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A DESCRIPTION AND ANALYSIS OF COASTAL ZONE AND SHORELAND MANAGEMENT PROGRAMS IN THE UNITED STATES

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TABLE OF CONTENTS

	PAGE
INTRODUCTION	vii
SECTION I. Overview and Analysis of Coastal Zone and Shoreland Management Programs in the United States	
Chapter 1. Purpose and Methodology	2
Chapter 2. History of Coastal Zone and Shoreland Management at the State Level	20
Chapter 3. Description of Coastal Zone and Shoreland Management Programs by Type	24
Part A. Wetlands Preservation and Acquisition Programs	24
Part B. Beach Access Programs	37
Part C. Power Plant Siting Programs	39
Part D. Shorelands Zoning Programs	51
Part E. Site Location Regulation Programs	56
Part F. Comprehensive Coastal Zone Planning Programs	58
Part G. Comprehensive Coastal Zone Management Programs	62
Part H. Other Types of Programs	67
Chapter 4. Comprehensive Coastal Zone Management Issues	71
Chapter 5. Areas for Future Research	84
SECTION II. Ten States' Approaches to Coastal Zone and Shorelands Management	91
Chapter 1. Massachusetts	92
Chapter 2. Maine	110
Chapter 3. Maryland	129
Chapter 4. Oregon	169
Chapter 5. Wisconsin	181
Chapter 6. California	190

Chapter 7. Hawaii 208

Chapter 8. Delaware 251

Chapter 9. Washington 267

Chapter 10. Rhode Island 299

SECTION III. Survey of Other State Coastal Zone and Shoreland Management Programs 315

Chapter 1. Atlantic Coast 316

Introduction

Part A. New Hampshire 317

Part B. Connecticut 319

Part C. New York 324

Part D. New Jersey 328

Part E. Virginia 333

Part F. North Carolina 335

Part G. South Carolina 344

Part H. Georgia 345

Part I. Florida 349

Chapter 2. Gulf Coast 364

Introduction

Part A. Alabama 365

Part B. Mississippi 366

Part C. Louisiana 374

Part D. Texas 385

Chapter 3. Great Lakes 401

Introduction

Part A. Great Lakes Basin Commission 401

Part B. Michigan 406

Part C. Minnesota 411

Chapter 4. Pacific Coast 420

Alaska 420

APPENDICES (Compendium of relevant legislative acts, executive orders, etc.)

A. Massachusetts

B. Maine

C. Maryland

D. Oregon

E. Wisconsin

F. California

G. Hawaii

H. Delaware

I. Washington

J. Rhode Island

K. Atlantic Coast

L. Gulf Coast

M. Great Lakes

N. Pacific Coast

O. Persons to contact concerning coastal management activities on a state-by-state basis

TABLES

		PAGE
Table I.	Coastal Legislative, Executive, and Judicial Measures of the Ten States	9
Table II.	Legislative, Executive, and Judicial Coastal Measures of the Other Coastal States	13
Table III.	Coastal Zone and Shoreland Management Programs in the United States	16
Table IV.	Type of Wetlands Programs Undertaken by Atlantic Coast States and Date of Initiation	28

INTRODUCTION

Throughout the history of civilization man has been drawn to the beach: the meeting ground of land and water. This attraction has been derived from a multitude of factors, from the most primitive net casting for food to an equally basic seeking of solitude and respite. Modern man has seen that the beach itself is really only one element of a natural system, now called the "coastal zone", that consists of a complex set of entities with interrelationships about which his knowledge is less than adequate. These many elements, the shallow water areas, beaches, bluffs, uplands, etc., both influence and are influenced by man's many uses and activities in the coastal zone.

In more recent history these activities have increased at rates that are at least proportional if not greater than the increase in man's numbers.

Initially, the more intensive use of the coastal zone was due to man's quest for economic growth and pursuit of commerce, e.g., based on his early dependence upon water transportation and related port and harbor development. Subsequent development of the coastal areas followed this beginning and at present more than 45% of the U.S. population lives in counties bordering on the Great Lakes, the Atlantic and Pacific Oceans, or the Gulf of Mexico.

Following the rapid rise in disposable income, leisure time, and general affluence, man has turned to the coastal areas with a new vigor which has manifested itself in terms of multiple use conflicts. Many localities, regions, and states have found themselves severely unprepared to react with adequate resource management strategies.

As a result, during the past decade the focus of attention on the coastal zone by state and federal government has increased tremendously. The states have seen their coastal areas subjected to unprecedented pressures from oil drilling, the operations of large power plants, increased port activity, and other such commercial and industrial activities. The growth in family income and leisure time has caused these areas to become the object of a tremendous boom in recreational activity, including swimming, boating, recreational fishing, all-terrain vehicles, as well as prime sites for second homes and suburban developments. The increased economic activity and population mobility have caused increase levels of pollution in coastal areas. The nation's coastal areas have shown the effects of these stresses: public access is at a premium; Lake Erie is suffering from advanced eutrophication; and the nation's supply of wetland areas has been seriously depleted. Furthermore, many of the economic and recreational activities that people have sought in coastal areas are incompatible.

This recognition of multiple use conflicts in the coastal areas has not been reflected in many of the various approaches to planning for future use. Frequently, planning programs express, sometimes implicitly, the promise that the coastal zone can be managed so as to mean all things to all people. In all too many cases, this ideal situation is ecologically impossible. The fragile coastal areas cannot be used for all purposes, no matter how well "managed".

Such incomplete approaches have been accompanied by another basic problem that is becoming increasingly apparent in this country: the question of land ownership and responsibility of land ownership. The traditional view of land as a commodity is in direct conflict with

the concept of land as a resource. Indeed, this difference in philosophy provides the basis for many of the legalistic difficulties in approaching the problem of a new management ethic for coastal zone resources.

The Sea Grant Program has provided a national focus on this extremely important resource issue. This report was prepared as a first attempt to put under one cover a discussion, sometimes admittedly brief, of all of the existing coastal programs. The major thrust was to look at what the various states have done in approaching the problem and to uncover which programs seem to be making innovative approaches to resource management. The following section will set the stage for the various chapters of the report.

FEDERAL GOVERNMENT STUDIES RELATING TO THE COASTAL ZONE

On the federal level, four major studies of coastal zone problems were undertaken during the period from 1965 to 1970. The Marine Resources and Engineering Development Act of 1966 authorized two studies, one by an inter-agency committee (A Plan for Multiple Use of the Coastal Zone by the Inter-Agency Committee on Multiple Use of the Coastal Zone) and the other by a commission of distinguished citizens (Our Nation and the Sea by the National Commission on Marine Science, Engineering, and Resources). The Clean Water Restoration Act of 1966 required the Department of the Interior to undertake an Estuarine Pollution Study. Finally, the National Estuarine Protection Act of 1968 authorized the National Estuary Study by the Fish and Wildlife Service. These studies, while differing on specific recommendations, saw the states as the key managerial units for any coastal resource program. The federal government's role was seen as providing technical and financial assistance along with some degree of federal overview of

state coastal plans and programs, the extent of which varied depending on the study. Legislation embodying these recommendations has been introduced during the past two years in Congress but has not yet been passed.

TREATMENT OF STATE COASTAL ZONE AND SHORELAND MANAGEMENT PROGRAMS

While activity on the state level has suffered from a lack of federal direction and technical and financial assistance, many states have initiated programs to cope with some of the problems of shorelands management. The purpose of this report is to provide insight into the various approaches of different states to determine which are valid and what the elements of a comprehensive coastal zone management program should be. Major attention will be focused on the programs of ten states. Summaries of the activities of the other coastal states in the area of shorelands management are included to provide a comprehensive view of the scope and nature of coastal zone programs in the United States. Emphasis is placed on programs dealing with management of the shorelands, rather than those dealing with the coastal waters or the tidelands lying underneath those waters because it is in the shorelands that the principal innovations are taking place and the threats to environmental quality are most imminent. The principal types of programs reviewed are those dealing with estuarine and wetlands preservation measures, including significant acquisition programs; controls over dredging and filling to protect environmental quality; industrial, residential, and power plant site location controls; and measures to increase beach access.

Mention will also be made of other programs being undertaken by coastal states which are not specifically aimed at coastal zones, but which are innovative approaches that may have some applicability to the solution of coastal zone problems such as the development of conservation commissions in Massachusetts and the creation of the Environmental Service in Maryland.

This report will not cover either new approaches in state pollution control programs as these have already been described in the literature, or reorganizations of state governments to provide better environmental management as these are extensively discussed in the Woodrow Wilson International Center for Scholars' publication Managing the Environment: Nine States Look for Answers.

The ten states that have been chosen for close examination and the reason for their selection are:

(1) Massachusetts, its wetlands program is an example of immediate measures that can be taken to protect vital resources while more comprehensive programs are being developed;

(2) Maine, its industrial, residential development and power plant site location legislation, and its coastal conveyance of petroleum program;

(3) Maryland, its activities in protecting its Chesapeake Bay resources and its power plant siting legislation;

(4) Oregon, its innovative policy in declaring its beaches up to the vegetation line, open for public use and its incipient statewide coastal zone program for all of its area west of its coastal range of mountains;

(5) Wisconsin, it is a Great Lakes state which has instituted a comprehensive shoreland zoning program;

(6) California, the activities of the San Francisco Bay Conservation and Development Commission and the work being done through its COAP (Comprehensive Ocean Area Plan) development program;

(7) Hawaii, its coastal zone program is being developed using its statewide zoning program as a base;

(8) Delaware, its recent law banning heavy industrial development in the coastal zone;

(9) & (10) Washington and Rhode Island, they were the first states to pass legislation establishing a comprehensive coastal zone program.

SECTION I

Overview and Analysis of Coastal Zone and Shoreland Management Programs in the United States

Chapter 1. Purpose and Methodology

Chapter 2. History of Coastal Zone and Shoreland Management at the State Level

Chapter 3. Description of Coastal Zone and Shoreland Management Programs by Type

Chapter 4. Comprehensive Coastal Zone Management Issues

Chapter 5. Areas for Future Research

CHAPTER 1

PURPOSE AND METHODOLOGY

PURPOSE

The purpose of this report is:

(1) to provide a survey of the shoreland management programs presently being undertaken at the state level to inform interested persons of past and current development in this area of growing importance;

(2) to provide an analysis of the various programs in order to determine what types of approaches appear to be appropriate and under what conditions;

(3) hopefully to assist persons working in this field to develop effective shoreland management programs for their areas by exposing them to the possible alternative approaches that are open to them and the strengths and weaknesses of those approaches as they are presently being pursued.

METHODOLOGY

Sources

The following comprise the major sources of information for this report: (1) federal government reports including the major coastal zone studies such as the National Estuary Study and the National Estuarine Pollution Study; (2) review of the literature including articles in law journals and natural resource journals; (3) review of studies undertaken by the states; (4) correspondence with state agency officials; (5) interviews, where possible, with appropriate officials

and knowledgeable persons; and (6) review of the legal statutes enacted in the various states regarding shorelands management.

The acquisition of the necessary information was hindered by the fact that some of the programs discussed have been so recently enacted that the formulation of the means of implementing them has not even been completed, thus rendering judgment of their effectiveness difficult. Moreover, the limitation on the time and manpower available may have resulted in the omission of some information that ideally should have been included.

Finally, the fact that prime concentration was on the programs of ten states is not meant to be an implication that the programs of the other coastal states are necessarily inferior. The programs of the ten states selected were thought to be most representative of current shoreland management efforts.

Method of Approach

Background

This report focuses on state shoreland management programs since the present trend towards coastal zone management has come from the need to provide better management of shoreland and nearshore water areas due to the imminent threats to the environmental quality of such areas and the necessity to establish priorities among conflicting uses of such areas. (In this report the term "shorelands" is used to describe the strips of land which comprise the interface between the interior lands of the United States and the waters of the Great Lakes, the Atlantic Ocean, the Pacific Ocean and the Gulf of Mexico. The term coastal zone includes, in addition to the shorelands, the coastal waters and the submerged lands lying under the coastal waters, out to the limit of state jurisdiction.)

However, it should be realized that no shoreland management program adequately takes into account all of the factors that must be considered in a comprehensive coastal zone management program.

As indicated by enacted coastal zone management programs in Washington and Rhode Island, regulation of the use of offshore waters as well as of shoreland areas must be considered in any comprehensive coastal zone management program. While the problems of the offshore waters are not generally as pressing as those on shoreland and nearshore areas, there are strong indications that the situation may soon change. The oil spills off the California coast and elsewhere are only the harbingers of future problems associated with increased utilization of the resources of offshore areas. There is also the added difficulty of the lack of any control by a state over activities undertaken beyond its three-mile limit which may directly affect its coastal areas.

Even the coastal zone programs of Washington and Rhode Island do not fully take cognizance of all the activities that have an impact on their coastal areas. The federal government undertakes many activities and programs that have a direct impact on a state's coastal areas; these range from navigation and defense to the establishment of national seashores. It also undertakes many programs that are not specifically related to coastal areas but which have a substantial impact on the uses to which a state's coastal areas are put; examples of such programs are the national interstate highway program and the Land and Water Conservation Fund program. Under the Constitution the states have limited control over such activities but they can provide mechanisms in their coastal zone programs for the interaction of their activities and those of the

federal government. They are in a similar situation with respect to the activities of other states that may have an impact on their coastal areas.

The states themselves conduct several programs that are centered on the regulation of a single or limited number of uses, such as shellfish harvesting and fishing or provision of dock facilities, without much attention being given to their overall impact on a state's coastal areas. They also conduct many programs only indirectly related to coastal zone management, such as highway construction and provision of recreational areas, which may have a significant impact on coastal areas.

Two other types of programs may have a significant impact on a state's coastal areas: first are the air, water, and solid waste pollution control programs both on the state and the federal level which have a major effect on the vitality of a state's coastal resources; second are the policy guidelines established by such acts as the National Environmental Policy Act of 1969 on the federal level and Michigan's Act 127-1970, the Environmental Protection Act of 1970, (which gives citizens the right to sue to prevent environmental degradation) on the state level, and other manifestations of the Public Trust Doctrine.[1]

Obviously, one paper cannot cover all of these subjects, but in the establishment of a fully comprehensive coastal zone management program the impact of such activities should be recognized and provision should be made for appropriate linkages between the regulations of such activities and the implementation of the coastal zone management program. It is hoped by discussing the shoreland management programs and the

efforts at coastal zone management of Washington and Rhode Island, the nature of the trends that are occurring on the state level towards coastal zone management can be indicated.

Specific Approach

As mentioned in the introduction, the programs of ten states were chosen for close examination as they are representative of the major approaches being undertaken on the state level. In examining the programs of these states, attention was focused on the following features:

(1) the purpose of the program;

(2) the policy statement, if any, under which the program was to be carried out;

(3) the integrity of the program (whether it forms an effective program in itself or needs accompanying programs to be effective);

(4) the type of implementing agency;

(5) the state-local relationships that are involved in implementing the program;

(6) the information base on which the program was to be implemented;

(7) the method and the amount of funding for the program;

(8) the staff support for the program;

(9) its relationship to other state programs affecting the state coastal areas;

(10) the provision, if any, for public participation in the program's development and implementation;

(11) the enforcement powers associated with the program: permit system, standards, regulations, eminent domain, injunctive recource, etc.;
and

(12) the provisions, if any, for appeal and decision review of agency decisions related to the program's implementation.

Appraisal of programs in accordance with the above criteria was in some instances hindered by an inability to obtain sufficient information about the program in relation to each of the above criteria from the sources available. In addition, some of the programs have been so recently enacted that several aspects of these programs have not yet been settled. In such cases the analysis of the program in question was based on the available information.

Table 1 shows the legislative acts and court cases that were analyzed in relation to the shoreland management efforts of each of the ten states. These programs are discussed in detail in Section II.

As mentioned above, the shoreland management programs of other coastal states were also reviewed in order to obtain a comprehensive view of the scope and general nature of shorelands management at the state level throughout the United States. Table II summarizes the programs that the other coastal states have undertaken. These programs are discussed in Section III. Table III provides a matrix representation of the shoreland programs that each coastal state has undertaken.

The remainder of this section will be devoted to giving an overview of the status of shoreland management at the state level in the United States: a historical analysis is presented, which also describes

the influence of geographical and political factors on the development of shoreland management programs; followed by a description and analysis of shoreland management programs by type and a discussion of the various issues involved in developing a comprehensive coastal zone management program; finally, there is a section devoted to the areas that should be examined in future research.

TABLE 1

COASTAL LEGISLATIVE, EXECUTIVE, AND

JUDICIAL MEASURES OF THE TEN STATES

State	Type of Program	Relevant Legislation and Court Cases	Date
Mass.	Wetlands	1. Act 426 (Jones Act-Coastal Wetlands Dredge and Fill Law of 1963) as amended	1963
		2. Act 768 (Coastal Wetlands Protection Act)	1965
		3. Act 220 (Hatch Act-Inland Wetlands Dredge and Fill Law of 1965) as amended	1965
		4. Act 444 (Inland Wetland Protection Act of 1968)	1968
		1A. Commissioner of Natural Resources vs. S. Volpe and Company*	1965
	Estuarine Area Management Plan	A1. Executive Order No. 59 (Commission on Ocean Management)**	1968
	Conservation Commission	1. Act 223 (Conservation Commission Act)	1957
		2. Act 517 (Massachusetts Self-Help Act)	1960
Maine	Wetlands	1. Act 348 (Coastal Wetlands Regulation) as amended	1967
		2. Act 572 (Coastal Wetlands Regulations)	1971
		1A. State vs. Johnson	1970
	Industrial, Subdivision, Power Plant Siting	1. Act 571 (Site Location Regulation)	1970
	Oil Transport	1. Act 572 (Coastal Conveyance of Petroleum)	1970

State	Type of Program	Relevant Legislation and Court Cases	Date
Maine, cont.	Coastal Development Plan	(Period of development 1969-1973)	
Maryland	Wetlands	1. Act 241 (Wetlands)	1970
		2. Act 242 (Wetlands)	1970
	Power Plant Siting	1. (Power Plant Siting)	
	Comprehensive Sewage Treatment	1. Act 240 (Environmental Service Act)	1970
	Comprehensive Resources Plan	(Begun 1969)	
Oregon	Beach Access	1. Act 601 (Beach Bill) as amended	1967
		1A. State ex rel Thorton vs. Hay	1969
	Coastal Zone Management Plan	1. Act 608 (Coastal Zone Management Plan)	1971
	Coastal Construction Moratorium	A1. Executive Order 01-070-07	March 3, 1970
	Power Plant Siting	B1. Executive Order 01-069-25	Dec. 11, 1969
Wisconsin	Shoreland Zoning	1. Act 614 (Water Resources Act of 1965)	1965
California	San Francisco Bay Conservation and Development Commission	1. Act 1165 (McAteer-Petris Act) as amended	1965
		2. Act 713 (McAteer-Petris Act - major amendments)	1969
	Thermal Power Plant Siting	Departmental Regulation as amended	1965
	Comprehensive Ocean Area Plan	Act 1642 (Marine Resources Conservation and Development Act of 1967)	1967

State	Type of Program	Relevant Legislation and Court Cases	Date
California, cont.	Beach Access	A1. Gion vs. Santa Cruz	1970
		A2. Dietz vs. King	1970
Hawaii	Land Use Zoning	1. Act 187 (State Land Use Law of 1961)	1961
		2. Act 32 (Amending the State Land Use Law)	1963
		3. Act 205 (Amending the State Land Use Law)	1965
	Open Space	1. Act 135 (Open Space Appropriations)	1970
	Beach Access	1. Act 136 (Shoreline Setback Areas)	1970
	Marine Management	1. Act 137 (Office of Marine Affairs Coordinator)	1970
	Natural Areas Protection	1. Act 139 (Natural Areas Reserve System)	1970
Delaware	Heavy Industry-Port Facility Ban	1. Act 175 (Coastal Zone Act)	1971
	Coastal Zone Management Plan	(Begun 1970)	
Washington	Coastal Management	1. Act 286 (Shoreline Management Act of 1971)	1971
		2. Initiative 43 (Shoreline Protection Act)	(to be voted on Nov., 1972)
		1A. Wilbour vs. Gallaher	1970
	Thermal Power Plant Siting	1. Act 45 (1st extraordinary session) (Thermal Power Plant Siting Act of 1970)	1970
Rhode Island	Wetlands	1. Act 140 (Coastal Wetlands)*	1965

State	Type of Program	Relevant Legislation and Court Cases	Date
Rhode Island, cont.		2. Act 26 (Intertidal Salt Marsh) as amended	1965
	Coastal Management	1. Act 279 (Coast Resources Management Council)	1971

*Court cases denoted by subscripted numbers

**Executive orders denoted by subscripted letters

TABLE II

LEGISLATIVE, EXECUTIVE, AND JUDICIAL

COASTAL MEASURES OF THE OTHER COASTAL STATES

State	Type of Program	Relevant Legislation and Court Cases	Date
Atlantic Coast			
New Hampshire	Wetlands-Dredging & Filling Controls	1. Act 215 (Regulation of Dredging & Filling in and adjacent to Tidal Waters)	1967
		2. Act 284 (Regulation of Dredging & Filling in and adjacent to Public Waters)	1967
		3. Act 274 (Regulation of Dredging, Filling, Construction, etc., in Surface Waters)	1967
Connecticut	Wetlands	1. Act 695 (Preservation of Tidal Wetlands)	1969
		2. Act 536 (Wetlands Acquisition Powers)	1967
New York	Wetlands	1. Act 545 (Long Island Wetlands Act)	1960
	Coastal Management Unit	1. Act 715 (Division of Marine and Coastal Resources)	1969
	Power Plant Siting	1. Act 294 (Power Plant Site Acquisition) amends the Atomic Space and Development Act, Act 210-1962.	1968
New Jersey	Wetlands	1. Act 45 (Green Acres Land Acquisition Act of 1961)	1961
		2. Act 46 (Green Acres Bond Act of 1961)	1961
		3. Act 27 (Wetlands Act of 1970)	1970

State	Type of Program	Relevant Legislation and Court Cases	Date
Virginia	Wetlands	1. House Joint Resolution 60 (Wetlands Commission Study)	1971
North Carolina	Wetlands	1. Act 791 (Dredging & Filling Regulation)	1969
		2. Act 159, Sections 6 & 7 (Dredge & Fill Law) amends Act 791-1969, Coastal Wetlands Act	1971
	Beach Area Protection	1. Act 237 (Sand Dune Protection)	1965
	Coastal Zone Plan	1. Act 1164 (Estuarine Zone Study)	1969
Georgia	Wetlands	1. Act 1332 (Reid-Harris Bill, Coastal Marshlands Protection Act of 1970)	1970
Florida	Aquatic Preserves	1. Resolution of Nov. 24, 1969 of the Board of Trustees of the Internal Improvement Fund	1969
	Beach Area Protection	1. Act 280 (Regulation of Coastal Construction and Excavation)	1971
	Coastal Zone Plan	1. Act 259 (Coastal Coordinating Council)	1970
Gulf Coast			
Mississippi	Marine Resource Management Council	1. Act 293 (Marine Resources Council)	1970
	Regional Organization	1. Act 517 (Gulf Regional District Act)	1971
Louisiana	Legislative Committee	1. Senate Concurrent Resolution #8 (Joint Legislative Committee on the Environment)	1970

State	Type of Program	Relevant Legislation and Court Cases	Date
Louisiana, cont.	Marine Resource Management Commission	1. Act 35 (Louisiana Advisory Commission on Coastal and Marine Resources)	1971
Texas	Beach Access	1. Act 19 (Open Beaches Bill)	1958
		1A. Seaway Co. vs. Attorney General*	1964
	Natural Resources Council	1. Act 417 (Natural Resources Interagency Council)	1967
		2. Senate Concurrent Resolution No. 38 (Coastal Zone Study)	1969
	Sale and Lease Moratorium	1. Act 21 (Submerged Lands Moratorium)	1969
	Marine Resources Council	1. Act 279 (Council on Marine-Related Affairs)	1971
Great Lakes			
Michigan	Shoreland Management	1. Act 245 (Shorelands Management & Protection Act of 1970)	1970
Minnesota	Shoreland Management	Act 777 (Regulation of Shoreland Use & Development)	1969
Pacific Coast			
Alaska	Constitutional Provisions	Section VIII (Natural Resources) Alaska Constitution	1958
	Resource Management	Alaska Land Act	1959

*Court cases denoted by subscripted numbers

TABLE III

COASTAL ZONE AND SHORELAND MANAGEMENT PROGRAMS UNDERTAKEN IN THE UNITED STATES

State	Wetlands		Beach Access	Power Plant Siting	Shorelands Zoning	Site Location Regulation	Comprehensive Planning	Coastal Zone Management	Other	
	Protection	Major Acquisition							directly related	indirectly related
Alabama										
Alaska									x	
California	SF Bay		x	x			x	SF Bay	x	
Connecticut	x	x								
Delaware		x				x	x			
Florida							x			
Georgia	x									
Hawaii			x				x		x	
Illinois							GLBC study			

State	Wetlands		Beach Access	Power Plant Siting	Shorelands Zoning	Site Location Regulation	Comprehensive Planning	Coastal Zone Management	Other	
	Protection	Major Acquisition							directly related	indirectly related
Indiana							GLBC study			
Louisiana	(study)						x			
Maine	x					x	x			x
Maryland	x			x						x
Massachusetts	x						x			x
Michigan					x		GLBC study			
Minnesota					x		GLBC study			
Mississippi							x			
New Hampshire	x									
New Jersey	x	x								
New York	x			x			GLBC study			
North Carolina	x	x					x		x	

State	Wetlands		Beach Access	Power Plant Siting	Shorelands Zoning	Site Location Regulation	Comprehensive Planning	Coastal Zone Management	Other	
	Protection	Major Acquisition							directly related	indirectly related
Ohio							GLBC study			
Oregon			x	x			x		x	
Pennsylvania							GLBC study			
Rhode Island	x						x	x		
South Carolina										
Texas			x	x			x		x	
Virginia	(study)									
Washington				x			x	x	x	x
Wisconsin					x		GLBC study			

CHAPTER 1

FOOTNOTES

[1]The Public Trust Doctrine and its implications for natural resources management is discussed in some detail in the book Defending the Environment: A Strategy for Citizen Action by Professor Joseph Sax of the University of Michigan Law School.

CHAPTER 2

HISTORY OF COASTAL ZONE AND SHORELAND MANAGEMENT AT THE STATE LEVEL

There have been five major sources of impetus for passage of coastal zone and shoreland management legislation at the state level:

(1) substantial evidence of serious environmental degradation;

(2) increasing conflicts between various uses of coastal areas and increasing developmental pressures on such areas;

(3) federal coastal zone studies and legislation;

(4) state coastal zone studies and reports; and

(5) the nation-wide concern for environmental quality that came into prominence during the 1960's.

The first programs to be initiated at the state level were the beach access programs of Texas (1959) and Oregon (1967) and the wetlands preservation programs of Massachusetts (1963, 1965), Rhode Island (1965), Maine (1967), and other Atlantic Coast states. On the West Coast similar attention was being focused on the threats to San Francisco Bay and its estuarine areas which culminated in the development of the San Francisco Bay Conservation and Development Commission (1965). The beach access legislation passed in Texas and Oregon was in response to threats by private interests to stop long-standing public use of the state beach areas. The wetland preservation programs were passed in response to the increasing threats to estuarine areas from dredging and filling projects and general coastal development coupled with a growing awareness of the value of such areas for sustenance of wildlife and fisheries, flood control, etc.

These programs were aimed at specific aspects of the general area of the utilization of coastal resources, but in the late 1960's, attention was focused at the whole area by four major studies undertaken at the federal level: A Plan for the Multiple Use of the Coastal Zone; Our Nation and the Sea; The Estuarine Pollution Study; and the National Estuary Study. The nature of the nation's coastal resources was studied in detail, major threats to them were identified, and recommendations were made on possible approaches to alleviate the threats. All of these emphasized the importance of action at the state level in any coastal zone managment system.

While the input of these studies was being considered at the state level, the environmental movement gained national prominence in late 1969 and 1970, culminating in a series of teach-ins on college campuses throughout the country. At the same time, coastal zone management legislation was introduced in Congress offering the potential for substantial federal financial assistance if a state established a coastal resources management program and an administrative mechanism to implement it. The states responded to these forces with a flurry of environmental legislation as can be seen in Tables I & II.

Mention should be made of the geographic differences of the state programs that have been initiated. The Atlantic Coast states have focused much attention on protecting their wetlands because of the tremendous value of the wetlands to coastal fisheries and other estuarine life and the danger to such estuarine areas from dredging and filling projects and other coastal developments. Florida has taken action to protect its unique coastal resources through establishment of a system of aquatic preserves. The Gulf Coast states have concentrated on methods of

allocation of exploitation rights for its estuarine resources and have only begun to implement protective measures as effects of overdevelopment have begun to threaten their coastal resources. In the Great Lakes, Wisconsin and Minnesota enacted shoreland management programs primarily in response to pressure on their inland lakes, while Michigan's program was aimed originally at coping with shore erosion problems due to high lake levels on the Great Lakes. Protection for environmental areas was added to Michigan's program as a result of the increased interest in environmental concerns that developed as an effective political force in the state in late 1969 and 1970. California and Oregon have instituted programs to protect the public's long-standing use of beach areas. In addition, the San Francisco Bay Conservation and Development Commission has instituted a management program to protect Bay resources. Both states have also embarked on coastal zone planning programs as the first steps to management programs. The state of Washington, under impetus of a court decision and pressure from conservation organizations, has enacted a program of shoreline management (1971) and may adopt a stronger program by an affirmative vote on an initiative measure in November, 1972. Finally, Rhode Island (1971) and Delaware (1971), states strongly dependent on coastal resources, have instituted programs to protect their coastal resources, on the basis of the recommendations of task forces appointed to study the problems of coastal zone management.

Political pressures have also played a part in shaping the contents of such programs. The comprehensive shoreline management program passed in Washington was the result of pressures from developmental interests inhibited by a court decision, which blocked shoreline development until enabling legislation was passed, and pressures from

conservation organizations for legislation to protect coastal areas. In Georgia and North Carolina, wetlands legislation was passed only after the growth of environmental concern was able to offset pressures from development interests. Rhode Island's coastal management legislation was passed only after it had been modified to give representation on the management council to local governmental units. In some other states, legislation instituting new coastal zone management programs has been enacted but has not been sufficiently funded to constitute effective programs. Finally, pressure from development interests on the departments administering programs relating to management of coastal resources has prevented the effective implementation of such programs in some states. Thus, passage of good legislation does not insure the implementation of an effective program. Sufficient funding and political support are also necessary. More detailed discussion of this point will be undertaken in other portions of this report.

CHAPTER 3

DESCRIPTION OF COASTAL ZONE AND SHORELAND MANAGEMENT PROGRAMS BY TYPE

PART A - WETLANDS PRESERVATION AND ACQUISITION PROGRAMS

Background

Most of the Atlantic Coast states have initiated programs to protect their wetlands areas because they have recognized the immense value of such areas to the propagation of fisheries and estuarine life and the increasing threat to such areas from developmental pressures, especially those involving dredging and filling.

The other coastal states have not taken similar action for several reasons. The Gulf Coast states until recently had not encountered any developmental pressures comparable to those of the Atlantic Coast states, and the wetlands areas are generally more dispersed. Their programs also have been traditionally oriented towards exploitation of coastal resources, particularly mineral and petroleum deposits. However, in the past year, Texas, Louisiana, and Mississippi have initiated major studies into the problems of effective management of their coastal resources including their wetlands areas.

The Great Lakes do not have any true estuarine areas because of their fresh water composition. However, Michigan through its Shoreland Protection and Management Act of 1970 has initiated a program involving the zoning of wetland and high risk erosion areas by local communities under state guidance.

The contiguous Pacific Coast states have placed more emphasis on regulating the use of beach areas and other coastal resources than on regulating the use of wetlands areas. This is largely due to the fact

that they have few estuaries. These few estuarine areas consist mainly of areas around the mouths of rivers in the Northwest and shallow coastal embayments with little or sporadic river flow in the Southwest. The major exception to this is San Francisco Bay which is fed by the fresh water runoff from much of northcentral California.[1] To protect the Bay's resources, the San Francisco Bay Conservation and Development Commission has been established to regulate shoreline activities particularly dredging and filling projects. It is expected that coastal zone management programs presently being developed by the Pacific Coast states will include provisions for protection of their limited wetland areas.

Alaska is in a unique position in that nearly all of its land area is presently owned by the federal government and in that its coastal resources have not been subject to much pressure for development. This will change somewhat with the lifting of the freeze on land development as a result of the settlement of the Alaska Native Claims issue and the completion of the land selection process by the Alaska state government. When it became a state, Alaska enacted constitutional provisions relating to the protection of its coastal resources and legislation to provide basic guidelines for the management of its lands in accordance with those provisions. Whether these provisions will be sufficient to protect the state's coastal resources as they are subject to more developmental pressure is subject to question.

Composition of Wetland Management Programs

Thus it can be seen that the primary wetlands protection programs have been instituted in the Atlantic Coast states. Such programs have generally been undertaken as narrow focus programs that have as their

goal protection of those states' single most valuable coastal resource, their wetland areas (considering the relationship of such areas to the propagation of the Atlantic Coast fisheries and other coastal aquatic life such as oysters, waterfowl, and lobsters) not the development of a comprehensive coastal resource management program. Many of those states have declared preservation of the vitality of their wetland and estuarine areas as the primary goal under which they will regulate coastal activities. The rest of Atlantic Coast states are seeking an effective mechanism for preserving as many estuarine areas as possible while allowing certain other important coastal activities to supersede the preservation of wetlands in some areas. As can be seen from Table IV, the initiation of these programs was spurred by the increased recognition of the value of wetland resources and the increased concern of the general public over environmental matters that developed in the late 1960's.

In pursuing these objectives there have been three major types of programs that the Atlantic Coast states have undertaken: (a) acquisition programs, (b) programs involving the institution of a permit system to regulate activities in wetland areas, and (c) programs involving the institution of a system of restrictive orders placed on wetland areas to limit the uses which can take place to protect the vitality of such areas. Acquisition programs provide the greatest control over activities occurring in estuarine areas, but they are also the most expensive. Programs involving the establishment of a system of restrictive orders provide less complete protection but are less expensive and do not take wetland areas off local tax rolls. Permit systems are the least expensive to implement and provide a mechanism for regulating the manner in which allowable uses are to be undertaken. However, they cannot

generally prohibit the development of coastal areas but can only regulate such development so that it occurs in the least harmful manner. Most of the Atlantic Coast states have utilized the elements of more than one of these programs in their attempts to provide an adequate protection program for their estuarine areas. Table IV shows the types of wetlands programs each Atlantic Coast state has undertaken.

Management Agencies

Most states have placed management of their wetlands programs in a single state agency (the Department of Natural Resources or its equivalent) which is to consult to some degree with other state agencies and local governmental units before taking regulatory action. However, Maine's programs are administered by an interagency group, the Wetlands Control Board, comprised of the Commissioners of the Departments of Seas and Shores Fisheries and Inland Fisheries and Game, the chairmen of the Environmental Improvement Commission and the State Highway Commission, the Forestry Commissioner, and the Commissioner of Health or their delegates. Furthermore, New York's program is unique in that it primarily consists of state financial assistance to local communities on Long Island, where the majority of New York's wetlands are located, to enable local governments to institute conservation and management programs for wetlands owned by the local townships. Township-owned wetlands constitute the greatest portion of the significant wetlands on the Island.

Components of an Effective Wetlands Program

Ideally, a model wetlands program should utilize all three of the major approaches described above. In describing the components of such a program, below, it must be realized that a management program

TABLE IV

TYPE OF WETLANDS PROGRAM UNDERTAKEN

BY ATLANTIC COAST STATES AND DATE OF INITIATION

State	Study	Permit System	Restrictive Order System	Wetlands Acquisition Program	Other
Maine		1967	1971	(limited)	
Massachusetts		1963	1965	(acquisition by local conservation commission)	
Rhode Island	1970 (as part of coastal zone study)	1965		(limited)	Coastal Zone Management Program (1971)
Connecticut	1969	1969		(major)	
New Hampshire		1967		(limited)	
New York				(limited)	financial and technical assistance to local wetlands management programs (1960)
New Jersey	1970	1970	1970	(major)	
Delaware	1970 (as part of coastal zone study)			(major)	site location control program (1971)
Maryland	1967	1970	1970	(limited)	
Virginia	1971			(limited)	

State	Study	Permit System	Restrictive Order System	Wetlands Acquisition Program	Other
North Carolina	1969	1969	1971	(major)	
South Carolina				(limited)	
Georgia	1970	1970		(authorized)	
Florida	1970 (as part of coastal zone study)			(authorized)	aquatic preserves system (1969)

must be adapted to the existing governmental and legal structures in a state. Such adaptation does not, of course, rule out the possibility of making such changes in the existing institutional arrangements as are necessary for the implementation of an effective program. But attention must also be paid to consideration of the political and legal feasibility of the proposed program.

In regard to acquisition efforts, a state should acquire those wetlands that are so valuable that it is desirable to place them under the complete control of the state. In some states, many such areas have already been protected by acquisition under the Federal Wildlife Refuge Program and similar federal programs, local governmental open space and conservation programs, or the programs of private citizens and conservation groups.

Concomitant with such acquisition efforts, a state should place all of its remaining wetlands under restrictive orders that establish a basic level of protection. Administration of a permit system will then provide a mechanism by which desirable activities can be regulated so that the wetland areas in question are not adversely affected to any significant degree. Several states have not instituted a restrictive order system but only have undertaken the comprehensive survey and inventory of wetland areas that would accompany the institution of such a system. This author believes, however, that the restrictive order system has the advantage of allowing the cognizant agency to consider what activities are appropriate on an area-wide basis and then to issue restrictive orders that comprise the equivalent of an easement to prevent unsuitable activities. Institution of only a permit system forces decisions on allowable activities to be made on a permit-by-permit basis.

The danger of the latter approach is that the vitality of an estuarine area may be nibbled away by a succession of small concessions to developmental interests. In any case, attention must be focused on the difficult problem of establishing the criteria on which the issuance of permits will be based. In the discussion that follows, certain features which are of considerable importance to the establishment of a wetlands preservation program will be briefly described.

(1) In the establishment of acquisition programs, the power of eminent domain is obviously quite helpful in insuring that wetlands of major significance can be acquired and thus protected from undue development. In addition, the granting of such power as was given to Connecticut's Board of Fisheries and Game by Act 536-1967 to acquire wetland areas for which municipal property tax payments are six or more years delinquent by paying the unpaid taxes is a provision that is of limited application but which can in some cases allow a state to acquire wetland areas at minimal cost.

(2) A strong policy statement which declares the state's intent to protect its wetlands, describes the reasons why the wetlands are important to the state, and points out the threats to the vitality of such wetlands can be of major importance in the effective implementation of a wetlands permit program. Such a declaration of state policy can add substantial support to the state's position in any court case challenging the constitutionality of a state agency's decision on a permit application on grounds that it is an undue exercise of police power. Such a statement may also allow aggrieved persons to challenge unwise agency decisions by questioning whether such decisions were in accordance with the general policy stated in the act. Such a statement

is not so important in the implementation of a restrictive order system since such a system relies heavily on voluntary acceptance by property owners of the proposed orders as constituting what is best for their interests as well as the best interests of the general public.

(3) The manner in which the wetland areas to be protected are determined can be of prime importance to the effectiveness of a wetlands preservation program. Many states are identifying the areas to be protected by undertaking comprehensive survey programs that utilize evidence of periodic or occasional tidal inundation and the presence of characteristic types of vegetation such as Spartina altiflora, Spartina patens, saltwort, etc., for identification purposes. Determination of the landward boundary of the wetland areas to be protected is difficult. Legal and political as well as ecological considerations are involved. A definition must be selected that will provide adequate protection and also survive a judicial challenge. Several states include lakes, bogs, salt marshes, etc., and lands subject to tidal waters that are no more than one foot above extreme high water. In legislation authorizing the restrictive order systems of Massachusetts and North Carolina, the director of the administering agency is allowed to place under restrictive order such contiguous land as he deems necessary for carrying out the purposes of the act as well as actual marsh and estuarine areas. Such provisions allow control over activities occurring on contiguous lands that might otherwise adversely affect the wetland areas.

(4) Whatever boundaries are decided upon, they should be recorded at the local registry of deeds (along with the limitations on the activities allowed in the case of a restrictive order system).

Whenever possible, notice should be placed on the actual deeds, or at least on a list of the affected property owners so that any potential buyers of such property will be aware that restrictions have been placed on the uses to which such property can be put.

(5) All permit applications for the undertaking of activities on wetland areas should include: a description of the proposed activity; a description of the area to be affected; proof of ownership of the area in question (the deed or other reasonable evidence of ownership) or the permission of the owner if the land is not owned by the applicant; a list of the known owners of adjacent or riparian property that would be affected by the project; certification from local governmental authorities that the proposed project does not violate any local zoning laws, ordinances, etc.; and an application fee to defray the costs of processing the application. In considering such applications, the cognizant agency must be given the authority to approve, deny, or require modifications to the permit in accordance with the provisions of the act.

(6) In the review of permit applications or proposed orders, the views of affected property owners, interested state agencies, local governmental officials and other interested persons should be obtained. Public hearings should be held on all proposed orders and on all major permit applications.

(7) In making the decision on a permit application the following guidelines for refusing the permit or requiring modifications to the proposed project should be set forth: adverse affects on the public safety, health, or welfare; significant adverse affects on the property of abutting owners including property owned by the state if such is the

case; adverse affects on the public use of estuarine waters; adverse affects on public or private water supplies; adverse affects on the area's flood control capabilities; adverse affects on wildlife or freshwater, estuarine, or marine fisheries, etc. However, such guidelines should only be indicative of the types of factors the agency must consider so that the agency can consider other factors that may be important but were not originally included in the legislation. They should, nevertheless, be based on the results of a comprehensive wetlands inventory system so that all relevant factors will be fully considered, especially those related to the environmental characteristics of the wetlands in question.

(8) Permits should be approved under the condition that the approved project will be completed within a set time period, with extensions allowed if it is shown that all reasonable efforts have been made to complete the project within that time period. (Georgia's wetlands act establishes a two-year limit for completion of approved projects.) Such a provision will prevent projects approved several years previously from being undertaken if circumstances have changed so that the undertaking of the project is no longer wise; an example being the Cross-Florida Barge Canal which was originally approved for anti-submarine purposes during World War II but actual work was not begun on it until approximately twenty years later when the original purpose for its authorization was no longer valid.

(9) Appeal procedures must be available to any person aggrieved by the agency's decision in either a permit decision or the establishment of a regulatory order with a time limit set in which such appeals would be allowed.

(10) Provision should be made to restrict the impact of any adverse court decision regarding the constitutionality of an agency's decision on a permit or an order to the area in question. In the case of such an adverse decision, the agency should have the opportunity to purchase the land in question or an easement on it or allow it to be removed from the provisions of the act. The effectiveness of Rhode Island's wetlands program was impaired because it required compensation to the owner in all such cases thus placing the threat of a potential financial drain on the state's budget if wetlands regulatory activities were actively undertaken.

(11) Provision must be made for adequate funds and staff to administer the program. Much good legislation has proven ineffective because insufficient staff and funds were provided to implement its provisions adequately. In addition, authority should be granted to the administering agency to accept funds from any sources, contract for necessary services with outside sources, establish rules and regulations in accordance with its mandated functions, etc.

(12) Exemptions from the provisions of wetland legislation should be as limited as politically and legally feasible to allow the implementation of an effective wetlands preservation program. North Carolina probably has the least amount of exemptions, excluding only the activities of the North Carolina State Board of Health and the mosquito control programs of local health departments which are undertaken for the protection of the health and welfare of the people of North Carolina. In other states, the activities of state agencies such as the Highway Department were excluded for political reasons. In addition, the wetland acts of some states specifically exclude the production of salt, hay, or other agricultural

crops because it was thought that, by allowing these uses, the constitutionality of these acts and actions taken in accordance with them would be more easily upheld.

(13) Finally, provision must be made to punish violators of the provision of the wetlands act. Many states consider such violations a misdemeanor, subject to the penalties thereof. Other states stipulate specific fines or jail sentences or both. In any case, the penalty should be severe enough to deter potential violation. Also, provision should be made to consider each day of an ongoing violation as a separate offense. Violators should be held responsible for the costs of restoring the land affected by their action to its original condition.

In the discussions of the programs of the individual states that follow in Sections II and III, an attempt has been made to analyze how well each state's program considers the above factors.

PART B - BEACH ACCESS PROGRAMS

Programs relating to beach access were among the first manifestations of attention towards the questions of the public's rights in the utilization of shoreland areas. Texas, in 1959, and Oregon, in 1967[2], codified, in law, the rights of their citizens to use shoreland areas up to the vegetation line. The validity of such laws was based on a history of long-standing public use of dry beach areas. The flat expansive nature of the beaches in these states encouraged public usage, including their use as transportation routes. Until recent years, such public utilization of beach areas was not challenged because of their unsuitability for permanent structures. However, with the rise in tourism and recreational activities along with technological advances, some private owners attempted to restrict usage of their beach property and to build structures for their own benefit. Such actions led to the passage of the "open beach" bills in Texas and Oregon and the resultant court cases to test their validity.

In the case involving the Texas law, Seaway Company vs. Attorney General (1964), the court upheld the state's right to block the construction of barriers on upper beach areas, but based its decision largely upon the public long-term use of the beach area for motorized travel rather than the law's assertion of the public right to use all beach areas.[3] The Oregon test case, State ex. rel. Thorton vs. Hayes (1969), in contrast, was decided in the state's favor based on the more general concept of the public's customary usage of such areas.[4]

In addition, two California court cases, Dietz vs. King and Gion vs. Santa Cruz (1970), considered together by the California Supreme

Court, upheld the state's position of the public's right to use the beach areas in question because of long-standing use of such areas for public purposes.[5]

Thus, the laws and court cases have set precedents favoring the public right to continued usage of beach areas if there has been a history of long-standing public use of such areas. While such precedents are useful in preserving the public's continued use of such shoreland areas, they bear little relevance to the problem of providing beach access to meet current and future public needs.

Moreover, once the public's right to use such areas has been safeguarded, there remains the problem of regulating public activities to preserve the quality of such areas, including the banning or severely limiting of some activities such as motorized travel, as well as integrating such usage into a system of compatible uses of a state's shorelands. Both Texas and Oregon have made some progress in regulating public usage but their management programs have not yet been perfected.

The above programs probably will have limited impact as precedents for other coastal states except where long-standing public rights of use are threatened.[6]

To provide more public access, most states will have to look towards acquisition of easements on or the fee simple of appropriate areas through open space or outdoor recreation programs or the enactment of laws expanding on the provisions of Hawaii's set-back law.[7] This law establishes set-back areas of from 20 to 40 feet on which construction and removal of materials was banned except under certain conditions. However, as presently constituted, this act establishes only limited set-back areas and probably allows too many exceptions.

PART C - POWER PLANT SITING PROGRAMS

Introduction

The subject of power plant siting was chosen for close examination in this report because electrical power plants have the potential of being a disruptive influence on the nation's shorelands. Because of the need for large amounts of cooling water, nuclear plants and large fossil fuel plants are increasingly being located in coastal areas, creating the potential for serious thermal pollution, the dislocation of other shore uses, and possible radiation and air pollution hazards.

State Programs

Maryland

While the question of developing better procedures for power plant siting is presently being discussed in the U.S. Congress, several states have already taken action in this regard. Maryland has probably the most all-encompassing program. Its Power Plant Siting Act of 1971 establishes a three-pronged program of land acquisition, environmental research, and single stage certification. The legislation authorizes a surtax of .1 mil on electrical energy produced in the state after January 1, 1972, to provide funds for an Environmental Trust Fund which will be used for the acquisition of favorable sites and for environmental research into the effects of power plant operation on the environment. The environmental research program is to be a continuing study conducted under the guidance of the Secretary of Natural Resources which will cover the spectrum from general biological and ecological baseline studies of Chesapeake Bay and its tributaries through the monitoring of the operation of power plants to the analysis of the socio-economic impact of electric power generation

facilities on land uses in the state. The results of this research work will be useful not only for application to the power plant siting program but also to other environmental programs run by the state.

To provide sites for the location of future power plants that are not harmful to the environment, the act established the following procedure: the Public Service Commission is to submit annually a ten-year plan of possible and proposed sites for the construction or extension of power plants, including associated transmission lines, in the state beginning January, 1972; the Department of Natural Resources will have 180 days to develop a preliminary environmental statement on each proposed and possible site; at the end of the 180-day period, the Secretary of Natural Resources will state which sites are unsuitable and these sites will then be dropped from the plan. For the sites judged possibly suitable, more detailed examination of their acceptability will be undertaken, with the results of such study published in detailed environmental statements within two years after the commencement of the study. Such statements are to be used as the basis for deciding which areas are to be acquired for use as future sites for power plants. The funds for the purchase of such areas will be supplied from the Environmental Trust Fund. The Department of Natural Resources may hold between four and eight sites for future use, subject to the requirement that by July 1, 1974, at least one site be acquired for each electric company in the state and that such a minimal inventory be maintained thereafter.

When an electric power company desires a site, it is to request one from the Department of Natural Resources which will then make a site available. In order to construct or operate a power plant once the site has been chosen, the company is to submit an application to the Public

Service Commission two years in advance of the commencement of construction. Upon receipt of such an application the Commission is to notify all the appropriate state agencies so that they may conduct the necessary studies of the proposed plant's probable impact on wetland areas, water supply, public health and welfare, etc.

After 60 days, the Commission is to hold a public hearing at which the state agencies are to state the findings of their studies and make recommendations as to the disposition of the proposed application. Other individuals who would like to make presentations on the matter may do so at this hearing. After the hearing, the state agencies have 15 days to modify their recommendations and submit them to the Public Service Commission. The Commission will then have 90 days to make a final decision on the matter. Approval of a company's application will automatically fulfill the requirement of any pertinent environmental regulations regarding the plant's construction and operation. Appeals can be made by any affected person but the grounds by which the Public Service Commission's decision will be overturned are limited. This may be the weak link in the system. The act gives the Public Service Commission the final say in the matter without providing sufficient appeal procedures to prevent unwise decisions on the part of the Commission from being carried out. In addition, the question of whether the power companies' needs should be filled without question is not directly attended to by the legislation's required procedures although the authorization for study of the question has certainly been granted by the legislature.

Nevertheless, this legislation contains most of the prerequisities of a model piece of legislation in this field: (1) consideration of the means of site acquisition; (2) detailed research into the environmental

affects of power plant siting, construction, and operation; (3) a procedure for providing adequate funding for the previous two steps; and (4) a streamlined procedure for reviewing a power company's request for certification for construction and operation which requires consideration of the environmental and public health and welfare factors involved.

Washington

The state of Washington also has instituted a major power plant siting program. However, it does not include any provision for the acquisition of potential sites. Rather, the act established a Thermal Power Plant Site Evaluation Council composed of the heads of the major state agencies or their designees. In addition, a representative of the county legislature in each county in which a thermal power plant is proposed, is to be appointed to take part in the deliberations when the Council is considering a site in his county.

To insure that the Council would give proper consideration of environmental factors, the act designated that the establishment of environmental and ecological guidelines be given top priority in the development of the thermal power plant evaluation program.

Council review of a proposed site is initiated by an application by a power company which is to be accompanied by a fee of $25,000 to pay for an independent study by a consultant of the environmental impact of the plant at the proposed site. To insure that the public interest will be considered in the Council's deliberations on the application, an assistant attorney general is to be appointed to represent environmental concerns during the Council's deliberations.

At least two public hearings are to be held on an application: one in the county in which the proposed site is located to assure the

proposed site complies with county or regional land use plans, and at least one additional hearing to hear views for and against the proposed siting.

After consideration of any studies done and the evidence presented at the public hearings, the council is to make its recommendations to the Governor on whether the site application should be approved or not. Denial of an application by the Governor is final, subject to normal court review. Certification of an application is to replace any permits, certification, etc., normally required by state agencies for construction or operation of the plant. However, violation of the terms of certification or of provisions of the Siting Act or regulations established by the Council is grounds for revokation of a permit. Willful violation of the provisions of the Act shall subject the violator to criminal prosecution of a gross misdemeanor. Material violations of the provisions of the act, or any certification issued under it, shall subject the violator to a fine of between $1,000 and $25,000 per day.

The above outlined program, established by the passage of the Power Plant Siting Act, appears to be a reasonable approach to the problem of power plant siting since it provides for public input through its hearing procedures, for funding for studies of the environmental impact of proposed plants, and for a fairly strict enforcement procedure. However, there are a few areas in which it could be strengthened:

First, by focusing attention on the environmental impact of proposed sites in studies to be funded under this act, there is danger that the question of whether there are more appropriate sites for a power plant may never be broached.

Maryland's acquisition program and wide ranging environmental survey and research program fulfill this requirement in that state. Whether Washington has sufficient land acquisition problems to justify a state site acquisition program can be debated, but at least siting decisions should include possible alternative sites preferably using information gained from a state wide land use and capability survey system. Once the state's shoreland management program is instituted, such information should be available at least for the state's shoreland areas.

Secondly, compliance with air and water quality standards is only required by the guidelines established by the council, not by the provisions of the act as it probably should be.

Third, with interagency committees, there is also the danger that participation in the council's deliberations may be delegated to a low level representative or to a succession of different representatives for a department head for successive meetings of the council so that a department's views are not well represented. The detriment of such an occurrence is lessened by the presence of the assistant attorney general to represent environmental concerns and the fact that the Council is only advisory with the governor having the final say.[9]

California

California instituted, in 1965, a power plant siting procedure adapted to the somewhat unusual breadth of powers given to its Public Service Commission. A Power Plant Siting Committee, with units of the State Resources Agency serving as members, was established to review plant construction design and potential sites for location. While a power company is not required to consult with the Committee, it is in

its interest to do so because once it has obtained the Committee's approval, the Committee will back the power company's application for construction license from the California Public Utilities Commission. Since the Commission, in contrast to those of most other states, is required to consider the environmental factors involved in such applications, the Department of Natural Resources' backing is quite valuable. Furthermore, since most of the environmental agencies that a power company has to satisfy in the construction and operation of a plant are located in the Natural Resources Agency, consultation with the units of that agency through the Siting Committee will smooth the power company's path to satisfying the state's environmental standards.

This type of voluntary arrangement is not likely to be adopted in other states since their Public Utilities Commissions are not required to consider environmental as well as economic factors in ruling on a power plant's construction application. Thus, a power company has no incentive in entering into such a voluntary agreement.[10]

Oregon

Oregon's efforts in this direction consist of the establishment of a Nuclear Siting Task Force as a sub-unit of the Nuclear Development Committee to advise the Governor and the Committee on the desirability of approving proposed sites for nuclear power plants based on a consideration of the environmental factors involved. The heads of appropriate state agencies or their representatives are to comprise the task force's membership. This arrangement suffers from several weaknesses:

First, it does not exert control over the construction of fossil fuel power plants which will comprise a major portion of the total number of power plants for many years to come.

Second, it was created by an executive order and thus can be abolished by another executive order if the present governor's successor wishes to do so.

Third, it is comprised of the heads of state agencies or their representatives who have many other duties and interests to consider. Thus, the review of proposed sites may not be as comprehensive and far-reaching as it would be if undertaken by a permanent full-time administrator who has review processes as his main responsibility.

Yet this review process does represent official recognition of the problem and an attempt to respond to it so that it shouldn't be too harshly criticized. Instead, efforts should be made to bolster its authority and competence or to replace it with a unit having the authority to undertake an effective review program.[11]

New York

The state of New York, in 1968, established a program for the acquisition of sites for future nuclear power plants, the development of the sites, and the sale or lease to power companies. Control over the program was given to the Atomic and Space Development Authority, a public corporation established in 1962 to promote the uses of atomic energy and the development of space-oriented industries in the state.

The criteria given in the legislation amending the Atomic and Space Development Authority Act to guide the selection of appropriate sites has been criticized as being too vague. However, the Authority does consult extensively with the state agencies concerned with environmental matters because it wants to acquire sites that will present few problems when the time comes for the future owners or lessees to apply for construction or operating licenses.

This approach does present a method to involve the natural resources agencies early in the site selection process while many options are still open, however, the Authority's control is limited to sites for nuclear power plants, thus excluding the question of sites for fossil fuel plants. Moreover, it is a promotional agency which is therefore not suited for the task of filling any gaps that may now exist in the licensing and permit-granting procedures regarding the construction and operation of power plants. Thus, while this program may ameliorate the problems involved in the selection of sites for power plant production and, thus enhance the possibilities of having more electric power facilities available as the demand arises for them, it certainly is not the final answer.[12]

Other States

Three other states include the question of power plant siting as parts of other programs: Maine, Rhode Island, and Delaware.

Maine considers the construction of power plants under the provision of its Site Location Regulation Act. Under this act the permission of the Environmental Improvement Commission is required for any commercial or industrial development of any size. To obtain permission, a company has to provide evidence that its proposed development: is backed by sufficient finances to allow air and water pollution standards to be met; allows sufficient provision for any increased traffic flows; will cause no adverse environmental effects and will fit harmoniously into the existing natural environment and patterns of existing uses; and will be built on soil types favorable for such development. Unfortunately, this program does not have a comprehensive plan on which to base its decisions, although the shorelands plan presently being developed will provide such information for the state's coastal areas.[13]

While the power plant siting programs discussed up to this point apply to all the land within the states involved, Rhode Island and Delaware include power plants under their shoreland management programs and, thus regulate the location of power plants only in their coastal areas. Location of power plants in the coastal areas of these states will be allowed only if the siting of such plants is in accordance with the comprehensive shorelands management plan presently being developed in each state and with the guidelines established in each state to protect the environmental quality of their coastal areas in the granting of use permits.[14]

Summary

In reviewing the programs of the above states, one is struck by the differences in the approaches that the various states have taken and with the varying degrees of comprehensiveness of the programs they have initiated. Washington established a new interagency regulatory body to review site proposals, while Maryland gave new power to its Department of Natural Resources for site acquisition and environmental research and left the final decision regarding certification and construction to its existing Public Service Commission. California instituted a review procedure which involved voluntary agreements between its Interagency Council, including the units of the Department of Natural Resources, and the power companies, workable because of the existence of a Public Service Commission with broad powers. New York established a program of acquisition only for nuclear power plants. Oregon established an interagency task force to review potential nuclear power plant sites. The three other states -- Maine, Delaware, and Rhode Island -- covered power plant siting in other programs.

The historical context of these programs should be noted since the most comprehensive program, Maryland's, was established most recently, in 1971, while California's voluntary program was begun in 1965, New York's acquisition program established in 1968, and Washington's comprehensive regulatory program in 1970, thus indicating a progression in the comprehensiveness of the program involved and the state's powers of regulation.

Whether a state should establish a separate power plant siting program or include it as part of a more encompassing management program depends on several factors: the immediacy of the threat of damage from unregulated location of power plants, the likelihood of passing more comprehensive management legislation, the desirability of focusing on power production as a particularly high impact industry, and the type of regulatory program established by the passage of legislation at the federal level.

No matter what type of program is established, certain factors should be included: an intensive procedure for mandatory review of potential sites; an adequate research program to investigate the environmental, general land-use, and social factors involved; a method of sufficient funding; explicit guidelines safeguarding environmental and social interests upon which decisions for approval are to be based; provision for review of these decisions when necessary; sufficient staff to administrate the program; and procedures for enforcement of the provisions of the program.

Using these criteria, the programs of Maryland and Washington measure up well while the programs of New York, Oregon, and California are lacking in some respects. The effectiveness of the regulation of

power plant siting in Maine, Delaware, and Rhode Island will depend on how well the more encompassing programs of those states are developed and implemented.

PART D - SHORELANDS ZONING PROGRAMS

Zoning programs have been utilized as a means to control shoreland development by three Great Lakes states: Wisconsin, Minnesota, and Michigan. Wisconsin and Minnesota have instituted programs requiring the zoning of all lands in unincorporated areas that are within 1,000 feet of a pond, lake, etc., or within 300 feet of a river or stream or to the landward edge of the flood plain, while Michigan requires the zoning only of high-risk areas for shore erosion and environmental areas that are determined to be necessary for the preservation and maintenance of fish and wildlife.

The programs of Wisconsin and Minnesota were instituted more to protect the shores of their inland lakes than their Great Lakes' shores although such shorelands are covered by the provisions of the authorizing acts. However, Wisconsin's program looks to the characteristics of the shorelands as the basis for its zoning classifications while Minnesota bases its shorelands zoning classification on the characteristic of the lakes.

Wisconsin

Wisconsin's shorelands legislation, passed in 1967, requires each county to classify all of its shorelands into one of three districts: Conservancy (wetlands), Recreation-Residential, or General Purpose, depending on the characteristics of the land in question. In each of these districts, certain activities were to be allowed, subject to regulations, ranging from activities with minimal impact in Conservancy Districts to more intensive activities in the other two districts, particularly in the General Purpose Districts. In all three districts, strict

regulations were placed on sewage disposal systems; the cutting of trees and shrubbery along the shoreline; and dredging, filling, and lagooning projects. The location of structures was also strictly regulated with setbacks required and construction prohibited if the land in question were determined to be unsuitable for construction.

The counties were allowed three years to establish zoning programs after which time the state would impose a program. In establishing programs, the counties were exempted from having to obtain the approval of the townships within their boundaries. To assist the counties in establishing their programs, the state provided technical assistance, including a model ordinance which illustrated a recommended method of fulfilling the legislation's requirements. The legislation further called for the appointment of a zoning administrator in each county to administer the provisions of the ordinance and the establishment of a board of adjustment to rule on special permits and exceptions.

It was found that three years was insufficient time for many counties to comply with the provisions of the act, so extensions were granted. By December, 1969, twenty-seven of Wisconsin's seventy-two counties had fully complied and by July 1, 1971, all but one had done so.

Once all the counties have instituted the required zoning, the state will still function as overseer regarding the administration of the programs by the counties. It will receive all proposed amendments to the shorelands ordinances, variances, plat approvals, etc., and is authorized to step in if it determines that a county's program is being mismanaged. The state will also provide continuing technical assistance and training programs for the county officials associated with the shorelands program.

Among the problems that have been encountered in implementing this program have been a lack of sufficient data in several areas required as a basis for district classification, control over sources of indirect pollution such as fertilizer and sediment run-off, and the lack of means of linking the shorelands regulations to the state's water quality control program. In addition, while some counties have developed county-wide regulations or have participated in regional planning programs as part of their compliance with the shoreland management act, many counties have simply zoned the narrow 1,000 foot shoreland borders required by law. In such counties, difficulty will be encountered in controlling activities occurring outside the shoreland areas which may adversely affect these areas and the waters they border.

Nevertheless, this program constitutes a major step forward in ameliorating the adverse affects in shoreland uses, including those along the shores of Lake Michigan.[15]

Minnesota

Minnesota's shorelands regulations act, enacted in 1968, is quite similar to Wisconsin's act in regards to the type of regulations and administrative procedures it requires. However, as stated above, the classification of shoreland areas is based on the type of lakes they border. The state has determined that large, evenly bordered lakes can withstand more development than small irregularly shaped lakes and classifies lakeshores respectively. While this appears to be an appropriate method to protect the shores of Minnesota's inland lakes, it results in the classification of the state's shorelands on Lake Superior for General Development, thus imposing minimum restrictions and protective mechanisms.

It would seem logical that Lake Superior should be put into a special classification which takes into account its unique resources and recreational potential. This apparently was not done originally because of the emphasis placed on inland lakes in the implementation of the act to date.

As of August, 1971, only eight counties had established shoreland zoning in compliance with the provisions of the act. St. Louis County, which borders on Lake Superior, already has a zoning ordinance and has announced its intention to comply with the act by the required deadline of July 1, 1972. Although the rest of the counties are still being required to meet this deadline at this time, it seems likely that extension will have to be granted for some of them judging from Wisconsin's experience.[16]

Michigan

In contrast to the programs of Wisconsin and Minnesota, Michigan's program, as mentioned above, requires the zoning only of high-risk shore erosion areas and environmental areas along its Great Lakes shores. Moreover, because of Michigan's strong local governmental structure, in contrast to the strong county government structure of Wisconsin and Minnesota, Michigan's shorelands protection act considers counties as just another of the local governmental units, besides cities, townships, and villages, that are required to comply with the provisions of the act. Thus, the Water Resources Commission, the state agency charged with implementing the act, has a multiplicity of local governments to deal with, not just county governments.

Michigan's act, as those described above, gives local governments three years to establish shoreland zoning programs before the state will step in. To assist them, the state is to conduct studies to determine what areas need to be zoned and to draw up model regulations that will meet the requirements of the act.

It will be more difficult under Michigan's program to effectively protect shoreland areas because of the greater number of local governments that have to be dealt with and the fact that the act only requires the zoning of portions of shoreland areas, which may be adversely affected by activities on adjacent non-zoned areas as well as by activities on inland areas.

However, the act does provide that the Water Resources Commission develop a plan for the use and management of the state's shorelands including recommendations for future legislation that is needed to institute effective shoreland management in Michigan.[17]

Summary

One of the principal deficiencies of the above programs is the lack of data on which to base the mandated zoning programs. There is also some question as to whether such locally administered programs will be able to handle the pressures of large-impact developments, such as electric power plants, for which state-administered programs may need to be established. Nevertheless, by placing primary administrative responsibility in the hands of local officials, advantage can be taken of the knowledge of those officials concerning the exact nature of local conditions and the workload on the staff of the state agency can thereby be greatly lessened.

PART E - SITE LOCATION REGULATION PROGRAMS

Two states, Maine and Delaware, have instituted programs regulating the location of sites for large plants and developments without waiting for comprehensive coastal zone plans to be completed.

Maine

Maine's Site Location Act, passed in 1970, requires that a permit be obtained from the Environmental Improvement Commission before construction can begin anywhere in the state on any commercial and industrial development which (a) requires a license from the Commission in accordance with the enforcement of air and water pollution control standards, (b) covers more than 20 acres of land, (c) involves drilling for or excavating natural resources, except for pits otherwise regulated, or (d) involves structures on a single parcel of land covering ground area of 60,000 feet or greater. Approval of an application for a permit is based on financial resources, effect on traffic movement, effect on the natural environment, and soil suitability for construction. The burden is on the applicant to show that his project meets the above criteria and does not jeopardize the health, safety, and welfare of the general public.

This act was passed in response to the trend to locate large-scale projects, such as the proposed oil port at Machiasport, in areas that are not always well-suited for them. Its implementation is presently hampered by the lack of comprehensive plans and information on which the Commission can base its decisions on site applications, particularly regarding impacts of the proposed development on the environment and alternative more appropriate uses for the site in question. The completion of the coastal development plan presently underway should ameliorate this deficiency for coastal areas.[18]

Delaware

Delaware's Coastal Zone Act of 1971 banned the construction of heavy industries and port facilities in the state's coastal regions. This law, based on the recommendations of the preliminary report of the Governor's Task Force on Marine and Coastal Affairs, was passed in response to the imminent threat of the location of a new oil refinery at Smyrna and the creation of an artificial island in the mouth of the Mispillion River for the handling of coal shipments. Industries having a high probability of adverse environmental impacts were banned from the state's coastal zone and permits were required before other major industries could be located there. It is obvious that this act does not constitute a comprehensive coastal zone management program. However, it does provide a means of coping with potential major sources of environmental degradation while the Governor's task force is completing its coastal zone study and making its recommendations on the steps that must be taken to institute an effective coastal zone management program.[19]

PART F - COMPREHENSIVE COASTAL ZONE PLANNING PROGRAMS

Approximately one-half of the coastal states are undertaking major studies of their coastal resources and methods of effective utilization. These studies vary with respect to the basic premises under which they are being undertaken, their relationship to the development of a comprehensive coastal management program, the comprehensiveness of their coverage, and the technical and financial resources which they can draw upon.

Several of the states, such as Oregon, Florida, and North Carolina, are embarking on major coastal zone studies as a preliminary step in the development of a coastal zone management program. Narrow focus programs have already been initiated to protect valuable coastal resources that have been seriously threatened: North Carolina's wetlands acquisition program, Florida's system of aquatic preserves, and Oregon's beach access program. Development of comprehensive coastal management systems is being delayed until coastal zone studies are completed and recommendations based on the studies have been formulated.

California also has been conducting a major coastal resource study for several years, its Comprehensive Ocean Area Plan (COAP). However, in recent legislative sessions, the linkage and compatibility of the several bills that have been introduced to establish systems of coastal zone management with the work being done on the COAP is in question. In contrast, Delaware's program of banning new heavy industries and port facilities is a direct result of the preliminary report of the Governor's Task Force on Marine and Coastal Affairs which is conducting a comprehensive study of the state's coastal resources and proper methods of management. It is expected that the recommendations of the Task Force's

final report will form the basis of a comprehensive coastal zone management program for the state of Delaware.

Washington and Rhode Island have already instituted coastal zone management programs and plan to use the results of ongoing coastal zone studies to provide information on which to base their management systems. These states have already made some policy decisions upon which their programs are to be based. Rhode Island's Coastal Management Council Act states that "preservation and restoration of ecological systems shall be the guiding principle upon which environmental alterations of coastal resources will be measured, judged, and regulated."[20] Washington's Shorelines Management Act divides the state's shorelines into classifications of "shorelines" and "shorelines of state-wide significance", providing the latter with strong protection from inappropriate uses. (An even more protectively-oriented proposed management system has been placed on the November, 1972, ballot by an initiative proposal and may replace the present program.)

The Great Lakes states are participating in a cooperative planning effort through the auspices of the Great Lakes Basin Commission which is completing a comprehensive framework study. The portions of this study that are of particular import to coastal zone management are Appendix 12 - Shore Use and Erosion and Appendix 20 - Federal and State Regulations, Policies, Programs, and Institutional Arrangements.

The state of Maryland is not undertaking a coastal management program per se at the present time. However, as part of its power plant siting program, it is mandated to undertake a comprehensive study of the environmental characteristics of Chesapeake Bay and its tributaries, including inventories of coastal resources and the establishment of

baselines from which environmental degradation can be measured. The results of this on-going program could be useful in other environmental programs the state is undertaking and could provide a good base on which to develop a coastal management program.

Similarly, the state of New York has been undertaking a major land use inventory program[21] which presently is not related to coastal resource management programs. However, its methodology could be readily applied to a study of the state's coastal areas and the resources to be found there.

The differences in the relationship between the planning programs and coastal management programs of the various states are in the orientations that different states have in developing their planning and management programs. Delaware's program is oriented towards utilizing its coastal resources for recreation purposes while Texas is placing major emphasis on maximizing commercial utilization of its coastal resources. The orientation of the programs of the other states, to the best that can be determined, fall between these two extremes. Until these programs have been further developed, their orientation cannot be clearly determined.

Finally, there is a variance in the technical and financial resources that are being employed in various states to develop their coastal zone programs. Maine's coastal zone study is suffering from lack of sufficient funding, relying largely on grants and other outside funding to support its work. Michigan's program is similarly suffering from limited staff and funding. Washington and Rhode Island, on the other hand, have made major commitments to effective management of their coastal resources. The state legislatures of both states have appropriated substantial money to fund the programs. While the funds appropriated in

Rhode Island were less than those in Washington, the Marine Resource Program and the Sea Grant Program at the University of Rhode Island, through the establishment of a Coastal Resources Center, are supplying major supporting efforts in the areas of research and resource analysis.

Nevertheless, the quality of these programs could be improved by the addition of federal funding by the passage of federal coastal zone legislation. Many other states will require either federal funding or a stronger state commitment if their stated intentions are to be effectively implemented. In the absence of federal funds, the efforts of many states with regard to coastal planning have been aided by university-based research programs, particularly those sponsored by Sea Grant Programs. Rhode Island, Texas, Louisiana, Michigan, and Hawaii, in particular, have been aided in this way.

Further discussion of the strengths and weaknesses of the coastal zone planning effort of each state can be found in the individual state program descriptions in Sections II and III.[22] Also, the attributes of an effective comprehensive coastal zone plan will be discussed in the chapter devoted to comprehensive coastal zone management issues.

PART G - COMPREHENSIVE COASTAL ZONE MANAGEMENT PROGRAMS

Washington's Coastal Zone Program

In 1971, Washington and Rhode Island became the first two states to institute coastal zone management programs. The impetus for the establishment of Washington's program came from two sources: (1) a court ruling which prohibited any construction or filling in the tidelands of the state until legislation specifically authorizing such activities was enacted and (2) pressure from conservation groups for a program to preserve the state's shore areas. The legislation that was enacted, the Shoreline Management Act of 1971, was a compromise between the desires of shoreland developers and conservation groups. However, while this legislation was being considered by the state legislature, the Washington Environmental Council, a coalition of environmentally-concerned groups, succeeded in an initiative campaign to put a significantly stronger measure on the ballot in the November, 1972, election. Thus, the voters of Washington will decide between the two programs in that election.

The act passed by the state legislature, the Shorelines Management Act of 1971, establishes a mechanism for managing the use of the shorelines of the state. The term "shorelines" was used in the act to include all water areas of the state including rivers and lakes and the land lying within two hundred feet of such waters. A special category of shorelines, "shorelines of state-wide significance," was established to designate areas to receive added protection. Included in this category are the coastal areas of the state.

The management program for the state's shorelines as defined above, was to be implemented by the issuance of guidelines and standards by the state Department of Ecology which local governments are to use to

develop master programs (comprehensive use plans) on which the implementation of shoreline management programs in their areas is to be based. The development of these master programs is to be guided by the policy statement included as Section 2 of the Shorelines Management Act which emphasizes the necessity of protecting the state's shorelines from misuse and a preference for allowing, in shore areas, those activities that are dependent upon the use of shoreline areas and are consistent with the goal of preventing damage to the environmental quality of shore areas.

In the development of such master plans, detailed studies and inventories are to be made of land uses and the potential environmental impacts of various activities in shore areas. In addition, consideration is to be given to economic development factors, public access and recreational needs, transportation circulation patterns, the distribution of various activities in shoreline areas, and the need for preservation of natural areas and areas of historical, cultural, scientific, or educational significance.

The Department of Ecology must approve master programs for general shoreline areas, unless they conflict with the act's policy statement, but can veto any master program for shorelines of state-wide significance that does not meet with its approval.

Once these master programs have been developed, they are to provide the basis for a permit system regulating developments whose value is greater than $1,000 or which materially affect public use of the water or shoreline areas. The permit system is to be administered by local governments, but the Department of Ecology does have the right of appeal to an Appeals Board if it feels that the decision on a permit is not in accordance with the provisions of the Shorelines Act. Appeals

from private citizens are to be heard if either the Department of Ecology or the Attorney General feels that a citizen has a valid reason for his appeal. Provision for court review of such decisions is also provided.

Violators of the provisions of the act are liable for the cost of returning such lands to their original condition. If willful violation can be proven, fines and/or jail sentences can be imposed.

To implement the shorelines program the state legislature appropriated $500,000, a portion of which was to be given to local governments to help them develop their master programs.

The Washington Environmental Council's alternative to the Shorelines Management Act, Initiative 43, proposed a more preservation-oriented program. It places primary reliance on the Department of Ecology rather than local governments for the development and administration of the shorelines management program, makes no distinction between shorelines and shorelines of state-wide significance, provides for greater citizen participation in the development and enforcement of the program, and places greater restrictions on developments in shoreline areas. It also expands the land area to be protected from 200 feet landward to 500 feet landward. Regarding funding provisions, it provides funds not only of $500,000 for their first biennium but also $900,000 for the next biennium and authorizes the setting of fees to cover the costs of processing permit applications.

Rhode Island's Coastal Zone Program

The program established by Rhode Island differs from either of the two outlined above. It was enacted on the basis of a recommendation of the Governor's Committee on the Coastal Zone which had been appointed, in 1969, to study possible mechanisms for managing the state's coastal

zone. The appointment of this committee had been spurred by a report by the Natural Resources Group, an organization of interested citizens, which clearly documented the lack of adequate coastal management policy and the clear threat to the state's coastal resources from increasing developmental pressures.

The program covers the management of all activities occurring below the high water mark quite comprehensively but only covers the activities occurring on land which involve:

> (a) power generation or desalination plants.
>
> (b) chemical or petroleum processing, transfer, or storage.
>
> (c) mineral extraction.
>
> (d) shoreline protection facilities and physiographical features.
>
> (e) intertidal salt marshes.
>
> (f) sewage treatment and disposal and solid waste disposal facilitation.[23]

Control over water based activities and the above land activities is to be accomplished through utilization of a permit system. Administration of the permit system is to be based on a resource management plan which considers:

> (a) the need and demand for various activities and their impact upon ecological system;
>
> (b) the degree of compatibility of various activities;
>
> (c) the capabilities of coastal resources to support various activities;
>
> (d) water quality standards set by the Department of Health;
>
> (e) consideration of plans, studies, surveys, inventories, and so forth prepared by other public and private sources;
>
> (f) consideration of contiguous land uses and transportation facilities;
>
> (g) consistency with the state guide plan.[24]

The composition of the entity that is to administer Rhode Island's program, the Coastal Management Council, is also quite different from the single state agency-local government combination that is to administer Washington's program. The Council is to be composed of representatives of the state legislature, members of the general public (predominantly from coastal communities), local governmental officials from coastal communities, and the Director of Natural Resources, and the Director of the Department of Health. In addition, advisory members may be appointed to the council from federal agencies with coastal interests, regional agencies, and other interested groups. Thus, the problem of state government-local government-general public relationships in the administration of the program is dealt with by appointing representatives of each group to sit together on the Council and make decisions jointly.

To fulfill the need for staff services, a Division of Coastal Resources was created in the state Department of Natural Resources. In addition, substantial assistance is to be provided to the Council by the Marine Resource Program and the Sea Grant Program at the University of Rhode Island.

Further discussion of these programs including analyses of their strengths and weaknesses can be found in Section II and in the discussion of coastal management issues that follows.

PART H - OTHER TYPES OF PROGRAMS

Besides the type of programs mentioned above, there are four other categories of programs discussed in this report. One category is those programs which have been undertaken as supplemental to other types of coastal zone programs such as Oregon's moratorium on coastal construction and Texas' moratorium on the sale of submerged lands while comprehensive coastal zone plans are being developed. Included in the second category are those coastal resource management programs such as Florida's aquatic preserve systems that are unique to a specific state and thus, fit into none of the previously mentioned types of programs. Discussion of these programs can be found in Sections II and III of the programs undertaken by the various states. The third category is comprised of Hawaii's Land Use Control Program which was included for discussion to provide insight into the question of whether the institution of a land use control program would eliminate the need for a coastal zone management program. The final category of programs is comprised of programs presently being undertaken by coastal states that are not specifically aimed at coastal zone problems but which are innovative approaches which may have some applicability to the solution of coastal zone problems. These programs are the development of Conservation Commissions in Massachusetts, the Coastal Conveyance of Petroleum Act enacted in Maine, and the Environmental Service Commission established in Maryland.

The development of the Conservation Commission system in Massachusetts was thought worthy of inclusion in this report because it provides a mechanism for developing local support for state environmental

programs, for tapping local resources in implementing environmental programs, and for opening communication channels between state and local governments.

Maine's Coastal Conveyance of Petroleum Program was included because it is a very innovative measure to coping with the dangers of oil pollution of the state's coastal areas. It makes provision for enforcing prohibitions against dumping or discharging oil products into the state's coastal waters, for immediate clean-up of discharges from unknown sources, for quick action in the case of emergencies involving the discharge of oil, and for adequate funding of the activities undertaken under its provisions by placing a levy on all petroleum products transferred to terminal facilities within the state's coastal areas.

A description of Maryland's Environmental Service was included because, through its state-wide operation of sewage and solid waste treatment facilities, such wastes will be more effectively handled in coastal areas and less effluents will be dumped into the state's rivers, thus lessening the adverse impact of such wastes and effluents on the state's coastal areas.

More detailed descriptions of the programs in this final category will be found in the discussion of the programs undertaken by the states of Massachusetts, Maine, and Maryland in Section II of this report. Discussion of the programs in the other categories will be found in the discussion of the programs of the individual states.

CHAPTER 3

FOOTNOTES

[1]The National Estuarine Pollution Study, (The Department of the Interior, Washington, D.C., 1970), pp. 90-92.

[2]These programs are discussed in more detail in Chapter 4 of Section II (Oregon) and Chapter 2 of Section III (Texas).

[3]This court case is discussed in more detail in Chapter 2 of Section III (Texas).

[4]This case is discussed in more detail in Chapter 4 of Section II (Oregon).

[5]These court cases are discussed in more detail in Chapter 6 of Section II (California).

[6]The issues involved in providing more public access to beaches and in preserving present access areas are discussed in considerable detail in the article, "Public Access to Beaches," by Steve A. McKeen in the February, 1970, Stanford Law Review.

[7]The provisions of Hawaii's Setback Areas Act are discussed in more detail in Chapter 7 of Section II.

[8]This program is discussed in more detail in Chapter 3 of Section II (Maryland).

[9]This program is discussed in more detail in Chapter 9 of Section II (Washington).

[10]This program is discussed in more detail in Chapter 6 of Section II (California).

[11]This program is discussed in more detail in Chapter 4 of Section II (Oregon).

[12]This program is discussed in more detail in Chapter 1 of Section III (New York).

[13]This program is discussed in more detail in Chapter 2 of Section II (Maine).

[14]These programs are discussed in more detail in Section II Chapter 8 (Delaware) and Chapter 10 (Rhode Island).

[15]Further discussion of Wisconsin's program can be found in Chapter 5 of Section II.

[16]Further discussion of Minnesota's program can be found in Chapter 3 of Section III.

[17]Further discussion of Michigan's program can be found in Chapter 3 of Section III.

[18]As mentioned above further discussion of this program can be found in Chapter 2 of Section II (Maine).

[19]As mentioned above, further discussion of this program can be found in Chapter 8 of Section II.

[20]Rhode Island, Act 279-1971 (Coastal Management Council Act), Section I (46-23-1).

[21]For further information concerning New York's Land Use Inventory Program, reference should be made to Ernest F. Hardy's and Robert L. Shelton's article, "Inventorying New York's Land Use and Natural Resources" in New York's Food and Life Sciences, Vol. 3, No. 4, October-December, 1970, and their paper "Cornell Environmental Inventory and Planning Techniques" presented at the 37th Annual Meeting of the American Society of Photogrammetry in Washington, D.C., March 9, 1971.

[22]Table 3 found in Chapter 1 of this section shows which states are undertaking coastal zone planning programs.

[23]Act 279-1971 (Coastal Management Council Act), Section 1 (46-23-6, Subsection B).

[24]Ibid., (46-23-6, Subsection A).

CHAPTER 4

COMPREHENSIVE COASTAL ZONE MANAGEMENT ISSUES

INTRODUCTION

It is beyond the scope of this paper to develop fully a model comprehensive coastal zone management program. However, it is appropriate to discuss some of the issues involved in developing such a program. Attention will be focused on those issues dealing with coastal zone management rather than merely shoreland management. It is felt to be unreasonable, in establishing a comprehensive coastal management program, not to include the water portion of a state's coastal zone, particularly when that area is usually owned by the state and is intimately affected by shoreland activities. It has, in the past, perhaps been reasonable to concentrate only on shoreland activities when attention has been focused on narrow purpose programs such as wetlands preservation and beach access. It is unrealistic to attempt to establish comprehensive management of the shorelines without, at the same time, considering the offshore waters that are so affected by shore activities. By taking a unified coastal zone approach, the problems that arise from the interactions of shore and water activities can be treated. These problems would likely be neglected in a management program that focused only on shore activities or on water activities, or totally separated the regulation of shore activities from the regulation of water activities.

FOCUS OF PROGRAM

For a coastal zone program to be effective, its purpose, scope, both geographically and functionally, and guiding principles should be

well defined. It is unfortunate that political, financial, and legal realities may deter a state from establishing as comprehensive and ecologically based program as it might like. Establishment of such programs may also be hindered by a lack of appreciation on the part of state and legislative officials of the necessity of basing such programs on ecological considerations. Such a lack of appreciation is abetted by the false notion that economic activities can be safely undertaken without consideration of their dependency on environmental conditions. The prevalency of such beliefs makes it all the more important to state in the authorizing legislation the purpose of a coastal management program and the reasons for its establishment to protect it from challenges as to its constitutionality and to provide guiding policy for the implementation of its provisions.

Care must also be taken in establishing the appropriate geographic jurisdiction for a coastal zone management program. The seaward boundary is usually set at the seaward limit of the state's jurisdiction, usually three miles. The landward boundary is more difficult to determine since it is dependent on the specific purpose of the program, the geographic and ecological nature of the state's coastal areas, and legal and political considerations. The state of Washington has set boundaries of 200 feet inland for its shoreline management program. The boundaries of Delaware's coastal zone were set to include all those areas below ten feet above mean sea level. (A system of coastal highways, roughly equivalent to the ten foot contour, was used to mark the actual boundaries of the state's coastal zone.) Rhode Island's coastal zone management act puts forth a different approach by regulating certain activities, regardless of location, if they affect the coastal waters of the state. Ideally, a coastal zone program should encompass all activities occurring in the coastal zone, either

directly or by specifying its relationship to other programs such as pollution control and navigation being undertaken in the state's coastal areas. If a definite landward boundary is set, provision should be made to control activities which, although they are not located in coastal areas, have a substantial adverse affect on coastal resources.

Recognition must also be made of the incompatibility of some types of coastal uses and the need for establishing some mechanism for reconciling such conflicts. Several worthwhile guidelines have been prepared in the programs already established in Washington and Rhode Island and in the proposals for programs in other states. Priority should be given to the activities --preservation, recreation, industrial, and commercial -- which are particularly dependent on a location on, or the use of shoreline areas. Maintenance of the vitality of the coastal resources and the ecosystem they comprise should be a dominant concern. Projects having substantial irreversible effects should be undertaken only if an overriding public interest is shown and if the potential damage is clearly understood by all concerned parties and is acknowledged in the decision to proceed with the project. Consideration should be given to potential future uses of a coastal resource in making decisions regarding the allocation and use of coastal resources. Consideration should also be given to the availability of alternate sites in making decisions on conflicting uses. Finally, the advocate of a proposed use should have to present reasonable evidence that the proposed use will not have a detrimental effect on coastal resources, rather than requiring a regulatory agency to prove it will, as has been the case in the past. Too often, application of the former approach has allowed environmental degradation to become severe before sufficient evidence could be collected to require that the offending

activity be stopped. Permits should be for a specific time period with performance conditions specified so that management agency can regulate coastal uses in accordance with changing conditions. Other priorities may be set according to the particular conditions and interests of the individual state.

INFORMATION BASE

In order to make rational decisions concerning the uses of coastal resources, a comprehensive inventory should be made of existing uses of coastal areas, potential future uses, potential sites for various coastal uses, the physical characteristics of coastal areas, the ecological capability of coastal resources to support various uses, and the economic and social demands for certain coastal activities. In addition, determination should be made of the possible conflicts and compatibilities among various coastal resources. A conflict matrix system, such as that developed by Jens Sorensen for California's Comprehensive Ocean Area Plan, could be very useful in discerning potential conflicts between various uses especially those involving secondary or tertiary consequences.

From such an inventory, a system of benchmarks should be established from which the effects of certain activities on the coastal ecosystem can be measured. Too often, ecological degradation can not be detected until it becomes severe because there is no baseline data with which present conditions can be compared. To be of continued value, such an inventory must make a continuing effort to record changes in coastal areas. Such an inventory system would also allow advanced planning for major new uses of the shoreline on a regional basis to assure they are located in areas where they will cause minimal environmental degradations. For some major

projects which would serve more than one state, interstate efforts should be undertaken to select the most appropriate sites.

In addition, a historical analysis of past coastal uses in a state's own coastal areas or similar areas in other states should be undertaken. Such an analysis would give insight into possible shortcomings and inherent dangers in some potential uses.

The inventory and survey projects described above would be quite expensive and, thus, would require a state to set priorities on the types of information it will concentrate on. However, the more information that can be gathered in a systematic manner, the better able a management agency to make rational decisions regarding potential uses. High priority should be given to the collection of benchmark data to provide a baseline from which the impacts of various activities and programs can be measured. Some funds for such purposes can be obtained by requiring application fees and placing taxes on certain types of activities, such as Maryland has placed on electrical power production to raise funds to support its power plant siting program. It does not seem unreasonable to expect that those who wish to use coastal resources should absorb a substantial portion of the costs involved in obtaining the information necessary to insure the protection of those resources. If the proposed federal coastal zone legislation is passed, additional funds will be provided for these inventory and survey projects.

TYPE OF MANAGEMENT AUTHORITY

In establishing a management unit to administer a comprehensive coastal zone management program, there are two questions that must be answered. One concerns the type of organization to be established at the state level and the other is what the division of authority should be

between state and local governments. In the state of Washington, there are presently two management alternatives under consideration, both of which involve a cooperative effort between local governmental units and a single state agency, the Department of Ecology. Under the program established by the Shoreline Management Act of 1971, authority was given to local governmental units to administer the management program in accordance with master programs--comprehensive use plans--that they are to establish in accordance with guidelines established by the Department of Ecology. The Department of Ecology would only have the right to appeal local governmental decisions concerning the granting of permits for allowable uses. However, in decisions that involve allowing uses in shorelines of state-wide significance--shorelines designated in the act for added protection--the Department of Ecology would have a more direct influence over the activities to be allowed. Under the alternative system proposed by Initiative 43, the Department of Ecology would draw up the master programs and administer the permit system, regulating allowable uses in consultation with local agencies. Thus, primary power is placed at the state level rather than at local governmental level as the Shoreline Management Act provides.

Rhode Island, on the other hand, has established a Coastal Zone Management Council made up of representatives of the state legislature, the general public (mostly from coastal areas), local governmental officials from coastal areas, and the Directors of the state Departments of Natural Resources and of Health. A division of the Department of Natural Resources is to provide staff services to the Council.

A third alternative would be an inter-agency committee made up of officials from different state agencies. Such an organization may make it more difficult to place accountability for the decisions made by the

committee on any specific agency. Its effectiveness relies heavily on the determination by the participants that the committee's activities are worthy of substantial contribution of time and effort. This alternative would add another level of authority to the governmental system without really solving the problems of departmental responsibility or state-local relationships.

In choosing between the above alternatives or other institutional arrangements, the first consideration should be upon what combination of state and local control will meet the objectives of the coastal zone management program. Consideration must also be given to existing governmental organizations, political conditions, including the influence and power of local governments, and other circumstances indigenous to the individual state in question. Of particular importance is the consideration of the strengths and weaknesses of the various levels of government. Local governments generally have more knowledge of local conditions but also less resources to devote to management problems and are less able to stand up to locally powerful developmental interests. State agencies have the ability to apply programs on more regional basis, to employ analytical survey and management techniques too expensive for local governments to duplicate. However, there is the danger of overloading state agencies with administrative details, and the possible insensitivity of a state level program to variations in local abilities, needs, desires, and resources.

The alternative suggested by Initiative 43 (Washington) seems to be the most appropriate for many states, although Rhode Island's approach may be more suitable in smaller states where there are fewer local communities and different types of areas to represent. Thus, in general, a coastal management program should be administered by a single department having authority over all operations of the program, but which delegates much of

the implementation of the program to local authorities including authority to make the decisions concerning projects having only a local impact. In such a system, planning and inventorying programs as well as the making of management decisions would be better coordinated. However, opportunities must be provided for local governmental officials and concerned individuals to present their views on proposed uses or proposed regulations, hopefully in a manner which allows more attention to the actual factors involved than the emotional stands and politically motivated or narrowly self-interest testimony that most public hearings now provide. Of course, mechanisms must also be established to obtain the views of other state agencies on matters that affect the programs they administer.

In cases involving major developmental projects, an assistant attorney general could be appointed to represent environmental interests in the agency's deliberations as is provided in Maryland's Power Plant Siting Program. Such a person could also advocate the position of future alternatives for the site in question; a viewpoint that is usually neglected because of the lack of an advocate.

Coordination must also be provided between the state agency administering the coastal management program and other state agencies administering programs having an impact on coastal resources such as highway programs and recreation programs. Ideally, the coastal management agency should be able to veto or require modification of projects associated with these programs if it can provide reasonable evidence that the project in question will have significant adverse effects on environmental quality or on the public welfare generally. If an agency is given this power, there must be a mechanism for appealing its decision by affected persons, corporate interests, local governments, and other state agencies. In the case of the

latter, an inter-agency review board may be appropriate to resolve agency disagreements. Final review of agency disputes and of appeals by the other affected entities listed above should be by judicial review. Passage of legislation such as the Environmental Protection Act of 1970, which was enacted in Michigan to allow citizens (and other affected groups) to bring suit to prevent environmental degradation, would provide a mechanism for citizen groups to overturn decisions of the management agency which were biased towards developmental interests. The courts have traditionally overturned agency decisions which were too discriminatory towards economic interests.

A final consideration in the matter of coastal zone management arrangements, is the appropriateness of establishing regional organizations, such as the San Francisco Bay Conservation and Development Commission, to regulate the shoreline activities of similar regions in other states. These organizations would have access to local knowledge of the area in question, but because they are regional organizations, they should be able to resist development pressures better than local governmental units. Of course, linkages to coordinate their activities would have to be developed with the state management agency. In states such as Michigan, where local governments (township, city, and village) are very powerful in comparison to county governments, a series of regional organizations may be the best way to establish linkages between the state and local levels of governments. The problems involved in communicating with each local government, one by one, are immense.

STAFF AND FINANCIAL SUPPORT

The undertaking of a comprehensive coastal zone management program, in the manner described above, will require the allocation of considerable

financial and staff resources to the program. In addition to appropriations by the state legislature, there are four main sources of support possible: application fees could be required with any permits issued under the system to help defray processing and other program costs; taxes, such as the petroleum transfer tax in Maine and the electrical production surcharge in Maryland, could be imposed on coastal activities to cover the costs of regulating them and the studies needed for effective regulation; financial and technical assistance which may be available from a federal coastal zone management program if Congress enacts the program it is presently considering; and research assistance from university-based programs, such as the Sea Grant Program. The latter type of assistance is being provided to Rhode Island, Michigan, Louisiana, and Florida among other states. The staff hired for the programs must be carefully selected because their work will provide much of the backbone of the program. In cases where employing staff for a specific study would not be feasible, studies could be contracted with private consulting firms.

RELATIONSHIP TO A FEDERAL COASTAL ZONE MANAGEMENT PROGRAM

While a federal coastal zone management program is needed to provide financial and technical assistance, it is also needed to provide policy guidelines to guide the development of state programs and to review their operation to assure that the national interest is upheld, particularly concerning the maintenance of a quality environment. On major issues, such review should be de novo; otherwise, only the most blatantly unwise state decisions will be overruled. The policy guidelines that should be promulgated should be similar to those discussed above in reference to state programs. In this way, a state enforcing strict regulations would not

suffer adverse effects from adjoining states which allow unwise use of their coastal areas. However, the states should be allowed some discretion as to how much stricter they wish their coastal regulations to be. Thus, a state could emphasize recreational and conservation uses of their coastal areas or could allow some industrial development of their coasts as long as such development did not violate the national guidelines. A unit of the state coastal management agency should be appointed to act as liaison with the federal management program and the programs of other states to promote coordination between the respective programs and communication of the research and management findings.

A federal coastal zone management program should also provide a linkage between federal activities which affect the coastal areas of the states, such as defense, navigation, migratory waterfowl programs, national seashores, etc., and state coastal zone management programs. One particular subject upon which attention must be focused, regarding the appropriate federal-state relationship, is the use of offshore waters within federal jurisdiction but outside state jurisdiction, especially with regard to the regulation of such uses as oil and mineral exploitation which may have significant adverse effects on the state's coastal areas.

As with the coastal management program of a state, the passage of the national version of Michigan's Environmental Protection Act of 1970 presently being considered in Congress would help assure proper consideration of environmental factors in any federal coastal zone management program and would allow a state to challenge any federal regulation it thought undermined its efforts to protect the environmental quality of its coastal areas.

Finally, a federal coastal zone program should undertake the acquisition of areas of greater than local significance for wildlife refuges, estuarine preserves, national seashores, etc., thus enabling state acquisition programs to concentrate on acquiring areas that may be of significance from a state viewpoint but not from a regional or national viewpoint. Programs such as the Land and Water Conservation Fund should be continued and expanded to allow states to acquire such areas also.

PARTICIPATION OF THE PUBLIC AND OF LOCAL GOVERNMENTS

It has been mentioned several times in the discussion of the above issues that the provision must be made for the participation of the public and local governments in any system of coastal zone management. This point was considered of sufficient importance to warrant reiteration here. It is for the public interest that coastal zone management programs are being initiated and the public should definitely be able to have its views considered and to require the review of decisions it feels are unjust or unwise. In a similar vein, local governments are generally most cognizant of local conditions and viewpoints and can relieve much of the administrative burden from the state agency, providing they are given the proper guidance and technical assistance. Local governments are also the most appropriate unit of government to make the decisions on uses that have only a local impact. They should also have the right to appeal decisions by the state agency they believe to be unwise or unjust.

POLITICAL REALITIES

A word should be mentioned about the political feasibility of instituting such a management program as described above. There is bound

to be opposition from developmental interests, persons who believe private property rights should be supreme above all others, and state agencies and local governments fearful of losing some of their powers. In some states concessions may have to be made to these interests to get coastal zone legislation passed. However, the increasing public awareness of the threats to the environment and the need for regulations to allow rational utilization of coastal resources has greatly aided the passage of the many pieces of shoreland and coastal zone management legislation enacted in the past three years. If sustained, these factors should enable legislation to be passed that would not have had a chance in the past. Furthermore, the passage of national coastal zone legislation should spur the development of coastal zone legislation at the state level. The mere possibility of the passage of such legislation has been partially responsible for the proliferation of coastal zone planning programs in the past couple of years.

Once such legislation has been passed at the state and federal level, public attention must be turned to the funding and staffing of such programs and to the manner in which its provisions are implemented. Too often the public and citizen groups believe that the battle has been won with the passage of legislation. However, without adequate staff and funding and continued scrutiny, passage of legislation accomplishes very little.

CHAPTER 5

AREAS FOR FUTURE RESEARCH

INTRODUCTION

There are several aspects that are relevant to the discussion of coastal zone management programs but which could be touched upon only tangentially or not at all in this paper. These areas will be described briefly in hopes future researchers will discuss them.

OFFSHORE MANAGEMENT PROGRAMS

Probably the most critical need is for a survey and analysis of management programs regulating activities occurring in offshore waters which discusses how such programs can be combined with the shoreland management programs discussed in this report to form comprehensive coastal management programs. Examples of such programs are the Offshore Mineral Resource Law passed in Massachusetts in 1968, Florida's Aquaculture Program established in 1969, and New Jersey's legislation prohibiting the dumping of wastes and refuse in offshore waters passed in 1970, not to mention the dredge and fill laws passed by many states primarily to protect navigational rights but which may have some broader implications and laws directed towards control of oil pollution. Examination should also be made of existing federal regulations and what effect they have on state programs. This is of particular importance in relation to activities occurring beyond the limit of state jurisdiction but within federal jurisdiction, where, therefore, federal regulations are the sole authority.

Many of the regulations pertaining to coastal waters are aimed at regulating how coastal resources are to be allocated among various

exploitative interests with little attention being given to environmental concerns. More and more developmental pressures are being placed on such resources and rational methods must be developed to regulate their utilization so that they will not be over-exploited and so that the vitality of the area's ecosystem will be maintained. Attention must be placed on what type of regulation programs would be appropriate and how those regulation programs would fit into a comprehensive coastal zone management program covering the regulation of both shoreland and offshore activities.

LEGAL TRENDS

Of prime importance is an investigation of the legal precedents being set in the field of coastal zone management and of the public trust doctrine movement now gathering momentum. Briefly this doctrine holds that a state's natural resources are being held in trust for the benefit of all its citizens and that private concerns cannot undertake activities that would violate this public trust. Such a doctrine has great potential regarding the question of the constitutionality of regulations placing restrictions on the ways a private property owner can use his land. It also permits stricter regulation of the use of all-terrain vehicles and other exploitative uses of public lands. One of the major manifestations of this movement is the campaign to get laws similar to Michigan's Environmental Protection Act of 1970 passed at the state and local level so that citizens can institute court suits to prevent environmental degradation by private interests or by the action or inaction of state agencies. Massachusetts and Connecticut have passed such legislation while Florida, Illinois, and Minnesota have passed weaker versions. Congress is presently considering similar legislation

on the national level. The concept of public trust doctrine as it applies to environmental management is discussed in detail in a book by Professor Joseph Sax of the University of Michigan Law School, Defending the Environment: A Strategy for Citizen Action.

INTERACTION WITH FEDERAL GOVERNMENT PROGRAMS

The federal government undertakes many programs that have an impact on a state's coastal area. Besides the regulation of offshore activities mentioned above, the federal government also regulates navigation, interstate commerce, fishing operations, the use of national forest areas, and migratory waterfowl programs, as well as defense and similar activities. Furthermore, federal programs, such as those involving recreation and highway development, have significant impact on coastal activities. Research must be undertaken into the mechanisms a state coastal zone program can utilize in coping with the effects of such programs in its attempt to regulate coastal activities. Similar research needs to be undertaken regarding the development of a federal coastal zone program.

IMPACT OF OTHER STATE PROGRAMS

Just as the federal government undertakes many programs that indirectly have major impacts on coastal areas, so do many state agencies. The effects of such state agency programs need to be investigated in detail so that appropriate mechanisms can be developed to coordinate the activities of such programs with that of a coastal zone management program so that adverse effects on coastal resources can be minimized. Attention should be particularly focused on the potential adverse impact of programs such as those related to the provision of intensive recreation facilities.

While the purpose of such programs is commendable, there is a danger that if they are carried too far they will place extreme demands on coastal resources.

ENVIRONMENTAL LEGISLATION

There have been several pieces of environmental legislation recently passed or applied that have a major impact on the regulation of coastal zone activities. On the federal level, there have been the National Environmental Policy Act (NEPA) which requires environmental impact statements on all federally funded programs; water, air, and solid waste pollution control programs; enforcement of the provisions of the 1899 Refuse Act; legislation establishing national seashores; etc. On the state level, air, water, and solid waste pollution control programs have been instituted; California and Washington have passed state "NEPA" programs; many states have enacted subdivision regulations which are applicable to the problems of controlling the burgeoning growth and recreational homes in coastal areas; etc. The implications of these programs on coastal zone management need to be considered.

Similarly, attention needs to be focused on the relationship between coastal zone management programs and the national and state land use programs that have been proposed. As the experience of Hawaii indicates, a state land use program does not eliminate the need for a program devoted to the special needs of coastal zone areas. Coastal zone management programs should be developed so that they will be compatible with state-wide land use systems. The experience gained in the implementation of coastal zone management programs can be invaluable in the development of land use programs.

Related to such considerations is the question of whether and how state land use inventory systems, such as have been developed in New York and Minnesota, could be employed to meet the requirements for inventorying coastal zone resources and establishing beachmarks. Linkages between the data systems of the two programs (coastal management and state-wide land use) could help to assure compatibility between them.

SPECIFIC STATE COASTAL ZONE PROGRAMS

In addition to surveys such as this report, there is a need for case studies concerned with the problems encountered in the development of coastal zone programs. Such studies could have one of two focal points. Attention can be focused on how a coastal zone management program should be developed in light of the conditions existing in a particular state and the considerations raised above. Such a study should include an examination of the institutional changes that would be needed for the effective implementation of a coastal zone management program. Study of the changes in perceptions that would be needed on the part of state agencies and legislative officials for the institution of an ecologically-based program would be an invaluable addition to such a study, particularly if it included methods of inducing such changes. The alternative is a case study of the implementation of a coastal zone management program for the purpose of showing its strengths and weaknesses and how it could be adapted for other states.

Thus, there are many areas that still need research. It is hoped that the information contained in this report will be useful in future attempts to fulfill these needs.

SECTION I

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SECTION II

Ten States' Approaches to

Coastal Zone and Shorelands Management

Chapter 1. Massachusetts

Chapter 2. Maine

Chapter 3. Maryland

Chapter 4. Oregon

Chapter 5. Wisconsin

Chapter 6. California

Chapter 7. Hawaii

Chapter 8. Delaware

Chapter 9. Washington

Chapter 10. Rhode Island

CHAPTER 1

MASSACHUSETTS

WETLANDS PRESERVATION[1]

Massachusetts was one of the first states in the nation to take action to preserve its coastal resources, enacting during the 1960's a series of laws designed to protect its remaining wetlands. During the previous decades the state had lost many of its wetlands due to dredging and filling. This fact and a growing recognition of the value of the state's coastal salt marshes and estuaries to marine fisheries and the state's shellfish resources led to the passage of the Jones Act in 1963.[2]

The Jones Act (Act 46-1963)

This legislation essentially requires a Dual Layer system covering any dredging or filling of coastal wetlands. Notice must be given thirty days prior to the proposed date for the commencement of any project involving dredging and filling, to the local authorities, the Director of the Division of Marine Fisheries of the State Department of Natural Resources, and the Director of the State Department of Public Works. Such notice must describe the nature of the project, its purpose, the person doing the alteration, the area to be altered, the extent of the alteration, the means by which proper drainage will be obtained, and a key map locating the area in the state.

Upon receipt of such a notice, the selectmen (of a town) or licensing agency (of a city) must hold a public hearing on the proposed dredging or filling within fourteen days. Based on the results of such a hearing, they "may recommend the installation of such bulkheads, barriers or other protective measures as may protect the public interest."[3]

Their recommendations are to be forwarded to the Department of Natural Resources within seven days after the hearings.

The State Department of Public Works has the responsibility of determining if the dredging would prove harmful to any harbor, other navigable tide waters, or any natural barrier that provides protection against erosion by the sea for land bordering on the sea, or for adjacent upland areas. If such a determination is made, the Department may obtain an injunction prohibiting such alteration or have imposed the applicable criminal penalty, a fine of not more than five hundred dollars.

The Director of Marine Fisheries may impose such conditions as he determines necessary to protect any shellfish or marine fisheries in the area of the work. However, for the Director to take action, it must be determined that the area to be affected is, in fact, necessary for the protection of shellfish or marine fisheries and that it would be adversely affected. The Director can not actually prohibit a project, but only impose modifications that are necessary to protect marine life.

Thus, this law has its weaknesses but it provides a means to slow down the destruction of coastal wetlands until more permanent measures for their protection can be instituted. The validity of this law has been tested in court. In the case of Commissioner of Natural Resources et al v.s. S. Volpe & Co., Inc.,[4] the Massachusetts Superior Court ruled that law was a valid exercise of police power and that protecting the marine fisheries was a public purpose for which the law was properly enacted, but it sent the case back to the trial court for determination whether, in this particular case, the value of the land in question had been so impaired that a taking of eminent domain would be required.

The Coast Wetlands Protection Act of 1965 (Act 768-1965)

The Coastal Wetlands Protection Act of 1965 is the keystone to Massachusetts' effort to save its wetlands. This Law authorizes the Commissioner of Natural Resources to "adopt, amend, modify, or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting coastal wetlands."[5] The term "coastal wetlands" is defined inclusively as "any bank, marsh, swamp, meadow, flat or other low land subject to tidal action or coastal storm flowage and such contiguous land as the Commissioner reasonably deems necessary to affect by any such order in carrying out the purposes of this section."[6] The activities of the Department of Public Works, the State Reclamation Board, and those activities involving mosquito control projects were exempted from the provisions of this act.

By issuing restrictive orders in accordance with the provisions of this act, the Commissioner can, in effect, enforce easements to prevent any alteration of land which might adversely affect the coastal wetlands. Furthermore, such orders are required to be recorded at the local registry of deeds and can not be changed except by the same process. Public hearings are required at least twenty-one days before the imposition of such an order. Appeals to the Superior Court are allowed by any affected land owner within ninety days of receipt of notice of such an order for determination whether such an order "so restricts the use of his property as to deprive him of the practical uses thereof and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of a taking without compensation."[7] If such a finding is made, the law allows the state to replace the order by negotiated purchase of the full title to the land or of lesser interests

such as an easement and to employ its eminent domain powers if necessary to obtain such rights.

The state's position in such cases is strengthened by the fact that a land owner must prove clear ownership before a court will consider sustaining such an appeal. Since the titles to much of the coastal area are vague and subject to challenge and the title searches needed to clear such titles are very expensive, the above requirement has foreclosed the possibility of challenges on many wetland areas.

The provisions of this act are implemented in the following manner: the boundaries of the wetlands areas to be protected are determined from Coast and Geodetic Survey maps (and aerial photos, when available); meetings are held with the local governments in addition to the public hearings required by law to clear up any questions regarding the proposed boundaries. After such meetings and hearings, any revisions thought appropriate are made and the proposed orders (which specify the areas to be covered) are submitted to the Board of Natural Resources[8] for final approval. As stated above, provisions have been made for appeal of the Board's decisions. The entire process generally takes from nine months to a year. The priorities for review of areas for inclusion in the system are based on consideration of the developmental pressures on the value of the wetlands involved. As of June 30, 1971, restrictive orders had been proposed on 22,810 acres and recorded on 18,000 acres out of the 43,166 acres potentially subject to the provisions of this law. It is estimated that it will take two more years to include all the state's coastal wetlands under the protection of such orders.[9]

Commentary

Thus, this law gives the state strong powers to protect its coastal wetlands while interfering with the rights of land owners only as much as

necessary to provide such protection. It has been generally well received by local citizens and land owners where it has been applied. Land owners generally benefit from the knowledge that neighboring wetlands will not be destroyed, and the imposition of such orders will interfere with their rights as little as possible, especially in comparison to the alternative of acquisition of their lands by the state. The local governments are in favor of the program because it provides a means for protecting their wetlands resources without destroying their tax base. The lands affected generally remain in private hands with the restrictions imposed by the state orders simply prohibiting certain types of developments and activities.

The Hatch Act (Act 220-1965)

The state legislature of Massachusetts has also passed two laws to protect inland waters similar to those passed to protect the coastal wetlands, although they are somewhat less inclusive. The Hatch Act, passed in 1965, provides a Dual Layer system, similar to that of the Jones Act, to protect the inland wetlands because of their value as natural flood protection areas and underground water recharge areas. The local authorities may recommend such protective measures as are necessary to protect the public interest. The state Department of Natural Resources can obtain a cease and desist order to stop any dredging or filling if it can prove that the wetlands involved are necessary for preservation of private or public water supplies or for proper flood control. A 1971 amendment to the act provided a penalty of from $1,000 to $5,000 or a maximum jail sentence of not more than two years or both for violation of the provisions of the Act.

Commentary

Since it is difficult to justify the preservation of inland wetlands on the above grounds, this law has had limited effect although it has stopped some blatant incursions against inland wetlands and has opened wetlands activities to public scrutiny. The most important effect has been to draw attention to the need to protect the inland wetlands and to act as a stop-gap measure until more comprehensive legislation could be passed.

The Inland Wetlands Protection Act of 1968 (Act 444-1968)

In 1968, the Inland Wetlands Protection Act of 1968 was passed containing provisions similar to that of the Coastal Wetlands Protection Act of 1965 and covering lands subject to flooding by fresh water as well as permanent wetlands. The provisions of this law are weakened by the restricition that the state cannot enforce orders on land owners if they object within ninety days of receipt of an order and can prove ownership to the land. However, the state Department of Natural Resources can negotiate for purchase of such land or easements thereto or use its eminent domain powers to achieve the purposes of the act subject to the approval of the Board of Natural Resources and the Governor. The powers of the Department were somewhat lessened by inclusion of a "home rule" provision which stipulated that if the local authorities did not approve the Department's order, the adoption of such an order could not occur for one year. The number of state agencies excluded from the law was increased from the Department of Public Works, State Reclamation Board, and those undertaking authorized mosquito control projects (exempted by the 1965 Coastal Wetlands Protection Act) to include also the Department of Public Health, the Metropolitan District Commission, the Division of Fisheries and Game, and the

Massachusetts Aeronautics Commission. In addition, agricultural land was exempted from the provisions of this act.

Commentary

The task of protecting lands under this law is much greater than under the Coastal Wetlands Protection Act since orders must be issued covering 300,000 acres of inland wetlands compared to the 45,000 acres of coastal wetlands. Since this program is just commencing and it is estimated that it will take perhaps ten years to complete, there is still a need for local communities to pass wetlands and flood plain zoning regulations to bolster the provisions of the Jones and Hatch Acts to preserve the wetlands until they can be covered. Furthermore, since public access is not provided for by either the Coastal Wetlands Protection Act or the Inland Wetlands Protection Act, additional acquisitions of such lands will be necessary to provide such access.

MASSACHUSETTS COMMISSION ON OCEAN MANAGEMENT

In May, 1968, the Massachusetts Commission on Ocean Management was created by Executive Order No. 59 to develop a comprehensive long-range estuarine area management plan and to determine the most appropriate agency to carry out such a plan. No information was available at the time this report was written as to the progress on development of the plan or on the Commission itself.[10]

CONSERVATION COMMISSIONS[11]

Much of the progress that has been made under the Massachusetts Wetlands Acts would not have been possible without the existence of a system of local Conservation Commissions throughout the state. Because

these Commissions have proven to be an invaluable link between the state and local governments and have thus made possible many environmental programs, they will be discussed here as Massachusetts' second valuable innovation relating to shorelands management programs (in addition to its wetlands legislation).

The Conservation Commission Act (Act 223-1957)

In 1957, the Massachusetts legislature passed the Conservation Commission Act (Act 223-1957) in response to the threat to a marsh in Ipswich by a dredge and fill project. Instead of a purely local response to the problem, John Dolan, state representative from Ipswich who had a strong interest in conservation matters, saw the opportunity to enact state enabling legislation which would allow any town or municipality in the state to take action to prevent environmental deterioration.

The Conservation Commission Act stipulated that the purpose of Conservation Commissions was for "the promotion and development of the natural resources and for the protection of the watershed resources"[12] of the local entities involved. A Commission, once established by a town or city, was to "conduct researches into its local land areas and to seek to coordinate the activities of unofficial bodies organized for similar purposes"[13] and was given authority to publish materials it thought necessary to carry out its work. Each Commission was also mandated to keep an index on all open areas and marsh lands, swamps and other wetlands in order to recommend to the local government and (with the local government's permission) to the state government programs for "the better promotion, development, or utilization of all such areas."[14] The Commissions were to consist of from three to seven people appointed by the mayor (or the selectmen in the case of a town). The Commissions were also given the

authority to:

> receive gifts of property, both real and personal, in the name of the city or town, subject to the approval of the city council in a city or the selectmen, such gifts to be managed and controlled by the commission for the purposes of this section. Said commission may acquire by gift, purchase, grant, bequest, device, lease, or otherwise the fee in such land or water rights or any lesser interest, development right, easement, covenant, or other contractual right including conveyances or conditions or with limitations or revisions, as may be necessary to acquire, maintain, improve, protect, limit the further use of or otherwise conserve and properly utilize open spaces and other land and water areas within their city or town and shall manage and control the same.[15]

Furthermore, the local government, upon written request of the Conservation Commission, was authorized to take any land or water under its jurisdiction by a 2/3 vote of the city council (or a 2/3 vote at a town meeting in the case of a town) for the purpose of putting it under the jurisdiction and control of the Commission.

Implementation of the Act

Although this act provided the basic framework for the Commission program, only 19 communities (out of 351) took advantage of it during the first three years after its passage. In 1960, the newly appointed Commissioner of Natural Resources, Charles H. W. Foster, realized the potential significance of the Conservation Commissions as locally-oriented action groups and took steps to encourage their development throughout the state. He recognized that one of the problems hampering their spread was the lack of any mechanism for local-state interaction and communication. To remedy this situation he ordered a town-by-town survey by the Department's Division of Law and Enforcement to determine the status of the Conservation Commission idea in each town and city and to explain the provisions of the Conservation Commission Act and the opportunities it

presented for local action. As a result of the survey it was found that lack of knowledge of the Conservation Commission Act was the most important factor limiting its spread.

Acting on this finding, the Department undertook a major promotional effort to build support for the movement. Conservation and citizen groups as well as local government officials were contacted. With financial help from the Carling Corporation, a Conference on Conservation was held at the Harvard Business School, in the Spring of 1960, at which the provisions of the Conservation Commission Act were discussed and booklets describing its implications were passed out to the conferees. As a result of its promotional activities the Conservation Commission movement began to grow rapidly, with 25 towns establishing Commissions in 1960; 52 in 1961; 46 in 1962; and 36 in 1963. By 1964, 205 cities and towns had established Commissions.

Further Developments

The 1957 Conservation Commission Act laid the basic framework for local involvement in environmental matters by giving official approval to direct citizen involvement in conservation planning and by providing the potential for continuing coordination and review at the local level instead of repeated responses to crisis. Three developments in 1960 and 1961 added significantly to the power of the conservation movement:

The Massachusetts Self-Help Act (Act 517-1960) was passed providing financial assistance to communities which had established Conservation Commissions, to assist them in acquiring lands and waters for conservation purposes and in developing long-range resource planning. The emphasis was placed on preservation of areas in the natural state and the provision of non-intensive recreation. Towns were to be reimbursed for up to 50

percent of their costs provided each project had the prior approval of the Commissioner of Natural Resources and was undertaken in compliance with such approval. This law provided an incentive for each Commission to get larger appropriations from its local government for its operations because such appropriations would now be matched by state funds. It also provided Massachusetts with a headstart over other states in meeting the requirements of federal assistance programs such as the Federal Open Space Program of the Housing Act of 1971 and the Land and Water Conservation Fund of 1965.

Second, a statewide organization of Conservation Commissions was formed on February 16, 1961, to provide for the exchange of information and ideas among individual Commissions, to provide a united, coordinated front for supporting environmental legislation in the state legislature, and to promote public education concerning preservation and management of open areas and natural resources generally.

Third, the Department of Natural Resources established the means whereby local communities could receive the technical assistance they needed from the various agencies of the state government. Previously, the Department of Natural Resources had kept in contact with the local groups interested in natural resources as had the extension services of the Agriculture Department, but there had been no mechanism to coordinate the assistance of the state agencies to solve a local problem. To meet this need, the Department of Natural Resources created five regional offices and appointed a representative of the Department as contact person for Conservation Commission activities in each region. These contact persons had the responsibility of calling together representatives from the various state (and later on federal) agencies when a request for

assistance was received from local agencies. Through this arrangement local people could be assisted in meeting their problems and the agency representatives could develop more understanding of the local problems and observe how their agency's mission related to those of other state and federal agencies.

In 1963, legislation was passed to streamline the extension activities of the Agriculture Department and to formalize the Department of Natural Resources as the lead agency in resource matters. A Division was formally established in the Department of Natural Resources to coordinate all interactions with Conservation Commissions and to administer the Self-Help Programs, since the previous informal mechanisms could no longer keep up with the expanding program. Also, a member of the State Association of Conservation Commissions was added to the Soil and Water Conservation Districts Committee, which coordinated local soil conservation programs with those of the U.S. Soil Conservation Service to encourage more involvement of the individual Conservation Commissions with soil conservation projects.

In addition, the Commissions' importance grew during the early 1960's as local planning agencies recognized them as valuable sources of help in resource problems rather than threats to their bureaucratic role. By the late 1960's, the Commissions' role in resource planning had been so firmly recognized that all Self-Help grants were tied to the existence of a long-range conservation plan.

Summary

The impact of Conservation Commissions on the various local communities in Massachusetts has varied greatly depending upon the capabilities of the members of a Commission, the length of time it has been

in existence, and the acceptance it has received from the local government and townspeople. The most active Commissions have generally started with an interest in receiving land for open space and marshland preservation and other such projects. They have then become involved in obtaining the support of governmental institutions and the general public and have eventually become involved in developing new perspectives in the planning of the use of the natural resources in their area. While the Commissions have not been the total answer to the problem of environmental management in Massachusetts, they have been responsible for the successful execution of many environmental programs and for the development of the public support necessary to implement such programs. In fact, the local interest developed through the planning done in conjunction with the Conservation Commissions has assured the implementation of planning programs developed with their assistance while many comprehensive plans drawn up by private consulting firms under the "701 Grants Program" have ended up gathering dust on the shelf. It appears that such work done by private consulting firms does not develop the same understanding and commitment on the part of the general public as programs developed with the assistance of Conservation Commissions.

Finally, it should be mentioned that the Conservation Commission system has provided a valuable link as a state-local liaison whereby not only can local communities obtain assistance from the state agencies but the state agencies can gain valuable information concerning local views and knowledge from the communities. The Commissions have also become a valuable ally in passing legislation and in building support for state environmental programs such as those supported by recreational bond issues.

It should be noted here that the Conservation Commissions are not a substitute for active citizen groups because they are part of the official structure, and thus lack the freedom to act and to represent particular points of view that the private groups have. The Commissions' structure, instead, lends itself to being a liaison between such citizen groups and the local and state governments.

The Conservation Commission concept has spread to several other states. As of 1970, all of the New England States, except Vermont, and New York and New Jersey had some system of Conservation Commissions. While no one type of organization has been universally acceptable because of the need to adapt to local conditions, certain features have been found to be quite beneficial to the success of a Conservation Commission system:

First, the success of local Commissions is strongly dependent upon the amount of support, encouragement and assistance offered by the state government. While technical assistance and the cooperation of state agencies is needed, special financial assistance to local Commissions has definitely helped encourage their development and increase the leverage of the Commissions with local governments.

Second, a strong state association provides support to the Commission movement as a whole, giving encouragement to weaker Commissions and providing a mechanism for cooperative efforts among the local Commissions.

Third, a state-enabling law, even where not specifically needed, provides valuable publicity and official sanction to the concept, improving the possibility that local communities will take advantage of the opportunity to establish their own Commissions. Such legislation will also assure compatible organizational structures among the individual Commissions making regional cooperation among them easier.

Finally, the strength of a Commission lies in its members, particularly the chairmen. Their ability to develop innovative ideas and public support for the Commission's projects and their commitment to the Commission's work are of ultimate importance for the success of the Commission. It has been found in many communities that a diverse membership, consisting of more than conservationists, has been beneficial in developing public support and in encouraging other citizens to volunteer their time to Commission projects.[16]

MASSACHUSETTS

FOOTNOTES

[1]In developing this section on wetlands preservation legislation, Benjamin Mason's report, Wetlands Protection Laws of Massachusetts, (Conservation Law Foundation, Boston, Massachusetts, 1968), was an invaluable help.

[2]Copies of the Jones Act and the other acts described in this section can be found in Appendix A.

[3]The Coastal Wetlands Dredge and Fill Law of 1963 (Jones Act - Act 46-1963), as amended.

[4]Natural Resources vs. S. Volpe & Co., Inc., Massachusetts Reports, Vol. 349, p. 104 et seq.; New England Reporter, 2nd series, p. 666 et seq. (1965), [349 Mass. 104; 206 N. E. 2nd 666 (1965)].

[5]The Coastal Wetlands Protection Act of 1965, (Act 768-1965).

[6]Ibid.

[7]Ibid.

[8]The Board is composed of seven persons appointed by the Governor. It meets periodically throughout the year to make final determination on the actions proposed by the Department of Natural Resources. Theoretically, at least, it is supposed to provide a check against arbitrary decisions made by the Director of Natural Resources and to provide citizen review of the department's actions. The report, Managing the Environment: Nine States Look for New Answers, (Elizabeth H. Haskell, Project Director, Woodrow Wilson International Center for Scholars, Smithsonian Institution, Washington, D.C., 1971) discusses in considerable detail the merits and drawbacks of such boards and commissions set up to overview the actions of administrative departments.

[9]Interview with Russ Davenport of the Division of Water Resources of the Massachusetts Department of Natural Resources, July 7, 1971 and letter of August 26, 1971, (in response to request for information) from Russ Davenport of the Massachusetts Department of Natural Resources.

[10]The National Estuarine Pollution Study, (U.S. Department of the Interior, Washington, 1970), p. 376.

[11]In developing this section, Andrew J.W. Scheffey's report, Conservation Commission in Massachusetts (Conservation Foundation, Washington, D.C., 1969) was heavily relied upon.

[12]Act 223-1957 (Conservation Commission Act), as amended.

[13]Ibid.

[14]Ibid.

[15]Ibid.

[16]This summary of the features needed to develop a strong Conservation Commission system is based on the material, in Conservation Commissions in Massachusetts, pp. 166-170.

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CHAPTER 2

MAINE

WETLANDS PRESERVATION

Act 348-1967

In 1967, the Maine State Legislature, impressed by the Coastal Wetlands Protection Act enacted by the Massachusetts legislature two years earlier, passed its own Wetlands Act (Act 348-1967).[1]

This act provided that:

> No person, agency, or municipality shall remove, fill, dredge, or drain sanitary sewage into, or otherwise alter any coastal wetland, as defined herein, without filing written notice of his intention to do so, including such plans as may be necessary to describe the proposed activity, with the municipal offices in the municipality affected and with the Wetlands Control Board.[2, 3]

The Wetland Control Board is an interagency committee that was established to administer the provisions of the Wetlands Act. Its members are the Commissioners of Sea and Shore Fisheries and of Inland Fisheries and Game, the Chairmen of the Environmental Improvement Commission and the State Highway Commission, the Forest Commissioner, and the Commissioner of Health and Welfare, or their delegates.

A 1969 amendment to the act defined "coastal wetlands" as "any swamp, marsh, bog, beach, flat or other contiguous lowland above extreme low water which is subject to tidal action or normal storm flowage at any time excepting period of maximum storm activity."[4]

This legislation requires that hearings be held by the municipality with the hearing record sent to the Wetlands Control Board on each proposed activity. If both bodies approve the proposed alteration, a permit is to be issued within seven days of the hearing. Either body can reject

an application if it believes that:

> the proposal would threaten the public safety, health, or welfare, would adversely affect the value or enjoyment of the property of the abutting owners, or would be damaging to the conservation of public or private water supplies or of wildlife or freshwater, estuarine, or marine fisheries.[5]

Conditional permits can be issued to allow the municipality or the Wetlands Control Board to impose such restrictions as they deem necessary to protect the public interest. Each permit application is to be accompanied by a $30 application fee to cover administrative costs.

A 1969 amendment to the act requires that all permits be recorded by the owner within 30 days with the registry of deeds for the county in which the wetland is located, or the permit would be void. Appeals of denials of permits or issuance of conditional permits are allowed within 30 days of the permit decision to determine whether the action taken is an unreasonable exercise of police power or constitutes the equivalent of a taking without compensation.

A 1971 amendment to the act provided that all permits would become void three years after they were issued precluding the possibility that projects, which had been approved several years earlier under conditions existing then, would still be undertaken even though changes in circumstances had made such action no longer appropriate.

Violators of the provisions of the act are to be subject to a fine of not more than $500. Any filling, dredging, draining, altering, or removal of materials undertaken without a permit or contrary to the provisions of a permit on coastal wetland is to be considered <u>prima facie</u> evidence that the property owner of the wetlands on which such action occurred has committed a violation of the act. No actual witnessing of the activity or proof of willful intent is necessary for prosecution of

such a violation. In addition, any person may file suit to have the Superior Court issue a restraining order to stop any continuing violation of the provisions of the act and, where appropriate, to have the court order restoration of the affected area at the violator's expense. Such strong violation provisions should make it possible to enforce the provisions of the act effectively.

Commentary

While the provision providing for municipal review of a permit before it is submitted to the Wetlands Control Board is admirable in concept and precluded municipal opposition to the act that might have occurred if such a clause had not been provided, it has not been as effective as hoped. Many municipalities have routinely approved permit applications in the absence of overwhelming local sentiment against such approval in order to avoid having to defend their denial of a permit in a court suit. Thus, they leave it up to the Board to deny the permit and to face the responsibility of defending the decision in court.[6]

Furthermore, no funds are directly appropriated to carry out the provisions of the act. The Board members meet as often as necessary to process applications and utilize the personnel of their respective departments for staff services to the Board's activities when such assistance is required.[7]

This act differs from the Massachusetts Coastal Protection Act of 1965 in that it does not require any systematic inventory of the wetlands of the state and the subsequent issuance of restrictive orders to be placed on the deeds of wetland properties. Instead, it merely requires that the permits that are granted be recorded at the registry of deeds. This difference undoubtedly made the act much less expensive to administer

but at the same time required decisions in a case-by-case manner rather than on the basis of a comprehensive survey, thus creating the possibility that the quality of the state's wetlands would be nibbled away by a series of small concessions to permit applicants.

Act 541-1971

By passing Act 541, the 1971 state legislature enacted the necessary legislative authority to remedy the above-mentioned deficiency. The provisions of Act 541 are almost identical to those of the Massachusetts Coastal Wetlands Protection Act of 1965, thus giving Maine's Wetlands Control Board the necessary authority to institute a wetland survey program so that restrictive orders could be placed on wetlands areas in the same manner as Massachusetts has been doing under the Coastal Wetlands Protection Act.

Under the provisions of Act 541, the Wetlands Control Board is authorized to "adopt, amend, modify or repeal orders regulating, restricting, or prohibiting dredging, filling, removing, or otherwise altering any coastal wetland or draining or depositing sanitary sewage into or on any coastal wetland or otherwise polluting the same" for the purpose of promoting "the public safety, health, and welfare, the protection of public and private property and the conservation of public or private water supplies, wildlife and freshwater, estuarine, and marine fisheries."[8]

Before adopting any such orders, the Board is to hold a public hearing in the municipality in which the affected wetlands are located after giving notice to the local governmental officials, affected landowners, and the general public. Once an order has been adopted, a copy of it is to be placed, along with a map of the wetlands affected and a

list of the affected landowners, in the county registry of deeds. In addition, copies of the order are to be sent to the affected landowners by registered or certified mail.

Within 90 days after the issuance of the order, any person having a recorded interest in the affected wetlands may challenge the constitutionality of the order by appeal to the Superior Court. If the order is found to be an unreasonable taking without compensation, the affected wetland is to be exempted from the proposed order, but the effect of the court's ruling is to be restricted to property of the appellant. No damages are to be awarded to the appellant as the result of the ruling. However, the exemption of the wetlands in question by the court's ruling is to be recorded at the local registry of deeds.

With respect to such exempted wetlands, the Board may negotiate for the purchase of such wetlands if, after an appraisal such action is thought to be necessary to carry out the purposes of the Act. After negotiating for 60 days for the purchase of such lands, the Wetlands Control Board, by determining that an emergency condition exists regarding achieving the purposes of the Act, may acquire, with the consent of the governor and council, the fee simple or lesser interests in such wetlands by eminent domain.

Violation of the provisions of this act or an order of the Wetlands Control Board subjects the violator to a fine of not more than $500. In addition, the Superior Court may institute a restraining order to stop a continuing violation of an order or the provisions of the Act and, if the situation warrants, require the violator to restore the affected wetlands as near as possible to its original condition.

Commentary

Thus, the Wetlands Control Board has been given sufficient legislative authority to institute a program to adequately protect its coastal wetlands. However, to do so, adequate funding and staff must be devoted to the program.

Court Review of the Provisions of Act 348

One test case has been undertaken under this Act. In State v.s. Johnson,[9] the Maine Supreme Court decided, in this particular case, that since the defendant's wetland property was deemed to have no commercial value unless it was filled in so that cottages could be built on it, the restriction issued by the Wetlands Control Board prohibiting him from doing so was an unreasonable exercise of police power and equivalent to a taking without compensation. The Court did not rule on the constitutionality of the Act as it was applied in other situations.[10]

According to the opinion of legal authorities concerning this case,[11] the Maine Supreme Court's decision, while somewhat distressing, need not inhibit the Act's enforcement in other instances. The circumstances surrounding the State v.s. Johnson case were somewhat unusual. The land in question was bought by Dr. and Mrs. Johnson, before the Wetlands Act was passed, solely for the purpose of having it developed, and it was located in an area in which such development had previously taken place without any objections. Thus, the Johnsons were not merely speculating but had a reasonable expectation of developing their land for cottage lots. More important, the state did not dispute the fact that the land had no commercial value without filling. No reference was made of its value to marine fisheries and estuarine life or its educational or passive recreation potential. Instead, the state based its

case on the validity of its police powers in such a case and the lack of an undue burden on the landowner. The state also made no reference to its possible claims regarding use of the land based on Colonial ordinances or to possible damage to state lands adjoining the Johnson property from the filling and the construction of the cottage lots.

Thus, it is thought that with a different argument the state would be likely to win other such cases.

Wetland Acquisition

Both the Department of Inland Fisheries and Game and the State Park Commission are undertaking coastal land acquisition programs. Funding for the acquisition of wetlands for waterfowl purposes amounts to about $20,000 annually. The State Parks Commission has acquired twenty-two miles of waterfront (not necessarily wetlands) valued at three million dollars and plans to acquire substantially more under a new bond issue.[12]

SITE LOCATION REGULATION

Act 571-1970

In 1970, the Maine State Legislature passed two other innovative acts regarding coastal management as part of an "Environmental Protection Package" of legislation. Act 571 (Act 571-1970) provides that the permission of the Environmental Improvement Commission is necessary for any commercial or industrial development which (a) requires a license from the Commission (in accordance with the enforcement of air and water pollution control standards), (b) covers more than 20 acres of land, (c) involves drilling for or excavating natural resources (except for pits of less than five acres or borrow pits for sand, fill, or gravel regulated by the state highway department), or (d) involves structures

on a single parcel of land which have a ground area of 60,000 feet or greater.

The Environmental Commission is composed of ten members appointed by the Governor; two representing manufacturing interests; two, Municipalities; two, the public generally; two, conservation interests; and two who are knowledgeable in matters concerning air pollution. It was established in the middle 1960's to administer the state's air and water pollution control programs and has since taken on the administration of other environmental programs. Members of the Commission receive ten dollars for each day they devote to Commission business in addition to compensation for expenses incurred as a result of Commission business. To carry out the administrative duties and direct the activities of the staff of the Commission, a full-time director has been appointed by the Commission.

The Commission is required, within fourteen days after receiving a request for permission to undertake a development, either to give approval or schedule a public hearing to further investigate the impact of the development. Approval of a project is to be based upon four criteria:

> 1. Financial capacity. The proposed development has the financial capacity and technical ability to meet state air and water pollution control standards, has made adequate provision for solid waste disposal, the control of offensive odors, and the securing and maintenance of sufficient and healthful water supplies.
>
> 2. Traffic movement. The proposed development has made adequate provision for loading, parking and traffic movement from the development area onto public roads.
>
> 3. No adverse affect on natural environment. The proposed development has made adequate provision for fitting itself harmoniously into the existing natural environment and will not adversely affect existing uses, scenic character, natural resources or property values in the municipality or in adjoining municipalities.

> 4. Soil types. The proposed development will be built on soil types which are suitable to the nature of the undertaking.[13]

At any hearings held under this act the burden of proof is on the applicant to show that the proposed project meets the above criteria and that the public's health, safety, and general welfare will be adequately protected. The Commission is required to issue an order approving, denying, or modifying the request within 45 days after holding a hearing. It is authorized to impose modifications as it deems "advisable to protect and preserve the environment and the public's health, safety, and general welfare."[14] Appeal of a decision of the Commission is allowed within 30 days to the Maine Supreme Court. Upon the request of the Commission, the Attorney General is to seek injunctions to stop unauthorized construction or construction that is not being carried out in accordance with the Commission's order. If the situation warrants, a person undertaking such unauthorized construction may be required to restore the affected area at his own expense. Orders issued in accordance with the provisions of this act are to be enforced by the Attorney General who is required to seek appropriate civil action if an order is not complied with within 30 days after he is notified of such non-compliance by the Commission. Twenty Thousand dollars was appropriated for the implementation of this act for the remainder of fiscal 1971. No figures were available at the time of this writing for the appropriations for implementation of this act for fiscal 1972.

Commentary

Although it is too early to tell what the impact of this law will be, a few observations can be made regarding its provisions. First, it suffers from the same deficiency that the Wetlands Regulation Program did before passage of Act 541--the lack of a comprehensive plan upon

which the Commission can base its decisions to approve or deny requests. This is particularly pertinent regarding decisions based on Criteria Three: No adverse impact on the environment. Without the backing of a comprehensive plan to show interest and careful consideration of the factors involved, it will be difficult for the Commission to rationally review projects for their general environmental impact (other than pollution) and to have their decisions sustained in court. Hopefully, the development of Maine's Coastal Development Plan will remedy this situation. Finally, this act contains no provision for citizens to appeal a decision to approve a project, or even to require that hearings be held to review the project before approval is given. It is presently at the Commission's discretion whether a hearing is warranted or not. Either the act should be amended to provide a safeguard against arbitrary approval of projects by the Commission, or Maine should pass legislation patterned after Michigan's Environmental Protection Act of 1970[15] which allows citizens to bring lawsuits to challenge administrative actions that they think are detrimental to the environment.

COASTAL CONVEYANCE OF PETROLEUM REGULATION

Act 572-1970

The other piece of innovative environmental legislation enacted in 1970 is the Coastal Conveyance of Petroleum Act (Act 572-1970). This legislation mandated the Environmental Improvement Commission to establish regulations for the transfer of oil and other petroleum products between vessels and onshore facilities and between different vessels within the jurisdiction of the state. For the purposes of this act, the state's jurisdiction is to be considered to extend 12 miles instead of the normal three miles from the coastline of the state.

The Act prohibits the discharge of

> oil, petroleum products, or their by-products into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the State, or into any river, stream, sewer, surface water drain or other waters that drain into the coastal waters of the State.[16]

Any person causing such a discharge is required to promptly notify the Commission and to begin clean-up operations immediately. However, the Commission is empowered to remove the discharge if necessary, in cases where the violator is known and in the case of all unexplained discharges. A fine of from $100 to $5,000, with each day considered a separate offense, is to be assessed for each violation of the provisions of this act or of orders of the Commission. If a person promptly notifies the Commission and cleans up his discharge, he will not be subject to this fine.

This Act also empowers commissions to issue emergency rules and regulations without a hearing. In the case of a potential or actual catastrophe arising from the discharge of oil or other petroleum products, the Governor is mandated to declare an emergency situation and to coordinate the state's actions with that of other states, the agencies of the federal government, and foreign countries and is given emergency powers to take such action as he deems necessary.

The viability of this legislation as an effective mechanism to protect the environment is assured by the provision that establishes the Maine Coastal Protection Fund to finance the activities of the Commission relating to the prevention and control of oil pollution. Money for the fund is to come from fines and user fees comprised of yearly license fees for all terminal facilities[17] based on a 1/2 cent per barrel levy on all petroleum products (or byproducts) transferred by the licensee.

(The renewal of licenses is predicated on compliance with state and federal pollution control programs, thus providing an additional means of control over a facility's operations.)

The fund's resources are also to be used to pay for damages to third parties from oil spills, including both damage to property and loss of income. The latter provision would seem to include fishermen who previously have had no cause for action in cases of injury from oil spills.[18] Persons responsible for spills are subject to absolute liability for the costs of the commission actions relating to the spill and for third party damages. The first $15,000 of such costs is exempted if the offender has given prompt notice to the Commission and has taken steps to remove his discharge.

Thus, this act provides two basic ingredients for an effective program: strong regulatory authority and the necessary funding to implement it. The legislature appropriated $30,000 to initiate the implementation of the act. A limit of $9,000,000 was placed on the Coastal Development Fund with up to $100,000 of the fund authorized to be spent on the research and development in the causes, effects, and removal of pollution caused by oil, petroleum products (and their by-products) on the marine environment. It should be mentioned that the licensing provision may be challenged as a violation of the Commerce and Due Process Clauses. However, it is the opinion of legal authorities that the licensing fees are not an undue burden on interstate commerce or a violation of due process but rather a reasonable activity-related charge; a finding which allows the state to take measures to protect its natural resources from the dangers engendered by the conveyance and transfer of petroleum in its coastal region.[19]

COASTAL DEVELOPMENT PLAN

As stated above, the effectiveness of much of Maine's coastal regulations is dependent on the successful completion of Maine's Coastal Development Plan. The development of this plan was spurred by the prospect of federal coastal zone legislation which would require such a plan for a state to share the proposed federal assistance.[20]

The following excerpts from the statement of purpose of the plan's work program will give an indication of the tone and direction of the development plan:

> The purpose of the Maine Coastal Plan is to set forth the procedures by which coastal development can take place in ways consistent with the natural characteristics of Maine's coastal land and water resources. The plan will be resource-based, oriented toward classifying coastal areas according to their natural capacities and determining the types of uses which are compatible with them.
>
> A basic aspect of the plan will be an inventory of the entire coastal zone; and, classification of coastal areas according to natural characteristics, ecological relationships, existing uses, and compatible potential uses.
>
> Coastal development must be a function of both the ecological and economic consequences of various alternative uses. Comparative economic values must be evaluated in making resource allocation, locational and development decisions. The physical studies contained in the Maine Coastal Plan will provide the resource-based information so vital to the economic and institutional considerations which are necessary to the Plan's implementation.
>
> . . . this plan will place special emphasis on a land classification system with development standards to be applied to specific areas. This classification system will be designed to permit adoption and enforcement of land-use controls by appropriate local, state and federal levels of government to guide sound development practices by both private enterprise and public agencies. Necessary state legislation and local ordinances will be recommended, along with financing proposals and administrative arrangements.

> Special attention will be given to water use along with the traditional concern of planners with land use. An attempt should be made to relate proper land use to increasing water use and deal with the problems involved in the regulation of offshore activities. . . . The object of this study will be to make compatible through planning and regulation many of the present incompatible uses of water and land along our coastal areas.
>
> The Maine Coast will also serve as a pilot program for development of a cooperative State-Federal coastal zone plan and action program. The State will prepare a plan for coastal development management considering State, regional and national needs and objectives as the first phase of the effort. Following preparation of the State development plan, the second phase of the program will be initiated with Federal and State agencies preparing action plans for carrying out public sector responsibilities.
>
> A major purpose of the plan is to present alternatives, to seek out knowledge on which to base better decisions. Unless we consider rational alternatives among competing uses, we will continue to accept single-purpose approaches modified by short term advantages to specific individuals, individual industries or small local governments. Such short-term or single-use orientation apart from inhibiting the greater advantage of multiple uses may actually dissipate the resource itself. . . . Consequently, each single-purpose use may be narrowly justified on its own merits but the final and complete effect of this piecemeal development will be absolute chaos.[21]

The plan is to consist of four phases with the first phase having begun in November, 1969, and the last phase scheduled to end in December, 1973. Phase I lasted until May, 1970. Activities were concentrated in the following areas:

> formation of the Coastal Planning Advisory Task Force (consisting of representatives from all State and Research Agencies with responsibilities in the Coastal Zone to coordinate the activities of the various agencies in the development of the coastal plan with the State Planning Office, the lead agency); establishment of the goals and objectives for the Maine Coastal Plan; definition of the Coastal Zone; determination of participating agencies and their contributions; selection of a pilot study area (Penobscot Bay); development of general inventory and classification procedures; preparation of

> an annotated bibliography and cataloging of relevant materials; and preparation of base maps; and collection of preliminary data relating to the pilot area.[22]

The purpose of the other phases of the plan and their scheduled duration are as follows:

> Phase II - developing and programming specific procedures, testing and refining procedures in the pilot test area, and the developing of a detailed coastal planning program including procedures, budgets and anticipated results (May, 1970-June, 1971)[23]
>
> Phase III - conducting an inventory of the coast in accordance with the practices and procedures established in the previous phases (January, 1971-May, 1971)
>
> Phase IV - conducting a detailed physical, economic, and institutional analysis and making recommendations of the steps necessary for the establishment of an effective coastal development program (December, 1971-December, 1973)[24]

Commentary

From the information at hand, it is difficult to tell whether Maine's Coastal Development Plan will meet its objectives. However, a few of the necessary factors for its success can be specified: adequate funding, adequate staff, adequate cooperation between state agencies and a willingness on their part to assume new responsibilities and directions of efforts, establishment of more governmental controls at the local level (according to the Phase I report, only 32 out of 139 local governments have any type of zoning), and technical and financial assistance of the federal government. At present, funding for the

program is quite limited, composed mostly of grants from outside sources.[25]

While meeting these requirements will be a difficult task, the state does have in its favor a seeming commitment on the part of the Governor and the legislature (witness the 1970 Environmental Legislative Package) and, potentially at least, a commitment of the federal government through the proposed coastal zone management legislation now being considered by Congress. Only time will tell whether these commitments will be sufficient to meet the objectives of the plan and, even more important, implement the recommendations it produces.

FOOTNOTES

[1]Harriet P. Henry, Research Director, and David J. Halperin, Project Director, Maine Law Affecting Marine Resources, Volume I: State Government Organization: Agencies Dealing with Marine Resources, (University of Maine School of Law, Augusta, Maine, 1969), p. 56.

[2]Act 348-1967, (Coastal Zone Regulations), as amended, sec. 1, [par. 4701].

[3]See Appendix B for copies of this and the other pieces of Maine legislation discussed in this paper.

[4]Act 348-1967, sec. 1 [par. 4702].

[5]Ibid.

[6]Henry and Halperin, Maine Law Affecting Marine Resources, Vol. I, p. 55.

[7]Letter of September 23, 1971 in response to request for information from Bradford S. Sterl, Coastal Wetlands Coordination of the Wetlands Control Board.

[8]Act 541-1971 (Coastal Wetlands Regulations), sec. 1 [pars. 4751 and 4754].

[9]State v. Johnson, Atlantic Reporter, 2nd Series, Vol. 265, p. 711, et seq. [265 A2d711 (Me 1970)].

[10]See Daniel Wilkes, "Constitutional Dilemmas Posed by State Policies Against Marine Pollution--The Maine Example," Maine Law Review, Vol. 23, No. 1, 1971, pp. 143-174, and Henry and Halperin, Maine Law Affecting Marine Resources, Volume II: State, Public, and Private Rights, Priveleges, and Powers, pp. 297-304, for discussion of this case and its possible implications.

[11]Ibid.

[12]John O. Ludwigson, "Managing the Environment in the Coastal Zone," Environmental Reporter, Monograph No. 3, Vol. 1, No. 1, (May 1, 1970), p. 7.

[13]Act 571-1970, (Site Location Regulation), sec. 2, [par. 484].

[14]Ibid.

[15]Act 127 (The Environmental Protection Act of 1970) of the 1970 Regular Session of the 75th Legislature of the State of Michigan.

[16]Act 572-1970 (Coastal Conveyance of Petroleum), sec. 1, [par. 543].

[17]The term "terminal facility" is defined to include vessels which engage in the process of transferring petroleum products, but marinas are exempted if they handle boats 75 feet or less in length.

[18]Henry and Halperin, Maine Law Affecting Marine Resources, Volume III: Regulation of the Coast: Land and Water Uses, p. 486.

[19]For a further discussion of the legality of the license fees see Henry and Halperin, Maine Law Affecting Marine Resources, Volume III: Regulation of the Coast: Land and Water Uses, pp. 594-601, and Wilkes, "Constitutional Dilemmas Posed by State Policies Against Marine Pollution --The Maine Example."

[20]Henry and Halperin, Maine Law Affecting Marine Resources, Vol. III, p. 597.

[21]Maine Coastal Development Plan: Phase 1 Report, Maine State Planning Office (June 1970), pp. 13-14.

[22]Ibid, p. 17.

[23]Ibid, p. 47.

[24]See Maine Coastal Development Plan: Phase 1 Report for more information about the results of Phase 1 of the plan and the proposed activities of the other phases.

[25]Letter of August 25, 1971, (in response to request for information) from Ronald A. Poitras, Planning Associate of the Maine State Planning Office.

MAINE

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Act 572-1970 (Coastal Conveyance of Petroleum), [Title 38, Chapter 3, Sections 541-557 of the Maine Revised Statutes].

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CHAPTER 3

MARYLAND

INTRODUCTION

During its 1970 and 1971 sessions, the Maryland state legislature passed several bills that dealt with the problems of shorelands management. Two of the bills dealt with wetlands preservation (passed in 1970), one with power plant siting (passed in 1971), and one established the Maryland Environmental Service to cope with the state's wastewater and solid waste problems (passed in 1970). The latter two bills, while not concerned with the state shorelands per se, are innovative measures which should by their very nature have considerable impact on those areas.

All of these measures are to be administered by the Department of Natural Resources or one of its subdivisions. The Department of Natural Resources is a super-agency created, in 1969, to bring together, in one department, previously independent departments such as Chesapeake Bay Affairs, Fish and Game, and Water Resources, and newly created departments such as the Environmental Service that are involved in the management of the state's natural resources.

WETLANDS PRESERVATION LEGISLATION

Background

The two wetlands acts[1] passed by the Maryland state legislature provide the basis for a state-wide program of preservation and management of the wetlands lying within the state. The passage of these acts

was, to a considerable extent, due to the efforts of conservation groups throughout the state which had conducted efforts to ensure the passage of these bills.[2]

A study of the state's wetlands conducted during the late 1960's by the Maryland Department of State Planning in coordination with the other state agencies also contributed to the bills' passage since it provided documented evidence of the wetland's value for fish and wildlife habitat and for erosion and flood control, documented the loss of valuable wetlands due to dredging and filling, etc., and pointed up areas where state control over activities occurring on the state's wetlands was lacking.[3]

Prior to passage of the 1970 legislation, adequate protection of the state's wetlands was lacking for several reasons. First, although the state owned much of the marshland and the tidelands lying within its boundaries, adequate control was not exercised over activities occurring on such areas or the transferral of such lands to private ownership. Under legislation enacted in 1943, the state Board of Public Works was authorized to issue patents (grants of ownership) for such lands to private interests for compensation that it considered adequate without necessarily considering the ecological consequences of such actions.[4] Furthermore, controls over dredging and filling of such lands were primarily based on consideration of the effects on navigation rights, although in recent years, some consideration was given to the effects on fish and wildlife and water quality in administering such controls. A state policy was adopted in 1968 to tie the filling of wetlands or submerged lands to compensation with lands of equal ecological value and twice the acreage

in addition to monetary compensation for the dredged fill. However, this policy was found to be inadequate and subject to misuse.[5]

There was also some legal question as to the ability of the state, even if it so desired, to control the activities of riparian owners even though such activities may adversely affect wetland areas. In addition, the state had no control over the salt marsh areas lying principally on the state's eastern shore, which are not reguarly affected by the tide's ebb and flow.[6]

Act 242-1970 (Wetlands)

One of the wetlands bills, HB 286 (Act 242-1970), passed by the 1970 state legislature tightened the conditions under which the Board of Public Works, which is composed of the Governor, the Comptroller, and the Treasurer, could transfer the rights of state-owned wetlands or submerged lands[7] to private persons. Such transfer was limited to only the owner of the land abutting the land to be transferred. Before taking action on transfers occurring after July 1, 1972, the Board of Public Works is required to consult with other state and interested federal agencies and to hold a public hearing concerning the matter. After the hearing, the Board is required to justify in writing its decision on the proposed transfer, "taking into account the best interests of the State with respect to the varying ecological, economic, developmental, agricultural, recreational, and aesthetic values of the area under consideration."[8] Such written justification is to be made available for public scrutiny.

Act 241-1970 (Wetlands)

The second wetlands bill passed by the 1970 state legislature, HB 285 (Act 241-1970), provided most of the new protection for the

state's wetlands. This Act, for the first time, specifically acknowledged in law the value of the state's wetlands economically and ecologically for fish and shellfish propagation, plant and animal habitat, flood and silt control, and recreation and aesthetic enjoyment, and the damages to them from unregulated dredging, dumping, filling, etc.

In presenting a management program for the state's wetlands, the Act divided them into two categories: state wetlands and private wetlands. The category "state wetlands" includes "all land under the navigable waters of the state below mean high tide[8] or which is affected by the regular rise of the tide"[9] and which has not been transferred to private ownership. The majority of such transferrals had occurred on the lands bordering Baltimore harbor which were ceded to builders of wharves, houses or other buildings that extended into the water in order to encourage trade and the development of the city as a port.[10] The other category, "private wetlands," includes "all lands not considered State wetlands bordering on or lying beneath tidal waters, which are subject to regular or periodic tidal action and which support aquatic growth,"[11] including all state wetlands transferred to private ownership.

State Wetlands Management System

The Act provides different management programs for each type of wetland. On state wetlands, dredging and filling was prohibited after July 1, 1970 unless a permit was obtained from the Board of Public Works. Exempted from this provision were riparian owners making improvements to preserve their access to navigable waters or undertaking shore erosion measures, persons harvesting seaweed, licensed operators dredging for seafood products, mosquito control measures approved by the state entomologist, and measures undertaken to improve wildlife habitat, or agricultural drainage ditches approved by the appropriate state agency.

To assist the Board of Public Works in making decisions on permit requests, the Secretary of Natural Resources is mandated to submit a report to the board indicating whether the permit should be granted and, if so, under what conditions. Such a report is to be based on consultations with interested agencies (state, local, and federal), the holding of public hearings, and the "taking of such evidence" as the Secretary thinks necessary. After reviewing the Secretary's report, the board is to make its decision as to whether issuance of a permit would be in the best interests of the state, taking into consideration "the varying ecological, economic, developmental, recreational, and aesthetic values each application presents."[12]

Violation of the above provisions subjects a person to a fine of not less than $500 nor more than $1,000 and to be liable for restoring the affected wetlands to their original condition, to the extent possible, within a period of time judged by the court to be reasonable for such restoration.

Restrictive Order System for Private Wetlands

The Act also gave the Secretary of Natural Resources, with the advice and consent of the Agricultural Commission[13] and after consultation with the appropriate agencies of the area under consideration, the authority to set rules and regulations governing activities on private wetlands. If the Agricultural Commission does not comment within 60 days, the proposed regulations will be considered approved by the commission. Exempted from such rules and regulations were the following activities:

> (1) Conservation of soil, vegetation, water, fish, shellfish, and wildlife; (2) trapping, hunting, fishing, and shellfishing, where otherwise legally permitted; (3) exercise of riparian rights to make improvements to lands bounding on navigable waters to preserve access to such navigable waters or to protect the shore against erosion[14]

and activities occurring before the effective date of the act, July 1, 1970.

The establishment of such rules and regulations is to follow an inventory of the private wetlands of the state. For each subdivision of the state, as determined by the Secretary, boundary maps are to be made and the relevant rules and regulations proposed. Then a public hearing is to be held on the proposed boundaries and regulations. Following such a hearing, the Secretary is to make final determinations of the appropriate boundaries and regulations for each of the wetlands in the subdivision. Copies of such determinations are to be sent to each wetlands owner and to be filed in the land records of the appropriate county following any appeal of any of the Secretary's rulings. Thus, the Secretary is empowered to establish a restrictive order system, similar to Massachusetts', which, in effect, establishes easements on the wetlands.

Appeal of the Secretary's ruling may be made by the property owner to the Board of Review of the Department of Natural Resources in accordance with established procedures. (The Board of Review is composed of seven members appointed by the Governor with the advice of the Secretary of Natural Resources and the consent of the state senate. Four of these members are to come from the general public and three are to have experience and knowledge in fields relevant to the activities of the Department of Natural Resources.) Appeal of the board's decision may be made to the circuit court within 30 days of the board's ruling on grounds that the proposed regulation constitutes an unconstitutional taking without compensation.

The court is to consider any such appeal de novo without regard to the provisions of the Administrative Procedure Act and with consideration by a jury upon request of either party. In making its determination the court is to consider "the importance of the land to marine life, shellfish, wildlife, prevention of siltation, floods, and other natural disasters, the public health and welfare and the public policy set forth"[15] in the Act. The court's decision is to affect only the specific piece of property under question. Such a decision by the circuit court can be appealed by either party to the Court of Appeals.

Permit System for Activities Occurring on Private Wetlands

Act 285 also established a permit system which would allow activities otherwise prohibited by the rules and regulations established by the Secretary to be undertaken upon acquisition of a permit from the Secretary. Such a system is in marked contrast to the permit systems of Maine and Massachusetts in that it allows variances from the rules and regulations established by the Secretary rather than providing a supplemental regulatory system.

The following describes the operation of the permit system. Any application for a permit is to include a detailed description of the proposed work, a map showing the location of the proposed activity, and the names of the owners of adjoining property and water rights in or adjoining the wetland in question. Thirty to sixty days after reviewing the application, the Secretary (or a designated hearing officer) is to hold a public hearing on the matter. After the public hearing, the Secretary is to decide whether to approve, deny, or approve with conditions the application. In making his decision, the Secretary (or the designated hearing officer) is to consider the effect of the proposed

work on "the public health and welfare, marine fisheries, shellfisheries, wildlife, economic benefits, the protection of life and property from flood, hurricane, and other natural disasters,"[16] and its accordance with the public policy set forth in the act. To assure compliance with conditions set on the approval of a permit, the Secretary is authorized to require a bond. Non-compliance with the provisions of a permit or exceeding the work authorized by it is grounds for revoking the permit.

Appeal of the Secretary's decision on a permit application is allowed, in accordance with established procedures, to the Board of Review of the Department of Natural Resources by the applicant, or the county or the municipal government in which the land in question lies. Such a review must take place in the county in which the land in question lies and the Board of Review must view the land. Appeal of the board's decision may be made by any party, involved in the Board's review, to the circuit court within 30 days of the Board's decision. The court's review is to be de novo, with an optionable jury trial, and without regard to the provisions of the Administrative Procedure Act. If the court decides the appealed action is an unreasonable exercise of police power, it can set aside or modify the order in question.

In either this type of court appeal or one involving the original rules and regulations set by the Secretary, the court can require the state to pay court costs if it decides that the financial condition of the person appealing the Secretary's decision warrants such action.

Violation Penalties

Violation of the rules and regulations established by the Secretary or the provisions of the act dealing with private wetlands is punishable by a fine of not more than $100.00 or one month's imprisonment or both.

Any person who knowingly commits such a violation is also liable for the restoration of the affected wetlands to their condition prior to the violation to the extent possible with the period of time allowed for such restoration set by the circuit court. The Act also grants injunctive relief to prevent or abate such violation to the Department of Natural Resources.

Worchester County Provision

One final provision of the Act provides that the Act does not affect the powers of the Shoreline Commission in Worchester County to control dredging and filling in that county, thus in effect establishing a dual permit system for that county. This commission had been established prior to the Act's passage and the legislature decided not to abrogate its authority in passing the wetlands act.

Commentary

As is the case with many of the measures discussed in this report, the wetlands acts have been passed too recently for any definite judgment to be made on their effectiveness. However, several comments can be made on the likely import of the provisions of these acts.

The passage of these acts is a considerable step forward towards the establishment of an effective program for the preservation and management of the state's wetlands. However, effective implementation of the acts' purpose of managing the state's wetlands in accordance with preservation of the public health and welfare and the ecological attributes of such areas is strongly dependent of the rules and regulations established to govern activities on the wetlands and the manner in which the boundaries of the private wetlands are set. The fact that the Secretary of Natural Resources does not have full control of the management program for either

the state wetlands or the private wetlands but has to defer to the Board of Public Works in the case of the state wetlands and to obtain the consent of the Agricultural Commission in the case of private wetlands offers the possibility of interference by those bodies in the sound management of the wetlands. Since neither of these entities is particularly conservation-oriented, one towards management of public works and the other towards promoting agricultural interests, there exists the danger that they may overrule the Department's actions on political grounds rather than on conservation or public health and welfare grounds.

With regard to the penalty provisions in the Act, the monetary sums seem to be low, especially in the case of violations by industrial interests, but this weakness is somewhat offset by the restoration and injunctive resource provisions.

Finally, with respect to the appeals provisions of the Act, no direct provision is made for appeals of the Secretary's or the Board's decision by members of the general public, other than the owner of the property affected, even though they may be affected by the decision. Section 237 of Article 41 of the Annotated Codes of Maryland does provide for appeals by persons aggrieved by decisions and, thus, may provide the basis for appeals by members of the general public in matters concerning the management of the state's wetlands. However, the right of the general public to make such appeals would be more assured if it were explicitly stated in the provisions of the wetlands acts.

Wetlands Acquisition

The Departments of Game and Inland Fish and of Forest and Parks (of the Department of Natural Resources) both acquire lands bordering estuaries as part of their department responsibilities.[17]

POWER PLANT SITING

The Power Plant Siting Act (Act 31-1971) enacted by the state legislature, while not referring specifically to the state's coastal zone, will have a considerable impact on the state's coastal areas because the nature of the entity is to regulate power plants. Coastal areas are one of the prime areas considered for locations of power plants, particularly atomic power plants, because of the ready availability of cooling water.

With the rapid increase in demand for electric power and the concomitant increase in controversy of the siting of power plants, particularly for environmental reasons, the Maryland state legislature decided to enact legislation to regulate the siting of power plants, giving prime consideration to protecting environmental quality.

Environmental Trust Fund

The power plant siting program enacted by the legislature has three main features: an environmental trust fund, a power plant environmental research program, and a site acquisition program. The legislation provides that a surtax of .1 mil/kw-hour be placed on the electrical energy produced in the state beginning January 1, 1972, to provide money for the trust fund. Additional increases in the surcharge up to .3 mil/kw-hour may be made by the Public Service Commission at the beginning of each fiscal year, provided the existence of the surtax does not extend beyond 1985. (The Public Service Commission is composed of three persons appointed by the Governor for six-year terms to regulate the activities of public service companies such as electric, gas, water, telephone, common carriers in the state.) The fund established by this surcharge

is to be administered by the Secretary of Natural Resources to pay for the power plant environmental research program and the acquisition of sites for future power plants.

Environmental Research Program

The power plant environmental research program is to provide the basis for the selecting of future power plant sites and for judging the environmental effects of the operation of power plants. It is to be a continuing research program implemented by the Secretary of Natural Resources in cooperation with the Secretary of Health and Mental Hygiene, the Secretary of Economic and Community Development, and electric company representatives in accordance with procedures established by the Secretary of Natural Resources to assure coordination of research efforts. To provide information for the program, the Secretary of Natural Resources is authorized to draw upon the resources of additional sources including federal and state agencies, the electric companies, and academia.

Any research done by electric companies to satisfy application and permit requirements for federal, state, and local regulatory agencies is to be paid for out of the fund if the company has furnished an outline of the required research program and its estimated cost to Secretary of Natural Resources so that the research program can be budgeted in advance.

To insure that the research fulfills its function, the legislation required that it include the following features:

> (1) general biological and ecological baseline studies, including but not limited to appropriate environmental studies of the biology, physics, and chemistry of the Chesapeake Bay and tributaries; sediment; biological surveys to determine and identify essential marine organism nursery areas of the State's waters including the Chesapeake Bay and tributaries; epibenthos; bottom species; crab; fin fish and human use studies,

(2) research to assist prediction, including but not limited to experimental research, field and laboratory, and the development and provision for physical, mathematical, and biological modeling tools to assist in and to evaluate the effects of variation of natural waters resulting from electric generating plant operations including changes in temperature, oxygen levels, salinity, biocides, radionuclides and "heavy" metals and to also include the collection and organization of relevant information and data necessary to the operation of physical, mathematical, and biological modeling tools,

(3) provisions for monitoring the operations of existing and hereafter established electric power facilities located in the State and which shall include, but not be limited to determination of the actual distribution and effect of temperature, salinity, oxygen, radionuclides and heavy metals, biological effects; radiological, heavy metal and biocide effects; recreational and commercial fishing gains and losses; and human health and welfare effects,

(4) research and investigations relating to the effects on air resources of electric power plants and the effects of air pollutants from power plants on public health and welfare, vegetation, animals, materials and esthetic values, including baseline studies, predictive modeling, and monitoring of the air mass at proposed sites and sites of operating electric generating stations, evaluation of new or improved methods for minimizing air pollution from power plants and other matters pertaining to the effect of power plants on the air environment,

(5) an environmental evaluation of electric power plant sites proposed for future development and expansion and their relationship to the waters and air of the State,

(6) evaluation of the environmental effects of new electric power generation technologies and extraordinary systems related to power plants designed to minimize environmental effects,

(7) the determination of the potential for constructive use(s) of the waste energy to be released at proposed electric power plant sites,

(8) analysis of the socio-economic impact of electric power generation facilities on the land uses of the State.[19]

Site Acquisition Program

The results of the research program are to be utilized in the following manner to provide the basis for the power plant siting program. The Public Service Commission is to be responsible for assembling and evaluating the long-range plans for the state's electric companies with respect to their generating needs and proposed means of meeting these needs. The chairman of that commission is to submit annually a ten-year plan of possible and proposed sites or the construction or extension of power plants including associated transmission routes, submitting the first such plan on about January 1, 1972. Upon receipt of the ten-year plan of proposed power plant sites, the Secretary of Natural Resources, with the advice of the Secretary of Health and Mental Hygiene, is to prepare, within 180 days of receiving the plan, a preliminary environmental statement on each possible and proposed site. These statements are to be based on the results of the Environmental Research Program and are to include but not be limited to consideration of the following factors:

> The environmental impact of the proposed site,
>
> Any adverse environmental effects which cannot be avoided should the proposed site be accepted,
>
> Possible alternatives to the proposed site,
>
> Any irreversible and irretrievable commitments of resources which would be involved at the proposed site should it be approved,
>
> Where appropriate, a discussion of problems and objections that were raised by other State and Federal agencies and local entities,
>
> A plan for monitoring environmental effects of the proposed action and provision for remedial actions should the monitoring reveal unanticipated environmental effects of significant adverse consequences.[20]

On the basis of such preliminary environmental statements, the Secretary of Natural Resources is to specify to the Public Service Commission which sites should be categorized as unsuitable. Unless the electric company whose proposed sites are involved can provide the Secretary of Natural Resources with substantial evidence to the contrary, such sites are to be dropped from the plan. However, they may be resubmitted as part of future ten-year plans.

For sites which were classified as desirable or acceptable, the Secretary of Natural Resources, with consultation from the Secretary of Health and Mental Hygiene, is to begin more detailed investigations. For any site on which construction has not started by July 1, 1974, the Secretary of Natural Resources is to publish, at least two years before construction is to begin, a detailed environmental statement which utilizes the information attained in the Environmental Research Program.

Moreover, the Secretary of Natural Resources, with the assistance of the Secretary of Health and Mental Hygiene, is to publish biennially, beginning July 1, 1972, a Cumulative Environmental Impact Report on all electric power plants operating in the state. Such a report is to include a section detailing the changes that can occur as the result of constructing additional power plants in accordance with the ten-year plan and recommendations to the governor concerning state environmental policy and objectives. In addition, a section developed by the Secretary of State Planning is to be devoted to a consideration of growth and specific growth-related factors which necessitate the additional electrical energy to be generated by development of plants on the site(s) in the ten-year plan. In the development of that section, the projected estimates and recommendations of the electric companies are to be taken into consideration.

To meet the need for sites, the Secretary of Natural Resources is authorized to acquire sites using money from the Environmental Trust Fund. The Act restricts the number of sites that the Secretary may hold at one time to between four and eight sites suitable for either single or multiple power plant siting, providing that at least one site be acquired to meet the needs of each electric company in the state generating more than 1,000 MV of electricity by July 1, 1974, and that a minimum inventory of one such site for each such electric company be maintained after that date. In selecting such sites, the Secretary is to rely on the results of the detailed environmental site investigations mentioned above. The Act requires that such detailed investigations not take more than two years, after which time the Secretary must either acquire the site in question or remove it from further consideration, making public the reasons for his decision.

On sites that have been acquired for future use, no activities are to be allowed that would prevent their prompt availability for power plant siting. Revenues obtained from any temporary activities allowed on such sites are to be divided between the trust fund and the county in which the site is located on a 75-25 percent basis.

When an electric company needs a power plant site, it is to request an appropriate one from the Secretary of Natural Resources who will make the site available. The electrical company has the option of purchasing the site or leasing it on a ninety-nine year basis. In the latter case, the rental charge shall be three percent of the purchase price of the site. The purchase price is to be determined by an independent board of appraisers of three members, one chosen by the electric company, one by the Secretary of Natural Resources, and the third by the

two appraisers already chosen. The money from such sales or leases of sites is to be placed in the trust fund. In the case of either the purchase or lease of a site by an electric company, the electric company shall be subject to local property taxes. By participating in such a mechanism for obtaining its sites, an electric company shall be free of the responsibility of meeting the requirements of any local zoning rules, regulations, laws, or ordinances, or any municipal or county requirements.

Application for Certificate of Public Convenience and Necessity

In addition, the legislation provides a mechanism for an electric company to fulfill the requirements for application of all wetland permits or water appropriation permits for constructing a power plant by applying for a certificate of public convenience and necessity from the Public Service Commission. For plants and their associated overhead transmission lines on which construction is to begin after July 1, 1974, the electric company is to submit an application for a certificate two years in advance of the proposed date of commencement of construction. This two-year requirement may be waived by the Public Service Commission for good cause shown. All such applications shall include such information as the Public Service Commission may require, and the electric company shall submit all additional information that the commission requests.

Upon receipt of an application for such a certificate, the Public Service Commission is to notify the Secretary of Natural Resources of the application. The Secretary will then have sixty days to have such studies made as he deems necessary regarding the possible dredging and filling and appropriations of water that may be required by the power plant's construction and operation and other possible consequences of the power

plant's construction. The results of such studies and a recommendation as to whether the certificate should be granted and what conditions are, are to be submitted to the Public Service Commission. The Commission is then required to hold a public hearing on the granting of the permit at which the Secretary or his designee shall make public the results of the above studies and the recommendation regarding granting the application.

Similar notification of an electric company's application for a certificate of public convenience and necessity is to be given to all interested persons including the following state agencies (besides the Department of Natural Resources): Department of Health and Mental Hygiene, Transportation, Economic and Community Development, and State Planning. These agencies are required to present, at the public hearing, the results of any of their recommendations regarding the granting of certificate applications and possible conditions to be attached, along with all information they have gathered regarding the effects of the construction and operation of the power plant.

Following the hearing, the Secretary of the Department of Natural Resources has fifteen days to modify his recommendation and submit a final recommendation to the Public Service Commission on the evidence presented at the public hearing. This final recommendation must include specific conclusions regarding any private wetlands to be affected and water use and restrictions on such use by the construction and operation of the power plant. The other state agencies likewise have fifteen days after the public hearing to modify their recommendations.

The Public Service Commission is to make its decision regarding the granting of the certificate, and possible conditions to be attached, within ninety days after the public hearings. If a majority of the Commission can not agree on the conditions to be attached, the application is to be considered denied.

The granting of a certificate shall fulfill all requirements regarding wetland permits, water appropriation permits and permits for air emissions resulting from operation of the plant. Appeal of the Commission's decision is allowed by "any party or person in interest, including the People's Counsel" and the Secretary of Natural Resources. However, in such an appeal, the Commission's decision shall be deemed correct unless it can be clearly shown that it is:

> (1) in violation of constitutional provisions, or (2) not within the statutory authority or jurisdiction of the Commission, or (3) made upon unlawful procedure, or (4) arbitrary or capricious, or (5) affected by other error of law, or (6) if the subject of review is an order entered in a contested case after hearing, such order is unsupported by substantial evidence on the record considered as a whole.[21]

Moreover, such an appeals procedure is to take the place of any appeals of the Secretary of Natural Resources' actions which, in other cases, would be allowed by law.

Proposed Implementation Plan[22]

In the period since this legislation was passed, the Department of Natural Resources has developed a proposed implementation plan. The plan proposes that the administration of the program be handled by a small staff operating out of the Office of the Secretary of Natural Resources and that most of the research required by the bill's provisions be contracted to outside groups.

Studies Groups, composed of institutions, agencies, and individuals actively involved in or sponsoring relevant research, will be established to conduct the fundamental research projects required by the act. Each Studies Group will elect a Steering Committee to determine the type of projects that are needed in their area to fulfill the requirements of the act and to review the research undertaken and develop summaries of the relevant results at the end of each fiscal year so that they can be readily used by the Power Plant Siting Program staff, utilities, environmental groups, etc. Research projects are to be guided so that they add sufficient increments of knowledge each year to the technological base on which the decisions required by the act are to be based.

One Studies Group, the Chesapeake Bay Cooling Water Studies Group, has already been formed to undertake research concerning biological and socio-economic effects of using the waters of the state for cooling purposes in the operation of power plants. A second group, the Human Health and Welfare Group, is presently in the process of formation. It will study the problems associated with radioactive emissions and the effects of power plant (base plant, stack, and cooling tower) emissions on the atmosphere and the environment generally. Other groups will be formed shortly to study other problem areas concerning the operations of electric power plants.

In addition to the work of these Studies Groups, research will be contracted to several universities for the purpose of carrying out specific case study research regarding specific problems at specific power plants and abstract problems needing special expertise. Among the case studies presently being formulated are ones involving the operation of cooling towers at one plant, the flow requirements at a

potential plant site, and methods of evaluating aesthetic considerations objectively.

The programs concerned with the monitoring required by the Act of the operations of power plants will be guided by a panel of scientific advisors from the Maryland Academy of Sciences. The actual work will be carried out by research and development companies contracted to undertake the specific portions of the overall monitoring program in which they have competence.

As with the research activities, the detailed environmental investigations of these sites, designated as potentially suited for power plant sites, will be contracted out. The work will be done by non-profit academic laboratories in accordance with research designs developed specifically by the program staff for each site to be investigated.

A Power Plant Siting Program Advisory Committee will be appointed by the Secretary of Natural Resources to be composed of at least fourteen members. Among these members are to be the chairman of the Governor's Science Advisory Council, the chairman of each Power Plant Siting Program Studies Group, two members of the state legislature, two representatives of electric power companies, and one representative of each of the following: the Natural Resources Advisory Board, the Public Service Commission, the Department of Health and Mental Hygiene, the Department of Economic and Community Development, the Department of State Planning, the Association of County Commissioners, and citizens environmental organizations. It will be the function of the committee to evaluate the progress of the program and make recommendations to the Secretary of Natural Resources. Such recommendations could involve, among other matters, the Public Service Commission's ten-year plan, budget requests,

the acquisition of specific sites and the advisability of seeking judicial review of the Public Service Commission's decision regarding the issuance of certificates of public convenience and necessity.

Commentary

As with the case of the wetlands laws, this Act has been passed too recently for any judgment to be made on its effectiveness. However, a few comments may be in order regarding its provisions and the proposed plan of implementation:

First, insufficient attention appears to be given, in the proposed plan of implementation, to the requirement in the Act that general biological and ecological baseline studies be undertaken including but not limited to:

> appropriate environmental studies of the biology, physics, and chemistry of the Chesapeake Bay and tributaries; sediment; biological surveys to determine and identify essential marine organisms, nursery areas of the State's waters, including the Chesapeake Bay and tributaries; epibenthos; bottom species; crab, fin fish and human use studies.[23]

All of the research presently proposed seems to be oriented towards the study of specific effects of the operation of power plants rather than towards such general baseline studies. However, without these studies, it will be difficult to determine how the power plants are affecting the environment since no baselines will have been established with which to compare the effects of such operations.

The Act further seems to be oriented to fulfilling the electric power companies' needs with only suggestions of questioning whether the state's environment can withstand the consequences of unchecked growth of demand for electric power, even given the program outlined in the Act. The study of this question is obviously authorized by the Act, but its

provisions may be interpreted as not requiring such needed investigations of the question of whether part of the response to such increase in demand should be measures to reduce that demand rather than unendingly trying to meet it.

As with the wetlands acts, the question can be made whether sufficient appeals procedures are open to persons that may be affected by the provisions of the Act. As mentioned above the grounds on which appeals will be sustained are quite narrow. Since the Public Service Commission decision concerning the permit should come at least a year and a half before construction is to begin and given the wide-ranging scope of questions presently being raised about the consequences of power plant operations, it would seem appropriate that any appeal process should be as open and comprehensive as possible. The question of long court delays does not arise here because cases involving Public Service Commission rulings are given precedence over almost all other types of civil cases.

Even taking the above qualifications into consideration, the implementation of this act should contribute considerably to a de-fusing of the power plant controversy in Maryland by establishing a rational, comprehensive procedure for providing new power plants in which environmental considerations will be given considerable weight.

MARYLAND ENVIRONMENTAL SERVICE

The Maryland Environmental Service was created in 1970 by the passage of S382 (Act 240-1970) to establish a state-wide entity which would promote regional planning and operation of sewage and solid waste treatment facilities and projects and would take advantage of economies of scale in the construction and operation of such facilities while maintaining the quality of the environment. The statement of purpose of the

Act clearly shows this intent:

> To assist with the preservation, improvement, and management of the quality of air, land, and water resources, and to promote the health and welfare of the citizens of the State, it is the intention of the General Assembly in enactment of this article to exercise the powers of the State of Maryland to provide for dependable, effective, and efficient purification and disposal of liquid and solid wastes, to encourage reductions in the amount of waste generated and discharged to the environment, and to serve its political subdivisions and economic interests.[24]

While the Environmental Service will operate state-wide, the effects of its operations will be significantly felt in Maryland's coastal region, not only because the wastes produced in that region will be more effectively handled and, thus, will have less adverse effect on the region's unique resources, but also because the effluents dumped into the rivers that empty into Chesapeake Bay will be significantly lowered, thus lessening the amounts of effluents carried into the Bay and the state's coastal region.

Composition of the Environmental Service

To carry out the purpose of the Act stated above, the Environmental Service was established as a public corporation located in the Department of Natural Resources. While the Secretary of Natural Resources appoints the officers of the service--a director, a secretary, and a treasurer--subject to the approval of the Governor to serve at the Secretary's pleasure, the Service is in most respects an independent agency. The Secretary of Natural Resources has no authority over the staffs and funds of the service, thus assuring its freedom of operation. In order to carry out its mandate, the Service was given the authority to adopt bylaws and rules and regulations; to issue revenue bonds; to enter into contracts with the federal and other state governments as well as local

and municipal governments; to exercise the rights of eminent domain in acquiring property and water rights; to set rates and fees for its services; to receive grants and contributions from federal, state, or private sources; to make plans, surveys, studies, etc., either directly or by the use of consultants,

> relating to liquid and solid waste transportation, purification, disposal techniques, and management methods or the effects of these techniques and methods, for the purpose of improving or evaluating the effectiveness or economy of its services and operations;[25]

and to exercise such powers as are necessary to undertake wastewater and solid waste projects including constructing, maintaining, and operating wastewater (sewage), including industrial wastes, and solid waste facilities.

Implementation of Service Plans

As an initial step in implementing its operation, the Service is to divide the state into service regions for planning and service provision purposes. The service regions for wastewater will be based on a river basin or watershed basis, while those for solid waste will be based on consideration of the demand for services and the available supply of disposal sites. The regions for wastewater and solid waste services need not be the same, but each part of Maryland can only be included in one wastewater region and one solid waste region.

The provision of the Service's services is to be based on the development of five-year plans for service regions which shall:

> designate those existing facilities or portions of them that shall be transferred to the jurisdiction of the Service, improvements to and extension of existing facilities, construction of new waste water purification and solid waste disposal projects, and the proposed methods of acquisition, ownership and operation by the Service and/or affected municipalities and persons, together with

> anticipated expenditures, sources of revenue, charges for projects to be levied against municipalities and persons, and related matters the Service finds necessary and convenient.[26]

Such plans are to take into account the ten-year master plans for water supply and liquid waste disposal that each county was required to prepare by the legislation enacted in 1966[27] which established the Waste Management Program existing at the time that the Environmental Service was established.

In the original legislation, submitted to the state legislature, the Service would be able to implement its five-year plans after holding public hearings at which the views of the affected counties, municipalities, and citizens were to be heard. However, due to the opposition of local governments, provisions were added to require county approval of such plans before they were implemented and approval of local municipalities before the Service took over operation of their wastewater and solid waste facilities.[28]

A county's disapproval of the five-year plan can be overriden if the Service can get a joint resolution to that effect passed by the state legislature. Moreover, the municipalities' services must be in compliance with state regulations for their veto to be effective.

Upon adoption of the five-year plans, the Service is to establish service districts which will be the basic units upon which the service will base its provision of services.

The five-year plans are to be updated biennially, an operation for which no county approval is required, but the consent of the local municipalities will still be required before their operations are taken over. The initial five-year plans for liquid waste treatment are to be completed by July 1, 1973, while those for solid waste treatment are to be completed

by January 1, 1974. The emphasis in the initial liquid waste treatment plans presently being developed will be on recommending measures to improve the effectiveness of the operation of present plants and to take measures regarding the replacement of present plants with fewer more efficient ones so as to leave the most future options open. More wide-ranging proposals regarding regionalization of sewage treatment programs will await the updating of the plans at which time more information and analysis will be available on which to base decisions regarding placements of new plants in the various regions, etc., which will shape the nature of the regional treatment for many years to come.[29]

The restrictions requiring local government consent for the Service's takeover of their operations are lifted if a community refuses to comply with an order of the Secretary of Mental Health and Hygiene to provide a sewage system or refuse disposal works. In such a case, the Secretary must direct the service to construct the necessary works. Likewise, if any person, industry, municipality, etc., fails to comply with an order of the Secretary of Mental Health and Hygiene to abate pollution, the Secretary must direct the service to undertake such projects as are necessary. The orders of the Secretary of Mental Health and Hygiene are issued in accordance with his department's mandate to protect the public's health and welfare and generally include allowance of certain periods of time for the violator to take the necessary steps to comply with the order.

A similar provision relates to the violations of the pollution abatement orders of the Secretary of Natural Resources. (The Department of Natural Resources through its member agency, the Department of Water Resources, plays a dominant role regarding water resource development in the state. Among the programs the Department of Water Resources administers

are those involving the application of water quality standards, the regulation of surface and ground water, appropriations, the control of construction and obstruction in state waters, flood plain management, and sediment and shore erosion control.) In such cases the Secretary may, but is not required to, direct the service to undertake the necessary projects to abate the pollution. This provision allows the Service, through the Secretary's actions, to decline to treat an industry's waste and, instead, have the Secretary take the industry to court for possible violation citations and for institution of court abatement orders. In this manner the Secretary, if the situation warrants, can force the industry to undertake process changes to reduce pollution rather than forcing the service to treat the end wastes. In cases where the waste treatment operations of a municipality or industry are taken over, the municipality or industry in question is to pay the service the cost of such taking over, including any construction or operating costs involved. Once the Service undertakes the construction or operation of such facilities it is, from that point on, to exercise control over their operation, even in the face of objection from the entity whose services were taken over.

It should be mentioned at this point that the Service is authorized only to treat the end-of-the-line waste products emanating from a collection system, not to construct the collection system, i.e., a city sewer system.

The Service is also to undertake the provision of wastewater and solid waste services to any entity (municipality, industry, etc.) that requests the Service to do so. In such cases, the Service is also authorized to undertake waste collection services provided that a contract can be developed with terms agreeable to the Service.

Nevertheless, the focal point of the legislation is to set up a state-wide waste management system based on the five-year plans. Upon adoption of these plans the Service is to enter into contracts with the municipalities and industries whose treatment it deems advisable to take over. As stated above, if a municipality's service is, in the opinion of the Secretary of Health and Mental Hygiene, providing adequate services, or will be doing so in the near future, the Environmental Service is prohibited from taking over its facilities without its approval.

Once a contract is entered into, however, it is binding on the municipality. Such a contract shall cover the conditions under which facilities are to be turned over to the Service, the charges to be paid to the Service, and the manner in which such charges are to be paid to the Service. The charges to be paid to the Environmental Service are to take into account the value and capacity of services transferred to the Service and on the volume of the characteristics of the wastes to be treated. The Service may exclude or cause to be pre-treated any waste that might otherwise endanger the viability of treatment structures or purification processes, or the health and wealth of the workers involved. Once the Service undertakes to provide service to any entity, no parallel services are to be constructed or operated, thus allowing the Service sole control over such operations.

To encourage compliance with the solid waste five-year plans, the legislation offers the enticement of 25¢ a ton to any county that allows final disposal of solid waste within its borders.

If a municipality fails to pay the services provided to it by the Environmental Service within 60 days of the payment date, then the municipality's share, or such portion as is needed, of state funds deriving

from the income tax, racing tax, recordation tax, amusement tax, and the tax on licenses shall be turned over to the Environmental Service until the debt is paid.

If any other entity fails to pay for the services provided to it within 60 days of the payment date, a lien shall be placed on the property served and turned over to the Attorney General for collection.

Disputes between the Service and the entity over the charges to be paid shall be turned over to the Public Service Commission for arbitration upon the request of either member of the dispute.

Financial Aspects of the Service's Operations

In order to finance its operation, the Service has other sources of revenue in addition to the fees charged for its services. Two hundred thousand dollars was appropriated for start-up expenses of the Service, and more funds will be appropriated annually until the Service becomes self-supporting, a condition which is expected within five years.[30] In addition, the 1968 state legislature authorized, as part of a sewage treatment bond issue, four million dollars for river basin planning which the service can draw upon in developing its five-year plans. The same bond issue included $100 million for grants for sewage treatment plants and $25 million for loans for the construction of sewage collection facilities. The plants under the Service's operation will qualify for such grants, along with those of such municipalities which decide not to join the Service's system or are not included for takeover under the five-year plans.

The Service may also issue its own revenue bonds to provide funds. With the guaranteed payment provision of charges to the Service through the garnisheeing of a municipality's share of tax receipts, these bonds

should be more attractive to investors than bonds from other entities not having such guaranteed sources of funds. Further, the interest on such bonds is tax-exempt, as are all revenues of the Service. The Service may also issue state general obligation bonds subject to the approval of the Board of Public Works.

Appeal Procedures

Regarding the accountability of the Service for its actions, the Service is subject to the provisions of the Administrative Procedure Act. In any appeal of its actions, the Natural Resources Board of Review does not have any jurisdiction. Such appeals are to go all the way to the Maryland Court of Appeals if the appellant so requests.

Violation Provisions

Violation of the provisions of the Environmental Service Act or the regulations established by the Service shall subject the violator to a fine of not more than $1,000 per day. Each day a violation continues shall be considered a separate violation.

Commentary

As with the other programs discussed in this chapter, the waste management system conducted by the Environmental Service has not been underway long enough to make definite judgments as to its effectiveness. However, some comments can be made about certain aspects of this system:

First, the provision that municipalities whose waste management facilities are in compliance do not have to transfer the operation of their facilities to the Service could have a significant effect on the Service's ability to undertake effective regional management of the state's waste management programs. Without cooperation from such municipalities, it will be more difficult for the Service to plan and implement effective

programs, particularly in regard to the development of future treatment facilities. However, such a provision might possibly have a good effect if it forces the Service to develop more effective and innovative programs in order to get the cooperation of such municipalities.

Secondly, by being a public corporation operating state-wide, it can hopefully avoid some of the problems faced by regional systems that are based on extending municipal districts of a large city, such as the regional system presently being proposed for the Detroit-Southeastern Michigan area. Such systems generally face the opposition of outlying cities who fear domination by the larger city through the institution of these systems. Moreover, alternatives that may have merit from a rational point of view, such as building a treatment plant to serve two of the outlying cities which may have advantages over joining the extended municipal system or building separate plants for each city, are not likely to be proposed by an urban-based regional waste treatment authority since such plants would be outside its sphere of control. Instead, such an authority will likely bring pressure to have the outlying cities join the extended urban system and have all the wastes treated at one or possibly two large city-run treatment plants even though that may not be rationally the best solution. No doubt, the Maryland Environmental Service will meet some parochial views on the part of some of the cities it seeks to serve, but its operations should not pose as much of a threat to such cities' local authority as an extended municipal district would. More important, it will be able to offer alternatives beyond the capability of an extended municipal system.

Third, the financial basis of the Service seems to be quite sound. The state will contribute appropriations until the Service becomes self-sufficient, allowing more flexible modes of operations to be followed than

would be the case if it were expected to be self-sufficient from the beginning, as were the two somewhat comparable systems in New York and Ohio. The money from the 1968 bond issue that the Service can draw upon to help finance its operation--$120 million for plant construction and $4 million for river basin planning--is substantial compared to Maryland's share of federal grants for such purposes[31] and, thus, provides the Service with sufficient financial backing to allow it to reject federal grants if it finds that accepting such grants would force them to pursue traditional rather than innovative modes of treatment.

Fourth, the placement of the Service within the Department of Natural Resources will allow it to coordinate activities with the Department's other agencies to improve the quality of the state's rivers. Such coordination would be more difficult if the Service were located in a different department than the one that administers the state's water quality program.

Finally, the emphasis of the program operated by the Environmental Service on the development and implementation of five-year plans and the regional nature of those plans makes the program unique in the United States as a regional waste treatment system. The other two states, Ohio and New York, which have similar programs do not provide funds for any such planning but rather see their programs as limited to providing services to local communities once those communities have determined their needs and priorities.

COMPREHENSIVE PLANNING FOR THE STATE'S COASTAL ZONE

The Chesapeake Bay region, of which Maryland's coastal zone is a part, has been the focal point of several studies at the federal and state levels. All of the federal coastal zone studies (Our Nation and

the Sea, etc.), referred to in the introduction of this report, included a section on Chesapeake Bay regarding its resources, the threats to such resources, and steps to be taken to meet such threats.

On the state level, the Chesapeake Bay Interagency Planning Committee (CBIPC) was created in February, 1969, by the Governor of Maryland to prepare a comprehensive resources plan for Chesapeake Bay and its related resources. The Committee at present consists of six member agencies: State Planning, Natural Resources, Health, Economic Development, Maryland Port Authority, and State Roads Commission.[32] The Department of State Planning is in charge of coordinating the cooperative planning efforts of the member agencies towards the Committee's goal of a comprehensive plan.

Representatives of the University of Maryland's Natural Resources Institute and College of Agriculture and the Johns Hopkins University also sit on the Committee in an ex-officio capacity as sources of additional technical expertise and advice.

During 1970, the Committee's technical work group completed the first phase of the Committee's program--the description of the portion of Chesapeake Bay belonging to Maryland as a resource system. The results of the study were submitted to a private consulting firm for analysis, review, and documentation. The same firm was contracted to carry out several other phases of the Committee's programs under a HUD 701 Planning Grant. Those phases are:

> (1) description of present State Bay management systems; (2) identification of State resource management goals and policies; (3) coordination and development of information collecting data processing, and related retrieval systems to improve State resource planning and management programs; (4) formulation and assembling of elements constituting a comprehensive plan for the Bay; and (5) development of information dissemination capabilities concerning work program results.[33]

The Interagency Committee is also attempting to provide liaison and coordination of other studies being conducted on the Bay and possible management systems such as the inter-university program being undertaken by Johns Hopkins University, the University of Maryland, the Smithsonian Institution, and the Virginia Institute of Marine Science under a National Science Foundation grant.[34]

FOOTNOTES

[1]Copies of these acts and the other ones discussed in this section of the paper can be found in Appendix C.

[2]Miss Raye-Paige, Maryland's Wetlands Acts, Speech given at the 12th Biennial Sierra Club Wilderness Conference, Washington, D.C., September 24-26, 1971.

[3]Robert M. August, Maryland's Wetlands, Marshes, and Submerged Lands in the Context of Common and Statutory Law, (Maryland State Planning Department, Baltimore, October, 1968) and Ray G. Metzgar and David A. Wharton, "Planning the Management of Maryland's Wetlands," Proceedings of the 22nd Annual Conference of Southeastern Association of Game and Fish Commissioners, 1968.

[4]Stuart Marshall Salsbury, "Maryland Wetlands: The Legal Quagmire," Maryland Law Review, Vol. XXX, No. 3, (Summer, 1970), p. 242, and Robert M. August, pp. 6-11.

[5]Garret Power (Project Director) Chesapeake Bay in Legal Perspective, (Estuarine Pollution Study Series No. 1), (U.S. Department of Interior, Federal Water Pollution Control Administration, Washington, D.C., March, 1970), pp. 199-200.

[6]Salsbury, pp. 243-250.

[7]The actual language of the bill was "land owned by the State due to its relationship to the waters of the State," Act 242-1970, sec. 1, [sec. 15A(a)].

[8]Act 242-1970, sec. 1, [sec. 15A(a)].

[9]Act 241-1970, sec. 1, [sec. 719(a)].

[10]Salsbury, p. 244.

[11]Act 241-1970, sec. 1, [sec. 719(b)].

[12]Ibid., [sec. 721].

[13]The Agricultural Commission is a commission of 19 members, 15 of whom are representatives of various agricultural and agricultural service interests appointed by the Governor, four ex-officio members from the Board of Agriculture. Its principal function is to serve as an advisory group to the Board of Agriculture.

[14]Act 241-1970, sec. 1, [sec. 723].

[15]Ibid., [sec. 725].

[16]Ibid., [sec. 727].

[17]John O. Ludwigson, "Managing the Environment in the Coastal Zone," Environmental Reporter, Monograph No. 3, May 1, 1970, p. 7.

[18]Further discussion of this point can be found in Salsbury, pp. 264-265.

[19]Act 31-1971, (Power Plant Siting), sec. 1, [sec. 764(b)].

[20]Ibid., sec. 1, [sec. 765(a)(2)].

[21]Article 78, Section 97 of the Annotated Code of Maryland.

[22]This discussion of the proposed plan of implementation draws heavily upon the memorandum of November 4, 1971, from James B. Coulter, Secretary of the Department of Natural Resources, concerning the Maryland Power Plant Siting Program.

[23]Act 31-1971, sec. 1, [sec. 764(b)].

[24]Act 240-1970, (The Environment Service Act), sec. 1.

[25]Ibid., sec. 4(b).

[26]Ibid., sec. 5(d).

[27]Act 562-1966, as amended (County Waste Treatment Plans).

[28]Elizabeth B. Haskell, Project Director, Managing The Environment: Nine States Look For New Answers, (Woodrow Wilson International Center for Scholars, Smithsonian Institution, Washington, D.C., 1971), pp. 237-238.

[29]Conversation with Thomas Andrews of the Maryland Environmental Service on September 29, 1971. See also Elizabeth B. Haskell, Managing the Environment: Nine States Look for New Answers, pp. 340-342.

[30]Haskell, p. 345.

[31]The Committee originally had as members the Departments of Chesapeake Bay Affairs, Forests and Parks, Game and Inland Fish, Maryland Geological Survey, and Water Resources. The Department of Natural Resources was created as a super-agency in July, 1969, and in early 1970 it absorbed the above departments as sub-units. As a result it replaced them on the Committee. (Although the Department of Chesapeake Bay Affairs sounds as though it would be involved in coastal zone management, it was established to administer traditional programs involving navigation, fishing regulations, shellfish harvesting, etc. With the passage of the wetlands programs, the Department has begun to become involved with coastal zone management matters.)

[32]For the 1971 fiscal year, $800 million was appropriated for federal sewage treatment construction grants and $5 million for river basin planning to be divided among all the states.

[33]State Planning in Maryland: Activities Report 1970, (Maryland Department of State Planning, Baltimore, Maryland, 1971), p. 17.

[34]The description in this section of the state of Maryland's planning activities draws heavily upon the information contained in the report, State Planning in Maryland: Activities Report 1970.

MARYLAND

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CHAPTER 4

OREGON

BEACH ACCESS AND USE

The Beach Bill (Act 601-1967)

Statement of Policy

Oregon's principal innovation in the field of shoreland management was its codifying into law, in 1967,[1] through passage of the Beach Bill (Act 601-1967),[2] the right of its citizens to unrestricted use of its beaches all the way to the vegetation line.[3] Most states declare as public property the tidelands lying between the ordinary low tide line and the ordinary high tide line, but Oregon, drawing upon long-established custom, also declared the public's right to use the dry sand area of its beaches (the area between the ordinary high tide line and the vegetation line) and prohibited any improvements[4] on this area without a permit given by the State Highway Division. The Act stated:

> (1) The Legislative Assembly hereby declares it is the public policy of the State of Oregon to forever preserve and maintain the sovereignty of the state heretofore legally existing over the ocean shore of the state from the Columbia River on the north to the Oregon-California line on the south so that the public may have the free and uninterrupted use thereof.
>
> (2) The Legislative Assembly recognizes that over the years the public has made frequent and uninterrupted use of the ocean shore and recognizes, further, that where such use has been legally sufficient to create rights or easements in the public interest to protect and preserve such public rights or easements as a permanent part of Oregon's recreational resources.
>
> (3) Accordingly, the Legislative Assembly hereby declares that all public rights or easements legally acquired in those lands described in subsection (2) of this section are confirmed and declared vested exclusively in the State of Oregon and shall be held and administered as state recreation areas.

> (4) The Legislative Assembly further declares that it is in the public interest to do whatever is necessary to preserve and protect scenic and recreational use of Oregon's ocean shore.[5]

The significance of this act can be seen from the fact that, of Oregon's 362 miles of coastline, beaches comprise 262 miles with rocky shores or headlands making up the remaining 100 miles.[6]

Permit System

In determining whether a permit should be granted, the Act required the following factors to be considered:

> (1) The public need for healthful, safe, esthetic surroundings and conditions; the natural scenic, recreational and other resources of the area; and the present and prospective need for conservation and development of those resources.
>
> (2) The physical characteristics or the changes in the physical characteristics of the area and the suitability of the area for particular uses and improvements.
>
> (3) The land uses, including public recreational use if any and the improvements in the area, the trends in land uses and improvements, the density of development and the property values in the area.
>
> (4) The need for recreation and other facilities and enterprises in the future development of the area and the need for access to particular sites in the area.[7]

Hearings on applications for permits are required to be held if the applicant or ten or more interested persons request one within 30 days after notice of such application is posted on or near the site of the proposed improvement. After the hearing or after the thirty-day period has expired, a permit is to be granted if such approval "would not be adverse to the public interest."[8] The factors listed above play a major part in such decisions. If a permit is denied, the reasons of denial are to be put in writing and a copy of the writer's finding sent to the applicant. If no action is taken on an application within 60 days

after it was submitted or 30 days after a hearing, the application is considered to be denied.

In a similar manner, permits are required for removal of "sand, rock, mineral marine growth, or other natural product of the ocean shore, other than fish or wildlife, agates or souvenirs" and "treasure trove, semiprecious stones, petrified wood, and archaeological and paleontological objects" from Oregon's shores.[9]

The penalty for violation of the requirement for permits for improvement or the removal of material is $500 or imprisonment for six months or both. In the case of unapproved construction (improvements), each day the violation continues is considered a separate offense.

Under the provisions of the Act, some 25 requests have been made to construct improvements. The most frequent type of request, for revetment walls to prevent ocean erosion, has generally been approved, particularly in areas where similar structures exist on adjoining areas. Requests for permits for landfills or for commercial structures have generally been denied.[10]

Court Test of the Beach Bill (Act 601-1966)

The constitutionality of this legislation was affirmed by the Oregon Supreme Court in the case of State ex rel Thorton v Hay.[11] William Hay appealed the granting of an injunction to the state, based on a prescriptive rights ruling, which prevented him from fencing off his ocean shore property below the vegetation line. Under Oregon Law,

> an easement can be created in favor of one person in the land of another by uninterrupted use and enjoyment of the land in a particular manner for the statutory period [10 years], so long as the user is open, adverse, under claim of right, but without authority of law of consent of the owner.[12]

An easement obtained in this manner is called a prescriptive right.

The Supreme Court denied Hay's appeal and affirmed the constitutionality of the Beach Bill on grounds that Oregonians had customarily used the state's ocean shores without restriction. The Supreme Court based its ruling on the similar but broader doctrine of customary use rather than the doctrine of prescriptive rights because of the unique nature of the land involved and because the doctrine of prescriptive rights, strictly construed, applies only to the specific tract of land involved. Thus, doubtful prescription cases could clog the courts for years on a tract by tract basis while a customary use ruling would cover all similar land in one case.

History of Beach Regulation

The State Highway Division was given authority over this program because the original highways along the coast were the wet sand beaches due to the mountainous and difficult topography inland. In 1913, these areas were declared public highways and removed from potential sale to private interests. In 1925, a program of acquiring the most scenic coastal headlands and forests for state parks was started with many of the areas obtained both for scenic highways and for scenic parks, viewpoints, and wayside forests. Administration of this program was located in the State Highway Department. Today, about one-third of Oregon's state parks lie in its coastal areas and one-half of the most attractive portions of its frontage have been set aside for public use, as well as all its beaches.[13]

Until recent years, there has been no challenge to public use of ocean beaches due to their unsuitability for permanent structures, but, with the rise of tourism and recreational activity, some owners attempted to block off their beach property from public use and to construct structures for their personal benefit to the public detriment. These

developments led to the passage of the 1967 Beach Bill to preserve the customary right of Oregon citizens to unrestricted use of their beaches.

The State Highway Division is also authorized to regulate travel by motor vehicles or the landing of aircraft (except in an emergency) on Oregon beaches. In 1970, the Highway Division set aside zones where all such traffic is prohibited at all times and others where it is prohibited from May 1st to September 30th, the period of the year when the beaches are most used by the general public.

In addition, the Highway Division, in the summer of 1970, instituted a program of patrolling the beach, using a group of college students equipped, trained, and supervised by the Oregon State Police. The program proved very worthwhile. Not only were 238 citations and 420 warnings issued but there were also 1244 instances in which the beach patrolers provided assistance to persons in distress.[14]

POWER PLANT SITING

On December 11, 1969, Governor Tom McCall established, by executive order, the Governor's Nuclear Siting Task Force of the Nuclear Development Coordinating Committee to approve the location of nuclear power plants within Oregon. The Task Force is to be composed of the heads of the following state agencies or their designated representatives: Agriculture Department, Environmental Quality Commission, Fish Commission, Game Commission, Public Utility Commission, State Board of Health, State Engineer, State Department of Geology and Mineral Industries, and the Water Resources Board.

In its review of sites proposed by utility companies for the location of nuclear power plants, the Task Force's primary attention is to be

focused on the effects that "the specific nuclear installations will have on Oregon's environment, such as, protection from pollution, protection of the state's people, water, air, land, resources, wildlife, fisheries, and aquatic life."[15]

In carrying out its duties, the Task Force was authorized to conduct public hearings and request assistance from state agencies. The Task Force was also required to work closely with local government officials in carrying out its functions. The findings of the Task Force are to be reported to the Governor and the Nuclear Development Coordinating Committee to be used as the basis for action by those bodies on the proposed sites.

COASTAL ZONE MANAGEMENT PLAN

Act 608-1971 (Coastal Zone Management Plan)

The Oregon State Legislature also has recognized the need for more comprehensive planning as a basis for state action in the coastal zone. By the passage of SB 687 (Act 608-1971) the 1971 legislature established the Oregon Coastal Conservation and Development Commission to "develop and prepare a comprehensive plan for the conservation and development of the natural resources of the coastal zone that will provide the necessary balance between conflicting public and private interests in the coastal zone" in accordance with "the policy of this state in the protection, preservation, development, and where practicable the restoration of natural resources of the coastal zone," to be presented to the Governor and state legislative assembly not later than January 17, 1975.[16, 17]

For the purpose of the commission's study, the coastal zone was defined as the area of Oregon's territory lying eastward of its coastal

mountains with the exception of the Umpqua, Rogue, and Columbia river basins where it would extend further inland.[18]

The Commission will total 30 members and will be composed of two persons, interested in conservation and the orderly development of the state, appointed to serve at large by the Governor and seven members of the coordinating committees of each of the four districts the coastal zone was divided into by the Act. Each coordinating committee is to be composed of one person appointed by the Governor, two elective officials of the county government, two elective city officials, and two elective port district officials, all of which are to be chosen by the intergovernmental organizations existing in each district.[19]

The legislature places the following requirements on the composition of the plan:

> (1) The plan described by subsection (2) of section 4 of this Act shall reflect a balancing of the conservation of the natural resources of the coastal zone and the orderly development of the natural resources of the coastal zone. Such plan shall be prepared in a form designed to be used as a standard against which proposed uses of the natural resources of the coastal zone may be evaluated. In the event of conflicting uses of the natural resources of the coastal zone, the plan shall establish a system of preferences between such conflicting uses that are consistent with the control of pollution and the prevention of irreversible damage to the ecological and environmental qualities of the coastal zone.
>
> (2) In preparing the plan described by subsection (2) of section 4 of this Act, the commission and its coordinating committees shall consider:
>
> (a) The quality, quantity and movement of estuarine and other coastal waters, whether tidal or nontidal in character.
>
> (b) The ecological balance of estuarine and marine resources.
>
> (c) The economic interests in the coastal zone, including but not limited to commercial and recreational fishing interests.

(d) The projected population growth and employment needs within the coastal zone.

(e) Scientific information regarding the hydrology, geology, topography, ecology and other relevant scientific data relating to the coastal zone as provided by state agencies.

(f) Plans, surveys and inventions that have been or are being made with respect to the coastal zone by federal, state and local governmental agencies.

(g) Comprehensive land use plans and local zoning ordinances administered by local governmental agencies having jurisdiction over lands within the coastal zone.[20]

The Commission was authorized to appoint advisory committees of private citizens to assist it in developing the plan; to accept grants, contributions, and assistance from private and governmental sources; to utilize the services of professional consultants; to employ such staff as it found necessary; and to perform other duties that it thought necessary to carry out the purposes of the act.

It is obviously too early to determine what the results of the commission's work will be. However, through its membership and the provision for citizen advisory committees, it has a mechanism whereby state, local, and regional views can be expressed and hopefully amalgamated into a consensus position which would make the plan's chances for implementation much greater. Much will depend on the amount of money allocated to the commission's work and whether the representatives of different levels of government and different areas can work together to develop an effective plan.

COASTAL CONSTRUCTION MORATORIUM

In order to prevent degradation of coastal areas while the coastal zone management plan is being developed, Governor Tom McCall issued an executive order directing

> that all state agencies involved in construction or construction-related activities on the coast stop planning for or implementing any project that would modify the natural environment of the coast. This order covers sandspills, estuaries, and any coastal section where the project would exceed simple modification of an existing facility.[21]

The executive order also ordered "that all state agencies with regulatory responsibilities apply their authority in the most stringent possible fashion to insure complete protection of Oregon's coast."[22]

The Local Government Relations Division of the Executive Department and the Department of Transportation were mandated by the order to work with local governmental units along the state's coast "to initiate complete land use plans specifically including transportation."[23] Financial and staff support for these local efforts are to come from the Highway Division and other appropriate state agencies.

In addition, the order directed that "where local comprehensive plans are developed in a broad coordinated system that state agencies in carrying out these responsibilities comply with the priorities of these plans." Specific exemptions are only to be granted by the Governor's Office.[24]

FOOTNOTES

[1]The provisions of the 1967 legislation were slightly amplified by passage of additional legislation in 1969.

[2]A copy of this act and the other pieces of legislation discussed in this chapter can be found in Appendix D.

[3]The vegetation line along Oregon's entire coastline has been surveyed and the coordinates defining it have been legally recorded. It generally occurs at about sixteen feet above mean sea level.

[4]The term "improvement" was defined as including "a structure, appurtenance, or other addition, modification, or alteration constructed, placed, or made on or to the land." (Oregon Statutes, Section 390.605)

[5]Oregon Statutes, Section 390.610. (Paragraph 4 added by the 1969 amendments to the Beach Bill).

[6]Letter of July 28, 1971 (in response to request for information) from David G. Talbot, State Parks Superintendent, Oregon State Highway Division.

[7]Oregon Statutes, Section 390.655.

[8]Oregon Statutes, Section 390.640.

[9]Oregon Statutes, Section 390.725 and 390.735.

[10]David G. Talbot, Coastal Zone Management - Oregon, speech given at Coastal Zone Management Conference, May 26-28, 1971, at Traverse City, Michigan.

[11]State ex rel Thorton v. Hay, (1969), 462 P. 2d, 671.

[12]Ibid.

[13]David G. Talbot, Coastal Zone Management - Oregon.

[14]Ibid.

[15]Executive Order No. 01-069-25 (Governor's Nuclear Siting Task Force), December 11, 1969.

[16]Act 608-1971 (Coastal Zone Management Plan), Section 1(3).

[17]A progress report of the Commission's efforts in the study and formulation of the comprehensive plan is to be submitted not later than January 12, 1973.

[18]The exact limits for these river basins are Scottsbury for the Umpqua River, Agnes for the Rogue River, and the upstream end of Puget Island for the Columbia River.

[19]Section 3 of Act 608-1971 describes the districts the Act divided the state's coastal zone into and names the intergovernmental councils which are to appoint all but one of the members of the coastal coordinating council for their districts.

[20]Act 608-1971, Section 5.

[21]Executive Order No. 01-070-07, March 3, 1970.

[22]Ibid.

[23]Ibid.

[24]Ibid.

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CHAPTER 5

WISCONSIN

SHORELAND ZONING PROGRAM

Zoning Criteria

In contrast to the programs of the states discussed above, the state of Wisconsin undertook a more comprehensive approach towards management of its shorelands. As part of the Water Resources Act of 1965,[1] the Wisconsin legislature required counties to zone all the unincorporated shoreland areas within their boundaries subject to state guidelines and review. Shorelands were defined by the act to be "lands within 1,000 feet of a lake, pond, or flowage and lands within 300 feet of a river or stream or to the landward side of the floodplain, whichever distance is greater."[2]

Under the Act, the state would not take direct action unless the counties refused to act within three years; instead it would provide a back-up role to the counties' actions to make sure that their zoning regulations were adequate. To allow the counties sufficient freedom to implement the required zoning, approval of such zoning by the town boards was not required. To help the counties in meeting the state's criteria for the zoning, the State Department of Natural Resources provided technical assistance including a model ordinance which illustrated a recommended method of fulfilling the legislature's mandate. The shoreland areas were either to be zoned Conservancy (wetlands) Districts, Recreation-Residential Districts, or General Purpose Districts depending on the characteristics of the land. In each of these districts, certain activities were to be allowed subject to regulation, ranging from activities with minimal impact

in Conservancy Districts to more intensive activities in the other two districts, particularly the General Purpose District.

Throughout the entire shoreland area, strict regulations were placed on sewage disposal (both public sewers and private septic tanks); location and setbacks of all structures with prohibitions on construction imposed if the land were not suitable for development (subdivision developments would be subject to special county review); the cutting of trees and shrubbery along the shoreline; and dredging, filling, grading, or lagooning (all of which would be severely restricted and only allowed to any significant degree[3] near navigable waters under special exemption permits). Commercial establishments were prohibited from Conservancy Districts and only allowed in Residential-Recreation Districts by special permit, while industrial plants were barred from Conservancy and Recreational-Residential Districts and only allowed in General-Purpose Districts by special permits. Power plants were allowed in any district by special permit.

Program Administration

To provide for the administration of this program, the Act required that a Zoning Administrator be appointed for each county to "advise persons of the permitted uses of their properties, issue permits, make inspections and report violations," and a semi-judicial body, the Board of Adjusters, be established "to interpret the ordinance where necessary and to grant variances and special exceptions."[4] In addition, an agency of the County Board, the County Planning and Zoning Committee, was to oversee the administration of the ordinances and conduct hearings and make reports as proposed amendments to the ordinance.[5]

In the implementation of this act, it was found that the three-year deadline was too short for many counties to be able to comply so that extensions were allowed to fulfill the Act's requirements. As of December, 1969, twenty-seven of Wisconsin's seventy-two counties had fully complied with the Act's provisions[6] and as of July 1, 1971, all but Racine County had fully complied.[7] On July 21, 1971, the Department of Natural Resources held a hearing concerning the enactment of administrative rules to bring that county into compliance.[8]

The validity of ordinances developed under the Act has been tested in two court cases. The rulings in both cases upheld the propriety of the challenged ordinances.[9]

The state's role does not end with approval of the required zoning for a county. The Department of Natural Resources receives copies of all proposed and enacted amendments to the shoreland ordinances, variances, special exceptions, plat approvals, and appeals of rulings from which it can determine the effectiveness of a county's administration and enforcement of the shoreland regulations enacted in accordance with the provisions of the Shorelands Management Act. If a county's program is found to be lacking, the state is empowered to step in and administer the program directly.[10]

Moreover, the Department of Natural Resources is continuing to assist the counties in the administration of their shoreland management programs. Two people are employed full-time in local assistance activities, with others in the department also providing technical assistance from time to time.[11]

In addition, the Department has prepared a manual for zoning administration, board of adjustment members, and county planning and zoning

committees to assist in carrying out the duties. In conjunction with other state agencies and the University of Wisconsin Extension Service, the Department regularly conducts workshops and training sessions for the county officials. It also distributes a monthly newsletter which is devoted to a discussion of the problems that various counties have encountered in administering their shoreland programs. In the same vein, the county administors have formed their own statewide organization which meets semi-annually to discuss the problems that the county administrators meet in their day-to-day activities.[12]

It should be mentioned that the thrust of Wisconsin's program is aimed at protecting the shoreland of its inland lakes. However, the state did inventory its shoreline along Lake Michigan more completely than anywhere else, and the counties bordering Lake Michigan were required to zone their shorelands in the same manner as the counties containing inland lakes.[13]

Commentary

Wisconsin's program is an innovative approach to the problem of shoreland protection and preservation which recognizes the lack of experience on the part of many of its counties with land use control regulatory mechanisms.

However, the program has several weaknesses. First, all of the areas covered by Wisconsin's shoreland and floodplain management regulations have not yet been adequately mapped by the U.S. Geological Survey; thus, in some areas there is not an adequate data base on which to develop the shoreland ordinances.[14]

Second, while some counties have developed county-wide regulations or have participated in regional planning programs as part of their compliance with the Shorelands Management Act, others have simply zoned the

narrow 1,000-foot shoreland borders required by law. In the latter counties, there will be difficulty in controlling (and in some cases even recognizing the effects of) activities occurring outside the shoreland areas which may adversely affect the shorelands and the waters they border.

Further, there is generally a lack of sufficient controls over sources of indirect pollution, such as sediment deposits occurring as by-products of agricultural practices and road-building, the use of commercial fertilizers and pesticides, and contaminants in storm water run-off, in large part due to a lack of knowledge of alternatives to present practices.[15]

In addition, the purpose of the shoreland regulations is defined in the Act as to "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life,"[16] as well as to "control building sites, placement of structures, and land uses and reserve shore cover and natural beauty," but how the shoreland regulations will assist the achievement of the water quality standards that have been set by the state is not spelled out. There is no mention of increasing public access to the state's lakes and rivers.

Additional problems left unsolved relate to the problem of regulations concerning seasonal dwellings; the arbitrary nature of the jurisdictional limits set by the act and their non-coincidence with property lines; jurisdiction over dwellings built offshore on pilings or on barges; controls over practices on forested lands which may cause pollution and sedimentation problems; and the preservation of sufficient shoreline cover. The latter is somewhat of a common property problem as lakeside dwellers would like to clear their own land to improve their view of the lake and

other's shoreline cover, but if everyone does so, no shoreline cover is left. Regulations allowing thinning but preventing "clear-cutting" have proved difficult to develop and enforce.[17]

Finally, complete protection of the shorelands and provisions for their wise use will not be assured until management of the shorelands and the other lands of the state is based upon a system of comprehensive land use planning. Nevertheless, Wisconsin's shorelands program is a significant step in that direction both in the regulations embodied in it and in the experience and familiarity gained by county officials and the general public in land use regulation practices through institution of the program.

FOOTNOTES

[1]Appendix E contains a copy of the section of the Water Resources Act which established the Shoreland Management Program along with a copy of the administrative regulations the Wisconsin Department of Natural Resources adopted to implement the program.

[2]Wisconsin's Shoreland Protection Ordinance, (Wisconsin Department of Natural Resources, Madison, Wisconsin, 1971), p. 1.

[3]Special permits are required for all dredging and lagooning projects and for fill projects involving more than 500 feet of wetlands and for fill and grading projects on slopes of 20 percent or greater, comprising more than 1,000 square feet on slopes 12-20 percent, or comprising more than 2,000 square feet on slopes less than 12 percent. (A permit is also required from the Department of Natural Resources for filling or grading projects of greater than 10,000 square feet and for lagooning and dredging projects.) Reference: Section 9, Model Shoreland Protection Regulation, Wisconsin's Shoreland Protection Ordinance, pp. 17-19.

[4]Text of speech by Thomas M. Lee on Wisconsin's Shoreland Management Program presented on August 19-21, 1970, at the ASCE Hydraulics Division, 18th Annual Specialty Conference, held at the University of Minnesota, Minneapolis, Minnesota, p. 11.

[5]Ibid., p. 11.

[6]Donald F. Wood, "Wisconsin's Requirements for Shoreland and Flood Plain Protection," Natural Resources Journal, Vol. 10, No. 2, (April, 1970), p. 328.

[7]Letter of August 9, 1971, (in response to request for information) from Ted Lauf, Supervisor, Land Use Control Unit, Bureau of Water and Shoreland Management, Wisconsin Department of Natural Resources.

[8]Ibid.

[9]Lee, p. 11.

[10]Ibid., p. 12.

[11]Lauf.

[12]Lee, p. 11.

[13]Lauf.

[14]Natural Resources Council of State Agencies, "Quality Management for Wisconsin," Madison, Wisconsin, 1971, pp. 27-28.

[15]Lee, p. 13.

[16]Act 614-1965 (Water Resources Act of 1965), Section 22.

[17]For a further discussion of the implication of these problems on shorelands management, see Wood, pp. 336-338.

WISCONSIN

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CHAPTER 6

CALIFORNIA

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

Creation of the Bay Commission

In California, the San Francisco Bay Conservation and Development Commission (BCDC) was established as the nation's first regional coastal management agency. The establishment of the BCDC as a permanent management agency was the culmination of nearly a decade's efforts to protect San Francisco Bay. Over the years the edges of the bay had been filled in response to the pressures of increasing urbanization. By 1958, diking and fill projects had reduced the area of the bay from 680 to 437 square miles, a practice which if continued much longer would seriously threaten the bay's very existence.[1] In 1961, a small group of citizens, alarmed at this trend, formed the Save San Francisco Bay Association.

Through the Association's efforts, public attention to the problem was stirred up and a major study of the bay, The Future of San Francisco Bay, was developed. With the information produced by this study, the Association, in 1964, was able to have introduced and passed, legislation creating a commission to study the problem of the bay. The recommendations of this commission and increasing public awareness of the bay's problems led to the creation of the BCDC in 1965 by enactment of McActeer-Petris Act (Act 1162-1965)[2] as a temporary agency mandated to undertake a more detailed study of the bay and to develop a comprehensive plan for the preservation of the bay and the orderly development of its shoreline. While the plan was being developed, the Commission was given the authority to approve or deny dredging and filling permits.

In 1969, the BCDC submitted the product of its efforts, the San Francisco Bay Plan to the legislature, recommending there be a permanent regulatory authority with powers to regulate dredging and filling and with limited authority to regulate shoreline development in accordance with the concepts developed in the plan. After a long and difficult battle, the state legislature passed legislation amending the McAteer-Petris Act which enacted into law the recommendations of the Commission with only slight modifications.[3]

Composition of the Bay Commission

As it has since its original establishment in 1965, the Commission consists of 27 members representing local, state, and federal agencies and the general public: two federal members who do not vote on the decisions on dredging and filling permits (one representing the Corps of Engineers, the other the Environmental Protection Agency); five state agency representatives (one each from the staffs of the State Departments of Finance, Resources, and Business and Transportation and the State Lands Commission and a member of the San Francisco Bay Regional Water Quality Board); nine county members (one member of the board of supervisors of each of the nine counties bordering the bay, each of which must represent a district bordering on the bay); four city representatives (each an elected official of a bay-side city; one from each of four geographic regions the bill designates, North Bay, South Bay, East Bay, and West Bay); and seven members of the general public (appointed in the following manner from the population of the San Francisco Bay area: five appointed by the Governor, one by the Committee on Rules of the Senate and one by the Speaker of the Assembly--all of the above appointments are subject to confirmation by the State Senate). The chairman and

vice-chairman of the Commission are chosen by the Governor from the public members of the Commission.[4]

In addition, one member of the (state) senate and one member of the (state) assembly, appointed by the Senate Rules Committee and the Speaker of the Assembly respectively, are to meet with and take part in the Commission's activities as their state legislature duties permit. These two persons are in effect a joint investigating committee on the BCDC for the legislature with the powers that such committees generally have.

Provisions of the McActeer-Petris Act

The McActeer-Petris Act gives the BCDC three major responsibilities:

> 1. To regulate all filling and dredging in San Francisco Bay (including San Pablo and Suisun Bays, all sloughs that are parts of the Bay System, and certain creeks and tributaries) in accordance with the law and the Commission's Bay Plan.
>
> 2. To have limited jurisdiction over substantial developments within a 100-foot strip inland from the Bay. Within this shoreline band the Commission's responsibility is twofold: (a) to require public access to the Bay to the maximum extent feasible, consistent with the nature of new shoreline developments, and (b) to insure that existing shoreline property suitable for high-priority purposes such as ports, water-related industry, and water-related recreation, is reserved for these purposes, thus minimizing pressures to fill the Bay.
>
> 3. To have limited jurisdiction over any proposed filling of salt ponds or managed wetlands (areas diked off from the Bay and used for salt production, duck-hunting preserves, etc.). These areas, although not subject to the tides of the Bay, provide wildlife habitat and also provide water surface important to the climate of the Bay Area. If filling of these areas is proposed, the Commission is to encourage dedication or public purchase to retain water area. And if development is authorized, the Commission is to insure that such development provides public access to the Bay and retains the maximum amount of water surface consistent with the nature of the development.[5]

The Commission is also mandated to undertake a continuing review of the San Francisco Bay Plan and the studies it is based upon to make sure that they are consonant with the latest scientific findings. In conducting this general review, the BCDC is to cooperate with the Association of Bay Area Governments, coordinate its planning with the various local agencies, and, wherever possible, avoid duplication of effort by utilizing the studies and information produced by the State Planning Office, the Association of Bay Area Governments, the cities and counties in the area, and other public or private agencies.

Such a review is to include an annual report which describes land within the Commission's jurisdiction which should, in the Commission's opinion, be acquired for public use. Such recommendations should include a description of the location of the properties involved, the public use they should be acquired for, the public agency that should acquire them, and the cost involved. Permits for developments on such lands can be denied for three years on the grounds that they have been selected for acquisition for public use.[6] The reason for inclusion of the requirement for such an annual report is somewhat unclear; it was not part of the BCDC's recommendations to the legislature and is not seen as having much effect at the present time.[7]

There are two main objectives of the San Francisco Bay Plan: (1) "Protect the Bay as a great natural resource for the benefit of present and future generations" and (2) "Develop the Bay and its shoreline to their highest potential with a minimum of Bay filling."[8]

Implementation of the Act's Provisions

In consonance with this position, the Commission seeks to prevent dredging and filling along the bay's shoreline except where there is no feasible alternative and the project in question is in the public interest.

Dredging and filling will generally be allowed in accordance with the following types of projects subject to the above criteria: developing modern port terminals; developing sites for industries dependent on access to water;[9] developing new water-oriented recreational facilities; expansion of airport terminals and runways, if regional studies show that there is no feasible alternative; developing new transportation routes if shown to be needed by regional studies (and then only on pilings, not solid fill); increasing public access to the bay; and improving the appearance of the bay's shoreline.[10] However, the filling for such projects is to be kept at an absolute minimum and the public's health, safety, and welfare are to be kept paramount. Filling for any purpose can be allowed only if there is no alternate dry-land site for the project.

The procedure for reviewing permits is as follows: permits are required for "any person or any governmental agency wishing to place fill,[11] to extract materials,[12] or to make any substantial change in the use of any water, land, or structure within the area of the Commission's jurisdiction...."[13]

The Commission may set a reasonable fee for the filing of a permit application and require reimbursement for the expenses incurred in processing the application including any investigation that may be necessary. If the locality in which the proposed project is located also requires a permit, the applicant must apply there also. In such areas, the findings of the local authorities, concerning a permit application, are to be submitted to the Commission for its review within 90 days. Upon receiving a direct application in cases where no local review is required, the Commission is required to hold a public hearing and make a decision on the application within 90 days. Thirteen affirmative votes (out of a possible 25) are required to grant a permit. In approving a project, the Commission

may attach such restrictions as it deems necessary. The failure of the Commission to act within the prescribed time period will result in the automatic approval of the application. Appeals of the Commission's decision to the courts are allowed within 90 days of the Commission's action.

With regard to proposed projects by the U.S. Army Corps of Engineers, a "memorandum of understanding" has been agreed upon by the BCDC and the Corps in which such projects will be in accordance with the provision of the California state law and the bay plan.

The Commission's powers with regard to the 100-foot shoreline strip under its jurisdiction are limited in the following manner: the law required that the lands to be reserved for water-oriented priority land uses be designated by December 1, 1971; after that date, permits for proposed projects on land within the shoreline strip, but not so designated, can be rejected by the Commission only if maximum feasible public access is not provided.

The Commission is aided in carrying out its duties by a professional staff and a citizen's advisory committee as well as legislative authority to employ professional consultants to undertake studies not within its capability or that of other government agencies.

During 1970, the Commission conducted its work by meeting two full afternoons a month. It approved one out of 13 major permit applications while approving 66 additional minor permits for minor repairs or improvements. The Commission explains the high rate of approval in the following manner:

> (1) The law and the Commission's Bay Plan encourage many types of Bay related development and permits for such projects are issued provided a proposed project meets the standards in the law and the Bay Plan...(2) The law and

> the Bay Plan state clearly that filling of the kind that has greatly shrunk the Bay in the past are not to be allowed, and thus there were no applications to fill for large refuse dumps, subdivisions that could just as well be on dry land, etc.[14]

Commentary

The Commission's varied membership representing local, county, state and federal governments, as well as the general public, apparently has added to the Commission's strength and legitimacy in carrying out its duties as a regional agency protecting a regional resource valuable to all its various constituencies. Its decisions are generally not challenged and its recommendations carry considerable weight. Two other factors have undoubtedly significantly contributed to the Commission's present position of importance and general acceptance; namely, the public's support for action to protect the bay and for the concept of the Commission as the appropriate agency and the respect and acceptance the Commission developed during the years it was developing the San Francisco Bay Plan. The Bay Plan and its supporting reports not only documented the need for the continued existence of the Commission, but the Commission members' ability to reach a consensus on the proposals recommended by the Bay Plan also proved that a Commission made up of members representing several different constituencies could be effective.[15] However, the viability of similarly constituted commissions in other localities is by no means assured since the Commission's success is no doubt at least partially the result of particular circumstances: the presence of a clearly visible danger, the initiative of the private citizens who sparked the Save-the-Bay movement, and the considerable abilities of the people who have made and presently make up the BCDC.

The above should not be taken to indicate that the bay's regional problems are solved. The BCDC has only limited regulatory powers, and developments outside its jurisdiction could have adverse effects on the bay. The Bay Plan needs to be continually updated to keep pace with new developments. Yet the present funding level of $259,000, appropriated out of the state's general fund, only allows the employment of a small staff of 13 (9 professional) and precludes the possibility of hiring additional staff or outside consultants.[16]

Moreover, its enforcement powers have been insufficient. It has had only persuasive and injunctive recources. In the past, the latter has been difficult to utilize since the BCDC has only a small staff, making it difficult to obtain sufficient evidence to obtain an injunction. The 1971 legislature has now, however, made violation of the BCDC law a misdemeanor; thus making it more easily enforceable.[17]

All in all, the BCDC, with its activities based on a carefully drawn comprehensive plan, is a major step forward in coastal zone management on a regional basis.

THERMAL POWER PLANT SITING

The rest of California's coastline, unfortunately, is not protected in the same manner as that of the San Francisco Bay area. However, with regards to the siting of power plants, both thermal and nuclear, the state Resources Agency has developed a procedure by which the natural resources agencies, most of which are constituent units of the Resources Agency, participate as members of the State Power Plant Siting Committee in the selection and design of sites for thermal power plants throughout the entire state.[18, 19]

The procedure involves the review of potential sites by the State Power Plant Siting Committee to assure that the location and construction design will be chosen to protect the public health of the citizens of California and to minimize the adverse environmental effects of the plant's operation. A power company is not required by law to consult with the Siting Committee, but it is in its interest to do so. In exchange for its compliance with the Siting Committee's requirements regarding site selection, plant design, and operating procedure, the Resource Agency will back the company's position in its application for a construction license from the California Public Utilities Commission. This is a point with much leverage because, in contrast to the situation in most other states, a pre-construction license is required from the California Public Utilities Commission, and the Commission must give serious consideration to environmental factors as well as economic factors in granting a license. Furthermore, since the Resources Agency contains most of the environmental agencies with which the power companies have to contend, consultation with the Siting Committee lays the groundwork for cooperation with the State Air and Water Resources Boards in meeting air and water quality standards.

To gain the approval of the Power Plant Siting Committee, a power company must satisfy its requirements in the following areas: compatability with state and local comprehensive plans; consonance of its operations with a policy of conservation of energy and natural resources; effects on wildlife and fish, and the aquatic life on which they are dependent; ability to meet state air and water quality standards with particular emphasis on the impact of usage of cooling water; avoidance of areas of significant seismic activity; minimization of effects on state recreational and scenic areas and even enhancement of the plant's site with respect to these considerations whenever possible. The guidelines for meeting the last

requirement have particular implication in the coastal zone as well as promoting increased recreational opportunities generally.[20]

Commentary

This procedure is not transferable to most of the other states because of the aforementioned lack of any legal requirement for a pre-construction license and the dispersal of responsibility for environmental programs among many different state agencies making coordination of permit procedures, regarding compliance with air and water quality standards, difficult. Thus, a power company is not likely to seek a voluntary agreement with regard to its site selection and operation procedures when it is neither required to obtain a pre-construction license nor is likely to benefit from a coordinated permit approval procedure.

BEACH ACCESS

In California, there have been two recent court cases involving the public right of access to the beaches: Gion v. Santa Cruz and Dietz v. King. The California Supreme Court considered both cases together on appeal and ruled that in each case the public had acquired an easement for passage through and the recreational use of the beach areas in question through the doctrine of implied dedication.

In Gion v. Santa Cruz,[21] the case involved a private land owner's attempt to develop his property--a group of private lots and the shoreline they bordered on--in the face of city restrictions due to continuous public use of it for access and recreation purposes. Over the years, the lots had been continually used as parking spaces and the City of Santa Cruz had undertaken improvements on the area, including some fairly extensive erosion prevention measures and the paving of the parking areas. The

Supreme Court affirmed the Superior Court's decision that, while the Gion's were fee owners of the lands in dispute, they were subject to an easement to the City of Santa Cruz,

> a municipal corporation, for itself and on behalf of the public, in, on, over and across said property for public recreation purposes, and uses incidental thereto, including, but not limited to, parking, fishing, picnicking, general viewing, public protection and policing, and erosion control, but not including the right of the City or the public to build any permanent structures thereon.[22]

The court based its decision on the fact that the public without asking permission made continuous and uninterrupted use of the property for more than five years before the start of the lawsuit; that the City of Santa Cruz had likewise exercised control over the property through its maintenance efforts for more than five years; and that the plaintiffs and previous owners had full knowledge of the above for more than five years before the lawsuit was initiated.

The second case, Dietz v. King,[23] involved a suit to allow continued public use of an access road to a beach in the face of attempts by the owners of the property to block the access road which crossed their property. The public had used the beach and the road for over a hundred years when the present owners, the King's, bought the property in 1960. At that time, the King's blocked the road with a timber which was immediately removed and public use of the road continued. With the exception of placing a few "no trespassing" signs which quickly disappeared, the King's took no further action until 1966 when they made plans to bulldoze the road closed. The suit arose when the plaintiff, Dietz, representing public users in a class action, sought to stop this action. The Superior Court ruled against Mr. Dietz but the Supreme Court overruled their decision stating, in this case also, there was implied dedication by reason

of adverse use and that the public should continue to be able to use the road. The fact that the present owners objected to the use of the land by the public was not considered to negate the implied dedication of the land by the previous owners.[24]

Commentary

These two rulings set a strong precedent for preventing attempts by private land owners to block long established recreational use of a portion of their lands. However, their significance is limited in that they have no relevance to the problem of providing increased public access to and use of beach areas.[25]

COMPREHENSIVE OCEAN AREA PLAN[26]

Unfortunately, procedures for dealing with other threats to California's coastline, outside the San Francisco Bay area, have not been instituted. In the past two state legislature sessions, comprehensive coastal zone legislation has been considered, but not passed.[27]

However, an effort has been underway for several years to develop a comprehensive plan for California's coastal zone. Following several years of special study commissions on the subject of managing California's coastal resources, the state legislature, in 1967, enacted the Marine Resources Conservation and Development Act of 1967 which mandated the development of the California Comprehensive Ocean Area Plan (COAP) to guide state government action in the management of its coastal zone. This act also created the California Advisory Commission on Marine and Coastal Resources (CMC), a 36-member citizen advisory group appointed by the Governor, to advise the state on the proper development of its coastal resources and to review the COAP after it had been developed.

In August, 1967, the Governor established the Interagency Council for Ocean Resources (ICOR) to develop the COAP and plans for its implementation. Work on the plan was started in earnest, in 1969, following establishment of a staff to produce it and receipt of a federal government grant to help fund its development. By December, 1969, a study design for the plan had been completed and work was then begun on the body of the plan.

During 1970, ICOR, as the group responsible for the plan's development, and CMC, as the group responsible for reviewing it, have kept a close watch over the plan's development and have devoted considerable time to consideration of methods of implementing the plan in the face of strong public concern over coastal zone management and the consideration of coastal zone legislation by the state legislature.

In July, 1970, the COAP planning staff, in an administrative change, was placed in the Department of Navigation and Ocean Development, to function as the COAP development program unit of that department. The basic responsibility of ICOR, for the general policy developed in the plan, and CMC, for reviewing it, was not affected by the change.

As part of COAP's work, two studies have been produced which are worthy of mention: the first is Coastal Zone Planning in the United States, An Analysis of State and Regional Ocean Area Planning Projects and the second is A Framework for Identification and Control of Resource Degradation and Conflict in the Multiple Use of the Coastal Zone in which the author has developed a system of matrices to analyze the potential conflicts among various uses of the coastal zone.

As for the final result of the planning staff's effort, the COAP is scheduled to be completed in 1972, although some portions of the contract studies may be curtailed due to a lack of continual federal financial

assistance. Due to the controversy, in the state legislature's consideration of coastal zone management legislation, as to where the principal authority for coastal zone management should reside, the COAP planning staff has concentrated on developing the basic inventory of information needed for effective planning decisions no matter where the management authority is located and on the planning criteria and methodology needed to effectively utilize such information. However, recommendations will be included in the final document concerning the most effective methods of coastal zone management (including placement of primary authority) to reflect and, reciprocally, to influence state legislative and administrative opinion.

Commentary

The COAP is being developed under the assumption that it will provide the basis for a continuing effort of coastal zone planning and management. However, the degree of its utilization and subsequent effectiveness will depend upon the decisions of the state government and the state legislature regarding the nature of the coastal zone management program that the state should undertake.

FOOTNOTES

[1]David Peter Sachs, "Saving San Francisco Bay - in Sacramento" in Ecotactics, ed. by John G. Mitchell with Constance L. Stollings (Sierra Club, New York, 1970), p. 133.

[2]Appendix F contains a copy of Title 7.2 of the California Government Code composed of the provisions of the McActeer-Petris Act as amended (Act 1162-1965 as amended) as well as the executive orders and other legislation discussed later in this chapter.

[3]For detailed accounts of the fight, over the years, to establish the BCDC as a permanent agency see "Saving San Francisco Bay: A Case Study in Environmental Legislation" by Janine M. Ralezel and Bruce N. Warren (Stanford Law Review, Vol. 23, No. 2, January, 1971, pp. 349-366) and Sachs, "Saving San Francisco Bay - in Sacramento."

[4]Section 66620 Government Code (established by the McActeer-Petris Act) gives the exact manner in which the members of the Commission are to be appointed.

[5]San Francisco Bay Conservation and Development Commission, Annual Report - 1970, p. 3.

[6]The McActeer-Petris Act, [Sections 66630.1 and 66632.3].

[7]Letter of September 8, 1971 in response to request for information from E. Jack Schoup, Chief Planner of the San Francisco Bay Conservation and Development Commission.

[8]San Francisco Bay Conservation and Development Commission - San Francisco Bay Plan, p. 7.

[9]The Bay Plan approves the location of desalination and power plants in locations on the bay where their operation will not seriously conflict with residential, recreational, or other public uses of the bay and its shoreline provided the problems associated with the thermal discharges involved can be overcome.

[10]The Bay Commission, What it is and What it does, p. 2.

[11]"Fill" is defined by the McActeer-Petris Act as "earth or any other substance or material including pilings or structures placed on pilings, and structures floating at some or all times and moved for extended purposes such as houseboats and floating docks." (Section 66632 of the California Government Code [established by the McActeer-Petris Act]).

[12]"Materials" are defined as items exceeding twenty dollars ($20) in value. (Section 66632 of the California Government Code [established by the McActeer-Petris Act]).

[13]Section 66632 of the California Government Code [established by the McActeer-Petris Act].

[14]San Francisco Bay Conservation and Development Commission, Annual Report 1970, pp. 7-8.

[15]Joseph E. Bodovitz's speech, Planning, the Law, and a Quality Environment at the 11th National Conference of the U.S. Commission for UNESCO describes the way in which the members of the BCDC developed the Bay Plan.

[16]Letter from E. Jack Schoup.

[17]Letter from E. Jack Schoup and letter of December 3, 1971, from Joseph E. Bodovitz, Executive Director of the San Francisco Bay Conservation and Development Commission.

[18] This policy was first instituted in 1965 and then amended in 1969. (Appendix [F] contains a copy of the complete policy instituted, the State of California Policy on Thermal Power Plants).

[19]The document, Laws and Procedures of Power Plant Siting in New England Power and the Environment/Report No. 1 (New England River Basin Commission, 1970) provides a good discussion of the factors involved in the problem of regulating power plant siting including a review of California's approach to the problem.

[20]State of California Policy on Thermal Power Plants, Section III (Adopted June 30, 1965; revised March 12, 1969).

[21]Gion v. City of Santa Cruz, 2 Cal 3d 29 - P. 2d - Cal Reporter (1970).

[22]Ibid.

[23]Dietz v. King, 2 Cal 3d 39 - p. 2d - Cal Reporter (1970).

[24]As it has been established in law by the court's decision, implied dedication of property to public can occur in two ways by acquiescence and by adverse use. In the former case, it must be proven that the owner allowed his land to be used continually without putting any restrictions on its use. If the land had been used by the public for less than five years at the time of the inquiry the owner's actual (not implied) consent must be shown. In the case of dedication by adverse use, however, the public must merely have used the land continually for more than five years with the owner's knowledge, without asking permission to do so, and without objection being raised to such use. In the face of continued use, the posting of an occasional no trespassing sign is not significant sign of objection.

[25]Steve A. McKeon's article, Public Access to Beaches, in the Stanford Law Review (Vol. 22, No. 3, February, 1970) discusses in considerable detail several possible different legal approaches to increasing beach access and use including the implied dedication concept.

CALIFORNIA

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CHAPTER 7

HAWAII

INTRODUCTION

The coastal zone activities of Hawaii have been chosen for close examination because Hawaii was the first state to institute a state land use control program. Because land use control programs have been advocated as an alternative to programs aimed specifically at the coastal zone, it was thought worthwhile to investigate whether a need existed for a coastal zone management program even in a state that already had a state-wide land use control program and, if such were the case, what type of coastal zone program was being proposed and how it would relate to the already existing land use control program. The material in this chapter will illustrate the need for a coastal zone program in addition to a land use control program, at least for the state of Hawaii.

STATE LAND USE PROGRAM

History of Land Use Program[1]

Hawaii's Land Use Program had its origins in three acts passed by the 1957 Territorial Legislature:

The first act, Act 35-1957, established the Land Study Bureau at the University of Hawaii and gave it a mandate to classify all of Hawaii's lands to provide a sound basis for subsequent land use studies. Particular emphasis was placed on agricultural lands since agriculture was the primary land use. The studies that were developed by the Bureau, as a result of the provisions of this Act, provided a substantial base for the development of the boundaries of the land use districts established under the State Land Use Law of 1961.

The second act, Act 234-1957, directed the Department of Land and Natural Resources (which was called the Board of Commissioners of Agriculture and Forestry at the time) to establish a comprehensive forest and water reserve zoning program. The Department was given the authority to set the forest and water reserve boundaries, to establish subzones within the larger forest and water reserve zones in which only certain uses would be permitted, and to establish regulations governing activities in the zoned area. The establishment of such regulations was to be guided by the proviso that they not be"detrimental to the conservation of necessary forest growth and the conservation and development of water resources adequate for present and future needs."[2] In determining the uses that would be allowed in the special subzones, which were to include but not be limited to "farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting pursuits, or residential use," full consideration was to be given to

> all available data as to soil classification and physical use capabilities of the land so as to allow and encourage the highest economic use thereof consonant with requirements for the conservation and maintenance of the purity of the water supplies arising in, or running or percolating through the land.[3]

The forest and water reserve zones, created by this Act, formed the basis for the Conservation Districts established under the provisions of the State Land Use Law of 1961. This Act also gave general zoning powers to county boards of supervisors for areas not included in the forest and water reserve zones.

The third act established the Territorial Planning Office, now the Department of Planning and Economic Development, and directed it to develop a general plan to guide physical and economic development throughout Hawaii. This general plan, which was completed in 1961, formed the impetus

for the passage of the State Land Use Law of 1961 because the following land use issues were brought forth as needing attention:

> 1. Development of land for urban uses, in many cases tended to occur in areas where it was uneconomical for public agencies to provide proper and adequate service facilities, and there was a consequent lag in the provision of such facilities, to the detriment of the general welfare and convenience;
>
> 2. Development of land for urban uses, in many cases, occurred on land having a higher capacity for contributing to the basic economy of the State (meaning agriculture) than the uses which were developed thereon;
>
> 3. There was adequate land on all the islands of the State, for full development of the urban uses forecast for the next twenty years, without using the lands with high capacity for intensive cultivation;
>
> 4. Development of urban areas should be encouraged in an orderly and relatively compact manner in order to provide for economy and efficiency in public services and utilities;
>
> 5. Land not required at any given time for urban or intensive agricultural uses should receive special attention regarding land management practices and use.[4]

Provisions of the State Land Use Law of 1961[5]

Recognition by the state legislature of the need of coping with the above issues can be found in the statement of purpose of the State Land Use Law of 1961 (Act 187-1961):

> Inadequate controls have caused many of Hawaii's limited and valuable lands to be used for purposes that may have a short-term gain to a few but result in a long-term loss to the income and growth potential of our economy. Inadequate basis for assessing lands according to their value in those uses than can best serve both the well-being of the owner and the well-being of the public have resulted in inequities in the tax burden, contributing to the forcing of land resources into uses that do not best serve the welfare of the State. Scattered subdivisions with expensive, yet reduced, public services; the shifting of prime agricultural lands into nonrevenue producing residential uses when other lands are available that could serve adequately the urban needs; failure to utilize fully multiple-purpose lands; these are evidences of the need for public concern and action.

> Therefore, the Legislature finds that in order to preserve, protect and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare and to create a complementary assessment basis according to the contribution of the lands in those uses to which they are best suited, the power to zone should be exercised by the State and the methods of real property assessment should encourage rather than penalize those who would develop these uses.[6]

Land Use Commission

To administer its provisions, the act created a nine-member Land Use Commission composed of seven members appointed by the Governor with the advice and consent of the state senate: one from each of the six senatorial districts and one at large, and two ex-officio members, the Directors of the Departments of Planning and Economic Development and Land and Natural Resources. The chairman is to be selected by the members of the Commission from the seven appointed members. The terms of the appointed Commission members are subject to the provisions of the term of office section of the Hawaii Revised Statutes (Section 26-34). That section states that Commission members shall be appointed to terms of four years, subject to reduction to provide staggered terms, and that they cannot serve more than two consecutive terms.

The Land Use Commission was located in the Department of Planning and Economic Development for administrative purposes, but such location does not give the director of the Department any powers over the quasi-judicial function of the Commission other than as an ex-officio member of the Commission.[7]

As is usual with such commissions, the Land Use Commission was given authority to hire staff personnel, draw upon the technical capabilities of state agencies, receive funds from governmental agencies, and adopt regulations to govern its actions. In addition, the Commission was

required to prepare an annual report of its activities, accomplishments and recommendations.

Land Use Districts

The Land Use Law established three different types of districts into which the Commission was to divide the lands of the state: (1) Urban Districts to include lands "now in urban use and a sufficient reserve area for foreseeable urban growth;" (2) Agriculture Districts which were to be established to provide the greatest possible protection for "those lands with a high capacity for intensive cultivation;" and (3) Conservation Districts to consist of the forest and water reserve zones created by Act 234-1957.[8]

The Act was amended in 1963 (by the passage of Act 205) to provide a fourth type of district, Rural, to be composed of "areas of lands composed primarily of small farms mixed with very low density residential lots" (one-half acre lots).[9] Act 205 also provided a detailed explanation of the uses to be found in each district:

> Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.
>
> Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre in areas where 'city-like' concentration of people, structures, streets and urban level of services are absent, and where small farms are intermixed with such low density residential lots. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. [Public, quasi-public and public utility facilities are also allowed in this district.]
>
> Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, and game and fish propagation; services and uses accessory to the above activities including but

> not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; and open area recreational facilities.
>
> These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.
>
> Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness and beach; conserving endemic plants, fish, and wildlife; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; and other related activities; and other permitted uses not detrimental to a multiple use conservation concept.[10]

While the Commission was empowered to draw up the boundaries of each of these districts, the counties of the state (Kauai, Honolulu, Maui and Hawaii)[11] were authorized to further zone the land within each district and enact stricter regulations, except that no areas could be zoned for urban use that were not in an Urban District; that such zoning must be compatible with the provisions of the State Land Use Law; and that the usage of lands in Conservation Districts was to be regulated by the Department of Land and Natural Resources. The latter restriction is of considerable importance since Conservation District lands comprise 45 percent of the total state area.[12]

The boundaries of each of these districts were to be set after public hearings had been held to provide for public, county government, private owner, and agency comment on the proposed boundaries developed by the commission. Act 205 also added the provision that the Commission was to give consideration to the master plan or general plan of a county in developing the district boundaries for that county.

Amendments to District Boundaries

Amendments to the boundaries set by the Land Use Commission are to be considered by the Commission upon receiving a request for such a change from any state or county agency, or any property owner or lessee or upon the initiative of the Commission itself. Before making a decision on the request the Commission is to obtain the recommendations of the planning commission of the county involved. A public hearing is also to be held to hear the views of persons and agencies interested in the proposed change. Approval of the request is to be granted by an affirmative vote of six members of the Commission provided that the petitioner has fulfilled the following conditions, namely that he:

> has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified and either of the following requirements has been fulfilled: (a) the petitioner has submitted proof that the land is usable and adaptable for the use it is proposed to be classified, or (b) the condition and trends of development have so changed since the adoption of the present classification, that the proposed classification is reasonable.[13]

Special Use Permits

Upon request of the county planning commission of the county in question (or the zoning board of appeals of the city and county of Honolulu), certain unusual and reasonable uses may be allowed in rural and agricultural districts even though the district is not classified for them. The approval of both the county planning commission and the Land Use Commission is required. The county planning commission is to consider such requests first holding a public hearing before making its decision. It may approve a request by an affirmative vote of its total membership adding such protective restrictions as it deems necessary subject to the condition the proposed use would promote the effectiveness and objectives

of the State Land Use Law. Requests that are approved by the county planning commission are forwarded to the Land Use Commission for its judgement. To be approved by the Commission, a request must receive the affirmative votes of five members of the Commission. The decision of either the county planning commission or the Land Use Commission, in such cases, can be appealed to the circuit court in accordance with the Hawaii Rules of Civil Procedure. (This procedure should be compared to the handling of such requests for Conservancy Districts. The approval of only the Department of Land and Natural Resources is required for special uses in such districts.)

Enforcement of District Classification Provisions

Enforcement of the use classification districts established by the State Land Use Law is to be by the county official who enforces the county zoning regulations. Violation of any provision of the law is punishable by a fine of not more than $1,000.00 with each day the violation being considered a separate offense.

Dedicated Lands

As stated in its statement of purpose, one of the purposes of the State Land Use Law was to revise the state's tax laws to encourage the use of the lands of the state for those purposes for which they are best suited. In accordance with this purpose, the law established a special category of land use, called Dedicated Lands, to allow the owner of long-term leases (ten years or longer) of land within an Agricultural or Conservation District to apply for dedication of his land to a specific ranching or agricultural use and, as a result, to have his land assessed at its value for that use.

To obtain such a classification for one's lands, a land owner has to submit a request to the director of the Department of Taxation. Upon receiving such a request, the Director of Taxation is to have the Land Study Bureau of the University of Hawaii undertake a study to determine if the petitioned land "is reasonably well suited for the intended use." The bureau's determination of this question is to be based

> upon the productivity ratings of the land in those uses for which it is best suited, a study of the ownership, size of operating unit and present use of surrounding similar lands and other criteria as may be appropriate.[14]

In addition, the Director of Taxation is to ask the Director of Planning and Economic Development to determine whether the intended use would be in conflict with the state's General Plan. Approval of the request for dedicated classification is to carry the condition that the requester must not change the use of his lands to which they were dedicated for a minimum of ten years. This classification is automatically renewable indefinitely, but subject to cancellation by either the owner or the Director of Taxation with five years notice at any time after the fifth year of dedication. In the case of a state agency changing the general use classification of the area in which the dedicated land is located, the dedication can be cancelled within 60 days of such a change if both the owner and the Director of Taxation agree.

If an owner fails to observe the restrictions that the dedication placed on his land, the special assessment privilege that the dedication provided is to be cancelled and the difference between the taxes that have been paid and the taxes that would have been paid from assessment at a higher use, plus a 5 percent/yr. penalty, shall be paid by the owner. Such failure will be considered to exist if the land in question is not used in the manner requested for one calendar year or if an overt act of

changing such use for any period is committed. Institution of the above penalty is not to prevent the state from undertaking any other legal remedies to enforce the dedication agreement regarding the land's use.

An owner may appeal an unfavorable decision on his dedication request in the same manner as an assessment decision.

Other Provisions

The State Land Use Law of 1961 contained two other provisions: one provided an appropriation of $50,000 for the Commission's activities; the other required a comprehensive review of the land classification, district boundaries, and all regulations established under the provisions of the Land Use Law to be carried out at five-year intervals from the time that the district boundaries were formally adopted.

Commentary

Thus, the Land Use Law established a land use system which gave: the Land Use Commission the authority to establish district boundaries, the Department of Land and Natural Resources control over uses in the Conservation Districts, the county planning commission's sole control over use in the urban districts and shared control over deviation from permitted uses in rural and agricultural districts, and the Director of Taxation control over the dedication of lands subject to the findings of the Land Study Bureau and the Department of Planning and Economic Development.

Review of the Operation of the Land Use Law

In accordance with the provision of the Land Use Law, the district boundaries were formally set in 1964. (Temporary boundaries and regulations had been set previously, but it was not until 1964 that the Land Use Commission finally completed the boundary setting process.) As a result, a

general review of the land use control program was implemented in 1969. Preceding this review was a revision of the State General Plan in 1967 in order to provide a policy basis for the land use review in 1969. In order to obtain an outside view on the General Plan's implications and the operation of the land use program during its first five years, the state contracted with the consulting firm of Eckbo, Dean, Austin, and Williams. It is largely on their report State of Hawaii Land Use Districts and Regulations Review that the following review of the operation of Hawaii's land use program is based.

Review of District Boundaries

The subject that received the most attention in Eckbo, Dean, Austin, and Williams' review of the program was the consideration of the appropriateness of the district boundaries. Extensive review of previous research was undertaken along with substantial mapping and field work with regards to this question. It was found that the original boundaries had been set with great care. Thus, the major recommendations of Eckbo, Dean, Austin, and Williams involved establishing clearer distinctions of the differences between Agricultural and Conservation Districts with resultant changes in the boundaries of some lands and the regulations concerning their use. Of particular interest was the determination of the inland boundaries of shoreline areas which had been included in Conservation Districts by the Land Use Law, a point that will be discussed in more detail later. Other recommendations involved the changing of the boundaries of Urban and Rural Districts to account for future growth and county recommendations, owner-developer intentions, and compliance with the intent of the Land Use Law.

Effectiveness of Land Use Controls

With regard to the administration of the Land Use Law, it was found that considerable success had been achieved in containing urban sprawl. Although the population growth in Oahu, the island subject to the greatest economic pressures, had grown by 153,000 during the period 1961-68, only 1,616 acres were added to the Urban Districts. Since a standard of about nine acres/100 people had been set for Urban Districts in the original boundary studies, approximately 13,770 acres would have been needed to accomodate this growth in population. It is obvious that most of the growth has occurred in the lands already set aside for urban use, rather than sprawling into the other districts which had been designated for other uses.[15]

Likewise, it was found that the land use control system had been effective in preserving prime agricultural soil. Although proposals had been received to change 2,648.8 acres of agricultural soil to urban use, only 284.8 acres or eleven percent had been approved for such a change. In addition, it is impossible to tell how many other changes were not proposed because of the existence of the approval process.[16]

Review of Nature of Boundary Changes and Requests for Special Uses

Nevertheless, the Commission did approve, in whole or in part, the great majority of boundary changes and special permits submitted to it: 73.4 percent of the 128 boundary proposal changes, 60.9 percent totally and 12.5 percent in part; 70.9 percent of the 20 special permit changes, 36.4 percent totally and 34.5 percent in part. The percent of total acreage approved was considerably less, the respective figure's being: for boundary changes, 9,514 acres requested, 3550.1 totally approved,

1811.5 partially approved; for special permits 984 acres requested, 361.7 totally approved, 408.0 partially approved.[17]

As might be expected, the great majority of boundary changes involved requests for urban district designations, while approximately 80 percent of these requests were partially or totally approved, only about one-half the acreage involved was approved. On Oahu, the Commission refused changing the designation of 60 percent of the total acreage involved (although approving 16 and partially approving 4 applications out of the total of 25) indicating their concern with preventing urban sprawl and scatterization.[18]

In addition, the study showed that in only a small number of cases were the decisions of the Land Use Commission in conflict with the decisions of the county planning commissions and the recommendations of its own staff. Out of the 90 cases involving boundary changes or use permits on which all three expressed opinions, the Commission overruled the recommendations of the county planning commissions in only 11 cases; its staff in only 17 cases; and both of them in only 3 cases.[19, 20] Nearly half of the Commission's decisions were unanimous, but there were also many close decisions, particularly those involving lands on Oahu. It was also on decisions involving lands on Oahu that the majority of the above conflicts occurred, indicating the degree of concern and the economic pressures involved regarding the use of land on Hawaii's most developed island.[21]

Results of Attitude Survey

An attitude survey, undertaken as a part of the review, indicated that it was generally thought that the Land Use Law had successfully encouraged appropriate land use without hindering economic development.[22]

However, as a result of this survey and studies undertaken as part of the overall review, both by itself and by others, particularly the state agencies, Eckbo, Dean, Austin and Williams found several areas in which the Hawaii land use control program could be improved. The survey found that most people, including many county officials, were uninformed regarding the powers of the Land Use Commission and the provisions of the Land Use Law. The Commission was also thought, by the majority of the people surveyed, to favor large land owners and developers. This is not surprising as Hawaii's land ownership has a legacy of large land owners from its pre-territorial days that leaves 75 percent of the privately-owned land (which is 58 percent of the total lands; 34 percent is state-owned and 8 percent federally-owned) in the hands of only 50 large land owners.[23] Thus, many of the decisions of the Commission regarding boundary changes and special permits involved these large land owners. The fact that the Commission did not document sufficiently the factors on which its decisions were based contributed to the decrease of public confidence in its fairness and left doubt in the minds of applicants and county planning commissioners alike on what constitutes a valid proposal.

Another deficiency was the lack of sufficient follow-up of the implementation of the approved boundary changes and special use permits. The advantages of follow-ups were thus lost; namely a determination of the effects of such changes on the Land Use Law's impact in encouraging proper land use and satisfying the needs of the citizens of the state and; thus, obtain insight into what conditions to attach to future approvals.

As a result of these findings and the resultant recommendations to correct them, the Land Use Commission adopted changes in its rules of practice and procedure at its meeting on July 8, 1969.

General Plan Revision Program

Eckbo, Dean, Austin and Williams also reviewed the issues involved in the development of the General Plan upon which the revised boundary changes and regulations were to be based: those involved in the regulation of uses in each of the districts and those involved in the use of the tax structure to affect land use. Their findings in each of these areas will be briefly summarized below.

As a first step in reviewing the state's land use control program, the state's General Plan was revised in 1967. While the plan revision program produced many valuable studies and paid considerable attention to appropriate goals to strive for and the appropriate administrative techniques to utilize, it did not produce long-range coordinated plans involving recreational, public facility provision, and other land uses which the counties and state agencies could use as a guide in carrying out their land use programs. In fact, there seems to be some acceptance of the state land use district zoning maps as a substitute for actual long-range land use plans. Thus, Eckbo, Dean, Austin and Williams saw the 1967 General Plan Revision Program as providing a good foundation for the development of long-range plans rather than developing those plans themselves. It is hoped that such plans will be developed by the time of the next revision. The studies revealed lack of long-range planning in the counties' planning and zoning programs, as well as insufficient attention to the special resources and characteristics of the islands. Furthermore, there seemed to be inadequate consideration of how the county plans and ordinances should mesh with the state regulations in order to provide an effective land use control system. Finally, one major consideration was missing in both the state and the county planning programs: consideration of what

the proper population level and distribution should be for the state if it is to fulfill its goals regarding land use regulation and economic development. As part of the General Plan Revision Program, an innovative economic planning technique was developed for relating economic growth and income distribution for various levels of population growth, but consideration of management of population growth to achieve desired social and economic goals was not undertaken.

An attempt to rectify this deficiency was undertaken by the establishment of the Temporary Commission on Population Stabilization in January, 1971. The work of this commission has been hampered by a lack of funds. However, it has undertaken several projects, including a survey of state planning departments to find out how they utilize population growth distribution factors.[25]

Administration of Conservation Districts

With regard to the administration of the Conservation Districts, it was found that the present program of regulation by the Department of Land and Natural Resources had several defects. First, the present regulation, Regulation No. 4, on which the Department of Land and Natural Resources bases its decisions, was considered overly permissive. The Department's administration of the lands has been somewhat suspect as it has approved 76 out of 82 special use applications and has shown some tendency to circumvent the intent of the district in cases where large acreages of land were involved.

As originally established, the lands within Conservation Districts were divided into two categories: General Use (GU) and Reserved Watershed (RW) Use. The permitted uses allowed in each of these districts were found to include governmental buildings and resort and related residences

in GU districts, which may lead to urban development, and transmission facilities in RW districts, which would blight scenic vistas--both contrary to the intention of the district's establishment. Furthermore, three additional sub-zones were added to provide land for a college, a cemetary, and a convalescent home within Conservation District boundaries; thus setting a highly questionable precedent. Part of the reason for these developments was that land more suited for urban development was included within Conservation District boundaries with no systematic mechanism provided for its development and rezoning as it becomes needed for urban-oriented uses.

Criticism was also aimed at the Department of Land and Natural Resources' sole control over the administration of the Conservation District with no input from the county commissions or provision for public hearings, in contrast to the administration of the other districts.

In order to bring more appropriate management of these districts, Eckbo, Dean, Austin and Williams recommended the above system of management be changed to provide greater participation on the part of the public and the county commissions. Further, it recommended that Conservation Districts be divided into five sub-zones with special descriptions of the uses permitted in each district and the type of administrative mechanism that would be appropriate. In cases where the lands presently included in Conservation Districts were more appropriate for grazing, it was recommended that the zoning designation be changed to "Agricultural." Where Conservation Districts are suited to urban uses and contiguous to

an Urban District or are in an area designated as appropriate for such use in a county general plan, the zoning should be changed to "Urban." Eckbo, Dean, Austin, and Williams also paid particular attention to protection of the shoreland areas of the state and recommended that special plans be developed for their preservation and development.

In its revision of state land use district regulations at its meeting on July 8, 1969, the Commission followed the recommendation concerning more explicit specifications of the type of lands to be included in Conservation Districts as well as making some boundary changes that had been recommended as a result of such considerations. Included in Conservation Districts by such actions were tsunami and flood hazard areas and shoreland areas to the point of maximum annual wave advance. Many areas adjoining the shorelines were also included in Conservation Districts, but such areas in Urban and Rural Districts were retained in those districts in order to allow utilization of them in accordance with county plans and regulations. All offshore and outlying islands were included in Conservation Districts unless specially designated otherwise.

However, the Conservation Districts were not divided up in subzones to provide more appropriate use of the various types of lands included in a Conservation District, nor was the Department of Land and Natural Resources' sole control over such districts modified. (The state legislature did take action in 1970 to provide some measure of shorelands management which will be described later.)

Administration of Rural Districts

With regard to Rural Districts, it was noted that the mixed uses allowed in such districts are not always compatible, and that such districts have the potential of introducing widespread residential development into

agricultural areas. Therefore, it was recommended that such districts be severely restricted in number, with areas presently included in such districts included in Urban or Agricultural Districts if one or the other use predominates and such a classification is appropriate to the contiguous areas.

In making its boundary revisions, the Land Use Commission followed the recommendation of making extremely limited use of the Rural District classification, although it did not eliminate any of those districts that had been already established.

Administration of Agricultural Districts

With regard to the question of the efficiency of Agricultural Districts, Eckbo, Dean, Austin and Williams found that to date the objective of preserving agricultural land had been achieved to a large extent. However, they saw that the increasing economic development and population growth occurring on the islands was putting considerable development pressure on such lands. Therefore, they looked to the State Agricultural Plan presently being developed by the Department of Planning and Economic Development for full consideration of some of the issues involved: the economic value of present agriculture land, both per se and as a part of a diversified economy;[26] ways in which agricultural lands could be utilized to make the state more self-sufficient in those foodstuffs that could be grown on the islands to feed its growing population; and the value of such lands for amenity purposes as a part of the state's cultural heritage; and the attractiveness of these lands to tourists. They also hoped that the State Agriculture Plan would include consideration of the question of the appropriateness of subsidies to agricultural production to bolster the present measures of zoning restrictions and preferential tax treatment in order to

preserve agricultural land in the face of increasing economic and urbanization pressures.

With regard to the present regulations regarding Agricultural Districts, several recommendations for improvement were made. In the face of county inaction and state minimal lot restrictions of only one acre, Eckbo, Dean, Austin, and Williams recommended that the minimum lot size be set at five acres with larger minimum lot restrictions set in areas that favor large-scale agriculture. In such a way, the threat of the proliferation of one-acre lot residential developments in Agricultural Districts would be minimized. In a similar vein, they recommended that the scope of permitted uses in Agricultural Districts be reduced to agriculturally-related activities and non-intensive recreational uses that were compatible with the agricultural tone of the districts. By so doing, urban-producing developments such as golf courses and schools would be prohibited except by special permit. This latter recommendation was implemented by the Land Use Commission at its July 8, 1969, meeting.

Administration of Urban Districts

With regard to the issues involved in the management of lands within Urban Districts, it was found that other influences were often more important than the provisions of the Land Use Law. In particular, the high costs of building houses and the shortage of low and moderate cost housing appeared to be problems that needed other types of governmental intervention. The Land Use District boundaries were viewed as able to tightly or loosely contain urban and rural areas and thus affect the density within. However, little evidence was seen that redistricting lands to urban use would lower the cost of land or help provide additional low cost housing. Nor was there evidence that the present district boundaries had hindered the provision

of low cost housing. Thus, the conclusion was drawn that the Land Use Law should be used to preserve agricultural and conservation lands, with other measures utilized to cope with these urban problems.

The above problems were viewed as further complicated by the increased interest in developing areas as tourist facilities and; thus, drawing off manpower and resources needed to develop low and moderate cost housing. The Land Use Law was seen as a valuable tool, in coping with the proliferations of such resort areas throughout the state. By the review of proposals for such areas, the Land Use Commission could deal with the problem of the building of these areas outstripping the demand and the issue of whether the development of such areas would unduly reduce the supply of natural and open space areas throughout the state. The shorelines of the state were viewed as being particularly threatened since over 60 percent of the proposed developments over 100 acres, for which redistricting to "Urban" was requested as part of the boundary review process, involved the use of shoreline areas for resort or residential use.[27]

A need was also seen for more consideration of the potential impact of public capital expenditures to serve such potential developments as highways and airports. It was recommended that work be hastened on the development of a comprehensive plan and policy to guide the development of such capital improvements in such a manner as to prevent inadvertent destruction of the state's resources in providing such improvements.

An additional problem was seen as involving the potential spread of "scattered urban development;" that is, "the location of new urban areas [in non-developed areas] that by themselves are not self-supporting or self-sustaining."[28] Such developments are against the intent of the

Land Use Law but there was the question of whether the new towns proposed on the island of Hawaii and the other islands would have the necessary economic base to sustain themselves or whether they would in fact become scattered developments depending on other urban areas for many of their needs, such as schools and jobs.

While many of the above problems need attention above and beyond the scope of administration of the provisions of the Land Use Law, it was felt that a system of incremental zoning, of approving proposed developments in steps based on fulfillment of proposed plans, would provide some controls over premature development of such projects and the manner in which such projects are carried out. This recommendation was adopted by the Land Use Commission at its meeting on July 8, 1969.

Taxation as a Planning Tool

The last aspect of Hawaii's land use control system to be studied is the use of its taxation powers as part of its land use planning process. Because this is an important planning concept with obvious application to shoreline management programs, it will be discussed in some detail as it is applied in Hawaii. As above, the study done by Eckbo, Dean, Austin, and Williams will be strongly relied upon.

In discussing Hawaii's use of its taxing power in relation to its land use control system, three criteria can be applied. First, is the legislative intent of the respective laws actively carried out? Second, with what degree of specificity can such taxing power be applied? Third, how consistent are they internally and with the intent of the Land Use Law?

Of course, there are several other considerations in the development of a taxing system besides its impact on land use: the questions of the

fairness of the distribution of the burden it imposes, its responsiveness to changing economic patterns, the other social goals it attempts to induce, and its political acceptability. But it is towards those aspects of Hawaii's taxing system that are directed at affecting land use that the following discussion will be based.

Property Tax Considerations

Hawaii's tax structure is based on three main types of taxes: general excise taxes, real property taxes, and personal and corporate taxes. The type of tax with the greatest implication for land use planning, the real property tax, comprises a relatively small amount of Hawaii's tax receipts in comparison to other states. It makes up only 20.1 percent of Hawaii's tax receipts compared to the national average of 42.9 percent.[29] (The ratio is nearly reversed on personal income taxes 21.9 percent to 9.5 percent, while revenues from other types of taxes make up the percentage difference between Hawaii's and the national average with respect to property taxes.) This is not to say that the burden of the property tax is minor for all segments of society. As will be seen later, because of widespread exemptions, the majority of the property tax is borne by a relatively small proportion of society; thus, burdening them considerably. Nevertheless, it is obvious that Hawaii has a rather low base of property taxes with which to work to influence increased economic development in the state. Eckbo, Dean, Austin, and Williams conclude that, in the face of the major significance of resource comparisons, transportation costs, market opportunities, and the possibility of interstate tax incentive competition as influences on industrial locations, the use of tax incentives as part of Hawaii's property tax system is not likely to have any major impact on the decision of industries generally to locate in the state. Therefore, it is recommended

that the present exemptions on business inventories, growing crops (as their value affects the assessed value of the property they are grown on), and on "fixtures" (defined as machinery and other mechanical or similar equipment used primarily in the manufacture of personal products) should be eliminated to reduce the burden of the property tax borne by the residential property owner. However, exceptions should be made for industries such as those producing bagasse fibre, which are new industries contributing to the diversification of the economy and are seemingly responsive to the incentive provided by the property tax exemptions.

Tax Assessment Considerations

Defects were also found in the manner in which real property is assessed and taxed. In particular, certain of the statutory language was found to be vague and too much discretion was found to be placed in the hands of the Director of Taxation. For instance, regarding the tax exemption on homes, the vague language of the statutes gives the Director of Taxation the capacity to manipulate the assessment ratio and the tax rate to reduce the worth of the exemption and, thus, promote intensive development of an area. (This is not to say that the Director of Taxation would do this, but that such manipulations could legally take place under the present statutes.)

Of more far-reaching significance is the potential of the present system of assessment and taxation to undermine the impact of the Land Use Law. According to the tax statutes, tax assessment is to be based on the market value of the property involved. This, at best, is a difficult task in Hawaii because of the large land holdings and the resultant relatively small number of market transactions involving each type of property. The process is complicated by the fact that the Director of Taxation must

classify lands into six designated classes for taxing on a graded scale. By doing so, he could undermine the provisions of the Land Use Law because of the emphasis of using the market value of lands as a basis for taxation. If market forces do not take seriously the restrictive nature of the land use districts established by the Land Use Commission, lands classified as agricultural under the Land Use Law could be classified as commercial or industrial for applying Hawaii's graded tax rate structure by the Director of Taxation. The increased taxes and policy implications relating to such a classification will create pressure for development on such lands in opposition to the intent of the classification of such lands as "Agricultural" under the Land Use Law. To correct this situation, it is recommended that this classification power be transferred to a combination of the Department of Planning and Economic Development and local planning commissions so that the classifications could be designed to support the state and local zoning laws rather than undermine them. The graded tax rates could be based on the highest and best use allowed within such districts while the assessed value of such lands could still be based on their value as determined by market prices. The tax information resulting from such a procedure would provide a good tool for determining how effective the state and local zoning programs were in influencing use of lands in certain directions. If the assessed values of nearby lands in different districts were substantially different, there would be a strong indication that the intent of establishing such districts was being effectively carried out.

In order to make such calculations, however, the manner in which tax records are kept would have to be modified to show such information in a form easily usable for planning purposes. Thus, it is recommended

that the further use of taxation information for planning purposes be a consideration in determining how the tax records are kept, in addition to transferring the classification powers out of the Department of Taxation.

Dedication Provisions

The above leads into a discussion of the agriculture dedication provisions of the Land Use Law. If the police power utilized in establishing the various districts were fully effective, then the dedication provision would serve no purpose because the market value of agriculturally designated lands would reflect their potential use for agriculture only, and offering tax incentives for promoting such uses would serve no purpose. Thus, the intent of such a provision is seemingly to backstop the districting provisions of the law in an attempt to forestall the economic pressures for intensive development of prime agricultural lands. However, several defects in the present dedication provision seem to undercut this purpose. First, the penalty provision of only five percent per annum is not sufficient to forestall speculation. Owners of land that is potentially developable as urban land have nothing to lose by putting their lands in an agricultural dedication status. While they are waiting for the proper market conditions, they will receive the reduced tax benefits and if they decide to develop it before the ten-year period is up, they have to pay only a five percent per annum penalty; a rate which is lower than the rate for borrowing money. Obviously, the penalty rate must be much higher if the dedication provision is to serve any protective purposes. There is also some ambiguity in how the penalty provision is supposed to be enforced. Is it to be based on the higher tax rates actually levied because of the reduced tax base due to the removal of the dedicated lands from full consideration, or on the tax rates that

would have been used if the dedicated lands had been a full part of the tax base? The monetary difference and resultant deterrent factor would be considerable between these two alternatives.

In addition, the Land Use Law does not specify how the value of dedicated lands is to be determined for assessment purposes; thus, leaving too much to the discretion of the Director of Taxation. The appropriateness of dedicating agricultural lands in urban districts may also be questioned. It can be reasonably argued that it such lands are valuable for agricultural purposes, they should be so zoned.

One final ambiguity in the law, which has large implications, is the use of the phrase "automatically renewable" rather than "automatically renewed" relating to the future state of the dedicated lands after the initial ten-year period. If the landowner has the opportunity to break his dedication contract at that point, the five-year notice provision is largely meaningless. The assessment of such lands would also become much more difficult in such a case because the question would arise as to whether the increased value of such lands, deriving from the potential for development at the end of the ten-year period, should be considered or not.

Similar incentives for speculation are present in the forgiveness provision if dedicated lands are redistricted to urban use as a result of state agency action. Thus, a person could buy agricultural land likely to be converted to urban use under the redistricting, get lowered tax rates for a few years, then reap the profit when the lands are redistricted. In this case, it is recommended that the property owner in question pay the difference in taxes involved, but without any penalty involved. The landowner would then be deprived of any speculative profits in accordance with the intent of the Land Use Law, but would not be penalized by conditions resulting from state actions.

The urban open-space and wasteland development provisions of the present tax statutes can also be questioned as to whether they really carry out the intent of the law or whether they give inappropriate incentives to the owner of the land in question.

A final recommendation involves the administration of the dedication provisions. Since they were established to promote better land planning and use, it is recommended that the administration of the dedication provisions of the law be placed in the hands of the Director of Planning and Economic Development with consultation with the Director of Taxation, rather than the present reverse situation.[30]

COASTAL ZONE MANAGEMENT CONSIDERATIONS

Background

Concomitant with the implementation of the Land Use Law, an increasing concern was developing about how the shorelines of the state were used. The Department of Planning and Economic Development undertook a study in 1964 called Hawaii's Shoreline to obtain some basic information concerning the state shorelines and their possible uses.

As mentioned above, one result of this concern was the inclusion of all shorelines areas below the high water mark and the territorial waters of the state in Conservation Districts. Likewise, the abutting shoreland areas were included in Conservation Districts except where they had already been classified as belonging in Rural or Urban Districts. (The high water mark was judged to be defined as the line of vegetation in the 1968 case of The Matter of the Application of Ashford[31] because it was judged that it was so designated at the time of the issuance of land patents in 1866 by King Kamehaneha V.)

Furthermore, one of the conclusions of the State General Plan Revision Program in 1967 was that the matter of conservation and development of Hawaii's shoreline was worthy of an independent functional plan. Concern over the degradation of the waters bordering the state's beaches by industrial and human waste disposal and oil spoilage also added to the feeling that the state's shorelines must get special attention. An additional concern was the increasing developmental pressures being felt on such lands, as mentioned above.

Task Force on Oceanography

In 1969, the Governor appointed a Task Force on Oceanography to study the problems and potentials of the state's coastal and marine resources and make recommendations as to how this could be better managed. In its report, Hawaii and the Sea, the Task Force recommended increased scientific exploration of these resources and methods of utilizing them, both at the state level and as part of an International Decade of Pacific Ocean Exploration. The facilities of the University of Hawaii were specifically mentioned as a worthy base on which to develop such marine and coastal programs.

Other recommendations included establishment of increased shoreline access including a 300 foot setback on all publicly-owned shorelands, to be measured from either the vegetation line or the top of the pali (cliffs bordering the sea) as the case may be. Regulation of construction on setback areas was urged for all the state's undeveloped shorelands. It was also recommended that an investigation be made of the methods of utilizing the state's coastal resources: tablefish, coral (for jewelry), oysters and other forms of aquaculture, and offshore sand and minerals. To prevent over-exploitation of the coastal resources, it was recommended that the state's coastal reefs not be utilized as general construction materials

and that sand not be extracted from beach areas. A centralized management authority was proposed to manage the utilization of these resources, so that the recreational potential and the ecological balance of coastal areas would not be impaired. It was recommended that such an authority be composed of an Executive Director for Marine Affairs, a Governor's Advisory Council for Marine Affairs, and a Governor's Cabinet for Marine Affairs. The Executive Director would be charged with the following duties: (a) coordinating management policies for those activities dealing with marine affairs that by their nature involve the interests of several state agencies; (b) providing supportive help to the various state agencies in their specific programs involving marine, including coastal, resources; and (c) developing proposals for new programs to meet Hawaii's marine needs and responsibilities. The Advisory Council on Marine Affairs would be an expansion of the present Task Force on Oceanography to provide better coverage of near-shore and shorelands issues in its function as an advisory group to the Governor. The Cabinet on Marine Affairs would be comprised of the heads of those state agencies dealing with marine affairs to provide a mechanism for coordinating and implementing programs involving the resources of several state agencies. The Office of the Executive Director for Marine Affairs would act as the staff arm to the cabinet. In addition, it was proposed that an independent coastal zone authority might be necessary in the future to focus specifically on the problem of providing effective management of the state's coastal resources.

Sea Grant Program Involvement

Two developments have recently occurred that are in consonance with the recommendations of the Governor's Task Force and the development of a coastal zone program for Hawaii: the activities of the Sea Grant Program

at the University of Hawaii and the passage of coastal zone-related legislation. First, the Sea Grant Program at the University of Hawaii has undertaken a program on coastal environment management to increase the understanding of the natural processes of the coastal zone and the impact of man's activities on them. This program will focus attention on the problem of utilizing this information to develop an effective program of coastal zone management. The purpose and aim of this program are summed up in the following quotation from the 1971-1972 Sea Grant Proposal by the University of Hawaii:

> Defining the guiding principles for use of resources, delineating within the multiple-use framework compatible and incompatible uses, and specifying the priorities which should be assigned to competing uses, to complement and preserve the environment, are of paramount importance. The coastal zone is both one of the most highly regulated and at the same time most poorly regulated areas in the state. The existing agencies in some cases have responsibility without authority and in other cases authority without responsibility. Any development in the coastal zone in Hawaii is tremendously complicated, due to the extremely complex requirements for permits and permission from a wide array of regulating agencies. At the same time the county-state-government structure is extremely simple compared with that of other states and the possibility of developing an effective management system is good.[32]

Research will be undertaken into (a) the legal aspects of coastal zone management and the relationship it should have to the land use control system established by the Land Use Law; (b) the economic and institutional aspects of multiple use of Hawaii's coastal resources; (c) the quality of the state's coastal waters including identification of the biological and physical parameters involved; and (d) methods of maintaining the quality of the state's beach areas.[33]

The importance of this program is underlined by the fact that coastal zone management legislation proposed in the Hawaii state legislature would

designate the University of Hawaii as the state's coastal zone laboratory with the duty to assist the state in carrying out its coastal zone management program.

Coastal Zone Related Legislation

Act 136-1971 (Shoreline Setback Areas)

The other development referred to above was the passage of several pieces of legislation in 1970 which concerned various aspects of the management of Hawaii's coastal zone. Act 136 mandated the Land Use Commission to establish setback areas along the shorelines of the states of between 20 and 40 feet inland from the upper reaches of the effects of waves excluding storm and tidal waves. (The upper reaches of the wave action are to be designated "by the edge of vegetation growth, the upper line of debris left by the wash of waves."[34]

The counties were authorized to extend the setback areas further inland if they deemed it appropriate to do so. Within the setback areas, the removal of "sand, coral, rocks, soil, or other beach composition"[35] was prohibited for any purpose except reasonable, non-commercial uses. Sandmining operations that had been started previous to two years before the Act was passed would be allowed to continue until July 1, 1975, unless they increased the extent of their mining, in which case they would lose their mining rights.

The construction of any structures or any portion thereof including seawalls, groins, and revetments was prohibited without special permit. Already existing structures were allowed to remain, and structures needed for safety reasons or for the prevention of property damage caused by erosion or storm wave damages were exempted from the provisions of the legislation.

Special permits to allow activities or structures otherwise prohibited by the Act can be requested from the county planning department. Applications for such permits are to include information about the natural conditions, topography and existing structures in the area. The county planning department is to forward its recommendations concerning the permit applications, including changes made in the submitted plans, to achieve the maximum compliance practicable with the intent of the Act. The county agency authorized to grant zoning variances is to make the final decision on the application within 45 days after receiving the recommendations of the planning department. Approval of the request is required if it is shown that

> (1) such structures, activity or facility is in the public interest or (2) that hardship will be caused to the applicant if the proposed structure, activity, or facility is not allowed in that portion of the land within the shoreline setback.[36]

However, the county agency may attach conditions to its approval to minimize the activity's or facility's impact on the shoreline.

"Tunnels, canals, basins, and ditches and associated structures that are used by the public utilities," docking facilities, other maritime facilities, and water recreational facilities are to be permitted in the shoreline setback area if it is determined by the appropriate state body after a public hearing "that they will result in minimal interference with natural shoreline processes."[37] Furthermore, government-constructed structures will be permitted subject only to holding two public hearings, one at the time at which the project was conceived and the other after the project has been planned in detail but before contracts have been let on it.

Commentary

While the purpose of Act 136 is commendable, there are certain aspects of its contents which may inhibit its effectiveness:

First, activities or structures otherwise prohibited in the setback area are to be allowed if such prohibition would incur a hardship on the owner or if they are in the public interest. Loose interpretation of this provision, especially since the bill does not define what constitutes a hardship, could obviate the whole intent of the bill since restricting construction or activity on the setback area per se at least reduces the possibilities of economic gain from future development on such land and; thus, constitutes what some people might consider a hardship, even though such future development might not be in the public interest.

Secondly, the setback area of 20 to 40 feet authorized by this legislation is much smaller than the 300 feet recommended by the Governor's Task Force on Oceanography for publicly owned land (no specific width was recommended for privately owned lands). There is considerable question whether setback areas of that width fulfill the Task Force's desire of setting aside sufficient shorelands for public access, open space, and conservation purposes.

Moreover, only minimal restraints are put on actions by governmental agencies that may have a detrimental effect on the setback areas.[38]

Act 137-1971 (Office of Marine Affairs Coordinator)

Act 137-1971, which creates the position of Marine Affairs Coordinator in the Office of the Governor, also seems to lean heavily to the developmental side of coastal zone management. In the statement of purpose of the act, exploitation of marine resources is emphasized without

much mention of the necessity of protecting such resources from over-exploitation per se, or from being adversely affected by the exploitation of other resources:

> (a) The marine environment is one of Hawaii's most valuable assets. It has shaped the uniqueness of the way of life in Hawaii and it has contributed to the major elements of the State's economy. Hawaii can secure even greater benefits from the judicious use of the resources in and around the sea if it energetically coordinates the development of technology needed to exploit these resources, the promotion of marine businesses, and the establishment of programs dedicated to a better understanding and knowledge of the marine environment.
>
> (b) There is a need for a planned and concerted effort to explore and develop to their fullest potential the vast, under-utilized resources of the Pacific Ocean. In view of its mid-Pacific location, unique oceanographic environment and other advantages. Hawaii can take the lead in fostering the development of the ocean's resources, consistent with State and national goals of economic growth, international development assistance, and cooperation with neighbors in the Pacific basin.[39]

Likewise, the appropriations authorized by the bill show a similar exploitation and development orientation:

> SECTION 4. Appropriations. There is appropriated from the general revenues of the State of Hawaii the sum of $470,000 or so much thereof as may be necessary, to be expended by the marine affairs coordinator for the following purposes:
>
> (a) $30,000 for the planning and coordination of activities to hold an international marine exposition in Hawaii in 1976;
>
> (b) $75,000 for the preparation and publication of a detailed atlas defining and tabulating Hawaii's marine resources;
>
> (c) $25,000 for the planning, coordination and convening of a conference in Hawaii of the representatives of government, science, technology, and industry from the nations of the Pacific basin to plan the Pacific region portion of the International Decade of Ocean Exploration;

(d) $50,000 for the development of preliminary plans for marine science research parks;

(e) $100,000 for a pilot marine resources survey of the area within boundaries set at Koko Head and the north margin of Kahana Bay on the island of Oahu, provided that State funds be matched equally by private industry and by more than twice the amount by the federal government;

(f) $190,000 for the survey, research, development, and promotion of Hawaii's marine resources by private industry, provided that an expenditure of State funds shall be matched by an equal amount from private industry[40]

However, the Act does recognize the need for better coordination of these activities and of the responsibilities of state agencies arising from pursuit of such activities. The office of Marine Affairs Coordinator was established to fulfill these needs. Specifically, the coordinator is directed to undertake the following activities subject to the Governor's approval:

(a) Develop plans, including objectives, criteria to measure accomplishment of objectives, programs through which the objectives are to be attained, and financial requirements for the total and optimum development of Hawaii's marine resources;

(b) Conduct systematic analysis of existing and proposed marine programs, evaluate the analysis conducted by the agencies of state government and recommend to the governor and to the legislature programs which represent the most effective allocation of resources for the development of the marine environment;

(c) Assist those departments having interests in marine affairs, coordinate those activities which involve the responsibilities of multiple State agencies, and insure the timely and effective implementation of all authorized marine projects and programs;

(d) Establish a continuing program for informing the federal government, other state governments, governments of nations with interests in the Pacific basin, private and public organizations involved in marine science and technology, and commercial enterprises of Hawaii's leadership potential as the center of marine affairs;

(e) Coordinate the State's involvement in national and international efforts to investigate, develop and utilize the marine resources of the Pacific basin;

(f) Develop programs to continuously encourage private and public marine exploration and research projects which will result in the development of improved technological capabilities in Hawaii;

(g) Formulate specific program and project proposals to solicit increased investment by the federal government and other sources to develop Hawaii's marine resources and coordinate the preparation and submission of program and project proposals of State agencies;

(h) Serve as consultant to the governor, State agencies and private industry on matters related to the preservation and enhancement of the quality of Hawaii's marine environment;

(i) Perform such other services as may be required by the governor and the legislature;

(j) Contract for services when required for implementation of this Act; and

(k) Prepare and submit an annual report to the governor and to the legislature on the implementation of this Act and all matters related to marine affairs.[41]

Act 135-1971 (Open Space Appropriations)

Two other acts passed by the Hawaii state legislature in 1970 consider the protection and preservation aspects of coastal zone management to a greater extent--Act 135-1971 and Act 139-1971. Act 135-1971 authorizes the expenditure of $150,000 for the development of a comprehensive open space plan by the Department of Planning and Economic Development. The study will run the gamut from considering the present status of open space lands in Hawaii to the appropriateness of various methods of acquiring and managing such lands. Consideration of the conservation and acquisition of open space lands in the coastal zone of the state was to be included in this plan.

Act 139-1971 (Natural Areas Reserve System)

The other act, Act 139-1971, established a Natural Areas Reserve System to preserve areas containing unique natural resources "both for the enjoyment of future generations and to provide baselines against which changes which are being made in the environments of Hawaii can be measured."[42]

The system, which is to be managed by the Department of Land and Natural Resources, is to be composed of lands already under that department's jurisdiction, set aside by a departmental resolution that has been affirmed by an executive order of the Governor; and of new natural areas acquired by gift or purchase, by eminent domain, and of state-owned land set aside for such purposes by the Governor.

The administration of the system by the Department of Land and Natural Resources is to be overseen by a Natural Areas Reserve System Commission. This Commission is to consist of six members having knowledge, as evidenced by an academic degree, in the natural sciences,[43] to be appointed by the Governor with the advice and consent of the senate in accordance with the provision of the statutes dealing with commissions. The Chairman of the Board of Land and Natural Resources, the Director of the Department of Planning and Economic Development, the Chairman of the Board of Agriculture, the Superintendent of Education, and the President of the University of Hawaii, or a designated representative thereof, are to serve as ex-officio voting members.

In addition to reviewing the rules and regulations established concerning the management of the Natural Areas Reserve System, the Commission is to (a) recommend criteria for the determination of the appropriateness of lands for inclusion in the system, (b) conduct studies and make

recommendations of possible suitable areas for inclusion in the system, (c) recommend changes in the administration of the system to better carry out the intent of the act, and (d) to act as an advisory group to the Governor on matters involving natural areas.

A penalty provision was included in the Act subjecting violators of the laws and rules and regulations pertaining to natural areas to a fine of $100 or imprisonment of not more than 30 days, or both for each offense.

An appropriation of $60,000 was authorized to carry out the provisions of the Act. Such an appropriation might be adequate for the administration of the system, but it is questionable whether it will allow much new land to be purchased for inclusion in the system.

Other Legislation

In addition, legislation to require the development of a coastal zone plan upon which to base management of coastal zone activities has been introduced in the state legislature. Unfortunately, the provisions of this legislation seem to over-emphasize the development of the coastal zone and do not devote sufficient attention to the preservation and protection aspects of coastal zone management. Moreover, no mention is made of how the provisions of the legislation would relate to the programs established by the acts described above. Nonetheless, consideration of such coastal zone legislation and passage of the acts described above show a recognition of the need for the development of a specific program for the management of the state's coastal zone over and above the state's existing land use control system.

HAWAII

FOOTNOTES

[1]The report, State of Hawaii Land Use Districts and Regulations Review, by the consulting firm of Eckbo, Dean, Austin, and Williams was relied upon in the writing of this section.

[2]Act 234-1957 (Forest and Water Reserve Zones), Section 2.

[3]Ibid.

[4]State of Hawaii Land Use Districts and Regulations Review, Eckbo, Dean, Austin, and Williams (Honolulu, Hawaii, August 15, 1969), p. 2.

[5]A copy of this law along with the other acts mentioned in the description of Hawaii's management programs can be found in Appendix G.

[6]Act 187-1961 (The State Land Use Law of 1961), Section 1.

[7]Section 26-35 of the Hawaii Revised Statutes describes in detail the relationship between a commission and the department in which it is located for administrative purposes.

[8]Act 187-1961, Section 2.

[9]Act 205-1963, Section 2.

[10]Ibid.

[11]The counties of Kauai, Honolulu, Maui and Hawaii consist respectively of the islands of: Kauai and Nihau; Oahu; Maui, Molakai, and Lanai; and Hawaii.

[12]State of Hawaii Land Use Districts and Regulations Review, p. 84.

[13]Act 32-1965, Section 2. (Act 32-1965 amended the time periods specified in the Land Use Law regarding amendments of the district boundaries, reducing the amounts of time allowed for action by the county planning commission and the time period in which the public hearing held by the Land Use Commission was to take place.)

[14]Act 187-1961, Section 3.

[15]State of Hawaii Land Use Districts and Regulations Review, pp. 8-9.

[16]Ibid., p. 8.

[17]Ibid., p. 156.

[18]Ibid., p. 164.

[19]In some of the other decisions, one of the groups may have recommended total approval while the others partial approval or vice versa, but in such cases there was, nevertheless, agreement on the basic issue of approval or rejection.

[20]State of Hawaii Land Use Districts and Regulations Review, p. 164.

[21]Ibid., Chapter 17, gives a more detailed analysis of the administration of the Land Use Law including the decisions made on each type of request by the various decision-making groups involved.

[22]Ibid., Chapter 16, describes the results of surveys on attitudes concerning the Land Use Law and its administration in more detail.

[23]Ibid., p. 102.

[24]Appendix G contains copies of this and other major revisions of rules and procedures approved by the Land Use Commission.

[25]Zero Population Growth National Reporter, (Vol. 3, No. 10), October, 1971, p. 2.

[26]Agriculture has played a major role in Hawaii's economy throughout its history. At present, it is no longer the dominant industry, but still ranks third after defense and tourism.

[27]State of Hawaii Land Use Districts and Regulations Review, p. 97.

[28]Ibid., p. 97.

[29]Ibid., p. 124.

[30]Ibid., Chapter 15, considers the question of the use of taxation as a planning tool in more detail.

[31]The Matter of the Application of Ashford, 76 P. 2d 440 (1968).

[32]P. F-3 of the proposal as quoted in Chennat Gopalakrishan's Managing Hawaii's Coastal Zone: Programs, Problems, and Prospects, paper presented at the Conference on Coastal Zone and Shoreline Management in the Great Lakes, May 26-28, 1971, (Traverse City, Michigan), p. 9.

[33]This research program is described in more detail in Chennat Gopalakrishan's paper, Managing Hawaii's Coastal Zone: Programs, Problems, and Prospects.

[34]Act 136-1970 (Shoreline Setback Areas), Section 2.

[35]Ibid.

[36]Ibid.

[37]Ibid.

[38]Act 136 also included a provision reducing the time periods involved in reviewing applications for special permit uses of rural and agricultural lands.

[39]Act 137-1970 (Office of Marine Affairs Coordinator), Section 1.

[40]Ibid., Section 4.

[41]Ibid., Section 3.

[42]Act 139-1970 (Natural Areas Reserve System), Section 1.

[43]The actual academic areas specified were wildlife and marine biology, botany, forestry, zoology, or geology.

HAWAII

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CHAPTER 8

DELAWARE

COASTAL ZONE ACT

Background

On June 28, 1971, Governor Russell Peterson signed into law legislation, HB300 (Substitute 2) (Act 175-1971)[1], which would ban new heavy industries from Delaware's coastal zone and would prohibit the building of new port facilities on or near the shores of the state. By the passage of this act, the state legislature had responded to the recommendations of a special Task Force on Marine and Coastal Affairs appointed by the governor to study the problems associated with coastal zone management. Two other factors also gave added impetus to the legislature's action: (1) Governor Peterson's strong backing of the legislation and (2) the threat of the imminent development of a major oil refinery at Smyrna by Shell Oil Corp. and an artificial island in the mouth of the Mispillion River by Zapata-Norris Inc. to be used as a storage area for shipments of coal too large to be handled by present port facilities.

To allow time for the Governor's Task Force to develop recommendations for wise use of the coastal zone, the state legislature enacted a year's moratorium on development in the state's coastal area in June, 1970. The Task Force, composed of representatives of government, industry, university, private foundations, and conservation groups[2], found that it could not develop, by the end of the moratorium, its final report on the wise management of the state's coastal resources, including water management, provision of recreational opportunities, preservation of fish and

wildlife, protection of beaches and shorelines, mosquito control, and other aspects of the maintenance of environmental quality. However, in the face of the proposed developments at Smyrna by Shell Oil Corp. and in the mouth of the Mispillion River by Zapata-Norris Inc., the Task Force issued a preliminary report containing recommendations as how to cope with such threats.

Recommendations of Preliminary Report of the Governor's Task Force

In the report, the Task Force stressed the importance of coastal resources to the state, in particular its estuaries, wetlands, and recreational areas. Delaware is dominated by its relationship to the sea, having a shoreline of 160 miles in length with a land area of only 1,983 square miles with no part of the state more than about 8 miles from tidewater. The influence of the state's bays and rivers is particularly compelling in light of the state's lack of other significant topographic features or significant mineral resources.[3]

For the purpose of its recommendations, the Task Force defined the state's coastal zone as consisting of a water portion extending to the limit of the state's jurisdiction and a landward portion consisting of those areas lying below ten feet above mean sea level for the portion of the state lying above the Chesapeake and Delaware Canal; and those areas lying below ten feet above mean sea level or one mile inland, whichever is further inland for those areas lying below the Chesapeake and Delaware Canal. For the lands lying along the canal, the boundary would be one mile on each side; the canal itself would of course be included in the state's coastal zone. In addition, the Task Force recommended that a secondary coastal zone area be established consisting of all lands lying within the Atlantic Coast-Delaware Bay drainage

system that were not included in the basic definition of the coastal zone, in order to permit evaluation of the effects of all agricultural, domestic, and industrial discharges from such lands on the basic coastal zone area.[4]

The ten feet above mean sea level was chosen because the lands below this level are the ones on which most of the land-water interaction occurs and because of this level's correspondence to the height of one-hundred year tidal floods. While the Task Force recommended that this level be determined by surveying, it noted that the boundaries of the coastal zone area roughly coincided with the area bounded by certain coastal highways. (The Coastal Zone Act actually defines the coastal zone of the state using these highways as boundaries rather than height above sea level measurements.)

Recognizing the importance of the state's coastal resources, the Task Force recommended that no further heavy industry, such as steel mills, paper mills, and oil refineries, be allowed to locate in the state's coastal zone "since pollution and other adverse environmental and social effects, normally attendant upon such developments, present serious threats to the coastal environment, the natural resources of the bays, and the quality of life in Delaware."[5] In contrast, the Task Force encouraged the location in coastal areas of "new industries which are compatible with high environmental standards and which would employ a relatively high ratio of employees in relation to the space occupied and the public services required."[6]

In addition to recommending against further location of heavy industry in the state's coastal area, the Task Force recommended against the development of any deep water port facility or offshore island in lower Delaware Bay because:

> Any expected economic benefits to Delaware of the proposed location in the Bay appear to be more than offset by the considerable additional risk to the environment.
>
> Such a facility would encourage the development of incompatible heavy industry and accompanying urbanization along the shoreline.
>
> Such a facility requires major offshore structures, dredging, and filling of the Bay which constitutes a form of a heavy industry in itself.
>
> Such a facility would contribute a major risk of additional pollution in the Bay and along the shoreline with accompanying deleterious effect on the estuarine life.[7]

Instead, the Task Force urged consideration of the feasibility of developing port facilities on the continental shelf on a regional basis. Such facilities, it suggested, would be able to handle ships well beyond the capability of present port facilities without endangering coastal resources. Such facilities could also include terminals for the unloading of oil to be piped to refineries inshore.

Furthermore, the Task Force urged the establishment of the requirements of environmental impact statements for all proposed developments in the coastal zone similar to the "102 statements" on the federal level. Such impact statements, along with a permit system, were seen as comprising part of a system of land and water use controls for the state's coastal zone. Management of such a land use control system was seen to be best undertaken by the Department of Natural Resources and Environmental Control in conjunction with county and local governments.

Other recommendations of the Task Force urged the development of a contingency oil spill plan; development of increased recreational areas and facilities; acceleration of the acquisition of public lands in accordance with the 1970 Delaware Comprehensive Outdoor Recreation Plan;

establishment of a coastal zone interagency coordinating mechanism; and establishment of a coastal zone advisory council; using the present Governor's Council on Science and Technology as a base to be expanded upon. Such an advisory council would advise the governor and all pertinent state organizations on matters dealing with the management of the coastal zone after having obtained input from the academic, commercial, industrial, local government, private agency, and general public sectors. The Task Force also recommended the expansion of the state coastal research program, including the establishment of a marine science center under the direction of the University of Delaware's College of Marine Studies, and the undertaking of a comprehensive baseline study of the state's coastal waters. In conjunction with the latter study, the Task Force urged the establishment of a continuous monitoring system of physical and biological parameters pertinent to the state's regulatory activities.

Provisions of the Coastal Zone Act

The Coastal Zone Act passed by the Delaware state legislature focuses on the threat of continued industrial development as exemplified by the Smyrna and Zapata-Norris proposed developments; and its provisions deal with that problem specifically rather than the more general land use control approach advocated by the Governor's Task Force. This is not surprising since the year's moratorium on development in the coastal zone was to end June 30, 1971, two days after the legislation became law; the final report of the Task Force had not been completed; and the threat of at least two major developments was imminent. There is some question as to whether further legislation will be passed covering the remainder of the recommendations of the preliminary report of the Task Force and of the upcoming final report; thus completing the coastal zone program started by the passage of the Coastal Zone Act.

Nevertheless, the provisions of the Coastal Zone Act passed by the state legislature do show a concern about the state's coastal resources and recognition of the threat to such resources from industrial development. Such concern is expressed in the statement of the purpose of the Act:

> It is hereby determined that the coastal areas of Delaware are the most critical areas for the future of the State in terms of the quality of life in the State. It is, therefore, the declared public policy of the State of Delaware to control the location, extent and type of industrial development in Delaware's coastal areas. In so doing, the State can better protect the natural environment of its bay and coastal areas and safeguard their use primarily for recreation and tourism. Specifically, this chapter seeks to prohibit entirely the construction of new heavy industry in its coastal areas, which industry is determined to be incompatible with the protection of that natural environment in those areas. While it is the declared public policy of the State to encourage the introduction of new industry into Delaware, the protection of the environment, natural beauty and recreation potential of the State is also of great concern. In order to strike the correct balance between these two policies, careful planning based on a thorough understanding of Delaware's potential and her needs is required. Therefore, control of industrial development other than that of heavy industry in the Coastal Zone of Delaware through a permit system at the State level is called for. It is further determined that off-shore bulk product transfer facilities represent a significant danger of pollution to the Coastal Zone and generate pressure for the construction of industrial plants in the Coastal Zone, which construction is declared to be against public policy. For these reasons, prohibition against bulk product transfer facilities in the Coastal Zone is deemed imperative.[8]

As stated above, the coastal area was defined by using state highways and maintenance roads as boundaries on the landward side while using the state's territorial limits on the seaward side. The width of this area varies from about a mile at the Delaware-Pennsylvania line on

the Delaware River at the north to ten miles at the widest portion of Delaware Bay with its western border covering wetlands that extend up to five miles inland.[9]

In this coastal zone area, the Act bans all heavy industries and port or dock facilities not in existence at the time of passage of the Act and requires a permit for all other manufacturing uses or expansion of existing heavy industrial uses. Heavy industries were defined as those:

> involving more than twenty acres, and characteristically employing some but not necessarily all of such equipment such as, but not limited to, smoke stacks, tanks, distillation or reaction columns, chemical processing equipment, scrubbing towers, pickling equipment, and waste treatment lagoons; which industry, although conceivably operable without polluting the environment, has the potential to pollute when equipment malfunctions or human error occurs. Examples of heavy industry are oil refineries, basic steel manufacturing plants, basic cellulosic pulp paper mills, and chemical plants, such as petrochemical complexes. Generic examples of uses not included in the definition of "heavy industry" are such uses are garment factories, automobile assembly plants and jewelry and leather goods manufacturing establishments.[10]

Manufacturing uses were defined as those involving:

> the mechanical or chemical transformation of organic or inorganic substances into new products, characteristically using power driven machines and materials handling equipment, and including establishments engaged in assembling component parts of manufactured products, provided the new product is not a structure or other fixed improvement.[11]

Permit System Operation

The administration of the permit system for manufacturing uses is to be undertaken by the State Planning Office with appeals of decisions by the State Planner being considered by a State Coastal Zone Industrial Control Board created by the Act.

The Control Board is to be made up of ten members: five regular members, appointed, by the governor with the consent of the state senate,

from the residents of the state with no more than two members from any one of the state's three counties and no more than two members from the same political party; and five ex-officio members consisting of the Secretary of Natural Resources and Environmental Control, the Secretary of Community Affairs and Economic Development, and the chairmen of the planning commission of each county. The regular members are initially to be appointed on staggered terms and vacancies filled by appointments to five-year terms. The chairman of the Board is to be selected from these members by the governor and is to serve as such at the governor's pleasure. In reviewing permit applications both the State Planner and the Control Board are required to consider the following factors:

> (1) Environmental impact, including but not limited to, probable air and water pollution likely to be generated by the proposed use under normal operating conditions as well as during mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact of site preparation on drainage of the area in question, especially as it relates to flood control; impact of site preparation and facility operations on land erosion; effect of site preparation and facility operations on the quality and quantity of surface ground and sub-surface water resources, such as the use of water for processing, cooling, effluent removal, and other purposes; in addition, but not limited to, likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.
>
> (2) Economic effect, including number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and amount of tax revenues potentially accruing to state and local government.
>
> (3) Aesthetic effect, such as impact on scenic beauty of the surrounding area.
>
> (4) Number and type of supporting facilities required and the impact of such facilities on all factors listed in this subsection.

> (5) Effect on neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas, and effect on adjacent residential and agricultural areas.
>
> (6) County and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction.[12]

The permit system is to operate as follows: permit requests are to include (1) indication of approval of county and local officials, (2) an environmental impact statement, and (3) detailed description of the proposed manufacturing use, its construction and its operation. Upon receipt of such requests, the State Planner is to determine whether the proposed use is a prohibited industrial use, a manufacturing use allowed by permit only, or a use not covered by the Act. After a public hearing is held, the State Planner is to decide in 90 days to approve, deny, or approve with modifications the proposed project.

In making such decisions, the State Planner is to follow the regulations he has established with the approval of the Control Board. In addition, the State Planner is to develop a comprehensive plan and guidelines for the Control Board to follow regarding further definitions of acceptable manufacturing uses and banned heavy industrial uses, which will be binding on the Control Board's actions upon their adoption by the Board after a public hearing. The Board may later modify such guidelines and plans after consideration of the proposed changes in a public hearing.

Appeals Procedures

Once the State Planner has made a decision on a permit application, it is a function of the State Control Board to hear any appeals of his decision. All decisions made by the Board must be approved by a majority

of the Board. In cases where a member of the Board has a conflict of interest in a case, he is to disqualify himself from that decision.

Appeals to the Board may be made by any person aggrieved by a final decision of the State Planner within 14 days of the State Planner's decision. The Board is then required to hold a public hearing and render its decision within 60 days of the appeal request. In making such a decision, the Board has the authority to affirm or overrule the State Planner's classification of the proposed use and affirm, overrule, or modify the State Planner's decision on the permit per se.

In addition, appeals of the Board's decisions may be made by any aggrieved person, including the State Planner, to the Superior Court in the county in which the proposed use is located within 20 days of the Board's decision. The court may affirm, overrule, or modify the Board's decision but its rulings must be based on the record of proceedings of the Board and can only consider whether the Board abused its discretion in following the standards established for its action.

In a case where the Superior Court rules that a permit decision constitutes an unconstitutional taking-without-compensation, the Secretary of the Department of Natural Resources and Environmental Control is authorized to acquire the land in question or lesser interests therein by negotiation or condemnation within five years of the court's ruling. After such a time, a permit must be granted for the proposed use as if the use were not covered by the Act.

Violation Provisions

Regarding violations of the provisions of this Act, the state attorney general is authorized to issue cease-and-desist orders. Such an order is valid (1) for only 30 days after its issuance, (2) until withdrawn by the attorney general, or (3) until an injunction is granted by the courts, whichever should occur first.

The Act also provides that any person who violates any provision of the Act is to be fined not more than $50,000 for each offense. Each day an activity continues is considered to be a separate violation.

Commentary

Since this Act was only recently passed and has not withstood any court tests, no judgment can be made on its effectiveness. However, several comments can be made concerning its provisions and its viability as a coastal management mechanism. The provisions of the Act are addressed to the most immediate threat to the state's coastal zone - large industrial developments and additional port facilities. However, the broadness of the Act's provisions will be determined to some extent by the further definitions of the terms "heavy industrial use" and "manufacturing use" by the State Planning Office and the Coastal Zone Industrial Control Board. The heavy industries which are specifically mentioned in the Act are definitely banned from the coastal zone, but the position of some other types of industries with regard to the provisions of the Act is not yet clear. Furthermore, considerable discretion is left to the State Planning Office and the Control Board in further defining the types of industries that fall into each category: banned, permit needed, and not covered by the Act. Also, these two entities have considerable leeway in deciding how the permit system is to be implemented, what industries are to be allowed to locate under what conditions, what extensions present heavy industrial uses are to be allowed, etc. Obviously much of the effectiveness of the provisions of the Act will depend on the orientation and views of these two entities.

More important, many other types of developments, such as subdivision developments, commercial establishments, and intensive recreational

facilities, which also have a considerable impact on the coastal zone are not covered by the legislation. Unless further legislation establishes a control mechanism over these types of developments, the state's coastal resources will be threatened, in future years, by such developments to the same extent they are presently by heavy industrial complexes.

Moreover, the state has enacted no specific regulations regarding preservation of its wetlands, which comprise such a significant portion of its coastal resources. The state's 120,000 acres of tidal wetlands are not only important to the state but to the entire Atlantic coast as breeding grounds for commercial fishes and as feeding grounds for waterfowl, particularly migratory waterfowl using the Atlantic Flyway. These wetlands are being increasingly threatened by developments in the coastal zone. According to the Division of Fish and Wildlife, the state rate of loss of wetlands in recent years has been about 1 percent/year or about 1,200 acres/year.[13]

WETLANDS ACQUISITION

About 60,000 acres of the state's tidal wetlands are owned by state, federal, and private conservation groups[14] and the state proposes, in its comprehensive Outdoor Recreation Plan, that the state acquire an additional 26,700 acres by the year 2000. Yet further restrictions are required to preserve those areas the state wishes to purchase until they are able to do so and to regulate the use on others that the state cannot afford to purchase. The State Planning Office has designated large portions of the state's wetlands for conservation purposes on its Comprehensive Plan Map, but more specific measures regulating dredging and filling and construction of commercial and recreational developments in such areas are needed to provide adequate protection for such areas.

FURTHER COMMENTARY

To meet the threats to the state wetlands and to its coastal resources in general, the recommendations for land use controls outlined in the Preliminary Report of the Governor's Task Force will presumably be expanded in the Final Report with more detailed recommendations of the components of an effective land use system. The integration of the management of such an expanded land-use system, which will rely heavily on the resources of the Department of Natural Resources and Environmental Control, with the present industrial control mechanism, under the primary control of the State Planning Office, is a problem that will have to be confronted.

There is some question as to whether the State Planning Office has sufficient resources to administer the limited program. In reviewing the acceptability of the environmental impact statements required as a part of each permit application, the expertise of the Department of Natural Resources and Environmental Control should be utilized, but the Act makes no mention of requiring any such consultation by the State Planning Office before it makes its decision on a permit. Furthermore, the Act makes no mention of any appropriations with which to implement its provisions.

It should be noted that the State Planning Office was created in 1961 to act as the staff agency for planning matters in the Executive Department and that it has been designated as the agency to administer the funds from several federal programs including that of the Land and Water Conservation Fund. Nevertheless, the question remains as to whether these factors make it the appropriate agency to administer the Coastal Zone Act, particularly without mention of any consultation with the Department of Natural Resources.

With regard to coping with violations of the Act, the Act specifies that the cease-and-desist orders, which can only be issued by the state attorney general, are only good for a maximum of 30 days; in some cases, this amount of time might not be sufficient to secure an injunction if one is needed. In addition, no minimum fine is specified, opening the possibility of token fines for flagrant violators of the Act, although the high figure specified for the maximum allowable fine seems to indicate legislative intent that the violation provision of the Act is not to be so abused.

In summary, the Coastal Zone Act is a good first step to the establishment of a comprehensive coastal zone program for the State of Delaware, but by itself it will be clearly inadequate. However, Governor Peterson strongly backed this legislation based on the Preliminary Report of his Task Force and presumably will take action on the recommendations contained in the Task Force's Final Report. Other members of the state government share Governor Peterson's viewpoint. In the words of the Secretary of Natural Resources and Economic Development, Austin Heller, (spoken with respect to passage of the Coastal Zone Act):

> What we're really saying here is that we want our economic thrust to be compatible with our life style and our goals. The changes in degree of industrialization that these projects represent has to give us pause.[15]

Developments in the next few years will indicate whether this view will be embodied in a comprehensive coastal zone program for the State of Delaware or whether the Coastal Zone Act will provide only a temporary check on further encroachments on the state's coastal resources.

DELAWARE

FOOTNOTES

[1]A copy of this Act can be found in Appendix H.

[2]The exact composition of the Task Force was as follows: Special Assistant to Governor Peterson and Chairman of the Task Force, James H. Wakelin, Jr., Chairman of the Oceanic Foundation, Hawaii and Washington, D.C.; Robert W. Cairns, Vice-President, Hercules, Inc., Wilmington, Delaware; Thomas B. Evans, Jr., Thomas B. Evans and Associates, Wilmington, Delaware (resigned from the Task Force January 18, 1971); Nisson A. Finkelstein, President, ILC Industries, Dover, Delaware; William S. Gaither, Dean of the College of Marine Studies, University of Delaware, Newark, Delaware; Edmund H. Harvey, President, Delaware Wildlands, Inc., Wilmington, Delaware; Austin N. Heller, Secretary, Department of Natural Resources and Environmental Control, Dover, Delaware; Charles H. Mason III, Lewes Beach, Delaware; and Executive Secretary of the Task Force, Amos L. Lane, The Oceanic Foundation, Hawaii and Washington, D.C. [Source: Coastal Zone Management for Delaware, Preliminary Report of the Governor's Task Force on Marine and Coastal Affairs, (Dover, Delaware, February 18, 1971), p. iii].

[3]Coastal Zone Management for Delaware, p. 1-4.

[4]Ibid., p. 1-2 - 1-4.

[5]Ibid., p. 3-4.

[6]Ibid., p. 3-4.

[7]Ibid., p. 3-1.

[8]Coastal Zone Act, Act 175-1971, Section 1 [paragraph 7001].

[9]Donald Janson, "Delaware Bans Heavy Industry," New York Times, June 29, 1971, p. 1 et seq.

[10]Coastal Zone Act, Section 1 [paragraph 7002(e)].

[11]Ibid., Section 1 [paragraph 7002,(d)].

[12]Ibid., Section 1 [paragraph 7003(b)].

[13]Delaware Comprehensive Outdoor Recreation Plan, Delaware State Planning Office, (Dover, Delaware, October, 1970), p. 115.

[14]John O. Ludwigson, "Managing the Environment in the Coastal Zone," Environmental Reporter, Monograph No. 3, (Vol. 1, No. 1, May, 1970), p. 6.

[15]George Cantor, "Delaware Says No to Dirty Industry," (3rd of 4 articles of series "Pollution: The Cost of Control"), Detroit Free Press, August 31, 1971, p. 6A.

DELAWARE

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CHAPTER 9

WASHINGTON

COMPREHENSIVE SHORELINE MANAGEMENT PROGRAM

Background

On May 25, 1971, the state of Washington became the first state to enact legislation to establish a comprehensive program of shoreline management. While such legislation had been a priority item for several years for conservation groups, significant impetus for its passage was given by the ruling made by the Washington Supreme Court in the case of Wilbour v. Gallaher which effectively prohibited any construction or filling in or over any tidelands in the state.[1] In deciding that case, which involved the filling on lands on Lake Chelan which are covered by water only part of the year, the Supreme Court declared that "the public has the right to go where the navigable waters go even though the navigable waters lie over privately owned land" and that the defendent could not place fill in such an area so that the public access to the area was blocked during the time of year when water would normally cover the area.[2]

Thus, this ruling provided considerable motivation for previous opponents of shorelands management legislation to back some form of legislation which would allow some development along the shorelands of the state, and would, thus, nullify the impact of the court's ruling. However, due to the controversy over the form that such legislation should take, between development-oriented groups, desiring mainly legislative modifications of the court's ruling, and conservationist groups, notably the Washington Environmental Council, desiring strict regulation of development along the shores to preserve their natural, scenic, and

recreational qualities, the state legislature was unable to pass any shoreline management legislation during the 1970 session. The content of the legislation that was enacted in 1971--the Shoreline Management Act of 1971 (Act 286-1971, first extraordinary session)[3]--was the result of compromise between the desires of the opposing groups.

However, while the legislature was considering that act, the Washington Environmental Council conducted a successful initiative campaign to put a significantly stronger measure--Initiative 43--on the 1972 ballot to be voted on by the people in case the legislature did not enact comparable legislation. As a result, the voters of the state of Washington in the November, 1972, election will decide whether to replace the program authorized by the Shoreline Management Act with the stronger program embodied in Initiative 43. In the meantime, the provisions of the Shoreline Management Act will comprise the legal basis for shoreline management in the state of Washington. For this reason the provisions of the Act will first be discussed, then attention will be turned to the way in which the shoreline management program, authorized by that Act, would be strengthened by the adoption of Initiative 43.

Policy Framework and Coverage of the Shoreline Management Act

Section 2 of the Shoreline Management Act states the reason for passage of the Act and provides the policy framework in accordance with which the Act is to be implemented. For this reason it is quoted in full:

> The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The

legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of state-wide significance. The department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the state-wide interest over local interest;
(2) Preserve the natural character of the shoreline;
(3) Result in long term over short term benefit;
(4) Protect the resources and ecology of the shoreline;
(5) Increase public access to publicly owned areas of the shorelines;
(6) Increase recreational opportunities for the public in the shoreline;
(7) Provide for any other element as defined in section 11 of this 1971 act deemed appropriate or necessary.
[Note this paragraph applies only to shorelines of statewide significance.]

> In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. [underlines added]
>
> Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.[4]

In the implementation of this policy, primary responsibility is placed with the local governments with the advice and assistance of the Department of Ecology. The Department of Ecology is a new state agency established in 1970 by placing under its jurisdiction the programs dealing with water pollution control, water resources management, air pollution control, and solid waste management.[5]

The program outlined in the Act for shoreline protection divides the shorelines of the state into two categories: shorelines and shorelines of state-wide significance. The significance of the two categories is that, regarding the latter, stricter regulations are placed on developments, and the Department of Ecology is given more control of the development and implementation of the management program for them.

The legislation defines "shorelines" as:

> All of the water areas of the state including reservoirs and their associated wetlands together with the lands

> underlying them except (i) shorelines of state-wide significance (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.[6, 7]

The "shorelines of state-wide significance" for which additional protection is provided by the Act are to include: (a) all the area between the ordinary high water mark and the sea-ward boundary of the state's jurisdiction (three miles) along the Pacific coast including the Strait of Juan de Fuca and Puget Sound; (b) lakes of 1,000 or more acres in size at their ordinary high water mark, and (c) those portions of rivers west of the top of the Cascade Range downstream from where the mean annual flow is 1,000 cubic feet/second or more and east of the top of the Cascade Range downstream from where they are 200 cubic feet/second or more or downstream from the first three hundred square miles of drainage area, whichever is greater, and (d) their associated wetlands.[8]

The term "wetlands" as used in the Act is defined very comprehensively as:

> those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; and all marshes, bogs, swamps, floodways, river deltas, and floodplains associated with the streams, lakes, and tidal waters which are subject to the provisions of this act; [the location of which to be designated by the Department of Ecology][9]

Implementation of the Provisions of the Act

Development of Master Programs

The Act is to be implemented in the following manner. Within 120 days of the effective date of the act (June 1, 1971), the Department of Ecology is to issue guidelines for the local governments to follow

in developing master programs--comprehensive use plan--on which the implementation of the shoreline management program in their area is to be based and for standards to be followed while the master programs are being developed. The local governments then have 60 days to comment on the proposed guidelines and suggest possible changes. After receiving the comments and suggestions of the local governments, the Department of Ecology is to, within 120 days of the original issuance of the guidelines, resubmit final proposed guidelines. At this point (within 60 days of the resubmittal of the guidelines), public hearings are to be held, to allow interested public and private parties to comment on the proposed guidelines, in Olympia, the capital, and Spokane, the major city in the western part of the state. Then within 90 days of the public hearings, the final form of the guidelines is to be approved at a public hearing in Olympia.

With respect to the master programs on which the implementation of the program is to be based, the local governments have eighteen months to develop them along with a comprehensive inventory of their shorelines. Such an inventory is to include, but not limited to, a survey of the general national characteristics of the lands, general ownership patterns, present uses of such lands, and projected uses for them.

The Department is to accept the proposed master program unless it determines that portions of the programs are not in accordance with the guidelines that had been established or with the policy stated in Section 2 of the Act. The local governments have 90 days after being informed, in writing, of such discrepancies to correct their master plans and resubmit them to the Department for its approval. Before the master plans are finally approved by the Department and, thus,

become effective, public hearings are to be held in each county containing shorelines covered by the master plan in question.

Regarding the parts of any master programs relating to shorelines of state-wide significance, the Department has the authority to reject a proposed program in toto and submit an alternative to the local government which must accept it as the final program, unless it can prove that such a program is not in accordance with the policy expressed in Section 2 and the accepted guidelines for development of the program. If the Department suggests modifications of such proposed programs (for shorelines of state-wide significance) the local governments have 90 days to change their proposed programs in accordance with such modifications and resubmit them to the department.

In the case of a local government not submitting a master plan within the time prescribed, the Department shall develop the master plan. However, the local government has the option of later developing a master plan in accordance with the provisions of the Act. In such a case, that plan would supersede the master program developed by the Department. In addition, local governments are authorized to submit their programs in segments in order to provide protection as soon as possible for seriously threatened areas. Also, the Department of Ecology may designate the shorelines in two or more adjacent local government jurisdictions as a region and require them to cooperate in developing their master plans.

The Act further sets the following guidelines for the development of the master plans:

> ...In preparing the master program, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shoreline of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education,

> public buildings and grounds, and other categories of public and private uses of the land;
>
> (f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;
>
> (g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values; and
>
> (h) Any other element deemed appropriate or necessary to effectuate the policy of this act.
>
> (3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.
>
> (4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.[10]

Variances and changes in such master plans are only to be made in extraordinary circumstances and if no significant adverse effect will occur to the public interest. All such changes are subject to approval by the Department of Ecology.

Permit System

Once adopted, these master plans are to form, along with the policy statement in Section 2 of the Act, the basis for a permit system to be administered exclusively by the local governments in accordance with rules established by the Department of Ecology to control developments in the shorelines area. While these master programs are being developed, the local governments are to use the policy statement in Section 2 and the guidelines for developing the master programs, once they have been approved, as the basis for deciding whether to grant permits and whether a development is consistent with the provisions of the Act.

As with the shorelines of the state, the Act divides the developments occurring on them into two categories:

> (d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;
>
> (e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds one thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the following shall not be considered substantial developments for the purpose of this chapter:
>
> (i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements;
>
> (ii) Construction of the normal protective bulkhead common to single family residences;
>
> (iii) Emergency construction necessary to protect property from damage by the elements;
>
> (iv) Construction of a barn or similar agricultural structures on wetlands;
>
> (v) Construction or modification of navigational aids such as channel markers and anchor buoys;
>
> (vi) Construction on wetlands by an owner, lessee or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter.[11]

As has been indicated above, no development is to be allowed on the shorelines of the state which is not consistent with the policy expressed in the Act or with the guidelines and master programs as they are developed. The permit system referred to above is to be used to regulate substantial developments only.

In addition, surface drilling for oil or gas is specifically prohibited in Puget Sound and in the Strait of Juan de Fuca and on all lands bordering these waters within 1,000 feet of the ordinary high water mark. With regard to timber lying on shorelines of state-wide significance within 200 feet of the ordinary high water mark, the cutting of such timber is to be regulated so that no more than 30 percent of the merchantable trees are cut within any ten-year period except where conditions make such selective cutting ecologically unwise or where such cutting is incidental to pursuing developments allowed under the Act.

Permits may be revoked by the local governments if the conditions of the permit are not followed. (The Department of Ecology may take action to have a permit revoked in the same manner that it may appeal the issuance of permits as described below.)

Appeals Procedures

The Department of Ecology does have indirect review powers over the permit system administered by the local governments in that they may appeal to the Shorelines Hearings Board[12] within 30 days of the issuance of a permit during the period when the master plans are being developed or within 45 days after the master plans have been adopted[13] if they believe that the issuance of the permit is not in accordance with the provisions of the Act.

To allow for an effective appeals procedure, all rulings on permit applications are required to be filed with the state attorney general and the Department of Ecology and to be subject to public notice procedures at the same time as the applicant is informed of the decision. The Act provides that no development may be begun within 45 days after

the issuance of the permit or until review proceedings have been completed if such proceedings are started within 45 days of the permit's issuance.

Under the provisions of the Act any person feeling aggrieved by a decision on a permit application may appeal by writing to the Shorelines Appeals Board and notifying the Department of Ecology and the attorney general of the reasons for their appeal. If either the department or the attorney general believe that such a person has valid reason for appealing, the permit decision will be reviewed by the Hearings Appeals Board; otherwise no review will be undertaken. Both the Department and the attorney general were granted the authority to intervene in such cases to protect the public interest and assure compliance with the act.

The local governments are also given the right to appeal to the Shorelands Appeals Board the decision of the Department regarding any rules, regulations, guidelines or master plans for the shorelines of the state within 30 days of the department's action. The Shorelines Appeals Board is made up of six members: the three members of the Pollution Control Board,[14] the State Land Commissioner or his designee, one member appointed by the Association of Washington Cities, and one by the Association of County Commissioners.

In appeals concerning permit applications, the burden of proof is on the entity requesting the review since the permit applicant has the burden of proof at the time of the original application to show that his proposed development is in compliance with the provisions of the Act.

Court review of permit decisions or the establishment of rules, regulations, guidelines, and master programs is also allowed by the Act

except that local government must first use the Appeals Board procedure and must request court review within three months of the board's decision.

Enforcement Provisions

Enforcement of the Act is to be undertaken by the state attorney general and the attorney general of the local government who are empowered to seek injunctive, declarative or other such court relief. Besides such civil liability as may arise by such action on the part of an attorney general, persons who are found to have willfully violated the provisions of the Act are subject to a fine of not less than $25 nor more than $1,000, or 90 days in jail or both; for three or more violations in a five-year period, the fines are to be increased to not less than $300 nor more than $10,000.

In addition, violators of the provisions of the Act are liable for all damage done to private or public property, including the cost of restoration of such property to its original condition. In the case of such damages, private individuals are allowed to sue for damages on their own behalf and that of all persons similarly affected, in addition to the state or local attorney general suing on behalf of the state and the local government. In the case that liability has been established for restoration of an area, the court is to require that restoration be made within a certain length of time. The court may award, at its discretion, attorney's fees and court costs to the winner of the suit.

Controls over Development of Lands Adjacent to Shorelines Areas

In order to mollify the effects of developments on lands adjacent to shoreline areas, the Act requires all levels of government to review their ordinances, regulations, administrative and management policies,

and plans regarding such lands in order to assure the use of such land in a manner consistent with the policy embodied in the Act and the guidelines and master plans established under it. The Department of Ecology is authorized to make recommendations which the local governments shall take into account in developing their regulations for the use of such lands.

Funding

To implement the shorelines program, the state legislature appropriated $500,000 (or as much of this sum as is needed), a portion of which to be distributed to local governments on the basis of applications for the preparation of their master programs. However, such grants to local governments are limited to 50 percent of the cost of developing such programs.

INITIATIVE 43

Background

The purpose of the initiative campaign, conducted by the Washington Environmental Council, to put Initiative 43 on the ballot, was to assure that the voters of the state of Washington would have a chance to enact a strong shoreland management Act in case the program approved by the state legislature was not sufficiently comprehensive. It was hoped that the state legislature would adopt the Initiative's provisions for the act it was considering; but as related above, the final form of the Shoreline Management Act was the product of a compromise between development and conservation interests. As a result, the Council has decided to press for passage of Initiative 43 and, thus, for a stricter, more comprehensive system of regulations than the Shorelines Management Act contains.[15]

Policy Framework and Coverage of Initiative 43

The principal differences between Initiative 43 and the Shoreline Management Act are that Initiative 43 places primary reliance for development and administration of the shorelines management program with the Department of Ecology, makes no distinction between shorelines and shorelines of state-wide significance, provides for greater citizen participation in the development and enforcement of the management program, and puts greater restrictions on developments including timber cutting and oil drilling.

The statement of policy in Section 2 of the Initiative is similar to that of the Shoreline Management Act, it is more conservationist oriented:

> The people of the state of Washington hereby find and declare:
>
> (1) That the saltwater and freshwater shoreline areas of this state are held in public trust for all the people of the state and their descendents; and that they are a valuable and endangered natural resource;
>
> (2) That the present pattern of haphazard, inappropriate and uncoordinated development of the shoreline is:
>
> (a) Threatening the public health, safety, welfare, comfort and convenience;
>
> (b) Diminishing the values of the shorelines held in trust;
>
> (c) Destroying the ecological balance of plant and animal communities;
>
> (d) Reducing open space available for public recreation and esthetic enjoyment;
>
> (e) Diminishing the capacity of lands and waters to produce food;
>
> (f) Diminishing public access to publicly owned shoreline areas;

(g) Obstructing the view of the shorelines;

(h) Increasing air, water, solid waste, noise, visual and other pollution;

(i) Preventing the existence and development of properly situated and designed commercial and industrial developments requiring location in the shoreline area;

(j) Reducing present and future job opportunities for the people of this state;

(k) Limiting public navigation;

(l) Reducing the value of private property;

(m) Reducing the attractiveness of the state to tourists, thereby jeopardizing an important state industry.

(3) That the adoption, implementation, and enforcement of a comprehensive plan for shorelines will have a significantly beneficial effect on the preservation and development of shorelines for the public good.

(4) That for the public health, safety, welfare, comfort and convenience, it shall be the policy of the state to develop, establish and implement a comprehensive planning and permit system for the shorelines of the state of Washington to accomplish the following goals:

(a) Protection of the natural resources and natural beauty of the shoreline areas;

(b) Provision of appropriate locations for aquaculture and for commercial and industrial developments requiring location on the shoreline;

(c) Protection of the public's right to an unpolluted and tranquil environment;

(d) Provision for and protection of public access to publicly owned shoreline areas;

(e) Minimization of interference with view rights;

(f) Regulation of signs and illumination in the shoreline areas;

(g) Minimization of interference with the public's right to navigation and outdoor recreational opportunities;

(h) Protection and development of the capacity of the shoreline areas for the production of food resources;

(i) Conservation and enhancement of the natural growth of fish and wildlife;

(j) Preservation of areas of historic, cultural, scientific, and educational importance;

(k) Regulation of access to and traffic in the shoreline areas by motor vehicles and motor craft;

(l) Fulfillment of the responsibilities of each generation as the trustee of the shoreline areas for succeeding generations;

(5) That in planning for and in guiding the changing environments of the shoreline area it shall be the policy of the state to give preference to:

(a) Long term benefits over short term benefits;

(b) Statewide or regional interests over local interests;

(c) Natural environments over man-made environments;

(d) The location of industrial and commercial facilities in existing developed industrial or commercial areas over their location in undeveloped, rural or residential areas of the shoreline in order that as great a portion of the shorelines as possible may remain in a natural and nonintensively used condition and that existing commercial and industrial areas may be grouped, renewed, and restored.[16]

Under the provisions of Initiative 43, all of the shorelines of the state would be equally protected and the land area included in the definition of shorelines would be 500 feet from the ordinary high water mark rather than 200 feet. Only shoreline areas of lakes less than twenty acres in size at all times of the year and those of rivers upstream of the point of navigability for public use as determined by the Department of Ecology would be excluded from the shorelands management program to be developed by the Department of Ecology under the provisions of Initiative 43.

Even those shoreline areas would eventually be protected since the policy stated in Section 2 of the Initiative requires the cities

and counties, who have jurisdiction over such shoreline areas, to develop within 36 months of the Initiative's approval, management programs for such areas. Such programs must be approved by the Department of Ecology which is authorized to require changes or modifications in such programs to make them consistent with the policy stated in Section 2. If a city or county does not take action regarding such shoreline areas within 48 months, the Department is to develop the management program for the shoreline areas in question.

Implementation of the Provisions of Initiative 43

Development of the Comprehensive Plan

As stated above, the Department of Ecology is given the primary responsibility for developing the comprehensive plan on which the management program outlined in the initiative is to be based. Cities and counties are allowed to submit plans for the shoreline areas, under their jurisdiction, to the Department for inclusion in the overall comprehensive plan but the Department has the ultimate authority over the composition of the plan.

Rather than the vague references for encouragement of public involvement in the development of programs and the provisions for public hearings after the guidelines and master plans have been put into proposed final form contained in the Shoreline Management Act, Initiative 43 makes explicit provision for active public participation in the development of the comprehensive plan. The state is to be divided into seven or more regions based on river basins and similar geographical factors, and a citizens council is to be appointed for each region. The make-up of these councils shall be as follows: more than 30 members, including two members of the legislative body of each county of the region which has a county executive, the mayor of the largest city in the region, the mayors

of each city of over 10,000 people, and sufficient citizen members who do not hold office in and are not employed by either city or county governments to form a majority of the members of the council. These citizen members are to be appointed by the Governor from the voters of the state and at least 1/10 of them are to be from outside the region to represent state-wide interests in the shorelines of the region. The chairman and vice-chairman of the council are to be appointed by the Governor from among the citizen members of the council. In addition, the councils may appoint such additional committees as are necessary to allow them to adequately carry out their function. These councils are to advise the department of the preparation of the comprehensive plans for their regions.

Once the portion of the comprehensive plan pertaining to a particular region has been developed, a public hearing is required to be held on it in that region. After such a hearing, the plan shall be adopted if a majority of the Ecological Commission, the seven-member commission set up to advise the Department of Ecology, approves it. The members of the Ecological Commission are appointed by the Governor for staggered four-year terms subject to the following stipulations: one member is to be a representative of organized labor, one the business community, one the agricultural community, and from the general public. In addition, the directors of the state agencies are authorized to attend all meetings of the Commission and put forth their views on all proposed orders, regulations, and recommendations. The power of the Commission over the activities is unclear. Although it is regarded as advisory in nature, all rules and regulations proposed by the Director of the Department must be submitted to him. Further, the stature creating the Department of Ecology states that proposed rules and regulations

will be adopted unless five members of the commission disapprove of them but does not say what happens if the five members do express their disapproval.[17]

Permit Program

As with the master programs of the Shorelines Management Act, the comprehensive plan required by Initiative 43 is to be the basis for a permit system, along with the statement of policy in Section 2 of the initiative. Permits are to be required for all developments not just for substantial developments. However, owners of shoreline property as of the effective date of the act are allowed to build single family residences above the high water mark for their own use or their families' without a permit.

A "development" is defined in Initiative 43 as:

> the division of land after the effective date of this act into two or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease or transfer; and the following projects commenced or altered after the effective date of this fact for which either the fair market value or cost, including the cost of surveying and engineering, is in excess of $100 in any one-year period: draining, dredging, excavating, removing of soil, mud, sand, stones or gravel, dumping, filling or depositing of any soil, mud, sand, stones, gravel, manufactured items or rubbish, driving of pilings or placing of obstructions, commercial boring, drilling, testing or exploring for any minerals, including oil and/or gas, the logging or cutting of timber for commercial purposes, the erecting or exterior alteration of a structure of any kind, or any combination of the foregoing.[18]

And "substantial development" is defined as:

> the division of ten or more acres of land after the effective date of this act into two or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease or transfer, and any development as defined in subsection (15) herein for which either the fair market value or cost, including the cost of surveying and engineering, is in excess of $50,000 in any one-year period.[19]

The reason for the distinction between the two types of developments is that the Department is allowed to delegate its authority over "developments" to city or county governments, but it must retain full authority over "substantial developments."

As stated above, the Initiative provides stricter control over oil drilling, allowing no extraction of oil from Puget Sound; thus, eliminating the possibility of slant drilling, whereas the Shorelines Management Act only prohibited direct drilling in the Puget Sound area. Likewise, Initiative 43 invokes stricter controls over timber cutting, allowing only cutting procedures that would open the forest canopy no more than an area whose diameter is equal the average height of the surrounding trees.

Initiative 43 would also provide consumer protection for potential buyers of shorelines land by requiring sellers of such land to make known to potential buyers that the land was subject to the provisions of the initiative and that there were, therefore, restrictions on what could be done on the land.

Appeals and Enforcement Procedures

Regarding appeal procedures, Initiative 43 designates the Pollution Control Board as the reviewing authority rather than create a new authority as the Shorelines Management Act does. Initiative 43, like the Shorelines Management Act, allows appeals of decisions to the Superior Courts.

As in the enforcement of the Shorelines Management Act, the provisions of the Initiative delegate to the state attorney general the authority to bring court action to enforce the provisions of the Initiative. However, if a citizen requests the attorney general to bring suit and he does not act, the citizen is allowed to sue to enforce the Initiative's provisions. If he wins, his attorney fees shall be paid;

one-half by the defendent and one-half by the state. If the court finds that such a suit was brought without reasonable cause, the citizen shall pay the defendent's attorney fees. With regard to suits for damages, Initiative 43's provisions are similar to that of the Shoreline Management Act, allowing private citizens to initiate suits in their own behalf as well as suits by state attorney general or the local government attorney on the state's or local government's behalf. With regard to civil penalties, Initiative 43 does not require willfulness on the part of the violator and raises the lower limit of the fine from $25 to $50 keeping upper limit at $1,000. Each violation is to be considered a separate offense; and in the case of continuing violations, each day the violation is continued is to be a separate offense. Furthermore, if a citizen is forced to bring suit, due to inaction on the part of the state attorney general or the local government attorney, he will collect any fines arising as a result of the suit rather than having them go to the general fund of the state or the county.

Funding

Initiative 43 would increase the funding of the Department's implementation to not only $500,000 for the fiscal biennium when the act becomes effective but also $900,000 for the next biennium. Moreover, it authorizes the setting of fees to cover the costs of processing permit applications.

Commentary

By providing direct implementation of the management program by the Department of Ecology, Initiative 43 lessens the danger of economically-oriented permit decisions present under the Shorelines Management Act with its emphasis on local governmental authority over management of

the program. Moreover, by requiring permits for all developments, the likelihood of unacceptable developments occurring is decreased. (Under the Shorelines Management Act, no permits were required for ordinary developments; thus, a person could undertake such developments subject only to the general guidelines of the act and the threat of possible eventual court action.) Furthermore, by allowing private citizens to enforce the provisions of the initiative if the state or local authorities don't act, the chances for energetic enforcement of its provisions are enhanced.

By providing for a state-wide comprehensive plan with regional inputs rather than a collection of local plans, albeit with the same general guidelines, Initiative 43 is more likely to promote the development of a compatible, uniformly developed plan. Under the Shorelines Management Act, there is the danger that some local communities will be unable to develop sufficiently detailed master programs (especially given the extensive requirements for such plans that were outlined earlier); thus, leaving gaps in the state-wide plans and delays of several years until their shoreline areas can be covered by action on the part of the Department of Ecology.

In conclusion, while both the Shorelines Management Act and Initiative 43 are substantial steps forward toward effective shorelines management, the program embodied in the latter is more likely to provide direct effective management of all the state's shorelines.

THERMAL POWER PLANT SITING ACT OF 1970

Neither the Shorelines Management Act nor Initiative 43 require permits for the construction of thermal power plants because that type of development already had been regulated by the Thermal Power Plant

Siting Act of 1970.[18] That Act was passed in recognition of the need to provide for increased power generation while protecting the public safety and preserving the quality of the environment. However, its coverage was limited to all types of thermal power plants; hydro-electric power plants were excluded from coverage by its provisions.

Thermal Power Plant Site Evaluation Council

The Act established a Thermal Power Plant Site Evaluation Council consisting of the directors or their designees of the following state agencies: Water Pollution Control Commission,[20] Department of Water Resources,[20] Department of Fisheries, Department of Game, State Air Pollution Control Board,[20] Department of Parks and Recreation, Department of Health, Interagency Committee for Outdoor Recreation, Department of Commerce and Economic Development, Utilities and Transportation Commission, Office of Program Planning and Fiscal Management, Department of Natural Resources, Planning and Community Affairs Agency, Department of Civil Defense, and Department of Agriculture. In addition, a representative of the county legislative authority, in each county where a thermal plant is proposed, is to be appointed to take part in the Council's deliberations when it is considering a plant in his county.

To enable it to carry out its functions, the Council was given the normal power to appoint staff; adopt operating procedures; adopt, amend, or rescind rules and regulations; to carry out the provisions of the Act; to contract for independent studies; to conduct hearings; and submit its recommendations to the Governor for his approval or disapproval.

In order to assure that the spirit of the Act would be adhered to, the Act mandated the Council, as its first function, "to develop and

apply typical environmental and ecological guidelines in relation to the type, design and location of thermal power plant sites and associated transmission line routes."[21] A copy of the general guidelines adopted by the ouncil to fulfill this mandate can be found in Appendix I.

Site Review Procedure

For the actual review of a site by the Council, the Act prescribed the following procedure. Anyone wishing to construct a stationary power plant, after February 23, 1970, with a generating capacity of at least two hundred fifty thousand kilowatts or a floating thermal power plant of at least fifty thousand kilowatts is required to apply for certification of the plant's site and its proposed operating procedure. Such applications are to be accompanied by a fee of $25,000 to pay for an independent study by a consultant of the environmental impact of the plant at the proposed site.

In order to assure that the public interest will be considered in the Council's deliberations on the application, the state attorney general is mandated to appoint an assistant attorney general, or a special assistant attorney general, to act as counsel for the environment for the duration of the Council's deliberations.

Within 60 days after it has received an application, the Council must hold a public hearing in the county in which the site is located, at a place as close as practical to the proposed site, in order to determine whether the proposed site is consistent and in compliance with county or regional land use plans and zoning ordinances. Although Initiative 43 and the Shorelines Management Act do not require permits for the construction of thermal power plants, this requirement would seem to imply that the siting of thermal power plants has to be compatible with the comprehensive plan or the master programs required respectively by those acts.

The Council is to hold at least one additional public hearing at which any proponents or opponents of the proposed siting can present their views for the record. Within twelve months after such hearings (or at a later date mutually agreed upon by the Council and the applicant), the Council is to make its recommendations to the Governor who has 60 days to approve or reject the Council's certification of an application. Neither the Act nor the general guidelines established by the Act give any indication of how disagreements among the council's members concerning approval of an application or the requirements to be embodied in a certification are to be settled. The method that is decided upon will have some input on the results of the decision made. Emphasizing consensus on a decision will result in more compromises than agreement to abide by majority vote. However, the requirements embodied in the Act and in the general guidelines for a successful application limit the areas in which disagreements can occur.

The denial of certification by the Governor is final subject only to normal court review. It is unclear from the provisions of the Act whether or not the Governor can approve the certification of a plant in the face of a negative recommendation on the part of the Council.

Certification of an application by the Governor binds the state and all of its departments, agencies, bureaus, etc., to the approval of the site and the construction and operation of the proposed thermal power plant and any associated transmission lines. The issuance of the certification is to be in lieu of any permit, certificate, etc., required by any state agency, department, bureau, etc. Such certification may be revoked if the applicant has made untrue statements in his application in supplemental statements of fact regarding the application when the

true answer would have resulted in refusal of the application, if the terms of the certification are not lived up to, or if other provisions of the Act or regulations of the Council are violated. As provided by the general guidelines set up by the Council, development of operating procedures to meet and agreement to comply with the air and water quality standards prescribed by the Department of Ecology are prerequisites to successful application for certification from the Council.

Enforcement Provisions

The provisions of the Act are to be enforced by the state attorney general or the prosecuting attorney of any county affected by the violation. A willful violation of the provisions of the act is to be considered a gross misdemeanor subject to criminal prosecution. In addition, civil penalties of a minimum of $1,000 per day and a maximum of $25,000 per day may be invoked for material violation of the provision of the Act or any certification issued under it. Injunctive relief and restraining orders are also available as possible mechanisms to assure the provisions of the Act are respected.

Commentary

This legislation seems to provide the mechanisms to fulfill its purpose, namely, to provide electric power to meet the state's demands while giving prime consideration to preserving the quality of the environment and to protecting the public safety. It provides for public input through its hearing procedures, contains a mechanism for funding studies of the appropriateness of proposed sites, and includes a fairly strict enforcement procedure, although there is no provision for citizen initiated measures as are contained in Initiative 43. It does not, however, consider the broader implications of the problems; namely, the inherent

increased impact on the shorelines as greater and greater amounts of electrical energy are produced and whether steps should be taken to reduce the demand for electrical energy rather than continuing to keep up with the increases in it.

It also would be better if the Act explicitly required strict compliance with state air and water quality standards rather than implicitly requiring such a provision in the general guidelines established by the Council.

Moreover, for the Act's measures regarding the selection of sites for electrical power plants to be completely effective, a comprehensive land use plan is needed of all areas which are potentially suitable for power plant sites; because, inevitably, the decision on the feasibility of a site for power production purposes is somewhat dependent on the availability of other sites for power production and for potential uses of the site which would be precluded by its use for power production. The provisions of the Shorelines Management Act and Initiative 43 will hopefully fulfill this requirement regarding the most seriously threatened areas, the shorelines; but comprehensive plans covering potential inland sites are also needed to completely satisfy this requirement.

Finally, while the provisions of the Act are environmentally-oriented, the members of the Council, at least by function, are not necessarily so (especially since three of the environmentally-concerned agencies originally represented on the council have been combined into the Department of Ecology). Effective enforcement of the Act will, thus, depend on the perceptions of the individuals who comprise the Council and the political and social climate (including the concern expressed by the general public) in which they make their decisions.

OTHER LEGISLATION[22]

The state legislature also passed several other bills during its 1971 session which will have a bearing, at least indirectly, on shorelands management. HB622 established a minimal fund for cleaning up oil spills and authorized the Department of Ecology to regulate the times, places, and methods of transferring oil. HB865 established a state land planning commission consisting of eight legislative and eleven citizen members which is to employ a consultant such as Ian McHarg to run a pilot project and to report to the state legislature in 1973 on the feasibility of establishing a state-wide land use data bank. Sufficient funding was appropriated to allow the commission to carry out its mandate in an effective manner. Use of such a data bank could lead to control of land uses which are conducted outside the shorelines of the state but which, without such control, would adversely affect shoreline areas.

Another bill, SB314, mandates the Department of Natural Resources (which is charged with managing the use of state-owned lands) to use multiple use management on its lands; to set aside a limited amount of acreage for the study of natural systems; and to include, in its land use data bank, information that will be of use in making future policy decisions. Finally, SB645 established a requirement for environmental impact statements on the state level similar to that for 102 statements on the federal level.

WASHINGTON

FOOTNOTES

[1]Dorothy C. Morrel, The Seacoast Management Act: A Legislative History (Washington Environmental Council, March 1, 1970).

[2]Wilbour v. Gallaher, 462 P. 2d 232 (1970).

[3]Copies of this act, Initiative 43, and the Thermal Plant Siting Act of 1970 will be found in Appendix I.

[4]The Shorelands Management Act of 1971 (Act 286-1971, 1st extraordinary session), Section 2.

[5]The document, Managing the Environment: Nine States Look for New Answers (Elizabeth Haskell, Project Director), describes this reorganization and the powers given to the Department of Ecology in considerable detail.

[6]The Shorelines Management Act of 1971, Section 3(d).

[7]The bill as sent to the Governor explicitly included the lands administered by the Department of Natural Resources under its coverage with the Department of Natural Resources subject to the same provision as the local governments. However, Governor Evans vetoed this section when he signed the bill into law.

[8]The Shorelines Management Act of 1971, Section 3(e), 2(e).

[9]Ibid., Section 3, 2(f).

[10]Ibid., Section 10.

[11]Ibid., Section 3(d, e).

[12]The terms "Shorelines Hearing Board" and "Shorelines Appeals Board" appear to be used interchangeably in the act.

[13]There is some ambiguity about the duration of the period in which appeals are to be allowed. Section 14 (2a) specifies 30 days while the master programs are being developed, while Section 18 (2) specifies 45 days as a general right of the department regarding permit appeals.

[14]The Pollution Control Board was set up to adjudicate disputes in the administration of the pollution control programs. All of its three members are appointed by the Governor with the advice and consent of the state senate. One of them must be a lawyer, and two of them can't be of the same political party as the Governor.

[15]Letter of May 25, 1971, to members of the Washington Environmental Council's Salt Water and Beaches Committee from Dorothy C. Morrell, Chairman.

[16]Initiative 43 (The Shorelines Protection Act), Section 2.

[17]Elizabeth Haskell (Project Director), Managing the Environment: Nine States Look for New Answers, pp. 176-178.

[18]Ibid., Section 3, Paragraph (15).

[19]Ibid., Section 3, Paragraph (16).

[20]As mentioned above, these three agencies along with the Division of Solid Wastes Management were consolidated to form the Department of Ecology in 1970.

[21]Thermal Power Plants Siting Act (Act 45-1970), Section 5.

[22]The letter of May 21, 1971, to members of the Washington Environmental Council's Salt Water and Beaches Committee from Dorothy C. Morrell, Chairman, was used as the basic reference for this section.

WASHINGTON

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d. Will Initiative 43 Inhibit Economic Development?

Wilbour v. Gallaher, 462 Pac 2nd 232 (1970).

CHAPTER 10

RHODE ISLAND

COASTAL ZONE MANAGEMENT

History of the Passage of the Coastal Management Council Act[1]

In July 14, 1971, Rhode Island became the second state[2] to pass comprehensive coastal zone legislation by enacting H2440 (Alternative B), The Coast Management Council Act (Act 279-1971).[3]

This act had its origins in the appointment of a Technical Committee[4] by Governor Licht on April 7, 1969, to study possible mechanisms for managing the state's coastal zone. The appointment of this committee had been spurred by a report by the Natural Resources Group, an organization of private, interested citizens, which clearly documented the lack of an adequate management policy and the clear threat to the state's coastal resources. By March, 1970, the Technical Committee had completed its report which summarized the present involvement of the state, local, and federal governments with the state's coastal zone; the resources that were to be found in the zone; the threats to those resources from pollution and other sources; and the conflicts that existed between various uses of the coastal zone. To resolve such conflicts and to provide protection for the state's coastal resources, the Technical Committee recommended that the Rhode Island General Assembly establish a Coastal Zone Council composed of four ex-officio members; the Directors of the state Departments of Natural Resources, Health, and Community Affairs; the Executive Director of the Rhode Island Development Council; seven citizen members of which two members were to represent environmental interests; two, coastal interests; two, commercial interests; one, research or educational

interests; and two, local government interests. The council would also be charged with developing a comprehensive plan on which to base its management policies.

Legislation based on the Technical Committee's recommendations was introduced in the 1970 state legislature session but not passed because of opposition to the bill's emphasis on state, rather than local government, management of the coastal zone.

After the 1970 session had ended, Governor Licht requested that the Technical Committee study further possible mechanisms for coastal zone management and enlarged the council to include representatives of coastal cities and towns, the General Assembly, and twelve private and public agencies. It was the recommendation of this enlarged committee that formed the basis of the coastal zone legislation enacted into law during the 1971 legislative session.

Previous Wetlands Acts

It should be mentioned at this point that Rhode Island had enacted two pieces of wetlands preservation legislation in 1965, an Intertidal Salt Marsh Act (Act 26-1965) and a Coastal Wetlands Act (Act 140-1965). Both were based on Article 1, Section 17 of the state constitution which guarantees the "free right of fishery" and the recognition of the value of the salt marshes for fish sustenance, flood alleviation, and aesthetic enjoyment.

The Intertidal Salt Marsh Act

The Intertidal Salt Marsh Act prohibited the dumping of mud, dirt, or rubbish in a salt marsh or disturbing the ecology of the marsh by excavating without obtaining a permit from the Department of Natural Resources. The Director of Natural Resources was directed to refuse a

permit application if he judged that the ecology of the intertidal salt marshes would be disturbed by the proposed action. The act provided for a fine of $500 for each violation of its provisions with half of such a fine going to the state and half to the complainant; a fine of $50 for each day a cease and desist order of the Department of Natural Resources is not complied with; and the restoration of a disturbed marsh to the extent practical by the violator upon complaint of the Director of the Department of Natural Resources. The existence of an intertidal salt marsh was to be determined by the presence of certain types of vegetation and salt marsh peat.[5]

The Coastal Wetlands Act

The Coastal Wetlands Act allowed the Director of Natural Resources to issue orders restricting the uses allowed on coastal wetlands. These orders are to be recorded on the deeds of such property. A coastal wetland was defined as a salt marsh and such contiguous uplands up to fifty yards from the salt marsh as were considered necessary to protect the marsh. A salt marsh was defined somewhat more liberally than in the intertidal Coastal Marsh Act, as any area on which grew some of an extended list of different types of vegetation or on which salt peat marsh was found.

However, implementation of this act was greatly inhibited by a provision whereby any landowner who thought that he had suffered damages by the issuance of such an order could recover compensation by filing with the Superior Court within two years of the recording of such an order on his deed. This latter restriction and the fact that the Intertidal Salt Marsh Act applied only to salt marshes, strictly defined, left the state's

coastal lands inadequately protected and provided added impetus to the need for more comprehensive legislation.

Wetlands Acquisition

The Department of Natural Resources has made limited acquisitions of salt marshes and plans to make more as funds become available.[6]

Importance of Coastal Resources to Rhode Island's Well-being

In the years leading up to the formation of the Technical Council, increasing and often conflicting demands were being placed on the state's coastline. In particular, the state's tidelands, which were publicly owned but not protected by statute, were being considered as possible sources of gravel and plans were being formulated to place oil refineries along the shore. The severity of the danger to the state's well-being from such developments can be gauged by considering the state's great dependence on its coastal resources. The state has a salt water shoreline of 419 miles in length out of a total land area of only 1,057 square miles; and Narragansett Bay and the Providence River deeply indent the state so that no point in the state is more than 25 miles from the shoreline. These facts, combined with a lack of other significant topographic features and the lack of traditional mineral resources, show that Narragansett Bay and the coastline are a major influence over the state's economy and whole way of life.[7] Thus, action to preserve the state's coastal resources became a critical necessity.

Provisions of the Coastal Management Council Act

It was with these facts in mind that the Technical Committee developed its report and the state legislature considered its recommendations. Recognition of the state's dependence on its coastal

resources and the increasing threats to those resources can be found in Section 1 of the Coastal Management Council Act:

> LEGISLATIVE FINDINGS -- The general assembly recognizes and declares that the coastal resources of Rhode Island, a rich variety of natural, commercial, industrial, recreational, and aesthetic assets are of immediate and potential value to the present and future development of this state; that unplanned or poorly planned development of this basic natural environment has already damaged or destroyed, or has the potential of damaging or destroying, the state's coastal resources, and has restricted the most efficient and beneficial utilization of such resources; that it shall be the policy of this state to preserve, protect, develop, and where possible, restore the coastal resources of the state for this and succeeding generations through comprehensive and coordinated long-range planning and management designed to produce the maximum benefit for society from such coastal resources; and that preservation and restoration of ecological systems shall be the primary guiding principle upon which environmental alteration of coastal resources will be measured, judged, and regulated.
>
> That effective implementation of these policies is essential to the social and economic well-being of the people of Rhode Island because the sea and its adjacent lands are major sources of food and public recreation, because these resources are used by and for industry, transportation, waste disposal, and other purposes, and because the demands made on these resources are increasing in number, magnitude, and complexity; and that these policies are necessary to protect the public health, safety, and general welfare. Furthermore, that implementation of these policies is necessary in order to secure the rights of the people of Rhode Island to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values, and in order to allow the general assembly to fulfill its duty to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state.
>
> That these policies can best be achieved through the creation of a coastal resources management council as the principal mechanism for management of the state's coastal resources.[8]

Composition and Duties of the Coastal Management Council

In order to meet the objections raised to the coastal management legislation considered in the 1970 legislative session, the make-up of the Coastal Management Council was considerably altered in the provisions of the Coastal Management Act. Specifically, the Council is to be made up of seventeen members chosen in the following manner: two members of the State House of Representatives (at least one of which must represent a coastal municipality), appointed by the Speaker of the House; two members of the State Senate (both of which must represent coastal municipalities), appointed by the Lieutenant Governor (who presides over the State Senate); four members of the general public (of which two must come from coastal municipalities), appointed by the Speaker of the House; four elected or appointed officials of coastal municipalities (two representing coastal municipalities over 25,000 and two representing coastal municipalities under 25,000), appointed by the Governor; three members of the general public (all of whom must reside in coastal communities), appointed by the Governor with the advice and consent of the State Senate; and with the Director of the Department of Natural Resources and the Director of the Department of Health as ex officio members. The members of the Council originally will be appointed to terms of different lengths so that the expiration of their terms will be staggered.[9] Those members who are governmental representatives of coastal communities are not eligible for reappointment. Other members may be reappointed with the restriction that no more than two members may come from the same community.

In addition, advisory members of the Council are to be appointed by either the Governor or the voting members of the Council to represent federal agencies with coastal interests, such as: the Navy; the Public

Health Service (of the Department of Health, Education, and Welfare); and the Federal Water Quality Administration (of the Environmental Protection Agency); regional agencies, such as the New England River Basin Commission and the New England Regional Commission; and any other group or interest not otherwise represented. The Council also has the authority to form committees, composed of its members or other persons it deems necessary to carry out its functions. As with most other such councils, its members are to serve without compensation, having only their expenses paid.

In carrying out its duties of planning for and managing the state's coastal resources, the Council is to utilize the following process: (1) identify all of the state's coastal resources including their quantity, quality and other important characteristics, (2) determine the current and potential uses of each resource, (3) likewise determine current and potential problems associated with each resource, (4) devise plans and programs for the management of each resource specifying permitted use and locations, protective measures to be followed, etc., and (5) implement such programs through its own activities and the coordination of the state, local, federal, and private activities. The Council has the authority to formulate standards not previously existing and reevaluate present standards. Such a process is to be iterative in order to keep the Council's programs up to date.[10]

In carrying out such processes, the Act specifies the following criteria that must be considered:

a) The need and demand for various activities and their impact upon ecological systems.

b) The degree of compatibility of various activities.

c) The capability of coastal resources to support various activities.

d) Water quality standards set by the Department of Health.

e) Consideration of plans, studies, surveys, inventories, and so forth prepared by other public and private sources.

f) Consideration of contiguous land uses and transportation facilities.

g) Consistency with the state guide plan.[11]

The State Guide Plan

The State Guide Plan is a long-range plan for the physical, social, and economic development of the state. It is composed of a series of functional plans, some of which have already been published--those concerning water supply, sewerage facilities, mass transit, recreation, and historic preservation. Other plans nearing completion are those concerned with the highway system, the airport system, and land use. In the latter, attention has been focused on the influence of major developmental factors (urban development, limiting physical conditions, water and sewer service, etc.) on all undeveloped and unreserved land (not reserved for military installations, reservoirs, etc.) in order to formulate development patterns to serve the best interests of the state. In connection with this study a listing was compiled of all state-owned lands including the agency having jurisdiction over each portion, the existing uses of each portion, etc. A study is now being undertaken of all the land in the state designated for industrial use.[12]

Each of these plans is prepared and maintained as an element of the overall State Guide Plan for the Statewide Planning Program, a Division of the Department of Administration, with the guidance of a Technical Committee and the State Planning Council. (Both the Technical Committee and the State

Planning Council are composed of members of state, local, and federal participating agencies.) The Guide Plan is used as the basis for capital budgeting expenditures and elements of it are enacted into law as appropriate and politically feasible. It also provides a basic source of information regarding resource utilization and developmental activities in the state.[13]

The State-wide Planning Program also exerts influence over the activities in the state through its designation as the unit to review federal projects under the Bureau of the Budget Circular A-95 and its participation in special projects. It provided considerable assistance to the Technical Committee which drew up the recommendations for the establishment of the Coastal Resources Management Council.[14]

Regulation of Coastal Activities

Regarding management of the water portion of the coastal zone, the Act requires that:

> Any person, firm, or governmental agency proposing any development or operation within, above, or beneath the tidal water below the mean high water mark, extending out to the extent of the state's jurisdiction in the territorial sea shall be required to demonstrate that its proposal would not (1) conflict with any resources management plan or program; (2) make any area unsuitable for any uses or activities to which it is allocated by a resources management plan or program; or (3) significantly damage the environment of the coastal region. The council shall be authorized to approve, modify, set conditions for, or reject any such proposals.[15]

The land area provisions of the Act are more limited. The Council is authorized to:

> approve, modify, set conditions for, or reject the design, location, construction, alteration, and operation of <u>specified activities or land uses</u> when these are related to a water area under the agency's jurisdiction, <u>regardless of their actual location</u> [underlines added]

but only in:

> situations in which there is a reasonable probability of conflict with a plan or program for resources management or damage to the coastal environment.[16]

(The restraint imposed by this last clause is somewhat lessened by the provision in Section 4 of the Act that the Act "be construed liberally in furtherance of its declared purposes.")

The specified uses and activities over which the Council may exert control are:

(a) power generation and desalination plants

(b) chemical or petroleum processing, transfer, or storage

(c) mineral extraction

(d) shoreline protection facilities and physiographical features

(e) intertidal salt marshes

(f) sewage treatment and disposal and solid waste disposal facilitation[17]

In regards to coastal regulation programs that have been previously enacted, such as the wetlands acts, the Council has general responsibility for their implementation but actual administration of their provisions will be delegated to the administrative units specified in the legislation authorizing them.[18]

Furthermore, the following activities are singled out in the Act for specific authorization and designation as essential functions of an effective coastal management body:

(a) Issue, modify or deny permits for any work in, above, or beneath the water areas under its jurisdiction, including conduct or any form of aquaculture.

(b) Issue, modify or deny permits for dredging, filling, or any other physical alteration of intertidal salt marshes.

(c) Licensing the use of coastal resources which are held in trust by the state for all its citizens, and imposing fees for private use of such resources.

(d) Determining the need for and establishing pierhead, bulkhead, and harbor lines.

(e) Developing, leasing, and maintaining state piers and other state-owned property assigned to the agency by the department of natural resources, the governor, or the general assembly.

(f) Investigating complaints alleging violations of state laws or riparian rights in the state's tidal waters.[19]

For carrying out the above duties and functions, the Act specifies that nine members of the Council will constitute a quorum and that decisions will be made by a majority vote of the members present at a meeting.

As an additional duty the Council is to coordinate activities in the state's coastal zone by:

(a) Functioning as a binding arbitrator in any matter of dispute involving both the resources of the state's region and the interests of two or more municipalities or state agencies.

(b) Consulting and coordinating actions with local, state, regional, and federal agencies and private interests.

(c) Conducting or sponsoring coastal research.

(d) Advising the governor, the general assembly, and the public on coastal matters.[20]

Violation Provision

Violations of regulations or decisions of the Council are to be handled by the issuance of cease and desist orders, followed by court suits brought by the attorney general upon the Council's request. Moreover, violation of a Council order or regulation is to be considered a misdemeanor punishable by a fine of $500 or a jail sentence of up to one year.[21] Violators may also be required to restore the area on which the violation occurred to as near as possible its original condition. They

may also be prosecuted under the provisions of other coastal regulation laws, such as the wetlands acts.

Staff Assistance to the Council's Operations

The Act provided for the reorganization of the Division of Harbors and Rivers of the Department of Natural Resources into the Division of Coastal Resources to act as the staff arm of the Council. In order to be able to concentrate on coastal management activities, the duties of the Division of Rivers and Harbors relating to the inspection of dams and reservoirs concerning their construction and maintenance in non-tidal waters, were transferred to the Division of Planning and Development (of the Department of Natural Resources); and its duties relating to the operation of stream gauging stations were transferred to the Water Resources Board. The Division of Harbors and Rivers, now the Division of Coastal Resources, retained control over those functions of the Department of Natural Resources "relating to harbor and harbor lines, flood control, shore development, construction of port facilities and the registration of boats"[22] in addition to the functions assigned to it by the Coastal Resources Management Council. The Council also was authorized to call upon other divisions of the Department of Natural Resources as the need arises. It is expected that considerable use will be made of the resources of the Division of Enforcement.[23]

Further assistance is also expected from the Coastal Resources Center at the University of Rhode Island, recently established with the assistance of the University's Sea Grant Program.[24]

Funding of Council's Operations

The state legislature appropriated $25,000 for the 1972 fiscal year specifically for carrying out the provisions of the Act. In addition,

$312,000 was appropriated for the operations of the Division of Coastal Resources. An additional $20,000 was expected from a grant for the New England Regional Council as part of its new program to assist coastal management technical activities.[25]

Commentary

It is obviously too early to tell how effective this act will be. However, a couple of observations can be made regarding some of the aspects of the program. First, the make-up of the Council appears to include most of the different sectors involved in the coastal zone either as voting or as advising members. In this respect, it resembles the composition of the San Francisco Bay Conservation and Development Council. It can also act in a similar manner to that organization providing the mechanism for a coordinated approach to the problems of the state's coastal zone if its members are oriented towards that goal rather than merely representing parochial interests. Second, it appears to have sufficient powers to provide significant protection for the state's coastal waters and to ameliorate the threat to shoreline areas. However, by restricting its coverage to specific activities, it does not provide any mechanism to control the proliferation of subdivision developments, private homes, and industrial plants other than petroleum or chemical facilities.[26] The Act will have to be amended to include such activities before it can be considered to provide a complete program for coastal zone management.

RHODE ISLAND

FOOTNOTES

[1] The source used for this brief history of the development of the Coastal Management Council Act is the Report of the Governor's Committee on the Coastal Zone, (R.I. Statewide Planning Program, Providence, Rhode Island, March, 1970).

[2] As mentioned in the previous section, Washington was the first state to enact such legislation.

[3] See Appendix J for a copy of this legislation.

[4] The Technical Committee was originally composed of the heads of various state agencies involved in coastal affairs, representatives of the governor's office, and a professor of oceanography from the University of Rhode Island. In November, 1970, the committee was expanded to include representatives of other groups interested in coastal matters: conservation groups, local communities, industry, the state legislature, etc.

[5] 1967 amendments to this act switched the enforcement of the program from the Department of Public Works to the Department of Natural Resources, which had been created in 1965, raised the fines for violation from $100 to $500, and added the provision allowing the Director of the Department of Natural Resources to reject a permit application if he thought that the proposed activity would disturb the marsh's ecology.

[6] Ludwigson, John O., "Managing the Environment in the Coastal Zone," Environmental Reporter, Monograph No.3 (Vol. 1, No. 1, May, 1970, p. 9).

[7] Report of the Governor's Committee on the Coastal Zone, p. 6.

[8] Act 279-1971 (Coastal Management Council Act), Section 1 [46-23-1].

[9] Section 1 [46-23-2] of the Act gives the exact terms for each of the various members of the Council.

[10] Coastal Management Council Act, Section 1 [46-23-6 (Subsection A)].

[11] Ibid.

[12] Annual Report 1969-1970, Rhode Island Statewide Planning Program, (Providence, Rhode Island, 1970), pp. 3-4.

[13] Ibid., letter of September 27, 1971, in response to request for information, from Mrs. Susan Morrison, Senior Planner, Rhode Island Statewide Planning Program; telephone interview with Brad Southwith, Rhode Island Statewide Planning Program, October 1, 1971.

[14] Annual Report 1969-1970, Rhode Island Statewide Planning Program, pp. 8, 9, 11.

[15]Coastal Management Council Act, Section 1 [46-23-6, Subsection B].

[16]Ibid.

[17]Ibid., [46-23-6 (Subsection B)].

[18]Letter of September 27, 1971 from Mrs. Susan Morrison.

[19]Coastal Management Council Act, Section 1 [46-23-6 (Subsection B)].

[20]Act 279-1971, Section 1 [46-23-6 (Subsection C)].

[21]Letter of September 27, 1971 from Mrs. Susan Morrison.

[22]Act 279-1971, Section 2.

[23]Letter of September 27, 1971 from Mrs. Susan Morrison and Program Prospectus for the Coastal Resources Management Council,(Rhode Island Statewide Planning Program, Providence, Rhode Island, September, 1971), pp. 25-27.

[24]"Sea Grant Colleges: Opening of an Era," Sea Grant 70's, Vol. 2, No. 1, (September, 1971) [Sea Grant Printing Office, Texas A&M University], p. 4.

[25]Program Prospectus, p. 38.

[26]Originally the specified uses and activities were merely to be examples of the type of uses and activities to be covered. However, the legislation was amended to cover only those activities in order to secure enough votes for its passage.

RHODE ISLAND

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SECTION III

Survey of Other State Coastal Zone and Shoreland Management Programs

Chapter 1. Atlantic Coast

Chapter 2. Gulf Coast

Chapter 3. Great Lakes

Chapter 4. Pacific Coast

CHAPTER 1

ATLANTIC COAST

New Hampshire, Connecticut, New York, New Jersey, Virginia, North Carolina, South Carolina, Georgia, Florida

The coastal management programs of most of the Atlantic Coast states have been focused on programs of wetlands preservation and acquisition in recognition of the value of such areas for estuarine life (particularly sustenance of fisheries), flood control, etc. Only Virginia, South Carolina, and Florida have not instituted such programs. However, Virginia is in the midst of a study to determine whether to initiate such a program, and Florida has instituted a system of aquatic preserves and has undertaken a comprehensive coastal planning effort.

Since the wetlands preservation programs of many of these states are similar, the emphasis in describing them has been on pointing out particularly worthy, unusual, or weak provisions rather than on giving uniform descriptions. Other programs of importance instituted by the states which relate to coastal management have been described also. Copies of the major acts described in this section can be found in Appendix K.

NEW HAMPSHIRE

WETLANDS--DREDGING AND FILLING CONTROLS

In 1967, the New Hampshire state legislature passed three laws relating to controlling dredging and filling in tidal areas and in public waters.

Act 215-1967

Act 215 required that a permit be obtained from the New Hampshire Port Authority before any dredging, filling, excavating, or removing of "any lands, flat, marsh, or swamps in and adjacent to tidal waters"[1] could take place.

In ruling on a permit, the Port Authority is to hold a public hearing after notifying the appropriate state and local officials.

The Act authorizes the Port Authority to deny the permit or to require the installation of bulkheads, barriers, containment structures, etc., to prevent fill runoff into tidal waters. If shellfish or marine fisheries and wildlife would be affected by the project, the Director of New Hampshire Fish and Game Department may impose such conditions as he deems necessary to protect such marine life.

Violators are liable for the removal of any fill, spoil, or construction placed in violation with the provisions of the Act as well as being subject to a fine of up to $1,000.

Act 274-1967

Act 274 required the approval of the governor and council, based on the recommendations of the Water Resources Board, for any dredging, excavating, or removing of any bank, flat, marsh, swamps or lake bed that lies below the mean high water level of any natural pond of more than ten

acres. Before making its recommendation to the governor, the Water Resources Board is required to notify appropriate state and local authorities and to hold a public hearing on the matter. Anyone who undertakes such activity without approval may be compelled to restore the affected areas to their prior condition and will be subject to a fine of not more than $1,000.

Act 254-1967

Act 254 required that a permit be obtained from the Water Supply and Pollution Control Commission before any dredging, excavating, mining, or construction is undertaken in the surface waters of the state. The Commission shall impose such conditions as are necessary to assure that the quality of the waters involved is not impaired.

Commentary

While these acts provide some minimal protection for tidal marsh areas, they appear to be more directed at protecting the quality of public waters and the marine fisheries and wildlife, than at protecting the marsh areas per se. Regulatory control of activities occurring in and adjacent to tidal waters was presumably given to the New Hampshire Port Authority because much of the state's small coastline is taken up by the port of Portsmouth and its environs.

Wetlands Acquisition

The State Fish and Game Department has been acquiring tidal marsh areas in small installments either by gift or as funds become available. The Department, in conjunction with private groups, is in the process of raising funds to buy a 4,500 acre marsh.[2]

CONNECTICUT

WETLANDS PRESERVATION

Act 695-1969

Following the examples of its neighboring states in New England, Connecticut passed Act 695 in 1969 to protect its coastal wetlands. The Declaration of Policy of that act succinctly states the case for wetlands preservation:

> It is declared that much of the wetlands of this state has been lost or despoiled by unregulated dredging, dumping, filling and like activities and that the remaining wetlands of this state are all in jeopardy of being lost or despoiled by these and other activities; that such loss or despoliation will adversely affect, if not entirely eliminate, the value of such wetlands as sources of nutrients to finfish, crustacea and shellfish of significant economic value; that such loss or despoliation will destroy such wetlands as habitats for plants and animals of significant economic value and will eliminate or substantially reduce marine commerce, recreation and aesthetic enjoyment; and that such loss or despoliation will, in most cases, disturb the natural ability of tidal wetlands to reduce flood damage and adversely affect the public health and welfare; that such loss or despoliation will substantially reduce the capacity of such wetlands to absorb silt and will thus result in the increased silting of channels and harbor areas to the detriment of free navigation. Therefore, it is declared to be the public policy of this state to preserve the wetlands and to prevent the despoliation and destruction thereof.[3]

This act required the Commissioner of Agriculture and Natural Resources to make an inventory of all the tidal wetlands within the state and to develop maps, showing the boundaries of the wetlands, to be used as the basis for a permit system to regulate the use of wetlands areas. The term wetlands was defined as:

> those areas which border or lie beneath tidal waters, such as but not limited to banks, bogs, salt marsh, swamps, meadows, flats, or other low lands subject to

> tidal action, including those areas now or formerly connected to tidal waters, and whose surface is at or below an elevation of one foot above local extreme high water; upon which may grow or be capable of growing some but not necessarily all, the following: [characteristic types of vegetation listed].[4]

Once the inventory of an area has been completed, a public hearing was held on the boundary lines that had been determined. After considering the testimony presented at the hearings, the provisions of the Wetlands Act, and other relevant information, the Commissioner of Agriculture and Natural Resources issued an order establishing the official boundaries of the wetlands areas. Copies of the order and a map showing the boundaries were filed with the town clerk's office of all the towns affected. Copies were also sent to all of the affected land owners. Publication of the orders was required in a newspaper or newspapers having a general circulation in the areas affected.

Permit System

Once an area has been designated as wetlands, no draining, dredging, excavation, soil, sand or gravel removal, filling with soil, sand, rubbish or other material, construction of structures, driving of pilings, or the placing of obstructions is allowed without a permit from the Department of Agriculture and Natural Resources. An application for a permit to undertake such activities is to include a detailed description of the proposed project, a map showing the wetland area that would be affected, and the names of adjacent land owners and known claimants of water rights in or adjacent to the wetland area to be affected. Once a permit application is received by the Department, copies are to be sent to relevant state and local agencies including the local Conservation Commissions. Within 30 to 60 days after receiving the application, a public hearing is to be held,

notification of which is to be given to the appropriate state and local agencies, owners of lands adjacent to the site of the proposed activity, and the general public (through publication in a local newspaper).

After the public hearing, the Commissioner of the Department of Agriculture and Natural Resources is to make his decision to grant, deny, or approve with modification the application in question, based on consideration of the effect of the proposed work on "the public health and welfare, marine fisheries, shell fisheries, wildlife, the protection of life and property from flood, hurricane, or other natural disasters and the public policy set forth [in Act 695]."[5]

Notification from the state Board of Fisheries and Game that it is in the process of acquiring the wetlands in question by negotiation or condemnation is to be considered grounds for refusal of the permit.

In the granting of a permit, any condition thought necessary to protect the wetlands areas in accordance with the policy established by Act 695 may be imposed. In addition, a bond may be required to insure compliance with the conditions of the permit.

The activities of the Mosquito Control Division of the state Health Department, the activities of the state Department of Agriculture and Natural Resources, the construction or maintenance of navigational aids authorized by governmental authority, and activities undertaken on emergency degrees to protect the public health are exempted for the requirement of obtaining a permit.

Appeal Procedures

Appeal of a permit decision may be made to the Superior Court by any aggrieved person within 30 days of the publication of the decision. The court's decision on the appeal is to be based on full review of the

complainant's reasons for appeal and the record regarding the permit decision to determine the legality and propriety of the action of the Commissioner of Agriculture and Natural Resources. If the court finds that the decision is an unreasonable exercise of power, it can negate the decision. If the action constitutes a taking without compensation, but the land in question is appropriately classified as wetlands, the court may, at the Commissioner's option, either set aside the decision or award damages to the property owner. These provisions protect the constitutionality of the Act and limit the impact of any adverse court decision to the particular area in dispute.

Violation Provisions

Noncompliance with the conditions of any permit issued in accordance with the provisions of the Wetlands Act can be considered as cause for suspension or revokation of the permit. Violation of the provisions of Act 695 shall make the violator liable for the cost of restoration of the affected wetlands areas to its prior condition and for a fine of $1,000 for each violation. Each day a violation continues is to be considered a separate violation. The attorney general shall institute court proceedings with regard to violations of the act upon request of the Commissioner of Agriculture and Natural Resources.

Progress on Implementation of Act 695

The Department of Agriculture and Natural Resources has acted promptly to implement the provisions of the Act. A Wetlands Division consisting of three professional and two secretarial personnel has been established, and $300,000 was appropriated for fiscal 1970-1971 and $102,302 for fiscal 1971-1972 to carry out the provisions of the Act.[6]

As of August, 1971, 98 percent of the tidal wetlands had been inventoried. In conducting this inventory, the Department was assisted by the Marine Research Laboratory of the University of Connecticut. Almost 10,000 of the total 14,500 acres of tidal wetlands had been put under orders to prevent their despoliation. It was expected that virtually all of the state's tidal wetlands would be protected by the end of 1971.[7]

Five permit applications have been reviewed in accordance with the provision of the Act: one permit was approved without modification, one was approved with modification, one was denied, and the other two were withdrawn.[8]

Wetlands Acquisition

Connecticut also has a long-standing program of wetlands acquisition. Over the past thirty years, 5,000 acres of tidal marsh have been acquired at a cost of approximately $1,500,000. This acquisition program will continue as a complement to the wetlands preservation program established by Act 695, the Wetlands Preservation Act.[9]

The state's acquisition powers were strengthened by the passage of Act 536 in 1967 which gave the Board of Fisheries and Game the right to acquire wetlands by eminent domain and by paying the unpaid municipal property taxes on wetlands for which the tax payments were six or more years delinquent.

WETLANDS PRESERVATION

The Long Island Wetlands Act (Act 545-1959)

In 1959, the New York state legislature enacted the Long Island Wetlands Act (Act 545-1959) which provided state support for the preservation and management of marsh areas owned by the local governments. The act provided that the state would share the cost of such activities on a 50-50 basis if the local government would first dedicate such lands for conservation purposes. Over the years, 15,500 acres have been placed under such cooperative agreements. It is the long-range goal of the program to place the remainder of the marsh areas owned by the local governments, 16,000 acres, under such agreements. Attainment of this goal would place most of the significant wetlands on Long Island under dedication to conservation purposes.[10]

The following are examples of the types of projects undertaken under this program: (1) the development of trails and observation blinds, the construction of fresh water ponds, the planting of shrubs, and general habitat improvements in the Tobay Wildlife Sanctuary in the town of Oyster Bay; (2) research on biological control of mosquitoes as a joint state-Nassau County project; and (3) reclaiming of a tidal creek area in the town of Islip that had been impaired by dredging operations.[11] State funding for this program averages $15,000 a year.[12]

Wetlands Acquisition

As a result of the Park and Recreation Land Acquisition Bond Act of 1960, the state has been able to purchase 200 acres of tidal marsh. The power of eminent domain was granted to the state for the purposes of wetlands acquisition by the passage of Act 7 of that same year.[13]

County Regulatory Controls

Suffolk County has recently passed an ordinance imposing regulations on the uses allowed on wetlands in its jurisdiction. Unfortunately, information relating to the exact nature of these regulatory controls is unavailable at this time.[14]

DIVISION OF MARINE AND COASTAL RESOURCES

In 1969, the Division of Marine and Coastal Resources was created in the New York Conservation Department (now the Department of Environmental Conservation) by the passage of Act 715-1969.

The Division was given the responsibility of managing the state's coastal resources in order to maximize the use of renewable and non-renewable resources and minimize the areas of conflicting uses. Specifically, its duties are:

(1) to carry out coastal programs such as wetland preservation, activities, review of Corps of Engineers permit applications, and the undertaking of sanitary surveys and other bio-chemical tests for the purposes of preserving a quality environment to fish, shellfish, etc.;

(2) to undertake research, management, and development programs relating to renewable resources such as migrating fish;

(3) to aid private industry's efforts in the utilization of coastal resources;

(4) to further the development of aquaculture through innovative programs and participate in cooperative research efforts with academic institutions;

(5) to develop a broad-based recreational salt-water fishery program;

(6) to develop commercial fisheries;

(7) to coordinate plans and activities with federal, state, local, and interstate agencies for the purpose of environmental preservation and conservation of marine and coastal resources;

(8) to act as coordinator for the Department in federal-state cooperative programs for the multiple use and development of the coastal zone and as coordinator for inter- and intra-agency developmental programs;

(9) to coordinate with the appropriate agencies in carrying out the law enforcement aspects of the above program.[15]

The establishment of this agency provides the management unit to undertake coastal zone management programs, but the state has yet to enact any real coastal management programs other than the Long Island Wetlands Act.

POWER PLANT SITING

In 1968, the state legislature enacted legislation giving the state Atomic and Space Development Agency (ASDA) the authority to acquire, develop, and then lease or sell nuclear power plant sites. Sites may be acquired by purchase, dedication, agreement, or condemnation and are to be paid for by the sale of lands and other obligations or out of available funds. Such funds would be repaid and operational expenses would be covered by the reselling or the leasing of the property.

The authorizing legislation has been criticized for the vague nature of the criteria given for site selection. The only reference to environmental quality is the statement that ASDA is given the authority to:

> participate in the incorporation of features in nuclear power plants and the construction of associated facilities to the extent required by the public interest in development, health, recreation safety, conservation of natural resources and aesthetics.[16]

However, ASDA does consult extensively with the agencies concerned with environmental and health matters since it wishes to purchase sites which will pose the least number of problems for future owners or lessees when the time comes to apply for operation and construction permits.

Nevertheless, it is a promotional agency created to promote the maximum development and use of atomic energy and the maximum development of space-related industries within the state. Thus, it is ill-suited to fill the gaps that exist in the licensing and permit-granting processes regarding the protection of environmental quality. Also, it has acquisition powers for nuclear power plant sites but not for those for fossil fuel plants even though such plants will play a substantial role in the production of electric power for a considerable time to come.

Commentary

For the reasons mentioned above, ASDA's acquisition program may aid in meeting future demands for electric power but it certainly does not resolve all the problems involved in the question of power plant siting.[17]

WETLANDS PRESERVATION

Act 27-1970, The Wetlands Act of 1970

On November 5, 1970, the state of New Jersey followed the example of the New England states in passing Act 27-1970, the Wetlands Act of 1970. The reason for the legislature's action can be found in the statement of purpose of the Act:

> The Legislature hereby finds and declares that one of the most vital and productive areas of our natural world is the so-called "estuarine zone," that area between the sea and the land; that this area protects the land from the force of the sea, moderates our weather, provides a home for waterfowl and for 2/3 of all our fish and shellfish, and assists in absorbing sewage discharge by the rivers of the land; and that in order to promote the public safety, health and welfare, and to protect public and private property, wildlife a marine fisheries [sic], and the natural environment, it is necessary to preserve the ecological balance of this area and prevent its further deterioration and destruction by regulating the dredging, filling, removing or otherwise altering or polluting thereof, all to the extent and in the manner provided herein.[18]

To fulfill these objectives the Act requires the acquisition of permits from the Department of Environmental Protection for regulated activities on the state wetlands, including the following:

> draining, dredging, excavation, or removal of soil, mud, sand, gravel, aggregate of any kind or depositing or dumping therein any rubbish or similar material or discharging therein liquid wastes, either directly or otherwise, and the erection of structures, drivings of pilings, or placing of obstructions whether or not changing the tidal ebb and flow.[19]

The commercial production of salt hay or other agricultural crops is specifically exempted from the provisions of the Act. The activities of the State Department of Environmental Protection, the Natural Resources

Council, the State Department of Health, the State Mosquito Control Commission, and any other mosquito control authorities are also exempted from the provisions of the Act.

The Act also authorizes the establishment of a restrictive order system such as Massachusetts' by giving the Commissioner (of the Department of Environmental Protection) the authority to:

> for the purpose of promoting the public safety, health, and welfare, and protecting public and private property, wildlife and marine fisheries; adopt, amend, modify or repeal orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering or polluting coastal wetlands.[20]

The Act further specifies that the wetlands areas protected by both of these systems are to be determined by an inventory undertaken by the Department of Environmental Protection which is to be completed within two years of the passage of the Act. These areas include "any bank, marsh, swamps, meadow, flat or other low land subject to tidal action" in the state's coastal area including bays, rivers, coastal inland waterways, estuaries, tributary waterways, and "those areas now or formerly connected to tidal waters where surface is at or below an elevation of one foot above local extreme high water and upon which may grow or is capable of growing [at least some of the following characteristic types of vegetation (specified in the legislation)]."[21] However, the wetlands area under the jurisdiction of the Hackensack Meadowlands Development Commission is exempted from the provisions of the Act.

Restrictive Order System

Before adopting, modifying, etc., any orders pertaining to such wetland areas in accordance with establishing a restrictive order system, the Commissioner is to hold a public hearing in the county in which the

wetlands to be affected are located, after notifying the owners of the wetlands in question and publicizing the hearing in the local newspapers.

After the Commissioner has taken action on such a restrictive order, a copy of the order along with a map of the affected wetlands and a list of the affected land owners is to be placed in the county registry of deeds. Copies are to be sent to each affected land owner.

Permit System

As with the permit systems of other states, the Commissioner of the Department of Environmental Protection is to hold a public hearing on any application submitted to him. This application is to contain a detailed description of the proposed activity and the area it will affect.

In making his decision on a permit application, the Commissioner is to "consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shell fisheries, the protection of life and property from flood, hurricane, and other natural disasters and the public policy set forth [in the Act]."[22]

Appeals Procedure

Appeal of a decision by the Commissioner can be made within 90 days by "any person having a recorded interest in land affected by any such order or permit"[23] to the Superior Court for a ruling as to whether or not the Commissioner's action was an unreasonable exercise of the police power because it constituted a taking without compensation. If the court decides the decision was an unreasonable exercise of the police power it shall set aside the Commissioner's order but such a decision will apply to the plaintiff's property only and will not rule on the Act's constitutionality generally.

Violation Provision

Violators of any of the orders of the Commissioner or any of the provisions of the Act are liable for the cost of restoring the affected wetland to its prior condition and to a fine of not more than $1,000.

Implementation of the Act

To carry out the provisions of the Act, the Department of Environmental Protection has instituted a three-phase program. In Phase I, a study was undertaken to determine the feasibilities of different methods for mapping. In Phase II, mapping was done in two test areas and species' associations were determined by the use of aerial photography using color and color infrared films. Regulations also were developed for the test areas. In the current phase, Phase III, the remaining wetlands of the state are being mapped. As part of this program, the state, in conjunction with the USGS and NOS, is investigating the correspondence between the physical and biological high water lines.[24]

The cost of all three phases of the mapping effort is expected to be between $1.2 and $1.5 million. The state legislature has appropriated $800,000 and the remainder will be paid from federal funds.[25]

Wetlands Acquisition

The state has also undertaken an extensive wetlands acquisition program under its Green Acres Program established by passage of the Green Acres Land Acquisition Act of 1961 (Act 45-1961) and a $60 million bond issue, the Green Acres Bond Act of 1961 (Act 46-1961). As a result of this program, the state Division of Fish and Game has added about 20,000 acres of salt marsh to its previous holdings of about 30,000 acres. The total acreage that has been acquired in the state's coastal counties by

state and local authorities under the program is about 65,000 acres. An additional 50,000 acres is expected to be acquired under this program. In addition, the U.S. Bureau of Sports Fisheries expects to have control over 50,000 acres when its acquisition program is completed. These acquisitions will place in public ownership most of the state's high quality salt marsh areas and, combined with the new wetlands regulatory program established by Act 27-1970, should provide considerable protection for the state's estuarine areas.[26]

VIRGINIA

The Commonwealth of Virginia has not yet enacted any legislation relating to comprehensive management of its shoreland, other than placing some restrictions in the use of its subaqueous beds (submerged lands) for the purposes of protecting water quality.[27]

STUDY COMMISSIONS

However, the state legislature in March, 1971, established three study commissions on subjects having some relationship to shorelands management. House Joint Resolution No. 35 directed the Virginia Advisory Legislative Council to investigate the desirability of establishing a single state agency that would administer all environmental pollution control programs. House Bill 157 created a nine-member commission to continue the solid waste disposal study, initiated by the Virginia Advisory Legislative Council in 1968, for the purpose of making recommendations to the state legislature on the best methods of handling solid waste disposal, with particular emphasis on regional disposal methods. House Joint Resolution 60 established a commission, composed of three state representatives, three state senators, and three gubernatorial appointees, to study the status of the state's wetlands. Included in the study are to be an inventory of the available wetlands resources in the state, a description of the forces endangering these wetlands and recommendations on the steps that the state and local governments can take to preserve and protect these resources. The commission's report is due on December 1, 1971, at which time the legislature may take further action to protect the state's wetlands.

WETLANDS ACQUISITION

The state has taken some action in the area of wetlands acquisition. The Commission of Game and Inland Fisheries has acquired several substantial areas of coastal marsh and expects to make further acquisitions. The State Parks Commission has also acquired some salt marsh acreage and is undertaking a study of the feasibility of acquiring more.[28]

NORTH CAROLINA

WETLANDS PRESERVATION

Dredging and Filling Controls (Permit System)

In 1969, the North Carolina state legislature enacted Act 791 which established regulatory controls over dredging and filling in and around estuarine areas or state-owned lakes. The statutory provisions established by this Act were expanded and strengthened by the passage of Act 1159 in 1971. Under the provisions of these acts, anyone wishing to undertake an excavation or filling project in estuarine waters, tidelands, marshlands, or state-owned lakes is required to obtain a permit from the North Carolina Department of Conservation and Development. Mosquito control projects of state and local boards of health are exempted from provisions of the Acts. Each permit application must include a plat of the area in which the proposed project is to take place, a detailed description of the proposed project, and a copy of the deed under which the applicant claims ownership to the proposed work area or some other reasonable evidence of his ownership of the property. (If the applicant does not own the land in question, he must submit not only a copy of the deed to the property but also written permission from the owner to undertake the project.)

In addition, the applicant must send, by certified mail, a copy of his permit application to all adjacent riparian property owners who are allowed 30 days to submit any objections they may have to the Department of Conservation and Development. The Department of Conservation and Development is required to submit copies of the application to all relevant state agencies (and appropriate federal agencies at the discretion of the Director of the Department).

All applications are to be acted upon within 90 days or they will be considered approved. The following are to be considered sufficient reasons for denying an application or requiring modification to it: (1) significant adverse effect on the use of public waters by the project; (2) significant adverse effect on the value and enjoyment of their property by riparian owners; (3) significant adverse effect on the public health, safety, and welfare; (4) significant adverse effect on private and public water supplies; and (5) significant adverse effect on wildlife and fisheries.

Appeals Procedures

Appeal of the Director's decision may be made by any state agency or the applicant within 20 days of his decision. Upon receipt of such an appeal, a review board must be formed of the Directors, or their designees, of the following state agencies: the Department of Conservation and Development, the Board of Health, the Department of Water and Air Resources, the Wildlife Resources Commission, and any other agency designated by the governor. (If the Director of the Department of Conservation and Development cannot attend the board's deliberations he must designate two persons to act in his stead; one to represent conservation interests and the other to represent development interests.) The review board is to conduct a hearing on the proposed application in which all aspects of the matter are to be reviewed in detail. The decision of the review board to affirm, deny, or modify the Director's decision, which is to be made after considering the evidence presented at the hearing, may be further appealed to the Superior Court.

Violation Provisions

Violators of the provisions of these acts are deemed to be guilty of a misdemeanor and subject to a fine of not more than $500.00 or 90 days

imprisonment or both. Each day a violation continues is to be considered a separate offense. In addition, the Director of the Department of Conservation and Development is authorized to sue for damages or injunctive relief in regards to damage done to any lands or property held in the public trust by the state.

Restrictive Order System

Act 1159 also provided additional protection for wetland areas by authorizing the Director to establish a restrictive order system similar to that of Massachusetts. Specifically, the Director was authorized to "adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting dredging, filling, removing, or otherwise altering coastal wetlands."[29]

Coastal wetlands were defined as "any marsh [as defined below] and such contiguous land as the Director reasonably deems necessary to affect by any such order in carrying out the purposes of this section."[30] Areas are determined to be marsh areas by the growth of characteristic vegetation and the occurrence of regular or occasional flooding by tides, including wind tides (other than hurricane or tropical storm tides).

Before the Director can take any action with respect to these areas, he must hold a public hearing on the matter in the county in which the coastal wetlands in question are located. Notice of such a hearing must be given to all interested state agencies and to each owner or person claiming ownership by certified or registered mail.

Upon adoption of any order, a copy of it is to be placed in the county deeds office along with a list of the affected property owner. A copy is also to be mailed directly to each affected property owner.

Appeals Procedures

Appeal of any order may be made within 90 days by any person "having a recorded interest in or registered claim to land affected [by the order]"[31] to the Superior Court. If the petitioner is judged to be the true owner of the property, then a ruling shall be made as to whether or not the Director's decision constitutes a taking without compensation. Any ruling adverse to the Director's shall apply only to the petitioner's property and shall be duly recorded at the county deeds office. Upon the request of the Board of Conservation and Development, the state may take by eminent domain such property which has been exempted by a court ruling from a Department order.

Violation Provisions

Violators of orders issued in accordance with this section of Act 1159 are to be fined not more than $500 or imprisoned not more than six months, or both. In addition, the Director is authorized to seek injunctions to stop violations of his orders.

Financial Support

To meet the staffing needs of the state's augmented estuarine programs enacted by Act 791-1969, the 1969 state legislature appropriated $80,000. No figures were available at the time of this writing regarding appropriations to carry out the added duties established by Act 1159-1971.[32]

Commentary

While the above programs are significant towards the goal of protecting North Carolina's estuarine area, they are quite weak in their appeals procedures. Under the dredge and fill regulations, a public hearing is not held unless the applicant or a state agency raises an objection to the Director's decision. Appeals of the Review Board's decision to the

Superior Court can only be made by the affected property owners or state agencies. Thus, adjacent property owners, local governmental officials, and interested citizen groups are prevented from appealing the Director's decisions through official channels.

Similarly, appeals of the orders of the Director of the Department of Conservation and Development, issued in accordance with the wetlands protection section of Act 1159, can only be initiated by an affected property owner and then only to challenge the order's constitutionality. No objection apparently can be raised that an order is too lenient or not encompassing enough, not even by other affected property owners or by local governmental officials, not to mention interested citizen groups. Since the Department of Conservation and Development undertakes both developmental and protective activities, it would seem appropriate that there should be some check on the Department's activities to assure that a proper balance between these two considerations is maintained.

In addition, the provision that permits be considered approved if no action is taken on them within 90 days may lead to approval of projects without any or only cursory examination of possible adverse impacts of the project.

Wetlands Acquisition

The Board of Conservation and Development has broad powers to lease, purchase, or condemn estuarine areas for the purpose of conserving and protecting these areas. As part of its estuarine area protection package, the 1969 state legislature appropriated $500,000 for land acquisition purposes.[33]

SAND DUNES PROTECTION

Shore Protection Lines

The 1965 state legislature recognized the value of the state's outlying dunes area as protection for coastal areas from "the actions of wind, water, and sand" [34] and from the despoliation of such dunes by certain uses.

The enactment of Act 237-1965 authorized boards of county commissioners to appoint shoreline protection officers to administer permit programs regulating activities occurring in such dunes areas. The boundaries of the dunes areas to be protected were set by the establishment of shore protection lines. Activities seaward of such a line could be undertaken only under permits issued by the shoreline protection officer after he had determined that:

> the particular action, damage, destruction, or removal proposed will not materially weaken the dune or reduce its effectiveness as a means of protection from the effects of high wind and water, taking into consideration the height, width and slope of the dune or dunes and the amount and type of vegetation thereon.[35]

At the time of the granting of the permit, the protection officer attaches such conditions as he deems necessary, collects a fee determined by the county Board of Commissioners, and requires a surety bond to be deposited. Under the provisions of the Act, the county Board of Commissioners was authorized to offset the costs incurred by the administration of this program by collecting a special property tax.

1971 Amendments

The provisions of Act 237-1965 were amended in 1971 to allow the state Board of Air and Water Resources to set shore protection lines and administer permit programs for those counties in which protection lines had not been set by December 31, 1971. The Board will cease such

administration in a county once the county Board of Commissioners has established a plan to conduct such operations themselves and has requested the Board of Air and Water Resources to allow them to take over operations. These amendments also revised the appeals procedures of Act 237-1965 so that appeals of the decision of the shoreline protection officer in a county can be made within 30 days to the county Board of Commissioners either by the applicant, in case of denial, or an affected property owner, in the case of an affirmative decision. Appeals of the decisions by the county Board of Commissioners can be made to the Superior Court and no activity shall take place until the matter has been settled by the Court.

Project Protection Lines

Act 237 also authorized the Department of Water Resources to establish project protection lines before construction begins on beach restoration or hurricane protection projects to identify the lines on which the projects are to be constructed. Once such a line has been established, no buildings or roads are to be constructed, nor is any sand, shells, or other materials to be removed seaward of the line. Likewise, vehicular travel is to be prohibited seaward of the line except at designated points. Existing groins, jetties, or other shore erosion projects on the ocean side of the protection line are not to be interfered with but no new groins, jetties, piers, etc., are to be constructed without a permit from the Department of Water Resources.

A fine of between $50 and $500 is to be paid by violators of the provisions of Act 237 or the regulations established by a board of county commissioners under the Act. Every ten days that pass without the damage being restored is to be considered a separate violation. In addition,

court action may be instituted by a board of county commissioners to obtain injunctive relief against existing or imminent violations and to compel restoration of damaged areas.

ESTUARINE STUDY

Act 1164-1969 (Estuarine Study)

The 1969 state legislature, by enacting Act 1164-1969, authorized a comprehensive study of the state's estuarine areas to be undertaken by the Division of Commercial and Sports Fisheries of the Department of Conservation and Development "with a view to the preparation of a comprehensive and enforceable plan for the conservation of the resources of the estuaries, the development of their shorelines, and the use of the coastal zone of North Carolina...."[36]

An interim report was to be completed by January 1, 1971, and a final report by November 1, 1973. The final report, which is to be submitted to the state legislature for their attention, is to include the detailed studies conducted as part of the plan's development, the comprehensive plan itself, recommendations as to the appropriate agency or agencies to maintain and carry out the comprehensive plan, an estimate of the approximate cost of maintaining and carrying out the plan, and such other information and recommendations as thought desirable. For the 1969-71 biennium, $94,000 was appropriated for work towards development of the comprehensive plan.[37]

Commentary

The development of the comprehensive plan can provide the basis for a comprehensive coastal zone management program for the state of North Carolina. It is interesting to note that the language regarding

the contents of this plan specified only what may be included as part of the plan rather than what must be included. What the impact of the use of such permissive, rather than mandatory, language on the contents of the plan will be is unclear at present.

Coastal Plains Regional Commission

North Carolina is also participating in the activities of the three-state Coastal Plains Regional Commission (along with South Carolina and Georgia) which coordinates the coastal resource and development programs of the three states. It is expected that this commission will play a role in coordinating development activities with estuarine management and conservation.[38]

OTHER ACTS

In order to centralize activities connected with the state's coastal areas, the 1969 state legislature, through enactment of Act 1143-1969, abolished the Seashore Commission and transferred its duties to the Department of Conservation and Development. These duties related to (1) promoting and assisting the development in coastal areas of tourist attractions, recreational and industrial developments (with an emphasis of making seashore areas attractive to tourists and permanent residents) and (2) coordinating federal, state, and local activities relative to the above goals, etc. Approximately $21,000 was appropriated for fiscal years 1970 and 1971 for the undertaking of the above activities.[39]

SOUTH CAROLINA

The state of South Carolina has instituted no regulatory controls over the use of estuarine areas other than the usual fish and game laws, pollution control programs, etc. The Wildlife Resources Department has, in the past, acquired several substantial salt marshes for the purpose of providing areas for waterfowl hunting but is not undertaking any active wetland acquisition efforts at the present time. However, the federal government has set aside about 30,000 acres of marshland in the Cape Romaine Natural Wildlife Refuge.[40]

GEORGIA

WETLANDS PRESERVATION

Act 1332-1970 (The Coastal Marshland Protection Act of 1970)

Recognizing the increasing pressures on and threats to the state's wetlands areas, the Georgia state legislature in 1970 enacted Act 1332, the Coastal Marshlands Protection Act. This act created the Coastal Marshland Protection Agency to administer a permit program regulating activities in the state's estuarine areas. This agency is to be composed of the following seven persons: the Director of the Fish and Game Commission, the Executive Director of the Ocean Science Center of the Atlantic Commission, the Executive Secretary of the Water Quality Control Board, the Director of the Coastal Area Planning and Development Commission, the Executive Director of the Georgia Ports Authority, the Director of the Department of Industry and Trade, and the state attorney general, or their appointed representatives.

Unless this agency grants a permit, all dredging, filling, draining, removing, or otherwise altering any marshlands within an estuarine area in the state is prohibited. Marshlands are to be determined by the growth of certain characteristic types of vegetation or the existence of salt marsh peat while estuarine areas are defined as "all tidally-influenced waters, marshes, and marshlands lying within a tide-elevation range of 5.6 feet above mean tide level and below."[41]

To carry out its duties the Agency was given the usual complement of powers including the right to employ staff, make rules and regulations, institute court action to enforce the provisions of the Act, etc. However, it is not allowed to adopt any rules and regulations until after it has held at least two public hearings on them.

Permit System

In applying for a permit from the Agency, a person must submit a description of the proposed project, a description of the area in which it is to take place, a copy of the deed or other reasonable evidence of ownership of the property in question, a list of all adjoining owners and their addresses, a certificate from the local governmental authority that no local regulations will be violated by the project, and a certified check or money order for $25/acre to be affected up to a maximum of $500 to cover administrative costs.

Upon receipt of an application the Director of the State Fish and Game Commission is to notify all adjoining landowners and all other members of the Coastal Marshlands Protection Agency of the project. In its deliberations on a permit application, the Agency is to consider whether the project will cause (1) "an unreasonably harmful obstruction to or alternation of the natural flow of navigable water" within the affected area, (2) "unreasonably harmful or increased erosion, shoaling of channels or stagnant areas of water," or (3) unreasonable interference "with the conservation of fish, shrimp, oysters, crabs and clams or any marine life or wildlife or other natural resources, including but not limited to, water and oxygen supply" to the extent that the project would be contrary to the public interest.[42]

All decisions of the Agency regarding granting, denying, or approving with conditions a permit application must be made within 90 days upon receipt of the application by affirmation of a majority of the members of the Agency. All activities for which a permit is granted must be completed within two years after the permit has been issued unless good cause is shown for extending the time allowed, as well as evidence

that all reasonable efforts have been made to complete the project within the allowable time period.

Appeals Procedures

The act further provides that "any person who is aggrieved or adversely affected by any final order or action of the Agency shall have the right to a hearing...conducted pursuant to the Georgia Administrative Procedure Act."[43]

Exemptions

The following activities were exempted from the provisions of the Act: (1) the construction, repair, or maintenance of public roads by the Highway Department; (2) activities undertaken for navigation purposes including those relating to areas "for utilization for spoilage" by designated state and federal agencies; (3) construction, repair or maintenance of utility lines by public utility companies "for the transmission of gas, electricity, or telephone messages;" (4) construction, repair, or maintenance of railroad lines and bridges; (5) construction, maintenance or repair of water and sewer pipelines; and the construction of private docks or pilings in such a manner that the normal tidal flow is not impaired by the owners of residences on the adjoining highlands.[44]

Violation Provision

Violators of the provisions of the Act or the orders of the Agency are to be judged guilty of a misdemeanor and are to be so penalized. The Agency is, in addition, authorized to initiate court actions to prevent or restrain such violations.

Attorney General's Opinion

Shortly after the passage of the Coastal Marshlands Protection Act, the state attorney general issued an opinion stating that, contrary to

previous judgments, almost all of the state's marshes were owned by the state since they were below the high tide mark. This opinion is likely to be tested in the state's courts as may be certain procedures under the Marshland Protection Act.[45]

Commentary

Thus, Georgia like many other Atlantic Coast states has enacted legislation to protect its coastal wetlands. Its definition of estuarine areas, in which activities affecting wetlands use is to be regulated, is more encompassing than many states. Likewise, the requirement of application fees to defray administrative costs is a worthy provision of the Act. However, many of the activities exempted from the provisions of the Act are among those that have caused threats to wetland areas in other states, such as the construction of highways and the laying of public utility lines.

Wetlands Acquisition

Land acquisition is authorized for waterfowl areas by the Game and Fish Commission for state park purposes by the State Parks Agency, but no acquisition program is presently being undertaken.[46]

FLORIDA

AQUATIC PRESERVES

On November 24, 1969, the Florida Board of Trustees of the Internal Improvement Trust Fund passed a resolution establishing a system of aquatic preserves. The Board of Trustees, which is composed of the governor, the secretary of state, the attorney general, the comptroller, the state treasurer, the Commissioner of the Department of Education, and the Commissioner of the Department of Agriculture, is entrusted with the administration of (including the sale and the leasing of) the state's public lands. Twenty-five preserves have been established: eleven on the Atlantic Coast and fourteen on the Gulf Coast.

This aquatic preserve system was established as a result of the recognition of the desirability of protecting and preserving in perpetuity exceptional areas of state-owned land and associated waters in essentially their natural or existing condition. A preserve is to be one or a combination of three interrelated types: "biological (to preserve or promote certain forms of animal or plant life); aesthetic (to preserve certain scenic qualities or amenities); or scientific (to preserve certain features, qualities, as conditions for scientific purposes.)[47] Each preserve is to be composed only of lands and water bottoms owned by the state and such private lands and water bottoms that a private owner may authorize for inclusion.

Inclusion of an area in the system will preclude any dredging and filling (other than minimal projects for navigation purposes), mineral exploration or excavating, or erection of structures (unless associated with an authorized activity). However, the rules and regulations

established by the Board of Trustees to regulate activities in the aquatic preserves are not to "interfere unduly with lawful and traditional public uses of the area, such as fishing (both sport and commercial), hunting, boating, swimming and the like."[48]

Wetland Acquisition

The trustees of the Internal Improvement Fund are authorized to acquire wetlands and floodplains by purchase, purchase-lease agreements, etc., using funds from the land acquisition trust fund.[49]

REGULATION OF COASTAL CONSTRUCTION AND EXCAVATION

Act 280-1971 (Regulation of Coastal Construction and Excavation)

In 1971, Florida state legislature passed Act 280 which authorized the establishment of coastal construction setback lines for the protection of upland areas and the control of beach erosion. Such lines are to be established on a county basis by the Division of Marine Resources of the Department of Natural Resources after a comprehensive engineering study and topographic survey have shown that they are needed for the above purposes. The Department also must hold a public hearing before establishing such setback lines and have the lines, once established, recorded in the public records of the county and municipalities affected.

Setback lines are to be reviewed every five years or upon written request of county or municipal officials. In addition, any riparian upland land owner who believes that the use of his property is unduly restricted by a setback line, as it has been established, can ask for a review of the line by the Department. If the land owner is not satisfied by the results of such a review, he can seek judicial review as provided by the procedures established in the state statutes.

Once a setback line has been established, no construction, excavation, or other removal of beach material, vehicular traffic, or damage to vegetation is allowed seaward of the line except by a waiver or variance authorized by the Department of Natural Resources. Such waivers or variances may be granted by the Department upon application of a riparian property owner if the Department believes the facts concerning the case under consideration, including engineering data concerning shoreline stability and storm tides in relation to shoreline topography, clearly justify such action.

Shore protection structures which are regulated under other statutes or areas explicitly designated by the Department as not needing protection from erosion because of their composition are exempted from the provisions of this act.

Violators of the provisions of the Act are liable for a fine of between $500 and $1,000. Each month or portion thereof a violation continues is to be considered a separate offense. In addition, violators will be required to restore the affected area to its previous condition or be charged the costs for the Department to do so.

Commentary

While this act provides some protection for coastal areas, it is aimed at preventing undue shore erosion rather more general protection purposes. More importantly, the Department of Natural Resources may have been given too much discretion in the granting of waivers and variances.

COASTAL COORDINATING COUNCIL

Act 259-1970 (Coastal Coordinating Council)

Probably the most significant piece of coastal management legislation that has been passed by the Florida state legislature is Act 259 which was enacted into law on July 1, 1970. This act established, within the Department of Natural Resources, the Florida Coastal Coordinating Council, consisting of the Executive Directors of the Department of Natural Resources, the Board of Trustees of the Internal Improvement Trust Fund, and the Department of Air and Water Pollution Control as base members, and such additional members of interested state and local governmental units as the base members may unanimously ask to become members. The Council's creation reflects the legislature's recognition that:

> the environmental aspects of the coastal areas of this state [Florida] have attracted a high percentage of permanent population and visitors and that this concentration of people and their requirements has had a serious impact on the natural surroundings and has become a threat to health, safety, and general welfare of the citizens of this state.[50]

This council was created to coordinate programs and comprehensive planning to meet these threats to Florida's coastal area.

Act 259 gave the council the following duties:

(1) The Coastal Coordinating Council is to be considered the future Coastal Zone Authority for Florida as the term is used in pending federal legislation.

(2) The principal consideration in all coastal resource use allocations will be the maintenance and, where indicated, improvement of environmental quality.

(3) Public interest will be the primary consideration against which all uses will be measured.

(4) Policies and criteria will be established to provide joint use of resources by compatible activities and allocation of exclusive use by non-compatible activities.

(5) All criteria established for allocation of coastal resources will provide for maximum retention of options for the future.

(6) The Florida Coastal Area Management Plan will promulgate policy and criteria as guidelines for regional and local planning for allocation of local coastal resources.[51]

In order to carry out the above activities the legislature authorized the expenditure of $200,000 from the Internal Improvement Trust Fund.

Guidelines for Council Activities

To provide guidance in the planning phase of its programs, the Coastal Coordinating Council adopted the following guidelines:

(1) To employ a staff director and such other personnel as may be necessary to aid in carrying out the work of the council.

(2) To conduct, direct, encourage, coordinate and organize a continuous program of research into problems relating to the coastal zone.

(3) To review, upon request, all plans and activities pertinent to the coastal zone and to provide coordination in these activities among the various levels of government and areas of the state.

(4) To develop a comprehensive state plan for the protection, development and zoning of the coastal zone making maximum use of any federal funding for this purpose.

(5) To provide a clearing service for coastal zone matters by collecting, processing and disseminating pertinent information relating thereto.

(6) To make use of such pertinent data as may be secured from departments, boards, commissions, officials, agencies and institutions, except such records or information as may be required by law to be confidential, and any and all interested agencies are requested to make available such records, data, information and statistics as are necessary or proper for the operation of the council.

(7) To provide such other services as any interested agency may request.[52]

In accordance with such guidelines, the Council has developed a concept to be utilized in the development of the comprehensive plan for Florida's coastal zone which would classify the state's coastal zone according to three basic zones: "preservation" (no development permitted), "conservation" (limited development permitted), and "development" (suitable for intensive development).[53]

Outside Assistance

In developing the ramifications of this concept and methods for applying it, the Coordinating Council will be assisted by a research group at the University of Florida.[54] Other university-based cooperative programs involve compilation of pertinent county and municipal laws and ordinances by Professor Dennis O'Connor, Director of the Ocean Law Program at the University of Miami, and a study of trace metals and pesticide residues in inshore estuary waters by the State University Systems Institute of Oceanography in conjunction with the Department of Air and Water Control.[55]

Pilot Study

A pilot study area has been established in the Escambia-Santa Nora (Escarosa) region in western Florida. An in-depth study has been made of the area as a first step in a detailed planning effort. It is expected that the methodology techniques developed for the zoning classification system will soon be tried in this area.[56]

Commentary

The state of Florida has embarked on a substantial coastal zone comprehensive planning program as a first step to a comprehensive coastal zone management program. Unfortunately, no deadline for completion of

the comprehensive plan has been set. As a result the planning effort may drag out without significant steps being taken towards development of the management program.

FOOTNOTES

New Hampshire

[1]Act 215-1967 (Wetlands Dredging and Filling), Section 1.

[2]John O. Ludwigson, "Managing the Environment in the Coastal Zone," Environmental Reporter, Monograph No. 3, Vol. 1, No. 1, (May 1, 1970), p. 8.

Connecticut

[3]Act 695-1969 (Preservation of Tidal Wetlands), Section 2.

[4]Ibid., Section 1.

[5]Ibid., Section 7.

[6]Letter of August 19, 1971, in response to request for information, from John T. MacDonald, Commissioner of the Connecticut Department of Agriculture and Natural Resources.

[7]Letter from John T. MacDonald, and News Release of July 14, 1971, of the Connecticut Department of Agriculture and Natural Resources.

[8]Letter from John T. MacDonald.

[9]Ludwigson, op. cit., p. 6.

[10]Ludwigson, op. cit., pp. 8, 9.

New York

[11]The Long Island Wetlands Act, Mimeo published by the New York Conservation Department (now the Department of Environmental Conservation), 1969.

[12]Milton S. Heath, Jr., Estuarine Conservation Legislation in the United States, Land and Water Review, Vol. V, No. 2, 1970, p. 370.

[13]Ludwigson, op. cit., p. 8.

[14]Letter of August 31, 1971, from Anthony S. Taormina, Principal Fish and Wildlife Biologist, New York Department of Environmental Conservation.

[15]David H. Wallace, Director, Functions and Responsibilities of the Division of Marine and Coastal Resources, (mimeo), Revised August 4, 1969.

[16]McKinney's Consolidated Laws of New York Annotated: Book 42, Public Authorities Law, Section 1859 (3) (b).

[17]The discussion of New York's nuclear power plant site acquisition law relies heavily upon the treatment given that topic in Land and Procedures of Power Plant Siting in New England - Report No. 1 in the series: Power and the Environment (New England River Basin Commission, Boston, 1970), pp. 69-71.

New Jersey

[18]Act 272 (The Wetlands Act of 1970) of the 1970 New Jersey state legislative session, Section 1.

[19]Ibid., Section 4.

[20]Ibid., Section 2.

[21]Ibid.

[22]Ibid., Section 4.

[23]Ibid., Section 6.

[24]Letter of August 24, 1971, from Jo Ann Yates, Office of the Commissioner, New Jersey Department of Environmental Protection.

[25]Newsletter of the Florida Coastal Coordinating Council, Vol. 1, No. 10, (August, 1971), p. 4.

[26]Ludwigson, op. cit., p. 8.

Virginia

[27]Section 62.1-3 of the Virginia Statutes describes the power that the Virginia Marine Resources Commission has to regulate the use of the state's sub-aqueous beds.

[28]Ludwigson, op. cit., p. 19.

North Carolina

[29]Act 1159-1971, Section 7(a).

[30]Ibid., Section 7(a).

[31] Ibid., Section 7(f).

[32] Heath, op. cit., p. 371.

[33] The National Estuary Study, Vol. 3, p. 138.

[34] Act 237-1965, Section 1 [Section 104B3].

[35] Ibid., [Section 104B5].

[36] Act 1164-1969 (Estuarine Study), Section 1.

[37] Heath, p. 371.

[38] Ludwigson, p. 9.

[39] Act 1143-1969 (Abolishment of Seashore Commission).

South Carolina

[40] Ludwigson, p. 10.

Georgia

[41] Act 1332-1970 (The Coastal Marshlands Protection Act of 1970), Section 2.

[42] Ibid., Section 5.

[43] Ibid.

[44] Ibid., Section 11.

[45] For a discussion of the legal question surrounding the attorney general's ruling and the provision of the Coastal Marshland Protection Act of 1970, one should refer to Laurie K. Abbott's article "Some Legal Problems Involved in Saving Georgia's Marshlands," (Georgia State Bar Journal, [Vol. 7, No. 1, August 1970], pp. 27-30).

[46] Ludwigson, p. 7.

Florida

[47] Proceedings of the Management Systems for the Resources of the Coastal Zone, a symposium held at Charleston, South Carolina on June 8-9, 1970, p. 85.

[48]Aquatic Preserves Resolution of November 24, 1969, of the Board of Trustees of the Internal Improvement Trust Fund.

[49]Dennis J. Dimsey, Wetlands: The Legal Context (Report prepared for the Maryland State Planning Department, July, 1968).

[50]Act 259-1970 (Coastal Coordinating Council), Section 1.

[51]Ibid., Section 4.

[52]Newsletter of the Florida Coastal Coordinating Council, Vol. 1, No. 2, (December, 1970), pp. 1-2.

[53]Ibid., Vol. 1, No. 10, (August, 1971), p. 1.

[54]Ibid., p. 2.

[55]Ibid.

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CHAPTER 2

GULF COAST

Alabama, Mississippi, Louisiana, Texas

At the present time, these states do not have major coastal zone management programs. Most of the regulations that they do have regarding activities in their coastal zones are oriented toward single purpose activities such as navigation or waterfowl production rather than toward comprehensive management. Moreover, much of these states' involvement in their shoreline areas has been aimed at promoting development of coastal resources and settling arguments over ownership of those resources rather than consideration of the appropriate balance between preservation and development.

In general, the possible destruction of their coastal resources by over-exploitation, over-development, and pollution is only beginning to be regarded as a relevant concern by the state agencies of this region. This is not to say that these states have not acquired lands for bird and wildlife refuges, or for state parks, but rather that, until quite recently, little consideration has been given to the concept that comprehensive management of the coastal zones is necessary if these areas are to retain their vitality and remain productive regarding fish and wildlife and other estuarine life.

Summaries of the coastal activities presently being undertaken by each Gulf Coast state follow.

ALABAMA

Alabama's State Docks Authority is authorized to establish "harbor lines" behind which it can exercise supervision and control over activities that are undertaken.

In areas where "harbor lines" do not exist, the Department of Conservation has similar authority over activities that occur below the mean high tide line where the state's authority over its tidelands is said to be well-established.[1]

The state's activities regarding the preservation of its estuaries and wetlands are confined to:

> preventing alteration of the habitat by refusing to approve Corps of Engineer project applications for projects harmful to the environment. The same applies to dredging and filling. Locations of industries and domestic sources of pollution are regulated by the Alabama Water Improvement Commission and by city zoning laws.[2]

In the Mobile Bay Basin the South Alabama Regional Planning Commission has proposed planned zoning as a part of their pollution abatement plans, but the needed authorizing legislation appears unlikely to be passed by the state legislature.[3]

MISSISSIPPI

MARINE RESOURCES COUNCIL

Composition and Duties

Mississippi has recently taken steps toward the development of a coastal zone management program. By the passage of Act 2934, during its 1970 session, the Mississippi state legislature created the Marine Resources Council to:

> provide for effective, efficient and economic development of marine resources available to the state of Mississippi, and to cause suitable skilled professionals and labor to harness the marine resources of this state's coastal, offshore and water resources toward achieving the highest economic growth potential possible through modern concepts and technology in the oceanographic field and scientific discovery of underwater marine resources.[5]

The Council is to be composed of sixteen members: two members from the state house of representatives; two members from the state senate; six members of the general public; and one member from each of the following entities: the state's educational institutions, the Universities Marine Center, the Research and Development Center, the Mississippi Agricultural and Industrial Board (its director), the Mississippi Marine Conservation Commission or its staff,[6] and the Gulf Coast Research Laboratory.[7] Each member is to be appointed for a four-year term by the governor with the advice and consent of the state senate.

To enable it to carry out its duties the Council was authorized to appoint an executive director and other staff, accept funds from any source, to contract services from state or federal governments, and to cooperate with other institutions involved in marine research. An appropriation of $242,000 was made to provide funds for its operating expenses.[8]

The Council, in order to accomplish the functions quoted above, was mandated to develop a long-range oceanographic program for the state. It was also mandated to undertake such planning programs and review of programs relating to the development and utilization of the state's coastal and marine resources as are necessary to assure that the state's activities in that area are coordinated among themselves, with those of other states, and with those of the agencies of the federal government.

The Council is also to act as an advisory body on marine matters to the governor, relevant state agencies, the Gulf Coast Research Laboratory, the Board of Trustees of Institutions of Higher Learning, and the Universities Marine Center. In this capacity, it is: (1) to act as a clearinghouse for all present and future joint federal-state programs; (2) to advise which are the best programs for developing the state's marine resources; (3) to aid in the state's participation in such federal programs; and (4) to recommend how the facilities of the state could be best utilized for marine research and development.

Coastal Zone Management Plan[9]

In accordance with the duties and functions described above the Council has embarked on developing a comprehensive program for management of the state's coastal zone. One of the first actions of the Council was to designate the Universities Marine Center as its research and advisory arm for all its activities. As a result, the Center has directed its Sea Grant research program towards developing better approaches for the preservation and utilization of the state's coastal resources.

Most of the Council's efforts are presently being directed towards the development of a comprehensive coastal zone management plan.

While these efforts are still in an early stage, some broad objectives and methods of approach have been decided. In particular, the Council decided that its overall objective would be:

> To obtain the best utilization of the resources of the coastal zone, by establishing and maintaining proper balance between environmental control and economic development, and by making the best multiple use of the resources so that one interest is not favored to the exclusion of others.[10]

The Council has also decided to utilize existing governmental structures as much as possible in the implementation of its program, establishing new linkages where necessary, rather than creating an entirely new organizational structure.

GULF REGIONAL DISTRICT

A second major development which may have profound implications for the management of the state's coastal zone was the passage of Act 517 by the state legislature during its 1971 session which authorized the establishment of a Gulf Regional District. The purpose of the Regional District is to encourage:

> the voluntary association of local communities and political entities of the state within a region, and to act as a unified coordinating unit structured to solve common area-wide problems by mutual cooperation within the framework of local governmental control.[11]

The impetus for the creation of the Gulf Regional District grew out of the efforts of the Governor's Emergency Council, which was established under the governor's emergency powers, towards the rebuilding of the areas in the state's coastal counties that had been devastated by hurricane Camille in August, 1969. In addition to coordinating the

rebuilding activities, the Council was also charged with undertaking "comprehensive planning for redevelopment which would allow the area to realize its great natural potential."[12]

Impressed with the Council's work, the state's coastal counties and cities urged the development of a permanent organization that would provide a regional basis for the undertaking of rehabilitation efforts from such disasters and also general comprehensive planning for the state's coastal areas.

Composition of the District's Governing Body

The Gulf Regional District's governing body is to be composed of the presidents of the boards of supervisors of each county and the mayors of each city in the state's six coastal county region that chooses to join the District, three members appointed by the governor from the general public of the region, and four members elected by a vote of 2/3 of the governing body of the District. In addition, ex-officio, non-voting members of public agencies undertaking activities in the region may be added at the governing body's discretion.

Cities and counties can join the District by having their governing bodies pass a resolution, which is subsequently affirmed by the voters of the city or county in question. If the governing body rejects such a resolution, citizens of the area may place the question on the ballot for approval by the area's voters by submitting a petition with the required number of signatures to the governing body.[14] Withdrawal from the District can be accomplished by the same procedure.

Since the District is in the process of formation, provision has been made for an interim organization composed of those members appointed by the governor to undertake some minimal duties--until such time as

at least three cities and/or counties have elected to join the District. The cities and counties in the region were given until February 1, 1972, to pass resolutions stating whether they intend to join the District or not.

Duties of the District

Once three political entities have decided to join the District, the District is authorized to undertake the following duties:

(a) Coordinate all activities, in planning for the redevelopment of the region;

(b) Provide a mechanism for the solution of area-wide problems;

(c) Develop more effective lines of communication by and between local, regional, state and federal governments and agencies;

(d) Detail the program for the long-term development of the region;

(e) Develop and continually update comprehensive regional and associated regional plans for the district;

(f) Provide for the marshalling of the region's natural and human resources;

(g) Provide additional planning assistance to any public agency;

(h) Undertake and provide for the financing of any regional project for and on behalf of any public agency which any such public agency may be empowered to undertake in its or their right by law;

(i) Enter into contracts with any public agency or any federal agency or private persons for performance of any project within the region.[15]

In addition, the District is authorized to plan for and undertake any regional project at the request of a public agency operating in the area. It can also review, to meet the federal requirements for approval,

regional projects submitted by public agencies. The activities of the District are to be undertaken only with the approval of the cities and counties affected by it so that the District does not detract from the powers of the individual cities and counties but rather supplements them.

With respect to its planning function, the District is authorized to utilize the Gulf Regional Planning Commission. The District is also to act as a repository for all zoning ordinances, building codes, subdivision regulations, etc., that the political units in the region have enacted and as a clearinghouse for the dissemination of information relating to planning in the region. It is authorized to urge, but not compel, the adoption of uniform ordinances, codes, and regulations throughout the region.

The District's operations are to be funded by an assessment of 50¢ per capita. If a city and the county in which it is located both join, each entity's share shall be 25¢ per capita on their respective populations. The funds to pay for these assessments are to come out of a county's or city's general fund or from an ad valorem property tax of not more than two mills.

As is usual with such bodies, the District was authorized: to set rules of operation; hire staff; set compensation for those members of its governing staff, who are not elected officials, at a rate not more than $22.50/day besides reimbursement for expenses; employ an executive director and staff; enter into contracts for services necessary to performance of its functions; hold public hearings; accept funds for any source; maintain offices wherever it chooses; and meet at least twice

a year, more often upon request of two of the members of its governing body.

Gulf Regional Planning Commission

The Gulf Regional Planning Commission, which will likely act as the planning arm of the Gulf Regional District, has recently undertaken a major study dealing with coastal zone planning. This study relates to the development of a regional plan for open spaces, recreation, and environmental appearance for Hancock, Hansen, Jackson, and Pearl River Counties. In this study, open space is defined as "land or water area within the [four county] region which is predominantly in its natural condition"[16] such as parks, beaches, school grounds, rivers and streams, utility and road right of ways, military lands, etc. Such lands are to be used for recreation; fish and wildlife habitat protection; soil conservation; provision of scenic amenities; beach, shoreline, and estuarine protection; and educational, scientific and defense purposes.

Commentary

Since the Marine Resources Council was only established last year and its efforts towards developing a comprehensive coastal zone management plan are still at an early stage, it is difficult to judge the likelihood of the development of an adequate coastal zone management program. The efforts of the Marine Resources Council will have to be closely watched as well as those of the Gulf Regional District.

While the latter is presently an advisory body, it has the potential of developing into a management entity which could play a significant role in the state's coastal zone management program. It will be interesting to observe in the next four years what linkages develop

between the Council's and the District's activities and whether the present efforts towards developing a comprehensive coastal zone management program come to fruition or not.

LOUISIANA

BACKGROUND

Louisiana traditionally has been more interested in exploiting its non-renewable mineral resources, while neglecting the need for preserving and protecting its renewable marine resources and its dwindling estuarine areas.[17] This is in spite of the fact that it is quite dependent on its coastal and floodplain wetlands, which comprise 45% of the state's area and contain 80% of its population and 80% of its manufacturing capacity.[18]

Public works projects for purposes of flood control; the enhancement of oil and gas production; and the development of port facilities at New Orleans, Baton Rouge, and Lake Charles have inhibited the flow of water through the state's wetlands and, thus, have helped cause a salt-water intrusion problem. In addition to reducing the productiveness of the state's wetlands, such projects have been responsible for an annual net loss of land of 16.5 square miles a year. It is estimated that this rate of loss has continued for 40 years, amounting to a loss of land equal to 1/3 of the total area of the state of Rhode Island.[19]

In addition, localized state agencies called "levee boards" have been given considerable power by the state legislature to build levees and drain areas for the purposes of creating hard land, primarily for development purposes. In the process, the state's estuary regions have been adversely affected. Likewise, the 36 Port and Harbor Commissions in the state have, it seems, tried to give each community a port of its own and direct access to the Gulf of Mexico. The resultant system of canals and waterways has adversely affected the state's wetlands

by allowing the fresh water that would normally mix with the brackish water of these regions to flow directly through the man-made channels away from these areas to the Gulf of Mexico.[20]

PRESENT COASTAL MANAGEMENT PROGRAMS

Management of activities in state's coastal zone has been primarily in the hands of three state agencies: the Louisiana Wildlife and Fisheries Commission, Louisiana Department of Conservation, and the Department of Public Works. The Wildlife and Fisheries Commission is the predominant agency having authority over most resource development and use activities in the state's coastal zone, other than mineral development and major water resources development. Among the activities that it regulates are shellfish harvesting, canal and waterway dredging, sports fishing and hunting, refuges and preserve management, water pollution abatement, and seismic exploration for oil and gas deposits.

The Department of Conservation regulates the production of oil and gas and the extraction of other minerals in the state to insure efficient and equitable production and to curtail pollution and safety hazards.

The Department of Public Works manages the state's flood protection, navigation, and water resource programs. Among its activities are the construction of dams and reservoirs, the digging of canals and harbors, the construction of water diversion projects for navigation and water supply purposes, the assisting of local levee boards with their projects involving flood control, and the provision of technical assistance to local governments.

In addition, there exists a Louisiana Coastal Commission. This commission is composed of only the coastal parishes of the western and middle parts of the state, but not those in the eastern part of the state. Moreover, the focus of its activities is on the construction and operation of an Intracoastal Seaway and the construction and operation of canals, levees, locks, and similar devices to improve navigation, increase fresh water supply, prevent salt water intrusion, abate water pollution, and promote flood control.

CENTER FOR WETLAND RESOURCES

Recent developments may lead to more attention to the problems of preserving the state's wetland resources and, thus, to a more balanced resource program.

In recognition of the importance of wetlands to Louisiana, Louisiana State University established the Center for Wetland Resources in December, 1970, to coordinate the University's activities regarding wetlands and to promote research into the physical characteristics of proper land management techniques for the state's wetlands. This action was followed by the adoption of a Wetlands Charter by the University Board of Supervisors which declared that a primary goal of the University would be the achievement of "further national and international recognition as a center of research, education and advisory services in the fields of study, management and development of wetland areas and resources - both natural and cultural."[21] The adoption of this Charter also means a determination on the part of the University to consider its activities and resources from the perspective of their significance to the understanding, preservation, and management of the state's wetlands rather than merely their contribution to individual disciplines.

The primary mechanism for achieving the Charter goal is to be the Center for Wetland Resources. The establishment of the Center brought together three formerly separate entities: the Coastal Studies Institute, the Office of Sea Grant Development, and the Department of Marine Sciences, each with its own area of expertise and potential contribution.

Coastal Studies Institute

Over its 20 year history, the Coastal Studies Institute has conducted coastal research throughout the world with particular attention to the Louisiana wetlands and delta region. The Institute's ultimate aim is to "develop the knowledge and methodology needed for the measurement, understanding, prediction, and control of coastal environments and associated sea-air land processes."[22] Among the Institute's current projects involving Louisiana's coastal zone are studies of "vegetational and faunal distributions, hydrography, sedimentology, interactions between physical, chemical, and biological marshland processes, water turbidity, and application of remote sensing techniques in coastal research."[23]

Office of Sea Grant Development

The Office of Sea Grant Development oversees the operation of the University's Sea Grant Program. That program has developed from a Coherent Project grant in 1968 to Institutional Support for the present fiscal year. The aim of this program is not only to increase the understanding of natural systems and man's impact on them, but also to support state coastal zone programs through supplying information on the social, economic, and legal factors involved in coastal zone management.

Among the current projects being undertaken by the Sea Grant Program are studies of the legal, political, and administrative aspects

of coastal zone management. Particular studies involve: the legal, political, and financial implications of diverting water from the Mississippi River into adjoining salt water areas to create new estuarine areas; the development of a system whereby ecological considerations could be implanted in the operation of local levee boards; the development of less intrusive methods of oil extraction in marsh areas; the study of various maricultural techniques; and a survey of the state's port needs to prevent an over-development of small port facilities throughout the state. In addition, a comprehensive compilation of laws pertaining to the coastal zone is being made for every coastal state in the nation.

In the current fiscal year, eleven departments, involving six major academic divisions of the university,will be involved in Sea Grant research. With such extensive participation, the Program should begin to achieve its goal of providing an informational base to the state agencies for the wise development of the state's marine and coastal resources.

JOINT LEGISLATIVE COMMITTEE ON THE ENVIRONMENT

Other major developments regarding coastal zone management in Louisiana were the creation of a Joint Legislative Committee on Environmental Quality in 1970 and the creation of a Coastal and Marine Resources Commission in 1971 as a result of the Joint Committee's recommendations.

Joint Committee's Composition and Duties

The Joint Legislative Committee on Environmental Quality was created by adoption of Senate Concurrent Resolution No. 8^{24} in recognition of the increasing concern about environmental quality and the increasing complexity of resolving the environmental issues involved with technological and social developments in the state.

The Committee is composed of the Speaker of the House and four house members appointed by him, and the lieutenant governor and three senators appointed by him. It is charged with reviewing the proposed legislation that may be referred to it relating to control of the environment (particularly control of air and water pollution), holding public hearings on the proposed legislation, and making recommendations to the state legislature as a whole on the public policy matters contained in such legislation. (The fact that the language of the resolution states that environmental legislation may instead of must be referred to the Joint Committee may be of significance; the procedures and precedents developed for referral of legislation to the Joint Committee will resolve this query.)

In carrying out its duties, the Committee is authorized to employ consultants and staff, draw upon the resources of the state agencies, subpoena witnesses, and gather such information as is necessary to carry out its duties.

In its report to the state legislature in April, 1971, the Joint Committee recommended that the Coastal and Marine Resources Commission be established to devise a coastal zone management plan for the state, including policy guidelines for the action of state agencies and recommendation for new laws and regulations that would be needed to implement the plan. By the passage of HB 118 (Act 35-1971) on June 11, 1971, the state legislature followed this recommendation.

LOUISIANA ADVISORY COMMISSION ON COASTAL AND MARINE RESOURCES

Composition of the Commission

This act established the Louisiana Advisory Commission on Coastal and Marine Resources which is to be composed of nine members, appointed by the governor, who are concerned with the conservation and orderly development of the resources of the coastal zone, possess demonstrated expertise in their respective fields, and who shall serve in their individual capacities and not as representatives of their respective employers or organizations.[25] In appointing the members of the Commission the governor is "to ensure that they have a diversity of backgrounds and interests in order to provide the Commission with a wide range of views and breadth of expertise."[26] Although the members may be selected from a wide range of industries and organizations concerned with coastal resources, two of the members must be marine academic scientists, one each from Louisiana State University and Nichols State University; one must be a person involved in the fish and shellfish industry who is a resident of a coastal parish. None can be members of the state legislature.

Coastal Zone Management Plan

The Commission's existence is tied to the development of a state coastal zone management plan. The plan is to be completed and distributed by September 15, 1973, at which time the Commission is to cease to exist.

Definition of the Coastal Zone

The Act defines the state's coastal zone as:

> the land, waters, tide and submerged lands, bays, marshes, coastal and intertidal areas, harbors, lagoons, inshore waters, and channels landward of the outer limit of the territorial sea of the United States or of the state of Louisiana, or of other waters subject to the jurisdiction of Louisiana where greater than the territorial sea of the United States, and extending inland to the landward extent of marine influences.[27]

The phrase "landward extent of marine influences" is defined as:

> the area extending landward from the high water mark which in contemplation of human activities and natural ecology may be considered to come under the influence of the adjacent sea.[28]

Composition of the Coastal Zone Management Plan

The Act gives the following objectives which the management plan is supposed to promote:

(1) The orderly and responsible development and utilization of coastal and marine resources;

(2) The protection of the values of natural systems in the coastal zone, providing for accommodation of developmental uses in ways which minimize destruction of the values of natural systems;

(3) The advancement of education, research, and training in the marine sciences, and the expansion of human knowledge of the coastal zone, marine environment and coastal and marine resources;

(4) The development of the role of the state of Louisiana as a leader in the marine sciences and in the conservation and development of the state's coastal zone, marine environment and coastal and marine resources;

(5) The effective utilization of the scientific and engineering resources of the state, with close cooperation among all interested agencies, public and private, in order to avoid unnecessary waste and duplication of effort, facilities, and equipment; and

(6) The cooperation by the state of Louisiana with other states, the federal government, nations or groups of nations, and national and international organizations in marine science activities when such cooperation is in the interest of the state of Louisiana.[29]

As part of the plan, the Commission is to determine which of the existing permanent state agencies is most appropriate to implement the management plan and the policies that should be instituted by legislative or administrative action to take care of the following considerations in the implementation of the plan:

(a) The effects of population growth and urbanization on the coastal zone;

(b) Land use in the coastal zone;

(c) The conservation and development of coastal and marine resources;

(d) Recreation;

(e) Waste management, water quality, and pollution control;

(f) Water and power development, including the use of nuclear energy;

(g) Transportation and trade in the coastal zone and marine environments;

(h) Engineering and technology in the coastal zone and marine enviornments;

(i) Research and education in the field of marine science;

(j) Weather, climate, oceanographic conditions, and the establishment of monitoring systems;

(k) All social, economic, legal, and other matters relative to the conservation and development of the coastal zone, marine environment and coastal and marine resources; and

(l) Any system of coastal zone management adopted by the federal government.[30]

The Commission is to base its recommendations on:

> a comprehensive investigation and study of all aspects of the marine sciences, coastal zone, marine environment and coastal and marine resources, including but not limited to all of the following:
>
> (a) A review of the known and estimated future needs for coastal and marine resources from the coastal zone;
>
> (b) A survey of all significant existing and planned marine science activities in the state of Louisiana, including research, educational, developmental, and administrative policies, programs, and accomplishments of all departments and agencies of the state which are engaged in such activities; and

> (c) A determination of the surveys, applied research programs, and ocean engineering projects required to obtain the needed coastal and marine resources from the coastal zone.[31]

In addition, the Commission is to study:

> state and federal plans, studies, and legislation in the field of conservation and development of coastal and marine resources, and shall thereafter recommend to the governor and the legislature the most appropriate form of state organization for participation in any system of coastal zone management adopted by the federal government.[32]

Other Duties of the Commission

The Commission is also to submit to the governor and the state legislature each March, a report describing the activities and accomplishments of each state agency relating to the "conservation and development of the coastal zone, marine environment and coastal and marine resources during the preceding fiscal year"[33] and an evaluation of the consonance of these activities to the objectives set forth in Act 35-1971. Accompanying each report are to be recommendations for legislative and administrative action considered necessary to achieve the objectives set forth in the Act and appraisals of the funding requirements for each state agency for its coastal zone activities. In addition, the Commission may submit any reports and recommendations deemed advisable at any time to the governor and the legislature.

In order to carry out its duties, the Commission is authorized to employ staff; utilize the resources of state agencies; and contract with other state agencies, the federal government, and private consultants for services related to carrying out its responsibilities. In addition, the Commission was given the blanket authority "to do any and all other things necessary or convenient to enable it fully and adequately to

perform its duties and fulfill its responsibilities."[34] To pay for its operational expenses, $50,000 was appropriated for the 1971-72 fiscal year.

It is expected that Louisiana State University's Center for Wetland Resources will provide substantial assistance to the Commission in development of a coastal zone management plan.[35]

Commentary

The development of the coastal management plan (Act 35) will be a step forward for Louisiana's coastal zone program, provided some attention is given to the protection and preservation of the state's coastal resources. However, a few comments should be made about the provisions of Act 35, which authorized it.

First, the term "coastal and marine resources" is defined to include "without limitation, living resources, non-living resources, recreational uses, shoreline development, wildlife and estuarine preservation, transportation and water resources which may be adversely affected by waste."[36] [underlines added] In effect, this definition includes particular uses of the resources as well as the resources themselves.

Second, the Act prescribes that the plan is to be implemented by existing permanent state agencies, thus eliminating the option of creating a new agency or management entity for this purpose. With the state's previous emphasis on development, use of already existing agencies may encounter impediments as such agencies cannot be expected to adopt wholeheartedly new operating ethics and policy direction overnight. How great a significance this restriction will have on the plan's implementation remains to be seen, but it seems unwise to reject possible alternative management mechanisms without allowing their consideration.

BEACH ACCESS

Act 19-1959 (The Open Beaches Bill)

Texas is one of the few states to recognize public ownership of its beach areas up to the vegetation line. By the passage of Act 19, the Open Beaches Bill[37] in 1959, the state legislature declared that it was the public policy of the state that:

> the public, individually and collectively, shall have the free and unrestricted right to ingress and egress to and from the state owned beaches bordering on the seaward shore of the Gulf of Mexico or such larger area extending from the line of mean low tide to the line of vegetation on the Gulf of Mexico, in the event that the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained such a right by virtue of continuous right [sic] in the public.[38]

This Act further provides that, in any court suit challenging this action, the fact that

> the area in question is embraced within the area from mean low tide to the line of vegetation shall be prima facie evidence that:
>
> (1) The title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea;
>
> (2) There has been imposed upon the area subject to proof of easement or prescription right or easement in favor of the public for ingress or egress to the sea.[39]

In cases where the line of vegetation cannot be determined or where it is located far back from the water's edge, a 200-foot limit from the line of mean low tide was established to take the place of the line of vegetation.

Obstruction of the public access to the beaches or prescription areas is to be considered an offense against the public policy of the

state and the state attorney general, county attorney, district attorney or criminal district attorney is authorized to bring suit to remove any such obstruction. The cost of removal of the obstruction is to be paid by the person responsible for the obstruction.

The Act also authorized the Commissioners Court of the county in which a beach is located to establish regulations to control motor traffic on the beaches and to prohibit littering. In regards to such regulations, the towns and villages within a county were allowed by the Act to establish their own regulations which would, in cases of conflict with the county's regulations, supersede the county's regulations. (Because of the long expanses of beaches in the state, vehicular travel is a major use of beach areas. Such use provided substantial support for the state's position that upper beach areas have been prescripted for public use.)

The Act also provided for the establishment of a legislative committee to study various issues relating to the use and management of the state beach areas (acquisition of more accessways, highway right-of-ways, right of property owners to construct protective devices, etc.) and to make recommendations to the state legislature for such legislative action as is necessary to adequately cope with such issues.

By passing this Act, Texas became the first state in the nation to enact legislation to protect the public's access to and use of dry sand beach areas below the vegetation line. As mentioned above, Oregon followed Texas' example by enacting similar legislation in 1967.

Court Review of Act 19-1958

The provisions of this Act were tested in 1964 in the case of Seaway Co. vs. Attorney General.[40] The state attorney general sought the removal of barriers constructed by the Seaway Company on a beach near

Galveston on the area above the mean high tide line. The state asserted the continued public use of the area for many years for all sorts of recreational activities including motorized travel. The court decided in favor of the attorney general's position, but based its decision largely on the public use of the beach as a roadway, a precedent which had been safely established, rather than on the general prescription of the use of the upland beach areas for various types of activities. It was left to the courts in California and Oregon to decide cases on such broader contexts.

INTER-AGENCY NATURAL RESOURCES COUNCIL

At present, the state agencies in Texas are carrying out mainly traditional line functions in relation to coastal zone activities: fish and game management, oil and gas exploration permit issuance, water pollution control programs, etc. However, there have been developments in the past few years that indicate a movement towards more comprehensive management programs for the state's coastal resources and away from the state's traditional single-purpose programs which emphasize the exploitation of such resources.

Creation of Inter-Agency Planning Councils

In 1967, the state legislature, by enactment of Act 417, reorganized the planning operations of the Texas state government. The governor was designated the state's chief planning officer and a Division of Planning Coordination was created in his office to provide him with staff services. In addition, a series of Inter-Agency Planning Councils was created to coordinate the planning efforts of the state government in the following areas: natural resources, health, education, and such other areas that

need coordinated planning efforts. Each council was to be comprised of a representative of the governor's office, the heads of the relevant state agencies, and the heads of the educational institutions of the state. In the case of the Natural Resources Interagency Council, the following membership was appointed: the governor and the executive directors of the General Land Office, Air Control Board, Industrial Commission, Railroad Commission, Highway Department, Parks and Wildlife Department, Soil and Water Conservation Board, Water Quality Board, Water Development Board, and Water Rights Commission.

Natural Resources Inter-Agency Council Comprehensive Coastal Study

In 1969, the state legislature, by passage of Senate Concurrent Resolution No. 38, mandated the Natural Resources Inter-Agency Council, in consultation with the School Land Board and the Submerged Lands Advisory Commission, to undertake "a comprehensive study of the state's submerged lands, beaches, islands, estuaries, or estuarine areas, including but without limitation coastal marshlands, bays, sounds, seaward areas, and lagoons."

The Resolution defined the term "estuary" as:

> all or part of the mouth of an intrastate river or stream or other body of water, including but not united to, a sound, bay, harbor, lagoon, inshore body of water, and channel, having unimpaired natural connection with the open sea and within which the sea water is measurably diluted with fresh water derived from land drainage.[41]

The term "estuarine areas" was defined as:

> an environmental system consisting of an estuary and those transitional areas which are constantly influenced or affected by water from an estuary such as but not limited to, coastal salt and fresh water marshes, algal flats, coastal and intertidal areas, bays, harbors, lagoons, inshore bodies of waters and channels.[42]

In this study the Council is to consider the value of the above areas for the following purposes:

> (a) their wildlife, health, and recreational potential, their ecology, their value as natural marine habitats and nursery feeding grounds for the marine, anadromous, and shell fisheries, their value as established marine soils for producing plant growth of a type useful as nursery or feeding grounds for marine life and their natural beauty and esthetic value;
>
> (b) their importance to navigation, their value for flood, hurricane, and erosion control, their mineral value; and
>
> (c) the value of such areas for more intensive development for economic use to further the growth and development of the state.[43]

The Council also was specifically instructed to consider (1) the ramifications of coastal engineering projects such as groins, seawalls, and bay fills, and their value for beach protection and erosion and their effects on the physical characteristics of the shore and bay bottom and marine fish and wildlife and (2) the effects of waste and drainage water discharges into estuarine areas and the waters of the Gulf of Mexico regarding "the reasonable protection and conservation of the marine environment and the natural resources and natural beauty"[44] of the study areas.

In carrying out the study the Council also was to consider:

> without limitation as to the generality thereof, the physical and economic effects of existing and proposed water development projects of federal, state, and local agencies, and of authorized and prospective drainage projects of whatever nature upon the coastal waters and the waters of the state's estuaries and estuarine areas the feasibility of reclaiming drainage waters from such projects, the future population growth and economic development in the area and in areas tributary thereto, the effects of existing and proposed projects for the filling and reclamation of waterfront lands upon the waste assimilative capacity of the coastal waters

> and the waters of the state's estuaries and estuarine areas, the possibilities of reclamation and reuse of waste waters and drainage water from such projects, and the feasibility of flow augmentation through managed releases from upstream reservoirs as an aid to quality maintenance.[45]

As is usual with the carrying out of such studies, the Council was authorized: to receive grants; contract for studies; utilize data and information developed by federal, state, and local agencies; hold public hearings; and draw upon the facilities of its member agencies. In addition, the council will rely upon the Sea Grant Program at Texas A & M University for much of its research work.[46]

The Council was required to submit an interim report along with recommendations for emergency legislation to the governor and the state legislature on December 1, 1970, and its final report along with its recommendations for appropriate legislation on December 1, 1972.

Moratorium of Sale or Lease of Submerged Lands

In order to protect the state's coastal resources from undue exploitation while the Council's study was being completed, the state legislature by passage of Act 21-1969, enacted a moratorium on the "sale or leasing of, and the establishment of any bulkhead line on the surface estate of any state-owned submerged lands, beaches, and islands for any purposes under any existing law of this state."[48] The moratorium is to last until the Council's study is completed or May 31, 1973, whichever is earlier.

The following exceptions were made to the moratorium: (1) the leasing of submerged lands or islands where they are within 2500 feet of submerged lands or islands already leased to the applicant, (2) the extraction and sale of "marl, sand, gravel, or shells of commercial value" under a permit by the Parks and Wildlife Department, (3) "any island or

peninsula that is not accessible by a public road or common carrier ferry facility, so long as such conditions shall exist."[49]

How much land is excluded from the moratorium by these exceptions and what significance such exclusion will have on the effect of the moratorium is not known by the author.

COUNCIL ON MARINE-RELATED AFFAIRS

HSR 381-1969 (Interim Study Committee on Oceanography)

Durings its 1969 session, the Texas House of Representatives passed House Simple Resolution (HSR) 381 creating an interim committee to study the feasibility of establishing an Institute of Oceanography. The Interim Study Committee on Oceanography, thus created, was composed of members of the House of Representatives, academic officials, businessmen, and a lawyer.[50] This Study Committee was to undertake its study during 1970 and report its findings to the 1971 state legislature. An informal industrial advisory committee was formed to provide a link between the Committee and marine-oriented industries. The Committee held a series of public hearings, mainly on marine industry topics, during 1970, as well as visiting various oceanographic institutions, such as the Woods Hole Oceanographic Institute and the Scripps Institute of Oceanography.

As a result of its investigations, the Committee recommended that the question of an oceanographic institute be deferred in favor of developing mechanisms to cope with the pressing problems of coastal and marine development. Therefore, the Committee recommended to the state legislature and the governor, the establishment of a Texas Council on Marine-Related Affairs to provide a continuing source of wise judgment and expertise on marine and coastal matters. In addition, the Committee pointed up the

need for a Coastal Zone and Marine Affairs Administrator in the governor's office to provide an operational link to the federal government and to other states.

Composition and Duties of the Council on Marine-Related Affairs

In accordance with the Committee's recommendations, the 1971 Texas state legislature established the Texas Council on Marine-Related Affairs by enacting Act 279 on May 19, 1971. This Council is to consist of twelve members, all Texas residents; four of whom are to be appointed by the governor, four by the lieutenant governor, and four by the speaker of the house. In each group of four, there is to be a representative of government (the governor's personal representative, a state senator, and a state representative, respectively); of education; of commerce and industry; and of the general public. Each group of four is to be initially appointed to a different term of office to provide staggered terms. Thereafter, they are to be appointed to six-year terms.[51]

To carry out its duties of advising the governor and the state legislature on "the comprehensive assessment and planning of marine-related affairs in this state [Texas] and their relationship to national and international marine-related affairs,"[52] the Council was given the mandate to hold public hearings, establish a liaison with appropriate agencies of the federal government, accept funds from various sources, appoint a director to serve as the chief executive officer of the Council and as the head of the Council's staff, and hold quarterly or more frequent meetings.

To provide the Council with funds until it receives a formal appropriation for operational expenses, the Act authorized the expenditure of funds from the contingent expense funds of the state house of representatives and the state senate. However, the expenditure of such funds

is dependent upon the approval of an annual budget for the Council's operations by the Contingent Expense Committee of the house or the senate as the case may be.

The Act also broke with tradition by authorizing the payment of $50 to each Council member for each day devoted to Council business, in addition to reimbursement for expenses. However, those Council members who are also members of the state legislature were excluded from this payment because service on the Council is to be considered part of their legislative duties. Provision of such remuneration may allow qualified persons to serve who otherwise might not have been able to and should encourage attendance at the Council's meetings.

POWER PLANT SITING

The governor has recently begun coordinating, through an appointed committee, future power plant sitings. No further information is presently available on this program.[53]

COMMENTARY

Thus, the Texas state government has taken steps towards the development of a comprehensive coastal management program for the state. How extensive and how effective such a program will be will depend on the worthiness of the plan being developed by the Inter-Agency Natural Resources Council and the state legislature's action upon it and the recommendations of the Inter-Agency Council or the Council on Marine-Related Affairs. From the preambles of the enabling legislation and public statements made by state officials, the state seems dedicated to developing its coastal resources with at least some consideration being given to the preservation

and conservation of a quality environment for the state's coastal zone.[54] Only the future will determine what the balance will be between "developmental" and "environmental" interests in the completed coastal zone management plan and the management program that evolves from it.

FOOTNOTES

Alabama

[1]John O. Ludwigson, "Managing the Environment in the Coastal Zone," Environmental Reporter, Monograph #3, (Vol. 1, No. 1, May 1, 1970), p. 5.

[2]Letter of August 27, 1971, in response to request for information, from Wayne E. Swingle, Chief Marine Biologist, Alabama Department of Conservation.

[3]Ibid.

Mississippi

[4]Copies of this act and Act 517 (Gulf Regional District Act) can be found in Appendix L.

[5]Act 293-1970 (Marine Resources Council), Section 3.

[6]The Mississippi Marine Conservation Commission was created by the passage of Act 173 in 1960 to provide for management of the state's aquatic resources specifically its shrimp, oyster, crabs, and shell deposits. It is composed of three residents each of Hancock, Harris, and Jackson Counties and a marine biologist whose recommendations are to be followed unless overruled by six other members of the Commission.

[7]The Gulf Coast Research Laboratory was created in 1950 to promote the study of the natural resources of the state (specifically its coastal resources) under the direction of the Board of Trustees of State Institutions of higher learning.

[8]Fact Sheet on Louisiana's Wetlands, Louisiana's Coastal Zone, Louisiana's Sea Grant Program, (Louisiana State University, Baton Rouge,) (mimeo).

[9]The following report was heavily relied upon in the development of this discussion of Mississippi's incipient coastal zone management program: State of Mississippi Coastal Zone Management Program, (Universities Marine Center, Ocean Springs, Mississippi), October, 1971.

[10]State of Mississippi Coastal Zone Management Program, p. 14.

[11]Act 517-1971 (Gulf Regional District Act), Section 2.

[12]Ibid.

[13]The six counties are George, Hancock, Harris, Jackson, Pearl River, and Stone.

[14]The required number is 10% or 1500 of the qualified voters whichever is less.

[15]Act 517-1971 (Gulf Regional District Act), Section 11.

[16]The Regional Plan for Open Space, Recreation and Environmental Appearance - Hancock, Harrison, Jackson and Pearl River Counties, Mississippi (Gulf Regional Planning Commission, Gulfport, Mississippi, April, 1970).

Louisiana

[17]Wetlands: Resources of the Future, (Louisiana State University, Baton Rouge, 1971), p. 80.

[18]Center for Wetland Resources, (Louisiana State University, Baton Rouge), (mimeo), p. 3.

[19]Wetlands: Resource of the Future, and Letter of March 18, 1971, to John Armstrong, Director of the University of Michigan Sea Grant Program, from Marc J. Hershman, Research Director of the Sea Grant Legal Program, Louisiana State University, Baton Rouge.

[20]Letter from Marc J. Hershman.

[21]Resolution of the Board of Directors of Louisiana State University of February 5, 1971, quoted in Wetlands: Resource of the Future.

[22]Center for Wetlands Resources, p. 1.

[23]Wetlands: Resource for the Future, p. 8.

[24]A copy of this resolution and one of Act 35 which created the Advisory Commission on Coastal and Marine Resources can be found in Appendix L.

[25]Act 35-1971 (Advisory Commission on Coastal and Marine Resources), Section 1, (paragraph 1363).

[26]Ibid.

[27]Ibid., (paragraph 1361).

[28]Ibid.

[29]Ibid., (paragraph 1362).

[30]Ibid.

[31]Ibid.

[32]Ibid.

[33]Ibid.

[34]Ibid.

[35]Louisiana Coastal Law, Report No. 2, November, 1971, (Sea Grant Legal Program, Louisiana State University, Baton Rouge), p. 3.

[36]Act 35-1971, Section 1 (paragraph 1361).

[37]See Appendix L for copies of this act and the other acts and resolutions referred to below.

[38]Act 19-1959, 2nd called session, The Open Beaches Bill, Section 1.

[39]Ibid., Section 2.

[40]Seaway Co. vs. Attorney General, 375 SW 2nd 923 (1964).

[41]Senate Concurrent Resolution (SCR) 38 (Inter-Agency Natural Resources Council Coastal Zone Study) of the 1969 Texas state legislative session, Section 1.

[42]Ibid.

[43]Ibid.

[44]Ibid.

[45]Ibid.

[46]Rep. Gus F. Mutscher, Speaker of the Texas House of Representatives, Political Consideration in the Management of the Coastal Zone, Address given on June 8, 1970, at the Symposium, "Management System for the Resources of the Coastal Zone", Charleston, South Carolina. (Published by the Texas A & M University Sea Grant Program, August, 1970).

[48]Act 21-1969 (Submerged Lands Moratorium), 2nd called session, Section 1.

[49]Ibid.

[50]The actual members were Rep. Ray Lemmon (Houston)-Chairman, Rep. Menton Murray (Hanlingen)-Vice Chairman, Rep. Bill Presnal (Bryan), Rep. Lauro Cruz (Houston), Rep. Forest Harding (San Angelo), Dr. Richard Geyen (Department of Oceanography, Texas A & M University), Dr. George Kozmetsky (Dean, College of Business Administration, University of Texas at Austin), Dr. Cecil Green (Director of Texas Instruments), Mr. Robert Bybee (Humble Oil and Refining Company), Mr. William McIlhenny (Dow Chemical Company), Mr. Tot Hodges, Jr., (Attorney-at-Law, Houston).

[51]The Act provides that government members shall serve on the Council only as long as they hold office in the case of the senate and house representatives or as long as the governor who appointed the member holds office in the case of the governor's representative. Also, if a member attends less than 50% of the meetings in any twelve-month period or ceases to be a resident of Texas, he shall lose his right to serve on the Council.

[52]Act 279-1971 (Council of Marine-Related Affairs), Section 1.

[53]Letter of August, 1970, in response to request for information, from Ken Jones, Director of Planning, Texas Parks and Wildlife Department.

[54]See Report of the Interim Study Committee on Oceanography (Texas House of Representatives, 1971); Gus F. Mutscher, Political Considerations in the Management of the Coastal Zone; and Goals for Texas in the Coastal Zone and the Sea, Report of the Goals for Texas in the Coastal Zone and the Sea Conference held at Houston, Texas on September 10-11, 1970 (published by the Texas A & M Sea Grant Program, January, 1971) for a representative sampling of such comments.

GULF COAST

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Texas

Act 19-1959 (The Open Beaches Bill), 2nd called session, [Article 5143d of Vernon's Annotated Civil Statutes].

Act 417-1967 (Establishment of Interagency Planning Councils) [Article 4413(32a) of Vernon's Annotated Civil Statutes].

Act 21-1969 (Submerged Lands Moratorium), 2nd called session, [Article 5415 of Vernon's Annotated Civil Statutes].

Act 279-1971 (Council on Marine-Related Affairs) [Article 4413 (38) of Vernon's Annotated Civil Statutes].

Goals for Texas in the Coastal Zone and the Sea, Report of the Goals for Texas in the Coastal Zone and the Sea Conference held at Houston, Texas on September 10-11, 1970 [published by the Texas A&M Sea Grant Program, January, 1971].

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CHAPTER 3

GREAT LAKES

Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, Wisconsin (New York programs are discussed under Atlantic Coast States)

Most of the Great Lake states have enacted some provisions regulating dredging and filling for navigation and public health purposes as well as undertaking fish and game management, state park, and public recreation programs. However, Wisconsin, Michigan, and Minnesota are the only states which have undertaken specific shorelands management programs. All of the Great Lake states (including New York) are, however, participating in the activities of the Great Lakes Basin Commission. Thus, attention will be focused on the activities of Michigan and Minnesota and the Great Lakes Basin Commission, those of Wisconsin having been discussed in Section I.

GREAT LAKES BASIN COMMISSION

Composition and Duties of the Commission

The Great Lakes Basin Commission was established in 1967 at the request of the governors of the Great Lake states in accordance with the provision of the Water Resources Planning Act of 1965. It was established because of a need for coordinated resource planning, a need spurred by the requirements for such planning in much of the federal legislation regarding water resources that was passed in the middle 1960's. The Water Resources Planning Act delineated the following duties for such a commission:

> (1) serve as the principal agency for the coordination of the Federal, State, interstate, local and nongovernmental plans for the development of water

and related land resources in its area, river basin or group of river basins;

(2) prepare and keep up to date, to the extent practicable, a comprehensive, joint plan for Federal, State, interstate, local and nongovernmental development of water and related resources; Provided, that the plan shall include an evaluation of all reasonable alternative means of achieving optimum development of water and related land resources of the basin or basins, and it may be prepared in stages, including recommendations, with respect to individual projects;

(3) recommend long-range schedules of priorities for the collection and analysis of basic data and for investigation, planning and construction of projects, and

(4) foster and undertake such studies of water and related land resources problem in its area, river basin, or group of river basins as are necessary in the preparation of the plan described in clause (2) of this subsection.[1]

This Act also provided that the Commission should: "engage in such activities and make such studies and investigations as are necessary and desirable in carrying out the policy set forth in section 2 of this act and in accomplishing the purposes set forth in section 201 (b) of this act."[2]

The Commission is composed of a representative of each state in the region (appointed by the governor of the state); a representative of each of the nine federal departments having an interest in water and related land resource programs (Agriculture; Army [because of the Corps of Engineers]; Commerce; Health, Education, and Welfare; Housing and Urban Development; Interior; Transportation; Justice; and the Federal Power Commission); a representative of the Great Lakes Commission (an interstate compact composed entirely of state membership); and a chairman appointed by the president. The Basin Commission also has a small professional planning staff which facilitates its operation.

The primary mission of the Commission is to prepare and keep up-to-date a comprehensive, coordinated joint plan for the Great Lakes Basin area. Its efforts have been focused in two areas; first, on a comprehensive Framework Study and, second, on the development of Guidelines for the Comprehensive, Coordinated, Joint Plan. The latter will provide a basis for building upon the Framework Study and related detailed studies in order to develop the Comprehensive Plan. A draft of the Guidelines is presently being developed by the staff of the Commission.

Framework Study

The Framework Study, on which most of the Commission's attention is centered at present, will consist of a main report and 27 appendices. Each area of investigation which will be discussed in detail in an appendix, will be conducted by a workgroup chaired by a well-qualified individual who is a member of the agency best qualified in the particular field. For coordination purposes, work groups in similar fields will be grouped under a single coordinator. Table I shows the work groups, the supporting agency of which the chairman is a member, and the groupings of the workshops having similar purposes. Reviewing the work of the work groups will be a Plan and Program Formulation Committee made up of an experienced planner from the staff of each Commissioner. Final authority over the study will lie with the Commission itself, particularly the Chairman who devotes full-time to the Commission while the other Commissioners cannot.

The main report presumably will be drawn up by the staff of the Commission from the appendices that each workgroup will submit as a result of its investigation. Other duties of the staff, in regard to the Framework Study, will be to facilitate the work of the individual

Table I

Workgroups for the Framework Study

Group I - Basic Resource Information

(1) Climate and Meteorology - Department of Commerce
(2) Surface Water Hydrology - Corps of Engineers
(3) Geology and Ground Water - Geological Survey
(4) Limnology of Lakes and Embayments - Corps of Engineers
(5) Mineral Resources - Bureau of Mines

Group II - Water Use and Management

(6) Water Supply - Municipal, Industrial, and Rural - Departments of Agriculture, Commerce, and HEW
(7) Water Quality and Pollution Control - Federal Water Pollution Control Administration
(8) Fish - Michigan Department of Natural Resources - Fish Division
(9) Navigational - Commercial and Recreational Boating - Corps of Engineers
(10) Power - Federal Power Commission
(11) Levels and Flows - Corps of Engineers
(12) Shore Use and Erosion - Corps of Engineers

Group III - Land Use and Management

(13) Land Use - Department of Agriculture
(14) Flood Plains - Department of Agriculture, Corps of Engineers
(15) Irrigation - Department of Agriculture
(16) Drainage - Department of Agriculture
(17) Wildlife - Fish and Wildlife Service
(18) Sediments and Erosion - Department of Agriculture

Group IV - Economic/Social/Industrial

(19) Economic and Demographic - Department of the Army
(20) Federal and State Regulations, Policies, Programs, and Institutional Arrangements - Department of Justice and State of Michigan

Group V - Environmental Quality

(21) Recreation - Bureau of Outdoor Recreation
(22) Aesthetics and Cultural - National Park Service
(23) Health Aspects - Department of Health, Education, and Welfare

Group VI - Plan and Program Formulation and Reports

(24) Basin Description - Commission Staff
(25) Water and Land Requirements - Commission Staff
(26) Plan and Program Formulation - Plan & Program Formulation Committee
(27) History of Study - Commission Staff

Source: Annual Report 1969

workgroups and to compare the final group of studies in coordination with the Plan and Program Formulation Committee.

The Framework Study is due to be completed by mid-1972. Although by their nature most of its appendices will have some relevance to shorelands management, of particular note are Appendix 12 - Shore Use and Erosion and Appendix 20 - Federal and State Regulations, Policies, Programs, and Institutional Arrangements, which will contain description and brief analysis of the programs of the various Great Lakes states relating to shorelands management and the institutional arrangements that have been developed to carry them out.

MICHIGAN

SHORELANDS MANAGEMENT

Act 245-1970 (The Shorelands Management and Protection Act of 1970)

Scope of Act 245-1970

In November, 1970, the Michigan state legislature passed Act 245 (The Shorelands Management and Protection Act of 1970)[3] as the first step to developing a comprehensive shoreland management program. It is aimed at preventing damage in high risk shore erosion areas, and at protecting marsh and wildlife habitat areas by instituting zoning in those areas. In such areas, the land bordering on or adjacent to a Great Lake or a connecting waterway within 1,000 feet of the ordinary high water mark is to be zoned. Zoning of the remaining portion of a local governmental unit's shoreland area is urged but not required. The bill retains the township's authority to zone its own area but gives the state the right to review proposed zoning and to substitute its own zoning regulations if the local authorities haven't complied with the law within three years. To assist the local authorities, the Water Resources Commission and the Department of Natural Resources are to make surveys to determine the high risk shoreland erosion areas and the marsh and fish and wildlife habitat areas that should be protected.

The state Water Resources Commission[4] is also instructed to prepare a plan for the management of the shoreland. Such a plan is to include but not be limited to:

(a) An inventory and identification of the use and development characteristics of the shoreland; the general physical and man-influenced shoreline features; the existing and proposed municipal and industrial water intakes and sewage and industrial waste outfalls; and high risk areas and environmental areas.

(b) An inventory of existing federal, state, regional and local plans for the management of the shorelands.

(c) An identification of problems associated with shoreland use, development, conservation and protection.

(d) A provision for a continuing inventory of shoreland and estuarine resources.

(e) Provisions for further studies and research pertaining to shoreland protection.

(f) Identification of the high risk and environmental areas which need protection.

(g) Recommendations which shall:

(i) Provide procedures for the resolution of conflicts arising from multiple use.

(ii) Foster the widest variety of beneficial uses.

(iii) Provide for the necessary enforcement powers to assure compliance with plans and to resolve conflicts in uses.

(iv) Provide criteria for the protection of shorelands from erosion or inundation, for aquatic recreation, for shore growth and cover, for low lying lands and for fish and game management.

(v) Provide criteria for shoreland layout for residential, industrial and commercial development, and shoreline alteration control.

(vi) Provide for building setbacks from the water.

(vii) Provide for the prevention of shoreland littering, blight harbor development and pollution.

(viii) Provide for the regulation of mineral exploration and production.

(ix) Provide the basis for necessary future legislation pertaining to efficient shoreland management.[5]

Implementation of Act 245-1970

Implementation of the provisions of Act 245 is more difficult in Michigan than in many other states because of the nature of its local government system which emphasizes village and township rather than county control. Previous legislation passed in 1952, during the last period of high water levels, gave local authorities the power to pass ordinances to protect areas subject to shore erosion, without any state back-up powers. Few coastal communities took advantage of this power as the lake levels receded as part of their normal fluctuation pattern. While the Great Lakes were in their period of lower lake levels from 1953 to 1968, a great deal of new shoreland construction was undertaken which has sustained damage as the lakes have again risen. Thus, the renewed attempt to institute measures to prevent shore erosion damage, this time with state overview through the passage of Act 245.

As a first step in the implementation of the provisions of Act 245, the state Water Resources Commission has instituted, with the assistance of the Sea Grant Program at the University of Michigan, a pilot project in the Traverse Bay area.[6] At the same time, the Commission has been undertaking, with the Department of Natural Resources, the surveys required by the Act and working on the guidelines for local communities to use in developing their ordinances. It is hoped that local communities will take a wider approach to the problem and zone their entire shorelands, not just high risk erosion and environmental areas.[7]

Most of the local communities are awaiting the results of the pilot project study before drawing up their ordinances. One major problem confronting the local communities is the difficulty in developing uniform,

or at least compatible, standards throughout their region when each township is required to draw up its own regulations. In the pilot project, this problem is confronted through the development of a formal regional Shorelands Group with which the Sea Grant/Water Resources Commission team could communicate regarding their data and recommendations for management of the shorelands in the Traverse Bay area. The Shorelands Group is made up of local governmental representatives and other interested individuals, thus providing a link to the local governments. It is hoped that, through such a group, coordinated standards can be instituted for the entire Traverse Bay region.

Included in the information that will be made available to this group will be (a) a fish and wildlife study being made of the near-shore areas by the Department of Natural Resources, (b) the results of a land-use mapping effort by the Sea Grant Program identifying through the use of aerial photos how land use-patterns have changed over the past thirty years, and (c) land use classification and capability measurement mechanisms presently being developed by the Sea Grant Program to provide the basis for classifying the area's shorelands.

It is hoped that through the pilot project answers can be found to the following questions regarding the implementation of the program. How can compatibility of ordinances be achieved on a regional basis throughout the state? What should be the relationship of any regional group such as the Traverse Bay Shorelands Group to local governments in implementing the provision of the act? How can conflicts between local interests and state and regional interests in the management of shorelands areas be resolved? How can the provisions of the Shoreland Management Act be expanded to provide comprehensive shorelands management in accordance with the mandate

in the Act to develop a proposed program to do so? What legal and institutional challenges are needed to implement such a program?

At the present time, the efforts of the state and the Sea Grant Program in conducting the program and in carrying out the mandates of the Act have been somewhat hindered by a lack of funds and manpower but reasonable progress is being made.

Other Acts

Over the years, Michigan has passed several other acts whose provisions have had some impact on the management of the state's shorelands. Of particular note is the Submerged Lands Act (Act 247-1955) which gives the state the authority to regulate the use and sale of the state's tidelands. While the passage of such acts is not unusual, its impact on shoreland management has been bolstered by a state policy not to sell its tidelands and to allow their use only when such use would not harm the fish and wildlife and recreational potential of the state's coastal areas.

In addition, the Subdivision Control Act (Act 288-1967) provides for plat reviews to prevent any unlawful encroachment into the public waters of the state and for minimum building restrictions to prevent owners from flooding damages. This has had less than an ideal impact upon the increasing pressures for development of Michigan's remaining wilderness/forest areas because it places only minimal regulations on plats over ten acres. Legislation has been introduced in the state legislature to correct this deficiency, but it has not yet been passed.

MINNESOTA

SHORELAND MANAGEMENT

Act 777-1969 (Regulation of Shoreland Development)

Coverage of Act 777-1969

In 1969, Minnesota enacted into law Act 777 (Regulation of Shoreland Development) based upon Wisconsin's shoreland management legislation. As in Wisconsin's legislation, this act defined shoreland as:

> (1) land within 1,000 feet from the normal high watermark of a lake, pond, or flowage; and (2) land within 300 feet of a river or stream or the landward side of flood plain delineated by ordinance on such a river or stream, whichever is greater.[8]

Unlike Michigan's Act 245-1970 which required the zoning of only certain types of shoreland areas, the Act required all counties in the state to establish land-use control ordinances for all their shorelands lying in unincorporated areas.

The counties are not required to obtain the approval of the towns within their boundaries; however, such towns are allowed to require stricter standards if they so desire.

To provide guidance for the counties in this task, the Commissioner of Natural Resources was mandated to develop by July 1, 1970:

> model standards and criteria for the subdivision use, and development of shoreland in unincorporated areas, including but not limited to the following:
>
> (a) the area of a lot and length of water frontage suitable for a building site;
>
> (b) the placement of structures in relation to shorelines and roads;
>
> (c) the placement and construction of sanitary and waste disposal facilities;
>
> (d) designation of types of land uses;

(e) changes in bottom contours of adjacent public waters;

(f) preservation of natural shorelands through the restriction of land uses;

(g) variances from the minimum standards and criteria and

(h) a model ordinance.[9]

Administration of the Act's Provisions

The Commissioner carried out this mandate by developing the rules and regulations which now form Chapter 6 (Cons 70-84) of the Minnesota State Regulations.[10]

If a county has not adopted a shoreland ordinance in accordance with the regulations established by the Commissioner of Natural Resources by July 1, 1972, or if any time after that date the Commissioner feels that a county's ordinance is not compatible with his regulations, he is to develop an ordinance that is compatible to or modifies the county's ordinance to bring it into compliance. The county is to pay the cost of any such action.

Once the required ordinances have been adopted by the counties, the Department of Natural Resources will play a limited administrative role. Each county is required to notify the department of all public hearings held and all variances and plats that have been approved regarding shoreland areas. While the Department does not have veto power per se, it can require more stringent controls as mentioned above.[11]

Ordinarily, the provisions of an ordinance adopted by a county are to be administered and enforced by a zoning administrator appointed for that purpose. Violations or threatened violations can be counteracted by the institution of appropriate actions or court procedures by any member of the Board of the County Commissioners. In addition, any

taxpayer of the county can institute mandamus proceedings to force specific performance by a county official of any duties required by him.

Violations of any provision of a county ordinance adopted in accordance with the Act are to be punished by a fine of $300.00 or imprisonment of 90 days or both. Each day that a violation continues is to be considered a separate offense.[12]

Public Waters Classification

To provide a basis for establishing the guidelines for land use the Department of Natural Resources divided the lakes and rivers in the state into four classifications each of which is to have appropriate land use regulations to provide for the guided development of the shorelands bordering it. To reduce the administrative workload, lakes of less than 25 acres were excluded from the provisions of the Act on the assumption that they would likely be too small to be developed. By so doing, approximately one-third of the lakes in the state could be excluded from attention.

Table II gives the general criteria for the three major types of classifications--Natural Environment, Recreational Development, and General Development.

> The Natural Environment classification is intended for those waters which need a significant amount of protection because of the unique natural characteristics or because [of] their unsuitability for development and sustained recreational use. They will be assigned the most restrictive development standards.
>
> The Recreational Development classification is intended for those waters which are capable of absorbing additional development and recreational use. They are usually lightly to moderately developed at present. They will be assigned an intermediate set of development standards.
>
> The General Development classification is intended for those bodies which are at present highly developed or which due to their location, may be needed for high

> density development in the future. They will be assigned the least restrictive set of development standards.[13]

The fourth classification, Critical Lakes, was used to cover lakes which needed further study to be appropriately classified. Until they can be so studied, they are to be protected under the strict regulations accompanying the Natural Environment classification.

The classification of the lakes in the state was based on data obtained by the Lakeshore Development Study of the Department of Geography at the University of Minnesota supplemented by information supplied by the Division of Waters, Soils, and Minerals and the Division of Game and Fish within the Department of Natural Resources and information from federal agencies such as U.S. Geological Survey topographic maps, air photos, etc.

Commentary

This classification scheme appears to have preserved the wilderness or low-development condition of most of the state's lakes. However, the use of Minnesota's classification system in other states whose lakes have been subject to more developmental pressures would be inappropriate because all lakes whose shores had been somewhat developed would be classified as general development and given the minimal level of regulatory protection.

The classification scheme also appears to be inappropriate for the waters of Lake Superior. According to its criteria, Lake Superior was classified as General Development because priority is given to a lake's crowding potential (acres of water per mile of shore) in case of low developmental density. Thus, the shores of Lake Superior are covered by the least restrictive development provisions. It seems to this author that Lake Superior should be put into a special classification which takes into account its unique resources and recreational potential.[14] This

apparently was not done originally because of the emphasis placed on inland lakes in the implementation of the Act to date.

Compliance with the Act

As of August 23, 1971, eight counties had complied with the Act. St. Louis County (Duluth area) already had a zoning ordinance and plans to update it to bring it in accordance with the provisions of the Act. The July 1, 1972, deadline still is in effect for the rest of the counties.[15]

Once all of the counties have complied with the Act, the shoreland management unit of the Department of Natural Resources will be able to turn more of its attention to the utilization of its long-standing permit program regarding dredging, filling, channelization, etc. within the beds of public waters to complement the provisions of Act 177.[16]

FOOTNOTES

Great Lakes Basin Commission

[1]The Water Resources Planning Act of 1965, PL 89-80 of the 89th Congress, 1st Session; Title II, Section 201(b).

[2]Ibid., Section 204.

Michigan

[3]Copies of this act and of Minnesota's Act 777 (Regulation of Shoreland Development) can be found in Appendix M.

[4]The Water Resources Commission is an independent commission located within the Department of Natural Resources. The two are linked together in the following way: the Bureau of Water Management of the Department of Natural Resources acts as the Commission's staff and the Executive Secretary of the Commission is also the Deputy Director for Water Management of the Department of Natural Resources.

[5]Act 243 (The Shorelands Protection and Management Act of 1970), Section 12.

[6]More detailed discussion of this pilot project can be found in the report Traverse Bay Shorelands Management and Planning Project (Sea Grant Program, University of Michigan, July, 1971).

[7]There is some question whether local communities can zone their entire shoreland areas without zoning their entire territory unless further authorizing legislation is passed by the state legislature.

Minnesota

[8]Act 777-1969 (Regulation of Shoreland Development), Section 1, Subd. 2.

[9]Ibid., Subd. 4.

[10]The supplementary reports put out by the Minnesota Department of Natural Resources regarding its shoreland management programs describe the implications of and the implementation of these regulations in some detail.

[11]Letter of August 25, 1971, in response to request for information, from James Mentor, Hydrologist in the Flood Plain Shoreland Management Unit of the Minnesota Department of Natural Resources.

[12]Section 77.64 of Chapter 6 of the Minnesota State Regulations.

[13]Shoreland Management, Supplementary Report No. 1 - Classification Scheme for Public Waters (Minnesota Department of Public Works, April, 1971), pp. 3-4.

[14]A step in this direction could be taken with the application of the reclassification provision of the state regulations [Cons 71 (a) 5].

[15]Letter from James Mentor.

[16]Ibid.

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Pennsylvania

Letter of September 1, 1971, in response to request for information, from V. M. Beard, Director of the Bureau of Engineering, Pennsylvania Department of Environmental Resources.

CHAPTER 4

PACIFIC COAST

ALASKA

The problems and opportunities for shorelands management in Alaska are different from those of any other state. Not only is Alaska one of only two non-contiguous states, it is also largely in an undeveloped state. It also has the largest proportion of its lands owned by the federal government, over 95 percent of its 365.5 million acres.[1] Included in this is about 2,000 miles of shoreline in southeastern Alaska which is included in a national forest.[2]

ALASKAN NATIVE CLAIMS SETTLEMENT

This situation will change somewhat with the settlement of the Alaskan native claims issue, the ramifications of which have held up several development projects in the state, most notably the Alaskan pipeline, and much mineral exploration. The settlement, the details of which were settled by a congressional conference committee at the time of this writing, will give approximately 40 million acres to the Alaskan natives and will also allow the state to select its remaining 78 million acres from the 103 million acres allowed to it by the Alaska Statehood Act. The state's selection process has been held up until the native claims issue was settled. A "freeze" on development of unreserved public lands has also been instituted, pending settlement of the native claims issue. The conference committee will decide exactly what provisions the claims settlement bill will contain regarding measures for preserving existing and potential wildlife refuges, park

and recreation areas, and wilderness areas, and for instituting comprehensive land-use planning. Thus, the situation in Alaska regarding land use, including the use of its shoreland areas, is presently in a state of flux.[3]

PRESENT MEASURES RELATING TO SHORELANDS MANAGEMENT

Constitutional Protection Provisions

The state of Alaska has instituted, both through its constitution and the provisions of the Alaska Land Act, policy procedures regarding use of its natural areas and, specifically, its coastal resources.

Article VIII of Alaska's state constitution[4] contains several provisions relating to the way the state's resources should be utilized. It states that "it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."[5] All of the state's renewable resources such as forests, wildlife, fish, etc. are to be "utilized, developed and maintained on the sustained yield principle subject to preferences among beneficial uses."[6] The right of the public to free access to its public waters is declared, except where such restrictions are necessary to protect the public interest. The state is also prohibited from selling, deeding, or otherwise disposing of its rights to the state's renewable resources and is only allowed to lease them subject to provisions relating to their proper usage and forfeiture of the usage if they are improperly used.[7]

To complement the above provisions, the state is specifically allowed to reserve "areas of natural beauty, or of historical, cultural, recreational, or scientific value" from the public domain and establish

regulations to protect and preserve them "for the use, enjoyment, and welfare of the people."[8] Also, mineral rights to a piece of land are to entitle the holder only to such surface uses necessary for the extraction or basic processing of the mineral deposits located there.

Thus, provisions for protection of the state's renewable resources are written into Alaska's highest law and should provide protection against the excesses that accompanied the development of the western portion of the United States.

Alaska Land Act[9]

The above constitutional provisions were bolstered by the passage of Act 169, the Alaska Land Act, 1959, which provided the basic guidelines under which the state's lands are to be managed. This act provided for the classification of the state's lands according to their highest and best use based upon area land-use plans; for the multiple use of the state's lands; and for public participation in land use decisions by requiring public hearings on all regulation-setting procedures, including classification procedures.

The Department of Natural Resources, which was given the management authority for the state's natural resources, has interpreted the classification provision to mean that all state lands must be classified before any disposal action can be taken on them.

This classification provision has presented a major challenge because of the great amount of tidal and submerged lands put under the department's administration by this act. The Act provided that tidelands that had been "improved" or developed before Alaska became a state could be patented to the persons involved and that the title of tidelands seaward of city boundaries could be granted to those coastal cities that

had been incorporated before statehood. All other tidelands and submerged lands could not be sold or granted away, but could be leased for periods up to 55 years. The philosophy under which such lands are to be managed is to maintain as much of them as possible "open for the use and enjoyment of the public."[10]

At the present time, about 50 percent of the state's tidal and submerged lands have been classified for recreational purposes. In the leasing of such lands or granting permits for any use of such lands, "the potential effects of the proposed use on the ecosystem or fish and game is one of the prime considerations." To give full consideration to such factors, the Department of Natural Resources coordinates its actions regarding leasing and granting of permits with those of the Department of Fish and Game, which is charged with the "managing, protecting, maintaining, and extending the fish and game resources of Alaska."[11]

In carrying out their duties in accordance with the above policy guidelines, the state agencies have been hampered by the need for more funds and staff with which to enlarge their scope of planning and their classification of estuarine areas and to undertake more comprehensive studies of coastal area resources.[12]

Commentary

The provisions contained in Alaska's constitution and its Land Act provide a good base on which to build a comprehensive coastal zone program. There seems to be some realization of the necessity of basing resource decisions on a solid information base and the utilization of scientific methods. However, as mentioned above, the state agencies suffer from a lack of sufficient funds to carry out as comprehensive a program as desired. Moreover, the effect on the state's coastal areas

of the settlement of the Alaska native claims issue remains to be seen. Hopefully, sufficient safeguards will be written into the settlement act to protect Alaska's valuable natural areas, while allowing reasonable utilization of the state's resources. Likewise, settlement of the Alaska pipeline issue will have an impact on the state's resources, including its coastal resources around the southern end of the proposed pipeline, the port of Valdez. The next few years should indicate whether or not Alaska can develop a rational, comprehensive, balanced program and avoid the mistakes that other states have made in the utilization of their resources.

FOOTNOTES

[1]One-Third of the Nation's Land, Report of the Public Land Law Review Commission (Government Printing Office, Washington, D.C., June, 1970), p. 327.

[2]The National Estuarine Pollution Study, (Department of the Interior, Washington, D.C., 1970), p. 390.

[3]See Conservation Reports, 30-35 et seq. of the National Wildlife Federation for information regarding the status of the Alaska native claims issue.

[4]Appendix N contains a copy of this article of Alaska's state constitution.

[5]Article VIII (Natural Resources) of the Constitution of the State of Alaska, Section 1.

[6]Ibid., Section 4.

[7]Ibid., Section 3 and the National Estuary Study, (Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C., 1970), Vol. 3, p. 267.

[8]Ibid., Section 7.

[9]The following brief discussion of the provisions of the Alaska Land Act is based upon the material in the National Estuary Study, Vol. 3, pp. 267-268.

[10]The Alaska Land Act, quoted in the National Estuary Study, Vol. 3, p. 262.

[11]The National Estuarine Pollution Study, p. 388.

[12]Ibid., p. 390.

PACIFIC COAST

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APPENDICES

APPENDIX A - Massachusetts

APPENDIX B - Maine

APPENDIX C - Maryland

APPENDIX D - Oregon

APPENDIX E - Wisconsin

APPENDIX F - California

APPENDIX G - Hawaii

APPENDIX H - Delaware

APPENDIX I - Washington

APPENDIX J - Rhode Island

APPENDIX K - Atlantic Coast

APPENDIX L - Gulf Coast

APPENDIX M - Great Lakes

APPENDIX N - Pacific Coast

APPENDIX O - Persons to Contact Concerning Coastal Management Activities on a State-by-State Basis

APPENDIX A

MASSACHUSETTS

Wetlands

Act 46-1963 (Jones Act - Coastal Wetlands Dredge and Fill Law of 1963) as amended. [Chapter 130, Section 27A of the General Laws of Massachusetts].

Act 768-1965 (Coastal Wetlands Protection Act of 1965) [Chapter 130, Section 105 of the General Laws of Massachusetts].

Act 220-1965 (Hatch Act - Inland Wetlands Dredge and Fill Law of 1965) as amended [Chapter 131, Section 40 of the General Laws of Massachusetts].

Act 444-1968 (Inland Wetlands Protection Act of 1968) [Chapter 131, Section 40A of the General Laws of Massachusetts].

Conservation Commissions

Act 223-1957 as amended (Conservation Commission Act) [Chapter 40, Section 8-C of the General Laws of Massachusetts].

Act 517-1960 (Self-Help Act) [Chapter 132-A, Section 11 of the General Laws of Massachusetts].

ACT 46-1963 (as amended)

MASSACHUSETTS GENERAL LAWS

Chapter 130 - Section 27A

(The "Jones Act")

An Act Relative to Removal, Filling and Dredging of Areas Bordering on Coastal Waters

No person shall remove, fill or dredge any bank, flat, marsh, meadow or swamp bordering on coastal waters without written notice of his intention to so remove, fill or dredge to the Board of Selectmen in a town or to the appropriate Licensing Authority in a city, to the State Department of Public Works, and the Director of Marine Fisheries. Said notice shall be sent by registered mail at least thirty days prior to any such removing, filling or dredging. The Selectmen or in the case of a city, the Licensing Authority, shall hold a hearing on said proposal within twenty days of the receipt of said notice, notice of which hearing shall be given by them by publication in a newspaper published in such town or city, or if there be no newspaper published in such town or city, then in a newspaper published within the county, and shall notify by mail the person intending to do such removing, filling or dredging, the Department of Public Works and the Director, of the time and place of said hearing. The cost of such publication of notice shall be borne by the person filing the notice of intention to so remove, fill or dredge. The Selectmen or Licensing Authority as the case may be, may recommend the installation of such bulkheads, barriers or other protective measures as may protect the public interest, and shall transmit forthwith to such person, the director and the department of public works a copy of any such recommendations. If the Department of Public Works finds that such proposed removing, filling or dredging would violate the provisions of sections thirty and thirty A of chapter ninety-one, it shall proceed to enforce the provisions of said sections. If the area on which the proposed work is to be done contains shellfish or is necessary to protect marine fisheries, the said Director may impose such conditions on said proposed work as he may determine necessary to protect such shellfish or marine fisheries, and work shall be done subject thereto.

Whoever violates any provision of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months or both, and the Superior Court shall have jurisdiction in equity to restrain a continuing violation of this section.

This section shall not affect or regulate the ordinary and usual work of any mosquito project operating under chapter two hundred and fifty-two, or under the provisions of a special act.

EFFECTIVE DATE: May 22, 1963 (Chapter 426, Acts of 1963)

AMENDED: Chapter 375, Acts of 1965
Chapter 406, Acts of 1969

ACT 768-1965

MASSACHUSETTS GENERAL LAWS

Chapter 130, Section 105

An Act Providing for the Protection of the Coastal Wetlands of the Commonwealth

The commissioner, with the approval of the board of natural resources, may from time to time, for the purpose of promoting the public safety, health, and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify, or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting coastal wetlands. In this section, the term "coastal wetlands" shall mean any bank, marsh, swamp, meadow, flat or other low land subject to tidal action or coastal storm flowage and such contiguous land as the commissioner reasonably deems necessary to affect by any such order in carrying out the purposes of this section.

The commissioner shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the municipality in which the coastal wetlands to be affected are located, giving notice thereof to the state reclamation board, the department of public works and each assessed owner of such wetlands by mail at least twenty-one days prior thereto.

Upon adoption of any such order or any order amending, modifying or repealing the same, the commissioner shall cause a copy thereof, together with a plan of the lands affected and a list of the assessed owners of such lands, to be recorded in the proper registry of deeds or, if such lands are registered, in the registry district of the land court and shall mail a copy of such order and plan to each assessed owner of such lands affected thereby. Such orders shall not be subject to the provisions of chapter one hundred and eighty-four. Any person who violates any such order shall be punished by a fine of not less than ten nor more than fifty dollars, or by imprisonment for not more than one month, or by both such fine and imprisonment.

The superior court shall have jurisdiction in equity to restrain violations of such orders.

Any person having a recorded interest in land affected by any such order, may, within ninety days after receiving notice thereof, petition the superior court to determine whether such order so restricts the use of his property as

to deprive him of the practical uses thereof and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of a taking without compensation. If the court finds the order to be an unreasonable exercise of the police power, as aforesaid, the court shall enter a finding that such order shall not apply to the land of the petitioner; provided, however, that such finding shall not affect any other land than that of the petitioner. The commissioner shall cause a copy of such finding to be recorded forthwith in the proper registry of deeds or, if the land is registered, in the registry district of the land court. The method provided in this paragraph for the determination of the issue of whether any such order constitutes a taking without compensation shall be exclusive, and such issue shall not be determined in any other proceeding, nor shall any person have a right to petition for the assessment of damages under chapter seventy-nine by reason of the adoption of any such order.

The department may, after a finding has been entered that such order shall not apply to certain land as provided in the preceding paragraph, take the fee or any lesser interest in such land in the name of the commonwealth by eminent domain under the provisions of chapter seventy-nine and hold the same for the purposes set forth in this section.

No action by the commissioner or the department under this section shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the department of public works, the state reclamation board or any mosquito control or other project operating under or authorized by chapter two hundred and fifty-two.

No order adopted hereunder shall apply to any area under the control of the metropolitan district commission.

EFFECTIVE DATE: November 23, 1965 (Chapter 768, Acts of 1965)

ACT 220-1965 (as amended)

MASSACHUSETTS GENERAL LAWS

Chapter 131 - Section 40

(The "Hatch Act")

An Act Relative to Removal, Filling or Dredging of Land Bordering on Inland Waters

A person shall not remove, fill or dredge any bank, flat, marsh, meadow or swamp bordering on any inland waters without filing written notice of his intention to so remove, fill or dredge, including such plans as may be necessary to describe such proposed activity, with the board of selectmen in a town or the mayor of a city, and with the state departments of public works and natural resources. Such notice shall be sent by registered mail at least thirty days prior to any such removing, filling or dredging. The selectmen or mayor, as the case may be, shall hold a public hearing on said proposal within fourteen days of the receipt of said notice, and shall notify by mail the person intending to do such removing, filling or dredging, and the said state departments of the time and place of said hearing. The selectmen or mayor may recommend such protective measures as may protect the public interest. The selectmen or mayor, within seven days thereafter, shall transmit such recommendations to the commissioner of natural resources, but the failure to do so shall not delay the issuance of an order by the commissioner. The department of public works shall determine whether the proposed activity would violate any provisions of chapter ninety-one and shall take such action as may be necessary to enforce such provisions. If the area on which the proposed work is to be done is determined by the department of natural resources to be essential to public or private water supply or to proper flood control, the department shall by written order signed by the commissioner impose such conditions as may be necessary to protect the interests described herein, and the work shall be done in accordance therewith. The provisions of this section shall not apply to areas established by the water resources commission as flood plain zones. Land used for agricultural purposes shall be exempt from the provisions of this section. The provisions of this section shall not apply to any work done under the provisions of clause (36) of section five of chapter forty, chapter two hundred and fifty-two, or any special act. The provisions of this section shall not apply to inland wetlands which are subject to an order adopted under section forty A, nor to inland wetlands immediately contiguous thereto unless such contiguous wetlands had been subject to such an order which was thereafter revoked by reason of the objection of the owner. The commissioner may, by rule or regulation, exempt from this section such other use as he may deem not inconsistent with the purposes of this section. The superior court shall have jurisdiction in equity to restrain a continuing violation of this section.

EFFECTIVE DATE: June 26, 1965 (Chapter 220, Acts of 1965)

AMENDED: Chapter 276, Acts of 1967
Chapter 444, Acts of 1968

CRIMINAL PENALTY

Whoever violates any provision of Chapter 131, Section 40, or any rule or regulation made under authority thereof, shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than five thousand dollars ($5,000.00), or by imprisonment for not more than two years, or both.

Chapter 131, Section 90,
As amended by Chapter 144,
Acts of 1971.

§ 40A. Protection of Inland Wetlands.

The commissioner of natural resources, with the approval of the board of natural resources, may from time to time, for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife, fisheries, water resources, flood plain areas and agriculture, adopt, amend or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering or polluting inland wetlands. In this section the term "inland wetlands" shall mean any marsh or swamp bordering on inland waters or that portion of any bank which touches any inland waters, or any marsh or swamp subject to flooding by fresh water.

The commissioner shall, before adopting any such order, hold a public hearing thereon in the city or town in which the inland wetlands to be affected are located, giving notice thereof to the state reclamation board, the department of public works, the department of public health, the metropolitan district commission, the selectmen, conservation commissioners and assessors of each such town, the mayor, city council, conservation commissioners and assessors of each such city, and each assessed owner of such wetlands by certified mail at least twenty-one days prior thereto. For the purposes of this section the person to whom the land was assessed in the last preceding annual tax levy shall be deemed to be the assessed owner thereof, and the notice shall be addressed in the same manner as the notice of such tax levy, unless a different owner or a different address is known by the commissioner to be the correct one in which case the notice shall be so addressed. No order shall be adopted unless and until it is approved by the selectmen or city council of the town or city in which said wetlands are located; provided that if the selectmen or the city council fail to approve or disapprove such proposed order within thirty days after receipt of a written request from the commissioner such order shall be deemed to have been approved; and provided further, that if such order is so disapproved the commissioner may, after the expiration of one year from the date of such disapproval, adopt such order.

Upon the adoption of any such order or any order amending or repealing the same, the commissioner shall cause a copy thereof, together with a plan of the lands affected and a list of the assessed owners of such lands, to be recorded in the registry of deeds or the office of the assistant recorder for the district wherein the land lies, and shall send by certified mail a copy of such order and plan to each assessed owner of land affected and to the clerk and board of assessors of each city or town in which the land is located. Such order shall not be subject to the provisions of chapter one hundred and eighty-four. The superior court shall have jurisdiction in equity to enforce, and remedy violations of, such orders.

Any person having, at the time of said recording, a recorded interest in land subject to the order may, within ninety days of receiving notice thereof, object to the order by applying to the department by certified mail to amend or repeal the order in so far as it applies to his interest or to purchase all or part of his interest. An heir, devisee or the personal representative of any person who had at the time of his death a right to apply may exercise said deceased person's right within ninety days of receiving notice of such order. The commissioner shall, within ninety days of receiving any such objections, repeal the order in so far as it applies to any such interest in land to which the applicant demonstrates that he has title unless the commissioner to the satisfaction of the applicant amends the order or purchases all or part of the applicant's interest therein. In addition to all other remedies the applicant shall have a right to appeal under the provisions of section fourteen of chapter thirty A any adverse determination of title by the commissioner. The method provided in this paragraph for objecting to an order shall be exclusive and the validity of any order adopted hereunder shall not be contested in any other proceeding or by any other person. No person shall have a right to petition for damages by reason of any such order; provided, however, that if there is a taking by eminent domain as hereinafter provided, he may recover damages under chapter seventy-nine.

No such order shall prohibit, restrict or regulate the use or improvement of land or water for agricultural purposes without the written consent of the owner, provided, however, that any subsequent nonagricultural use of land which was filled or drained for agricultural purposes at a time when said land was subject to an order under this section may be regulated, restricted or prohibited by such order. No such order shall prohibit, restrict or regulate the exercise or performance of the powers and duties conferred or imposed by law upon the department of public health, the department of public works, the metropolitan district commission, the division of fisheries and game, the Massachusetts aeronautics commission, or the state reclamation board, or any mosquito control or other project operating under or authorized by chapter two hundred and fifty-two. If after following the procedures hereinbefore set forth, no such order has become effective as to any particular land or interest therein, the department may, subject to a specific appropriation for the purpose, take such land or interest therein by eminent domain, or may acquire the same by purchase, gift or otherwise. Awards of damages, expenses of acquisition of land and water, and expenses incidental thereto and to the preparation of maps and plans of the lands to be affected, to the holding of hearings, and to the adoption and recording of orders, as provided in this section, may be paid out of funds made available for the purpose of section three of chapter one hundred and thirty-two A.

The exercise of the power of eminent domain under the provisions of this section shall be subject to the approval of the board of natural resources, the governor and the executive council. (Added by 1968, 444, § 1, approved June 26, 1968, effective 90 days thereafter.)

Editorial Note—

Section 3, Acts 1968, 444, provides as follows:

SECTION 3. No order adopted under section forty A of chapter one hundred and thirty-one of the General Laws, inserted by section one of this act, shall be deemed to invalidate any order imposed prior thereto by the commission of natural resources under section forty of said chapter one hundred and thirty-one, as originally appearing in chapter two hundred and twenty of the acts of nineteen hundred and sixty-five, and said order shall remain in full force and effect until expressly amended or repealed by the commissioner of natural resources.

towns having a manager form of government, in which town appointments shall be made by the town manager, subject to the approval of the selectmen. When a Commission is first established, terms of the members shall be for one, two or three years, and so arranged that the terms of approximately one-third of the members will expire each year, and their successors shall be appointed for terms of three years each. Any member of a commission so appointed may, after a public hearing, if requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall in a city be filled for the unexpired term in the same manner as an original appointment and in a town in the manner provided in section eleven of chapter forty-one. Said commission may receive gifts of property, both real and personal, in the name of the city or town, subject to the approval of the city council in a city or the selectmen in a town, such gifts to be managed and controlled by the commission for the purposes of this section. Said commission may acquire by gift, purchase, grant, bequest, devise, lease or otherwise the fee in such land or water rights, or any lesser interest, development right, easement, covenant, or other contractual right including conveyances on conditions or with limitations or revisions, as may be necessary to acquire, maintain, improve, protect, limit the future use of or otherwise conserve and properly utilize open spaces and other land and water areas within their city or town and shall manage and control the same. For the purpose of this section a city or town may, upon the written request of the commission, take by eminent domain under chapter seventy-nine, the fee or any lesser interest in any land or waters located in such city or town, provided such taking has first been approved by a two-thirds vote of the city council or a two-thirds vote of an annual or special town meeting, which land and waters shall thereupon be under the jurisdiction and control of the commission. The commission may adopt rules and regulations governing the use of land and water under its control, and prescribe penalties, not exceeding a fine of one hundred dollars, for any violation thereof. No action taken under this section shall affect the power and duties of the state reclamation board or any mosquito control or other project operating under or authorized by chapter two hundred and fifty-two, or restrict any established public access. Lands used for farming or agriculture, as defined in section one A of Ch. 128, shall not be taken by eminent domain under the authority of this section. Upon a like vote, a city or town may expend monies in the fund, if any, established under the provisions of clause (51) of section five for the purpose of paying, in whole or in part, any damages for which such city or town may be liable by reason of any such taking."

ACT 223-1957 (as amended)

MASSACHUSETTS CONSERVATION COMMISSION ACT

Ch. 40, Sec. 8-C, General Laws of Massachusetts, as amended by Acts of 1961, Ch. 258, Acts of 1965, Ch. 769, and Acts of 1967, Ch. 885:

"A city or town which accepts this section may establish a conservation commission, hereinafter called the commission, for the promotion and development of the natural resources and for the protection of the watershed resources of said city or town. Such commission shall conduct researches into its local land areas and shall seek to coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its work. It shall keep an index of all open areas within the city or town, as the case may be, with the plan of obtaining information pertinent to proper utilization of such open areas, including lands owned by the Commonwealth or lands owned by a city or town. It shall keep an index of all open marsh lands, swamps and all other wet lands in a like manner, and may recommend to the city council or selectmen and, subject to the approval of the city council or selectmen, to the department of natural resources and to the state reclamation board, a program for the better promotion, development or utilization of all such areas. It shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the case of towns in the annual town report. The Commission may appoint such clerks and other employees as it may from time to time require. The Commission shall consist of not less than three nor more than seven members. In cities the members shall be appointed by the mayor, subject to the provisions of the city charter, except that in cities having or operating under a Plan D or Plan E form of city charter, said appointments shall be by the city manager, subject to the provisions of the charter; and in towns they shall be appointed by the selectmen, excepting

ACT 517-1960

MASSACHUSETTS "SELF-HELP" ACT

"G.L. Ch. 132-A, Sec. 11

"The Commissioner shall establish a program to assist the cities and towns, which have established conservation commissions under section 8C of Ch. 40, in acquiring land and in planning or designing suitable public outdoor facilities as described in Secs. 2B and 2D. He may, from funds appropriated to carry out the provisions of Sec. 3, reimburse any such city or town for any money expended by it in establishing an approved project under said program in such amount as he shall determine to be equitable in consideration of anticipated benefits from such project, but in no event shall the amount of such reimbursement exceed fifty percent of the cost of such project. No reimbursement shall be made hereunder to a city or town unless a project application is filed by such city or town with the Commissioner setting forth such plans and information as the Commissioner may require and approved by him, nor until such city or town shall have appropriated, transferred from available funds or have voted to expend from its conservation fund, under clause of Sec. 5 of Ch. 40, an amount equal to the total cost of the project, nor until the project has been completed to the satisfaction of the Commissioner, in accordance with said approved plans. Any reimbursement received by a city or town under this section shall be applied to the payment of indebtedness, if any, incurred in acquiring land for such conservation project.

"Section 2B It is hereby declared to be the policy of the Commonwealth that all such sites acquired or developed by the Commissioner shall insofar as practicable be preserved in their natural state; that they shall be insofar as possible collectively self-supporting; and that no commercial activities except those essential to the quiet enjoyment of the facilities by the people shall be permitted.

"Section 2D (1) to acquire, plan, construct, maintain and operate public recreational facilities, including roads, areas for parking, picnicking and camping, provisions for swimming, wading, boating, outdoor games, winter sports, horseback riding, bicycling and hiking trails, nature study, rest areas, outlooks, comfort stations, food accommodations and such other facilities as the commissioner deems necessary and desirable and consistent with the policy of the Commonwealth, as set forth in Sec. 2B."

APPENDIX B

MAINE

Act 348-1967 (Coastal Wetlands Regulations) as amended [Title 12, Chapter 421, Sections 4701-09 of the Maine Revised Statutes].

Act 541-1971 (Coastal Wetlands Regulations) [Title 12, Chapter 426, Sections 4751-4758 of the Maine Revised Statutes].

Act 571-1970 (Site Location Regulation) [Title 38, Chapter 3, Sections 4751-4758 of the Maine Revised Statutes].

Act 572-1970 (Coastal Conveyance of Petroleum) [Title 38, Chapter 3, Sections 541-557 of the Maine Revised Statutes].

ACT 348-1968 (as amended)

AN ACT to Clarify the Law Regulating the Alteration of Coastal Wetlands
P.L. 1967, c. 348
As amended by P. L. 1969, c. 379
and further amended by P. L. 1971, c. 336
Effective September 23, 1971

R. S., T. 12, Part 5, C. 421

§ 4701. Procedure; hearing

No person, agency or municipality shall remove, fill, dredge, or otherwise alter any coastal wetland, or drain or deposit sanitary sewage into or on any coastal wetland, as defined herein, without first obtaining a valid permit. Application for permit, by written notice of intent to alter coastal wetlands, including such plans as may be necessary to describe the proposed activity, shall be filed with the municipal officers in the municipality affected and with the Wetlands Control Board. Such notice shall be sent to each body by registered mail at least 60 days before such alteration is proposed to commence. The municipal officers shall hold a public hearing on the proposal within 30 days of receipt of the notice and shall notify by mail the applicant, the Wetlands Control Board, abutting owners and the public by publication in a newspaper published in the county where the wetlands are located, of the time and place of such hearing.

For purposes of this chapter, coastal wetland is defined as any swamp, marsh, bog, beach, flat or other contiguous lowland above extreme low water which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity.

When winter conditions prevent a municipality or the Wetlands Control Board from evaluating a permit application, the municipality or board upon notifying the applicant of such fact may defer action on the application for up to 120 days. The applicant shall not during the period of deferral remove, fill, dredge, drain, or deposit sanitary sewage into, or otherwise alter such coastal wetland.

The results of the public hearing shall be reported to the Wetlands Control Board by the municipal officers within 7 days of such hearing.

Each such application for permit filed with the municipality shall be accompanied by a permit fee of $30 to cover the administrative costs of the municipality in processing the permit application.

§ 4702. Permits

Permit to undertake the proposed alteration shall be issued by the municipal officers within 30 days of such hearing providing both the municipality and the Wetlands Control Board approve. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are deemed necessary by either the municipality or the Wetlands Control Board to protect the public interest. Approval may be withheld by either the municipal officers or the board when in the opinion of either body the proposal would threaten the public safety, health or welfare, would adversely affect the value or enjoyment of the property of abutting owners, or would be damaging to the conservation of public or private water supplies or of wildlife or freshwater, estuarine or marine fisheries.

Every permit issued by municipal officers shall be recorded by the owner in the registry of deeds for the county in which the wetlands lies. Any permit not recorded within 30 days of its issuance shall be void. All permits issued under this chapter shall expire 3 years from the date of issuance.

§ 4703. Unorganized territory; 2 or more municipalities

In the event that the activity is proposed within an unorganized township, the county commissioners shall act in the place of municipal officers. In the event that the activity is proposed in 2 or more municipalities, the respective municipal officers shall act concurrently.

§ 4704. Appeal

Appeal may be taken to the Superior Court within 30 days after the denial of a permit or the issuance of a conditional permit for the purpose of determining whether the action appealed from so restricts the use of the property as to deprive the owner of the reasonable use thereof or which constitutes the equivalent of a taking without compensation.

§ 4705. Wetlands Control Board

The Wetlands Control Board shall be composed of the Commissioners of Sea and Shore Fisheries and of Inland Fisheries and Game, the Chairman of the Environmental Improvement Commission, the Chairman of the State Highway Commission, the Forest Commissioner and the Commissioner of Health and Welfare or their delegates.

§ 4706. Application

Section 4701 shall not apply to any alteration of wetlands undertaken as a bona fide emergency action providing that the person undertaking such action notifies the municipal officers and the Wetlands Control Board within three days of commencing such action, and providing that such action does not result in permanent alteration unless authorization be obtained pursuant to section 4701.

§ 4707. Exemptions

The Wetlands Control Board may by rule or regulation exempt from this chapter such activity or activities or waive such procedural requirements as it seems not inconsistent with the purposes of this chapter.

§ 4708. Exception

Nothing in this chapter shall prohibit the normal maintenance or repair of presently existing ways, roads, or railroad beds nor maintenance and repair of installations and facilities of any utility as defined in Title 23, section 255, abutting or crossing said wetlands, provided no watercourse is substantially altered.

§ 4709. Violation

Whoever violates or causes a violation of any provision of this chapter shall be punished by a fine of not more than $500.

The Superior Court shall also have jurisdiction to restrain a continuing violation of this chapter at the suit of any person and, if necessary, to preserve any of the values and purposes for which this chapter was passed, as outlined in section 4702, shall order a restoration of the affected area to as near its original condition as possible; said restoration to be undertaken and costs borne by the property owner.

A violation is defined as any filling, dredging, draining, depositing, altering or removal of materials which takes place in coastal wetlands contrary to the provisions of a valid permit or without a permit having been issued, and without regard to whether these physical acts were witnessed as they were being carried out or whether the action was willfully undertaken to avoid the intent of this chapter or only innocently undertaken. Any such filling, dredging, draining, depositing, altering or removal of materials shall be prima facie evidence that it was done or caused to be done by the owner of such wetlands.

Inland fish and game wardens, coastal wardens and all other law enforcement officers enumerated in section 2003, shall enforce this chapter.

B-5

APPROVED

JUN 28 '71

BY GOVERNOR

CHAPTER

541

PUBLIC LAW

ACT 541-1971

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-ONE

H. P. 1299 — L. D. 1704

AN ACT Providing for the Protection of Coastal Wetlands.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 12, c. 421, sub-c. II, additional. Chapter 421 of Title 12 of the Revised Statutes, as enacted by chapter 348 of the public laws of 1967, and as amended, is further amended by adding a new subchapter II, to read as follows:

SUBCHAPTER II

ZONING

§ 4751. Purpose

The purpose of this subchapter is the promotion of the public safety, health and welfare, the protection of public and private property and the conservation of public or private water supplies, wildlife and freshwater, estuarine and marine fisheries.

§ 4752. Definition

For the purposes of this subchapter, "coastal wetlands" are as defined in section 4701.

§ 4753. Administration

This subchapter shall be administered by the Wetlands Control Board, as constituted in section 4705.

§ 4754. Orders

The board may, from time to time, for the purposes of this subchapter, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering any coastal wetland, or draining or depositing sanitary sewage into or on any coastal wetland, or otherwise polluting the same.

§ 4755. Hearing

The board, before adopting, amending, modifying or repealing any such order, shall hold a public hearing thereon in the municipality in which the coastal wetlands to be affected are located, and shall give notice by mail to the municipal officers of such municipalities and to each assessed owner of such wetlands at least 21 days prior thereto, and to the public by publication in a newspaper published in the county where the wetlands are located, of the time and place of such hearing.

§ 4756. Recording

Upon the adoption of any such order or any order amending, modifying or repealing the same, the board shall cause a copy thereof, together with a plan of the wetlands affected and a list of the assessed owners of such wetlands to be recorded in the registry of deeds for the county in which such wetlands are located, and shall mail a copy of such order and plan to each assessed owner of such wetlands affected thereby, by registered or certified mail, return receipt requested.

§ 4757. Appeal procedure

Any person having a recorded interest in wetlands affected by any such order of the board may, within 90 days after notice thereof, appeal to the Superior Court for the county in which the wetland is situated for the purpose of determining whether such order so restricts the use of the property as to deprive the owner of the reasonable use thereof or constitutes the equivalent of a taking without compensation. If the court so finds, it shall enter a decree that such order shall not apply to the wetland of the appellant, provided that such decree shall not affect any wetland other than that of the appellant. The appeal shall be the exclusive method of determining the validity of said order of the board. Any decree that such order constitutes the equivalent of a taking without compensation shall not entitle the appellant or any other person to petition for the assessment of damages by reason of the adoption of such order.

The board shall cause a copy of such decree to be recorded in the registry of deeds for the county in which the wetland is situated. After a decree has been entered providing that any such order of the board shall not apply to the wetland involved in the appeal, the board may, after causing an appraisal to be made, negotiate for the purchase of such wetland, if it deems that acquisition of the same is necessary for the purposes of section 4702 or 4751. If purchase, or a written agreement therefor, has not been effected within 60 days after negotiations have begun, and the board determines that an emergency situation exists which would cause an immediate threat to the public safety, health and welfare, to the protection of public or private property, or to public or private salt water supplies, or to the conservation of wildlife or freshwater estuarine or marine fisheries, the board shall declare that the public exigency requires the taking of such wetland, and, with the consent of the Governor and Council, may acquire in behalf of the State the fee of such wetland or any lesser interest therein by eminent domain, the proceedings for such taking to be in accordance with Title 35, chapter 263.

Such wetlands or lesser interests therein, so taken, shall thereupon be under the jurisdiction and control of the board which shall hold the same for the purposes of this subchapter and issue rules and regulations governing the use thereof.

Any violation of such rules and regulations shall be punishable by a fine of not more than $100.

§ 4758. Violation; penalty

Whoever violates or causes a violation of any such order of the board or of any provision of this subchapter, shall be punished by a fine of not more than $500.

The Superior Court shall have jurisdiction to restrain a continuing violation of any such order or of any provision of this subchapter at the suit of any person and, if necessary to preserve any of the values and purposes for which this subchapter was passed, shall order a restoration of the affected area to as near its original condition as possible, said restoration to be undertaken and costs borne by the property owner.

ACT 571-1970

Chapter 571

AN ACT to Regulate Site Location of Development Substantially Affecting Environment.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 38, § 361, amended. The 6th and 7th paragraphs of section 361 of Title 38 of the Revised Statutes, as amended by section 2 of chapter 475 of the public laws of 1967, are further amended to read as follows:

It shall be the duty of the commission, ~~to study, investigate and from time to time recommend to the persons responsible for the conditions, ways and means, so far as practicable and consistent with the public interest, of controlling~~ exercising the police power of the State, to control, abate and prevent the pollution of the air, ~~rivers~~ waters, ~~and~~ coastal flats and prevent diminution of the highest and best use of the natural environment of the State ~~by the deposit therein or thereon of municipal sewage, industrial waste and other substances and materials in so far as the same are detrimental to the public health or to animal, fish or aquatic life, or to the practicable and beneficial use of said air, rivers, waters and coastal flats~~. The commission shall make recommendations to each subsequent Legislature with respect to the classification of the ~~rivers~~ waters and coastal flats and sections thereof within the State, based upon reasonable standards of quality and use.

The commission shall make recommendations to each Legislature with respect to the control, abatement and prevention of pollution of the air, ~~rivers~~ waters, ~~and~~ coastal flats and ~~sections thereof~~ other aspects of the natural environment within the State ~~for the purpose of raising the classifications or standards thereof to the highest possible classification or standards so far as economically feasible, such recommendations to relate to methods, costs and the setting of time limits for compliance~~ for the benefit of the citizens of this State.

Sec. 2. R. S., T. 38, c. 3, sub-c. I, Art. 6, additional. Subchapter I of chapter 3 of Title 38 of the Revised Statutes, as amended, is further amended by adding a new Article 6, to read as follows:

ARTICLE 6. SITE LOCATION OF DEVELOPMENT

§ 481. Findings and purpose

The Legislature finds that the economic and social wellbeing of the citizens of the State of Maine depend upon the location of commercial and industrial developments with respect to the natural environment of the State; that many developments because of their size and nature are capable of causing irreparable damage to the people and the environment in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in state authority to regulate the location of developments which may substantially affect environment.

The purpose of this subchapter is to provide a flexible and practical means by which the State, acting through the Environmental Improvement Commission, in consultation with appropriate state agencies, may exercise the police power of the State to control the location of those developments substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings.

§ 482. Definitions

As used in this subchapter:

1. Commission. "Commission" means the Environmental Improvement Commission.

2. Development which may substantially affect environment. "Development which may substantially affect environment" means any commercial or industrial development which requires a license from the Environmental Improvement Commission, or which occupies a land area in excess of 20 acres, or which contemplates drilling for or excavating natural resources, excluding borrow pits for sand, fill or gravel, regulated by the State Highway Commission and pits of less than 5 acres, or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

3. Natural environment of a locality. "Natural environment of a locality" includes the character, quality and uses of land, air and waters in the area likely to be affected by such development, and the degree to which such land, air and waters are free from non-naturally occurring contamination.

4. Person. "Person" means any person, firm, corporation or other legal entity.

§ 483. Notification required

Any person intending to construct or operate a development which may substantially affect local environment shall, before commencing construction or operation, notify the commission in writing of his intent and of the nature and location of such development. The commission shall within 14 days of receipt of such notification, either approve the proposed location or schedule a hearing thereon in the manner hereinafter provided.

§ 484. Hearings; orders; construction suspended

In the event that the commission determines to hold a hearing on a notification submitted to it pursuant to section 483, it shall hold such hearing within 30 days of such determination, and shall cause notice of the date, time and place thereof to be given to the person intending the development and in addition shall give public notice thereof by causing such notice to be published in some newspaper of general circulation in the proposed locality, or if none, in the state paper; the date of the first publication to be at least 10, and the last publication to be at least 3, days before the date of the hearing.

At such hearing the commission shall solicit and receive testimony to determine whether such development will in fact substantially affect the environment or pose a threat to the public's health, safety or general welfare.

The commission shall approve a development proposal whenever it finds that:

1. Financial capacity. The proposed development has the financial capacity and technical ability to meet state air and water pollution control standards, has made adequate provision for solid waste disposal, the control of offensive odors, and the securing and maintenance of sufficient and healthful water supplies.

2. Traffic movement. The proposed development has made adequate provision for loading, parking and traffic movement from the development area onto public roads.

3. No adverse affect on natural environment. The proposed development has made adequate provision for fitting itself harmoniously into the existing natural environment and will not adversely affect existing uses, scenic character, natural resources or property values in the municipality or in adjoining municipalities.

4. Soil types. The proposed development will be built on soil types which are suitable to the nature of the undertaking.

At hearings held under this section the burden shall be upon the person proposing the development to affirmatively demonstrate to the commission that each of the criteria for approval listed in the preceding paragraphs have been met, and that the public's health, safety and general welfare will be adequately protected.

The commission shall adopt, and may amend and repeal rules for the conduct of hearings held under this section in the same manner as provided for the adoption, amendment and repeal of rules of practice before it. A complete verbatim transcript shall be made of all hearings held pursuant to this section.

Within 45 days after the commission adjourns any hearing held under this section, it shall make findings of fact and issue an order granting or denying permission to the person proposing such development to construct or operate the same as proposed, or granting such permission upon such terms and conditions as the commission may deem advisable to protect and preserve the environment and the public's health, safety and general welfare.

Any person who has notified the commission, pursuant to section 483, of his intent to create a development substantially affecting local environment shall, upon receipt of notice that the commission has determined to hold a hearing under this section, immediately defer or suspend construction or operation with respect to such development until the commission has issued its order after such hearing.

§ 485. Failure to notify commission; hearing; injunctions; orders

The commission may at any time with respect to any person who has commenced construction or operation of any development without having first notified the commission pursuant to section 483, schedule and conduct a public hearing in the manner provided by section 484 with respect to such development.

The commission may request the Attorney General to enjoin any person, who has commenced construction or operation of any development without having first notified the commission pursuant to section 483, from further construction or operation pending such hearing and order. Within 30 days of such request the Attorney General shall bring an appropriate civil action.

In the event that the commission shall issue an order, denying a person commencing construction or operation of any development without first having notified the commission pursuant to section 483, permission to continue such construction or operation, it may further order such person to restore the area affected by such constuction or operation to its condition prior thereto or as near as may be, to the satisfaction of the commission.

§ 486. Enforcement

All orders issued by the commission under this subchapter shall be enforced by the Attorney General. If compliance with any order of the commission is not had within the time period therein specified, the commission shall immediately notify the Attorney General of this fact. Within 30 days thereafter the Attorney General shall bring an appropriate civil action designed to secure compliance with such order.

§ 487. Judicial review

Any person, with respect to whose development the commission has issued an order after hearing pursuant to section 484 may within 30 days after notice of such order, appeal therefrom to the Supreme Judicial Court. Notice of such appeal shall be given by the appellant to the commission. The proceedings shall not be de novo. Review shall be limited to the record of the hearing before and the order of the commission. The court shall decide whether the commission acted regularly and within the scope of its authority, and whether the order is supported by substantial evidence, and on the basis of such decision may enter judgment affirming or nullifying such determination.

§ 488. Applicability

This subchapter shall not apply to any development in existence or in possession of applicable state or local licenses to operate or under construction on January 1, 1970 or to any development the construction and operation of which has been specifically authorized by the Legislature prior to the effective date hereof, or to public service corporation transmission lines.

Sec. 3. Appropriation. There is appropriated from the General Fund the sum of $20,000 to the Environmental Improvement Commission to carry out the purposes of this Act. Any unexpended balance at the end of June 30, 1970 shall be carried forward to June 30, 1971. The breakdown shall be as follows:

	1969-70
ENVIRONMENTAL IMPROVEMENT COMMISSION	
Personal Services	$ 4,000
All Other	16,000
	$20,000

Effective May 9, 1970

Chapter 572

AN ACT Relating to Coastal Conveyance of Petroleum.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 38, c. 3, sub-c. II-A, additional. Chapter 3 of Title 38 of the Revised Statutes is amended by adding a new subchapter II-A, to read as follows:

SUBCHAPTER II-A

OIL DISCHARGE PREVENTION AND POLLUTION CONTROL

§ 541. Findings; purpose

The Legislature finds and declares that the highest and best uses of the seacoast of the State are as a source of public and private recreation and solace from the pressures of an industrialized society, and as a source of public use and private commerce in fishing, lobstering and gathering other marine life used and useful in food production and other commercial activities.

The Legislature further finds and declares that the preservation of these uses is a matter of the highest urgency and priority and that such uses can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests with the least possible conflicts in such diverse uses.

The Legislature further finds and declares that the transfer of oil, petroleum products and their by-products between vessels and vessels and onshore facilities and vessels within the jurisdiction of the State and state waters is a hazardous undertaking; that spills, discharges and escape of oil, petroleum products and their by-products occurring as a result of procedures involved in the transfer and storage of such products pose threats of great danger and damage to the marine, estuarine and adjacent terrestrial environment of the State; to owners and users of shorefront property; to public and private recreation; to citizens of the State and other interests deriving livelihood from marine-related activities; and to the beauty of the Maine coast; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as herein set forth and that such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring oil, petroleum products and their by-products and related activities.

The Legislature intends by the enactment of this legislation to exercise the police power of the State through the Environmental Improvement Commission by conferring upon said commission the exclusive power to deal with the hazards and threats of danger and damage posed by such transfers and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide procedures whereby persons suffering damage from such occurrences may be promptly made whole; and to establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

The Legislature further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety, and that the State's interest in such preservation outweighs any burdens of absolute liability imposed by the Legislature upon those engaged in transferring oil, petroleum products and their by-products and related activities.

§ 542. Definitions

The following words and phrases as used in this subchapter shall, unless a different meaning is plainly required by the context, have the following meaning:

1. Barrel. "Barrel" shall mean 42 U.S. gallons at 60 degrees Fahrenheit.

2. Board. "Board" shall mean the Board of Arbitration.

3. Commission. "Commission" shall mean the Environmental Improvement Commission.

4. Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

5. Fund. "Fund" shall mean the Maine Coastal Protection Fund.

6. Oil. "Oil, petroleum products and their by-products" means oil of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

7. Oil terminal facility. "Oil terminal facility" means any facility of any kind and related appurtenances, located in, on or under the surface of any land or water, including submerged lands, which is used or capable of being used for the purpose of transferring, processing or refining oil, petroleum products and their by-products, or for the purpose of storing the same, but does not include any facility used or capable of being used to store no more than 500 barrels, nor any facility not engaged in the transfer of oil, petroleum products or their by-products to or from tidal waters of the State. A vessel shall be considered an oil terminal facility only in the event of a ship to ship transfer of oil, petroleum products and their by-products, and only that vessel going to or coming from the place of transfer and the oil terminal facility.

8. Operate or operator. "Operate or operator" shall mean any person owning or operating an oil terminal facility whether by lease, contract or any other form of agreement.

9. Person. "Person" shall mean individual, partnership, joint venture, corporation or any group of the foregoing organized or united for a business purpose.

10. Transferred. "Transferred" shall include both onloading and offloading between terminal and vessel and vessel to vessel.

11. Vessel. "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise and shall include barges and tugs.

§ 543. Pollution and corruption of waters and lands of the State prohibited

The discharge of oil, petroleum products or their by-products into or upon any coastal waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the State, or into any river, stream, sewer, surface water drain or other waters that drain into the coastal waters of the State is prohibited.

§ 544. Powers and duties of the commission

The powers and duties conferred by this subchapter shall be exercised by the Environmental Improvement Commission and shall be deemed to be an essential governmental function in the exercise of the police power of the State.

1. Jurisdiction. The powers and duties of the commission under this subchapter shall extend to the areas described in section 543 and to a distance of 12 miles from the coastline of the State.

2. Licenses. Licenses required under this subchapter shall be secured from the commission subject to such terms and conditions as are set forth in this subchapter.

§ 545. Operation without license prohibited

No person shall operate or cause to be operated an oil terminal facility as defined in this subchapter without a license.

1. Expiration of licenses. Licenses shall be issued on an annual basis and shall expire on December 31st annually, subject to such terms and conditions as the commission may determine are necessary to carry out the purposes of this subchapter.

2. Renewal of licenses. As a condition precedent to the issuance or renewal of a license the commission shall require satisfactory evidence that the applicant has or is in the process of implementing state and federal plans and regulations for control of pollution related to oil, petroleum products and their by-products and the abatement thereof when a discharge occurs.

3. Exemptions. The Legislature finds and declares that the likelihood of significant damage to marine, estuarine and terrestrial environment, due to spills of oil, petroleum products and their by-products by the following classes of persons, is remote due to the limited nature of their operations and the small quantities stored, and accordingly exempts the same from the licensing requirements imposed by this section:

A. Marinas. Persons engaged in the business of servicing the fuel requirements of pleasure craft, fishing boats and other commercial vessels, where the purchaser and the consumer are the same entity and the serviced vessel is 75 feet or less in overall length.

4. Certain vessels included. Licenses issued to any terminal facility shall include vessels used to transport oil, petroleum products and their by-products between the facility and vessels within state waters.

§ 546. Regulatory powers of commission

The commission shall from time to time adopt, amend, repeal and enforce reasonable rules and regulations necessary to carry out the intent of this subchapter.

1. Procedure for adopting rules and regulations. The commission shall post notice of proposed rules and regulations by publishing an attested copy of such notice in the state paper, and such other daily papers published in the State as it believes will bring the proposals to the attention of all interested parties, at least 7 days prior to holding a public hearing.

A. Such notice shall in addition contain the time, date and place of the public hearing.

B. The commission may establish reasonable rules and regulations governing the conduct of public hearings under this subchapter including adjournments and continuations thereof.

C. Rules and regulations adopted by the commission shall become effective 15 days after final adjournment of the public hearing.

D. Rules and regulations of the commission shall be seasonably printed and made available to interested parties.

2. Emergency rules and regulations without hearing. Upon finding by the commission that an emergency exists requiring immediate rules, regulations or orders to effectively deal with such emergency, the commission may without hearing adopt such rules and regulations and issue such orders which shall have the force and effect of law, but any rules, regulations or orders issued under authority of this subsection shall be null and void 30 days thereafter unless sooner adopted in accordance with subsection 1.

3. Enforcement of rules and regulations. Rules, regulations and orders issued by the commission under this subchapter shall have the force and effect of law.

4. Extent of regulatory powers. The commission shall have the power to adopt rules and regulations including but not limited to the following matters:

A. Operating and inspection requirements for facilities, vessels, personnel and other matters relating to licensee operations under this subchapter.

B. Procedures and methods of reporting discharges and other occurrences prohibited by this subchapter.

C. Procedures, methods, means and equipment to be used by persons subject to regulations by this subchapter.

D. Procedures, methods, means and equipment to be used in the removal of oil and petroleum pollutants.

E. Development and implementation of criteria and plans to meet oil and petroleum pollution occurrences of various degrees and kinds.

F. The establishment from time to time of control districts comprising sections of the Maine coast and the establishment of rules and regulations to meet the particular requirements of each such district.

G. Requirements for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment and other equipment relating to the use and operation of terminals, facilities and refineries and the approach and departure from terminals, facilities and refineries.

H. Such other rules and regulations as the exigencies of any condition may require or such as may reasonably be necessary to carry out the intent of this subchapter.

§ 547. Emergency proclamation; Governor's powers

Whenever any disaster or catastrophe exists or appears imminent arising from the discharge of oil, petroleum products or their by-products, the Governor shall by proclamation declare the fact and that an emergency exists in any or all sections of the State. If the Governor is temporarily absent from the State or is otherwise unavailable, the next person in the State who would act as Governor if the office of Governor were vacant shall, by proclamation, declare the fact and that an emergency exists in any or all sections of the State. A copy of such proclamation shall be filed with the Secretary of State. The Governor shall have general direction and control of the Environmental Improvement Commission and shall be responsible for carrying out the purposes of this subchapter.

In performing his duties under this subchapter, the Governor is authorized and directed to cooperate with all departments and agencies of the Federal Government, with the offices and agencies of other states and foreign countries, and the political subdivisions thereof, and with private agencies in all matters pertaining to a disaster or catastrophe.

In performing his duties under this subchapter, the Governor is further authorized and empowered:

1. Orders, rules and regulations. To make, amend and rescind the necessary orders, rules and regulations to carry out this subchapter within the limits of the authority conferred upon him and not inconsistent with the rules, regulations and directives of the President of the United States or of any federal department or agency having specifically authorized emergency functions.

2. Delegation of authority. To delegate any authority vested in him under this subchapter, and to provide for the subdelegation of any such authority.

Whenever the Governor is satisfied that an emergency no longer exists, he shall terminate the proclamation by another proclamation affecting the sections of the State covered by the original proclamation, or any part thereof. Said proclamation shall be published in such newspapers of the State and posted in such places as the Governor, or the person acting in that capacity, deems appropriate.

3. Civil defense. The provisions of Title 25, chapter 61, as they shall apply to eminent domain and compensation, mutual aid, immunity, aid in emergency, right of way, enforcement and compensation shall apply to disasters or catastrophes proclaimed by the Governor under this subchapter.

§ 548. Removal of prohibited discharges

Any person discharging oil, petroleum products or their by-products in the manner prohibited by section 543 shall immediately undertake to remove such discharge to the commission's satisfaction. Notwithstanding the above requirement the commission may undertake the removal of such discharge and may retain agents and contracts for such purposes who shall operate under the direction of the commission.

Any unexplained discharge of oil, petroleum products or their by-products within state jurisdiction or discharge of oil, petroleum products or their by-products occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction shall be removed by or under the direction of the commission. Any expenses involved in the removal of discharges, whether by the person causing the same, the person reporting the same or the commission by itself or through its agents or contractors shall be paid in the first instance from the Maine Coastal Protection Fund hereinafter provided for and any reimbursements due said fund shall be collected in accordance with the provisions of section 551.

§ 549. Personnel and equipment

The commission shall establish and maintain at such ports within the State, and other places as it shall determine, such employees and equipment as in its judgment may be necessary to carry out the provisions of this subchapter. The commission may employ, subject to the Personnel Law, and prescribe the duties of such employees. The salaries of such employees and the cost of such equipment shall be paid from the Maine Coastal Protection Fund established by this subchapter. The commission and the Maine Mining Bureau shall periodically consult with each other relative to procedures for the prevention of oil discharges into the coastal waters of the State from offshore drilling production facilities. Inspection and enforcement employees of the commission in their line of duty under this subchapter shall have the powers of a constable.

§ 550. Enforcement, penalties

Whenever it appears after investigation that there is a violation of any rule, regulation, order or license issued by the commission, the commission shall proceed in accordance with the provisions of section 451, subsection 2.

Whoever violates any provisions of this subchapter or any rule, regulation or order of the commission made hereunder shall be punished by a fine of not less than $100 nor more than $5000. Each day that any violation shall continue shall constitute a separate offense. The provisions of this section shall not apply to any discharge promptly reported and removed by a licensee in accordance with the rules, regulations and orders of the commission.

§ 551. Maine Coastal Protection Fund

The Maine Coastal Protection Fund is established to be used by the commission as a nonlapsing, revolving fund for carrying out the purposes of this subchapter. The fund shall be limited to the sum of $4,000,000. To this sum shall be credited all license fees, penalties and other fees and charges related to this subchapter, and to this fund shall be charged any and all expenses of the commission related to this subchapter, including administrative expenses, costs of removal of discharges of pollutants, and third party damages covered by this subchapter.

Moneys in the fund, not needed currently to meet the obligations of the commission in the exercise of its responsibilities under this subchapter shall be deposited with the Treasurer of State to the credit of the fund, and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the Maine Coastal Protection Fund.

1. Research and development. The Legislature may allocate not more than $100,000 per annum of the amount then currently in the fund to be devoted to research and development in the causes, effects and removal of pollution caused by oil, petroleum products and their by-products on the marine environment. Such allocations shall be made in accordance with the provisions of section 555.

2. Third party damages. Any person claiming to have suffered damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil, petroleum products or their by-products prohibited by section 543 may apply within 6 months after the occurrence of such discharge to the commission stating the amount of damage he claims to have suffered as a result of such discharge. The commission shall prescribe appropriate forms and details for such applications. The commission may, upon petition, and for good cause shown, waive the 6 months limitation for filing damage claims.

A. If the claimant, the commission and the person causing the discharge can agree to the damage claim, the commission shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the same from the Maine Coastal Petroleum Fund.

B. If the claimant, the commission and the person causing the discharge cannot agree as to the amount of the damage claim, the claim shall forthwith be transmitted for action to the Board of Arbitration as provided in this subchapter.

C. Third party damage claims shall be stated in their entirety in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

D. Damage claims arising under the provisions of this subchapter shall be recoverable only in the manner provided under this subchapter, it being the intent of the Legislature that the remedies provided in this subchapter are exclusive.

3. Board of Arbitration. The Board of Arbitration shall consist of 3 persons, one to be chosen by the person determined in the first instance by the commission to have caused the discharge, one to be chosen by the commission to represent the public interest and one person chosen by the first 2 appointed members to serve as a neutral arbitrator. The neutral arbitrator shall serve as chairman. If the 2 arbitrators fail to agree upon, select and name the neutral arbitrator within 10 days after their appointment then the commission shall request the American Arbitration Association to utilize its procedures for the selection of the neutral arbitrator.

A. No member of the commission shall serve as an arbitrator.

B. Arbitrators shall be named by their principals within 10 days after the commission receives notice of claims arising from a discharge prohibited by section 543. If either party shall fail to select its arbitrator within the said 10 days the other party shall request the American Arbitration Association to utilize its procedures for the selection of such arbitrator and the 2 arbitrators shall proceed to select the neutral arbitrator as provided in this section.

C. One Board of Arbitrators shall be established for and hear and determine all claims arising from or related to a common single discharge.

D. Hearings before Boards of Arbitrators shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. The board shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues represented to them for determination.

E. Determinations made by a majority of the board shall be final, and such determinations may be subject to review by a Justice of the Superior Court but only as to matters relating to abuse of discretion by the board.

F. Representation on the Board of Arbitration shall not be deemed an admission of liability for the discharge.

4. Funding.

A. Annual license fees shall be determined on the basis of ¼ cent per barrel of oil, petroleum products or their by-products transferred by the applicant during the licensing period and shall be paid monthly on the basis of records certified to the commission. License fees shall be paid to the commission and upon receipt by it credited to the Maine Coastal Protection Fund.

B. Whenever the balance in the fund has reached the limit provided under this subchapter license fees shall be proportionately reduced to cover only administrative expenses and sums allocated to research and development.

5. Disbursements from fund. Moneys in the Maine Coastal Protection Fund shall be disbursed for the following purposes and no others:

A. Administrative expenses, personnel expenses and equipment costs of the commission related to the enforcement of this subchapter.

B. All costs involved in the abatement of pollution related to the discharge of oil, petroleum products and their by-products covered by this subchapter.

C. Sums allocated to research and development in accordance with this section.

D. Payment of 3rd party claims awarded in accordance with this section.

E. Payment of costs of arbitration and arbitrators.

F. Payment of costs of insurance by the State to extend or implement the benefits of the fund.

6. Reimbursements to Maine Coastal Protection Fund. The commission shall recover to the use of the fund all sums expended therefrom, including overdrafts, for the following purposes; provided that recoveries resulting from damage due to an oil pollution disaster declared by the Governor pursuant to section 547 shall be apportioned between the Maine Coastal Protection Fund and the General Fund so as to repay the full costs to the General Fund of any bonds issued as a result of such disaster.

A. Costs incurred by the fund in the abatement of a prohibited discharge including 3rd party claims when the person permitting the same shall have failed to promptly report the discharge as required by rules and regulations of the commission, and such costs where the person permitting the prohibited discharge is not a licensee.

B. In the case of a licensee promptly reporting a discharge as required by this article, costs involved in the abatement of any single prohibited discharge including 3rd party claims in excess of $15,000, over and above payments received under any federal program.

C. Requests for reimbursement to the fund for the above costs if not paid within 30 days of demand shall be turned over to the Attorney General for collection.

7. Waiver of reimbursement. Upon petition of the person determined to be liable for reimbursement to the fund for abatement costs under subsection 6, the commission may, after hearing, waive the right to reimbursement to the fund if the commission finds that the occurrence was the result of any of the following:

A. An act of war.

B. An act of government, either State, Federal or municipal.

C. An act of God, which shall mean an unforseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

Upon such finding by the commission immediate credit therefor shall be entered for the party involved. The findings of the commission shall be conclusive as it is the legislative intent that waiver provided in this subsection is a privilege conferred not a right granted.

§ 552. Liabilities of licensees

1. Licensee shall be liable. A licensee shall be liable for all acts and omissions of its servants and agents, and carriers destined for the licensee's facilities from the time such carrier shall enter state waters until such time as the carrier shall leave state waters.

2. State need not plead or prove negligence. Because it is the intent of this subchapter to provide the means for rapid and effective clean-up and to minimize direct damages as well as indirect damages and the proliferation of 3rd party claims, any licensee, agent or servant including carriers destined for or leaving a licensee's facility while within state waters permits or suffers a prohibited discharge or other polluting condition to take place shall be liable to the State of Maine for all costs of clean-up or other damage incurred by the State. In any suit to enforce claims of the State under this section, it shall not be necessary for the State to plead or prove negligence in any form or manner on the part of the licensee, the State need only plead and prove the fact of the prohibited discharge or other polluting condition and that it occurred at facilities under the control of the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter.

§ 553. Interstate Compact, authority

In accordance with subchapter II the Governor of this State is authorized and directed to execute supplementary agreements with any one or more of the states comprising the New England Interstate Water Pollution Control Commission and the United States for the purpose of implementing and carrying out the provisions, limitations, qualifications and intent of this subchapter.

§ 554. Reports to the Legislature

The commission shall include in its recommendations to each Legislature as required by section 361 specific recommendations relating to the operation of this subchapter, specifically including a license fee formula to reflect individual licensee experience, and fee schedule based upon volatility and toxicity of petroleum products and their by-products.

§ 555. Budget approval

The commission shall submit to each Legislature its budget recommendations for disbursements from the fund in accordance with the provisions of section 551. Upon approval thereof the State Controller shall authorize expenditures therefrom as approved by the commission.

§ 556. Municipal ordinances; powers limited

Nothing in this subchapter shall be construed to deny any municipality, by ordinance or by law, from exercising police powers under any general or special act; provided, however, that ordinances and bylaws in furtherance of the intent of this subchapter and promoting the general welfare, public health and public safety shall be valid unless in direct conflict with the provisions of this subchapter or any rule, regulation or order of the commission adopted under authority of this subchapter.

§ 557. Construction

This subchapter, being necessary for the general welfare, the public health and the public safety of the State and its inhabitants, shall be liberally construed to effect the purposes set forth under this subchapter. No rule, regulation or order of the commission shall be stayed pending appeal under the provisions of this subchapter.

Sec. 2. M. R. S., T. 38, § 416, amended. The first and 2nd sentences of the 3rd paragraph of section 416 of Title 38 of the Revised Statutes, as enacted by section 4 of chapter 431 of the public laws of 1969, are amended to read as follows:

There shall be no discharge of grease, oil, gasoline, kerosene or related products into the inland waters ~~or into the marginal sea~~ of this State. Any person, corporation or other party that discharges, or permits to be discharged, grease, oil, gasoline, kerosene and related products into the inland waters ~~or marginal sea~~ of this State shall remove same from said waters.

Sec. 3. Expenditures. Moneys not exceeding $800,000 which accrue to the fund prior to June 30, 1971 from legislative appropriations, license fees, penalties and other fees and charges related to this Act, may be expended by the commission for the purposes described in such legislation.

Sec. 4. Appropriation. There is appropriated from the General Fund the sum of $30,000 to carry out the purposes of this Act. The breakdown shall be as follows:

		1969-70
ENVIRONMENTAL IMPROVEMENT COMMISSION		
Personal Services	(2)	$20,000
All Other		10,000
		$30,000

Any unexpended balances remaining at June 30, 1970 shall carry to June 30, 1971.

Effective May 9, 1970

APPENDIX C

MARYLAND

Act 241-1970 (Wetlands) [Sections 718-731 of Article 55C of the Annotated Code of Maryland].

Act 242-1970 (Wetlands) [Section 15A of Article 15A of the Annotated Code of Maryland].

Act 240-1970 (Environmental Service Program) [Article 33B of the Annotated Code of Maryland].

Act 31-1971 (Power Plant Research and Site Evaluation Program) [Sections 766-771 (redesignated; originally Sections 763-768) of Article 666 of the Annotated Code of Maryland].

ACT 241-1970

HOUSE BILL NO. 285
WETLANDS

AN ACT to add new Sections 718 through 731, inclusive, to Article 66C of the Annotated Code of Maryland, (1967 Replacement Volume), title "Natural Resources," to follow immediately after Section 717 thereof, and to be under the new subtitle "Wetlands"; and to repeal Section 485 of Article 27 of the Annotated Code of Maryland (1967 Replacement Volume), title and subtitle, "Crimes and Punishments," subheading "Rivers, Harbors, etc."; and to repeal Sections 45, 46 and 47 of Article 54 of the Annotated Code of Maryland (1968 Replacement Volume), title "Hall of Records," subtitle "Land Patents," to provide a State policy for the preservation of wetlands in the State; to regulate the filling and dredging of wetlands; to authorize the Secretary of Natural Resources with the advice and consent of the Maryland Agricultural Commission to promulgate rules and regulations; to authorize the Secretary of Natural Resources to prohibit certain activities on specified wetlands; to provide for an inventory of private wetlands; to provide certain protections to riparian owners; and generally dealing with both State and private wetlands; and to repeal sections generally dealing with the removal of sand and gravel, ownership of accretions, improvements on lands bounding navigable waters, and the liability of riparian owners, with the general context of said sections to be incorporated into the new Sections 718 through 731, inclusive.

SECTION 1. Be it enacted by the General Assembly of Maryland, That Sections 718 through 731, inclusive, be and they are hereby added to Article 66C of the Annotated Code of Maryland (1967 Replacement Volume), title "Natural Resources," to follow immediately after Section 717 thereof, to be under the new subtitle "Wetlands," and all to read as follows:

Wetlands

In General

718.

It is declared that in many areas of the State much of the wetlands have been lost or despoiled by unregulated dredging, dumping, filling, and like activities, and that the remaining wetlands of this State are in jeopardy of being lost or despoiled by these and other activities; that such loss or despoliation will adversely affect, if not entirely eliminate, the value of such wetlands as sources of nutrients to finfish, crustacea and shellfish of significant economic value; that such loss or despoliation will destroy such wetlands as habitats for plants and animals of significant economic value and will eliminate or substantially reduce marine commerce, recreation and aesthetic enjoyment; and that such loss or despoliation will, in most cases disturb the natural ability of tidal wetlands to reduce flood damage and adversely affect the public health and welfare; that such loss or despoliation will substantially reduce the capacity of such wetlands to absorb silt and will thus result in the increased silting of channels and harbor areas to the detriment of free navigation. Therefore, it is declared to be the public policy of this State, taking into account varying ecological, economic, developmental, recreational and aesthetic values, to preserve the wetlands and to prevent the despoliation and destruction thereof.

719.

(a) "State wetlands" means all land under the navigable waters of the State below the mean high tide, which is affected by the regular rise and fall of the tide. Such wetlands, which have been transferred by the State by a valid grant, lease or patent or a grant confirmed by Article 5 of the Declaration of Rights of the Constitution of Maryland, shall be considered "private wetland" to the extent of the interest so transferred.

(b) "Private wetlands" means all lands not considered "State wetlands" bordering on or lying beneath tidal waters, which are subject to regular or periodic tidal action and which support aquatic growth. These include wetlands, which have been transferred by the State by a valid grant, lease or patent or a grant confirmed by Article 5 of the Declaration of Rights of the Constitution of Maryland, to the extent of the interest so transferred.

(c) "Dredging" means the removal or displacement by any means of soil, sand, gravel, shells or other material, whether of intrinsic value or not, from State or private wetlands affected by the regular ebb and flow of the tide.

(d) "Filling" means either the displacement of navigable waters by the deposition into wetlands affected by the regular ebb and flow of the tide of soil, sand, gravel, shells or other material; or the artificial alteration of navigable water levels by physical structures, drainage ditches or otherwise.

(e) "Person" means any natural person, partnership, joint stock company, unincorporated association or society, or the State and any agency thereof, or municipal or political subdivisions or other corporation of any character whatsoever.

(f) "Regular or periodic tidal action" means the rise and fall of the sea that is produced by the attraction of the sun and the moon uninfluenced by winds or other circumstances.

State Wetlands

720.

The owner of land bounding on navigable waters shall be entitled to all natural accretions to said land and to make improvements into the waters in front of said land for the purposes of preserving his access to navigable water or for protecting his shore against erosion. After an improvement has been constructed, it shall become the property of the owner of the land to which it is attached. None of the rights covered under this subheading shall exclude the owner from developing other uses as approved by the Board of Public Works.

721.

It shall be unlawful for any person to dredge or fill on State wetlands, except to the extent that he has been issued a license to do so by the Board of Public Works. The provisions of this section shall not apply to the dredging of seafood products by licensed operators, the harvesting of seaweed, mosquito control and abatement as approved by the State entomologist, the improvement of wildlife habitat or agricultural drainage ditches as approved by an appropriate agency. In order to aid the Board of Public Works in the determination of whether a license to dredge or fill State wetlands should be issued, the Secretary of Natural Resources, after consultation with interested federal, state and local agencies and appropriate agricultural agencies, and after taking of such evidence and holding of such hearings as the Secretary thinks advisable, shall submit a report indicating whether the license should be granted and, if so, the terms, conditions and consideration which should be required. The Board of Public Works after a hearing in the local subdivision affected shall then decide if issuance of the license is in the best interests of the State, taking into account the varying ecological, economic, developmental, recreational and aesthetic values each application presents, and if it so decides, shall issue a license for such consideration, and according to such terms and conditions as it deems advisable. All licenses shall be in writing. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction, fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000). Any person who knowingly violates the provisions of this subheading shall be liable to the State for the restoration of the affected wetland to its condition prior to such violation insofar as that is possible. The appropriate court shall specify a reasonable time for completion of the restoration. The provision of this section shall not apply to any operations for dredging and filling being conducted as of July 1, 1970, as authorized under the terms of an appropriate permit or license granted under the provisions of existing State and Federal law.

Private Wetlands

722.

The Secretary of Natural Resources, with the advice and consent of the Maryland Agricultural Commission and in consultation with the appropriate agencies within the affected political subdivision, may from time to time, for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries, promulgate rules and regulations governing dredging, filling, removing or otherwise altering or polluting private wetlands. The Agricultural Commission, within sixty days of receiving any proposed rules and regulations from the Secretary, shall convey its decision concerning the adoption or rejection of such rules and regulations to the Secretary; and if this is not done, such rule or regulation shall be considered approved by the Commission. Such rules and regulations may vary as to specific tracts of wetlands because of the character of such wetlands.

723.

Notwithstanding any rule or regulation promulgated by the Secretary of Natural Resources for the protection of private wetlands, the following uses shall be lawful on those lands included in the Secretary's inventory of private wetlands:

(1) Conservation of soil, vegetation, water, fish, shellfish, and wildlife.

(2) Trapping, hunting, fishing, and shellfishing where otherwise legally permitted.

(3) Exercise of riparian rights to make improvements to lands bounding on navigable waters to preserve access to such navigable waters or to protect the shore against erosion.

724.

The Secretary shall promptly make an inventory of all private wetlands within the State. The boundaries of such wetlands shall be shown on suitable reproductions or aerial photographs to a scale of one inch equals two hundred feet with such accuracy that they will represent a class D survey. Such maps shall be prepared to cover entire subdivisions of the State as determined by the Secretary. Upon completion of the private wetlands boundary maps for each subdivision and adopton of proposed rules and regulations governing activities on such wetlands as provided by Section 722, the Secretary shall hold a public hearing in the county of the affected wetlands. The Secretary shall give notice of such hearing to each owner as shown in tax records of all lands designated as wetland as shown on such maps, by registered mail not less than thirty days prior to the date set for such hearing. The notice shall include the proposed rules and regulations. The Secretary shall also cause notice of such hearing to be published at least once not more than thirty days and not fewer than ten days before the date set for such hearing in a newspaper or newspapers published within and haveing a general circulation in the county or counties where such wetlands are located. After considering the testimony given at such hearing and any other facts which may be deemed pertinent and after considering the rights of affected property owners and the purposes of this subheading, the Secretary shall establish by order the bounds of each of such wetlands and the rules and regulations applicable thereto. A copy of the order, together with a copy of the map depicting such boundary lines, shall be filed among the land records in all counties affected after final appeal of such, if any, has been completed. The Secretary shall give notice of such order to each owner of record of all lands designated as such wetlands by mailing a copy of such order to such owner by registered mail. The Secretary shall also cause a copy of such order to be published in a newspaper or newspapers published within and having a general circulation in the county or counties where such wetlands are located.

725.

Any person having a recorded interest in land affected by any such rules and regulations, may appeal the rules and regulations and the designation of his land within the inventory to the Board of Review of the Department of Natural Resources as provided by Section 237 of Article 41 of the Annotated Code. This proceeding shall be held in the county in which the land is located, and the Board shall view the land in question. If such person is dissatisfied with the decision of the Board, he may, within thirty days after receiving notice thereof, petition the circuit court in the county in which the land is located to determine whether such rules or regulations so restrict the use of his property as to deprive him of the practical uses thereof and are therefore an unreasonable exercise of the police power, because the order constitutes the equivalent of a taking without compensation. The court in a jury trial at the election of either party shall hear the case de novo without the right of removal and the appeal shall not be subject to the provisions of the Administrative Procedure Act. In weighing the appropriate exercise of the police power, the court shall consider the importance of the land to marine life, shellfish, wildlife, prevention of siltation, floods and other natural disasters, the public health and welfare, and the public policy set forth in this subheading. If the court find the ruling to be an unreasonable exercise of the police power, as aforesaid, the court shall enter a finding that such ruling shall not apply to the land of the petitioner; provided, however, that such finding shall not affect any other land than that of the petitioner. The Secretary shall cause a copy of such finding to be recorded forthwith in the land records. The decision of the Circuit Court may be appealed by either party to the Court of Appeals.

726.

Any person proposing to conduct an activity upon any wetland which is not permitted by rules and regulations adopted under the provisions of Section 722 shall file an application for a permit with the Secretary, in such form and with such information as the Secretary may prescribe. Such application shall include a detailed description of the proposed work and a map showing the area of wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice. The Secretary shall cause a copy of such application to be mailed to the chief administrative officer in the county or counties where the proposed work or any part thereof is located. No sooner than thirty days and not later than sixty days after receipt of such application, the Secretary or his duly designated hearing officer shall hold a public hearing in the county where the land is located on such application. The Secretary shall cause notice of such hearing to be published at least once not more than thirty days and not fewer than ten days before the date set for the hearing in a newspaper published within and having a general circulation in each county where the proposed work, or any part thereof, is located. All applications and maps and documents relating thereto shall be open for public inspection at the offices of the Secretary, and the chief administrative officer in the county. At such hearing any person or persons may appear and be heard. No person may make such an application within eighteen months of the denial of a prior application for the same type permit or the final determination of any appeal of such denial.

727.

In granting, denying or limiting any permit, the Secretary or his duly designated hearing officer shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, economic benefits, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in this subtitle. In granting a permit the Secretary may limit or impose conditions or limitations designed to carry out the public policy set forth in this subtitle.

The Secretary may require a bond in an amount and with surety and conditions satisfactory to it securing to the State compliance with the conditions and limitations set forth in the permit. The Secretary may suspend or revoke a permit it the Secretary finds that the applicant has not complied with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The Secretary shall state upon his record, his findings and reasons for all actions taken pursuant to this section. The Secretary shall cause notice of his order in issuance, denial, revocation or suspension of a permit to be published in a newspaper published within and having a general circulation in the county or counties wherein the wetland lies. An appeal of the order may be taken to the Board of Review of the Department of Natural Resources as provided by Section 237 of Article 41 of the Annotated Code by the applicant or the county or municipal goverment in which the land is located. This proceeding shall be in the county where the land is located and the Board shall view the affected land.

728.

Any party to the appeal to the Board of Review may take an appeal within thirty days after the decision of the Board of Review to the circuit court in the county in which the land is located. The court in a jury trial at the election of either party shall hear the case de novo without the right of removal, and the appeal shall not be subject to the Administrative Procedure Act. If the court finds that the action appealed from is an unreasonable exercise of the police power, it may set aside or modify the order.

729.

The court may order the State to pay court costs due because of any appeal made pursuant to Section 725 or 728, if it finds that the financial situation of the person so appealing warrants such action.

730.

Any person who violates the rules and regulations validly promulgated by the Secretary or any provisions of this subheading shall be punished by a fine of not more than one hundred dollars ($100.00) or imprisonment for not more than one (1) month, or by both such fine and imprisonment. Any person

ACT 242-1970

HOUSE BILL NO. 286
WETLANDS

AN ACT to add new Section 15A to Article 78A of the Annotated Code of Maryland (1969 Replacement Volume), title "Public Works," subtitle "Board of Public Works," to follow immediately after Section 15 thereof, pertaining to conveyances by the Board of Public Works of title to lands owned by the State due to their relationship to the waters of the State.

SECTION 1. Be it enacted by the General Assembly of Maryland, That new Section 15A be and it is hereby added to Article 78A of the Annotated Code of Maryland (1969 Replacement Volume), title "Public Works," subtitle "Board of Public Works," to follow immediately after Section 15 thereof, and to read as follows:

15A.

(a) The Board of Public Works shall not convey a title to land owned by the State due to its relationship to the waters of the State to any person other than the riparian owner or proprietor of the land abutting the land being conveyed. The Board may only make such a conveyance after seeking the advice of the Department of Natural Resources, appropriate agricultural agencies, including the Maryland Agricultural Commission and the Agricultural Stabilization and Conservation Committee and the Soil Conservation District Committee of the county in which the land is located, and other interested Federal and State agencies. Prior to such a conveyance, there must be a public hearing, with proper notice, in the county in which the land is located, after which a written decision must be rendered by the Board justifying its action, taking into account the best interests of the State with respect to the varying ecological, economic, developmental, agricultural, recreational and aesthetic values of the area under consideration. This document shall be maintained in the permanent records of the Board and be open to public scrutiny.

(b) The provisions of this section shall not affect the title to interests conveyed by the State prior to July 1, 1970, by a valid grant, lease or patent or a grant confirmed by Article 5 of the Declaration of Rights of the Maryland Constitution. In addition thereto, the provisions of this section shall not prohibit the approval of the conveyance of any such land for which application for conveyance was made and approved by a majority of the Board of Public Works prior to July 1, 1970.

(c) The provisions of this section shall not deprive any riparian owner or proprietor of any riparian rights, privilege or enjoyment that he had prior to July 1, 1970.

(d) The provisions of this section shall not affect the provisions of Section 15A and 15B of the Code of the Public Local Laws of Worcester County.

SEC. 2. And be it further enacted, That this Act shall take effect July 1, 1970.

ACT 240-1970

Article 33B

ENVIRONMENTAL SERVICE

§ 1. Legislative intent; purposes of article.

To assist with the preservation, improvement, and management of the quality of air, land, and water resources, and to promote the health and welfare of the citizens of the State, it is the intention of the General Assembly in enactment of this article to exercise the powers of the State of Maryland to provide for dependable, effective, and efficient purification and disposal of liquid and solid wastes, to encourage reductions in the amount of waste generated and discharged to the environment, and to serve its political subdivisions and economic interests. For these purposes, the General Assembly creates an instrumentality of the State of Maryland constituted as a body politic and corporate to provide waste purification and disposal services in compliance with State laws, regulations, and policies governing air, land, and water pollution to public and private instrumentalities, and with safeguards to protect the autonomy of the political subdivisions and the rights of the private entities it serves.

§ 2. Creation and organization.

(a) *Created; instrumentality of State; agency of Department of Natural Resources.* There is created a body politic and corporate to be known as the "Maryland Environmental Service," hereinafter referred to as the Service. The Service is constituted as an instrumentality of the State of Maryland, and the exercise by the Service of the powers conferred by this article shall be deemed and held to be the performance of an essential governmental function of the State of Maryland. For purposes of executive organization, the Service shall be an agency within the Department of Natural Resources, and the exercise of all powers and functions of the Service shall be subject to the authority of the Secretary of Natural Resources as set forth in Article 41 of this Code or elsewhere in the laws of Maryland. However, the Secretary's authority to transfer functions, staff or funds set forth in § 234(d) of Article 41 of this Code shall not be applicable to the Service.

(b) *Officers and board of directors generally.* There shall be three officers of the Service: a director, a secretary, and a treasurer. The director, secretary, and treasurer shall be appointed solely with regard to their qualifications for the duties of their offices by the Secretary of Natural Resources, with the approval of the Governor, and they shall serve at the pleasure of the Secretary of Natural Resources. The director, secretary, and treasurer shall receive such compensation as may be provided in the State budget. The director, secretary, and treasurer shall comprise the board of

directors of the Service. Two members of the board of directors shall constitute a quorum for the transaction of business of the board. The affirmative vote of at least two members shall be necessary for any action taken by the board of directors. No vacancy in the membership of the board of directors shall impair the right of a quorum to exercise all the rights and perform all the duties of the board of directors. The director shall be the administrative head of the Service and the presiding officer of the board of directors. He shall be responsible for the exercise of all powers and duties conferred upon the Service by the provisions of this article except for those powers and duties specifically conferred by this article on the secretary, treasurer, or on the board of directors.

(c) *Staff; operating expenses.* The staff of the Service shall consist of such employees as may be necessary to carry out the duties of the Service. The director shall appoint and remove the staff of the Service in accordance with the provisions and restrictions of Article 64A of the Annotated Code of Maryland, title "Merit System"; except that such positions within the Service as may be designated by the director, with the approval of the Secretary of Natural Resources, as technical and professional positions for the operation and support of the Service shall be unclassified positions and shall receive such salaries as shall be set by the Secretary and provided in the State budget. The other employees of the Service shall be classified employees. Provision shall be made in the State budget for the payment of compensation to the employees of the Service and for the payment of general operating expenses of the Service from general funds.

(d) *Duties of secretary; copies of records and documents.* The secretary shall keep a record of the proceedings of the board of directors and shall be custodian of all books, documents, and papers filed with the Service and of the minute book or journal of the Service and its official seal. He may cause copies to be made of all minutes and other records and documents of the Service and give certificates under the official seal of the Service to the effect that the copies are true copies. All persons dealing with the Service may rely upon the certificates, and such copies when certified shall be received as evidence in any court of law or equity, or before any judge, justice of the peace, or other tribunal in this State, in the same manner and with the same effect as if the original books, papers, entries, records, or proceedings were themselves produced.

(e) *Duties and bond of treasurer.* The treasurer shall develop and maintain a detailed and accurate accounting system for all financial transactions of the Service, and he shall perform other duties relating to the financial affairs of the Service as required by law or by directive of the board of directors. Unless any moneys of the Service are otherwise held by or payable to a trustee appointed pursuant to a resolution authorizing the issuance of bonds or notes or under a trust agreement securing such bonds or notes, the treasurer shall receive the monies of the Service, and, until otherwise prescribed by law, deposit them, as soon as received, to

the credit of the Service in such bank or banks located in the State of Maryland as he may, from time to time, with the approval of the board select, and shall disburse the same for the purposes of the Service according to law, upon his warrant and not otherwise. The treasurer shall, upon entering the performance of his duties, be covered by a surety bond in accordance with the provisions of §§ 46 through 50 of Article 78A of the Annotated Code of Maryland.

(f) *Duties of Attorney General.* The Attorney General of Maryland shall be the legal advisor for the Service and the board of directors in carrying out their duties under this article; he shall enforce compliance with the requirements of this article through any appropriate legal remedy and prosecute violations in accordance with the provisions of this article.

(g) *Service exempt from subtitle "Department of Public Improvements" of Article 78A.* The Service shall be exempt from the provisions of Article 78A, subtitle "Department of Public Improvements," but shall be subject to all of the other applicable provisions of this article.

§ 3. Definitions.

(a) *Generally.* As used in this article, the words and terms listed in this section have the meanings given, unless the context clearly indicates another or different meaning or intent.

(b) *Liquid waste.* The term "liquid waste" means any water-carried wastes or wastes which are liquid in nature created in and carried away, or to be carried away, from residences, institutions, industrial establishments, commercial establishments, or any other public or private building, structure, or facility.

(c) *Solid wastes.* The term "solid wastes" means all putrescible and nonputrescible waste materials which are not gaseous or liquid, and the term includes garbage, rubbish, ashes, incinerator residue, waste water treatment residue, street cleanings, dead animals, demolition and construction debris, household appliances, automobile bodies, offal, paunch manure, and solid wastes from commercial or industrial activities.

(d) *Municipality.* The term "municipality" means any county, municipal corporation, sanitary district, State or local agency, or other public body or agency created or established by or pursuant to State or local law, ordinance, or resolution and having jurisdiction over disposal of liquid wastes or solid wastes or established for the purposes of collecting, transporting, purifying, or disposing of liquid or solid wastes.

(e) *Service region.* The term "service region" means a geographic area which the Service designates and within which the director, after consultation with the municipalities affected, shall cause surveys, plans, studies, and estimates to be made for the purpose of

determining the most dependable, effective, and efficient means of providing services through solid waste disposal projects or waste water purification projects. Service regions shall be based upon needs set forth in approved state-county master water and sewerage plans, or solid waste disposal plans, if any, adopted pursuant to Article 43 of the Annotated Code of Maryland, but may also take account of other plans and studies.

(f) *Service district.* The term "service district" means a geographic area established by the Service, after consultation with the municipalities affected thereby, for the purpose of providing waste water purification projects or solid waste disposal projects. Service districts may encompass areas containing projects of the Service as well as nonduplicating, noncompetitive projects owned and operated by municipalities and persons. Service districts shall be based upon approved state-county master water and sewerage plans or solid waste disposal plans, if any, adopted pursuant to Article 43 of this Code but may also take account of other plans and studies.

(g) *Person.* The word "person" means any natural person, individual, firm, partnership, association, cooperative, corporation, or other entity that, under the State or federal law, has responsibility for waste water or solid waste disposal; but the word does not include any natural person, individual, firm, partnership, association, cooperative, corporation, or other entity receiving or entitled to receive waste water collection or solid waste collection services from a municipality.

(h) *Solid waste disposal project.* The term "solid waste disposal project" means the services, facilities or properties used or useful or having present capacity for future use in connection with the transporting, compacting, burying, incinerating, composting, or otherwise disposing of solid waste; the term includes land, buildings, rail or motor vehicles, barges, boats, and all properties and rights therein and appurtenances thereof.

(i) *Director.* The word "director" means the director of the Environmental Service.

(j) *Waste water purification project.* The term "waste water purification project" means the services, facilities, or properties used or useful or having present capacity for future use in connection with the reception of liquid wastes from the collection system of a municipality or person, or sludge or other pollutants removed from liquid wastes, for the purpose of transporting, treating, stabilizing, purifying or disposing of the liquid wastes or sludge or other pollutants removed from the liquid wastes, including treatment facilities of all kinds, and all properties and rights therein and appurtenances thereto.

(k) *Cost.* The word "cost" as applied to a solid waste disposal project, a waste water purification project, a service area, a

service district, or to any activity undertaken by the Service, includes: the cost of construction or acquisition, including the purchase price of any existing project or the cost of acquiring all right, title, or interest of the project and the amount to be paid to discharge all obligations necessary to vest title to the project or any part thereof in the Service; the cost of any reconstruction, extension, enlargement, alteration, repair or improvement; the cost of all lands, properties, rights, easements, interests, franchises, and permits acquired; the cost of all labor, machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction; the cost of revenue estimates, engineering and legal services, plans, designs, specifications, surveys, investigations, demonstrations, studies, estimates of cost, other expenses necessary or incident to determining the feasibility or practicability of any such acquisition, improvement, or construction, administrative expenses, and other expenses as necessary or incident to the financing herein authorized, and to the acquisition, operation, maintenance, improvement, construction of liquid and solid waste project facilities and the placing of the same in operation by the Service. Any obligation or expense incurred by the Service prior to the issuance of bonds under the provisions of this article for engineering studies and for estimates of costs and revenues and for other technical or professional services which may be utilized in the acquisition, improvement, or construction of such facilities may be regarded as a part of the costs of the facilities.

(l) *Project.* The term "project" means a solid waste disposal project or a waste water purification project, as the case may be.

§ 3B. Responsibilities and activities; limitation upon powers.

The Service shall be responsible for carrying out the following general activities, with limitations as provided:

(a) Planning, integration and establishment of geographic service regions and districts, in cooperation with the affected municipalities, and based upon approved state-county master plans for water and sewerage, and solid waste disposal as provided for in Article 43 of the Annotated Code of Maryland, as well as other plans and studies permitted by this article.

(b) Research and developmental studies and investigations into improved methods and techniques of liquid and solid wastes acquisition, transportation, processing, purification, disposal and management, and technical consultation and assistance to design, management and operating personnel of the Service and, pursuant to an order or upon request, to appropriate municipalities or persons possessing similar responsibilities.

(c) To the extent deemed appropriate in each particular instance, acquisition, design, construction, reconstruction, rehabilitation, improvement, operation, maintenance and repair of waste water purification and solid waste disposal, projects, either pursuant to an order of the Secretary of Health and Mental Hygiene or the Secretary of Natural Resources as further provided for in §§ 8 and 9 of this article,

or pursuant to a mandatory agreement to provide requested services, as provided for in § 6 of this article, or pursuant to an approved five-year plan, as provided for in § 5 of this article.

(d) Anything in this article to the contrary notwithstanding, the Service shall not have authority or power to acquire, construct, operate or otherwise establish a waste water purification project or solid waste disposal project, as the case may be, for any area or district which, in the determination of the Secretary of the Department of Health and Mental Hygiene is receiving adequate service from a project owned by a municipality and operated in compliance with applicable laws and regulations, or for any area or district which, in the determination of the aforementioned Secretary, will, within a reasonable time as determined by said Secretary, receive adequate service from a project owned by a municipality and operated in compliance with applicable laws and regulations, except upon the request of the appropriate municipality and pursuant to a voluntary contract between the Service and such municipality.

§ 4. Powers generally.

The Service is granted and has and may exercise all powers necessary for carrying out the purposes of this article, including, but not limited to, the following rights and powers:

(a) *Perpetual corporate existence.* To have perpetual existence as a corporation;

(b) *Bylaws, rules, regulations, etc.* To adopt bylaws, rules, regulations, policies, and procedures for the regulation of its affairs and the conduct of its business, subject to the approval of the Secretary of Natural Resources;

(c) *Official seal.* To adopt an official seal and alter the same at pleasure;

(d) *Office facilities.* To maintain an office or offices at such place or places as it designates, subject to the approval of the Secretary of Natural Resources;

(e) *Agents, employees and servants.* To appoint agents, employees, and servants, subject to the approval of the Secretary of Natural Resources, and to prescribe their duties and to fix their compensation as set forth in this article;

(f) *Sui juris.* To sue and be sued;

(g) *Acquisition, construction, operation, etc., of projects; project rules and regulations; purchase, lease, sale, etc., of franchise and property.* To acquire, construct, reconstruct, rehabilitate, improve, maintain lease as lessor or as lessee, repair and operate projects within or without the State of Maryland and to establish reasonable rules and regulations for the use of any project, and to acquire,

purchase, hold, lease as lessee, and use any franchise and any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or convenient for carrying out the purposes of the Service and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it;

(h) *Acquisition of real property and water rights generally; eminent domain.* To acquire by gift, purchase, or the exercise of the right of eminent domain, in the manner prescribed by Article 33A of the Annotated Code of Maryland, as from time to time amended, real property or rights in real property or water rights in connection therewith; and at any time after the ten days following the return and recordation of the verdict or award in any condemnation proceedings, the Service may enter and take possession of the property so condemned, upon first paying to the clerk of the court the amount of said award and all costs taxed to that date, notwithstanding any appeal or further proceedings upon the part of the defendant; but at the time of said payment, however, the Service shall give its corporate undertaking to abide by and fulfill any judgment in such appeal or further proceedings;

(i) *Borrowing money; issuing bonds and anticipation notes and securing same.* To borrow money and to issue bonds or notes for the purpose of paying all or any part of the cost of any one or more projects and to provide funds to be paid into any debt service reserve fund, and to secure the payment of such bonds or notes or any part thereof by pledge or deed of trust of all or any part of its revenues or other available monies, to combine projects for financing purposes and to make such agreements with or for the benefit of the purchasers or holders of such bonds or notes, or with others in connection with the issue of any such bonds or notes, whether issued or to be issued, as the Service may deem advisable and in general to provide for the security for such bonds or notes and the rights of the holders thereof;

(j) *Combining projects.* To combine, after consultation with the municipalities affected, one or more waste water purification or solid waste disposal project with any other project as a single system for the purpose of operation or of financing;

(k) *Rates, fees and charges.* To fix, alter, charge, and collect rates, fees, and charges for the use of or for the services furnished by its projects;

(l) *Contracts with federal, State or municipal governments and others.* To enter into contracts with the federal or any State government, or any agency, instrumentality or subdivision thereof, or with any municipality or person within or without the State of Maryland providing for or relating to the furnishing of services to or the facilities of any project of the Service, or in connection with the services or facilities provided by any solid waste project or waste water purification project owned or controlled by the other contracting party, including contracts for the construction and operation of any project which is in this State or in such adjoining state;

(m) *Contracts and agreements generally.* To make and enter into all contracts or agreements, as the Service determines, necessary or incidental to the performance of its duties and to the execution of the purposes of and the powers granted by this Article, including contracts with the federal or any State government, or any agency, instrumentality, or municipality thereof or with any person on terms and conditions the Service approves, relating to (1) the use by the other contracting party or the inhabitants of any municipality of any project acquired, constructed, reconstructed, rehabilitated, improved or extended by the Service under this Article or the services therefrom or the facilities thereof, or (2) the use by the Service of the services or facilities of any solid wastes system, or liquid waste system owned or operated other than by the Service; the contract may provide for the collecting of fees, rates, or charges for the projects provided by the Service and for the enforcement of delinquent charges for the projects; and the provisions of the contract and of any ordinance or resolution of the governing body of a municipality enacted pursuant thereto shall be deemed to be for the benefit of bondholders or noteholders;

(n) *Entry upon and excavation of municipal streets, roads and other public ways.* To enter upon and excavate any municipal street, road, or alley, highway or any other public way for the purpose of installing, maintaining, and operating a solid waste disposal or waste water purification project provided for under this article, and to construct in the street, road, alley or highway, a sewer or any appurtenance thereof, without a permit or the payment of a charge; subject, however, to such reasonable local regulation as may be established by the governing body of any municipality having jurisdiction in the particular respect; and if any municipal street, road, alley, or highway is to be disturbed, the governing body having control thereof shall be notified within a reasonable period of time, and the said street, road, alley, or highway shall be repaired and left by the Service in the same condition as, or in a condition not inferior to, that existing before the street, road, alley, or highway was torn up, and that all costs incident thereto shall be borne by the Service;

(o) *Right of entry upon lands, waters and premises for certain purposes; liability for damage.* To enter upon lands, waters, or premises as in the judgment of the Service is necessary, convenient, or desirable for the purpose of making surveys, soundings, borings, and examinations to accomplish any purpose authorized by this article, the Service being liable for actual damage done;

(p) *Grants and contributions.* To make application for, receive and accept from any State or federal government or any agency, instrumentality, or subdivision thereof, grants for or in aid of the planning, financing, construction, acquisition, maintenance, or operation of any project, and to receive and accept aid

or contributions from any source of money, property, labor, or other things of value, to be held, used, and applied only for the purpose for which such grants and contributions may be made in the furtherance of the purposes of this article;

(q) *Making plans, surveys, studies, etc.* To make directly, or through the hiring of consultants, any plans, surveys, investigations, and studies relating to liquid and solid wastes transportation, purification, disposal techniques, and management methods or the effects of these techniques and methods, for the purpose of improving or evaluating the effectiveness or economy of its services and operations; the Service may charge in part or in whole the costs of the investigations and studies against one or more service districts or may include them in part or in whole in its general operating expenses, depending on the expected applicability of the studies and investigations; and the Service may supplement grants or other aids received from the federal government or from other sources to assist in carrying out the purposes of this article;

(r) *Conducting hearings and investigations.* To conduct hearings and investigations for the furtherance of the purposes of this article; and

(s) *Supplemental powers.* To do all things necessary to carry out its purposes and for the exercise of the powers granted in this article.

(t) *Limitation of powers within municipality.* Anything in this article to the contrary notwithstanding, the Service shall not have any power to construct or otherwise establish any new solid waste disposal project or to dispose of any solid wastes within the boundaries of any municipality without the express consent of the governing body of such municipality.

(u) *Permitting municipality to construct, operate, etc., facilities when Service unable to do so.* To permit a municipality to construct, operate, maintain, expand, relocate, replace, renovate or repair facilities provided for in this article when the Service certifies that it is not in a position to provide the necessary construction, operation, maintenance, expansion, relocation, replacement, renovation or repair of facilities within the municipality. Notwithstanding other provisions in this article and limited to the circumstances in this subparagraph, a municipality shall finance construction, operation, maintenance, expansion, relocation, replacement renovation or repair of facilities in accordance with its statutory authority, including the receiving of State and/or federal grants if available. The municipality shall have the authority to fix and charge the appropriate rates sufficient to cover the costs to construct, operate, maintain, expand, relocate, replace, renovate or repair said facilities.

§ 5. Creation of waste water purification and solid waste disposal service regions and districts; five-year plans.

(a) *Determination of region boundaries; bases.* As soon as possible after the organization of the Service, the director shall, after consultation with the Secretary of Natural Resources, the Secretary of State Planning, the Secretary of Health and Mental Hygiene, and the municipalities affected, determine appropriate boundaries for waste water purification service regions and solid waste disposal service regions. Service regions shall be based upon needs set forth in, and provide integration of, approved state-county master plans for water and sewerage or solid waste disposal, adopted pursuant to Article 43 of this Code, but may also take account of other plans and studies.

(b) *Establishment of priorities and formal designation of regions.* As soon as possible after the determination of appropriate boundaries, the director, after consultation with the municipalities affected, shall establish priorities for designating waste water purification service regions and solid waste disposal service regions, and shall formally designate the regions.

(c) *Designation of identical regions; inclusion of any part of State in only one of each class of region.* Identical service regions need not be designated for both waste water purification and solid waste disposal projects; however, every part of Maryland shall be included in one and only one waste water purification service region and in one and only one solid waste disposal service region.

(d) *Surveys, plans, studies and estimates; preparation and content of five-year plans.* As soon as possible after the designation of a service region, the Service shall cause surveys, plans, studies, and estimates to be made and shall, after consultation with the municipalities located within the service region, prepare a five-year plan for each service region for the most effective and economical means of providing waste water purification and solid waste disposal projects. The five-year plan shall give due consideration to the need for waste water purification projects included in the approved county water and sewerage plans adopted in compliance with Article 43, § 387C of this Code. The five-year plan shall designate those existing facilities or portions of them that shall be transferred to the jurisdiction of the Service, improvements to and extension of existing facilities, construction of new waste water purification and solid waste disposal projects, and the proposed methods of acquisition, ownership and operation by the Service and/or affected municipalities and persons, together with anticipated expenditures, sources of revenue, charges for projects to be levied against municipalities and persons, and related matters the Service finds necessary and convenient.

(e) *Adoption of five-year plans; prerequisites thereto.* The five-year plan may be adopted by the Service only after at least one public hearing in each of the counties (or Baltimore City) affected. At least sixty days in advance of a hearing, the proposed five-year plan shall be submitted to each county (or Baltimore City) and person against whom charges will be levied if the plan is adopted, and to the Secretaries of Natural Resources, State Planning, and Health and Mental Hygiene for review and comment. A five-year plan shall be adopted by the Service only after it is submitted to and approved by resolution of the governing body of each county (or Baltimore City) affected by the plan, or in the event the plan is not approved by each of the appropriate governing bodies within 120 days following submission of the plan for approval of such governing bodies, then only after the plan is approved by joint resolution of the General Assembly. If a joint resolution of the General Assembly approving a five-year plan contains any amendments or modifications of such plan, those amendments and modifications shall repeal such plan to the extent of any inconsistency, and nothing in this article shall be construed to authorize the Service to take any action thereafter which would be inconsistent with such amendments or modifications without the approval of the governing body of each county (or Baltimore City) included within the plan.

(f) *Establishment of service districts; acquisition, etc., of facilities and maintenance and operation of projects.* Upon adoption of a five-year plan by the Service, service districts shall be established in the manner and following the schedule set forth in the plan. Immediately thereafter, the Service shall proceed with the acquisition, extension, and construction of facilities set forth in the plan and shall assume jurisdiction over and provide for the maintenance and operation of waste water purification and solid waste disposal projects included in the plan, for those projects within the service region and districts placed under the jurisdiction of the Service by the plan.

(g) *Contracts with municipalities and persons within districts; stipulations.* The Service shall enter into contracts with municipalities and persons within a service district and stipulate the projects to be provided, the amount of compensation for acquiring existing projects, the charges to be apportioned to the municipalities and persons, the manner of repaying the Service for these charges, and the effective date or dates that the Service will initiate the provision of projects.

(h) *Transfer of existing projects to Service.* Existing projects providing waste water purification and solid waste disposal services, including all rights, easements, laboratory facilities, vehicles, records, and all other property, equipment, and furnishings necessary and normally associated with the operation of the facility, shall be transferred to the sole ownership of the Service at the time designated in the five-year plan. Compensation for existing projects may be based on the original cost of the project minus an allowance for depreciation, or on other terms and conditions satisfactory to the municipality or person transferring the project. All costs and obligations

assumed by the Service incidental to the transfer of ownership of an existing project shall be included in the charges apportioned to the service district.

(i) *Biennial revision and readoption of five-year plans.* The Service biennially shall review, update, and readopt the five-year plan for each service region after review by the municipalities and persons concerned. The five-year plan may be updated and readopted by the Service only after at least one public hearing in each of the counties (or Baltimore City) affected. Upon updating and readoption, the Service shall take the actions necessary to implement the revised plan.

(j) *Extension of service region or district boundaries; combining regions or districts; combining, abandoning and modifying projects.* The Service by formal action, and after consultation with the municipalities affected, may extend the boundaries of service regions or districts, combine two or more service regions or districts or parts thereof and combine, abandon, extend, enlarge, improve, or make any other modification of projects serving one or more service districts, provided that no such change will diminish any existing level of service rendered to the district or districts concerned.

(k) *Responsibilities of Service and special provisions. Waste water purification service districts.* Within a waste water purification service district the Service shall be responsible for the purification and disposal of liquid waste as set forth in the five-year plan, including the residue resulting from purification, that is delivered to the Service projects through the sewer pipes of any municipality or person in the service district except that the Service may exclude or require preconditioning of any waste that might otherwise be harmful to structures or purification processes or endanger the health or safety of workers. Within the service district no municipality or person may discharge liquid waste onto the surface of the ground or into the waterways of the State except through the projects of the Service or of a municipality or person designated by the plan, or under reasonable conditions the Service stipulates.

(l) *Same. Solid waste disposal service districts.* Within a solid waste disposal service district the Service shall be responsible for the disposal of solid wastes as set forth in the five-year plan. Within the service district no municipality or person may dispose of solid wastes except through the projects of the Service or of a municipality or person designated by the plan, or under reasonable conditions the Service stipulates.

§ 6. Mandatory agreement to provide requested services.

(a) *Request for project.* Any municipality or person may request the Service to provide the waste water purification or solid waste disposal projects as are authorized by this article. The request shall set forth the type of proposed project or projects to be furnished and the proposed boundaries of the area within which a project or projects is requested.

(b) *Preparation and contents of contract; establishment of district and operation of projects.* As soon as possible after the receipt of a duly authorized request from a municipality or person, the Service shall draft a proposed contract with the municipality or person in accordance with the provisions of this article specifying the type of project to be provided, the boundaries of the related service district, the effective date the service district will come into existence, and the terms and conditions under which the project would be provided and the estimated cost thereof. Upon execution of the contract, the Service shall as soon as possible establish a service district and provide, maintain, and operate the necessary project or projects.

(c) *Reduction of cost levied against district by amount of grants.* The charges apportioned to a service district shall be reduced by the full amount of federal and State grants which the Service receives and is entitled to retain to defray the cost of any project within the service district.

(d) *Transfer of existing facilities to Service; compensation for existing projects.* Existing facilities providing service of the type requested, including all rights, easements, laboratory facilities, vehicles, records, and all other property, equipment, and furnishings necessary and normally associated with the operation of the facility, shall be transferred to the sole ownership of the Service on the effective date that the service district comes into existence. Compensation for existing projects may be based on the original cost of the project minus an allowance for depreciation, or on other terms and conditions satisfactory to the municipality or person transferring the project. All costs and obligations assumed by the Service incidental to the transfer of ownership shall be included in the charges apportioned to the service district.

(e) *Adjunct contracts for management and operation of waste collection services.* At the request of any person or municipality having the responsibility for the collection of liquid waste or solid waste, the Service may enter into a contract to provide management and operation of waste collection services in any service district as an adjunct to the mandatory provision of projects as set forth in subsections (a) through (d) of this section, if (1) as a condition to the provision of management and operation of waste collection services, the municipality or person enters into a contract upon terms the Service determines reasonable; and (2) the Service and the municipality or person requesting collection services determines by agreement from time to time the charges including the amount and frequency of payments to the Service.

§ 7. Charges for waste management contracts; costs of projects generally.

(a) *Determination of contract charges and costs.* In calculating charges for waste management contracts and in determining the local costs to be apportioned to a service district established pursurant to this article, the Service shall require that the charges

reflect the full costs of projects. Such charges and costs to be apportioned to any particular municipality or person located within a service district shall take account of the value and capacity of any existing facility transferred by such municipality or person to the Service, and the costs and obligations assumed by the Service incidental to the transfer of such facility, and, to the extent deemed reasonable and practicable by the Service, charges shall also be based on but not necessarily limited to a formula reflecting the volume and characteristics of the wastes as they influence transportation, purification, final disposal, and time pattern of discharge.

(b) *State funds to be paid to Service upon failure of municipality to pay for project.* If a municipality fails to pay the Service for projects provided pursuant to this article within 60 days of the due date, as established by contract, then all State funds, or such portion of them as may be required, relating to the income tax, the tax on racing, the recordation tax, the tax on amusements, and the license tax thereafter to be distributed to the municipality shall be paid by the Comptroller of Maryland directly to the Service until the Service is reimbursed.

(c) *Unpaid charges to be lien against property upon person failing to pay for projects.* If a person fails to pay the Service for projects provided pursuant to this article within 60 days of the due date, as established by contract, then the unpaid bill shall become a lien against the property served and shall be referred to the Attorney General for collection.

(d) *Fee may be charged by county or Baltimore City for final disposal of solid wastes.* The governing body of any county (or Baltimore City) may charge the Service a fee not to exceed twenty-five cents (25¢) per ton for final disposal of solid waste at any solid waste disposal project located in that county (or Baltimore City).

(e) *Review of waste management contracts.* Waste management contracts shall be reviewed at least biennally by the Service and by the other contracting party, provided that a contract may be reviewed upon the request of either party at any time for the purpose of renegotiating rates, fees, or other charges exacted by the Service.

§ 8. Projects to be provided upon direction of Secretary of Health and Mental Hygiene.

(a) *Sewerage system or refuse disposal works for municipality upon failure to comply with order under Article 43, § 393.* Upon failure of a municipality to comply with an order of the Secretary of Health and Mental Hygiene to provide a sewerage system or refuse disposal works as provided for in Article 43, § 393 of the Annotated Code of Maryland, the Secretary of Health and Mental Hygiene shall direct the Service to install or put into operation sewerage or refuse disposal facilities to satisfy the requirements of the order.

Upon receipt of the directive from the Secretary of Health and Mental Hygiene, the Service shall proceed to install and put into operation sewerage or refuse disposal projects to comply with the directive. All costs incurred by the Service for the construction and operation of such projects shall be charged to the municipality against which the order was issued.

Funds to pay the Service for construction and operation of such projects may be raised under the provisions of Article 43, § 395 of the Annotated Code of Maryland.

Upon terms satisfactory to the Service and the municipality, the Service may enter into an agreement with the municipality to continue to operate the sewerage system or refuse disposal works installed by the Service under the provisions of this subsection. In this event, the municipality shall enter into a contract with the Service for the establishment of a service district as provided in § 6 (e) of this article.

(b) *Pollution abatement project for manufacturing or industrial establishment upon failure to comply with order under Article 43, § 397.* Upon failure of a person to comply with an order of the Secretary of Health and Mental Hygiene to abate pollution as provided for in Article 43, § 397 of the Annotated Code of Maryland, the Secretary of Health and Mental Hygiene shall direct the Service to provide projects necessary to abate the pollution.

Upon receipt of the directive from the Secretary of Health and Mental Hygiene, the Service shall provide the projects necessary to abate the pollution and the person shall therewith discharge or deliver his wastes only to a Service project or avail himself of the projects provided by the Service to abate pollution. The cost of projects provided by the Service to abate pollution under the terms of this subsection shall be borne by the person against whom the order of the Secretary of Health and Mental Hygiene was issued. The person and the Service shall determine by agreement, from time to time, the costs, rental, charges, or other fees to be paid by the person to the Service. If the fees and charges remain unpaid for a period of 60 days, the unpaid bills shall be a lien against the property served and they shall be referred to the Attorney General for collection.

All projects provided by the Service under this subsection shall remain under the control and operation of the Service. It is unlawful for a person provided with projects by the Service under this subsection to duplicate or use any other projects serving the same purpose.

(c) *Correction and operation of deficient existing sewerage system or refuse disposal works upon failure to comply with order under Article 43, § 391.* Upon the failure of a municipality or person to comply with an order of the Secretary of Health and Mental Hygiene to correct deficiencies on the operation of sewerage systems or

refuse disposal works as provided for in Article 43, § 391 of the Annotated Code of Maryland, the Secretary of Health and Mental Hygiene shall direct the Service to take charge of and operate such systems or works so as to secure the results demanded by the Secretary of Health and Mental Hygiene.

Upon the receipt of the directive from the Secretary of Health and Mental Hygiene, the Service shall immediately take charge of and operate the systems or works so as to secure the results set forth in the directive of the Secretary of Health and Mental Hygiene. All costs for maintenance, operation, and other services including legal fees incidental to taking possession of the sewerage system or refuse disposal works shall be charged to the municipality or person against whom or which the original order of the Secretary of Health and Mental Hygiene was served.

Funds to pay the Service for services rendered under this subsection shall be raised in the case of a municipality under the provisions of Article 43, § 395 of the Annotated Code of Maryland. If the order is issued against a person, the Service shall bill the person for the full cost of services rendered. If payment is not made within 60 days, the costs shall become a lien against the sewerage system or refuse disposal works and the director shall refer the matter to the Attorney General for collection.

(d) *Extension or alteration of sewerage system or refuse disposal works upon failure to comply with order under Article 43, § 392.* Upon failure of a municipality or person to comply with an order of the Secretary of Health and Mental Hygiene to extend or alter a sewerage system or refuse disposal works as provided for in Article 43, § 392 of the Annotated Code of Maryland, the Secretary of Health and Mental Hygiene shall direct the Service to make such alterations or extensions to the system or works, or to install such new system or works as the Secretary of Health and Mental Hygiene deems necessary to correct improper conditions.

Upon receipt of the directive from the Secretary of Health and Mental Hygiene, the Service shall assume jurisdiction over the systems or works and make the alterations, extensions, or new construction required to comply with the directive of the Secretary of Health and Mental Hygiene. All costs, including legal fees incidental to assuming jurisdiction over the system or works, shall be charged to the municipality or person against whom or which the order of the Secretary of Health and Mental Hygiene was issued.

Funds to pay the Service for costs incurred as a result of actions taken under this subsection may be raised as provided in Article 43, § 395 of the Annotated Code of Maryland. If the order was against a person, the Service shall charge the person with the cost of making the necessary improvements to comply with the directive of the Secretary of Health and Mental Hygiene. If the person fails to pay within 60 days, the cost shall become a lien against the property served and be referred to the Attorney General for collection.

§ 9. Pollution abatement projects to be provided upon directive of Secretary of Natural Resources.

Upon failure of a person to comply with an order of the Director of the Department of Water Resources to abate pollution as provided for in Article 96A, of the Annotated Code of Maryland, the Director of the Department of Water Resources shall, if he does not pursue another remedy provided for in Article 96A, request the Secretary of Natural Resources to direct the Service to provide projects necessary to abate the pollution. Upon receipt of the request from the Director of the Department of Water Resources, the Secretary of Natural Resources shall direct the Service to provide projects necessary to abate the pollution.

Upon receipt of the directive from the Secretary of Natural Resources, the Service shall provide the projects necessary to abate the pollution and the person shall therewith discharge or deliver his wastes only to a service project or avail himself of the projects provided by the Service to abate the pollution. The cost of projects provided by the Service to abate pollution under the terms of this subsection [section] shall be borne by the person against whom the order of the Director of the Department of Water Resources was issued. The person and the Service shall determine by agreement, from time to time, the costs, rental, charges, or other fees to be paid by the person to the Service. If the fees and charges remain unpaid for a period of 60 days, the unpaid bills shall be a lien against the property served and be referred to the Attorney General for collection.

All projects provided by the Service under this subsection [section] shall remain under the control and operation of the Service. It is unlawful for a person provided with projects by the Service under this subsection [section] to duplicate or use any other projects serving the same purpose.

§ 10. Duplicating or using projects similar to service provided project.

Except as provided for in § 3B of this article, or in an approved five-year plan adopted pursuant to this article, it is unlawful for a municipality or person provided with any projects by the Service under this article to duplicate or use any other similar projects serving the same purposes.

§ 11. Authority to issue revenue bonds and determine matters relating thereto.

(a) The Service is hereby authorized and empowered to provide, by resolution adopted by a majority of the board of directors, from time to time for the issuance of bonds and notes of the Service for the purpose of paying the cost of any one or more solid waste disposal projects or wastewater purification projects or any combination thereof acquired, constructed, reconstructed, rehabilitated, improved or extended by the Service and to provide funds to be paid into any debt service reserve funds.

(b) The board of directors shall have absolute discretion to determine with respect to the bonds or notes of any issue: (i) the date or dates of issue; (ii) the date or dates and amount or amounts of maturity, provided only that no bond of any issue shall mature later than forty (40) years from the date of its issue; (iii) the rate or rates of interest payable thereon and the date or dates of such payment; (iv) the form or forms, denomination or denominations, manner of execution and the place or places of payment thereof, and the interest thereon, which may be at any bank or trust company within or without this State; (v) whether such bonds or notes or any part thereof shall be made redeemable before maturity and, if so, upon what terms, conditions and prices; and (vi) any other matter relating to the form, terms, conditions, issuance and sale thereof.

§ 12. Provisions applicable to all bonds.

(a) *Validity of former officer's signature.* In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons or notes shall cease to be such officer before the delivery of such bonds or notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery.

(b) *Bonds deemed negotiable instruments.* Notwithstanding any other provision of this Article or any recitals in any bonds and notes issued hereunder, all such bonds and notes shall be deemed to be negotiable instruments under the laws of this State.

(c) *Form; registration, reconversion and interchange; replacement of lost, mutilated or destroyed bonds.* The bonds may be issued in coupon or in registered form or both, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of coupon and registered bonds. Provision may also be made for the replacement of bonds which become mutilated or are lost or destroyed.

(d) *Bonds exempt from Article 31, §§ 1 to 12, inclusive.* The bonds and notes shall be exempt from the provisions of §§ 1 to 12 inclusive, of Article 31 of the Annotated Code of Maryland, and the Service may sell such bonds and notes in such manner, either at public or at private sale, and for such price as it may determine.

(e) *Consent of State agency, etc., not required for issuance.* The bonds and notes may be issued by the Service without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those specifically required hereunder.

§ 13.

Except as may otherwise be expressly provided by the Service, every issue of its bonds or notes shall be general obligations of the Service payable out of any revenues or other monies of the Service, subject only to any agreements with the holders of particular bonds or notes pledging any particular receipts or revenues.

§ 14. Revenue refunding bonds.

The Service is further authorized and empowered to provide, by resolution adopted by a majority of the board of directors, for the issuance of its renewal notes or of refunding bonds for the purpose of refunding any bonds or notes then outstanding which had been issued under the provisions of this Article, whether the bonds or notes to be refunded have or have not matured, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds or notes, and, if deemed advisable by the board of directors, for either or both of the following combined additional purposes: (i) paying all or any part of the cost of constructing improvements or extensions to or enlargements of any existing project or projects and (ii) paying all or any part of the cost of any additional project or projects. The issuance of such refunding bonds or renewal notes and the details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Service in respect thereto, shall be governed by the provisions of this Article relating to bonds or notes, insofar as the same may be applicable.

§ 15. Interim receipts, temporary bonds and bond anticipation notes.

The Service, by resolution adopted by a majority of the board of directors, is further authorized and empowered to:

(a) Issue, prior to the preparation of definitive bonds, interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery; and/or

(b) Issue and sell its bond anticipation notes, the principal of and interest on said notes to be made payable to the bearer or registered holder thereof out of the first proceeds of sale of any bonds issued under this Article, or from any other available monies of the Service, provided that the authorizing resolution may make provision for the issuance of such bond anticipation notes in series as funds are required and for the renewal of such notes at maturity with or without resale. The issuance of such notes and the details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Service in respect thereto, shall be governed by the provisions of this Article relating to bonds, insofar as the same may be applicable.

§ 16. Trust agreement securing bonds.

(a) Bonds authorized to be issued under the provisions of this article by resolution of the board of directors may be secured by a trust agreement by and between the Service and a corporate trustee, which may be any trust company, or bank having trust powers, within or without the State. Such trust agreement, or such authorizing resolution, may pledge or assign all or any part of the revenues of the Service or of any project or other available funds of the Service. Any such trust agreement or resolution authorizing the issuance of bonds may contain such provisions for the protection and enforcement of the rights and remedies of the bondholders as may be deemed reasonable and proper, including covenants setting forth the duties of the Service in relation to the acquisition or construction of any project, the extension, enlargement, improvement, maintenance, operation, repair and insurance of any project and the custody, safeguarding and application of moneys and may contain provisions for the employment of consulting engineers in connection with the construction or operation of any project. It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depositary of the proceeds of the bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the board of directors. Such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders. In addition to the foregoing, such trust agreement may contain such other provisions as the board of directors may deem reasonable and proper for the security of the bondholders, including, without limitation, covenants to abandon, restrict or prohibit the construction or operation of competing facilities and covenants pertaining to the issuance of additional parity bonds upon conditions stated therein consistent with the requirements of this Article. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of any project or projects in connection with which such bonds shall have been issued.

(b) The proceeds of the sale of bonds secured by a trust agreement shall be paid to the Trustee under the trust agreement securing such bonds and shall be disbursed in such manner and under such restrictions, if any, as may be provided in such trust agreement.

§ 17. Revenues generally.

(a) *Rentals, rates, fees and charges generally.* The Service is hereby authorized to fix, revise, charge and collect rentals, rates, fees or other charges for the use of or for the services furnished by any project or projects, and to contract with any person or municipality desiring the use of the services or any part of any project or projects and to fix the terms, conditions, rentals, rates, fees and charges therefor. The rentals and other rates, fees and charges designated as security for any bonds issued under this article shall be so fixed and adjusted in respect of the aggregate thereof from the projects under the control of the Service

so as to provide funds sufficient with other revenues, if any, (i) to pay the cost of maintaining, repairing and operating any project or projects financed in whole or in part by outstanding bonds, to the extent such cost is not otherwise provided, (ii) to pay the principal of and the interest on such bonds as the same become due and payable, (iii) to create reserves for such purposes, and (iv) to provide funds for paying the cost of renewals or replacements, the cost of acquiring or installing equipment and the cost of enlarging, extending, reconstructing or improving any such project or projects. Such rentals and other rates, fees and charges shall not be subject to supervision or regulation by any department, division, commission, board, bureau or agency of the State or any political subdivision thereof, except as provided in § 26 of this article.

(b) *Pledged funds; sinking funds.* The rentals, rates, fees and other charges and revenues, or any part thereof, whether derived from the project or projects in connection with which the bonds of any issue shall have been issued or from other projects, designated as security for such bonds by the authorizing resolution or in the trust agreement securing the bonds, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of (i) the interest upon such bonds as such interest falls due, (ii) the principal of such bonds as it falls due, (iii) the necessary charges of paying agents for paying principal and interest, and (iv) the redemption price or purchase price of bonds retired by call or purchase as provided in such resolution or trust agreement; any amounts set aside in such sinking fund which are not needed to provide for the payment of such items (i), (ii), (iii) and (iv) may be used for any other lawful purpose to the extent provided in such resolution or trust agreement. Such pledge shall be valid and binding from the time when the pledge is made. Such rentals, rates, fees and other charges, revenues or other moneys so pledged and thereafter received by the Service shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having any claims of any kind in tort, contract or otherwise against the Service, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Service, any public general or public local law to the contrary notwithstanding. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement.

§ 18. Trust funds.

All moneys received by the Service as proceeds from the sale of bonds or notes and all moneys received by way of those rentals, rates, fees or other charges or revenues, or portion thereof, from any project or projects, or any continuation of projects and which

are designated by any authorizing resolution or trust agreement as security for such bonds shall be deemed to be trust funds to be held and applied solely as provided by the provisions of this Article and in the resolution authorizing the issuance of such bonds or notes or the trust agreement securing such bonds.

§ 19. Remedies of bondholders and trustees.

Any holder of bonds or notes issued under this subtitle or of any of the coupons appertaining to such bonds, and the trustee, except to the extent the rights herein given may be restricted by the trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of this State or granted hereunder or in the resolution authorizing the issuance of such bonds or notes or under the trust agreement, and may enforce and compel the performance of all duties required by this Article or in the resolution authorizing the issuance of such bonds or notes or by the trust agreement to be performed by the Service or by any officer thereof, including the fixing, charging and collecting of rentals and other rates, fees and charges for the use of the projects.

§ 20. Bonds are legal investments.

Bonds and notes issued under this Article are hereby made securities in which all public officers and public agencies of the State and its political subdivisions and all banks, trust companies, savings and loan associations, investment companies and others carrying on a banking business, all insurance companies and insurance associations and others carrying on an insurance business, all personal representatives, guardians, trustees and other fiduciaries, and all other persons may legally and properly invest funds, including capital in their control or belonging to them. Such bonds and notes are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law.

§ 21. Bonds not to be deemed State or local debt.

Bonds or notes issued under the provisions of this Article shall not be deemed to constitute a debt or a pledge of the faith and credit of the State or of any political subdivision thereof. All such bonds or notes shall contain on the face thereof a statement to the effect that neither the Service nor the State nor any political subdivision thereof shall be obligated to pay the same or the interest thereon except from revenues or other monies of the Service available therefor and that neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or the interest of such bonds or notes.

§ 22. Exemption from taxation.

The exercise of the powers granted by this article is and will be in all respects for the benefit of the people of the State of Maryland, for the improvement of their health and living conditions, and since the activities of the Service and the operation and maintenance of its projects will constitute the performance of essential governmental functions, the Service shall be exempt from any payment of or liability for any and all ordinary or special taxes, whether federal, State or local, now or hereafter levied or imposed, and any assessments or other governmental charges. The bonds and notes of the Service issued pursuant to the authority of this article, their transfer, the interest payable thereon, and any income derived therefrom, including any profit realized in the sale or exchange thereof, shall at all times be exempt from taxation of every kind and nature whatsoever by the State of Maryland or by any of its political subdivisions, municipal corporations or public agencies of any kind.

§ 23. Service not required to give bond or suffer liens.

The Service shall not be required to give any bond as security for costs, supersedeas, or any other security in any suit or action brought by or against it, or in proceedings to which it may be a party, in any court in this State, and the Service shall have the remedies of appeal or [of] whatever kind to all courts without bond, supersedeas, or security of any kind. No builder's, materialman's, contractor's, laborer's or mechanic's liens of any kind or character shall ever attach to or become a lien upon any property, real or personal, belonging to the Service, and no assignment of wages shall be binding upon or recognized by the Service.

§ 24. Financial affairs generally.

(a) *Creation, administration and deposit of funds; depositaries for securities.* The Service may provide for the creation and administration of such funds as may be required. Moneys in such funds and other moneys of the Service shall be deposited, as directed by the Service, in any State or national bank or federally or State insured savings and loan associations located in the State of Maryland having a total paid-in capital of at least one million dollars ($1,000,000). The trust department of any such State or national bank or savings and loan associations may be designated as a depositary to receive any securities acquired or owned by the Service. The restriction with respect to paid-in capital may be waived for any such bank or savings and loan associations which agrees to pledge securities of the State of Maryland or of the United States to protect the funds and securities of the Service in such amounts and pursuant to such arrangements as may be acceptable to the Service.

(b) *Investment of funds.* Any moneys of the Service may, in its discretion and unless otherwise provided in any agreement or covenant between the Service and the holders of any of its obligations limiting or restricting classes of investments, be invested

in bonds or other obligations of, or guaranteed as to principal and interest by, the United States or the State of Maryland or the political subdivisions or agencies thereof.

(c) *Financial accounting and controls generally; fiscal year.* The Service shall make provision for a system of financial accounting and controls, audits and reports. All accounting systems and records, auditing procedures and standards, and financial reporting shall conform to generally accepted principles of governmental accounting. The Service shall adopt a fiscal year which shall be July 1 to June 30, and designate the necessary funds for complete accountability and specify the basis of accounting for each such fund.

(d) *Annual independent audits and reports.* As soon as practical after the closing of the fiscal year, an audit shall be made of the financial books, records and accounts of the Service. The audit shall be made by independent certified public accountants, licensed to practice in this State as auditors, selected by the Service. Such auditors shall have no personal interest directly or indirectly in the fiscal affairs of the Service and shall be experienced and qualified in the accounting and auditing of public bodies. The report of audit shall be prepared in accordance with generally accepted auditing principles and shall point out any irregularities found to exist and report the results of their examination, including their unqualified opinion on the presentation of the financial position of the various funds and the results of the Service's financial operations. If such auditors are unable to express an unqualified opinion they shall so state and shall further detail reasons for their qualifications or disclaimer of opinion including recommendations necessary to make possible future unqualified opinions.

(e) *Service subject to State audit.* The books, records and accounts of the Service shall be subject to audit by the State of Maryland.

(f) *Refusal to cooperate with accountants.* Any officer or employee who shall refuse to give all required assistance and information to the accountants selected by the Service or by the State, or who shall refuse to submit to them for examination such books, documents, records, files, accounts, papers, things or property as may be required for such audit shall, in the discretion of the Service, forfeit his office or employment.

§ 24A.

(a) The Service may create and establish one or more reserve funds to be known as debt service reserve funds and may pay into such debt service reserve funds (a) any monies appropriated and made available by the State of Maryland for the purposes of such funds, (b) any proceeds of sale of notes or bonds, to the extent provided in the resolution of the Service authorizing the issuance

thereof, and (c) any other monies which may be made available to the Service for the purpose of such funds from any other source or sources. The monies held in or credited to any debt service reserve fund established under this section, except as hereinafter provided, shall be used solely for the payment of the principal of bonds of the Service secured by such debt service reserve fund as the same become due, the purchase of such bonds of the Service, the payment of interest on such bonds of the Service or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided however, that the Service shall have power to provide that monies in any such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such funds to less than the maximum amount of principal and interest becoming due in any succeeding calendar year on the bonds of the Service then outstanding and secured by such debt service reserve fund, except for the purpose of paying principal of and interest on such bonds of the Service secured by such debt service reserve becoming due and for the payment of which other monies of the Service are not available. Any income or interest earned by, or increment to, any such debt service reserve fund due to the investment thereof may with the approval of the General Assembly, be transferred by the Service to any other fund or account of the Service and the Service shall have power to provide that any such transfer shall not reduce the amount of such debt service reserve fund below the maximum amount of principal and interest becoming due in any succeeding calendar year on all bonds of the Service then outstanding and secured by such debt service reserve fund.

(b) The Service shall not issue bonds at any time if the maximum amount of principal and interest becoming due in any succeeding calendar year on the bonds outstanding and then to be issued and secured by a debt service reserve fund will exceed the amount of such debt service reserve fund at the time of issuance, unless the Service, at the time of the issuance of such bonds, shall deposit in such debt service reserve fund from the proceeds of the bonds so to be issued, or otherwise, an amount which, together with the amount then in such debt service reserve fund, will be not less than the maximum amount of principal and interest becoming due in any succeeding calendar year on the bonds then to be issued and on all other bonds of the Service then outstanding and secured by such debt service reserve fund.

(c) To assure the continued operation and solvency of the Service for the carrying out of the public purposes of this article, provision is made in subsection (a) of this section for the accumulation in each debt service reserve fund of an amount equal to the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year as determined by the Service on all bonds of the Service then outstanding and secured by such debt service reserve fund. In order further to assure the maintenance of such debt service reserve funds in the respective amounts provided therefor by the Service in the issuance of its bonds secured thereby, there may be annually appropriated and paid to the Service for deposit in each such debt service reserve fund such amount, if any, as

shall be certified by the director of the Service to the Governor as necessary to restore such debt service reserve fund to an amount equal to the maximum amount provided therefor by the Service as aforesaid. The director of the Service shall annually, on or before the 10th day of February, make and deliver to the Governor his certificate stating the amount, if any, required to restore each debt service reserve fund to the amount aforesaid and the amount or amounts so certified, if any, may be appropriated and paid to the Service during the next succeeding fiscal year.

(d) In computing the amount of any debt service reserve fund for the purposes of this section, securities in which all or a portion of such fund shall be invested shall be valued at par, or if purchased at less than par, at their cost to the Service.

(e) For the purposes of this section, the principal of bonds shall become due at the stated date of maturity or such earlier date as such bonds may be payable by operation of any sinking fund applicable thereto.

§ 25. Rules and regulations generally.

(a) *Authority to adopt, enforce, etc.* Except as otherwise provided by this article, and subject to the provisions of Article 41, §235 (b) of this Code, the Service is hereby authorized to adopt, formulate, and revise from time to time, and enforce rules and regulations necessary for the regulation of its internal affairs and for the use and operation of its projects, and of any other laws the administration of which is vested in the Service; provided, however, that no such rule or regulation concerning the use or operation of a project shall be in conflict with any rule or regulation of the State Department of Health. The Service may limit or regulate liquid waste service, refuse collection and disposal service, and storm and surface water drainage service, on a temporary basis in any area or to any premise served by Service projects, as the exigencies of the occasion and the protection of its systems require. The Service shall make such regulations consistent with law as it may deem necessary for the public safety, health, comfort or convenience, in the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of its waste water purification and solid waste disposal projects.

(b) *Limitation upon promulgation.* Except for the immediate preservation of the public health and safety or for emergency provisions required to protect projects of the Service, rules and regulations, and any revisions thereof, shall be promulgated pursuant to the provisions of the Administrative Procedure Act.

(c) *Effect of approved regulation.* Any regulation adopted by the Service pursuant to this section, and approved by the Secretary of Natural Resources, shall have the force and effect of law.

§ 26. Arbitration by Public Service Commission binding; appeal of decision of Commission.

If in any instance the Service and a municipality or person fail to reach agreement on rates, fees, or other charges to be exacted by the Service, the Public Service Commission upon petition by either party to the disagreement, shall assume jurisdiction for the purpose of arbitrating the disagreement, and its determination shall be final and binding on all parties concerned; provided, however, that any party shall have the right to appeal such determination to the circuit court of any county within which the municipality or person is located or carries on business or resides, or in any equity court in Baltimore City. In such appeal the decision of the Commission shall be prima facie correct and shall be affirmed unless clearly shown to be (1) in violation of constitutional provisions, or (2) made upon unlawful procedure, or (3) arbitrary or capricious, or (4) affected by other error of law.

§ 27. Violations and penalties.

Any person violating any provision of this article, or any rule or regulation lawfully promulgated and adopted by the Service, is deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed one thousand dollars ($1,000) for each violation. Each day on which a violation occurs constitutes a separate violation under this section.

§ 28. Construction of article -- Generally.

This article shall constitute full and complete authority, without regard to the provisions of any other law for the doing of the acts and things herein authorized, and shall be liberally construed to effect the purposes hereof; provided, however, that nothing herein contained shall be taken as restricting any control which the Department of Health and Mental Hygiene and the Department of Natural Resources, or any of the departments or agencies included therein, are empowered to exercise over any wastewater purification or solid waste disposal project authorized by this article except as provided for in Section 12 (e) of this Article. Provided further that nothing herein contained shall be taken as authority or power to interfere with, restrict or otherwise affect the operation of existing waste water purification or solid waste disposal projects found by the Secretary of Health and Mental Hygiene to be adequately and lawfully operated by municipalities having jurisdiction or responsibility for them, except by their express consent and agreement.

§ 29. Same--As to zoning or land use planning authority of municipality or public instrumentality.

Nothing in this article shall be construed to alter, change, modify, or restrict the zoning or land use planning authority of any municipality or public instrumentality.

§ 30. Board of review of Department of Natural Resources has no jurisdiction under article.

The board of review of the Department of Natural Resources shall not have jurisdiction over any proceedings arising under or pursuant to this article, and §§ 236 and 237 of Article 41 of this Code shall not be applicable to decisions of the Service.

§ 31. Judicial review includes right to appeal to Court of Appeals.

It is the intention of this article that judicial review as herein provided for shall in all instances include the right to appeal to the Maryland Court of Appeals from the decision of any circuit court or equity court of Baltimore City.

§ 32. Severability.

The provisions of this article are severable, and if any of its provisions are held unconstitutional by any court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining provisions.

ACT 31-1971

POWER PLANT ENVIRONMENTAL RESEARCH AND SITE EVALUATION PROGRAM S. B. 540

AN ACT to add new Sections 763 through 768, inclusive, to Article 66C of the Annotated Code of Maryland, title "Natural Resources," subtitle "In General," subheading "Department of Natural Resources," to follow immediately after Section 762 there of, and to be under the new subtitle "Power Plant Siting," To add New Section 5A to Article 66C of the Annotated Code of Maryland, Title "Natural Resources," Subtitle "In General" Subheading "Department of Natural Resources"; to Repeal and Re-enact with amendments, Section 706 of Article 43 of the Annotated Code of Maryland, Title "Health " Subtitle "Air Quality Control"; to repeal and re-enact, with amendments, Section 726 of Article 66C of the Annotated Code of Maryland, Title "Natural Resources," Subtitle "Wetlands," Subheading "Private Wetlands"; to repeal and re-enact, with amendments, section 11 of Article 96A of the Annotated Code of Maryland, Title "Water Resources," Subtitle "Appropriation of Waters; Reservoirs and Dams"; to repeal and re-enact, with amendments, section 54A of Article 78 of the Annotated Code of Maryland, Title "Public Service Commission Law," Subtitle "Public Service Companies," Subheading "Gas and Electric Companies," and to add new section 54B to said Article, and to repeal and re-enact with amendments, Section 90 of said Article; to establish an environmental trust fund from a surcharge on generated kilowatt hours of electric energy to be used to underwrite a power plant environmental research and site evaluation program and to insure long-range and timely planning for power plant site selection and acquisition, to strengthen the state of Maryland's capability to define and manage a power plant environmental research program, to provide for the exercise of eminent domain and potential power plant site ownership by the Secretary of Natural Resources, to exempt from local zoning certain sites, to assign responsibility to the Secretary of Natural Resources on applications to the Public Service Commission for Certificates of Public Convenience and Necessity associated with power plant construction, to provide for coordinated hearings and issuance of permits on applications for Certificates of Public Convenience and Necessity associated with power plant construction, to provide for certain exceptions in the construction of certain overhead transmission lines, to define the term "Construction", to entitle the Secretary of Natural Resources to Judicial review, and generally relating to power plant siting.

WHEREAS, the General Assembly of Maryland recognizes that electric power generation and distribution makes use of our environmental trust, including air, land and water and that the citizens of Maryland and other states benefit from the production of electric energy in Maryland and further recognizes that the electric companies (as defined in Article 78 of the Annotated Code of Maryland), as holders of public service franchises serving the public's interest, must bear, with other industries and governmental agencies at all levels, a shared responsibility with the citizen in the protection of the public environmental trust; and

WHEREAS, For these several reasons, it is the intent of the Maryland General Assembly to involve the human, institutional and financial resources of the private sector and Local, State and Federal Government in a long-range, stably-funded, well-designed electric power plant environmental research program to protect the quality of the State's environment, including the Chesapeake Bay and its tributary waters, while also satisfying the electric energy needs of people and industry; and

WHEREAS, It is the intent of the Maryland General Assembly to insure orderly governmental process without requiring the citizens of Maryland to pay excessive costs, either as taxpayers or as consumers; now, therefore,

SECTION 1. Be it enacted by the General Assembly of Maryland, That new Sections 763 through 768, inclusive, be and they are hereby added to Article 66C of the Annotated Code of Maryland (1970 Replacement Volume), title "Natural Resources," subtitle "In General," subheading "Department of Natural Resources," to follow immediately after Section 762 thereof, and to be under the new subtitle "Power Plant Siting"; that new Section 5A be and it is hereby added to said Article and title, to follow immediately after Section 5 thereof; that Section 726 of said Article and title, be and it is hereby repealed and re-enacted, with amendments; that Section 11 of Article 96A of the Annotated Code of Maryland (1964 Replacement Volume), title "Water Resources," subtitle "Appropriation of Waters; Reservoirs and Dams," be and it is hereby repealed and re-enacted, with amendments; and that Section 54A of Article 78 of the Annotated Code of Maryland (1969 Replacement Volume), title "Public Service Commission Law," subtitle "Public Service Companies," subheading "Gas and Electric Companies," be and it is hereby repealed and re-enacted, with amendments; that new Section 54B, be and it is hereby added to said Article and title, to follow immediately after Section 54A thereof; that Section 90 of said Article and title be and it is hereby repealed and re-enacted, with amendments; that Sectiom 706 of Article 43 of the Annotated Code of Maryland (1965 Replacement Volume), title "Health," subtitle "Air Quality Control," be and it is hereby repealed and re-enacted, with amendments; and all to read as follows:

POWER PLANT SITING

763. Establishment of an Environmental Trust Fund

(a) The Environmental Trust Fund, hereafter known as the "Fund", is hereby created, effective January 1, 1972. For the purposes of this subtitle, there shall be established as an added cost of generation an environmental surcharge per kilowatt hour of electric energy generated in Maryland by any electric company as defined in Article 78 of the Annotated Code of Maryland. Such surcharge shall be initially assessed at 0.1 mill per kilowatt hour as of January 1, 1972.

The Public Service Commission shall take cognizance of the mandate by the General Assembly to impose the surcharge per kilowatt hour of electric energy generated within Maryland. By authorizing the electric companies to add the full amount of the surcharge to customers' bills. Revenues from the surcharge so required to be made by electric companies and collected by the Comptroller shall be placed into the special fund known as the Environmental Trust Fund.

(b) Commencing with 1972, the Secretary of Natural Resources will each year coordinate the preparation of a budget required to carry out the provisions of this Act. Upon approval of the Annual State Budget, by the General Assembly of the State of Maryland, the Public Service Commission shall establish the amount of the surcharge per kilowatt hour for the fiscal year beginning July 1, 1972, and for each subsequent fiscal year thereafter, but in no event shall it continue beyond 1985 nor shall it ever exceed 0.3 mill per kilowatt hour.

Prior to January 1, 1972, after consultation with the electric companies, the Comptroller shall establish the method of collection of the surcharge from the companies, provided that such collections, shall accrue to the "Fund." In no event shall the utilities be required to pay into the fund a greater amount than that which has been collected less 1½% for expenses incurred in the collection thereof.

(c) The "Fund" shall be administered by the Secretary of Natural Resources and shall be subject to the provisions for financial management and budgeting established by the Department of Budget and Fiscal Planning. The "Fund" shall be used exclusively to carry out the provisions of this subtitle as provided for in the Annual State Budget. For the purposes of this subtitle, the Secretary of Natural Resources shall be authorized to execute appropriate contracts with State and Federal agencies, research organizations, industry and academic institutions to conduct the necessary research, to construct or acquire, or both, real property including physical predictive models, laboratories, buildings, land and appurtenances, and to support the technological development of extra-ordinary systems related to power plants designed to minimize environmental impact. The Secretary of Natural Resources shall utilize available expertise in other State agencies in the development, execution and management of contracts and agreements on projects relating to their areas of prime responsibility.

764. Power Plant Environmental Research Program

(a) The Secretary of Natural Resources in cooperation with the Secretary of Health and Mental Hygiene and the Secretary of Economic and Community Development and electric company representatives shall implement a continuing research program for electric power plant site evaluation and related environmental and land use considerations, hereinafter known as the "program." The Secretary of Natural Resources shall seek recommendations from additional sources including pertinent federal and State agencies, electric companies and academia for related research to be included in the "program." An initial program shall be documented on or about January 1, 1972. The Secretary of Natural Resources shall institute effective procedures for coordinating environmental research assignments, so as to prevent the dissipation of money, time and effort. To this end, the State's electric companies will be reimbursed from the "Fund" for environmental research specifically required to satisfy application and permit requirements for Federal, State and Local regulatory agencies provided the electric company has furnished an outline of the program and its estimated cost so that it can be budgeted in advance by the Secretary of Natural Resources.

(b) The "program" shall include:

(1) general biological and ecological baseline studies, including but not limited to appropriate environmental studies of the biology, physics, and chemistry of the Chesapeake Bay and tributaries; sediment; biological surveys to determine and identify essential marine organism nursery areas of the State's waters including the Chesapeake Bay and tributaries; epibenthos; bottom species; crab; fin fish and human use studies,

(2) research to assist prediction, including but not limited to experimental research, field and laboratory, and the development and provision for physical, mathematical, and biological modeling tools to assist in and to evaluate the effects of variation of natural waters resulting from electric generating plant operations including changes in temperature, oxygen levels, salinity, biocides, radionuclides and "heavy" metals and to also include the collection and organization of relevant information and data necessary to the operation of physical, mathematical, and biological modeling tools,

(3) provisions for monitoring the operations of existing and hereafter established electric power facilities located in the State and which shall include, but not be limited to determination of the actual distribution and effect of temperature, salinity, oxygen, radionuclides and heavy metals, biological effects; radiological, heavy metal and biocide effects; recreational and commercial fishing gains and losses; and human health and welfare effects,

(4) research and investigations relating to the effects on air resources of electric power plants and the effects of air pollutants from power plants on public health and welfare, vegetation, animals, materials and esthetic values, including baseline studies, predictive modeling, and monitoring of the air mass at proposed sites and sites of operating electric generating stations, evaluation of new or improved methods for minimizing air pollution from power plants and other matters pertaining to the effect of power plants on the air environment,

(5) an environmental evaluation of electric power plant sites proposed for future development and expansion and their relationship to the waters and air of the State,

(6) evaluation of the environmental effects of new electric power generation technologies and extra-ordinary systems related to power plants designed to minimize environmental effects,

(7) the determination of the potential for constructive use (s) of the waste energy to be released at proposed electric power plant sites,

(8) analysis of the socio-economic impact of electric power generation facilities on the land uses of the State.

765. Long-Range Power Plant Site Evaluation

(a) In cooperation with the Public Service Commission and the Secretary of Health and Mental Hygiene, the Secretary of Natural Resources shall implement a long-range (at least 10 years) environmental evaluation of power plant building sites. To facilitate providing adequate electric power on reasonable schedules at reasonable costs with the least possible depreciation of the quality of Maryland's environment, the following responsibilities and procedures are set forth:

(1) The Public Service Commission shall be responsible for assembling and evaluating annually the long-range plans of Maryland's public electric companies regarding generating needs and means for meeting those needs. The Chairman of

the Public Service Commission shall, on an annual basis, forward to the Secretary of Natural Resources a ten-year (10) plan of possible and proposed sites, including associated transmission routes, for the construction of new electric power plants within the State of Maryland and extensions of existing plants. The first ten-year (10) plan shall be forwarded on or about January 1, 1972.

(2) The Secretary of Natural Resources, with the advice of the Secretary of Health and Mental Hygiene, upon receipt of a ten-year plan from the Public Service Commission of proposed locations for the construction of electric power plants in accordance with item (1) above and Section 54B (b) of Article 78, shall prepare and submit within 180 days after receipt of the aforesaid plan, A preliminary Environmental Statement on each possible and proposed site, including associated transmission routes. The Statement, on the basis of the Environmental Research Program, shall include but not be limited to the following considerations:

The environmental impact at the proposed site,

Any adverse environmental effects which cannot be avoided should the proposed site be accepted,

Possible alternatives to the proposed site,

Any irreversible and irretrievable commitments of resources which would be involved at the proposed site should it be approved,

Where appropriate, a discussion of problems and objections that were raised by other State and Federal agencies and local entities,

A plan for monitoring environmental effects of the proposed action and provision for remedial actions should the monitoring reveal unanticipated environmental effects of significant adverse consequences.

The Secretary of Natural Resources shall state to the Public Service Commission which possible and proposed sites, based on preliminary Environmental Statement, justify a classification as unsuitable. Unless the electric company whose proposed site is involved offers to the Secretary of Natural Resources substantial evidence to the contrary, such site shall be deleted from the plan, provided, however, that nothing in this subsection shall prevent the inclusion of such site in subsequent ten-year (10) plans.

(3) For proposed sites in the ten-year plan which from the preliminary Environmental Statements appear desirable or acceptable the Secretary of Natural Resources with the advice of the Secretary of Health and Mental Hygiene will initiate detailed investigation of these sites. With respect to any site in the plan on which authorized construction has not commenced prior to July 1, 1974, at least two years before construction is estimated to begin and provided preponderant weight of newly offered scientific evidence does not justify revised classification of the proposed site as unsuitable, the Secretary of Natural Resources shall publish a Detailed Environmental Statement on the site. The Statement shall consider and include information developed in the "program" outlined in Section 764.

(4) The Secretary of Natural Resources with the advice of the Secretary

of Health and Mental Hygiene and Secretary of State Planning shall publish on a biennial basis, commencing July 1, 1972, a Cumulative Environmental Impact Report on all electric power plants operating in the State of Maryland. The Report shall include a section which specifies the changes that can occur as additional electric power plants are constructed in accordance with the ten-year plan. Further the Report shall include recommendations to the Governor which delineate State environmental policy and objectives. The Secretary of State Planning shall include a section devoted exclusively to the question of growth and the specific growth-related factors which necessitate specific additional increments of electric energy by development of a site or sites in the 10-year plan. In preparing this section, he shall consider the projected estimates and recommendations of electric company representatives.

766. Power Plant Site Acquisition

(a) The expertise of the electric utilities in the basic requirements including environmental considerations of a site for power generation is a needed element in site selection. Therefore, for the purposes of insuring adequate power on reasonable schedules while also protecting the quality of the State's environment, site acquisition may occur as follows:

(1) Anything in this Act to the contrary notwithstanding, sites either already owned or purchased in the future by electric companies shall be included in the inventory of possible and proposed sites.

(2) The Secretary of Natural Resources, upon the advice of the Secretary of Economic and Community Development, shall acquire in the name of the State a sufficient number of sites to satisfy the expected requirements as submitted by the Secretary of State Planning as provided in Section 765 (a) (4). The selection of such sites shall be based on existing research findings that show the site is a desirable one for power plant construction. Any investigations to ascertain the suitability of a site for the construction of an electric generating station shall be completed within two (2) years of the date such site has been so identified.By the end of the two (2) year period, the Secretary of Natural Resources shall purchase or remove from further consideration such site and shall make public his decision thereto.

The Secretary of Natural Resources shall acquire same by agreement, or by condemnation pursuant to the condemnation law, and payment therefor shall be made by the Secretary of Natural Resources from the Environmental Trust Fund. The Secretary of Natural Resources shall hold such property in the name of the State and shall not permit its temporary use for any purpose which might logically be expected to impede its prompt availability for power plant siting as and when needed. The Secretary of Natural Resources may not hold, at any one time, less than four (4) nor more than eight (8) such sites, suitable for either single or multiple power plant siting, provided, however, that one such site shall be acquired by July 1, 1974, reasonably suitable for each electric company generating more than 1000 MW of electric power and that at least one such site reasonably suitable for each such electric company shall be held as a minimum inventory thereafter.

All revenues obtained by the Secretary of Natural Resources through the

temporary use of such sites shall be deposited into the "Fund" except that prior thereto twenty-five (25) percent of the revenues received shall be paid to the county in which the site is situated. If the site lies within two or more counties, the twenty-five (25) percent shall be distributed proportionally as to area within the various counties.

(b) An electric company as defined in Article 78 of the Annotated Code of Maryland may, at any time, request from the Secretary of Natural Resources an appropriate site in his possession under the provisions of this Act and the Secretary of Natural Resources is authorized and directed to make such site available. The electric utility may purchase or lease on a ninety-nine (99) year lease such site. The purchase price shall be the fair market value of the site as determined by a committee of three (3) independent qualified real estate appraisers, one of whom shall be chosen by the Secretary of Natural Resources, one of whom shall be chosen by the electric company making the application, and the third to be chosen by the two appraisers first selected as provided hereinabove. Each party compensates their own appraiser and shall bear one-half (½) the cost of the third appraiser. The leasing charge shall be at five (5) percent annually of the purchase price. For the purposes of this Act, said leases are tantamount to a proprietary interest subjecting the electric utility to local property taxes. Receipts from the purchase and leasing transactions shall be deposited in the "Fund." In view of the safeguards provided by this subtitle through state agencies, and to assure the controlling effect of their determinations, any property purchased or leased by an electric company as provided in this paragraph shall be used and operated for electric generating and associated transmission purposes without regard to any local zoning rule, regulation, law, or ordinance, and such use shall not be required in any manner to be submitted to or approved by any county or municipal zoning board, authority or agency.

767. Judicial Review

The Board of Review of the Department of Natural Resources shall not have jurisdiction over any proceedings arising under or pursuant to this subtitle, and Sections 236 and 237 of Article 41 of this Code shall not be applicable to decisions of the Secretary of Natural Resources relating to power plant siting. It is the intention of this subtitle that judicial review as herein provided for shall in all instances include the right to appeal to the Circuit Courts as set forth in Article 78, Sections 89 through 98.

768. Administration

Such staff as may be necessary to carry out the provisions of this subtitle, in such numbers and at such salaries shall be provided in the annual State budget.

5A. Review of and recommendation concerning applications for Certificates of Public Convenience and Necessity associated with power plant construction.

Anything in Article 66C, Article 78, and Article 96A of the Annotated Code of Maryland to the contrary notwithstanding and in lieu of the requirements of Article 96A and Sections 722 through 731 of Article 66C, upon application to the

Public Service Commission for a certificate of public convenience and necessity associated with power plant construction involving, but not limited to, use or diversion of the waters of the State, and/or private wetlands, said Commission shall immediately notify the Department of Natural Resources of such fact and said Commission shall supply the Department of Natural Resources with all pertinent available information regarding such application. The Secretary of the Department of Natural Resources shall treat such application for a certificate of public convenience and necessity similar to an application for the appropriation or use of the waters of the State pursuant to Article 96A and similar to an application for a license for dredging and filling pursuant to Sections 722 through 731 of this Article. Within sixty (60) days after the time the application for a certificate of public convenience and necessity has been filed with the Public Service Commission, the Secretary of Natural Resources shall cause the Department of Natural Resources and the Department of Water Resources to complete such further studies and investigations concerning, but not limited to, the necessity for dredging and filling at the proposed plant site and the water appropriation or use and shall forward to the Chairman of the Public Service Commission the results of such studies and investigations together with a recommendation that the certificate be granted, denied, or granted with such conditions as may reasonably be deemed necessary. The results and recommendation shall be open to the public and shall further be presented by the Secretary of Natural Resources or his designees at the hearing held by the Public Service Commission as required by Article 78.

At the conclusion of the aforesaid hearing, and based on the evidence there presented, the Secretary of the Department of Natural Resources shall within fifteen (15) days present his final recommendation to the Chairman of the Public Service Commission including, but not limited to, specific conclusions as to private wetlands if such be involved and specific conclusions as to water use or restriction thereof if such be involved.

Article 43

706. Permits for and registration of certain equipment required.

The Department may require by regulation that before any person either builds, erects, alters, replaces, operates, sells, rents, or uses any article, machine, equipment or other contrivance specified by such regulation the use of which may cause emissions into the air,such person shall obtain a permit to do so or be required to register with the Department. The aforesaid provisions of this section shall not apply to machinery and equipment which are normally used in a mobile manner and boilers used exclusively for the operation of steam engines related to farm and domestic use nor to generating stations constructed by electric companies. The Secretary of Health and Mental Hygiene upon notification from the Public Service Commission of an application for a Certificate of Public Convenience and Necessity shall prepare a recommendation in connection with the registration or permit required by this section. Such recommendation shall be presented at the hearing required under Article 78, Section 54A, of the Annotated Code of Maryland. The decision of the Public Service Commission in connection with the registration or permit shall be binding on the Secretary of Health and Mental Hygiene, subject to judicial review as set forth in the provisions of Article 78, Section 91, subsection (a).

Article 66C

726. Permit to conduct activity not permitted by rules and regulations--Application; notice and hearing.

Any person proposing to conduct an activity upon any wetland which is not permitted by rules and regulations adopted under the provisions of Section 722 shall file an application for a permit with the Secretary, in such form and with such information as the Secretary may prescribe. Such application shall include a detailed description of the proposed work and a map showing the area of wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice. The Secretary shall cause a copy of such application to be mailed to the chief administrative officer in the county or counties where the proposed work or any part thereof is located. No sooner than thirty days and not later than sixty days after receipt of such application, the Secretary or his duly designated hearing officer shall hold a public hearing in the county where the land is located on such application, excepted, however that when an electric company as defined in Article 78, Section 2 shall apply to the Public Service Commission for a certificate of public convenience associated with power plant construction which involves private wetlands, the hearing and permit procedures shall be in accordance with Section 5A of this Article. The Secretary shall cause notice of such hearing to be published at least once not more than thirty days and not fewer than ten days before the date set for the hearing in a newspaper published within and having a general circulation in each county where the proposed work, or any part thereof, is located. All applications and maps and documents relating thereto shall be open for public inspection at the offices of the Secretary, and the chief administrative officer in the county. At such hearing any person or persons may appear and be heard. No person may make such an application within eighteen months of the denial of a prior application for the same type permit or the final determination of any appeal of such denial.

Article 96A

11. Illegal appropriation of State waters.

From and after January 1, 1934, it shall be unlawful for the State or any agency thereof, any person or persons, partnership, association, private or public corporation, county, municipality, or other political subdivision of the State, to appropriate or use, or to begin construction of any plant, building or structure which may appropriate or use any waters of the State, surface or underground, without the consent or permit of the Department in writing, previously obtained, upon written application therefor to the Department. The applicant shall provide proof satisfactory to the Department that issuance of such permit will not violate Maryland's water quality standards or jeopardize the natural resources of the State. Nothing in this Section shall be construed to apply to the use of water for domestic and farming purposes and nothing in this section shall be construed to apply to the use of water for an approved water supply of any municipality if the use was in effect on July 1, 1969; nor shall it apply to any particular use in existence on January 1, 1934, provided such use is not thereafter abandoned.

Notwithstanding any other provisions of this subtitle, an application to the

Public Service Commission for a certificate of public convenience and necessity associated with power plant construction involving use or diversion of waters of the State, pursuant to Article 78, shall constitute an application for the permit required by this section and shall be handled in accordance with Section 5A of Article 66C. The hearing required by this Article pursuant to this application shall not be required but any evidence pertinent thereto shall be presented at the hearing required by Article 78, Section 54A and the permit required by this Article shall be included in the Certificate of Public Convenience and Necessity as issued by the Public Service Commission.

Article 78

54A. Construction of generating station or overhead transmission line carrying in excess of 69,000 volts.

No electric company may begin the construction in Maryland of a generating station or any overhead transmission line designed to carry a voltage in excess of 69,000 volts, or exercise the right of eminent domain in connection therewith, without having first obtained from the Commission a certificate of public convenience and necessity for the construction of the station or line. The Commission shall hold a public hearing on each application for a certificate of public convenience and necessity in the area in which any portion of the construction of a generating station or an overhead transmission line designed to carry a voltage in excess of 69,000 volts is proposed to be located, together with the local governing bodies of each such area, unless any governing body wishes not to participate in the hearing. The Commission shall take final action only after due consideration of the recommendations of such governing bodies, the need to meet present and future demands for service, effect on system stability and reliability, economics, esthetics, historic sites, aviation safety as determined by the State Aviation Commission and the administrator of the Federal Aviation Administration,and, when applicable, the effect on air and water pollution. The said public hearing shall be advertised in a newspaper of general circulation in the area affected once in each of the two successive weeks immediately prior to the hearing. In no event shall an electric company construct, or be authorized by the Commission to construct, such an overhead transmission line in line with, and within one mile of, either end of any public airport runway. Unless the Federal Aviation Administration has determined that the construction of such overhead transmission line will not constitute a hazard to air navigation and such determination has been concurred in by the State Aviation Commission. A privately owned airport runway shall qualify as a public airport runway within the meaning of this section only when it shall have been on file with the Federal Aviation Administration for a period of two years as being open to the public without restriction.

As used in this section and Section 54B herein, the term "construction" is defined to include any clearing of land, excavation, or other action that would affect the natural environment of the site or route of bulk power supply facilities, but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

54B. Consolidated Public Hearing, Long-Range Plans and Establishing Rate of Charge on Generated Electric Energy.

(a) After July 1, 1972, an electric company, as defined in Article 78, Section 2 (f), in order to obtain the certificate of public convenience and necessity as required by Section 54A of this Article for construction to begin after July 1,

1974, shall file the application for the certificate with the Public Service Commission at least two (2) years prior to commencement of construction of an electric generating station and its associated overhead transmission lines designed to carry a voltage in excess of 69,000 volts, or exercising the right of eminent domain in connection therewith; said two (2) year provision may be waived by the Commission for good cause shown; such application shall contain such information as the Commission shall request and the company shall also furnish the Commission such information as it may further request from time to time; upon receipt of such application and information, the Commission shall notify all interested persons including, but not limited to, the following Maryland agencies, namely, the Department of Natural Resources, Department of Health and Mental Hygiene, Department of Transportation, Department of Economic and Community Development and Department of State Planning; after receipt of all information, and as the Commission deems necessary and after publication as the Commission deems proper, the Commission at the public hearing required by Section 54A shall insure presentation of the information and recommendations from said agencies, shall permit the official representative of said agencies to sit during hearing of all parties and, based on evidence relating to their areas of concern, shall allow said agencies fifteen (15) days, after conclusion of such hearing, to modify, affirm, or amend their initial recommendations; and within ninety (90) days after such hearing the Commission shall grant or deny the permit or grant it subject to such conditions as it may find appropriate, and notify all interested parties; such decision shall be by a majority of the members of said Commission and in any instance requiring a conditional permit failure to reach majority agreement on the conditions to be attached shall result in a denial. The granting of such certificate shall also constitute authority to dredge and/or construct bulkheads in the waters or private wetlands of the State, as well as to appropriate or use such waters; in addition, such certificate shall also constitute registration and a permit, as required under Article 43, Section 706, of the Annotated Code of Maryland, for the air emissions, if any, resulting from the operation of the plant.

(b) In cooperation with the Secretary of Natural Resources as set forth in Section 765 of Article 66C, the Commission shall be responsible for assembling and evaluating annually the long-range plans of Maryland's public electric utilities regarding generating needs and means for meeting those needs. The Chairman of the Public Service Commission shall, on an annual basis, forward to the Secretary of Natural Resources a ten-year (10) plan listing possible and proposed sites, including associated transmission routes, for the construction of electric power plants within the State of Maryland. Sites which are identified as unsuitable by the Secretary of Natural Resources in accordance with the requirements of Section 765 of Article 66C shall be deleted from the plan, provided, however, nothing in this subsection shall prevent the inclusion of such site in subsequent ten-year (10) plans. The first ten-year (10) plan shall be submitted on or about January 1, 1972.

(c) The Public Service Commission shall take cognizance of the mandate by the General Assembly to impose the surcharge per kilowatt hour of electric energy generated within Maryland. By authorizing the electric companies to add

the full amount of the surcharge to customers' bills. Revenues from the surcharge so required to be made by electric companies and collected by the Comptroller shall be placed into the special fund known as the Environmental Trust Fund.

Commencing with 1972, the Secretary of Natural Resources will each year coordinate the preparation of a budget required to carry out the provisions of this Act. Upon approval of the Annual State Budget, by the General Assembly of the State of Maryland, the Public Service Commission shall establish the amount of the surcharge per kilowatt hour for the fiscal year beginning July 1, 1972 and for each subsequent fiscal year thereafter, but in no event shall it continue beyond 1985 nor shall it ever exceed 0.3 mill per kilowatt hour.

Prior to January 1, 1972, after consultation with the electric companies, the Comptroller shall establish the method of collection of the surcharge from the companies, provided that such collections shall accrue to the "Fund." In no event shall the utilities be required to pay into the fund a greater amount than that which has been collected less 1½% for expenses incurred in the collection thereof.

90. Right to review; etc.

Any party or any person in interest, including the People's Counsel, dissatisfied by a final decision or order of the Commission whether affirmative or negative in form is entitled to judicial review thereof as provided in this subtitle. For the purposes of this subtitle, the Secretary of Natural Resources shall have standing to seek judicial review of the Commission's final decision or order made pursuant to Article 78, Section 54A and Section 54B relative to the environmental aspects of power plant siting. Where the registration of any motor vehicle carrier is suspended, or revoked by the Commissioner of Motor Vehicles, on order of the Commission, the order of the Commission, and not the action of the Commissioner of Motor Vehicles shall be subject to review.

Sec. 2. And be it further enacted, That if any provision of this subtitle or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this subtitle which can be given effect without the invalid provisions or application, and to this end all provisions of this subtitle are declared to be severable.

Sec. 3. And be it further enacted, That this Act shall take effect July 1, 1971.

APPENDIX D

OREGON

Act 601-1967 (The Beach Bill) as amended [Sections 390.605 et seq of the Oregon Statutes].

Act 608-1971 (Coastal Zone Management Plan).

Executive Order No. 01-069-25 (Governors Nuclear Siting Task Force), December 11, 1969.

Executive Order No. 01-070-07 (Coastal Construction Moratorium), March 3, 1970.

ACT 601-1967 (as amended)

OCEAN SHORES; STATE RECREATION AREAS

(General Provisions)

390.605 "Improvement," "ocean shore," and "state recreation area" defined. As used in ORS 390.610, 390.620 to 390.660, 390.670 to 390.680, 390.690, and 390.705 to 390.770, unless the context requires otherwise:

(1) An "improvement" includes a structure, appurtenance or other addition, modification or alteration constructed, placed or made on or to the land.

(2) "Ocean shore" means the land lying between extreme low tide of the Pacific Ocean and the line of vegetation as established and described by ORS 390.770.

(3) "State recreation area" means a land or water area, or combination thereof, under the jurisdiction of the State Highway Commission, pursuant to subsection (3) of ORS 366.205, used by the public for recreationalpurposes. [Formerly 274.065 and then 390.710]

390.610 Policy.

(1) The Legislative Assembly hereby declares it is the public policy of the State or Oregon to forever preserve and maintain the sovereignty of the state heretofore legally existing over the ocean shore of the state from the Columbia River on the north to the Oregon-California line on the south so that the public may have the free and uninterrupted use thereof.

(2) The Legislative Assembly recognizes that over the years the public has made frequent and uninterrupted use of the ocean shore and recognizes, further, that where such use has been legally sufficient to create rights or easements in the public through dedication, prescription, grant or otherwise, that it is in the public interest to protect and preserve such public rights or easements as a permanent part of Oregon's recreational resources.

(3) Accordingly, the Legislative Assembly hereby declares that all public rights or easements legally acquired in those lands described in subsection (2) of this section are confirmed and declared vested exclusively in the State of Oregon and shall be held and administered as state recreation areas.

(4) The Legislative Assembly further declares that it is in the public interest to do whatever is necessary to preserve and protect scenic and recreational use of Oregon's ocean shore. [1967 c.601 subsec.1, 2(1), (2), (3); 1969 c.601 Sec.4]

390.615 Ownership of Pacific shore; declaration as state recreation area. Ownership of the shore of the Pacific Ocean between ordinary high

tide and extreme low tide, and from the Oregon and Washington state line on the north to the Oregon and California state line on the south, excepting such portions as may have been disposed of by the state prior to July 5, 1947, is vested in the State of Oregon, and is declared to be a state recreation area. No portion of such ocean shore shall be alienated by any of the agencies of the state except as provided by law. [Formerly 274.070 and then 390.720]

390.620 Pacific shore not to be alienated; judicial confirmation. (1) No portion of the lands described by ORS 390.610 or any interest either therein now or hereafter acquired by the State of Oregon or any political subdivision thereof shall be alienated except as expressly provided by state law. The State Highway Commission, when necessary, shall undertake appropriate court proceedings to protect, settle and confirm all such public rights and easements in the State of Oregon.

(2) No portion of the ocean shore declared a state recreation area by ORS 390.610 shall be alienated by any of the agencies of the state except as provided by law. [1967 c.601 subsec.2(4), 3; 1969 c.601 Sec.5]

390.630 Acquisition along ocean shore for state recreation areas or access. The State Highway Commission, in accordance with ORS 390.110, may acquire ownership of or interests in the ocean shore or lands abutting, adjacent or contiguous to the ocean shore as may be appropriate for state recreation areas or access to such areas where such lands are held in private ownership. However, when acquiring ownership of or interests in lands abutting, adjacent or contiguous to the ocean shore for such recreation areas or access where such lands are held in private ownership, the commission shall consider the following:

(1) The availability of other public lands in the vicinity for such recreational use or access.

(2) The land uses, improvements, and density of development in the vicinity.

(3) Existing public recreationareas and accesses in the vicinity.

(4) Any local zoning or use restrictions affecting the area in question. [1967 c.601 Sec.4; 1969 c.601 Sec.6]

(Regulating Use of Ocean Shore)

390.635 Jurisdiction of highway commission over shore recreation areas. Except as provided by ORS 273.551, the State Highway Commission has jurisdiction over the state recreation areas designated or acquired under ORS 390.610, 390.615, 390.620 or 390.630 in order to carry out the purposes of ORS 390.610, 390.620 to 390.660, 390.670 to 390.680, 390.690, and 390.705 to 390.770. [1969 c.601 Sec.21]

390.640 Permit required for improvements on ocean shore; exceptions.

(1) In order to promote the public health, safety and welfare, to protect the state recreation areas recognized and declared by ORS 390.610 and 390.615, to protect the safety of the public using such areas, and to preserve values adjacent to and adjoining such areas, the natural beauty of the ocean shore and the public recreational benefit derived therefrom, it is necessary to control and regulate improvements on the ocean shore. Unless a permit therefor is granted as provided by ORS 390.650, no person shall make an improvement on any property that is within the area described by ORS 390.770.

(2) This section does not apply to permits granted pursuant to ORS 390.715, or to rules promulgated or permits granted under ORS 390.725 or 390.735.

(3) This section does not apply to continuous extensions of densely vegetated land areas which are above the 16 foot contour and lying seaward of the line established by ORS 390.770 as of August 22, 1969. The elevation mentioned in this subsection refers to the United States Coast and Geodetic Survey Sea-Level Datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947. [1967 c.601 Sec.5; 1969 C.601 Sec.7]

390.650 Improvement permit procedure.

(1) Any person who desires a permit to make an improvement on any property subject to ORS 390.640 shall apply in writing to the State Highway Engineer, on a form and in a manner prescribed by the engineer, stating the kind of and reason for the improvement.

(2) Upon receipt of a properly completed application, the engineer shall cause notice of the application to be posted at or near the location of the proposed improvement. The notice shall include the name of the applicant, a description of the proposed improvement and its location and a statement of the time within which interested persons may file a request with the engineer for a hearing on the application. The State Highway Engineer shall give notice of any application, hearing or decision to any person who files a written request with him for such notice.

(3) Within 30 days after the date of posting the notice required in subsection (2) of this section, the applicant or 10 or more other interested persons may file a written request with the engineer for a hearing on the application. If such a request is filed, the engineer shall set a time for a hearing to be held by the engineer or his authroized representative. The engineer shall cause notice of the hearing to be posted in the manner provided in subsection (2) of this section. The notice shall include the time and place of the hearing. After the hearing on an application or, if a hearing is not requested, after the time for requesting a hearing has expired, the engineer shall grant the permit if approval would not be adverse to the public interest. ORS 183.310 to 183.510 does not apply to a hearing or decision under this section.

(4) In acting on an application, the engineer shall take into consideration the matters described by ORS 390.655. If the engineer does

not act on a satisfactory application within 60 days after the date of receipt thereof or, if a hearing is held thereon, within 30 days after the date of the hearing, the application shall be considered denied.

(a) If the permit is denied upon the grounds that the same would be adverse to the public interest or the State Highway Engineer's failure to act, said engineer shall make written findings setting forth the specific reasons for the denial or inaction.

(b) A copy of the written findings shall be furnished to the applicant within 30 days following denial of the application as provided in this subsection.

(5) Subsections (2) and (3) of this section do not apply to an application for a permit for the repair, replacement or restoration in the same location, of an authorized improvement or improvement existing on or before May 1, 1967, if the repair, replacement or restoration is commenced within three years after the damage to or destruction of the improvement being repaired, replaced or restored occurs.

(6) The engineer may, upon application therefor, either written or oral, grant an emergency permit for a new improvement, dike, revetment, or for the repair, replacement or restoration of an existing, or authorized improvement where property or property boundaries are in imminent peril of being destroyed or damaged by action of the Pacific Ocean or the waters of any bay or river of this state. Said permit may be granted by the engineer without regard to the provisions of subsections (1), (2), (3), (4) and (5) of this section. Any emergency permit granted hereunder shall be reduced to writing by the State Highway Engineer within 10 days after granting the same with a copy thereof furnished to the applicant. [1967 c.601 Sec.6; 1969 c.601 Sec.10]

390.655 Standards for improvement permits. The State Highway Engineer shall consider applications and issue permits under ORS 390.650 in accordance with standards designed to promote the public health, safety and welfare and carry out the policy of ORS 390.610, 390.620 to 390.660, 390.670 to 390.680, 390.690, and 390.705 to 390.770. The standards shall be based on the following considerations, among others:

(1) The public need for healthful, safe, esthetic surroundings and conditions; the natural scenic, recreational and other resources of the area; and the present and prospective need for conservation and development of those resources.

(2) The physical characteristics or the changes in the physical characteristics of the area and the suitability of the area for particular uses and improvements.

(3) The land uses, including public recreational use if any and the improvements in the area, the trends in land uses and improvements, the density of development and the property values in the area.

(4) The need for recreation and other facilities and enterprises in the future development of the area and the need for access to particular sites in the area. [1969 c.601 Sec.11]

390.658 Judicial review of engineer's decision on improvement permit application. Any person aggrieved by the decision of the State Highway Engineer under ORS 390.650 is entitled to petition the circuit court of the county where the property is located for a judicial review, de novo as in equity, of the action or failure to act by the engineer. A petition filed under this section shall be filed within 60 days after the entry of the findings provided for in subsection (4) of ORS 390.650 or after the expiration of the period prescribed for action, by the engineer under ORS 390.650. [1969 c.601 Sec.12]

390.660 Regulation of use of lands adjoining ocean shore. The State Highway Commission is hereby directed to protect, to maintain and to promulgate rules governing use of the public of property that is subject to ORS 390.640, property subject to public rights or easements declared by ORS 390.610 and property abutting, adjacent or contiguous to those lands described by ORS 390.615 that is available for public use, whether such public right or easement to use is obtained by dedication, prescription, grant, state-ownership, permission of a private owner or otherwise. [1967 c.601 Sec.7; 1969 c.601 Sec.16]

390.665 Deposit of debris on ocean shore prohibited. No person shall deposit or wilfully permit the deposit of any logs, debris, rubbish or refuse upon the ocean shore. [Formerly 274.100 and then 390.740]

390.668 Motor vehicles and aircraft use regulated in certain zones; zone markers; proceedings to establish zones.

(1) The State Highway Commission may establish zones on the ocean shore where travel by motor vehicles or landing of any aircraft except for an emergency shall be restricted or prohibited. After the establishment of a zone and the erection of signs or markers thereon, no such use shall be made of such areas except in conformity with the rules of the commission.

(2) Proceedings to establish a zone:

(a) May be initiated by the commission on its own motion; or

(b) Shall be initiated upon the request of 20 or more landowners or residents or upon request of the governing body of a county or city contiguous to the proposed zone.

(3) A zone shall not be established unless the commission first holds a public hearing in the vicinity of the proposed zone. The commission shall cause notice of the hearing to be given by publication, not less than seven days prior to the hearing, by at least one insertion in a newspaper of general circulation in the vicinity of the zone.

(4) Before establishing a zone, the commission shall seek the approval of the local government whose lands are adjacent or contiguous to the proposed zone. [Formerly 274.090 and then 390.730]

390.670 Liability of owners of certain properties near ocean shore. The owner or person in control of any property subject to a public easement declared a state recreation area by ORS 390.610 or any property subject to ORS 390.640 shall not be liable for any injury to another person or damage to property of another resulting from a condition of the property within either area, unless the injury or damage results from a condition that he created and that he knew or, in the exercise of reasonable care, should have known was likely to cause injury to persons or damage to property. [1967 c.601 Sec.8; 1969 c.601 Sec.13]

390.680 Landowner declaration of continuing control of land along ocean shore; effect; revocation; failure to file.

(1) In any court proceedings involving prescriptive rights of the public over property abutting, adjacent or contiguous to the lands described in ORS 390.615 or ORS 390.770, an instrument executed and filed as provided by subsection (2) of this section shall be an act and declaration admissible as evidence of the intent of the owner or person in control of property to exercise dominion and control over his property.

(2) The declaration shall describe the property and shall be signed and acknowledged as provided by ORS 93.410. It shall state that the public is granted permission to use the property, or a specifically described portion of the property, and that the public use may be for certain purposes which shall also be described. The declaration shall be filed in the office of the county officer charged with the duty of filing and recording instruments or documents affecting title to real property.

(3) The permission granted may be revoked at any time by the grantor by a declaration revoking the permission signed, acknowledged and filed as provided by subsection (2) of this section. In any event, the permission granted shall terminate upon the assignment, grant, devise or other transfer or conveyance of the property or any interest therein by the owner or person in control of the property.

(4) Failure of the owner or person in control of property to execute and file the declaration as provided in subsection (2) of this section shall not imply an intent to relinquish dominion and control over his property. [1967 c.601 Sec.9; 1969 C.601 Sec.17]

390.685 Effect of ORS 390.605, 390.615, 390.665, 390.668 and 390.685. Nothing in ORS 390.605, 390.615, 390.665, 390.668, and 390.685 is intended to repeal ORS 492.780 to 492.810. [Formerly 274.110 and then 390.750]

390.690 Title and rights of state unimpaired. Nothing in ORS 390.610, 390.620 to 390.660, 390.670 to 390.680, 390.690, and 390.705 to 390.770 shall be construed to relinquish, impair or limit the sovereign title or rights of the State of Oregon in the shores of the Pacific Ocean as the same may exist before or after July 6, 1967. [1967 c.601 Sec.10]

(Special Permits)

390.705 Prohibition against placing certain conduits across recreation area and against removal of natural products. No person shall:

(1) Place any pipe line, cable line or other conduit across and under the state recreation areas described by ORS 390.635 or the submerged lands adjacent to the ocean shore, except as provided by ORS 390.715.

(2) Remove any natural product from the ocean shore, other than fish or wildlife, agates or souvenirs, except as provided by ORS 390.725. [1969 c.601 Sec.20]

390.710 [Formerly 274.065; amended by 1969 c.601 Sec.2; renumbered 390.605]

390.715 Permits for pipe, cable or conduit across ocean shore and submerged lands.

(1) The State Highway Commission may issue permits under ORS 390.650 to 390.658 for pipe lines, cable lines and other conduits across and under the ocean shore and the submerged lands adjacent to the ocean shore, upon payment of just compensation by the permittee. Such permit is not a sale or lease of tide and overflow lands within the scope of ORS 274.040.

(2) Whenever the issuance of a permit under subsection (1) hereof will affect lands owned privately, the State Highway Commission shall withhold the issuance of such permit until such time as the permittee shall have obtained an easement, license or other written authorization from the private owner, which easement, license or other written authority must meet the approval of the State Highway Commission, except as to the compensation to be paid to the private owner.

(3) All permits issued under this section are subject to conditions that will assure safety of the public and the preservation of economic, scenic and recreational values and to rules promulgated by state agencies having jurisdiction over the activities of the grantee or permittee. [1969 c.601 Sec.22]

390.720 [Formerly 274.070; renumbered 390.615]

390.725 Permits for removal of products along ocean shore.

(1) No sand, rock, mineral, marine growth or other natural product of the ocean shore, other than fish or wildlife, agates or souvenirs, shall be taken from the state recreation areas described by ORS 390.635, except in compliance with a rule of or permit from the State Highway Commission as provided by this section. Permits shall provide for the payment of just compensation by the permittee as provided in subsection (5) of this section.

(2) Rules or permits shall be made or granted by the State Highway Commission only after consultation with the Fish Commission of

the State of Oregon, the State Game Commission, the State Department of Geology and Mineral Industries and the Division of State Lands. Rules and permits shall contain provisions necessary to protect the areas from any use, activity or practice inimicable to the conservation of natural resources or public recreation.

(3) On request of the governing body of any coastal city or county, the State Highway Commission may grant a permit for the removal of sand or rock from the area at designated locations on the ocean shore to supply the reasonable needs for essential construction uses in such localities if it appears sand and rock for such construction are not otherwise obtainable at reasonable cost, and if such removal will not materially alter the physical characteristics of the area or adjacent areas, nor lead to such changes in subsequent seasons. Before issuing a permit the commission shall likewise take into consideration the standards described by ORS 390.655. The commission may grant a permit to take and remove sand, rock, mineral or marine growth from the area at designated locations. The commission shall also issue permits to coastal cities of counties to remove or authorize removal of sand from the ocean shore, under the standards provided by ORS 390.655, if the city or county determines that the sand accumulation on the ocean shore constitutes a hazard or maintenance problem to the city or county.

(4) The terms, royalty and duration of a permit under this section are at the discretion of the commission. A permit is revocable at any time in the discretion of the commission without liability to the permittee.

(5) Whenever the issuance of a permit under this section will affect lands owned privately, the State Highway Commission shall withhold the issuance of such permit until such time as the permittee shall have obtained an easement, license or other written authorization from the private owner, which easement, license or other written authority must meet the approval of the commission, except as to the compensation to be paid to the private owner. [1969 c.601 Sec.23]

390.730 [Formerly 274.090; amended by 1969 c.601 Sec.18; renumbered 390.668]

390.735 Permits for exploration, removal of treasure-trove and other objects; rules.

(1) The State Highway Commission may prescribe rules and issue permits governing the exploration for, and removal of, treasure-trove, semiprecious stones, petrified wood, and archaeological and paleontological objects from the recreation areas described by ORS 390.635. Such rules shall be designed to maximize the public benefit of these resources and shall permit the free use of the areas for collection for noncommercial purposes of reasonable quantities of petrified wood semiprecious stones and archaeological and paleontological objects. Notwithstanding any other law, such rules may provide that not to exceed 25 percent of any treasure-trove shall be retained by the commission, subject to disposal by

the commission as property of the State of Oregon, and that the remainder shall be retained by the finder.

(2) If any person removes treasure-trove, semiprecious stones or petrified wood from the state recreation areas in a manner contrary to rules prescribed under this section, all the materials or objects so removed shall be subject to disposal by the commission as property of the State of Oregon.

(3) Whenever the issuance of a permit under this section will affect lands owned privately, the State Highway Commission shall withhold the issuance of such permit until such time as the permittee shall have obtained an easement, license or other written authorization from the private owner, which easement, license or other written authority must meet the approval of the commission, except as to the compensation to be paid to the owner. [1969 c.601 Sec.25]

390.740 [Formerly 274.100; renumbered 390.665]

390.750 [Formerly 274.110; amended by 1969 c.601 Sec.19; renumbered 390.685]

(Vegetation Line)

390.755 Periodical reexamination of vetetation line by Highway Engineer; recommending adjustments.

(1) The State Highway Engineer is directed to periodically reexamine the line of vegetation as established and described by ORS 390.770 for the purpose of obtaining information and material suitable for a re-evaluation and re-definition, if necessary, of such line so that the private and public rights and interest in the ocean shore shall be preserved.

(2) The State Highway Commission may, from time to time, recommend to the Legislative Assembly adjustment of the line described in ORS 390.770. [1969 c.601 Sec.27]

PENALTIES

390.990 Penalties.

(1) Any person, firm or corporation violating any of the regulations provided in ORS 390.160 shall be punished, upon conviction, by a fine of not more than $500 or by imprisonment in the county jail for not more than 30 days.

(2) Violation of any provision of ORS 390.665, 390.668 or 390.705, or any rule promulgated under such statutes, is punishable, upon conviction, by a fine not exceeding $500 or imprisonment in the county jail for not more than six months, or both.

(3) Violation of ORS 390.640 shall be punished, upon conviction, by a fine of not more than $500 or imprisonment in the county jail for not more than six months, or both. Each day a violation continues shall be considered a separate offense. [Subsection (1) formerly 366.990; subsection (2) formerly part of 274.990; amended by 1969 c.601 Sec.28]

Enrolled

Senate Bill 687

Sponsored by COMMITTEE ON STATE AND FEDERAL AFFAIRS

CHAPTER 608

AN ACT

Relating to the conservation and development of the coastal zone; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. The Legislative Assembly finds and declares that:

(1) The coastal zone in this state is an important and valuable part of the natural resources of this state and that because of its value there exists a need for its protection through the development and maintenance of a balance between conservation and developmental interests with respect to such natural resources.

(2) There exists a conflict in the development and use of the natural resources of the coastal zone among industrial interests, commercial and residential development interests, recreational interests, power resource interests, transportation and other navigational interests, waste disposal interests and fish and other marine resource interests.

(3) To further the policy of this state in the protection, preservation, development and, where practicable, the restoration of the natural resources of the coastal zone, a commission should be established to develop and prepare a comprehensive plan for the conservation and development of the natural resources of the coastal zone that will provide the necessary balance between conflicting public and private interests in the coastal zone.

(4) For the purpose of this Act the coastal zone is defined as that area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's territorial jurisdiction, and on the east by the crest of the coastal mountain range, with the exception of:

(a) The Umpqua River basin, where the coastal zone shall extend to Scottsburg.

(b) The Rogue River basin, where the coastal zone shall extend to Agness.

(c) The Columbia River basin, where the coastal zone shall extend to the downstream end of Puget Island.

SECTION 2. (1) The Oregon Coastal Conservation and Development Commission is created. The commission shall consist of 30 members appointed as follows:

(a) The Governor shall appoint one person who has demonstrated an interest in the protection, conservation and orderly development of the environmental quality of life in this state to serve on each coordinating committee established as provided by subsection (2) of section 3 of this Act. Each of the four persons appointed by the Governor pursuant to this paragraph shall be appointed from the state at large.

(b) The Governor shall appoint two persons who have demonstrated an interest in the protection, conservation and orderly development of the environmental quality of life in this state to serve at large on the commission. Each of the two persons appointed by the Governor pursuant to this paragraph shall be appointed from the state at large.

(c) The members of the coordinating committees established as provided by subsection (2) of section 3 of this Act for the four districts of the coastal zone described in subsection (1) of section 3 of this Act.

(2) The commission shall adopt rules relating to its administration, the terms of its members and other matters.

(3) A majority of the members of the commission may appoint an executive director who shall carry out the duties assigned to him by the commission. The executive director shall, subject to the approval of a majority of the members of the commission, appoint such administrative and clerical employes as he may consider necessary in carrying out the provisions of this Act.

SECTION 3. (1) For the purposes of this Act, the coastal zone is divided into the following districts:

(a) District 1 which is composed of Clatsop and Tillamook Counties.

(b) District 2 which is composed of Lincoln County.

(c) District 3 which is composed of the coastal portions of Lane and Douglas Counties.

(d) District 4 which is composed of Coos and Curry Counties.

(2) There is established a coordinating committee for each of the districts described in subsection (1) of this section. Each such coordinating committee shall consist of the member appointed by the Governor to the committee pursuant to paragraph (a) of subsection (1) of section 2 of this Act and the members appointed to the committee by the designating body set forth in subsection (3) of this section for each such district; but the membership of each such committee appointed by the designating body set forth in subsection (3) of this section for each such district shall be composed of two elective county officials from the district, two elective city officials from the district and two elective port district officials from the district. However, the two members in each classification appointed to the committee by the designating body set forth in subsection (3) of this section for each such district may not be appointed from the same local governmental body, except in District 2, two of the members may be county commissioners.

(3) The designating bodies of the districts established by subsection (1) of this section are:

(a) For District 1, the Clatsop-Tillamook Intergovernmental Council.

(b) For District 2, the Lincoln County Sub-Council of Governments.

(c) For District 3, the Board of Commissioners for Lane County and the Umpqua Regional Council of Governments, each of which shall appoint three of the members of the coordinating committee for District 3.

(d) For District 4, the Coos-Curry Council of Governments.

SECTION 4. The commission and the four coordinating committees shall:

(1) Study the natural resources of the coastal zone and recommend the highest and best use of such resources.

(2) Not later than January 17, 1975, prepare and submit a report, including the findings of its study, a proposed comprehensive plan for the preservation and development of the natural resources of the coastal zone and any maps, charts and other information and materials that are considered by them to be necessary in such report, to the Governor and to the Fifty-eighth Legislative Assembly of the State of Oregon.

(3) Not later than January 12, 1973, prepare and submit a preliminary and, if possible, a final report of their progress in the study and formulation

of the comprehensive plan described by subsection (2) of this section to the Governor and the Fifty-seventh Legislative Assembly of the State of Oregon.

(4) Advise the Governor from time to time on the findings being made by them and propose policies and interim measures for implementation by the Governor and state agencies that they consider to be necessary for the proper preservation and development of the coastal zone prior to completion of its comprehensive plan for the coastal zone.

SECTION 5. (1) The plan described by subsection (2) of section 4 of this Act shall reflect a balancing of the conservation of the natural resources of the coastal zone and the orderly development of the natural resources of the coastal zone. Such plan shall be prepared in a form designed to be used as a standard against which proposed uses of the natural resources of the coastal zone may be evaluated. In the event of conflicting uses of the natural resources of the coastal zone, the plan shall establish a system of preferences between such conflicting uses that are consistent with the control of pollution and the prevention of irreversible damage to the ecological and environmental qualities of the coastal zone.

(2) In preparing the plan described by subsection (2) of section 4 of this Act, the commission and its coordinating committees shall consider:

(a) The quality, quantity and movement of estuarine and other coastal waters, whether tidal or nontidal in character.

(b) The ecological balance of estuarine and marine resources.

(c) The economic interests in the coastal zone, including but not limited to commercial and recreational fishing interests.

(d) The projected population growth and employment needs within the coastal zone.

(e) Scientific information regarding the hydrology, geology, topography, ecology and other relevant scientific data relating to the coastal zone as provided by state agencies.

(f) Plans, surveys and inventions that have been or are being made with respect to the coastal zone by federal, state and local governmental agencies.

(g) Comprehensive land use plans and local zoning ordinances administered by local governmental agencies having jurisdiction over lands within the coastal zone.

SECTION 6. The commission may:

(1) Accept grants, contributions and assistance from any federal, state or local governmental agency, any private foundation and any individuals.

(2) Appoint, from among its members, committees to carry out specified portions of its duties.

(3) Appoint advisory committees composed of persons selected from interested private organizations and the public at large to assist in carrying out its study and the preparation of its plan.

(4) Employ administrative, clerical and professional personnel considered by it to be necessary in carrying out its duties under this Act.

(5) Contract for the services of and consultation with professional persons or organizations, not otherwise available through federal, state and local governmental agencies, in carrying out its duties under this Act.

(6) Perform other duties considered by it to be necessary in carrying out the purposes of this Act.

SECTION 7. (1) All state and local governmental agencies shall cooperate, assist and participate with the commission and its coordinating committees in carrying out the purposes of this Act.

(2) The Governor shall designate members of state agencies that are affected by or interested in the studies and planning conducted by the

commission and coordinating committees pursuant to section 4 of this Act to assist the commission and coordinating committees in the performance of their duties set forth in section 4 of this Act.

SECTION 8. The state natural resources agencies shall review any preliminary or final comprehensive plans referred to in section 4 of this 1971 Act and shall incorporate comments and recommendations in a report to the Governor and to the Fifty-seventh and Fifty-eighth Legislative Assemblies.

SECTION 9. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect upon its passage.

EXECUTIVE ORDER NO. 01-069-25

GOVERNOR'S NUCLEAR SITING TASK FORCE OF THE NUCLEAR DEVELOPMENT COORDINATING COMMITTEE

IT IS HEREBY ORDERED AND DIRECTED that the Nuclear Siting Task Force of the Governor's Nuclear Development Coordinating Committee is created to approve the location of nuclear power plants within the State of Oregon - and to make these recommendations fully compatible with Oregon's environmental protection.

IT IS FURTHER ORDERED AND DIRECTED that the Task Force shall operate as a sub-committee of the Governor's Nuclear Development Committee, under the latter's authority, and operating for the purpose of reviewing all sites which, at intervals, are proposed by utility systems in search for nuclear power plant locations.

IT IS FURTHER ORDERED AND DIRECTED that the Task Force shall evaluate such proposed sites in regard to what effects the specific nuclear installation will have on Oregon's environment, such as: protection from pollution, protection of the state's people, water, air, land resources, wildlife, fisheries, and aquatic life. In evaluating proposed sites, the Task Force may conduct public hearings, calling upon any of the state agencies for assistance. The Task Force shall work closely with local government officials in all of its efforts.

IT IS FURTHER ORDERED AND DIRECTED that the Task Force will report its findings to the Governor and to the Nuclear Development Coordinating Committee.

IT IS FURTHER ORDERED AND DIRECTED that the Task Force shall consist of the heads of the following state agencies or by their designated representatives:

Agriculture Department
Environmental Quality Commission
Fish Commission
Game Commission

Public Utility Commission
State Board of Health
State Engineer
State Department of Geology and Mineral Industries
Water Resources Board

The State Nuclear Coordinator will serve as Chairman

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused to be affixed the great seal of the State of Oregon. Done at Salem, the Capital, this 11th day of December, A.D., 1969.

Tom McCall
Governor

By the Governor:

Secretary of State

EXECUTIVE ORDER NO. 01-070-07

March 3, 1970

"IT IS HEREBY ORDERED AND DIRECTED that all state agencies involved in construction or construction-related activities on the coast stop planning for or implementing any project that would modify the natural environment of the coast. This order covers sandspits, estuaries, and any coastal section where the project would exceed simple modification of an existing facility.

"IT IS FURTHER ORDERED AND DIRECTED that all state agencies with regulatory responsibilities apply their authority in the most stringent possible fashion to insure complete protection of Oregon's coast.

"IT IS FURTHER ORDERED AND DIRECTED that the Local Government Relations Division of the Executive Department and the Department of Transportation work with cities, counties and councils of government along the Oregon coast to initiate complete land use plans, specifically including transportation.

"IT IS FURTHER ORDERED AND DIRECTED that the Highway Division and other appropriate state agencies provide staff and financial support to these local efforts.

"IT IS FURTHER ORDERED AND DIRECTED that where local comprehensive plans are developed in a broad coordinated system that state agencies in carrying out their responsibilities comply with the priorities of these plans. Specific exemptions may only be granted by the Governor's office.

"IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused to be affixed the great seal of the State of Oregon. Done at Salem, the capital, this 3rd Day of March, A. D., 1970.

(signed) Tom McCall
Governor

APPENDIX E

WISCONSIN

Section 22 (Shorelands Zoning) of the Water Resources Act of 1965, Act 614-1965 [Section 59.971 of the Wisconsin Statutes].

Chapter NR115 (Wisconsin's Shoreland Management Program) of Wisconsin's Administrative Code.

Section 22 of the Water Resources Act of 1965, Act 614-1965
[Section 59.971 of the Wisconsin Statutes]

SECTION 22. 59.971 of the statutes is created to read:

59.971 ZONING OF SHORELANDS ON NAVIGABLE WATERS. (1) To effect the purposes of s. 144.26 and to promote the public health, safety and general welfare, counties may, by ordinance enacted separately from ordinances pursuant to s. 59.97, zone all lands (referred to herein as shorelands) in their unincorporated areas within the following distances from the normal high-water elevation of navigable waters as defined in s. 144.26 (2) (d): 1,000 feet from a lake, pond or flowage; 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater. If the navigable water is a glacial pothole lake, the distance shall be measured from the high watermark thereof.

(2) (a) Except as otherwise specified, all provisions of s. 59.97 apply to ordinances and their amendments enacted under this section, but they shall not require approval or be subject to disapproval by any town or town board.

(b) If an existing town ordinance relating to shorelands is more restrictive than an ordinance later enacted under this section affecting the same shorelands, it continues as a town ordinance in all respects to the extent of the greater restrictions, but not otherwise.

(c) Ordinances enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting counties, so far as practicable.

(3) All powers granted to a county under s. 236.45 may be exercised by it with respect to shorelands, but it must have or provide a planning agency as defined in s. 236.02 (1).

(4) (a) Section 66.30 applies to this section, except that for the purposes of this section any agreement under s. 66.30 shall be effected by ordinance. If the municipalities as defined in s. 144.26 are served by a regional planning commission under s. 66.945, the commission may, with its consent, be empowered by the ordinance of agreement to administer each ordinance enacted hereunder throughout its enacting municipality, whether or not the area otherwise served by the commission includes all of that municipality.

(b) Variances and appeals regarding shorelands within a county are for the board of adjustment for that county under s. 59.99, and the procedures of that section apply.

(5) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 59.97 that relate to shorelands.

(6) If any county does not adopt an ordinance by January 1, 1968, or if the department, after notice and hearing, determines that a county has adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreland protection objectives of s. 144.26 (1), the department shall adopt such an ordinance. As far as possible, s. 87.30 shall apply to this subsection.

Chapter NR 115

WISCONSIN'S SHORELAND MANAGEMENT PROGRAM

NR 115.01 Introduction
NR 115.02 Nature of the program
NR 115.03 Shoreland regulation standards and criteria
NR 115.04 Role of the department of Natural Resources
NR 115.05 Assistance to counties

History: Chapter RD 15 as it existed on August 31, 1970 was repealed and a new chapter numbered NR 115 was created, Register, August, 1970, No. 176, effective September 1, 1970.

NR 115.01 Introduction. (1) The water resources act (chapter 614, laws of 1965) requires counties to enact regulations for the protection of all shorelands in unincorporated areas by January 1, 1968. Shorelands as defined by the law are lands within 1,000 feet of a navigable lake, pond or flowage and lands within 300 feet of a river or navigable stream or to the landward side of the floodplain, whichever distance is greater.

(2) The statute defines the purposes of regulations enacted for shoreland protection: "to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses and reserve shore cover and natural beauty."

History: Cr. Register, August, 1970, No. 176, eff. 9-1-70.

NR 115.02 Nature of the program. (1) The water resources act creates section 59.971, Wis. Stats., which requires the zoning of shorelands in the unincorporated areas of each county. Such zoning shall not require the approval of the town boards. To assure that such zoning will be accomplished, section 59.971 (6), Wis. Stats., states that if any county does not adopt an ordinance by January 1, 1968, or if the department of natural resources, after notice and hearing, determines that a county had adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreland protection objectives, the department shall adopt such an ordinance.

(2) To comply with the water resources act, it is necessary for a county to enact shoreland regulations, including zoning provisions, land division controls, sanitary regulations and administrative provisions ensuring enforcement of the regulations.

(3) It is the policy of the department, in the discharge of its responsibility under section 144.26, to require adherence to certain specific standards and criteria. The standards and criteria are intended to define the objectives of the regulations.

History: Cr. Register, August, 1970, No. 176, eff. 9-1-70.

NR 115.03 Shoreland regulation standards and criteria. (1) ESTABLISHMENT OF APPROPRIATE ZONING DISTRICTS. Shoreland area development can usually be controlled by regulations appropriate to wetlands (conservancy district), recreation-residential districts and general purpose districts. Where detailed land use planning has been accomplished, other types of districts may also be desirable.

(2) ESTABLISHMENT OF LAND USE ZONING REGULATIONS. The zoning provisions adopted must provide sufficient control of the use of shorelands to afford the protection of water quality as specified in Wis. Adm. Code chapters RD 2 and 3. The provisions shall include the following:

(a) *Minimum lot sizes.* All future lots in the shoreland area shall afford protection against danger to health and hazard of pollution of the adjacent body of water.

1. Lots served by public sewer shall have a minimum width of 65 feet and a minimum area of 10,000 square feet.

2. Lots not served by public sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

(b) *Building setbacks.* The permitted location of buildings and structures shall conform to health requirements, preserve natural beauty and reduce flood hazards.

1. Unless an existing development pattern exists, a setback of 75 feet from the normal high waterline shall be required.

2. No building shall be erected in the floodway of a stream (see chapter NR 116, definitions).

3. Boathouses or similar structures which require a waterfront location shall not be used for habitation nor extend toward the water beyond the ordinary high waterline.

4. Buildings and structures shall be subject to any applicable floodplain zoning regulations.

(c) *Trees and shrubbery.* The cutting of trees and shrubbery shall be regulated to protect scenic beauty, control erosion and reduce the flow of effluents and nutrients from the shoreland. In the strip 35 feet inland from the normal high waterline, no more than 30 feet in any 100 feet shall be clear cut. In other areas, trees and shrub cutting shall be governed by consideration of the effect on water quality and should be in accord with accepted management practices.

(d) *Filling, grading, lagooning, dredging.* Filling, grading, lagooning and dredging may be permitted only in accord with state law and where protection against erosion, sedimentation and impairment of fish and aquatic life has been assured.

(3) ESTABLISHMENT OF SANITARY REGULATIONS. The protection of health and the preservation and enhancement of water quality require sanitary regulations to be adopted by the county. (a) Where public water supply systems are not available, private well construction shall conform to Wis. Adm. Code chapter RD 12.

(b) Where a public waste collection and treatment system is not available, design and construction of private sewage disposal systems shall fully comply with Wis. Admin. Code section H62.20.

(4) ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. Each ordinance required by these regulations shall provide for:

(a) The appointment of an administrator and such additional staff as the work load may require.

(b) A planning agency (planning and zoning committee) and a board of adjustment as required by law.

(c) A system of permits for all new construction, reconstruction, structural alteration or moving of buildings and structures, including sanitary waste disposal and water supply facilities. A copy of all applications shall be filed in the office of the county administrator.

(d) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

(e) A variance procedure relating to the use, change of use or alteration of nonconforming lands and structures, and a special exception procedure for uses presenting special problems of pollution or flood hazard. The county shall keep a complete record of all proceedings before the board of adjustment and planning agency.

(f) Timely notice to the floodplain-shoreland management section of the department of natural resources of hearings on proposed variances, special exceptions and amendments and delivery to that section of copies of decisions on such variances, special exceptions and such amendments, when adopted.

(g) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary changes.

(h) The prosecution of all violations of shoreland zoning ordinances.

(5) ESTABLISHMENT OF LAND SUITABILITY REVIEW. The county shall review all land divisions which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review the following factors should be considered:

(a) Hazards to the health, safety or welfare of future residents.
(b) Proper relationship to adjoining areas.
(c) Public access to navigable waters, as required by law.
(d) Adequate storm drainage facilities.
(e) Conformity to state law and administrative code provisions.

History: Cr. Register, August, 1970, No. 176, eff. 9-1-70.

NR 115.04 Role of the Department of Natural Resources. (1) Role. The department of natural resources is directed by the legislature to assist the counties in carrying out their responsibilities under the law and to review and evaluate the administration of the regulations. If necessary, the department may recommend to the natural resources board the adoption of an ordinance for a county, if the county failed to meet these standards and criteria.

(2) COMPLIANCE DETERMINED BY EVALUATING COUNTY REGULATIONS WITH SECTION NR 115.03. (a) Compliance with the requirements of section 59.971 will be determined by comparing the county shoreland regulations with the state minimum standards for shoreland protection as contained in section NR 115.03. Counties that have enacted regulations that meet the minimum standards for shoreland protection will be considered as complying with section 59.971, Wis Stats.

(b) Compliance status shall also be maintained by the county during subsequent reevaluation of the regulations to ascertain their effectiveness in maintaining the quality of Wisconsin water. A county shall keep its regulations current, effective and workable to retain its status of compliance. Failure to do so shall be deemed noncompliance.

(c) Compliance with chapter NR 115 shall not affect a county's responsibility to comply with chapter NR 116, floodplain management standards.

(d) The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with section 59.971, Wis. Stats.

(3) NONCOMPLIANCE. (a) Counties that have regulations that do not meet the minimum rules as contained in section NR 115.03 shall be considered as not complying with the requirements of the water resources act pertaining to shoreland regulations. For these counties to achieve compliance status, they shall modify their regulations to meet the minimum standards within a time limit established by the department.

(b) Counties that have not drafted shoreland regulations shall be deemed noncomplying counties. They shall state to the department of natural resources their reasons, if any, for failure to comply with the water resources act. The department shall then require the county:

1. To proceed with regulation formation within a given time period, or;

2. a. To have the staff of the department of natural resources draft the regulations, or;

b. Contract with a consultant to draft the regulations. All costs for such actions by the department of natural resources shall be borne by the noncomplying county.

History: Cr. Register, August, 1970, No. 176, eff. 9-1-70.

NR 115.05 Assistance to counties. To the full extent of its resources, the department of natural resources will provide advice and assistance to the counties, seeking the highest practicable degree of uniformity consistent with the objectives of the shoreland regulation provisions of the water resources act.

History: Cr. Register, August, 1970, No. 176, eff. 9-1-70.

APPENDIX F

CALIFORNIA

Act 1162-1965 (The McAteer-Petris Act) as amended [Sections 66600-66661 of the California Government Code].

Act 1642-1967 (Marine Resources Conservation and Development Act of 1967) [Sections 8800 et seq of the California Government Code].

Documents Pertinent to COAP (Comprehensive Ocean Area Plan).

State of California Policy on Thermal Power Plants, Adopted June 30, 1965, Revised March 12, 1969.

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
507 Polk St., San Francisco 94102 557-3686

November, 1970

THE McATEER-PETRIS ACT
(As Amended through the 1970 Legislative Session)

The McAteer-Petris Act, creating the San Francisco Bay Conservation and Development Commission, was enacted in 1965 (and amended slightly in 1968). Extensive further amendments were made by Chapter 713 of the 1969 Regular Session (AB 2057). Other amendments were made by the following Acts of the 1970 Regular Session of the Legislature:

Chapter 998 (AB 1200) -- changing the date in Sec. 66611.

Chapter 1179 (AB 1771) -- adding a second paragraph to Sec. 66622.

Chapter 1279 (AB 1971) -- adding subdivision (e) to Sec. 66610.

A few sections of the Act as enacted in 1965 have not been affected by any amendments.

What follows is the composite text of the McAteer-Petris Act as of November 23, 1970, the effective date of the 1970 amendments.

Sections marked with * in the left margin are unchanged since 1965. Material marked # was added or amended in 1970. All other material either was new or was last amended in 1969.

AHB/hk

TITLE 7.2. SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

CHAPTER 1. FINDINGS AND DECLARATIONS OF POLICY

66600. The Legislature hereby finds and declares that the public interest in the San Francisco Bay is in its beneficial use for a variety of purposes; that the public has an interest in the bay as the most valuable single natural resource of an entire region, a resource that gives special character to the bay area; that the bay is a single body of water that can be used for many purposes, from conservation to planned development; and that the bay operates as a delicate physical mechanism in which changes that affect one part of the bay may also affect all other parts. It is therefore declared to be in the public interest to create a politically-responsible, democratic process by which the San Francisco Bay and its shoreline can be analyzed, planned, and regulated as a unit.

66601. The Legislature further finds and declares that uncoordinated, haphazard filling in San Francisco Bay threatens the bay itself and is therefore inimical to the welfare of both present and future residents of the area surrounding the bay; that while some individual fill projects may be necessary and desirable for the needs of the entire bay region, and while some cities and counties may have prepared detailed master plans for their own bay lands, a governmental mechanism must exist for evaluating individual projects as to their effect on the entire bay; and that further piecemeal filling of the bay may place serious restrictions on navigation in the bay, may destroy the irreplaceable feeding and breeding grounds of fish and wildlife in the bay, may adversely affect the quality of bay waters and even the quality of air in the bay area, and would therefore be harmful to the needs of the present and future population of the bay region.

66602. The Legislature further finds and declares that certain water-oriented land uses along the bay shoreline are essential to the public welfare of the bay area, and that such uses include ports, water-related industries, airports, wildlife refuges, water-oriented recreation and public assembly, desalinization plants and powerplants requiring large amounts of water for cooling purposes; that the San Francisco Bay Plan should make provision for adequate and suitable locations for all such uses thereby minimizing the necessity for future bay fill to create new sites for such uses; that existing public assess to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.

66602.1. The Legislature further finds and declares that areas diked off from the bay and used as saltponds and managed wetlands are important to the bay area in that, among other things, such areas provide a wildlife habitat and a large water surface which, together with the surface of the bay, moderate the climate of the bay area and alleviate air pollution; that it is in the public interest to encourage continued maintenance and operation of the salt ponds and managed wetlands; that, if development is proposed for these areas, dedication or public purchase of some of these lands should be encouraged in order to preserve water areas; that, if any such areas are authorized to be developed and used for other purposes, the development should provide the maximum public access to the bay consistent with the proposed project and should retain the maximum amount of water surface area consistent with the proposed project.

66603. The Legislature further finds and declares that the San Francisco Bay Conservation and Development Commission, treating the entire bay as a unit, has made a detailed study of all the characteristics of the bay, including: the quality, quantity, and movement of bay waters, the ecological balance of the bay, the economic interests in the bay, including the needs of the bay area population for industry and for employment, the requirements of industries that would not pollute the bay nor interfere with its use for recreation or other purposes, but would need sites near deepwater channels; that the study has examined all present and proposed uses of the bay and its shoreline, and the master plans of cities and counties around the bay; and that on the basis of the study the commission has prepared a comprehensive and enforceable plan for the conservation of the water of the bay and the development of its shoreline, entitled the San Francisco Bay Plan.

66604. The Legislature further finds and declares that in order to protect the present shoreline and body of the San Francisco Bay to the maximum extent possible, it is essential that the commission be empowered to issue or deny permits, after public hearings, for any proposed project that involves placing fill, extracting materials or making any substantial change in use of any water, land or structure within the area of the commission's jurisdiction.

66605. The Legislature further finds and declares:

(a) That further filling of San Francisco Bay should be authorized only when public benefits from fill clearly exceed public detriment from the loss of the water areas and should be limited to water-oriented uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation and public assembly, water intake and discharge lines for desalinization plants and power generating plants requiring large amounts of water for cooling purposes) or minor fill for improving shoreline appearance or public access to the bay;

(b) That fill in the bay for any purpose, should be authorized only when no alternative upland location is available for such purpose;

(c) That the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill;

(d) That the nature, location and extent of any fill should be such that it will minimize harmful effects to the bay area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources;

(e) That public health, safety and welfare require that fill be constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters;

(f) That fill should be authorized when the filling would, to the maximum extent feasible, establish a permanent shoreline;

(g) That fill should be authorized when the applicant has such valid title to the properties in question that he may fill them in the manner and for the uses to be approved.

66605.1. The Legislature finds that in order to make San Francisco Bay more accessible for the use and enjoyment of people, the bay shoreline should be improved, developed and preserved. The Legislature further recognizes that private investment in shoreline development should be vigorously encouraged and may be one of the principal means of achieving bay shoreline development, minimizing the resort to taxpayer funds; therefore, the Legislature declares that the commission should encourage both public and private development of the bay shoreline.

66606. The Legislature hereby finds and declares that this title is not intended, and shall not be construed, as authorizing the commission to exercise its power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

66606.5. The Legislature finds and declares that the San Francisco Bay Plan indicates that extensive areas in and around the bay are owned or held under claim of ownership by private persons and that the acquisition for public use of all or large portions of such areas or the establishment of wildlife refuges therein may require a substantial public investment. The Legislature further finds and declares that the commission should make a continuing review and prepare and submit periodic reports on the nature, extent, estimated cost and method of financing of any proposed acquisitions of private property for public use.

66606.6. Nothing in this title shall deny the right of private property owners and local governments to establish agricultural preserves and enter into contracts pursuant to the provisions of the California Land Conservation Act of 1965. The commission, within six months after the effective date of this section, shall institute an affirmative action program to encourage local governments to enter into contracts under the California Land Conservation Act of 1965 with owners of property to which the provisions of that act may be applicable.

66607. If any provision of this title or the application thereof in any circumstance or to any person or public agency is held invalid, the remainder of this title or the application thereof in other circumstances or to other persons or public agencies shall not be affected thereby.

CHAPTER 2. DEFINITION OF SAN FRANCISCO BAY

66610. For the purposes of this title, the area of jurisdiction of the San Francisco Bay Conservation and Development Commission includes:

(a) San Francisco Bay, being all areas that are subject to tidal action from the south end of the bay to the Golden Gate (Point Bonita-Point Lobos) and to the Sacramento River line (a line between Stake Point and Simmons Point, extended northeasterly to the mouth of Marshall Cut), including all sloughs, and specifically, the marshlands lying between mean high tide and five feet above mean sea level; tidelands (land lying between mean high tide and mean low tide); and submerged lands (land lying below mean low tide).

(b) A shoreline band consisting of all territory located between the shoreline of San Francisco Bay as defined in subdivision (a) of this section and a line 100 feet landward of and parallel with that line, but excluding any portions of such territory which are included in subdivisions (a), (c) and (d) of this section; provided that the commission may, by resolution, exclude from its area of jurisdiction any area within the shoreline band that it finds and declares is of no regional importance to the bay.

(c) Saltponds consisting of all areas which have been diked off from the bay and have been used during the three years immediately preceding the effective date of the amendment of this section during the 1969 Regular Session of the Legislature for the solar evaporation of bay water in the course of salt production.

(d) Managed wetlands consisting of all areas which have been diked off from the bay and have been maintained during the three years immediately preceding the effective date of the amendment of this section during the 1969 Regular Session of the Legislature as a duck hunting preserve, game refuge or for agriculture.

(e) Certain waterways (in addition to areas included within subdivision (a)), consisting of all areas that are subject to tidal action, including submerged lands, tidelands, and marshlands up to five feet above mean sea level, on, or tributary to, the listed portions of the following waterways:

(1) Plummer Creek in Alameda County, to the eastern limit of the saltponds.

(2) Coyote Creek (and branches) in Alameda and Santa Clara Counties, to the easternmost point of Newby Island.

(3) Redwood Creek in San Mateo County, to its confluence with Smith Slough.

(4) Tolay Creek in Sonoma County, to the northerly line of Sears Point Road (State Highway 37).

(5) Petaluma River in Marin and Sonoma Counties to its confluence with Adobe Creek, and San Antonio Creek to the easterly line of the Northwestern Pacific Railroad right-of-way.

(6) Napa River, to the northernmost point of Bull Island.

(7) Sonoma Creek, to its confluence with Second Napa Slough.

The definition which is made by this section is merely for the purpose of prescribing the area of jurisdiction of the commission which is created by this title. This definition shall not be construed to affect title to any land or to prescribe the boundaries of the San Francisco Bay for any purpose except the authority of the commission created by this title.

66611. No later than December 1, 1971, the commission, after public hearing, of which adequate descriptive notice is given, shall adopt and file with the Governor and the Legislature a resolution fixing and establishing within the shoreline band the boundaries of the water-oriented priority land uses, as referred to in Section 66602. After such filing no further changes shall be made in such boundaries, except with the approval of the Legislature.

Chapter 3. San Francisco Bay Conservation and Development Commission

66620. The San Francisco Bay Conservation and Development Commission is hereby created. The commission shall consist of 27 members appointed as follows:

(a) One member by the Division Engineer, United States Army Engineers, South Pacific Division, from his staff.

(b) One member by the United States Secretary of Health, Education and Welfare, from his staff.

(c) One member by the Secretary of Business and Transportation, from his staff.

(d) One member by the Director of Finance, from his staff.

(e) One member by the Secretary of Resources, from his staff.

(f) One member by the State Lands Commission, from its staff.

(g) One member by the San Francisco Bay Regional Water Quality Control Board, who shall be a member of such board.

(h) Nine county representatives consisting of one member of the board of supervisors representative of each of the nine San Francisco Bay area counties, appointed by the board of supervisors in each county. Each county representative must be a supervisor representing a supervisorial district which includes within its boundaries lands lying within San Francisco

(i) Four city representatives appointed by the Association of Bay Area Governments from among the residents of the bayside cities in each of the following areas:

(1) North Bay—Marin County, Sonoma, Napa, and Solano;

(2) East Bay—Contra Costa County (west of Pittsburg) and Alameda County north of the southern boundary of Hayward;

(3) South Bay—Alameda County south of the southern boundary of Hayward, Santa Clara County and San Mateo County south of the northern boundary of Redwood City;

(4) West Bay—San Mateo County north of the northern boundary of Redwood City, and the City and County of San Francisco.

Each city representative must be an elected city official.

(j) Seven representatives of the public, who shall be residents of the San Francisco Bay area and whose appointments shall be subject to confirmation by the Senate. Five of such representatives shall be appointed by the Governor. One by the Committee on Rules of the Senate and one by the Speaker of the Assembly.

66621. One member of the Senate, appointed by the Senate Rules Committee, and one member of the Assembly, appointed by the Speaker of the Assembly, shall meet with, and participate in the activities of, the commission to the extent that such participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this title, such Members of the Legislature shall constitute a joint interim investigating committee on the subject of this title, and as such shall have the powers and duties imposed upon such committees by the Joint Rules of the Senate and Assembly.

66622. The members of the commission shall serve at the pleasure of their respective appointing powers. The members shall serve without compensation, but each of the members shall be reimbursed for his necessary expenses incurred in the performance of his duties.

A member, subject to confirmation by his appointing power, may authorize an alternate for attendance at meetings and voting in his absence. Each alternate shall be designated in a written instrument which shall include evidence of the confirmation by the appointing power and his name shall be kept on file with the commission. Each member may change his alternate from time to time, with the confirmation of his appointing power, but shall have only one alternate at a time. Each alternate shall have the same qualifications as are required for the member who appointed him, except that each county representative may designate any other member of that county's board of supervisors as his alternate.

66623. The Governor shall select, from among public representatives on the commission appointed pursuant to subdivision (k) of Section 66620, a chairman and a vice chairman.

[Subdivision (k) has been redesignated Subdivision (j)]

66624. The time and place of the first meeting of the commission shall be prescribed by the Governor, but, in no event, shall it be scheduled for a date later than 10 days after the effective date of this title.

66625. The headquarters of the commission shall be in the City and County of San Francisco.

Chapter 4. Powers and Duties of the Commission

66630. The commission shall make a continuing review of all the matters referred to in Section 66603, 66606.5 and Section 66651.

66630.1. The continuing review, among other things, shall include studies concerning properties within the area of the commission's jurisdiction which, in the opinion of the commission, might be acquired by public agencies for public use. Based on such studies the commission shall annually prepare a report setting forth the general location of such properties, the interest or interests proposed to be acquired therein, the public uses recommended therefor, the public agencies recommended to make the proposed acquisitions, the estimated cost of the proposed acquisitions and recommendations for financing such cost. Each annual report shall cover proposed acquisitions during a three-year period commencing January 1 after the date of the report and shall indicate any material changes made with respect to the report for the previous year. Not later than the fifth legislative day of each regular session of the Legislature, commencing with the 1971 Regular Session, the commission shall file such report with the Governor and Legislature.

66631. In making the review, the commission shall cooperate to the fullest extent possible with the Association of Bay Area Governments; and shall, to the fullest extent possible, coordinate its planning with planning by local agencies, which shall retain the responsibility for local land use planning. In order to avoid duplication of work, the commission shall make maximum use of data and information available from the planning programs of the State Office of Planning, the Association of Bay Area Governments, the cities and counties in the San Francisco Bay area, and other public and private planning agencies.

66632. (a) During the existence of the San Francisco Bay Conservation and Development Commission, any person or governmental agency wishing to place fill, to extract materials, or to make any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission and, if required by law or by ordinance, from any city or county within which any part of such work is to be performed. For purposes of this title, "fill" means earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks. For the purposes of this section "materials" means items exceeding twenty dollars ($20) in value.

The commission may require a reasonable filing fee and reimbursement of expenses for processing and investigating a permit application.

(b) Whenever a permit is required by a city or county for any activity also requiring a permit from the San Francisco Bay Conservation and Development Commission, an applicant for a permit shall file an application with the city council of the city if the proposed project is located in incorporated territory, or the board of supervisors of the county, if the proposed project is located in unincorporated territory. Upon filing such an application, the applicant shall notify the commission of the fact of the filing and the date thereof. The city council or the board of supervisors, as the case may be, shall investigate the proposed project and shall file a report thereon with the commission within 90 days after the application is filed with it.

Whenever a permit is not required by a city or county, no application for a permit need be made to the city or county.

(c) Upon receipt of the report from the city council or the board of supervisors, as the case may be, or, if the city council or the board of supervisors does not file a report with the commission within the 90-day period, upon the expiration of such 90-day period, and upon receipt of an application for a permit made directly to it, the commission shall hold a public hearing or hearings as to the proposed project and conduct such further investigation as it deems necessary. The commission shall give full consideration to the report of the city council or board of supervisors.

(d) The commission shall prescribe the form and contents of applications for permits. Among other things, an application for a permit shall set forth all public improvements and public utility facilities which are necessary or incidental to the proposed project and the names and mailing addresses of all public agencies or public utilities who will have ownership or control of such public improvements or public utility facilities if the permit is granted and the project is constructed. The executive director shall give written notice of the filing of the application to all such public agencies and public utilities. If the commission grants a permit for a project, the permit shall include all public improvements and public utility facilities which are necessary or incidental to the project.

(e) Upon receipt of an application for a permit the commission shall transmit a copy thereof to the San Francisco Bay Regional Water Quality Control Board. Within 60 days the board shall file a report with the commission indicating the effect of the proposed project on water quality within the bay.

(f) The commission shall take action upon an application for a permit, either denying or granting the permit, within 90 days after it receives the report (or, if the city council or the board of supervisors did not file a report with the commission within the 90-day period, within 90 days after the expiration of such 90-day period), or within 90 days after it receives an application from the applicant, whichever date is later. The permit shall be automatically granted if the commission shall fail to take specific action either denying or granting the permit within the time period specified in this section. A permit shall be granted for a project if the commission finds and declares that the project is either (1) necessary to the health, safety or welfare of the public in the entire bay area, or (2) of such a nature that it will be consistent with the provisions of this title and with the provisions of the San Francisco Bay Plan then in effect. To effectuate such purposes, the commission may grant a permit subject to reasonable terms and conditions including the uses of land or structures, intensity of uses, construction methods and methods for dredging or placing of fill. Thirteen affirmative votes of members of the commission are required to grant a permit. Neither of the federal representatives who are members of the commission may vote on whether or not a permit shall be granted.

Pursuant to this title, the commission may provide by regulation, adopted after public hearing, for the issuance of permits by the executive director, without compliance with the above procedure, in cases of emergency, or for minor repairs to existing installations or minor improvements made anywhere within the area of jurisdiction of the commission including, without limitation, the installation of piers and pilings and maintenance dredging of navigation channels. The commission may also adopt after public hearing such additional regulations as it deems reasonable and necessary to enable it to carry out its functions efficiently and equitably, including regulations classifying the particular water-oriented uses referred to in Sections 66602 and 66605.

(g) If the commission denies the permit, the applicant may submit another application for the permit directly to the commission after 90 days from the date of such denial.

(h) Any project authorized pursuant to this section shall be commenced, performed and completed in compliance with the provisions of all permits granted or issued by the commission and by any city or county.

(i) If, prior to September 17, 1965, any person or governmental agency has already obtained a permit from the appropriate local body to place fill in the bay or to extract submerged materials from the bay, application may be made directly to the San Francisco Bay Conservation and Development Commission and the permit from the local body shall constitute the report of the local body.

(j) Any action, or proceeding to contest or question the commission's denial of a permit application, or conditions attached to approval of a permit application, must be commenced in the appropriate court within 90 days following the date of such action by the commission.

(k) The executive director shall, within 90 days following the effective date of this section, communicate the provisions of this section to all governmental bodies that issue permits for developments described in this section, and shall request of them information concerning any development that may fall within the provisions of this section.

* 66632.1. Nothing in this title shall apply to any project where necessary local governmental approval and a Department of the Army Corps of Engineers permit have been obtained to allow commencement of the diking or filling process, and where such diking or filling process has commenced prior to the effective date of this title, nor to the continuation of dredging under existing Department of the Army Corps of Engineers permits.

[Compare with Sec. 66656, which appears to overlap]

66632.2. (a) The owner or operator of any public service facilities need not obtain a permit from the commission for the construction within or upon any public highway or street of any public service facilities to provide service to persons or property located within the area of the commission's jurisdiction. The public service facilities referred to in this subdivision shall be limited to those which are necessary for and are customarily used to provide direct and immediate service to the persons or property requiring such service.

(b) The owner or operator of public service facilities or a public street or road located anywhere within the area of the commission's jurisdiction may, without first obtaining a permit from the commission, make emergency repairs to such facilities as may be necessary to maintain service, provided, that the emergency is such as to require repairs before an emergency permit can be obtained under the provisions of subdivision (f) of Section 66632 and, provided further, that notification is given to the commission no later than the first working day following such undertaking.

(c) "Public service facilities," as used in this section, means any facilities used or intended to be used to provide water, gas, electric or communications service and any pipelines, and appurtenant facilities, for the collection or transmission of sewage, flood or storm waters, petroleum, gas or any liquid or other substance.

66632.3. If the most recent report made and filed pursuant to Section 66630.1 recommends that designated property be acquired for public use and all such property has not been so acquired within a period of three years, commencing with January 1 after the date of the report first recommending such acquisition, at any time after the expiration of said period the owners of all or any part of the property not previously acquired may file an application with the commission for the development of such property. Upon the filing of any such application, the commission shall grant or deny a permit in accordance with the provisions of this title and the San Francisco Bay Plan, then in effect, provided that a permit shall not be denied on the grounds that such property has been recommended to be acquired for public use.

66632.4. Within any portion or portions of the shoreline band which shall be located outside the boundaries of water-oriented priority land uses, as fixed and established pursuant to Section 66611, the commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline.

66633. The commission may:

(a) Accept grants, contributions, and appropriations from any public agency, private foundation, or individual.

(b) Appoint committees from its membership and appoint advisory committees from other interested public and private groups.

(c) Contract for or employ any professional services required by the commission or for the performance of work and services which in its opinion cannot satisfactorily be performed by its officers and employees or by other federal, state, or local governmental agencies.

(d) Sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction, including prohibitory and mandatory injunctions to restrain violations of this title.

(e) Do any and all other things necessary to carry out the purposes of this title.

66634. The commission shall, in addition to any funds which the Legislature may appropriate for planning activities of the commission, take whatever steps are necessary to attempt to obtain money available of such planning activities from any federal, state, or local sources.

66635. The commission shall appoint an executive director who shall have charge of administering the affairs of the commission, subject to the direction and policies of the commission. The executive director shall, subject to approval of the commission, appoint such employees as may be necessary in order to carry out the functions of the commission.

66636. Within a reasonable time, but not to exceed one year from the date of the first meeting of the commission, the chairman of the commission, in collaboration with and with the concurrence of the commission, shall appoint a citizens' advisory committee to assist and advise the commission in carrying out its functions. The advisory committee shall consist of not more than 20 members.

At least one member of the advisory committee shall be a representative of a public agency having jurisdiction over harbor facilities, and another shall represent a public agency having jurisdiction over airport facilities. The advisory committee shall also include representatives of conservation and recreation organizations, and at least one biologist, one sociologist, one geologist, one architect, one landscape architect, one representative of an industrial development board or commission, and one owner of privately held lands within the San Francisco Bay as defined in Section 66610.

CHAPTER 5. THE SAN FRANCISCO BAY PLAN AND FURTHER REPORTS OF THE COMMISSION

66650. This title shall be known and may be cited as the McAteer-Petris Act. [Formerly Sec. 66653]

66651. Pursuant to this title the commission has adopted and submitted to the Governor and the Legislature the San Francisco Bay Plan, a comprehensive plan containing statements and maps concerning:

(a) The objectives of the plan;

(b) The bay, as a resource, including findings and recommended policies upon: fish and wildlife; water pollution; smog and weather; water surface, area and volume; marshes and mudflats; fresh water inflow; dredging; and shell deposits;

(c) The development of the bay and shoreline, including findings and recommended policies upon: economic and population growth; safety of fills; water-related industries; ports; airports; recreation; saltponds and other managed wetlands; transportation; other uses of the bay and shoreline; refuse disposal sites; public access; appearance and design; and scenic views.

This plan shall constitute an interim plan for the commission (i) until otherwise ordered by the Legislature, or, (ii) until amended by the commission as provided in Section 66652.

66652. The commission at any time may amend, or repeal and adopt a new form of, all or any part of the San Francisco Bay Plan but such changes shall be consistent with the findings and declarations of policy contained in this title.

Such changes shall be made by resolution of the commission adopted after public hearing on the proposed change, of which adequate descriptive notice shall be given. If the proposed change pertains to a policy or standard contained in the San Francisco Bay Plan, or defines a water-oriented use referred to in Section 66602 or 66605, the resolution adopting the change shall not be voted upon less than 90 days following notice of hearing on the proposed change and shall require the affirmative vote of two-thirds of the commission members. If the proposed change pertains only to a map or diagram contained in the San Francisco Bay Plan, the resolution adopting the change shall not be voted on less than 30 days following notice of hearing on the proposed change and shall require the affirmative vote of the majority of the commission members.

66653. If a function or activity is within the area of the commission's jurisdiction and requires the securing of a permit, the commission shall exercise its power to grant or deny a permit in conformity with the provisions of this title and with any provisions of the plan pertaining to placing of fill, extraction of materials, construction methods and use or change of use of water areas, land or structures. If a function or activity is outside the area of the commission's jurisdiction or does not require the issuance of a permit, any provisions of the plan pertaining thereto are advisory only.

66654. Within the area of the commission's jurisdiction under subdivisions (b), (c) and (d) of Section 66610, any uses which are in existence on the effective date of this section may be continued, provided, that no substantial change shall be made in such uses except in accordance with this title.

Any owner of property devoted to an existing use or uses may file an application with the commission to determine the nature of such existing use or uses, the extent of territory then devoted to such use or uses, and such additional territory adjacent thereto as may be expected to be reasonably necessary for the expansion of such use or uses during a period of not to exceed 15 years from the date of filing such application. Not later than 90 days after such filing, the commission after public hearing shall adopt a resolution making such determination. After the adoption of such resolution no permit need be obtained from the commission for any of the existing use or uses specified in the resolution or for the expansion thereof within the territory described in said resolution.

66655. If, prior to September 1, 1969, any city or county has adopted an ordinance or issued a permit authorizing a particular use or uses within the areas defined in subdivisions (b), (c) and (d) of Section 66610, no person who has obtained a vested right thereunder shall be required to secure a permit from the commission, providing, that no substantial changes may be made in any such use or uses, except in accordance with this title. Any such person shall be deemed to have such vested rights if, prior to September 1, 1969, he has in good faith and in reliance upon the ordinance or permit commenced and performed substantial work on the use or uses authorized and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance or the issuance of a permit shall not be deemed liabilities for work or material.

66656. Nothing in this title shall apply to any project where necessary local governmental approval and a Department of the Army Corps of Engineers permit have been obtained to allow commencement of the diking or filling process, and where such diking or filling process has commenced prior to September 17, 1965, nor to the continuation of dredging under existing Department of the Army Corps of Engineers permits and any renewals and extensions of such dredging permits.

"Project" shall include the execution or undertaking or assumption of any contractual commitments entered into prior to September 17, 1965; if prior to July 9, 1969, the city or county has adopted a long-range general plan in accordance with its charter, or Sections 65300 to 65306 and specific plans in accordance with Sections 65450 and 65451 and the land uses comply with the general objectives or guidelines of the San Francisco Bay Plan.

66657. In eminent domain or inverse condemnation proceedings for any property within the area of the commission's jurisdiction, in determining "just compensation," as used in Section 14 of Article I of the California Constitution, or "value," "damage," or "benefits," as used in Section 1248 of the Code of Civil Procedure, the influence of the San Francisco Bay Plan, in effect at the time of the taking or damaging of the property, upon the value of the property or the interest being valued shall be inadmissible as evidence and not a proper basis for an opinion as to the value of the property.

66658. Until the termination of the existence of the commission, it shall have all powers and duties prescribed by Chapters 1 (commencing with Section 66600) to 4 (commencing with Section 66630), inclusive, of this title including, without limitation, the power to continue or make further studies authorized thereby.

66659. The commission shall continue in existence until such time as the Legislature provides for the termination of the existence of the commission or for the transfer of the commission's functions and duties to some other permanent agency.

66660. The commission shall make a supplemental report, or reports, containing all of the following:

(a) The results of any continued or further studies made by the commission;

(b) Such other information and recommendations as the commission deems desirable.

66660.1. Notwithstanding any provision of this title to the contrary, the jurisdiction of the commission, except for the control of fill or extraction of materials shall not include the shoreline within a city limit upon which any person or entity has commenced and performed substantial work for the purpose of establishing a planned community development on land already filled and requiring no additional fill or extraction, and for which the planning commission approval of the city council has been obtained prior to July 1, 1969.

66661. The commission shall annually file a supplemental report with the Governor and the Legislature by the fifth legislative day of each regular session of the Legislature commencing not later than the 1971 Regular Session.

ACT 1642-1967

Chapter 10, California Advisory Commission on Marine and Coastal Resources [New]

GOVERNMENT CODE § 8800

ARTICLE 1. DECLARATION OF POLICY AND OBJECTIVES

Sec.
8800. Policy.
8801. Objectives of plan.

Article 1 added by Stats.1967, c. 1642, p. 3934, § 1

Law Review Commentaries
Coordinated resource development: Legal controls of water quality and oil pollution in a marine environment. Thomas C. Lynch, B. J. Gindler, D. B. Stanton (1969) 44 Los Angeles Bar Bull. 154.

§ 8800. Policy

It is hereby declared to be the policy of the State of California to develop, encourage, and maintain a comprehensive, coordinated state plan for the orderly, long-range conservation and development of marine and coastal resources which will ensure their wise multiple use in the total public interest. The Governor shall develop the California Comprehensive Ocean Area Plan to accomplish this objective.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

Library references
Navigable Waters ⟨=3.
C.J.S. Navigable Waters § 10 et seq.

§ 8801. Objectives of plan

This plan for the conservation and development of marine and coastal resources should be developed so as to contribute to the following objectives:

(a) The accelerated and responsible development of the resources of the marine and coastal environment for the benefit of the people of California by the increased utilization of mineral, food, and other living resources of the sea, the improvement of commerce and transportation, and the wise use of coastal, tide, and submerged lands to meet the demands of population growth in the coastal zone. With special reference to the coastline, determination should be made of the priorities of development that are required by the public interest and by the needs of the future population of the state.

(b) The expansion of human knowledge of the marine environment.

(c) The encouragement of investment, by private enterprise in the exploration, technological development, marine commerce, and economic utilization of the resources of the marine environment.

(d) The continuation and improvement of the role of the State of California as a leader in the marine sciences and the development of ocean resources.

(e) The advancement of education, research, and training in marine sciences.

(f) The development and improvement of the capabilities, performance, use, and efficiency of vehicles, equipment, and instruments for use in exploration, research, surveys, the recovery of resources, and the transmission of energy in the marine environment.

(g) The effective utilization of the scientific and engineering resources of the state, with close cooperation among all interested agencies, public and private, in order to avoid unnecessary waste or duplication of effort, facilities, and equipment.

(h) The cooperation by the state with other states, the federal government, other nations, and groups of nations and national and international organizations in marine science activities when such cooperation is in the interest of the State of California.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

ARTICLE 2. DEFINITIONS

Sec.
8805. Marine service.
8806. Marine and coastal environment.
8807. Short title.

Article 2 added by Stats.1967, c. 1642, p. 3934, § 1.

Asterisks * * * indicate deletions by amendment

§ 8805. Marine science

For the purposes of this chapter the term "marine science" shall be deemed to apply to oceanographic and scientific endeavors and disciplines, and engineering and technology in and with relation to the marine and coastal environment.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8806. Marine and coastal environment

For the purposes of this chapter the term "marine and coastal environment" shall be deemed to include all of the following:

(a) The oceans.

(b) The continental shelf and slope, coastal lands, beaches, tidelands, and submerged lands of the State of California.

(c) The seabed and subsoil of the submarine areas adjacent to the coasts of California, and the islands thereof, to a depth of 200 meters, or beyond that limit, to where the depths of the superjacent waters limit the exploitation of the natural resources of such areas.

(d) The mineral and living resources thereof.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8807. Short title

This chapter shall be known and may be cited as "The Marine Resources Conservation and Development Act of 1967."
(Added Stats.1967, c. 1642, p. 3934, § 1.)

ARTICLE 3. CREATION AND MEMBERSHIP

Sec.
8810. Creation.
8811. Membership; interim investigating committee.
8812. Term; compensation.
8813. Chairman and vice chairman; selection.

Article 3 added by Stats.1967, c. 1642, p. 3934, § 1.

§ 8810. Creation

There is hereby created in the state government the California Advisory Commission on Marine and Coastal Resources, hereinafter in this chapter referred to as the "commission."
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8811. Membership; interim investigating committee

The commission shall consist of the following members:

(a) Twenty-five members, appointed by the Governor and confirmed by the Senate, from the academic, research, development, and marine law communities, both public and private, concerned with the conservation and orderly utilization of the resources of the marine and coastal environment.

(b) Five members of the public appointed by the Governor and confirmed by the Senate, representing various groups interested in coastline resources conservation or specialized disciplines related thereto.

(c) The Committee on Rules of the Senate shall appoint three Members of the Senate, and the Speaker of the Assembly shall appoint three Members of the Assembly. The Members of the Senate and the Members of the Assembly so appointed shall meet with the commission and participate in its activities to the extent that such participation is not incompatible with their positions as Members of the Legislature.

For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and as such shall have the powers and duties imposed upon such a committee by the Joint Rules of the Senate and the Assembly.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8312. Term; compensation

The members of the commission shall serve at the pleasure of their respective appointing powers. The members shall serve without compensation, but each of the members appointed from outside the state or federal government shall be reimbursed for all necessary expenses actually incurred in the performance of his duties. Each member representing the state government shall serve without additional compensation to that received for their services to the state government, but shall be reimbursed for necessary travel expenses.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8313. Chairman and vice chairman; selection

The Governor shall select the commission chairman and vice chairman from among its members. The vice chairman shall act as chairman in his absence.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

ARTICLE 4. POWERS OF THE COMMISSION

Sec.
8315. Meetings.
8316. Rules of procedure; attendance of meetings by representatives of public agencies.
8317. Consultant; clerical assistants; employment.
8318. Cooperation of state agencies in furnishing information.
8319. Contracts and agreements.
8320. Authority to perform duties.

Article 4 added by Stats.1967, c. 1642, p. 3934, § 1.

§ 8315. Meetings

The commission shall meet at such times and in such places as it may deem necessary to fulfill its responsibilities.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8316. Rules of procedure; attendance of meetings by representatives of public agencies

The commission shall adopt its own rules of procedure. The commission shall not, however, exclude from attendance at any of its meetings representatives of public agencies involved in or affected by the conservation and utilization of marine resources.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8317. Consultant; clerical assistants; employment

The commission shall employ a consultant and the necessary clerical assistants.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8318. Cooperation of state agencies in furnishing information

The commission is authorized to secure directly from any executive department, agency, or independent instrumentality of the state government any information it deems necessary to carry out its functions under this chapter. Each department, agency, and independent instrumentality is authorized to cooperate with the commission and, to the extent permitted by law, to furnish such information to the commission, upon request made by the chairman.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8319. Contracts and agreements

The commission is authorized to execute such contracts and agreements with other state agencies, the federal government, and private consultants as the commission may deem necessary to achieve the objectives of this chapter.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8820. Authority to perform duties

The commission [illegible] may and all other things [illegible] to enable it fully and adequately to perform [illegible] duties and to exercise [illegible] powers.
(Added Stats.1967, c. 1642, p. [illegible], § 1.)

ARTICLE 5. RESPONSIBILITIES AND DUTIES OF THE COMMISSION

Sec.
8825. Review of comprehensive ocean area plan; recommendations.
8826. Investigation and study of marine sciences and marine and coastal environment.
8827. Annual report.

Article 5 added by Stats.1967, c. 1642, p. 3934, § 1.

§ 8825. Review of comprehensive ocean area plan; recommendations

The commission shall review the California Comprehensive Ocean Area Plan and recommend any changes or additions it deems desirable.

The commission shall consider the interest and role of the state in the conservation and utilization of marine and coastal resources, and shall recommend the organization structure of state government which can most effectively carry out its provisions. It shall consider the following specific elements and recommend policies for adoption by administrative or legislative action, whichever is appropriate:

(a) The effects of population growth and urbanization on the marine and coastal environment.

(b) Land use in the coastal zone.

(c) The administration of tide and submerged lands.

(d) The conservation and utilization of the mineral and living resources of the marine environment.

(e) Recreation.

(f) Wastes management, water quality, and pollution control.

(g) Water and power development, including the use of nuclear energy.

(h) Transportation and trade in the coastal zone and on the high seas.

(i) Engineering and technology in the coastal and deep ocean environments.

(j) Research and education.

(k) Weather, climate, and the monitoring of oceanographic conditions.

(l) Social, economic, and legal matters relative to the conservation and utilization of ocean resources.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8826. Investigation and study of marine sciences and marine and coastal environment

The commission shall undertake a comprehensive investigation and study of all aspects of the marine sciences and the marine and coastal environment in and proximate to the State of California, including but not limited to all of the following:

(a) A review of the known and estimated future needs for natural resources from the marine and coastal environment necessary to maintain an expanding state economy. With special reference to the coastline, the commission shall prepare a report for submission to the Governor and the 1969 Regular Session of the Legislature which sets forth the public interest in the coastline of California, together with recommended legislation defining and protecting such public interest.

(b) A survey of all significant existing and planned marine science activities in the State of California, including the research, educational, developmental, and administrative policies, programs, and accomplishments of all departments and agencies of the state which are engaged in such activities.

(c) A determination of the surveys, applied research programs, and ocean engineering projects required to obtain the needed natural resources from the marine and coastal environment.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

§ 8827. Annual report

The commission shall transmit to the Governor and the Legislature in January of each year a report, which shall include a comprehensive description of the activities and accomplishments of all agencies of the State of California in the conservation and development of marine and coastal resources during the preceding fiscal year, and an evaluation of such activities and accomplishments in terms of the continuing objectives set forth pursuant to this chapter.

Any such reports transmitted to the Governor and the Legislature pursuant to this section shall contain such recommendations for legislative and administrative action as the commission considers necessary or desirable to achieve the continuing objectives of this chapter, and shall contain an estimate of the funding requirements of each agency and department of the State of California for activities in the conservation and development of marine and coastal resources during the succeeding fiscal year.

In addition, the commission may transmit to the Governor and the Legislature from time to time such other reports as it may deem advisable.
(Added Stats.1967, c. 1642, p. 3934, § 1.)

Excerpts from pertinent administrative and legislative documents:

DOCUMENTS PERTINENT TO COAP

INTERAGENCY COUNCIL FOR OCEAN RESOURCES
(Portion of Governor's Executive Order 67-25, August 24, 1967, establishing ICOR)

The Council's responsibilities shall be to:

A. Develop a California Comprehensive Ocean Area Plan to meet the needs of the people of the State of California and to support our national defense efforts;

B. Do all things necessary to secure an inventory of ocean-oriented projects, monitor and coordinate said projects and encourage the activation of new projects;

C. After consideration of pending or needed ocean-oriented projects, designate the lead agency within state government to be responsible for planning and implementation;

D. Where deemed advisable establish technical committees within government to carry out its objectives; and

E. Discharge such other duties and perform such functions as may be assigned by the Governor for the creation and activation of the Comprehensive Ocean Area Plan.

POLICY AND OBJECTIVES OF THE COMPREHENSIVE OCEAN AREA PLAN*/

Article 1. Declaration of Policy and Objectives

8800. It is hereby declared to be the policy of the State of California to develop, encourage, and maintain a comprehensive, coordinated state plan for the orderly, long-range conservation and development of marine and coastal resources which will ensure their wise multiple use in the total public interest. The Governor shall develop the California Comprehensive Ocean Area Plan to accomplish this objective.

8801. This plan for the conservation and development of marine and coastal resources should be developed so as to contribute to the following objectives:

(a) The accelerated and responsible development of the resources of the marine and coastal environment for the benefit of the people of California by the increased utilization of mineral, food, and other living

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*/Portions of Section 1, Chapter 10, Division 1, Title 2 of Government Code, "The Marine Resources Conservation and Development Act of 1967"

resources of the sea, the improvement of commerce and transportation, and the wise use of coastal, tide, and submerged lands to meet the demands of population growth in the coastal zone. With special reference to the coastline, determination should be made of the priorities of development that are required by the public interest and by the needs of the future population of the state.

(b) The expansion of human knowledge of the marine environment.

(c) The encouragement of investment by private enterprise in the exploration, technological development, marine commerce, and economic utilization of the resources of the marine environment.

(d) The continuation and improvement of the role of the State of California as a leader in the marine sciences and the development of ocean resources.

(e) The advancement of education, research, and training in marine sciences.

(f) The development and improvement of the capabilities, performance, use, and efficiency of vehicles, equipment, and instruments for use in exploration, research, surveys, the recovery of resources, and the transmission of energy in the marine environment.

(g) The effective utilization of the scientific and engineering resources of the state, with close cooperation among all interested agencies, public and private, in order to avoid unnecessary waste or duplication of effort, facilities, and equipment.

(h) The cooperation by the state with other states, the federal government, other nations and groups of nations and national and international organizations in marine science activities when such cooperation is in the interest of the State of California.

Article 5. Responsibilities and Duties of the Commission*/

8825. The commission shall review the California Comprehensive Ocean Area Plan and recommend any changes or additions it deems desirable.

The commission shall consider the interest and role of the state in the conservation and utilization of marine and coastal resources, and shall recommend the organization structure of state government which can most effectively carry out its provisions. It shall consider the following specific elements and recommend policies for adoption by administrative or legislative action, whichever is appropriate:

(a) The effects of population growth and urbanization on the marine and coastal environment.
(b) Land use in the coastal zone.
(c) The administration of tide and submerged lands.
(d) The conservation and utilization of the mineral and living resources of the marine environment.
(e) Recreation.
(f) Wastes management, water quality, and pollution control.
(g) Water and power development, including the use of nuclear energy.
(h) Transportation and trade in the coastal zone and on the high seas.
(i) Engineering and technology in the coastal and deep ocean environments.

*/California Advisory Commission on Marine and Coastal Resources.

(j) Research and education.
(k) Weather, climate, and the monitoring of oceanographic conditions.
(l) Social, economic, and legal matters relative to the conservation and utilization of ocean resources.

ADDITIONAL PLANNING OBJECTIVES FOR THE COAP
(Adopted by ICOR, August 25, 1969)

1. Provide for the orderly, efficient development and use, consistent with sound conservation principles, of all marine and coastal resources for economic, recreational, educational, scientific, and necessary defense purposes, stressing multiple uses that are consistent with the total public interest.

2. Maintain and, where indicated, improve the quality of the marine and coastal environment, including its amenities and aesthetic values.

3. Encourage the wise use of renewable and non-renewable marine resources.

OBJECTIVE OF THE CALIFORNIA COMPREHENSIVE OCEAN AREA PLAN
(Recommended by CMC, their Second Annual Report: 1969)

The broad objective of the California Comprehensive Coastal Area Plan is to provide a framework for the conservation and use of California's marine and coastal resources for the social and economic benefit of the people; more specifically, the goals of the plan are to:

1. Maintain and, where indicated, improve the quality of the marine and coastal environment, including its amenities and esthetic values;

   The amenities and esthetic values of the natural marine and coastal environment represent one of California's greatest assets. Scenic beauties--such as vistas of beaches, sea cliffs, salt marshes, and waves--as well as sounds and odors that are peculiar to the ocean should be preserved for man's enjoyment. Development of marine and coastal resources must take these qualities into account.

2. Insure the continued existence of sufficient populations of all species of living organisms for economic, recreational, educational, and scientific purposes;

   The present generation of man has the obligation to pass on to future generations all species of living resources that now exist. Man, in making modification of the marine

and coastal environment, must use discretion in recognition of the delicate ecological interrelationships. Renewable resources, if wisely used, can be available indefinitely for economic, recreational, educational and scientific purposes.

3. Provide for the orderly, efficient, balanced development and use, consistent with sound conservation principles, of living and non-living marine and coastal resources for economic, recreational, educational, scientific and necessary defense purposes;

The ocean and its shoreline provide space and resources for a wide variety of human uses, both consumptive and non-consumptive. These spaces and resources are not unlimited; therefore, to minimize conflicts and waste, it is important that plans for all uses be carefully developed to take optimum advantage of the particular characteristics of each given area, that environmental quality and conservation considerations are adequately taken into account, and that multiple uses be stressed where feasible and desirable.

(Recommended by CMC Coastal and Tidelands Subcommittee, September 1969)

The COAP should contain objectives that will make it possible to guide the location of oil refineries, power generation installations, open space preserves, parks, commercial and recreational harbors and other facilities and land uses which are of statewide concern, and to guide all state programs which relate to the shoreline, including state lands granting and leasing, harbor facility loans, state park acquisitions, and other financial grants to localities. These policies would not necessarily pinpoint locations, but would simply indicate the principles which should be followed in deciding on locations, so as to avoid an infringement on values which are of state or regional concern.

ASSUMPTIONS BASIC TO DEVELOPMENT OF COASTAL LAND-USE POLICY
(Recommended by CMC, their second Annual Report: 1969)

1. Maintenance, and where indicated, improvement of environmental quality will be a principal consideration in all coastal resource use allocations.

2. The public interest will be the primary consideration against which all uses must be measured.

3. Planning for allocation of local coastal resources will be done at the local level subject to compliance with policy and criteria to be promulgated in the Comprehensive Ocean Area Plan.

4. Established policies and criteria will provide in some manner for joint use of resources by compatible activities and for allocation of exclusive use by non-compatible activities.

5. The Comprehensive Ocean Area Plan, based on a Coastal Land Use Inventory, will include either a percentage allocation of the resource to all possible uses based on weighted criteria, a designation of certain specific sites to special uses, a per capita allocation, or a combination of the methods.

6. All criteria established for allocation of coastal resources will provide for maximum retention of "options for the future".

DEFINITION OF COASTAL ZONE

For planning purposes of the 1972 COAP, the primary area of study will be the area extending inland approximately ½ mile from the mean low tide and seaward to the outermost limit of the State boundaries. In order of planning priority within the above definition of the Coastal Zone, the following areas will be considered above and beyond the primary area: (1) landward from the ½-mile line to the landward boundary of the coastal counties and seaward to the outer edge of the continental shelf; (2) any other extended areas of land and water of importance having an influence or impact on special coastal zone interests.

(Definitions adopted by ICOR, November 19, 1969)

Zone A -- Primary Ocean Planning Area (Coastal)

Includes publicly and privately owned lands inland to a variable distance from beaches and margins of bays and estuaries but normally does not extend further than the highest elevation in the nearest coastal mountain range. It further includes tide and submerged lands lying seaward to a variable distance from the beaches but normally does not extend further seaward than the outermost limit of the State's boundaries.

The variable distance is on the order of ½-mile inland unless studies completed during the plan preparation indicate a different extent.

Zone B -- Secondary Ocean Planning Area (Offshore and Inland)

Includes the area extending from the seaward limit of Zone A to the outer limit of the continental shelf, and the area extending from the inland limit of Zone A to the landward boundary of the coastal counties, and shall not be inconsistent with other State planning areas.

Zone C -- Tertiary Ocean Planning Area

> Includes other extended areas of land and water of importance having an influence or impact on special interests, such as fisheries and transportation.

The planning area within the San Francisco Bay and Delta would be included within Zone A, and coincide with the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, in addition to the deep water ship channels to Sacramento and Stockton and the associated navigation and port facilities.

Source: Department of Navigation and Ocean Development (COAP Development Program), BACKGROUND: California Comprehensive Ocean Area Plan, Sacramento, Calif., October, 1970, pp. 8-13.

STATE OF CALIFORNIA POLICY ON THERMAL POWER PLANTS[1/]

I. OBJECTIVES AND PRINCIPLES

The objectives of the State of California are to develop and execute programs for conservation, enhancement, and prudent use of its resources.

It is the policy of the State of California to ensure that the location and operation of thermal power plants will enhance the public benefits and protect against or minimize adverse effects on the public, on the ecology of the land and its wildlife, and on the ecology of State waters and their aquatic life. Also, the public's opportunity to enjoy the material, physical, and aesthetic benefits of these resources shall be preserved to the greatest extent feasible.

It is also the policy of the State of California to encourage the use of nuclear energy, recognizing that such use has the potential of providing direct economic benefit to the public, thus helping to conserve limited fossil fuel resources and promoting air cleanliness.

Because sites of power plants often are critical to the interests of the State, plant owners should meet with the State's Secretary for Resources early in the planning stage to review and define proposed locations.

1/. Adopted June 30, 1965. Revised March 12, 1969

State of California Policy
on Thermal Power Plants

It is the State's intent to apply flexibly the criteria presented in Section III, and to seek courses of action which will balance the orderly processes of meeting the increasing demands for power plant location and operation with the broad interests of the public. The policy applies equally to all organizations, public and private.

II. STATE OF CALIFORNIA POWER PLANT SITING COMMITTEE

To ensure implementation of the State of California policy a committee called the State of California Power Plant Siting Committee has been established. Among its functions is the review of proposed power plant sites throughout the State as to their conformance with this policy. The committee consists of representatives of the Departments of Conservation Fish and Game, Harbors and Watercraft, Parks and Recreation, Public Health, and Water Resources; the State Lands Division; the State Air Resources and Water Resources Control Boards; and the Regional Water Quality Control Board in whose jurisdiction the proposed site lies.

Individual members of the committee are delegated the authority and responsibility, by their respective department directors or board executive officers, for reviewing proposed power plant sites, for consulting with all concerned parties within their respective departments or boards on each proposed site, for seeking resolution of conflicts at whatever level of management required, for keeping the department director or board executive officer informed.

of the status of siting actions, and finally, for communicating in writing the comments, conclusions, stipulations, and official position of the department or board relative to each proposed site. When the need arises and time does not permit review by either a state or regional control board, the control board staff member on the siting committee may be called upon for unofficial comments, but only of a technical nature.

It should be clearly understood that a site may be selected and approved long before many of the details of plant design and operation are firmly established. Site approval by the State of California Power Plant Siting Committee need only recognize the necessity of developing said details within the framework of the overall quality and integrity of the natural environment and in conformance with statutory requirements (i.e., Department of Public Health and Regional Water Quality Control Board waste discharge requirements, State Water and Air Quality Standards, etc.) prior to operation of the plant.

III. SPECIFIC CONSIDERATIONS REGARDING POWER PLANT LOCATION, CONSTRUCTION, AND OPERATION

The following criteria will be considered by the State of California as a basis for its position in respect to the suitability of power plant site plans. These criteria, with the exception of those specifically identified as

applying to radioactive discharges only, shall apply to both nuclear and fossil fuel plants. It is recognized that a particular site and a particular plant may require some deviation from these guides; thus, early conferences should be arranged between the proposer of the plant and the State of California Power Plant Siting Committee for the purpose of reviewing the plan and reaching a mutual understanding of all relevant factors.

Since expansion or modification of units at existing sites may affect the ecology, atmospheric quality, recreation, and aesthetics of the area, proposed modifications or additions must be evaluated by the State of California Power Plant Siting Committee as early as possible in the planning stage.

a. State of California Concurrence

Concurrence of the State of California will depend on such factors as:

1. Effect of the plant and its operation on:

(a) Existing or proposed plans of the State, local governmental, and/or private units for other developments which may be in conflict due to site location, use of water, etc.

(b) Existing or proposed policies for water quality prepared by the State or Regional Water Quality Control Boards.

(c) Fish and wildlife, or associated forms of aquatic life upon which they are dependent.

(d) Existing or proposed policies for air quality control prepared by the State Air Resources Board or by the local or regional authority.

2. The effect on the resources of the State and local area of the proposed eventual total power generation, type of fuel, cooling water requirements, or type of cooling.

3. The overall effect of the power plant and its operation on the total environment of the area.

b. Conservation of Energy

Factors which may contribute to the conservation of energy are important in evaluating power plant sites. Generally speaking, plants should be located in reasonable proximity to load centers, if practicable, thereby reducing energy losses in transmission. Conservation of energy also is effected by selecting sites which contribute to efficient operation, such as the availability of ample quantities of low temperature condenser cooling water requiring a minimum of pumping.

c. Recreation and Aesthetic Considerations

Important recreational and scenic areas must be preserved

State of California Policy
on Thermal Power Plants

to as great a degree as possible when selecting sites for power stations. Therefore:

1. The recreational capacity of the site should not be impaired but, if feasible, should be enhanced by construction and operation of the plant.

2. Coastal plants should be set back from the beach to the degree necessary to preserve the full and unrestricted width of the beach and to allow reasonable public use of the beaches and adjacent areas.

3. Beaches impaired during construction shall be restored to a condition equal to or better than the pre-construction condition.

4. Design of plant and landscaping of the plant site should be harmonious with the general natural features of the area.

5. Optimum use should be made of features associated with the plant, such as artificial reefs, piers, and warm water discharges, with the objective to provide public access and to enhance fisheries and other recreational opportunities. Consideration also should be given to navigational enhancement, including breakwaters, groins, protected mooring

areas, etc., to the extent that such features are consistent with use of the site for power generation.

6. Consistent with safety considerations and regulations, as much as possible of the plant area should be made available to the public for recreational purposes.

7. With due regard to conservation of energy as discussed in Section III b, plants should be located so that transmission lines can be routed to avoid residential or park areas, and the impairment of scenic values.

8. Where recreational, aesthetic, fish and wildlife, or other considerations are important, alternative sites should be considered.

d. Water Quality Considerations

An environmental evaluation program must be developed to meet the standards of the State Department of Public Health and the Regional Water Quality Control Board and must include pre-discharge monitoring of receiving waters to document pre-operational water quality and aquatic ecology, and to provide data to assist the appropriate Regional Water Quality Control Board to develop sound waste discharge requirements.

The environmental evaluation program may be prepared by the utility in consultation with concerned State agencies, and submitted to the siting committee for review; or the

program may be prepared by the appropriate Regional Water Quality Control Board. That regional board may prepare detailed specifications for this monitoring pursuant to its procedures and in consultation with the utility, the State Department of Fish and Game, the State Department of Public Health, the State Department of Water Resources, and other State and local agencies having responsibility for the quality of those receiving waters. The regional board may forward the pre-discharge monitoring specifications to the committee for inclusion in a broader agreement between the State and the utility.

The Regional Water Quality Control Board may also prepare specifications for post-operational monitoring of receiving waters and/or effluent according to its procedures. Such monitoring shall be adequate to show compliance with the waste discharge requirements which the regional board prescribed. The regional board may file a copy of the post-operational monitoring specifications with the siting committee.

It is important when considering the environmental surveillance program that attention be given to the recommendations of the State Departments of Fish and Game and Parks and Recreation. Before final plans are drawn up, the Department of Water Resources and the State Lands Commission also should be consulted with respect to siting criteria on

such matters as beach erosion control and surface and ground water protection.

The above requirements, with the exception of those identified as relating specifically to radioactive wastes, also shall apply to fossil fuel plants.

e. Air Quality Considerations

The impact of the proposed power generating plant upon air quality in the vicinity and in the air basin in which the site is located must be considered, to preserve the high standards of air purity. Proposals must include information on the type and quantity of fuel to be used, the estimated quantities of pollutants to be emitted, and the proposed controls, and the requirements of local authorities, including the status of permits where such are required.

At an early stage in the selection of the site an appraisal of the ambient air quality in the basin and the meteorological conditions should be made to determine the potential for air pollution resulting from the plant operations.

Care should be taken in the selection of the site to ensure that operation of the plant will be in conformance with the air quality standards of the State Air Resources Board and the air pollution control district having jurisdiction.

State of California Policy
on Thermal Power Plants

f. Geologic and Seismic Conditions

At an early stage in the selection of a site, an appraisal of the geologic and seismic conditions should be made to adequately determine the potential for damage due to geologic or seismic activity. The utility will furnish the siting committee with copies of all geologic reports pertaining to the site which are filed with governmental agencies.

g. Cooling Water Considerations

1. The location and construction of cooling water intake and discharge lines are of particular importance, and agreement between the State of California and the power plant builder on this feature of construction should be reached during the planning stage.

2. The design of cooling water systems to provide reasonable protection for aquatic life should also be a matter of agreement between the State of California and the plant builder before construction. Compliance with such agreement on the design of cooling water systems does not relieve the proponent of responsibility for complying with waste discharge requirements of the Regional Water Quality Control Boards.

State of California Policy
on Thermal Power Plants

IV. OTHER CONSIDERATIONS

Several State organizations other than those identified in Paragraph II, Page 2, may have specific interests in the location, construction, and operation of power plants, such as the State Departments of Agriculture, Industrial Relations, and Public Works. These departments, as identified with particular proposed sites, will be added to the State of California Power Plant Siting Committee in those specific cases.

Because sites of power plants often are critical to the interests of the State, it must be reiterated that plant owners should meet with the Secretary for Resources to review and define proposed locations early in the planning stage.

Source: New England River Basins Commission, Laws and Procedures of Power Plant Siting in New England, Boston, Mass., October, 1970, Appendix C.

Adopted by:

N. B. Livermore Jr.

NORMAN B. LIVERMORE, JR.
Secretary for Resources

MAR 12 1969

(Date)

APPENDIX G

HAWAII

Act 187-1961 (The State Land Use Law of 1961) [Chapter 98-H, Chapter 128, Section 9.2 of the Revised Laws of Hawaii, 1955].

Act 32-1963 (Amending the State Land Use Law) [Section 98-H-4 of the Revised Laws of Hawaii, 1955].

Act 205-1965 (Amending the State Land Use Law) [Chapter 98-H Chapter 128, Section 2a of the Revised Laws of Hawaii, 1955].

Act 135-1970 (Open Space Appropriations).

Act 136-1970 (Shoreline Setback Areas).

Act 137-1970 (Office of the Marine Affairs Coordinator).

Act 139-1970 (Natural Areas Reserve System).

(d) Establish a continuing program for informing the federal government, other state governments, governments of nations with interests in the Pacific basin, private and public organizations involved in marine science and technology, and commercial enterprises of Hawaii's leadership potential as the center for marine affairs;

(e) Coordinate the State's involvement in national and international efforts to investigate, develop and utilize the marine resources of the Pacific basin;

(f) Develop programs to continuously encourage private and public marine exploration and research projects which will result in the development of improved technological capabilities in Hawaii;

(g) Formulate specific program and project proposals to solicit increased investment by the federal government and other sources to develop Hawaii's marine resources and coordinate the preparation and submission of program and project proposals of State agencies;

(h) Serve as consultant to the governor, State agencies and private industry on matters related to the preservation and enhancement of the quality of Hawaii's marine environment;

(i) Perform such other services as may be required by the governor and the legislature;

(j) Contract for services when required for implementation of this Act; and

(k) Prepare and submit an annual report to the governor and to the legislature on the implementation of this Act and all matters related to marine affairs.

SECTION 4. **Appropriations.** There is appropriated from the general revenues of the State of Hawaii the sum of $470,000, or so much thereof as may be necessary, to be expended by the marine affairs coordinator for the following purposes:

(a) $30,000 for the planning and coordination of activities to hold an international marine exposition in Hawaii in 1976;

(b) $75,000 for the preparation and publication of a detailed atlas defining and tabulating Hawaii's marine resources;

(c) $25,000 for the planning, coordination and convening of a conference in Hawaii of the representatives of government, science, technology, and industry from the nations of the Pacific basin to plan the Pacific region portion of the international decade of ocean exploration;

(d) $50,000 for the development of preliminary plans for marine science research parks;

(e) $100,000 for a pilot marine resources survey of the area within boundaries set at Koko Head and the north margin of Kahana Bay on the island of Oahu, provided that State funds shall be matched equally by private industry and by more than twice the amount by funds provided by the federal government;

(f) $190,000 for the survey, research, development, and promotion of Hawaii's marine resources by private industry, provided that any expenditure of State funds shall be matched by an equal amount from private industry.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 22, 1970.)

A Bill for an Act Relating to Preservation of Natural Resources by Providing for a System of Natural Areas.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter thereto to be appropriately numbered and to read:

"CHAPTER

NATURAL AREA RESERVES SYSTEM

Sec. . Findings and declaration of necessity. The legislature finds and declares that (1) the State of Hawaii possesses unique natural resources, such as geological and volcanological features and distinctive marine and terrestrial plants and animals, many of which occur nowhere else in the world, that are highly vulnerable to loss by the growth of population and technology; (2) these unique natural assets should be protected and preserved, both for the enjoyment of future generations, and to provide base lines against which changes which are being made in the environments of Hawaii can be measured; (3) in order to accomplish these purposes the present system of preserves, sanctuaries and refuges must be strengthened, and additional areas of land and shoreline suitable for preservation should be set aside and administered solely and specifically for the aforesaid purposes; and (4) that a statewide natural area reserves system should be established to preserve in perpetuity specific land and water areas which support communities, as relatively unmodified as possible, of the natural flora and fauna, as well as geological sites, of Hawaii.

Sec. . Definitions. As used in this chapter, unless otherwise indicated by the context:

'Department' means the department of land and natural resources.

'Commission' means the natural area reserves system commission.

'Natural reserve area' means an area designated as a part of the Hawaii natural area reserves system, pursuant to criteria established by the commission.

Sec. . Hawaii natural area reserves system. There shall be a Hawaii natural area reserves system, hereinafter called the 'reserves system', which shall consist of areas in the State of Hawaii which are designated in the manner hereinafter provided as natural area reserves. The reserve system shall be managed by the department of land and natural resources.

Sec. . Powers of the department. The department of land and natural resources may designate and bring under its control and management, as part of the reserves system any and various areas as follows:

(1) State of Hawaii owned land under the jurisdiction of the department may be set aside as a natural area reserve by resolution of the department, subject to the approval of the governor by executive order setting the land aside for such purposes.

(2) New natural area reserves may be established:

(A) By gift, devise or purchase;

(B) By eminent domain pursuant to chapter 101; or

(C) By the setting aside of State of Hawaii owned land for such purposes by the governor, as provided by section 171-11, Hawaii Revised Statutes.

Sec. . Rules and regulations. (a) The department of land and natural resources may, subject to chapter 91, make, amend and repeal rules and regulations having the force and effect of law, governing the use, control and protection of the areas included within the reserves system, provided, that no rule or regulation which relates to the permitted use of any area assigned to the reserves system shall be valid and no use of any such area shall be permitted un-

all constitute a forfeiture on the part of the owner of any right to change the use of his land for a minimum period of ten years, automatically renewable indefinitely, subject to cancellation by either the owner or the director of taxation upon five years notice at any time after the end of the fifth year. In case of a change in major land use classification by a State agency, such that the owner's land is placed within an urban district, the dedication may be cancelled within sixty days of the change, without the five years notice, by mutual agreement of the owner and the director of taxation.

(d) Failure of the owner to observe the restrictions on the use of his land shall cancel the special tax assessment privilege retroactive to the date of the petition, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher rate shall be payable with a five per cent per annum penalty from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over one calendar year to use the land in that manner requested in the petition or the overt act of changing the use for any period. Nothing in this paragraph shall preclude the State from pursuing any other remedy to enforce the covenant on the use of the land.

(e) The director of taxation shall prescribe the form of the petition. The petition shall be filed with the director of taxation by September 1 of any calendar year and shall be approved or disapproved by December 15. If approved, the assessment based upon the use requested in the dedication shall be effective on January 1, next.

(f) The owner may appeal any disapproved petition as in the case of appeal from an assessment.

(g) The term 'owner' as used in this section includes lessees of real property whose lease term extends at least ten years from the date of petition."

SECTION 4. *Appropriation.* There is hereby appropriated out of the general fund of the State of Hawaii the sum of $50,000, or so much thereof as may be necessary, to the State land use commission for the expense of establishing, operating and administering the functions of the commission for the period beginning July 1, 1961, and ending June 30, 1962.

SECTION 5. If any section or part of this Act is invalid for any reason, the invalidity shall not affect the validity of the remaining sections and parts of this Act.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 11, 1961)

APPENDIX A-2

ACT 32
H. B. No. 1070
H. D. 1

A BILL FOR AN ACT

AMENDING SECTION 98 H-4, REVISED LAWS OF HAWAII 1955, AS AMENDED, RELATING TO THE LAND USE LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to reduce the number of days which petitions for boundary changes may be processed. Experience has shown that the number of days required to process the petition under the present Act has caused undue hardship on some landowners.

SECTION 2. Section 98H-4, Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

Section 98H-4. *Amendments to district boundaries.* Any department or agency of the state or county, or any property owner or lessee may petition the commission for a change in the boundary of any district. Within five days of receipt, the commission shall forward a copy of the petition to the planning commission of the county wherein the land is located. Within forty-five days after receipt of the petition by the county, the county planning commission shall forward the petition, together with its comments and recommendations, to the commission. Upon written request by the county planning commission, the commission may grant an extension of not more than fifteen days for the receipt of such comments and recommendations. The commission may also initiate changes in district boundary which shall be submitted to the appropriate county planning agency for comments and recommendations in the same manner as any other request for a boundary change.

After sixty days but within one hundred and twenty days of the original receipt of a petition, the commission shall advertise a public hearing to be held on the appropriate island in accordance with the requirements of section 98H-3. The commission shall notify such persons and agencies that may have an interest in the subject matter of the time and place of the hearing. Within a period of not more than ninety days and not less than forty-five days after such hearing, the commission shall act upon the petition for change. The commission may approve the change with six affirmative votes. No change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified and either of the following requirements has been fulfilled: (a) the petitioner has submitted proof that the land is usable and adaptable for the use it is proposed to be classified, or (b) conditions and trends of development have so changed since the adoption of the present classification, that the proposed classification is reasonable."

SECTION 3. This Act shall take effect upon its approval.

Approved May 5, 1965—(S) John A. Burns, Governor of the State of Hawaii

APPENDIX A-3

ACT 205
H. B. No. 1016
H. D. 1
S. D. 3

A BILL FOR AN ACT
RELATING TO LAND USES IN THE STATE OF HAWAII

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Experience and research to date on the application of the provisions of Act 187, Session Laws of Hawaii 1961, have demonstrated the need for clarifying the provisions of said Act 187 not only with reference to the division of authority between the Land Use Commission and the counties, but also with respect to the hardship caused to land owners who wish to develop lands included in agricultural districts but where such lands are not at all suitable for agricultural uses. The purpose of this Act, therefore, is to clarify the provisions of Act 187, Session Laws of Hawaii 1961, in order to provide for a more effective administration and a more equitable application of the provisions of said Act 187.

SECTION 2. Chapter 98H, Revised Laws of Hawaii 1955 (1961 Supplement), relating to the State Land Use Commission, is hereby amended to read:

"CHAPTER 98H
STATE LAND USE COMMISSION

"Section 98H-1. Establishment of the commission. The State land use commission, hereinafter called the commission, is hereby created. The commission shall consist of seven members who shall hold no other public office and shall be appointed in the manner and serve for the term, set forth in section 14A-3. One member shall be appointed from each of the senatorial districts and one shall be appointed at large. The chairman of the board of land and natural resources and the director of the department of planning and economic development shall serve as ex-officio voting members. The commission shall elect its chairman from one of its appointed members. The members shall receive no compensation for their services on the commission, but shall be reimbursed for actual expenses incurred in the performance of their duties.

The commission shall be a part of the department of planning and economic development for administration purposes, as provided for in section 14A-4.

The commission may engage employees necessary to perform its duties, including administrative personnel and one or more field officers. One field officer shall be named as the executive officer of the commission. Field officers shall be persons qualified in land use analysis. Departments of the State government shall make available to the commission such data, facilities and personnel as are necessary for it to perform its technical duties. The commission may receive and utilize gifts and any funds from the federal or other governmental agencies. It shall adopt rules guiding its conduct, maintain a record of its activities, accomplishments and recommendations to the governor and to the legislature through the governor.

"Section 98H-2. Districting and classification of lands. There shall be four major land use districts into which all lands in the State shall be placed: urban, rural, agricultural and conservation. The commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the

boundaries of each district, provided that (a) in the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included; (b) in the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included; (c) in the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with high capacity for intensive cultivation; and (d) in the establishment of the boundaries of conservation districts, the 'forest and water reserve zones' provided in section 19-70, are hereby renamed 'conservation districts' and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to section 19-70, shall constitute the boundaries of the conservation districts, provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission. In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre in areas where 'city-like' concentration of people, structures, streets and urban level of services are absent, and where small farms are intermixed with such low density residential lots. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.

Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, and game and fish propagation; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; and open area recreational facilities.

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness and beach; conserving endemic plants, fish, and wildlife; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; and other related activities; and other permitted uses not detrimental to a multiple use conservation concept.

"Section 98H-3. Adoption of district boundaries. The commission shall prepare district classification maps not later than January 1, 1964 showing all the proposed boundaries of conservation, agriculture, rural and urban districts. At least one public hearing shall be held in each county prior to the final adoption of the district boundaries for that county. Notice of the time and place of such hearing shall be published in the same manner as notices required for public hearings by the planning commission of the appropriate county. If there is no planning commission, then the notice shall be published at least 20 days prior to the hearing in a newspaper of general circulation within the county. Such notice shall indicate the time and place that the maps showing the proposed district boundaries within the county may be inspected prior to the hearing.

At the hearing, interested owners, lessees, officials, agencies and individuals may appear and be heard. They shall further be allowed at least 15 days following the final public hearing held in the county to file with the commission a written protest or other comments or recommendations. The district boundaries within a county shall be adopted in final form within a period of not more than 90 days and not less than 45 days from the time of the last hearing in the county, provided that district boundaries for all counties shall be adopted in final form no sooner than May 1, 1964, nor later than July 1, 1964. The county concerned shall be furnished with copies of any written protest, comment or recommendation. The commission shall prepare and furnish each county with copies of classification maps for that county showing the district boundaries adopted in final form.

"Section 98H-4. Amendments to district boundaries. Any department or agency of the State or county, or any property owner or lessee may petition the commission for a change in the boundary of any district, interim or permanent. Within 5 days of receipt the commission shall forward a copy of the petition to the planning commission of the county wherein the land is located. Within 90 days after receipt of the petition the county planning commission shall forward the petition, together with its comments and recommendations, to the commission. The commission may also initiate changes in a district boundary which shall be submitted to the appropriate county planning agency for comments and recommendations in the same manner as any other request for a boundary change.

After 100 days but within 210 days of the original receipt of a petition the commission shall advertise a public hearing to be held on the appropriate island in accordance with the requirements of section 98H-3. The commission shall notify such persons and agencies that may have an interest in the subject manner of the time and place of the hearing. Within a period of not more than 90 days and not less than 45 days after such hearing the commission shall act upon the petition for change. The commission may approve the change with six affirmative votes. No change shall be approved unless the petitioner has submitted proof that the area is needed for a use other than that for which the district in which it is situated is classified and either of the following requirements has been fulfilled: (a) the petitioner has submitted proof that the land is usable and adaptable for the use it is proposed to be classified, or (b) conditions and trends of development have so changed since the adoption of the present classification, that the proposed classification is reasonable.

"Section 98H-5. Zoning.

(a) Except as herein provided, the powers granted to counties under section 138-42 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to the provisions of section 19-70.

(b) Within agricultural districts, uses compatible to the activities described in Sec. 98H-2 as determined by the commission shall be permitted. Other uses may be allowed by special permits issued pursuant to the provisions of this chapter. The county standards for agricultural subdivision existing as of May 1, 1963, shall constitute the minimum lot sizes of agricultural districts within the respective counties.

(c) Unless authorized by special permit issued pursuant to the provisions of this chapter, only the following uses shall be permitted within rural districts:

(1) Low density residential uses;
(2) Agricultural uses; and
(3) Public, quasi-public and public utility facilities.

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre.

"Section 98H-6. Special permit. The county planning commission and the zoning board of appeals of the City and County of Honolulu may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use his land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which his land is located or the zoning board of appeals in the case of the City and County of Honolulu for permission to use his land in the manner desired.

The planning commission, or the zoning board of appeals as the case may be, shall conduct a hearing within a period of not less than 30 nor more than 120 days from the receipt of the petition. The planning commission or the zoning board of appeals shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

The planning commission or zoning board of appeals may, under such protective restrictions as may be deemed necessary, permit such desired use, but only when such use would promote the effectiveness and objectives of this chapter. The planning commission or the zoning board of appeals shall act on such petition not earlier than 15 days after the public hearing. A decision in favor of the applicant shall require a majority vote of the total membership of the planning commission or of the zoning board of appeals, which shall be subject to the approval of the commission. A copy of the decision together with the findings shall

e transmitted to the commission within 10 days after the decision is ndered. Within 45 days after receipt of the county agency's decision, e commission shall act to approve or deny. A denial either by the ounty agency or by the commission, as the case may be, of the desired se shall be appealable to the circuit court of the circuit in which the nd is situated and shall be made pursuant to the Hawaii Rules of ivil Procedure.

"Section 98H-7. Adoption of regulations. The commission shall by nuary 1, 1964, prepare proposed regulations relating to matters within 's jurisdiction. At least one public hearing shall be held in each county the manner provided in section 98H-3 of this chapter prior to the nal adoption of its regulations. The final regulations for the state shall e adopted within a period of not more than 90 days and not less than 5 days from the time of the final hearings in the state provided that s regulations shall be adopted not later than July 1, 1964.

"Sectic 98H-8. Non-conforming uses. The lawful use of land or uildings ting on the date of establishment of any interim agricul- ural district and rural district in final form may be continued although ch use, including lot size, does not conform to the provisions of this apter; provided that no non-conforming building shall be replaced, econstructed or enlarged or changed to another non-conforming use nd no non-conforming use of land shall be expanded or changed to nother non-conforming use. In addition, if any non-conforming use of nd or building is discontinued or held in abeyance for a period of one ear, the further continuation of such use shall be prohibited.

"Section 98H-9. Amendments to regulations. By the same methods set orth in section 98H-4, a petition may be submitted to change, or the ommission may initiate a change in its regulations. No such changes hall, however, be made unless a hearing or hearings are held in each the counties. Within not less than 45 and not more than 90 days ter the last of such hearings, the commission shall act to approve or eny the requested change in regulations. Such petition for a change hall be based upon proof submitted that conditions exist that were ot present when the regulation was adopted or that the regulation oes not serve the purposes of this chapter.

"Section 98H-10. Use of field officers. Notwithstanding the provisions section 98H-4 requiring a hearing by the full commission, if any ap- lication requiring a hearing is received which the commission in the ourse of its regular meetings shall not be able to hear for more than 0 days, it may authorize a field officer to conduct such a hearing and ake a recommendation, provided all other necessary rules for hearings e adhered to. The recommendations of the field officer shall be sub- itted to the commission at its next meeting, and any recommendation, r rulings by the commission as a result of this recommendation, shall be ubject to a review of the full commission at the next hearing date sched- led for the county in which the land concerned is located, if either the ommission or the applicant notified the other party at least 20 days rior to this date.

"Section 98H-11. Periodic review of districts. Irrespective of changes nd adjustments that it may have made, the commission shall make a omprehensive review of the classification and districting of all lands nd of the regulations at the end of each five years following the adop- on thereof. The assistance of appropriate State and county departments hall be secured in making this review and public hearings shall be held n each county in accordance with the requirements set forth for the doption in final form of district boundaries and regulations under this apter.

"Section 98H-12. Enforcement. The appropriate county officer or gency charged with the administration of county zoning laws shall en- orce within each county the use classificaton districts adopted by the ommission and shall report to the commission all violations thereof.

"Section 98H-13. Penalty for violation. Any person who violates any rovision of this chapter, or any regulation established pursuant to this apter, shall be fined not more than $1,000.

"Section 98H-14. Adjustments of assessing practices. Upon the adop- on of district boundaries, certified copies of the classification maps owing the district boundaries shall be field with the department of xation. Thereafter, the department of taxation shall, when making as- ssments of property within a district, give consideration to the use or es that may be made thereof as well as the uses to which it is then evoted

"Section 98H-15. Conflict. Except as specifically provided by this apter and the regulations adopted thereto, neither the authority for e administration of the provisions of section 19-70 nor the authority vested in the counties under the provisions of section 138-42 shall be affected."

SECTION 3. Chapter 128.2 (a) is amended by adding the words "a rural district" between the words "agricultural district" and "and/or a conservation district".

SECTION 4. All district boundaries, interim and permanent, and all actions of the commission heretofore established or taken pursuant to the provisions of Act 187, Session Laws of Hawaii 1961, are hereby continued in full force and effect; provided that within such districts so established except conservation districts, the zoning regulations of the county shall apply.

SECTION 5. If any section or portion of this Act is held invalid for any reason, such invalidity shall not affect the validity of the remaining sections or portions of this Act.

SECTION 6. This act shall take effect upon its approval.

APPENDIX B

STATE OF HAWAII
LAND USE COMMISSION

PART I. RULES OF PRACTICE AND PROCEDURE*

Sub-Part A. Rules of General Applicability

1.1 These rules govern procedure before the Land Use Commission of the State of Hawaii under Act 187, Session Laws of Hawaii 1961, as now or hereafter amended, and such other related acts as may now or hereafter be administered by the Land Use Commission. They shall be construed to secure the just, speedy and inexpensive determination of every proceeding.

1.2 *Definitions*

(a) As used in the rules and regulations prescribed by the Commission, except as otherwise required by the context:

(1) The term "Commission" means the Land Use Commission.

(2) The term "Act" means Act 187, SLH 1961 as now or hereafter amended.

(3) Unless otherwise indicated the term "section" refers to a section of Act 187, SLH 1961 as now or hereafter amended.

(4) Petitioner. In proceedings involving petitions or applications for permission or authorization which the Commission may give under statutory or other authority delegated to it, the parties on whose behalf the petitions or applications are made are styled petitioners.

(5) Proceedings. The term "proceeding" as used in these rules shall mean the Commission's elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the Commission's jurisdiction, initiated by a filing or submittal or a Commission notice of order, and shall include (a) proceeding involving the adoption of district boundaries; (b) proceedings involving the adoption of land use regulations; (c) petitions or applications for the granting of any right, privilege, authority or relief under or from any provision of the Act or of any regulation or requirement made pursuant to a power granted by the Act; (d) an investigation or review instituted or requested to be instituted by the Commission; (e) other proceedings involving the adoption, amendment or repeal of any rule or regulation of the Commission, whether initiated by Commission order or notice or by petition of an interested person.

(6) Party. The term "party", wherever used in these rules, shall mean each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in a proceeding. The Attorney General, in his capacity as counsel for the Commission, shall be present at all proceedings governed by these rules. The Attorney General or his representative shall be designated as "Counsel for the Commission", and shall be served with copies of all

*Adopted by the Land Use Commission at the action meeting held in Kauai County July 8, 1969, Filed in the Lieutenant Governor's Office July 25, 1969, effective August 1969.

papers, pleadings, maps and documents as are all other parties to the same proceeding.

(b) Unless otherwise specifically stated, the terms used in rules and regulations promulgated by the Commission pursuant to powers granted by statute shall have the meaning defined by such statute, or if not defined by statute, in accordance with their plain and ordinary meaning.

(c) A rule or regulation which defines a term without express reference to the statute or to the rules and regulations, or to a portion thereof, defines such terms for all purposes as used both in the statute and in the rules and regulations, unless the context otherwise specifically requires.

(d) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things; words importing the plural may include the singular; and words importing the masculine gender may be applied to the feminine gender.

The Commission

(a) Office. The office of the Commission is at Honolulu, Hawaii. All communications to the Commission shall be addressed to the Land Use Commission, Department of Planning and Economic Development, State of Hawaii, Honolulu, Hawaii, unless otherwise specifically directed.

(b) Hours. The office of the Commission shall be open from 7:45 a.m. to 4:30 p.m. of each week-day unless otherwise provided by statute or executive order.

(c) Sessions. The Commission meets and exercises its powers in any part of the State of Hawaii. All meetings of the Commission shall be open to the public, except that the Commission may meet in executive session, from which the public may be excluded, by a recorded vote of not less than two-thirds of the total membership of the Commission. No order, regulation, ruling, contract, appointment or decision shall be finally acted upon at such executive session.

(d) Quorum and number of votes necessary to validate acts. Unless otherwise specifically provided by statute, a majority of all the members to which the Commission is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all the members to which the Commission is entitled shall be necessary to make any action of the Commission valid; provided, however, that any change in the boundary of any district pursuant to Section 205-4, Hawaii Revised Statutes, shall require the concurrence of six members.

(e) Executive Officer.

(1) The executive officer shall have charge of the Commission's official records and shall be responsible for the maintenance and custody of the docket, files, and records of the Commission, including the transcripts of testimony and exhibits, with all papers and requests filed in proceedings, the minutes of all action taken by the Commission and all its findings determinations, reports, opinions, orders, rules, regulations, and approved forms. The executive officer shall also prepare for the Commission the draft of an annual report of the Commission's activities, accomplishments, and recommendations for submission to the Governor and to the Legislature through the Governor.

(2) Authentication of Commission action. All orders and other actions of the Commission shall be authenticated or signed by the executive officer or such other persons as may be authorized by the Commission.

i) Field Officer.

(1) Defined. The term "field officer" as used in this part includes the executive officer of the Commission or any other employee qualified in land use analyses and authorized by the Commission to hold a hearing for the purpose of taking evidence and to make a recommendation to the Commission in a proceeding in which an application or petition has been filed with the Commission.

(2) Disqualification. A field officer assigned by the Commission to hold a hearing and to make a recommendation shall withdraw from a proceeding at any time he deems himself disqualified or he may be withdrawn by the Commission for good cause found after timely affidavits alleging personal bias or other disqualifications have been filed and the matter has been heard by the Commission or by the executive officer to whom the Commission has delegated the matter for investigation.

(3) Powers. A field officer designated by the Commission to hold a hearing and to make a recommendation in a proceeding shall have the following powers:

(a) To give notice concerning and to hold hearings;
(b) To administer oaths and affirmations;
(c) To examine witnesses;
(d) To issue subpoenas;
(e) To rule upon offers of proof and receive relevant evidence;
(f) To regulate the course and conduct of the hearing;
(g) To hold conferences, before or during the hearing, for the settlement or simplification of issues;
(h) To rule on motions and to dispose of procedural requests or similar matters;
(i) Within his discretion, or upon the direction of the Commission, to certify any question to the Commission for its consideration and disposition;
(j) To make a recommendation to the Commission in writing to be acted upon by the Commission in accordance with the Act.
(k) To dispose of any other matter that normally and properly arises in the course of proceedings, and to take any other action authorized by these rules, by the Act, or by any other statute.

(4) The field officer's authority in each case will terminate either upon the submission of his recommendation to the Commission or upon the certification of the record in the proceeding to the Commission or when he shall have withdrawn from the proceeding upon considering himself disqualified, or when he has been withdrawn by the Commission for good cause found.

(5) The recommendations of the field officer or any ruling of the Commission made on the basis of his recommendations shall be subject to review by the Commission at the next hearing date scheduled for the county in which the land concerned is located, if either the Commission or the applicant or petitioner notifies the other party at least twenty days prior to that date.

(g) Requests and submittals. All documents required to be filed with the Commission shall be filed in the office of the Commission at Honolulu, Hawaii, within such time limits as prescribed by law, rules and regulations or by order of the Commission; copies of official documents, or opportunity to inspect public records shall be made to the Commission office.

1.4 *Public Records*

(a) The term "public record" as used in this part is defined as in Section 92-4, Hawaii Revised Statutes, and shall include all maps, rules, regulations, written statements, of policy or interpretation formulated, adopted or used by the Commission, all final opinions and orders, minutes of meetings of the Commission and any other material on file in the office of the Commission unless accorded confidential treatment pursuant to statute or the rules of the Commission.

(b) All public records will be available for inspection in the office of the Commission, Honolulu, Hawaii, during established office hours unless public inspection of such records is in violation of any State or Federal law; provided that, except where such records are open under any rule of court, the Attorney General may determine which records may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding to which the Commission, the State, or any governmental agency or subdivision is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of the character, reputation or business of any person.

(c) Copies of public records. Public records printed or reproduced by the Commission in quantity shall be given to any person requesting the same and paying the actual cost thereof. Photocopies of public records shall be made and given by the executive officer to any person upon request and upon payment of the actual cost thereof, and certified copies of extracts from public records shall also be given by the executive officer upon

request and upon payment of 20 cents a folio of one hundred words for such extracts.

(d) Requests for public information, for permission to inspect official records or for copies of public records will be handled with due regard for the dispatch of other public duties.

Appearances and Practice before the Commission

(a) An individual may appear in his own behalf, a member of a partnership may represent the partnership, a bona fide officer or employee of a corporation or trust or association may represent the corporation, trust or association and an officer or employee of an agency of the State or a political subdivision of the State may represent such agency in any proceeding before the Commission.

(b) A person may be represented by or with counsel or any other person to whom he has given written or verbal authority in any proceeding under these rules.

(c) A person shall not be represented in any proceeding before the Commission or a hearing officer except as stated in paragraph (a) and (b) of this section.

(d) When an individual acting in a representative capacity appears in person or signs a paper in practice before the Commission, his personal appearance or signature shall constitute a representation to the Commission that under the provisions of these rules and the law, he is authorized and qualified to represent the particular person on whose behalf he acts. The Commission may at any time require any person transacting business with the Commission in a representative capacity to show his authority and qualification to act in such capacity.

(e) No person who has been associated with the Commission as a member, officer, employee or counsel shall be permitted at any time to appear before the Commission in behalf of or to represent in any matter, any party in connection with any proceeding or matter which such person has handled or passed upon while associated in any capacity with the Commission. No person appearing before the Commission in any proceeding or matter shall in relation thereto knowingly accept assistance from any person who would himself be precluded by this section from appearing before the Comimssion in such proceeding or matter.

(f) No person who has been associated with the Commission as a member, officer, employee or counsel thereof shall be permitted to appear before the Commission in behalf of, or to represent in any matter, any person in connection with any proceeding or matter which was pending before the Commission at the time of his association with the Commission unless he shall first have obtained the written consent of the Commission upon a verified showing that he did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during his association with the Commission.

Part B. Proceedings Before the Commission

General

(a) The Commission may on its own motion or on petition of any interested person or any agency of the State or County government hold such proceedings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation of its rules and regulations. For such purposes it may subpoena witnesses and require the production of evidence. Procedures to be followed by the Commission shall, unless specifically prescribed in these rules be such as in the opinion of the Commission will best serve the purposes of such proceedings. Also, any rule in Part I, Rules of Practice and Procedure, may be suspended or waived by the Commission or the presiding officer to prevent undue hardship in any particular instance.

(b) Commencement of proceeding. Proceedings are commenced by order of the Commission upon its own motion, or by the filing of petition or application the processing of which necessitates a statutory hearing.

Filing of Documents

(a) All pleadings, submittals, petitions, reports, maps, exceptions, briefs, memoranda and other papers required to be filed with the Commission in any proceeding shall be filed with the executive officer of the Commission. Such papers may be sent by mail or hand carried to the Commission office in Honolulu, Hawaii, within the time limit, if any, for such filing. The date on which the papers are actually received by the Commission shall be deemed to be the date of filing. Applications for changes in the Land Use District Boundaries shall be filed on the prescribed application form supplied by the executive officer of the Commission.

(b) All papers filed with the Commission shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8½" x 14" in size except that tables, maps, charts and other documents may be larger, folded to the size of the documents to which they are attached.

(c) All papers must be signed in ink by the party signing the same or his duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(d) Unless otherwise specifically provided by a particular rule, regulation or order of the Commission, one original shall be filed.

(e) The initial document filed by any person in any proceeding shall state on the first page thereof the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

1.8 *Docket.* The executive officer shall maintain a docket of all proceedings and each proceeding shall be assigned a number.

1.9 *Computation of Time.* In computing any period of time prescribed or allowed by these rules or regulations or order of the Commission, the day of the act, event or default, after which the designated period of time is to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday in the State of Hawaii, in which event the period runs until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays and holidays shall not be included in a computation when the period of time prescribed or allowed is ten days or less. A half holiday shall be considered as other days and not as a holiday.

1.10 *Continuances or Extensions of Time.* Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order or regulation, the Commission or its executive officer may (1) before the expiration of the prescribed period, with or without notice, extend such period; or (2) upon motion, permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to be the result of excusable neglect.

1.11 *Amendment of Documents and Dismissal.* If any document initiating or filed in a proceeding is not in substantial conformity with the applicable rules or regulations of the Commission as to the contents thereof, or is otherwise insufficient, the Commission, on its own motion, or on motion of any party, may strike or dismiss such document, or require its amendment. If amended, the document shall be effective as of the date of the original filing, if it relates to the same proceeding.

1.12 *Retention of Documents by the Commission.* All documents filed with or presented to the Commission may be retained in the files of the Commission. However, the Commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents.

1.13 *Public Information.*

(a) Unless otherwise provided by statute, rule or order of the Commission, all information contained in any pleading, submittal, petition, statement, recommendation, report, map, exception, brief, memorandum or other document filed with the Commission pursuant to the requirements of a statute or rule or regulation or order of this Commission shall be available for inspection by the public.

(b) Confidential treatment may be requested for good cause where authorized by statute. For good cause shown, the Commission shall grant such request.

(c) Matters of public record may be inspected in the office of the Commission in Honolulu during regular office hours. Copies of matters of public record will be furnished to any person upon request and upon payment of the charges thereof as set forth in Rule 1.4.

14 *Commission Decision.* All final orders, opinions or rulings entered by the Commission in a proceeding shall be served upon the parties or persons participating in the proceeding by regular mail or personal delivery by the Commission and shall be released for general publication. Copies of such published material shall be available for public inspection in the office of the Commission or may be obtained upon request and upon payment of charges, if any.

15 *Substitution of Parties.* Upon motion and for good cause shown, the Commission may order substitution of parties, except that in the case of death of a party substitution may be ordered without the filing of a motion.

16 *Consolidations.* The Commission, upon its own initiative or upon motion, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues which are the same or closely related if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

b-Part C. Rules Applicable to Amendments to Rules and Regulations and District Boundaries and to Declaratory Rulings and to Special Permits.

17 *Notice of Proposed Amendment.*

(a) When pursuant to a petition therefor, or upon its own motion, the Commission proposes to amend a district boundary or rule or regulation, a notice of the proposed amendment will be published in the respective counties as set forth in Sections 205-4 and 205-9, Hawaii Revised Statutes, and such notices shall also be mailed to the Planning Commission of the county or counties involved and to all persons who made a timely request for advance notice of the Commission's proceedings.

(b) A notice of the proposed amendment will include:

(1) A statement of the date, time and place where the public hearing will be held;

(2) Reference to the authority under which the amendment is proposed;

(3) A statement of the substance of the proposed amendment;

(4) Docket number assigned to the proceeding; and

(5) In the case of a proposal to amend or review a district boundary, a statement of the time and place where maps showing the proposed or existing district boundaries within the county may be inspected prior to the public hearing.

8 *Further Notice of Amendment.* In any proceeding where the Commission deems it warranted, a further notice of the proposed amendment may be issued by publication thereof in a newspaper of general circulation in the State.

9 *Conduct of Hearing*

(a) Public Hearing. A public hearing shall be held at least once in the county or counties to be affected by the proposed amendment of district boundaries or rules or regulations.

(b) Presiding Officer. Each such hearing shall be presided over by the chairman of the Commission or by a field officer in the case where a field officer has been assigned to hear the matter. The hearing shall be conducted in such a way to afford to interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and so as to obtain a clear and orderly record. The presiding officer shall take all actions necessary to insure the orderly conduct of the hearing.

(c) Continuance of hearing. Each such hearing shall be held at the time and place set in the notice of hearing, but such hearing may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(d) Order of proceeding. At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(e) Submission of evidence. All interested persons shall be given reasonable opportunity to offer evidence with respect to the matters specified in the notice of hearing. Every witness shall, before proceeding to testify, be sworn, after which he shall state his name, address, and whom he represents at the hearing, and shall give such other information respecting his appearance as the presiding officer may request. The presiding officer shall confine the evidence to the questions before the hearing but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the presiding officer or by any other representative of the Commission, but cross-examination by private persons shall not be permitted except if the presiding officer expressly permits it.

(f) Oral and written presentation at such hearing. All interested persons or agencies of the State or political subdivisions of the State will be afforded an opportunity to submit data, views or arguments which are relevant to the issues. In addition, or in lieu thereof, persons or agencies may also file with the Commission within fifteen days following the close of public hearing a written protest or other comments or recommendations in support of or in opposition to the proposed amendment. The Planning Commission of the county concerned and such other persons designated by the presiding officer shall be furnished with copies of any written protest or other comments or recommendations, and they shall be afforded a reasonable time within which to file comments in reply to the original protest, comments or recommendations. The period for filing written protest, comments or recommendations may be extended by the presiding officer for good cause.

(g) Transcript of the evidence. Unless otherwise specifically ordered by the Commission or the presiding officer, testimony given at the hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record.

1.20 *Commission Action.* At the close of each public hearing, the Commission shall announce the dates within which its decision shall be made. The Commission will consider all relevant comments and materials of record before taking final action in a proceeding.

1.21 *Petition for Amendment of District Boundaries or Rules or Regulations or Special Permits.*

(a) Scope. As applicable any owner and lessee and any interested person, or any agency of the State or County government may petition the Commission for the amendment of established district boundaries or of rules or regulations and for requests for special permits pursuant to Chapter 205, Hawaii Revised Statutes.

(b) Form and contents. Petitions shall conform to the requirements of Rule 1.7. Petitions for amendments of boundaries or regulations, for issuance of a special permit, or for other action shall specify the amendment or permit or other action desired and state concisely the nature of the petitioner's interest in the subject matter and his reasons for seeking the amendment, permit, or other action and shall include any facts, views, arguments and data deemed relevant by petitioner. The Commission may also require the petitioner to serve other persons or governmental agencies known to be interested in the proposed amendment or action. No request for the amendment or action which does not conform to the requirements set forth above will be considered by the Commission.

(c) Procedures. Petitions involving proceedings before the Commission will be given a docket number and shall become matters of public record. The Commission shall set and give notice of public hearings pursuant to the provisions of the Act and rules and regulations. The provisions of this section shall not operate to prevent the Commission, on its own motion, from acting on any matter disclosed in any petition.

1.22 *Fee Accompanying Petition.* All petitions requiring a public hearing shall be accompanied by a fee of Fifty Dollars ($50.00) to partially cover the cost of public hearing and publication. The Com-

mission shall waive the requirement of this fee for petitions by any governmental agency.

Reconsideration of Petitions. The Commission shall not reconsider its action on any petition after the period within which the Commission is required to act on such petition under Chapter 205, Hawaii Revised Statutes, or its rules and regulations. The Commission further shall not reconsider its action on any petition after 6:00 p.m. of the first week day following the date of such action.

Re-Application by Petitioner. The Commission shall not consider any petition covering substantially the same request for substantially the same land as had previously been denied by the Commission within one year of the date of such denial unless the petitioner submits significant new data or additional reasons which substantially strengthen his petition, provided that in no event shall any such new petition be accepted within six (6) months of the date of such previous denial.

Petition for Declaratory Ruling

(a) Form and Contents. On petition of an interested person, the Commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or regulation or order of the Commission. Petitions for the issuance thereof shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a complete statement of the facts and the reasons or grounds promoting the petition, together with full disclosure of petitioner's interest and shall conform to the requirements of Rule 1.7.

(b) Additional data and supporting authorities. The Commission, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.

(c) Dismissal. The Commission may, without notice or hearing, dismiss a petition for declaratory ruling which fails in material respect to comply with the requirements of this part, or for other good and sufficient cause.

(d) Request for hearing. Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the Commission may in its discretion order such proceeding set down for hearing. Any petitioner or party in interest who desires a hearing on a petition for declaratory ruling shall set forth in detail in his request the reasons why the matters alleged in the petition together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities will not permit the fair and expeditious disposition of the petition and, to the extent that such request for hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts.

(e) Declaratory ruling on Commission's own motion. Notwithstanding the other provisions of this sub-part, the Commission may, on its own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty.

APPENDIX C

STATE OF HAWAII
LAND USE COMMISSION
PART II. STATE LAND USE DISTRICT REGULATIONS*

'art A. Ceneral Provisions

Title. These regulations shall be known as the State Land Use District Regulations.

Purpose. These rules and regulations are intended to clarify and implement Act 187, S.L.H. 1961 as now or hereafter amended. They are intended to preserve, protect and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare of the people of the State of Hawaii.

2.2 *Minimum Requirement.* These rules and regulations shall be minimum requirements only. In the event that any County imposes stricter requirements, the County's ordinances or regulations shall be controlling in that County.

2.3 *Definitions*

(a) The term "Land Use Law" shall mean Act 187, S.L.H. 1961 as now or hereafter amended.
(b) The term "Commission" shall mean the Land Use Commission of the State of Hawaii.
(c) The term "Map" shall mean the Land Use District Maps of the Land Use Commission.
(d) The term "District" shall mean an area of land, including lands underwater, established as an Urban, Agricultural, Conservation or Rural District.
(e) The term "owner" shall include lessees of real property.
(f) The term "Planning Commission" shall mean the County Planning and Traffic Commission or the City and County Planning Commission or the Zoning Board of Appeals of the City and County of Honolulu.
(g) The term "State" shall mean the State of Hawaii.
(h) The term "building" shall mean any structure having a roof, including, but not limited to attached carports and such devices.
(i) The term "accessory building or use" shall mean a subordinate building or use which is incidental to and customary with a permitted use of the land.
(j) The term "public institution and building" shall mean any institution or building being used by governmental agency for public purpose.
(k) The term "dwelling" shall mean a building designed or used exclusively for residential occupancy, but not including home trailers, multi-unit buildings, mobile homes, hotels, motels, boarding and lodging houses, tourist courts or tourist homes.
(l) The term "farm dwelling" shall mean a single-family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling.
(m) The term "single-family dwelling" shall mean a dwelling occupied exclusively by one family.
(n) The term "family" shall mean an individual or two or more persons related by blood, marriage or adoption; or a group comprising not more than five persons, not related by blood, marriage or by adoption.
(o) The term "lot" shall mean a parcel of land.
(p) The term "lot of record" shall mean a lot recorded in the land records of the State of Hawaii.
(q) The term "premises" shall mean a lot together with all buildings and structures thereon.
(r) The term "structure" shall mean and include any constructed or erected material or combination of materials, which requires location on the ground, including, but not limited to, buildings, radio towers, sheds, storage bins, fences and signs.
(s) The term "sign" shall mean and include an identification, description, illustration or device which is affixed to a building, structure or land and which directs attention to a product, place, activity, person, institution or business.
(t) The term "non-conforming use" shall mean the use of a building or structure, or of a parcel of land, lawfully existing at the time of adoption of the State Land Use District Regulations and Boundaries or subsequent amendments made thereto, that does not conform to the State Land Use District Regulations and Boundaries.
(u) The term "non-conforming structure" shall mean a building or structure, lawfully existing at the time of adoption of the State Land Use District Regulations and Boundaries or subsequent amendments made thereto, that does not conform to the State Land Use District Regulations and Boundaries.
(v) The term "zone of wave action" shall mean that portion of the shore lying between the sea and any visible marks which indicate the farthest extent to which the maximum annual wave advances inland including but not limited to (1) the vegetation line or line of debris (2) the crest of the sand or dune line or (3) the rocky shore.

ɔted by the Land Use Commission at the action meeting held in ɔl County July 8, 1969. Filed in the Lieutenant Governor's office 25, 1969, effective August 1969.

The term "land" shall include areas under water within the boundaries of the State.

The term "economic feasibility" shall mean the degree to which (1) the market demand for the goods and services proposed by the petitioner is accurately estimated and appears to be substantial enough to indicate a probability of sufficiently profitable endeavor to justify the rezoning requested, and (2) the costs of providing public services will be overcome by the public revenues to be accrued through taxes and other sources or will otherwise be offset by effects beneficial to the economy of the State.

finitions Pertaining to Grammatical Usage and Construction

Words used in the present tense include the future tense.

The singular number includes the plural; and the plural, the singular.

The word "shall" is always mandatory except where its usage in these rules and regulations requires a less absolute application to be consistent with the intent and spirit of the Land Use Law and of these regulations.

The word "may" is always permissive.

The word "persons" includes a firm, partnership, or corporation, as well as an individual.

Terms not herein defined shall have the meanings customarily assigned to them.

B. Land Use Districts

tricts and District Maps. In order to effectuate the purposes of Land Use Law, all the lands in the State shall be divided and ced into one of the four (4) Districts:

"U" Urban District
"A" Agricultural District
"C" Conservation District
"R" Rural District

boundaries of the above-mentioned Districts are shown on maps on file in the Commission office. Not all ocean areas d off-shore and outlying islands of the State in the Conservation strict are shown when deemed unnecessary to do so. The maps ll be designated as the "Land Use District Maps of the State Hawaii".

ndards for Determining District Boundaries. The following stands shall be used in establishing the district boundaries. They ll also be used as guides for the periodic review of district ndaries, for the granting of amendments to the district boundies and for other changes and adjustments.

" Urban District. In determining the boundaries for the "U" ban District, the following standards shall be used:

It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.

It shall take into consideration the following specific factors:

(1) Proximity to centers of trading and employment facilities except where the development would generate new centers of trading and employment.
(2) Substantiation of economic feasibility by the petitioner.
(3) Proximity to basic services such as sewers, water, sanitation, schools, parks, and police and fire protection.
(4) Goals and objectives of the State and County.
(5) Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.

It shall include plantation camps that are characterized by residences, school, businesses and other related uses.

Lands included shall be those with satisfactory topography and drainage and reasonably free from the danger of floods, tsunami and unstable soil conditions.

In determining urban growth for the next ten years, or in amending the boundary, lands contiguous with existing urban areas shall be given more consideration than non-contiguous lands, particularly when indicated for future urban use on State or County General Plans.

It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the State and County General Plans.

Lands with a high capacity for intensive cultivation shall not be included in this District when other lands are available that can adequately serve the urban needs.

(h) Lands which do not conform to the above standards may be included within this District:
  (1) When surrounded by or adjacent to existing urban development; and
  (2) Only when such lands represent a minor portion of this District.
(i) It shall not include lands which will contribute towards scattered urban developments.
(j) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the Commission finds that such lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

2.8 *"A" Agricultural District.* In determining the boundaries for the "A" Agricultural District, the following standards shall apply:

(a) Lands with a high capacity for agricultural production shall be included in this District except as otherwise provided for in other sections of these regulations.
(b) Lands with significant potential for grazing or for other agricultural uses shall be included in this District except as otherwise provided for in other sections of these regulations.
(c) Lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics may be included in the Agricultural District.
(d) Lands in intensive agricultural uses shall not be taken out of this District if it will significantly impair economical agricultural production.
(e) Lands not included in an Agricultural District and of indeterminate production potential may be included in this District at such time as the productive capacity or potential of the land is demonstrated to the satisfaction of the Land Use Commission by the owner or by a State, County or Federal Agency.

2.9 *"C" Conservation Districts.* In determining the boundaries for the "C" Conservation District, the following standards shall apply:

(a) Lands necessary for protecting watersheds, water sources and water supplies shall be included in this District except as otherwise provided for in other sections of these regulations.
(b) Lands susceptible to floods, and soil erosion, lands undergoing major erosion damage and requiring corrective attention by State or Federal Government, and lands necessary for the protection of the health and welfare of the public by reason of the land's susceptibility to inundation by tsunami and flooding, to volcanic activity and landslides may be included in this District.
(c) Lands used for national or state parks may be included in this District.
(d) Lands necessary for the conservation, preservation and enhancement of scenic, historic or archaeologic sites and sites of unique physiographic or ecologic significance shall be included in this District except as otherwise provided for in other sections of these regulations.
(e) Lands necessary for providing and preserving parklands, wilderness and beach reserves, and for conserving natural ecosystems of endemic plants, fish and wildlife, for forestry, and other related activities to these uses shall be included in this District except as otherwise provided for in other sections of these regulations.
(f) Lands having an elevation below the maximum inland line of the zone of wave action, and all marine waters, fish ponds and tide pools of the State shall be included in this District unless otherwise designated on the district maps. All off-shore and outlying islands of the State of Hawaii are classified Conservation unless otherwise indicated.
(g) Lands with topography, soils, climate or other related environmental factors that may not be normally adaptable or presently needed for urban, rural or agricultural use, shall be included in this District, except where such lands constitute areas not contiguous to the Conservation District.
(h) Lands with a general slope of 20% or more which provide for open space amenities and/or scenic values shall be included in

this District except as otherwise provided for in other sections of these regulations.

(i) Lands suitable for farming, flower gardening, operation of nurseries or orchards, growing of commercial timber, grazing, hunting, and recreational uses including facilities accessory to such uses when said facilities are compatible with the natural physical environment, may be included in this District.

"R" Rural District. In determining the boundaries for the "R" Rural District, the following standards shall apply:

(a) Areas consisting of small farms shall be included in this District.

(b) It shall include activities or uses as characterized by low density residential lots of not less than one-half (½) acre and a density of not more than one-single family dwelling per one-half (½) acre except that it shall not include areas where "city-like" concentrations of people, structures, streets and urban level of services are present.

(c) Generally, parcels of land not more than five (5) acres shall be included in this District.

(d) It may include other parcels of land, which are contiguous to or contained within this District and are not suited to low density residential uses or for small farm or agricultural uses.

(e) Parcels of land consisting of small farms needs not be included in this District if their inclusion will alter the general characteristics of the area.

Interpretation of District Boundaries

(a) Except as otherwise provided, a district name or letter appearing on the district maps applies throughout the whole area bounded by the district boundary lines.

(b) The following rules shall apply whenever uncertainty exists with respect to the boundaries of the various Districts:

(1) Whenever a district line falls within a street, alley, canal, navigable or non-navigable stream or river, it shall be deemed to be in the midpoint of the foregoing. If the actual location varies slightly from the location as shown on the district maps, then the actual location shall be controlling.

(2) Whenever a district line is shown as being located within a specific distance from a street line or other fixed physical feature, or from an ownership line, this distance shall be controlling.

(3) Unless otherwise indicated, the district lines shall be determined by the use of the scale contained on the map.

(4) All water areas within the State are considered to be within a use district and controlled by the applicable district regulations.

(c) Whenever subparagraphs (a) and (b) mentioned hereinabove cannot resolve an uncertainty concerning the location of any district line, the Land Use Commission, upon written application or upon its own motion, shall determine the location of such district lines.

Land Use District Maps.

The Land Use District Maps, showing all existing boundaries, shall be kept on file in the Commission office.

Part C. Land Use Regulations

Permissible Uses Within the "U" Urban District.

Any and all uses permitted by the Counties, either by ordinances or regulations, shall be allowed within this District.

Permissible Uses Within the "A" Agricultural District.

Except as otherwise provided, the following land and building uses are compatible and permitted within this District except when a county ordinance or regulation is more restrictive. Except as otherwise provided, uses not expressly permitted are prohibited.

(a) Growing of crops, including but not limited to flowers, foliage, fruits, forage and timber.

(b) Game and fish propagation.

(c) Raising of livestock, including but not limited to poultry, bees, fish or other domestic animals.

(d) Farm dwellings, farm buildings, or activities or uses related to farming and animal husbandry.

(e) Public institutions and buildings which are necessary for agricultural practices.

(f) Public and private "open area" types of recreational uses including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and over-night camps.

(g) Public, private, and quasi-public utility lines, transformer stations etc., and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants and major storage tanks not ancillary to agricultural practices, or corporation yards or other like structures.

(h) Retention, restoration, rehabilitation or improvement of buildings or sites of historic or scenic interest.

(i) Roadside stands for the sale of agricultural products grown on the premises.

(j) Buildings and uses, including but not limited to mills, storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above-permitted uses.

2.15 *Permissible Uses Within the "C" Conservation District.*

Any and all uses permitted by regulations of the Department of Land and Natural Resources pursuant to the provisions of Section 183-4, Hawaii Revised Statutes, shall be allowed within this District.

2.16 *Permissible Uses Within the "R" Rural District.*

Except as otherwise provided, the following land and building uses are permitted within this District except when county ordinances or regulations are more restrictive. Uses not expressly permitted are prohibited, except as otherwise provided.

(a) Any and all uses permitted under Rule 2.14 relating to agricultural uses and those uses that are compatible within the Agricultural District.

(b) Low density residential uses with a minimum lot size of one-half (½) acre. There shall be no more than one-single family dwelling per one-half (½) acre.

(c) Public, quasi-public and private utility facilities.

Sub-Part D. Non-Conformance

2.17 *Statement of Intent.*

The regulations contained in this Sub-Part D are intended to reasonably expedite the eventual elimination of existing uses or structures that are not in conformity with the provisions of this part because their continued existence violates basic concepts of health, safety and welfare as well as principles of good land use. However, in applying the aforesaid regulations, no elimination of non-conforming uses or structures shall be effected so as to cause unreasonable interference with established property rights.

2.18 *Non-Conforming Uses of Structure.*

(a) Any lawful use of lands or buildings existing at the effective date of these regulations may be continued even though such uses do not conform to the provisions hereof.

(b) Except as otherwise provided, the following provisions shall apply to non-conforming uses or structures within any District:

(1) It shall be changed to another non-conforming use or structure.

(2) It shall not be expanded or increased in intensity of use.

(3) It shall not be re-established after discontinuance and abandonment for a continuous period of one (1) year.

2.19 *Non-Conforming Areas and Parcels*

(a) A lot of record may be occupied by any use permitted by these regulations, including a single-family dwelling; provided, however, this exception shall not apply to subdivisions that have not received proper approval by the Counties.

(b) Any proposed subdivision of land which is not in conformity with these regulations, but which has received approval by the County having jurisdiction on or before the date of adoption of these regulations, shall be permitted as a non-conforming area subject to the ordinances and regulations of the County. All lots within the non-conforming area shall be considered as non-conforming parcels.

(c) Any parcel of land which is in a Rural District and which is smaller than one-half (½) acre, shall be deemed a non-conforming parcel.

2.20 *Casual or Illegal Use of Land*

A casual, intermittent, temporary, or illegal use of lands or buildings shall not be sufficient to establish the existence of a non-conforming use.

2.21 *Existence of Non-Conforming Use is a Question of Fact*

Whether a non-conforming use exists shall be a question of fact and shall be decided by the County Planning Commission after public notice and hearing.

2 *Illegal Non-Conforming Uses*
An illegal non-conforming use of lands or buildings shall not be validated by the adoption of these regulations.

Part E. Special Permits

3 *Petition Before County Planning Commission*
Any person who desires to use his land within an Agricultural or Rural District for other than an agricultural or rural use may petition the County Planning Commission within which his land is located for permission to use his land in the manner desired. If approved, the County Planning Commission shall forward the petition to the Commission for its action as hereinafter provided.

4 *Test to be Applied*
Certain "unusual and reasonable" uses within Agricultural and Rural Districts other than those for which the District is classified may be permitted. The following guidelines are established in determining an "unusual and reasonable use".
(a) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.
(b) That the desired use would not adversely affect surrounding property.
(c) Such use would not reasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.
(d) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
(e) That the land upon which the proposed use is sought is unsuited for the uses permitted within the District.
(f) That the proposed use will not substantially alter or change the essential character of the land and the present use.
(g) That the proposed use will make the highest and best use of the land involved for the public welfare.

5 *Condition to be Established*
The County Planning Commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use, which time limit shall be a condition of the special permit. If the permitted use is not substantially established to the satisfaction of the County Planning Commission within the specific time, it may revoke the permit. The County Planning Commission may with Land Use Commission concurrence extend the time limit if it deems that unusual circumstances warrant the granting of such an extension.

6 *Notice and Hearing*
The County Planning Commission shall conduct a hearing within a period of not less than 30 nor more than 120 days from the receipt of the petition. Notice of the time and place of such hearing shall be published in the same manner as notices required for public hearings by the Planning Commission of the appropriate county

7 *Decision*
The County Planning Commission shall act on special permit petitions not earlier than 15 days after the public hearing but within a reasonable time thereafter.

8 *Submission of Records to the Land Use Commission*
(a) A copy of the decision of the County Planning Commission permitting such use, together with the Planning Commission's findings, shall be transmitted to the Commission within 10 days after the decision is rendered. Within 45 days after receipt of the county agency's decision, the Commission shall act to approve or deny the decision.
(b) The Planning Director shall transmit a written copy of said decision to the Commission together with, but not limited to, the following records:
(1) Formal petition;
(2) Intermediate rulings or motions rendered relative to said petition;
(3) Evidence received or considered, including oral testimony, exhibits, maps and a statement of matters officially noticed;
(4) Staff report or memorandum presented at the hearing;
(5) Findings of fact and reasons therein in support of the county agency's ruling in approving said petition.

9 *Uses Within Conservation District*
Uses of land within a Conservation District are governed by the Rules and Regulations of the State Department of Land and Natural Resources under Chapter 183, Hawaii Revised Statutes.

Sub-Part F. Amendments to District Boundaries and Regulations

2.30 *Procedure to Amend District Boundaries*
(a) Any department or agency of the State or County, or any property owner and lessee may petition the Commission for a change in the boundary of any District. The Commission may also initiate changes in district boundaries provided that such petition shall be submitted to the appropriate county planning agency for its comments and recommendations, and otherwise conforms with the requirements of Section 205-4, Hawaii Revised Statutes. Within five (5) days after receipt of the petition, the Commission shall forward a copy of the petition to the Planning Commission of the County wherein the land is located. Within 45 days after receipt of the petition, the County Planning Commission shall forward the petition, together with its comments and recommendations, to the Commission. Upon written request by the County Planning Commission, the Commission may grant an extension of not more than 15 days for the receipt of such comments and recommendations.
(b) The following guidelines are established to aid petitioners, whenever they are seeking an urban or rural use of lands situated in either a Rural, or Agricultural, or Conservation District, in determining whether they should proceed under a special permit or boundary change application.
(1) Whenever said land is contiguous to an Uran District and petitioner is seeking an urban use and his land is situated in either a Rural, or Agricultural, or Conservation District, petitioners should seek a boundary change.
(2) Whenever said land is contiguous to a Rural District and petitioner is seeking a rural use and his land is situated in an Agricultural or Conservation District, petitioner should seek a boundary change.
(3) Whenever a petition covers substantial acreage of lands and petitioner seeks a use other than for which it districted, he should seek a boundary change.
(c) Petitions for an urban use are also subject to the provisions of Section 2.32, below, regarding incremental zoning.

2.31 *Test to be Applied*
The Commission may permit amendment to any district boundary provided that the petitioner has submitted proof that the area is needed within the next five year period for a use other than that for which the District in which it is situated is classified and provided that either one of the following requirements has been fulfilled:
(a) The petitioner has submitted proof that the land is usable and adaptable for the use to which it is proposed to be classified; or
(b) Conditions and trends of development have so changed, since the adoption of the existing classification, that the proposed classification is reasonable.
The Commission shall not approve any amendments to the district boundaries that would be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

2.32 *Zoning in Increments*
(a) Petitioners submitting applications for rezoning to urban shall also submit proof that development of the premises in accordance with the demonstrated need therefor will be accomplished within 5 years from the date of Commission approval. In the event full urban development cannot reasonably be completed within such period, the petitioner shall also submit a schedule for development of the total of such project in increments, each such increment to be completed within no more than a 5-year period.
(b) If it appears to the Commission that full development of the total premises cannot reasonably be completed within 5 years and that the incremental development plan submitted by the petitioner is reasonable, and if the Commission is satisfied that all other pertinent criteria for rezoning the premises or part thereof to Urban are present, then the Commission shall rezone to Urban only that portion of the premises which the petitioner plans to develop first and upon which it appears that total development can reasonably be completed within 5 years. At the same time, the Commission will indicate its approval of the future rezoning to Urban of the total premises requested by the petitioner, or so much thereof as shall be justified as appropriate therefor by the petitioner, such approval to indicate a schedule

of incremental rezoning to Urban over successive periods not to exceed 5 years each.

(c) Upon receipt of an application for rezoning to Urban of the second and subsequent increments of premises for which previous approval for incremental development has been granted by the Commission, substantial completion of the urban development, in accordance with the approved incremental plan, of the preceding increment zoned to Urban will be prima facie proof that the approved incremental plan complies with the requirements for boundary amendment.

3 *Performance Time*
Petitioners requesting amendments to District Boundaries shall make substantial progress in the development of the area rezoned to the new use approved within a period specified by the Commission not to exceed five (5) years from the date of approval of the boundary change. The Commission may act to reclassify the land to an appropriate District classification upon failure to perform within the specified period according to representations made to the Commission; provided that the Commission, in seeking such a boundary reclassification, complies with the requirements of Section 205-4, Hawaii Revised Statutes.

4 *Notice and Hearing*
After 60 days but within 120 days of the original receipt of a petition, the Commission shall advertise that a public hearing will be in the County in which the land is situated. Notice of the time and place of such hearing shall be published in the same manner as notices required for public hearings by the Planning Commission of the appropriate County.

5 *Decision*
Within a period of not more than 90 days and not less than 45 days after such hearing, the Commission shall act upon the petition for change. The Commission may approve the change with six affirmative votes.

6 *Amendments to Regulations*
By the same methods set forth in Rule 2.30, a petition may be submitted to change, or the Commission may initiate a change in, these Regulations. No such change shall be made unless a hearing is held in each of the Counties. Within not less than 45 and not more than 90 days after the last of such hearings, the Commission shall act to approve or deny the requested change. Such petition for a change shall be based upon proof submitted that conditions exist that were not present when the Regulations were adopted or that the Regulations do not serve the purposes of the Land Use Law.

Part G. Miscellaneous Provisions

7 *Fees*
An application for a change in District Boundaries or in these Regulations shall be accompanied by a certified check for $50.00 payable to the State of Hawaii, for the purpose of partially defraying public hearing costs. The Commission shall waive this fee on any petition submitted by any governmental agency.

8 *Enforcement*
The appropriate county officer or agency charged with the administration of county zoning laws shall enforce within each County the use classification districts adopted by the Commission and shall report to the Commission all violations thereof.

9 *Periodic Review of Districts*
Irrespective of changes and adjustments that it may have made, the Commission shall make a comprehensive review of the classification and districting of all lands and of the Regulations at the end of each five years following the adoption thereof. The assistance of appropriate state and county departments shall be secured in making this review and public hearings shall be held in each County in accordance with the requirements set forth for the adoption in final form of district boundaries and Regulations.

10 *Penalties*
Any person who violates any provision of the Land Use Law or Regulations shall be fined not more than $1,000. Each day of a continuing violation shall be a separate offense.

11 *Adjustments of Assessing Practices*
Upon the adoption of district boundaries and any amendments thereto, the executive officer of the Commission shall file certified copies of the classification maps showing the district boundaries with the Department of Taxation. Thereafter the Department of Taxation shall, when making assessments of property within a District, give consideration to the use or uses that may be made thereof as well as the uses to which it is then devoted.

2.42 *Dedicated Lands*
Notwithstanding any approval by the Director of Taxation of a petition of a landowner within any district to dedicate his land for specific ranching or other agricultural use under Section 246-12, Hawaii Revised Statutes, the Land Use Commission may change the Land Use District in which the land is situated.

2.43 *Validity*
If any section or part of these Regulations is held invalid for any reason whatsoever, such invalidity shall not affect the validity of the remaining sections or part of these Regulations.

2.44 *Effective Date*
These Regulations shall become effective when officially adopted in a manner provided by law.

Source: Eckbo, Dean, Austin, and Williams, State of Hawaii: Land Use Regulations Review, Honolulu, Hawaii, August 15, 1969, Appendices A-1, A-2, A-3, B, C.

ACT 135 S. B. NO. 1136-70

A Bill for an Act Making an Appropriation for the Preparation of a Plan Relating to the Preservation of Open Space in Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of $150,000.00, or so much thereof as may be necessary, to develop a statewide comprehensive open space plan. This plan will include the intensive studies of existing conditions, influences, implementing methods and techniques and policy matters in providing for public use or enjoyment of certain lands for open space purposes.

The plan will formulate appropriate recommendations, based on its findings, to insure desirable open space land uses within the State. The findings and recommendations will consider fee and less than fee acquisition methods in meeting its objectives. Among these considerations shall be techniques including: (1) legislation; (2) fee acquisition; (3) fee acquisition with resale subject to easements; (4) delayed purchase with resale subject to easements; (5) official mapping and contingent purchases; (6) acquisition of development rights; (7) improved zoning regulations; (8) compensable regulations.

SECTION 2. The sum appropriated shall be expended for the purpose herein specified by the department of planning and economic development.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 22, 1970.)

A Bill for an Act Relating to the Land Use Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 205-6, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 205-6. Special permit.** The county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use his land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which his land is located for permission to use his land in the manner desired.

The planning commission shall conduct a hearing within a period of not less than thirty nor more than one hundred twenty days from the receipt of the petition. The planning commission shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

The planning commission may under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter. The planning commission shall act on the petition not earlier than fifteen days after the public hearing. A decision in favor of the applicant shall require a majority vote of the total membership of the planning commission which shall be subject to the approval of the land use commission, provided that the land use commission may impose additional restrictions as may be necessary or appropriate in granting such approval, including the adherence to representations made by the applicant. A copy of the decision together with the findings shall be transmitted to the commission within ten days after the decision is rendered. Within forty-five days after receipt of the county agency's decision, the commission shall act to approve, approve with modification, or deny the petition. A denial either by the county agency or by the commission, or a modification by the commission, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure."

SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . SHORELINE SETBACKS.**

Sec. 205- . Definitions. As used in this part, unless the context otherwise requires:

(1) 'Agency' means the planning department of each county.

(2) 'Shoreline' means the upper reaches of the wash of waves, other than storm and tidal waves, usually evidenced by the edge of vegetation growth, the upper line of debris left by the wash of waves.

(3) 'Shoreline setback' means all of the land area between the shoreline and the shoreline setback line.

(4) 'Shoreline setback area' means all the land area seaward of the shoreline setback line.

(5) 'Shoreline setback line' means that line established by the State land use commission or the county running inland from and parallel to the shoreline at a horizontal plane.

Sec. 205- . Duties and powers of the commission and agency. The commission shall establish setbacks along shorelines of not less than twenty feet and not more than forty feet inland from the upper reaches of the wash of waves other than storm and tidal waves. The agency shall promulgate rules and regulations within a period of one year after the effective date of this Act, pursuant to chapter 91, and shall enforce the shoreline setbacks and rules and regulations pertaining thereto.

Sec. 205- . Prohibitions. (a) It shall be unlawful to remove sand, coral, rocks, soil, or other beach compositions for any purpose, except for reasonable domestic, non-commercial use, within the shoreline setback area, except that any sand mining operation which has been legally in operation for a period of at least two years immediately prior to the effective date of this Act, may be continued for a period not to extend beyond July 1, 1975. However, if during the period prior to July 1, 1975, the sand mining operation is substantially increased, it shall be unlawful to further continue such mining operation.

(b) Except as otherwise provided in this part, no structure or any portion thereof, including but not limited to seawalls, groins, and revetments, shall be permitted within the shoreline setback area; provided that any lawful nonconforming structure existing on the effective date of this Act shall be permitted; provided further that any structure which is necessary for safety reasons or to protect the property from erosion or wave damages shall be permitted. A structure not conforming to this section but for which a building permit application has been filed on or before the effective date of this Act, shall also be permitted as a nonconforming structure, subject to the ordinances and regulations of the particular county.

(c) Any nonconforming structure, including but not limited to residential dwellings, agricultural structures, seawalls, groins, and revetments may be replaced or reconstructed within the shoreline setback area; provided that no nonconforming structure shall be substantially enlarged or changed to another nonconforming use within the shoreline setback area. If the use of any nonconforming structure is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited.

Sec. 205- . Shoreline setback lines established by county. The several counties through ordinances may require that shoreline setback lines be established at a distance greater than that established by the commission.

Sec. 205- . Functions of agency. (a) The agency shall administer the provisions of this part. It shall review the plans of all applicants who propose any structure, activity, or facility which otherwise would be prohibited by this part.

The agency may require that the plans be supplemented by accurately mapped data showing natural conditions and topography relating to all existing and proposed structures, buildings and facilities.

The agency may also require reasonable changes in the submitted plans in order to obtain optimum compliance practicable.

(b) After reviewing the plans, the agency shall transmit the plans with its recommendations to the governmental body of the county authorized to grant variances from zoning requirements. Such governmental body shall grant a variance for such structure, activity, or facility if, after a hearing pursuant to chapter 91, it finds in writing, based on the record presented either: (1) that such structure, activity, or facility is in the public interest; or (2) that hardship will be caused to the applicant if the proposed structure, activity, or facility is not allowed on that portion of the land within the shoreline setback. Any variance granted may be subject to such conditions as will cause the structure, activity, or facility to result in a minimum interference with natural shoreline processes. Such governmental body shall render written approval or disapproval within 45 days after the hearing on the applicant's plans, unless such period is extended by written agreement between the governmental body and the applicant.

Sec. 205- . Exemptions. Tunnels, canals, basins, and ditches, together with associated structures used by public utilities as the term is defined in section 269-1, wharves, docks, piers and other harbor and water front improvements and any other maritime facility and water sport recreational facilities may be permitted within the shoreline setback area; provided that the plans therefor are submitted for review and are approved by the agency after a public hearing has been held and that the appropriate State body has found that the proposed structures will result only in a minimum interference with natural shoreline processes; provided further that any such structure constructed by a governmental body shall be exempt from the provisions of this part except as to the requirement that two public hearings shall be held by the governmental body charged with such construction, once when the project is first conceived and again when the project is substantially designed and planned, but prior to the letting of the contract.

Sec. 205- . Conflict of other laws. In case of a conflict between the requirements of any other State law or county ordinance regarding shoreline setbacks, the more restrictive requirements shall apply in furthering the purposes of this part. Nothing herein contained shall be construed to diminish the jurisdiction of the State department of transportation over wharves, airports, docks, piers, small boat, or other harbors, and any other maritime or water sports recreational facilities to be constructed on State land by the State; provided that such plans are submitted for the review and information of the officer of the respective agency charged with the administration of the county zoning laws, and found not to conflict with any county ordinances, zoning laws, and building code."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes may exclude the brackets, the bracketed material, or the underscoring.*

SECTION 5. This Act shall take effect upon its approval.
(Approved June 22, 1970.)

A Bill for an Act Creating the Position of a Marine Affairs Coordinator in the Office of the Governor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. **Findings and declaration of necessity.** The legislature finds that:

(a) The marine environment is one of Hawaii's most valuable assets. It has shaped the uniqueness of the way of life in Hawaii, and it has contributed to the major elements of the State's economy. Hawaii can secure even greater benefits from the judicious use of the resources in and around the sea if it energetically coordinates the development of technology needed to exploit these resources, the promotion of marine businesses, and the establishment of programs dedicated to a better understanding and knowledge of the marine environment.

(b) There is a need for a planned and concerted effort to explore and develop to their fullest potential the vast, under-utilized resources of the Pacific Ocean. In view of its mid-Pacific location, unique oceanographic environment and other advantages, Hawaii can take the lead in fostering the development of the ocean's resources, consistent with State and national goals of economic growth, international development assistance, and cooperation with neighbors in the Pacific basin.

(c) The development and utilization of marine resources require the deep involvement of state government. Responsibilities and authorities already exist in the various agencies of state government to address many of the opportunities and problems that may arise in marine affairs in the foreseeable future. However, there is no mechanism to bring a unified and coordinated approach to marine activities that cut across the responsibilities of the various agencies of state government.

(d) If Hawaii is to capitalize on the immediate and long-term opportunities for the fullest development and utilization of marine resources, it is essential that the total efforts of the State in the planning, research, development, and promotion of the marine environment must be effectively coordinated. The marine programs in existence and those being planned require a mechanism in the state government to bring about the most effective and efficient use of resources in developing the marine environment. This mechanism can best be provided through the establishment of a marine affairs coordinator in state government at a level which will make possible the coordinated management of all marine activities.

SECTION 2. **Establishment of marine affairs coordinator.** The position of marine affairs coordinator is established in the office of the governor. The governor shall appoint and remove the coordinator, who shall not be subject to chapters 76 and 77. The salary of the coordinator shall be set by the governor and shall not be more than the salary of first deputies or first assistants to department heads as prescribed by section 26-53. The coordinator shall be included in any benefit program generally applicable to the officers and employees of the State.

SECTION 3. **Powers and duties.** Subject to the governor's approval, the coordinator shall:

(a) Develop plans, including objectives, criteria to measure accomplishment of objectives, programs through which the objectives are to be attained, and financial requirements for the total and optimum development of Hawaii's marine resources;

(b) Conduct systematic analysis of existing and proposed marine programs, evaluate the analysis conducted by the agencies of state government and recommend to the governor and to the legislature programs which represent the most effective allocation of resources for the development of the marine environment;

(c) Assist those departments having interests in marine affairs, coordinate those activities which involve the responsibilities of multiple State agencies, and insure the timely and effective implementation of all authorized marine projects and programs;

(d) Establish a continuing program for informing the federal government, other state governments, governments of nations with interests in the Pacific basin, private and public organizations involved in marine science and technology, and commercial enterprises of Hawaii's leadership potential as the center for marine affairs;

(e) Coordinate the State's involvement in national and international efforts to investigate, develop and utilize the marine resources of the Pacific basin;

(f) Develop programs to continuously encourage private and public marine exploration and research projects which will result in the development of improved technological capabilities in Hawaii;

(g) Formulate specific program and project proposals to solicit increased investment by the federal government and other sources to develop Hawaii's marine resources and coordinate the preparation and submission of program and project proposals of State agencies;

(h) Serve as consultant to the governor, State agencies and private industry on matters related to the preservation and enhancement of the quality of Hawaii's marine environment;

(i) Perform such other services as may be required by the governor and the legislature;

(j) Contract for services when required for implementation of this Act; and

(k) Prepare and submit an annual report to the governor and to the legislature on the implementation of this Act and all matters related to marine affairs.

SECTION 4. **Appropriations.** There is appropriated from the general revenues of the State of Hawaii the sum of $470,000, or so much thereof as may be necessary, to be expended by the marine affairs coordinator for the following purposes:

(a) $30,000 for the planning and coordination of activities to hold an international marine exposition in Hawaii in 1976;

(b) $75,000 for the preparation and publication of a detailed atlas defining and tabulating Hawaii's marine resources;

(c) $25,000 for the planning, coordination and convening of a conference in Hawaii of the representatives of government, science, technology, and industry from the nations of the Pacific basin to plan the Pacific region portion of the international decade of ocean exploration;

(d) $50,000 for the development of preliminary plans for marine science research parks;

(e) $100,000 for a pilot marine resources survey of the area within boundaries set at Koko Head and the north margin of Kahana Bay on the island of Oahu, provided that State funds shall be matched equally by private industry and by more than twice the amount by funds provided by the federal government;

(f) $190,000 for the survey, research, development, and promotion of Hawaii's marine resources by private industry, provided that any expenditure of State funds shall be matched by an equal amount from private industry.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 22, 1970.)

A Bill for an Act Relating to Preservation of Natural Resources by Providing for a System of Natural Areas.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter thereto to be appropriately numbered and to read:

"CHAPTER

NATURAL AREA RESERVES SYSTEM

Sec. . Findings and declaration of necessity. The legislature finds and declares that (1) the State of Hawaii possesses unique natural resources, such as geological and volcanological features and distinctive marine and terrestrial plants and animals, many of which occur nowhere else in the world, that are highly vulnerable to loss by the growth of population and technology; (2) these unique natural assets should be protected and preserved, both for the enjoyment of future generations, and to provide base lines against which changes which are being made in the environments of Hawaii can be measured; (3) in order to accomplish these purposes the present system of preserves, sanctuaries and refuges must be strengthened, and additional areas of land and shoreline suitable for preservation should be set aside and administered solely and specifically for the aforesaid purposes; and (4) that a statewide natural area reserves system should be established to preserve in perpetuity specific land and water areas which support communities, as relatively unmodified as possible, of the natural flora and fauna, as well as geological sites, of Hawaii.

Sec. . Definitions. As used in this chapter, unless otherwise indicated by the context:

'Department' means the department of land and natural resources.

'Commission' means the natural area reserves system commission.

'Natural reserve area' means an area designated as a part of the Hawaii natural area reserves system, pursuant to criteria established by the commission.

Sec. . Hawaii natural area reserves system. There shall be a Hawaii natural area reserves system, hereinafter called the 'reserves system', which shall consist of areas in the State of Hawaii which are designated in the manner hereinafter provided as natural area reserves. The reserve system shall be managed by the department of land and natural resources.

Sec. . Powers of the department. The department of land and natural resources may designate and bring under its control and management, as part of the reserves system any and various areas as follows:

(1) State of Hawaii owned land under the jurisdiction of the department may be set aside as a natural area reserve by resolution of the department, subject to the approval of the governor by executive order setting the land aside for such purposes.

(2) New natural area reserves may be established:

(A) By gift, devise or purchase;

(B) By eminent domain pursuant to chapter 101; or

(C) By the setting aside of State of Hawaii owned land for such purposes by the governor, as provided by section 171-11, Hawaii Revised Statutes.

Sec. . Rules and regulations. (a) The department of land and natural resources may, subject to chapter 91, make, amend and repeal rules and regulations having the force and effect of law, governing the use, control and protection of the areas included within the reserves system, provided, that no rule or regulation which relates to the permitted use of any area assigned to the reserves system shall be valid and no use of any such area shall be permitted un-

less such rule or regulation or permitted use shall have been specifically approved by the natural area reserves system commission.

(b) The department may confer upon such of its employees as it deems reasonable and necessary the powers to serve and execute warrants and arrest offenders or issue citations in all matters relating to the enforcement within the reserves system of the law and rules and regulations applicable thereto.

Sec. . Natural area reserves system commission. There shall be a natural area reserves system commission, hereinafter called the 'commission'. The commission shall consist of eleven members who shall be appointed in the manner and serve for the term set in section 26-34. Six of the members of the commission shall be persons possessing scientific qualifications as evidenced by an academic degree in wildlife or marine biology, botany, forestry, zoology or geology. The chairman of the board of land and natural resources, the superintendent of education, the director of planning and economic development, the chairman of the board of agriculture and the president of the university of Hawaii, or their designated representatives, shall serve as ex-officio voting members. The governor shall appoint the chairman from one of the appointed members of the commission. The members shall receive no compensation for their services on the commission but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of their duties.

The commission shall be a part of the department of land and natural resources for administration purposes as provided in section 26-35, Hawaii Revised Statutes.

Any action taken by the commission shall be by a simple majority of its members. Six members of the commission shall constitute a quorum to do business.

The commission may engage employees necessary to perform its duties, including administrative personnel, as provided by section 26-35, Hawaii Revised Statutes.

The commission shall adopt rules guiding its conduct and shall maintain a record of its activities and actions.

Sec. . Powers and duties. The commission shall:

(1) Recommend criteria to be used in determining whether an area is suitable for inclusion with the reserves system;

(2) Conduct studies of areas for possible inclusion within the reserves system;

(3) Recommend to the governor and the department of land and natural resources areas suitable for inclusion within the reserves system;

(4) Recommend policies regarding required controls and permitted uses of areas which are part of the reserves system;

(5) Advise the governor and the department of land and natural resources on any matter relating to the preservation of Hawaii's unique natural resources; and

(6) Develop ways and means of extending and strengthening presently established preserves, sanctuaries and refuges within the State.

Sec. . Penalty. Any person who violates any of the laws and rules and regulations applicable to the reserves system shall be fined not more than $100 or imprisoned not more than 30 days, or both, for each offense."

SECTION 2. There is appropriated out of the general revenues of the State the sum of $60,000, or so much thereof as may be necessary, to the department of land and natural resources to be expended for the purposes of this Act.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 22, 1970.)

APPENDIX H

DELAWARE

Act 175-1971 (The Coastal Zone Act) [Chapter 70, Title 7, of the Delaware Code].

This bill appears as Chapter 175
Volume 58 Laws of Delaware
Approved by the Governor 6/30/71

ACT 175-1971

HOUSE OF REPRESENTATIVES

126TH GENERAL ASSEMBLY

FIRST SESSION - 1971

HOUSE SUBSTITUTE NO. 2

FOR

HOUSE BILL NO. 300

AS AMENDED BY

HOUSE AMENDMENTS NO. 1, 2, 8, 11, 12, 13, 14,

15, 18, 19, 22, 23 AND 24

AN ACT CREATING A NEW CHAPTER 70, TITLE 7, DELAWARE CODE TO ESTABLISH A COASTAL ZONE IN DELAWARE; TO PROHIBIT OR LIMIT CERTAIN USES THEREIN; TO CREATE A STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Title 7, Delaware Code, is amended by creating a new Chapter 70 to read as follows:

"CHAPTER 70. COASTAL ZONE ACT

§ 7001. Purpose

It is hereby determined that the coastal areas of Delaware are the most critical areas for the future of the State in terms of the quality of life in the State. It is, therefore, the declared public policy of the State of Delaware to control the location, extent and type of industrial development in Delaware's coastal areas. In so doing, the State can better protect the natural environment of its bay and coastal areas and safeguard their use primarily for recreation and tourism.

Specifically, this chapter seeks to prohibit entirely the construction of new heavy industry in its coastal areas, which industry is determined to be incompatible with the protection of that natural environment in those areas. While it is the declared public policy of the State to encourage the introduction of new industry into Delaware, the protection of the environment, natural beauty and recreation potential of the State is also of great concern. In order to strike the correct balance between these two policies, careful planning based on a thorough understanding of Delaware's potential and her needs is required. Therefore, control of industrial development other than that of heavy industry in the Coastal Zone of Delaware through a permit system at the State level is called for. It is further determined that off-shore bulk product transfer facilities represent a significant danger of pollution to the Coastal Zone and generate pressure for the construction of industrial plants in the Coastal Zone, which construction is declared to be against public policy. For these reasons, prohibition against bulk product transfer facilities in the Coastal Zone is deemed imperative.

§ 7002. Definitions

(a) 'The Coastal Zone' is defined as all that area of the State of Delaware, whether land, water or subaqueous land between the territorial limits of Delaware in the Delaware River, Delaware Bay and Atlantic Ocean, and a line formed by certain Delaware highways and roads as follows:

Beginning at the Delaware-Pennsylvania line at a place where said line intersects U. S. Route 13; thence southward along the said U. S. Route 13 until it intersects the right-of-way of U. S. Route I-495; thence along

said I-495 right-of-way until the said I-495 right-of-way intersects Delaware Route 9 south of Wilmington; thence along said Delaware Route 9 to the point of its intersection with Delaware Route 273; thence along said Delaware Route 273 to U. S. 13; thence along U. S. 13 to Maintenance Road 409; thence along Maintenance Road 409 to Delaware Road 71; thence along Delaware Road 71 to its intersection with Delaware Road 54; thence along Delaware Road 54 to Delaware Road 896; thence along Delaware Road 896 to Maintenance Road 396; thence along Maintenance Road 396 to Maintenance Road 398; thence along Maintenance Road 398 to the Maryland State Line; thence southward along the Maryland State Line to Maintenance Road 433; thence along Maintenance Road 433 to Maintenance Road 63; thence along Maintenance Road 63 to Maintenance Road 412; thence along Maintenance Road 412 to U. S. 13; thence along U. S. 13 to Delaware 299 at Odessa; thence along Delaware Route 299 to its intersection with Delaware Route 9; thence along Delaware Route 9 to U. S. 113; thence along U. S. Route 113 to Maintenance Road 8A; thence along Maintenance Road 8A to Maintenance Road 7 to the point of its intersection with Delaware Route 14; thence along Delaware Route 14 to Delaware Route 24; thence along Delaware Route 24 to Maintenance Road 331; thence along Maintenance Road 331 to Maintenance Road 334; thence along Maintenance Road 334 to Delaware Route 26; thence along Delaware Route 26 to Maintenance Road 365; thence along Maintenance Road 365 to Maintenance Road 84; thence along Maintenance Road 84 to Maintenance Road 384; thence along Maintenance Road 384 to Maintenance Road 382A; thence along Maintenance Road 382A to Maintenance Road 389; thence along

Maintenance Road 389 to Maintenance Road 58; thence along Maintenance Road 58 to Maintenance Road 395; thence along Maintenance Road 395 to the Maryland State Line.

(b) 'Non-conforming use' means a use, whether of land or of a structure, which does not comply with the applicable use provisions in this chapter where such use was lawfully in existence and in active use prior to the enactment of this chapter.

(c) 'Environmental Impact Statement' means a detailed description as prescribed by the State Planning Office of the effect of the proposed use on the immediate and surrounding environment and natural resources such as water quality, fisheries, wildlife and the aesthetics of the region.

(d) 'Manufacturing' means the mechanical or chemical transformation of organic or inorganic substances into new products, characteristically using power driven machines and materials handling equipment, and including establishments engaged in assembling component parts of manufactured products, provided the new product is not a structure or other fixed improvement.

(e) 'Heavy industry use' means a use characteristically involving more than twenty acres, and characteristically employing some but not necessarily all of such equipment such as, but not limited to, smoke stacks, tanks, distillation or reaction columns, chemical processing equipment scrubbing towers, pickling equipment, and waste treatment lagoons; which industry, although conceivably operable without polluting the environment, has the potential to pollute when equipment malfunctions or human error occurs. Examples of heavy industry are oil refineries, basic steel manufacturing plants, basic

cellulosic pulp paper mills, and chemical plants such as petrochemical complexes. Generic examples of uses not included in the definition of 'heavy industry' are such uses as garment factories, automobile assembly plants and jewelry and leather goods manufacturing establishments.

(f) 'Bulk product transfer facility' means any port or dock facility, whether an artificial island or attached to shore by any means, for the transfer of bulk quantities of any substance from vessel to on-shore facility or vice versa. Not included in this definition is a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted or which is a non-conforming use. Likewise, docking facilities for the Port of Wilmington are not included in this definition.

(g) 'Person' shall include, but not be limited to, any individual, group of individuals, contractor, supplier, installer, user, owner, partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, administrative agency, public or quasi-public corporation or body, or any other legal entity, or its legal representative, agent, or assignee.

(h) 'Board' shall mean the Coastal Zone Industrial Control Board.

§ 7003. Uses absolutely prohibited in the Coastal Zone

Heavy industry uses of any kind not in operation on the date of enactment of this chapter are prohibited in the Coastal Zone and no permits may be issued therefor. In addition, offshore gas, liquid, or solid bulk product transfer facilities which are not in operation on the date of enactment of this

chapter are prohibited in the Coastal Zone, and no permit may be issued therefor. Provided, that this section shall not apply to public sewage treatment or recycling plants.

§ 7004. Uses allowed by permit only. Non-conforming uses

(a) Except for heavy industry uses, as defined in section 7002 of this chapter manufacturing uses not in existence and in active use of the date of enactment of this chapter are allowed in the Coastal Zone by permit only, as provided for under this section. Any non-conforming use in existence and in active use on the effective date of this chapter shall not be prohibited by this chapter. All expansion or extension of non-conforming manufacturing uses, as defined herein, and all expansion or extension of uses for which a permit is issued pursuant to this chapter, are likewise allowed only by permit. Provided, that no permit may be granted under this chapter unless the county or municipality having jurisdiction has first approved the use in question by zoning procedures provided by law.

(b) In passing on permit requests, the State Planner and the State Coastal Zone Industrial Control Board shall consider the following factors

(1) Environmental impact, including but not limited to, probable air and water pollution likely to be generated by the proposed use under normal operating conditions as well as during mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact of site preparation on drainage of the area in question, especially as it relates to flood control; impact of site preparation and facility operations on land erosion;

effect of site preparation and facility operations on the quality and quantity of surface ground and sub-surface water resources, such as the use of water for processing, cooling, effluent removal, and other purposes; in addition, but not limited to, likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.

(2) Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to State and local government.

(3) Aesthetic effect, such as impact on scenic beauty of the surrounding area.

(4) Number and type of supporting facilities required and the impact of such facilities on all factors listed in this subsection.

(5) Effect on neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas, and effect on adjacent residential and agricultural areas.

(6) County and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction.

§ 7005. Administration of this chapter

(a) The State Planning Office shall administer this chapter. All requests for permits for manufacturing land uses and for the expansion or extension of non-conforming uses as herein defined in the Coastal Zone shall be directed to the State Planner. Such requests must be in writing and

must include (1) evidence of approval by the appropriate county or municipal zoning authorities, (2) a detailed description of the proposed construction and operation of the use, and (3) an Environmental Impact Statement. The State Planner shall hold a public hearing and may request further information of the applicant. The State Planner shall first determine whether the proposed use is, according to this chapter and regulations issued pursuant thereto, (1) a heavy industry use under section 7003; (2) a use allowable only by permit under section 7004; or (3) a use requiring no action under this chapter. The State Planner shall then, if he determines that section 7004 applies, reply to the request for a permit within ninety (90) days of receipt of the said request for permit, either granting the request, denying same, or granting the request but requiring modifications; he shall state the reasons for his decision.

(b) The State Planner may issue regulations including, but not limited to, regulations governing disposition of permit requests, and setting forth procedures for hearings before himself and the Board. Provided, that all such regulations shall be subject to approval by the Board.

(c) The State Planner shall develop and propose a comprehensive plan and guidelines for the State Coastal Zone Industrial Control Board concerning types of manufacturing uses deemed acceptable in the Coastal Zone and regulations for the further elaboration of the definition of 'heavy industry' in a manner consistent with the purposes and provisions of this chapter. Such plan and guidelines shall become binding regulations upon adoption by the Board after public hearing. The Board may alter said regulations at any time after a public hearing. Provided, that any such regulations shall be consistent with sections 7003 and 7004 of this chapter.

(d) The State Planning Office and all agencies of State government shall assist the State Coastal Zone Industrial Control Board in developing policies and procedures, and shall provide the Board with such information as it shall require.

§ 7006. State Coastal Zone Industrial Control Board created. Composition. Conflict of interest. Quorum.

There is hereby created a State Coastal Zone Industrial Control Board, which shall have ten (10) voting members. Five (5) of these shall be regular members appointed by the Governor and confirmed by the Senate. No more than two (2) of the regular members shall be affiliated with the same political party. At least one regular member shall be a resident of New Castle County, one a resident of Kent County and one a resident of Sussex County, provided that no more than two residents of any county shall serve on the Board at the same time. The additional five (5) members shall be the Secretary of Natural Resources and Environmental Control, the Secretary of Community Affairs and Economic Development, and the Chairmen of the Planning Commissions of each county, who shall be ex-officio voting members. The term of one appointed regular member shall be for one (1) year; one for two (2) years; one for three (3) years; one for four (4) years; and the Chairman, to be designated as such by the Governor, and serve at his pleasure. Thereafter, all regular members shall be appointed for five year terms. The members shall receive no compensation except for expenses. Any member of the Board with a conflict of interest in a matter in question shall disqualify himself from consideration of that matter. A majority of the total membership of the Board less those disqualifying themselves shall constitute a quorum. A majority of the total membership of the Board shall be necessary to make a final decision on a permit request.

§ 7007. Appeals to State Coastal Zone Industrial Control Board

(a) The State Coastal Zone Industrial Control Board shall have the power to hear appeals from decisions of the State Planner made under section 7005. The Board may affirm or reverse the decision of the State Planner with respect to applicability of any provision of this chapter to a proposed use; it may modify any permit granted by the State Planner, grant a permit denied by him, deny a permit, or confirm his grant of a permit. Provided, however, that the Board may grant no permit for uses prohibited in section 7003 herein.

(b) Any person aggrieved by a final decision of the State Planner under section 7005 (a) may appeal same under this section. Appellants must file notice of appeal with the State Coastal Zone Industrial Control Board within fourteen (14) days following announcement by the State Planner of his decision. The State Coastal Zone Industrial Control Board must hold a hearing and render its decision in the form of a final order within sixty (60) days following receipt of the appeal notification.

(c) Whenever a decision of the State Planner concerning a permit request is appealed, the Board shall hold a public hearing at which the appellant may be represented by counsel. All proceedings in such a hearing shall be made a matter of record and a transcript or recording of all proceedings kept, and the public may attend and be heard.

(d) The Board shall publicly announce by publication in at least one newspaper of daily publication in the county in which the site designated in the request is wholly or principally located and in at least one newspaper of daily publication

and general circulation throughout the State the time, location and subject of all hearings under this section at least ten (10) days prior thereto.

§ 7008. Appeals to Superior Court

Any person aggrieved by a final order of the State Coastal Zone Industrial Control Board under section 7007 may appeal the Board's decision to Superior Court in and for the county of the location of the land in question. Likewise, the State Planner may appeal from any modification by the Board of his ruling. The appeal shall be commenced by filing notice thereof with Superior Court not more than twenty (20) days following announcement of the Board's decision. The Court may affirm the Board's order in its entirety, modify same, or reverse said order. In either case, the appeal shall be based on the record of proceedings before the Board, the only issue being whether the Board abused its discretion in applying standards set forth by this chapter and regulations issued pursuant thereto to the facts of the particular case. The Superior Court may by rule prescribe procedure by which it will receive, hear, and make disposition of appeals under this chapter.

Provided, that no appeal under this chapter shall stay any cease and desist order or injunction issued pursuant to this chapter.

§ 7009. Condemnation

If Superior Court rules that a permit's denial, or restrictions imposed by a granted permit, or the operation of section 7003 or section 7004 of this chapter, is an unconstitutional taking without just compensation, the Secretary of the State Department of Natural Resources and Environmental Control may, through negotiation or condemnation proceedings

under Chapter 61 of Title 10, acquire the fee simple or any lesser interests in the land. The Secretary must use this authority within five years from the date of the Court's ruling, for after said five years have elapsed the permit must be granted as applied for if the land has not been acquired under this authority.

§ 7010. Cease and Desist Orders

The Attorney General shall have the power to issue a cease and desist order to any person violating any provision of this chapter ordering such person to cease and desist from such violation. Provided, that any cease and desist order issued pursuant to this section shall expire (1) after thirty (30) days of its issuance, or (2) upon withdrawal of said order by the Attorney General, or (3) when the order is superseded by an injunction, whichever occurs first.

§ 7011. Penalties

Any person who violates any provision of this chapter shall be fined not more than $50,000 for each offense. The continuance of an activity prohibited by this chapter during any part of a day shall constitute a separate offense. Superior Court shall have exclusive original jurisdiction over offenses under this chapter.

§ 7012. Injunctions

The Court of Chancery shall have jurisdiction to enjoin violations of this chapter.

§ 7013. Inconsistent laws superseded. All other laws unimpaired. Certain uses not authorized.

All laws or ordinances inconsistent with any provision of this chapter are hereby superseded to the extent of the inconsistency. Provided, that present and future zoning powers

of all counties and municipalities, to the extent that said powers are not inconsistent with this chapter, shall not hereby be impaired; and provided that a permit granted under this chapter shall not authorize a use in contravention of county or municipal zoning regulations.

§ 7014. Severability and Savings Clause

If any provision of this chapter, or of any rule, regulation, or order promulgated thereunder, or the application of any such provision, regulation, or order to any person or circumstances shall be held invalid, the remainder of this chapter or any regulations or order promulgated pursuant thereto or the application of such provision, regulations, or order to persons or circumstances other than those to which it is held invalid, shall not be affected thereby."

APPENDIX I

WASHINGTON

Act 286-1971, 1st extraordinary session (The Shoreline Management Act).

Initiative 43 (The Shorelines Protection Act).

Act 45-1970, 1st extraordinary session (The Thermal Power Plant Siting Act of 1970) [Chapter 80.50 of the Washington Annotated Code].

Guidelines for Thermal Power Plant Siting Applicants. [Washington Administrative Code 463-12-010 et seq.].

ENGROSSED SUBSTITUTE HOUSE BILL NO. 584

State of Washington
42nd Legislature
First Extraordinary Session

by Committee on Natural Resources and Ecology
(Originally sponsored by: Representatives Julin, Marsh, Brown, Kiskaddon, Zimmerman and Smythe--by Executive request)

Read first time March 31, 1971, and passed to second reading.

AN ACT Relating to shoreline areas; adding new sections to Title 90 RCW as a new chapter therein; defining crimes; prescribing penalties; making an appropriation; authorizing an alternative to Initiative 43; and declaring an effective date and an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. This chapter shall be known and may be cited as the "Shoreline Management Act of 1971".

NEW SECTION. Sec. 2. The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

IN THE LEGISLATURE
of the
STATE OF WASHINGTON

P.V.

CERTIFICATION OF ENROLLED ENACTMENT

SUBSTITUTE HOUSE BILL NO. 584

CHAPTER 286

LAWS 1971, 1ST EX. SESSION

(As provided in Section 41, this Act shall become effective June 1, 1971. As further provided in Section 42, this Act constitutes an alternative to Initiative 43 to the Legislature and shall be placed on the ballot in conjunction with Initiative 43 at the 1972 state general election for approval or rejection by the voters.)

Passed the House April 5, 1971

Yeas 83 *Nays* 11

Passed the Senate May 4, 1971

Yeas 38 *Nays* 9

The House concurred in the Senate amendments and passed the bill as amended: May 6, 1971.

Yeas 90 Nays 7

CERTIFICATE

I, Malcolm McBeath, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is enrolled Substitute House Bill No. 584 *as passed by the House of Representatives and the Senate on the dates hereon set forth.*

Malcolm McBeath
Chief Clerk

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of state-wide significance. The department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the state-wide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in section 11 of this 1971 act deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent

with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

NEW SECTION. Sec. 3. As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

(a) "Department" means the department of ecology;

(b) "Director" means the director of the department of ecology;

(c) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter: PROVIDED, That lands under the jurisdiction of the department of natural resources shall be subject to the provisions of this chapter and as to such lands the department of natural resources shall have the same powers, duties, and obligations as local government has as to other lands covered by the provisions of this chapter;

vetoed

(d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal

corporation, or agency of the state or local governmental unit however designated;

(6) "Hearing board" means the shoreline hearings board established by this chapter.

(7) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on the effective date of this chapter or as it may naturally change thereafter: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining saltwater shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of state-wide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying them; except (i) shorelines of state-wide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of state-wide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the

western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta -- from DeWolf Bight to Tatsolo Point,

(B) Birch Bay -- from Point Whitehorn to Birch Point,

(C) Hood Canal -- from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area -- from Brown Point to Yokeko Point, and

(E) Padilla Bay -- from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those wetlands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Wetlands" or "wetland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; and all marshes, bogs, swamps, floodways, river deltas, and flood plains associated

with the streams, lakes and tidal waters which are subject to the provisions of this act; the same to be designated as to location by the department of ecology.

(3) Procedural terms:

(a) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts or other descriptive material and text, a statement of desired goals and standards developed in accordance with the policies enunciated in section 2 of this 1971 act;

(c) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds one thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state; except that the following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction of a barn or similar agricultural structure on wetlands;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on wetlands by an owner, lessee or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter.

NEW SECTION. Sec. 4. The shoreline management program of this chapter shall apply to the shorelines of the state as defined in this act.

NEW SECTION. Sec. 5. This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating and administering the regulatory program of this chapter. The department shall act primarily in a supportive and review capacity with primary emphasis on insuring compliance with the policy and provisions of this chapter.

NEW SECTION. Sec. 6. (1) Within one hundred twenty days from the effective date of this chapter, the department shall submit to all local governments proposed guidelines consistent with section 2 of this 1971 act for:

(a) Development of master programs for regulation of the uses of shorelines; and

(b) Development of master programs for regulation of the uses of shorelines of state-wide significance.

(2) Within sixty days from receipt of such proposed guidelines, local governments shall submit to the department in

writing proposed changes, if any, and comments upon the proposed guidelines.

(3) Thereafter and within one hundred twenty days from the submission of such proposed guidelines to local governments, the department, after review and consideration of the comments and suggestions submitted to it, shall resubmit final proposed guidelines.

(4) Within sixty days thereafter public hearings shall be held by the department in Olympia and Spokane, at which interested public and private parties shall have the opportunity to present statements and views on the proposed guidelines. Notice of such hearings shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in each county of the state.

(5) Within ninety days following such public hearings, the department at a public hearing to be held in Olympia shall adopt guidelines.

NEW SECTION. Sec. 7. (1) Local governments are directed with regard to shorelines of the state in their various jurisdictions to submit to the director of the department, within six months from the effective date of this chapter, letters stating that they propose to complete an inventory and develop master programs for these shorelines as provided for in section 8 of this 1971 act.

(2) If any local government fails to submit a letter as provided in subsection (1) of this section, or fails to adopt a master program for the shorelines of the state within its jurisdiction in accordance with the time schedule provided in this chapter, the department shall carry out the requirements of section 8 of this 1971 act and adopt a master program for the shorelines of the state within the jurisdiction of the local government.

NEW SECTION. Sec. 8. Local governments are directed with regard to shorelines of the state within their various jurisdictions as follows:

(1) To complete within eighteen months after the effective date of this chapter, a comprehensive inventory of such shorelines. Such inventory shall include but not be limited to the general ownership patterns of the lands located therein in terms of public and private ownership, a survey of the general natural characteristics thereof, present uses conducted therein and initial projected uses thereof;

(2) To develop, within eighteen months after the adoption of guidelines as provided in section 6 of this 1971 act, a master program for regulation of uses of the shorelines of the state consistent with the guidelines adopted.

NEW SECTION. Sec. 9. Master programs or segments thereof shall become effective when adopted or approved by the department as appropriate. Within the time period provided in section 8 of this 1971 act, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(1) As to those segments of the master program relating to shorelines, they shall be approved by the department unless it determines that the submitted segments are not consistent with the policy of section 2 of this 1971 act and the applicable guidelines. If approval is denied, the department shall state within ninety days from the date of submission in detail the precise facts upon which that decision is based, and shall submit to the local government suggested modifications to the program to make it consistent with said policy and guidelines. The local government shall have ninety days after it receives recommendations from the department to make modifications designed to eliminate the inconsistencies and to resubmit the program to the department for approval. Any resubmitted program shall take effect when and in such form and content as is approved by the department.

(2) As to those segments of the master program relating to

shorelines of state-wide significance the department shall have full authority following review and evaluation of the submission by local government to develop and adopt an alternative to the local government's proposal if in the department's opinion the program submitted does not provide the optimum implementation of the policy of this chapter to satisfy the state-wide interest. If the submission by local government is not approved, the department shall suggest modifications to the local government within ninety days from receipt of the submission. The local government shall have ninety days after it receives said modifications to consider the same and resubmit a master program to the department. Thereafter, the department shall adopt the resubmitted program or, if the department determines that said program does not provide for optimum implementation, it may develop and adopt an alternative as hereinbefore provided.

(3) In the event a local government has not complied with the requirements of section 7 of this 1971 act it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

NEW SECTION. Sec. 10. (1) The master programs provided for in this chapter, when adopted and approved by the department, as appropriate, shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry,

transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values; and

(h) Any other element deemed appropriate or necessary to effectuate the policy of this act.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in section 2 of this chapter. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in section 14(3) of this chapter.

NEW SECTION. Sec. 11. (1) Whenever it shall appear to the director that a master program should be developed for a region of the shorelines of the state which includes lands and waters located

in two or more adjacent local government jurisdictions, the director shall designate such region and notify the appropriate units of local government thereof. It shall be the duty of the notified units to develop cooperatively an inventory and master program in accordance with and within the time provided in section 8 of this 1971 act.

(2) At the discretion of the department, a local government master program may be adopted in segments applicable to particular areas so that immediate attention may be given to those areas of the shorelines of the state in most need of a use regulation.

NEW SECTION. Sec. 12. All rules and regulations, master programs, designations and guidelines, shall be adopted or approved in accordance with the provisions of RCW 34.04.025 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

(1) Prior to the approval or adoption by the department of a master program, or portion thereof, at least one public hearing shall be held in each county affected by a program or portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county auditor and city clerk. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines.

NEW SECTION. Sec. 13. To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments.

NEW SECTION. Sec. 14. (1) No development shall be undertaken on the shorelines of the state except those which are consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, regulations or master program.

(2) No substantial development shall be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From the effective date of this chapter until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of section 2 of this 1971 act; and (ii) after their adoption, the guidelines and regulations of the department; and (iii) so far as can be ascertained, the master program being developed for the area. In the event the department is of the opinion that any permit granted under this subsection is inconsistent with the policy declared in section 2 of this 1971 act or is otherwise not authorized by this section, the department may appeal the issuance of such permit within thirty days to the hearings board upon written notice to the local government and

the permittee;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and the policy of section 2 of this 1971 act.

(3) Local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. Any such system shall include a requirement that all applications and permits shall be subject to the same public notice procedures as provided for applications for waste disposal permits for new operations under RCW 90.48.170. The administration of the system so established shall be performed exclusively by local government.

(4) Such system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until forty-five days from the date of final approval by the local government or until all review proceedings are terminated if such proceedings were initiated within forty-five days from the date of final approval by the local government.

(5) Any ruling on an application for a permit under authority of this section, whether it be an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general.

(6) Applicants for permits under this section shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in section 16(1) of this chapter, the person requesting the review shall have the burden of proof.

(7) Any permit may be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. In the event the department is of the opinion that such noncompliance exists, the department may appeal within thirty days to

the hearings board for a rescission of such permit upon written notice to the local government and the permittee.

(8) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under this section.

(9) No permit shall be required for any development on shorelines of the state included within a preliminary or final plat approved by the applicable state agency or local government prior to April 1, 1971, if:

(a) The final plat was approved after April 13, 1961, or the preliminary plat was approved after April 30, 1969, or

(b) Sales of lots to purchasers with reference to the plat, or substantial development incident to platting or required by the plat, occurred prior to April 1, 1971, and

(c) The development to be made without a permit meets all requirements of the applicable state agency or local government, other than requirements imposed pursuant to this chapter, and

(d) The development does not involve construction of buildings, or involves construction on wetlands of buildings to serve only as community social or recreational facilities for the use of owners of platted lots and the buildings do not exceed a height of thirty-five feet above average grade level, and

(e) The development is completed within two years after the effective date of this chapter.

(10) The applicable state agency or local government is authorized to approve a final plat with respect to shorelines of the state included within a preliminary plat approved after April 30, 1969, and prior to April 1, 1971: PROVIDED, That any substantial development within the platted shorelines of the state is authorized by a permit granted pursuant to this section, or does not require a permit as provided in subsection (9) of this section, or does not require a permit because of substantial development occurred prior to the effective date of this chapter.

(11) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval.

NEW SECTION. Sec. 15. With respect to timber situated within two hundred feet abutting landward of the ordinary high water mark within shorelines of state-wide significance, the department or local government shall allow only selective commercial timber cutting, so that no more than thirty percent of the merchantable trees may be harvested in any ten year period of time: PROVIDED, That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions or silviculture practices necessary for regeneration render selective logging ecologically detrimental: PROVIDED FURTHER, That clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted.

NEW SECTION. Sec. 16. Surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark and on all lands within one thousand feet landward from said mark.

NEW SECTION. Sec. 17. A shorelines hearings board sitting as a quasi judicial body is hereby established which shall be made up of six members: Three members shall be members of the pollution control hearings board; two members, one appointed by the association of Washington cities and one appointed by the association of county commissioners, both to serve at the pleasure of the associations; and the state land commissioner or his designee. The chairman of the pollution control hearings board shall be the chairman of the shorelines hearings board. A decision must be agreed to by at least four members of the board to be final. The pollution control hearings board shall provide the shorelines appeals board such administrative and clerical assistance as the latter may require. The members of the shoreline appeals board shall receive the

compensation, travel, and subsistence expenses as provided in RCW 43.03.050 and RCW 43.03.060.

NEW SECTION. Sec. 18. (1) Any person aggrieved by the granting or denying of a permit on shorelines of the state, or rescinding a permit pursuant to section 15 of this chapter may seek review from the shorelines hearings board by filing a request for the same within thirty days of receipt of the final order. Concurrently with the filing of any request for review with the board as provided in this section pertaining to a final order of a local government, the requestor shall file a copy of his request with the department and the attorney general. If it appears to the department or the attorney general that the requestor has valid reasons to seek review, either the department or the attorney general may certify the request within thirty days after its receipt to the shorelines hearings board following which the board shall then, but not otherwise, review the matter covered by the requestor: PROVIDED, That the failure to obtain such certification shall not preclude the requestor from obtaining a review in the superior court under any right to review otherwise available to the requestor. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within forty-five days from the date of the filing of said copies by the requestor.

(2) The department or the attorney general may obtain review of any final order granting a permit, or granting or denying an application for a permit issued by a local government by filing a written request with the shorelines appeals board and the appropriate local government within forty-five days from the date the final order was filed as provided in subsection (5) of section 14 of this 1971 act.

(3) The review proceedings authorized in section 18(1) and (2) of this 1971 act are subject to the provisions of chapter 34.04 RCW pertaining to procedures in contested cases. The provisions of

chapter 43.21B RCW and the regulations adopted pursuant thereto by the pollution control hearings board, insofar as they are not inconsistent with chapter 34.04 RCW, relating to the procedures for the conduct of hearings and judicial review thereof, shall be applicable to all requests for review as provided for in section 18(1) and (2) of this 1971 act.

(4) Local government may appeal to the shorelines hearing board any rules, regulations, guidelines, designations or master programs for shorelines of the state adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

(a) In an appeal relating to a master program for shorelines, the board, after full consideration of the positions of the local government and the department, shall determine the validity of the master program. If the board determines that said program:

(i) is clearly erroneous in light of the policy of this chapter; or

(ii) constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(iii) is arbitrary and capricious; or

(iv) was developed without fully considering and evaluating all proposed master programs submitted to the department by the local government; or

(v) was not adopted in accordance with required procedures; the board shall enter a final decision declaring the program invalid, remanding the master program to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government, a new master program. Unless the board makes one or more of the determinations as hereinbefore provided, the board shall find the master program to be valid and enter a final decision to that effect.

(b) In an appeal relating to a master program for shorelines of state-wide significance the board shall approve the master program adopted by the department unless a local government shall, by clear and convincing evidence and argument, persuade the board that the master program approved by the department is inconsistent with the policy of section 2 of this chapter and the applicable guidelines.

(c) In an appeal relating to rules, regulations, guidelines, master programs of state-wide significance and designations, the standard of review provided in RCW 34.04.070 shall apply.

(5) Rules, regulations, designations, master programs and guidelines shall be subject to review in superior court, if authorized pursuant to RCW 34.04.070: PROVIDED, That no review shall be granted by a superior court on petition from a local government unless the local government shall first have obtained review under subsection (4) of this section and the petition for court review is filed within three months after the date of final decision by the shorelines hearing board.

NEW SECTION. Sec. 19. The department and each local government shall periodically review any master programs under its jurisdiction and make such adjustments thereto as are necessary. Each local government shall submit any proposed adjustments, to the department as soon as they are completed. No such adjustment shall become effective until it has been approved by the department.

NEW SECTION. Sec. 20. The department and local governments are authorized to adopt such rules as are necessary and appropriate to carry out the provisions of this chapter.

NEW SECTION. Sec. 21. The attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

NEW SECTION. Sec. 22. In addition to incurring civil

liability under section 21 of this 1971 act, any person found to have wilfully engaged in activities on the shorelines of the state in violation of the provisions of this chapter or any of the master programs, rules, or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five nor more than one thousand dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment: PROVIDED, That the fine for the third and all subsequent violations in any five-year period shall be not less than five hundred nor more than ten thousand dollars.

NEW SECTION. Sec. 23. Any person subject to the regulatory program of this chapter who violates any provision of this chapter or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The attorney general or local government attorney shall bring suit for damages under this section on behalf of the state or local governments. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

NEW SECTION. Sec. 24. In addition to any other powers granted hereunder, the department and local governments may:

(1) Acquire lands and easements within shorelines of the state by purchase, lease, gift, or eminent domain, either alone or in concert with other governmental entities, when necessary to achieve implementation of master programs adopted hereunder;

(2) Accept grants, contributions, and appropriations from any

agency, public or private, or individual for the purposes of this chapter;

(3) Appoint advisory committees to assist in carrying out the purposes of this chapter;

(4) Contract for professional or technical services required by it which cannot be performed by its employees.

NEW SECTION. Sec. 25. The department is directed to cooperate fully with local governments in discharging their responsibilities under this chapter. Funds shall be available for distribution to local governments on the basis of applications for preparation of master programs. Such applications shall be submitted in accordance with regulations developed by the department. The department is authorized to make and administer grants within appropriations authorized by the legislature to any local government within the state for the purpose of developing a master shorelines program.

No grant shall be made in an amount in excess of the recipient's contribution to the estimated cost of such program.

NEW SECTION. Sec. 26. The state, through the department of ecology and the attorney general, shall represent its interest before water resource regulation management, development, and use agencies of the United States, including among others, the federal power commission, environmental protection agency, corps of engineers, department of the interior, department of agriculture and the atomic energy commission, before interstate agencies and the courts with regard to activities or uses of shorelines of the state and the program of this chapter. Where federal or interstate agency plans, activities, or procedures conflict with state policies, all reasonable steps available shall be taken by the state to preserve the integrity of its policies.

NEW SECTION. Sec. 27. (1) Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in

navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: PROVIDED, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of state statutes.

(2) Nothing in this section shall be construed as altering or abridging any private right of action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) hereof.

(3) Nothing in this section shall be construed as altering or abridging the authority of the state or local governments to suppress or abate nuisances or to abate pollution.

(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on the effective date of this chapter relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights.

NEW SECTION. Sec. 28. The provisions of this chapter shall be applicable to all agencies of state government, counties, and public and municipal corporations and to all shorelines of the state owned or administered by them.

NEW SECTION. Sec. 29. The restrictions imposed by this act shall be considered by the county assessor in establishing the fair market value of the property.

NEW SECTION. Sec. 30. The department of ecology is designated the state agency responsible for the program of regulation of the shorelines of the state, including coastal shorelines and the shorelines of the inner tidal waters of the state, and is authorized to cooperate with the federal government and sister states and to

receive benefits of any statutes of the United States whenever enacted which relate to the programs of this chapter.

NEW SECTION. Sec. 31. Additional shorelines of the state shall be designated shorelines of state-wide significance only by affirmative action of the legislature.

The director of the department may, however, from time to time, recommend to the legislature areas of the shorelines of the state which have state-wide significance relating to special economic, ecological, educational, developmental, recreational, or aesthetic values to be designated as shorelines of state-wide significance.

Prior to making any such recommendation the director shall hold a public hearing in the county or counties where the shoreline under consideration is located. It shall be the duty of the county commissioners of each county where such a hearing is conducted to submit their views with regard to a proposed designation to the director at such date as the director determines but in no event shall the date be later than sixty days after the public hearing in the county.

NEW SECTION. Sec. 32. No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

NEW SECTION. Sec. 33. The department of ecology, the attorney general, and the harbor line commission are directed as a matter of high priority to undertake jointly a study of the locations, uses and activities, both proposed and existing, relating to the shorelines of the cities, and towns of the state and submit a report which shall include but not be limited to the following:

(1) Events leading to the establishment of the various harbor

lines pertaining to cities of the state;

(2) The location of all such harbor lines;

(3) The authority for establishment and criteria used in location of the same;

(4) Present activities and uses made within harbors and their relationship to harbor lines;

(5) Legal aspects pertaining to any uncertainty and inconsistency; and

(6) The relationship of federal, state and local governments to regulation of uses and activities pertaining to the area of study.

The report shall be submitted to the legislature not later than December 1, 1972.

NEW SECTION. Sec. 34. All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as the achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government.

NEW SECTION. Sec. 35. Nothing in this chapter shall affect any rights established by treaty to which the United States is a party.

NEW SECTION. Sec. 36. Nothing in this chapter shall obviate any requirement to obtain any permit, certificate, license, or approval from any state agency or local government.

NEW SECTION. Sec. 37. This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

NEW SECTION. Sec. 38. Sections 1 through 37 of this act

shall constitute a new chapter in Title 90 RCW.

NEW SECTION. Sec. 39. To carry out the provisions of this 1971 act there is appropriated to the department from the general fund the sum of five hundred thousand dollars, or so much thereof as necessary.

NEW SECTION. Sec. 40. If any provision of this chapter, or its application to any person or legal entity or circumstances, is held invalid, the remainder of the act, or the application of the provision to other persons or legal entities or circumstances, shall not be affected.

NEW SECTION. Sec. 41. This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government, and its existing institutions. This 1971 act shall take effect on June 1, 1971. The director of ecology is authorized to immediately take such steps as are necessary to insure that this 1971 act is implemented on its effective date.

NEW SECTION. Sec. 42. This 1971 act constitutes an alternative to Initiative 43. The secretary of state is directed to place this 1971 act on the ballot in conjunction with Initiative 43 at the next ensuing regular election.

This 1971 act shall continue in force and effect until the secretary of state certifies the election results on this 1971 act. If affirmatively approved at the ensuing regular general election, the act shall continue in effect thereafter.

Passed the House May 6, 1971.

Thomas A. Swayze Jr.
Speaker of the House.

Passed the Senate May 4, 1971.

John A. Cherberg
President of the Senate.

Approved May 21, 1971
with the exception of
an item in section 3
which is vetoed.

Daniel J. Evans
Governor of the State of Washington

ESHB 584

FILED
MAY 21 1971
11:05 p.m.
No. .....
A. LU... State

Initiative 43

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

SECTION 1. Title. This act shall be known and cited as the "Shorelines Protection Act."

SECTION 2. Declaration of Policy. The people of the state of Washington hereby find and declare:

(1) That the saltwater and freshwater shoreline areas of this state are held in public trust for all the people of the state and their descendants; and that they are a valuable and endangered natural resource;

(2) That the present pattern of haphazard, inappropriate and uncoordinated development of the shorelines is:

(a) Threatening the public health, safety, welfare, comfort and convenience;

(b) Diminishing the values of the shorelines held in trust;

(c) Destroying the ecological balance of plant and animal communities;

(d) Reducing open space available for public recreation and esthetic enjoyment;

(e) Diminishing the capacity of lands and waters to produce food;

(f) Diminishing public access to publicly owned shoreline areas;

(g) Obstructing the view of the shorelines;

(h) Increasing air, water, solid waste, noise, visual and other pollution;

(i) Preventing the existence and development of properly situated and designed commercial and industrial developments requiring location in the shoreline area;

(j) Reducing present and future job opportunities for the people of this state;

(k) Limiting public navigation;

(l) Reducing the value of private property;

(m) Reducing the attractiveness of the state to tourists, thereby jeopardizing an important state industry.

(3) That the adoption, implementation and enforcement of a comprehensive plan for the shorelines will have a significantly beneficial effect on the preservation and development of the shorelines for the public good.

(4) That for the public health, safety, welfare, comfort and convenience, it shall be the policy of the state to develop, establish and implement a comprehensive planning and permit system for the shorelines of the state of Washington to accomplish the following goals:

(a) Protection of the natural resources and natural beauty of the shoreline areas;

(b) Provision of appropriate locations for aquaculture and for commercial and industrial developments requiring location on the shoreline;

(c) Protection of the public's right to an unpolluted and tranquil environment;

(d) Provision for and protection of public access to publicly owned shoreline areas;

(e) Minimization of interference with view rights;

(f) Regulation of signs and illumination in the shoreline areas;

(g) Minimization of interference with the public's right to navigation and outdoor recreational opportunities;

(h) Protection and development of the capacity of the shoreline areas for the production of food resources;

(i) Conservation and enhancement of the natural growth of fish and wildlife;

(j) Preservation of areas of historic, cultural, scientific, and educational importance;

(k) Regulation of access to and traffic in the shoreline areas by motor vehicles and motor-craft;

(l) Fulfillment of the responsibilities of each generation as the trustee of the shoreline areas for succeeding generations;

(5) That in planning for and in guiding the changing environments of the shoreline area it shall be the policy of the state to give preference to:

(a) Long term benefits over short term benefits;

(b) Statewide or regional interests over local interests;

(c) Natural environments over man-made environments;

(d) The location of industrial and commercial facilities in existing developed industrial or commercial areas over their location in undeveloped, rural or residential areas of the shoreline, in order that as great a portion of the shorelines as possible may remain in a natural and nonintensively used condition, and that existing commercial and industrial areas may be grouped, renewed and restored.

SECTION 3. Definitions. As used in this act:

(1) "Saltwater shoreline" and "saltwater shoreline area" mean:

(a) All areas of land or water extending seaward to the outer limits of the state's seaward jurisdiction from the line of ordinary high tide, including but not limited to: beds, submerged lands, tidelands; harbors, bays, bogs, channels, canals, estuaries, sounds, straits, inlets, sloughs, salt marshes; those ponds, pools and wetlands that are contiguous to or have been divided off from tidal waters; and all rock and minerals beneath these lands and waters.

(b) Those lands extending landward for 500 feet in all directions as measured on a horizontal plane from the line of ordinary high tide as such line now or hereafter may from any cause be located.

(2) "Freshwater shoreline" and "freshwater shoreline area" mean:

(a) All areas of land or water up to the line of ordinary high water of a river, lake or reservoir, including, but not limited to: beds, submerged lands, banks; marshes, bays, bogs, harbors, channels, canals, straits, deltas, inlets, sloughs; and all rock and minerals beneath these lands and waters.

(b) Those lands adjoining any river, lake, or reservoir extending landward for 500 feet in all directions as measured on a horizontal plane from the line of ordinary high water as said line now or hereafter may from any cause be located.

(3) "Shoreline" and "shoreline area" mean both saltwater shorelines and freshwater shorelines.

(4) "River" means any flowing body of water or portion thereof including rivers, streams and creeks, but shall not include artificially constructed waterways used principally for carrying water for uses for which a legal appropriation of water exists.

(5) "Lake" means a natural or man-made inland body of standing water in a depression of land.

(6) "Line of ordinary high tide" and "line of ordinary high water" mean the line which the water impresses on the soil by covering it for sufficient periods to deprive the soil of vegetation. In any area where the line of ordinary high tide or the line of ordinary high water cannot be determined, the line of ordinary high tide shall be the line of mean higher high tide and the line of ordinary high water shall be the line of mean high water.

(7) "Navigable for public use" means having sufficient water at any time during the year to float a device or craft now or hereafter used by the public for transportation in pursuit of commercial or recreational activity.

(8) "Department" means the department of ecology.

(9) "Director" means the director of the department of ecology.

(10) "Commission" means the ecological commission.

(11) "Council" means regional citizens' council.

(12) "Owner" means holder of a legal or equitable interest in property.

(13) "Local government" means cities, counties, public utility districts, port districts, or other municipal corporations and regional planning authorities.

(14) "Person" means an individual, partnership and any organization, or officer thereof, which shall include a corporation, association, cooperative, municipal corporation, federal, state or local governmental agency, or any two or more of the foregoing.

(15) "Development" means the division of land after the effective date of this act into two or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease or transfer; and the following projects commenced or altered after the effective date of this act for which either the fair market value or cost, including the cost of surveying and engineering, is in excess of $100 in any one-year period: draining, dredging, excavating, removing of soil, mud, sand, stones or gravel, dumping, filling or depositing of any soil, mud, sand, stones, gravel, manufactured items or rubbish, driving of pilings or placing of obstructions, commercial boring, drilling, testing or exploring for any minerals, including oil and/or gas, the logging or cutting of timber for commercial purposes, the erecting or exterior alteration of a structure of any kind, or any combination of the foregoing.

(16) "Substantial development" means the division of ten or more acres of land after the effective date of this act into two or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease or transfer, and any development as defined in subsection (15) herein for which either the fair market value or cost, including the cost of surveying and engineering, is in excess of $50,000 in any one-year period.

(17) "Reasonable public notice" means notice in writing to any person who has requested such notice at least one month prior to the specified hearing and the publication of notice at least once in each of the four weeks preceding the specified hearing, in at least one newspaper of general circulation publishing at least six days of the week in all of the following cities: Seattle, Olympia, Tacoma, Everett, Vancouver, Pasco, Wenatchee, Yakima, Spokane, and Walla Walla, Washington and Portland, Oregon; and in at least one newspaper of general circulation in each of the counties affected by the subject matter of the hearing.

SECTION 4. Application and Exemptions. This act shall apply to the saltwater and freshwater shoreline areas of the state of Washington, provided that:

(1) The planning and permit authority given in this act to the department shall not apply to freshwater shoreline areas along and including lakes that have a water surface area smaller than twenty surface acres at all times of the year nor to freshwater shoreline areas along rivers above the upstream limit of navigability for public use as determined by the department, except as provided in section 11.

(2) An applicant receiving certification pursuant to the Thermal Power Plants Act, Chapter 45, Laws of 1970, shall not be required to obtain a permit under this act to develop a thermal power plant, associated transmission lines or an off-stream body of water pursuant to said certification.

(3) An owner of property on the effective date of this act within the shoreline area shall not be required to obtain a permit under this act to construct upon said property above the line of ordinary high tide or ordinary high water a single family residence for his own use or the use of his family.

(4) This act shall not be construed to increase or decrease public access to freshwater shoreline areas used by local governments to supply water for human consumption; and

(5) This act shall not require the removal, destruction or alteration of any structure or development existing upon the effective date of this act.

SECTION 5. Preparation of the Comprehensive Plan and Inclusion Therein of City and County Plans. The department shall prepare for consideration by the commission a comprehensive plan for the shorelines of the state of Washington which shall be in accordance with the findings and declarations of section 2 of this act.

Before preparing the comprehensive plan, the department shall study the characteristics of the saltwater and freshwater shoreline areas and adjacent areas, including quality, quantity and movement of the waters, ecological relationships within the shoreline areas and the needs of the state's population for employment, recreation and esthetic satisfaction. The department shall examine present and proposed uses of the saltwater and freshwater shoreline areas and shall consider current plans and zoning regulations of the cities and counties.

In drafting a comprehensive plan, the department shall consider plans, studies, surveys, and other information concerning saltwater and freshwater shoreline areas which have been or are being developed by federal and state agencies, local governments, private individuals or organizations, or other appropriate sources. Particular emphasis shall be placed on obtaining and using scientific information regarding the hydrology, geology, topography, ecology, and other scientific data relating to the shoreline areas. The department shall consult with officials of local governments in areas affected by the plan and with the regional citizens' councils established in this act.

Cities and counties may submit plans for the shoreline areas to the department, and where the department finds that such plans are consistent with the findings and declarations of section 2 of this act, it shall consider and may include as a part of the department's proposed comprehensive plan for any given area, any part or all of the plan submitted by a city or county.

The department's comprehensive plan shall include the following elements:

(1) A conservation element for the preservation and restoration of natural resources, including but not limited to scenic vistas, water sheds, forests, soils, fisheries, wildlife and minerals, and lands and waters giving esthetic enjoyment;

(2) A recreation element for the preservation and enlargement of recreational opportunities, including but not limited to parks, beaches, and recreational easements;

(3) An economic development element for the location and design of industries, tourist facilities, commerce and other developments that require a location in the shoreline area;

(4) A public access element for the preservation and enlargement of opportunities for public access to publicly owned shoreline areas, including but not limited to trails, access roads, streets and highways, walkways, parking areas, and boat launching and moorage areas;

(5) An historic, cultural, scientific and educational element for the protection and restoration of buildings, sites and areas having historic, cultural, scientific or educational values;

(6) Any other element which in the opinion of the commission is necessary to the development of the comprehensive plan and to accomplish the findings and declarations of section 2 of this act.

The comprehensive plan shall contain maps and written text and shall designate on the maps and in the written text the acceptable uses and the conditions to be placed on such use or uses in each portion of the shoreline.

SECTION 6. Regional Citizens' Councils. The director shall divide the state into seven or more regions which shall contain whole counties and shall reflect the geography of the river basins and the similar nature of the shorelines among the counties within the regions. One citizens' council shall be established in each region.

The regional citizens' councils shall advise the department in the preparation of comprehensive plans for their particular regions. The councils shall cease to exist after the commission shall approve the comprehensive plan pursuant to section 7 of this act.

Each council shall be non-partisan and shall be composed of more than thirty members who shall include two members of the legislative body of each county in the region, the county executive of each county in the region having a county executive, the mayor of the largest city in each county in the region, the mayor of each city having a population in excess of 10,000 at the 1970 census in the region and a number of citizen members who are not employed by or are not officials of a city or county and who shall form a majority of the council. The citizen members shall be appointed by the governor from among the electors of the state. Members of each council shall be appointed within sixty days after the effective date of this act. One-tenth of the citizen members shall represent the statewide concern for shorelines within the region and shall not be residents of the region. Any city or county official member may appoint a representative to serve in his place on the council. Vacancies shall be filled within sixty days in the same manner as the original appointments. The chairman and vice-chairman of each council shall be appointed from among the citizen members by the governor.

The council shall meet at such times and places as shall be designated by the chairman. Members of the councils shall receive reimbursement for their travel expenses as provided in RCW 43.03.060, as now or hereafter amended.

The director may from time to time establish and dissolve additional committees and task forces composed of members of the several regional citizens' councils and/or the general public to examine and comment on specific problems, river basins, shoreline areas, or amendments to the comprehensive plan. Members of these committees and task forces shall receive reimbursement for their travel expenses as provided in RCW 43.03.060, as now or hereafter amended.

SECTION 7. Adoption of the Comprehensive Plan. The department shall submit to the commission a comprehensive plan for the saltwater and freshwater shoreline areas within the state of Washington as prescribed by this act within thirty-six months of the effective date of this act.

The commission shall, after giving reasonable public notice, hold at least one public hearing in each region designated pursuant to section 6 herein.

The comprehensive plan shall be adopted and take effect upon a majority vote of all the commission. The comprehensive plan may be adopted by divisions or segments possessing geographical, topographical, political or river or lake basin identity.

The comprehensive plan, and all amendments thereto, shall be filed with the county auditor of each county of the state and shall become part of the land records of the respective counties.

SECTION 8. Modification of Plans. The commission may by majority vote amend or rescind parts of the comprehensive plan where necessary to implement the declarations and findings contained in section 2 after giving reasonable public notice and then holding a public hearing in each county affected by the amendment or rescission.

SECTION 9. Implementation of the Plan. No person shall cause a development to take place in the shoreline areas without a permit issued by the department, or by a

city or county pursuant to section 10; provided, that permits shall not be required for:

(1) Normal maintenance or repair of existing structures or developments;

(2) Construction by the owner on property he occupies for his own residential use or the use of his family of the normal protective bulkhead, dock or outbuildings common to single family residences in the immediate area or for the landscaping of such property to improve the appearance of the land or buildings;

(3) Construction on a property used for agricultural purposes of a barn or similar building above the line of ordinary high tide or ordinary high water;

(4) Any emergency measures or repairs not falling under (1), (2), and (3) above that are necessitated by fire, flood, windstorm or similar act of nature or accident, or criminal act.

The commission shall adopt appropriate administrative regulations for the granting, denying, granting subject to conditions or rescinding of permits for any proposed development in the shoreline areas, and may specifically adopt administrative regulations for the routine issuance of permits for proposed developments in intensively developed areas above the line of ordinary high tide or ordinary high water.

The department shall issue permits pursuant to this section only if the proposed development is consistent with the findings and declarations set out in section 2 and the comprehensive plan. Applicants for permits shall have the burden of proving by a preponderance of the evidence that the proposed development is consistent with the findings and declarations set out in section 2 and the comprehensive plan. The department shall rescind any permit upon finding that an applicant has either not complied with conditions imposed by the department or not followed his own previously submitted development plan, and further finding that such noncompliance results in the development not conforming with the findings and declarations of section 2 or the comprehensive plan.

Until the comprehensive plan is adopted, the department shall base its decisions on permit applications and rescissions on consistency with the findings and declarations of section 2.

All findings on permit applications, together with the applications, supportive materials and the reasons for the finding, shall be reduced to writing.

The department shall notify other state and federal agencies and local governments as well as private groups and individuals who are interested in a particular permit decision so that said entities may, if they desire, submit data to the department.

Any person aggrieved by a decision of the department in granting or rescinding a permit shall have the right to a hearing before the pollution control hearings board pursuant to procedures established by the Environmental Quality Reorganization Act of 1970, Chapter 62, Laws of 1970. The pollution control hearings board shall review the department's decision in light of the findings and declarations set out in section 2 and shall affirm, modify or reverse said decision. The decision by the department in granting or rescinding a permit shall be made without a formal hearing.

SECTION 10. Delegation of Authority by Department to Counties and Cities. Following the adoption of the comprehensive plan the department may designate and delegate to requesting counties and cities the department's authority or portion thereof under section 9 herein over those developments that are not substantial. Such designation and delegation may be made and may be withdrawn only after the department considers the following factors:

(1) The severity of the impact of various classes of development on the ecology of the shoreline;

(2) The jurisdiction of particular state agencies, counties and cities and conflicts in jurisdiction with other state agencies or local governments;

(3) The experience and ability of particular counties and cities in regulating proposed developments.

The department shall retain jurisdiction and exercise all authority given to it by this act over substantial developments. Cities and counties exercising authority under this section shall act pursuant to and comply with all the provisions of section 9 herein; provided, that any person concerned with a decision of a city or county in granting or rescinding a permit shall have such hearing rights as may be provided by existing state laws or by existing county or city ordinances.

SECTION 11. Responsibilities of Counties and Cities. To preserve and protect freshwater shorelines along rivers that are not navigable for public use and along lakes that are smaller than twenty surface acres at all times of the year, cities and counties shall within thirty-six months of the effective date of this act enact legislation for the management and protection of such shoreline areas in conformance with the declarations and findings set out in section 2 of this act.

Within ten days of the enactment of such legislation, it shall be submitted to the commission for approval. If the commission finds that the legislation is not consistent with the declarations and findings of section 2 of this act, it shall notify the county or city of the deficiencies in its legislation. The county or city shall amend its legislation and return it to the department within ninety days.

If, within forty-eight months from the effective date of this act no legislation has been enacted and approved by the commission for a given city or county the department shall develop and propose and the commission shall adopt a comprehensive plan and regulations for the management and protection of those shoreline areas in the same manner as provided in sections 7, 8 and 9. Such plans and regulations shall have the full force of law within the county or city and shall be administered by the city or county affected.

SECTION 12. Power Reserved to Cities and Counties. The issuance of a permit by the department under section 9 or by its designee under section 10 shall not authorize a person to cause a development to take place in violation of any other state law or regulation, or any city or county ordinance or resolution.

No person shall apply for a permit pursuant to sections 9 or 10 of this act without first having complied with applicable county and city resolutions and ordinances.

SECTION 13. Shoreline Environment Erosion Control. No person shall be granted a permit pursuant to sections 9 or 10 for commercial harvesting or cutting of timber when the proposed harvesting or cutting would result in openings in the forest canopy within the shoreline areas larger in diameter than the average height of the immediately surrounding trees, except where the cutting or harvesting is in pursuit of a development other than logging or timber cutting granted a permit pursuant to this act or where the director finds that the proposed harvesting or cutting is needed to meet or avert a threat to the public health or safety.

SECTION 14. Consumer Protection. No person shall sell or otherwise transfer, except by gift or will, or offer for sale or transfer, except by gift or will, any interest in lands or waters within the shoreline area without including in any written or printed advertisement or offer for sale or transfer and in any instruments of sale or transfer the following notice in ten-point bold-face type or larger, or if by typewriter, in capital letters:

"NOTICE: Part or all of the lands and waters concerned herein are within the shoreline area of the state of Washington and subject to the environmental protection restrictions of the Shorelines Protection Act. Developments and modifications of these lands or waters are subject to regulation. Contact the Department of Ecology, Olympia, Washington, for information regarding the regulations applying to these lands and waters, or see a copy of the regulations at the office of your County Auditor."

Failure to comply with this section shall not affect the title to any property except that such failure shall be grounds for rescission by the purchaser or transferee.

SECTION 15. Oil and Gas Exploration and Production. No permit shall be issued to any person pursuant to this act to bore, excavate, drill, test drill, conduct seismic explorations or remove any oil and/or gas from the shoreline areas of Puget Sound, including Hood Canal and the San Juan Islands; provided, that the department may conduct explorations necessary to carry out the study provisions of this section.

Within thirty-six months of the effective date of this act the director shall submit to the governor a study report and recommendations on the exploration and production of oil and gas from the shoreline areas of the state of Washington.

SECTION 16. High Rise Structures. No permit shall be issued pursuant to this act for any new or expanded building of more than thirty-five feet above average grade level on shorelines that obstruct the view of the shoreline from a substantial number of residences on areas adjoining the shoreline, except as the comprehensive plan shall designate specific areas where such buildings shall be permitted.

SECTION 17. Private Property Rights. Nothing in this act shall be construed to authorize the taking of private property without just compensation, nor impair or affect private riparian rights of owners of property in the shoreline areas as against another private individual, group, association, corporation, partnership or other private legal entity.

SECTION 18. Public Navigation Rights. Except as permitted by this act, there shall be no interference with or obstruction of the navigation rights of the public pursuant to common law as stated in such cases as the Washington State Supreme Court decision in *Wilbour v. Gallagher*, 77 Wash. Dec. 2d 307 (1969).

SECTION 19. Administration. To administer this act and pursuant to the Environmental Quality Reorganization Act of 1970, Chapter 62, Laws of 1970, there shall be established within the department a shoreline protection division responsible to the director and supervised by an assistant director.

The commission shall adopt regulations for the administration of this act, consistent with the policy of this act; provided, that prior to the adoption of any such administrative regulations, a public hearing after reasonable public notice shall be held in Thurston County.

The department is authorized and directed to assign staff to assist the commission, regional citizens' councils, and other committees or task forces established pursuant to this act, and to furnish such administrative and informational services as the director may find necessary.

SECTION 20. Right of Review. Any plans or regulations adopted pursuant to this act by the commission or any city or county, any permits granted, denied or rescinded by the pollution control hearings board or any permits granted, denied or rescinded by a city or county pursuant to sections 10 or 11 of this act shall be subject to judicial review pursuant to the provisions of Chapter 34.04 RCW. Any judicial proceedings brought by any party relating to this act shall be instituted in the superior court of the county where the property affected is located, or in the superior court of Thurston County if no definite property is related to the proceeding.

SECTION 21. Public Documents. Upon request and at the expense of the requesting party the department, city or county acting pursuant to this act shall make available for public inspection and copying during regular office hours or shall copy and mail any of the following materials:

(1) Each permit application;

(2) All final orders, made in the granting or denying of permit applications;

(3) Proposed and adopted comprehensive plans, comprehensive plan amendments and related administrative regulations;

(4) Interdepartmental memoranda, permit findings and other recorded material related to permit functions;

(5) Administrative staff manuals and instructions to staff relating to the planning and permit functions herein that affect the public;

(6) Minutes of commission, board or council meetings relating to the planning and permit functions herein that affect the public;

(7) All evidence provided by applicants for permits.

SECTION 22. Enforcement. The attorney general shall enforce this act, including the provisions of any permit issued pursuant thereto and shall, at the request of the director or upon his own initiative, or upon the request of a private person, bring injunctive, declaratory, or other legal actions necessary to such enforcement.

If a private person has requested the attorney general to enforce this act, and the attorney general has declined to do so, the private person may institute an appropriate civil suit to enforce this act, including the provisions of any permit issued pursuant thereto, in the name of the public, and if he prevails, shall be entited to reasonable attorney's fees. One-half of such attorney's fees shall be assessed against defendant and one-half of such attorney's fees shall be assessed against the state. If the court finds that the suit was commenced without reasonable cause, the defendant shall be entitled to reasonable attorney's fees from the plaintiff.

SECTION 23. Damages. Any person who violates any provision of this act or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, and for the cost of restoring the affected area to its condition prior to violation. The attorney general shall bring suit for damages under this section on behalf of the state, any of its agencies, or local governments. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. The court, if liability has been established for the cost of restoring an area affected by a violation, shall either compel the violator to restore the affected area at his own expense, or make other provision for assuring that restoration will be done within a reasonable time. In addition to such appropriate relief, including money damages, which is provided by the court under this or other acts, a private person bringing a damage suit in his own behalf or on the behalf of others may, in the discretion of the court, recover his reasonable attorney's fees and court costs.

SECTION 24. Civil Penalties. Any person who violates any provision of this act except section 14 shall incur in addition to any other penalties provided by the law a penalty in an amount not less than fifty dollars ($50.00) nor more than one-thousand dollars ($1,000.00) a day for every such violation. Each and every such violation under this section shall be a separate offense, and in case of a continuing violation, every day's continuance shall be a separate violation. Prosecution to enforce this section may be brought by either the attorney general or prosecutor of the county where the affected property is located; provided, that if both the attorney general and the prosecutor of the county where the affected property is located refuse to prosecute under this section, a private person shall be entitled to do so. Fines collected pursuant to this section through prosecution by the prosecutor shall go to the general fund of the county. Fines collected pursuant to this section through prosecution by the attorney general shall go to the state's general fund. Fines collected pursuant to this section through prosecution by a private person shall go to the person bringing the suit.

SECTION 25. Criminal Penalties. Any person who violates any provision of this act except section 14 shall be guilty of a misdemeanor. Prosecutions pursuant to this section shall be brought in the county where the affected property is located by either the prosecutor of said county or the attorney general. Any fines collected pursuant to this section from prosecution by the county prosecutor shall go to the general fund of the county. Any fines collected pursuant to this section from prosecution by the attorney general shall go to the state general fund.

SECTION 26. Financing. To carry out the purposes of this act, there shall be appropriated to the department from the state general fund in the fiscal biennium in which this act takes effect the sum of $500,000, and for the ensuing fiscal biennium the sum of $900,000; provided, that such monies as are not expended shall be returned to the state general fund.

To help meet the costs of administering this act, the department, or a city or a county issuing permits pursuant to this act shall by regulation or ordinance adopt a fee schedule for permit applications based on the estimated costs of processing different classes of permit applications. A permit applicant shall be required to pay the appropriate fee based on the fee schedule adopted by the governmental body issuing the permit. All fees collected pursuant to this section by the department shall be deposited in the state general fund. All fees collected pursuant to this section by a city or county shall go to the respective city or county general fund.

SECTION 27. Cooperation With Local Governments and Private Persons. The department shall cooperate, consult with and assist appropriate government agencies and private persons developing plans, studies, surveys, recommendations, or information on shorelines.

State and local government agencies shall cooperate fully with the department in furthering the purposes of this act.

SECTION 28. Department's Authority to Contract. For the purposes of administering this act, the department may enter into contracts or agreements with or receive funds from the state of Washington, the federal government or any governmental department, agency or any person.

SECTION 29. Official Representative. The department is authorized to be the official representative of the state of Washington to the United States and its agencies, Canada, the states of Oregon and Idaho, the Province of British Columbia, and other interested state governments, organizations and individuals, in the fields of shoreline management and policy.

SECTION 30. Severability. If any provision of this act, or its application to any person or legal entity or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or legal entities or circumstances shall not be affected.

SECTION 31. Section Headings Not Part of Law. Section headings as used in this act shall not constitute any part of the law.

CRAFTSMAN & MET PRESS

Chapter 80.50

THERMAL POWER PLANTS—SITE LOCATIONS

80.50.010 Legislative finding—Policy—Intent. The legislature finds that the present and predicted growth in electric power demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for thermal generating facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites and the routing of associated transmission lines will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington that, while recognizing the pressing need for increased power generation facilities, the state shall ensure through available and reasonable methods, that the location and operation of thermal power plants will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for thermal power plant location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

(3) To provide abundant low-cost electrical energy. [1970 1st ex.s. c 45 § 1.]

Joint committee on nuclear energy: Chapter 44.38.
Nuclear energy development: RCW 43.31.280-43.31.320.
Nuclear power facilities, joint operation: Chapter 54.44.
Western interstate nuclear compact: RCW 43.31.400-43.31.420.

80.50.020 Definitions. (1) "Applicant" means any electric utility which makes application for a site location certification pursuant to the provisions of this chapter;

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter;

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized;

(4) "Electric utility" means cities and towns, public utility districts, regulated electric companies, electric cooperatives and joint operating agencies, or combinations thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(5) "Site" means any proposed location wherein the power plant,

related or supporting facilities, and associated transmission lines will be located;

(6) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines adopted in RCW 80.50.050 as conditions to be met prior to or concurrent with the construction or operation of any thermal power plant coming under this chapter;

(7) "Associated transmission lines" means new transmission lines constructed to operate at nominal voltages in excess of 200,000 volts to connect a thermal power plant to the northwest power grid;

(8) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies;

(9) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities;

(10) "Thermal power plant site evaluation council" or "council" means the body defined under RCW 80.50.030;

(11) "Counsel for environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080;

(12) "Construction" means on-site work and construction shall not be deemed to have commenced until there has been an expenditure of not less than two hundred fifty thousand dollars in on-site improvements, excluding exploratory work;

(13) "Chairman" means the chairman of the thermal power plant site evaluation council;

(14) "Member agency" means departments, agencies and commissions enumerated in RCW 80.50.030(3). [1970 1st ex.s. c 45 § 2.]

80.50.030 Thermal power plant site evaluation council—Membership. (1) There is hereby created and established a "thermal power plant site evaluation council".

(2) The chairman of the council shall be appointed by the governor with the advice and consent of the senate and shall serve at the pleasure of the governor. The salary of the chairman shall be determined pursuant to the provisions of RCW 43.03.028 as now or hereafter amended.

(3) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies and commissions or their statutory successors:

(a) Water pollution control commission
(b) Department of water resources
(c) Department of fisheries
(d) Department of game
(e) State air pollution control board
(f) Department of parks and recreation

(g) Department of health
(h) Interagency committee for outdoor recreation
(i) Department of commerce and economic development
(j) Utilities and transportation commission
(k) Office of program planning and fiscal management
(l) Department of natural resources
(m) Planning and community affairs agency
(n) Department of civil defense
(o) Department of agriculture.

(4) The county legislative authority of every county wherein an application for a proposed thermal power plant site is filed shall appoint a member to the council. The member so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he represents and such member shall serve until there has been a final acceptance or rejection of such proposed site. [1970 1st ex.s. c 45 § 3.]

80.50.040 ————Powers enumerated. The council shall have the following powers:

(1) To adopt, promulgate, amend, or rescind suitable rules and regulations to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;

(2) To appoint an executive secretary to serve at the pleasure of the council;

(3) To appoint and prescribe the duties of such clerks, employees and agents as may be necessary to carry out the provisions of this chapter: *Provided,* That such persons shall be employed pursuant to the provisions of chapter 41.06 RCW;

(4) To develop and apply topical environmental and ecological guidelines in relation to the type, design, and location of thermal power plant sites and associated transmission line routes;

(5) To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in chapter 34.04 RCW;

(6) To prescribe the form, content, and necessary supporting documentation for site certification;

(7) To receive applications for site locations and to investigate the sufficiency thereof;

(8) To make and contract, when applicable, for independent studies of thermal power plant sites and transmission line routes proposed by the applicant;

(9) To conduct hearings on the proposed location of the thermal power plant sites and, when applicable, the associated transmission line routes;

(10) To prepare written reports to the governor which shall include: (a) a statement indicating whether the application is in compliance with the council's topical guidelines, (b) criteria specific to the site and transmission line routing, and (c) a council

recommendation as to the disposition of the application;

(11) To prescribe the means for monitoring of the effects arising from the construction and the operation of thermal power plants, and where applicable, associated transmission lines to assure continued compliance with terms of certification. [1970 1st ex.s. c 45 § 4.]

80.50.050 Adoption of council guidelines as rules. Promptly after it is organized under this chapter, the council shall give notice, pursuant to the Administrative Procedure Act, chapter 34.04 RCW, of intention to adopt as rules the comprehensive guidelines recommended by the thermal power plant evaluation council. The thermal power plant site evaluation council shall adopt the proposed guidelines as rules after making any changes or additions that are appropriate in view of facts and testimony presented at the hearing, provided that the guidelines so changed are consistent with the purposes of this chapter. [1970 1st ex.s. c 45 § 5.]

80.50.060 Plants to which chapter applies—Applications for certification—Forms—Information. (1) Provisions of this chapter shall apply to any stationary thermal power plant with generating capacity of two hundred fifty thousand kilowatts or more and floating thermal power plants of fifty thousand kilowatts or more, including associated transmission lines installed anywhere within the state of Washington. No construction of any such facility may be undertaken, after February 23, 1970, without first obtaining certification in the manner as herein provided, except that this chapter shall not apply to any such thermal power plant presently operating, or under construction, and its associated transmission lines.

(2) Applications for certification shall be upon forms prescribed by the council and shall be supported by such information and technical studies as the council may require. [1970 1st ex.s. c 45 § 6.]

80.50.070 Applications for site certification—Fee—Study. (1) The council shall receive all applications for thermal power plant site certification. A fee of twenty-five thousand dollars for each proposed site, to be applied toward the cost of any study authorized in subsection (2) of this section, shall accompany the application and shall be a condition precedent to any further consideration or action on the application by the council.

(2) After receiving an application for site certification, the council shall commission its own, independent consultant study to measure the consequences of the proposed power plant on the environment for each site application. The council shall direct the consultant to study any matter which it deems essential to an adequate appraisal of the site. The full cost of the study shall be paid by the applicant: *Provided,* That said costs exceeding a total of twenty-five thousand dollars shall be payable subject to applicant giving prior approval to such excess amount.

(3) All payments required of the applicant under this section are to be made to the state treasurer, who in turn shall pay the consultant as instructed by the council. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the applicant. [1970 1st ex.s. c 45 § 7.]

80.50.080 Counsel for the environment. After the council has received a site application, the attorney general shall appoint an assistant attorney general or a special assistant attorney general as a counsel for the environment who shall be a member of the bar of the state of Washington. The counsel for the environment shall represent the public and its interest in protecting the quality of the environment for the duration of the certification proceedings, until such time as the certification is issued or denied. He shall be accorded all the rights, privileges and responsibilities of an attorney representing a party in a formal action. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with the other provisions of this chapter. [1970 1st ex.s. c 45 § 8.]

80.50.090 Public hearings. (1) The council shall conduct a public hearing in the county of the proposed site within sixty days of receipt of an application for site certification: *Provided,* That the place of such public hearing shall be as close as practical to the proposed site.

(2) The council must determine at the initial public hearing whether or not the proposed site is consistent and in compliance with county or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the county or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

(3) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as a contested case under chapter 34.04 RCW, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

(4) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter. [1970 1st ex.s. c 45 § 9.]

80.50.100 Recommendations to governor—Approval or denial of certification. (1) The council shall report to the governor its recommendations for the disposition of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant.

(2) Within sixty days of receipt of the council's report the

governor shall approve or reject the application for certification.

(3) The issuance of denial of the certification by the governor shall be final as to that application.

(4) Upon approval by the governor of the application for certification the chairman of the council shall within thirty days compose and submit a certification agreement for execution by the governor and the applicant. [1970 1st ex.s. c 45 § 10.]

80.50.110 Chapter governs and supersedes other law or regulations—Preemption of regulation and certification by state. (1) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated thereunder, this chapter shall govern and control and such other law or rule or regulation promulgated thereunder shall be deemed superseded for the purposes of this chapter.

(2) The state hereby preempts the regulation and certification of thermal power plant sites and thermal power plants as defined in RCW 80.50.020. [1970 1st ex.s. c 45 § 11.]

80.50.120 Effect of certification. (1) Subject to the conditions set forth therein any certification signed by the governor shall bind the state or any of its departments, agencies, divisions, bureaus, commissions or boards as to the approval of the site and the construction and operation of the proposed thermal power plant and any associated transmission lines.

(2) The certification shall authorize the electric utility named therein to construct and operate the proposed thermal power plant and any associated transmission lines subject only to the conditions set forth in such certification.

(3) The issuance of a certification shall be in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission or board of this state. [1970 1st ex.s. c 45 § 12.]

80.50.130 Revocation or suspension of certification—Grounds. Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the council's refusal to recommend certification in the first instance; or

(2) For failure to comply with the terms or conditions of the original certification; or

(3) For violation of the provisions of this chapter, regulations issued thereunder or order of the council. [1970 1st ex.s. c 45 § 13.]

80.50.140 Review. (1) The approval or rejection of an application for certification by the governor shall be subject to judicial review pursuant to the provisions of chapter 34.04 RCW.

(2) The rules and regulations adopted by the council shall be subject to judicial review pursuant to the provisions of chapter 34.04 RCW. [1970 1st ex.s. c 45 § 14.]

80.50.150 Enforcement of compliance. (1) The courts are authorized to grant such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with this chapter and/or with a site certification agreement issued pursuant to this chapter. The court may assess civil penalties in an amount not less than one thousand dollars per day nor more than twenty-five thousand dollars per day for each day of construction or operation in material violation of this chapter, or in material violation of any site certification agreement issued pursuant to this chapter.

(2) Wilful violation of any provision of this chapter shall be a gross misdemeanor.

(3) Civil or criminal proceedings to enforce this chapter may be brought through the attorney general by the prosecuting attorney of any county affected by the violation.

(4) The remedies and penalties in this section, both civil and criminal, shall be cumulative and shall be in addition to any other penalties and remedies available at law, or in equity, to any person. [1970 1st ex.s. c 45 § 15.]

80.50.160 Availability of information. The council shall make available for public inspection and copying during regular office hours at the expense of any person requesting copies, any information filed or submitted pursuant to this chapter. [1970 1st ex.s. c 45 § 16.]

80.50.900 Severability—1970 1st ex.s. c 45. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1970 1st ex.s. c 45 § 17.]

Guidelines for Thermal Power Plant Siting Applicants

WAC 463-12-010 GUIDELINES FOR APPLICANT--GENERAL. Applicant will be required to:

(1) furnish a legal land description of the site, land use plans, the latest zoning status and a survey of land occupancy and land uses, including residential and industrial, within a 25 mile radius of the immediate site area.

(2) indicate the source and the approximate amount of water required during construction and operation of the plant.

(3) describe the available roads and railroads and indicate what additional access is needed for ingress and egress of personnel and materials during plant construction and operation of the plant.

(4) submit an approximate routing as well as conceptual design and type of all proposed associated transmission lines to be constructed between the plant site and their connecting points with the existing Northwest grid and proposed plan for treatment of the natural features of the landscape, such as the existing vegetation and terrain, and newly planted vegetation.

(5) submit plans relating to satisfaction of existing statutory criteria, requirements, standards and regulations of those state agencies which, prior to certification, have any legal authority over conditions or activities related to the site.

(6) submit an inventory of historical and archeological sites which are existent within the thermal plant boundary area or transmission corridors and state the nature of the methods to be employed to enable their preservation and/or their interpretation. (RCW 43.51.750)

(7) furnish an estimated investigation, planning and construction schedule flow chart expressing in months the time to execute and complete the several phases of planning and construction work. Give an approximate starting date of actual construction and operation.

(8) finance studies, related to the site, approved by the Council and agreed to by the applicant. These studies may include, but not be limited to, data gathering and research on biological, ecological, meteorological, geological, hydrological and general environmental problems. (Sec. 7, chapter 45, Title 80 RCW)

WAC 463-12-015 HEALTH AND SAFETY. Applicant will be required to:

(1) supply plans covering the safe use by the public of land and water areas under its control.

(2) provide a plan for compliance with health and safety requirements of the State and the Atomic Energy Commission.

(3) provide background radiation levels of appropriate receptor media pertinent to the site in question.

(4) provide a plan for pre- and post-operational environmental radiation monitoring of appropriate receptor media in accordance with state criteria.

(5) provide plans for protection of the plant facility complex against damage from flood waters, tsunamis, and natural disasters, and security provisions against sabotage and vandalism.

WAC 463-12-020 QUALITY OF THE ENVIRONMENT--LAND. Applicant will be required to:

(1) furnish plans for the control of surface water run-off to prevent water pollution or adverse water quality

changes in variance with the water quality standards.

(2) provide plans for the excavation of borrow pits, disposal of surplus excavation or spoil material and earth fills which are designed to minimize erosion.

(3) furnish plans for the associated transmission line routes so as to avoid scenic, recreational, historical, archeological, heavily timbered areas, steep slopes, and proximity to highways where possible; and to minimize conflict between the rights-of-way for present and foreseeable uses of the land on which they are to be located.

(4) conduct a comprehensive geologic survey to determine geologic conditions of the site with particular attention to the nature of the foundation materials and recorded seismic activities. Geologic information will continuously be evaluated during preparation of the site for construction and appropriate steps taken in design and construction of the plant recognizing the geologic conditions.

WAC 463-12-025 -------WATER. (1) Use. Applicant will be required to:

(a) furnish plant siting plans that are compatible with the State water use programs.

(b) show evidence of consideration of multi-purpose use of cooling water.

(c) show by research, studies or other data, that adequate water flow is available to meet total known and future requirements of the plant.

(2) Quality. Applicant will be required to:

(a) provide plans for the compliance with regulations relating to water quality standards for waters of the State of Washington.

(b) provide plans for waste heat dissipation at all proposed sites including plans for off-stream cooling facilities for power sites located adjacent to fresh water bodies and estuarine locations.

(c) submit completed studies prior to site certification to identify the outfall configuration and locations, heated effluent distribution characteristics and extent of the dilution zone.

(d) provide an engineering report, plan and specifications which will reflect all known, available and reasonable methods of treatment of waste discharges, including, but not limited to, biocides, blow-down water, plant floor drains, sanitary sewage, and other waste discharges from the facility to state waters.

(e) make and submit a hydrographic study of temperature, salinity structure, and other physical factors in the receiving waters that may influence the dilution, dispersion and reconcentration of waste discharge.

(f) provide background water quality data pertinent to the site in question.

(g) provide a plan for pre- and post-operational water quality monitoring to insure the maintenance of water quality standards and continued beneficial uses of adjacent waters.

WAC 463-12-030 -------AIR. Applicant will be required to:

(1) provide plans for the compliance with air pollution control standards.

(2) demonstrate by acceptable research and study the extent to which fogging, misting, icing, obscuration of visibility or plumes would occur as a result of the operation of any proposed off-stream cooling facilities.

(3) provide an engineering report and evaluation of proposed fossil-fueled and nuclear-fueled power plants to demonstrate that the highest and best practicable contaminant emission control technology will be used, including the utilization of fossil fuel with the lowest technically feasible sulfur content consistent with applicable standards.

(4) provide preliminary data, either from available records or from reasonable estimates, as to air quality and meteorologic conditions at the proposed site. Meteorologic data should include (as a minimum) wind and direction patterns, rainfall and temperature regimes.

(5) provide a program and schedule to cover pre- and post-operational air quality monitoring and weather data on a continual basis. This program will be for a specific site and its nature will depend upon fuel to be used, contaminant potential and land characteristics and use and shall include contaminant emission monitoring when required by the appropriate agencies.

WAC 463-12-035 -------NATURAL RESOURCES. (1) Vegetation. Applicant will be required to:

(a) provide a description and location of vegetation, or other receptor, terrestrial and aquatic, which might potentially be affected by the design, construction and operation of the plant and design, installation and maintenance of associated transmission lines.

(b) develop a pre- and post-operational environmental quality surveillance program of the appropriate receptor media, terrestrial and aquatic.

(2) Fish and Wildlife. Applicant will be required to:

(a) provide plans for fish protection facilities that assure maximum protection to the resource. These facilities shall include, but are not limited to, fish screens at the water intake and discharge, water intake and discharge design that minimizes fish attraction, and a system to by-pass fish safely to natural waters.

(b) provide acceptable research or study plans for determining the abundance of, distribution of, and project effects on wildlife, fish and other aquatic life, in the proposed project influence area.

(c) agree to provide replacement and/or compensation for any wildlife, fish and other aquatic life and eco-system damage or loss caused by project construction and operation.

(d) provide for post-operational studies that will monitor the effect of the project on wildlife, fish, other aquatic life, and the ecology of the area environs and agree to provide appropriate additional protective measures if such measures are deemed necessary by the Council.

WAC 463-12-040 -------AESTHETICS. Applicant will be required to:

(1) provide plans to show that the thermal power plant and appurtenant facilities are located and designed to insure that insofar as is practicable the physical appearance of the installation will be aesthetically compatible with the surroundings.

WAC 463-12-045 -------RECREATION. Applicant will be required to:

(1) provide plant construction and/or operational plans that, where applicable, contain provisions for the recreational development and use of the site and adjacent land and water areas and agree to provide replacement and/or compensation for any losses or damages to recreation opportunities.

WAC 463-12-050 ECONOMICS--FINANCES. Applicant will be required to:

(1) file an economic feasibility study on the proposed project setting forth

(a) the estimated investment in the site, thermal power plant and related properties and facilities;

(b) the source and amount of funds to finance the entire project;

(c) the proposed rate structure and type and number of power purchasers; and

(d) a pro forma statement of revenue and expenses.

The estimated investment and/or annual expenses to satisfy the requirements for quality of the environment shall be separately stated in the study.

APPENDIX J

RHODE ISLAND

Act 26-1965 (The Intertidal Salt Marshes Act) as amended [Section 11-46.1 of the General Laws of Rhode Island].

Act 140-1965 (The Coastal Wetlands Act) [Sections 2-1-13 - 2-1-17 of the General Laws of Rhode Island].

Act 279-1971 (The Coast Resources Management Council Act) [Sections 46-23-1 - 46-23-12, 42017.1-4 of the General Laws of Rhode Island].

ACT 26-1965 (as amended)

CHAPTER 46.1—INTERTIDAL SALT MARSHES

SECTION.
11-46.1-1. Disturbing intertidal salt marshes—Penalty.

11-46.1-1. Disturbing intertidal salt marshes—Penalty.—Whereas, article I, section 17 of the constitution of the State of Rhode Island and Providence Plantations guarantees to the people the free right of fishery, and

Whereas, the free right of fishery cannot be enjoyed unless both finfish and shellfish are in abundance to be caught, and

Whereas, the metabolism and katabolism of plants and animals which constitute the estuarine complex found in salt marshes furnishes the nitrates, phosphates, sugars, plankton and organic chemicals necessary for the nurture of finfish and shellfish throughout the Narragansett bay area and its environs and

Whereas, all the salt marshes of this state are in jeopardy of despoliation by persons unmindful of the economic and esthetic consequences of such spoliation, therefore,

Be It Resolved, That (a) any person who dumps or deposits mud, dirt, or rubbish upon, or who excavates and disturbs the ecology of intertidal salt marshes, or any part thereof, without first obtaining a permit therefor issued by the department of natural resources shall be fined for each offense five hundred dollars ($500), one half (½) thereof to the use of the state and one half (½) thereof to the use of the complainant, (b) any person who in violation of an order of the director of the department of natural resources to cease such dumping or excavating, shall be fined fifty dollars ($50) for each day he continues such dumping or excavating, (c) any person who so disturbs the ecology of an intertidal salt marsh may upon complaint of the director of said department filed in the superior court be required to restore such salt marsh to the extent practical. For the purposes of this chapter an intertidal salt marsh shall be prima facie presumed to be those areas upon which grow some, but not necessarily all, of the following: salt marsh grass (Spartina alterniflora), black grass (Juncus gerardi), seaside lavender (Limonium carolinianum), saltwort (Salicornea europaea), salt meadow grass (Spartina patens), spike grass (Distichlis spicata), salt marsh bullrush (Scirpus maritima) and sand spurrey (Spergularia marina), and upon which exists salt marsh peat. The director of natural resources shall refuse to issue such permit if in his judgment the dumping or depositing of mud, dirt or rubbish or excavation would disturb the ecology of intertidal salt marshes.

History of Section.
As amended, P. L. 1968, ch. 86, § 1; P. L. 1967, ch. 78, § 1; P. L. 1960, ch. 175, § 1.

2-1-13. Public policy on coastal wetlands.—Whereas, article I, § 17 of the constitution of the state of Rhode Island and Providence Plantations guarantees to the people the free right of fishery, and

Whereas, The free right of fishery cannot be enjoyed unless both finfish and shellfish are in abundance to be caught, and

Whereas, The metabolism and katabolism of plants and animals which constitutes the estuarine complex found in salt marshes furnishes the nitrates, phosphates, sugars, plankton and organic chemicals necessary for the nurture of finfish and shellfish throughout the Narragansett bay area and its environs, and

Whereas, The capacity of the salt marsh peat and muck substrate to absorb tidal flooding helps to obviate the hydraulics of severe flood conditions, and

Whereas, All the salt marshes of this state are in jeopardy of despoliation by persons unmindful of the economic and aesthetic consequences of such spoliation, therefore,

It is the public policy of this state to preserve the purity and integrity of the coastal wetlands of this state. The health, welfare and protection of persons and property require that the state restrict the uses of coastal wetlands and, therefore, in the exercise of the police power such wetlands are to be regulated hereunder.

History of Section.

As enacted by P. L. 1965, ch. 140, § 1.

2-1-14. Definitions.—A coastal wetland shall mean any salt marsh bordering on the tidal waters of this state, whether or not the tide waters reach the littoral areas through natural or artificial water courses, and such uplands contiguous thereto, but extending no more than fifty (50) yards inland therefrom, as the director shall deem reasonably necessary to protect such salt marshes for the purposes set forth in § 2-1-13. Salt marshes shall include those areas upon which grow some, but not necessarily all of the following: Salt meadow grass (Spartina patens), spike grass (Distichlie spicata), black grass (Juncus gerardi), saltmarsh grass (Spartina alterniflora), saltworts (Salicornia europaea, and Salicornia bigelevil), sea lavender (Linonium carolinanus), saltmarsh bulrushes (Scirpus robustus, and Scirpus paludosus var. atlanticus), sand spurrey (Spergularia marina), switch grass (Panicus virgatum), tall cordgrass (Spartina pectinata), high-tide bush (Iva frutescens var. oraria), cattails (Typha angustifolia, and Typha latifolia), spike rush (Eleocharis rostellata), chairmaker's rush (Scirpus americana), bent grass (Argostis palustria), and sweet grass (Hierochlee odorats). The occurrence and extent of saltmarsh peat at the undisturbed surface shall be construed to be true evidence of the extent of a salt marsh or a part thereof.

History of Section.

As enacted by P. L. 1965, ch. 140, § 1.

2-1-15. Program for coastal wetlands.—The department is hereby authorized to establish a program for the protection of the coastal wetlands of the state. After public hearing the director may, by written order signed by the director and recorded in the registry of deeds in each city or town where the land is situated, designate coastal wetlands or parts thereof, the ecology of which shall not be disturbed and the use of which shall be restricted to those uses compatible with the public policy of this state as set forth in such order. Notice of such public hearing shall be given by certified mail, return receipt requested, mailed at least two (2) weeks prior to such hearing to all owners of record of the land concerned listed in the most recent records in the city or town in which the land lies, and upon recording of an order signed by the director a copy thereof shall be sent by certified mail, return receipt requested, to said owners of record. The director may amend or repeal such order in like manner. In adopting such order the department shall consider the value of the coastal wetlands to the public health, marine fisheries, wildlife and the protection of life and property from flood, hurricane and other natural disasters and the order shall contain a statement of the purposes and necessity for restricting the use of the coastal wetlands described therein. No city, town, person, firm or corporation shall use or permit the use of such restricted coastal wetlands contrary to such order and the superior court shall have jurisdiction in equity to restrain any violation or threatened violation of this section at the instance of the attorney general, the director of the department of [natural resources].

History of Section.
As enacted by P. L. 1965, ch. 140, § 1.

Compiler's Note.
Bracketed words were substituted for "agriculture and conservation, or the chief of the division of fish and game" because of § 42-17.1-3.

2-1-16. Damages.—If by the adoption of an order under the preceding section any owner of the land subject to such order suffers damage, such owner may recover compensation for such damage in an action filed in the superior court within two (2) years from the date of recording of such order. Awards of damages shall be paid either from funds appropriated to carry out the purposes of §§ 2-1-13 through 2-1-17, inclusive, or from the recreation and conservation land acquisition and development fund of 1964 established pursuant to § 32-4-15 of the general laws.

History of Section.
As enacted by P. L. 1965, ch. 140, § 1.

2-1-17. Assents subject to orders.—Any assent hereafter granted by the director of the department of public works to fill coastal wetlands shall be subject to the orders promulgated pursuant to this chapter.

History of Section.
As enacted by P. L. 1965, ch. 140, § 1.

STATE OF RHODE ISLAND

AN ACT
CREATING A COASTAL RESOURCES
MANAGEMENT COUNCIL AND MAKING
AN APPROPRIATION THEREFOR.

IT IS ENACTED BY THE GENERAL ASSEMBLY AS FOLLOWS:

SECTION 1. Title 46 of the general laws entitled "Waters and navigation", as amended, is hereby further amended by adding thereto the following chapter:

"CHAPTER 23"

"COASTAL RESOURCES MANAGEMENT COUNCIL"

"46-23-1. LEGISLATIVE FINDINGS. -- The general assembly recognizes and declares that the coastal resources of Rhode Island, a rich variety of natural, commercial, industrial, recreational, and aesthetic assets are of immediate and potential value to the present and future development of this state; that unplanned or poorly planned development of this basic natural environment has already damaged or destroyed, or has the potential of damaging or destroying, the state's coastal resources, and has restricted the most efficient and beneficial utilization of such resources; that it shall be the policy of this state to preserve, protect, develop, and where possible, restore the coastal resources of the state for this and succeeding generations through comprehensive and coordinated long-range planning and management designed to produce the maximum benefit for society from such coastal resources; and that preservation and restoration of ecological systems shall be the primary guiding principle upon which environmental alteration of coastal resources will be measured, judged, and regulated.

That effective implementation of these policies is essential to the social and economic well-being of the people of Rhode Island because the sea and its adjacent lands are major sources of food and public recreation, because these resources are used by and for industry, transportation, waste disposal, and other purposes, and because the demands made on these resources are increasing in number, magnitude, and complexity; and that these policies are necessary to protect the public health, safety, and general welfare. Furthermore, that implementation of these policies is necessary in order to secure the rights of the people of Rhode Island to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values, and in order to allow the general assembly to fulfill its duty to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state.

That these policies can best be achieved through the creation of a coastal resources management council as the principal mechanism for management of the state's coastal resources.

"46-23-2. COASTAL RESOURCES MANAGEMENT COUNCIL CREATED - APPOINTMENT OF MEMBERS. -- There is hereby created the coastal resources management council. The coastal resources management council shall consist of seventeen (17) members, two (2) of whom shall be members of the house of representatives, at least one (1) of said members shall represent a coastal municipality, appointed by the speaker, two (2) of whom shall be members of the senate, each of whom shall represent a coastal municipality, appointed by the lieutenant governor, two (2) of whom shall be from the general public appointed by the speaker of the house for a term of two (2) years, two (2) of whom shall be from a coastal municipality appointed by the speaker of the house for a term of three (3) years. Four (4) appointed or elected officials of local government appointed by the governor, one (1) of whom shall be from a municipality of less than 25,000 population, appointed to serve until January 31, 1972, one (1) of whom shall be from a coastal municipality of more than 25,000 population appointed to serve until January 31, 1973 and one (1) of whom shall be from a coastal municipality of less than 25,000 population appointed to serve until January 31, 1974 and one (1) of whom shall be from a coastal community of more than 25,000 population appointed to serve until January 31, 1975, said populations are to be determined by the latest federal census; all such members shall serve until their successors are appointed and qualified; during the month of January 1972 and during the month of January thereafter, the governor shall appoint a member to succeed the member whose term will then next expire for a term of four (4) years commencing on the first day of February then next following and until his successor is named and qualified; each such municipal appointment shall cease if the appointed or elected official shall no longer hold or change the office which he held upon

appointment, and further, each such appointee shall be eligible to succeed himself. Three (3) members shall be appointed by the governor from the public, with the advice and consent of the senate, one (1) of whom shall serve until January 1, 1972, one (1) of whom shall serve until January 1, 1973 and one (1) of whom shall serve until January 1, 1974 said members and their successors shall represent a coastal community. All such members shall serve until their successors are appointed and qualified; during the month of January 1972 and during the month of January thereafter the governor shall appoint, with advice and consent of the senate, a member to succeed the members whose term will then next expire for a term of three (3) years commencing on the first day of February next following and until his successor is named and qualified. A member shall be eligible to succeed himself. No more than two (2) persons on said council shall be from the same community. Appointments shall first be made by the governor then by the lieutenant governor and, then by the speaker. A vacancy other than by expiration, shall be filled in like manner as an original appointment but only for the unexpired portion of the term. The director of natural resources and the director of health shall serve ex officio.

In addition to the foregoing voting members, the council shall include a varying number of other members who shall serve in an advisory capacity without the right to vote and who shall be invited to serve by either the governor or the voting members. These advisory members shall represent the federal agencies such as the navy, coast guard, corps of engineers, public health service and the federal water pollution control administration and such regional agencies as the New England river basins commission and the New England regional commission and any other group or interest not otherwise represented. The council shall have authority to form committees of other advisory groups as needed from both its own members and others.

"46-23-3. QUALIFICATIONS OF MEMBERS. -- Each appointed member of the council, before entering upon his duties, shall take an oath to administer the duties of his office faithfully and impartially, and such oath shall be filed in the office of the secretary of state.

"46-23-4. OFFICERS OF THE COUNCIL; QUORUM AND VOTE REQUIRED FOR ACTION. -- The governor, upon the appointment of the appointed members of the council shall select from said appointed members a chairman and vice chairman. The council shall thereupon select a secretary from among its membership or staff. The council may engage such staff as it deems necessary. A quorum shall consist of nine (9) members of said council. A majority vote of those present shall be required for action.

"46-23-5. EXPENSES OF MEMBERS. -- The members of the council shall serve without compensation, but shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties.

"46-23-6. POWER AND DUTIES. -- In order to properly manage coastal resources the council shall have the following powers and duties:

A. Planning and Management.

The primary responsibility of the counsil shall be the continuing planning for and management of the resources of the state's coastal region. The counsil shall be able to make any studies of conditions, activities, or problems of the state's coastal region needed to carry out its responsibilities.

The resources management process shall include the following basic phases:

a. Identify all of the state's coastal resources, water, submerged land, air space, fin fish, shellfish, minerals, physiographic features, and so forth.

b. Evaluate these resources in terms of their quantity, quality, capability for use, and other key characteristics.

c. Determine the current and potential uses of each resources.

d. Determine the current and potential problems of each resources.

e. Formulate plans and programs for the management of each resource, identifying permitted uses, locations, protection measures, and so forth.

f. Carry out these resources management programs through implementing authority and coordination of state, federal, local and private activities.

g. Formulation of standards where these do not exist, and re-evaluation of existing standards.

An initial series of resources management activities shall be initiated through this basic process, then each phase shall continuously be recycled and used to modify the council's resources management programs and keep them current.

Planning and management programs shall be formulated in terms of the characteristics and needs of each resource or group of related resources. However, all plans and programs shall be developed around basic standards and criteria, including:

a) The need and demand for various activities and their impact upon ecological systems.

b) The degree of compatibility of various activities.

c) The capability of coastal resources to support various activities.

d) Water quality standards set by the department of health.

e) Consideration of plans, studies, surveys, inventories, and so forth prepared by other public and private sources.

f) Consideration of contiguous land uses and transportation facilities.

g) Consistency with the state guide plan.

B. Implementation. - The council is authorized to formulate policies and plans and to adopt regulations necessary to implement its various management programs.

Any person, firm, or governmental agency proposing any development or operation within, above, or beneath the tidal water below the mean high water mark extending out to the extent of the state's jurisdiction in the territorial sea shall be required to demonstrate that its proposal would not (1) conflict with any resources management plan or program; (2) make any area unsuitable for any uses or activities to shich it is allocated by a resources management plan or program; or (3) significantly damage the environment of the coastal region. The council shall be authorized to approve, modify, set conditions for, or reject any such proposal.

The authority of the council over land areas (those areas above the mean high water mark) shall be limited to that necessary to carry out effective resource management programs. This shall be limited to the authority to approve, modify, set conditions for, or reject the design, location, construction, alteration, and operation of specified activities or land uses when these are related to a water area under the agency's jurisdiction, regardless of their actual location. The council authority over these land uses and activities shall be limited to situations in which there is a reasonable probability of conflict with a plan or program for resources management or damage to the coastal environment. These uses and activities are:

a) Power generating and desalination plants.

b) Chemical or petroleum processing, transfer, or storage.

c) Minerals extraction.

d) Shoreline protection facilities and physiographical features.

e) Intertidal salt marshes.

f) Sewage treatment and disposal and solid waste disposal facilities.

C. Coordination - The council shall have the following coordinating powers and duties:

a) Functioning as a binding arbitrator in any matter of dispute involving both the resources of the state's coastal region and the interests of two or more municipalities or state agencies.

b) Consulting and coordinating actions with local, state, regional, and federal agencies and private interests.

c) Conducting or sponsoring coastal research.

d) Advising the governor, the general assembly, and the public on coastal matters.

D. Operations. -- The council shall be authorized to exercise the following operating functions, which are essential to management of coastal resources.

a) Issue, modify or deny permits for any work in, above, or beneath the water areas under its jurisdiction, including conduct of any form of aquaculture.

b) Issue, modify or deny permits for dredging, filling, or any other physical alteration of intertidal salt marshes.

c) Licensing the use of caostal resources which are held in trust by the state for all its citizens, and imposing fees for private use of such resources.

d) Determining the need for and establishing pierhead, bulkhead, and harbor lines.

e) Developing, leasing, and maintaining state piers and other state-owne property assigned to the agency by the department of natural resources, the governo or the general assembly.

f) Investigating complaints alleging violations of state laws or ripari rights in the state's tidal waters.

"46-23-7. VIOLATIONS. -- (a) In any instances wherein there is a violati of the coastal resource management program, or a violation of regulations or decis of the council, the council shall have the power to order the violator to cease and desist or to remedy such violation. If the violator does not conform to the council order then the council, through its chairman, may bring prosecution by complaint and warrant, and such prosecution shall be made in the district court of the state.

The chairman without being required to enter into any recognizance or to give surety for cost, may institute such proceedings in the name of the state. It shall be the duty of the attorney general to conduct the prosecution of all such proceedings brought by the council.

(b) The chairman, at the direction of the council, may obtain relief in equity or by prerogative writ whenever such relief shall be necessary for the proper performance of the council's duties hereunder. The superior court shall have the jurisdiction in equity to enforce the provisions of this chapter and any rule or regulation or order made by the council in conformity therewith. Proceedings under this section shall follow the course of equity and shall be instituted, and prosecuted in the name of the chairman and council by the attorney general, but only upon the request of the chairman, at the direction of the council.

(c) It shall be a misdemeanor for any violation of an order of the counci

"46-23-8. GIFTS, GRANTS AND DONATIONS. - The council is authorized to receive any gifts, grants or donations made for any of the purposes of its program, and to disburse and administer the same in accordance with the terms thereof.

"46-23-9. SUBPOENA. - The council is hereby authorized and empowered to summon witnesses and issue subpoenas in substantially the following form:

Sc.

To of greeting:

You are hereby required, in the name of the State of Rhode Island and Providence Plantations, to make your appearance before the commission on

in the city of

on the day of to give evidence of what you know relative to a matter upon investigation by the commission on and produce and then and there have and give the following:

Hereof fail not, as you will answer to default under the penalty of the law in that behalf made and provided.

Dated at the day of in the year

"46-23-10. COOPERATION OF DEPARTMENTS. -- All other departments and agencies and bodies of state government are hereby authorized and directed to cooperate with and furnish such information as the council shall require.

"46-23-11. RULES AND REGULATIONS. -- The rules and regulations promulgated by the council shall be subject to the administrative procedures act.

"46-23-12. REPRESENTATION FROM COASTAL COMMUNITIES. Upon the expiration of a term of a member appointed by the governor as an appointed or elected official of local government from a coastal municipality as set out in 46-23-2, the governor shall appoint an appointed or elected official of a coastal municipality which at the time of the governor's appointment has no appointed or ex-officio representation on said council.

SEC. 2. Section 42-17.1-4 of the general laws in chapter 42-17-1 entitled "Department of Natural Resources", as amended, is hereby further amended to read as follows:

42-17.1-4. DIVISIONS WITHIN DEPARTMENT

"* * *

(d) A division of coastal resources which shall carry out those functions of the department relating to harbors and harbor lines, flood control, shore development, construction of port facilities, and the registration of boats and such other functions and duties as may from time to time be assigned by the director, except that such division shall not be responsible for the functions of inspection of dams and reservoirs, approving plans for construction or improvement of dams, reservoirs and other structures in non-tidal waters, and the operation of steam-gauging station in cooperation with the United States geological survey, and provided further that such division and its staff shall be responsible through the director of natural resources, to the coastal resources management council, and such chief and the staff of the division shall serve as staff to said council.

(e) A division of planning and development which shall carry out those functions of the department relating to planning, programming, acquisition of land, engineering studies and such other studies as the director may direct, and which shall work with the department of education, with educational institutions at all levels and with the public in the dissemination of information and education relating to natural resources and shall perform the publication and public relations functions of the department, the functions of inspection of dams and reservoirs, approving plans for construction or improvement of dams, reservoirs, and other structures in non-tidal waters, and the operation of steam-gauging stations in cooperation with the United States geological survey.

(f) A division of enforcement which shall enforce all of the laws and regulations of the department, which shall cooperate with the other enforcement agencies of the state and its municipalities and which shall administer all of the policing, enforcing, licensing, registration, and inspection functions of the department and such other functions and duties as may from time to time be assigned by the director.

SEC. 3. APPROPRIATION -- The sum of twenty-five thousand ($25,000) dollars is hereby appropriated out of any money in the treasury not otherwise appropriated to be expended during the fiscal year beginning July 1, 1971, and the state controller is hereby authorized and directed to draw his orders upon the general treasurer for the payment of such sum or so much thereof as may be required from time to time upon receipt by him of properly authenticated vouchers.

SEC. 4 This act shall be construed liberally in furtherance of its declared purposes.

SEC. 5 If any provision of this act or of any rule, regulation or determination made thereunder, or the application thereof to any person, agency, or circumstances is held invalid by a court of competent jurisdiction, the remainder of the act, rule, regulation, or determination and the application of such provisions to other persons, agencies, or circumstances shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this act shall not affect the validity of the remainder of the act.

SEC. 6 This act shall take effect upon its passage and all acts or parts of acts inconsistent herewith are hereby repealed.

APPENDIX K

ATLANTIC COAST

New Hampshire

Act 215-1967 (Regulation of Dredging and Filling in and adjacent to Tidal Waters) [Chapter 483-A of the New Hampshire Revised Statutes Annotated].

Act 254-1967 (Regulation of Dredging and Filling in and adjacent to Public Waters) [Section 149.8a of the New Hampshire Revised Statutes Annotated].

Act 274-1967 (Regulation of Dredging, Filling, Construction, etc., in Surface Waters) [Chapter 488-A of the New Hampshire Revised Statutes Annotated].

Connecticut

Act-695-1969 (Preservation of Tidal Wetlands) as amended [Sections 22-7h - 22-7o of the Connecticut General Statutes Annotated].

New York

Act 545-1959 (The Long Island Wetlands Act) [Sections 360(g), 394 of McKinneys Consolidated Laws of New York Annotated: Book 10 Conservation Law].

Act 294-1968 Sections 9 & 10, (Amending the Atomic and Space Development Act, Act 210-1962) [Sections 1854, 1860 of McKinney's Consolidated Laws of New York Annotated: Book 42, Public Authorities Law].

Act 715-1969 (Division of Marine and Coastal Resources) [Sections 1-0303, 300, 395, 396 of McKinney's Consolidated Laws of New York Annotated: Book 10, Conservation Law].

New Jersey

Act 45-1961 (The New Jersey Green Acres Land Acquisition Act of 1961) [Sections 13.8A-1 - 13.8A-18 of the New Jersey Statutes Annotated].

Act 272-1970 (The Wetlands Act of 1970) [Sections 13.9A-1 - 13.9A-10 of the New Jersey Statutes Annotated].

Virginia

House Joint Resolution No. 60-1971 (Wetlands Commission Study).

North Carolina

Act 1159-1971, Sections 6 & 7 (Dredge and Fill Law; amends Act 791-1969, Coastal Wetlands Act) [Sections 113-299, 113-230 of the General Statutes of North Carolina].

Act 237-1965 (Sand Dune Protection) as amended [Chapter 104B of the General Statutes of North Carolina].

Act 1164-1969 (Estuarine Study) [Section 146.64 of the General Statutes of North Carolina].

Georgia

Act 1332-1970 (Reid-Harris Bill - The Coastal Marshlands Protection Act of 1970) [Sections 45-136 - 45-147 of the Georgia Code Annotated].

Florida

Aquatic Preserves Resolution of the Board of Trustees of the Internal Improvement Fund, November 24, 1969.

Act 280-1971 (Regulation of Coastal Construction and Excavation) [Section 161.053 of the Florida Statutes Annotated].

Act 259-1970 (Coastal Coordinating Council) [Section 370.0211 of the Florida Statutes Annotated].

CHAPTER 215.

AN ACT RELATING TO EXCAVATING, FILLING AND DREDGING IN AND ADJACENT TO TIDAL WATERS.

Be it Enacted by the Senate and House of Representatives in General Court convened:

215:1 **Tidal Waters.** Amend RSA by inserting after chapter 483 the following new chapter:

Chapter 483-A

Tidal Waters

483-A:1 Excavating and Dredging. No person shall excavate, remove, fill or dredge any bank, flat, marsh, or swamp in and adjacent to tidal waters without written notice of his intention to excavate, remove, fill or dredge to the New Hampshire Port Authority. Said notice shall be sent by registered mail to the New Hampshire Port Authority at least thirty days prior to such excavating, removing, filling or dredging with a detailed plan drawn to scale of the proposed project.

483-A:2 Hearing. The New Hampshire Port Authority shall hold a public hearing on said proposal within thirty days of the receipt of said notice, and shall notify by mail the person intending to do such excavating, removing, filling or dredging, the department of public works and highways, the selectmen or the proper city official of the municipality involved, the office of planning and research, division of economic development or its successor, the water pollution commission and the New Hampshire fish and game department of the time and place of said hearing.

483-A:3 Powers of New Hampshire Port Authority. The New Hampshire Port Authority may deny the petition, or may require the installation of bulkheads, barriers, proper retention and, or, containment structures to prevent subsequent fill runoff back into tidal waters or other protective measures. If the area on which the proposed work is to be done contains shellfish or is necessary to protect marine fisheries and wildlife, the director of the New Hampshire fish and game department may impose such conditions or measures as he may determine necessary to protect such shellfish or marine fisheries and wildlife, and work shall be done subject thereto.

483-A:4 Rehearing. Any party to the action or proceedings before the New Hampshire Port Authority may apply for a rehearing under the procedure as provided by RSA 541.

483-A:5 Penalty. Whoever violates any provision of this chapter shall be liable for the removal of fill, spoil or structure placed in violation hereof and shall be fined not more than one thousand dollars, and the superior court shall have jurisdiction in equity to restrain a continuing violation of this chapter.

215:2 **Effective Date.** This act shall take effect upon its passage.
[Approved June 22, 1967.]
[Effective date June 22, 1967.]

New Hampshire

Act 254-1967

CHAPTER 254.

AN ACT RELATIVE TO THE PREVENTION OF POLLUTION FROM DREDGING, FILLING, MINING, OR OTHER CONSTRUCTION.

Be it Enacted by the Senate and House of Representatives in General Court convened:

254:1 **Water Pollution; Dredging.** Amend RSA 149 by inserting after section 8 as amended by 1961, 47:1; 1963, 48:1; 1967, 145:1; and 1967, 147:9 the following new section: 149:8-a **Dredging.** Any person proposing to dredge, excavate, place fill, mine or undertake construction in the surface waters of the state shall be directly responsible for the submission of plans concerning such proposal to the commission at least thirty days prior to undertaking any such activity and obtain permission from the commission in writing to conduct such operations. The commission shall have full authority to establish the terms and conditions under which said permit may be exercised, giving due consideration to the circumstances involved and the purposes of this chapter. Nothing contained herein shall be construed to modify or limit the duties and authority conferred upon the water resources board and the governor and council under the provisions of RSA 482.

254:2 **Effective Date.** This act shall take effect upon its passage.

[Approved June 27, 1967.]
[Effective date June 27, 1967.]

CHAPTER 274.

AN ACT RELATIVE TO EXCAVATING AND DREDGING IN PUBLIC WATERS.

Be it Enacted by the Senate and House of Representatives in General Court convened:

274:1 **Excavating and Dredging in Public Waters.** Amend RSA by inserting after chapter 488 the following new chapter:

Chapter 488-A
Excavating and Dredging in Public Waters

488-A:1 **Excavating and Dredging.** No person, firm, or corporation shall excavate, remove, or dredge any bank, flat, marsh, swamp, or lake bed that lies below the natural mean high water level of any public waters of this state, except as provided in this chapter. For the purposes of this chapter, public waters are defined as all natural ponds of more than ten acres. Upon the request of the owner of land abutting any public waters, the water resources board shall determine the natural mean high water level of the abutting public water. The provisions of this chapter do not apply to any land above the natural mean high water level of public waters or to any land below any artificially created high water level of any body of water.

488-A:2 **Grant of Right.** The governor and council, upon petition and upon the recommendation of the water resources board, may, for just consideration, grant to an owner of a shore line on public waters the right to excavate, remove, or dredge any bank, flat, marsh, swamp or lake bed before his shore line. Every petition to excavate or dredge said areas shall be referred to the water resources board, and said board after thirty days notice to abutters, and to the selectmen of the town or mayor and council of the city in which the property is situate, and to the commissioner of fish and game, and to the water pollution commission, and to the department of public works and highways, and to the department of planning and research, and to the division of parks, and to the division of public health shall hold a public hearing, at which a majority of the members of the water resources board shall be present, notice of which shall be published twice in two different weeks, the first publication to be seven days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the town or city, and notice posted in two public places in the town or city and upon appropriate investigation shall make its recommendations to the governor and council with regard to such petition. If the board recommends that the petition be granted, in whole or in part, such recommendation shall include appropriate specifications and conditions necessary to the protection of public rights and to the protection of the rights and privileges of persons owning land in the vicinity of the area to be excavated or dredged by the petitioner.

488-A:3 **Penalty.** Any person, firm, or corporation who violates any provision of this chapter shall be subject to a fine not to exceed one thousand dollars and may be compelled to return said land to its original condition by the superior court upon a petition brought by the attorney general at the request of the water resources board.

488-A:4 **Fees.** Any payment received by the state as determined by the governor and council under the provisions of this chapter shall be paid over to the state treasurer and shall be deposited in the general funds of the state.

488-A:5 **Hearing Costs.** The petitioner shall make a deposit of fifty dollars with each petition to pay for the expenses of publication, mailing, and posting of notices, and for the expenses of hiring a hearing site, if a hearing outside of Concord is necessary. If these expenses are more than fifty dollars, the board shall require the petitioner to pay the additional expenses before it sends its recommendations to the governor and council with regard to the petition.

274:2 **Effective Date.** This act shall take effect upon its passage.

[Approved June 27, 1967.]

Connecticut

Act 695-1969 (as amended)

DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WETLANDS STATUTES

Section 22-7h. PRESERVATION OF TIDAL WETLANDS. DECLARATION OF POLICY. It is declared that much of the wetlands of this state has been lost or despoiled by unregulated dredging, dumping, filling and like activities and that the remaining wetlands of this state are all in jeopardy of being lost or despoiled by these and other activities; that such loss or despoliation will adversely affect, if not entirely eliminate, the value of such wetlands as sources of nutrients to finfish, crustacea and shellfish of significant economic value; that such loss or despoliation will destroy such wetlands as habitats for plants and animals of significant economic value and will eliminate or substantially reduce marine commerce, recreation and aesthetic enjoyment; and that such loss or despoliation will, in most cases, disturb the natural ability of tidal wetlands to reduce flood damage and adversely affect the public health and welfare; that such loss or despoliation will substantially reduce the capacity of such wetlands to absorb silt and will thus result in the increased silting of channels and harbor areas to the detriment of free navigation. Therefore, it is declared to be the public policy of this state to preserve the wetlands and to prevent the despoliation and destruction thereof. (1969, P.A. 695, S. 2.)

Sec. 22-7i. Definitions. The following words and phrases, as used in sections 22-7h to 22-7o, inclusive, shall have the following meanings: (1) "Commissioner" means the commissioner of agriculture and natural resources; (2) "wetland" means those areas which border on or lie beneath tidal waters, such as, but not limited to banks, bogs, salt marsh, swamps, meadows, flats, or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters, and whose surface is at or below an elevation of one foot above local extreme high water; and upon which may grow or be capable of growing some, but not necessarily all, of the following: Salt meadow grass (Spartina patens), spike grass (Distichlis spicata), black grass (Juncus gerardi), saltmarsh grass (Spartina alterniflora), saltworts (Salicornia Europaea, and Salicornia bigelovii), Sea Lavendar (Limonium carolinianum), saltmarsh bulrushes (Scirpus robustus and Scirpus paludosus var. atlanticus), sand spurrey (Spergularia marina), switch grass (Panicum virgatum), tall cordgrass (Spartina pectinata), hightide bush (Iva frutescens var. oraria), cattails (Typha angustifolia, and Typha latifolia), spike rush (Eleocharis rostellata), chairmaker's rush (Scirpus americana), bent grass (Agrostis palustris), and sweet grass (Hierochloe odorata); (3) "regulated activity" means any of the following: Draining, dredging, excavation, or removal of soil, mud, sand, gravel, aggregate of any kind or rubbish from any wetland or the dumping, filling or depositing thereon of any soil, stones, sand, gravel, mud, aggregate of any kind, rubbish or similar material, either directly or otherwise, and the erection of structures, driving of pilings, or placing of obstructions, whether or not changing the tidal ebb and flow. Notwithstanding the foregoing, "regulated activity" shall not include activities conducted by the mosquito control division of the state health department, conservation activities of the state department of agriculture and natural resources and its related agencies and boards, the construction or maintenance of aids to navigation which are authorized by governmental authority and the emergency decrees of any duly appointed health officer of a municipality acting to protect the public health; (4) "person" means any corporation, association or partnership, one or more individuals, and any unit of government or agency thereof. (1969, P.A. 695, S. 1.)

Sec. 22-7j. Procedure. The commissioner shall promtly make an inventory of all tidal wetlands within the state. The boundaries of such wetlands shall be shown on suitable reproductions or aerial photographs to a scale of one inch equals two hundred feet with such accuracy that they will represent a class D survey. Such lines shall generally define the areas that are at or below an elevation of one foot above local extreme high water. Such maps shall be prepared to cover entire subdivisions of the state as determined by the commissioner. Upon completion of the tidal wetlands boundary maps for each subdivision, the commissioner shall hold a public hearing. The commissioner shall give notice of such hearing to each owner of record of all lands designated as such wetland as shown on such maps by registered mail not less than thirty days prior to the date set for such hearing. The commissioner shall also cause notice of such hearing to be published at least once not more than thirty days and not fewer than ten days before the date set for such hearing in a newspaper or newspapers having a general circulation in the town or towns where such wetlands are located. After considering the testimony given at such hearing and any other facts which may be deemed pertinent and after considering the rights of affected property owners and the purposes of sections 22-7h to 22-7o, inclusive, the commissioner shall establish by order the bounds of each of such wetlands. A copy of the order, together with a copy of the map depicting such boundary lines, shall be filed in the town clerk's office of all towns affected. The commissioner shall give notice of such order to each owner of record of all lands designated as such wetlands by mailing a copy of such order to such owner by registered mail. The commissioner shall also cause a copy of such order to be published in a newspaper or newspapers having a general circulation in the town or towns where such wetlands are located. Any person aggrieved by such order may appeal to the superior court for Hartford county within thirty days after the date of such publication. (1969, P.A. 695, S. 3.)

See Amendment following

Section 22-7j; replaced by material in Act 38-1971 found at end of this Act.

Sec. 22-7k. Hearing officers. The commissioner shall appoint such hearing officers as may be necessary to carry out the purposes of sections 22-7h to 22-7o, inclusive. (1969, P.A. 695, S.4.)

Sec. 22-7l. Regulated activity permit. Application. No regulated activity shall be conducted upon any wetland without a permit. Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland shall file an application for a permit with the commissioner, in such form and with such information as the commissioner may prescribe. Such application shall include a detailed description of the proposed work and a map showing the area of wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice. The commissioner shall cause a copy of such application to be mailed to the chief administrative officer in the town or towns where the proposed work, or any part thereof, is located, the state board of fisheries and game, and the open spaces section of the department of agriculture and natural resources, the soil and water conservation section of said department, the shellfish commission and the chairman of the conservation commission and shellfish commission of the town or towns where the proposed work, or any part thereof, is located. No sooner than thirty days and not later than sixty days of the receipt of such application, the commissioner or his duly designated hearing officer shall hold a public hearing on such application. The following shall be notified of the hearing by mail not less than fifteen days prior to the date set for the hearing: All of those persons and agencies who are entitled to receive a copy of such application in accordance with the terms hereof and all owners of record of adjacent land and known claimants to water rights in or adjacent to the wetland of whom the applicant has notice. The commissioner shall cause notice of such hearing to be published at least once not more than thirty days and not fewer than ten days before the date set for the hearing in the newspaper having a general circulation in each town where the proposed work, or any part thereof, is located.

Sec. 22-71. Regulated activity permit. Application. Hearing (continued)

All applications and maps and documents relating thereto shall be open for public inspection at the office of the commissioner. At such hearing any person or persons may appear and be heard. (1969, P.A. 695, S. 5,6.)

Sec. 22-7m. Issuance or denial of permit. In granting, denying or limiting any permit the commissioner or his duly designated hearing officer shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shell-fisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in sections 22-7h to 22-7o, inclusive. Notice to the commissioner that the state board of fisheries and game is in the process of acquisition of any tidal wetlands by negotiation or condemnation under the provisions of section 26-17a, shall be sufficient basis for denial of any permit. In granting a permit the commissioner may limit or impose conditions or limitations designed to carry out the public policy set forth in sections 22-7h to 22-7o, inclusive. The commissioner may require a bond in an amount and with surety and conditions satisfactory to him securing to the state compliance with the conditions and limitations set forth in the permit. The commissioner may suspend or revoke a permit if the commissioner finds that the applicant has not complied with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The commissioner may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application. The commissioner shall state, upon his record, his findings and reasons for all actions taken pursuant to this section. The commissioner shall cause notice of his order in issuance, denial, revocation or suspension of a permit to be published in a daily newspaper having a circulation in the town or towns wherein the wetland lies. (1969, P.A. 695, S. 7.)

Sec. 22-7n. Appeal. (a) An appeal may be taken by the applicant or any person or corporation, municipal corporation or interested community group other than the applicant who has been aggrieved by such order from the denial, suspension or revocation of a permit or the issuance of a permit or conditional permit within thirty days after publication of such issuance, denial, suspension or revocation of any such permit to the superior court for Hartford county. If the court finds that the action appealed from is an unreasonable exercise of the police power, it may set aside the order. If the court so finds that the action appealed from constitutes the equivalent of a taking without compensation, and the land so regulated otherwise meets the interests and objectives of sections 22-7h to 22-7o, inclusive, it may at the election of the commissioner (1) set aside the order or (2) proceed under the provisions of sections 48-12 to 48-14, inclusive, to award damages.

(b) Such appeal shall be brought by a complaint in writing, stating fully the reasons therefor, with a proper citation, signed by a competent authority, and shall be served at least twelve days before the return date upon the commissioner and upon all parties having an interest adverse to the appellant. Such appeals shall be brought to the next return day or next but one of the superior court for Hartford county after the filing of such appeal. The commissioner shall forthwith, after service of notice of any appeal, prepare and file, in said court, a copy of such portions of the record of the case from which such appeal has been taken as may appear to the commissioner to be pertinent to such appeal, with such additions as may be claimed by any party of interest to be essential thereto, certified by the commissioner. The court, upon such appeal in making its determinations as provided in subsection (a) of this section, shall review, upon the record so certified, the proceedings of the commissioner and examine the question of the legality of the action of the commissioner and the propriety of said action.

Sec. 22-7n. Appeal. (continued)

If, upon hearing such appeal, it appears to the court that any testimony has been improperly excluded by the commissioner or that the facts disclosed by the record are insufficient for the equitable disposition of the appeal, it shall refer the case back to the commissioner to take such evidence as it may direct and report the same to the court, with the commissioner's findings of fact and conclusions of law. Such appeal shall have precedence in the order of trial.
(1969, P.A. 695, S. 8,9.)

Sec. 22-7o. Penalty. Any person who knowingly violates any provision of sections 22-7h to 22-7o, inclusive, shall be liable to the state for the cost of restoration of the affected wetland to its condition prior to such violation insofar as that is possible, and shall forfeit to the state a sum not to exceed one thousand dollars, to be fixed by the court, for each offense. Each violation shall be a separate and distinct offense, and, in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The attorney general, upon complaint of the commissioner, shall institute a civil action to recover such forfeiture. The superior court shall have jurisdiction in equity to restrain a continuing violation of said sections at the suit of any person or agency of state or municipal government. (1969, P.A. 695, S. 10.)

STATE OF CONNECTICUT

Substitute Bill No. 639 Page 1

LCO No.

PUBLIC ACT NO. 138

General Assembly,

January Session, A.D., 1971

AN ACT CONCERNING TIDAL WETLANDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 22-7j of the 1969 supplement to the general statutes, as amended by substitute for house bill 6251 of the current session, is repealed and the following is substituted in lieu thereof: The commissioner or his authorized representative shall have the right to enter upon any public or private property at reasonable times to carry out the provisions of sections 22-7h to 22-7o, inclusive. The commissioner shall promptly make an inventory of all tidal wetlands within the state. The boundaries of such wetlands shall be shown on suitable reproductions or aerial photographs to a scale of one inch equals two hundred feet with such accuracy that they will represent a class D survey. Such lines shall generally define the areas that are at or below an elevation of one foot above local extreme high water. Such maps shall be prepared to cover entire subdivisions of the state as determined by the commissioner. IF, BEFORE THE MAPS ARE PREPARED, THE COMMISSIONER FINDS THAT AN AREA IS IN IMMEDIATE DANGER OF BEING DESPOILED BY ANY ACTIVITY WHICH WOULD REQUIRE A PERMIT IF SUCH AREA WERE DESIGNATED AS WETLAND AND THAT SUCH AREA SHALL PROBABLY BE SO DESIGNATED WHEN SUCH MAPS ARE COMPLETED, THE COMMISSIONER MAY DESIGNATE SUCH AREA AS WETLAND, PROVIDED, IF SUCH MAP OF SUCH AREA IS NOT COMPLETED WITHIN SIXTY DAYS, SUCH DESIGNATION SHALL BE VOID. Upon completion of the tidal wetlands boundary maps for each subdivision, the commissioner shall hold a public hearing. The commissioner shall give notice of such hearing to each owner of record of all lands designated as such

etland as shown on such maps by registered mail not less than
hirty days prior to the date set for such hearing. The
mmissioner shall also cause notice of such hearing to be
blished at least once not more than thirty days and not fewer
an ten days before the date set for such hearing in a newspaper
newspapers having a general circulation in the town or towns
ere such wetlands are located. After considering the testimony
ven at such hearing and any other facts which may be deemed
rtinent and after considering the rights of affected property
ners and the purposes of sections 22-7h to 22-7o, inclusive,
e commissioner shall establish by order the bounds of each of
ch wetlands. A copy of the order, together with a copy of the
depicting such boundary lines, shall be filed in the town
erk's office of all towns affected. The commissioner shall
ve notice of such order to each owner of record of all lands
signated as such wetlands by mailing a copy of such order to
ch owner by registered mail. The commissioner shall also cause
copy of such order to be published in a newspaper or newspapers
ving a general circulation in the town or towns where such
tlands are located. Any person aggrieved by such order may
peal to the superior court for Hartford county within thirty
s after the date of such publication."

APPROVED
April 30, 1971
GOVERNOR

K-10

Form L-200

AMENDMENT

Offered by Senator CASHMAN *of the* 20th *District.*

Sub .

To Substitute for Senate Bill } *No.* 639 *File No.* 253

To Senate Joint Resolution

In Section

In Line 1 at the beginning insert "SECTION 1"

At Line 63 add "SECTION 2.. THIS ACT SHALL TAKE EFFECT FROM ITS PASSAGE."

APPROVED
April 30, 1971
GOVERNOR

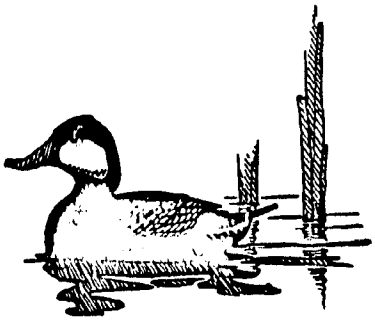
NEW YORK

ACT 545-1959

AN ACT

for the preservation, development and management of

LONG ISLAND WETLANDS



There is keen public interest in what is happening under the Long Island Wetlands preservation act, and what can be done to move programs along faster. In this connection, procedures come in for questioning, including just what wetlands are applicable under the law. Since the law itself is quite explicit in this respect, and since the Legislative finding of fact is an excellent description of the need for this legislation, we are reprinting both "finding in fact" and the law in this leaflet.

The material contained herein is taken directly from the "Report of the Joint Legislative Committee on Revision of the Conservation Law," State of New York, Legislative Document No. 11, 1959, pages 74-76.

Cooperative Agreements under Long Island Wetlands Act: May 1969

Town of Hempstead	10,500 acres
Town of Oyster Bay	5,000 acres
Town of Islip	550 acres

N. Y. S. CONSERVATION DEPARTMENT
DIVISION OF FISH AND GAME
ALBANY, N. Y.

AN ACT to amend the conservation law, in relation to authorizing the state to assist the villages, towns and counties in the preservation, development and management of the Long Island wetlands.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative finding in fact. This act and the amendments made thereby shall be construed and administered in the light of the following statement of finding of fact:

(a) The fish, game, wildlife, crustacea and protected insects, ownership of which is vested in the State of New York by section one hundred fifty-one of the conservation law, represent one of the most valuable assets of the State.

(b) The wetland areas of Long Island, extending over six hundred miles of coastal shore line and including hundreds of small islands within its bays is, because of its proximity to the world's largest concentration of people and the huge eastward migration of human population, fast becoming the "last frontier" for certain of the natural resources of the State.

(c) Resourcewise, the Long Island wetlands are important for the growth and culture of clams, oysters, bay scallops and many fin fishes. For fish the area serves as a nursery ground and sanctuary and its destruction will affect the fin fishing for miles away. Its shores and bays serve as a feeding and resting place for migratory waterfowl, shorebirds and other wildlife. The area has become a popular place for boating, fishing, hunting, wildlife watching, bathing and other outdoor recreational uses.

(d) Due to the vast migration of people and urban development, bulldozers and dredges have cleared and filled great areas to provide homes and commercial developments. Springs and small brooks are becoming

a rarity, or if present at all on the western end of the island, run underground, and elsewhere on the island seem doomed. Drainage of swamps and the filling in of the small estuaries has destroyed and will continue to destroy much spawning and nursery area for fish and shellfish. The increase in population and urban development has brought extensive pollution of the waters.

(e) Much of the remaining wetlands on the south shore are owned by the villages, towns and counties. Some are still in a relatively unspoiled state as compared to the shoreline located just immediately north of the bay.

(f) In view of the increased demand for recreational opportunity for all the people of the state, it is in the interests of the state to preserve as much as possible of these wetlands, in their present natural condition, for the propagation of fish, shellfish, waterfowl, shorebirds and other forms of wild life and for the recreational use of the people of the state. It is important to preserve and enhance the natural conditions of these lands and also to make them attractive and continue their value as wild lands for those who desire to pursue the observation of natural wildlife.

(g) The Long Island wetlands are used, and will continue to be used, for such recreational purposes by millions of people living elsewhere in the State who come to Long Island for rest and recreation. The preservation, care, development and management of these lands is therefore a "joint" responsibility of the state and its local subdivisions.

(h) Moreover, in respect to the remaining wetlands to which the villages, towns and counties have title, these objectives can best be accomplished by cooperation between the state and such political subdivisions. In order to carry out such a co-operative program the state should have authority to assist financially in the care, management and development of such wetlands on Long Island, as may be dedicated by the villages, towns and counties in which such wetlands are situate to conservation purposes, and to develop programs thereon of habitat restoration and improvement and promotion of natural propagation designed to maintain the wetlands in their naturally wild condition.

(i) The accomplishment of these objectives is justified and will require expenditure of moneys by the state in providing technical advice and services and in furnishing services and materials for the development and management of the wetlands and for habitat restoration and improvement thereof.

Section 360. Powers of the Department Amended to add

(g) to enter into cooperative agreements with a village, town, or county or with any one or more of them, for the purpose of preserving and maintaining, in accordance with the purposes and policies set forth in Section 175, lands located on Long Island and owned by such villages, towns and counties which have been dedicated to conservation purposes.

Section 394. Cooperative agreements with towns and counties concerning lands dedicated to conservation purposes.

(1) A cooperative agreement with a village, town or county or with any one or more of them made pursuant to paragraph (f) of subdivision (1) of Section 360, may provide for the development by personnel and facilities of the Department or the payment, out of funds appropriated for the purpose, of the cost of development of all or a part of an area dedicated by such village, town or county, or one or more of them as the case may be, to conservation purposes, and for the furnishing of personnel and facilities of the Department or the payment, out of funds appropriated for the purpose, of moneys for the maintenance of such area to the extent of fifty per centum of the total cost of such maintenance, provided that such village, town or county, or one or more of them as the case may be, shall provide personnel and facilities or moneys for the maintenance of such area to the extent of fifty per centum.

(2) The agreement may also provide for determining the value of personnel and facilities for the purpose of fixing such proportionate shares.

(3) A reservation in any such agreement by a village, town or county of the right to operate or lease for operation shellfish beds lying within the area, and a reservation of the income from such operation or lease for village, town or county purposes shall not be deemed a limitation of the dedication of the area for conservation purposes so as to make this section and paragraph (e) of subdivision (1) of Section three hundred sixty inapplicable.

Send for:

The Nature of a Tidal Marsh
Our Shore Areas – Let's Save Them
Our Changing Shoreline
Natural Values of Marine Wetlands
Wetlands Preservation on Long Island

Prepared by Division of Conservation Education

ACT 294-1968 Sections 9 & 10

§ 9. Section eighteen hundred fifty-four of such law, as amended by chapter three hundred sixty-six of the laws of nineteen hundred sixty-four, is hereby amended to read as follows:

§ 1854. Purposes and specific powers of the authority. The purposes of the authority shall be to encourage and cooperate in the maximum development and use of atomic energy for peaceful and productive purposes within the state and in the active furtherance of space activities within the state. In carrying out such purposes, the authority shall, with respect to the activities specified, have the following powers:

1. Research and development. To conduct, sponsor, assist and foster programs of research and development in the methods of production and use of atomic energy and programs relating to space activities, including the power to establish, acquire, operate, develop and manage facilities therefor.

2. The provision of services. To provide services required for the development and use of atomic energy and services required for space activities by the industrial, commercial, medical, scientific, educational and governmental organizations within the state, including the power to establish, acquire and develop facilities therefor not otherwise available within the state, and to operate and manage such facilities.

3. Cooperation with power companies. To contract with or enter into joint undertakings with any power company, or power authority of the state of New York, or more than one of them, to

(a) Participate in the construction and operation of experimental or developmental nuclear power facilities within the state of types which, by reason of advanced design concepts, have substantial prospects of reducing power production costs.

(b) Participate in the incorporation of features in nuclear power plants and the construction of associated facilities to the extent required by the public interest in development, health, recreation, safety, conservation of natural resources and aesthetics.

(c) Develop, prepare, and furnish by sale or lease real property owned, held, or acquired by the authority within the state to be used for the construction and operation of nuclear power plants and related facilities,

Provided that no such contract or joint venture shall be entered into which shall permit the authority to distribute or sell any power or energy to any person or entity other than the other contracting party or parties or joint venturer or venturers, and provided further that all power and energy received by power authority of the state of New York, pursuant to any such contract or joint venture, shall be distributed and sold only to such persons as power authority of the state of New York may sell power produced by its nuclear generating facilities, pursuant to law.

4. Water desalination. To contract with one or more water distribution companies or agencies to participate in the construction and operation of nuclear facilities for the purpose of desalination or distribution of water, and to develop, prepare, and furnish by sale or lease, real property owned, held or acquired by the authority within the state to be used for the construction and operation of such facilities and facilities related thereto, provided that the authority shall not enter into any such contract relating to any such facility which also produces electric power for purposes of sale unless the authority also contracts with one or more power companies with respect to the construction and operation of such facility and the distribution and use of such power.

5. Provision of nuclear fuel. To acquire and lease or otherwise make available nuclear fuel for use in the production of power, the desalination of water or for any other useful purpose within the state.

[3.] *6.* The dissemination of information. To accumulate and disseminate information relating to the development and use of atomic energy and relating to space activities, including the power to conduct, sponsor, assist and foster studies and surveys, and publish the results thereof.

In exercising the powers granted by this title, the authority shall, insofar as practicable, cooperate and act in conjunction with industrial, commercial, medical, scientific and educational organizations within the state, and with agencies of the federal government, of the state and its political subdivisions, of other states, and joint agencies thereof.

In carrying out its corporate purposes and in exercising the powers granted by this title, the authority shall be regarded as performing an essential governmental function.

§ 10. Subdivision one of section eighteen hundred sixty of such law, as amended by chapter three hundred sixty-six of the laws of nineteen hundred sixty-four, is hereby amended to read as follows:

1. The authority shall have the power and is hereby authorized to issue at one time or in series from time to time its bonds and notes in such principal amounts as, in the opinion of the authority, shall be necessary to provide sufficient moneys for achieving the authority's corporate purposes, including the establishment of reserves to secure the bonds and notes and the payment of interest on bonds and notes [, which bonds and notes, however, shall not exceed an aggregate principal amount of thirty million dollars ($30,000,000), excluding bonds and notes issued to refund, renew or pay outstanding bonds and notes].

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

NEW YORK

ACT 715-1969

CHAPTER 715

AN ACT to amend the conservation law, in relation to creation of a division of marine and coastal resources in the conservation department and prescribing its powers and duties

Became a law May 22, 1969, with the approval of the Governor. Passed by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1-0303 of the conservation law, as added by chapter one hundred seventy-four of the laws of nineteen hundred sixty-four, is hereby amended to read as follows:

§ 1-0303. Organization of Department.

1. There shall be in the Department the following divisions:

(1) Lands and Forests;

(2) Fish and Game;

(3) Water Resources;

(4) Saratoga Springs Reservation;

(5) Parks;

(6) Motorboats; [[and]]

(7) Oil and Gas[[.]]; *and*

(8) Marine and Coastal Resources.

2. The Commissioner may establish, consolidate or abolish additional divisions and bureaus.

3. There shall also be in the Department the Lake George Park Commission.

§ 2. Such law is hereby amended by inserting therein a new article, to be article four-A, to read as follows:

ARTICLE 4-A

DIVISION OF MARINE AND COASTAL RESOURCES

Section 395. Division of Marine and Coastal Resources.

396. Functions, Powers and Duties.

§ *395. Division of Marine and Coastal Resources.*

1. There shall be a Division of Marine and Coastal Resources in the Department.

2. The headquarters of such Division shall be located at such place in the county of Nassau or Suffolk as the Commissioner shall determine.

3. The Commissioner shall appoint a Director of the Division of Marine and Coastal Resources and such assistants and other employees, within the limits of appropriations therefor, as shall be needed to carry out the works of the Division. The positions named in this subdivision shall be in the competitive class of the classified civil service.

§ *396. Functions, Powers and Duties.*

The functions, powers and duties of the Department as now or hereafter provided for in the Conservation Law relating to the Marine and Coastal District as defined in section three hundred of this chapter, except matters relating to law enforcement, shall be exercised by and performed through said Division notwithstanding any other general, special or local law to the contrary.

§ 3. Section three hundred of such law, as added by chapter six hundred thirty of the laws of nineteen hundred fifty-five, is hereby amended to read as follows:

§ 300. Marine *and Coastal* District described.

The Marine *and Coastal* District shall include the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the state, [except] *including* the Hudson River [northerly of the south end of Manhattan Island] *up to the Tappan Zee bridge.*

§ 4. Section three hundred one of such law, such section having been added by chapter six hundred thirty of the laws of nineteen hundred fifty-five, subdivision one thereof having been amended by chapter six hundred twenty-four of the laws of nineteen hundred sixty-one, and subdivision two having been last amended by chapter nine hundred seventy-nine of the laws of nineteen hundred sixty-five, is hereby amended to read as follows:

§ 301. [Bureau of] Marine *and Coastal* Fisheries *Advisory Committee.*

[(1) There shall continue to be a Bureau of Marine Fisheries in the Division of Fish and Game in the Conservation Department. The functions, power and duties of the Division relative to shellfish, crustacea and migratory fish of the sea shall be exercised through and performed by such Bureau.

(2) The Commissioner shall appoint for the Bureau of Marine Fisheries conservation officers, a bacteriologist and such other employees, within the limits of appropriations therefor, as shall be actually needed to carry out the provisions of the Conservation Law.] The Commissioner shall appoint a Marine *and Coastal* Fisheries Advisory Committee to advise the [Assistant] Director [in charge of Marine Fisheries]. The committee shall include members representing shellfish farmers, baymen, commercial fishermen and salt water anglers. Committee members shall receive no compensation except their necessary traveling expenses when attending meetings of the committee which shall be paid from moneys appropriated to the department for travel and shall be paid on vouchers certified by the department upon audit of the Comptroller in the manner provided by law.

§ 5. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

NEW JERSEY

ACT 45-1961

CHAPTER 8A

GREEN ACRES

Sec.

13:8A-1. Short title.
13:8A-2. Legislative findings.
13:8A-3. Definitions.
13:8A-4. Acquisition of lands for recreation and conservation purposes; grants to assist local units acquire lands.
13:8A-5. Considerations to guide commissioner in acquiring lands and making grants.
13:8A-6. Manner of acquisition; statement of intended acquisition.
13:8A-7. Rules and regulations governing administration, operation and use of lands.
13:8A-8. Manner of acquisition of lands by local unit with state assistance.
13:8A-9. Conditions precedent to local assistance grant; terms and conditions of grant; acceptance by local unit.
13:8A-10. Conditions precedent to local assistance grant; rules and regulations governing administration, operation and use of lands.
13:8A-11. Grants by state treasurer upon approval by commissioner; amount of grant.
13:8A-12. Acquisition of lands subject to rights of another; conservation easements.
13:8A-13. Disposition of lands or diversion to other uses.
13:8A-14. Discrimination prohibited.
13:8A-15. Sale of lands by local unit to state.
13:8A-16. Powers of commissioner.
13:8A-17. Appropriation.
13:8A-18. Effective date.

13:8A-1. Short title

This act may be cited as the "New Jersey Green Acres Land Acquisition Act of 1961." L.1961, c. 45, p. 477, § 1.

Historical Note

Title of Act:

An Act concerning the acquisition of lands for recreation and conservation purposes, governing the expenditure of money for such purposes, appropriating $60,000,000.00 from the State Recreation and Conservation Land Acquisition Fund for such expenditure, and supplementing Title 13 of the Revised Statutes. L.1961, c. 45, p. 477.

Notes of Decisions

Library references
States ⇐85.
C.J.S. States § 104.

1. In general

Enactment of cluster or open space zoning ordinance which permitted reduced lot sizes and frontages in subdivision upon deeding of land for park, school, and other public purposes was in good faith, was in accordance with legislative objective in zoning, and granted only incidental benefits to individual subdivision developer, where benefits to developer, other than saving in street construction costs, were obscure, and municipality obtained more land reserved for public use. Chrinko v. South Brunswick Tp. Planning Bd., 77 N.J. Super. 594, 187 A.2d 221 (1963).

Pending litigation which questions the constitutionality of Laws 1961, c. 45, (New Jersey Green Acres Land Acquisition Act of 1961) would not affect the validity of a companion statute, i. e., Laws 1961, c. 46, (New Jersey Green Acres Bond Act of 1961), therefore, the State Recreation and Conservation Land Acquisition Bonds (Series B) proposed to be issued under authority of Laws 1961, c. 46 may legally be issued and delivered. F.O.1963, No. 1.

13:8A–2. Legislative findings

The Legislature hereby finds that:

(a) The provision of lands for public recreation and the conservation of natural resources promotes the public health, prosperity and general welfare and is a proper responsibility of government;

(b) Lands now provided for such purposes will not be adequate to meet the needs of an expanding population in years to come;

(c) The expansion of population, while increasing the need for such lands, will continually diminish the supply and tend to increase the cost of public acquisition of lands available and appropriate for such purposes;

(d) The State of New Jersey must act now to acquire and to assist local governments to acquire substantial quantities of such lands as are now available and appropriate for such purposes so that they may be used and preserved for use for such purposes; and

(e) The sum of $60,000,000.00 is needed now to make such acquisition possible.

(f) Such sum will be made available by the sale of bonds authorized by the New Jersey Green Acres Bond Act of 1961,[1] if the same be approved by the people;

(g) It is desirable to appropriate said sum for prompt use and to specify the manner in which the Legislature now proposes

that such sum, and such other funds as may be appropriated, shall be used for such purposes. L.1961, c. 45, p. 478, § 2.

[1] Laws 1948, c. 448; See note under section 13:8A–18.

Library References

States ⇐85. C.J.S. States § 104.

13:8A–3. Definitions

Except as the context may otherwise require:

(a) "Commissioner" means the Commissioner of Conservation and Economic Development or his designated representative;

(b) "Local unit" means a municipality, county or other political subdivision of this State, or any agency thereof.

(c) "Recreation and conservation purposes" means use of lands for parks, natural areas, forests, camping, fishing, water reserves, wildlife, reservoirs, hunting, boating, winter sports and similar uses for public outdoor recreation and conservation of natural resources; and

(d) "Land" or "lands" means real property, including improvements thereof or thereon, rights of way, water, riparian and other rights, easements, privileges and all other rights or interests of any kind or description in, relating to or connected with real property. L.1961, c. 45, p. 478, § 3.

Library References

States ⇐85. Words and Phrases (Perm.Ed.)
C.J.S. States § 104.

13:8A–4. Acquisition of lands for recreation and conservation purposes; grants to assist local units acquire lands

The commissioner shall use the sum appropriated by this act from the proceeds of the sale of bonds under the New Jersey Green Acres Bond Act of 1961,[1] and such other sums as may be appropriated from time to time for like purpose, to acquire lands for recreation and conservation purposes and to make grants to assist local units to acquire lands for such purposes, subject to the conditions and limitations prescribed by this act. L.1961, c. 46, p. 479, § 4.

[1] Laws 1961, c. 46, p. 484; See note under section 13:8A–18.

Library References

States ⇐85. C.J.S. States § 104.

13:8A–5. Considerations to guide commissioner in acquiring lands and making grants

In acquiring lands and making grants to assist local units to acquire lands the commissioner shall:

(a) seek to achieve a reasonable balance among all areas of the State in consideration of the relative adequacy of area recreation and conservation facilities at the time and the relative anticipated future needs for additional recreation and conservation facilities;

(b) insofar as practicable, limit acquisition to predominantly open and natural land to minimize the cost of acquisition and the subsequent expense necessary to render land suitable for recreation and conservation purposes;

(c) wherever possible, select land for acquisition which is suitable for multiple recreation and conservation purposes;

(d) give due consideration to co-ordination with the plans of other departments of State Government with respect to land use or acquisition. For this purpose, the commissioner is authorized to use the facilities of any interdepartmental committee or other agency suitable to assist in such co-ordination. L.1961, c. 45, p. 479, § 5.

Library References

States ⇐85. C.J.S. States § 104.

13:8A–6. Manner of acquisition; statement of intended acquisition

Lands acquired by the State shall be acquired by the commissioner in the name of the State. They may be acquired by purchase or otherwise on such terms and conditions as the commissioner shall determine, or by the exercise of the power of eminent domain in the manner provided in chapter 1 of Title 20 of the Revised Statutes. This power of acquisition shall extend to lands held by any local unit.

At least 60 days prior to any acquisition the commissioner shall submit a statement of any such intended acquisition to each of the following bodies in the Department of Conservation and Economic Development: the Water Policy and Supply Council, the Planning and Development Council, the Fish and Game Council and the Shell Fisheries Council. L.1961, c. 45, p. 479, § 6.

Library References

States ⇐85. C.J.S. States § 104.

13:8A-7. Rules and regulations governing administration, operation and use of lands

The commissioner shall prescribe rules and regulations governing the administration, operation and use of lands acquired by the State under this act to effect the purpose of this act. L. 1961, c. 45, p. 480, § 7.

Library References

States ⇐88. C.J.S. States § 105.

13:8A-8. Manner of acquisition of lands by local unit with state assistance

Lands approved by the commissioner for acquisition by a local unit with State assistance shall be acquired by and in the name of the local unit and may be acquired in any manner authorized by law for the acquisition of lands for such purposes by the local unit. L.1961, c. 45, p. 480, § 8.

Library References

Counties ⇐104. C.J.S. Counties § 166.
Municipal Corporations ⇐224. C.J.S. Municipal Corporations § 957.
C.J.S. Wills § 107.

13:8A-9. Conditions precedent to local assistance grant; terms and conditions of grant; acceptance by local unit

A grant to assist a local unit to acquire lands for recreation and conservation purposes shall not be made under this act until:

(a) The local unit has applied to the commissioner on forms prescribed by him describing the land acquisition for which a grant is sought, stating the recreation and conservation purpose or purposes to which such lands will be devoted, stating the facts which give rise to the need for such lands for such purpose, enclosing a comprehensive plan for the development of the local unit approved by its governing body, and stating such other matters as the commissioner shall prescribe;

(b) The commissioner shall have prescribed the terms and conditions under which the grant applied for will be made; and

(c) The local unit shall have filed with the commissioner its acceptance of such terms and conditions, and has otherwise complied with the provisions of this act. L.1961, c. 45, p. 480, § 9.

Library References

Counties ⇐104.
Municipal Corporations ⇐224.
States ⇐120.

C.J.S. Counties § 166.
C.J.S. Municipal Corporations § 957.
C.J.S. Wills § 107.
C.J.S. States § 160 et seq.

13:8A-10. Conditions precedent to local assistance grant; rules and regulations governing administration, operation and use of lands

A grant may not be made under this act until the local unit has adopted regulations governing the administration, use and development of the lands in question, and until the commissioner shall have approved such regulations. No such regulation may be altered thereafter without the approval of the commissioner. L.1961, c. 45, p. 481, § 10.

Library References

Counties ⇐107.
Municipal Corporations ⇐223.
States ⇐120.

C.J.S. Counties § 169.
C.J.S. Municipal Corporations §§ 958-960.
C.J.S. States § 160 et seq.

13:8A-11. Grants by state treasurer upon approval by commissioner; amount of grant

Grants under this act shall be made by the State Treasurer upon certification of approval by the commissioner. Each grant shall be in an amount equal to 50% of the actual price to be paid for the lands in question. L.1961, c. 45, p. 481, § 11.

Library References

States ⇐85, 120.

C.J.S. States §§ 104, 160 et seq.

13:8A-12. Acquisition of lands subject to rights of another; conservation easements

Without limitation of the definition of "lands" herein, the commissioner may acquire, or approve grants to assist a local unit to acquire:

(a) lands subject to the right of another to occupy the same for a period measured in years or otherwise; or

(b) an interest or right consisting, in whole or in part, of a restriction on the use of land by others including owners of other

interests therein; such interest or right sometimes known as a "conservation easement." L.1961, c. 45, p. 481, § 12.

Library References

Counties ⇐103.
Municipal Corporations ⇐221.
States ⇐85.
C.J.S. Counties § 165.
C.J.S. Municipal Corporations § 950 et seq.
C.J.S. States § 104.

13:8A-13. Disposition of lands or diversion to other uses

(a) Lands acquired by a local unit with the aid of a grant under this act shall not be disposed of or diverted to a use for other than recreation and conservation purposes without the approval of the commissioner and the State House Commission. Such approval of the State House Commission shall not be given unless the local unit shall agree to pay an amount equal to 50% of the value of such land, as determined by the commission, into the State Recreation and Conservation Land Acquisition Fund, if the original grant shall have been made from that fund, or, if not, then into the State Treasury. Money so returned to said fund shall be deemed wholly a part of the portion of that fund available for grants to local units under this act.

(b) Lands acquired by the State under this act with money from the State Recreation and Conservation Land Acquisition Fund shall not be disposed of or diverted to use for other than recreation and conservation purposes without the approval of the State House Commission. Such approval shall not be given unless the commissioner shall agree to pay an amount equal to the value of such land, as determined by the commission, into said fund. Money so returned to said fund shall be deemed wholly a part of the portion of that fund available for land acquisition by the State under this act.

(c) If land acquired by the State under this act with money from the State Recreation and Conservation Land Acquisition Fund is subsequently developed for any water supply projects, the commissioner shall pay an amount equal to the value of the land so developed, as said value is determined by the State House Commission, into said fund. Money so returned to the fund shall be deemed wholly a part of the portion of that fund available for land acquisition by the State under this act. The commissioner shall make said payment from any funds available for such purpose in the State Water Development Fund or other water development moneys appropriated and available for such purpose. L.1961, c. 45, p. 481, § 13.

Library References

Counties ⇐110.
Municipal Corporations ⇐225(3).
States ⇐88, 89.
C.J.S. Counties § 172.
C.J.S. Municipal Corporations § 967.
C.J.S. States §§ 105, 107.

13:8A-14. Discrimination prohibited

Use of lands acquired under this act by the State or with State assistance shall not be restricted by any conditions of race, creed, color or nationality, and shall not be restricted by any condition of residence except by direction of or with the approval of the commissioner. L.1961, c. 45, p. 481, § 14.

Library References

Civil Rights ⇐1.
States ⇐87, 88.
C.J.S. Civil Rights § 6 et seq.
C.J.S. States § 105.

13:8A-15. Sale of lands by local unit to state

Notwithstanding any other provision of law, lands to be acquired by the State under this act from any local unit may be sold to the State by the unit at private sale. L.1961, c. 45, p. 481, § 15.

Library References

Counties ⇐110.
Municipal Corporations ⇐225(1).
States ⇐85.
C.J.S. Counties § 172.
C.J.S. Municipal Corporations § 962 et seq.
C.J.S. States § 104.

13:8A-16. Powers of commissioner

The commissioner, in executing this act, may do all things necessary or useful and convenient in connection with the acquisition of lands by the State or with the assistance of the State, including the following:

(a) Make arrangements for and direct (i) engineering, inspection, legal, financial, geological, hydrological and other professional services, estimates and advice; (ii) and organizational, administrative and other work and services;

(b) Enter on any lands for the purpose of making surveys, borings, soundings or other inspections or examinations;

(c) Prescribe rules and regulations to implement any provisions of this act. L.1961, c. 45, p. 481, § 16.

Library References

States ⇐85.
C.J.S. States § 104.

13:8A–17. Appropriation

The money in the State Recreation and Conservation Land Acquisition Fund created by the New Jersey Green Acres Bond Act of 1961 [1] is hereby appropriated to the Department of Conservation and Economic Development for use in executing the provisions of this act, according to the following division:

(a) with respect to acquisition of lands by the State under this act, $40,000,000.00;

(b) with respect to State grants under this act to assist local units to acquire lands, $20,000,000.00. L.1961, c. 45, p. 482, § 17.

[1] Laws 1961, c. 46, p. 484; See note under section 13:8A–18.

Library References

Counties ⇐103.
Municipal Corporations ⇐221.
States ⇐85, 129.

C.J.S. Counties § 165.
C.J.S. Municipal Corporations § 950 et seq.
C.J.S. States §§ 104, 160 et seq.

13:8A–18. Effective date

Section 17 of this act [1] shall take effect upon approval by the people at a general election of the New Jersey Green Acres Bond Act of 1961, and the remainder of this act shall take effect immediately. L.1961, c. 45, p. 483, § 18.

[1] Section 13:8A–17.

Historical Note

The New Jersey Green Acres Bond Act of 1961 was enacted by L.1961, c. 46, p. 484, subject to approval by the people. The Act was adopted at the general election on Nov. 7, 1961.

Library References

States ⇐129, 147.
Statutes ⇐251, 259.

C.J.S. States §§ 160 et seq., 179.
C.J.S. Statutes §§ 401, 402, 410.

NEW JERSEY

ACT 272-1970

WETLANDS ACT OF 1970

CHAPTER 272 [1]

ASSEMBLY NO. 505

An Act concerning the protection of natural resources in coastal wetlands, providing for the designation by the Commissioner of Environmental Protection of certain coastal wetlands after public hearing, and requiring permits from the commissioner prior to the dredging, removing, filling or otherwise altering or polluting coastal wetlands.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1.

a. The Legislature hereby finds and declares that one of the most vital and productive areas of our natural world is the so-called "estuarine zone," that area between the sea and the land; that this area protects the land from the force of the sea, moderates our weather, provides a home for water fowl and for ⅔ of all our fish and shellfish, and assists in absorbing sewage discharge by the rivers of the land; and that in order to promote the public safety, health and welfare, and to protect public and private property, wildlife a marine fisheries and the natural environment, it is necessary to preserve the ecological balance of this area and prevent its further deterioration and destruction by regulating the dredging, filling, removing or otherwise altering or polluting thereof, all to the extent and in the manner provided herein.

b. The Commissioner of Environmental Protection shall, within 2 years of the effective date of this act, make an inventory and maps of all tidal wetlands within the State. The boundaries of such wetlands shall generally define the areas that are at or below high water and shall be shown on suitable maps, which may be reproductions or aerial photographs. Each such map shall be filed in the office of the county recording officer of the county or counties in which the wetlands indicated thereon are located. Each wetland map shall bear a certificate of the commissioner to the effect that it is made and filed pursuant to this act. To be entitled to filing no wetlands map need meet the requirements of R.S. 47:1-6.

2.

The Commissioner may from time to time, for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting, coastal wetlands. For the purposes of this act the term "coastal wetlands" shall mean any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey along the Delaware bay and Delaware river, Raritan bay, Barnegat bay, Sandy Hook bay, Shrewsbury river including Navesink river, Shark river, and the coastal inland waterways extending southerly from Manasquan Inlet to Cape May Harbor, or at any inlet, estuary or tributary waterway or any thereof, including those areas now or formerly connected to tidal waters whose surface is at or below an elevation of 1 foot above local extreme high water, and upon which may grow or is capable of growing some, but not necessarily all, of the following: Salt meadow grass (Spartine patens), spike grass (Distichlis spicata), black grass (Juncus gerardi), saltmarsh grass (Spartina alterniflora), saltworts (Salicornia Europaea, and Salicornia bigelovii), Sea Lavendar (Limonium carolinianum), saltmarsh bulrushes (Scirpus robustus and Scirpus paludosus var. atlanticus), sand spurrey (Spergularia marina), switch grass (Panicum virgatum), tall cordgrass (Spartina pectinata), hightide bush (Iva frutescens var. oraria), cattails (Typha angustifolia, and Typha latifolia), spike rush (Eleocharis rostellata), chairmaker's rush (Scirpus americana), bent grass (Agrostis palustris), and sweet grass (Hierochloe odorata). The term "coastal wetlands" shall not include any land or real property subject to the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to the provisions of P.L.1968, chapter 404, sections 1 through 84 (C. 13:17-1 through C. 13:17-86).

3.
The commissioner shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the county in which the coastal wetlands to be affected are located, giving notice thereof to each owner having a recorded interest in such wetlands by mail at least 21 days prior thereto addressed to his address as shown in the municipal tax office records and by publication thereof at least twice in each of the 3 weeks next preceding the date of such hearing in a newspaper of general circulation in the municipality or municipalities in which such coastal wetlands are located.

Upon the adoption of any such order or any order amending, modifying or repealing the same, the commissioner shall cause a copy thereof, together with a plan of the lands affected, including reference to the filed wetlands map or maps on which the same are shown and a list of the owners of record of such lands, to be recorded in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment, and shall mail a copy of such order and plan to each owner of record of such lands affected thereby.

4.
a. For purposes of this section "regulated activity" includes but is not limited to draining, dredging, excavation or removal of soil, mud, sand, gravel, aggregate of any kind or depositing or dumping therein any rubbish or similar material or discharging therein liquid wastes, either directly or otherwise, and the erection of structures, drivings of pilings, or placing of obstructions, whether or not changing the tidal ebb and flow. "Regulated activity" shall not include continuance of commercial production of salt hay or other agricultural crops or activities conducted under section 7 of this act.

b. No regulated activity shall be conducted upon any wetland without a permit.

c. Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland shall file an application for a permit with the commissioner, in such form and with such information as the commissioner may prescribe. Such application shall include a detailed description of the proposed work and a map showing the area of wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent land and known claimants of rights in or adjacent to the wetland of whom the applicant has notice. All applications, with any maps and documents relating thereto, shall be open for inspection at the office of the Department of Environmental Protection.

d. In granting, denying or limiting any permit the commissioner shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shell fisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in section 1. a. of this act.

5.
The Superior Court shall have jurisdiction to restrain violations of orders issued pursuant to this act.

6.
Any person having a recorded interest in land affected by any such order or permit, may, within 90 days after receiving notice thereof, file a complaint in the Superior Court to determine whether such order or permit so restricts or otherwise affects the use of his property as to deprive him of the practical use thereof and is therefore an unreasonable exercise of the police power because the order or permit constitutes the equivalent of a taking without compensation. If the court finds the order or permit to be an unreasonable exercise of the police power, the court shall enter a finding that such order or permit shall not apply to the land of the plaintiff; provided, however, that such finding shall not affect any other land than that of the plaintiff. Any party to the suit may cause a copy of such finding to be recorded forthwith in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment.

The method provided in this section for the determination of the issue shall be exclusive, and such issue shall not be determined in any other proceeding.

7.
No action by the commissioner under this act shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the State Department of Environmental Protection, the Natural Resource Council and the State Mosquito Control Commission in said Department, the State Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of the Revised Statutes.

8.
Nothing in this act or any permit issued hereunder shall affect the rights of the State in, or the obligations of a riparian owner with respect to, riparian lands.

9.
Any person who violates any order by the commissioner, or violates any of the provisions of this act, shall be liable to the State for the cost of restoration of the affected wetland to its condition prior to such violation insofar as that is possible, and shall be punished by a fine of not more than $1,000.00, to be collected in accordance with the provisions of the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.).

10.
This act may be cited as "The Wetlands Act of 1970."

11.
This act shall take effect immediately.

Approved and effective Nov. 5, 1970.

VIRGINIA

HOUSE JOINT RESOLUTION NO. 60

Creating a commission to consider matters relating to the wetlands.

Whereas, the wetlands of this State, involving as they do our marine resources and recreational features, are under constant threat of being put to other uses, and

Whereas, if the wetland resources of this State are lost, this generation will have allowed to slip from its grasp a priceless treasure and future generations will be forever deprived of this important part of our environment; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That a commission is hereby created to make a study and report upon the wetlands of this State. Such study shall include, among other matters, an inventory of the wetlands resources available to us, the dangers threatening them, and steps the State and local governments can take to preserve the potential of this great resource for this and future generations.

The Commission shall be composed of nine members of whom three shall be appointed by the Speaker of the House of Delegates from the membership thereof, three shall be appointed by the President of the Senate from the membership thereof and three shall be appointed by the Governor from within or without the State. The members of the Commission shall receive no compensation for their services but shall be paid their necessary expenses, for which, and for such clerical and technical assistance as will be required, there is hereby appropriated the sum of ten thousand dollars to be paid from the contingent fund of the General Assembly. The Commission shall conclude its study and make its report to the Governor and General Assembly not later than December one, nineteen hundred seventy-one. All agencies of the State shall assist the Commission upon its request.

NORTH CAROLINA

ACT 1159 - Section 6

GENERAL ASSEMBLY OF NORTH CAROLINA

1971 SESSION

RATIFIED BILL

Sec. 6, Chapter 1159
House Bill 705

DREDGE AND FILL LAW

AN ACT TO PROVIDE FOR THE CONTROL OF BEACH EROSION AND FOR THE PROTECTION AND CONSERVATION OF COASTAL AREAS, SAND DUNES AND ESTUARINE AREAS.

The General Assembly of North Carolina enacts:

Sec. 6. Chapter 113 of the General Statutes is hereby amended by rewriting subsections (a), (e), (f), (h), (k), (l), (m) and (n) of G. S. 113-229 so that G. S. 113-229 shall read as follows:

"G. S. 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.--(a) Before any excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a permit from the North Carolina Department of Conservation and Development. Granting of a State permit shall not relieve any party from the necessity of obtaining a permit from the United States Army Corps of Engineers for work in navigable waters, if the same is required. The North Carolina Department of Water and Air Resources shall continue to coordinate projects pertaining to navigation with the United States Army Corps of Engineers.

(b) All applications for such permits shall include a plat of the areas in which the proposed work will take place, indicating the location, width, depth and length of any proposed channel, the disposal area, and a copy of the deed or other instrument under which the applicant claims title to the property adjoining the waters in question (or any land covered by waters), tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title plus written permission from the owner to carry out the project on his land.

(c) In lieu of a deed or other instrument referred to in subsection (b) of this Section, the agency authorized to issue such permits may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(d) The applicant shall cause to be served in the manner provided by paragraph (g)(9) of this Section upon an owner of each tract of riparian property adjoining that of the applicant a copy of the application filed with the State of North Carolina and each such adjacent riparian owner shall have thirty days from the date of such service to file with the Department of Conservation and Development written objections to the granting of the permit to dredge or fill. An owner may be served by publication, in the manner provided by paragraph (g)(10) of this Section, whenever the owner's address, whereabouts, dwelling house or usual place of abode is unknown and cannot with due diligence be ascertained, or there has been a diligent but unsuccessful attempt to serve the owner under paragraph (g)(9) of this Section.

(e) Applications for permits shall be circulated by the Department of Conservation and Development among all State agencies and in the discretion of the Director, appropriate federal agencies, having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. The Department shall act upon an application for permit within ninety days after the application is filed and failure to so act shall automatically approve the application.

(f) If any State agency or the applicant raises an objection to the action of the Department of Conservation and Development regarding the permit application within 20 days after said action

was taken, the Department shall call a meeting of a Review Board composed of the directors (or their designees) of the following State agencies: The Department of Administration, the Department of Conservation and Development, the Board of Health, the Department of Water and Air Resources, the Wildlife Resources Commission, and any other agency that may be designated by the Governor. The Director of the Department of Conservation and Development, if he does not sit on the review himself, may appoint two designees, one to represent conservation interests and one to represent development interests. The Review Board shall set a date for a hearing not more than 60 days from the date of the departmental action. At said hearing, evidence shall be taken by the Review Board from all interested persons, who shall have a right to be represented by counsel. After hearing the evidence, the Review Board shall make findings of fact in writing and shall affirm, modify or overrule the action of the Department concerning the permit application. Any State agency or the applicant may appeal from the ruling of the Review Board to the superior court of the county where the land or any part thereof is located, pursuant to the provisions of Article 33 of Chapter 143 of the General Statutes.

(g) The following provisions, together with any additional provisions not inconsistent herewith which the Review Board may prescribe, shall be applicable in connection with hearings pursuant to this Article:

(1) All hearings shall be open to the public. The Review Board, or its authorized agents, shall have the authority to administer oaths.

(2) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the Review Board or by some other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Review Board.

(3) The Review Board shall follow generally the procedures applicable in civil actions in the Superior Court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(4) Subpoenas or subpoenas duces tecum issued by the Review Board, in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the Board, application may be made to the Superior Court of the appropriate county for enforcement thereof.

(5) The burden of proof at any hearing shall be upon the person or agency, as the case may be, at whose instance the hearing is being held.

(6) No decision or order of the Review Board shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(7) Following any hearing, the Review Board shall afford the parties thereto twenty days to submit proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the Board's ruling with respect to each such requested finding of fact and conclusion of law.

(8). The Department and the Review Board shall give notice to all interested parties of their formal actions taken under this Section, including Departmental findings upon applications and calling of Review Board meetings by the Department, and announcement of decisions and setting of hearing dates by the Review Board.

(9) All notices which are required to be given or to be served by the Department, the Review Board or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto. The date of receipt for such registered or certified mail shall be the date when such notice is deemed

to have geen given. Notice by the Department or Review Board may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the Superior Courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The Review Board by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices. Within the meaning of this paragraph, a 'notice' includes a copy of an application for a permit required to be served on adjoining riparian owners, pursuant to subsection (d) of this Section.

(10) For purposes of this Section, service by publication shall consist of publishing a notice of service by publication in a newspaper qualified for legal advertising in accordance with G. S. 1-597 and G. S. 1-598, and published in a county where any part of the land affected by a proposed project is located or, if no qualified newspaper is published in such county, then in a qualified newspaper published in an adjoining county, or in a county in the same judicial district, once a week for three successive weeks. If the owner's post

office address is known or can with reasonable diligence be ascertained, there shall be mailed to the owner at or immediately prior to the first publication a copy of the notice of service by publication. The mailing may be omitted if the post office address cannot be ascertained with reasonable diligence. The notice of service by publication shall (i) designate the Department of State Government having jurisdiction to initially grant or deny dredge and fill permits hereunder, and identify the General Statutes Section under which the permit has been sought; (ii) be directed to the owner sought to be served; (iii) identify the name and post office address of the permit applicant; (iv) indicate whether the proposed project will involve dredging or filling or both; (v) indicate the county(ies) and township(s) in which the proposed project will be located, together with any further information descriptive of the location which the Department may wish to include; (vi) state where and at what hours a copy of the application may be obtained or inspected; and (vii) indicate the time limit for filing of objections with the Department by the owner, pursuant to subsection (d) of this Section.

(h) The granting of a permit to dredge or fill shall be deemed conclusive evidence that the applicant has complied with all requisite conditions precedent to the issuance of such permit, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part, except failure to notify adjacent riparian landowners as required by subsection (d) of this section.

(i) All materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.

(j) None of the provisions of this Section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

(k) Any person, firm, or corporation violating the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment of not more than ninety (90) days, or both. Each day's continued operation after notice by the Department to cease shall constitute a separate offense. Notice to cease shall be pursuant to G. S. 113-229(g)(9).

(l) The Director may, either before or after the institution of proceedings under subsection (k) of this section, institute a civil action in the Superior Court in the name of the State upon the relation of the Director, for damages, and injunctive relief, and for such other and further relief in the premises as said court may deem proper, to prevent or recover for any damage to any lands or property which the State holds in the public trust,

and to restrain any violation of this section or of any provision of a dredging or filling permit issued under this section. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this section for any violation of the same.

(m) This section shall apply to all persons, firms, or corporations, their employees, agents, or contractors proposing excavation or filling work in the estuarine waters, tidelands, marshlands and State-owned lakes within the State, and to work to be performed by the State Government or local governments. Provided, however, the provisions of this section shall not apply to the activities and functions of the North Carolina State Board of Health and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G. S. 130-206 through G. S. 130-209. Provided, further, this act shall not impair the riparian right of ingress and egress to navigable waters.

(n) Within the meaning of this section:

(1) 'State-owned lakes' include man-made as well as natural lakes.

(2) 'Estuarine waters' means all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department

of Conservation and Development and the Wildlife Resources Commission, within the meaning of G. S. 113-229.

(3) 'Marshland' means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tide waters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Salt marshland or other marsh shall be those areas upon which grow some, but not necessarily all, of the following salt marsh and marsh plant species: Smooth or salt-water Cordgrass (Spartina alterniflora), Black Needlerush (Juncus roemerianus), Glasswort (Salicornia spp.), Salt Grass (Distichlis spicata), Sea Lavender (Limonium spp.), Bulrush (Scirpus spp.), Saw Grass (Cladium jamaicense), Cat-Tail (Typha spp.), Salt-Meadow Grass (Spartina patens), and Salt Reed-Grass (Spartina cynosuroides)."

GENERAL ASSEMBLY OF NORTH CAROLINA

1971 SESSION

RATIFIED BILL

Sec. 7, Chapter 1159
House Bill 705

COASTAL WETLANDS ACT

AN ACT TO PROVIDE FOR THE CONTROL OF BEACH EROSION AND FOR THE PROTECTION AND CONSERVATION OF COASTAL AREAS, SAND DUNES AND ESTUARINE AREAS.

The General Assembly of North Carolina enacts:

Sec. 7. Chapter 113 of the General Statutes is hereby amended by adding immediately following G. S. 113-229 a new section to be designated G. S. 113-230 and to read as follows:

"§ 113-230. Orders to control activities in coastal wetlands.--(a) The Director of the Department of Conservation and Development, with the approval of the Board of Conservation and Development, may from time to time, for the purpose of promoting the public safety, health, and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering coastal wetlands. In this section, the term 'coastal wetlands' shall mean any marsh as defined in G. S. 113-229(n)(3), as amended, and such contiguous land as the Director reasonably deems necessary to affect by any such order in carrying out the purposes of this section.

(b) The Director shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the county in which the coastal wetlands to be affected are located, giving notice thereof to interested State agencies and each owner or claimed owner of such wetlands by certified or registered mail at least twenty-one days prior thereto.

(c) Upon adoption of any such order or any order amending, modifying or repealing the same, the Director shall cause a copy thereof, together with a plan of the lands affected and a list of the owners or claimed owners of such lands, to be recorded in the register of deeds office in the county where the land is located, and shall mail a copy of such order and plan to each owner or claimed owner of such lands affected thereby.

(d) Any person, firm or corporation that violates any order issued under the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment for not more than six months, or both in the discretion of the court.

(e) The superior court shall have jurisdiction in equity to restrain violations of such orders.

(f) Any person having a recorded interest in or registered claim to land affected by any such order may, within ninety days after receiving notice thereof, petition the superior court to determine whether the petitioner is the owner of the land in question, and in case he is adjudged the owner of the subject land, whether such order so restricts the use of his property as to

deprive him of the practical uses thereof and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of a taking without compensation. If the court finds the order to be an unreasonable exercise of the police power, as aforesaid, the court shall enter a finding that such order shall not apply to the land of the petitioner; provided, however, that such finding shall not affect any other land than that of the petitioner. The Director shall cause a copy of such finding to be recorded forthwith in the register of deeds office in the county where the land is located. The method provided in this paragraph for the determination of the issue of whether any such order constitutes a taking without compensation shall be exclusive, and such issue shall not be determined in any other proceeding.

(g) After a finding has been entered that such order shall not apply to certain land as provided in the preceding paragraph, the Department of Administration, upon the request of the Board of Conservation and Development, shall take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this section.

(h) This section shall not repeal the powers, duties and responsibilities of the Department of Conservation and Development under the provisions of G. S. 113-229."

Chapter 104B.

Hurricanes or Other Acts of Nature.

Article 2.

Zoning of Potential Flood Areas.

Sec.
104B-2. [Repealed.]

Article 3.

Protection of Sand Dunes along Outer Banks.

104B-3. Legislative findings.
104B-4. Damaging or removing without permit; establishment of shore protection line.
104B-5. Findings prerequisite to issuance of permit; requiring restoration of protection.
104B-6. Appointment or designation of shoreline protection officers; compensation; joint shoreline protection department.
104B-7. Duties of shoreline protection officer.
104B-8. Inspection and enforcement powers of shoreline protection officers.
104B-9. Regulations by board of county commissioners; taxes authorized.
104B-10. Appeal from decision of shoreline protection officer; review of decision of county commissioners.
104B-11. Establishment of project protection line; prohibited acts on ocean side of line; permit for construction of structure.
104B-12. Violations of article or regulations.
104B-13. Definitions.
104B-14. Map or description of shore protection line or project protection line.
104B-15 Powers of Board of Water Resources.

ARTICLE 2.

Zoning of Potential Flood Areas.

§ 104B-2: Repealed by Session Laws 1965, c. 431, s. 1.

ARTICLE 3.

Protection of Sand Dunes along Outer Banks.

§ 104B-3. Legislative findings.—It is hereby determined and declared as a matter of legislative finding that the area of the State of North Carolina lying along the Atlantic Ocean front, and in particular the outer banks of this State as hereinafter defined, is a major asset to the economy of the entire State and as such should be protected and preserved. This area is wholly or in part protected from actions of the Atlantic Ocean and storms thereon by a system of natural or constructed dunes providing a protective barrier for adjacent lands and inland waters and land against the actions of sand, wind and water. Certain persons, firms, and corporations have from time to time modified or destroyed the effectiveness of such protective barriers in the process of developing the waterfront for various purposes. These practices constitute serious threats to the safety of adjacent properties and to public highways, as well as to the value and taxable basis of such adjacent properties, and they constitute a real danger to the health, safety, and welfare of persons living, visiting, or sojourning in such area. It is therefore deemed necessary to protect that area and especially the system of protective barrier dunes as hereinafter provided. (1965, c. 237.)

Editor's Note. — Chapter 237, Session Laws 1965, rewrote this article, which formerly consisted of five short sections codified from c. 995, Session Laws 1957. Where the subject matter of the present section is the same as that of a former section, the 1957 act is included in the historical citation but no comparison of the old and new provisions has been attempted.

§ 104B-4. Damaging or removing without permit; establishment of shore protection line. — (a) Except as otherwise provided in subsection (b)

of this section, it shall be unlawful for any person, firm, or corporation in any manner to damage, destroy, or remove any sand dune, or part thereof, lying along the outer banks of this State as hereinafter defined, or to kill, destroy, or remove any trees, shrubbery, grass, or other vegetation growing on said dunes, without first having obtained a permit as specified herein authorizing such proposed damage, destruction, or removal.

(b) Any board of county commissioners whose county includes a portion of the outer banks of this State may establish a shore protection line, for the purpose of limiting the territorial application of the provisions of subsection (a) of this section to those dunes within the county which in the judgment of said board serve as protective barriers. In any county which so elects to establish a shore protection line, the provisions of subsection (a) of this section shall apply only with respect to sand dunes (or parts thereof and vegetation growing thereon) located on the ocean side of said shore protection line. In establishing any such shore protection line the board of county commissioners may hold such hearings as it deems desirable, and may consult with the Department of Water Resources and others. (1957, c. 995, s. 1; 1965, c. 237.)

Cross Reference.—See Editor's note to § 104B-3.

§ 104B-5. Findings prerequisite to issuance of permit; requiring restoration of protection.—No such permit shall be granted by any officer, agency, or board charged with the issuance of permits hereunder unless such officer, agency, or board shall first have found as a fact that the particular action, damage, destruction, or removal proposed will not materially weaken the dune or reduce its effectiveness as a means of protection from the effects of high wind and water, taking into consideration the height, width, and slope of the dune or dunes and the amount and type of vegetation thereon. Permits so issued will require the restoration of protection so affected by construction as well as the restoration of vegetation. (1957, c. 995, s. 3; 1965, c. 237.)

Cross Reference.—See Editor's note to § 104B-3.

§ 104B-6. Appointment or designation of shoreline protection officers; compensation; joint shoreline protection department.—(a) Any board of county commissioners whose county includes a portion of the area subject to this article may appoint and empower with police authority one or more shoreline protection officers, to serve at the will of the board. In the alternative the board of county commissioners may designate to perform the powers, duties and functions of a shoreline protection officer:

(1) A shoreline protection officer of any other county or counties, with the approval of the board of county commissioners of such other county or counties;

(2) A municipal employee or official of any municipality or municipalities within the county, with the approval of the municipal governing body; or

(3) Any employee or official of the county.

In the absence of such appointment or designation, the board of county commissioners shall itself have the powers, duties and functions of the shoreline protection officer as specified herein.

(b) The board of county commissioners may pay a shoreline protection officer a fixed salary or compensation in such other measure as it deems appropriate. The board of county commissioners may also accept and disburse any funds which may be made available by the State or federal governments as contributions towards the salary or expenses of a shoreline protection officer. The board of county commissioners may make necessary appropriations for the special purpose of paying the salary or salaries of shoreline protection officers and any expenses

pertaining to shoreline protection and may levy annually taxes for the payment of such appropriation as a special purpose, in addition to any allowed by the Constitution.

(c) The board of county commissioners may enter into and carry out contracts with any other county or counties under which the parties agree to support a joint shoreline protection department. The board of county commissioners may make any necessary appropriations for such a purpose. (1965, c. 237.)

Cross Reference.—See Editor's note to § 104B-3.

§ 104B-7. Duties of shoreline protection officer.—It shall be the duty of the shoreline protection officer to receive applications for permits under this article, to check each application for compliance with this article and any regulations adopted by the board of county commissioners, to make the findings called for under this article, to issue the permit where no fact appears which would make such issuance a violation of this article or of regulations adopted hereunder, to collect such fees as may be specified by the board of county commissioners and to deliver same to the county treasurer, to make such reports as may be required by the board of county commissioners, to furnish a surety bond for the faithful performance of his duties and the safeguarding of any public funds coming into his hands (which bond shall be approved as to amount, form, and solvency of sureties by the board of county commissioners), and to carry out such related duties as may be specified by the board of county commissioners. (1965, c. 237.)

Cross Reference.—See Editor's note to § 104B-3.

§ 104B-8. Inspection and enforcement powers of shoreline protection officers.—(a) A shoreline protection officer is authorized at any reasonable hour to enter upon any lands and structures upon lands to inspect the property, as may be necessary in performing his duties under this article and the rules and regulations adopted pursuant to this article; and such entry shall not be deemed a trespass, provided that the county shall make reimbursement for any damages resulting to such property as a result of such activities.

(b) A shoreline protection officer shall have within the county or counties where he holds his appointment the powers of peace officers vested in the sheriffs and constables, for the purpose of enforcing the provisions of this article and the rules and regulations adopted pursuant to this article, and for the purpose of initiating prosecutions under this article. (1965, c. 237.)

Cross Reference.—See Editor's note to § 104B-3.

§ 104B-9. Regulations by board of county commissioners; taxes authorized.—(a) The board of county commissioners is hereby empowered to adopt and enforce such regulations as it may deem necessary, to enforce the provisions of this article, and also to matters concerning the form, time, and manner of submission of any application for a permit under this article. It may also fix any reasonable fees to cover part or all of the cost of necessary inspections or other administrative procedures under this article.

(b) The board of county commissioners of any county which includes a portion of the area subject to this article is hereby authorized to levy annually on all taxable property in the county a special tax for the special purpose of paying any expenses incurred in carrying out the provisions of this article and the General Assembly does hereby give its special approval for the levy of such taxes. (1965, c. 237.)

Cross Reference.—See Editor's note to § 104B-3.

§ 104B-10. Appeal from decision of shoreline protection officer; review of decision of county commissioners.—(a) In the event that a shoreline protection officer denies a permit under this article, the applicant may within 30 days file an appeal with the board of county commissioners. In the event that a shoreline protection officer grants a permit under this article, any property owner whose property is damaged by action taken under the permit may within 30 days file an appeal with the board of county commissioners. On receipt of any appeal, the board of county commissioners shall be entitled to consider the matter ab initio and may take any action which the shoreline protection officer could have taken under this article.

(b) Every decision of the board of county commissioners on such an appeal as well as every decision granting or denying a permit by a board of county commissioners performing the functions of shoreline protection officer, shall be subject to review by the superior court of the county by proceedings in the nature of certiorari. Pending the final disposition of any such appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this article. (1965, c. 237.)

Cross Reference.—See Editor's note to § 104B-3.

§ 104B-11. Establishment of project protection line; prohibited acts on ocean side of line; permit for construction of structure.—(a) The Department of Water Resources shall establish a project protection line prior to the start of construction of each beach restoration or hurricane protection project. Said project protection line will identify the line along which said beach restoration and hurricane protection works will be constructed along the ocean front. The construction of said beach restoration and hurricane protection works will be located on the ocean side of said project protection line.

(b) Subsequent to the establishment of such a project protection line, it shall be unlawful for any person, firm or corporation to construct any building or part thereof, open any new road or street or remove sand, sea shells and similar materials on the ocean side of said project protection line. It shall also be unlawful for any person, firm or corporation to alter in any manner the sand dune or beach or in any manner to injure, destroy, interfere with, or reduce the operation of any then existing groins, jetties or any other erosion control works on the ocean side of the project protection line. Groins, jetties, piers or any other such structure will not be constructed on the ocean side of the project protection line without first obtaining a permit from the Department of Water Resources. It shall be further unlawful to drive or operate vehicles of any type or nature on or along the sand dunes or beaches on the ocean side of said project protection line except at such places as may be designated. (1965, c. 237; c. 623, s. 1.)

Cross Reference.—See Editor's note to § 104B-3.

Editor's Note.—Session Laws 1965, c. 623, substituted "injure" for "insure" preceding "destroy" in the second sentence of subsection (b).

§ 104B-12. Violations of article or regulations.—(a) Any violation of this article or of regulations promulgated by a board of county commissioners under the authority of this article shall constitute a misdemeanor, and upon conviction thereof, any person, firm or corporation committing such violation shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00); provided that the provisions of this article shall not be construed to apply to the removal of sand, sea shells or similar materials for souvenir value in such amounts as may be carried upon the person. Failure to restore any sand dune or part thereof which has unlawfully been damaged, destroyed, or removed, or to restore or replace any trees, shrubbery, grass, or other vegetation which has unlawfully been killed, destroyed, or removed from said dunes shall constitute a separate violation of this article for each ten days that such failure continues after

written notice from the shoreline protection officer or the board of county commissioners.

(b) In addition to other remedies, the board of county commissioners may institute any appropriate action or proceedings

(1) To restrain or prevent any violation of this article or

(2) To require any person, firm, or corporation which has committed a violation to restore any sand dune or part thereof which has unlawfully been damaged, destroyed, or removed, or to restore or replace any trees, shrubbery, grass, or other vegetation which has unlawfully been killed, destroyed, or removed from said dunes in violation of this article. (1965, c. 237.)

Cross Reference.—See Editor's note to § 104B-3.

§ 104B-13. Definitions.—As used in this article:

(1) The term "outer banks of this State" shall be construed to mean all of that part of North Carolina which is separated from the mainland by a body of water, such as an inlet or sound, and which is in part bounded by the Atlantic Ocean and in New Hanover, Onslow, and Brunswick counties this shall include the land areas lying between the Intra-Coastal Waterway and the Atlantic Ocean.

(2) The term "shoreline protection officer" includes any person designated by a board of county commissioners to perform the functions of shoreline protection officer, as well as a shoreline protection officer duly appointed by a board of county commissioners. (1957, c. 995, s. 4; 1965, c. 237.)

Cross Reference.—See Editor's note to § 104B-3.

§ 104B-14. Map or description of shore protection line or project protection line.—(a) The board of county commissioners in establishing a shore protection line pursuant to § 104B-4, and the Board of Water Resources in establishing a project protection line pursuant to § 104B-11, may define said line by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies (in the case of a shore protection line) or the Director of Water Resources (in the case of a project protection line). Alterations in these lines shall be indicated by appropriate entries upon or additions to such map or description. Such entries or additions shall be made by or under the direction of the clerk of superior court or Director of Water Resources, as the case may be. Photographic, typed or other copies of such map or description, certified by the clerk of superior court (in the case of a shore protection line) or the Director of Water Resources (in the case of a project protection line), shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description The board of county commissioners or Department of Water Resources, as the case may be, may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or maps which it is designated to replace upon the filing thereof at those places designated above.

(b) The Department of Water Resources shall file with the Secretary of State and with the clerk of superior court and the register of deeds of every county in which a beach erosion or hurricane protection project or any part thereof is located:

(1) A certified copy of the map, drawing, description or combination thereof showing the project protection line for said project; and

(2) A certified copy of any redrawn or altered map or drawing, and of any

amendments or additions to written descriptions, showing alterations to said project protection line.

The filings required by this subsection shall constitute compliance with the requirements of article 18 of chapter 143 of the General Statutes. (1965, c. 237; c. 623, s. 2.)

Cross Reference.—See Editor's note to § 104B-3.

Editor's Note.—Session Laws 1965, c. 623, substituted "lies" for "lines" immediately preceding the first parentheses in the section.

§ 104B-15. Powers of Board of Water Resources.—In addition to its other powers under this article, the Board of Water Resources shall be empowered to render advice and assistance to any shoreline protection officer or officers, board of county commissioners, or other office, agency, or board having responsibilities under this article. In exercising this function it shall specifically be authorized to furnish manuals, suggested standards, plans, and other technical data; to conduct training programs; and to give advice and assistance with respect to handling of particular applications; but it shall not be limited to such activities. (1965, c. 237.)

Cross Reference.—See Editor's note to § 104B-3.

! § 104B-16 added 1971. See attached sheets (first 3)

"§ 104B-16. Regulation and enforcement powers of Board of Water and Air Resources.--The power and authority vested by this Article in the boards of county commissioners of any county to adopt regulations, establish a shore protection line, appoint or designate a shoreline protection officer, fix inspection fees and charges, institute proceedings, and take other actions for the protection of sand dunes along the Outer Banks of North Carolina may also be exercised by the North Carolina Board of Water and Air Resources in any county that has not adopted regulations and appointed a shoreline protection officer under the authority of this Article by December 31, 1971. In exercising the powers and authority of this Article the Board of Water and Air Resources shall have all the powers (except the power to levy a special tax), and shall be subject to all the requirements and limitations, imposed on boards of county commissioners by this Article. If the Board of Water and Air Resources elects to designate a county or municipal employee or official as a shoreline protection officer, it may do so only with the approval of such county or municipal governing body. Appeals to the Board of Water and Air Resources from actions of a shoreline protection officer may be heard by the Board, or by its designated members, employees, or a committee in Wake County or in any county containing land affected by the denied permit.

If the Board of Water and Air Resources decides to exercise the powers and authority of this Article in any county as authorized by this section, it shall do so by first adopting a resolution stating its intent. From and after the adoption of the resolution of intent, the Board of Water and Air Resources shall have exclusive jurisdiction in any county named in the resolution in the exercise of the powers and authority of this Article. The board of county commissioners of any county named in the resolution of intent shall not be authorized to exercise any of

the powers and authority of this Article thereafter unless and until the said commissioners request that the Board of Water and Air Resources rescind its resolution of intent. The Board of Water and Air Resources shall rescind its resolution and vacate its jurisdiction within sixty (60) days after receipt of the resolution from the board of county commissioners; provided the resolution from the said commissioners includes a plan for carrying out the duties, responsibilities, and provisions of this Article. In the event that the county fails to carry out the duties, responsibilities, and provisions of this Article, the Board may reassume the powers and responsibilities of this Article."

Sec. 5. G.S. 104B-10 is rewritten so it shall read as follows:

"§ 104B-10. Appeal from decision of shoreline protection officer; review of decision of county commissioners.--(a) In the event that a shoreline protection officer denies a permit under this Article, the applicant may within 30 days file an appeal with the board of county commissioners. In the event that a shoreline protection officer grants a permit under this Article, any property owner whose property may be damaged by action taken under the permit or any interested State agency may within 30 days file an appeal with the board of county commissioners. In the event that a shoreline protection officer grants a permit under this Article, any property owner whose property may be damaged by action taken under the permit or any interested State agency may within 30 days file an appeal with the board of county commissioners. On receipt of any appeal, the board of county

commissioners shall be entitled to consider the matter ab initio and may take any action which the shoreline protection officer could have taken under this Article.

(b) Every decision of the board of county commissioners on such an appeal as well as every decision granting or denying a permit by a board of county commissioners performing the functions of shoreline protection officer, shall be subject to review by the superior court of the county by proceedings in the nature of certiorari. Pending the final disposition of such appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this Article."

Estuarine Study

ACT 1164-1969

COPY OF

NORTH CAROLINA GENERAL ASSEMBLY

1969 SESSION

RATIFIED BILL

Chapter 1164
House Bill 1101

AN ACT TO DIRECT THE COMMISSIONER OF COMMERCIAL AND SPORTS FISHERIES TO MAKE A COMPREHENSIVE STUDY OF THE ESTUARINES OF NORTH CAROLINA, AND FOR RELATED PURPOSES.

The General Assembly of North Carolina do enact:

Section 1. The Commissioner of Commercial and Sports Fisheries is hereby directed to study the estuaries of North Carolina with a view to the preparation of a comprehensive and enforceable plan for the conservation of the resources of the estuaries, the development of their shorelines, and the use of the coastal zone of North Carolina. In connection with such study and plan, the Commissioner may call upon affected State and local agencies for advice and assistance; may accept grants, contributions, and appropriations from any public or private sources; may arrange for consultant studies and research and for other professional services; and may designate one or more advisory committees to assist and advise in carrying out the study and planning. Such study may include an analysis of all characteristics of the coastal zone, including: the quality, quality and movement of estuarine waters, the ecological balance of the estuaries, and the economic interests of the coastal zone. Such study may examine all present and proposed uses of the estuaries and coastal zone; may give consideration to the plane of cities, counties, and regional and State agencies for the coastal zone; and may take into account varying needs, problems and resources of the respective estuarine regions of North Carolina. In preparing the comprehensive estuarine

plan the Commissioner shall consider and evaluate the effectiveness of existing regulations and controls, existing land acquisition programs, and other existing governmental programs affecting estuarine resources; and shall recommend such modification in these regulations and controls and programs, or adoption of additional regulations, controls and programs, as he deems desirable.

Sec. 2. The Commissioner shall file an interim report by January 1, 1971, and a final report by November 1, 1973, with the Director of the Department of Conservation and Development for transmission by the Governor to the General Assembly.

Sec. 3. The final report shall contain:

a. The results of the Commissioner's detailed studies.

b. The comprehensive plan proposed by the Commissioner for the conservation of the resources of the estuaries, the development of their shorelines, and the uses of the coastal zone.

c. The Commissioner's recommendations of the appropriate agency or agencies to maintain and carry out the comprehensive plan.

d. The Commissioner's estimate of the approximate sums of money that will be needed to maintain and carry out the comprehensive plan.

e. Such other information and recommendations as the Commissioner deems desirable.

Sec. 4. There is hereby appropriated from the General Fund to the Department of Conservation and Development for the conduct of the study and preparation of the comprehensive plan authorized by this Act the sum of ninety-four thousand dollars ($94,000.00) for the 1969-71 biennium.

Sec. 5. General Statutes Subsection 146-64(3) is hereby amended by inserting therein in line 2 of such subdivision following the word "easements," and before the word "and" the

word "options," so that said subdivision as so amended will read as follows:

"(3) 'Land' means real property, buildings, space in buildings, timber rights, mineral rights, rights-of-way, easements, options, and all other rights, estates, and interests in real property."

Sec. 6. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 7. This Act shall become effective July 1, 1969.

In the General Assembly read three times and ratified, this the 30th day of June, 1969.

ACT 1332-1970

By: Messrs. Harris of the 67th, Brantley of the 114th, Funk of the 92nd, Egan of the 116th, Lambert of the 25th, Levitas of the 77th and others.

A BILL TO BE ENTITLED AN ACT

To create the "Coastal Marshlands Protection Agency"; to provide a short title; to define certain terms; to provide for the membership of the Agency; to provide for the election of a Chairman; to provide for the appointment of an executive secretary and of representatives and agents by designated members; to provide for payment of expenses; to provide for the powers and duties of the Agency; to provide for applications to alter marshlands; to provide for the procedure for filing applications; to provide for gathering of information by Agency members; to provide for the issuance of permits; to provide for conditional permits; to provide for denial of permits under certain conditions; to provide for appeals; to provide for policing; to provide for injunctions; to provide for posting permits; to provide for the transfer of permits; to provide penalties for violations; to provide for exceptions; to provide for emergency powers; to provide for severability; to repeal conflicting laws; and for other purposes.

WHEREAS, scientific research has established that the estuarine area of Georgia is the habitat of many species of marine life and wildlife, and without the food supplied by the marshlands, such marine life and wildlife cannot survive; and

WHEREAS, intensive marine research has revealed that the estuarine marshlands of coastal Georgia are among the richest providers of nutrients in the world; and

WHEREAS, the marshlands of Georgia provide a great buffer against flooding and erosion, and help control and disseminate many pollutants; and

WHEREAS, the estuarine areas and coastal marshlands provide a unique form of outdoor recreation for the people of our State; and

WHEREAS, it is in the public interest that the State of Georgia regulate the use of the coastal marshlands by the exercise of its police power in order to protect the welfare, health and safety of the citizens of this State; and

WHEREAS, in the exercise of this police power the State of Georgia recognizes that it is necessary for the economic growth and development of the coastal area that provision be made for the future use of some of the marshlands for industrial and commercial purposes; and

WHEREAS, it is the intent of the General Assembly that any use of the marshlands be balanced between protection of the environment on the one hand and industrial and commercial development on the other.

NOW, THEREFORE, BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Short Title--This Act shall be known and may be cited as the "Coastal Marshlands Protection Act of 1970".

Section 2. Definitions--Unless clearly indicated otherwise by the context, the following terms, when used in this Act, shall have the meanings respectively ascribed to them in this Section:

(a) "Coastal marshlands" hereinafter referred to as "marshlands" means any marshland or salt marsh in the State of Georgia, within the estuarine area of the State, whether or not the tide waters reach the littoral areas through natural or artificial water courses. Marshlands shall include those areas upon which grow one, but not necessarily all, of the following: saltmarsh grass (Spartina alterniflora), black grass (Juncus gerardi), high-tide bush (Iva frutescens var. oraria). The occurrence and

extent of salt marsh peat at the undisturbed surface shall be deemed to be conclusive evidence of the extent of a salt marsh or a part thereof.

(b) "Estuarine area" means all tidally-influenced waterr, marshes and marshlands lying within a tide-elevation range from five and six tenths (5.6) feet above mean tide level and below.

(c) "Person" means any individual, partnership, corporation, municipal corporation, county, association, public or private authority, and shall include the State of Georgia, its political subdivisions, and all its departments, boards, bureaus, commissions or other agencies, unless specifically exempted by the provisions of this Act.

(d) "Applicant" means any person who files an application under the provisions of this Act.

(e) "Political subdivision" means the governing authority of a county or a municipality in which the marshlands to be affected or any part thereof are located.

(f) "Agency" means the Coastal Marshlands Protection Agency.

Section 3. Creation of the Coastal Marshlands Protection Agency.--(a) There is hereby created, as an autonomous division of the State Game and Fish Commission, the Coastal Marshlands Protection Agency which shall administer the provisions of this Act.

(b) The Agency shall be composed of seven (7) members as follows:

(1) The Director of the State Game and Fish Commission

(2) The Executive Director of the Ocean Science Center of the Atlantic

(3) The Executive Secretary of the Water Quality Control Board

(4) The Director of the Coastal Area Planning and Development Commission

(5) The Executive Director of the Georgia Ports Authority

(6) The Director of the Department of Industry and Trade

(7) The Attorney General

or their appointed representatives. In the event one of the members of the Agency designated herein appoints a representative, such representative shall be an employee of the same State agency or department as the official making the appointment.

(c) A majority of the members of the Agency shall elect a chairman from among the members who shall serve for a period of four years from the date of his election and until his successor is elected.

(d) The members of the Agency shall receive no compensation for their services, but shall be entitled to receive actual expenses incurred in the performance of their duties from the agency or department with which employed.

Section 4. Powers and Duties of Agency.--(a) The Agency shall have the following powers and duties:

(1) To promulgate such rules and regulations as may be necessary to effectuate the provisions of this Act; provided, however, that such rules and regulations shall not be of any force and effect unless two public hearings be held after notice thereof has been publicized

in the legal organ in the counties of Chatham, Camden, Glynn, McIntosh, Liberty and Bryan, once a week for two consecutive weeks immediately prior to such hearings.

(2) To administer and enforce the provisions of this Act and all rules, regulations and orders promulgated thereunder.

(3) To examine and pass upon applications to alter marshlands.

(4) To revoke permits of applicants who fail or refuse to carry out their proposals.

(5) To accept monies that are available from government units and private organizations.

(6) To institute and prosecute all such court actions as may be necessary to obtain the enforcement of any order issued by the Agency in carrying out the provisions of this Act.

(7) To exercise all incidental powers necessary to carry out the purposes of this Act.

(b) The above and foregoing powers, may, except for the rule making powers, be exercised and duties performed by the Agency through such duly authorized agents and employees as it deems necessary and proper including an executive secretary.

Section 5. Applications, Procedure.--(a) No person shall remove, fill, dredge or drain or otherwise alter any marshlands in this State within the estuarine area thereof without first obtaining a permit from the Coastal Marshlands Protection Agency.

(b) Each application for such a permit shall be filed with the State Game and Fish Commission and shall include

(1) Name and address of applicant.

(2) A plan or drawing showing the applicant's proposal and the manner or method by which such proposal shall be accomplished.

(3) A plat of the area in which the proposed work will take place.

(4) A copy of the deed or other instrument under which the applicant claims title to the property, or if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title together with written permission from the owner to carry out the project on his land. In lieu of a deed or other instrument referred to in this paragraph 3 the Agency may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property.

(5) A list of all adjoining landowners together with such owners' addresses. If the ownership of adjoining landowners cannot be determined or if addresses cannot be ascertained, the applicant shall file in lieu thereof a sworn affidavit that a diligent search has been made but that the applicant was not able to ascertain the owners or addresses as the case may be of adjoining landowners.

(6) A certificate from the local governing authority(s) of the political subdivision(s) in which the property is located stating that the applicant's proposal is not violative of any zoning law, ordinance or other local restrictions

which may be applicable thereto. If in the judgment of the Agency a zoning permit is not needed prior to considering an application, it may waive this requirement and issue a conditional permit based upon the condition that the applicant acquire and forward a permit from the local political subdivision prior to commencement of work. No work shall commence until this requirement is fulfilled.

(7) A certified check or money order in the amount of $25.00 for each acre of land or portion thereof to be affected payable to the Coastal Marshlands Protection Agency to defray administrative costs. No applicant shall be required to pay in excess of $500.00 for any one proposal regardless of the number of acres to be affected.

(c) A copy of each application for a permit shall be delivered to each member of the Agency within seven days from receipt thereof.

(d) The Director of the State Game and Fish Commission within thirty days of receipt of an application shall notify in writing all adjoining landowners of the application and shall indicate the use the applicant proposes to make of the property. Should the applicant indicate that any adjoining landowner is unknown or that the address of such landowner is unknown, then the member of the Agency to which the application for permit is filed shall cause a notice of the proposed activity and a brief description of the land to be affected to be published in a legal organ of the county or counties in which said land lies within thirty days of receipt of the application.

Should the property to be affected by applicant be bordered on any side or on more than one side by other property of applicant, applicant shall supply the names and addresses of the nearest landowners other than applicant and bordering on applicant's land or a sworn statement of diligent search as provided above in this Act. The landowner so named shall be notified either directly or by advertisement as provided above in this Section. Any member may also make inquiry to adjoining landowners to ascertain whether or not there is objection to issuance of a permit.

(e) In passing upon the application for permit, the Agency shall consider the public interest which, for purposes of this Act, shall be deemed to be the following considerations:

(1) Whether or not any unreasonably harmful obstruction to or alteration of the natural flow of navigable water within such area will arise as a result of the proposal

(2) Whether or not unreasonably harmful or increased erosion, shoaling of channels or stagnant areas of water will be created to such extent as to be contrary to the public interest

(3) Whether or not the granting of a permit and the completion of the applicant's proposal will unreasonably interfere with the conservation of fish, shrimp, oysters, crabs and clams or any marine life or wildlife or other natural resources, including but not limited to, water and oxygen supply to such

an extent as to be contrary to the public interest.

(f) If the Agency finds that the application is not contrary to the public interest as heretofore specified, it shall issue to the applicant a permit. Such permit may be conditioned upon the applicant's amending the proposal to take whatever measures are necessary to protect the public interest. The Agency shall act upon an application for permit within ninety days after the application is filed.

(g) In the event a majority of the members of the Agency determine that a permit should be denied, the application for permit shall be denied, and any applicant who is aggrieved or adversely affected thereby shall have the right to appeal as provided in subparagraph (j) of this Section.

(h) In the event any member of the Agency determines that a conditional permit should be issued the member of the Agency making such determination shall notify the other members of the Agency in writing of the conditions and the reasons therefor, and the Agency shall have an additional 15 days to act with regard to the application. Should a majority of the members of the Agency agree that such permit should be conditional the permit shall be issued on such conditions as a majority of the Agency directs. If less than a majority agrees that such permit should be conditional, the permit shall be issued without such conditions. Any applicant who is aggrieved or adversely affected thereby shall have the right to appeal as provided in subparagraph (j) of this Section.

(i) No permit shall be issued unless the proposed change of use of the area shall be completed within two (2) years next after the date of the issuance of such permit. Such time may be extended for good cause upon showing that all due efforts and diligence toward the completion of the work have been made. Any permit may be revoked for noncompliance with or for violation of its terms after written notice of intention to do so has been furnished to the holder thereof.

(j) Any person who is aggrieved or adversely affected by any final order or action of the Agency shall have the right to a hearing and such hearing shall be conducted pursuant to the Georgia Administrative Procedure Act (Ga. Laws 1964, p. 338, et. reg.) as now or hereafter amended.

Section 6. The State Game and Fish Commission, through its officers and wildlife rangers, shall in addition to their other duties prescribed by law make reasonable inspections of the marshlands to ascertain whether the requirements of this Act and the rules, regulations and permits promulgated or issued hereunder are being faithfully complied with. Any violations shall be immediately reported to the Coastal Marshlands Protection Agency.

Section 7. The Superior Court of the county in which the land or any part thereof lies shall have jurisdiction to restrain a violation of this Act at the suit of any person. In the event the land lies in more than one county and is divided equally between two or more counties, jurisdiction shall be in the Superior Court of any county in which said land lies.

Section 8. Posting of Permit.--A certified copy of every permit issued to an applicant shall be prominently displayed within the area of proposed activity. If the Agency deems it advisable, the applicant may be required to cause a sign to be erected bearing the permit number, date of issuance, name of applicant and such other information as the Agency may r asonably require. The type and size of the sign reasonable in dimensions may be specified by the Agency.

Section 9. In the event of sale, lease, rental or other conveyance by an applicant to whom a permit is issued, such permit shall be continued in force in favor of the new owner, lessee, tenant or other assignee so long as there is no change in the use of the land as set forth in the original application.

Section 10. Any person violating the provisions of this Act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor.

Section 11. Exceptions.--The provisions of this Act shall not apply to the following:

(a) Activities of the State Highway Department incident to constructing, repairing and maintaining a public road system in Georgia;

(b) Agencies of the United States charged by law with the responsibility of keeping the rivers and harbors of this State open for navigation and agencies of this State charged by now existing law with the responsibility of keeping the rivers and harbors of this State open for navigation, including areas for utilization for spoilage designated by such agencies;

(c) Activities of public utility companies regulated by the Public Service Commission incident to constructing, erecting, repairing and maintaining utility lines for the transmission of gas, electricity or telephone messages;

(d) Activities of companies in constructing, erecting, repairing and maintaining railroad lines and bridges;

(e) Activities of political subdivisions incident to constructing, repairing, and maintaining pipelines for the transport of water and sewage;

(f) The building of private docks on pilings, the walkways of which are above the marsh grass not obstructing tidal flow, by the owners of residences located on highland adjoining such docks.

Section 12. Emergency Powers.--In the event of an emergency whether created by Act of God, actions of domestic or foreign enemies, or in circumstances where grave peril to human life or welfare exists, the provisions of this Act shall be suspended for such period. The burden of proof shall be upon the person or persons relying upon this Section to establish that such an emergency did indeed exist.

Section 13. In the event any section, subsection, sentence, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged

invalid or unconstitutional were not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 14. All laws and parts of laws in conflict with this Act are hereby repealed.

FLORIDA

AQUATIC PRESERVES

RESOLUTION

WHEREAS, the State of Florida, by virtue of its sovereignty, is the owner of the beds of all navigable waters, salt and fresh, lying within its territory, with certain minor exceptions, and is also the owner of certain other lands derived from various sources; and

WHEREAS, title to these sovereignty and certain other lands has been vested by the Florida Legislature in the State of Florida Board of Trustees of the Internal Improvement Trust Fund, to be held, protected and managed for the long-range benefit of the people of Florida; and

WHEREAS, the State of Florida Board of Trustees of the Internal Improvement Trust Fund, as a part of its overall management program for Florida's state-owned lands, does desire to insure the perpetual protection, preservation and public enjoyment of certain specific areas of exceptional quality and value by setting aside forever these certain areas as aquatic preserves or sanctuaries; and

WHEREAS, the ad hoc Florida Inter-Agency Advisory Committee on Submerged Land Management has selected through careful study and deliberation a number of specific areas of state-owned land having exceptional biological, aesthetic and scientific value, and has recommended to the State of Florida Board of Trustees of the Internal Improvement Trust Fund that these selected areas be officially recognized and established as the initial elements of a statewide system of aquatic preserves for Florida;

NOW, THEREFORE BE IT RESOLVED by the State of Florida Board of Trustees of the Internal Improvement Trust Fund:

APPROVED AS TO FORM AND LEGALITY
TRUSTEES I. I. TRUST FUND - LEGAL
BY: _____

THAT it does hereby establish a statewide system of aquatic preserves as a means of protecting and preserving in perpetuity certain specially selected areas of state-owned land; and

THAT specifically described, individual areas of state-owned land may from time to time be established as aquatic preserves and included in the statewide system of aquatic preserves by separate resolution of the State of Florida Board of Trustees of the Internal Improvement Trust Fund; and

THAT the statewide system of aquatic preserves and all individual aquatic preserves established thereunder shall be administered and managed, either by the said State of Florida Board of Trustees of the Internal Improvement Trust Fund or its designee as may be specifically provided for in the establishing resolution for each individual aquatic preserve, in accordance with the following management policies and criteria:

(1) An aquatic preserve is intended to set aside an exceptional area of state-owned land and its associated waters for preservation essentially in their natural or existing condition by reasonable regulation of all human activity which might have an effect on the area.

(2) An aquatic preserve shall include only lands or water bottoms owned by the State of Florida, and such private lands or water bottoms as may be specifically authorized for inclusion by appropriate instrument from the owner. Any included lands or water bottoms to which a private ownership claim might subsequently be proved shall upon adjudication of private ownership

be automatically excluded from the preserve, although such exclusion shall not preclude the State from attempting to negotiate an arrangement with the owner by which such lands or water bottoms might be again included within the preserve.

(3) No alteration of physical conditions within an aquatic preserve shall be permitted except: (a) minimum dredging and spoiling for authorized public navigation projects, or (b) other approved activity designed to enhance the quality or utility of the preserve itself. It is inherent in the concept of the aquatic preserve that, other than as contemplated above, there be: no dredging and filling to create land, no drilling of wells or excavation for shell or minerals, and no erection of structures on stilts or otherwise unless associated with authorized activity, within the confines of a preserve - to the extent these activities can be lawfully prevented.

(4) Specifically, there shall be no bulkhead lines set within an aquatic preserve. When the boundary of a preserve is intended to be the line of mean high water along a particular shoreline, any bulkhead line subsequently set for that shoreline will also be a line of mean high water.

(5) All human activity within an aquatic preserve shall be subject to reasonable rules and regulations promulgated and enforced by the State of Florida Board of Trustees of the Internal Improvement Trust Fund and/or any specifically designated managing agency. Such rules

and regulations shall not interfere unduly with lawful and traditional public uses of the area, such as fishing (both sport and commercial), hunting, boating, swimming and the like.

(6) Neither the establishment nor the management of an aquatic preserve shall infringe upon the lawful and traditional riparian rights of private property owners adjacent to a preserve. In furtherance of these rights, reasonable improvement for ingress and egress, mosquito control, shore protection and similar purposes may be permitted by the State of Florida Board of Trustees of the Internal Improvement Trust Fund and other jurisdictional agencies, after review and formal concurrence by any specifically designated managing agency for the preserve in question.

(7) Other uses of an aquatic preserve, or human activity within a preserve, although not originally contemplated, may be permitted by the State of Florida Board of Trustees of the Internal Improvement Trust Fund and other jurisdictional agencies, but only after a formal finding of compatibility made by the said Trustees on the advice of any specifically designated managing agency for the preserve in question.

IN TESTIMONY WHEREOF, the Trustees for and on behalf of the State of Florida Board of Trustees of the Internal Improvement Trust Fund have hereunto subscribed their names and have caused

the official seal of said State of Florida Board of Trustees of the Internal Improvement Trust Fund to be hereunto affixed, in the City of Tallahassee, Florida, on this the 24th day of November, A. D. 19 69.

Governor

Secretary of State

(SEAL)
State of Florida Board of Trustees of the Internal Improvement Trust Fund

Attorney General

Comptroller

Treasurer

Commissioner of Education

Commissioner of Agriculture

As and Constituting the State of Florida Board of Trustees of the Internal Improvement Trust Fund

FLORIDA

ACT 280-1970

CHAPTER 71-280

Committee Substitute for Senate Bill No. 1311

AN ACT relating to coastal construction and excavation; creating §161.053, Florida Statutes, providing that the department of natural resources shall establish coastal setback lines on a county basis; requiring engineering and topographic surveys; requiring local public hearings; requiring the setback lines to be recorded; prohibiting construction, excavation, driving of vehicles on dunes, and damage to dunes and vegetation seaward of setback lines; providing for review of setback lines; providing for waivers; providing for construction of piers and pipelines; declaring a violation of said section a public nuisance; providing exemption; providing that pending the establishment of setback lines, §161.052, Florida Statutes, 1970 Supplement, which relates to the same subject, shall apply; providing a penalty; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 161.053, Florida Statutes, is created to read:

161.053 Coastal construction and excavation; regulation on county basis.—

(1) The department of natural resources, acting through the division of marine resources, shall establish coastal construction setback lines on a county basis along the sand beaches of the State of Florida fronting on the Atlantic Ocean and the Gulf of Mexico. Such construction setback lines shall be established by the department only after it has been determined from a comprehensive engineering study and topographic survey that the establishment of such setback lines is necessary for the protection of upland properties and the control of beach erosion. No such line shall be set until a public hearing has been held for each area involved. After the department has given consideration to the results of said public hearing, it shall, after considering ground elevations in relation to historical storm and hurricane tides, predicted maximum wave uprush, beach and offshore ground contours, the vegetation line, erosion trends, the dune or bluff line if any exist, and existing upland development, set and establish a coastal construction setback line and cause same to be duly recorded in the public records of the county and munici-

palities affected, and shall furnish the clerk of the circuit court in each county affected a survey of such line with references made to permanently installed monuments at such intervals and locations as may be considered necessary. Upon the establishment, approval and recordation of such setback line or lines, no person, firm, corporation or governmental agency shall construct any structure whatsoever seaward thereof, or make any excavation, or remove any beach material or otherwise alter existing ground elevations, or drive any vehicle on, over or across any sand dune, or damage or cause to be damaged such sand dune or the vegetation growing thereon, seaward thereof except as hereinafter provided. Setback lines established under the provisions of this section shall be subject to review by the department at five (5) year intervals from time of establishment or at the written request of affected county or municipal officials. Any riparian upland owner who feels that such line as established is unduly restrictive or prevents a legitimate use of his property shall be granted a review of the line upon written request. After such review the department shall decide if a change in the setback line as established is justified, and shall so notify the person or persons making the request. The decision of the department shall be subject to judicial review as provided in chapter 120, Florida Statutes.

(2) A waiver or variance of the setback requirements may be authorized by the department of natural resources in the following circumstances:

(a) The department may authorize an excavation or erection of a structure at any riparian coastal location as described in subsection (1) upon receipt of an application from a riparian owner and upon the consideration of facts and circumstances, including adequate engineeering data concerning shoreline stability and storm tides related to shoreline topography, which, in the opinion of the department of natural resources, clearly justify such a waiver or variance.

(b) If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the foregoing, and if said existing structures have not been unduly affected by erosion, a proposed structure may be permitted along such line on written authorization from the department of natural resources if such proposed structure is also approved by the department of natural resources. However,

the department of natural resources shall not contravene setback requirements established by a county or municipality which are equal to, or more strict than those setback requirements provided herein.

(c) The department may authorize the construction of pipelines or piers extending outward from the shoreline, unless it determines that the construction of such projects would cause erosion of the beach in the area of such structures.

(3) Any coastal structure erected or excavation created in violation of the provisions of this section is hereby declared to be a public nuisance, and such structure shall be forthwith removed or such excavation shall be forthwith refilled after written notice by the department directing such removal or filling. In the event that, within a reasonable time, the structure is not removed or the excavation refilled as directed, the department may remove such structure or fill such excavation at its own expense, and the costs thereof shall become a lien upon the property of the upland owner upon which such unauthorized structure or excavation is located.

(4) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000). Such a person shall be deemed guilty of a separate offense for each month during any portion of which any violation of this section is committed or continued.

(5) The provisions of this section shall not apply to structures intended for shore protection purposes which are regulated by §161.041, Florida Statutes, nor to structures existing or under construction on the effective date of this act, provided such structures shall not be materially altered except as provided in subsection (2).

(6) The department may by regulation exempt specifically described portions of the coastline from the provisions of this act, whenever in its judgment such portions of coastline because of their nature are not subject to erosion of a substantially damaging effect to the public.

(7) Pending the establishment of construction setback lines as provided herein, the provisions of §161.052, Florida Statutes,

1970 Supplement, shall remain in force; provided that upon the establishment of construction setback lines, the provision of said section shall be superseded by the provision of this section.

Section 2. This act shall take effect September 1, 1971.

Approved by the Governor June 24, 1971.

Filed in Office Secretary of State June 25, 1971.

FLORIDA

ACT 259-1970
CHAPTER 70-259
House Bill No. 4604

AN ACT creating the coastal coordinating council within the department of natural resources; providing its duties and functions; providing legislative intent; providing appropriations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. It is hereby determined to be the intent of the legislature that the environmental aspects of the coastal areas of this state have attracted a high percentage of permanent population and visitors and that this concentration of people and their requirements has had a serious impact on the natural surroundings and has become a threat to the health, safety and general welfare of the citizens of this state. It is further determined that a coordinated effort of interested federal, state and local agencies of government is imperative to plan for and to effect a solution to this threat and that the creation of an advisory council will aid in accomplishing this purpose and in the implementation of article II, section 7 of the Florida constitution of 1968, as amended, and paragraph 9 of section 3 of chapter 69-106, Laws of Florida.

Section 2. As used in the act:

(1) "Council" means the coastal coordinating council.

(2) "Coastal zone" means that area of land and water from the territorial limits seaward to the most inland extent of maritime influences.

(3) "Interested agency" means any unit of state of local government administering laws, regulations or ordinances designed to manage an environmental aspect of the coastal zone.

Section 3. There is hereby created within the department of natural resources the Florida coastal coordinating council to consist of the executive director of the department of natural resources, who shall be chairman, the executive director of the board of trustees of the internal improvement trust fund and the executive director of the department of air and water pollution control, all of who shall serve ex-officio on the council and who shall be considered as the base members of the council. Additional members from interested state or local units of government may serve on the council by unanimous request and at the pleasure of its base members.

Final reports shall also include all findings and conclusions of such research or study.

(4) Nothing in this act shall require the filing of reports on projects that have been classified due to national defense or security.

(5) The legislative service bureau shall make report forms available and keep records of all reports submitted.

Section 6. The council is to be advisory to any interested agency requesting such service in matters relating to the coastal zone to provide coordination of efforts and to avoid duplication of effort in the interest of governmental efficiency.

Section 7. Rules.—The council is authorized to make and shall adopt rules for the implementation of this law in accordance with the provisions of the administrative procedure act, chapter 120, Florida Statutes.

Section 8. Appropriations.—There is hereby appropriated for the fiscal year 1970-71 the sum of $200,000 from the internal improvement trust fund. Any portion of such appropriation which remains unexpended at the end of the 1970-71 fiscal year shall revert to the internal improvement trust fund.

Section 9. This act shall take effect July 1, 1970.

Became a law without the Governor's approval.

Filed in Office Secretary of State July 1, 1970.

APPENDIX L

GULF COAST

Mississippi

Act 293-1970 (Marine Resources Council) [Sections 8946-51-8946-161 of the Mississippi Annotated Code].

Act 517-1971 (Gulf Regional District([Sections 9054-51-9054-71 of the Mississippi Annotated Code].

Louisiana

Senate Concurrent Resolution No. 8-1970 (Joint Legislative Committee on the Environment)

Act 35-1971 (Advisory Commission on Coastal and Marine Resources) [Title 51, Paragraphs 1361-65 of the Louisiana Revised Statutes].

Texas

Act 19-1959, 2nd called session (The Open Beaches Bill) as amended, [Article 5145d of Vernon's Annotated Civil Statutes].

Act 417-1967 (Establishment of Interagency Planning Councils) [Article 4413 (32a) of Vernon's Annotated Civil Statutes].

Senate Concurrent Resolution No. 38-1969 (Interagency Natural Resources Council Coastal Zone Study).

Act 21-1969, 2nd called session (Submerged Lands Moratorium) [Article 5145f of Vernon's Annotated Civil Statutes].

Act 279-1971 (Council on Marine Related Affairs) [Article 4413(38) of Vernon's Annotated Civil Statutes].

ACT 293-1970

[New] CHAPTER 2D

MARINE RESOURCES COUNCIL

Sec.

8946-151. Council created—cooperation with other agencies.
8946-152. Purposes—powers.
8946-153. Objectives of council.
8946-154. Advisory functions.
8946-155. Membership and organization—terms of office—quorum.
8946-156. Meetings—compensation of members.
8946-157. Executive director and employees—compensation.
8946-158. Minutes of proceedings.
8946-159. Severability.
8946-160. Authority for act.
8946-161. Effective date.

§ 8946-151. Council created—cooperation with other agencies.

There is hereby created the Mississippi Marine Resources Council as an arm or agency of the State of Mississippi; hereinafter referred to as "the council." The council shall function in cooperation with the Mississippi Marine Conservation Commission, the Mississippi Agricultural and Industrial Board, the Mississippi Research and Development Council, and the Board of Trustees of Institutions of Higher Learning with particular reference to the Gulf Coast Research Laboratory, the Universities Marine Center, and the universities and colleges which are conducting oceanographic research.

§ 8946-153. Objectives of council.

The council exercising the prerogatives and functions as set out in Section 2 [§ 8946-152] herein, shall have as the aim for the State of Mississippi to provide for effective, efficient and economic development of marine resources available to the State of Mississippi, and to cause suitable skilled professionals and labor to harness the marine resources of this state's coastal, offshore and water resources toward achieving the highest economic growth potential possible through modern concepts and technology in the oceanographic field and scientific discovery of underwater marine resources. To accomplish these goals, the council shall carry out or cause to be carried out continuing study of the science of oceanography as it relates to Mississippi, and the development of a long-range oceanographic program for the State of Mississippi.

SOURCES: Laws, 1970, ch. 293, § 3.

§ 8946-154. Advisory functions.

The council, exercising its duties and responsibilities, shall also act in an advisory capacity to the Governor and all related state agencies, including the Board of Trustees of Institutions of Higher Learning, the Gulf Coast Research Laboratory and the Universities Marine Center which are conducting oceanographic research. All state boards and agencies engaged in activities in the field of marine resources and technology shall utilize this commission as a clearinghouse on all present and future joint federal-state programs whether presently administered by an existing agency or not; to advise on the best programs available to the State of Mississippi for the development of its marine resources, and how to apply for, receive or hold any and all such authorizations, licenses and grants necessary and proper therefor; to advise on the utilization of all facilities in the State of Mississippi for marine research and development, such as the future maximum utilization of the NASA-Mississippi Test Facility, but not limiting the provisions of this act exclusively thereto; and to advise on all in-depth studies necessary to carry out the provisions of this act. This act shall not, however, abrogate the authority of the Mississippi Marine Conservation Commission, the Board of Trustees of Institutions of Higher Learning or the Gulf Coast Research Laboratory, the Universities Marine Center, or of the individual institutions under the board's control to apply for grants, and to carry out oceanographic research. Said council is hereby authorized to receive services, gifts, contributions, property and equipment from public and private sources to be utilized in the discharge of the council's functions, all to be done within the purview of this act.

SOURCES: Laws, 1970, ch. 293, § 4.

§ 8946-155. Membership and organization—terms of office—quorum.

The membership of the council shall consist of sixteen (16) members from the state at large, to represent the various segments of industry, government and academic institutions, to be selected and appointed by the Governor, as follows: Two (2) members from the House of Representatives, two (2) members from the State Senate, one (1) member to represent the institutions of higher learning, a member of the Universities Marine Center, a member of the Research and Development Center or its staff, the Director of the Mississippi Agricultural and Industrial Board, one (1) member from the Mississippi Marine Conservation Commission or its staff, one (1) member from the Gulf Coast Research Laboratory, and six (6) members to be appointed from the public at large, with the advice and consent of the Senate, and who shall serve for a term of not more than four (4) years under each appointment except for legislative members, which term of office shall expire at the expiration of the term of office for which the Governor appointing the members was elected, without regard for the date of actual appointment of the members. It is specifically provided that the legislative appointees shall serve by virtue of their office and shall not be deemed public officers in the executive branch of the State Government. Provided, however, such members shall continue to serve until their successors have been appointed and duly qualified. The Governor shall serve as chairman of the council; the vice-chairman of the council shall be appointed by the Governor. Any nine (9) members shall constitute a quorum of the members thereof to conduct any official business of the commission.

SOURCES: Laws, 1970, ch. 293, § 5.

§ 8946-156. Meetings—compensation of members.

Said council shall hold meetings at a place to be determined, at least once during each quarter of each year, and at such other times and places as deemed necessary to carry out the purpose of this act, all meetings to be called by the Governor or by a majority vote of the members of the council. Service on the council shall be without compensation, but members may be reimbursed by funds appropriated or otherwise received by the council for their actual and necessary expenses incurred in the performance of their duties as set forth in Section 4061-01, Mississippi Code of 1942, as amended.

SOURCES: Laws, 1970, ch. 293, § 6.

§ 8946-157. Executive director and employees—compensation.

The council shall select and appoint a person who is neither a member of the Agricultural and Industrial Board, Mississippi Research and Development Council, or Mississippi Marine Conservation Commission, nor of the said council, and who is qualified by education and training in oceanographic science and technology to serve as executive director of the council. His salary shall be fixed by the council and paid by funds appropriated or otherwise received by the council. The council shall have authority to replace the director for cause at its discretion. The council is empowered to employ, with the approval of the Governor, such other staff as may be necessary to administer the provisions of this act. Such technical, administrative, stenographic, clerical and other personnel in the employ of the council shall be compensated by it from funds as shall be appropriated to the council in carrying out its duties.

SOURCES: Laws, 1970, ch. 293, § 7.

§ 8946-152. Purposes—powers.

It is hereby declared to be the intent of the Legislature by this act that the policy of the council hereby created shall be conducted according to the following guidelines: The council shall have the general purpose and policy of studying and developing plans, proposals, reports and recommendations for the development and utilization of the coastal and offshore lands, waters and marine resources of this state in order to insure that all future plans and/or programs of the State of Mississippi involving the field of marine resources and sciences, oceanographic research, and related studies, will be coordinated with comparable functions and programs of agencies of the United States Government. The council shall further have the purpose and policy to help coordinate, as hereinabove provided all plans of other agencies of this state engaged in similar activities and of the various states of the United States of America, and also with all private agencies whose purpose is marine science and resource development. The council is further authorized to enter into contract with any state or federal agency as may be necessary and requisite to carry out the purposes of this act.

The council is authorized and empowered to solicit and accept financial support from sources other than the state, including private or public sources or foundations. All funds received by or appropriated to the council shall be deposited upon receipt thereof into a special fund in the State Treasury to be known and designated as the "Mississippi Marine Resources Council Fund." Expenditures from said special fund shall be made in the following manner: Expenditures by and for the council for the purpose of carrying out its functions as provided by law shall be made with the approval of a majority of the members of the council at any meeting upon requisitions presented to the State Auditor in the manner provided by law, and paid by the State Treasurer. Full and complete accounting shall be kept and made by the council for all funds received and expended by it. Representatives of the office of the State Auditor of Public Accounts annually shall audit the expenditure of funds received by the council from all sources and the said Auditor shall make a complete and detailed report of such audit to the Legislature. It is further provided that all state appropriated funds expended shall conform to all requirements of law as provided for expenditures by the laws applicable to the Commission of Budget and Accounting.

The council may solicit, receive and expend contributions, matching funds, gifts, bequests and devises from any source, whether federal, state, public or private, as authorized by annual appropriations therefor. It may enter into agreements with said federal, state, public or private agencies, departments, institutions, firms, corporations or persons to carry out its policies as provided for in this act. To accomplish these goals, the council may expend any such sums from any source other than the State of Mississippi as herein provided.

SOURCES: Laws, 1970, ch. 293, § 2.

CROSS REFERENCES: § 8946-153, this title.

§ 8946-158. Minutes of proceedings.

The executive director of said council shall keep regular and accurate minutes of the council's proceedings in a minute book provided for that purpose which shall be a public record, and all findings and recommendations and acts of the said council shall be entered upon its minutes as may be necessary for its official acts, deeds, expenditures and other major objectives to be in keeping with established state agencies.

SOURCES: Laws, 1970, ch. 293, § 8.

§ 8946-159. Severability.

The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions, but the remaining provisions thereof shall be in force and effect without regard to that so invalidated.

SOURCES: Laws, 1970, ch. 293, § 9.

§ 8946-160. Authority for act.

The Legislature hereby declares that this act is being enacted under the state's inherent general welfare and police power authority for the broad purposes set forth in the preceding sections in an effort to explore, develop, conserve and market the underwater natural resources of this state, particularly those lying offshore in the coastal waters of the State of Mississippi.

SOURCES: Laws, 1970, ch. 293, § 10.

§ 8946-161. Effective date.

This act shall take effect and be in force from and after its passage (approved: April 3, 1970).

SOURCES: Laws, 1970, ch. 293, § 11.

MISSISSIPPI

ACT 517-1970

[New] CHAPTER 10

GULF REGIONAL DISTRICT

SEC.

9054-51. Definitions.
9054-52. Purpose.
9054-53. Composition of governing body—teerms of office.
9054-54. Oath of office.
9054-55. Association with the district.
9054-56. Withdrawal from the district.
9054-57. Interim organization.
9054-58. Official organization.
9054-59. Administrative support of district.
9054-60. General powers.
9054-61. Duties and responsibilities.
9054-62. Further powers.
9054-63. Feasibility studies.
9054-64. Approval of projects.
9054-65. Planning functions.
9054-66. Acquisition of property.
9054-67. Issuance of bonds.
9054-68. Limitations.
9054-69. Constitutionality.
9054-70. Amendments.
9054-71. Short title.

§ 9054-51. Definitions.

When used in this act, the following words and phrases shall have the meaning ascribed to them hereby, except where the context clearly describes and indicates a different meaning:

A. Person: Any individual, firm, co-partnership, joint venture, association, corporation estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

B. District: The Gulf Regional District, as an agency and instrumentality of the State of Mississippi.

C. Public Agency: Any county, municipal corporation, school district, utility district, port authority, port development commission, port commission, housing commission or authority, agency of any county, municipal corporation, or of the state, or any combination thereof.

D. City: An existing municipal corporation of the State of Mississippi, or one hereinafter incorporated.

E. Region: The geographical area of such of the counties bordering on the Gulf of Mexico or contiguous to any county bordering on the Gulf of Mexico as shall have elected to come within the provisions of this act and join the district under the provisions hereof.

F. Regional: The entire area within the region, or such contiguous area thereof as may be designated by the governing body of the district.

G. Project: Any undertaking, purpose, service, or program, governmental or corporate, authorized to be performed by any public agency as hereinabove defined, under the laws of the State of Mississippi, including but not limited to the acquisition, leasing or purchasing of property, real, personal or mixed, and the construction, reconstruction, rehabilitation or improvement thereof.

SOURCES: Laws, 1971, ch. 517, § 1, eff from and after passage (approved April 14, 1971).

Editor's Note—

The preamble to Chapter 517, Laws, 1971, recites as follows:

WHEREAS, Hurricane Camille, the most severe storm ever to strike the United States mainland, struck the Mississippi Gulf Coast on August 17, 1969, devastating wide areas of the coast, killing over two hundred (200) persons, leaving thousands without homes, and inflicting property damages and losses of approximately One Billion Dollars ($1,000,000,000.00); and

WHEREAS, acting in response to this disaster, the Governor of the State of Mississippi, acting under the executive powers vested in him by the Constitution of the State of Mississippi, created an executive entity, the Governor's Emergency Council, and charged such council with the responsibility for the coordination of all activities connected with the rebuilding of the areas, and with the added task of comprehensive planning for redevelopment which would allow the area to realize its great natural potential; and

WHEREAS, a remarkable recovery is being made within the devastated areas due to the joint efforts of local, state and federal governmental agencies, as well as private and public corporations and individuals; and

WHEREAS, it is imperative for the future rehabilitation of the devastated areas, and to insure the lives and safety of people within such areas and to protect such areas from future damage, that a program of continuous comprehensive planning and development be initiated to coordinate the activities connected with the rebuilding of such devastated areas in the six (6) coastal counties of the state; and

WHEREAS, an ad hoc committee consisting of the elected heads of government in the six (6) counties and thirteen (13) cities within the Mississippi Gulf area, consisting of George, Hancock, Harrison, Jackson, Pearl River and Stone Counties, and the members of the Governor's Emergency Council for such counties, and other interested citizens, have recommended the creation of a permanent organization to provide a regional approach toward rehabilitating such devastated areas and developing the full potential of the human and natural resources of the area; and

WHEREAS, the creation of the Gulf Regional District as an agency and instrumentality of the State of Mississippi is necessary and required to establish a unified coordinating unit structured to solve common areawide problems by mutual cooperation within the framework of local governmental control.

§ 9054-52. Purpose.

The Gulf Regional District is hereby created as an agency and instrumentality of the State of Mississippi for the purpose of encouraging the voluntary association of local communities and political entities of the state within the region, and to act as a unified coordinating unit structured to solve common areawide problems by mutual cooperation within the framework of local governmental control.

SOURCES: Laws, 1971, ch. 517, § 2, eff from and after passage (approved April 14, 1971).

§ 9054-53. Composition of governing body—terms of office.

The governing body of the district shall consist of:

A. The presidents of the boards of supervisors and the mayors of each county or city within the region electing to associate as a member of the district, each to serve a term concurrent with their respective elective terms of office. In event of the inability of the president of the board of supervisors or a mayor of a city to attend any meeting, he may designate in writing any other member of the board of supervisors or the governing body of such city to attend such meeting, and to vote for and on behalf of such county or city.

B. Three (3) members to be appointed by the Governor from qualified electors within the region. The initial appointment of one (1) member shall be for a period of one (1) year, one (1) member for a period of two (2) years, and the third member for a period of three (3) years. Thereafter, all such appointments shall be for a period of four (4) years. Each appointment shall be made from a list of at least three (3) qualified persons submitted to the Governor by the elected official members of the governing body at least thirty (30) days prior to the vacancy.

C. Four (4) members from the qualified electors in the region to be appointed by a vote of two-thirds (2/3) of the governing body of the district. However, at no time shall the number of appointive members of the district as provided in subsections B and C of this section be greater than the number of cities and counties then associated with the district. The initial appointment of one (1) member shall be for a period of one (1) year, one (1) member for a period of two (2) years, one (1) member for a period of three (3) years and one (1) member for a period of four (4) years. Therafter, all such appointments shall be for a period of four (4) years.

D. The governing body of the district may, in its discretion, designate and appoint ex officio and nonvoting members to the governing body of the district from such public agencies within the region as the governing body of the district may deem desirable.

SOURCES: Laws, 1971, ch. 517, § 3, eff from and after passage (approved April 14, 1971).

§ 9054-54. Oath of office.

All voting members shall be qualified electors within the region, and except as to those members who already hold public office under the laws of this state, shall take the oath of office required under Section 268 of the Constitution of the State of Mississippi.

SOURCES: Laws, 1971, ch. 517, § 4, eff from and after passage (approved April 14, 1971).

§ 9054–55. Association with the district.

In the event any county or city within the region desires to become a member of the district, such county or city shall so indicate by proper resolution of its governing body declaring this intention. Such resolution shall contain notice that an election will be held to permit the qualified electors of such county or city to decide if they desire to become associated with the district. Such election shall be held and conducted by the election commissioners of the county or city in accordance with the general laws governing elections, and only qualified electors as reside within the county or city shall be entitled to vote in such election. Such resolution shall set forth the time, place or places, and purpose of such election, which shall be published by the clerk of the governing body of such county or city for the time and in the manner required by law. The ballots to be prepared and used at said election shall be in substantially the following form:

FOR associating with the Gulf Regional District ( )
AGAINST association with the Gulf Regional District ( )

Voters shall vote by placing a cross mark (x) or a check mark (√) opposite their choice.

If a majority of those voting in such election favor associating with the said district, then in such event the resolution of the county or city shall become operative and that county or city shall become a member of the district.

A resolution of the governing body of all such cities and counties as provided herein indicating its intention to or not to become a member of the district shall be adopted on or before February 1, 1972. In the event the governing authorities adopt a resolution indicating its intention not to become a member of the district within thirty (30) days from the adoption of said resolution ten percent (10%) of the qualified electors of such county or city or fifteen hundred (1,500) qualified electors of such county or city, whichever shall be the lesser number, shall file written petitions with the governing authorities of such county or city before the date specified as aforesaid in favor of becoming associated as a member of the district, the governing bodies of such county or city shall call an election on the question of whether or not such county or city shall become associated as a member of such district. Such election shall be held and conducted by the election commissioners of the county or city as nearly as may be in accordance with the general laws governing elections as hereinbefore provided.

SOURCES: Laws, 1971, ch. 517, § 5, eff from and after passage (approved April 14, 1971).

§ 9054–56. Withdrawal from the district.

In the event any county or city within the region desires to withdraw from the district, having previously voted to become associated with such district as provided in Section 5 [§ 9054–55] hereof, and at least six (6) months has elapsed since the date the election was held for becoming associated with the district as provided in Section 5 [§ 9054–55],

such county or city shall follow the same procedure for withdrawing from the district as that followed for becoming associated with the district. Withdrawal from said district may also be initiated by petition in the same manner as provided in Section 5 [§ 9054-55] hereof for the election for associating with said district.

SOURCES: Laws, 1971, ch. 517, § 6, eff from and after passage (approved April 14, 1971).

§ 9054-57. Interim organization.

Within ninety (90) days after the effective date of this act, the Governor shall appoint the members of the governing body of the district required to be appointed by him under this act. Until at least three (3) counties and/or cities within the region have elected to become associated as members of the district as hereinbefore provided, the members of the governing body of the district shall constitute an interim body, and their powers and duties shall be limited to the following:

A. To make a determination of all factors that relate to the long range development of the affected area and to correlate such factors to the economy and development of the entire state.

B. To explore all available avenues of assistance, both public and private; and to bring into focus the aims, aspiration, and needs of our people.

C. To make specific recommendations of the most efficient and effective roles that should be played by local and state governments in cooperation with the Federal Government and private interests, to the end that the total resources of all might be mobilized swiftly and decisively to accomplish this objective.

D. To recommend a comprehensive plan for the accomplishments of the maximum long range development of the area's recreational, cultural and economic life.

SOURCES: Laws, 1971, ch. 517, § 7, eff from and after passage (approved April 14, 1971).

§ 9054-58. Official organization.

When at least three (3) cities and/or counties within the region have elected to become associated as members of the district in the manner provided in this act, and the Attorney General has reviewed the official proceedings of the governing bodies of such counties and/or cities and has certified to the Governor that such counties and/or cities have elected to become associated as members of the district in the manner required by this act, then the Governor within fifteen (15) days after such certification shall issue a proclamation declaring that such district has been lawfully organized with the powers as set forth in Section 7 [§ 9054-57] of this act, and that it is vested with all the additional powers, rights, and duties conferred on it by this act. The Governor shall, in such proclamation, fix a date, time and place, within the region, for the formal organization of the governing body of such district.

SOURCES: Laws, 1971, ch. 517, § 8, eff from and after passage (approved April 14, 1971).

§ 9054-59. Administrative support of district.

Upon the Governor issuing such a proclamation the governing body of the district, as constituted in this act shall meet and adopt an annual budget for the operation, maintenance and support of the district. The funds for the administrative support of the district shall be apportioned equally on an annual basis of not more than Fifty Cents (50¢) per capita of the population of each associated member of the district, according to the last official federal census. If a city associated with the district is within a county which is also associated with the district, the city and county shall each pay not more than Twenty-five Cents (25¢) for the residents of such city. Such amount may be paid by each associated member from its general or surplus funds on or before April 1st of each calendar year, or may be raised by an annual levy of an ad valorem tax not to exceed two (2) mills on all taxable property within such county or city provided such levy shall not exceed such millage as will be necessary and required to raise the per capita contribution of each such associated county or city. Such levy shall be continued as long as such county or city remains associated as a member of the district, and shall be in addition to all other levies authorized by law. The governing body of the district may from time to time revise or amend the budget of the district. The tax levy herein authorized shall be in addition to the maximum levy heretofore authorized to be levied and the governmental body imposing such levy shall not receive homestead exemption reimbursement for the same.

SOURCES: Laws, 1971, ch. 517, § 9, eff from and after passage (approved April 14, 1971).

§ 9054-60. General powers.

The district shall be authorized and empowered as follows:

(A) To adopt rules or procedures for the regulation of its affairs, set forth policies and procedures for the conduct of its business, including the number of members sufficient to constitute a quorum, and to appoint, from among its members, a chairman, vice-chairman, and secretary to serve annually, provided that such chairman may be subject to re-election.

(B) To fix the compensation of the members of the governing body of the district, other than elective officers who may be members of such governing body, for their attendance at meetings of such governing body, but not to exceed Twenty-two Dollars and Fifty Cents ($22.50) per meeting, and to allow such members their necessary travel expenses within the limits fixed by law for state employees.

(C) To adopt a seal, and retain and keep minutes of its meetings in a firmly bound minute book, in which all actions taken by the commission about its business shall be recorded.

(D) To maintain offices at such place or places as it may designate, and meet at regular times at least two (2) times each year. On written request of any two (2) voting members of the district, requesting a special meeting of the governing body of the district, addressed to the office of the executive director, and delivered by first class mail, the executive director shall notify all members by first class mail of the convening of a special meeting of the members at a time not more than

ten (10) days from the receipt of such notice, at a place most convenient for such meeting within the district, and for the consideration of the matter giving rise to the convening of such meeting. The members shall only consider the matters touching the convening of such special meeting, and may recess from day to day, or place to place.

(E) To employ and to compensate an executive director who may serve as secretary, and such other personnel, consultants and technical and professional assistants as shall be necessary to exercise the powers and perform the duties set forth in this act.

(F) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act. The executive director of said organization shall be the duly authorized individual to execute contracts on behalf of said district, upon duly and properly entered resolution of said district so authorizing him to enter and execute said contract.

(G) To hold public hearings and sponsor public forums in any part of the region whenever the district deems it necessary or useful in the execution of its functions.

(H) To accept and receive, in the furtherance of its functions, funds, grants and service from the Federal Government, or its agencies; from departments, agencies and instrumentalities of state, municipal or local government; or from private or civil sources.

(I) To receive and expend such sums of money as shall be from time to time appropriated for its use by any county, state or public agency, or other public or private bodies, corporations or persons, and to receive and expend federal funds.

(J) The broad general powers granted the Gulf Regional District in this act shall not in any way conflict with the objectives and services of the Southern Mississippi Economic Development District, Inc., or any other public agency.

SOURCES: Laws, 1971, ch. 517, § 10, eff from and after passage (approved April 14, 1971).

§ 9054-61. Duties and responsibilities.

The district shall have the responsibility and is granted wide latitude and broad authority to:

(A) Coordinate all activities, in planning for the redevelopment of the region;

(B) Provide a mechanism for the solution of areawide problems;

(C) Develop more effective lines of communication by and between local, regional, state and federal governments and agencies;

(D) Detail the program for the long-term development of the region;

(E) Develop and continually update comprehensive regional and associated regional plans for the district;

(F) Provide for the marshalling of the region's natural and human resources;

(G) Provide additional planning assistance to any public agency;

(H) Undertake and provide for the financing of any regional project for and on behalf of any public agency, which any such public agency may be empowered to undertake in its or their right by law;

(I) Enter into contracts with any public agency or any federal agency or private persons for the performance of any project within the region;

(J) The powers, duties and responsibilities set out in subsection (A) through (I) of this section shall be subject to the express limitation that no such rights, powers or duties shall be undertaken or exercised by the district except at the request of and with the consent of the public agency involved in any approved project.

SOURCES: Laws, 1971, ch. 517, § 11, eff from and after passage (approved April 14, 1971).

§ 9054-62. Further powers.

The district is authorized and empowered to consider, plan, propose, and at the request of and with the consent of the public agency involved in such project, to provide for the implementation of any approved regional project. The district may determine and establish priorities for the consideration of regional projects, and shall give primary attention to those projects related to rehabilitating those areas of the region devastated by disaster, to safeguard the lives and promote the safety of the people within the region, and for the protection of property from future disaster.

SOURCES: Laws, 1971, ch. 517, § 12, eff from and after passage (approved April 14, 1971).

§ 9054-63. Feasibility studies.

Any public agency may request the district to approve a regional plan for any project and for such purpose is hereby authorized to appoint competent consultants, engineers and/or other technical personnel, to be approved by the district, to prepare an analysis and feasibility study of such proposed project, which analysis shall include the plan of operation, the financing to be provided by each public agency and the source of all anticipated revenue, estimated expenditures, the estimated cost of construction, where required, the estimated cost of lands, properties, facilities, machinery, rights, easements and franchises to be acquired, if any, the estimated cost of engineering, architectural and legal expenses and all financing charges and interest, and such other estimated receipts and expenditures as may be necessary or incidental to such project, together with a projection of the gross and net revenues anticipated from the net operation of such project, and any proposed option, contracts or commitments involved in such project, and such other information as may be required by the district.

SOURCES: Laws, 1971, ch. 517, § 13, eff from and after passage (approved April 14, 1971).

§ 9054-64. Approval of projects.

On the receipt of an application from any public agency for the authorization of a regional project the district may cause an independent evaluation to be made of the plan submitted and if the district shall find and determine that the project is feasible and is in the public interest, then the district in its discretion may approve such plan as submitted or may

approve such plan, subject to such changes and modifications as may be required by the district, or may disapprove such plan in its entirety, all in the discretion of the district. All costs of any consultants, technical or other personnel employed by the district in making an evaluation of such proposed project shall be borne by the public agency submitting the project, but the cost thereof shall be fixed by agreement between the district and such public agency prior to the district undertaking such evaluation. Any such project may, at the request of a public agency, be undertaken by the district for and on behalf of such public agency, subject to such terms, conditions and agreements as may be made by and between the district and such public agency, which agreements shall be binding on all parties thereto, and shall be enforceable in the chancery court as provided in Section 17 [§ 9054-67] of this act. No such project shall be approved without the consent of the governing authorities of each city or county participating in such project and the consent of the governing authorities of each city or county within whose boundaries such project is to apply.

SOURCES: Laws, 1971, ch. 517, § 14, eff from and after passage (approved April 14, 1971).

§ 9054-65. Planning functions.

In its planning functions, the district may, in its discretion, use the Gulf Regional Planning Commission as the planning instrumentality of the district. Each county and city within the district, including those counties or cities not associated as members of the district, shall make available to the district their current zoning ordinances, building codes, housing codes, subdivision regulations and all other codes which such cities or municipalities are authorized to adopt, and shall furnish the district from time to time with copies of all revisions, amendments or supplements to such ordinances, regulations or codes. The district is authorized to propose, but shall not have the power to compel, the adoption of uniform ordinances, regulations and codes pertaining to such matters, and may serve as a clearing house for the dissemination of information relating to planning matters between the counties, cities and other municipalities within the region.

SOURCES: Laws, 1971, ch. 517, § 15, eff from and after passage (approved April 14, 1971).

§ 9054-66. Acquisition of property.

To carry out the powers and authority conferred by this act, the district is authorized either directly, or through the public agency involved in an approved project, to acquire land, and interests in land, property, and interests in property, including but not limited to rights, easements, licenses, franchises, and privileges therein necessary or required to carry out such approved project. The right to exercise the power of eminent domain shall be exercised only by the governing bodies of the political subdivisions within whose boundaries such approved project is to apply, as provided for by Chapter 3, Title 12 of the Mississippi Code of 1942, and shall be subject to the same limitations as are now or may hereafter be imposed by law.

SOURCES: Laws, 1971, ch. 517, § 16, eff from and after passage (approved April 14, 1971).

§ 9054–67. Issuance of bonds.

The district, and each county and city within the region associated as a member of the district, are hereby granted the power and authority to expend public funds of the district or such county or city for the purposes authorized by this act, and are authorized to issue revenue bonds, notes, or other revenue obligations to carry out the purposes of this act, and to mortgage or pledge property, real, personal or mixed, and to secure such obligations in a manner to be provided for by resolution of such district or such county or such city. The governing bodies of the district and each county or city within the region associated as a member of the district, acting separately or jointly, may, in its or their discretion, issue revenue bonds of the district, or of the county, or of the city, or jointly, to provide funds to finance any regional project approved by the district, in the manner provided in this act. Each county or city within the region, associated as a member of the district, may, in its discretion, issue general obligation bonds of such county or city, in an amount not to exceed its legal limit, to provide funds to finance any regional project approved by the district for any purpose which such county or city is now authorized, or hereafter may be authorized by law, to issue general obligation bonds of such county or such city.

The governing body of the district, county or city shall adopt a resolution declaring its intention to issue bonds for the purposes authorized by this act stating the amount of the bonds proposed to be issued, whether such bonds are revenue bonds or general obligation bonds, and the date upon which further action will be taken by the governing body looking forward to the issuance of such bonds. Such resolution shall be published once a week for at least three (3) successive weeks in a newspaper published and of general circulation within such county or city. The first of such publications shall be made at least twenty-one (21) days prior to the date set forth in said resolution as the date upon which further action will be taken by the governing body, and the last publication shall be made not more than seven (7) days prior to said date. If, prior to the date set forth as aforesaid, there shall be filed with the clerk of such governing body a petition in writing signed by ten percent (10%) of the qualified electors of such regional area, county or city thereof, or fifteen hundred (1,500) qualified electors, whichever shall be the lesser number, requesting an election on the question of the issuance of such bonds, then such bonds shall not be issued unless authorized by a majority of the qualified electors in such regional area, county or city voting thereon at an election to be ordered by the governing body for that purpose. Notice of such election shall be given and such election shall be held and conducted in like manner as provided by law with respect to elections held on the submission of county or city bond issues. If the proposition so submitted shall fail to receive approval at such election, then no further proceedings for the issuance of such bonds shall be taken for a period of six (6) months from and after the date of such election. If, however, no such petition shall be filed, or if such election or subsequent election on such proposition shall be assented to by a majority of the qualified electors voting thereon, then such governing body shall be authorized to proceed with the issuance of such bonds without further election. Revenue bonds shall bear date

or dates, be in such denomination or demonations, bear interest at such rate or rates, be payable at such place or places within or without the State of Mississippi, shall mature at such time or times and upon such terms, with or without premium, shall bear such registration privileges and shall be substantially in such form, all as shall be determined by resoution of the governing body or bodies issuing such bonds. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its state of maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted; the lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. Such bonds shall be sold in such manner and upon such terms as the governing authorities of the municipality shall determine, provided that such bonds shall not bear a greater overall maximum interest rate to maturity than eight percent (8%) per annum, and the interest rate of any one (1) maturity shall not exceed eight percent (8%) per annum. Each interest rate specified in any bid must be in multiples of one-eighth of one percent (1/8 of 1%) or in multiples of one-tenth of one percent (1/10 of 1%).

Provided, however, that such bonds shall mature in annual installments beginning not more than five (5) years from the date thereof and extending not more than thirty-five (35) years from the date thereof.

The revenue bonds issued under the provisions of this section shall be payable solely out of the revenues to accrue from the operation of the approved regional project, and the full faith and credit of the district, county or city shall not be pledged therefor, nor shall any ad valorem tax be levied therefor. No authority, either direct or implied, is extended by this act to the district to issue general obligation bonds of the district as a whole, or of any participating agency or entity within the region, as described in this act.

General obligation bonds issued by any associated member county or city under this act shall bear date or dates, be in such denomination or denominations, bear interest at such rate or rates, not exceeding the rate authorized to be paid on general obligation bonds of the state, be payable at such place or places within or without the State of Mississippi, shall mature at such time or times and upon such terms, with or without premium, shall bear such registration privileges and shall be substantially in such form all as shall be determined by resoution of the governing body or bodies issuing such bonds.

The general obligation bonds authorized by this act shall not bear a greater overall maximum interest rate to maturity than the rate authorized to be paid on general obligation bonds of the county or city issuing same. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall

bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted; the lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue. Such bonds shall be sold in such manner and upon such terms as the governing authorities of the municipality shall determine, provided that such bonds shall not bear a greater overall maximum interest rate to maturity than eight percent (8%) per annum, and the interest rate of any one (1) maturity shall not exceed eight percent (8%) per annum. Each interest rate specified in any bid must be in multiples of one-eighth of one percent (1/8 of 1%) or in multiples of one-tenth of one percent (1/10 of 1%).

Provided, however, that such bonds shall mature in annual installments beginning not more than five (5) years from the date thereof and extending not more than thirty-five (35) years from the date thereof.

The revenue bonds issued under the provisions of this section shall be payable solely out of the revenues to accrue from the operation of the approved regional project, and the full faith and credit of the district, county or city shall not be pledged therefor, nor shall any ad valorem tax be levied therefor. No authority, either direct or implied, is extended by this act to the district to issue general obligation bonds of the district as a whole, or of any participating agency or entity within the region, as described in this act.

General obligation bonds issued by any associated member county or city under this act shall bear date or dates, be in such denomination or denominations, bear interest at such rate or rates, not exceeding the rate authorized to be paid on general obligation bonds of the state, be payable at such place or places within or without the State of Mississippi, shall mature at such time or times and upon such terms, with or without premium, shall bear such registration privileges and shall be substantially in such form all as shall be determined by resolution of the governing body or bodies issuing such bonds.

The general obligation bonds authorized by this act shall not bear a greater overall maximum interest rate to maturity than the rate authorized to be paid on general obligation bonds of the county or city issuing same. No bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified in the bid; all bonds of the same maturity shall bear the same rate of interest from date to maturity; all interest accruing on such bonds so issued shall be payable semiannually or annually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

No interest payment shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted; the lowest interest rate specified for any bonds issued shall not be less than seventy percent (70%) of the highest interest rate specified for the same bond issue.

Each interest rate specified in any bid must be in multiples of one-eighth of one percent (1/8 of 1%) or in multiples of one-tenth of one percent (1/10 of 1%), and a zero rate of interest cannot be named.

Provided, however, that such bonds shall mature in annual installments beginning not more than five (5) years from the date thereof and extending not more than twenty-five (25) years from the date thereof. Such bonds shall be general obligations of such county or such city and for the payment of such bonds and the interest thereon the full faith, credit and resources of such county or such city shall be irrevocably pledged, and it shall be the mandatory duty of the governing body of such county or such city to annually levy on all taxable property within such county or such city an ad valorem tax sufficient to pay for such bonds as they mature, and the interest thereon as the same becomes due. The proceeds of such tax levy shall be used for no other purpose. In its discretion, the governing body of such county or city may also pledge for the payment of such bonds and the interest thereon the revenues from any approved regional project.

All bonds issued under this act shall be signed by the presiding officer of the governing body or bodies issuing the same, and the official seal or seals of such governing body or bodies shall be affixed thereto, attested by the clerk or secretary of such governing body or bodies. The interest coupons to be attached to such bonds may be executed by the facsimile signatures of said officers. Whenever any such bonds shall have been signed by the officers herein designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

All bonds and interest coupons issued under the provisions of this act and all notes or other obligations authorized herein, shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of Mississippi. Such bonds and income therefrom and all notes or other obligations authorized herein shall be exempt from all taxation within the State of Mississippi.

The governing body or bodies issuing such bonds shall sell such bonds in such manner and for such price as it or they may determine to be for the best interest of said governing body or bodies, but no such sale shall be made at a price less than par plus accrued interest to date of delivery of the bonds of the purchaser. Notice of the sale of any such bonds shall be published at least one time not less than ten (10) days prior to the date of sale, and shall be published in a newspaper published in and having general circulation within such regional area, county or city.

The proceeds of such bonds shall be paid into a special fund or funds in banks qualified to act as depositories in such regional area, county or city, and may be deposited, invested, and disbursed as set out in the

agreements relating to such approved project. The proceeds of such bonds shall be used solely for the purposes for which they were issued, interim investments, and the redeeming of any outstanding bonds, and shall be disbursed upon order of the governing body or bodies with such restriction, if any, as the resolution or resolutions authorizing the issuance of the bonds may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the purpose for which they were issued, and the redeeming of any outstanding bonds, unless otherwise provided in the resolution or resolutions authorizing the issuance of such bonds, additional bonds may in like manner be issued to provide the amount of such deficit which, unless otherwise provided in the resolution or resolutions authorizing the issuance of bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same funds without preference or priority of the bonds first issued for the same purpose; provided, however, that such additional bonds issued shall not exceed ten percent (10%) of the amount of the original issue. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which the bonds were issued, the surplus shall be paid into the fund established for the payment of the principal of and the interest on such bonds.

In anticipation of the issuance of the definitive bonds authorized by this act, any such county or city may issue interim certificates. Such interim certificates shall be in such form, contain such terms, conditions or provisions, bear such date or dates, and evidence such agreement or agreements, relating to their discharge by payment or by the delivery of the definitive bonds, as such county or city by resolution of its governing body may determine. All such bonds, notes or other obligations authorized herein, may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions and things which are specified or required by this act. All bonds issued under the authority of this act shall be validated in the chancery court of any county involved in an approved project, or in which a city involved in an approved project is located, and in the case of two or more cities located in different counties, then in either county, with all public agencies involved in such approved project being parties to the validation proceedings, with the full right to any party in interest to file objections thereto, in the manner and with the force and effect provided now by Chapter 1, Title 10, Mississippi Code of 1942, and as hereinafter amended (Sections 4313-4318) for the validation of county, municipal school district and other bonds. Provided further, that all objections to any matters relating to the issuance and sale of such bonds shall be adjudicated and determined by the chancery court in the validation proceedings and in no other manner, and all rights of the parties shall be preserved and not foreclosed, for the hearing before the chancery court or the chancellor in vacation.

In addition to the method of issuing bonds provided herein, any county or city may, if authorized by law, issue bonds under any other general or special laws to secure funds for the purposes of funding such project.

The district is an agency and instrumentality of the state and shall be and remain an agency of the state at all times while acting at the request of and for and on behalf of any public agency in the performance

of a governmental function, and shall have the same immunity from all actions as does the public agency for which it is acting, except as hereinbefore and hereinafter provided.

The district and all associated members thereof shall be vested with the power to enforce in chancery court by mandamus, in addition to the equitable remedies available in such courts, all legal rights or rights of action of the district or associated county or city with any public agency, corporation, or person, and for such purpose may sue, be sued, plead and be impleaded in the chancery court of any county in the district having jurisdiction of the subject matter of any such suit; in any suit against the district service of process may be had by serving the executive director of the district or the chairman of the governing body of the district. Provided, further, that in cases where the chancery court of more than one county may have jurisdiction of the subject matter of any action, the chancery court of either county may exercise exclusive jurisdiction and all parties having an interest therein shall be made parties to the proceedings.

Any person aggrieved by a judgment or decision of the governing body of the district or of an associated county or city involved in an approved project, may appeal therefrom within ten (10) days from the date thereof to the chancery court of any county within the district having jurisdiction of the subject matter, and may embody the facts, judgment and decision in a bill of exceptions which shall be signed by the persons acting as chairman or the presiding officer of the county or city of the governing body of the district; and the executive director of the district or the clerk of such county or city shall transmit the bill of exceptions to the chancery court at once and the court shall either in term time or vacation hear and determine the same on the case as presented by the bill of exceptions as an appellate court, and shall affirm or reverse the judgment; and if the judgment be reversed, the chancery court shall render such judgment as should have been rendered, and certify the same to the district or county or city, and costs shall be awarded as in other cases. The district or any associated member thereof may employ counsel to defend such appeals or defend or prosecute any suit, to be paid out of the funds of the district or such county or city. Any such appeal may be heard and determined in vacation in the discretion of the court on motion of any party and written notice for ten (10) days to the other party or parties or the attorney of record, and the hearing of same shall be held in the county where the suit is pending, unless the judge in his order shall otherwise direct.

Provided, however, that no appeals shall be taken from any order relating to or authorizing the issuance of bonds; these matters shall be heard in the manner provided by Section 17 [§ 9054-67] of this act.

SOURCES: Laws, 1971, ch. 517, § 17, eff from and after passage (approved April 14, 1971).

CROSS REFERENCES: § 9054-64, this title.

§ 9054-68. Limitations.

Notwithstanding the powers and authority conferred on the district by this act, it is not the intent of this act to limit, abridge, restrict, or curtail any existing power granted to any municipality by law, but to

provide a vehicle through which municipalities may more effectively perform their governmental and corporate functions, and the provisions of this act shall be cumulative, additional, and supplemental. Notwithstanding provisions of this act to the contrary, a municipality shall not be required to secure the approval by the district of any feasibility study, plans, or projects which the municipality may elect to undertake separately. Wherever any public agencies are now authorized to join with other municipalities, and undertake projects, then such municipalities may elect to proceed under such general laws, or may elect to come within the provisions of this act. Notwithstanding any regulation or requirement of any federal agency to the contrary, the governing body of the district shall not act for or on behalf of any public agency of the district in its dealings with such federal agency without the express consent of the public agency involved. It is the intent of this act that the governing body of the district shall not be vested with any governmental powers or functions other than those voluntarily conferred upon it by public agencies in the manner provided in this act.

SOURCES: Laws, 1971, ch. 517, § 18, eff from and after passage (approved April 14, 1971).

§ 9054-69. Constitutionality.

If any sentence, clause, paragraph, section or portion of this act shall be held unconstitutional by a court of competent jurisdiction, the remainder of this act shall be and remain in full force and effect.

SOURCES: Laws, 1971, ch. 517, § 19, eff from and after passage (approved April 14, 1971).

§ 9054-70. Amendments.

This act shall never be amended unless this act is brought forward in its entirety.

SOURCES: Laws, 1971, ch. 517, § 20, eff from and after passage (approved April 14, 1971).

§ 9054-71. Short title.

This act may be referred to as the "Gulf Regional District Act."

SOURCES: Laws, 1971, ch. 517, § 21, eff from and after passage (approved April 14, 1971).

LOUISIANA

ENROLLED BILL

1970 R.S.

Regular Session, 1970
SENATE CONCURRENT RESOLUTION NO. 8
BY: MESSRS. JOHNSTON, GUSTE, SMITHER AND NUNEZ AND
REP. LAURICELLA

A CONCURRENT RESOLUTION

To create and establish the Joint Legislative Committee on Environmental Quality; to provide for the membership of said Committee; to propose that legislation relating to the control of the environment and the control of pollution of the air and the water may be referred to said Committee for study and consideration; to provide for a full committee report; to provide for the payment of per diem and travel expenses for members of the Committee; to authorize the employment of consultants and clerical personnel and to provide for their compensation; to authorize said Committee to receive, accept and expend funds made available from outside the state government; to provide for the power of subpoena; and to require all governmental agencies to cooperate with the Committee.

WHEREAS, the citizens of this State and of the United States have become increasingly aware of pollution of the air and water as well as other environmental hazards to the health and well being of our people; and

WHEREAS, there is a clear and present danger to human ecology in the state of Louisiana resulting from the pressures of modern society and its ever-increasing technology; and

WHEREAS, the problem of controlling the environment is vested in numerous agencies of state and local government; and

WHEREAS, the costs of pollution and environmental control must be weighed against the benefits to be derived from such control; and

WHEREAS, the technical aspects of effective control of pollution and environmental control are vastly complex, both in respect to the techniques and impacts, require extensive research and deliberate consideration; and

WHEREAS, adequate data in respect to such techniques and impacts are not now available to the legislature of the State of Louisiana; and

WHEREAS, action on the part of the legislature might be misleading without a clear perspective in regard to balancing the equities and interests of all segments of our population.

NOW THEREFORE BE IT RESOLVED by the Legislature of Louisiana, the Senate and House of Representatives concurring, that an interim joint committee of the Legislature of Louisiana, to be known as The Joint Legislative Committee on Environmental Quality, be and said Committee is hereby created and established to be composed of the Lieutenant Governor, the Speaker of the House of Representatives, four (4) members of the House of Representatives designated by the Speaker thereof, and three (3) members of the Senate designated by the Lieutenant Governor.

BE IT FURTHER RESOLVED that all proposed legislation relating to the control of the environment and control of pollution of the air and water, except that which is considered to be of an emergency nature may be referred to the Committee herein created for consideration and in considering such proposed legislation, said committee shall hold public hearings on such proposed legislation and afford all interested persons a full opportunity to be heard.

BE IT FURTHER RESOLVED that after full study of such proposed legislation, the Committee herein created and established shall file a full report, in writing, to the Senate and House of Representatives on or before May 1, 1971, such report to include comprehensive recommendations in respect to the public policy to be pursued by the Legislature and by the State in respect to the subject matter of this resolution.

BE IT FURTHER RESOLVED that the members of the Committee created herein, except the Lieutenant Governor, shall receive the same per diem and travel allowance in the performance of their duties as is provided for members of the Legislature and that such per diem and travel allowances herein authorized and all other expenses of the Committee shall be paid out of funds available to the presiding officers of the two Houses of the Legislature for the expenses of the Legislature and Interim Committees.

BE IT FURTHER RESOLVED that the Committee herein created shall be authorized to retain the services of consultants, clerical personnel and such other employees as may be necessary to accomplish the purposes of this Resolution and said consultants and employees shall be paid from the same source as the per diem and travel allowances hereinabove provided for members of this Committee.

BE IT FURTHER RESOLVED that said Committee be and it is hereby authorized to receive, accept and expend any funds made available from sources outside of the state government.

BE IT FURTHER RESOLVED that every Department, Commission, Board, Agency, Officer and employee of the state government of Louisiana shall furnish the Committee, upon request, any information, records, documents and other data as the Committee may deem proper for accomplishment of the purposes for which it is created.

BE IT FURTHER RESOLVED that the Committee herein created shall have the power and authority to hold public hearings at any place in Louisiana, to subpoena witnesses, administer oaths, require the production of books and records and to do all other things necessary to accomplish the purposes of this Resolution.

BE IT FURTHER RESOLVED that the Committee herein created shall have the power to punish for contempt and to provide for the prosecution of any individual who is guilty of refusal to testify, as well as any individual who commits perjury before such Committee.

LIEUTENANT GOVERNOR AND PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

ACT 35-1971

Regular Session, 1971 H.B. No. 118

HOUSE BILL No. 118*--

By Messrs. Beeson, Bel, Fulco and Hollins and
Senators Nunez, Oubre and Johnston:

AN ACT

To amend Title 51 of the Louisiana Revised Statutes of 1950, to add thereto a new chapter to be designated as Chapter 12, comprising R.S. 51:1361 through R.S. 51:1365, both inclusive, to provide for the creation of the Louisiana Advisory Commission on Coastal and Marine Resources, to appropriate the sum of Fifty Thousand ($50,000.00) Dollars from the General Fund of the state for the fiscal year 1971-1972 to said Commission, and to provide otherwise with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 12 of Title 51 of the Louisiana Revised Statutes of 1950, comprising R.S. 51:1361 through R.S. 51:1365, both inclusive, is hereby enacted to read as follows:

CHAPTER 12. Louisiana Coast and Marine Resources Conservation and Development

§ 1361. Definitions

A. The term "marine science" shall mean scientific research engineering, and technological development related to the coastal zone, the marine environment and coastal and marine resources.

B. The term "coastal zone" shall mean the lands, waters, tide and submerged lands, bays, estuaries, marshes, coastal and intertidal areas, harbors, lagoons, inshore waters, and channels landward of the outer limit of the territorial sea of the United States or of the state of Louisiana, or of other waters subject to the jurisdiction of Louisiana where greater than the territorial sea of the United States, and extending inland to the landward extent of marine influences.

C. The term "landward extent of marine influences" means the area extending landward from the high water mark which in contemplation of human activities and natural ecology may be considered to come under the influence of the adjacent sea.

D. The term "marine environment" means the ocean and the seabed and subsoil of submarine areas.

E. The term "coastal and marine resources" shall include, without limitation, living resources, non-living resources, recreational uses, shoreline development, wildlife and estuarine preservation, transportation and water resources which may be adversely affected by waste.

* Act No. 35, approved June 11, 1971 (Regular Session, 1971) La. Revised Statutes, Title 51, §§ 1361-65.

§ 1362. Objectives of Coastal Zone Management Plan

A Louisiana Coastal Zone Management Plan shall be developed so as to contribute to the following objectives:

(1) The orderly and responsible development and utilization of coastal and marine resources;

(2) The protection of the values of natural systems in the coastal zone, providing for accommodation of developmental uses in ways which minimize destruction of the values of natural systems;

(3) The advancement of education, research, and training in the marine sciences, and the expansion of human knowledge of the coastal zone, marine environment and coastal and marine resources;

(4) The development of the role of the state of Louisiana as a leader in the marine sciences and in the conservation and development of the state's coastal zone, marine environment and coastal and marine resources;

(5) The effective utilization of the scientific and engineering resources of the state, with close cooperation among all interested agencies, public and private, in order to avoid unnecessary waste and duplication of effort, facilities, and equipment; and

(6) The cooperation by the state of Louisiana with other states, the federal government, nations or groups of nations, and national and international organizations in marine science activities when such cooperation is in the interest of the state of Louisiana.

The Louisiana Coastal Zone Management Plan shall be prepared and shall be widely distributed to all interested groups within the state by Sept. 15, 1973. The plan shall contain as part of its recommendations the manner in which the plan shall be implemented by existing permanent agencies of the state of Louisiana.

§ 1363. Creation and membership of advisory commission

A. There is hereby created the Louisiana Advisory Commission on Coastal and Marine Resources, hereafter referred to as the "Commission," to serve only until the preparation of the Louisiana Coastal Zone Management Plan.

B. The commission shall consist of nine members, appointed by the governor, concerned with the conservation and orderly development of the resources of the coastal zone, possessing demonstrated expertise in their respective fields, who shall serve in their individual capacities and not as representatives of their respective employers or organizations. Members may be selected from among each of the following groups: Marine academic scientists; state government officials administering resource use in the coastal zone; petroleum industry officials; officials of fish and shellfish industries; officials of transportation industry; labor union officials; and private conservation and recreation group officials. Two of the members shall be marine academic scientists, one of whom shall be from Louisiana State University and the other from Nichols State University. Another of the members shall be a person engaged in the fish and shell fish industry who shall also be a resident of one of the coastal parishes. No member of the Commission shall be a member of the legislature. In appointing the

members, the Governor shall ensure diversity of background and interests in order to provide the commission with a wide range of views and breadth of expertise.

C. The members of the commission shall be appointed within ninety days after the enactment of this Act and shall serve at the pleasure of their respective appointing powers.

D. The members shall serve without compensation, but each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of duties.

E. The commission shall elect its chairman and vice-chairman from among its members. The vice-chairman shall act as chairman in the absence of the latter. The commission may select an executive committee from among its members to handle such ordinary and recurring matters the commission deems appropriate.

§ 1364. Powers of the commission

A. The commission shall meet at such times and in such places as it may deem necessary to fulfill its responsibilities.

B. The commission shall adopt its own rules of procedure, but in no event shall the commission exclude from attendance at any of its meetings representatives of public agencies involved in or affected by the conservation and development of the coastal zone, marine environment or coastal and marine resources, or any other member of the public.

C. The commission shall employ an executive director, clerical assistance, and such other supporting personnel as it deems necessary.

D. The commission is authorized to secure directly from any executive department, agency, or independent instrumentality of the state government any information it deems necessary to carry out its functions under this Act. Each department, agency, and independent instrumentality is authorized to cooperate with the commission and, to the extent permitted by law, to furnish such information to the commission, upon request made by the chairman.

E. The commission is authorized to execute such contracts and agreements with other state agencies, the federal government, and private consultants as the commission may deem necessary to achieve the objectives of this Act. In addition, the commission is authorized to do any and all other things necessary or convenient to enable it fully and adequately to perform its duties and to fulfill its responsibilities.

§ 1365. Responsibility and duties of the commission

A. For the purpose of assisting the governor in the development of the Louisiana Coastal Zone Management Plan, the commission shall study the interest and role of the state of Louisiana in the orderly, long-range conservation and development of the state's coastal zone, marine environment and coastal and marine resources, and the interest and role of the state in developing related research programs necessary to describe and predict ongoing natural phenomenon and human activities which relate to the coastal zone, marine environment and coastal and marine resources. The commission shall recommend which permanent agencies of state government can most effectively carry out the Louisiana

Coastal Zone Management Plan, and shall recommend policies for adoption by administrative or legislative action considering the following specific elements:

(a) The effects of population growth and urbanization on the coastal zone;

(b) Land use in the coastal zone;

(c) The conservation and development of coastal and marine resources;

(d) Recreation;

(e) Waste management, water quality, and pollution control;

(f) Water and power development, including the use of nuclear energy;

(g) Transportation and trade in the coastal zone and marine environments;

(h) Engineering and technology in the coastal zone and marine environment;

(i) Research and education in the field of marine science;

(j) Weather, climate, oceanographic conditions, and the establishment of monitoring systems;

(k) All social, economic, legal, and other matters relative to the conservation and development of the coastal zone, marine environment and coastal and marine resources; and

(l) Any system of coastal zone management adopted by the federal government.

B. The commission shall undertake a comprehensive investigation and study of all aspects of the marine sciences, coastal zone, marine environment and coastal and marine resources, including but not limited to all of the following:

(a) A review of the known and estimated future needs for coastal and marine resources from the coastal zone;

(b) A survey of all significant existing and planned marine science activities in the state of Louisiana, including research, educational, developmental, and administrative policies, programs, and accomplishments of all departments and agencies of the state which are engaged in such activities; and

(c) A determination of the surveys, applied research programs, and ocean engineering projects required to obtain the needed coastal and marine resources from the coastal zone.

C. The commission shall review state and federal plans, studies, and legislation in the field of conservation and development of coastal and marine resources, and shall thereafter recommend to the governor and the legislature the most appropriate form of state organization for participation in any system of coastal zone management adopted by the federal government.

D. The commission shall transmit to the governor and the legislature in March of each year of its existence a report which shall include a comprehensive description of the activities and accomplishments of all agencies of the state of Louisiana in the conservation and development of the coastal zone, marine environment and coastal and marine resources during the preceding fiscal year, and an evaluation of such activities and accomplishments in terms of the continuing objectives set forth pursuant to this Act. Any such reports transmitted to the governor and the legislature pursuant to this Section shall contain such recommendations for legislative and administrative action as the commission considers necessary or desirable to achieve the continuing objectives of this Act; and shall contain an appraisal of the funding requirements of each agency and department of the state of Louisiana for activities in the conservation and development of the coastal zone, marine environment and coastal and marine resources during the succeeding fiscal year. In addition, the commission may transmit to the governor and the legislature from time to time such other reports and recommendations as it may deem advisable.

Section 2. There is hereby appropriated from the General Fund of the state of Louisiana the sum of Fifty Thousand ($50,000.00) Dollars for the 1971-72 fiscal year to the Louisiana Advisory Commission on Coastal and Marine Resources to be used by said commission for its operational expenses.

Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

TEXAS

ACT 19-1959

Art. 5415d. State beaches; right of public to free and unrestricted use and enjoyment

Declaration of policy

Section 1. It is hereby declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or such larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

It shall be an offense against the public policy of this state for any person, firm, corporation, association or other legal entity to create, erect or construct any obstruction, barrier, or restraint of any nature whatsoever which would interfere with the free and unrestricted right of the public, individually and collectively, to enter or to leave any state-owned beach bordering on the seaward shore of the Gulf of Mexico, or such larger area, extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

It shall be an offense against the public policy of this state for any person, firm, corporation, association, or other legal entity to create, erect, or construct any obstruction, barrier or restraint which would interfere with the free and unrestricted right of the public, individually and collectively to the lawful and legal use of, any property abutting upon or contiguous to the state-owned beach bordering on the seaward shore of the Gulf of Mexico upon which the public has acquired a prescriptive right.

Be it provided, however, that nothing in this Act shall prevent any agency, department, institution, subdivision or instrumentality of this state or of the federal government from erecting or maintaining any groin, seawall, barrier, pass, channel, jetty or other structure as an aid to navigation, protection of the shore, fishing, safety or other lawful purpose authorized by the Constitution or laws of this state or of the United States.

The requirements of free and unrestricted rights of ingress and egress over areas landward of the line of vegetation shall be deemed to be fully satisfied by access roads or ways, now existing and available to the public, or which by or with the approval of any governmental authority having jurisdiction, may be provided in the future.

Be it provided further, that nothing in this Act shall be construed as in any way affecting the title of the owners of land adjacent to any state-owned beach bordering on the seaward shore of the Gulf of Mexico, or to the continuation of fences for the retention of livestock across sections of beach which are not accessible to motor vehicular traffic by public road or by beach.

Be it provided further, that none of the provisions of this Act shall apply to the beaches on those islands or peninsulas that are not accessible by a public road or ferry facility, so long as such condition shall exist.

Actions; prima facie evidence of right of user and prescriptive easement in public

Sec. 2. In any action brought or defended under this Act or whose determination is affected by this Act a showing that the area in question is embraced within the area from mean low tide to the line of vegetation shall be prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea;

(2) there has been imposed upon the area subject to proof of easement a prescriptive right or easement in favor of the public for ingress and egress to the sea.

Definitions

Sec. 3. a. The term "line of vegetation" means the extreme seaward boundary of natural vegetation which spreads continuously

inland. In any area where there is no clearly marked vegetation line (as, for instance, a line immediately behind well-defined dunes or mounds of sand and at a point where vegetation begins) recourse shall be had to the nearest clearly marked line of vegetation on each side of such unmarked area to determine the elevation reached by the highest waves of the Gulf. The "line of vegetation" for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side. In the event the elevation of the two points on each side of the area are not the same, then the extension defining the line reached by the highest waves of the Gulf shall be the average elevation as between the two points; provided, however, that where there is no clearly marked line of vegetation, such extended line shall in no event extend inland further than two hundred (200) feet from the seaward line of mean low tide. The "line of vegetation" shall not be affected by the occasional sprigs of salt grass upon the mounds or dunes, or seaward from them, and shall not be affected by artificial fill, the addition or removal of turf, or by other artificial changes in the natural vegetation of the area. Where such changes have been made, and thus the vegetation line has been obliterated or has been created artificially, then the line of vegetation shall be determined in the same manner as in those areas where there is otherwise no clearly marked "line of vegetation"; however, where there is a vegetation line consistently following a line more than two hundred (200) feet from the seaward line of mean low tide, this two hundred (200) foot line shall constitute the landward boundary of the area subject to public easement until such time as a final court adjudication shall establish this line in another place.

b. The term "highest waves" means the highest swell of the surf with such regularity that vegetation is prevented, and does not refer to the extraordinary waves which temporarily extend above the line of vegetation during storms and hurricanes.

c. The term "beach" as used herein means that area subject to public use and easement as defined in Section 1.

d. "Person" as used herein includes natural persons, corporations and associations.

e. "Littoral owner" means the owner of land adjacent to the shore and includes anyone acting under the littoral owner's authority.

Construction of term "public beaches"

Sec. 4. Nothing herein shall in any way reduce, limit, construct or vitiate the definition of public beaches as defined from time immemorial in law and custom.

Injunction; protection of rights of ingress and egress

Sec. 5. The Attorney General, any County Attorney, District Attorney, or Criminal District Attorney of the State of Texas is hereby authorized and empowered, and it shall be his, or their duty to file

in the District Court of Travis County, Texas, or the county wherein such property is situated, actions seeking either temporary or permanent court orders or injunctions to remove any obstruction or barrier, or prohibit any restraint or interference, restricting the right of the public, individually or collectively, to free and unrestricted ingress and egress to and from the state-owned beaches, or such larger area, extending from the line of mean low tide to the line of vegetation, in the event the public has acquired a right to use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public, or any property abutting upon or contiguous to the state-owned beach bordering on the Gulf of Mexico upon which the public has acquired a prescriptive right, and in such proceedings, the Attorney General, County Attorney, District Attorney, or Criminal District Attorney, shall also be empowered to bring an action seeking recovery of the costs of removing any obstruction or barrier if the same be removed by public authorities pursuant to any order of such court.

Declaratory judgment suits

Sec. 6. Any littoral owner whose rights may be determined or affected by this Act shall be permitted to bring suit for a declaratory judgment against the State of Texas to try such issue or issues. Service of citation in such cases may be had by serving the Attorney General of Texas.

Study committee

Sec. 7. Because of certain problems peculiar to the various beaches of Texas, a study committee is hereby authorized to study the development of those beaches. The committee shall be composed of three (3) Representatives to be appointed by the Speaker of the House of Representatives, three (3) Senators to be appointed by the Lieutenant Governor of the state, and, as ex officio members, the Land Commissioner of the State of Texas, or a representative appointed by such Land Commissioner, the Chief Engineer of the Highway Department of the State of Texas, or a representative appointed by such Chief Engineer, ~~and a representative of the Attorney General to be appointed by the Attorney General~~. The expense incurred by the legislative members of the Committee in performing their duty shall be payable one-half out of the Contingent Expense Fund of the House and one-half out of the Contingent Expense Fund of the Senate. Such interim committee shall examine into the special conditions prevailing as to the shore line in the various areas, and shall file its report to the Legislature, whether in Special or General Session, at the earliest time compatible with the performance of its duties. The report shall include recommendations for legislation, including the following subjects:

see following amendments

a. the most practical method of procuring the right-of-way necessary for construction of essential parallel highways and for ve-

hicular parking areas (to facilitate access to the beach) all to be situated landward and above the beach;

b. method of procuring easements for egress and ingress between such parking areas and the beach;

c. procedure for negotiation and execution of cooperative agreements between the state and affected landowners for acquisition by gift or purchase of such rights-of-way and easements;

d. recognition of rights in such landowners to construct works, including groins, for the protection of their property and meeting the standards to be prescribed in such legislation;

e. method of negotiations with landowners for additional easements or deeds for park areas adjacent to the beach, for the use and pleasure of the public, provided such lands or easements can be obtained without cost to the state;

f. any change necessary to bring general legislation into conformity with the fixed procedures applicable to National Seashore Areas, to the extent that lands along the coast may be designated to a National Seashore Area; and

g. such other related matters as in the opinion of the interim committee should be included in such report so as to facilitate the development of Texas' beaches as public recreational areas and to further their development as a tourist attraction.

Power of commissioners court; rules and regulations; violations; penalties

Sec. 8. The Commissioners Court of any county shall have, and is hereby granted, the authority to regulate motor vehicular traffic and the littering of such state-owned beaches, or such larger area, extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public, within the limits of said county. Such regulations may include the speed of motor vehicles in accordance with existing state laws and rules or regulations promulgated by the Texas Highway Commission, and the zoning of designated areas for non-vehicular traffic. The Commissioners Court may declare the violation of such regulations to be and the same shall be considered as a violation of this Act, and the Commissioners Court may prescribe civil penalties therefor not to exceed a penalty in the payment of Two Hundred Dollars ($200.00) in money.

see following amendments

The right of the public to use the public beaches covered in this Act shall remain inviolate subject to the rules and regulations promulgated by the Commissioners Court having jurisdiction. Acts 1959, 56th Leg., 2nd C.S., p. 108, ch. 19.

Art. 5415d. State beaches; right of public to free and unrestricted use and enjoyment

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Study committee

Sec. 7. Because of certain problems peculiar to the various beaches of Texas, a study committee is hereby authorized to study the development of those beaches. The committee shall be composed of three (3) Representatives to be appointed by the Speaker of the House of Representatives, three (3) Senators to be appointed by the Lieutenant Governor of the state, and, as ex officio members, the Land Commissioner of the State of Texas, or a representative appointed by such Land Commissioner, the Chief Engineer of the Highway Department of the State of Texas, or a representative appointed by such Chief Engineer, and one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years. The expense incurred by the legislative members of the committee in performing their duty shall be payable one-half out of the Contingent Expense Fund of the House and one-half out of the Contingent Expense Fund of the Senate. Such interim committee shall examine into the special conditions prevailing as to the shore line in the various areas, and shall file its report to the Legislature, whether in Special or General Session, at the earliest time compatible with the performance of its duties. The report shall include recommendations for legislation, including the following subjects:

a. The most practical method of procuring the right-of-way necessary for construction of essential parallel highways and for vehicular parking areas (to facilitate access to the beach) all to be situated landward and above the beach;

b. Method of procuring easements for egress and ingress between such parking areas and the beach;

c. Procedure for negotiation and execution of cooperative agreements between the state and affected landowners for acquisition by gift or purchase of such rights-of-way and easements;

d. Recognition of rights in such landowners to construct works, including groins, for the protection of their property and meeting the standards to be prescribed in such legislation;

e. Method of negotiations with landowners for additional easements or deeds for park areas adjacent to the beach, for the use and pleasure of the public, provided such lands or easements can be obtained without cost to the state;

f. Any change necessary to bring general legislation into conformity with the fixed procedures applicable to National Seashore Areas, to the extent that lands along the coast may be designated to a National Seashore Area; and

g. Such other related matters as in the opinion of the interim committee should be included in such report so as to facilitate the development of Texas beaches as public recreational areas and to further their development as a tourist attraction. As amended Acts 1963, 58th Leg., p. 1138, ch. 442, § 16.

Effective 90 days after May 24, 1963, date of adjournment.

Regulation of motor vehicle traffic on beaches; littering beaches; violations; penalties

Sec. 8. (a) The Commissioners Court of a county bordering on the Gulf of Mexico or its tidewater limits may by order regulate motor vehicle traffic on a beach within the boundaries of the county. It may also prohibit by order the littering of such beach and to this end may define the term "littering."

(b) Before a Commissioners Court may adopt an order authorized by Subsection (a) of this Section, it must

(1) publish notice in at least one newspaper having general circulation in the county of its intention to adopt the order;

(2) in the notice, state the time and place of a public hearing on the proposed order and state that interested persons may obtain copies of the proposed order from the Commissioners Court;

(3) make copies of the proposed order available to interested persons;

(4) more than two weeks, but less than one month, after the notice is published, conduct a hearing at the time and place stated in the notice, at which it must allow all interested persons to express their views on the proposed order; and

(5) in the case of a traffic regulation, provide in the order for signs, designed and posted in compliance with the current provisions of the Texas Manual on Traffic Control Devices for Streets and Highways, stating the applicable speed limit, parking requirement, or that vehicles are prohibited, as the case may be.

(c) The Commissioners Court may, in an order duly adopted under Subsections (a) and (b) of this Section, provide the following criminal penalties for violation of the order:

(1) for a first conviction, a fine not exceeding $50.00;

(2) for a second conviction, a fine not exceeding $200; and

(3) for a conviction subsequent to the second, a fine not exceeding $500 or imprisonment in the county jail not exceeding 60 days or both such fine and imprisonment.

(d) If an order duly adopted under Subsections (a) and (b) of this Section conflicts with a General Law of this state, the order controls over the state law and in case of violation prosecution may be maintained only under the order. As amended Acts 1965, 59th Leg., p. 1515, ch. 659, § 2, eff. June 18, 1965.

Power of city, town or village to regulate traffic and to prohibit littering of beaches; regulatory ordinances

Sec. 9. This Act[1] shall not limit the power of an incorporated city, town, or village bordering on the Gulf of Mexico or any body of water adjacent thereto to regulate motor vehicle traffic and prohibit littering on a beach within its corporate limits. In the event such regulatory ordinances are passed by such a city, town, or village, and such ordinance conflicts with a General Law of this state, or with an order of the Commissioners Court adopted under this Act, the ordinance controls over the state law, and over such order, and in case of violation, prosecution may be maintained only under the ordinance. Added Acts 1965, 59th Leg., p. 1515, ch. 659, § 3, eff. June 18, 1965.

[1] Acts 1965, 59th Leg., p. 1515, ch. 659.

Right to use public beaches

Sec. 10. The right of the public to use the public beaches defined in this Act[1] remains inviolate subject only to orders duly adopted by a Commissioners Court under this Act and to ordinances enacted by an incorporated city, town, or village. Added Acts 1965, 59th Leg., p. 1515, ch. 659, § 4, eff. June 18, 1965.

[1] Acts 1965, 59th Leg., p. 1515, ch. 659.

Section 1 of the amendatory act of 1965 provided:

"The regulation of traffic and prohibition of littering on the public beaches is of great concern both to the residents of Gulf Coast counties and to those of the state at large. The variety of existing needs and conditions, the ever-changing area and nature of our beaches, and the myriad interests of the counties in whose boundaries the beaches lie require above all else flexible solutions to the traffic and littering problems. The Legislature accordingly finds that

"(1) the continued enjoyment by the people of this state of our public beaches necessitates the orderly regulation of vehicular traffic and prohibition of littering on these beaches; and

"(2) it is impracticable, if not impossible, to prescribe by General Law, applicable to each of our public beaches, regulations and prohibitions which would realistically accommodate the legitimate interests of the local governments most directly concerned.

"It is therefore the purpose of this Act to authorize the Gulf Coast counties to adopt, within the limitations herein prescribed, regulations and prohibitions suited to the conditions and needs prevailing within their boundaries."

Cities bordering Gulf of Mexico, use of tidelands and waters for parks, see 6081g.

Development of outdoor recreation resources, see art. 6081r.

Home rule cities bordering Gulf of Mexico, beaches for park purposes, see 6081g—1.

Parks in counties on Gulf of Mexico having island or part of island, see art. 6079c.

Reimbursement of citizen members of boards and commissions for expenses incurred when performing duties at official meetings, see art. 3183a, note.

Speed of vehicles in parks of counties bordering Gulf of Mexico, see Vernon's Ann.P.C. art. 827g.

Speed of vehicles on beaches, see Vernon's Ann.P.C. art. 827f.

Index to Notes

Access 5
Construction and application 2
Dedication 3
Evidence 4
Right of public use 6
Validity 1

Library references
Navigable Waters ⇐41(1).
States ⇐45.
C.J.S. Navigable Waters §§ 69-71.
C.J.S. States §§ 52, 66.

1. Validity

This article declaring policy that public should have unrestricted right of access to beaches in which public has rights, and providing means for enforcing such rights, was not unconstitutional. Seaway Co. v. Attorney General (Civ.App.1964) 375 S.W.2d 923, ref. n. r. e.

It is not necessary to pass on defendant's assertions of unconstitutionality of provision of this article for presumption, where plaintiffs did not rely on presumption. Id.

2. Construction and application

Even if provision of this article creating prima facie presumption of public rights in beach were unconstitutional, it would not affect balance of act, relating to rights of access to public beaches and means of enforcing such rights. Seaway Co. v. Attorney General (Civ.App.1964) 375 S.W.2d 923, ref. n. r. e.

3. Dedication

Evidence of public use of whole beach, including use of road running along beach, was admissible in action involving question whether certain section of beach had been dedicated. Seaway Co. v. Attorney General (Civ.App.1964) 375 S.W.2d 923, ref. n. r. e.

Republic of Texas as owner of beach, had authority to convey fee simple title, even if beach had been dedicated to public use. Id.

Ancient maps, hearsay about use of beach by stage line, history of its use by stage line, license to operate ferry, old newspaper and almanac, and Congressional act showing establishment of mail routes, were admissible in action to establish public rights in beach through dedication or prescription. Id.

4. Evidence

Evidence supported finding that public had acquired easement by prescription in beach. Seaway Co. v. Attorney General (Civ.App.1964) 375 S.W.2d 923, ref. n. r. e.

Evidence supported finding that Republic of Texas, prior to grant of shore land, had dedicated beach for use by public. Id.

Evidence supported finding that beach had been dedicated by defendant's predecessors in title. Id.

That public authority maintained and patrolled beach was some evidence of owner's intention to dedicate beach. Id.

5. Access

It is not the rule that sovereign, holding seashore in trust for people, lacks power to cut off convenient access, or that grants of shore land are impressed by implication with reserved easement in favor of public to furnish access. Seaway Co. v. Attorney General (Civ.App.1964) 375 S.W. 2d 923, ref. n. r. e.

Pleadings in action to require removal of obstructions of ingress and egress to beach area, which did not assert that title was in people on theory that patent did not go to shore, admitted that defendant and its predecessors had title, and only asserted that ownership was subject to easement in favor of public. Id.

6. Right of public use

Reservation of public rights in beach could not be implied in Republic of Texas' patent despite evidence that there had been road down beach at time of grant. Seaway Co. v. Attorney General (Civ.App.1964) 375 S.W.2d 923, ref. n. r. e.

TEXAS

ACT 417-1967

GOVERNOR—INTERAGENCY PLANNING COUNCILS—APPOINTMENT

CHAPTER 417 [3]

H. B. No. 276

An Act concerning planning; designating the Governor the Chief Planning Officer of the State; providing Interagency Planning Councils; establishing a Division of Planning Coordination; providing a severability clause; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. The imperative need to maximize the prudent use of governmental revenues being self-evident, the Legislature recognizes that planning is a governmental purpose and function of the State and its political and legal subdivisions.

Sec. 2. The Governor is hereby designated the Chief Planning Officer of the State.

Sec. 3. The Governor shall appoint Interagency Planning Councils to coordinate joint planning efforts in the various functional areas of government, and each Council shall be composed of a member of the Governor's Office and the Administrative heads of the several State agencies and departments and institutions of higher education represented on the respective Councils. The Interagency Planning Councils shall represent the areas of natural resources, health, education, and such other areas as may require coordinated planning efforts.

Sec. 4. The Governor shall establish a Division of Planning Coordination within his Office to coordinate the activities of the several Councils, and to serve as a coordinating catalyst by encouraging needed studies and planning efforts. The several Councils may participate jointly in studies providing information common to all planning efforts.

Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are declared to be severable.

Sec. 6. The fact that there is a great need for planning coordination creates an emergency and an imperative public necessity that the Constitutional Rule requiring all bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after September 1, 1967, and it is so enacted.

Passed by the House on February 27, 1967, by a non-record vote; passed by the Senate on May 17, 1967: Yeas 31, Nays 0.

Approved June 12, 1967.

Effective Sept. 1, 1967.

TEXAS

SENATE CONCURRENT RESOLUTION NO. 38-1969

INTERAGENCY NATURAL RESOURCES COUNCIL—SUBMERGED LANDS—STUDY

S. C. R. No. 38

WHEREAS, The state-owned submerged lands, islands, estuaries, and estuarine areas in the Texas Gulf Coast Area, including the submerged lands of the state seaward of the mean of lower low water marks in the Gulf of Mexico, and the natural resources and the environmental natural beauty with which they are so richly endowed, constitute an important and valuable property right belonging to the Public Free School Fund and to all of the people of Texas, and they are of immediate and potential value to the present and future generations of Texans; and

WHEREAS, It is the declared policy of the state that such submerged lands, islands, estuaries, and estuarine areas shall be so managed and used as to insure the conservation, protection, and restoration of such submerged lands, islands, estuaries, and estuarine areas with resources and natural beauty and, consistent with such protection, conservation and restoration, their development and utilization in a manner that adequately and reasonably maintains a balance between the need for such protection in the interest of conserving the natural resources and natural beauty of the state and the need to develop these submerged lands, islands, estuaries, and estaurine areas to further the growth and development of the state; and

WHEREAS, The people of the State of Texas have a primary interest in the correction and prevention of irreparable damage to or unreasonable impairment of the uses of the coastal waters of the state and inland waters of the state in such estuaries and estuarine areas caused by drainage, waste water disposal, industrial waste disposal, and all other activities that may contribute to the contamination and pollution of such waters; and

WHEREAS, The people of the State of Texas also have primary [illegible] in the value of such lands, islands, estuaries, and estuarine areas [illegible] property for production and marketing of oil and gas and other [illegible] and mineral resources, for the production of living resources, [illegible] and other fisheries and fishing, hunting, and other recreation, [illegible] wildlife conservation, and for health and other uses in which the [illegible] at large may participate and enjoy; and

WHEREAS, It is also the declared policy of this state that the public, individually and collectively, shall have the free and unrestricted right [illegible] and egress to and from the state-owned beaches bordering on [illegible] seaward shore of the Gulf of Mexico and hence the people of the State [illegible] have a further primary interest in conserving the natural beauty [illegible] state's beaches and protecting and conserving them for the use [illegible] public; and

WHEREAS, A comprehensive study is necessary to prepare the way [illegible] constructive legislation for the present and future protection of the [illegible] of the people of the State of Texas in such submerged lands, [illegible], islands, estuaries, and estuarine areas; and

WHEREAS, The United States Government is now conducting similar [illegible] under P.L. 660 of the 84th Congress as amended and under P.L. 454 of the 90th Congress and is entitled to receive the full cooperation of the agencies of this state with respect to the lands, beaches, waters, [illegible], and estuarine areas of this state; now, therefore, be it

RESOLVED, By the Senate of the State of Texas, the House of Representatives concurring, that the following be accomplished:

Section 1. The Interagency Natural Resources Council, an interagency planning entity created under the authority of House Bill 276, Acts 1967, 60th Legislature, Regular Session, Chapter 417, in consultation with the School Land Board and the Submerged Lands Advisory Committee and with all other appropriate local, state, and federal agencies, is authorized and directed to make a comprehensive study of the state's submerged lands, beaches, islands, estuaries, and estuarine areas, including but without limitation coastal marshlands, bays, sounds, seaward areas, and lagoons. The term "estuary" means all or part of the mouth of an intrastate or interstate river or stream or other body of water, including, but not limited to, a sound, bay, harbor, lagoon, inshore body of water, and channel, having unimpaired natural connection with the open sea and within which the sea water is measurably diluted with fresh water derived from land drainage. The term "estuarine areas" means an environmental system consisting of an estuary and those transitional areas which are constantly influenced or affected by water from an estuary such as, but not limited to, coastal salt and freshwater marshes, tidal flats, coastal and intertidal areas, sounds, bays, harbors, lagoons, inshore bodies of water, and channels. For the purpose of the study or studies of these lands, beaches, islands, estuaries, and estuarine areas, the Council shall consider, among other matters (a) their wildlife, health, and recreational potential, their ecology, their value as natural marine habitats and nursery feeding grounds for the marine, anadromous, and shell fisheries, their value as established marine soils for producing plant growth of a type useful as nursery or feeding grounds for marine life and their natural beauty and esthetic value, (b) their importance to navigation, their value for flood, hurricane, and erosion control, their mineral value, and (c) the value of such areas for more intensive development for economic use to further the growth and development of the state. The study or studies shall also include (a) studies of the various problems of coastal engineering such as the protection of the beaches and bay bluffs from harmful erosion, the design and use of groins, seawalls, and jetties, and the effects of bay fills, fish passes, and other coastal works upon the physical features of the shores, channels, and bay bottoms and upon marine life and wildlife inhabiting such areas and (b) studies of the effects of waste and drainage water discharges into the waters of such estuaries and of the Gulf of Mexico in relation to the reasonable protection and conservation of the marine environment and the natural resources and natural beauty of these submerged lands, beaches, islands, estuaries, estuarine areas, and their overlying waters. In conducting the study or studies, the Interagency Natural Resources Council shall consider, among other matters, and without limitation as to the generality thereof, the physical and economic effects of existing and proposed water development projects of federal, state, and local agencies, and of authorized and prospective drainage projects of whatever nature upon the coastal waters and the waters of the state's estuaries and estuarine areas, the feasibility of reclaiming drainage waters from such projects, the future population growth and economic development in the area and in areas tributary thereto, the effects of existing and proposed projects for the filling and reclamation of waterfront lands upon the waste assimilative capacity of the coastal waters and the waters of the state's estuaries and estuarine areas, the possibilities of reclamation and reuse of waste waters and drainage water from such projects, and the feasibility of flow augmentation through managed releases from upstream reservoirs as an aid to quality maintenance.

Sec. 2. The Interagency Natural Resources Council may receive grants and matching funds from and may contract with such state, federal, or local public agencies or private agencies, entities, or educational institutions as it deems necessary for the rendition and affording of such management and technical services, facilities, studies, and reports, and personal services and operating expenses as will best assist it to carry out the purposes of this concurrent Resolution.

Sec. 3. The Interagency Natural Resources Council of Texas is directed to call on the advice, counsel, and guidance, and participation of appropriate local, state, and federal departments, boards, agencies, and educational institutions. The council shall, to the fullest practicable extent, cooperate and coordinate its work with all departments, boards, and agencies undertaking planning and technical investigations pertinent to this study. The Interagency Natural Resources Council is directed to coordinate its study and, in order to avoid duplication of work, shall make maximum use of data and information available from state agencies and boards and federal agencies, including but not limited to the United States Public Health Service, the United States Corps of Engineers, the United States Department of Health, Education and Welfare, the Federal Water Pollution Control Administration, the United States Soil Conservation Service, the United States Fish and Wildlife Service, the United States Bureau of Reclamation, the United States Geological Survey, the United States Department of the Interior, the member agencies of the Interagency Natural Resources Council, and the Bureau of Economic Geology of The University of Texas.

Sec. 4. The Interagency Natural Resources Council is authorized to hold one or more public hearings which it deems necessary or desirable for the full development of all facts pertinent to its studies. City, county

[illegible] state officials, officers, and employees and those of any other political [illegible] division of the state and of the state government are directed to furnish the Council, upon its request and within the limits of their respective [illegible] ilities, such data, reports, and any other information it may require [illegible] connection with its studies, without any cost, fee, or charge whatsoever.

Sec. 5. On or before the first day of December, 1970, preceding the [illegible]71 Regular Session of the Legislature, the Interagency Natural Re[illegible]rces Council shall submit to the Governor of Texas and to the Legis[illegible]ture a progress report indicating the status of its studies to date together with any recommendations for emergency legislation at that time [illegible] carry out the purposes of its studies as herein defined.

Sec. 6. The Interagency Natural Resources Council shall submit its final report to the Governor of Texas and to the Legislature on or before the first day of December, 1972, preceding the 1973 Regular Session of the Legislature, together with its findings and recommendations for appropriate legislation to carry out the purposes of its studies as herein defined.

Adopted by the Senate on April 17, 1969; adopted by the House on May 12, 1969.

Approved May 22, 1969.

Filed with the Secretary of State, May 22, 1969.

TEXAS

ACT 21-1969

61ST LEGISLATURE—2ND CALLED SESSION Ch. 21

STATE-OWNED LANDS AND ISLANDS—SALE OR LEASING—MORATORIUM

CHAPTER 21[7]

S. B. No. 20

An Act declaring a moratorium on the sale or leasing of the surface estate in state-owned submerged lands, beaches, and islands under any existing laws of this state, pending receipt of the Interagency Natural Resources Council study of these submerged lands, beaches, and islands or until May 31, 1973, whichever is earlier; providing certain exemptions; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Pending delivery of the final report of the Interagency Natural Resources Council to the Legislature covering its comprehensive study and recommendation concerning the state's submerged lands, beaches, islands, estuaries, and estuarine areas pursuant to S. C. R. No. 38 of this 61st Legislature, or until May 31, 1973, whichever date shall first occur, there is hereby declared a moratorium and suspension of the sale or leasing of, and of the establishment of any bulkhead line on, the surface estate of any state-owned submerged lands, beaches, and islands for any purpose under any existing law of this state.

Be it provided, however, that this moratorium shall not apply to any application for a lease of state-owned submerged lands or islands under the provisions of Chapter 377, Acts of the 57th Legislature, Regular Session, 1961, where the submerged lands or islands sought to be leased are within 2500 feet of submerged lands or islands already under lease to the applicant pursuant to the terms of Chapter 377, Acts of the 57th Legislature, Regular Session, 1961.

It is further provided that this Act shall not be construed to repeal, modify, or suspend the provisions of Chapter 3, Title 67, Revised Civil Statutes of Texas, as amended, as it relates to the powers and duties of the Parks and Wildlife Department with respect to all matters pertaining to the sale, taking, carrying away, or disturbing of marl, sand, gravel, or shell of commercial value, and all gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation as provided in said Chapter 3.

Be it provided, however, that this Act shall not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility, so long as such condition shall exist.

Sec. 2.[8] The facts that the state-owned submerged lands, islands, estuaries, and estuarine areas in the Texas Gulf Coast Area, including the submerged lands of the state seaward of the mean of lower low water marks in the Gulf of Mexico, and the natural resources and the environmental natural beauty with which they are so richly endowed, constitute an important and valuable property right belonging to the Public Free School Fund and to all of the people of Texas, and they are of immediate and potential value to the present and future generations of Texans;

7. Vernon's Ann.Civ.St. art. 5415f, § 1.
8. Vernon's Ann.Civ.St. art. 5415f note.

That it is the declared policy of the state that such submerged lands, islands, estuaries, and estuarine areas shall be so managed and used as to insure the conservation, protection, and restoration of such submerged lands, islands, estuaries, and estuarine areas with resources and natural beauty and, consistent with such protection, conservation and restoration, their development and utilization in a manner that adequately and reasonably maintains a balance between the need for such protection in the interest of conserving the natural resources and natural beauty of the state and the need to develop these submerged lands, islands, estuaries, and estuarine areas to further the growth and development of the state;

That the people of the State of Texas have a primary interest in the correction and prevention of irreparable damage to or unreasonable impairment of the uses of the coastal waters of the state and inland waters of the state in such estuaries and estuarine areas caused by drainage, waste water disposal, industrial waste disposal, and all other activities that may contribute to the contamination and pollution of such waters;

That the people of the State of Texas also have primary interests in the value of such lands, islands, estuaries, and estuarine areas as public property for production and marketing of oil and gas and other minerals and mineral resources, for the production of living resources, for shell and other fisheries and fishing, hunting, and other recreation, for wildlife conservation, and for health and other uses in which the public at large may participate and enjoy;

That it is also the declared policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico and hence the people of the State of Texas have a further primary interest in conserving the natural beauty of the state's beaches and protecting and conserving them for the use of the public;

That the Interagency Natural Resources Council has been directed by the Legislature to make a comprehensive study to prepare the way for constructive legislation for the present and future protection of the interest of the people of the State of Texas in such submerged lands, beaches, islands, estuaries, and estuarine areas; and

That the purpose, intent, and effectiveness of such constructive legislation for the present and future protection of the people of the State of Texas cannot be achieved if the sale and leasing of the state-owned submerged lands, beaches, and islands is continued under the existing laws of this state without regard to detailed modern scientific knowledge of these submerged lands, beaches, and islands which will result from the Council study and before such information can be collected and finally reported to the Legislature.

All create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended; and that this Act shall take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on September 6, 1969: Yeas 29, Nays 0; passed the House on September 8, 1969: Yeas 134, Nays 4.

Approved Sept. 19, 1969.

Effective Sept. 19, 1969.

TEXAS

ACT 279-1971

COUNCIL ON MARINE-RELATED AFFAIRS

CHAPTER 279 [23]

H. B. No. 483

An Act relating to the creation, administration, powers and duties, and funding of The Texas Council on Marine-Related Affairs, an advisory body concerned with marine affairs; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Purpose

Section 1. The purpose of this Act is to create The Texas Council on Marine-Related Affairs, an advisory body to assist in the comprehensive assessment and planning of marine-related affairs in this state and their relationship to national and international marine-related affairs.

Membership

Sec. 2. (a) The council is composed of 12 members, each of whom must be a Texas resident.

(b) The governor, lieutenant governor, and speaker of the House of Representatives shall each appoint four persons to the council. The four persons appointed by each of these officers shall include one person to represent government, one person to represent the educational profession, one person to represent commerce and industry, and one person to represent the public. The representatives of government must include a personal representative appointed by the governor, a state senator appointed by the lieutenant governor, and a state representative appointed by the speaker.

(c) All members of the council must be persons who are knowledgeable of, and interested in, marine-related affairs.

(d) All initial appointments to the council by the governor shall be for a term to expire on June 30, 1977. All initial appointments by the lieutenant governor shall be for a term to expire on June 30, 1975. All initial appointments by the speaker shall be for a term to expire June 30, 1973. The successor of each member shall be appointed by the original appointing authority for a term of six years.

(e) If a senator or representative ceases to serve in the house in which he was serving when he was appointed to the council, he ceases to be a member of the council. The person appointed by the governor to represent government ceases to be a member of the council if the governor who appointed him ceases to be governor. If any member of the council fails to attend at least 50 percent of the meetings of the council in any 12-month period or ceases to be a Texas resident, he ceases to be a member of the council.

(f) In the case of a vacancy on the council, the original appointing authority shall appoint a person to fill that vacancy for the unexpired portion of the term. The person appointed to fill the vacant position must meet all qualifications prescribed by this Act for that position.

Powers and duties

Sec. 3. (a) The function of the council is purely advisory. It does not have the power to act on behalf of the state.

(b) The council may hold public hearings relevant to its purpose. It may report its findings to the Legislature and the governor from time to time and it shall report to each regular session of the Legislature.

(c) In order to aid the state in making use of federal funds, facilities, and programs relating to marine affairs, the council shall establish a liaison relationship with all appropriate branches and agencies of the federal government.

(d) The council may accept gifts or grants from any source to be used in connection with any of its lawful purposes.

(e) The council may appoint a director to serve at the will of the council. The director is the chief executive officer of the council and subject to the policy direction of the council. He may appoint employees to serve at his will. The council shall determine the compensation of the director and all other employees.

(f) The council shall meet at least once every calendar quarter, and at other times on the call of the chairman or by the written call of two-thirds of the members of the council.

(g) The council shall elect a chairman and may elect other officers.

Per diem, expenses

Sec. 4. Except for members of the Legislature, members of the council are entitled to compensation of $50 for each day spent on the official business of the council. All members of the council are entitled to reimbursement for actual and necessary expenses incurred in carrying out council business. Service on the board by a member of the Legislature is a part of his duties as a member of the Legislature and does not constitute a separate office.

Funding

Sec. 5. Until the Legislature provides an appropriation for the operation of the council, the contingent expense funds of the House of Representatives and of the Senate may be expended for such purposes authorized herein. Prior to any expenditure of funds of the contingent expense committees of either the House or the Senate, a budget for the annual expenses of the committee shall be submitted to such committees and no funds shall be expended from such funds until approved by that committee.

Emergency

Sec. 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 1, 1971: Yeas 134, Nays 0, and that the House concurred in Senate amendments on May 14, 1971: Yeas 12, Nays 1; passed by the Senate, as amended, on May 13, 1971: Yeas 31, Nays 0.

Approved May 19, 1971.

Effective May 19, 1971.

APPENDIX M

GREAT LAKES

Michigan

Act 245-1970 (Shorelands Protection and Management Act of 1970) [Sections 281.631-281.645 of Michigan Compiled Laws Annotated].

Minnesota

Act 777-1969 (Regulation of Shorelands Use and Development) [Sections 105.485, 394.25 subdivision (2), 396.03, 396.051 of Minnesota Statutes 1967].

STATE OF MICHIGAN

Act 245, Public Acts of 1970

AN ACT to provide for the protection and management of shorelands; to provide for zoning and zoning ordinances; to provide certain powers and duties; to authorize certain studies; to provide for development of certain plans; to promulgate rules; and to provide for certain remedies for violations of rules.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "shorelands protection and management act of 1970".

Sec. 2. As used in this act:

(a) "Commission" means the water resources commission.

(b) "Connecting waterway" means the St. Marys river, Detroit river, St. Clair river, Keeweenaw waterway or Lake St. Clair.

(c) "Department" means the department of natural resources.

(d) "Environmental area" means an area of the shoreland determined by the department on the basis of studies and surveys to be necessary for the preservation and maintenance of fish and wildlife.

(e) "High risk area" means an area of the shoreland which is determined by the commission on the basis of studies and surveys to be subject to erosion.

(f) "Land to be zoned" means the land in this state which borders or is adjacent to a Great Lake or a connecting waterway situated within 1,000 feet landward from the ordinary high water mark as defined in section 2 of Act No. 247 of the Public Acts of 1955, as amended, being section 322.702 of the Compiled Laws of 1948.

(g) "Local agency" means a county, city, village or township.

(h) "Shoreland" means the land, water and land beneath the water which is in close proximity to the shoreline of a Great Lake or a connecting waterway.

(i) "Shoreline" means that area of the shorelands where land and water meet.

Sec. 3. Within 1 year after the effective date of this act, the commission shall make or cause to be made an engineering study of the shoreland to determine:

(a) The high risk areas.

(b) The areas of the shorelands which are platted or have buildings or structures and which require protection from erosion.

(c) The type of protection which is best suited for an area determined in subdivision (b).

(d) A cost estimate of the construction and maintenance for each type of protection determined in subdivision (c).

Sec. 4. Within 1 year after the effective date of this act the department shall make or cause to be made an environmental study of the shoreland to determine:

(a) The environmental areas.

(b) The areas of marshes along and adjacent to the shorelands.

(c) The marshes and fish and wildlife habitat areas which should be protected by shoreland zoning.

Sec. 5. The commission in accordance with section 3 shall determine if the use of a high risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The commission shall notify a local agency of its determinations and recommendations relative to a high risk area which is in a local agency.

Sec. 6. The department in accordance with section 4 shall notify a local agency of the existence of any environmental area which is in a local agency and shall recommend to the commission appropriate use regulations necessary to protect an environmental area.

Sec. 7. Within 3 years after the effective date of this act a county, pursuant to rules promulgated under section 12 and Act No. 183 of the Public Acts of 1943, as amended, being sections 125.201 to 125.232 of the Compiled Laws of 1948, may zone any shoreland and land to be zoned which is in the county.

Sec. 8. Within 3 years after the effective date of this act a city or village, pursuant to rules promulgated under section 12 and Act No. 207 of the Public Acts of 1921, as amended, being sections 125.581 to 125.591 of the Compiled Laws of 1948, may zone any shoreland and land to be zoned which is in the city or village.

Sec. 9. Within 3 years after the effective date of this act a township, pursuant to rules promulgated under section 12 and Act No. 184 of the Public Acts of 1943, as amended, being sections 125.271 to 125.301 of the Compiled Laws of 1948, may zone any shoreland and land to be zoned which is in the township.

Sec. 10. An existing zoning ordinance or a zoning ordinance or a modification or amendment thereto which regulates a high risk area or an environmental area shall be submitted to the commission for approval or disapproval. The commission shall determine if the ordinance, modification or amendment adequately prevents property damage or prevents damage to an environmental area or a high risk area. If an ordinance, modification or amendment is disapproved by the commission, it shall not have force or effect until modified by the local agency and approved by the commission.

Sec. 11. (1) The commission, in order to regulate the uses and development of high risk areas and environmental areas and to implement the purposes of this act, shall promulgate rules in accordance with and subject to the provisions of Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948.

(2) A circuit court upon petition and a showing by the commission that a violation of a rule promulgated under subsection (1) exists, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

Sec. 12. (1) Within 18 months after the effective date of this act the commission shall, in compliance with the purposes of this act, prepare a plan for the use and management of shoreland. The plan shall include but not be limited to:

(a) An inventory and identification of the use and development characteristics of the shoreland; the general physical and man-influenced shoreline features; the existing and proposed municipal and industrial water intakes and sewage and industrial waste outfalls; and high risk areas and environmental areas.

(b) An inventory of existing federal, state, regional and local plans for the management of the shorelands.

(c) An identification of problems associated with shoreland use, development, conservation and protection.

(d) A provision for a continuing inventory of shoreland and estuarine resources.

(e) Provisions for further studies and research pertaining to shoreland management.

(f) Identification of the high risk and environmental areas which need protection.

(g) Recommendations which shall:

(i) Provide precedures for the resolution of conflicts arising from multiple use.

(ii) Foster the widest varietv of beneficial uses.

(iii) Provide for the necessary enforcement powers to assure compliance with plans and to resolve conflicts in uses.

(iv) Provide criteria for the protection of shorelands from erosion or inundation, for aquatic recreation, for shore growth and cover, for low lying lands and for fish and game management.

(v) Provide criteria for shoreland layout for residential, industrial and commercial development, and shoreline alteration control.

(vi) Provide for building setbacks from the water.

(vii) Provide for the prevention of shoreland littering, blight harbor development and pollution.

(viii) Provide for the regulation of mineral exploration and production.

(ix) Provide the basis for necessary future legislation pertaining to efficient shoreland management.

(2) Upon completion of the plan, the commission shall hold regional public hearings on the recommendations of the plan. Copies of the plan shall be submitted with the hearing records to the governor and the legislature.

Sec. 13. The department and commission may enter into an agreement jointly or separately or to make contracts with the federal government, other state agencies, local agencies or private agencies for the purposes of making studies and plans for the efficient use, development, preservation or management of the state's shoreland resources. Any study, plan or recommendation shall be available to a local agency in this state which has shoreland. The recommendations and policies set forth in the studies or plans shall serve as a basis and guideline for establishing zoning ordinances and developing shoreland plans by local agencies and the commission.

Sec. 14. For the purposes of this act, the department and the commission may receive, obtain or accept any moneys, grants or grants-in-aid for the purpose of research, planning or management of shoreland.

Sec. 15. It is the intent of the legislature that any additional cost of the implementation of section 3 of this act shall only be financed from federal funds.

relating to water resources; providing for the regulation of shoreland use and development; prescribing the powers and duties of state agencies and local governments in relation thereto; providing penalties; amending Minnesota Statutes 1967, Chapters 105, and 396 by adding sections; Sections 394.25, Subdivision 2; and 396.03.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1967, Chapter 105, is amended by adding a section to read:

(105.485) (REGULATION OF SHORELAND DEVELOPMENT.) Subdivision 1. (PURPOSE.) In furtherance of the policies declared in Minnesota Statutes, Section 105.38, and Chapter 116, it is in the interest of the public health, safety, and welfare to provide guidance for the wise development of shorelands of public waters and thus preserve and enhance the quality of surface waters, preserve the economic and natural environmental values of shorelands, and provide for the wise utilization of water and related land resources of the state.

Subd. 2. (DEFINITIONS.) For the purposes of this section the terms defined in this section have the meanings given them: (a) "Shoreland" means land located within the following distances from the ordinary high water elevation of public waters: (1) Land within 1,000 feet from the normal high watermark of a lake, pond, or flowage; and (2) land within 300 feet of a river or stream or the landward side of flood plain delineated by ordinance on such a river or stream, whichever is greater, (b) "Unincorporated area" means the area outside a city, village, or borough.

Subd. 3. (COMMISSIONER'S DUTIES.) Before July 1, 1970, the commissioner of conservation shall promulgate, in the manner provided in Minnesota Statutes, Chapter 15, model standards and criteria for the subdivision, use, and development of shoreland in unincorporated areas, including but not limited to the following: (a) The area of a lot and length of water frontage suitable for a building site; (b) the placement of structures in relation to shorelines and roads; (c) the placement and construction of sanitary and waste disposal facilities; (d) designation of types of land uses; (e) changes in bottom contours of adjacent public waters; (f) preservation of natural shorelands through the restriction of land uses; (g) variances from the minimum standards and criteria; and (h) a model ordinance. The following agencies shall provide such information and advice as may be necessary to the preparation of the rules and regulations, or amendments thereto: The state departments of agriculture, economic development, and health; the state planning agency; the pollution control agency; the state soil and water conservation commission; and the Minnesota historical society. In addition to other requirements of Minnesota Statutes, Chapter 15, the model standards and ordinance promulgated pursuant to this section, or amendments thereto, shall not be filed with the secretary of state unless approved by the executive officer of the state board of health and the director of the pollution control agency.

Subd. 4. (FAILURE OF COUNTY TO ACT; COMMISSIONER'S DUTIES; ENFORCEMENT.) If a county fails to adopt a shoreland conservation ordinance by July 1, 1972, or if the commissioner of conservation, at any time after July 1, 1972, after notice and hearing as provided in Minnesota Statutes, Section 105.44, finds that a county has adopted a shoreland conservation ordinance which fails to meet the minimum standards established pursuant to this section, the commissioner shall adapt the model ordinance to the county. The commissioner shall hold at least one public hearing on the proposed ordinance in the manner provided in Minnesota Statutes, Section 394.26, after giving notice as provided in section 394.26. This ordinance is effective for the county on the date and in accordance with such regulations relating to compliance as the commissioner shall prescribe. The ordinance shall be enforced as provided in Minnesota Statutes, Section 394.37. The penalties provided in Minnesota Statutes, Section 394.37, apply to violations of the ordinance so adapted by the commissioner.

Subd. 5. (COSTS.) The cost incurred by the commissioner in adapting the model ordinance to the county pursuant to subdivision 4 shall be paid by the county upon the submission to the county of an itemized statement of these costs by the commissioner. If the county fails to pay these costs within 90 days after the commissioner's statement is received, the commissioner may file a copy of the statement of these costs with the county auditor of the county for collection by special tax levy. The county auditor, upon receiving a statement from the commissioner, shall include the amount of the state's claim in the tax levy for general revenue purposes of the county. This additional tax shall be levied in excess of any limitation as

to rate or amount, but shall not cause the amount of other taxes which are subject to any limitation to be reduced in any amount whatsoever. Upon completion of the tax settlement following this levy, the county treasurer shall remit the amount due to the state to the commissioner for deposit in the state treasury.

Sec. 2. Minnesota Statutes 1967, Section 394.25, Subdivision 2, is amended to read:

Subd. 2. The establishment of zoning districts within which districts the use of land for agriculture, forestry, recreation, residence, industry, trade, soil conservation, water supply conservation, surface water drainage and removal, conservation of shorelands, as defined in section 1 of this act, and additional uses of land may be encouraged, regulated, or prohibited and for such purpose the board may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the comprehensive plan.

Sec. 3. Minnesota Statutes 1967, Section 396.03, is amended to read:

396.03 (OBJECT OF REGULATIONS.) These regulations shall be made in accordance with a comprehensive plan and designed for any or all of the following purposes:

(1) To protect and guide the development of non-urban areas;

(2) To secure safety from fire, flood, and other dangers;

(3) To encourage a distribution of population and a mode of land utilization that will facilitate the economical and adequate provision of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements;

(4) To lessen governmental expenditures;

(5) To conserve and develop natural resources, including but not limited to the conservation of shorelands, as defined in section 1 of this act;

(6) To prevent soil erosion;

(7) To foster the state's agricultural or other industries;

(8) To protect the food supply;

(9) To prevent waste.

These regulations shall be made with a reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses.

Sec. 4. Minnesota Statutes 1967, Chapter 396, is amended by adding a section to read:

(396.051) (SHORELAND REGULATIONS; POWERS OF TOWNS.) Notwithstanding the provisions of Minnesota Statutes, Section 396.05, the approval of town boards is not required for ordinances regulating the conservation of shorelands. However, this section does not prohibit a town from adopting or continuing in force, by ordinance, regulations of shorelands which are more restrictive than those required by the county ordinance.

APPENDIX N

PACIFIC COAST

Alaska

Article VIII (Natural Resources) of the Constitution of Alaska.

Article VIII

Natural Resources

Section 1. **Statement of Policy.** It is the policy of the State to ...rage the settlement of its land and the development of its ...rces by making them available for maximum use consistent ... the public interest.

...a licensing regulations have a ...ble relation to a conservation ...and therefore do not conflict with the state constitution. 1959 Op. Atty. Gen., No. 28.

Section 2. **General Authority.** The legislature shall provide for ...ilization, development, and conservation of all natural re...ces belonging to the State, including land and waters, for the ...imum benefit of its people.

Section 3. **Common Use.** Wherever occurring in their natural ...e, fish, wildlife, and waters are reserved to the people for com... use.

...ross reference.—See note to ...a Constitution, art. VIII, § 3.

Section 4. **Sustained Yield.** Fish, forests, wildlife, grasslands, ... all other replenishable resources belonging to the State shall ...ilized, developed, and maintained on the sustained yield prin..., subject to preferences among beneficial uses.

...rea licensing regulations have re...on to the subject of fish conserva...n in that they are designed to en... the Department of Fish and ... to control the extent of fishing ...rious areas of Alaska, and thereby to meet the mandate of art. VIII, § 4, of the state constitution to maintain our fish resources on the sustained yield principle. 1959 Op. Atty. Gen., No. 28.

Section 5. **Facilities and Improvements.** The legislature may pro... for facilities, improvements, and services to assure greater ...lization, development, reclamation, and settlement of lands, and ...ssure fuller utilization and development of the fisheries, wild... and waters.

Section 6. **State Public Domain.** Lands and interests therein, in...ding submerged and tidal lands, possessed or acquired by the ...te, and not used or intended exclusively for governmental pur...es, constitute the state public domain. The legislature shall pro...de for the selection of lands granted to the State by the United ...tes, and for the administration of the state public domain.

Section 7. **Special Purpose Sites.** The legislature may provide for ... acquisition of sites, objects, and areas of natural beauty or of ...storic, cultural, recreational, or scientific value. It may reserve ...m from the public domain and provide for their administration ... preservation for the use, enjoyment, and welfare of the people.

Section 8. Leases. The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, and for forfeiture in the event of breach of conditions.

Section 9. Sales and Grants. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

Section 10. Public Notice. No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

Section 11. Mineral Rights. Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

Section 12. Mineral Leases and Permits. The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.

Section 13. Water Rights. All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Cross reference.—See note to Alaska Constitution, art. VIII, § 15.

Section 14. Access to Navigable Waters. Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Section 15. No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

This section was derived from the White Act. 1961 Op. Atty. Gen., No. 9.

Hence, decisions contruing White Act are applicable.—Since the purpose sought by the White Act have been given expression, albeit under slightly different terminology, in the provisions of this section, the decisions of the territorial district court in Alaska construing § 222 of the White Act, may assist in construing our own state constitution. 1960 Op. Atty. Gen., No. 9.

Prohibition against exclusive right of fishery applicable to Natives.—Under the language of the White Act (48 USC § 222) the Secretary of Interior was prohibited from granting any exclusive or several right of fishery in favor of the Natives on the Karluk River on Kodiak Island. The court held that the prohibition against granting an exclusive right of fishery applied to commercial fishing by Natives equally with fishing companies, and that the secretary could not grant to the occupants of the Indian reservation the privilege of exclusive commercial fishing rights. 1960 Op. Atty. Gen., No. 9, citing Alaska v. Grimes Packing Co., 12 Alaska 318, 337 U. S. 86, 69 S. Ct. 967, 93 L. Ed. 1231.

Regulations establishing minimum distance between set nets.—Fish and Game Department regulations do not themselves tend to create an exclusive right of fishery by establishing minimum distances between set nets. They merely regulate the fishing effort of a particular type of stationary gear. Constitutional provisions were not intended to outlaw all forms of stationary gear. 1960 Op. Atty. Gen., No. 9.

Conveyances for establishment of set net fishery.—The power to issue a lease for the establishment of a set net fishery upon tidelands, if the same were to be of any value whatsoever to the lessee, would necessarily convey a special privilege or right to use the particular area covered by such lease. 1960 Op. Atty. Gen., No. 9.

The Department of Natural Resources cannot grant an exclusive right of fishery by means of a tidelands lease or permit. 1960 Op. Atty. Gen., No. 9.

Any attempt to convey tideland locations for the purposes of set netting would go against both the spirit and the letter of the constitution and would therefore be of no effect. 1961 Op. Atty. Gen., No. 3.

The attempt to lease a tract of tideland for the purpose of establishing a set net fishery would be unlawful and, even if attempted, would convey no legal right to such fishery. 1960 Op. Atty. Gen., No. 9.

Quoted in Metlakatla Indian Com.,

Annette Island Res. v. Egan, Sup. Ct. Op. No. 42 (File Nos. 21, 22, 23), 362 P. (2d) 901, vacated and remanded in 369 U. S. 45, 82 S. Ct. 552, 7 L. Ed. (2d) 562.

Section 16. Protection of Rights. No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

Section 17. Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Section 18. Private Ways of Necessity. Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources. Just compensation shall be made for property taken or for resultant damages to other property rights.

APPENDIX O

PERSONS TO CONTACT CONCERNING COASTAL MANAGEMENT ACTIVITIES ON A STATE-BY-STATE BASIS

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Notes: 1. The persons named above were chosen as a result of their replying to a letter of inquiry or, in a few cases, knowledge that they were familiar with coastal management activities in the state in question.

2. For a few states, no one replied to a letter of inquiry; thus, no one has been listed under those states.

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