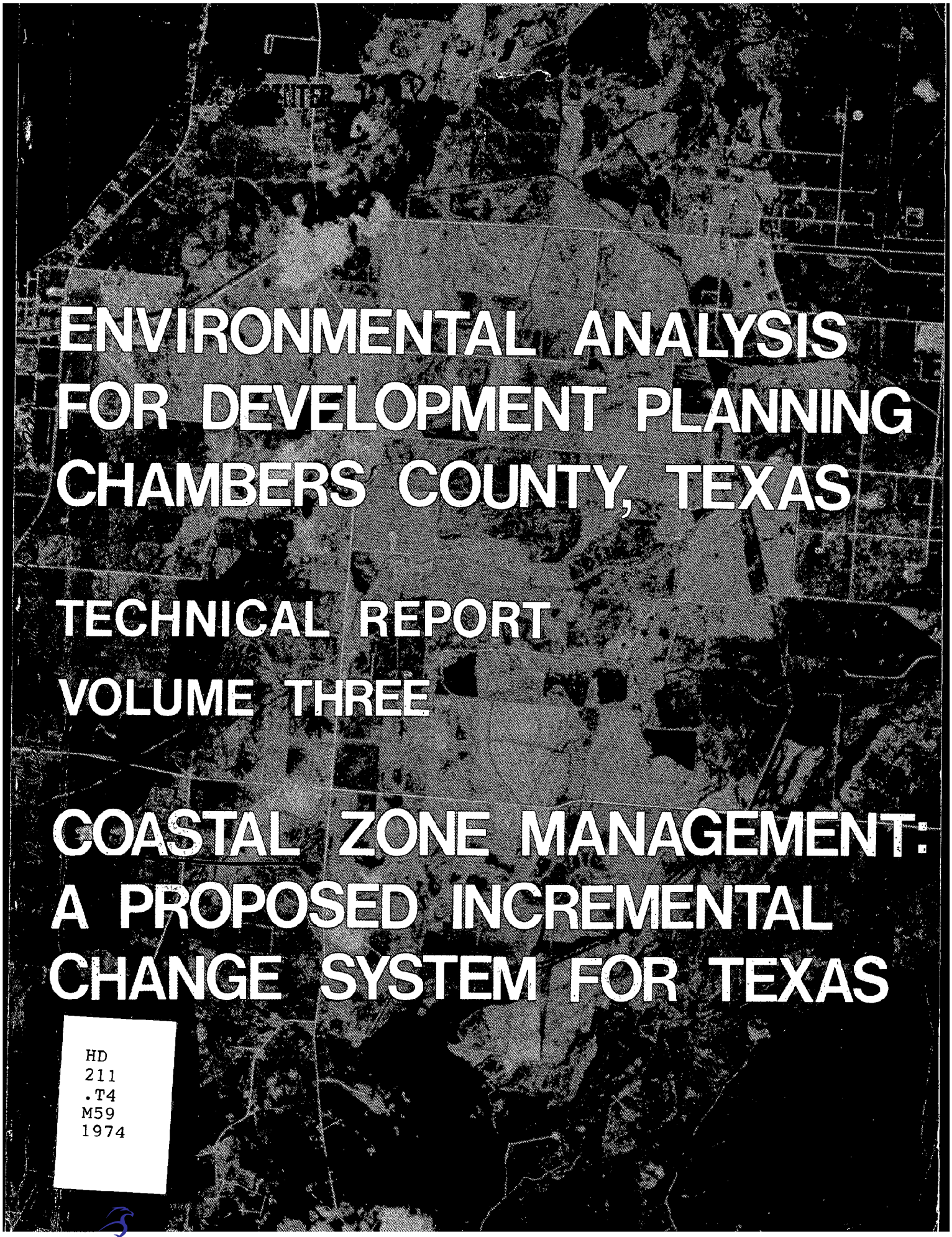

ENVIRONMENTAL ANALYSIS FOR DEVELOPMENT PLANNING CHAMBERS COUNTY, TEXAS

TECHNICAL REPORT
VOLUME THREE

COASTAL ZONE MANAGEMENT: A PROPOSED INCREMENTAL CHANGE SYSTEM FOR TEXAS

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Environmental Analysis for Development Planning in Chambers County, Texas

COASTAL ZONE MANAGEMENT: A PROPOSED INCREMENTAL CHANGE SYSTEM FOR TEXAS

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PREFACE

This paper is written as a part of a study of Chambers County, Texas, financed by the National Science Foundation. During Phase I, the Chambers County project produced an environmental analysis of the capability of the county to accommodate land development. The project also produced data concerning the predispositions and preferences of county residents for development. Residents generally prefer that governmental intervention be kept at minimum levels in resource allocation matters, and that local governmental values be emphasized over state and federal values.

The study of state and local governmental institutions disclosed that Texas does not have a strong system for planning and regulating the ways that land is used. Although state agencies actively influence development patterns through their capital investments for state facilities and water supply, the agencies themselves deny that they make land use decisions. Conflicts between private and public claimants for land uses do not have high visibility. As an example of Texas' attitude, the state established an industrial commission on its own initiative to attract new industry. Federal prompting was required, however, to get the state to protect its air and water from pollution.

Emerging federal environmental and land use legislation indicates that Texas will soon have to increase its regulation of private land uses and coordinate state-level allocation of resources. At

the beginning of the project, the research teams assumed that the National Land Use Policy Act would pass and that the Act would set the standards for the modifications of existing state institutions. The Act did not pass. It is still being debated and its future and final content are uncertain.

Instead of trying to satisfy a fluid federal proposal that may never pass, the research teams turned to existing legislation on coastal zone management that the state has begun to implement. The Coastal Zone Management Act covers many of the issues that are involved in the Land Use Policy Act. Both Acts require that a certain amount of data be gathered; that planning processes be developed; that certain types of land uses be regulated; and that critical areas be identified. The General Land Office is responsible for formulating Texas' response to the federal Act and has indicated a desire to receive any help the project could provide.

This paper tries to blend Texas' present land use system, Chambers County preferences for local control, and federal requirements into a coherent response to the Coastal Zone Management Act. The challenge is enormous, and the attempt to produce a workable system may not be completely successful. It is advanced as a point of beginning, and as a theory of approach instead of a "must" system for the state. The proposal emphasizes an "incremental change" process to balance development and conservation values along the Texas Gulf Coast.

One portion of the Chambers County study is an environmental analysis component, which consists of a detailed study and graphic representation of the capability of the county land and water areas to accommodate land development of various types. This type of

study should be valuable to a coastal zone management agency in carrying out the major tasks required by the federal Act. For example, the study should provide the basic data for completion of an inventory of coastal resources, standards for determining permissibility of uses that directly and significantly impact coastal waters, and for designating areas of particular concern. Such a study, or some modification thereof, should be a beginning point for any coastal zone management program.

ACKNOWLEDGMENTS

Although the number of people who deserve thanks for their help in preparing this paper is undoubtedly greater than those mentioned here, the author wishes to recognize the research and editorial efforts and assistance provided by Anna Ballew, Patti Bass, and Terri Brake.

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INTRODUCTION

By 1972, Congress was well aware that the nation's coastlines needed attention. Oil spills, conflicting claims by industries and public users to remaining beach areas in the northeast, and continued destruction of productive marshlands made regulation appear inevitable. Would the regulation come from federal or state sources?

Direct federal regulation would have been hard to sell politically. Many of the regulatory decisions related to matters of local concern, and probably could best be made locally. The theory of "new federalism" was in vogue, meaning that the states should be given a greater role in carrying out programs that affected both state and federal interests.

It was in this setting that Congress passed the Coastal Zone Management Act of 1972. The Act provides federal funding to help states put together a program of coastal zone management, and additional funding to help the states administer the program. At the federal level, the Department of Commerce administers coastal zone management, with specific administration delegated to the National Oceanic and Atmospheric Administration (NOAA).

There are no expressed sanctions in the Act to penalize states that do not put together qualifying programs. Why, then, would a state undertake coastal zone management after the Act, if it had not done so prior to the Act? There are several reasons. One is funding. Federal funds for coastal management will be made available

for those states that set up qualifying programs. No funds are available for states that do not. Funding in any case is likely to be inadequate to pay the cost of the whole program. A more persuasive reason for a state to participate in coastal zone management is the implied threat: that if states do not take care of their own coastal problems, then the federal government will do it directly. Under the current program, states at least have some flexibility in determining what to do with their coastlines and in striking the balance between conservation and development to suit local values.

The Act has an additional incentive that is built into the program that gives significant effect to the new federalism tenet: when a state adopts a program for coastal management that is finally approved by the Secretary of Commerce, then most other federal agencies must defer to the state's plan. If states want to take back some decision prerogatives from federal agencies, this offers them a chance to do so.

Not all federal agencies and laws are subordinated to approved coastal programs. Federal air and water pollution laws take primacy over coastal zone management and must be incorporated into the program. The coastal zone management program may in some cases be so closely intertwined with air and water pollution laws that they become supportive of each other, i.e., the coastal zone management program may be used to implement the pollution control programs, and vice versa.

The Coastal Zone Management Program does not take away much local government power to make ordinary land use decisions. It does

not matter to the coastal program whether a certain street corner is used for residential or commercial purposes. Strict coastal zone regulation is required for only one category of use: land and water uses that directly and significantly impact coastal waters. The state has leeway to define these uses and to decide which uses are permissible and which are not. The state may set the standards at the state level and implement them directly or it may delegate implementation to local governments, subject to state review.

The state must do something else that looks a lot like regulation, but isn't. It its program the state must identify "areas of particular concern" and assign priorities to the major uses within such areas. At first glance, this looks like more regulation, and it would be if the use priorities had to be enforced. But they don't. The purpose of designating areas of particular concern is to call attention to areas that have certain characteristics that should be taken into account when public and private characteristics that should be taken into account when public and private decisions are made concerning development or conservation of those areas, or areas around them. Thus, an industrialized area needs to be identified geographically and a notation made that it is probably committed to industrial uses in order that the state may have a decisional reference point for highway construction, dredging permits, and the like. Similarly, the programs should identify areas that the state should buy for conservation and public recreational purposes.

Many provisions in the Act suggest that it is primarily a conservation measure. For example, historical, aesthetic, and recreational values are to be taken into account when decisions are

made. However, the Act also requires that uses of regional benefit are not to be unreasonably excluded from the coastal zone. This reference could be specifically pointed at the northeastern coastal states that have excluded refineries and other industrial uses from their coastal areas in recent years.

The Coastal Zone Management Act intentionally establishes policies and procedures, but leaves details and definitions to the states. This flexibility may be desirable and even essential if it is to be adapted to the differing needs and approaches of all coastal states. Such flexibility can also breed confusion, however, when the same requirements apply to such diverse political and geographical settings as Texas and Delaware.

This paper represents an initiatory attempt to explain some of the Act's details and formulate a system for Texas to respond to its requirements. The paper is written while the regulations are still being formulated at the federal level. State law, likewise, is not settled and new legislative enactments may either add to coastal management problems or solve major deficiencies. The paper seeks to accommodate Texas' basic preferences for minimum interference with private property rights, and maximum emphasis upon local decision and maintenance of existing governmental structure. The final program for Texas probably will not reflect entirely the proposals made herein. The effort will be worthwhile if the final program is in some measure influenced in a positive way by this statement.

1. THE FEDERAL COASTAL ZONE MANAGEMENT ACT

A. Purpose and focus of the Act

The Coastal Zone Management Act (CZMA) sets federal guidelines for managing the coastal resources of the nation, and provides funds for states to formulate and administer a state program.[1] Its stated purpose is to encourage states to exercise their full authority in developing and implementing coastal zone management (CZM) programs.[2] Although the Act does not contain sanctions, direct federal action is likely if states do not establish rational procedures to allocate coastal resources and strike a balance between conservation and development.[3]

The concept of coastal zone management focusses on the coastal area where land and salt water meet, and addresses the problem caused by the complex and conflicting demands made upon that region. The federal Act articulates broad policies to preserve, protect, develop, and when possible, to restore or enhance these coastal zones for succeeding generations.[4] State programs must consider ecological, cultural, historical, and aesthetic values along with economic development.[5] Legislative history shows that an overriding goal is preservation of the nutrient-laden coastal wetlands that comprise an essential part of the complex ocean marine life cycle.[6]

CZM areas may extend inland only to the extent necessary to control shoreland uses which have a direct and significant impact on the coastal waters.[7] This inexact designation leaves considerable discretion for states to set coastal boundaries. States may not, however, restrict their programs solely to the water-land contact point[8]; neither may they use the Act to lever an extensive inland land use program which does not immediately affect the coast.[9]

B. Federal administration

Federal responsibility for the Coastal Zone Management Act rests upon the Secretary of the Department of Commerce, with administration delegated to the National Oceanic and Atmospheric Administration (NOAA).[10] NOAA has capability to provide technical assistance through the National Ocean Survey, Environmental Data Service, and the Environmental Research Laboratories.[11]

C. Coordination of coastal program with other governmental entities

The Act specifies coordination of the CZM program among the governmental entities.[12] The state must afford an opportunity to all relevant federal, state, and private parties to participate in its program development.[13] Open hearings are required.[14]

The state must coordinate the program with existing local, areawide, or interstate plans applicable to areas within the coastal zone, and establish an effective mechanism for continuing consultation and coordination with these planning agencies.[15]

The Act places federal agencies and laws into two categories. One category is unaffected by the program and retains priority over the state system; the other category is subordinated to the approved state program.

1. Early coordination with federal agencies essential

In formulating its coastal program, a state must be careful to coordinate with relevant federal agencies.[16] The Secretary is forbidden to approve a state's program unless the views of all principally affected federal agencies have been adequately considered.[17] Although federal agencies do not have veto power, their disagreement with a program proposal could delay its approval. In case of serious disagreement between any federal agency and the state, the Secretary, in cooperation with the Executive Office of the President, must try to mediate the differences.[18]

2. Deference to approved program required

During the program development phase, consultation and coordination between the CZM agency and other entities may be on an equal basis.[19] After the program has been formulated and approved by the Secretary of Commerce, however, it must be implemented[20] and thus acquires primacy over the plans and activities of most other governmental entities in the regulated areas.[21] Applications by local governments for federal grants[22] and local governmental decisions concerning regulated uses must, therefore, be subject to state administrative review for conformity with the program.[23]

It is clear, however, that the Act does not contemplate any governmental entity running roughshod over another. Accordingly, after the program becomes operative, the coastal management agency must continue to communicate and coordinate its program with the plans and proposals of other affected governmental entities.[24]

3. General policy of federal deference to approved state CZM program

All federal agencies whose activities directly affect the coastal zone and agencies who develop projects in the coastal zone must conform as much as possible to the state's management program.[25] Moreover, federal agencies that issue licenses and permits must require the applicant to certify that the proposed activity conforms with the coastal program.[26] Applications by state and local governments for assistance under other federal programs affecting the coastal zone must indicate conformity with the management program.[27] Federal agencies are forbidden to approve proposed projects that are inconsistent with a state management program unless the Secretary of Commerce determines that the project is consistent with the purposes of the Act or that the project is necessary in the interest of national security.[28]

4. Federal laws and agencies retaining primacy over state CZM programs

The most important federal primacy over state CZM programs concerns air and water pollution control laws and regulations. The CZM program must defer to federal air and water pollution controls and incorporate them into the program.[29] This requirement makes it imperative that the state coastal management agency establish a working relationship with the Environmental Protection Agency (EPA) and state pollution control agencies at the very outset of program development.

Federally owned lands are unaffected by the program inasmuch as the Act's definition of "coastal zone" expressly excludes such lands.[30] Presumably, this would exclude national parks and wildlife refuges. The program may indirectly affect such land, however, through the Act's requirement that all federal agencies defer to approved state plans when conducting activities in the coastal zone.[31] The Act states that it does not diminish federal or state jurisdiction, responsibility, or rights in interstate compacts or in the field of planning, development, or control of water resources, submerged lands, or navigable water.[32] This provision might exclude many of the activities of the Corps of Engineers, Coast Guard, and other agencies whose functions relate to offshore water. Also saved from modification are the powers and prerogatives of the International Joint Commission of United States and Canada; the Permanent Engineering Board; and the United States' operating entities established pursuant to the Columbia River Basin

Treaty and the International Boundary and Water Commission between the United States and Mexico.[33]

5. Application of the National Environmental Policy Act (NEPA)[34]

Although the Coastal Zone Management Act does not mention the National Environmental Policy Act, some argument could be made that, insofar as coastal zone decisions are concerned, the Act modifies NEPA. By requiring activities of federal agencies in the coastal zone to conform with the state's coastal management program, the Act could shift environmental decision-making away from the NEPA procedures and substitute the planning processes of an approved CZM program. This result is justifiable in that the CZM program eventually could become the process through which a balance is struck between development and environmental protection.

It is unlikely that a court would hold NEPA, as it pertains to activities within the coastal zone, to be totally superseded by the CZMA. Such a decision would cause administrative havoc in determining which federal activities that significantly affect the environment are within the purview of coastal zone management and which are not. Moreover, a court would not lightly overturn NEPA's environmental policies by implication in a CZMA which does not expressly mention the Act.

Agency decisions that conform to approved CZM programs should have greater success in withstanding judicial review than ad hoc NEPA decisions. In the past, agency decisions on whether to "go" with proposed projects have been on an ad hoc basis because there was no background fabric of rational planning to guide them in one direction or another. If coastal zone management can provide a standard for federal agency decisions, then a measure of program implementations is guaranteed. Far better predictability of court action on proposed projects subject to NEPA review could also result.

Federal regulations require that an environmental impact statement be prepared prior to approval of a state's program.[35] In many respects, the program itself is a means of addressing the very issues raised by impact statements. Accordingly, the impact statement should closely parallel the program's goals.

6. Integration with the proposed National Land Use Planning Act[36]

Since the drafters of the CZMA anticipated that a National Land Use Planning Act (NLUP) would be adopted, they provided for the federal officials responsible for administering the Act to

approve the part of the CZM program which would affect inland areas.[37] This requirement suggests an eventual overlap of authority between the Departments of Commerce and the Interior. The CZMA and the proposed Land Use Planning Act do not appear to be contradictory. They do, however, approach similar problems with different terminology and different requirements for state action. In many states, administration of the two programs may be delegated to two separate agencies. The overlap of authority at the federal level is unfortunate. If possible, it should be avoided at the state level, by naming a single agency for coastal zone management and for land use planning.

7. Coordination of state governmental entities

The type and degree of coordination anticipated within the state governmental structure is not as precisely spelled out as the coordination expected from federal agencies. The Act requires that the Governor approve the plan and that a satisfactory implementation procedure be established.[38] Regulations strongly imply that the state must work out a system by which the various state agencies will conform to the program in their regulatory and spending activities.[39] In some states, the Governor's approval may imply that the state agencies will conform. In Texas, this does not follow because the Governor does not have direct control over the various boards and commissions which spend state funds and issue state permits to private and public developers.[40]

D. Substantive elements of CZM

The procedures which have been outlined are only background. The actual program is reduced to two steps: program development and program management. Separate federal funding is provided for each step.

During the development phase, a state must produce a management program that addresses the following six issues:

(1) An identification of the boundaries of the coastal zone;

(2) A definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters;

(3) An inventory and designation of areas of particular concern within the coastal zone;

(4) An identification of the means by which the state will control the permissible land and water uses which have a direct and significant impact on the coastal waters;

(5) Broad guidelines on priority of uses in particular areas, including specifically those of lowest priority; and

(6) A description of the organizational structure proposed to implement the management program, including responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.[41]

The six requirements do not completely state what an adequate CZM program should include. In addition, the Secretary of Commerce must, prior to granting final program approval, determine that:

(1) All relevant public and private parties had an opportunity to participate in program development.

(2) The state has coordinated its program with local, areawide, and interstate plans, and has established an effective mechanism for continuing consultation and coordination between the management agency and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone.

(3) The state has held public hearings.

(4) The Governor has approved the program.

(5) The Governor has designated a single agency to administer the federal grants.

(6) The state is organized to implement the programs.

(7) The state has the necessary authority for implementing the program, including power to administer land and water use regulations which control development so as to ensure compliance with the management program; to resolve conflicts among competing uses; and to acquire property by condemnation to achieve conformance with the program.[42]

Control techniques may include (a) state-established criteria and standards implemented by local governments, subject to state administrative review and enforcement;

(b) direct state land and water use planning and regulation; or (c) state administrative review of all private and public development plans, projects, or land and water use regulations, with power to approve or disapprove;[43]

(8) The management program provides for adequate consideration of the national interest involved in siting of facilities necessary to meet requirements which are other than local in nature. The enforcement system must include a method for assuring that local land and water use regulations do not unreasonably restrict or exclude land and water uses of regional benefit.[44]

(9) The management program provides procedures for designating specific areas for preservation or restoration for their conservation, recreational, ecological, or aesthetic values.[45]

E. Texas' response to the Coastal Zone Management Act

Texas has commenced coastal planning for a program that should eventually qualify for full federal funding. Even before the Act passed, Texas had passed legislation protecting the right of public access to Gulf beaches.[46] In 1972, Texas passed a Coastal Zone Management Act that authorized the General Land Office to submit an application to the federal government for funds to formulate a management program.[47] Related legislation restricts the rights of navigation districts to resell submerged lands to private parties, and protects sand dunes along certain Gulf Coast beaches.[48]

This paper does not address the initial stages of program formulation. Instead, it looks at selected portions of the management program itself, with particular attention to methods of implementing the control requirements. The selected areas of coastal management are (1) the requirement that the state regulate land and water uses within the coastal zone which have a direct and significant impact on coastal waters;[49] (2) designation of areas of particular concern;[50] (3) preservation of the national interest in the siting of key facilities;[51] and (4) protecting land and water uses of regional benefit.[52]

2. REGULATION OF LAND AND WATER USES WITHIN THE COASTAL ZONE WHICH HAVE A DIRECT AND SIGNIFICANT IMPACT ON THE COASTAL WATERS

A. The Formal Requirements

The state must define what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters. It must also identify means for controlling those uses.[53]

1. Limited to uses of greater than local significance

The federal Act does not require a CZM program to concern itself with all land use decisions in the designated coastal zone.[54] To the contrary, the program addresses only matters of greater than local significance.[55] Thus, locational decisions for ordinary residential and commercial uses may be determined in coastal cities according to the community norm; e.g., if conventional zoning techniques are desired, they may be used; if not, then the market may decide. Only those coastal uses that affect persons and interests beyond the immediate locale come within the CZMA. One such category covers uses which have a "direct and significant impact on the coastal waters".[56]

2. Effect of this requirement on designation of coastal zone boundaries

The "direct and significant impact" requirement relates to definition of the coastal zone boundaries, as well as to control of specific land and water uses within the coastal zone. The Act specifies that the zone may extend inland only far enough to control uses which have a direct and significant impact on the coastal waters.[57] The words of the Act would not require that the zone be deep enough to cover all such uses;[58] latest regulations, however, do require that the coastal zone boundaries be coextensible with the location of land and water uses that have the prescribed impact.[59]

Arguably, the Texas coastal zone should stretch hundreds of miles inland, following the rivers which feed the coastal waters. Major land uses far upstream may affect the coastal waters by depositing silt, changing the course of streams, impounding water, adding pollution, and depleting fresh water supplies which otherwise would have reached the

coastal waters. Texas has chosen not to designate such extensive coastal zone boundaries; instead it has identified a tentative coastal zone according to county boundaries which extend one to three counties deep.[60] If this tentative designation becomes permanent, Texas may have to justify a boundary designation based upon political lines instead of natural features.

B. "Direct and significant impact" in three ownership segments of the coastal zone: offshore, shoreline, and inland

The Texas coastal management zone encompasses three significantly different areas. The first area is the 10.35 mile strip of offshore submerged lands.[61] Texas has sold portions of the submerged lands to state-created port authorities and navigation districts. Regulatory responsibility is shared with various federal agencies, such as the Corps of Army Engineers and the Coast Guard. Every use in this area that changes the chemistry or physical configuration of the waters has a direct impact on coastal waters. Such uses include dredging, drilling operations, and construction of port and docking facilities. Whether the use is "significant" depends upon some measure of impact expressed either as a standard or determined through administrative process.

1. State and federal control of offshore lands

As owner of submerged lands, the State of Texas may regulate private users so long as the regulations are reasonable and uniformly applied. Federal agencies may not be regulated directly. Many federal agencies are, however, required to defer to the CZM program to the maximum extent feasible.[62] The state may legislatively regulate the activities of the port authorities and navigation districts so long as the rights of bondholders are not impaired.[63]

The state has leased some submerged lands to oil companies for oil and gas exploration purposes.[64] These leases create private property rights in the oil companies and reduce the power of the state to control the submerged lands as owner. The state may, however, impose reasonable regulations upon oil company leases to insure that the essential public interests in coastal waters are protected.[65]

Texas has patented some submerged lands to private owners. The coastal agency may have to treat these lands as if they were subject to full constitutional protection.

2. An uncertain shoreline

The second significant area is the strip of land at water contact point that is subject to periodic tidal inundation. The state patented a great deal of this land to private owners who will thus claim some lands which are covered at high tide and exposed at low tide. Private owners may also claim title to submerged lands as well. The confusion surrounding claims in this coastal margin will require extensive litigation to settle ownership. Accordingly, the state must plan to use its police power to regulate private landowners in may submerged and partially submerged portions of the coast.

Large stretches of Texas' Gulf Coast beaches have had long and continued entry and use by the public. Even though the beaches may once have been granted to private owners by the state, long public use creates an enforcible public right. The Open Beaches Law, passed in 1962, formalizes the public claim as a presumptive easement and authorizes the Attorney General and other officials to bring suit to preserve the right of public entry and use.[66] Any public or private use that changes the physical configuration or use of these beaches is likely to qualify as a use that has a direct impact on the coastal waters. "Significance" of the impact may be determined through development of a predetermined standard or through administrative process.

The water contact area includes coastal marshlands as well as sand beaches.[67] The presumptive public easement does not cover marshlands.[68] Private parties will claim ownership of these marshlands and the state must rely upon its police power to regulate private owners to control their use. Marshlands form a vital link in the food cycle for marine life. Any use that alters them or changes their relationship to the marine life cycle has a direct impact on the coastal waters. "Significance" must be determined separately, as previously mentioned.

3. Public and private ownership of inland areas

The third significant coastal area lies inland of high tide contact. This contact line is hard to draw. One problem is that the legal definition of "high tide" is uncertain. Another problem is that the actual water-land contact point constantly shifts because of shoreline erosion, subsidence, and other phenomena. Important questions of public and private ownership, wherever it may be located, is owned by private claimants. Some land, however, is owned by city and county governments and other state entities. The federal government owns some lands. Although virtually every substantial use of wetlands and offshore waters automatically fits the Act's definition, inland uses must be much more sharply defined to identify those that have a direct and significant impact. Some inland uses

have a direct and significant impact on coastal waters; others do not. For example, it does not greatly impact coastal waters that a single farmhouse is built or torn down a few miles inland. It may, however, matter a great deal that a new subdivision in a coastal county increases the volume and velocity of fresh water coming into coastal waters, and increases the sewage load in the local watershed. The impact is "direct" because it changes the chemical content of the water. The magnitude of impact is also likely to be sufficiently great that it will be called "significant".

C. Defining boundaries of the coastal zone

The inland reach of coastal zone boundaries must include all uses which directly and significantly affect coastal waters. The coastal zone boundary need not, however, be coextensive for all regulated uses. Thus, the boundary may extend a hundred miles inland to regulate development in an aquifer recharge area that feeds water into the Gulf. Regulation in that area could be limited to that specific purpose, however, and need not cover all land uses which might be regulated in the immediate coastal area.

D. Legal and constitutional constraints on regulation within the designated coastal zone

The state has no power to regulate federally owned lands, and such lands are exempted from the Act.[69] Although the state may legislatively control lands owned by cities, counties, and other governmental units, no existing state agency is authorized to do so. Private landowners are not significantly regulated in unincorporated areas.

State action that imposes too harsh a burden upon a private landowner or that denies all beneficial use of private property may be declared by a court to be a "taking" that violates the rights protected by state and federal constitutions.[70] The state is entitled, however, to regulate private property uses to protect the health, safety, and welfare of the community.[71] The police power has been used to justify zoning, nuisance prevention, and other regulations which prevent land uses which cause community harm.[72]

One writer asserts that so long as the state acts as a mediator between the landowner and interests affected by a particular land use, the regulation is constitutional and no compensation is due for whatever losses result from the regulation.[73] Recent cases have upheld the right of a state to prevent landowners from building in flood-prone areas, and from altering a natural shoreline.[74] These cases indicate some judicial acceptance of a broad definition of the police power.

Although the legal bases for regulation may be complex, a state can put together a constitutionally valid system for regulating all private and state land and water uses that have a direct and significant impact on coastal waters without compensating landowners for losses suffered from the regulations. The state in such case acts either as owner, as political superior over its own subdivisions (cities, counties, districts), or as mediator of claims between landowners and the public at large. A close look is now in order to determine what specific types of uses must be included in the essential regulation package.

E. Defining "direct and significant impact on the coastal waters"

1. Federal requirements

Tentative federal regulations indicate that the state should list those land and water uses

(a) which have a direct and significant impact upon the coastal waters,

(b) which the state, following appropriate analysis, is prepared to accept in its coastal zone, and

(c) over which the state will exercise control through its management program.[75]

2. Operational definition required

The state must define the phrase "direct and significant impact" in operational terms that can be applied uniformly and consistently[76] and must, therefore, develop a classification system for relating various uses to their impacts on coastal waters. Regulations require that all existing, projected, and potential uses must be analyzed as to intensity of impact, and a determination made whether they meet the definition of "direct and significant impact".[77] All uses that affect the chemical content or physical configuration of coastal waters directly impact coastal waters. The impact may or may not, however, be "significant". For example, a use that killed one fish might not be deemed "significant". On the other hand, a use that killed one million fish probably would be deemed "significant". The definition of "direct" can be stated scientifically. "Significance" cannot. There are two ways to define significance. One is by an agreed standard, e.g., any use that increases water pollution by a certain pollutant percentage is significant. Another way is through administrative process, e.g., the coastal agency holds hearings or applies its own discretionary standard to determine whether the magnitude of impact is significant.

The uses to be screened for permissibility must meet both requirements; that is, they must be both direct and significant in their impact upon coastal waters.

The impact to be monitored is the impact of land uses upon the waters - not the impact of waters upon the land. Thus, shoreland development for residential purposes meets the definition because its runoff changes the chemistry or physical boundaries of the waters--not because the water may destroy the development.

3. Determining "permissible uses:" Zoning versus performance standards

After a satisfactory definition has been formulated, the state must form a basis for deciding which of these uses are permissible, and which are not.[78] A state might respond in either of two ways. One way is to list classifications of land use, with permissible and nonpermissible uses keyed to a zoning map. Another way is to set performance standards for various land uses and locations which, if followed, will satisfy the definition for permissible use.

Listing permissible and nonpermissible uses amounts to conventional land use zoning. Setting authoritative management guidelines may resemble zoning, but it does not require the classification and exclusion of disfavored uses from particular areas. A system based upon authoritative management guidelines keyed to water capability would meet the Act's requirements, and would be more acceptable to Texas' political climate than a system based upon conventional zoning.

This portion of the Act does not require that the CZM program conserve values which are purely cultural; e.g., it does not require that a subdividion plat approval process insure availability of schools, open space, and utilities unless the lack thereof would have a direct and significant impact on the coastal waters.[79] It does not require a city or county to engage in conventional land use zoning or to regulate development to insure that consumers are protected from faulting soils. It does not require preservation of wildlife other than that related to coastal waters. It does not require that historic buildings be identified or saved. It only requires that land uses impacting the coastal waters be identified, that the coastal zone be drawn to include all such uses, and that regulations be applied to protect the coastal waters from the adverse effects of such use.[80]

4. A logical point: A land capability survey

The state must develop a method for assuring that decisions are made in an objective manner, based upon evaluation

of the best available information concerning land and water capability and suitability. This must include at a minimum:

(a) an inventory of all significant natural and man-made coastal resources, including beaches, dunes, wetlands, uplands, barrier islands, waters, bays, estuaries, harbors, and their associated facilities,

(b) an analysis of the capabilities of each resource for supporting various types of uses and the suitability for use when considered in conjunction with nearby resources, and

(c) an analysis of the impact of such resource utilization upon the coastal waters.

Permissible uses are those that can be reasonably and safely supported by coastal waters, that are compatible with surrounding resource utilization, and that will have a tolerable impact upon the environment. States may designate as impermissible those uses that exceed carrying capacity, adversely affect surrounding resources, or have adverse environmental impact. The state must spell out the reasons for banning impermissible uses from the coastal zone or from portions of it.

5. Implications of the Chambers County study: A four-step process

The applicability of the land capability assessment system developed for Chambers County is apparent. The system produces the information needed for an inventory of all significant natural and man-made coastal resources. These features are indexed and designated on a map of the county. They are stored in a computer and are available for convenient print-out. Most important for CZM purposes, the analysis measures the capability of each unit to support various types of uses, and measures the impact of such uses upon the environment. This gathering of scientific fact provides the necessary base for establishing a definition of permissible and nonpermissible uses based upon impact on coastal waters, and for formulating authoritative management guidelines to protect coastal waters from adverse impacts.

Information is thus available for defining land uses which have a direct impact on coastal waters in Chambers County. A complete statement can be made for other areas only after a similar study of land within the coastal zone identifies the natural processes peculiar to those areas. Nevertheless, some analogies may be drawn from the Chambers County study which will apply throughout the Houston-Galveston area and to the entire coastal program.

The Chambers County study implies that there are four steps involved in satisfying this provision of the Coastal Zone Management Act. They are:

(1) The program must begin with a factual investigation of the coastal lands and waters. This may be quite expensive if the Chambers County study procedures are adopted for the entire coastal zone. Perhaps a less expensive system could be developed using the key factors which the Chambers County study identified as most determinative of land use capability.

(2) The information produced by the capability study may be used as a basis for formulating management guidelines for land development. In some cases, the guidelines may negate any substantial change in natural environmental characteristics. In many situations, however, guidelines may be formulated that can spell out what types of development may occur and what precautions must be taken to protect the waters. This display of information and statement of guidelines allows developers to predict what they may and what they may not do with a certain tract of land. The system would also minimize governmental discretion to refuse approval of qualifying development proposals. This would be particularly helpful for small developers who cannot afford the front-end cost of preparing plans, impact statements, and other documents for projects which may not be approved. On the other hand, the management guidelines should always allow planned unit developments which meet or exceed the performance standards established for environmental protection. This will benefit large developers who want to adopt new techniques to a particular situation. Such developments must be reviewed and approved on an individual basis.

(3) An enforcement system should be developed to ensure that private and public developers obey the management guidelines formulated to prevent damage to the coast's natural processes. The federal Act requires that the state-level agency either establish guidelines for local governments to enforce, with an appeals system, or that direct state regulations be applied.[81]

Following the findings of the environmental analysis team, this paper recommends that state guidelines for permissible uses be stated in terms of management guidelines rather than according to the type of use to which land may be put, e.g., residential, commercial or industrial. Use controls are not necessary

to preserve essential processes, and they introduce a type of land use control which may be politically unacceptable at this time.

(4) For uses that cannot have guidelines for permissibility precisely stated, an administrative procedure must be established. The procedure would involve (a) an identification of uses that have direct and significant impact on coastal waters; (b) a hearing to allow all interested participants to present their positions favoring the use; and (c) an administrative decision whether the use should be allowed.

3. AREAS OF PARTICULAR CONCERN

A. Comparison of the American Law Institute's (A.L.I.) Model Land Development Code and National Land Use Planning Act with the CZM requirements for areas of particular concern.

1. The requirement that such areas be designated

The state's CZM program must include an inventory and designation of "areas of particular concern" within the coastal zone, and establish guidelines on priority of uses for such areas.[82]

The term "areas of particular concern" is similar to concepts that appear in the American Law Institute's proposed Model Land Development Code, and current drafts of the National Land Use Planning Act.[83] Although the coastal Act's concept appears to be different, it is worthwhile to consider the Model Code and the Land Use Planning Act as background.

2. The A.L.I.'s Model Land Development Code (Proposed Official Draft, 1974)

The Model Code would classify situations where land use and development may have significant areawide impact as "areas of critical state concern". A reason for the state to pay attention to these areas is that local governments may not have the capability nor inclination to supervise development in a way that protects areawide interests. The Code places in the "areawide impact" category (1) land around major public improvements, (2) areas with particular historical, natural, or environmental significance, (3) new community sites, and (4) areas not regulated by local governments.[84] A state Land Planning Agency established by the Code would be responsible for designating such areas and establishing development principles for them.[85] The state agency would regulate development in critical areas directly unless a local government submitted a regulatory plan that meets state criteria.[86] If a local government submits a satisfactory program for critical areas within its jurisdiction, then the state agency delegates regulatory responsibility to that government, subject to continuing state administrative review.[87]

The Code presents a cogent policy for designated areas. The definition of critical areas is precise; the purpose of regulation is spelled out; and the roles and responsibilities of state and local governments are spelled out.

3. The National Land Use Planning Act

The basic policy of providing state supervision over problem areas is carried forward into current drafts of the Land Use Planning Act. The Act would require state responsibility for land uses in areas which "may be impacted by key facilities", and in "areas of critical environmental concern", as well as over large-scale developments.[88]

Although the terminology shifts from Model Code to Planning Act, the policies remain the same. Under the Land Use Planning Act, states must provide assurance that such areas will be designated and controls applied, either by the state land use planning agency or by local governments operating under state supervision.[89]

4. The Coastal Zone Management Act

a. The Statutory Requirements

The CZMA uses the term "areas of particular concern" to designate geographic areas which need special attention.[90] Unfortunately, the Act does not spell out the criteria and purposes for such designation with the clarity of the Model Code and Land Use Planning Act.

The only definite statements in the CZMA are contained in Sec. 305, which provides (1) that the management program shall include an inventory and designation of areas of particular concern within the coastal zone, and (2) that the management program shall include broad guidelines on priority of uses in particular areas, including specifically those of lowest priority.[91]

Undoubtedly, the term "particular areas" refers to "areas of particular concern". Taken alone, these sections require that the state do no more than identify the problem areas and decide which types of uses are best suited and least suited for them. Obviously, more was intended for the designated areas.

b. The Regulations

Federal regulations provide a key to what the Department of Commerce expects to be done about areas of particular concern. Regulation § 923.14 states that the guidelines for priority of uses in particular areas "should be seen as the core substance of the management program."[92] Obviously, the state must go well beyond the Act's sketchy requirements for designation of areas and listing of uses according to suitability. In 15 C.F.R. 920.15, three purposes are spelled out for establishing priority guidelines in areas of particular concern:

(a) to provide the basis for regulating land and water uses in the coastal zone;

(b) to provide the state, local governments, areawide regional agencies, and citizens with a common reference point for resolving conflicts; and

(c) to articulate the state's interest in the preservation, conservation, and orderly development of specific areas in its coastal zone.[93]

c. A question: Must the state ensure exact compliance with the use priorities for particular areas?

The stated purposes fall short of requiring the type regulation called for in the Model Code for areas of "Critical State Concern" and in the Land Use Policy Act for designated areas. Conceivably, however, the Department of Commerce could require that the state provide a system for enforcing the scale of use priorities in designated areas of particular concern as a condition of program approval.

The relationship is unclear between the Sec. (b)(2) and (b)(4) requirements for defining and controlling permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters,[94] and the (b)(3) and (b)(5) requirements for designating areas of particular concern and establishing use priorities.[95] Many areas of particular concern will be so closely related to coastal waters that they will be regulated under Sec. 305(b)(5).[96] Coastal marshlands provide an example. A determination of use priorities in many productive marshland areas will place industrial development at the bottom of the list. The state's control system can be expected to prohibit or to regulate strictly such uses as a part of its system for controlling uses having direct and significant impact on coastal waters. The overlap is not complete, however, because some "areas of particular concern" may relate to uses which do not have a direct and significant impact on the coastal waters.

Federal regulations list the following representative factors to assist in designating areas of particular concern:

(1) Areas of unique, scarce, fragile, or vulnerable natural habitat, physical feature, historical significance, cultural value, and scenic importance;

(2) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and the various

trophic levels in the food web critical to their well-being;

(3) Areas of substantial recreational value and/or opportunity;

(4) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(5) Areas of unique geologic or topographical significance to industrial or commercial development;[97]

(6) Areas of urban concentration where shoreline utilization and water uses highly are competitive;

(7) Areas of significant hazard if developed, due to storms, slides, floods, erosion, settlement, etc.; and

(8) Areas needed to protect, maintain, or replenish coastal lands or resources, such areas including coastal floodplains, aquifer recharge areas, sand dunes, coral and other reefs, beaches, offshore sand deposits, and mangrove stands.[98]

At least half of these example areas may apply to lands and uses within the designated coastal zone that do not have a direct and significant impact on the coastal waters, e.g., areas listed in categories (1), (2), (3), (5) and (7) may be located far enough inland that the coastal waters are unaffected by destructive development. If they are located within the designated coastal zone, they should be identified as areas of particular concern. Such designation will not, however, bring them within the control requirements for land and water uses which have a direct and significant impact on the coastal waters. Although guidelines as to priorities of use must be established for particular areas, local governments and private owners may ignore the priorities. The question remains whether the Secretary will approve a state plan that designates inland areas of particular concern, establishes priorities as to use and then does not enforce these priorities.

d. An answer: coastal zone management purposes do not require that the state ensure compliance with the use priorities for particular areas

The Secretary should not disapprove a state plan on the grounds that it does not ensure precise observance of the use priorities in inland areas of particular concern. There are several

reasons for this suggestion. First, a state should be encouraged to include as much land within its coastal zone as reasonably relates to the coastal waters. If too much regulation is required throughout the zone, then states may simply restrict their definition of coastal zone to the least allowable area. Second, the Act itself does not require specific regulation of areas of particular concern.[99] A control system is required only for those uses which directly impact coastal waters. There is sense in this limitation, because the Act is, after all, a coastal zone act--not a national land use planning act. Third, identifying inland areas of particular concern will serve the purposes that are postulated in the regulations, i.e., providing the basis for regulating land and water uses, providing a common reference point for resolving conflicts, and articulating the state's interest in preservation, conservation, and orderly development of specific areas.[100]

A final reason is that designation of areas of particular concern is connected with other provisions of the Act that do not require police power regulation of such areas. Sec. 306 (c)(9) requires that the management program provide procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or aesthetic values."[101] 15 C.F.R. 923.13 states that the inventory and designation of geographical areas of particular concern will be of assistance in meeting this requirement.[102]

In some cases, the state may accomplish its preservation and conservation goals through police power; in other cases, the state may choose to use the power of eminent domain. The CZMA requires that the state system provide authority to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.[103] This power would presumably be exercised in specific areas where preservation cannot be accomplished without compensation to the owner.

In sum, designation of particular areas serves several purposes. One purpose is to focus attention upon those areas which relate directly to coastal waters as part of the regulatory system. Under Sec. 305 (b)(2) of the Act regulations must issue for these areas of particular concern.[104] Another purpose is to identify those areas of particular concern within the coastal area which do not directly affect coastal waters, but which need to be inventoried and classified in order that all interested governmental agencies and private developers may give them proper attention.[105] These purposes do not require that the state enforce all use priorities established for particular areas. Nevertheless the Secretary deems areas of particular concern and the assignment of priority of

uses to be the core of the CZM program, and a detailed consideration of their nature is in order.

e. Use priorities in particular areas that must be enforced and those that may merely be encouraged

Although the entire CZM program emphasizes that appropriate provisions must be made for development interests as well as for preservation interests, the Act clearly requires that the state place a high priority upon saving essential life-cycle processes.[106] Accordingly, the state should designate and regulate coastal wetlands and other essential marine areas.[107] Similarly, the state should designate as particular areas and regulate flood-prone areas, which by definition include coastal wetlands. Another natural process that must be preserved through regulation is the aquifer recharge system. The clearest message in the coastal zone act and its legislative history is that the federal government will not long allow states to permit these natural processes to be destroyed by unregulated development.[108]

Priorities that are not as essential as those just described must compete in a game of balancing costs and benefits. Some areas must be designated for social values, such as recreation, aesthetics, and preservation of wildlife that are not related to the marine life-cycle.[109] Other areas may be designated for industrial uses that will destroy many of the natural values. The management process should involve a rational identification of areas that are best suited to particular uses, according to natural features and current use dedication.

Apart from the social value just mentioned, the Act does not require the coastal management authority to concern itself with the intricacies of urban social claims. For example, the coastal authority need not worry whether a particular neighborhood does or does not have good schools, a public library, an active public housing program, or other people-oriented activities. It does matter to the coastal authority, however, whether residential subdivisions are developed on lands that adversely affect coastal waters.[110] Accordingly, the CZM program needs to have enough contact with private land development activity that it may prevent or regulate development in areas subject to slides, floods, erosion, settlement, bad soils and the like which are intimately interrelated with the coastal waters, i.e., which have a significant and direct impact on the coastal waters.

The physical orientation of the CZMA is consistent with the coastal agency's identifying areas of particular concern that do not significantly and directly impact the coastal waters. The Act does not require that the CZM agency control uses in such areas, but there is ample invitation for it to do so.[111]

f. Preservation and conservation of specific areas

The Act requires that the CZM program make provision for designating specific areas for preservation or restoration of their conservation, recreational, ecological, or aesthetic values. This may not always mean that such areas must be devoted to a single use, e.g., in some cases preservation may be consistent with some private and public development. If so, then regulations should be established to ensure that private and public development does not submerge the preservation and conservation goals. If regulations cannot accomplish the goal without "taking" private property, then a process should be developed for condemning development rights, fee simple, and other appropriate interests in land and water rights.[112] The state's resources that are available for public purchase should be channeled into these areas in preference to other coastal expenditures.

g. Specific area classification and treatment: legal power

How are specific areas to be classfied under the federal requirements for preservation of areas of particular concern?

(1) Conservation areas

The conservation category would include coastal wetlands and sand dunes along the coast, and aquifer recharge and subsidence areas farther inland. Lands with bad soils could be included in the conservation category to prevent water pollution caused by septic tank seepage. The state's police power is sufficient to take care of these problems without compensation to private landowners.[113] Coastal wetlands and sand dunes carry a high priority for preservation and a low value for private development. Aquifer recharge and subsidence areas can generally support multiple uses, so long as the inherent physical limitations of the development area are respected.

(2) Recreational areas

Recreational areas clearly include the state's sand beaches and related grounds. Beach use may be preserved without compensation under the state's Open Beaches Law.[114] If related lands are sought for public entry, compensation must be paid. If related lands are regulated to ensure orderly development by zoning, then no compensation need be paid. Public use of beach areas is a high-priority item, and multiple uses may be inconsistent with the preservation goal. Orderly development of nearby lands may be consistent with the goal, however, and even contribute to it.

(3) Environmentally sensitive areas

Sensitive areas are often preserved incidentally through regulation directed toward achieving other goals. For example, states may use their police power to regulate or prevent development in floodplains in order to minimize loss to property and human life. This regulation has the incidental effect of maintaining wildlife corridors along the waterways and preserving the other natural processes incident thereto. Coastal wetlands are by definition situated in floodplains, and a carefully drafted wetland preservation act could prohibit destructive development without requiring compensation to the owner. Some multiple uses could be allowed, e.g., low-density housing on stilts, with sewage piped to treatment plants inland. If coastal wetlands are preserved, then a great deal of wildlife is preserved incidentally. The state may protect marine beds and nurseries directly without running into the "taking" problem. They generally lie within waters which already have substantial public claim or public regulation.

(4) Aesthetic interests

The state may often preserve aesthetic interests through its police power, without compensation. For example, preserving open beaches maintains their aesthetic values. Floodplain regulation could preserve large quantities of privately owned open space along the Gulf Coast at or near its present semi-rural condition. Current laws prevent destruction of sand dunes on private lands, thereby maintaining their visual values.[115] Local communities may use zoning laws to preserve historical areas without compensating the owners of properties in the zoning district.[116] Zoning could be used to ensure that private uses are consistent with the overall character of public recreational areas. Some aesthetic interests probably cannot be preserved without compensation. For example, if the sole reason to preserve a site is for public enjoyment, the state may not prevent destruction of a valuable historical site without payment unless the owner agrees.[117] Although the police power may sometimes be legally sufficient to prevent private owners from destroying the visual attributes of an area, the public agency may choose to compensate the landowner in order that the burden of loss may fall upon the group which realizes the actual benefit of preservation.

h. Designation of areas of particular concern for industrial and other developmental uses

The CZMA requires preservation and conservation, but it also requires a balancing between these interests and the continued development of coastal areas.[118] Some areas of particular concern will be designated for high-priority industrial uses. In these areas, recreational and preservation interests will be assigned a lower priority. This designation should assist decision-makers

on a number of fronts. For example, if an area is to be served by a federally financed facility and if an environmental impact statement must be prepared and evaluated, the final agency decision will be heavily influenced by a formal determination that the geographical area in question has been given over to industrial uses. Concern about destruction of a rare wildlife species in industrial areas may not be as critical as in areas with a high priority for conservation and preservation. Similarly, decisions may be made concerning water supply, pollution control, transportation, and power supply that reflect the designation of the specific area for industrial use.

Designation of an area for industrial uses should influence the various state agencies that make investment decisions. For example, the state should spend money for transportation into and out of designated industrial areas instead of buying large parks therein. The state should locate superports and related facilities near designated industrial areas and not offshore from a recreational beach.

Some stretches of waterfront may be designated with a high priority for recreational cottages and private vacation facilities. Such designations would help recreational developers who must seek permits from various state and federal agencies. The state may have a concomitant obligation to ensure that designation of such areas does not threaten coastal processes that are essential to the marine life cycle, and does not threaten public access to recreational lands.[119]

B. Utility of a land capability survey in designating areas of particular concern

The Chambers County study identified a number of environmental situations which merited the designation of "areas of critical environmental concern."[120] Although this category is narrower than the term "areas of particular concern", the critical areas should certainly be designated as such in a CZM program. In addition to identifying critical areas, the study provides information on which use priority assignments may be based.[121]

A land use capability study can identify coastal areas where industrial and other intensive land uses can be accommodated without significant environmental damage. Such a study is, therefore, essential before designations of industrial areas are made in the coastal zone.

4. NATIONAL INTEREST IN THE SITING OF FACILITIES

A. Definitions of the types of facilities to be favored

A coastal management program must consider the national interest as it is affected by the siting of facilities necessary to meet other than local requirements.

CZMA does not spell out the criteria for "national interest" nor the standards for substantive decisions concerning the national interest. Federal regulations[122] indicate that the requirement is primarily procedural, in that the Secretary of Commerce must determine that the state has a process for considering the national interest when dealing with the siting of such facilities.[123] What facilities are these? The regulations provide a list, which includes energy production and transmission facilities, recreational facilities, transportation facilities, agricultural and forest lands facilities, military and defense facilities, and historic, cultural, aesthetic and conservation values.[124]

B. Procedures required for compliance

Tentative regulations are fairly specific as to the steps involved in meeting this requirement. They are:

(1) An inventory of all coastal resources in the coastal zone.

(2) An analysis for the capability and suitability of each resource for supporting each of the enumerated facilities. The Chambers County study provides adequate information to fulfill this requirement.

(3) Identification of the federal agencies' perception of how the resources ought to be used in siting the listed facilities.125 Federal agencies must respond to this requirement, one purpose of which is to encourage discussions between the state and federal agencies regarding the suitability of state lands and the needs of the federal agencies. The Act's primary concern is that such uses not be excluded from the coastal area except for legitimate reasons, e.g., carrying capacity or environmental impact.[126]

(4) An analysis of how the state would allocate its coastal resources to state, regional, and national needs with no

constraints imposed by out-of-state causes. In a state such as Texas, which generally chooses to let the market set the pattern of land development, this may be a difficult task. Texas does not have a strict zoning system that causes difficulty in locating facilities of national interest.[127] Neither, however, does Texas have information about land carrying capacity to help the federal agencies make rational decisions concerning location. The coastal agency should make an estimate of suitability and need to determine federal requirements in the coastal zone and how suitable the Texas coastal lands are for satisfying these needs.

(5) Consultation, cooperation, and coordination with adjacent and nearby states. Texas, Louisiana, and the other Gulf Coast States may need to establish criteria for siting of facilities of national significance. Southern states do not want to exclude defense installations, power plants, and other national facilities. It is more likely that they will battle to get federal installations that bring economic gains. Indeed, the strongest need is for southern states to protect the coastal environment from the excesses of federal installations, and to work out a rational sharing of federal investments.

(6) A synthesis of how the state would assign various coastal resources meeting national needs based upon how it would allocate them after consultation with nearby states. Again, it is difficult for a growth-oriented state such as Texas to respond with anything other than "send all the federal and private investments that we can get." If this is a legitimate representation of the state's attitude, then Texas should establish a program to show the federal agencies that they can be assured of successful NEPA review of their proposed projects. The key to this result may be a rational coastal zone management program that identifies area growth goals, land carrying capacity, and a system for protecting the environment against the excesses of both public and private investment.

C. A need for a rational siting process to allow continued federal and private investments

The need to open up coastal zones for installations of national significance probably applies far more to the heavily impacted northern areas than to the Gulf Coast states. Northern concern about the environment may be a new code word for excluding undesirable uses. The South, however, continues to seek new growth, both public and private. In the Gulf Coast, local governments are likely to provide a receptive atmosphere for heavy investment and not want to impose land use controls that might deter such investment. Land use controls may be essential, however, if the Gulf States are to continue to attract public and private development.

Under the Clean Air Act of 1970, EPA will begin to look at growth areas to determine whether they have the potential for exceeding national levels of pollution; if they do, then stringent land use controls may be applied to those areas.[128] Only by establishing land use controls keyed to pollution abatement may an area continue to absorb growth.

NEPA requirements make land use planning and controls important for federal investment. No federal agency wants to make plans for local investment and then have a court declare that the proposed activity is not in accordance with the environmental protection policies of NEPA. Having a rational local control system would facilitate federal decisions under NEPA, and increase the likelihood of favorable court review. If the state establishes a systematic planning process and identifies those portions of its coastal area which can accommodate key facilities without damage, then the state may attract federal agency investment far more effectively than if it does not.

Several changes of mental set are in order. First, Texas and the growth-minded southern states need to reverse their assumption that planning and land use controls deter growth. Instead, planning and regulation may soon be conditions precedent to any significant growth. Second, the federal agencies administering the CZM program need to recognize that exclusion of key facilities is not a critical issue in the Gulf Coast. Instead, the question is whether the state has accurately assessed its own carrying capacity to accommodate significant federal investments along the coast. Both of these concerns justify an early response by Texas and other growth-minded states to the federal Act's requirements.

D. Utility of land capability study in promoting state policy in siting of key facilities

The proposed regulations specifically require an inventory of coastal resources and an analysis of their capability and suitability for supporting the enumerated facilities. These requirements cannot be satisfied by abstract planning systems that do not address land carrying capacity. The Chambers County study amassed data sufficient to support a locational decision for key facilities and to negate locational decisions.[129] No other county along the Texas coast has been similarly surveyed for this purpose. Without such a study, the key facility requirements of the federal Act cannot be met.

5. LAND AND WATER USES OF REGIONAL BENEFIT

A. Exclusions by local governments to be regulated

The enforcement system must include a method for assuring that local regulations do not unreasonably restrict or exclude land and water uses of regional benefit. This is similar to the requirement that the national interest be considered in the siting of facilities necessary to meet requirements which are other than local in nature.

The CZMA strikes a balance between development and conservation. On the development side, the Act recognizes that local governments have sometimes zoned essential uses out of entire regions.[130] For example, public utility companies on the eastern seaboard have difficulty finding sites for power-generating plants and refineries. The CZMA requires that the state prevent unreasonable exclusion of essential uses.

B. Broad social concerns or narrow coastal issues?

The A.L.I.'s Model Land Development Code and current drafts of the National Land Use Planning Act would also ensure that local governments not unreasonably exclude uses of regional benefit.[131] Those proposals, however, cover uses which are not peculiar to the coast, e.g., public housing and eleemosynary institutions. One might ponder whether the CZMA's definition of "regional benefit" includes these uses as well as those closely related to the coastal waters.

Such a broad definition seems unfounded. The CZMA's definition of "land uses" refers to "shoreland uses."[132] The entire thrust of the Act is toward protecting the coastal zone from destructive action that peculiarly relates to the land-water contact area. This indicates that the definition of "regional benefit" would include those industries that need access to the coast, and power plants and refineries to supply energy for coastal areas. It would certainly include the activities involved in exploiting coastal resources, such as oil and gas. There is no indication that the CZMA has the broad-based social concerns that are reflected in the National Land Use Planning Act, except when they have direct coastal zone connection. Thus, the Act addresses land and water uses of regional benefit that are directly related to the coastal area. It does not necessarily cover those uses that are only incidentally located on the coast.

A very few schools, housing projects, and eleemosynary institutions could be so related to coastal waters that they would come

within the Act's protection against exclusionary tactics. For example, a university for marine research might have a claim for coastal location if local zoning excluded it entirely from the coastal area. Such a result in Texas is so unlikely that it is hardly worth the cost of a system to prevent exclusion.

C. A nonproblem in Texas: without county zoning power, exclusionary tactics fail

As with facilities which are imbued with a national interest, Texas' situation differs from that which prompted the regional benefit provision in the Act. Texas counties do not have zoning power; hence, they are unable to exclude uses of regional benefit. Although Texas cities have zoning power, they have not exhibited great tendency to exclude significant public and private investments. Power companies may simply buy (or take by eminent domain) the land they need for generating stations and transmission lines without getting the permission of any local government. Power companies face federal review when they apply for permits from the Atomic Energy Commission or from the EPA.[133] The controls on location of such uses are federal and state--not local.[134]

For CZM purposes, this means two things. First, the federal reviewing authorities must recognize that Texas' CZM system does not need a system for overriding local governmental decisions. Second, the CZM itself may establish procedures for making siting decisions. Federal agencies that are involved in almost every significant siting decision should follow the policies of the CZM program. Thus, the CZM agency should review the siting of land uses of regional benefit to ensure that the carrying capacity of coastal lands is not exceeded, and to justify siting decisions for NEPA review purposes.

D. A need for a sham procedure?

Texas may have to establish some formal system for appeal from exclusionary decisions by Texas cities to satisfy the requirement that the program include "a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit."[135] It could be argued that the present Texas system meets this requirement, inasmuch as most of the coastal zone lies in unincorporated areas, and there is no system by which unreasonable local exclusion can be practiced. The abstract possibility that a Texas city might exclude a use of regional benefit may be sufficient to prevent approval of the Texas program if it does not have a system for overriding local zoning ordinances. However, the Texas program should be submitted to the Secretary of Commerce without such a provision.

It is more likely that recreational uses of regional benefit will be destroyed along the Texas coast than that public and private investments will be excluded. The pressure for industrial and

commercial development is such that beaches, forestlands, and open spaces along the coast are likely to be converted to these profitable uses. This issue is properly addressed, however, under that portion of the Act that requires a procedure for conserving particular areas--[136] not the portion dealing with exclusion of uses of regional benefit.

6. IMPLEMENTATION

A. Statutory Requirements

The CZM program must be implemented. Sec. 305 requires that the state define what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters, and identify the means of controlling those land and water uses.[137] The section also requires that the state describe the organizational structure for implementation, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies.[138] The state must designate a single agency to receive the grants for implementing the management program.[139]

Although implementation may involve a number of state governmental entities, the process must include the power to administer land and water use regulations, control development to ensure compliance with the management program, and resolve conflicts among competing uses.[140] Additionally, the state must authorize acquisition of fee and less than fee interests in private property through condemnation when necessary to achieve conformance with the program.[141]

Three specific methods of implementation are allowed. They are:

(1) The state may establish criteria and standards; local governments may implement these criteria and standards; the state must have a procedure for administrative review and enforcement of compliance.

(2) The state may administer state land and water use planning and regulations directly.

(3) The state may establish a management program and then review all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer; the state will have power to approve or disapprove such proposals after public notice and an opportunity for hearings.[142]

The program must also provide methods of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude uses of regional benefit.[143]

B. Automatic Implementation

1. State-owned submerged lands

It is natural to think of implementation in terms of formal land use controls. Although such controls may be required, they may not be as important in determining gross development patterns as public decisions concerning management of state-owned resources and expenditures of state funds. Texas owns submerged lands which extend 10.25 miles into the Gulf. Ownership carries the power to regulate development, so long as the regulations do not violate federal or international law or the constitutional rights of persons making use claims. The General Land Office is the state agency with general supervisory power over these submerged lands; it is also the present CZM agency.[144] The Land Office should receive full legislative authority to formulate and apply management guidelines for development and use of submerged lands. Some submerged lands have been sold to navigation districts and port authorities. The Land Office should have power to regulate the activities of these entities to ensure that coastal management guidelines are observed.

Federal agencies, such as the Corps of Engineers and Coast Guard, also have authority to regulate land and water uses seaward of the high tide line. A cooperative program that brings these agencies, particularly the Corps of Engineers, into the management process, would virtually assure compliance with the management decisions for activities in the Gulf.

2. Open beaches

A great deal of beach area along the Gulf Coast is protected by the state's Open Beaches Law and the regulations preventing destruction of sand dunes.[145] An aggressive state program for enforcing these laws, coupled with improved maintenance of the beach areas and better vehicular control, would conserve and preserve recreational areas. Little increase in substantive regulations over private owners is required.

3. Planning and expenditures by state agencies

The parks programs of the Texas Highway Department and the Parks and Wildlife Department should be coordinated with coastal zone planning, and their planning decisions should be incorporated into the coastal program. The Highway Department's planning of highways may help implement the coastal management program, e.g., if the Highway Department provides easy access to it, a coastal area more likely to develop than if the highways are routed elsewhere. The Texas Water Development Board may help implement the CZM program by providing surface water supplies in areas designated as acceptable growth areas and avoiding activity in areas designated for preservation. Similarly, the Texas Air Control

Board and the Texas Water Quality Board could tailor their air and water pollution control decisions to encourage or discourage growth in specific areas according to the growth goals of the CZM program.

4. Federal air and water pollution control laws

The federal air and water pollution control regulations are automatically included in the coastal management program.[146] If the coastal zone management program is consistent with nondegradation zone designations and basin-wide water planning, then the combined strategies of the coastal zone program and the pollution control systems will stimulate conforming growth and discourage nonconforming growth. For example, designation of an area as nondegradation Growth Zone III allows substantial industrialization; designation of an area as nondegradation zone I virtually rules out growth of heavy industry. If the EPA requires basin-wide planning as a condition of approval of sewer treatment facility grants and if the water pollution control laws are incorporated into coastal zone planning, only those areas which can accommodate additional effluent discharge will receive the grants. Such areas will grow; others will not.

5. Federal expenditures and permits

The very existence of a CZM program will affect most federal investment in coastal facilities and programs because development agencies and permitting agencies must defer to the approved program. Under NEPA, the federal agency must prepare an environmental impact statement describing any proposed activity which significantly affects the natural environment.[147] Decisions are made only after comments by affected state and federal agencies and interested private participants.[148] The initiating agency must consider adverse effects in deciding whether to proceed. A decision to proceed in defiance of a state's CZM program probably would not withstand judicial review under NEPA.

Federal expenditures and federal actions account for a great deal of the development-generating activities along the coast. Federal agency compliance is virtually assured by the terms of the Act and by the NEPA requirements. If federal highway construction, dredging and water improvement activities, federally assisted local projects, and other activities requiring federal permits (power plants, air and water polluting sources, etc.) must conform to the coastal zone program, then the program becomes largely self-executing.

6. Local governments

The coastal zone agency needs to monitor local government activity to ensure compliance with the CZM program. Any attempt by a state agency such as the General Land Office to dictate local government expenditures would be politically unacceptable. If the other state agencies conform strictly to the management program,

however, the activities of local governments will be positively influenced. For example, the air and water pollution control agencies regulate pollution by cities as well as by private industries. If these permitting agencies require sewer treatment and incineration facilities to conform with the CZM program, then most local governmental activity will be covered. Other local governmental activities probably do not often have a direct adverse impact upon coastal resources and, thus, do not require detailed control.

7. Two major problems

The coastal agency faces two tough issues in setting up an implementation system which will be acceptable to the Secretary of Commerce. The first is gaining cooperation of state governmental entities in coordinating planning and investment policies to implement the coastal management program and to avoid decisions which will detract from it. The second issue is the most volatile political matter in the entire program: controlling private landowners in coastal areas to ensure compliance. These issues will be discussed separately.

Public expenditures often influence private investment. Sometimes the influence is good; sometimes it is not. For example, public construction of artificial lakes encourages private recreational development that pollutes the very water that has been impounded and destroys miles of natural vegetation. Similarly, public decisions and expenditures for highways, utilities, and port improvements create opportunities for regional growth and impaction of local areas.

To identify these effects of public expenditures neither implies that they should all be stopped nor that growth is bad. The secondary effects of public activity must be realistically assessed, however, and government should view public expenditures as a mechanism for influencing growth in a positive fashion. Specifically, growth-generating expenditures should be channelled into areas with capability to absorb growth without causing undue stress upon the environment. In many cases, conservation funds should be spent in high-growth areas to minimize the adverse effects of heavy investment upon the limited natural resources in that area.

In Texas, a number of governmental entities allocate public resources which generate growth. The Texas Highway Department, for example, influences the growth pattern of the state through its decisions on freeways and other major traffic arteries. The Texas Water Development Board engages in broad-based water resource planning for the state and provides technical and financial assistance for specific projects which attract growth. The various river authorities and port authorities tax and spend to improve water resources within their jurisdiction. Their planning and expenditures are often used to spur economic development in their constituent areas. Cities and counties spend their money for public improvements

such as municipal buildings and parks. Cities and special districts provide basic utility services that encourage development in a given area.

If public spending conforms to coastal zone management programs and policies, then implementation is enhanced. If spending activities do not conform to the coastal policies, then the coastal program will fall far short of its goals. Public expenditures which conflict with coastal management policies will cause one of two bad results: either the money and its growth-generating capability will be wasted or the coast will succumb to the demand for private development.

How can the planning and expenditures of independent state agencies and local governments be harnessed and brought into conformity with the CZM program? A simple answer suggested by the federal Act is for the Governor to head up the program.[149] This might cause the state agencies to fall into line in a state in which the Governor acts as administrative head of the agencies. In Texas, however, each agency has its own legislative charge and its own budget. The governor has minimal control over agency planning and budgeting activities.[150]

Texas' effort to coordinate agencies through the interagency council system has not been highly successful. The chairmen of the boards and commissions do not attend council meetings. The councils have not institutionalized a review process on major expenditures. Although the Interagency Council on Natural Resources and the Environment have adopted a formal policy favoring a "NEPA-like" environmental assessment of their major projects, several member agencies have not used the process extensively.

One answer might be to give the CZM agency direct control over the planning and budgeting functions of other state agencies insofar as the coastal zone is concerned. The CZM agency could, for example, review each agency budget and make its recommendations to the Legislative Budget Board for final decision. This system would require that agencies consider the coastal zone policies when planning major expenditures, provide the CZM agency a chance to review those decisions, and place the power of final decision in the legislature.

A less coercive method of attempting interagency compliance with the plan would be a review and comment procedure whereby agency plans for expenditure were sent to the coastal zone management agency for comments about conformity with the program. Such a system would not bind the action agency and would be effective only to the extent that the CZM agency could convince the other agency that the coastal policies should be respected.

Another approach might be to assign to the cumulative body of state agencies the responsibility for the CZM program itself. The interagency councils have been given a general charge to cooperate

and communicate; they have not, however, been assigned specific action tasks which necessitate a final product. Cooperation and coordination thus have possessed an abstract quality that may seem immaterial to the agencies. The legislature has not provided the interagency council with an adequate staff to handle the details and mechanics of communication and coordination on state planning and policy implementation. If the interagency council were given staff support and if it were given responsibility for producing the CZM program, then the broad planning resources of all state agencies would be brought to bear upon the basic task.

Environmental impact statements on projects in the coastal area should refer to the CZM program. The scope of federal funding is such that federal deference will ensure compliance by most state agencies. For example, the State Highway Department depends heavily upon federal funds for its major highway expenditures.[151] Under CZM's federal deference and NEPA review procedures, it may be brought automatically into line with the CZM program. The Texas Water Development Board relies upon federal funding for significant water projects.[152] In this case too, all its federally funded projects will be brought automatically under the CZM program. Federal funding is so pervasive that most major state activities will come within the NEPA review process and be subject to the deference provisions of the federal CZMA.

Required conformity of federally funded projects will influence local governments as well as state agencies. No city or county will make a substantial expenditure for water supply, sewage treatment facilities, and open space acquisition without federal funds. When the federal screening process includes a requirement for conformity to the CZM program, then local government conformity is assured.

The control net established in the CZMA itself may be sufficient to ensure conformity as to most public actions which are really important. Accordingly an elaborate and coercive structure may not be necessary to ensure conformity by independent public bodies. An attempt at coercion would be politically disadvantageous, as well as unnecessary. On the other hand, an early attempt to solicit participation of the various governmental entities in the planning process would be highly advantageous in assuring that the program reflects their contribution and that they get an understanding of its processes.

7. IS CONVENTIONAL LAND USE ZONING REQUIRED TO IMPLEMENT THE COASTAL ZONE MANAGEMENT PROGRAM?

The state must satisfy the Secretary of Commerce that coastal policies will be enforced as to private and public developers.[153] Particular methods of implementation are left up to the states.[154] Regardless of organizational form, however, the state program must establish procedures for controlling certain types of land development to ensure that it is consistent with the coastal program.[155]

A. Implementation through local zoning systems

In many coastal states, county governments have zoning power. In the implementation of their conventional zoning procedures, those counties and coastal cities require permits for development. Uses must conform to zoning districts' designations for residential, commercial, industrial, and other uses. Currently, zoning operates more to ensure use compatibility than coastal management. Zoning may be modified to implement coastal zone goals, however, by incorporating coastal management policies into local zoning procedures. For example, the CZM agency could set coastal management policies, review local zoning maps and control systems, and certify local governments that had adequate management procedures. The coastal agency would supervise areas where local governments fail to submit a qualifying program for local implementation.

The CZM agency would have power to review local decisions concerning development by private and public parties. Local governments would continue to control most land use matters, such as locations of residential and commercial structures. The CZM agency would set permissibility standards for land and water uses which have a direct and significant impact on coastal waters. The agency could either designate areas of particular concern or establish criteria for initial designation by qualifying local governments. Supervision is not required to ensure that local land use regulations were consistent with particular area designation.

Through the zoning permit system, all uses along the coast would be brought to the attention of the authorized coastal management authority. Zoning thus would operate as a screening device to identify those uses that impact coastal waters. If the local government were certified by the state agency to determine permissibility, then that function could be carried out locally, subject to administrative review by the agency. If the agency wanted to make all decisions concerning permissibility, then the local government

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could simply identify impacting uses and send the permit applications to the agency.

The described implementation system should work smoothly in areas where counties and cities have a tradition of involvement in land use matters. In Texas, counties do not have general ordinance power, and except in two isolated instances,[156] counties do not have zoning power. The only significant land use control powers which counties exercise pertain to subdivision regulation,[157] sewer regulation,[158] and regulation of construction in flood-prone areas.[159] Although Texas cities have formal zoning power,[160] many do not have zoning ordinances. There is thus no "ready made" screening process to bring particular development proposals to the attention of the coastal zone management agency.

If conventional land use zoning were used as the primary implementation mechanism for the Texas coastal management program, then coastal counties or a state-level agency would have to establish a zoning system. County governments have no tradition in Texas for making land use planning decisions. Zoning works best when land use decisions have overwhelming local support, and state level zoning would probably be opposed by local residents and property owners.

Zoning is an emotional issue along the Texas coast. Many persons view it as an unjustifiable intrusion upon the freedom of landowners to do with their land as they choose. Others assert that zoning has failed to achieve its stated goals, and that is merely increases the cost and bureaucratic hassle connected with land development.

The Chambers County study indicates that conventional land use zoning that divides the area into residential, commercial, and industrial use districts is not relevant to environmental protection. Instead, the study shows that it is more important that all development, regardless of type, follow management guidelines designed to minimize the adverse impact of human intervention into the natural environment. The unpopularity of zoning in Texas and the findings of the Chambers County study lead to a natural question: May an adequate regulatory system for coastal zone management be developed that does not involve conventional land use zoning?

B. Regulating land and water uses that have a direct and significant impact on coastal waters

The Federal Coastal Zone Act does not require zoning. Neither do the tentative regulations. Admittedly, Section 305(b)(2)'s requirement that permissible land and water uses be defined[161] could be accomplished by a zoning system. Federal regulations indicate, however, that the definition may be stated in terms of performance standards.[162] The performance standards may relate to

the nature of the activity's impact upon the coastal lands and waters without limiting the developer to a predetermined residential, commercial, or industrial use.

For example, coastal marshlands could be protected by a zoning ordinance which prohibited any use except hunting, fishing, and related nondevelopment activities. Alternatively, a zoning system could allow residential use at a density of one residence per five acres, thereby ensuring that marshland use would not significantly interfere with its natural productive state. Both of these approaches depend upon use classification as the method of regulating development.

Zoning systems are based upon tacit assumptions that building technology is static. Use zoning is a crude environmental impact control device and overly punitive because it does not identify that aspect of a particular land use that causes the problem. A system that identifies the interests to be protected, spells out acceptable strategies for protecting the interests, and allows developers freedom to create different strategies which meet the same performance criteria should be a more effective way of meeting coastal management goals than land use zoning.

A regulatory system based upon performance standards could allow any use, so long as development did not interfere with the productive capability of the marsh areas by reduction in size or pollution. Conceivably, a developer could show that a six-story condominium building would not reduce the productive capability of the marsh, provided strict guidelines were observed concerning the amount of cutting and filling, dedication of artificial marshes, and disposal of waste from the development. Another developer might construct an entire residential or recreational community on pilings and a boardwalk upon showing that marine productivity would be increased because of the entry of the pilings into the productive area.

Management guidelines for such development can thus be stated in nonzoning terms that relate directly to the policies of coastal zone management. The guidelines may be easy to formulate in some cases, e.g., they may simply allow any structures to be built in the marsh so long as no filling is involved, pilings are used to support the structure, and waste is properly treated. The performance standard goals could be spelled out, however, to permit imaginative developers to invent new development techniques. A planned unit procedure should be available for developers who find a way to put the marshes to multiple uses while maintaining productivity.

C. Areas of particular concern

Section 305(b)(3) requires an inventory and designation of areas of particular concern within the coastal zone.[163] Section

305(b)(5) requires broad guidelines on priority of uses in these areas.[164] Although these sections suggest that a zoning system should authoritatively permit high-priority uses and prohibit low-priority uses, a close reading discloses that such controls are not essential.

The CZM agency may designate particular areas without applying regulations that control their use. Designation simply signals that the area has characteristics that merit appropriate attention and response by public and private participants.

The Act also requires a determination and listing of priorities of use within particular areas.[165] There is no requirement, however, that these use priorities must be precisely enforced. For example, an area designated for industrial priority would clearly have residential, recreational, and conservation uses placed in a low-priority category. But this does not mean that the area must be authoritatively zoned for industrial use only, and that private landowners are to be prohibited from using the land for low-priority purposes. Thus, a landowner who wished to continue using his own property in a designated industrial area for farming purposes could do so without upsetting the coastal management program.

The purposes served by designation of areas of particular concern and listing of use priorities can generally be accomplished without zoning. City zoning that conforms to the designations is, of course, appropriate. For example, if the CZM program designates a particular area and gives industrial uses highest priority, a city may appropriately zone it for industrial uses.

D. Power to administer land and water use regulations

The process must include power to administer land and water use regulations.[166] Texas now regulates many offshore uses through its ownership of the tidelines. For example, the General Land Office and Parks and Wildlife Department must issue permits for offshore uses that disturb the submerged state-owned lands. Their general powers have not been expansively described, however, and legislation should clearly enable the CZM agency to formulate policies and administer regulations for offshore uses.

The Open Beaches Law provides direct regulation to ensure continuing public access to miles of Gulf Coast beaches.[167] Counties currently administer portions of the open beaches law and maintain the beaches. The CZM agency should have supervisory authority over open beaches. Counties should be given financial assistance to help defray costs of maintaining the beaches. Traffic should be regulated to ensure greater beach safety for users. Otherwise, the present system should be adequate to preserve recreational interests.

Land and water uses that pollute coastal waters and estuarine inflows are regulated under current state and federal law.[168] Land uses that discharge pollutants into the waters must be permitted by the Texas Water Quality Board and the EPA.[169] These agencies apply performance standards for issuance of their permits, e.g., based upon engineering estimates whether the discharge will violate the established pollution standards.

The agency must regulate land and water uses which directly and significnatly affect coastal waters, even though the land and water uses occur on privately owned land. Such regulations need not be stated in terms of zoning, however, and they need not relate to the particular type of use (residential, commercial, and industrial) to which the land is put. Uses that directly and significantly affect coastal waters may be defined in impact terms and regulations may be stated in terms of maximum allowable impact. Management guidelines may be written to describe in advance what landowners may do as a matter of right in many areas. Planned unit procedures may permit innovative developments that meet the impact standards.

The implementation system just described should meet the Act's requirements. The system does not require traditional land use zoning, i.e., it does not divide the land up into residential, commercial, and industrial use districts. Instead, it addresses directly the goals of regulation without limiting developer option as to particular land uses.

E. Requirements that the program have authority to resolve conflicts among competing uses

The program must have authority to resolve conflicts among competing uses.[170] This requirement strongly suggests a zoning system whereby competition for residential, commercial, and industrial uses would be resolved through an authoritative system which designates use districts on a zoning map. Is there another meaning which does not require this conventional zoning approach?

What are the conflicts that must be addressed? In conventional zoning, the conflict is between one landowner's desire to develop his land, and members of the community who desire that the landowner do something different. Conventional land use zoning represents the community's response to the problems created by competing land uses.

Conventional zoning addresses specific values. Among these are (1) aesthetic, in which the community sense of beauty and order are maintained by avoiding detrimental neighborhood use; (2) economic, in which the community, by advanced planning of its service needs for expanding areas, may avoid waste and duplication in laying trunk utility lines and transportation facilities; (3) order, in which claims for various use priorities may be asserted and

decided in an orderly manner; (4) communal, in which the bargaining process may be used to enhance communal values such as schools, parks, and the like with a formal or informal trade-off procedure through which permission for development is conditioned upon the developer's promise to donate land for public purposes.

1. Are zoning values necessary to meet coastal zone management requirements?

To what extent are these attributes of a zoning system required by the CZMA? The Act requires consideration of aesthetic values, but it does not require zoning to accomplish this goal.[171] Texas' Open Beaches Law[172] and Sand Dune Protection Act[173] protect visual values along the Gulf Coast. Scenic areas may be designated as areas of particular concern, and the state may use available funds to buy park sites and scenic easements to protect the public aesthetic values. Infrastructure decisions may also preserve aesthetic values by appropriate location of parkways and denial of highway access to designated areas. There are thus ways of promoting the aesthetic interests in the coastal areas without conventional land use zoning, and nothing in the Act requires that zoning be used for this purpose.

The economic advantages claimed for zoning may or may not apply in actual practice. There is some doubt whether zoning makes a city more efficient or maintains property values better than if no zoning exists. There is no indication in the CZMA that the agency need concern itself about these matters. They, along with the values of order and communal bargaining, could be classified as matters of local concern to be left for purely local decision.

2. Zoning not relevant for conflicts that involve environmental protection

Except in rare cases, conventional zoning systems do not emphasize environmental goals. These goals are more likely to appear in building codes which require connection of buildings to sanitary sewers, requirements in city ordinances that open burning of trash be prohibited, and the like. Floodplain regulation is an exception in that prohibiting development of floodplains serves environmental goals while protecting consumers from flood loss.

Floodplains provide a good example of a conflict in use that can be approached through conventional zoning or through performance standards that permit multiple uses. When conventional zoning is used to protect floodplains, regulations tend to be written in terms of land use types, e.g., prohibiting all but agricultural and recreational use. The current trend in Texas floodplain regulations, however, is to establish management guidelines to achieve certain levels of performance, e.g., elevation of floor levels and waterproofing.

Both approaches (zoning and performance standards) resolve conflicts among competing uses. With zoning, the community resolves the conflict by prohibiting development according to type; with performance standards, the regulations are more precisely directed against the evil to be avoided.

Protecting productive marshlands presents another competitive situation among land uses. A landowner may want to fill and develop productive marshlands in pursuit of the profit that comes from "highest and best use". The conflict arises because such development destroys the productive capability of the marshes which is essential for other claimants, e.g., sport and commercial fishers. Conventional zoning might resolve the issue by prohibiting all but hunting and trapping uses in the marshlands. A system based upon management guidelines could allow any use so long as the productivity of the marshland is not impaired.

These are examples of situations in which authoritative performance standards may resolve conflicts among competing uses without conventional land use zoning. Zoning may offer a simpler and more easily administered system. Performance standards may be more complex, but they offer developers and consumers an opportunity for multiple uses of vital coastal lands without interfering with their productivity and other fundamental purposes of coastal management.

3. Coastal zone management problems created by zoning

Conventional zoning is antithetical to one purpose of the CZMA: preventing unreasonable exclusion of beneficial uses. Most zoning ordinances list uses that are allowed in the various land use districts. If a use is not listed, it is not allowed. Accordingly, local governments may use zoning ordinances to exclude certain uses which they deem not to be in keeping with their local values. The exclusionary process has prohibited location of essential power plants and refineries in northeastern states and contributed to severe power shortages areawide. To combat these exclusionary practices, the CZMA requires that the state establish procedures to override local community zoning to permit key facilities and land uses of regional benefit.[174]

In Texas, local governments do not have conventional zoning power outside of city boundaries.[175] Accordingly, local governments cannot totally exclude these vital uses. Some Texas cities may exclude apartment projects and other uses which have arguable claims for site location. Even in these areas, however, unrestricted land is usually available in nearby unincorporated areas.

No political authority now regulates the location of refineries, power plants, and other major industrial users along the vast stretches of Texas' unincorporated coastal areas. Although Texas may need to protect the environment from the impact of such facilities, the exclusionary problems highlighted in the CZMA do not

apply to Texas and are not addressed in the incremental change proposal.

4. Performance standards as a type of zoning

It may be argued that the use of authoritative performance standards to regulate certain types of development in the coastal corridor is a type of land use zoning. In a broad sense, this is true. Zoning involves an identification of land areas which are to be regulated and places authoritative controls upon the landowners' options for development. The proposed performance standards system does these two things. Zoning ordinances themselves state many management guidelines, such as setback requirements, maximum lot coverages, and sideyard requirements for buildings placed upon city lots. Noise levels for industrial uses are sometimes stated in allowable decible standards. Planned unit development regulations set out the performance standards in terms of parking, minimum project size, and similar factors.

Lest the semantic issue become overwhelming, the basic feature of land use zoning which is not incorporated into the proposed coastal zone management system is regulation of type of use. The major objection is that zoning tries to predetermine the residential, commercial, and industrial siting decisions according to a planner's map and local governmental decision. Many observers believe that these decisions are best left to the market, and to the landowners' and developers' choices. It is this locational aspect of zoning that is negated in the proposed system.

8. A PROPOSED INCREMENTAL CHANGE SYSTEM

A. Basic approach

The survey of political sentiment during the Chambers County study indicated that a land use management system based upon traditional land use zoning would not be acceptable. A system based upon performance standards (authoritatively imposed management guidelines) would be less objectionable. The most acceptable system would be based upon performance standards enforced through the present governmental structure, with considerable participation by local government.

It will be hard enough to convince Texans that any authoritative management system is needed. The line of least resistance may be through "incremental change". Incremental change does not mean "no change". Instead, it means that the system does not commit the state to zoning in unincorporated areas; it uses existing structures of government to formulate and implement the coastal zone management program; and it emphasizes performance standards as a guide to development of sensitive lands.

B. Implementation

The immediate objection to an incremental change system is that, without zoning, private landowners may avoid coastal zone management regulations. Admittedly, an elaborate zoning system would bring all coastal landowners within the "net" of regulations. With conventional zoning, land use districts would be designated throughout the coastal zone, and all persons who proposed to change the use of their land by development, construction, filling, or otherwise would have to get a permit from some political entity. The permitting entity would check the coastal zone maps and regulations to determine whether the proposed use was permissible. If it was, the permit would issue; if not, the permit would be denied. The landowner would be subject to fine and injunction if he violated the management act.

The proposed incremental change system would use a different "net" to catch land users who should be regulated under the coastal zone management system. The net would be structured to catch only the large fish whose activities significantly affect the overall management picture. For example, it is not important that a farmer in a coastal county adds to his barn or builds an addition to his house. What does matter is whether a recreational subdivision or an industry is developed on filled-in wetlands, whether flood-prone lands are developed unwisely, and whether an industry locates in a fragile coastal site. A CZM program that is overburdened by

regulating insignificant users will not even have time to regulate large users. Accordingly, the net should catch large-scale users and let small users slip through unnoticed. But how can such a net be structured without zoning?

A regulatory net now brings virtually every major land user before some state or federal agency for a permit to develop his land. For example, every subdivision must be approved by a city or county government before the plat may be recorded.[176] If unplatted subdivisions were made illegal, then every subdivision would be caught within an existing regulatory net. Every major industrial user must get a permit from the air and water pollution control agencies.[177] Every developer of large commercial projects must undergo a review from EPA[178] or the state agency enforcing indirect source pollution regulations.

Each major developer must get from one to six permits from local or state governments before undertaking actual development. An enforcement system may be built into this existing net by requiring that every applicant who seeks a state agency or local permit for designated uses within the coastal zone must obtain the approval of the CZM agency. The coastal agency may delegate some approval power to existing governmental entities, e.g., if an industry in the coastal zone applies to the Texas Water Quality Board for a discharge permit, the Board could determine for itself whether the industry conforms with the CZM program, or it could issue its permit conditioned upon certification by the CZM agency that the proposal conforms. Similarly, the coastal agency may certify that a county's subdivision control regulations meet all of the coastal zone management guidelines, and accept county plat approval as the implementing step. In order to qualify under the federal Act, the CZM agency would have to establish criteria for approving developments in the coastal zone, along with an appeals procedure.[179] Nevertheless, for the land developer, the basic approval structure would remain substantially as it is today.

It must be emphasized, however, that except for a few specified instances, e.g., removal of sand dunes, building in floodways, and filling in marshlands, regulations would be written as management guidelines that would not prohibit any specific uses. Thus, an industry may wind up next door to a recreational subdivision if the locality does not adopt a zoning ordinance that operates in addition to coastal zone management program.

Landowner-developers may object to any new regulatory system that reduces their own options. Developers, however, may benefit from the proposed system. If a state grounds its management program upon a study of the coastal zone that establishes the carrying capacity of the various coastal areas, then land developers will have reliable information about the strengths and weaknesses of the land which they propose to develop. If the survey of land capability is used to formulate management guidelines that are clearly and

simply stated, then developers will be able to determine in advance whether their project conforms to the coastal requirements. Small developers will be especially benefitted by such procedures. If the coastal program allows planned developments that meet the performance standards, then imaginative developers may produce innovative planning and market approaches. This option will benefit large developers with sufficient front-end money to finance the planning and presentations required to get specific project approval.

On the administrative level, the CZM agency could eliminate some red tape in dealing with the various state permitting agencies. For example, a developer of a Gulf Coast recreational subdivision may need to secure a half-dozen state agency permits before he begins his development. This may require a half-dozen trips to the state capitol with corresponding presentations. If the CZM program were to provide a single hearing where all agencies could be represented, then the developer would benefit from a shorter and simpler process in obtaining state agency permits. This would be especially helpful if the various agencies were to provide an advance statement of their requirements and procedures so the developer would be guided through the formal process with minimum lost time.

The details of the proposed system will be discussed in a later section. The essentials have been covered sufficiently that a scenario may be built around the requirement that the agency identify and control permissible land and water uses which directly and significantly impact coastal waters.

9. A SCENARIO FOR DEVELOPING A COASTAL ZONE MANAGEMENT PROGRAM BASED UPON INCREMENTAL CHANGE

At this point, the incremental change system exists only as an idea and as a theory. Some reification is essential if the concept is to become an operative, viable possibility. One way to illustrate the general theory is to present the CZM agency as an essentially powerless facilitator of its program and see how the existing structure may be used to accomplish program goals. Accordingly, the picture that is about to emerge is not illustrative of the final management product. Rather, it is a "walk-through" of an agency trying to function within the "incremental change system." At the end of the "walk-through" the agency could stand back and identify the essential legislative changes required to make its program functional. Hopefully, the changes would be made and the resultant coastal zone program would conform to the implementation requirements established by the federal Act.

A. A Scenario

To illustrate the spirit and conceptual operation of the incremental change system, consider the following situation that has been identified by the environmental analysis of Chambers County:

> An underground aquifer underlies the Houston-Galveston region and discharges into the Gulf of Mexico. The aquifer reaches the surface sixty miles north of Houston, where it is charged by rainwater which soaks into undeveloped forestland. When fully charged, the water formation is stable and capable of supporting the overlying ground. When the formation loses its water charge through excessive withdrawal or depleted intake, the weight of the overlying ground compresses the formation, causing surface subsidence. The effects of this subsidence are irreversible. Several developed areas in the Houston-Galveston region have sunk below flood level and others are threatened to increased flood hazard as a result of subsidence.

B. Steps in identifying and solving the problem

1. A capability study

The CZM agency will conduct a capability survey of the tentative coastal zone. The survey of the Houston-Galveston/Chambers County area discloses that several locations are sinking rapidly. The subsidence is caused by depletion of the water formation underlying the area. The primary cause is withdrawal of groundwater in the Houston-Galveston area by industrial and municipal users. A potential additional cause is identified in the aquifer recharge area, where

standard subdivision development reduces the amount of permeable land available for recharging the formation and causes quick run-off of rainwater into streams instead of allowing it to soak into the ground.

Factual investigation shows that subsidence increases inland flooding from coastal storms and ordinary rains; it reduces beachlands and coastal wetlands by causing them to sink below the low tide level; and it reduces the capability of coastal lands to support industrial, recreational, residential, and commercial uses.

2. The determination of direct and significant impact

The CZM agency determines that land subsidence has a direct and significant impact on coastal waters, and, therefore, that the land uses which contribute to subsidence have such an impact. The agency analyzes its intuitive decision that subsidence meets the Act's definition and formulates its operative definition to include any use that

(a) reduces the physical area of beaches and other wetlands or causes a change in shoreline configuration; or

(b) reduces the capability of coastal lands to support industrial, recreational, residential, and commercial uses.

3. New boundaries

Noting that portions of the aquifer recharge area lie outside the coastal zone boundaries, the agency redraws its boundaries to include the recharge lands. The agency limits its concern in the expanded area to regulating development that affects the ability of the aquifer to recharge.

4. Management guidelines

The agency next determines that certain management guidelines are appropriate for land development in the coastal zone area affected by land subsidence and for land development which causes subsidence. The following guidelines result:

(a) Development and construction in floodplains in the coastal zone should either be prevented or regulated to ensure that the first-floor living level of structures placed in the floodplain are elevated above the 100-year flood level and that no structures are placed in the flooding. The 100-year

flood line should be redrawn to the foreseeable effects of land subsidence which will result from prior water withdrawals.

(b) Water withdrawal should be strictly regulated in the Houston-Galveston area, and all users should be shifted to surface water sources as soon as such sources are reasonably available.

(c) Development in the recharge area should not interfere with the capability of the land to absorb surface water. For example, regulations should limit the extent of land coverage by non-porous materials such as pavement and houses, and require holding ponds to prevent rapid surface water drainage into sewers and streams. Increased treatment of sewage should be required to prevent pollution of the fresh water formation.

The agency will state guidelines in terms of alternatives so that developers and local governments may select specific techniques appropriate to their own situations. Minimum standards are spelled out in detail, however, to ensure that the purposes of regulation are fulfilled.

5. Enforcement

a. Regulation of development in floodplains, and modification of floodplain boundaries to account for the effects of land subsidence

The CZM agency finds that all county governments in the coastal zone have adopted floodplain regulations as required by the National Flood Insurance Act.[180] In one county, however, it finds that the boundaries should be redrawn to account for subsidence. The county has been certified for compliance with the National Flood Insurance program, and refuses to redraw their lines, arguing that land developers should not be restricted to an extent greater than required by the Flood Act.

The CZM agency thus faces a need to override the local regulations. One alternative would be to turn to the legislature for direct enforcement power. Another alternative would be to work within the system established by the federal CZMA itself. The Federal Insurance Administrator must certify that local communities have an adequate system of regulations to regulate development in flood-prone areas. Otherwise, federally subsidized flood insurance will not be available.[181] Without flood insurance, federally insured and regulated lending institutions are prohibited from lending money for purchase and development of properties in the designated areas.[182] Lack of participation in the insurance program virtually ensures that no development will take place in a coastal area.

The CZM agency decides that its management guidelines may be enforced through the Federal Insurance Administrator's certification procedures. The agency accordingly contacts the Administrator and (1) exhibits the findings concerning the effects of land subsidence upon the floodplain boundaries; and (2) claims that the flood insurance certification process falls within the provisions of the CZMA's requirement that each federal agency conducting or supporting activities directly affecting the coastal zone conform to the CZMA to the maximum extent possible.[183] The agency also relies upon the Act's requirement that federal agencies not approve local government applications for federal assistance which are not in conformity with the state program.[184]

The county argues that the Federal Insurance Program is not an activity which directly affects the coastal zone, and that only "projects", not certifications, are required to conform with it. The Federal Insurance Administrator resolves the issue by deciding that, whether or not it is required to defer to the CZM program, the agency should require the county to redraw its floodplain boundaries to take land surface subsidence into account. The Administrator notifies the county, and the county reluctantly redraws its boundaries.

In this manner, the CZM agency has, without drastically changing existing procedures, ensured that harmful development does not occur in the floodplains. This approach is consistent with the incremental change system.

The Secretary of Commerce may question whether the enforcement procedures outlined conform with the Act's requirement that implementation be either direct from the state or through a system of review over local decisions.[185] The state did in fact review the local regulations and cause them to be changed. The agency used a method which is built into the Act, namely, the requirement that federal agencies defer to the CZM system.[186] Although the methods used to assure compliance are not established by a state-established review system, they appear to meet the Act's requirements.

b. Regulation of water withdrawal in the Houston-Galveston area

The CZM agency does not have direct power to prevent or regulate water withdrawal in the subsidence area. The agency determines that the state's water law allows private owners to withdraw water without liability to other users.[187] A state statute authorizes creation of a special control district for the purpose of preventing land subsidence. The CZM agency contacts the Texas Water Rights Commission and commences procedures for establishing such a district in the subsidence area.

As a part of the CZM program, the management agency works with the Texas Water Development Board to set precise standards for determining the amount of groundwater which may be withdrawn without causing land surface subsidence or salt water intrusion. After these standards have been established, the CZM agency notifies the Texas Water Rights Commission that no permit should be issued for a water district in the coastal zone which does not conform with these management guidelines. The Texas Water Rights Commission indicates that it does not consider itself bound by these guidelines inasmuch as its own enabling legislation does not require it to take such matters into consideration.[188]

The CZM agency causes legislation to be passed requiring that all state agencies screen permits for activities within the coastal zone for compliance with the management program. The CZM agency establishes a procedure whereby each agency identifies activities that may affect coastal waters. Some permitting agencies apply coastal regulations in their own office; others require that applicants for permits go to the coastal agency itself for a determination of compliance. In cases where applicants go to the coastal agency, a procedure is established whereby at a single presentation the applicant may cause representatives to be present from the several agencies from which permits are required.

The outlined procedures show the CZM agency using existing procedures to the fullest possible extent in accomplishing specific management goals. The procedures may not be as neat as if the agency itself had direct regulatory power. For example, the agency may hit a snag in causing the subsidence district to be formed, and additional legislation may be required. Nevertheless, the use of existing governmental entities and procedures is likely to receive greater political acceptance and thus be more effective in the long run than a frontal assault by the CZM agency.

c. Regulation of land development in the aquifer recharge area to minimize coverage of absorptive lands by nonporous materials, to prevent rapid surface water drainage, and to hold water on site

The CZM agency determines that residential subdivisions account for most of the land development in the recharge area. Many subdivisions that are developed in the recharge area rely upon municipal utility districts to provide water and sewer services. Developers must get state permits to create these districts[189] and to discharge effluent.[190] The CZM agency uses the permit procedures established under (b), above, to require that applicants for creation of water districts and for discharge permits comply with the management guidelines.

Some subdividers connect with existing utility lines, however, and some use septic tanks and private water wells. These

users do not come within the regulatory net for state permits. They do, however, come within the requirement that subdividers cause a plat to be made of their subdivisions and get plat approval by the city or county having jurisdiction over the area.[191] The subdivider cannot record the plat without appropriate approval,[192] and cannot convey lots by lot and block descriptions which refer to an unrecorded plat. The procedure may be easily avoided by a developer who conveys lots by metes and bounds instead of plat description.

The CZM agency determines that, if the metes and bounds loophole were eliminated, the plat approval procedure would be a good control point for regulating residential subdivisions to ensure conformity with its program. However, the CZM agency discovers that plat approval powers of counties are quite restricted, and that local governments in the aquifer recharge area are antagonistic toward the management guidelines that would protect Houston-area lands from subsiding. The management guidelines would increase development cost, use surface drainage, require holding ponds for water, and reduce the value of such lands for development purposes.

The CZM agency determines that it needs greater power to enforce the management guidelines upon residential subdivisions in the recharge area. Accordingly, it causes legislation to be passed that broadens the power of counties to impose environmental conditions upon plat approval, and additionally requires that subdividers in the coastal zone get plat approval from the CZM agency as a condition of recordation. The legislation allows the agency to approve the local government's standards and procedures for plat approval and allow approved local governments to sign for the coastal agency. The legislation forbids subdividers from using metes and bounds descriptions' for conveying lots. Land developers in the aquifer recharge area do not want to have to go to the CZM agency for plat approval. They, therefore, encourage the county governments to establish local standards that conform to the guidelines established by the CZM agency. The coastal agency certifies these counties and cities, and they apply the standards through local procedures.

The CZM agency's guidelines limit ground coverage in subdivisions in the recharge area by setting minimum lot sizes, requiring dedication of a designated percentage of open space, and by requiring holding ponds, surface drainage systems, and use of porous paving materials for subdivision streets. These standards maintain the capability of the land to perform its water absorption function.

The agency determines that its state permit screening system is sufficient to regulate industrial and commercial uses which require permits from the Texas Water Quality Board for effluent discharges[193] or permits from the Texas Air Control Board for discharges into the air[194] and, in the case of complex sources

of air pollution, for parking lot construction.[195] The agency decides that the capability of the area to absorb water is not considerably affected by commercial and industrial uses, and that regulations should cover use of porous paving surfaces for parking lots and means to prevent quick runoff from commercial and industrial sites. These requirements are enforced through the existing state agency permitting system according to the procedures established between the CZM agency and the various agencies.

C. Reflections on the incremental change approach

The CZM agency has been described as if it were searching out implementation solutions in a piecemeal fashion. This bumbling around should not occur. Instead, the various methods of implementing the program should be identified during the program development period and the approved system should be fully operable upon program approval.[196] The key features of the implementation system are:

(1) A physical study of the coastal zone to identify the various problem areas and determine the types of constraints to be placed upon land use and development within the control corridor. This study may be similar to that developed during the Chambers County project, or it may be a less expensive survey of basic land capability.

(2) A detailed statement of management guidelines for land development in each area of limited capability within the coastal zone. These guidelines should be formulated by the CZM agency, acting in coordination with local, regional, state, and federal participants.[197] Private participants should be given ample opportunity to present their positions during the guideline development stage.[198] The CZM agency should establish a range of guidelines that meet minimal conservation requirements, while allowing local governments to select the level of consumer quality appropriate to their own development goals.

(3) A system for coordinating the activities of the various state agencies that manage state resources. The state agencies should conform to the CZM policies and avoid action that would encourage detrimental development. They should fashion their own development expenditures so as to facilitate the CZM program.

(4) A system for centralized processing of applications for development permits and screening of state permits to ensure conformity with the coastal zone management guidelines. Developers now have to deal individually with a number of state agencies to get permits for air and water discharge, water districts, dredging, stream

diversion, and other activities covered by existing state laws. The CZM agency may assist developers by becoming a central clearinghouse for these permits and by holding a single hearing at which all relevant agencies are represented. The existing permit procedures may provide the essential control mechanism to ensure conformity with the coastal program. Certification by the CZM agency that the proposed development meets its management guidelines would be required as a condition of the state permit. Legislation would also be required to establish the centralized hearing procedure. Violation of the terms of the permit should subject the permitee to criminal and civil penalities, as well as injunction.

(5) A tightening of the state's subdivision regulations to eliminate "red flag" unplatted subdivisions, accompanied by an increase in the power of counties to place qualitative requirements upon developers as a condition of plat approval. If a county or city wishes to implement the CZM guidelines, they should be able to do so, subject to specific overriding by the CZM agency. The CZM agency approval could be required as a condition of plat recordation in the county records, except in counties that have certification from the CZM agency that their regulations meet the program's requirements. The CZM agency should be given notice of all applications for plat approval, and be empowered to step into the approval procedure and require conformity if the local government does not consistently apply the established management guidelines for development.

In summary, an incremental change system lacks the neatness and clarity of a zoning system. It will not mediate land use conflicts that are not directly related to protecting the coastal land and waters from adverse consequences of land development. The system uses the existing regulatory net to the fullest extent possible, and in some instances simplifies its administration. When combined with the powerful implementation influences which come from federal deference to the coastal zone policies, it should provide adequate assurance that basic program goals will be accomplished.

10. SPECIFIC PROPOSALS

Texas has pursued a logical course in formulating a coastal zone program. For example, long before the federal Act passed, Texas preserved the public's access to open beaches,[199] regulated dredging in coastal waters to protect marine life,[200] and established a historical preservation program that is active in many coastal areas.[201] Recently, Texas enacted laws prohibiting resale of submerged lands by navigation districts (except resale to the state),[202] protecting sand dunes,[203] and naming the General Land Office to formulate a state plan to meet federal coastal requirements.[204]

The General Land Office successfully applied for federal funds and assembled a staff to perform the organizational tasks. The Commissioner has held hearings to inform the public about the program, and to get reactions about the particular needs that the program should address. Some hearings have been fiery; some have been scholarly and informative.

After hearings are completed the General Land Office must make difficult decisions. Its program may commit Texas to a coastal program that could have lasting effect. The following specific task outline is directed toward formulation of an incremental change system for coastal management.

A. Tightening the control net

The CZM agency should recommend the following legislation:

1. County ordinance power in land use maters

Counties do not now have sufficient power to enforce floodplain regulations, subdivision regulations, building codes, and similar land use controls. County governments may not be ready for zoning power, but they need to have such power to pass and enforce other land use ordinances. The coastal zone program does not require that zoning power be included.

2. Broadened subdividion regulation powers

Counties should be given broad police power to require that new subdivision developments provide appropriate services for lot buyers, and that land capability limitations be respected. Increased powers are essential if counties are to become partners in implementing the coastal zone management program.

The subdivision control system should require that, in designated coastal areas, subdivision plats must be approved by the CZM agency and the local planning officials. The coastal agency should be empowered to establish guidelines for development in specific coastal areas, and to certify that cities and counties that adopt satisfactory regulations may approve plats in the name of the coastal agency. This approval would apply only to subdivision approval and not to the state permitting system to be described later.

Parties affected by local governmental approval or disapproval of plats should be able to appeal to the coastal agency. The coastal agency should receive a copy of each plat approval application and receive notification of action taken by the certified local governments. The agency should have a right to intervene to correct local action if such intervention is appropriate.

Development and sale of unplatted subdivision lots should be made a misdemeanor. Purchasers of such lots should be allowed to rescind and recover purchase price payments from the developer. This double-barrelled approach should ensure that land developers will follow the standard plat approval procedures and seek county and city approval for new subdivisions.

3. Prohibition of destruction of productive marshland and estuarine areas

The coastal zone agency should propose legislation prohibiting filling or alteration of productive marshlands without a permit from the Parks and Wildlife Department. Permits should be withheld if the proposed development would damage the natural prohibit private and public acts that alter the natural balance in estuarine areas and other productive marine areas. In order to alleviate the monetary loss which such regulation might cause and to allow maximum use of resources, the agencies should formulate performance standards that allow multiple uses of productive areas whenever consistent with preservation of their natural processes. This might include a provision allowing a "swap" of existing marshlands for equally productive artificial marshlands where practicable. If politically necessary to further soften the impact of this regulation upon private landowners, the state might provide a five-year phase-in period, during which private landowners who are not otherwise prohibited from affecting the natural processes of these areas may apply for immediate development permits. The state would have a choice of suffering loss of the productive area or buying the development rights for the productive area at market value. Five years should be sufficient time for investors to put the property to whatever profitable uses they anticipated when they bought their lands. After five years, the prohibition would become absolute against development that is not consistent with maintenance of productivity.

4. Regulation of groundwater withdrawal

Present laws concerning withdrawal of groundwater do not protect coastal areas against the disasterous consequences of subsidence and depletion. Texas landownwers are considered to have a property right to withdraw groundwater from their lands.[205] Accordingly, coastal industries drill private wells instead of using available sources of surface water. The Texas Water Rights Commission persists in creating water districts that withdraw groundwater to serve new subdivision developments.

Combined efforts of the Texas Water Development Board, river authorities, Coastal Industrial Water Authority, and the cities of Baytown and Houston have made ample supplies of surface water available for coastal users in the Houston vicinity. Similar efforts could produce surface water for other coastal areas. The state's water policy suffers from fragmented agency responsibility for development, pollution control, and allocation functions. The three water agencies should be combined or a policy-making system should be established that bridges the substantial gap between them.

5. State agency restructuring

The CZM agency should assist the Division of Planning Coordination to respond to HB 1502's recommendations concerning possible restructuring of the state agencies whose activities affect natural resources and the environment. The goals of coordinating agency activity and formulating and implementing rational state policies prompted legislation to create an interagency council system. These goals have never been fully met. New challenges make coordination even more essential.

Federal legislation concerning air and water pollution control and coastal zone management require concerted planning and implementation.[206] Texas must designate growth zones under the nondegradation policy. It must allocate scarce water resources among the various competitors and preserve natural processes essential to the life cycle. It should protect important artifacts of the state's past. Recreational areas should be provided to serve the state's constantly expanding population and profitable tourist industry.

Coordination of state agency activities is essential to implmentation of the CZM program. There may be several ways to achieve agency support and coordination in coastal management. One way is to delegate the duty of formulating state resource policies to the interagency council The CZM agency could be designated as executive agency for the Council. Another way is to place responsibility for coastal zone management in the Governor's Office, Division of Planning Coordination, and to give the Governor tighter

control over the agencies themselves. If the heads of the agencies served at the pleasure of the Governor, then direct control would be assured.

If the CZM agency is to have separate and independent status, then it must be able to influence state agency decisions concerning regulation and allocation of resources within the coastal zone. The coastal agency might be given veto power over other state decisions that affect the coastal zone. Such authority over other state agencies could generate bitter and politically disasterous disputes. Perhaps a recommending function would serve the system better, e.g., the CZM agency might review and comment upon state agency budget requests before they go to the Legislative Budget Board. Final decisions concerning disputed expenditures would then be resolved by the legislature. The legislature would act after considering the comments of the CZM agency, and the possibility that approval of nonconforming agency decisions might jeopardize the state's certification under the federal coastal zone management program.

6. CZM agency review of applications for state permits

Prior discussion has shown that the subdivision approval process and the present state agency permitting process can be used to identify uses to be required under the coastal zone program. The combination of subdivision plat review, state agency permit review, and federal agency deference should provide sufficient methods of implementation to satisfy the federal Act. This system would not change substantially the approval "net" with which developers must now deal.

Legislation should identify the state agencies and the geographical areas to be covered. The legislation should prohibit issuance of state permits to public and private developers within the designated coastal zone unless the applicant complies with the coastal program. To give developers some quid pro quo for the additional governmental requirement, the state should establish a central agency hearing procedure for private developers within the coastal zone. The procedure should include the following:

(1) An identification of all state agencies that issue permits for development within the coastal zone;

(2) A published statement by each permitting agency describing the guidelines that it follows when it grants or denies an application for permit;

(3) A statement by each agency describing the requirements for permit application, with forms when appropriate;

(4) A central hearing procedure that applicants may initiate for development permits within the coastal zone. The procedure should provide a central processing system to ensure representation from each affected agency at a single hearing at which the developer may describe his project. The hearing should provide a forum for interagency communication about the project and reduce the time developers spend going from one agency to another.

(5) A statement of management guidelines by the CZM agency and/or local governments that inform developers about requirements for development approval for designated geographical areas within the coastal zone. The guidelines should spell out types of developments that will be approved automatically, and types that require "individual review".

(6) A precise time schedule within which an applicant for development permit must receive a "yes" or "no" answer, or specific reasons for delay.

(7) A review procedure whereby applicants for federal agency permits may obtain certification by the CZM agency that the proposal complies with the coastal zone management program.

When combined with the existing programs for preserving historical and recreational areas,[207] regulating construction in flood-prone areas,[208] and regulating the use of state-owned lands,[209] the implementation system should pass federal muster. No provision was made for overriding local exclusionary zoning tactics because Texas counties currently have no capability to exclude unpopular land uses. If this becomes a problem, then appropriate additions may be made to the program.

B. Establishing a substantive coastal zone program

The legislative steps outlined above presuppose that a rational CZM program has been developed. While the agency is setting up the control net, it must establish physical boundaries[210] and standards for the management system itself. The beginning point for this task must be a capability study of the coastal zone. Someone must identify productive estuarines and marshlands, natural recreation areas, lands already dedicated to development lands that have physical capability to absorb intensive development, and lands that have limited capability. Unique processes, such as area subsidence and shoreline erosion, must be identified, and the consequences of

development on such processes determined. A land capability assessment system of the type developed in Chambers County may be too expensive to be applied in every Gulf Coast county in Texas. However, similar assessment of land-carrying capacity is essential if the coastal zone program is to be firmly grounded on scientific data.

The land capability survey will produce a scientific statement about the physical environment and the effects of human intervention. From these facts, rational decision-makers may strike a balance between the benefits of development and the resultant environmental costs. Some balances are easy, e.g., Houston's subsidence must be stopped. Other balances, e.g., preservation or industrialization of specific seashore recreational lands, are not so easily determined.

An adequate CZM program may emphasize the multiple-use concept, and rely upon performance standards for new development instead of conventional land use zoning. To the greatest extent possible, the performance standards should be phrased in authoritative management guidelines that spell out appropriate and allowable development so that developers may predict what they can and cannot do with a given piece of property. But the guidelines should maintain flexibility so developers may secure special approval for a planned unit development upon showing that a proposed development meets or exceeds the substantive standards.

Management guidelines should be formulated to reflect varying degrees of emphasis upon development or conservation. For example, if development is to be emphasized in an area, then the performance standards that increase the cost of development may be relaxed; if development is to be discouraged, then high standards and consequent high costs should be applied.

The CZM agency has final responsibility for making the tough management decisions that will cause the program to be implemented. Decisions concerning permissibility of uses that impact coastal waters should be made at the state level or by local governments that have been certified by the state agency.

Planning decisions may be shared with regional and local governments, so long as there is adequate consideration of the state interests involved in such decisions. Designations of areas of particular concern and assignment of use priorities in such areas are essentially planning decisions. If the CZM agency shares these decisions with regional and local governments, then it may produce a better planning product and achieve greater political acceptability than if it makes such decisions at the state level. The federal Act encourages broad governmental participation in the decisions process.[211] There is, however, no clear direction for determining who is to do what.

The following outline suggests planning and program formulating roles that seem appropriate for the various levels of government in Texas, considering their present levels of competence.

C. Coordination with EPA and other federal agencies

The EPA and responsible state agencies should designate regions to be placed in Air Quality Maintenance Areas and identify control strategies for those areas. Nondegradation zones should be designated and indirect source regulations established. EPA and the Water Quality Board should establish areawide planning as a condition of sewer treatment grants in those regions which have significant water pollution problems.

The coastal plan may be vitally affected by designations of air quality maintenance areas, nondegradation zoning, and basin-wide water planning. Air and water pollution laws may severely restrict coastal growth potential. Coastal planning should conform to these air and water pollution control constraints;[212] pollution controls should be used to accomplish growth and conservation goals suggested by the coastal plan. For example, areas marked for conservation should be placed in a Class I air pollution zone to reduce development processes.

The CZM agency should coordinate with other federal agencies to ensure that the program includes adequate accommodation for their preservation and development goals.[213]

D. State agency and Governor's Office involvement

The CZM agency should enlist the entire Interagency Council on Natural Resources and the Environment, and the Governor's Office, Division of Planning Coordination, to formulate state-level management guidelines that strike an appropriate balance between development and conservation along the Texas coast. For example, the Parks and Wildlife Department should recommend policies for preserving fish and wildlife in the coastal zone. The State Historical Commission should formulate management guidelines to preserve historical areas. The industrial Commission, Highway Department, water agencies, and Texas Air Control Board should determine appropriate management guidelines to emphasize development and growth values and to determine which areas have capability to absorb growth without excessive environmental degradation.

Early involvement of these agencies in the planning process should gain agency commitments to the final planning product and lead to a more effective program.

E. Regional and local involvement in performing land capability assessment on areas of particular concern

Land capability studies that identify areas of particular concern and describe local natural processes are vital to the CZM

system.[214] The program should begin with a scientifically based statement about the natural processes in various coastal areas. Cities are too limited in geographical coverage to perform these studies; with some exceptions, coastal counties are not well enough equipped to perform them or to contract for them. Regional Planning Commissions, such as the Houston-Galveston Area Council, are better equipped than counties or cities to contract for capability studies of coastal areas within their planning regions. Regional planning commissions have computer capability for processing, storing, and retrieving the scientific information. They have almost a decade of experience in dealing with state and federal governments, performing comprehensive planning tasks, and contracting with private research groups. Although they are not always held in high regard by local governments, regional planning commissions do have an understanding of local land use perspectives and personalities. The federal CZMA requires continuing involvement by local and regional planning entities.[215]

The land capability studies will be useful to the state agency when it sets performance standards for permissibility of uses that impact coastal waters.

County governments should be allowed to make initial designations of areas of particular concern with the assistance and guidance of regional planning commissions and the CZM agency.

The CZM agency should issue guidelines for classifying areas of particular concern so that the regional planning commissions and local governments will know what the goals of their efforts are. The success of the process is likely to depend upon continuing interaction between the CZM agency, regional planning commissions, and local governments. Information about the natural processes in an area should trigger ideas about what guidelines should be used to designate areas of particular concern, and what regulations should be applied to permissible uses that directly and significantly affect coastal waters.

F. Local government involvement

The regional planning commission should present the results of the scientific study of its coastal regions along with recommendations concerning designation of areas of particular concern to local governments having political jurisdiction over the affected areas. The purposes of this presentation are to inform local governments about the findings and the program requirements. Local governments should respond to specific questions concerning boundaries and designation of areas of particular concern, and indicate the balance they strike between conservation and development.

Local governments should hold public hearings to acquaint citizens with the process and to get their opinions concerning the decisions to be made. Representatives of the regional planning commission and the CZM agency should be present at such meetings to

explain their purpose and to provide factual information about the study and the legal requirements for coastal zone management. Specific development guidelines should be proposed by the local governments within the range of acceptable strategies set by the coastal agency. Local governments should communicate their findings and preferences to the regional planning commission. The planning commission should record local preferences and, to the greatest extent possible, incorporate them into the recommended coastal program for the region.

The product of regional and local governmental efforts should include a survey of land capability within the designated coastal zone, with maps showing precise boundaries of lands having limited capability to accommodate conventional development. The land capability survey should identify all areas which might be designated of particular concern. The regional report to the CZM agency should indicate why certain areas were identified for classification and others were not. As to designated areas, the regional and local response should indicate their recommended ranking of use priorities. The regional planning commission should help local governments to qualify to review subdivisions as an agent for the CZM program and provide technical assistance for counties setting up general land use regulation systems.

After the regional program has been formulated around a land capability study, the CZM agency and the regional planning commission should hold hearings on the regionally sponsored coastal zone plan.[216] Participation by public and private parties should be encouraged. If the regionally sponsored plan conforms to the guidelines promulgated by the CZM agency, then it should be accepted by the agency.

In summary, the major state decisions concerning management policies are made at the state level; the CZM agency becomes an educator and organizer of regional responses; and the regional planning commissions perform the localized scientific survey and deal with local governmental preferences concerning the preferred balance between growth and conservation.

G. Final approval of a coastal program

The CZM agency should coordinate the several regional proposals and, to the greatest extent possible, preserve them intact. The agency should present the total program to the Interagency Council on Natural Resources and the Environment for comment, and to the Governor for approval[217] and forwarding to the legislature. If the Governor approves, and if the legislature approves, then the entire program will become a formal statement of state policy for coastal zone management. It should have the broadest possible support because it will be scientifically based, locally formulated, regionally coordinated, and will bear the mark of state-level responsibility.

H. Implementation

After formal approval of the state coastal zone program's accompanying maps identifying specific areas of particular concern and management guidelines for development and conservation, the CZM agency should commence implementation procedures. These will include its own participation in the state and federal permit issuance procedures, and certification of local governments to handle implementation through their zoning and subdivision plat approval procedures.

CONCLUSION

As suggested in the introduction, the program that is spelled out in this paper is not likely to become the Texas response to the Coastal Zone Management program. It is instead an expression of approach, or even of attitude. There is a conscious attempt to focus upon the policies and principles of the federal Act, without ignoring the value preferences of Texans for continued growth, minimum government emphasis over high level authority. There is strong advocacy for basing any coastal zone management program upon a scientifically valid study of the natural environment of the coastal areas. Conventional land use zoning is not required by the federal Act, and it is not included as an implementation measure in the proposed state system. Maximum use of existing state governmental institutions is recommended.

During the short time that Texas has spent formulating a coastal zone management program, the state agencies and the public have shown a great deal of responsibility in responding to the substance and procedures of management. Nobody likes to be managed or regulated. But the necessity of preserving some essential values along the Texas coastline while providing a receptive atmosphere for growth is undeniable. Texans fear an overresponse with resultant bureaucratic and administrative arbitrariness. If the coastal zone management program can be grounded upon scientific fact and obvious needs, and if the program respects and preserves traditional values, then a rational

and effective coastal program can be developed and implemented with minimum opposition.

REFERENCES

1. Coastal Zone Management Act of 1972, 16 U.S.C.A. §§ 1451-1464 (Supp. 1974).

2. *Id.* § 1452 (b).

3. 15 C.F.R. § 9234, *Comment* (1974).

4. 16 U.S.C.A. § 1452(a) (Supp. 1974); 15 C.F.R. § 923.4(b)(3) (1974).

5. 16 U.S.C.A. § 1452(b) (Supp. 1974); 15 C.F.R. § 923.4(b)(4) (1974).

6. 3 U.S. CODE CONG & AD. NEWS, 4777 (1972).

7. 16 U.S.C.A. § 1453(a) (Supp. 1974); 15 C.F.R. §§ 920.2(b), 920.11(b) (1973).

8. 15 C.F.R. § 923.11(b)(3)(1974).

9. *Id.* § 923.11(b)(1).

10. *Id.* § 920.41 (1973).

11. *Id.* § 920.20(b).

12. 16 U.S.C.A. § 1455(c)(2)(B) (1972); 15 C.F.R. § 920.11(c)(1973); 15 C.F.R. 923.30 (1974).

13. 16 U.S.C.A. § 1455(c)(i)(Supp. 1974).

14. *Id.* § 1455(c)(3); 15 C.F.R. § 920.31 (1973); *Id.* § 923.41(a) (1974).

15. 16 U.S.C.A. § 1455(c)(2)(B)(Supp. 1974); 15 C.F.R. § 923.23 (1974).

16. 15 C.F.R. § 920.14(a)(1)(iii)(1973); *Id.* §§ 923.31-923.32 (1974).

17. 16 U.S.C.A. § 1456(b)(Supp. 1974); 15 C.F.R. § 920.11(c)(1973).

18. 16 U.S.C.A. § 1456(b)(Supp. 1974).

19. *Id.* § 1456(c)(1); 15 C.F.R. § 920.11(c)(1973).

20. 16 U.S.C.A. § 1456(c)(3)(Supp. 1974).

21. *Id.* §§ 1456(c)(3)-(d).

22. *Id.* § 1456(c)(3).

23. *Id.* §§ 1455(c)(2), 1455(e)(1)(C); 15 C.F.R. § 920.14(a)(1)(iii) (1973), *Id.* §§ 923.20, 923.21(a)(1974).

24. 16 U.S.C.A. § 1456(c)(1)(Supp. 1974); 15 C.F.R. § 923.32 (1974).

25. *Id.* § 923.4 *Comment* (1974).

26. 16 U.S.C.A. § 1455(e)(1)(A)(Supp. 1974); 15 C.F.R. § 920.14(a)(i)(1)(1973).

27. 16 U.S.C.A. § 1456(d)(Supp. 1974).

28. *Id.* § 1456(c)(3)-(d).

29. *Id.* § 1456(f).

30. *Id.* § 1453(a); 15 C.F.R. 920.2(b)(1973).

31. 16 U.S.C.A. § 1456(c)(1)(Supp. 1974).

32. *Id.* § 1456(e)(1).

33. *Id.* § 1456(e)(2).

34. National Environmental Policy Act, 42 U.S.C. § 4331 (1970).

35. 15 C.F.R. § 923.5 (1974).

36. National Land Use Planning Act, H.R. 4342 (Mar. 5, 1975).

37. 3 U.S. CODE CONG. & AD. NEWS 4783 (1972).

38. 16 U.S.C.A. § 1455(c)(4)-(5)(Supp. 1974); 15 C.F.R. § 920.16(b)-(c)(1973).

39. 15 C.F.R. § 923.32 (1974).

40. Texas Land Use Report No. Two at 87 (1972).

41. 16 U.S.C.A. § 1454(b)(1)-(6)(Supp. 1974).

42. *Id.* § 1455(c)(1)-(9), (d)(1)-(2).

43. *Id.* § 1455(e)(1)(A)-(c).

44. *Id.* § 1455(e)(2).

45. *Id.* § 1452(b).

46. TEX. REV. CIV. STAT. ANN. art 5414d § 1 (1962).

47. *Id.* at art. 5415e-1 § 6-7 (Supp. 1974), Coastal Public Lands Management Act of 1973.

48. *Id.* at art. 5415f-5415h (Supp. 1974).

49. 15 C.F.R. § 920.12 (1973).

50. *Id.* § 920.13.

51. *Id.* § 923.15 (1974).

52. *Id.* § 923.17.

53. 16 U.S.C.A. § 1454(b)(2)(Supp. 1974); 15 C.F.R. § 920.12 (1973).

54. 15 C.F.R. § 1455(c)(8)(Supp. 1974).

55. 16 U.S.C.A. § 1455(c)(8)(Supp. 1974).

56. *Id.* § 1454(b)(2).

57. *Id.*

58. *Id.* 1453(2); 15 C.F.R. §§ 920.2(b), 920.11(b)(1973).

59. 15 C.F.R. § 923.12 (1974).

60. *See* TEX. REV. STAT. ANN. art. 5415h (Supp. 1974).

61. Submerged Lands Act, 43 U.S.C. § 1301 *et seq.* (1964).

62. 16 U.S.C.A. § 1456(a)(Supp. 1974).

63. TEX. REV. CIV. STAT. ANN. art. 8263h (1962).

64. TEX. REV. CIV. STAT. ANN. art 5415f (Supp. 1974).

65. *Id.* at art. 5415e-1 (Supp. 1974).

66. TEX. REV. CIV. STAT. ANN. art 5415d, § 1 (1962), Open Beaches Law.

67. 16 U.S.C.A. § 1453(a)(Supp. 1974); 15 C.F.R. § 920.2 (1973).

68. TEX. REV. CIV. STAT. ANN. art 5415d, § 1, 5 (Supp. 1974).

69. 16 U.S.C.A. § 1453(a)(Supp. 1974).

70. *See* cases cited in Bosselman, *The Taking Issue* at 216 (1973).

71. *See* TEX. REV. CIV. STAT. ANN. art. 1011a (1963).

72. *Id. See* Porter v. Southwestern Pub. Ser. Co., 489 S.W. 2d 361 (Tex. Civ. App.--1972, writ ref'd n.r.e.); San Antonio v. Hunt, 458 S.W. 2d 295 (Tex. Civ. App.--1970. Error granted.)

73. Sax, *Takings, Private Property and Public Rights,* 81 YALE L.J. 149 (1971).

74. *See* cases cited in *The Taking Issue* pp. 148-155.

75. 15 C.F.R. § 923.12(b)(1974).

76. *See* CODE CONG. & AD. NEWS, 92d Cong., 2d Sess. 4785 (1972).

77. 15 C.F.R. § 923.5, *Comment* (1974).

78. U.S. CODE CONG. & AD. NEWS, 92d Cong., 2d Sess. 4785 (1972).

79. *Id.* at 4785-86; 16 U.S.C.A. § 1454(b)(2)(Supp. 1974).

80. U.S. CODE CONG. & AD. NEWS, at 4875; 16 U.S.C.A. § 1454(b)(4) (Supp. 1974).

81. U.S. CODE CONG. & AD. NEWS, 92d Cong., 2d Sess. 4787 (1972); 16 U.S.C.A. § 1455(e) (Supp. 1974).

82. *Id.* § 1454(2)-(5); 15 C.F.R. §§ 920.12, 920.15 (1973).

83. National Land Use Planning Act, H.R. 4342 § 103(a)(Mar. 5, 1975).

84. A.L.I. Model Land Development Code, Proposed Official Draft no. 1, § 7-201(3)(1974).

85. *Id.* at § 7-201(1).

86. *Id.* at §§ 7-203, 7-204.

87. *Id.* at § 7-204.

88. National Land Use Planning Act, H.R. 4342 § 103(a)(Mar. 5, 1975).

89. *Id.* at Title III, §§ 301-310.

90. 15 C.F.R. § 920.13 (1973).

91. 16 U.S.C.A. § 1454(b)(3)-(5)(Supp. 1974).

92. 15 C.F.R. § 923.14 (1974).

93. *Id.* § 920.15 (1973).

94. 16 U.S.C.A. § 1454(b)(2)-(4)(Supp. 1974).

95. *Id.* § 1454(b)(3)-(5).

96. *Id.* § 1454(b)(5).

97. 15 C.F.R. § 920.13(1)-(5)(1973).

98. 15 C.F.R. § 920.13(b)-(8)(1973).

99. *See e.g.* 15 C.F.R. § 923.11 (1974).

100. 15 C.F.R. § 923.14 (1974).

101. 16 U.S.C.A. § 1455(c)(9)(Supp. 1974).

102. 15 C.F.R. § 923.13 (1974).

103. 16 U.S.C.A. § 1455(d)(2)(Supp. 1974); 15 C.F.R. § 923.25 (1974).

104. 16 U.S.C.A. § 1454(b)(2)(Supp. 1974).

105. *Id.* § 1454(b)(3)-(4); 15 C.F.R. 923.13(b)(1974).

106. 15 C.F.R. § 920.13 (1973); 15 C.F.R. § 923.14, *Comment* (1974).

107. 16 U.S.C.A. § 1454(b)(4)(Supp. 1974); *Id.* §§ 1455(d)(1)-(e)(1).

108. 15 C.F.R. § 920.13 (1973); *Id.* § 923.4 (13); *Id.* § 923.15(b)(1974).

109. 16 U.S.C.A. § 1455(c)(9)(Supp. 1974); 15 C.F.R. § 920.12 (1973); *Id.* § 923.4, *Comment* (5)-(16)(1974).

110. *Id.* §§ 920.11(a)-920.13(7) (1973); *Id.* § 923.4, *Comment* (13) (1974).

111. *Id.*

112. *Id.* § 920.14(b)(3)(ii)(1973).

113. *See* TEX. REV. CIV. STAT. ANN ., art. 5415d, §§ 5,6 (1962); Lawton v. City of Austin, 404 S.W. 2d 648 (Tex. Civ. App.--1966, writ ref'd n.r.e.).

114. TEX. REV. CIV. STAT. ANN., art. 5415d, §§ 1-2 (1962), Open Beaches Law.

115. TEX. REV. CIV. STAT. ANN., art. 5415g (Supp. 1974).

116. *See* TEX. REV. CIV. STAT. ANN., art 1011a (1963).

117. *Id.*; *See* Dallas v. Crownrich, 506 S.W. 2d 654 (Tex. Civ. App.--1974, no writ).

118. 15 C.F.R. §§ 923.4 *Comment*-923.14(b)(1974).

119. U.S. CODE CONG. and AD. NEWS, 92d Cong., 2d Sess. 4777-80 (1972).

120. J. Mixon, A Description of Private, Local and State Institutions Which Influence Chambers County Land Use, 1-10 (1975).

121. *Id.* at 11-22.

122. 15 C.F.R. 923.15 (1974).

123. *Id.* § 923.15(b).

124. *Id.* § 923.15 (see chart).

125. *Id.* §§ 923.12(2)(i)-(iii).

126. *Id.* §§ 923.13, 123.14(b).

127. TEX. REV. CIV. STAT. ANN., art 1011a (1963).

128. Clean Air Act of 1970, 42 U.S.C.A. § 1857a (Supp. 1975).

129. *See*, J. Mixon, A Description of Private, Local, and State Institutions Which Influence Chambers County Law (1975).

130. 15 C.F.R. § 920.12 (1973); *Id.* § 923.14 (1974).

131. A.L.I. Model Land Development Code, D.O.D. No. 1 § 7-301 (1974).

132. 16 U.S.C.A. § 1453(i) (Supp. 1974); 15 C.F.R. § 920.1(i) (1973).

133. Atomic Energy Commission, 84 Stat. 1565 (1971), 86 Stat. 621 (1972); Environmental Protection Agency, 84 Stat. 2086 (1970).

134. *Id.*

135. 16 U.S.C.A. § 1455(e)(2)(Supp. 1974); 15 C.F.R. 923.10(d) (1974).

136. *Id.* § 920.13 (1973); *Id.* §§ 923.10, 923.13, 923.14, (1974).

137. 16 U.S.C.A. § 1454(b)(1)-(3)(Supp. 1974).

138. *Id.* § 1454(b)(6).

139. *Id.* § 1455(c)(5).

140. *Id.* § 1454(b).

141. *Id.* § 1455(d)(2).

142. 15 C.F.R. § 920.14(a) (1973).

143. 16 U.S.C.A. § 1455(e)(2) (Supp. 1974); 15 C.F.R. § 923.10(d) (1974).

144. TEX. REV. CIV. STAT. ANN., art. 54153-1, § 3 (Supp. 1974). Coastal Public Lands Management Act of 1973.

145. TEX. REV. CIV. STAT. ANN., art. 5415h, §§ 3,7 (Supp. 1974). Protection of Sand Dunes.

146. 16 U.S.C.A. § 1456(f) (Supp. 1974).

147. 42 U.S.C.A. §§ 4321, 4332 (1973).

148. 16 U.S.C.A. § 1455(c)(1) (Supp. 1974).

149. 16 U.S.C.A. § 1455(c)(4) (Supp. 1974); 15 C.F.R. § 920.16(b) (1973).

150. The members of the Interagency Council on Natural Resources and the Environment adopted the State Policy on the Environment in March 1972. The publication of the adopted policy (including the recommendation of "NEPA-like" environmental assessments) is entitled "Environment for Tommorrow: The Texas Response."

151. 16 U.S.C.A. §§ 1456(c)-(f) (Supp. 1974).

152. *Id.*

153. *Id.* § 1455(e)(1).

154. *Id.* §§ 1455(c)(6)-(7).

155. *Id.* § 1455(e)(1).

156. TEX. REV. CIV. STAT. ANN., art. 2372 1 (1971) and art. 2372 1-1 (Supp. 1972) authorize three counties to zone land around two state recreational areas.

157. *Id.* art. 2372k (1971) and art. 6626a (1969) authorize counties to place street design, construction, and drainage requirements upon subdivision.

158. TEX. WATER CODE ANN. § 21.084 (1972) authorizes counties to license private sewage facilities.

159. TEX. REV. CIV. STAT. ANN., art. 8280-13 (Supp. 1971) authorizes all state political subdivisions to engage in flood plain management.

160. *Id.*, arts. 1011a *et. seq.* 1175 (26) (1963).

161. 16 U.S.C.A. § 1454(b)(2) (Supp. 1974).

162. 15 C.F.R. § 920.12 (1973); Proposed NOAA guidelines for § 306 of the Coastal Zone Management Act, § A.12 (1974).

163. 16 U.S.C.A. § 1454(b)(3) (Supp. 1974).

164. *Id.* § 1454(b)(5).

165. *Id.;* 15 C.F.R. § 920.15 (1973).

166. 16 U.S.C.A. § 1455(d)(1) (Supp. 1974).

167. TEX. REV. CIV. STAT. ANN., art. 5415d (1962, Supp. 1974).

168. Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.A. § 1251 (Supp. 1974); TEX. WATER CODE ANN., §§ 21.251-21.265 (1972).

169. 33 U.S.C.A. §§ 1341-45 (Supp. 1974); TEX. WATER CODE ANN. § 21.079 (1972).

170. 16 U.S.C.A. § 1455(d)(1) (Supp. 1974).

171. *Id.* § 1455(c)(9) (Supp. 1974).

172. TEX. REV. CIV. STAT. ANN., art. 5415d (1962, Supp. 1974).

173. *Id.*, art. 5415h (Supp. 1974).

174. 16 U.S.C.A. § 1455(e)(2) (Supp. 1974); Proposed NOAA guidelines for § 306 of the CZMA, § B.17 (1974).

175. Dillion's rule proclaims that cities and counties have no inherent powers of self-government (TEX. REV. CIV. STAT. ANN., art. 977 (1963) but cities have been granted conventional zoning power. TEX. REV. CIV. STAT. ANN., arts. 1011a *et. seq.* 1175 (26) (1963).

176. TEX. REV. CIV. STAT. ANN., art. 974a (1963); *Id.*, art. 2372k (1971); *Id.*, art. 6626a (1969).

177. TEX. WATER CODE ANN. § 21.079 (1972); TEX. REV. CIV. STAT. ANN. art. 4477-5 (Supp. 1972).

178. 42 U.S.C. § 4231 *et. seq.* (1970).

179. 16 U.S.C.A. § 1455(e)(1) (Supp. 1974).

180. National Flood Insurance Act of 1968, 42 U.S.C. §§ 4022, 4023, 4101, 4102 (1970).

181. *Id.*

182. 1974 Amendments to the National Disaster Relief Act of 1968, Pub. L. No. 93-288 (May 22, 1974)

183. 16 U.S.C.A. § 1456(c)(1) (Supp. 1974).

184. *Id.* § 1456(d).

185. 16 U.S.C.A. § 1455(e)(1) (Supp. 1974).

186. *Id.* § 1456(c)(1).

187. Houston & T.C. Ry. Co. v. East, 81 S.W. 279 (Tex. 1904).

188. TEX. REV. CIV. STAT. ANN., art. 7477(Supp. 1972).

189. Lee Charles Schroer described the intricate procedures required for creation of a water district in his comment "The Water Control and Improvement District: Concept, Creation and Critique", 8 HOUS. L. REV. 712 at 718 (1971).

190. TEX. WATER CODE ANN. § 21.079 (1972).

191. TEX. REV. CIV. STAT. ANN., art. 974a (1973), art. 2732k (1971).

192. *Id.* art. 6626 (1969).

193. TEX. WATER CODE ANN. § 21.079 (1972).

194. TEX. REV. CIV. STAT. ANN., art. 4474-5 (Supp. 1972).

195. 38 Fed. Reg. 29895 (1973).

196. 16 U.S.C.A. § 1455(c)(6)-(7) (Supp. 1974).

197. 16 U.S.C.A. § 1455(c)(2) (Supp. 1974).

198. *Id.* § 1455(c)(1).

199. The Open Beaches Act, TEX. REV. CIV. STAT. ANN., art. 5415d (1962, Supp. 1974).

200. Tex. Penal Code art. 962a, which is valid until replaced by Tex. Rev. Civ. Stat. Ann. art. 4048.

201. Schatzel, *Public Historic Preservation in Texas*, 49 Tex. L. Rev. 267 (1971).

202. TEX. WATER CODE ANN. § 61.117(f) (Supp. 1974).

203. The Sand Dune Protection Act, TEX. REV. CIV. STAT. ANN., art. 5415h (Supp. 1974)

204. The Coastal Public Lands Management Act of 1973, TEX. REV. CIV. STAT. ANN., art. 5415e-1, § 5 (Supp. 1974).

205. Houston & T.C. Ry. Co. v. East, 81 S.W. 279 (Tex 1904).

206. 42 U.S.C. § 4331 *et. seq.* (1970); Clean Air Amendments of 1970, 42 U.S.C. §§ 1857-58(a) (1970); Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.A. §§ 1251-376 (Supp. 1974); CZMA, 16 U.S.C.A. § 1451 *et. seq.* (Supp. 1974).

207. TEX. REV. CIV. STAT. ANN., art. 6145, 5438 (1962).

208. *Id.*, arts. 8280-13 and 1581e-1 (Supp. 1971).

209. *Id.*, art. 5415e-1 (Supp. 1974).

210. 16 U.S.C.A. § 1454(b)(1) (Supp. 1974).

211. *Id.* § 1455(c)(1)-(2).

212. *Id.* § 1456(f).

213. *Id.* § 1456.

214. *Id.* §§ 1454(b)(3)-(b)(5); 15 C.F.R. § 920.13 (1973); Proposed NOAA guidelines for § 306 of the Coastal Zone Management Act, § B.13-14 (1974).

215. 16 U.S.C.A. § 1455(c)(2)(b) (Supp. 1974).

216. *Id.* § 1455(c)(3).

217. *Id.* § 1455(c)(4).

APPENDICES

APPENDIX A
COASTAL ZONE MANAGEMENT ACT OF 1972*

CHAPTER 33.—COASTAL ZONE MANAGEMENT

Sec.

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* *16 U.S.C.A. §§ 1451-1464 (Supp. 1974).*

§ 1451. Congressional findings

The Congress finds that—

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone;

(b) The coastal zone is rich in a variety of natural, commercial, recreational, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation;

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion;

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations;

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values;

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate; and

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

Pub.L. 89–454, Title III, § 302, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1280.

Historical Note

Short Title. Section 301 of Pub.L. 89–454, as added by Pub.L. 92–583, provided that: "This title [enacting this chapter] may be cited as the 'Coastal Zone Management Act of 1972'."

Legislative History. For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

Library References

Navigable Waters ⟹29 et seq., 39 et seq.

C.J.S. Navigable Waters §§ 55 et seq., 61 et seq.

§ 1452. Congressional declaration of policy

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this chapter, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

Pub.L. 89–454, Title III, § 303, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1281.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1453. Definitions

For the purposes of this chapter—

(a) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(b) "Coastal waters" means (1) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and es-

tuary-type areas such as bays, shallows, and marshes and (2) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(c) "Coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this chapter, the term also includes Puerto Rico, the Virgin Islands, Guam and American Samoa.

(d) "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(e) "Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(f) "Secretary" means the Secretary of Commerce.

(g) "Management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this chapter, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) "Water use" means activities which are conducted in or on the water; but does not mean or include the establishment of any water quality standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 1456(f) of this title.

(i) "Land use" means activities which are conducted in or on the shorelands within the coastal zone, subject to the requirements outlined in section 1456(g) of this title.

Pub.L. 89–454, Title III, § 304, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1281.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1454. Management development program grants—Authorization

(a) The Secretary is authorized to make annual grants to any coastal state for the purpose of assisting in the development of a management program for the land and water resources of its coastal zone.

Program requirements

(b) Such management program shall include:

(1) an identification of the boundaries of the coastal zone subject to the management program;

(2) a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters;

(3) an inventory and designation of areas of particular concern within the coastal zone;

(4) an identification of the means by which the state proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, including a listing of relevant constitutional provisions, legislative enactments, regulations, and judicial decisions;

(5) broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority;

(6) a description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

Limits on grants

(c) The grants shall not exceed 66⅔ per centum of the costs of the program in any one year and no state shall be eligible to receive more than three annual grants pursuant to this section. Federal funds received from other sources shall not be used to match such grants. In order to qualify for grants under this section, the state must reasonably demonstrate to the satisfaction of the Secretary that such grants will be used to develop a management program consistent with the requirements set forth in section 1455 of this title. After making the initial grant to a coastal state, no subsequent grant shall be made under this section unless the Secretary finds that the state is satisfactorily developing such management program.

Submission of program for review and approval

(d) Upon completion of the development of the state's management program, the state shall submit such program to the Secretary for review and approval pursuant to the provisions of section 1455 of this title, or such other action as he deems necessary. On final approval of such program by the Secretary, the state's eligibility for further grants under this section shall terminate, and the state shall be eligible for grants under section 1455 of this title.

Allocation of grants

(e) Grants under this section shall be allocated to the states based on rules and regulations promulgated by the Secretary: *Provided,*

however, That no management program development grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

Reversion of unobligated grants

(f) Grants or portions thereof not obligated by a state during the fiscal year for which they were first authorized to be obligated by the state, or during the fiscal year immediately following, shall revert to the Secretary, and shall be added by him to the funds available for grants under this section.

Grants to other political subdivisions

(g) With the approval of the Secretary, the state may allocate to a local government, to an areawide agency designated under section 3334 of Title 42, to a regional agency, or to an interstate agency, a portion of the grant under this section, for the purpose of carrying out the provisions of this section.

Expiration date of grant authority

(h) The authority to make grants under this section shall expire on June 30, 1977.

Pub.L. 89–454, Title III, § 305, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1282.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1455. Administrative grants—Authorization

(a) The Secretary is authorized to make annual grants to any coastal state for not more than 66⅔ per centum of the costs of administering the state's management program, if he approves such program in accordance with subsection (c) of this section. Federal funds received from other sources shall not be used to pay the state's share of costs.

Allocation of grants

(b) Such grants shall be allocated to the states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided, however*, That no annual administrative grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

Program requirements

(c) Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

(1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this chapter and is consistent with the policy declared in section 1452 of this title.

(2) The state has:

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 3334 of Title 42, a regional agency, or an interstate agency; and

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this chapter.

(3) The state has held public hearings in the development of the management program.

(4) The management program and any changes thereto have been reviewed and approved by the Governor.

(5) The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

(6) The state is organized to implement the management program required under paragraph (1) of this subsection.

(7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

(8) The management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature.

(9) The management program makes provision for procedures whereby specific areas may be designated for the purpose of preserv-

ing or restoring them for their conservation, recreational, ecological, or esthetic values.

Required authority for management of coastal zone

(d) Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 3334 of Title 42, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

Required findings

(e) Prior to granting approval, the Secretary shall also find that the program provides:

(1) for any one or a combination of the following general techniques for control of land and water uses within the coastal zone;

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulation; or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

Allocation to other political subdivisions

(f) With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 3334 of Title 42, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: *Provided*, That such allocation shall not relieve the state of the responsibility for ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

Program modification

(g) The state shall be authorized to amend the management program. The modification shall be in accordance with the procedures required under subsection (c) of this section. Any amendment or modification of the program must be approved by the Secretary before additional administrative grants are made to the state under the program as amended.

Segmental development

(h) At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: *Provided*, That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

Pub.L. 89-454, Title III, § 306, as added Pub.L. 92-583, Oct. 27, 1972, 86 Stat. 1283.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92-583, see 1972 U.S.Code Cong. and Adm.News, p. 1776.

§ 1456. Interagency coordination and cooperation—Federal agencies

(a) In carrying out his functions and responsibilities under this chapter, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

Adequate consideration of views of Federal agencies; mediation of disagreements

(b) The Secretary shall not approve the management program submitted by a state pursuant to section 1455 of this title unless the views of Federal agencies principally affected by such program have been adequately considered. In case of serious disagreement between any Federal agency and the state in the development of the program the Secretary, in cooperation with the Executive Office of the President, shall seek to mediate the differences.

Consistency of Federal activities with state management programs; certification

(c)(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

(3) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

Applications of local governments for Federal assistance; relationship of activities with approved management programs

(d) State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968. Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this chapter or necessary in the interest of national security.

Construction with other laws

(e) Nothing in this chapter shall be construed—

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of

water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

Construction with existing requirements of water and air pollution programs

(f) Notwithstanding any other provision of this chapter, nothing in this chapter shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this chapter and shall be the water pollution control and air pollution control requirements applicable to such program.

Concurrence with programs which affect inland areas

(g) When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 1455 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas.

Pub.L. 89–454, Title III, § 307, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1285.

Historical Note

References in Text. The Intergovernmental Coordination Act of 1968, referred to in subsec. (d), presumably refers to the Intergovernmental Cooperation Act of 1968. Title IV thereof is classified to section 4231 et seq. of Title 42, The Public Health and Welfare.

The Federal Water Pollution Control Act and the Clean Air Act, referred to in subsec. (f), are classified, respectively, to section 1251 et seq. of Title 33, Navigation and Navigable Waters, and section 1857 et seq. of Title 42, The Public Health and Welfare.

Legislative History. For legislative history and purpose of Pub.L. 92-583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1457. Public hearings

All public hearings required under this chapter must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

Pub.L. 89–454, Title III, § 308, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1287.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1458. Review of performance; termination of financial assistance

(a) The Secretary shall conduct a continuing review of the management programs of the coastal states and of the performance of each state.

(b) The Secretary shall have the authority to terminate any financial assistance extended under section 1455 of this title and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

Pub.L. 89–454, Title III, § 309, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1287.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1459. Records and audit

(a) Each recipient of a grant under this chapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of the grant that are perti-

nent to the determination that funds granted are used in accordance with this chapter.

Pub.L. 89–454, Title III, § 310, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1287.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1460. Coastal Zone Management Advisory Committee

(a) The Secretary is authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such a manner as the Secretary may direct. The Secretary shall insure that the committee membership as a group possesses a broad range of experience and knowledge relating to problems involving management, use, conservation, protection, and development of coastal zone resources.

(b) Members of the committee who are not regular full-time employees of the United States, while serving on the business of the committee, including traveltime, may receive compensation at rates not exceeding $100 per diem; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for individuals in the Government service employed intermittently.

Pub.L. 89–454, Title III, § 311, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1287.

Historical Note

Termination of Advisory Committees. Advisory Committees in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law, see section 14 of Pub.L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Legislative History. For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1461. Estuarine sanctuaries

The Secretary, in accordance with rules and regulations promulgated by him, is authorized to make available to a coastal state grants of up to 50 per centum of the costs of acquisition, development, and operation of estuarine sanctuaries for the purpose of creating natural field laboratories to gather data and make studies of the natural and human

processes occurring within the estuaries of the coastal zone. The Federal share of the cost for each such sanctuary shall not exceed $2,000,000. No Federal funds received pursuant to section 1454 or 1455 of this title shall be used for the purpose of this section.

Pub.L. 89-454, Title III, § 312, as added Pub.L. 92-583, Oct. 27, 1972, 86 Stat. 1288.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92-583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1462. Annual report

(a) The Secretary shall prepare and submit to the President for transmittal to the Congress not later than November 1 of each year a report on the administration of this chapter for the preceding fiscal year. The report shall include but not be restricted to (1) an identification of the state programs approved pursuant to this chapter during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this chapter and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved or with respect to which grants have been terminated under this chapter, and a statement of the reasons for such action; (5) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 1456 of this title, are not consistent with an applicable approved state management program; (6) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (7) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (8) a summary of outstanding problems arising in the administration of this chapter in order of priority; and (9) such other information as may be appropriate.

(b) The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this chapter and enhance its effective operation.

Pub.L. 89-454, Title III, § 313, as added Pub.L. 92-583, Oct. 27, 1972, 86 Stat. 1288.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92-583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1463. Rules and regulations

The Secretary shall develop and promulgate, pursuant to section 553 of Title 5, after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this chapter.

Pub.L. 89–454, Title III, § 314, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1288.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1464. Authorization of appropriations

(a) There are authorized to be appropriated—

(1) the sum of $9,000,000 for the fiscal year ending June 30, 1973, and for each of the fiscal years 1974 through 1977 for grants under section 1454 of this title, to remain available until expended;

(2) such sums, not to exceed $30,000,000, for the fiscal year ending June 30, 1974, and for each of the fiscal years 1975 through 1977, as may be necessary, for grants under section 1455 of this title to remain available until expended; and

(3) such sums, not to exceed $6,000,000 for the fiscal year ending June 30, 1974, as may be necessary, for grants under section 1461 of this title, to remain available until expended.

(b) There are also authorized to be appropriated such sums, not to exceed $3,000,000, for fiscal year 1973 and for each of the four succeeding fiscal years, as may be necessary for administrative expenses incident to the administration of this chapter.

Pub.L. 89–454, Title III, § 315, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1289.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

APPENDIX B
RULES AND REGULATIONS FOR COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT GRANTS, PART 920*

Title 15—Commerce and Foreign Trade

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 920—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT GRANTS

The National Oceanic and Atmospheric Administration (NOAA) on June 13, 1973, proposed guidelines (originally published as 15 CFR Part 960), pursuant to section 305 of the Coastal Zone Management Act of 1972 (Pub. L. No. 92-583, 86 Stat. 1280), hereinafter referred to as the "Act," for the purpose of defining the procedures by which States can qualify to receive development grants under section 305 of the Act and policies for development of their management program.

Written comments were to be submitted to the Office of Coastal Environment, National Oceanic and Atmospheric Administration before August 13, 1973, and consideration has been given these comments.

The Act recognizes that the coastal zone is rich in a variety of natural, commercial, recreational, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation. Present State and institutional arrangements for planning and regulating land and water uses in the coastal zone are often inadequate to deal with the competing demands and the urgent need to protect natural systems in the ecologically fragile area. Section 305 of the Act authorizes annual grants to any coastal State for the purpose of assisting the State in the development of a management program for the land and water resources of its coastal zone (development grant). Once a coastal State has developed a management program it is submitted to the Secretary of Commerce for approval and, if approved, the State is then eligible, under section 306, to receive annual grants for administering its management program (administrative grants).

The guidelines contained in this part are for grants under section 305 to develop a management program that will meet the requirements of section 306. Section 305 provides guidance as to what must be included in a management program while section 306 sets forth requirements that must be met before the Secretary can approve a State's management program for administrative grants. Participating States, therefore, must insure that the management program they develop under section 305 will meet the requirements of section 306. These guidelines incorporate some of the requirements of section 306. Guidelines for section 306 are being developed and will be published when available.

In general terms, section 305 requires a management program to include (1) the boundaries of the State's coastal zone; (2) a process pursuant to which permissible land and water uses which have a direct and significant impact on coastal waters are defined; (3) criteria for and designation of geographic areas in the coastal zone of particular concern to the State; (4) identification or establishment of the means by which the State, together with other levels of government, shall exert control over the land and water uses in its coastal zone; (5) designation of priority uses within specific geographic areas throughout the coastal zone; and (6) description of the organizational structure and intergovernmental arrangements sufficient to develop and maintain an effective and coordinated management process.

The National Oceanic and Atmospheric Administration is publishing herewith the final regulations describing procedures for applications to receive development grants under section 305 of the Act. The final regulations and criteria published herewith were revised from the proposed guidelines based on the comments received. A total of sixty-three (63) States, agencies, organizations and individuals submitted responses to the proposed section 305 Guidelines published in the FEDERAL REGISTER on June 13, 1973. Of those responses received, twelve (12) were wholly favorable as to the nature and content of the Guidelines as they appear in the FEDERAL REGISTER on June 13, 1973. Forty-one (41) commentators submitted suggestions concerning the proposed section 305 Guidelines.

The following analysis summarizes key comments received on various sections of the interim regulations and presents a rationale for the changes made:

1. Several commentators asserted that there was a need for further elaboration on the definitions contained under § 920.2. No changes were made in response to these comments since the present definitions allow the States to adjust their programs as local conditions require.

2. Sixteen comments were received on the necessity of submitting an Environmental Impact Statement as required by § 920.10(c). The National Environmental Policy Act, 42 U.S.C. 4332, and implementing regulations, 38 FR 20562, August 1, 1973, require an Environmental Impact Statement be prepared and circulated on:

(i) The environmental impact of the proposed action,

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) Alternatives to the proposed action,

(iv) The relationship between local, short-term uses of man's environment and the maintenance of enhancement of long-term productivity, and

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

(42 U.S.C. 4332 [C])

It is anticipated that such Environmental Impact Statements will be prepared by the Secretary, primarily on the basis of an environmental impact assessment and other relevant data, prepared and submitted by the individual States.

3. Several suggestions were made that the seven representative factors listed under § 920.13 be expanded to include renewable resource lands. The commentators expressed concern that this important area in the coastal ecosystem was not specifically identified. As a result of the concern expressed by the commentators, renewable resource lands are included in the list of representative factors which will assist in the designation of certain areas as being areas of particular concern.

4. The requirement that a "more comprehensive management program design" be submitted within 120 days after approval of the grant application has been amended under § 920.45(d). The final guidelines require that the management program design be submitted at the same time as the application for the initial grant. The reason for the above change is that the 120-day delay is not necessary and would serve as a potential source of confusion to the applicants.

5. Several comments received pertaining to § 920.14 recommended that NOAA emphasize the point that institutional questions should be raised early in the overall process. Commentators expressed concern that waiting until all the "technical work" is completed and the "plan" developed to consider the institutional vehicles for implementation would be a mistake that could forseeably delay the implementation of the plan. As a result of the comments received, language has been inserted to encourage the States to determine at an early stage whether or not legislation is needed.

6. There appeared to be general misunderstanding of the Public Hearing requirements cited under § 920.31. In order to clarify this section it has been rewritten. The present section emphasizes that "the key to compliance with the provisions of the Act is the assurance that the public has had an adequate opportunity to participate in the development of the plan."

7. Several comments received indicated a lack of understanding by several commentators as to the exact meaning of "segmentation" under § 920.44. To eliminate any misinterpretation, the term "geographic" has been inserted before the terms "segment and segmentation" as they appear in §920.44.

8. One commentator expressed concern over § 920.45(f) which required that where "a State chooses to reject (completed and approved regional and local) plans, it should be prepared to justify its actions as part of the management program." The above language has been amended to require a State "to advise the local government wherein" "its plan is deficient," rather than to "justify" its actions. The commentator argued that it would be inappropriate to establish a burden of proof for the States when it disagrees with actions of a regional or local body created by the State.

9. Several suggestions were made that the 15-day limit under § 920.47 be expanded. On the basis of the comments submitted, the time limit was expanded

* *Federal Register, Vol 38, No. 229, Thursday, November 29, 1973.*

to "30 working days." One commentator believed that this would afford the Secretary greater time and opportunity to thoughtfully respond to State requests pursuant to this section.

Accordingly, having considered the comments received and other relevant information, the Secretary concludes by adopting the final regulations describing the procedure for application to receive development grants under section 305 of the Act, as modified and set forth below.

Effective date. November 29, 1973.

Dated: November 26, 1973.

ROBERT M. WHITE,
Administrator.

Sec.

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AUTHORITY: Sec. 305, Coastal Zone Management Act of 1972 (Pub. L. No. 92-583; 86 Stat. 1280).

Subpart A—General

§ 920.1 Policy and objectives.

(a) This part establishes guidelines on the procedures to be utilized by coastal States to obtain development grants under section 305 of the Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280, and sets forth policies for the development of coastal zone management programs.

(b) Coastal zone management programs developed by the States shall comply with the policy of the Act; that is, the program must give full consideration to ecological, cultural, historic, and esthetic values, as well as to needs for economic development.

§ 920.2 Definitions.

As used in this part, the following terms shall have the meanings indicated below:

(a) The term "Act" means the Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280.

(b) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the U.S. territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion or which is held in trust by the Federal Government, its officers or agents.

(c) "Coastal waters" means (1) those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of seawater, including but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries; and (2) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes.

(d) "Coastal State" means a State of the United States, in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of these guidelines, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(e) "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the seawater is measurably diluted with freshwater derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(f) "Secretary" means the Secretary of Commerce or his designee.

(g) "Management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other permanent media of communication, prepared and adopted by the State in accordance with the provisions of these guidelines, setting forth objectives, policies, and standards to guide and regulate public and private uses of lands and waters in the coastal zone.

(h) "Water use" means activities which are conducted in or on the water within the coastal zone.

(i) "Land use" means activities which are conducted in or on the shorelands within the coastal zone.

§ 920.3 Applicability of air and water pollution control requirements.

Notwithstanding any other provisions of this part, nothing in this part shall in any way affect any requirement (a) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (b) established by the Federal Government or by any State or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to these guidelines and shall be the water pollution control and air pollution control requirements applicable to such program.

Subpart B—Content of Management Programs

§ 920.10 General.

(a) The guidelines for section 305 of the Act have been structured to parallel the language and sequence of requirements in the Act. This approach has been followed to facilitate references to the Act. It is not required that this sequence be rigorously followed in developing the management program and in carrying out the specific tasks contained therein. It is anticipated and acceptable that the approach taken for development of programs will vary. These guidelines should not be interpreted as limiting State approaches or the contents of their management development grant applications.

(b) Section 305(b) required the inclusion of six elements in the initial development of State coastal zone management programs. These minimum requirements are set forth below with accompanying commentary that is designed to guide State responses to these key provisions of the management program development grant effort.

(c) It is anticipated that an environmental impact statement will be prepared and circulated on a State's management program prior to its approval by the Secretary of Commerce, in accordance with the terms of the National Environmental Policy Act and its associated administrative regulations. The Secretary will prepare and circulate an environmental impact statement on the basis of an environmental impact assessment and other relevant data, prepared and submitted by the individual States.

§ 920.11 Boundaries of the coastal zone.

Section 305(b)(1) requires the management program to include "an identification of the boundaries of the coastal zone subject to the management program." The definition of the coastal zone in the Act recognizes that no single geographic definition will satisfy the management needs of all coastal States, because designation of the coastal zone for management purposes must take into account the diverse natural, institutional, and legal characteristics that are subject to decisions made in fulfillment of other requirements of the Act and this subpart. Determination by a State of the extent of the coastal zone of that State land-

ward from the shoreline presents a very important conceptual and operational issue for State study, analysis, and decision. The following factors should be considered:

(a) In order to develop an orderly and effective management program, States my wish initially to delineate a planning area which generally is larger than, and encompasses the area ultimately identified as the coastal zone. Such a two-step procedure would enable a State to undertake planning studies and policy development for a relatively broad region aimed at a later final determination of the smaller coastal zone where specific land and water use controls, regulations, and active management activities will be applied. Demographic, economic, developmental, and biophysical factors and their analysis, which will largely determine State management activities in coastal waters and the landward and seaward areas and uses affecting them, are likely to be based upon data, programs, and institutional boundaries (such as counties or areawide agencies) that encompass geographic areas larger than the coastal zone designation. Specific coastal zone programming and regulation must take into account current developmental, political, and administrative realities, as well as biophysical processes, that may be external to the restricted zone eventually selected for direct management control.

(b) The coastal zone for management purposes extends inland only "to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters." However, the States are encouraged to take early and continuing account of existing Federal and State land/water use and resource planning programs. In addition, States may wish to anticipate a national land-use policy, including its application in their State, unless the State coastal zone management program applies to the entire State. States may also wish to anticipate the desired coordination between the coastal zone and proposed land use or broad resource management programs. Examples of some related statewide policies and programs which will affect and should be considered in making determinations under the Act include: Energy policy, siting of power plants and other major water-dependent facilities, surface and subsurface mineral extraction controls, overall land and water conservation policies, and many others.

(c) Lands the use of which are by law subject solely to the discretion of, or which are held in trust by the Federal Government, its officers or agents are excluded from the coastal zone. However, section 307(c) of the Act requires Federal agencies conducting or supporting activities in the coastal zone to conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved State management programs. Furthermore, before the Secretary can approve a management program, he is required under section 307(b) to consider the views of Federal agencies principally affected by the management program. States having excluded Federal lands in coastal zone must indicate the manner in which they will coordinate with Federal officials administering such lands in the development of their management program.

§ 920.12 Permissible land and water uses which have a direct and significant impact on coastal waters.

Section 305(b)(2) of the Act requires that the management program include "a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on coastal water." In determining permissible uses, States should give consideration to "requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources." As stated in the declaration of congressional policy, these uses are to be managed "giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development." Developing indices for determining environmental and economic impact—beneficial, benign, tolerable, adverse—is the first essential analytical and policy step needed to give substance and clarity to those uses which are "permissible." Some of the factors involved in this determination include location, magnitude, the nature of impact upon existing natural or man-made environments, economic, commercial, and other "triggering" impacts, and land and water uses of regional benefit. In responding to this requirement, therefore, the following general types of study and evaluation should be undertaken utilizing existing data and available analysis where possible:

(a) Determining criteria and measures to assess the impact of existing, projected, or proposed uses or classes of uses on the identified coastal environments;

(b) Categorizing the nature, location, scope, and conflicts of current and anticipated coastal land and water use or classes of uses;

(c) A continuing compilation, verification, and assessment of the general characteristics, values, and interrelationships within coastal land and water environments.

In establishing permissible uses, States must also be cognizant of the requirement in section 306(c)(8) of the Act that the management program must provide "for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature." The State must have adequate processes for providing such adequate consideration.

§ 920.13 Geographic areas of particular concern.

Section 305(b)(3) of the Act requires that the management program include "an inventory and designation of areas of particular concern." The inventory and analysis of the States' total costal zone in § 920.12 should provide the basic data analysis, and criteria necessary to identify specific geographic areas of particular concern. It should be noted that geographic areas of particular concern are likely to encompass not only the more-often cited areas of significant natural value or importance, but also: (a) Transitional or intensely developed areas where reclamation, restoration, public access and other actions are especially needed; and (b) those areas especially suited for intensive use or development. In addition, immediacy of need should be a major consideration in determining particular concern. While the States will vary in their perceptions of what areas are of particular concern, criteria derived from assessing the following representative factors will assist in these designations:

(1) Areas of unique, scarce, fragile, or vulnerable natural habitat, physical feature, historical significance, cultural value, and scenic importance;

(2) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and the various trophic levels in the food web critical to their well-being;

(3) Areas of substantial recreational value and/or opportunity;

(4) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(5) Areas of unique geologic or topographic significance to industrial or commercial development;

(6) Areas of urban concentration where shoreline utilization and water uses are highly competitive;

(7) Areas of significant hazard if developed, due to storms, slides, floods, erosion, settlement, etc.; and

(8) Areas needed to protect, maintain or replenish coastal lands or resources, such areas including coastal flood plains, aquifer recharge areas, sand dunes, coral and other reefs, beaches, offshore sand deposits, and mangrove stands.

This inventory and designation of geographic areas of particular concern will be of assistance in meeting the requirement in section 306(c)(9) of the Act which requires that the management program "make provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values."

§ 920.14 Means of exerting State control over land and water uses.

Section 305(b)(4) of the Act requires that the management program include "an identification of the means by which the State proposes to exert control over land and water uses referred to in (§ 920.12) including a listing of relevant constitutional provisions, legislative enactments, regulations, and judicial decisions." A fundamental purpose of this legislation is to broaden the perspective by which decisions affecting the coastal zone are made to incorporate a statewide view. Congress in section 306(e) provided

three methods by which a State might carry out its management responsibilities in an acceptable manner. Section 306(e) of the Act provides:

(a) Prior to granting approval, the Secretary shall also find that the program provides:

(1) For any one or a combination of the following general techniques for control of land and water uses within the coastal zone:

(i) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(ii) Direct State land and water use planning and regulation; or

(iii) State administrative review for consistency with the management program of all development plans, projects, or land water use regulations, including exceptions and variance thereto, proposed by any State or local authority or private developer with power to approve or disapprove after public notice and an opportunity for hearings.

It is for the several States to determine the appropriate role of local governments in administering its coastal zone program. The Act recognizes that local governments are closest to those who will be most affected by a management program and that many sub-State units often can make a useful contribution to the development of the program. Section 306 requires that: Local governments and other interested public and private parties must have an opportunity for full participation in the development of the management program; the State has coordinated with local, areawide, and interstate plans; and, the State has established an effective mechanism for continuing consultation and coordination with local governments and other units to insure their full participation in carrying out the management program (e.g., advisory councils composed of representatives of local government).

(b) Some of the issues to be addressed in identifying the means by which a State will propose to exert its control include:

(1) Whether existing State powers and authority are sufficient to exert one of the three alternative means of control specified in section 306(e);

(2) What specific modifications or strengthened mandates would be needed to qualify the State under section 306(d) and (e);

(3) Whether a shared State-local or State-areawide regional consolidated regulatory system should be established.

It is important that the States determine at an early stage whether legislation is needed, and identify the elements of that legislation to meet the requirements in section 306(d) and (e). This requires that the State, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, have authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

(i) To administer land and water use regulations, control development in order to insure compliance with the management program, and to resolve conflicts among competing uses; and,

(ii) To acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means where necessary to achieve conformance with the management program.

The required listing of relevant constitutional provisions, legislative enactments, regulations and judicial decisions will, of course, be one foundation for analyzing and making decisions concerning the above issues and alternatives. In order to undertake the kinds of work outlined above, however, it will be necessary to go beyond a mere listing by preparing an assessment of current legal constraints or prohibitions, needed executive or legislative initiatives, and where required, to prepare the elements of any legislative program needed to establish a comprehensive and effective management program. There is room to exercise strengthened design and management imagination and creativity under this program for coastal zone management. While past research and planning efforts have often been limited by existing law, policy and practices, the Act encourages creative approaches to action programs for orderly development, and preservation or restoration of areas within the coastal zone for their conservation, recreational, ecological or esthetic values. Thus, the States are encouraged to consider innovative techniques or strategies that are now being tested and utilized both in the United States and elsewhere that they deem suitable to their management needs.

§ 920.15 Designation of priority uses within specific geographic areas throughout the coastal zone.

Section 305(b)(5) of the Act requires that the management program include "broad guidelines on priority of uses in particular areas including specifically those uses of lowest priority." This required element is closely tied to the requirements in §§ 920.12 and 920.13 and should build upon the States' findings and conclusions reached concerning "permissible uses" and areas of "particular concern." These decisions should assist the State in establishing preferred uses tailored to specific areas in its coastal zone. Priority guidelines will serve three essential purposes:

(a) To provide the basis for regulating land and water uses in the coastal zone;

(b) To provide the State, local governments, areawide/regional agencies, and citizens with a common reference point for resolving conflicts, and

(c) To articulate the States' interest in the preservation, conservation, and orderly development of specific areas in its coastal zone.

It should be noted that States will be expected to utilize all available information relating to characteristics of the coastal zone when planning for specific uses. For example, data on flood inundation at 100-year intervals should be examined to determine the feasibility or wisdom of construction on affected sites.

§ 920.16 Organizational structure to implement the management program.

Section 305(b)(6) requires a management program to include: "A description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, areawide, State, regional and interstate agencies in the management process." One essential element of the organizational structure is the requisite State involvement in land and water use decisions in the coastal zone as set forth in § 920.14. Another, is the process of coordination by the State with local, areawide, regional and interstate agencies, in the development and administration of the management program. Guidance with respect to organizational structure is provided in section 306(c) which requires that the Secretary, prior to granting approval of a management program, find that:

(a) The State has—

(1) Coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

(2) Established an effective mechanism for continuing consultation and coordination between the management agency designated (by the Governor) and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this Act.

(b) The management program and any changes thereto have been reviewed and approved by the Governor.

(c) The Governor of the State has designated a single agency to receive and administer the grants for implementing the management program.

(d) The State is organized to implement the management program required under paragraph (d)(1) of this section. Based on policies, management approaches, technical data, priorities and existing or potential powers and authorities developed by the State in §§ 920.11 through 920.15, the critical issues of organizational structure, administrative responsibilities and institutional arrangements must be resolved. While a detailed institutional structure for achieving the Act's objectives cannot be specified in advance of development of the management program, the agency designated, or to be designated, by the Governor to re-

ceive and administer management grants should have:

(1) Authority to correlate the activities of all State, local, areawide/regional or other entities in the coastal zone;

(2) Appropriate access to the Governor; and

(3) Requisite powers set forth in section 306 of the Act.

In addition, States should strengthen cooperative mechanisms for State-Federal consultation in key mutual areas of concern, particularly where Federal activities affect the coastal zone. Section 306 requires that the management program provide for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit. Cooperation among the various State and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action, particularly regarding environmental problems and resource development in the national or regional interest, is encouraged.

Subpart C—Research and Technical Support

§ 920.20 General.

(a) It is clear that the process of developing (and operating) a management program for the coastal zone will necessarily involve frequent access to informational and research sources. In many cases, adequate understanding of questions such as dune stabilization, barrier beach dynamics, salt marsh productivity and estuarine circulation and flushing, to mention only a few, will be needed in order to develop successful management programs. Also, the process of inventorying and mapping the nature of a State's zone, and designation of areas of particular concern almost certainly will benefit from the application of technologies such as those employing remote sensing.

(b) A substantial number of sources for such information exist within Federal agencies, in universities, in State and Federal laboratories and research centers, and in the private sector. NOAA's Office of Coastal Environment, with the assistance of the Environmental Data Service, will endeavor to serve generally as a clearinghouse for specialized coastal zone technical information, and will issue pertinent publications on appropriate technical support available at least from Federal sources.

(c) Because some features of the coastal zone remain incompletely understood, States may find it necessary to act without all of the basic technical information that they require. The Office of Coastal Environment intends to identify unsolved coastal research problems and will seek to facilitate their solution. Monitoring programs established as part of the development of a management program may also, if properly designed, produce data which can be used to elucidate important coastal zone phenomena.

(d) It should be pointed out that the primary emphasis of the coastal zone management program is to create the mechanism for States to exert appropriate control over land and water uses and to begin the management process, not to engage in long-term research projects. Applications for management program development grants which contain substantial research elements will be carefully reviewed to assure that these elements are essential to the successful development of a State's management program and are an integral part of a comprehensive review of existing information relating to the management program. Clearly, the nature of this program will give preference to and encourage research in such applied activities as resource surveys, inventories, and determination of environmental carrying capacities.

(e) In developing their management programs, States should always endeavor to locate and utilize existing information and research sources to the extent applicable and available rather than undertaking unnecessary independent research or information gathering, as part of program development effectiveness. In this respect, the Office of Coastal Environment should ordinarily be initially contacted to ascertain what information and assistance it can provide.

§ 920.21 Approaches to research activities.

In addition to taking full advantage of the various sources of technical information found within the individual States, the States will also find that one of the important sources of technical information will be the various components of NOAA which support ongoing programs in coastal research and mapping, physical oceanography, and hydrography. Those elements of NOAA which States may wish to contact for assistance include:

(a) Office of Sea Grant: Supports a large program of university research aimed largely at coastal zone-related problems. Contact Office of Sea Grant, Pennsylvania Building, 425 13th Street NW., Washington, D.C.

(b) National Ocean Survey: Conducts a substantial inhouse effort on coastal mapping and charting, geodesy, hydrography, and related subjects. Contact National Ocean Survey, National Oceanic and Atmospheric Administration, Rockville, Md. 20852.

(c) National Marine Fisheries Service: Undertake biological and ecological research and other programs relevant to commercial and sport fisheries of all types. Contact National Marine Fisheries Service, Page Building 2, 3300 Whitehaven Street NW., Washington, D.C.

(d) Environmental Data Service: Monitors large quantities of environmental data of all types, including weather, oceanographic and earth sciences. Includes National Oceanic Data Center. Contact Environmental Data Service, National Oceanic and Atmospheric Administration, Page Building 2, 3300 Whitehaven Street NW., Washington, D.C.

(e) Environmental Research Laboratories: Conduct a wide ranging research program in the ocean and atmospheric sciences. Contact Environmental Research Laboratories, National Oceanic and Atmospheric Administration, Boulder, Colo. 80302.

(f) Office of Coastal Environment: Contains responsibility for administration of the Coastal Zone Management Act as well as a number of coastal environmental studies and manned underwater activity programs. Contact Office of Coastal Environment, National Oceanic and Atmospheric Administration, Rockville, Md. 20852.

(g) Other sources of information and resourses are:

(1) Research carried on by or for the U.S. Army Corps of Engineers;

(2) The Environmental Protection Agency has information on environmental programs and water quality studies and could be consulted for technical information and assistance in environmental pollution control problems and techniques;

(3) Department of Housing and Urban Development research program;

(4) Office of Water Resources Research, U.S. Department of the Interior;

(5) National Science Foundation—Research Applied to National Needs; and

(6) U.S. Geological Survey water and minerals resources investigations.

(h) In addition to the research activities cited above, there are many ongoing programs conducted by agencies at the State and Federal level which can provide technical assistance and should be utilized where appropriate. Inasmuch as further effort will be made to identify relevant Federal program, they are not described in detail here. They are, however, housed in such Federal agencies as:

Regional Economic Development Commissions,
Soil Conservation Service,
U.S. Geological Survey,
National Aeronautic and Space Administration,
Atomic Energy Commission,
Water Resources Councils and Associated River Basin Commissions.

(i) Finally, it is important to establish and maintain a relationship with the research community, designers, planners, decisionmakers, and managers. Because applied and basic research will be a continuing need in coastal zone management, States should review and develop explicit statements of their research needs and strengthen their contacts and involvement with the private and public research community, by taking a lead role in determining research and technical assistance priorities, continuing mutual project development activities and translation of scientific findings into information useful for managers.

Subpart D—Public Participation

§ 920.30 General.

Public participation is an essential element of development and administration of a coastal zone management program. Through citizen involvement in the development of a management program, public needs and aspirations can be reflected in use decisions for the

coastal zone, and public support for the management program can be generated. Participating States, therefore, should seek to obtain extensive public participation in the development and administration of a coastal zone management program.

§ 920.31 Public hearings.

Section 306(c)(3) of the Act requires that public hearings be held in the development of the management program.

(a) *Notice.* Notification of public hearing should provide the public the longest period of notice practical, but in no event should notice less than the 30-day statutory minimum be provided. Announcement of the hearings should be through media designed to inform the public—not merely to provide "technical notice." Therefore, in addition to any publication of legal notice as required by State law, reasonably informative news releases should be made available to the news media in the affected communities.

(b) *Access to document.* At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, the agenda for the hearing, and other data, must be made available to the public for review and study in the locale where the hearings are to be conducted.

(c) *Number of hearings.* Where a State has determined that a public hearing or hearings will be held only on the entire plan, it shall assure that the public is afforded an adequate opportunity to participate in the hearings.

Where a portion of the plan has been developed prior to the effective date of this Act, the requirement for public hearings under this Act shall be satisfied if the State shows that hearings complying with requirements of this section have been held on such earlier developed portions of the plans, or if the State provides a full opportunity for public hearings on the plan prior to submission of the plan for approval under section 306. In reviewing the plan submitted by a State, the Secretary will not approve any plan unless there has been a full and effective opportunity for public involvement in every portion of the plan. The key to compliance with the provisions of the Act is the assurance that the public has had an adequate opportunity to participate in the development of a plan. More than one public hearing on the plan is not required: *Provided,* That a hearing is conducted prior to final adoption of the plan and members of the public are given adequate notice of the hearing and a full opportunity to effectively participate and make their views known at such a hearing.

(d) *Location of hearings.* Hearings should be held in those geographic areas which would be principally affected by the decisions on issues under consideration at the hearing, e.g., establishment of priority uses for a given geographic area. Hearings on the total management program should be held in places within the State where all citizens of the State may have an opportunity to comment.

(e) *Timing of hearings.* In many cases, the population of the coastal zone fluctuates significantly with the seasons of the year. Efforts should be made to insure that hearings are held when those populations most likely to be affected are present.

(f) *Report.* A verbatim transcript of the hearings need not be prepared but a comprehensive summary should be prepared and made available to the public within 30 days after the conclusion of the hearing. A copy of these summaries shall accompany the management program when it is submitted to the Secretary for approval.

§ 920.32 Additional means of public participation.

Formal public hearings may not provide an adequate opportunity for information exchange. To insure that the public is heard during the development of the program, efforts should be made to encourage discussion in various forums of the subject matter of the hearings and to take other steps to insure that the public can participate in the process in a meaningful manner. The following are suggested to accommodate increased public participation:

(a) Establish arrangements for exchanging information, data, and reports, among State and local government agencies, citizen groups, special interest groups, and the public at large, throughout the development and administration of the coastal zone program.

(b) The State should provide, after notice, the opportunity of participation by relevant Federal agencies, State agencies, local organizations, port authorities and other interested parties both public and private.

(c) Develop mechanisms in addition to public hearings to allow citizens and the public at large to effectively participate in the coastal zone program. The following are examples of some of the components that may be used in the participation process:

(1) Citizen involvement in the development of the goals and objectives.

(2) Citizen appointment by the agency to a Citizen Advisory Committee.

(3) Establishment of processes to review component elements of the management program by selected citizen groups and the general public.

Subpart E—Applications for Development Grants

§ 920.40 General.

(a) The primary purpose of the development grant is to assist States in developing a comprehensive management program for their coastal zone. While the majority of the responsibility for developing a management program resides with the State, a State is permitted to allocate a portion of its grant to sub-State entities, or multi-State organizations, to assist in the development of a management program. At the discretion of the State and with the approval of the Secretary, a management program may be developed and adopted in geographical segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: *Provided,* That the State adequately provides for the ultimate coordination of the various geographical segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable. Grants given to the State must be expended for the development of a management program that meets the requirements of the Act. The grants shall not exceed two-thirds of the costs of the annual programs. Federal funds received from other sources cannot be used to match these grants. No more than three annual management program development grants can be awarded to a State.

(b) Section 305(c) of the Act provides:

> In order to qualify for grants under this section, the State must reasonably demonstrate to the satisfaction of the Secretary that such grants will be used to develop a management program consistent with the requirements set forth in section 306 of the Act. After making the initial grant to a coastal State, no subsequent grant shall be made under this section unless the Secretary finds that the State is satisfactorily developing such management program.

§ 920.41 Administration of the program.

The Congress assigned the responsibility for the administration of the Coastal Zone Management Act of 1972 to the Secretary of Commerce, who has designated the National Oceanic and Atmospheric Administration as the agency in the Department of Commerce to manage the program. NOAA has established the Office of Coastal Zone Management for this purpose. Requests for information on grant applications and the applications themselves should be directed to:

> Director, Office of Coastal Environment, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Rockville, Md. 20852.

§ 920.42 State responsibility.

(a) Applications for initial development grants must be submitted by the Governor of a coastal State or his designee.

(b) The application shall designate a single State official, agency, or entity, to receive development grants and have responsibility for the development of the State's coastal zone management program. The designee need not necessarily be that agency which will be designated by the Governor under the provisions of section 306(c)(5) of the Act as the single agency to receive and administer the grants for implementing the management program.

(c) A single State application will cover all program development activities, whether carried out by State agencies, areawide/regional agencies, local governments, regional or interstate entities.

§ 920.43 Allocation.

Section 305(g) allows a State to allocate a portion of its development grant to sub-State or multi-State entities. States must insure, in the development of the management program, that they de-

velop sufficient capability to administer the coastal zone management programs they are developing. If the State intends to allocate a portion of its grant, the application for a development grant shall set forth the manner in which a State plans to allocate any portion of its grant to sub-State units, multi-State units, or any other allocation. Requests for allocation will not be approved unless it is clearly demonstrated that the State is developing sufficient capabilities, and the work to be accomplished as the result of such allocations is integrated into the State's coastal zone management program development effort and will clearly contribute to the development of effective applications of State's policy in the coastal zone.

(a) *Areawide / Regional agencies.* Should the application indicate the desire of the State to allocate a portion of its management program development grant to an areawide/regional agency under the provisions of section 305(g) of the Act, in the absence of State law to the contrary, preference shall be given to those agencies recognized or designated as areawide/regional comprehensive planning and development agencies under the provisions of Office of Management and Budget circular No. A-95, under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 or Title IV of the Intergovernmental Cooperation Act of 1968. The provisions of part IV, OMB circular No. A-95 dealing with the "Coordination of Planning in Multijurisdictional Areas" apply to the areawide/regional agencies designated as recipients of management program development grants under this Act.

(b) *Local government.* Should the application indicate the desire of the State to allocate a portion of its management program development grant to a local government under the provisions of section 305(g) of the Act, units of general-purpose local government are preferred rather than special-purpose units of local government, as provided in section 402 of the Intergovernmental Cooperation Act of 1968.

(c) *Interstate agencies.* At the discretion of two or more Governors of adjacent or related coastal States, coordinated management programs or research and planning efforts may be developed leading to the establishment of management programs for such interstate or multi-State areas. Such proposals for interstate cooperation and action shall be set forth in the application for each State together with the interstate funding arrangements proposed for the joint work. The States involved may designate interstate compact agencies, Regional Action Planning Commissions, river basin commissions, or an interstate areawide/regional planning agency to accomplish the management program development work for the coastal zone management area within each jurisdiction as they see fit. Applications for interstate management program development grants will not be accepted directly from interstate or multi-State agencies, but only from the individual States involved in the joint program.

§ 920.44 Geographical segmentation.

Authority is provided in the Act for a State's management program to be "developed and adopted in geographical segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs." Request by a State to develop and adopt a program in geographical segments is subject to the additional proviso that the State "adequately provides for the ultimate coordination of the various geographical segments of the management program into a single unified program and that the unified program will be completed as soon as it is reasonably practicable." Undue geographical segmentation creates the possibility of continuing the status quo without creating a comprehensive management program.

§ 920.45 Application for the initial grant.

The application for the initial development grant shall include but not be limited to:

(a) Identification of the designated official, the State agency or entity designated by the Governor to prepare and submit the State's management program and receive its development grant as well as the legal authority or other basis under which the lead agency or entity operates. It shall also indicate what other State agencies may be involved in the development of the management program and, if the State desires to allocate a portion of its grant to other governmental units, it should identify those units and set forth the work proposed to be accomplished by each unit so identified.

(b) A summarization of the State's past and current activities in its coastal zone, the current status of coastal zone management, and other activities.

(c) A discussion and ranking by general order of importance of the major coastal zone related problems and issues facing the State, as well as identification of the goals and objectives the State hopes to achieve by development of its coastal zone management program.

(d) A management program design detailing the work to be accomplished in the development of the State's coastal zone management program. The management program design serves as an outline for the State's plan of action for developing a management program and should include a projection of how the State will seek to meet the requirements set forth in subpart B of this part. In addition, the management program design should include:

(1) An identification of existing information and sources of information;

(2) A projection as to additional information which must be acquired;

(3) A description of methods to insure public participation;

(4) A description of the intergovernmental process by which the State intends to involve various levels of government in the development and implementation of the management program;

(5) A mechanism for coordination with agencies administering excluded Federal lands that are in the coastal land; and

(6) A tentative approximation of the boundaries of the State's coastal zone.

(e) Submission of an annual work program consisting of a precise statement of what is intended to be accomplished during the year. Such a statement will include:

(1) Identification of the plans, programs and studies to be produced.

(2) Definition of the major tasks needed to produce the plans, programs and studies.

(3) For each task, the following should be specified:

(i) Approach and techniques to be used,

(ii) Data and studies already available,

(iii) Manpower requirements,

(iv) Time schedule,

(v) Costs, and

(vi) Source of funds.

(f) Identification of any other State and Federal planning, programming, or activity which may have a significant impact on the State's coastal zone. Such planning, programming or activities includes work accomplished or to be undertaken by any State, areawide, local, regional or interstate agencies funded, in part or in total, by State or local money, with or without Federal assistance. Completed and officially approved regional and local plans provide invaluable input and guidance in the development of a State's coastal zone management program. It should be pointed out that where a State chooses to reject such plans, it should advise the local government wherein its proposed plan is deficient and clarify what needs to be done to correct the deficiency. The objective of this provision is to seek and achieve as complete coordination and integration as possible at the State level of all local, State and Federal programs that lead to the setting of policy or the development of public and private works, facilities or programs in the State's defined coastal zone. The Act provides in section 307(c)(1) that: "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is to the maximum extent practicable, consistent with approved State management programs." To this end, the application shall reflect, and the developed coastal zone management program will provide, methods to integrate the following types of programs and activities as they affect the coastal zone of the state: (1) Federally assisted planning development and management programs, such as but not limited to (the program numbers and titles listed below are those contained in the 1972 Catalog of Federal Domestic Assistance as published by OMB):

PUBLIC LAW REFERENCE

Pub. L. 87-703; 91-343; 74-46.	Resource Conservation and Development.	(10.901)
Pub. L. 83-560	Comprehensive Planning Assistance.	(14.203)
Pub. L. 88-578	Outdoor Recreation State Planning.	(15.401)
Pub. L. 89-304; 91-239.	Anadromous Fish Conservation.	(15.600)
	Fish Restoration	(15.605)
	Wildlife Restoration	(15.611)
Pub. L. 74-292	Historic American Buildings Survey.	(15.903)
Pub. L. 89-665	Historic Preservation	(15.904)
Pub. L. 91-258	Airport Planning Grant Program.	(20.103)
Pub. L. 90-495; 91-605; 89-574.	Highway Research Planning and Construction.	(20.205)
Pub. L. 91-453; 88-365.	Urban Mass Transportation Technical Studies Grants.	(20.505)
Pub. L. 89-80	Water Resources Planning	(65.001)
	Air Pollution Survey and Demonstration Grants.	(66.005)
	Solid Waste Planning Grants.	(66.301)
	Water Pollution Control Comprehensive Planning Grants.	(66.401)
Pub. L. 88-206; 89-272; 89-675; 90-148; 91-604.	Air Pollution Survey and Demonstration Grants.	(66.005)
Pub. L. 92-500	Water Quality Management Technical Planning Assistance.	(66.023)
Pub. L. 89-272; 91-512; 93-14.	Solid Waste Technical Assistance, Training and Information Services.	(66.304)
Pub. L. 92-583	Marine Protection Research and Sanctuaries.	

(2) Public works land acquisition and development projects conducted, proposed to be conducted, proposed to be conducted or assisted by a Federal agency, authorized and financed outside of the Federal programs listed above, such as activities conducted with respect to rivers and harbors, small watershed development, wastewater collection and treatment facilities, military reservations, wildlife refuges, park and recreation areas, improvements in navigation, flood control and so forth;

(3) Any Federally supported national land use program which may be hereinafter enacted as specified in section 307 (g) of the Act;

(4) Activities in the coastal zone stemming from the Rural Development Act of 1972;

(5) State programs dealing with land use controls in the coastal zone or other regulatory, licensing, permit or operating programs in the coastal zone including, but not limited to, activities such as mineral extracting, power plant siting and harbor construction.

§ 920.46 Approval of applications.

(a) The Secretary shall approve any application which he finds complies with policy and requirements of the Act and these guidelines.

(b) Should the Secretary determine that an application is deficient, he shall notify the applicant in writing and set forth in detail the manner in which the application fails to conform to the requirements of the Act or this subpart. Conferences may be held on these matters. Corrections or other adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The Secretary may, upon finding of extenuating circumstances relating to applications for assistance, waive appropriate administrative requirements contained herein.

§ 920.47 Amendments.

Amendments to an approved development program must be submitted to, and approved by the Secretary prior to initiation of the change contemplated. Requests for substantial changes should be discussed with Federal officials well in advance. It is recognized that, while all amendments must be approved by the Secretary, most such requests will be relatively minor in scope; therefore, approval by the Secretary may be presumed for minor amendments if the State has not been notified of objections within 30 working days of date of postmark of the request.

§ 920.48 Applications for second year grants.

(a) Second year development grant applications will follow the procedures set forth in § 920.45: *Provided, however,* That the management program design and annual work program shall be updated to indicate the progress made toward the development of the State's coastal zone management program under the initial development grant and should in addition:

(1) Demonstrate how the past year's work activities and products contributed to the realization of management program development goals if such goals have not been fully realized. Either document the extent to which they have been met or present modified goals.

(2) Identify major constraints upon or problems encountered in establishing and implementing an adequate management program for the State.

(3) Reexamine and assess the development program's broad goals and measurable planning objectives; and

(4) Reexamine and, if necessary, revise management program design in light of emerging or continuing priority problems and opportunities.

(b) In evaluating whether a State is making satisfactory progress in the development of the management program to determine eligibility for the second year grant, the Secretary will consider among other things whether a State has completed:

(1) An analysis of the existing legal authority to exert control over land and water uses in the coastal zone;

(2) A description of the activities and authorities of the various agencies (State, local, regional, areawide or interstate) involved in activities or regulation of activities in the coastal zone; and

(3) An analysis of the existing or needed legal authorities with which the State believes it can insure compliance with coastal zone management program, resolve conflicts among competing uses, and acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(4) This analysis will permit a State to determine what legislative action will be needed to qualify under section 306 of the Act. States may propose alternate standards of accomplishment for consideration by the Secretary in determining "satisfactory progress" towards completion of the management program.

§ 920.49 Application for third year grants.

(a) The general requirements set forth in paragraph (a) of § 920.46 shall apply to review of the application for the third year development grant.

(b) In evaluating whether a State is making satisfactory progress in development of the management program to determine eligibility for the third year grant, the Secretary will consider among other things whether a State has completed:

(1) Identification of the boundaries of the coastal zone;

(2) Development of a process by which permissible land and water uses having a direct and significant impact upon coastal waters can be defined; and

(3) Criteria for designating geographical areas of particular concern. Accomplishment of these tasks will put the State in a position to provide guidelines on priority of uses in particular areas and allow a State to complete development of its management program by the end of the third year. States may propose alternate standards of accomplishment for consideration by the Secretary in determining "satisfactory progress" toward completion of the management program.

[FR Doc.73-25362 Filed 11-28-73;8:45 am]

APPENDIX C
RULES AND REGULATIONS FOR COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT GRANTS, PART 923*

Title 15—Commerce and Foreign Trade

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

PART 923—COASTAL ZONE MANAGEMENT PROGRAM APPROVAL REGULATIONS

The National Oceanic and Atmospheric Administration (NOAA) on August 21, 1974, proposed guidelines (originally published as 15 CFR Part 923), pursuant to the Coastal Zone Management Act of 1972 (Pub. L. 92-583, 86 Stat. 1280), hereinafter referred to as the "Act," for the purpose of defining the procedures by which States can qualify to receive administrative grants under the Act.

Written comments were to be submitted to the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, before November 22, 1974, and consideration has been given these comments.

The Act recognizes that the coastal zone is rich in a variety of natural, commercial, recreational, industrial and esthetic resources of immediate and potential value to the present and future well-being of the nation. Present State and institutional arrangements for planning and regulating land and water uses in the coastal zone are often inadequate to deal with the competing demands and the urgent need to protect natural systems in the ecologically fragile area. Section 305 of the Act authorizes annual grants to any coastal State for the purpose of assisting the State in the development of a management program for the land and water resources of its coastal zone (development grant). Once a coastal State has developed a management program, it is submitted to the Secretary of Commerce for approval and, if approved, the State is then eligible under Section 306 to receive annual grants for administering its management program (administrative grants).

The regulations below set forth (a) criteria and procedures to be utilized in reviewing and approving coastal zone management programs pursuant to section 306 of the Act, and (b) procedures by which coastal States may apply to receive administrative grants under section 306(a) of the Act. The criteria and procedures under (a) constitute the "guidelines for section 306" referred to in 15 CFR 920.

The National Oceanic and Atmospheric Administration is publishing herewith the final regulations describing procedures for applications to receive administrative grants under section 306 of the Act. The final regulations and criteria published herewith were revised from the proposed guidelines based on the comments received. A total of thirty-two (32) States, agencies, organizations and individuals submitted responses to the proposed section 306 guidelines published in the FEDERAL REGISTER on August 21, 1974. Of those responses received, nine (9) were wholly favorable as to the nature and content of the guidelines as they appeared in the FEDERAL REGISTER on August 21, 1974. Twenty-three (23) commentators submitted suggestions concerning the proposed Section 306 guidelines.

The following analysis summarizes key comments received on various sections of the draft regulations and presents a rationale for the changes made:

1. Several commentators asserted that the guidelines did not adequately reflect the environmental considerations contained in the Act. No changes were made in response to these comments since the guidelines more than adequately reflect the environmental concerns in the legislation as evidenced in part by the comment section under § 923.4:

> Management programs will be evaluated in the light of the Congressional findings and policies as contained in Section 302 and Section 303 of the Act. These sections make it clear that Congress, in enacting the legislation, was concerned about the environmental degradation, damage to natural and scenic areas, loss of living marine resources and wildlife, decreasing open space for public use and shoreline erosion being brought about by population growth and economic development. The Act thus has a strong environmental thrust, stressing the 'urgent need to protect and to give high priority to natural systems in the coastal zone.

2. Several comments were received on the necessity of the Secretary of Commerce preparing and circulating an environmental impact statement on each individual State application as required by § 923.5. The National Environmental Policy Act, 42 USC 4332, and implementing regulations, 38 FR 20562, August 1, 1973, require an environmental impact statement be prepared and circulated on each individual State's application. An environmental impact statement shall be prepared on each individual State's application by the Secretary, primarily on the basis of an environmental assessment, and other relevant data, prepared and submitted by the individual States. This section was amended to reflect the requirement of the National Environmental Policy Act environmental impact statement requirements.

3. Several comments indicated that the States did not have a clear understanding as to what was meant under § 923.11 (b)(4) which refers to Federal lands subject solely to the discretion of, or which is held in trust by, the Federal government, its officers and agents. This section has been amended in order to provide a procedure for identifying those lands which are within the framework of this section.

4. Several commentators indicated that there was uncertainty as to what the requirements of the national interest were pursuant to § 923.15. This section has been amended in order to more succinctly state what the requirements are pursuant to this section and how a State must meet these requirements during the development and administration of its coastal zone management program. At the request of several commentators, several additions have been made to the list of requirements which are other than local in nature.

5. Several commentators indicated that § 923.26, which pertains to the degree of State control needed to implement a coastal zone management program, did not offer sufficient guidance in interpreting the legislation. In response to these comments, § 923.26 has been expanded to include specific examples of how a State may implement this section.

6. Comments received indicate there was some misunderstanding in interpreting § 923.43, which deals with geographical segmentation. This section has been substantially amended in order to indicate that the segmentation issue refers to geographical segmentation of a State's coastal zone management program. The requirements for a State to receive approval on a segmented basis are clearly set forth in the amendment to the regulations.

7. Extensive discussions have taken place with various elements of the U.S. Environmental Protection Agency (EPA) concerning the applicability of air and water pollution requirements to the development, approval and implementation of State management programs pursuant to § 923.44 of the proposed regulations. State coastal zone management programs have also been surveyed in order to determine current and anticipated problems, issues and opportunities associated with carrying out the requirements of section 307(f) of the Coastal Zone Management Act, and § 923.44 of the draft approval regulations. Consolidated EPA comments have been received, together with State reviews, and one comment from the private sector. Specific clarifications and changes as a result of these reviews are contained in §§ 923.4, 923.12, 923.32 and § 923.44 of these regulations.

8. One commentator objected to the amount of detail required in section 306 applications and the undue administrative burden proposed pursuant to Sub-

* *Federal Register, Vol. 40, No. 6, 1683-95, Thursday, January 9, 1975.*

part F of the proposed regulations. The revisions attempt to both clarify and reduce those requirements, while still requiring sufficient information for the Office of Coastal Zone Management to approve management programs and make sound funding decisions.

Accordingly, having considered the comments and other relevant information, the Administrator concludes by adopting the final regulations describing the procedure for application to receive administrative grants under section 306 of the Act, as modified and set forth below.

Effective date: January 8, 1975.

Dated: January 6, 1975.

ROBERT M. WHITE,
Administrator, National Oceanic and Atmospheric Administration.

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AUTHORITY: 86 Stat. 1280 (16 U.S.C. 1451–1464).

Subpart A—General

§ 923.1 Purpose.

(a) This part establishes criteria and procedures to be employed in reviewing and approving coastal zone management programs submitted by coastal States and for the awarding of grants under Section 306 of the Act.

(b) The Act sets forth in sections 305, 306 and 307 a number of specific requirements which a management program must fulfill as a condition for approval by the Secretary. These requirements are linked together as indicated in the subparts which follow. Presentation of the State management program in a similar format is encouraged since it will enable more prompt and systematic review by the Secretary. However, there is no requirement that a State present its management program in the format which corresponds exactly to the listing of categories below. The broad categories are: Land and Water Uses, Subpart B; Authorities and Organization, Subpart C; Coordination, Subpart D; and Miscellaneous, Subpart E. Subpart F, Applications for Administrative Grants, deals with applications for administrative grants upon approval of State coastal zone management programs which will be subject to periodic review by the Secretary in accordance with Section 309 of the Act. In addition to providing criteria against which State coastal zone management programs can be consistently and uniformly judged in the approval process and establishing procedures for the application by States for administrative grants, it is the intent of this part to provide guidance to coastal States in the development of management programs. Therefore, many of the sections dealing with approval requirement in the subparts are followed by a "comment" which refers to a section or sections of the Act and indicates the interpretation placed upon the requirements of the Act or the regulation by the Secretary.

§ 923.2 Definitions.

In addition to the terms defined in the Act and 15 CFR 920.2, the following terms shall have the meanings indicated below:

"Final approval" means, with respect to a coastal zone management program, approval of a program which terminates the eligibility of the State for grants under Section 305 of the Act and makes the State eligible for grants under Section 306 of the Act. In cases where a State has elected to follow the geographical segmentation option pursuant to § 923.43, final approval will apply only to that specific geographical segment. The State will continue to remain eligible for development grants pursuant to Section 305 of the Act for the remainder of the State's coastal zone.

"Preliminary approval" means, with respect to a coastal zone management program, approval of a program which does not terminate the eligibility of the State for further grants under Section 305 of the Act, and which does not make the State eligible for grants under Section 306 of the Act.

"Use of regional benefit" means a land or water use that typically provides benefits to a significant area beyond the boundaries of a single unit of the lowest level of local, general-purpose government.

§ 923.3 Submission of management programs.

(a) Upon completion of the development of its management program, a State shall submit the program to the Secretary for review and final approval in accordance with the provisions of these regulations. A program submitted for final approval must comply with all of the provisions set forth in Subparts A–E of this part, including, in particular, Subpart C, which requires that certain authorities and plans of organization be in effect at the time of the submission.

(b) Optionally, the State may submit for the preliminary approval of the Secretary a program complying with the substantive requirements of this part, but for which the proposed authorities and organization complying with the provisions of Subpart C are not yet legally effective. In reviewing a program submitted for preliminary approval, the Secretary may grant such approval subject to establishment of a legal regime providing the authorities and organization called for in the program. If the State elects this option, it shall continue to be eligible for funding under Section 305 but it shall not yet be eligible for funding under Section 306 of the Act until such time as its program is finally approved. Upon a showing by the State that authorities and organization necessary to implement the program which has received preliminary approval are in effect, final approval shall be granted.

Comment. The purpose of the optional procedure is to provide a State with an opportunity for Secretarial review of its program before State legislation is enacted to put the program into legal effect. Some States may prefer not to utilize the optional procedure, especially those which have legislative authority enabling the coastal zone agency of the State to put the program into effect by administrative action. In any event, the Office of Coastal Zone Management will be available for consultation during all phases of development of the program.

(c) States completing the requirements set forth in Subpart B—Land and Water Uses, and Subpart D—Coordination, will be deemed to have fulfilled the statutory requirements associated with each criteria. If, however, a State chooses to adopt alternative methods and procedures, which are at least as comprehensive as the procedures set forth below, for fulfilling those statutory requirements contained in Subparts B and D, they may do so upon prior written approval of the Secretary. The States are encouraged to consult with the Office of Coastal Zone Management as early as possible.

Comment. The thrust of the Act is to encourage coastal States to exercise their full

authority over the lands and waters in the coastal zone by developing land and water use programs for the zone, including unified policies, criteria, standards, methods and processes for dealing with land and water uses of more than local significance. While the Act mandates a State to meet specific statutory requirements in order for the State to be eligible for administrative grants, it does not require the State to follow specific processes in meeting those requirements. The Secretary will review any State management program that meets the requirements contained in Subparts B and D in addition to the other subparts contained herein.

§ 923.4 Evaluation of management programs—general.

(a) In reviewing management programs submitted by a coastal State pursuant to § 923.3, the Secretary will evaluate not only all of the individual program elements required by the Act and set forth in Subparts B–E of this part, but the objectives and policies of the State program as well to assure that they are consistent with national policies declared in Section 303 of the Act.

(b) Each program submitted for approval shall contain a statement of problems and issues, and objectives and policies. The statements shall address:

(1) Major problems and issues, both within and affecting the State's coastal zone;

(2) Objectives to be attained in interagency and intergovernmental cooperation, coordination and institutional arrangements; and enhancing management capability involving issues and problem identification, conflict resolution, regulation and administrative efficiency at the State and local level;

(3) Objectives of the program in preservation, protection, development, restoration and enhancement of the State's coastal zone;

(4) Policies for the protection and conservation of coastal zone natural systems, cultural, historic and scenic areas, renewable and non-renewable resources, and the preservation, restoration and economic development of selected coastal zone areas.

(c) The Secretary will review the management program for the adequacy of State procedures utilized in its development and will consider the extent to which its various elements have been integrated into a balanced and comprehensive program designed to achieve the above objectives and policies.

Comment. Evaluation of the statutory requirements established in this subpart will concentrate primarily upon the adequacy of State processes in dealing with key coastal problems and issues. It will not, in general, deal with the wisdom of specific land and water use decisions, but rather with a determination that in addressing those problems and issues, the State is aware of the full range of present and potential needs and uses of the coastal zone, and has developed procedures, based upon scientific knowledge, public participation and unified governmental policies, for making reasoned choices and decisions.

Management programs will be evaluated in the light of the Congressional findings and policies as contained in Sections 302 and 303 of the Act. These sections make it clear that Congress, in enacting the legislation, was concerned about the environmental degradation, damage to natural and scenic areas, loss of living marine resources and wildlife, decreasing open space for public use and shoreline erosion being brought about by population growth and economic development. The Act thus has a strong environmental thrust, stressing the "urgent need to protect and to give high priority to natural systems in the coastal zone." A close working relationship between the agency responsible for the coastal zone management program and the agencies responsible for environmental protection is vital in carrying out this legislative intent. States are encouraged by the Act to take into account ecological, cultural, historic and esthetic values as well as the need for economic development in preparing and implementing management programs through which the States, with the participation of all affected interests and levels of government, exercise their full authority over coastal lands and waters.

Further assistance in meeting the intent of the Act may be found in the Congressional Committee Reports associated with the passage of the legislation (Senate Report 92–753 and House Report 92–1049). It is clear from these reports that Congress intended management programs to be comprehensive and that a State must consider all subject areas which are pertinent to the particular circumstances which prevail in the State. A comprehensive program should have considered at least the following representative elements:

(1) Present laws, regulations, and applicable programs for attainment of air and water quality standards, on land and water uses, and on environmental management by all levels of government;

(2) Present ownership patterns of the land and water resources, including administration of publicly owned properties;

(3) Present populations and future trends, including assessments of the impact of population growth on the coastal zone and estuarine environments;

(4) Present uses, known proposals for changes and long-term requirements of the coastal zone;

(5) Energy generation and transmission;

(6) Estuarine habitats of fish, shellfish and wildlife;

(7) Industrial needs;

(8) Housing requirements;

(9) Recreation, including beaches, parks, wildlife preserves, sport fishing, swimming and pleasure boating;

(10) Open space, including educational and natural preserves, scenic beauty, and public access, both visual and physical, to coastlines and coastal estuarine areas;

(11) Mineral resources requirements;

(12) Transportation and navigation needs;

(13) Floods and flood damage prevention, erosion (including the effect of tides and currents upon beaches and other shoreline areas), land stability, climatology and meteorology;

(14) Communication facilities;

(15) Commercial fishing; and

(16) Requirements for protecting water quality and other important natural resources.

The list of considerations is not meant to be exclusive, nor does it mean that each consideration must be given equal weight. State initiative to determine other relevant factors and consider them in the program is essential to the management of the coastal zone as envisioned by Congress.

In assessing programs submitted for approval, the Secretary, in consultation with other concerned Federal agencies, will examine such programs to determine that the full range of public problems and issues affecting the coastal zone have been identified and considered. In this connection, developments outside the coastal zone may often have a significant impact within the coastal zone and create a range of public problems and issues which must be dealt with in the coastal zone management program.

The Secretary encourages the States to develop objectives toward which progress can be measured and will review program submissions in this light. While it is recognized that many essential coastal zone management objectives are not quantifiable (e.g. public aspirations, "quality of life"), others are, and should be set forth in measurable terms where feasible (e.g. shore erosion, beach access, recreational demand, energy facility requirements). Identifying and analyzing problems and issues in measurable terms during the program development phase will facilitate the formulation of measurable objectives as part of the approval submission.

§ 923.5 Environmental impact assessment.

Individual environmental impact statements will be prepared and circulated by NOAA as an integral part of the review and approval process for State coastal zone management programs pursuant to the National Environmental Policy Act (Pub. L. 91–190, 42 USC 4321 et seq) and its implementing regulations. The Administrator of NOAA will circulate an environmental impact statement prepared primarily on the basis of an environmental impact assessment and other relevant data submitted by the individual applicant States.

Subpart B—Land and Water Uses

§ 923.10 General.

(a) This subpart deals with land and water uses in the coastal zone which are subject to the management program.

(b) In order to provide a relatively simple framework upon which discussion of the specific requirements associated with this subpart may proceed, it may be helpful to categorize the various types of land and water uses which the Act envisions.

(1) The statutory definition of the landward portion of the coastal zone states that it "extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters." Thus, the coastal zone will include those lands and only those lands where any existing, projected or potential use will have a "direct and significant impact on the coastal waters." Any such use will be subject to the terms of the management program, pursuant to Section 305(b)(2).

(2) There may well be uses of certain lands included within the coastal zone which will not have such "direct and significant impact." Such uses may be subject to regulation by local units of government within the framework of the management program.

(3) The Act also requires that management programs contain a method of assuring that "local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." This requirement is described more fully in § 923.17.

(c) As part of the State's management program, it must address and exercise authority over the following:

(1) *Land and water uses which have a direct and significant impact upon coastal waters.* These uses are described more fully in § 923.12.

(2) *Areas of particular concern.* Section 305(b)(3) specifies that the management program include an inventory and designation of areas of particular concern within the coastal zone. Section 923.13 deals more thoroughly with this statutory requirement. Such areas must be considered of Statewide concern and must be addressed in the management program.

(3) *Siting of facilities necessary to meet requirements which are other than local in nature.* The management program must take "adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature" (Section 306(c)(8)). This requirement is more fully discussed in § 923.15.

§ 923.11 Boundaries of the coastal zone.

(a) *Requirement.* In order to fulfill the requirement contained in Section 305(b)(1), the management program must show evidence that the State has developed and applied a procedure for identifying the boundary of the State's coastal zone meeting the statutory definition of the coastal zone contained in Section 304(a). At a minimum this procedure should result in:

(1) A determination of the inland boundary required to control, through the management program, shorelands the uses of which have direct and significant impacts upon coastal waters,

(2) A determination of the extent of the territorial sea, or where applicable, of State waters in the Great Lakes,

(3) An identification of transitional and intertidal areas, salt marshes, wetlands and beaches,

(4) An identification of all Federally owned lands, or lands which are held in trust by the Federal government, its officers and agents in the coastal zone and over which a State does not exercise any control as to use.

(b) *Comment.* Statutory citation: Section 305(b)(1):

> Such management program shall include * * * an identification of the boundaries of the coastal zone subject to the management programs.

Useful background information concerning this requirement appears in Part 920.11, which is incorporated into this part by reference.

(1) The key to successful completion of this requirement lies in the development and use of a procedure designed to identify the landward extent of the coastal zone. Included in this procedure must be a method for determining those "shorelands, the uses of which have a direct and significant impact upon the coastal waters." These uses shall be considered the same as the "land and water uses" described in § 923.12, reflecting the requirements of Section 305(b)(2) of the Act regardless of whether those uses are found, upon analysis, to be "permissible." The coastal zone must include within it those lands which have any existing, projected or potential uses which have a direct and significant impact upon the coastal waters and over which the terms of the management program will be exercised. In some States, existing regulations controlling shoreland uses apply only in a strip of land of uniform depth (e.g. 250 feet, 1,000 yards, etc.) behind the shoreline. Such a boundary will be acceptable if it approximates a boundary developed according to the procedure outlined above and extends inland sufficiently for the management program to control lands the uses of which have a direct and significant impact upon coastal waters. States may wish, for administrative convenience, to designate political boundaries, cultural features, property lines or existing designated planning and environmental control areas, as boundaries of the coastal zone. While the Secretary will take into account the desirability of identifying a coastal zone which is easily regulated as a whole, the selection of the boundaries of the coastal zone must bear a reasonable relationship to the statutory requirement. Nothing in this part shall preclude a State from exercising the terms of the management program in a landward area more extensive than the coastal zone called for in this part. If such a course is selected, the boundaries of the coastal zone must nevertheless be identified as above and the provisions of the Act will be exercised only in the defined coastal zone. It should be borne in mind that the boundary should include lands and waters which are subject to the management program. This means that the policies, objectives and controls called for in the management program must be capable of being applied consistently within the area. The area must not be so extensive that a fair application of the management program becomes difficult or capricious, nor so limited that lands strongly influenced by coastal waters and over which the management program should reasonably apply, are excluded.

(2) Inasmuch as the seaward boundary of the coastal zone is established in the Act, the States will be required to utilize the statutory boundary, i.e. in the Great Lakes, the international boundary between the United States and Canada, and elsewhere the outer limits of the United States territorial sea. At present, this limit is three nautical miles from the appropriate baselines recognized by international law and defined precisely by the United States. In the event of a statutory change in the boundary of the territorial sea, the question of whether a corresponding change in coastal zone boundaries must be made, or will be made by operation of law, will depend on the specific terms of the statutory change and cannot be resolved in advance. In the waters of Lake Michigan, the boundary shall extend to the recognized boundaries with adjacent States.

(3) A State's coastal zone must include transitional and intertidal areas, salt marshes, wetlands and beaches. Hence the boundary determination procedure must include a method of identifying such coastal features. In no case, however, will a State's landward coastal zone boundary include only such areas in the absence of application of the procedure called for herein or in § 923.43.

(4) Since the coastal zone excludes lands the use of which is by law subject solely to the discretion of, or which is held in trust by the Federal government, its officers and agents, the coastal zone boundary must identify such lands which are excluded from the coastal zone. In order to complete this requirement, the State should indicate those Federally owned lands, or lands held in trust by the Federal government, *and* over which the State does not exercise jurisdiction as to use. In the event that a State fails to identify lands held by an agency of the Federal government as excluded lands, and the agency, after review of the program under Section 307(b), is of the opinion that such lands should be excluded, the disagreement will be subject to the mediation process set forth in said section.

§ 923.12 Permissible land and water uses.

(a) *Requirement.* In order to fulfill the requirements contained in Section 305(b)(2), the management must show evidence that the State has developed and applied a procedure for defining "permissible land and water uses within the coastal zone which have a direct and significant impact upon the coastal waters," which includes, at a minimum:

(1) a method for relating various specific land and water uses to impact upon coastal waters, including utilization of an operational definition of "direct and significant impact,"

(2) an inventory of natural and man-made coastal resources,

(3) an analysis or establishment of a method for analysis of the capability and suitability for each type of resource and application to existing, projected or potential uses.

(4) an analysis or establishment of a method for analysis of the environmental impact of reasonable resource utilizations.

(b) *Comment.* Statutory citation: Section 305(b)(2):

> Such management program shall include * * * a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact upon the coastal waters.

Useful background information concerning this requirement appears in 15 CFR 920.12, which is incorporated into this part by reference. Completion of this requirement should be divided into two distinct elements: a determination of those land and water uses having a direct and significant impact upon coastal waters, and an identification of such uses which the State deems permissible.

(1) *Section 305(b)(4).* In identifying those uses which have a "direct and sig-

nificant impact," the State should define that phrase in operational terms that can be applied uniformly and consistently, and should develop a method for relating various uses to impacts upon coastal waters. Existing, projected and potential uses should be analyzed as to the level and extent of their impact, be it adverse, benign or beneficial, intrastate or interstate. These impacts should then be assessed to determine whether they meet the definition of "direct and significant impact upon coastal waters." (These are the ones by which the boundaries of the coastal zone are defined.) Those uses meeting that definition are automatically subject to control by the management program.

(2) In determining which land and water uses may be deemed permissible, a State should develop a method for assuring that such decisions are made in an objective manner, based upon evaluation of the best available information concerning land and water capability and suitability. This method should include at a minimum:

(i) An inventory of significant natural and man-made coastal resources, including but not limited to, shorelands, beaches, dunes, wetlands, uplands, barrier islands, waters, bays, estuaries, harbors and their associated facilities. This should not be construed as requiring long-term, continuing research and baseline studies, but rather as providing the basic information and data critical to successful completion of a number of required management program elements. States are encouraged, however, to continue research and studies as necessary to detect early warnings of changes to coastal zone resources. It is recognized that in some States a complete and detailed inventory of such resources may be expensive and time consuming in relation to the value of information gathered in the development of the management program. Much information, of course, already exists and should be integrated into the inventory. The Secretary, in reviewing this particular requirement, will take into account the nature and extent of the State's coastline, the funding available and existing data sources.

(ii) An analysis or establishment of a method for analysis of the capabilities of each resource for supporting various types of uses (including the capability for sustained and undiminished yield of renewable resources), as well as of the suitability for such resource utilization when evaluated in conjunction with other local, regional and State resources and uses. Resource capability analysis should include physical, biological and chemical parameters as necessary.

(iii) An analysis or establishment of a method for analysis of the impact of various resource uses upon the natural environment (air, land and water). Based upon these analyses and applicable Federal, State and local policies and standards, the State should define permissible uses as those which can be reasonably and safely supported by the resource, which are compatible with surrounding resource utilization and which will have a tolerable impact upon the environment. These analyses, in part, will be provided through existing information on environmental protection programs, and should be supplemented to the extent necessary for determining the relationship between land uses and environmental quality. Where a State prohibits a use within the coastal zone, or a portion thereof, it should identify the reasons for the prohibition, citing evidence developed in the above analyses. It should be pointed out that uses which may have a direct and significant impact on coastal waters when conducted close to the shoreline may not have a direct and significant impact when conducted further inland. Similarly, uses which may be permissible in a highly industrialized area may not be permissible in a pristine marshland. Accordingly, the definition may also be correlated with the nature (including current uses) and location of the land on which the use is to take place. The analyses which the State will undertake pursuant to this section should also be useful in satisfying the requirements of § 923.13 through § 923.17.

§ 923.13 Areas of particular concern.

(a) *Requirement.* In order to fulfill the requirements contained in Section 305 (b)(3), the management program must show evidence that the State has made an inventory and designation of areas of particular concern within the coastal zone. Such designations shall be based upon a review of natural and man-made coastal zone resources and uses, and upon consideration of State-established criteria which include, at a minimum, those factors contained in 15 CFR 920.13, namely:

(1) Areas of unique, scarce, fragile or vulnerable natural habitat, physical feature, historical significance, cultural value and scenic importance;

(2) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife and the various trophic levels in the food web critical to their well-being;

(3) Areas of substantial recreational value and/or opportunity;

(4) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

(5) Areas of unique geologic or topographic significance to industrial or commercial development;

(6) Areas of urban concentration where shoreline utilization and water uses are highly competitive;

(7) Areas of significant hazard if developed, due to storms, slides, floods, erosion, settlement, etc.; and

(8) Areas needed to protect, maintain or replenish coastal lands or resources, including coastal flood plains, aquifer recharge areas, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

(b) *Comment.* Statutory citation: Section 305(b)(3).

Such management program shall include * * * an inventory and designation of areas of particular concern within the coastal zone.

Useful background information concerning the requirement appears in 15 CFR 920.13, which is incorporated here by reference. It should be emphasized that the basic purpose of inventorying and designating areas of particular concern within the coastal zone is to express some measure of Statewide concern about them and to include them within the purview of the management program. Therefore, particular attention in reviewing the management program will be directed toward development by the State of implementing policies or actions to manage the designated areas of particular concern.

§ 923.14 Guidelines on priority of uses.

(a) *Requirement.* The management program shall include broad policies or guidelines governing the relative priorities which will be accorded in particular areas to at least those permissible land and water uses identified pursuant to § 923.12. The priorities will be based upon an analysis of State and local needs as well as the effect of the uses on the area. Uses of lowest priority will be specifically stated for each type of area.

(b) *Comment.* Statutory citation: Section 305(b)(5)

Such management program shall include * * * broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority.

As pointed out in 15 CFR 920.15, the priority guidelines will set forth the degree of State interest in the preservation, conservation and orderly development of specific areas including at least those areas of particular concern identified in § 923.13 within the coastal zone, and thus provide the basis for regulating land and water uses in the coastal zone, as well as a common reference point for resolving conflicts. Such priority guidelines will be the core of a successful management program since they will provide a framework within which the State, its agencies, local governments and regional bodies can deal with specific proposals for development activities in various areas of the coastal zone. In order to develop such broad guidelines, the management program shall indicate that a method has been developed and applied for (1) analyzing State needs which can be met most effectively and efficiently through land and water uses in the coastal zone, and (2) determining the capability and suitability of meeting these needs in specific locations in the coastal zone. In analyzing the States' needs, there should be a determination made of those requirements and uses which have Statewide, as opposed to local, significance. Section 302(h) of the Act states in part that land and water use programs for the coastal zone should include "unified policies, criteria, standards, methods and processes for dealing with land and water use decisions of more than local significance." The inventory and analyses of coastal resources and uses called for in § 923.12 will provide the State with most of the basic data needed to determine the specific locations where coastal resources are capable and suitable for meeting State-

wide needs. In addition, these analyses should permit the State to determine possible constraints on development which may be applied by particular uses. The program should establish special procedures for evaluating land use decisions; such as the siting of regional energy facilities, which may have a substantial impact on the environment. In such cases, the program should make provision for the consideration of available alternative sites which will serve the need with a minimum adverse impact. The identifying and ordering of use priorities in specific coastal areas should lead to the development and adoption of State policies or guidelines on land and water use in the coastal zone. Such policies or guidelines should be part of the management program as submitted by the State and should be consistent with the State's specified management program objectives. Particular attention should be given by the State to applying these guidelines on use priorities within those "areas of particular concern" designated pursuant to § 923.13. In addition, States shall indicate within the management program uses of lowest priority in particular areas, including guidelines associated with such uses.

§ 923.15 National interest in the siting of facilities.

(a) *Requirement*. A management program which integrates (through development of a body of information relating to the national interest involved in such siting through consultation with cognizant Federal and regional bodies, as well as adjacent and nearby States) the siting of facilities meeting requirements which are of greater than local concern into the determination of uses and areas of Statewide concern, will meet the requirements of Section 306(c)(8).

(b) *Comment*. Statutory citation: Section 306(c)(8):

> Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that * * * the management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature.

This policy requirement is intended to assure that national concerns over facility siting are expressed and dealt with in the development and implementation of State coastal zone management programs. The requirement should not be construed as compelling the States to propose a program which accommodates certain types of facilities, but to assure that such national concerns are included at an early stage in the State's planning activities and that such facilities not be arbitrarily excluded or unreasonably restricted in the management program without good and sufficient reasons. It is recognized that there may or may not be a national interest associated with the siting of facilities necessary to meet requirements which are other than local in nature. Requirements which are other than local in nature shall be considered those requirements which, when fulfilled, result in the establishment of facilities designed clearly to serve more than one locality (generally, the lowest unit of local, general-purpose government, excluding situations such as with cities and counties which exercise concurrent jurisdiction for the same geographic areas). In order to provide assistance to the States in completing this requirement, a listing is presented below which identifies those requirements which are both (1) other than local in nature, and (2) possess siting characteristics in which, in the opinion of the Secretary, there may be a clear national interest. For each such need, there is a listing of associated facilities. In addition, the principal cognizant Federal agencies concerned with these facilities are also listed. This list must not be considered inclusive, but the State should consider each requirement and facility type in the development of its management program. Consideration of these requirements and facilities need not be seen as a separate and distinct element of the management program, and the listing is provided to assure that the siting of such facilities is not overlooked or ignored. As part of its determination of permissible uses in the coastal zone (§ 923.12), as well as of priority of uses (§ 923.14), the State will have developed a procedure for inventorying coastal resources and identifying their existing or potential utilization for various purposes based upon capability, suitability and impact analyses. The process for responding to the requirements of Section 306(c)(8) should be identical to, and part of, the same procedure. No separate national interest "test" need be applied and submitted other than evidence that the listed national interest facilities have been considered in a manner similar to all other uses, and that appropriate consultation with the Federal agencies listed has been conducted. As a preliminary to adequate consideration of the national interest, the State must determine the needs for such facilities. Management programs must recognize the need of local as well as regional and national populations for goods and services which can be supplied only through the use of facilities in the coastal zone in order to make reasonable provision for such facilities in light of the size and population of the State, the length and characteristics of its coast and the contribution such State is already making to regional and national needs. This will require the State to enter into discussions with appropriate Federal agencies and agencies of other States in the region, a process which should begin early in the development of the management program so that the full dimensions of the national interest may be considered as the State develops its program (§ 923.31 and §923.32). The management program should make reference to the views of cognizant Federal agencies as to how these national needs may be met in the coastal zone of that particular State. States should actively seek such guidance from these Federal agencies, particularly in view of the fact that all management programs will be reviewed with the opportunity for full comment by all affected Federal agencies prior to approval. It is recognized that Federal agencies will differ markedly in their abilities to articulate policies regarding utilization of individual State's coastal zones. NOAA's Office of Coastal Zone Management will encourage Federal agencies to develop policy statements regarding their perception of the national interest in the coastal zone and make these available to the States. The States should also consult with adjacent and nearby States which share similar or common coastal resources or with regional interstate bodies to determine how regional needs may be met in siting facilities. Specific arrangements of "trade-offs" of coastal resource utilization should be documented with appropriate supporting evidence. The importance of this type of interstate consultation and cooperation in planning cannot be overemphasized for it offers the States the opportunity of resolving significant national problems on a regional scale without Federal intervention.

Requirements which are other than local in nature and in the siting of which there may be a clear national interest (with associated facilities and cognizant Federal agencies)

Requirements	Associated facilities	Cognizant Federal Agencies
1. Energy production and transmission.	Oil and gas wells; storage and distribution facilities; refineries; nuclear, conventional, and hydroelectric powerplants; deepwater ports.	Federal Energy Administration, Federal Power Commission, Bureau of Land Management, Atomic Energy Commission, Maritime Administration, Geological Survey, Department of Transportation, Corps of Engineers.
2. Recreation (of an interstate nature)	National seashores, parks, forests; large and outstanding beaches and recreational waterfronts; wildlife reserves.	National Park Service, Forest Service, Bureau of Outdoor Recreation.
3. Interstate transportation	Interstate highways, airports, aids to navigation; ports and harbors, railroads.	Federal Highway Administration, Federal Aviation Administration, Coast Guard, Corps of Engineers, Maritime Administration, Interstate Commerce Commission.
4. Production of food and fiber	Prime agricultural land and facilities; forests; mariculture facilities; fisheries.	Soil Conservation Service, Forest Service, Fish and Wildlife Service, National Marine Fisheries Service.
5. Preservation of life and property	Flood and storm protection facilities; disaster warning facilities.	Corps of Engineers, Federal Insurance Administration, NOAA, Soil Conservation Service.
6. National defense and aerospace	Military installations; defense manufacturing facilities; aerospace launching and tracking facilities.	Department of Defense, NASA.
7. Historic, cultural, esthetic and conservation values.	Historic sites; natural areas; areas of unique cultural significance; wildlife refuges; areas of species and habitat preservation.	National Register of Historic Places, National Park Service, Fish and Wildlife Service, National Marine Fisheries Service.
8. Mineral resources	Mineral extraction facilities needed to directly support activity.	Bureau of Mines, Geological Survey.

§ 923.16 Area designation for preservation and restoration.

(a) *Requirement.* In order to fulfill the requirement contained in Section 306(c)(9), the management program must show evidence that the State has developed and applied standards and criteria for the designation of areas of conservation, recreational, ecological or esthetic values for the purpose of preserving and restoring them.

(b) *Comment.* Statutory citation: Section 306(c)(9):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that * * * the management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreation, ecological or esthetic values.

(1) This requirement is closely linked to that contained in § 923.13, dealing with designation of areas of particular concern. Unless the State can make a compelling case to the contrary, all areas designated according to the methods called for in this part shall also be considered as areas of particular concern.

(2) This requirement is reasonably self-explanatory. The State must develop procedures for the designation of areas with certain characteristics. The State, in doing so, must:

(i) Establish standards and criteria for the possible designation of coastal areas intended for preservation or restoration because of their conservation, recreational, ecological or esthetic values, and

(ii) Apply those standards and criteria to the State's coastal resources. (In this, the inventory associated with the requirement of § 923.13 will be most helpful.)

(3) The requirement of the statute goes to the procedures rather than substance; the fact that a State may be unable to move rapidly ahead with a program of preservation or restoration will not prevent the program from being approved. The State should also rank in order of relative priority areas of its coastal zone which have been designated for the purposes set forth in this section. As funds become available, such a ranking will provide a set of priorities for selecting areas to be preserved or restored.

§ 923.17 Local regulations and uses of regional benefit.

(a) *Requirement.* In order to fulfill the requirement contained in Section 306(e)(2), the management program must show evidence that the State has developed and applied a method for determining uses of regional benefit, and that it has established a method for assuring that local land and water use controls in the coastal zone do not unreasonably or arbitrarily restrict or exclude those uses of regional benefit.

(b) *Comment.* Statutory citation: Section 306(e)(2):

Prior to granting approval, the Secretary shall also find that the program provides * * * for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

This requirement is intended to prevent local land and water use decisions from arbitrarily excluding certain land and water uses which are deemed of importance to more than a single unit of local government. For the purposes of this requirement, a use of regional benefit will be one which provides services or other benefits to citizens of more than one unit of local, general-purpose government (excluding situations such as in cities and counties which exercise jurisdiction over the same geographic areas). In order to assure that arbitrary exclusion does not occur, the State must first identify those uses which it perceives will affect or produce some regional benefit. This designation would normally be derived from the inventory and analysis of the uses contained in § 923.12. In any event, however, these uses should include those contained in the table of § 923.15. In addition, the State may determine that certain land and water uses may be of regional benefit under certain sets of circumstances; the State should then establish standards and criteria for determining when such conditions exist. There should be no blanket exclusion or restrictions of these uses in areas of the coastal zone by local regulation unless it can be shown that the exclusion or restriction is based upon reasonable considerations of the suitability of the area for the uses or the carrying capacity of the area. The requirement of this section does not exclude the possibility that in specific areas certain uses of regional benefit may be prohibited. However, such exclusions may not be capricious. The method by which the management program will assure that such unreasonable restrictions or exclusion not occur in local land and water use decisions will, of course, be up to the State, but it should include the preparation of standards and criteria relating to State interpretation of "unreasonable restriction or exclusion", as well as the establishment of a continuing mechanisms for such determination.

Subpart C—Authorities and Organization

§ 923.20 General.

This subpart deals with requirements that the State possess necessary authorities to control land and water uses and that it be organized to implement the management. It should be emphasized that before final approval of a coastal zone management program can be given by the Secretary of Commerce, the authorities and organizational structure called for in the management program must be in place. Preliminary approval, however, can be given to a proposal which will require subsequent legislative or executive action for implementation and eligibility for administrative grants under Section 306.

§ 923.21 Means of exerting State control over land and water uses.

(a) *Requirement.* In order to fulfill the requirements contained in Sections 305(b)(4) and 306(c)(7), the management program must show evidence that the State has identified a means for controlling each permissible land and water use specified in § 923.12, and for precluding land and water uses in the coastal zone which are not permissible. The management program should contain a list of relevant constitutional provisions, legislative enactments, regulations, judicial decisions and other appropriate official documents or actions which establish the legal basis for such controls, as well as documentation by the Governor or his designated legal officer that the State actually has and is prepared to implement the authorities, including those contained in Section 306(d), required to implement the objectives, policies and individual components of the program.

(b) *Comment.* Statutory citation: Section 305(b)(4):

Such management program shall include * * * an identification of the means by which the State proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, including a listing of relevant constitutional provisions, legislative enactments, regulations and judicial decisions;

Statutory citation: Section 306(c)(7):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that * * * the State has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

Useful information concerning this requirement appears in 15 CFR 920.14, which is incorporated into this part by reference. The key words in this requirement are, "to exert control over the land and water uses." This reflects the Congressional finding that the "key to more effective protection and use of the land and water resources of the coastal zone is to encourage the States to exercise their full authority over the lands and waters in the coastal zone * * *." It is not the intent of this part to specify for the States the "means" of control; this is a State responsibility. The State must, however, describe in the management program its rationale for developing and deciding upon such "means." The "means" must be capable of actually implementing the objectives, policies and individual components of the management program. As such, requirements shall be reviewed in close conjunction with § 923.24, 923.25 and § 923.26, relating to actual authorities which the State must possess. The management program should also indicate those specific land and water uses over which authority, jurisdiction or control will be exercised concurrently by both State and Federal agencies, particularly those uses affecting water resources, submerged lands and navigable waters. The management program must provide for control of land and water uses in the coastal zone, although the exercise of control may be vested in, or delegated to, various agencies or local government. As part of the approval of a management program, the Secretary must find that the means for controlling land and water uses identified in § 923.21 are established and in place, and that the means include the

authorities contained in § 923.24 and § 923.25. This finding will be based upon documentation by the Governor of the coastal State or his designated legal officer that the State possesses and is prepared to implement the requisite authorities.

§ 923.22 Organizational structure to implement the management program.

(a) *Requirement.* In order to fulfill the requirement contained in Section 305(b)(6), the management program must contain a description of how the State is organized to implement the authorities identified in § 923.21. In addition, the management program must contain a certification by the Governor of the State or his designated legal officer that the State has established its organizational structure to implement the management program.

(b) *Comment.* Statutory citation: Section 305(b)(6):

> Such management program shall include * * * a description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, areawide, State, regional and interstate agencies in the management process.

Statutory citation: Section 306(c)(6):

> Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that * * * the State is organized to implement the management program required under paragraph (1) of this subsection.

Useful background information and guidance concerning this requirement appears in 15 CFR 920.16, which is incorporated into this part by reference. The legislative history of the Act makes it clear that the States should be accorded maximum flexibility in organizing for implementation of their coastal zone management programs. Thus, neither the Act nor this part provide an organizational model which must be followed. While individual State programs may have a wide range of interstate, State, local or areawide agency roles to play, the program will be reviewed closely for assurance that it constitutes an organized and unified program. Consistent with this principle, there must be a clear point of responsibility for the program, although program implementation may be undertaken by several State entities. In those cases, where a complex interagency and intergovernmental process is established, the State must submit a description of roles and responsibilities of each of the participants and how such roles and responsibilities contribute to a unified coastal zone management program. This description should be sufficiently detailed to demonstrate that a coherent program structure has been proposed by the State and the State is prepared to act in accordance with the objectives of the management program. Although the Act does not prescribe the creation of a central management agency at the State level, it envisions the creation of a coastal zone management entity that has adequate legislative and/or executive authority to implement the policies and requirements mandated in the Act. Review of the management program for compliance with this requirement will be undertaken as a single review with review of the requirements contained in § 923.31, full participation by interested bodies in adoption of management programs, and § 923.23, designation of a single State agency.

§ 923.23 Designation of a single agency.

(a) *Requirement.* In order to fulfill the requirement of Section 306(c)(5), the management program must contain appropriate documentation that the Governor of the coastal State has designated a single agency to be responsible for receiving and administering grants under Section 306 for implementing an approved management program.

(b) *Comment.* Statutory citation: Section 306(c)(5):

> Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that * * * the Governor of the State has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

This requirement is closely related to that contained in § 923.22, relating to a description of the organizational structure which will implement the management program. While this requirement is self-explanatory, it should be pointed out that States will undoubtedly come forward with a wide variety of organizational structures to implement approved management programs. Some will probably be quite complex, utilizing a variety of control techniques at a number of governmental levels. Nothing in this part should be construed as limiting the options available to a State for implementing its program. The purpose of the requirement is simply to identify a single agency which will be fiscally and programmatically responsible for receiving and administering the grants under Section 306 to implement the approved management program.

§ 923.24 Authorities to administer land and water uses, control development and resolve conflicts.

(a) *Requirement.* (1) The management program must contain documentation by the Governor or his designated legal officer that the agencies and governments chosen by the State to administer the management program have the authority to administer land and water regulations, control development in accordance with the management program and to resolve use conflicts.

(b) *Comment.* Statutory citation: Section 306(d)(1):

> Prior to granting approval of the management program, the Secretary shall find that the State, acting through its chosen agency or agencies, including local governments, areawide agencies designated under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power * * * to administer land and water use regulations, control development in order to ensure compliance with the management program and to resolve conflicts among competing uses * * *.

This requirement shall be reviewed in close conjunction with that of §§ 923.21, 923.25 and § 923.26, dealing with authorities which the State's organizational structure must possess in order to ensure implementation of the management program. The language of this requirement makes it clear that the State may choose to administer its program using a variety of levels of governments and agencies, but that if it does, the State must have available to it the authorities specified.

§ 932.25 Authorities for property acquisition.

(a) *Requirement.* The management program shall contain documentation by the Governor or his designated legal officer that the agency or agencies, including local governments, areawide agencies, regional or interstate agencies, responsible for implementation of the management program have available the power to acquire fee simple and less than fee simple interests in lands, waters and other property through condemnation or other means where necessary to achieve conformance with the management program. Where the power includes condemnation, the State shall so indicate. Where the power includes other means, the State shall specifically identify such means.

(b) *Comment.* Statutory citation: Section 306(d)(2):

> Prior to granting approval of the management program, the Secretary shall find that the State, acting through its chosen agency or agencies, including local governments, areawide agencies designated under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power * * * to acquire fee simple and less than fee simple interests in lands, waters and other property through condemnation or other means when necessary to achieve conformance with the management program * * *.

In most cases, it will not be necessary to acquire fee simple ownership. Normally, appropriate use restrictions will be adequate to achieve conformance with the program. In other cases, an easement may be necessary to achieve conformance with the management program. Where acquisition is necessary, this section contemplates acquisition by condemnation or through other means. However, the mere authority to acquire an interest in lands or waters by purchase from a willing vendor will not be sufficient in cases where the acquisition of interests in real property is a necessary and integral part of the program. In such cases, the power of condemnation need be no broader than necessary to achieve conformance with the program. For example, if a State's program includes provisions expressly requiring that power transmission lines and pipelines be located in specified energy and transportation corridors to minimize environmental impact, and for State ac-

quisition of such transportation corridors, then the State should have the power to acquire corridors for such purposes through condemnation. It is not necessary that the power to acquire real property be held by any one particular agency involved in implementing the management program. The authority must, however, be held by one or more agencies or local governments with a statutory responsibility to exercise the authority without undue delay when necessary to achieve conformance with the management program.

§ 923.26 Techniques for control of land and water uses.

(a) *Requirement.* The management program must contain documentation by the Governor or his designated legal officer that all existing, projected and potential land and water uses within the coastal zone may be controlled by any one or a combination of the techniques specified in Section 306(e)(1).

(b) *Comment.* Statutory citation: Section 306(e)(1):

Prior to granting approval, the Secretary shall also find that the program provides * * * for any one or a combination of the following general techniques for control of land and water uses within the coastal zone:

(1) Section 306(e)(1)(A) "State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance." This option requires the State to establish general criteria and standards within the framework of the coastal zone program for implementation by local government. Such criteria and standards would provide for application of criteria and standards to specific local conditions. Implementation by a local unit of government would consist of adoption of a suitable local zoning ordinance or regulation, and enforcement on a continuing basis. Administrative review at the State level requires provision for review of local ordinances and regulations and local enforcement activity for consistency with the criteria and standards as well as programs, not review of specific cases on the merits. In the event of deficiencies either in regulation or local enforcement, State enforcement of compliance would require either appropriate changes in local regulation or enforcement or direct State intervention.

(2) Section 306(e)(1)(B) "Direct State land and water use planning and regulation." Under this option the State would become directly involved in the establishment of detailed land and water use regulations and would apply these regulations to individual cases. Initial determinations regarding land and water use in the coastal zone would be made at the State level. This option preempts the traditional role of local government in the zoning process involving lands or waters within the coastal zone.

(3) Section 306(e)(1)(C) "State administrative review for consistency with the management program of all development plans, projects, or land and water regulations, including exceptions and variances thereto proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings." This option leaves the local unit of government free to adopt zoning ordinances or regulations without State criteria and standards other than the program itself, but subjects certain actions by the local unit of government to automatic State review, including public notice and a hearing when requested by a party. Such actions include:

(i) Adoption of land and water use regulations, ordinarily in the form of a zoning ordinance or regulation.

(ii) Granting of an exception or variance to a zoning ordinance or regulation.

(iii) Approval of a development plan or project proposed by a private developer. This may be defined to exclude approval of minor projects, such as small residences or commercial establishments, or those which do not have a significant impact.

(4) It should be noted that State review is for consistency with the management program, not of the merits or of the facts on which the local decision is based.

(5) The State may choose to utilize only one of the specified techniques, or more than one, or a combination of them in different locations or at different times. Within the parameters set forth in the requirement, there is a large variety of tools which the management program could adopt for controlling land and water uses. The program should identify the techniques for control of land and water uses which it intends to use for existing, projected and potential uses within the coastal zone. This requirement will be reviewed in close conjunction with those contained in §§ 923.21, 923.24 and 923.25, dealing with State authorities to implement the management program.

Subpart D—Coordination

§ 923.30 General.

One of the most critical aspects of the development of State coastal zone management programs will be the ability of the States to deal fully with the network of public, quasi-public and private bodies which can assist in the development process and which may be significantly impacted by the implementation of the program. Each State will have to develop its own methods for accommodating, as appropriate, the varying, often conflicting interests of local governments, water and air pollution control agencies, regional agencies, other State agencies and bodies, interstate organizations, commissions and compacts, the Federal government and interested private bodies. It is the intent of these requirements for coordination with governmental and private bodies to assure that the State, in developing its management program, is aware of the full array of interests represented by such organizations, that opportunity for participation was provided, and that adequate consultation and cooperation with such bodies has taken place and will continue in the future.

§ 923.31 Full participation by relevant bodies in the adoption of management programs.

(a) *Requirement.* In order to fulfill the requirement contained in section 306(c)(1), the management program must show evidence that:

(1) The management program has been formally adopted in accordance with State law or, in its absence, administrative regulations;

(2) The State has notified and provided an opportunity for full participation in the development of its management program to all public and private agencies and organizations which are liable to be affected by, or may have a direct interest in, the management program. The submission of the management program shall be accompanied by a list identifying the agencies and organizations referred to in paragraph (a)(2) of this section, the nature of their interest, and the opportunities afforded such agencies and organizations to participate in the development of the management program. These organizations should include those identified pursuant to § 923.32, which have developed local, areawide or interstate plans applicable to an area within the coastal zone of the State as of January 1 of the year in which the management program is submitted for approval; and

(3) The management program will carry out the policies enumerated in section 303 of the Act.

(b) *Comment.* Statutory citation: Section 306(c)(1):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that * * * (t)he State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

This requirement embodies the actual approval by the Secretary of Commerce of a State's coastal zone management program pursuant to all of the terms of the Act, plus associated administrative rules and regulations. As the operative section, it subsumes all of the requirements included in this part, which shall be considered the "rules and regulations promulgated by the Secretary" mentioned in section 306(c)(1). The citation, however, also includes some specific additional requirements, for which guidance and performance criteria are necessary. These additional requirements include:

(1) Adoption of the management program by the State. The management program must demonstrate that it represents the official policy and objectives of the State. In general, this will require

documentation in the management program that the State management entity has formally adopted the management program in accordance with either the rules and procedures established by statute, or in the absence of such law, administrative regulations.

(2) Opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties, public and private. A major thrust of the Act is its concern for full participation and cooperation in the development and implementation of management programs by all interested and affected agencies, organizations and individuals. This is specifically included in the statement of national policy in section 303(c). The State must provide evidence that the listed agencies and parties were, in fact, provided with an opportunity for full participation. It will be left to the States to determine the method and form of such evidence, but it should contain at a minimum:

(i) A listing, as comprehensive as possible, of all Federal and State agencies, local governments, regional organizations, port authorities and public and private organizations which are likely to be affected by, or have a direct interest in, the development and implementation of a management program (including those identified in § 923.32), and

(ii) A listing of the specific interests of such organizations in the development of the management program, as well as an identification of the efforts made to involve such bodies in the development process.

(*a*) "Opportunity for full participation" is interpreted as requiring participation at all appropriate stages of management program development. The assistance which can be provided by these public and private organizations can often be significant, and therefore contact with them should be viewed not only as a requirement for approval, but as an opportunity for tapping available sources of information for program development. Early and continuing contact with these agencies and organizations is both desirable and necessary. In many cases it may be difficult or impossible to identify all interested parties early in the development of the State's program. However, the public hearing requirement of § 923.41 should afford an opportunity to participate to interested persons and organizations whose interest was not initially noted.

(3) Consistency with the policy declared in section 303 of the Act. In order to facilitate this review, the State's management program must indicate specifically how the program will carry out the policies enumerated in section 303.

§ 923.32 Consultation and coordination with other planning.

(a) *Requirement.* In order to fulfill the requirements contained in section 306(c)(2), the management program must include:

(1) An identification of those entities mentioned which have plans in effect on January 1 of the year submitted,

(2) A listing of the specific contacts made with all such entities in order to coordinate the management program with their plans,

(3) An identification of the conflicts with those plans which have not been resolved through coordination, and continuing actions contemplated to attempt to resolve them, and

(4) Indication that a regular consultive mechanism has been established and is active, to undertake coordination between the single State agency designated pursuant to § 923.23, and the entities in paragraph (B) of Section 306(c)(2).

(b) *Comment.* Statutory citation: Section 306(c)(2):

"Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find * * * that the State has:

(A) Coordinated its program with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

(B) Established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title."

Relevant background information on this requirement appears in 15 CFR 920.45(f), and is incorporated by reference herein. While the State will exercise its authority over land and water uses of Statewide significance in the coastal zone by one or more of the techniques set forth in § 923.28, the State management program must be coordinated with existing plans applicable to portions of the coastal zone. It should be noted that this section does not demand compliance of the State program with local plans, but the process envisioned should enable a State not only to avoid conflicts and ambiguities among plans and proposals, but to draw upon the planning capabilities of a wide variety of governments and agencies. Coordination implies a high degree of cooperation and consultation among agencies, as well as a mutual willingness on the part of the participants to accommodate their activities to the needs of the others in order to carry out the public interest. Perceptions of the public good will differ and it is recognized that not all real or potential conflicts can be resolved by this process. Nevertheless, it is a necessary step. Effective cooperation and consultation must continue as the management program is put into operation so that local governments, interstate, regional and areawide agencies can continue to participate in the carrying out of the management program. The "plans" referred to in (A) shall be considered those which have been officially adopted by the entity which developed them, or which are commonly recognized by the entity as a guide for action. The list of relevant agencies required under § 923.31 will be of use in meeting this requirement. It will enable the State to identify those entities mentioned in (A) which have such plans and to provide evidence that coordination with them has taken place. The process envisioned should not only enable a State to avoid conflicts between its program and other plans applying within its coastal zone, but to draw upon the planning capabilities of a wide variety of local governments and other agencies. In developing and implementing those portions of the program dealing with power transmission lines, pipelines, interstate transportation facilities and other facilities which will significantly impact on neighboring States of a region, particular attention should be paid to the requirements of this section.

Subpart E—Miscellaneous

§ 923.40 General.

The requirements in this subpart do not fall readily into any of the above categories but deal with several important elements of an approvable management program. They deal with public hearings in development of the management program, gubernatorial review and approval, segmentation of State programs and applicability of water and air pollution control requirements.

§ 923.41 Public hearings.

(a) *Requirements.* In order to fulfill the requirement contained in section 306(c)(3), the management program must show evidence that the State has held public hearings during the development of the management program following not less than 30 days notification, that all documents associated with the hearings are conveniently available to the public for review and study at least 30 days prior to the hearing, that the hearings are held in places and at times convenient to affected populations, that all citizens of the State have an opportunity to comment on the total management program and that a report on each hearing be prepared and made available to the public within 45 days.

(b) *Comment.* Statutory citation: Section 306(c)(3):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that * * * (t)he State has held public hearings on the development of the management program.

Extensive discussion and statements of policy regarding this requirement appears in §§ 920.30, 920.31 and 920.32, which is incorporated herein by reference.

§ 923.42 Gubernatorial review and approval.

(a) *Requirement.* In order to fulfill the requirement contained in section 306(c)(4), the management program must contain a certification signed by the Governor of the coastal State to the effect that he has reviewed and approved the management program and any amendments thereto. Certification may be omitted in

the case of a program submitted for preliminary approval.

(b) *Comment.* Statutory citation: Section 306(c)(4):

Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that * * * the management program and any changes thereto have been reviewed and approved by the Governor.

This requirement is self-explanatory.

§ 923.43 Segmentation.

(a) *Requirement.* If the State intends to develop and adopt its management program in two or more segments, it shall advise the Secretary as early as practicable stating the reasons why segmentation is appropriate and requesting his approval. Each segment of a management program developed by segments must show evidence (1) that the State will exercise policy control over each of the segmented management programs prior to, and following their integration into a complete State management program, such evidence to include completion of the requirements of § 923.11 (Boundaries of the coastal zone) and § 923.15 (National interest in the siting of facilities) for the State's entire coastal zone, (2) that the segment submitted for approval includes a geographic area on both sides of the coastal land-water interface, and (3) that a timetable and budget have been established for the timely completion of the remaining segments or segment.

(b) *Comment.* Statutory citation: Section 306(h):

At the discretion of the State and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: *Provided,* That, the State adequately provides for the ultimate coordination of the various segments of the management program into a single, unified program, and that the unified program will be completed as soon as reasonably practicable.

(1) This section of the Act reflects a recognition that it may be desirable for a State to develop and adopt its management program in segments rather than all at once because of a relatively long coastline, developmental pressures or public support in specific areas, or earlier regional management programs developed and adopted. It is important to note, however, that the ultimate objective of segmentation is completion of a management program for the coastal zone of the entire State in a timely fashion. Segmentation is at the State's option, but requires the approval of the Secretary. States should notify the Secretary at as early a date as possible regarding intention to prepare a management program in segments.

(2) Continuing involvement at the State as well as local level in the development and implementation of segmented programs is essential. This emphasis on State participation and coordination with the program as a whole should be reflected in the individual segments of a management program. Regional agencies and local governments may play a large role in developing and carrying out such segmented programs, but there must be a continuing State voice throughout this process. This State involvement shall be expressed in the first segment of the management program in the form of evidence that (i) the boundaries of the coastal zone for the entire State have been defined (pursuant to § 923.11) and (ii) there has been adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature (pursuant to § 923.15) for the State's entire coastal zone. These requirements are designed to assure that the development of a Statewide coastal zone management program proceeds in an orderly fashion and that segmented programs reflect accurately the needs and capabilities of the State's entire coastal zone which are represented in that particular segment.

(3) The Act's intent of encouraging and assisting State governments to develop a comprehensive program for the control of land and water uses in the coastal zone is clear. This intent should therefore apply to segments as well, and segmented management programs should be comprehensive in nature and deal with the relationship between and among land and water uses. No absolute minimum or maximum geographic size limitations will be established for the area of coverage of a segment. On the one hand, segments should include an area large enough to permit comprehensive analyses of the attributes and limitations of coastal resources within the segment of State needs for the utilization or protection of these resources and of the interrelationships of such utilizations. On the other hand, it is not contemplated that a segmented management program will be developed solely for the purpose of protecting or controlling a single coastal resource or use, however desirable that may be.

(4) One of the distinguishing features of a coastal zone management program is its recognition of the relationship between land uses and their effect upon coastal waters, and vice versa. Segments should likewise recognize this relationship between land and water by including at least the dividing line between them, plus the lands or waters on either side which are mutually affected. In the case of a segment which is predominantly land, the boundaries shall include those waters which are directly and significantly impacted by land uses in the segment. Where the predominant part of the segment is water, the boundaries shall include the adjacent shorelands strongly influenced by the waters, including at least transitional and inter-tidal areas, salt marshes, wetlands and beaches (or similar such areas in Great Lake States).

(5) Segmented management programs submitted for approval will be reviewed and approved in exactly the same manner as programs for complete coastal zones, utilizing the same approval criteria, plus those of this section.

§ 923.44 Applicability of air and water pollution control requirements.

(a) *Requirement.* In order to fulfill the requirements contained in Section 307(f) of the Act the management program must be developed in close coordination with the planning and regulatory systems being implemented under the Federal Water Pollution Control Act and Clean Air Act, as amended, and be consistent with applicable State or Federal water and air pollution control standards in the coastal zone. Documentation by the official or officials responsible for State implementation of air and water pollution control activities that those requirements have been incorporated into the body of the coastal zone management program should accompany submission of the management program.

(b) *Comment:* Statutory citation: Section 307(f):

Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal government, or any State or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title, and shall be the water pollution control requirements and air pollution control requirements applicable to such program.

(1) The basic purpose of this requirement is to ensure that the management program does not conflict with the national and State policies, plans and regulations mandated by the Federal Water Pollution Control Act, as amended, and the Clean Air Act as amended. The policies and standards adopted pursuant to these Acts should be considered essential baselines against which the overall management program is developed. This is a specific statutory requirement that reflects the overall coastal zone management objective of unified state management of environmental laws, regulations and applicable standards. To this end, management programs should provide for continuing coordination and cooperation with air and water programs during subsequent administration of the approved management program.

(2) There are also significant opportunities for developing working relationships between air and water quality agencies and coastal zone management programs. These opportunities include such activities as joint development of Section 208 areawide waste treatment management planning and coastal zone management programs; consolidation and/or incorporation of various planning and regulatory elements into these closely related programs; coordination of monitoring and evaluation activities; increased management attention being accorded specifically to the coastal waters; consultation concerning the desirability of adjusting state water quality standards and criteria to complement coastal zone management policies; and designation of areas of particular concern or priority uses.

Subpart F—Applications for Administrative Grants

§ 923.50 General.

The primary purpose of administrative grants made under section 306 of the Act is to assist the States to implement coastal zone management programs following their approval by the Secretary of Commerce. The purpose of these guidelines is to define clearly the processes by which grantees apply for and administer grants under the Act. These guidelines shall be used and interpreted in conjunction with the Grants Management Manual for Grants under the Coastal Zone Management Act, hereinafter referred to as the "Manual." This Manual contains procedures and guidelines for the administration of all grants covered under the Coastal Zone Management Act of 1972. It has been designed as a tool for grantees, although it addresses the responsibilities of the National Oceanic and Atmospheric Administration and its Office of Coastal Zone Management, which is responsible for administering programs under the Act. The Manual incorporates a wide range of Federal requirements, including those established by the Office of Management and Budget, the General Services Administration, the Department of the Treasury, the General Accounting Office and the Department of Commerce. In addition to specific policy requirements of these agencies, the Manual includes recommended policies and procedures for grantees to use in submitting a grant application. Inclusion of recommended policies and procedures for grantees does not limit the choice of grantees in selecting those most useful and applicable to local requirements and conditions.

§ 923.51 Administration of the program.

The Congress assigned the responsibility for the administration of the Coastal Zone Management Act of 1972 to the Secretary of Commerce, who has designated the National Oceanic and Atmospheric Administration (NOAA) as the agency in the Department of Commerce to manage the program. NOAA has established the Office of Coastal Zone Management for this purpose. Requests for information on grant applications and the applications themselves should be directed to:

Director, Office of Coastal Zone Management (OCZM)
National Oceanic and Atmospheric Administration,
U.S. Department of Commerce
Rockville, Maryland 20852

§ 923.52 State responsibility.

(a) The application shall contain a designation by the Governor of a coastal State of a single agency to receive and have fiscal and programmatic responsibility for administering grants to implement the approved management program.

(b) A single State application will cover all program management elements, whether carried out by State agencies, areawide/regional agencies, local governments, interstate or other entities.

§ 923.53 Allocation.

Section 306(f) allows a State to allocate a portion of its administrative grant to sub-State or multi-State entities if the work to result from the allocation contributes to the effective implementation of the State's approved coastal zone management program. The requirements for identifying such allocations are set forth in § 923.55(c).

§ 923.54 Geographical segmentation.

Authority is provided in the Act for a State's management program to be developed and adopted in segments. Additional criteria for the approval of a segmented management program are set forth in Subpart E § 923.43. Application procedures for an administrative grant to assist in administering an approved segmented management program will be the same as set forth in this subpart for applications to administer an approved management program for the entire coastal zone of a State.

§ 923.55 Application for the initial administrative grant.

(a) The Form CD-288, Preapplication for Federal Assistance, required only for the initial grant, must be submitted 120 days prior to the beginning date of the requested grant. The preapplication shall include documentation, signed by the Governor, designating the State office, agency or entity to apply for and administer the grant. Copies of the approved management program are not required. The preapplication form may be submitted prior to the Secretary's approval of the applicant's management program provided, after consultation with OCZM, approval is anticipated within 60 days of submittal of the preapplication.

(b) All applications are subject to the provisions of OMB Circular A-95 (revised). The Form CD-288, Preapplication for Federal Assistance, will be transmitted to the appropriate clearinghouses at the time it is submitted to the Office of Coastal Zone Management (OCZM). If the application is determined to be Statewide or broader in nature, a statement to that effect shall be attached to the Preapplication form submitted to OCZM. Such a determination does not preclude the State clearinghouse from involving areawide clearinghouses in the review. In any event, whether the application is considered to be Statewide or not, the Preapplication form shall include an attachment indicating the date copies of the Preapplication form were transmitted to the State clearinghouse and if applicable, the identity of the areawide clearinghouse(s) receiving copies of the Preapplication form and the date(s) transmitted. The Preapplication form may be used to meet the project notification and review requirements of OMB Circular A-95 with the concurrence of the appropriate clearinghouses. In the absence of such concurrence the project notification and review procedures, established State and areawide clearinghouses, should be implemented simultaneously with the distribution of the preapplication form.

(c) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. The allowability of costs will be determined in accordance with the provisions of FMC 74-4. Administrative grants made under section 306(a) of the Act are clearly intended to assist the States in administering their approved management programs. Such intent precludes tasks and related costs for long range research and studies. Nevertheless it is recognized that the coastal zone and its management is a dynamic and evolving process wherein experience may reveal the need for specially focused, short-term studies, leading to improved management processes and techniques. The OCZM will consider such tasks and their costs, based upon demonstrated need and expected contribution to more effective management programs.

(d) The Form CD-292, Application for Federal Assistance (Non-Construction Programs), constitutes the formal application and must be submitted 60 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with A-95 requirements including the resolution of any problems raised by the proposed project. The OCZM will not accept applications substantially deficient in adherence to A-95 requirements.

(e) The State's work program implementing the approved management program is to be set forth in Part IV, Program Narrative, of the Form CD-292 and must describe the work to be accomplished during the grant period. The work program should include:

(1) An identification of those elements of the approved management program that are to be supported all or in part by the grant and the matching share, hereinafter called the grant project. In any event, activities related to the establishment and implementation of State responsibilities pursuant to Section 307 (c)(3) and Section 307(d) of the Act, are to be included in the grant project.

(2) A precise statement of the major tasks required to implement each element.

(3) For each task, the following should be specified:

(i) A concise statement of how each task will accomplish all or part of the program element to which it is related. Identify any other State, areawide, regional or interstate agencies or local governments that will be allocated responsibility for carrying out all or portions of the task. Indicate the estimated cost of the subcontract/grant for each allocation.

(ii) For each task indicate the estimated total cost. Also indicate the estimated total man-months, if any, allocated to the task from the applicant's in-house staff.

(iii) For each task, list the estimated cost using the object class categories 6.a. through k., Part III, Section B—Budget Categories of Form CD-292.

(4) The sum of all the task costs in sub-paragraph (3) of this paragraph should equal the total estimated grant project costs.

(5) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's in-house staff, that will be assigned to the grant project. Additionally indicate the number assigned full time and the number assigned less than full time in the two categories.

(6) An identification of those management program elements, if any, that will not be supported by the grant project, and how they will be implemented.

§ 923.56 Approval of applications.

(a) The application for an administrative grant of any coastal State with a management program approved by the Secretary of Commerce, which complies with the policies and requirements of the Act and these guidelines, shall be approved by OCZM, assuming available funding.

(b) Should an application be found deficient, OCZM will notify the applicant in writing, setting forth in detail the manner in which the application fails to conform to the requirements of the Act or this subpart. Conferences may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) OCZM may, upon finding of extenuating circumstances relating to applications for assistance, waive appropriate administrative requirements contained herein.

§ 923.57 Amendments.

Amendments to an approved application must be submitted to, and approved by, the Secretary prior to initiation of the change contemplated. Requests for substantial changes should be discussed with OCZM well in advance. It is recognized that, while all amendments must be approved by OCZM, most such requests will be relatively minor in scope; therefore, approval may be presumed for minor amendments if the State has not been notified of objections within 30 working days of date of postmark of the request.

§ 923.58 Applications for second and subsequent year grants.

(a) Second and subsequent year applications will follow the procedures set forth in this subpart, with the following exceptions:

(1) The preapplication form may be used at the option of the applicant. If used, the procedures set forth in § 923.55 (b) will be followed and the preapplication is to be submitted 120 days prior to the beginning date of the requested grant. If the preapplication form is not used, the A-95 project notification and review procedures established by State and areawide clearinghouses should be followed.

(2) The application must contain a statement by the Governor of the coastal State or his designee that the management program as approved earlier by the Secretary of Commerce, with any approved amendments, is operative and has not been materially altered. This statement will provide the basis for an annual OCZM certification that the approved management program remains in effect, thus fulfilling, in part, the requirements of section 309(a) for a continuing review of management programs.

(3) The Governor's document designating the applicant agency is not required, unless there has been a change of designation.

(4) Copies of the approved management program or approved amendments thereto are not required.

[FR Doc.75-738 Filed 1-8-75;8:45 am]

Title 17—Commodities and Securities Exchange

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5552, 34-11156]

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Gold Offerings

The Securities and Exchange Commission today made public the text of three no-action letters issued by its Division of Corporation Finance with respect to certain proposed arrangements for the sale of gold bullion. Restrictions on the private ownership of gold by United States citizens are due to be terminated on December 31, 1974, and the Commission has received numerous informal inquiries regarding the applicability of the Federal securities laws to various arrangements for the sale of gold to public investors.

There are presently no regular markets in the United States for dealings in gold by ordinary investors nor are there any established procedures or practices for handling such transactions. Consequently, there are great uncertainties about the application of the federal securities laws to gold investment plans. It is not possible to resolve these uncertainties at the present time. And, the Commission is aware that the sale of gold involves questions of national financial and economic policy not presented by the sale of interests in other commodities. These are policies as to which the Commission has no expertise and which it does not wish to disrupt, at least in the absence of further information and experience concerning the needs of investors. There appears, however, to be considerable interest on the part of broker-dealers and others in offering plans for the purchase of gold to investors. Consistent with its intention not to disrupt the establishment of national economic and financial policies, the Commission believes that its staff should provide such guidance as is possible under the circumstances, and, for that purpose, is publishing three no-action letters stating the enforcement position of the staff of the Division of Corporation Finance.

The texts of the letters, with identifying details deleted, are as follows:

LETTER NO. 1

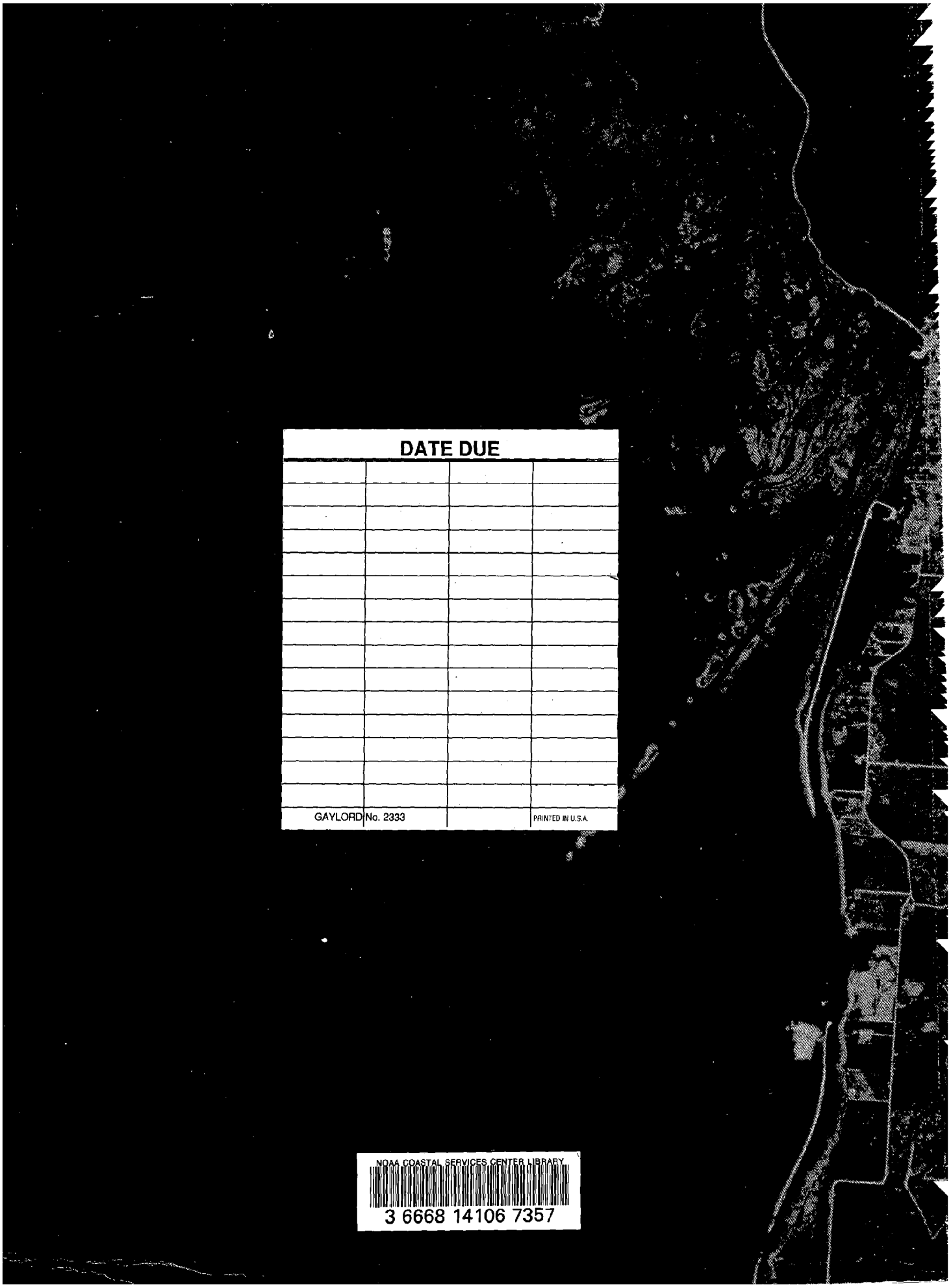
This is with reference to your letter, dated December 17, 1974, requesting, among other things, an interpretation as to the applicability of the Securities Act of 1933 to proposed plans of X National Bank ("X") to sell gold bullion, after December 31, 1974, to individual purchasers.

We understand the facts, which are set forth more fully in your letter, to be as follows. X will sell gold bullion cast in various size ingots and bars at a price equal to X's "asked price" as a gold bullion dealer plus a mark-up which is estimated to be ½ percent for registered broker-dealers and between 2-3 percent for individual purchasers. A buyer from X may either take physical delivery of the gold bullion purchased or may request that such bullion be held for safekeeping and storage in one of X's gold depositories which are expected to be established in the United States and Switzerland. X intends to enter into an agreement with each such depository which will provide either that (i) the depository will hold specifically identified bars or ingots of gold for X, maintain insurance covering such gold at prescribed limits and deliver gold bullion upon request by X or the owner of the gold or (ii) the depository will lease a portion of its vault directly to X which will handle such insurance and delivery functions. If the buyer's gold bullion is to be stored by X at its depositories, X will issue in registered form to the buyer a Gold Bullion Safekeeping Certificate ("Safekeeping Certificate") indicating the number of ounces purchased by the buyer. The buyer will be required to pay in advance the annual storage cost of the buyer's gold bullion plus a fixed fee of $5 per certificate. Upon presentment of the Safekeeping Certificate for delivery of the gold bullion, X will arrange to deliver gold bars or ingots in sizes selected by the Certificate holder.

The holder of a Safekeeping Certificate may demand delivery of the gold bullion represented by such Certificate at any time by (a) presenting the Certificate to X in New York City or to one of X's depositories listed on the Certificate, (b) payment of any unpaid storage charges, (c) payment of a gold bar or ingot fee in accordance with a fixed schedule, (d) payment of any applicable sales taxes and (e) payment of applicable shipping charges. The bar or ingot fees shall be based on the value of gold bullion set at the 3:00 p.m., London "fixing" on the day immediately preceding the day upon which delivery is requested. X and its depositories may not maintain substantial supplies of all sizes of bars and ingots. Accordingly, while it is expected that 400 ounce bars always will be deliverable upon demand, X may reserve the right to make deliveries of other size bars and ingots within several days after demand.

X will have no obligation to repurchase any gold bullion sold by it or any Safekeeping Certificates issued by it. X intends, however, to continue to act as a gold dealer and accordingly expects to continue to make bids on gold bullion offered for sale in the gold market, including offers of gold bullion by holders of Safekeeping Certificates. Such trading activities will be conducted as and to the extent deemed advisable by X in light of existing gold market conditions.

X will act for its own account in all sales of gold bullion, and will either deliver gold



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