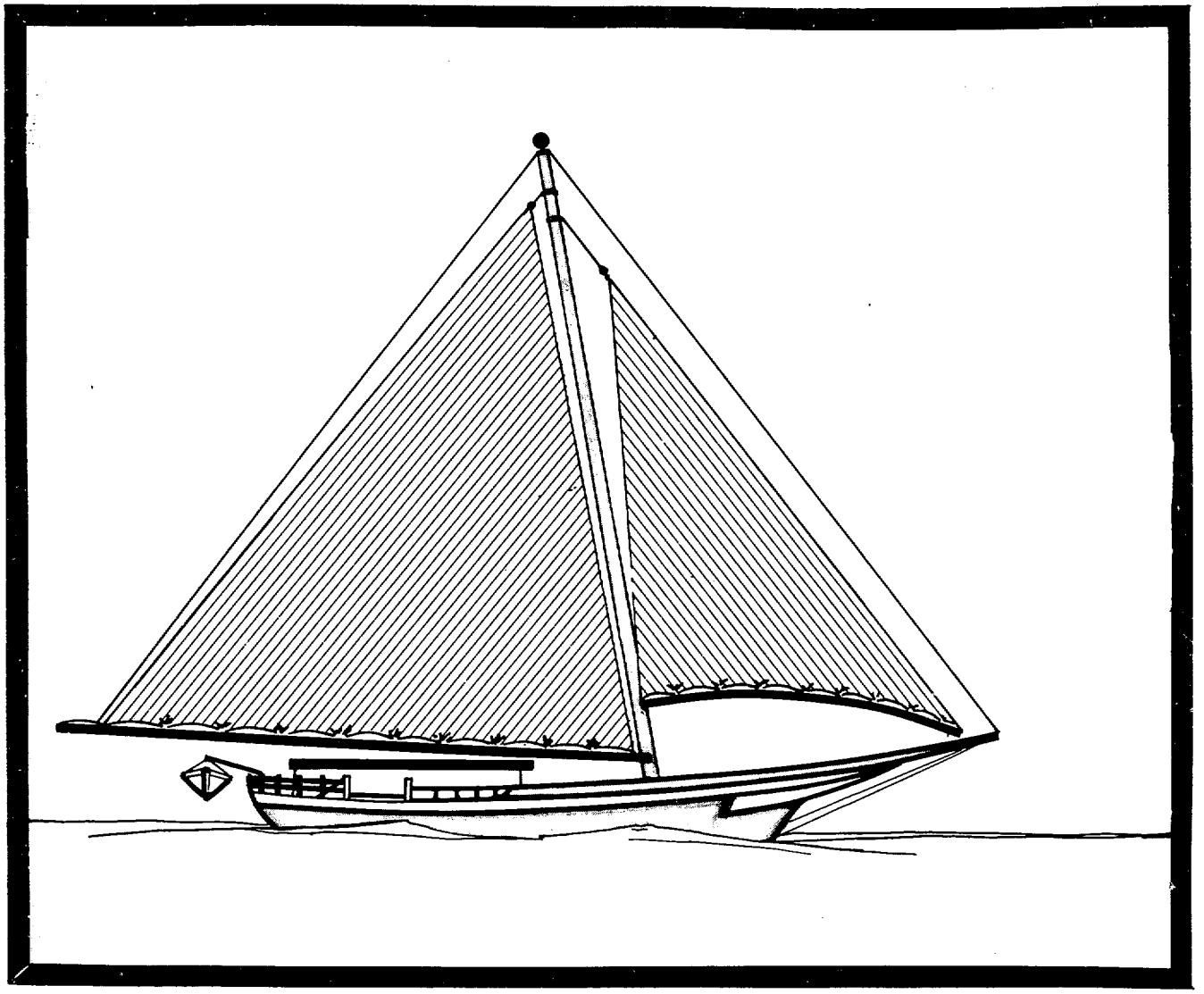
State of Maryland Coastal Management Program and Final Environmental Impact Statement

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management



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UNITED STATES

DEPARTMENT OF COMMERCE

FINAL

ENVIRONMENTAL IMPACT

STATEMENT

PROPOSED

COASTAL MANAGEMENT PROGRAM

FOR

THE STATE OF MARYLAND

AUGUST 1978

Prepared by:

Office of Coastal Zone Management
National Oceanic & Atmospheric
Administration
Department of Commerce
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

and

Department of Natural Resources
Energy & Coastal Zone Administration
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BLAIR LEE III
ACTING GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

August 21, 1978

Mr. Robert W. Knecht
Assistant Administrator for
Coastal Zone Management
U. S. Department of Commerce
National Oceanic and Atmospheric
Administration
Rockville, Maryland 20852

Dear Mr. Knecht:

I have received your letter of August 18, 1978 advising us that the review of Maryland's Coastal Zone Management Program and the Federal Draft Environmental Impact Statement has been completed. The review has necessitated changes in the Program which I forwarded to the Secretary of Commerce on December 23, 1978.

Please be advised that the changes resulting from the review and planned for inclusion in the Federal Environmental Impact Statement are acceptable to Maryland and will be incorporated in the Program.

I am very pleased that Maryland's Program will be formally approved by the Secretary of Commerce in the Federal Fiscal Year 1978 and that Maryland can proceed to carry out this important Program pursuant to my Executive Order 01.01.1978.05 of March 8, 1978.

Sincerely,

Blair Lee III
Acting Governor

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NOTE TO READERS

The National Environmental Policy Act (NEPA) of 1969 mandates that an environmental impact statement be prepared as part of the review and approval process of major actions by Federal government agencies which significantly affect the quality of the human environment. It is the general policy of the Federal Office of Coastal Zone Management (OCZM) to issue a combined final environmental impact statement and program document.

Part I of this Final Environmental Impact Statement (FEIS) was prepared by the Office of Coastal Zone Management and provides summary information concerning the Maryland Coastal Zone Management Program including how the State has addressed the requirements of the Federal Coastal Zone Management Act (FCZMA). Part II of the FEIS is a description of the State's Coastal Management Program and was prepared by the State of Maryland; it has been reviewed by the Federal Office of Coastal Zone Management and is relied upon as a description of the proposed action for purposes of NEPA. Part III fulfills the remaining NEPA requirements for a FEIS and was prepared by the Office of Coastal Zone Management (OCZM) with some assistance from the State of Maryland.

The Federal action contemplated is approval of the Maryland Coastal Zone Management Program under Section 306 of the Federal Coastal Zone Management Act of 1972, as amended. An immediate effect of approval is the qualification of the State for Federal matching of funds for use in administering the program. In addition, the FCZMA stipulates that Federal activities affecting the coastal zone shall be, to the maximum extent practicable, consistent with an approved State management program.

For purposes of reviewing this proposed action, the key questions are:

- whether the Maryland program is consistent with the objectives and policies of the national legislation;
- whether the award of Federal funds under Section 306 of the Federal Act will help Maryland to meet those objectives;
- whether the State management authorities are adequate to implement the State program, and
- whether there will be a net environmental gain as a result of program approval and implementation.

OCZM has made a preliminary assessment that the answers to these questions are affirmative. OCZM wants the widest possible circulation of this document to all interested agencies and parties in order to receive the fullest expression of opinion on these questions. OCZM thanks those participating in the review of the Maryland Program and this final environmental impact statement.

PART I

INTRODUCTION

SUMMARY

( ) Draft Environmental Impact Statement

(X) Final Environmental Impact Statement

Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. For additional information about this proposed action or this statement, please contact:

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Regional Manager
South Atlantic Region

Marion Cox
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South Atlantic Region

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Written comments should be addressed to:

Office of Coastal Zone Management
National Oceanic & Atmospheric Administration
Attention: John Phillips
3300 Whitehaven Street, N.W. (Room 330)
Washington, D.C. 20235

1. Type of Action

Proposed Federal approval of the Maryland Coastal Zone Management Program.

(X) Administrative ( ) Legislative

2. Brief Description of Action

It is proposed that the Assistant Administrator approve the Coastal Zone Management Program of the State of Maryland pursuant to P.L. 92-583. Approval would permit implementation grants to be awarded to the State, and require that Federal actions be consistent with the program.

3. Summary of Environmental Impacts and Adverse Environmental Effects

Approval and implementation of the program will allow the State to better coordinate and more effectively implement existing State authorities for management of its coastal zone. The State will condition, restrict, or prohibit land and water uses in some parts of Maryland's coast, while encouraging development in other parts. The impacts of the Maryland Coastal Program will be generally beneficial, although there may be some adverse, short-term economic impacts on coastal users, and the program will entail irreversible commitment of some coastal resources. The Maryland Coastal Program will produce positive and negative impacts.

4. Alternatives Considered

All alternatives would involve a decision by the Assistant Administrator for Coastal Zone Management to delay or deny approval of the Maryland Coastal Zone Management Program. Delay or denial of approval of the Program would most probably occur under the following conditions:

(1) The Assistant Administrator could delay or deny approval if the program is not adequately comprehensive to achieve the goals and objectives of the Federal Coastal Zone Management Act as expressed by Congress in Sections 302 and 303 of the Act.

(2) The Assistant Administrator could delay or deny program approval if the State lacks the ability to insure that the State coastal policies are enforced.

(3) The Assistant Administrator could delay or deny approval if the national interest in the siting of facilities or the protection of natural resources in the coastal zone was not adequately considered.

As a result of delay or denial for any cause, Maryland could continue to pursue development of a CZM program. Under section 305(d) of the Act, the State would be eligible for both program development and program implementation funds if OCZM found the program approvable after correction of certain specified deficiencies. The 305(d) funding would be used both to address these deficiencies and to implement those parts of the program which had met OCZM requirements. Maryland is now in its 4th and final year of program development funding under section 305 of the Act. With the completion of this 4th year, the State is no longer eligible for 305 development monies and must either enter 306 implementation or request 305(d) funding.

5. List of all Federal, State and local agencies and other parties from which comments have been requested:

Federal Agencies

U.S. Advisory Council on Historic Preservation
U.S. Department of Agriculture
U.S. Department of Commerce
U.S. Department of Defense
U.S. Department of the Navy
U. S. Army, Corps of Engineers
U. S. Air Force
U.S. Department of Energy
Federal Energy Regulatory Commission
U.S. Department of Health, Education and Welfare
U.S. Department of Housing and Urban Development
U.S. Department of the Interior
U.S. Department of Justice
U.S. Department of Labor
U.S. Department of Transportation
Economic Development Administration
Environmental Protection Agency
General Services Administration
Marine Mammal Commission
National Oceanic and Atmospheric Administration
Nuclear Regulatory Commission
U.S. Coast Guard
U.S. Department of Energy

State and Regional Agencies and Local Governments in Maryland

U.S. Department of Agriculture
U.S. Department of Economic and Community Development
U.S. Department of Health and Mental Hygiene
U.S. Department of Natural Resources
U.S. Department of State Planning
U.S. Department of Transportation
Governor's Office
Maryland Boat Act Advisory Committee
Maryland Environmental Trust
Maryland Port Administration

Delmarva Advisory Council
Maryland-National Capital Park and Planning Commission
Metropolitan Washington Council of Governments
Regional Planning Council
Tri-County Council
Wilmington Metropolitan Area Planning Coordinating Council

78 coastal towns, villages, cities and counties

Maryland General Assembly
Maryland Congressional Delegation

State and Local Special Interest Groups

Members of the Coastal Resources Advisory Committee:

Applied Physics Laboratory
Center for Environmental and Estuarine Studies
Chesapeake Bay Center for Environmental Studies
Chesapeake Bay Institute
University of Maryland Graduate School
Bethlehem Steel Corporation
Chesapeake Bay Foundation
Chesapeake Bay Yacht Club Association
Chesapeake Research Consortium
Delmarva Power and Light Company of Maryland
Home Builders Association of Maryland
Izaak Walton League
League of Women Voters of Maryland
Maryland Association of Counties
Maryland Association of Realtors
Maryland Association of Soil Conservation Districts
Maryland Bankers' Association
Maryland Chamber of Commerce
Maryland Conservation Council
Maryland Farm Bureau
Maryland Petroleum Association
Maryland Watermens' Association
Maryland Wetlands Committee
Maryland Wildlife Federation

28 local Chambers of Commerce in coastal counties
23 industrial, business and trade associations in coastal counties
9 sportsmens' clubs in coastal counties
16 soil conservation districts in coastal counties
9 local watermens' associations
14 local farm organizations
42 yacht clubs and charter boat associations
118 regional and community service and improvement associations
147 local and statewide environmental and public interest groups
4 League of Women Voters' chapters in coastal counties
Maryland State Bar Association
Maryland City Managers Association
Maryland Municipal League

National Interest Groups

A.M.E.R.I.C.A.N.
AFL-CIO
American Association of Port Authorities
American Bar Association
American Bureau of Shipping
American Farm Bureau Federation
American Fisheries Society
American Forest Institute
American Gas Association
American Hotel and Motor Association
American Industrial Development Council
American Institute of Architects
American Institute of Merchant Shipping
American Institute of Planners
American Littoral Society
American Mining Congress
American Oceanic Organization
American Petroleum Institute
American Shore & Beach Preservation Association
American Society of Civil Engineers
American Society of Landscape Architects, Inc.
American Society of Planning Officials
American Water Resources Association
American Waterways Operators
AMOCO
Ashland Oil, Inc.
Associated General Contractors of America
Association of Oil Pipe Lines
Atlantic Richfield Company
Atlantic States Marine Fisheries Commission
Atomic Industrial Forum
Barrier Islands Coalition
Center for Law and Social Policy
Center for Natural Areas
Center for Urban Affairs
Chamber of Commerce of the U.S.
Chevron, USA, Inc.
Cities Service Company
Coastal States Organization
Conservation Foundation
Continental Oil Company
Council of State Planning Agencies
The Cousteau Society
Earth Metabolic Design Lab., Inc.
Edison Electric Institute
El Paso Natural Gas Company
Environmental Defense Fund, Inc.
Environmental Law Institute
Environmental Policy Center
EXXON Company, U.S.A.
Friends of the Earth
Getty Oil Company
Great Lakes Basin Commission
Great Lakes Tomorrow
Gulf Energy & Minerals, U.S.A.
Gulf Oil Company
Gulf Oil Corporation
Gulf Refining Company
Gulf South Atlantic Fisheries Development Foundation
Independent Petroleum Association of America
Industrial Union of Marine and Shipbuilding Workers of America
Institute for the Human Environment
Institute for Marine Studies
Interstate Natural Gas Association of America
Izaak Walton League
Lake Michigan Federation
League of Conservation Voters

League of Women Voters Education Fund
Marathon Oil Company
Marine Technology Society
Massachusetts Petroleum Council
Mobil Exploration & Producing, Inc.
Mobil Oil Corporation
Murphy Oil Company
National Association of Conservation Districts
National Association of Counties
National Association of Dredging Contractors
National Association of Electric Companies
National Association of Engine and Boat Manufacturers
National Association of Home Builders
National Association of Realtors
National Association of Regional Councils
National Association of State Boating Law Administrators
National Association of State Park Directors
National Audubon Society
National Boating Federation
National Canners Association
National Coalition for Marine Conservation
National Commission on Marine Policy
National Conference of State Legislatures
National Environmental Development Association
National Farmers Union
National Federation of Fishermen
National Fisheries Institute
National Forest Products Association
National Governors Association
National League of Cities
National Ocean Industries Association
National Parks and Conservation Association
National Petroleum Council
National Petroleum Refiners Association
National Realty Commission
National Recreation and Park Association
National Research Council
National Science Foundation
National Science Teachers Association
National Shrimp Congress
National Society of Professional Engineers
National Wildlife Federation
National Waterways Conference
Natural Resources Defense Council
The Nature Conservancy
Nautilus Press
New England River Basin Commission
North Atlantic Ports Association
Outboard Marine Corporation
Resources for the Future
Rice University Center for Community Design and Development
Shell Oil Company
Shellfish Institute of North America
Shipbuilders Council of America
Sierra Club
Skelly Oil Company
Society of Industrial Realtors
Society of Real Estate Appraisers
Soil Conservation Society of America
Southern California Gas Company
Sport Fishing Institute
Standard Oil Company of California
Standard Oil Company of Ohio
Sun Company, Inc.
Tenneco Oil Company
Texaco, Inc.

United Brotherhood of Carpenters and
Joiners of America
U.S. Power Squadrons
U.S. Conference of Mayors
Water Pollution Control Federation
Water Transport Association
Western Oil and Gas Association
Wildlife Management Institute
The Wildlife Society
World Dredging Association

6. Because of possible funding constraints in Fiscal Year 1979, OCZM would like to approve the Maryland Program on or before September 30, 1978. In order to accomplish this, it is requested that the comment period on the FEIS be kept to 30 days, if possible.

Nuclear Regulatory Commission
(Robert Ryan) (6/28/78)

Comments

1. Page 44. Reference is made to a Secretarial Order that will establish the responsibilities of the various Department of Natural Resources (DNR) agencies in implementing the Coastal Management Program. Inasmuch as this Program relies on "networking" existing authorities for implementation and a large measure of that authority is distributed throughout the DNR (Water Resources Administration, Power Plant Siting Program, etc.), then a copy of that Secretarial Order, or an outline of its content, should be provided. This would facilitate understanding the relationship of these other DNR activities to the Coastal Management Program.

2. Page 66. There is a list of actions that will be taken by the Coastal Zone Unit to insure that all interested parties are aware of projects being evaluated. We believe that it would be useful to also require publishing twice in such major newspapers serving the affected areas as may be reasonably calculated to notify concerned or affected persons.

3. Page 219, First Paragraph. This paragraph implies that there is a limit of two units for any given power plant site in Maryland. That is not correct nor is it consistent with objective 18 (page 220). We suggest discussing the need in terms of numbers of units and stating the assumption of two units per site to arrive at the needed number of sites.

Nuclear Regulatory Commission
(Ryan) (6/28/78)

Responses

1. A copy of the signed Secretarial Order is included in the Addenda to Maryland's Coastal Zone Management Program at the end of Part II of the FEIS.

2. In response to your comments, text of page 66 has been revised to note that news releases will be prepared and distributed regarding full project evaluations to ensure that concerned or affected persons are aware of projects being evaluated.

3. There was no intention to imply that there was a limitation of two plants per site in Maryland. Since the language referred to has given that impression to some readers, it has been deleted. The remaining language should provide adequate description of the situation regarding power plants in Maryland.

Maryland Fisheries Administration
(W.R. Carter III) (6/28/78)

Comments

1. Page 25. Goal of increased recreational opportunities/public access to tidal waters. Whenever a goal or objective is stated as "increasing" the use density of the resource, it would be well to qualify this as being ultimately limited by the carrying capacity of the system for that use while still adequately providing habitat dependent values of fish and wildlife.

2. Page 31. The definition of "broad geographical areas" in relation to significant impacts needs further definition. It should be realized that in a small drainage basin, a relatively small perturbation has an effect felt throughout the basin's aquatic habitat. It would be desirable to define "broad" in terms of the sub-sub-basin units of the State's watershed segmentation, such that an impact affecting "X" percent of a sub-sub-basin's area, or miles of stream, or numbers of primary or secondary streams, could be termed significant.

3. Page 67. The discussion of CZM's role in determining cumulative impacts needs revision. The present discussion implies that action regarding cumulative impacts will be taken only when cumulative impacts begin to reach a point of having major adverse affects. The point of considering cumulative impacts is to prevent this from happening rather than to react when it does. Revision should indicate that this point will only have to be reached once and that the experience of reaching it will be used to prevent its recurrence in successive subsystems of the coastal zone. It would be well to focus this concern on the process of urbanization/suburbanization, since this appears to be the most exemplary of functions which produce a chronic, irreversible degrading effect.

4. Page 77 and Subsequent Maps. It is unclear whether non-tidal 100-year floodplains are included in areas of focus, or whether they are purposely excluded. Subtitle 9A of the Natural Resources Article does not discriminate between tidal and non-tidal flood hazard areas.

5. Page 116. The statement of policies is extremely misleading. By citing the several subtitles and sections, it is strongly implied that the import of the legislation is that which is written here as policies. While we support the interpretation of Subtitle 4 in the manner generally done here, the language of the legislation is not such as to mandate the different policies stated here in the plan. The use of the imperative mood in the language, (of the plan) e.g.,
in policy 1: "...will be developed...." " "
" " 3: "...shall acquire title to...."

Maryland Fisheries Administration
(W.R. Carter III) (6/28/78)

Responses

1. The goals and objectives of Maryland's Program have been designed to be compatible so that an objective which encourages "increasing" the use density of a particular resource area would necessarily take into account other program goals and objectives that are designed to provide for and protect natural habitat areas.

2. The description of Coastal Uses/Activities of Concern in Chapter III of the Program describes in detail what are thought to be activities "having direct and significant impact on coastal waters". Those descriptions recognize the point made in the comment that "in a small drainage basin, a relatively small perturbation, has an effect throughout the basin's aquatic habitat".

3. The discussion of cumulative impacts in the FEIS has been modified to respond to the concerns expressed in this comment. Please see Chapter III, Part II, of the FEIS.

4. The areas of focus generally do not include non-tidal flood plains, but such flood plains are included in the overall coastal zone boundary and proposed projects affecting them will be subjected to a project evaluation if they are likely to have significant impact.

5. The statement of policies in the section on Activities Associated with Living Aquatic Resources reflect the intention of the Coastal Zone Unit to work in conjunction with the Maryland Fisheries Administration to develop fisheries management plans, as evidenced by the recently signed agreement between the two agencies. The permitting agencies have reviewed the policies regarding consideration of the impact of projects on fisheries and have stated that they are policies they will follow in making permit decisions. Additionally, the Assistant Attorney General for Maryland's Department of Natural Resources has provided legal arguments.

Maryland Wetlands Committee
(Skinner) (7/7/78)

Comments

It is with great regret that I resubmit the following but I do not feel that the criticisms of the program which we voiced at a previous time have been significantly mitigated--indeed, they continue to be outstanding weaknesses-and I think the remarks of Mr. Whitten, Mr. Johnson, Mr. Davis and Mrs. Eastman echoed many of our concerns.

1. The response of the CZM administration to U.S. Fish and Wildlife Service's questioning of the capacity to protect non-tidal wetlands points up the inherent weakness of a networking approach which depends on legislative mandates. There is no law to protect non-tidal wetlands in Maryland.

As long as management authority resides only in existing legislation, the mechanism of project review is only a weak advisory device.

The Department of State Planning is most reluctant to use the Intervention authority.

We urge the Office of Coastal Zone Management to hold up approval of this plan until the Governor signs orders binding his department and his Executive Branch and himself to uphold the Goals and Objectives of this program and the Recommendations of the CZM administration. We also urge that your office delay approval of the program until there is a better mechanism for over-all planning and assurance that local jurisdictions will also abide by the Goals and Objectives and recommendations of the CZM administration.

2. Legislation is needed to create a mechanism stronger than memoranda of understanding, so that recommendations of the CZMP become binding on local and state agencies.

Maryland Wetlands Committee
(Skinner) (7/7/78)

Responses

1. The State's Watershed Permit Program and the U.S. Army Corps of Engineers Section 404 Permit Program, with the Federal consistency requirements establishing Section 307 of the Federal CZMA, should provide adequate authority for protecting those non-tidal wetlands in Maryland within the coastal zone. The inventory of non-tidal wetlands of greater than five acres recently completed by the Coastal Zone Unit should provide previously unavailable information regarding the location of non-tidal wetlands to the administration of those programs. In addition, as part of the first year program administration work efforts, State regulatory mechanisms will be examined and revised where necessary to enable the State to accept delegation of the Corps of Engineers permit responsibility, if appropriate changes are made in Federal law and regulations. In lieu of delegation, refinement of existing Memoranda of Agreement with the U.S. Army Corps of Engineers will be undertaken to insure close coordination of State and Federal efforts regarding non-tidal wetlands.

New and broader coastal policies related to existing legislation, and the Executive Order, Secretarial Order and MOUs make the project evaluation process more than an advisory device.

The Department of State Planning is bound to honor requests for intervention by the CZU.

Refer to the Executive Order and to the letter from the Governor in the FEIS. Approval is proposed on the basis of State control.

2. The Executive Order provides the authority requested in this comment. The Order states that (1) the policies and objectives of the Maryland Coastal Zone Management Program are the State's policies and objectives with respect to coastal resources and (2) that all State agencies shall conduct their activities in a manner consistent

Maryland Wetlands Committee
(Skinner) (7/7/78)

Comments

3. The matter of cumulative impacts from all sources does not appear to be given adequate consideration in the program.

4. Increasing demands for water recreation and commercial channels are assumed to be capable of being met indefinitely without adequate analysis of whether this is possible without creating unacceptable problems in respect to water quality and public safety and the disposal of spoil.

5. What will be the effect of major proposals for new deepwater ports, new Chesapeake Bay bridges, possible new or revived railroad lines, energy facilities on the economic, social and environmental fabric of the coastal zone?

6. Can the waters of the coastal zone continue to withstand the effects of increasing urbanization of the shoreline if the present methods of treating sewage remain unchanged? That is, discharging chlorinated effluent into the bays with present nutrient loads. Or is it necessary to insist on a serious search for innovative methods of treatment? The program totally fails to address this question, or indicate that if changes are needed the program will seek them.

7. Can the Baltimore Channel be dredged to 50 feet without creating long-term spoil disposal problems which are essentially insoluble? Is there a true need for the deepening? This should be reanalyzed by the CZMP.

8. Water Quality Planning under Section 303 FWPCA has moved ahead quite independently of any real coordination with the CZMP. Without any CZ management framework or overview this will continue. Mechanisms for integrating river basin plans and 208 plans into the coastal zone management program should be improved.

9. The program appears, so far, to have failed to develop the required carrying capacity study, except on a piecemeal basis, and therefore, significantly fails to have developed a statement regarding "permissible uses". It is interesting that the Maryland Program has changed the expression

Maryland Wetlands Committee
(Skinner) (7/7/78)

Responses

with the Program.

3. In order to adequately address the question of cumulative impacts, a sufficient information base must be developed and utilized by regulatory authorities. The description of Program Review Activities in the Section on the various Uses/Activities of Concern to the Program describe the efforts that will be taken in program implementation to address questions concerning the cumulative impacts of various types of projects.

4. The section on Recreational Boating in Chapter III of the Program describes the efforts that will be undertaken and the factors that will be considered to determine when recreational boating facilities and associated channels are likely to have adverse environmental impacts.

5. The purpose of the project evaluation process is to determine the potential impacts of such projects on the coastal zone.

6. We agree that this is a problem deserving of serious attention. The Coastal Zone Program will work with the 208 Program, the Chesapeake Bay Program and other relevant programs to insure that this question is adequately addressed and an effective solution found.

7. Please refer to the section on Dredging and Disposal of Dredge Material in Chapter III, Part II of the FEIS. This section specifically deals with this issue. The Program is committed to environmentally suitable methods of dredging and dredge spoil but has not analyzed in depth the need for dredging Baltimore Channel to 50 feet.

8. As noted on page 44 of the DEIS, steps are being taken to ensure the close coordination of the 208 Program and the Coastal Zone Mangement Program. Also please refer to response #3 of the EPA comment section.

9. It is correct that no use has been totally excluded from Maryland's coastal zone. However, the descriptions of the Uses/Activities of Concern in Chapter III of the Program indicate the factors including geographic location, extent and intensity of use that will be used to determine

Maryland Wetlands Committee
(Skinner) (7/7/78)

Comments

"permissible uses" to "appropriate uses". ALL USES ARE PERMISSIBLE UNDER MARYLAND'S PROGRAM and no priority of uses has been assigned for any land use or water use category, except in tidal wetlands where a priority of uses exists under the Maryland Wetlands Act, and for the beaches at Ocean City.

10. The program appears to give too little attention to strategies for resource protection and enhancement as opposed to strategies for utilization and development. The bias is obviously towards maximum possible utilization.

Maryland Wetlands Committee
(Skinner) (7/7/78)

Responses

whether a proposed activity should or should not be permitted to be undertaken in Maryland's coastal zone. In many cases, it is the manner in which an activity is undertaken, not the inherent nature of the activity that makes it unacceptable. The approach adopted by Maryland's Program recognized this fact and is consistent with NOAA's regulations for program approval. With respect to priority of uses, NOAA regulations are clear that these need be established only for designated geographic areas of particular concern (GAPCs). See 15 CFR 923.22. The areas mentioned in the comment are designated as GAPCs in the program.

10. Comment not sufficiently specific to permit full response. In general terms, NOAA disagrees with the comment. The statutes and related legislative history and regulations relied upon as authorities under the program are predominantly concerned with resource protection and enhancement.

Lawrence Whitlock (7/6/78)

Comments

1. I wish to point up citizen concern with respect to Chapter VI of the document pursuant to Federal Consistency. While the draft document identifies general methodology, no specifics are given as to the effects of "Plan" endorsement on the many existing and ongoing research projects. For example, the Chesapeake Bay Program within its proposed scope of endeavors is to conduct a Bay Management Study. Citizens are hopeful that EPA's Bay Management Study is not redundant of work already undertaken within the Maryland Coastal Zone Management Program and recognizes, upon plan adoption, that the Coastal Zone Unit (CZU) is the lead management agency for Maryland's Coastal Zone.

2. The ability to incorporate existing ongoing projects, whatever they may be, into the Maryland Program without duplication, loss of time, or additional expenditure by the taxpayer is essential. We look toward a coordinated and harmonious relationship through Federal Consistency. It is felt that this impact must be studied in more specific terms in the final document.

Lawrence Whitlock (7/6/78)

Responses

1. Maryland is participating in the Chesapeake Bay Study and making every effort to ensure that this project is not redundant with other Bay projects. Federally funded elements of the Study are subject to the Federal Consistency procedures of Section 307 and the implementing NOAA regulations 15 CFR 930 related to Federal assistance and direct Federal activities.

2. The provision(s) for amending approved coastal management programs are outlined in the FCZMA rules and regulations Section 923.81. (Official comment period on this final rulemaking extends until August 31, 1978.) This process provides a means of updating and/or modifying approved coastal programs. There is a general concern regarding the need to make this process responsive and expedient with regard to both time and money. We urge you to submit any comments you have regarding this program amendment process to OCZM prior to August 31, 1978.

Chesapeake Bay Foundation (CBF)
(Baker) (7/10/78)

Comments

1. Networking Approach. The overall approach of the Plan is conceptually sound, but it incorporates the deficiencies of the separate regulatory programs involved. Maryland must assure that equally thorough coverage is achieved through the separate regulatory programs and, most importantly, assure that each separate program must be conducted in a manner consistent with the goals and objectives of the CZM plan.

The plan makes the assumption that the Maryland Environmental Policy Act (MEPA) is sufficient authority for requiring state agencies to comply with the specific requirements of the plan. MEPA, of course, does not apply to local governments and provides no basis for requiring them to conduct zoning and sediment control activities in accord with the plan. Also, doubts have been raised by the Natural Resources Defense Council (NRDC) as to whether the general language of MEPA creates a legal duty for even state agencies to comply with specific parts of the plan.

Finally, the lack of a clear statutory definition of the legal status of the CZM plan and its relation to the conduct of separate state and local regulatory programs makes the plan difficult for citizens and agencies to comprehend. CBF therefore reaffirms its longstanding position that passage of a basic enabling act would greatly simplify and clarify the exact legal status of the plan, and would facilitate the difficult task of bringing together the diverse elements of the "network".

2. Boundaries. It is clear that no rational delineation of Maryland's coastal zone can exclude Baltimore City. However, the City is exempted from coverage under the Coastal Facilities Review Act. This exclusion would seem to undermine the state's reliance upon the Act as a means of directing the location of large oil and gas facilities in the coastal zone. Furthermore, until the exemption is eliminated, the entire Act is unconstitutional under the doctrine of Maryland Coal and Realty Co. versus Bureau of Mines, 193 Md. 626, 642-643 (1949).

Chesapeake Bay Foundation (CBF)
(Baker) (7/10/78)

Responses

1. The signed Executive Order binds all State agency regulatory authority to the program's stated goals and policies. Additionally, MOUs between specific State agencies and DNR serve as added assurance that program policies and procedures will be binding. The Executive Order and the MOU(s) signed between the Department of Natural Resources clearly define the legal status of the CZM Program and the regulatory programs. Given the extensive legislation already in existence in Maryland, it is appropriate for the State to focus on coordinating the program authorized by such legislation and making them work more effectively rather than enacting new legislation.

2. Baltimore City is not excluded from Maryland's Coastal Zone. While it is excluded from the provisions of the Coastal Facilities Review Act, energy facilities proposed to locate there still must meet pertinent State and local regulations and be subject to the project evaluation process. Please refer to EFS planning requirement. The Major Facilities Study undertaken by Maryland's Coastal Zone Program provides the information base needed for determining the suitability of energy facilities in the entire coastal zone whether it be through the Coastal Facilities Review Act in most of the coastal zone or through the coordinated exercise of the various permit programs in the State project evaluation process in Baltimore City. The Maryland Attorney General's office does not share your views on the constitutionality of the Coastal Facilities Review Act.

Chesapeake Bay Foundation (CBF)
(Baker) (7/10/78)

Comments

3. Appropriate Land and Water Uses. Here again CBF must reiterate its concern that there is no clear legal authority for requiring local zoning decisions (the principal land use determinant in the state) to consider or comply with the objectives of the Plan or even with the general environmental policies established by law for the guidance of state agencies.

4. Activities in Coastal Waters. CBF strongly endorses the commitment of the CZ Unit to "investigate the feasibility of alternatives to commercial shipping for transporting oil". We also recognize the urgent need to evaluate alternative solutions to the problem of dredge spoil disposal. We hope that the effort expended on dredging silt from shipping channels will be matched by a comparable effort in preventing silt and sediment from entering state waters in the first place. The state's present level of support for local sediment control programs is woefully inadequate; one full time employee, plus occasional enforcement personnel assistance.

5. Use of Agricultural Lands. CBF urges that the Plan provide for a thorough examination of soil conservation practices on Maryland farms. In many areas, farms are being bought up by developers and speculators who, unlike the owner-farmer, have no incentive to voluntarily spend time or money on soil conservation measures. The passive role CZU outlines for itself (p. 142) is not adequate unless some other agency demonstrates that it is making a serious effort to solve these problems.

6. Major Facilities. As stated above, the exclusion of Baltimore City from CFRA is both irrational and unconstitutional. This must be corrected since CFRA "provides the means whereby Maryland may interact with oil and gas organizations on siting and site evaluation (p. 189)".

A major inadequacy in the state's regulation of sand and gravel extraction is the lack of a provision for a public hearing. Presumably, this cannot be cured without legislation.

7. Geographic Areas of Particular Concern (GAPCs)

The Federal CZM Act requires that the state inventory and identify GAPCs and establish guidelines for the use of these areas. Maryland

Chesapeake Bay Foundation (CBF)
(Baker) (7/10/78)

Responses

3. In enacting the Federal CZMA, Congress provided the state with a number of techniques for land and water use control (see Section 306(e)(1) of the Act and related regulation). While one of those techniques (Section 306(e)(1)(A)) would require local zoning to be changed to meet the State's coastal policies, the other techniques (including those being used by Maryland) would not require such local zoning compliance. Maryland has developed a coastal management program based on State-level authorities and OCZM has determined that Maryland has sufficient State-level authorities to manage those areas and uses of State-level concern.

4. We agree with the comment; with respect to the last comment in support for local sediment control programs, NOAA plans to work with the State to assure the deficiencies are addressed as part of the first year work program.

5. As part of the State's 208 program, the State is working with the Soil Conservation Districts to undertake the soil conservation practices requested. The CZU is in the process of working with the 208 program to ensure that mutual concerns are addressed.

6. Please refer to response number 2 above.

7. Maryland will not rely upon the critical areas program to meet the GAPC requirement. Vegetated tidal wetlands have been designated as GAPCs in compliance with NOAA regulations (15 CFR 923.22). The critical areas program will be used to identify

Chesapeake Bay Foundation (CBF)
(Baker) (7/10/78)

Comments

proposes to satisfy these requirements through its critical areas program. In general, it appears the critical areas program is one way to identify resource areas of more than local significance. COMAR Section 16.00.02.08(A). However, the plan does not make it clear whether GAPCs will only be selected from among those areas nominated by the counties as critical areas. If this is so, the local governments will be making determinations as to what is of concern to the state. Is it possible that a county could refuse to nominate any areas or omit important areas? The plan should clarify the state's intended response (and strategy for meeting Federal requirements) in case local governments fail to designate substantially all appropriate areas for critical area consideration or fail to follow through with appropriate zoning changes. This problem may be the most serious defect in Maryland's proposed network.

8. CBF would like to see the development of means for citizen enforcement of the plan. The best avenue for this is the enactment of legislation conferring standing upon citizens bringing actions to restrain individuals from violating the plan (in a way that causes damage to the coastal environment) or to compel agencies to enforce or comply with the plan.

Chesapeake Bay Foundation (CBF)
(Baker) (7/10/78)

Responses

future areas for designation with Section 923.23 of NOAA regulations. The procedures of the critical areas program are adequate for these purposes. Local governments must forward all suggested areas for Critical Area Status (this includes any nominations received from public or private groups or individuals), whether they nominate an area for designation themselves or not, to the Department of State Planning for its final decision on designation. The final designation of an area as a State critical area will include a management plan (to be submitted by the nominating group or person) to ensure the protection of the characteristics of the area for which it was designated. Enforcement of the management plan will be ensured by strict application of pertinent State permit and funding programs and the State intervention process if local mechanisms are by themselves inadequate. Please see NRDC comment number 5.

8. Citizen Standing legislation was passed by the Maryland General Assembly this year. An analysis of this legislation can be found in Chapter VIII, Part II of the FEIS. Additional mechanisms for citizen involvement in the implementation of the Program are described in Chapter VII of the Program.

Maryland Department of Transportation
(Farragut) (7/19/78)

Comments

In general, I would like to commend the Energy and Coastal Zone Administration on a well prepared and comprehensive Program document. Based on the networking approach outlined in the document, it is anticipated that Maryland will be able to provide for a more effective management of it's coastal resources. I would add, however, that this will depend upon the execution of specific procedures outlined in the document in a timely manner. What we need to avoid is unnecessary time delays associated with the implementation of new regulations and programs.

Maryland Department of Transportation
(Farragut) (7/19/78)

Response

NOAA agrees with the comment and is committed to working with the State in timely execution of the new procedures.

League of Women Voters of Maryland
(Reeves) (7/20/78)

Comments

1. The League of Women Voters of Maryland support the basic concepts, the goals and objectives, and the management procedures of Maryland's Coastal Zone Management Plan. We are fully aware that the concept of "networking" is being challenged and that several state organizations oppose the plan on the basis that the Coastal Zone Unit does not have adequate authority to implement the plan. The League would like to have these questions resolved, however we support the adoption of this program because we believe that further delay of implementation and/or approval would result in a loss of momentum and erode support for the program.

We support prompt Federal approval so that 306 funding can be provided. However, we urge that the Office of Coastal Zone Management carefully monitor the implementation of Maryland's program and withhold 306 funding if severe deficiencies appear.

2. The League considers that the most important aspect of Maryland's program is its statement of goals and objectives. We do not consider that these are just window-dressing or motherhood statements. We will carefully monitor this program by demanding that all implementation activities are in accord with the goals and objectives.

League of Women Voters of Maryland
(Reeves) (7/20/78)

Responses

1. Please refer to the response to comment #1 of the EPA comment section.

Annual evaluation and recertification of the MCMP will occur under Section 312 of the Federal Act, and will address itself to program deficiencies through subsequent funding decisions and conditions.

2. NOAA fully supports the League of Women Voters' position on program monitoring, and plans to assure its execution in the first year grant program.

Department of Energy
(Langenkamp) (7/24/78)

Comments

1. We are concerned about the interaction of State policies for "uses of regional benefit," "siting and operation of major facilities," and "consideration of national interests" as these policies pertain to the siting of energy facilities. We recommend that treatment of energy facilities as uses of regional benefit should be expanded to include the scope of consideration currently provided for siting and operation of major facilities. We believe, first, that local land use plans and zoning ordinances should be reviewed to assess the extent to which energy facilities not subject to direct State control under the Maryland Power Plant Siting Program may be restricted by local regulation. Adequate consideration of the national interest in energy facilities of more than local concern, in view of the roles of local government in program administration as described especially at pages 286 through 300, should include evaluation of the extent that such facilities would be consistent with local land use plans and zoning ordinances.

Second, we encourage reconsideration of the general State intervention authority of the Department of State Planning. The State refers frequently to the intervention authority and clearly intends to use it as an important element of program administration, notwithstanding the reservations stated at page 375. In view of the importance given to this authority, a further analysis pursuant to Section 306(e)(1)(A) does seem warranted.

2. State policies for assessing unreasonable local restrictions are identified at page 408. We believe an additional provision should be added to the program. Local actions inconsistent with authorities for and provisions of local land use plans and zoning ordinances and actions which are arbitrarily exclusive in nature should be considered unreasonable and a basis for action pursuant to the State's

Department of Energy
(Langenkamp) (7/24/78)

Responses

1. Through the establishment of the Power Plant Siting Program, the Maryland Legislature established that power plants were clearly a use of regional benefit which should not be arbitrarily excluded by local governments. Through the passage of the Coastal Facilities Review Act (CFRA), the Legislature recognized that the need for siting oil facilities is environmentally suitable areas. It did not recognize oil facilities as uses of regional benefit that would necessitate a state override of local decisions. CFRA is an attempt to ensure that needed oil facilities are sited in areas that can tolerate the environmental impact of such facilities. The Legislature did not recognize oil facilities as URBs because the demand figures for these facilities did not indicate pressing needs. If an oil facility is determined by the CZU to be in the National Interest and if a local action arbitrarily excludes this oil facility which proposes to locate in an environmentally suitable areas, the CZU will ask State Planning to intervene. In accord with the DNR/DSP MOU, State Planning will honor this request. If the local action is found to be arbitrary and capricious, this action will be overturned. At the present time, the proposed siting of large oil facilities would generally require a local action as such facilities would not be fully consistent with local land use plans and zoning ordinances.

Intervention will be used to ensure that uses that are in the National Interest are not arbitrarily excluded from the coastal zone. OCZM believes that the analysis contained in Chapter VIII of Part II of the FEIS is sufficient and that further analysis is unnecessary. The Program is proposed for approval based on a system of State control and is not being reviewed pursuant to 306(e)(1)(A).

2. Local actions in Maryland would not be inconsistent with the authorities for and provisions of local land use plans. Additionally, provisions of the Secretarial Order ensure that the National Interest is considered in project evaluations.

Department of Energy
(Langenkamp) (7/24/78)

Comments

intervention authority.

3. Table VI-5, page 326, lists allocation of naphtha for LNG production and prohibition and construction orders regarding use of coal as license and permit actions. These actions concern direct regulatory orders of DOE and should be listed for review pursuant to CZMA Section 307(c)(1).

4. On page 326, the citation for allocation of naphtha for SNG production is listed as the "Natural Gas Act"; this is incorrect, the citation should read "Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 751 et seq)."

5. We further note a listing of the Energy Research and Development Administration at page 338 in the listing of Federal assistance programs. The items listed appear to be concerned with energy research and development activities of the Department which would be regarded as direct Federal activities and would be certified for consistency through Section 307(c)(1). This section of CZMA deals with Federal agencies "conducting or supporting activities directly affecting the coastal zone." DOE does administer a program of financial assistance through grants to States for preparation of State Energy Conservation Plans. The State may wish to list this program in Table VI-6.

6. Authority to acquire lands is discussed at page 386 of the program. We believe it would be appropriate at this point to reference the Maryland Industrial Land Act which is noted in the program document at page 377.

Department of Energy
(Langenkamp) (7/24/78)

Responses

Any local action which is considered arbitrarily exclusive in nature would be considered unreasonable and can be used as a basis for State intervention.

3. Please note editorial revisions.

4. Please note editorial revisions to FEIS.

5. The ERDA programs listed are also listed in the catalog of Federal Domestic Assistance, and thus are, to the best of our knowledge, grant programs through which the State and/or local governmens are eligible for funding. As such, the State is interested in reviewing these for consistency. To the extent that ERDA directly carries out R&D, or funds private companies to do so, we agree that it is a direct federal action. Please note changes to Table VI-6 for editorial changes.

6. Please note revisions to FEIS.

U.S. Army Corps of Engineers
(Wilson) (7/21/78)

Comments

1. Maryland's "Area of Focus" concept is generally based on the 100-year flood plain bordering the tidal waters of the State. The two tier approach for program management in Maryland is comparable to other states' CZM programs. However, one major difference is apparent in that the "Area of Focus" designated in the Maryland program is now considered only preliminary. The designation of "Areas of Focus" should be based on a permanent boundary.

2. Some authorities deficiencies in the Maryland program include:

a. Existing zoning regulation may permit major development which would be inconsistent with the Coastal Zone Management Program. As long as this development is consistent with existing comprehensive local plans for land use regulation and requires no zoning action by the local government, there appears to be no method by which Maryland can control such action. There is no state authority to approve or disapprove such projects, as required in Section 306(e)(1)(C) of the Federal Act. The subject document recognizes this problem on page 375.

b. Comprehensive rezoning by local governmental bodies is reviewed by the Department of State Planning to ensure that the plan is consistent with State plans, policies, standards and goals. However, the Department has no power to approve or disapprove such plans as required in Section 306(e)(1)(C). On page 364 of subject document, it is argued that such administrative review should be persuasive due to the State's influence over development through such mechanisms as funding and approval of schools, transportation systems, water and sewage plans, and recreational facilities. Such persuasive techniques do not constitute compliance with Section 306(e)(1)(C) of the Federal Coastal Zone Management Act of 1972.

3. Interstate Coordination

The Chesapeake Bay, as a natural feature, spans two states, Maryland and Virginia, yet there is very little attention paid in the document to interstate coordination regarding the management of these related coastal zones. This appears to be a serious oversight.

U.S. Army Corps of Engineers
(Wilson) (7/21/78)

Responses

1. It is true that the "area of focus", as defined by the MCMP, is a preliminary designation. The floodplain mapping process in Maryland is not yet fully completed. This will be completed by 1981. It is anticipated that the currently designated boundaries will vary only slightly once this mapping is completed.

2.a. As noted in Chapter III, Part II of the FEIS, the Maryland CZMP will control major development at the state level using State authority. These authorities include CFRA, the Power Plant Siting Program, a sedimentation law, flood control laws, the Wetlands Act and various public investment controls. OCZM proposes to approve Maryland as a 306(e)(1)(B) program based on State authority.

b. The program is being approved on the basis of State controls and so Section 306(e)(1)(c) is not applicable. OCZM believes that the State possesses adequate controls over development through state authority. The State's discussion of public investment authority serves to supplement the statutory authority Maryland already has over development.

3. Please note revisions made to the FEIS in Chapter I, Part II.

Maryland Petroleum Association
(McDonald) (7/20/78)

Comments

For the reasons discussed in the attached analysis, the Maryland program falls short of the Federal requirements for Section 306 approval. The program, however, appears to warrant serious consideration for further developmental funding under Section 305 (d) of the Act.

Due to the magnitude of the program, we have not attempted to provide an exhaustive, indepth analysis of its strengths and weaknesses. We have attempted only to address the program's more significant provisions that impact on petroleum industry operations.

1. While the current Development and Approval Regulations have completely done away with former requirements for adoption, we think it clear that the Act's provisions that a program be "adopted by the State ****" must require more than a reexamining of existing policies and developing new policies as the present regulations require at 15 C.F.R. 923.1(c)(2).

2. The first problem with enforceability of the proposed Coastal Zone Management Program in Maryland is that the program was put together by the Coastal Zone Unit with no legislative basis or charge. The premise that the Act establishing the Department of Natural Resources and setting forth its responsibilities grants the Department of Natural Resources the power to develop the State's Coastal Zone Management Program is totally without foundation inasmuch as "Coastal Zone Management Program" is nowhere mentioned in the Act's language, guidelines are not established for the development of such a Program, and a specific grant of power and authority to the Department of Natural Resources to tie together existing state policies, programs, and intra-state agency powers into a coherent Management Program cannot be found in the Act's provisions. Only the General Assembly has the authority to require multi-agency compliance with DNR CZM guidelines and program implementation where no such power currently resides with DNR.

3. In the main, the Coastal Zone Unit relies on one piece of existing legislation as the requisite legal authority required by the Coastal Zone Management Act. That legislation is the Maryland Environmental Policy Act (MEPA). MEPA does not provide the authority to establish the state's Coastal Management Program and to enforce it after it is put into place. The two statutes, MEPA and the CZMA, are at times inconsistent and conflicting. State agencies conducting their activities consistent with MEPA have been no obligation to meet these Federal CZM Act requirements. If then the Maryland Coastal Management Program depends on MEPA for its policy direction as the Coastal Zone Unit asserts on p. 392,

Maryland Petroleum Association
(McDonald) (7/2078)

Responses

1. The Governor's letter stated clearly that the State of Maryland has adopted the program. Such adoption by the Executive Branch is clearly consistent with Section 923.47 of NOAA regulations.

2. The Assistant Attorney General for DNR has developed legal analysis which supports Maryland's contention that enabling legislation of the State DNR is broad enough to allow Maryland to develop and adopt the MCMP consistent with NOAA regulations. The commentor's concerns lie with those regulations, not with the Maryland program in particular. The commentor's national affiliate and a number of its corporate members have commenced litigation in three other states to challenge these and other portions of the NOAA regulations.

3. NOAA disagrees that Maryland relies only on the Maryland Environmental Policy Act. A full listing of the authorities relied upon by the State and by NOAA in approving the program is provided in Chapter VIII, Part II, of the FEIS.

Maryland Petroleum Association
(McDonald) (7/20/78)

Comments

it does by its own terms fall short of the requirements for approval under Section 306 of the CZMA.

4. In addition to being without legislative authority to put together a Coastal Zone Management Program, the Coastal Zone Unit fails to establish the required inventory of legal instruments (authorities) presently in force, as required by Section 305(b)(4), which will allow it to demonstrate that it has the authority required by the Federal Coastal Zone Management Act.

If a Coastal Management Program exists which is enforceable, and it is enforceable only because of the action of the Governor issuing an Executive Order directing that all Executive Agencies conduct their affairs in a manner consistent with a proposed program document, then one must conclude that a Program exists on the basis of the issuance of that Executive Order where one did not previously exist. If that is so, then it must be said that a new governmental program was created by the issuance of the Executive Order, and under the requirements of the Maryland Constitution, that Executive Order must be sent to the General Assembly in statutory form within the first ten days of regular session for approval or disapproval.

5. On the question of the efficacy of the memorandums of understanding among the various executive agencies of the State of Maryland, the petroleum industry has taken the firm position elsewhere that that these memorandums are no more than an agreement to "consider" the statutory responsibilities of other agencies and to "cooperate" in the implementation and enforcement of their respective programs to the maximum extent possible. These agreements are of a voluntary nature and cannot constitute the binding legal obligation required for the state to "control development in order to ensure compliance with the program and to resolve conflicts. . . ." (CZMA Section 306(d)(1)). If the program developers are going to place such reliance on these memorandums as an enforcement mechanism, it would seem appropriate that these memorandums should be included with the final program submission.

6. As mentioned above, legislative action is required before a Maryland State agency will have the authority to resolve conflicts among competing uses. Conflict resolution in the State of Maryland involves policy matters beyond judicial or existing executive jurisdiction or expertise. As an example, the judiciary should not be called upon to decide whether a recreational facility should be viewed as

Maryland Petroleum Association
(McDonald) (7/20/78)

Responses

4. See Chapter VIII, Part II, of the FEIS for a list of the authorities relied upon.

Legal analysis by the State has concluded that the Executive Order is not of the type requiring submission to the Legislature. Maryland's program is consistent with existing laws and regulations which provide the legal basis for the program. The Executive Order ties the program authority together in a manner which is fully consistent with existing law. This Order does not create new government programs within the meaning of Article II, Section 24 of the State Constitution. The General Assembly has given recognition to Maryland's program by establishing the Energy and Coastal Zone Administration in 1976 and by creation of the Chesapeake Bay and Coastal Zone Advisory Commission within DNR.

5. The enforceability of memoranda of understanding is a matter of considerable variance among states. No blanket statement can usefully summarize their legal effect throughout the U.S. NOAA in every case carries out, with the assistance of the state, careful analysis of mechanisms required to make such memoranda enforceable. Where such mechanisms are unavailable, the MOU is not included as a means to make the solution enforceable. The Program Document clearly states the position of the State of Maryland and of NOAA as a result of the analysis carried out. While MOUs are voluntarily entered into, the Executive Order makes them legally binding. Policies additionally are legally enforceable because they are based on Statute. The analysis carried out by NOAA led to the conclusion that an Executive Order must be signed before the program was circulated for Federal review. This caused several months delay in processing the Maryland program, but it was delay that NOAA believes was essential.

6. CFRA will be the basis for initial decisions regarding the siting of major facilities in Maryland's coastal zone. Judicial action will then be relied upon for resolving conflicts not answered by use of the Executive Order. Maryland and OCZM do not believe that use of the legislative process is required to "direct the course of location determination".

Comments

a more favorable use of a given location than a gas processing plant. Such judgments are of a policy-making kind which should be undertaken by a body such as a state legislature which has the power to direct the course of location determination, and to provide for a mechanism which could override local decisions which might arbitrarily exclude or restrict uses of regional, state or national interest.

7. National Interest:

a. The Maryland Management Program must include affirmative, legally enforceable provisions which impose a duty upon relevant state and local authorities to accommodate the national interest in the planning for and in the siting of coastal dependent facilities which are necessary to meet requirements that are more than local in nature;

b. The Maryland Coastal Management Program must provide that the state must consult with cognate Federal agencies to determine the nature and extent of the national interests which may be affected by state planning and siting decisions;

c. The Maryland Coastal Management Program must recognize that it is the Federal view of what constitutes the national interest which must be given adequate consideration, not the state's conclusion as to what is in the interest of the nation.

8. Unreasonable Restriction of Uses of Regional Benefit:

Though the issue is addressed at page 306 of the proposed Management Program, the discussion does not meet the requirement of the Act's provisions that an affirmative guarantee against such restrictions be incorporated in the Program. Our earlier discussion of the deficiencies in the Program with respect to a state override of a local veto of projects which may be in the national or regional interest leads us to believe that despite the assurances from the Maryland Coastal Zone Unit, we believe that the Program is not adequate to prevent local units of government from prohibiting land or water uses of regional benefit.

9. We believe that there is nothing in the proposed Maryland Coastal Zone Management Plan that will assure or guarantee that new energy facilities can be established in the coastal zone or that existing facilities can be expanded in connection with Outer Continental Shelf activity or any other activity. Nor does the process hold much hope for the expeditious processing of permits for petroleum facilities.

Maryland Petroleum Association
(McDonald) (7/20/78)

Responses

7. a. The project evaluation process outlined in the FEIS will serve as a comprehensive review mechanism affecting those activities you refer to. This process requires, among other things, that the National Interest be considered in the decision-making process.

b. This consultation process with Federal agencies is inherent in the MCMP and fully discussed in Chapter VI, Part II, of the FEIS.

c. The State has addressed National Interest with regard to any and all direction received from the Federal Government and will continue to do so.

8. All of the uses cited are defined by the State as URBs with direct State authority. In addition, OCZM has been assured that the intervention authority will be used where necessary to fulfill this requirement. Until such time as we have reason to believe that an unreasonable restriction has occurred and that the intervention authority has not been used, OCZM accepts Maryland's method as approvable.

9. The first sentence is a true statement; the State does not make these assurances nor are such assurances required by the FCZMA. The State does believe that the project review procedure will expedite the processing of permits for all facilities, including those which are petroleum-related.

Maryland Petroleum Association
(McDonald) (7/20/78)

Comments

10. Currently most, if not all, of the land in the Coastal Zone in Maryland is subject to local and state laws that could greatly restrict if not totally prohibit the siting of energy facilities, and, therefore, the industry could be in effect excluded from the Coastal Zone.

Hence, the planning process does not appear to afford any effective guarantee that regional and national needs for petroleum related facilities will not be stymied by local regulations. This failure also contravenes the planning process and national interest requirements of the CZMA. This most serious deficiency must be remedied before the program may be approved.

11. The DEIS issued by OCZM has two essential deficiencies. First, it fails to provide a balanced and thorough discussion of both the costs and benefits of the proposed action. Second, the DEIS commits itself to one particular course of action--full approval under Section 306 and fails to meaningfully discuss possible alternatives, including continued program development funding under Section 305.

The authors of the DEIS, by focusing exclusively on benefits, have developed a document which does much more to promote the approval of the Maryland Program than it does to critically appraise that proposal's environmental impact. Yet the latter is the only purpose of an EIS. It may not be used as a promotional document in favor of the proposal, at the expense of a thorough and rigorous analysis of environmental risks.

The subject DEIS clearly reveals that OCZM's decisionmaking process has not been affected at all by the NEPA requirements, for there is no meaningful discussion of any course of action other than that which the agency clearly seeks to promote--Section 306 approval.

Specifically, since the Maryland program is so clearly not currently approvable, any adequate EIS must examine the alternative of continued program development funding pursuant to Section 305. Thus, in discussion alternative choices, the EIS must consider the possibility that Section 306 approval at this time might delay or disrupt beneficial coastal uses, and weigh this against continuation of Section 306 funding which would have no such adverse impact. Only through such an analysis can alternatives be meaningfully assessed.

Maryland Petroleum Association
(McDonald) (7/20/78)

Responses

10. As previously stated, the MCMP will rely upon the intervention authority to ensure that the siting of facilities is not unreasonably excluded by any local government.

11. NOAA disagrees with this characterization of the DEIS. Costs and benefits are discussed to the full extent required by NEPA and suggested in the CEQ Guidelines for the preparation of EISs.

Alternatives are discussed in terms of substantive reasons for delay or denial of program approval; as indicated in the EIS alternatives section, regardless of the substantive grounds for such denial, the remedies available include continued funding of the program under Section 305(b) or preliminary approval under 305(d). To discuss alternatives only in terms of different sections of the Federal Act from which funds to the State should issue to do the same things would be to reduce the EIS from a discussion of real-world effects to an intricate legal brief on section numbers of no meaning to the general public or even other Federal agencies.

Natural Resources Defense Council
Committee Preserve Assateaque Island
Maryland Conservation Council
Maryland Wetlands Committee
(Mullin and Chasis) (7/21/78)

Comments

1. To our knowledge, Maryland has not reviewed its statutes and regulations to determine to what extent state agencies will be legally able and bound to comply with program objectives and policy statements. The program must demonstrate that existing authorities can fully implement the policies and comprehensively control uses which have a direct and significant im pact on coastal waters.

a. The program should demonstrate that Maryland's statutory authority is broad enough to allow for state agencies to implement coastal policies. To date, the authorities have been discussed only in the case of an agency's authorization to implement its own statutes.

b. The legal analysis of the Environmental Standing Act in Chapter VIII of the program should be revised to include a discussion of how the Standing Act applies to the program's networking authorities and enforceable policies.

2. Floodplains

a. NRDC has commented on the timing of implementation of the Flood Hazard Management Act in a letter to the Coastal Zone Unit on March 27, 1978 and again at the Public hearing on July 6, 1978. We concluded that the Flood Hazard Management Program is not in place at the present time and therefore OCZM must determine the adequacy of Maryland's program without this Act.

It also appears that the state is going astray in its implementation of the Flood Hazard Management Act. The Act establishes minimum requirements for the adoption of interim rules and regulations by local subdivisions. The state is interpreting the adoption of HUD floodplain maps and regulations as fulfillment of the requirements for the interim phase of the FLood Hazard Management Act. NRDC believes that this is illegal because the state's mandated program is broader in scope than the Federal program.

If the state adopts only the HUD requirements, there is serious question as to whether this would comply with the intent of the Floodplains Executive Order and the CZMA.

b. The program should clearly state the coverage of the Watershed Permit Program and how it helps to control development in coastal floodplains.

Natural Resources Defense Council
Committee to Preserve Assateaque Island
Maryland Conservation Council
Maryland Wetlands Committee
(Mullin and Chasis) (7/21/78)

Responses

1. a. The Maryland Attorney General's Office has reviewed relevant State statutes and regulations and has determined that the Program goals and policies are within the scope of these statutes and regulations. The authorities to be used to implement the Program's goals and policies are broad and do not require issuances of permits when certain criteria have been satisfied. Because State agencies are not forced to issue permits, the Executive Order ensures compliance with coastal goals and policies.

b. Please refer to the analyses of the Environ - mental Standing Act in Chapter VIII, Part II of the FEIS.

2. a. The section on activities in Coastal tidal and non-tidal flood plains has been revised to include more detail in implementation of the flood hazard management program. A table showing the completion dates for the detailed delineation of both the riverine and tidal 100-year flood plains in each coastal county has been provided. OCZM believes that the program currently has the authority to adequately manage flood plains through its sediment and storm water management controls and through its major facility siting controls.

The State is utilizing the information provided by the detailed mapping undertaken as part of the HUD Flood Insurance Program; however, the State's position is that the regulations adopted by local subdivisions in accordance with the Flood Hazard Management Act not only must meet HUD requirements but also the additional requirements of the State Act.

b. The Watershed Permit Program covers all activities in the 100-year riverine flood plain including those areas that are influenced by both riverine and tidal processes: activities occurring in those areas which are purely coastal tidal

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c. In view of the limitations of these programs and the fact that the Flood Hazard Management Act is not in place, NRDC requests a fuller description of policies governing floodplain development in the interim and whether they are enforceable.

3. Wetlands

a. It is unclear whether the "Policy Guidelines for Implementation of the Maryland Wetlands Law" are legally binding before they are set forth as regulations. Maryland must either state clearly in the program and demonstrate that policies based on the guidelines are enforceable policies and will be followed in all instances or adopt the guidelines as legally enforceable regulations prior to program approval.

b. The state has not yet addressed NRDC's concerns with respect to activities on lands adjacent to wetlands. The Wetlands Act establishes a strong policy for wetlands protection. The coastal program has not, but should, coordinate application of all authorities which can be used to control adjacent uses to ensure that wetlands are protected.

c. The Beach Erosion Control District Act unequivocally prohibits the placement of permanent structures in the legally defined district. If a variance to the construction prohibition is to be granted, specific criteria and performance standards must be established.

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Responses

floodplains are only presently covered by the HUD flood insurance ordinances that have been adopted by the local governments. Once the detailed mapping of coastal floodplains is complete, activities in these areas will be covered by regulations adopted in accordance with the State Flood Hazard Management Act. In addition, the Shore Erosion planning section clarifies that localities will be required to develop shoreline setbacks in conformance with both the State Watershed Permit program and HUD flood insurance requirements in high risk erosion areas.

c. Please refer to the revised section in Chapter III, Part II, of the FEIS.

3. a. "Policy Guidelines for Implementation of the Maryland Wetlands Law" are consistent with the statutory authority vested in the State through that Law. This enables the State to enforce these policy guidelines. Since Executive Order 01.01.1978.05 requires all agencies to conduct their activities in accord with the Program to the extent consistent with their statutorily prescribed responsibilities, the Executive Order requires that these policy guidelines be enforced.

b. OCZM believes that the Program adequately manages activities on lands adjacent to wetlands through its sediment and storm water management controls, through its controls over major facilities siting, and through its policies related to channelization and use of agricultural and forest lands.

c. As noted in the Act, with appropriate State and Soil Conservation District approvals, shore erosion control and storm water management devises may be built in the District. No other type of construction is allowed. The Program policy, which prohibits the location of structures east of the dune line, effectively protects the primary dune system. The Fenwick Island/Ocean City area is heavily developed and no secondary dunes remain. The remaining part of Maryland's Atlantic coast is either in Federal or State ownership and is completely protected from development.

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d. CZMA Section 305(B)(9) requires state programs to include "a planning process for (a) assessing the effects of shoreline erosion (however caused), and (b) studying and evaluating ways to control or lessen the impact of such erosion, and to restore areas adversely affected by such erosion." The state has not demonstrated that it has met this requirement with respect to its Atlantic coast.

4. Maryland's proposals (pp. 106-109, 157-166) do not constitute a "planning process" to provide public access to recreational areas, open space or natural areas. The program simply identifies funding programs for the purchase of such areas. No other means of providing access are explored and no mechanism is proposed to assure that the carrying capacity of recreational resources is not exceeded.

5. We support the designation of vegetated tidal wetlands as these are indeed natural features of great concern, but we believe the designation should be expanded to include other types of wetlands, particularly tidal flats and beaches. It remains unclear to us what criteria Maryland applied to determine that designation of vegetated tidal wetlands alone was enough.

6. Critical Areas

a. Since the State Critical Areas Program is proposed to fulfill the CZMA requirement for designation and management of areas of particular concern, we believe that the State must exercise its full authority over this program.

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No variances in the construction prohibition are contemplated at this time. If a variance were to be considered, specific criteria and performance standards would be established. OCS pipelines and ocean outfalls are interpreted by the Program to be prohibited.

d. Please refer to the revised erosion planning element in Chapter III, Part II of the FEIS. The Coastal Zone Unit, the Army Corps of Engineers, U.S. Fish and Wildlife and local units of government are presently assessing the effects of shoreline erosion and studying and evaluating ways of controlling or lessening its impact. Study is focusing on Ocean City and the northern end of Assateaque. Management solutions are being considered which include beach nourishment, groins and offshore breakwaters. The Ocean City erosion problem is of emergency proportions and must be addressed.

4. Please refer to the revised shorefront access planning process in Chapter III, Part II of the FEIS.

5. In the future, additional GAPCs including aquatic resource areas will be identified for consideration for designation through the State's Critical Areas Program. Tidal flats and beaches were considered for designation but were not included as GAPCs because of the variability of their importance. Some tidal flats are extremely important biologically while others are not and some of the smaller beaches were not considered important. All of these areas are protected under the Wetlands Act. Vegetated tidal wetlands were selected because of their demonstrated biological importance and their important contribution to the estuarine system.

6.a. OCZM agrees that critical areas can be nominated by State and Federal agencies and private parties subject to approval by the Department of State Planning.

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The critical areas program, as described in the coastal program, appears to rely on local nomination of critical areas. However, we find no legal restraint which would prohibit Department of State Planning designation of areas nominated by a state or Federal agency, a member of the public or DSP itself.

b. The Coastal Zone Unit must establish in the FEIS and follow a schedule for its own nominations to DSP to ensure that the Critical Areas Program includes areas of concern to the coastal program such as erosion hazard areas and areas to provide public access.

c. We remain concerned about the implementation of management plans which are developed as part of the critical area nomination and designation process. The state lacks authority to enforce management plans implemented solely by local controls. Charter counties and the City of Baltimore are not required to include critical area management plans in their comprehensive plans. To the extent that state intervention is relied upon as an enforcement mechanism, the authorities are inadequate. The Secretary of State Planning is not legally bound to intervene, and even if intervention takes place, there is no guarantee it will be successful.

NOTE: Appendices comments not included.

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b. The Coastal Zone Unit will nominate Critical Areas during the second round of nominations which is expected in late 1979. During the first year of Program implementation, the CZU will consider including erosion hazard areas and areas to provide public access in the 1979 nominations.

c. If an area is designated, it must have an enforceable management plan. This plan could be implemented at the State or local level. If locally developed, the plan would be subject to the State's intervention authority with ample grounds for intervention if a local decision was not made in accord with the plan. If a critical area is designated as a GAPC under the Coastal Program, in the event of a deviation from the management plan for the critical area, the CZU will request that the Department of State Planning intervenes. DSP is bound to honor the requests by the CZU for intervention (see the State Planning/DNR Memorandum of Understanding). The Governor's Executive Order also requires State Planning to conduct its activities in a manner that is consistent with the Coastal Program. A decision by State Planning not to intervene in such a situation would be inconsistent with the Program.

DELMARVA Water Transport Committee
(Pitts) (7/17/78)

Comments

1. If environmental influences will not allow some flexibility in use of low value wetland areas and as the lease or purchase of costly upland areas for use as dredge spoil areas about every eight to ten years is not economically feasible, it is essential that dredging operations be expanded to support long distance pipeline pumping and/or barge transport and pumping operations to transport dredge spoil to available spoil site areas remote from the areas dredged.

2. Your consideration and support of the use of pipeline/pumping/barge transport methods of dredging is critical in order to comply with the environmental restrictions and achieve the dredging that is necessary for the economic development and sustenance of waterborne commerce on the Delmarva Peninsula.

Delmarva Water Transport Committee
(Pitts) (7/17/78)

Responses

1. The Coastal Zone Program is aware of the situation expressed in this and the following comment, and is working with appropriate Federal, State and local agencies to develop an approach to dredge spoil disposal that will address these concerns.

2. See response number 1 above.

Department of Interior
(Meierotto) (7/24/78)

Comments

1. We are concerned that the Governor's Executive Order, which insures that the State authorities are exercised consistent with coastal policies does not apply to two independent agencies--the Board of Public Works and the Public Service Commission. The Board of Public Works, comprised of the Governor, the Comptroller and the State Treasurer, has two responsibilities which are important to effective implementation of the MCMP. First, it approves all disposition of State lands including State wetlands. A person may not dredge or fill State wetlands without obtaining a wetlands license from the Board. After receiving recommendations from the Secretary of DNR, the Board makes wetlands permit decisions "taking into account the varying ecological, economic, developmental, recreational and aesthetic values" (see Article N.R. Section 9-202(c), 1976 Supp.). Second, the Board approves the expenditure of all sums appropriated through State loans and general funds for capital investment and expenditure. The State has identified its authority to control public investment as an important coastal management tool which will be relied upon to manage certain land and water uses. The Public Service Commission makes final decisions regarding the siting of power plants and transmission lines.

We recommend that action be taken to insure that the Board and the Commission make these important decisions regarding State wetlands, public investment and siting decisions consistent with the State coastal policies described in the final MCMP. Recognition and endorsement of the final MCMP by these two entities would be desirable and could be accomplished through a memorandum of agreement, or through letters of recognition and endorsement from the Board and Commission to the Secretary of DNR.

2. While the explanation of project evaluation on page 60-66 is quite detailed, the criteria to be used for determining the appropriate degree of evaluation for a particular project are not described. While the Secretarial Order to be signed prior to program approval will discuss this issue, the final program should be as specific as possible about the standards and criteria and time limitations involved in making these decisions in order to provide Federal agencies some predictability in this process.

3. Recently, the State legislature enacted the Oil Pipeline Corporation Act granting condemnation authority to oil pipeline corporations for the development of pipelines within existing rights-of-way. This Act is an example of the authority of the General Assembly to delegate condemnation authority to the Public Services Commission of Maryland to provide for development of facilities in the regional

Department of Interior
(Meierotto) (7/24/78)

Responses

1. We agree that the Board of Public Works is not covered by the Governor's Executive Order. Because of a lack of time, the Board will not be able to review and approve the Program prior to approval. As a condition of approval, OCZM is requiring that the Board review and approve the Program by March 1, 1979. The Board's approval of the Program is not essential since it must comply with the requirements of the Wetlands law for permits in State wetlands and can only approve or deny agency public investment proposals. Agency public investment proposals must be in accord with the Coastal Program so that the Board could only deny a funding proposal which was consistent with the Program.

The Public Service Commission, on the other hand, is covered by the Executive Order and must conduct its activities consistent with the Program. The Commission's members are appointed by the Governor, serve coterminously with him, and can be removed by him.

2. It is difficult to give more explicit criteria because the appropriate degree of evaluation depends upon impacts that a project may have on coastal resources and this must be evaluated on a case by case basis. A section has been added to the discussion on Project Evaluation which details the factors that will be considered in undertaking a full project evaluation.

3. The Oil Pipeline Corporations Act authorizes certain companies to condemn land adjacent to existing oil pipelines in certain counties (but not more than an extra 50 feet) in order to construct and operate additional pipelines along the same right of way. The recent law is not an attempt by the legislature to exercise condemnation when local interests threaten to veto the optional siting of a facility of regional or

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Comments

and national interest. We recommend that the final program discuss the relationship of this Act with the national interest provisions of the Coastal Zone Management Act of 1972, as amended (CZMA). It appears that the ability to site pipelines through established rights-of-way will reduce the likelihood that such facilities will be located in geographic areas of particular concern (GAPCs).

4. The Maryland Environmental Standing Act of 1978 should also be discussed in the final program. This Act, which provides citizen standing to bring action against the State for non-enforcement of an environmental standard, may enhance citizen efforts to assure State compliance with program policies and objectives.

5. Finally, numerous coastal policies are based on "revised DNR regulations." The final program should clarify when these revisions to the Watershed Permit and Wetlands regulations will be completed, and what enforcement mechanism will be used in the interim.

6. In order to protect these resources and to provide some predictability to State regulatory activities, we recommend that the final program include all of Dorchester County as an Area of Focus pending completion of the 100-year floodplain study. Reference to this should be included in Table II-1.

7. If Area of Focus boundaries are significantly altered during program implementation, we recommend that these changes be reviewed as amendments to the MCMP. The amendment process, which provides the opportunity for Federal review, assures that fish and wildlife resource areas will be carefully evaluated before they are excluded from an Area of Focus.

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national importance. The Act is expressly limited to existing pipelines in eight counties plus Baltimore City, and grants the condemnation power only to corporations:

> "...engaged in the business of transporting refined petroleum products by pipeline as a common carrier public service corporation (which are) subject to the jurisdiction of either (FERC) or the Public Service Commission of Maryland."

Only property which is "necessary for the construction and operation of additional oil pipelines" may be taken, and then only within 50 feet of the existing right of way. This Act cannot be viewed as an oil facility siting law, and will contribute little, if any, authority over the question of local vetoes in coastal zone development.

4. Please refer to the discussion on the Standing Act in Chapter VIII, Part II of the FEIS.

5. The revised Watershed Permit regulations have recently been promulgated and are now in effect. Issuance of new wetlands regulations is not necessary prior to program approval because the wetlands guidelines in Chapter III, Part II of the FEIS are presently being used as a basis for issuing permits although they have not been formally adopted as regulations.

6. Until the 100-year flood plain study is completed, the whole of Dorchester County will be treated the same with the "area of focus" designation not applicable until the 100-year flood plain study is complete. In accordance with the procedures developed with DNR's Wetlands section, all projects that may involve wetlands alteration will be reviewed for possible project evaluation action.

7. It is not expected that the Area of Focus boundaries will be significantly altered during program implementation. If the Area of Focus is significantly changed, these changes will be reviewed as amendments to the Maryland Coastal Management Program. Before any changes are made, fish and wildlife resource areas will be carefully evaluated to ensure that they are adequately protected.

Department of Interior
(Meierotto) (7/24/78)

Comments

8. The final MCMP would be enhanced by specifically addressing and encouraging the use of the Open Marsh Water Management (OMWM) method of mosquito control. The MCMP states: "Drainage ditches for mosquito control. . .are generally allowed if they conform to the drainage standards and specifications of the Soil Conservation Service, if they are approved by the Department of Agriculture, and if they are constructed to minimize adverse environmental impacts" (p. 138). While this State policy is acceptable, it tends to suggest and encourage ditching as an acceptable method for mosquito control. The OMWM technique of mosquito control is unique since it minimizes ditching, spoil disposal and pesticide spraying of wetlands for insect vector control. In view of the commendable efforts by the State Department of Agriculture and the Department of Natural Resources in implementing OMWM, we believe that the final program should include reference to this technique as an "enhancement" policy. Further, we recommend that CZU undertake a research effort in the first year of program implementation to evaluate the effectiveness of the OMWM method of mosquito control on the marshes of the lower eastern shore of Maryland.

9. The draft MCMP does not distinguish between tidal, private or State wetlands. We recommend that the term "tidal wetlands" be defined to include private and State wetlands and non-vegetated areas such as mudflats, submerged aquatic vegetation and beaches up to the mean high waterline. Coastal policies addressing "tidal wetlands" protection should specifically address these non-vegetated areas.

10. We note that Maryland's Areas for Restoration pertain only to aquatic areas of degraded water quality. Objective 4 of the draft MCMP is intended: "To protect, maintain, and where feasible, restore the integrity of the tidal wetlands of the State." We believe that this discussion of APR's should be expanded to include wetland restoration. At present it is Department policy to compensate for unavoidable losses of public fish and wildlife resources which are caused by water resource projects by replacing and restoring habitats within the project areas. Without adequate restoration of lost natural resources, each development project sited in the coastal zone will represent an incremental loss of the present resource base. We recommend that the final MCMP expand the discussion of APR's to address this and to provide criteria and procedures for designating areas to be restored.

Department of Interior
(Meierotto) (7/24/78)

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8. The Maryland Program is committed to evaluating the possible use of the Open Marsh Water Management (OMWM) method of mosquito control and the appropriateness of its use in Maryland's wetlands areas. The Program will fund a study by the State Department of Agriculture to assess the advisability of implementing (OMWM) on a broad scale. The Program does not feel a policy on this matter is appropriate until this research is completed.

9. As noted in the Section on Tidal Wetlands in Chapter III, Part II of the FEIS, the definition of tidal wetlands under State law describes the differences between private and State wetlands. (Please refer to Appendix G of the DEIS.) Tidal wetlands regularly include private and State wetlands, mudflats and submerged aquatic vegetation and beaches up to the mean high waterline.

10. The CZU will consider in the aquatic resource areas designation process those areas of degraded marsh that are in need of restoration. Please also refer to Appendix F, p. 67.

Department of Interior
(Meierotto) (7/24/78)

Comments

11. The final MCMP should include the criteria used by the Department of State Planning (DSP) to review proposed State Critical Areas (SCAs). The criteria for rejection of proposed sites and mediation procedures for reconciling conflicts should be included in the final program. Specifically, we question the grounds on which DSP can reject a recommended Resource Protection Area and the procedure CZU would use to appeal the decision.

12. The inconsistency in treating Aquatic Resource Areas (ARAs) within a specified management scheme at the local level and the program's all systems approach to Bay-wide problems (e.g., boating congestion, erosion remedies, OCS development, etc.) should be remedied in the final program. Finally, the State program should clarify how SCA designation and management plans will corollate with State programs (fishery management plans, fish refuges, wildlife management areas) and how ARA conflicts with these State programs will be resolved. Clarification is also needed to determine those areas which will be afforded ARA designation and the purposes of such designations.

13. The intervention authority could prove to be particularly useful as a way to present national interest considerations to local decisionmaking bodies. A more thorough explanation of the possibilities for using the intervention authority in this manner should be included in the final program document.

14. The draft MCMP indicates that the Coastal Zone Unit will have the final responsibility for the State's consistency determination and will reconcile different points of view on consistency into a unified State response. However, the MCMP further states on pages 316 and 317 "Disagreements arising from this process should lend themselves to administrative resolution." This sentence is confusing since it does not clarify what is meant by "administrative resolution." We suggest that this sentence be reworded or eliminated.

15. On page 321, the draft program contains a list of "types of activities which will, generally, directly affect the coastal zone." Outer Continental Shelf leases are included under the subtitle "Actions Seaward of the Coastal Zone." It is our position that pre-lease and lease sale activities are not subject to the consistency provisions of the CZMA. We recommend that the State either omit this item from the list or explain that the listing indicates the State's desire to reserve the right to apply

Department of Interior
(Meierotto) (7/24/78)

Responses

11. Please refer to Appendix D, pp. 30-38. The criteria for selection or rejection of critical areas is based on a site's criticality and whether the site is of state concern. Also refer to the MOU between DNR and State Planning. The DSP is bound to consider CZU recommendations concerning Critical Area designations; however, DSP reserves the right to reject a State Critical Area nomination if it deems it in the State's interest to do so.

12. State Critical Areas can be managed by any combination of State and/or local controls. In the case of Bay bottoms and wetlands, the State exercises full authority through the Wetlands law. The CZU will nominate ARAs in the future with close cooperation with the locals in the process. While ARA designation does imply a special importance for the designated area, state authorities over aquatic resources will be used to ensure protection of areas that have not been designated. ARAs will not be managed at the local level; management of these areas will be an integral part of the Bay-wide management system. SCA designations must be made in accord with the Coastal Program and its policies.

13. The Program has made a commitment to use intervention in National Interest questions. Chapter VI, Part II of the FEIS has an adequate description of the use of intervention in National Interest matters.

14. "Disagreements" refer to inter-departmental conflicts. The administrative resolution of these conflicts refers to the fact that department heads will attempt to resolve any conflicts that arise regarding a CZU consistency determination. If this is not possible, the Governor will resolve the conflict between departments.

15. A footnote at the bottom of p. 321 clearly explains that Congress has not yet determined whether this activity is subject to Federal Consistency Provisions.

Comments

consistency to OCS lease activities if the Administration or Congress decides that it applies.

16. The draft program also lists several purposes of the State's consistency review. One purpose is stated accordingly: ". . .minimize duplication in the performance of agency missions." We suggest that this statement be more fully explained in the final program since it is not clear how this purpose can be accomplished through consistency review.

17. Minerals:

The draft MCMP discussion regarding minerals should be expanded to mention stone, clay, lime, peat, green sand, marl, talc, and soapstone, as well as sand and gravel. A useful addition to this program would be a listing of known mineral deposits within each coastal county along with maps showing mineral resource and facility locations.

18. Chapter II, Section E, part (2), entitled "Air and Water Quality," should be rewritten to more accurately establish whether the areas in question are Aquatic Resource Areas of the State Critical Area program, or are Areas for Restoration. The former designation is based on biological resources, whereas the latter is primarily used for areas of degraded water quality. The term "areas of Critical State Concern" does not appear in the body of the Program and is consequently a source of confusion.

Department of Interior
(Meierotto) (7/24/78)

Responses

16. This "purpose" has been deleted. This is the purpose of related A-95 clearinghouse reviews with which consistency reviews will often be combined.

17. Please refer to Part D, Chapter III, Part II of the FEIS and to Appendix F, p. 61. Additional information on other minerals will be developed during Program implementation.

18. Although important Aquatic Resource Areas delineation is based on biological resources, in some cases water quality would need upgrading so that these areas could also be listed as Areas for Restoration. The term "Areas of Critical State Concern" is language used in the critical areas legislation; however, for purposes of clarity, it should be changed to read State Critical Areas.

Federal Energy Regulatory Commission
(Shuster) (8/2/78)

Comments

1. Should it be the intent of the MCMP that Conowingo or other Federally licenses hydroelectric projects or potential Federal hydroelectric projects be subject to Federal consistency requirements, the MCMP should discuss hydroelectric generating facilities in Chapter III-D. "Hydroelectric plants" should be added as an additional item under the heading of "Electric Generating Facilities" on page 210. Appropriate MCMP requirements concerning hydroelectric power plants should be presented on pages 219-225 under the same heading.

2. Natural Gas Facilities

a. Cove Point on the Maryland coast is the site of the only major liquified natural gas (LNG) import terminal operating in the United States today (design capacity--one billion cubic feet per day). Despite this, LNG is barely mentioned in the MCMP, and in fact is disguised in a section titled "Onshore OCS/ Oil/Natural Gas Facilities." All of these important energy facilities receive the same vague and non-comprehensive treatment, although OCS and natural gas facilities may have a major impact on the Maryland coastal zone.

b. The MCMP has not met the requirements of specificity and predictability of decisions made regarding coastal zone uses subject to State management. Material which should be provided as part of the MCMP is spread over numerous studies and reports which are not included in the program; e.g., see pages 213 and 282. The State must at least provide a synopsis of these studies in important areas such as facility siting and State policy on energy facilities.

c. In addition, the sections on OCS facilities and natural gas facilities should be separated and greatly expanded, especially in light of the possibility of the location of onshore OCS facilities or addititional LNG terminal facilities in the Maryland coastal area.

3. National Interest

a. The MCMP lists a number of activities and resources in which there may be a national interest (Table VI-1). However, this list is of little or no value since the State intends to independently make its own determination of facilities "in which there is a clear national interest" (MCMP-p. 307). The MCMP should identify those facilities, viz., bulk energy facilities, in which there is a national interest in a list such as Table VI-1. This would insure that these facilities will be subjected automatically to a MCMP project evaluation when one of these projects is proposed.

Federal Energy Regulatory Commission
(Shuster) (8/2/78)

Responses

1. Please note changes in the FEIS.

2. a. Please note additions and revisions to the FEIS. Also LNG and OCS are discussed together because CFRA deals with both of these activities and not because Maryland wanted to disguise the LNG discussion.

b. Please note that the FEIS has been updated to reflect that the Studies cited have been completed and are available for review. In addition, we believe the sections on OCS and natural gas facilities, as revised, are adequate to meet program approval regulations.

c. The same assessment and management procedures apply to both types of facilities, and we believe there is no need for a separate discussion. A section has been added describing LNG facilities in Maryland.

3. MCMP evaluations will be performed for all major project proposals. As part of this project evaluation process, the national interest is considered and this consideration becomes a part of the final evaluation results. Maryland's procedure for Energy Facility Siting (EFS) is reactive. Once a facility is proposed, the State will then decide if the siting of this particular facility is in the National Interest. This approach conforms to OCZM rules and regulations.

Federal Energy Regulatory Commission
(Shuster) (8/2/78)

Comments

b. It also should be clearly indicated in the MCMP that national interest means benefits are provided outside of the State of Maryland as well as in the State.

Two statements made in Table VI-1 should be supported. The first is that "Maryland has recognized that meeting energy needs is essential. . . ." This statement should be identified as a legislative finding, policy statement, etc. The other is that "criteria for State decisions for each type of energy facility are described in existing State legislation." These criteria should be included within the program document.

4. Uses of Regional Benefit

Maryland's definition of "uses of regional benefit," i.e., "activities (which) provide services or benefits to citizens of more than one local unit" (MCMP p. 306), is broad enough to cover many intra-state facilities. This corresponds to the latest OCZM dictum, however, we strongly disagree with OCZM and believe this should be expanded to include interstate considerations for dependency on coastal activities as well as intra-state considerations. If some other criterion is being used to determine uses of regional benefit, it should be listed in the MCMP. If not, then other energy facilities besides simply electric generating facilities and transmission lines should be listed as uses of regional benefit. Table VI-2 on page 315 lists only five uses of regional benefit. This list does not include energy facilities, including pipelines and LNG terminals, which obviously serve more than one local unit.

5. Energy Facility Planning Process

We feel that Maryland has complied with few, if any, of the five required elements of a planning process (see specifically 15 CFR 923.14(a)(1) through (a)(5), page H-52 of the MCMP). Although numerous statements are made that Maryland has completed the process, no evidence is provided in the text of the program. For example, the identification of energy facilities which are likely to locate in the coastal zone is said to be addressed in the Major Facilities Study." However this study has not been published yet, and will not be a part of the MCMP when it is published. Therefore, the Office of Coastal Zone Management (OCZM) and reviewing Federal agencies cannot determine whether this requirement has or will be met. Similarly, procedures for assessing the suitability of energy facility sites are said to be contained in the State's "Power Plant Siting Act."

Federal Energy Regulatory Commission
(Shuster) (8/2/78)

Responses

Maryland agrees that facilities located in the State with benefits outside the State could be determined to be in the National Interest.

Maryland has taken this first quote directly from CFRA. The referenced criteria are contained in relevant policy sections or the management procedures subsection of the program document.

4. The State listing of uses of regional benefit is adequate to comply with NOAA regulations, which provide some discretion to decide which classes of facilities to include. The CZMA does not include all energy facilities or even all national interest facilities to be uses of regional benefit. Other states have appropriately drawn the same distinction Maryland has between electric facilities, which have a regional service area and an advanced public planning process, and oil and gas facilities, which can serve more selective or expansive markets and which are less subject to advanced planning by the State.

5. The major facilities study is now available to all Federal agencies for review. It has been completed for some time. It was awaiting publication only. This study is regarded as important research and technical material and will be used as a basis for decisionmaking along with other material--as such, it is regarded as part of the MCMP. All materials referred to in this section are available from the Maryland CZU upon request. Additionally, while the Power Plant Siting Act is not contained in the document itself, the policy statements and objectives which use this as their basis have the citation attached.

Federal Energy Regulatory Commission
(Shuster) (8/2/78)

Comments

In order to allow Federal Agencies the maximum amount of time to review the MCMP's energy facility planning process, the State should be required to forego Section 305(b)(8) approval at this time. The State should then submit complete documentation of its fulfillment of the requirements of 15 CFR 923.14 (a) (1) through (a)(5) as an amendment to the MCMP at a later date. In addition, all energy facility studies which the MCMP identifies as "in progress" (e.g., see page 282) should be completed and included as part of the amendment.

6. Federal Consistency

The MCMP states that "the basis for determining consistency of Federal actions with (the MCMP) will be the goals, objectives, and policies of the program." Some means must be found to identify specific goals, objectives, and policies of the MCMP or of other coastal laws which apply directly to each listed Federal license, permit, or any other consistency decision. In this way the applicant, the Federal agency, the public, and the State decision-maker are all given a clear standard by which to judge a project.

Federal Energy Regulatory Commission
(Shuster) (8/2/78)

Responses

Please note changes to the description of the energy facility planning process in the document. These changes adequately respond to concerns raised by commentors and by NOAA in response to the DEIS.

6. All of the stated coastal policies, as well as stated goals and objectives, are the basis for consistency determinations. The program document fully describes these policies, goals and objectives.

Environmental Protection Agency
(Little) (8/4/78)

Comments

1. We note that the Coastal Zone Unit (CZU) will have the primary responsibility to review all projects and programs affecting the coastal zone. This review will fulfill the consistency provisions of the Coastal Zone Management Act. However, according to the management program, the CZU acts only in an advisory or coordinative manner, with little if any enforcement powers of its own. This serious flaw tends to attenuate the CZU's ability to implement the goals and objectives of the overall management program.

We recommend that the program be modified to incorporate a greater enforcement mechanism into the CZU project evaluation process. This modification will enable the CZU to act in a "checks and balances" role, especially in its dealings with other State agencies.

2. In the summary of requirements for program approval (p. 18), the necessity for incorporating the air and water quality requirements, established pursuant to the Clean Air Act (CAA) and Clean Water Acts (CWA), into the Coastal Management Program as stipulated in Section 307 (f) of the CZMA and 15 CFR 923.44 of the implementing regulations should be added. Since the incorporation of these requirements is not referenced, MCMP staff or other agency reviewers could be given the misleading impression that the requirements of CAA and CWA need not be met.

3. Areawide water quality management plans ("208" program) are being developed for numerous counties that will be impacted by MCMP. The program states that 208 plans "will be an integral part of the Coastal Zone Mangement Program" (p. 44). This statement is vague. It is not clear whether 208 plans will be incorporated and adopted by MCMP or will merely serve as a scheme to be consulted but not adhered to, in future coastal decisions.

4. Dredge and fill guidelines promulgated by EPA, pursuant to Section 404 (b) of the CWA must be incorporated into the MCMP as mandated by Section 307(f) of the CZMA.

We would also like to note that while a 404 permit will not be issued without a determination of CZM consistency, the reverse is not true. The fact that a proposed 404 permit is consistent with the MCM plan does not dispense with the necessity of fulfilling other substantive and procedural requirements for the issuance of 404 permits. The language of both Section 307 (e) of the CZMA and the Federal consistency regulations (15 CFR 930.63(c))

Environmental Protection Agency
(Little) (8/4/78)

Responses

1. While the CZU does not have any regulatory powers, the project evaluation process will be based upon enforceable State coastal policies. The evaluation process is designed to comprehensively review projects proposed for the coastal zone. The CZU will decide if a project is in conformance with the State's coastal program and, if a disagreement arises, the CZU has the authority to invoke their conflict resolution process. Also please refer to the revised Project Evaluation discussion in the FEIS.

2. The incorporation of Federal air and water quality standards is explicitly stated in the FCZMA as you have referenced. Maryland is aware of this and has developed a program based, in part, upon these requirements.

3. The State has not yet fully determined what the exact relationship between the MCMP and "208" plans will be. In part, this is due to the fact that the latter plans have not been finalized and adopted yet. However, the State intends to utilize draft plans in an advisory capacity in its decisionmaking. As 208 plans are finalized and it becomes evident that certain non-point source pollutants have direct and significant impact on coastal waters, the program will have to be amended so that these impacts will be adequately managed.

4. OCZM believes that this is implicit in the water quality requirements in the Program. Please refer to Table D in Part I of the FEIS for a listing of the sections of the Program that relate to air and water quality requirements.

Environmental Protection Agency
(Little) (8/4/78)

Comments

makes it clear that determinations of consistency with approved CZM plans are not to be viewed as substitutes for complying with applicable requirements of other Federal laws.

5. We are concerned that State authority in non-tidal wetlands appears to be confined to those areas associated with riverine flood plains. Other non-tidal wetland areas would therefore have little State protection with the Army Corps of Engineers having sole authority for the issuance of dredge and fill permits. This inconsistency must be addressed by the State WRA.

6. The MCMP should identify the Air Quality Control Regions (AQCRs) within the coastal zone which are nonattainment areas and those subject to prevention of significant deterioration (PSD) regulations. The MCMP should also describe measures to be implemented to prevent additional air pollution in the AQCRs affected by the plan.

7. State capital budget programs authorizations should be reviewed by the Health Department for adequacy in meeting Federal and State air quality requirements as well as these for water and sewer systems (p. 90).

8. In reviewing Maryland's policy chapters, we note two levels of statements: general goals and objectives, and more "specific" policy statements (over 200 of them). Concerning the general goals and objectives, EPA also notes that a subset of these has been designated as applying "...generally to all coastal uses...". EPA would like clarification on what rationale was used to make this distinction and what function it serves. For example, EPA would like to know why objectives dealing with productive agriculture areas and forest areas (objective #6, page 82) or utilization and disposal of hazardous substances (objective #33, page 82) are considered generally applicable to all coastal uses, but objectives such as promoting recreational opportunities in shoreland areas (objective #8, page 26) or encouraging inland siting of facilities not shoreline dependent (objective #17, page 28) are not considered generally applicable.

9. We suggest that all goals, objectives and policy statements include short scenarios of what the CZU will or will not accept as a project/proposal affecting the coastal zone.

Environmental Protection Agency
(Little) (8/4/78)

Responses

5. OCZM does not think that there is an inconsistency in this case. The MCMP has control over wetland areas associated with riverine floodplains. It has an interest in other freshwater wetlands but does not have State control over them. Control is exercised by the Army Corps. OCZM does not believe that this lack of control at the State level represents an approvability issue as freshwater wetlands are not demonstrably connected with coastal resources and the State's desire to manage these resources.

6. Please note changes made to the FEIS.

7. The Health Department will review State capital budget program authorizations to ensure their adequacy in meeting Federal and State air quality requirements. It is the responsibility of the Department of State Planning. In this process, the Health Department can be called upon to ensure adequacy in meeting Federal and State air quality requirements.

8. Objectives were considered to be generally applicable to all coastal uses if they express concerns that must be considered in evaluating most types of activities discussed in Chapter III. If an objective applied only to certain types of activities, it was listed as pertinant only to certain activities.

9. The coastal policies will act, in part, as a method of determining which proposals/projects are suitable for Maryland's coastal zone. However, the State would not want to arbitrarily exclude any type of activity (by writing a

Comments

10. We found significant errors among the wording of the program objectives. For example, objective #10 on page 28 reads "To discourage the location of major new....facilities...."(emphasis) added), but objective #10 on page 236 reads "To prevent the location of major new....facilities...."(emphasis added). Similarly, objective #18 on page 220 reads "To encourage the location of new coastal facilities.. .. "(emphasis added), but objective #18 on page 28 reads "To encourage the location of necessary new coastal facilities...."(emphasis added). Also, objective #16 on page 28 was never mentioned again in either the generally applicable list of objectives (p. 81 to 83) or any of the specific coastal use objectives. The EPA also found that the numbering system for objectives was not always accurate. For example, objectives #14, #18 and #19 on page 249 do not correspond with objectives #14, #18 and #19 on pages 27 and 28. While EPA appreciates the demanding task of compiling a document of this nature, it found an unusual number of errors which, in some instances, could make significant substantive inconsistencies. At the very least these errors greatly detract from the usability of the document and should be corrected.

11. We are not convinced that the MCMP has adequate legal authorities to control development in the coastal zone. We have no assurance that decisions reached through the Project Evaluation Process will reflect wise coastal management and a proper resolution of conflicts. To summarize, the MCMP does not have an effective or legally enforceable system for resolving conflicts, although this is specifically required by the program approval regulations (15 CFR 923.41(c)(3)).

Environmental Protection Agency
(Little) (8/4/78)

Responses

scenario of what is acceptable) prior to a full project evaluation.

10. Please note changes to FEIS.

11. OCZM believes that the Maryland Program has sufficient legal authorities to control development in the coastal zone. Controls over tidal wetlands, beaches and dunes, air and water, public investment, major facility siting, sedimentation and flood areas combined with other State authorities give Maryland broad control over the use of coastal resources. The Project Evaluation Process will be based on the coastal policies. Conflicts within DNR will be resolved by the Secretary (see Secretarial Order), while conflicts between agencies will be resolved by the Governor (see Executive Order, Secretarial Order and MOUs).

U.S. Department of Transportation
(Gimmler) (8/4/78)

Comments

1. Permit Letting

Table VI-5 of the CZMP provides a listing of licenses and permits for which Maryland intends to require Federal consistency review procedures. Page 298 states that Federal consistency review procedures "...will also apply to licenses and permits which are unlisted, or which occur outside the coastal zone if the CZU (Maryland Coastal Zone Unit) determines that they will affect the coastal zone...". While this is consistent with section 930.54 of the 29 August 1977 proposed NOAA consistency regulations, it is the Department of Transportation's position that --

"There is no legal basis for vesting in the States the authority to specify which Federal licenses and permits are subject to State consistency determinations. Each Federal agency, in consultation with the States, and with NOAA's advice, should identify those licenses and permit actions subject to the Act's consistency requirements. It is further recommended that such a list specifically delineate which permitting and licensing activities are to be regarded as "major" and which as "minor".

2. It is our position that only "site specific" licenses and permits are subject to determinations of consistency by the states. Examples of those site-specific permit activities which the Coast Guard considers appropriate for such determinations are:

1)	Bridge and Causeway Permits Incorrectly identified by Maryland's Draft as 49 USC 1655.	33 USC 401, 491 and 525
2)	Deepwater Port Development permits.	33 USC 1501
3)	Private Aids to Navigation permits not listed by Maryland's Draft.	14 USC 83

Table VI-4, page 294, should be modified to reflect this concept. Column three, "307(c)(3)(A)(Subpart A)" under "Federal Action" should be headed "Site specific Federally licensed and permitted activities".

U.S. Department of Transportation
(Gimmler) (8/4/78)

Responses

1. As your comment notes, Maryland's procedure for listing Federal licenses and permits subject to consistency determination is in conformance with OCZM rules and regulations. Section 930.50 states that "...any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone..." shall submit a consistency determination along with their application. OCZM believes that this provides the necessary legal basis for Federal license and permit activities to be reviewed for consistency with a State's Program. OCZM has allowed states to more narrowly define the Federal licenses and permits that they want to review based on the specific nature of their program. While the state should (and did in Maryland's case) consult with the relevant Federal agency in determining their list of licenses and permits, DOT's interpretation of the role of Federal agencies in determining which licenses and permits are relevant is incorrect. (Please refer to p. 323 of the DEIS for a full description of how the State determines which licenses and permits are relevant for consistency review.) The Department of Transportation had full opportunity to participate in the review of the consistency regulations carried out by the Office of Management and Budget (OMB) prior to their final promulgation. A number of the Department's positions were accepted as part of the process; this one was not.

2. The FCZMA rules and regulations do not support your interpretation that only "site specific" licenses and permits are subject to consistency determinations. Maryland will be reviewing both site specific and non-site specific licenses and permits for Federal consistency; however, this will not necessarily be on a case-by-case basis.

U.S. Department of Transportation
(Gimmler) (8/4/78)

Comments

3. Page 296 of the CZMP States, "Federal agencies should notify the State of pending actions (including a consistency determination) at least 90 days before the Federal activity reaches a decision stage likely to restrict the use of alternative measures." While this is consistent with section 930.39(b) of the proposed NOAA consistency regulations, it is our position that the specified time limit for providing state agencies with a consistency determination prior to the decision stage (currently 90 days) should be deleted. Rather, the notification time frame should be consistent with the National Environmental Policy Act Environmental Impact Statement procedural requirements.

4. Federal Assistance to State and Local Governments

Page 308 of the CZMP States, "Federal assistance to State and local governments for projects affecting the coastal zone may only be granted when such activities are consistent with the State's approved Coastal Zone Management Program." And that "Relevant State and local reviewers will review the application and indicate... whether or not the action is consistent with the program..."

Page 313 continues, "A Federal agency, upon receipt of an application and attached (State) Clearinghouse comments indicating inconsistency, may initiate processing of the application but may not take final funding action on the application unless CZU (Maryland Coastal Zone Unit) transfers to the Federal agency a final determination of consistency." While this viewpoint is consistent with Section 930.90 of the 20 August 1977 proposed NOAA consistency regulations, it is our position --

"...there is no statutory basis for prohibiting Federal approval (of assistance programs) simply because a State agency provides notice that a proposed Federal assistance project requires State agency review. The consistency determination of a Federal assistance program must be made by the Federal agency, not the State."

5. It is recommended that a more positive endorsement of Maryland's support of national defense interests be included in the CZMP.

Also within this section under "National Defense and Aerospace," "Interstate Transportation," and "Preservation of Life and Property," no specific mention is made of the Coast Guard. It is recommended that Maryland's program reflect the fact that most Coast Guard activities are coastal dependent, and that the Coast Guard's role in national defense is an essential element of the national interest.

U.S. Department of Transportation
(Gimmler) (8/4/78)

Responses

3. As you have noted, Section 930.39(b) of the FCZMA rules and regulations specify a 90-day notification period. Maryland's program is in conformance with rules and regulations and their process will continue to reflect this same time period. Once again, DOT participated in the OMB directed review of the regulations. Disagreements were resolved as part of that process before the final regulations were promulgated. DOT is legally bound by the regulations as promulgated. See 15 CFR 930.1.

4. Section 930.90 of the FCZMA rules and regulations specifically states that Federal assistance for activities significantly affecting a State's coastal zone shall be granted only after a consistency determination has been made. Section 930.96 specifies that the "State agency" has the lead role in this consistency review procedure. Therefore, your interpretation of when funding can be granted and the State's role in consistency determinations is incorrect and in violation of the adopted regulations.

5. We are aware of the Coast Guard's activities, but the National Interest table was not developed to list the missions of specific Federal agencies but rather to identify National Interest concerns.

PATUXENT Technical and Legal Committee
(Johnston) (7/28/78)

Comments

1. Certainly there must be substantive relevant considerations for alternatives to the present paper design of an administrative CZM program. For instance, what has been proposed in other states with what effects? What about the fact that while Maryland may have statutory authority, relied upon under the "net working" approach of the present plan plan, it is simply not enforced, such as the statewide lack of erosion control enforcement, even while erosion has caused and continues to cause damage to coastal resources? Are we thus to have a State program run with Federal funds that merely continues destructive State patterns of control? What were the intrastate political considerations leading to the choice of the present CZMP, would it not be relevant for the public to be informed of these important matters for future decisions under the CZMP?

Instead, the Federal authorities have decided that the Federal action is merely the approval, deferral, or disapproval of the state proposed CZMP, and that these all are the alternatives that must be considered, and review of the relevant portions of the DEIS verify that this involves no substantive considerations other than the possible date of final approval of the CZMP. This is a totally sterile interpretation of NEPA.

2. Cutting Off Reasonable Concerns

James Gutman, president of the Magothy River Association and member of the Chesapeake Bay Program's eutrophication group, has probably spent as much time as any other public participant studying and evaluating the CZMP. He submitted a written comment at the State hearing on January 18, 1978. He received a one page form response, and an attached response to the comment by the Natural Resources Defense Council, indicating that since his comments were similar to those of NRDC that the State response to the NRDC comments would suffice.

The undersigned also submitted a major (10 page) written comment for the January 18 State hearing. He also received the same form letter with the NRDC attachments, which were welcomed having already reviewed the NRDC comments.

Thus the State has ignored two comments raising substantive issues by two of the public participants who have devoted significant time to the development of the present CZMP (also through participation in the now defunct Regional Advisory Groups) and the understanding of its implications for future decisional processes. By cutting off candid discussion of substantive issues, and by not giving them official recognition, governmental authorities leave only the threat of suit to the ignored parties.

PATUXENT Technical and Legal Committee
(Johnston) (7/28/78)

Responses

1. The proposed Federal alternatives of delay, denial or approval of the program cover a broad range of issues and considerations. When considering whether Program approval should be delayed, the need for additional authorities is an important part of this consideration. OCZM believes that Maryland has the requisite authorities for Program approval. Future Federal funds will be used to ensure that these authorities are enforced so that coastal goals and policies are adhered to.

Also please refer to response number 11 of the Maryland Petroleum Institute comment section.

2. Maryland believed that Mr. Gutman's comments were substantially similar to those presented by NRDC. OCZM has requested that the State review the comments submitted by Mr. Gutman and Mr. Johnston and draft appropriate replies.

National Marine Fisheries Service
(Gordon) (8/3/78)
(Leitzell) (8/10/78)

Comments

1. As we have stated previously, in those cases where an overriding public interest need is served, the proponents of development should agree to implement measures aimed at replacement of resources and/or their habitats which will be lost or degraded We recommend that the Maryland CZM Program adopt a policy of encouraging, at the very minimum, compensation (replacement-in-kind) for estuarine or marine resources lost due to development. Further, we recommend that the Maryland CZM staff identify potential sites for restoration in the near future. The above policy should be adopted before 306 approval.

2. Part IV, Section 1.A., Last Paragraph:

The paper states that "Maryland experiences, on the average, one hurricane per year." This is not true. In fact, the average number of years between hurricane occurrences is 42. The probability of a hurricane entering the coastal area during any one year is only 2%. (This information is available in NOAA Technical Memorandum NWS SR-58, Atlantic Hurricane Frequencies Along the U.S. (outline)). Winter coastal storms, sometimes called "northeasters," are much more common than tropical cyclones and also damage the Maryland coastline. It is recommended that these storms be mentioned in the description of the natural environment given in Part IV.

3. The subject document treats onshore sand and gravel mining in quite a bit of depth (pp. 218-224) and Maryland is to be congratulated for a good job. However, despite noting (p. 219) that, "In some areas of the country, the depletion of onland supplies of sand and gravel will require the dredging of offshore supplies in the ocean where large deposits are believed to be located"--the document fails to discuss offshore mining. It does not inform the reader whether or not that general comment applies to Maryland. The subject could be incorporated into the discussion of dredging (pp. 83-88), but at present only harbor channel dredging is treated.

National Marine Fisheries Service
(Gordon) (8/3/78)
(Leitzell) (8/10/78)

Responses

1. It is State policy to prevent destruction of estuarine or marine resources. It is believed that a policy for compensation may actually encourage destruction of resources. As part of the areas for preservation and restoration nomination process, the CZU is considering wetland areas that are in need of restoration.

2. Please refer to the revised section of Part III of the FEIS which includes a description of the natural environment affected by this Federal action.

3. At present, Maryland appears to have adequate supplies of sand and gravel onshore to meet future demand. If these resources appear to be diminishing at a significant rate, a policy will be developed to ensure adequate management for offshore mining.

Lower Eastern Shore Counties
(Pollitt) (8/10/78)

Comments

The County Commissioners of Dorchester, Somerset, Wicomico and Worcester Counties have followed the progress of Maryland's Coastal Zone Program, A Partnership for Balanced Action very closely. The proposed plan has brought some mutual concerns that affect our regional area. The following comments are an attempt to identify the major views of the Lower Eastern Shore Counties:

1. Interstate Coordination

The Lower Shore Counties feel that in order to properly administer and exercise this program, a great deal of interstate coordination is needed. The program appears to ignore the fact that our neighboring States, in a great many cases, affect our coastal areas to a more drastic degree than does the citizenry of this area. To maintain a successful Coastal Zone Program, it is imperative that adjoining States develop their CZM plans consistent with Maryland's established program.

2. A major mistake was made when the Department of Natural Resources, an exclusively regulatory agency, was named as the lead agency. The Department of State Planning might be better equipped and more inclined towards long range planning and also have a better understanding of the social and economic considerations of our region.

3. Letters of Agreement from other State Agencies

Although Acting Governor Blair Lee III issued an Executive Order Number 01.01.1978.05 on March 8, 1978 requiring all State Agencies to "conduct their activities in a manner consistent with the Program," there is still concern involving interagency cooperation. The concept of cooperative efforts between various State agencies through memorandum of understanding is a commendable theory, but past experience leads one to question the reality of such an arrangement. What happens to the letters of agreement when there is a change of the Secretaries, other top individuals, or a revision of policy? These changes could have serious impacts on local government. We recommend that prior to change of Letters of Agreement, which were part of the Coastal Zone Management Program, the citizens, elected officials and staff have a chance to review and comment thereon.

Lower Eastern Shore Counties
(Pollitt) (8/10/78)

Responses

1. OCZM will be reviewing the Virginia Program, in particular, and the Delaware Program to ensure that they are consistent with Maryland's Program. Coordinated management of Chesapeake Bay is particularly important in this review. Maryland and Virginia have initiated efforts to coordinate their management activities concerning Chesapeake Bay through the establishment of the joint legislative council for Bay management.

2. The Department of State Planning has been intimately involved in the development of the Coastal Program. As DNR exercises many of the authorities on which the Program is based, it seems to be the best agency to implement the Program. We agree that the Program must remain a common sense coordinating type of effort so that long delays in permitting do not occur with resultant hardship for the smaller units of government or small businesses. The location of the Program within DNR provides the opportunity for the input of a more comprehensive attitude towards permitting than would be possible if the program was located outside of DNR.

3. As noted in Chapter VIII of Part II of the FEIS, memoranda of agreement once signed are binding on the parties involved and cannot be changed without the mutual consent of the agencies involved. If changes in these MOUs were to be made which would significantly alter the manner in which the CZ program would be implemented, such changes would be considered by OCZM and subject to the review and amendment procedures required by our regulations. Such procedures allow for the participation and comment of all parties in the decision.

Lower Eastern Shore Counties
(Pollitt) (8/10/78)

Comments

4. The opinions and attitudes of local officials should be given strong consideration in any management decisions in the implementation of the CZ Management Program. The administration of this program must be inclined so as not to erode the concepts of local government.

5. Maryland's Lower Shore Counties do not want a Coastal Zone Management Plan at the cost of our small business.

6. Environment - A Balanced Proposal

The Program appears to be oriented toward the physical environment with very little consideration given to the economic and social aspects of our surroundings. The recently adopted Goal II "to protect and promote economic and social stability of coastal communities in an environmentally compatible manner" is an initial step towards a balanced proposal.

However, more weight should be given to the social and economic need than is currently addressed in the CZM program text. If an approach, which would evaluate all aspects of a problem and assess the actual needs, was included then the Program would better reflect the needs of our Regional area.

7. Definition of Maryland's Coastal Zone Management Program

Realizing that there has been a considerable amount of work accomplished already in the clarification of the CZM purpose, we feel that much more can be done to further define the program's relationship with local government and other groups. There also needs to be further delineation between actual Federal program goals versus Maryland's CZMP. A void seems to exist in that the Program is so general that internal program goals are not defined specifically. Also the plan must contain the necessary mechanism to amend or modify as it is needed.

Lower Eastern Shore Counties
(Pollitt) (8/10/78)

Responses

4. The Coastal Zone Unit (CZU) will actively seek the advice of local government officials before decisions are made, recognizing that local officials have expertise and knowledge that the CZU staff does not. OCZM does not believe that this Program will in any way erode the concept of local government.

5. Before approving a state's coastal management program, OCZM must be convinced that it provides a greater level of predictability for the decision-maker and for the permit applicant than was provided before the development of a program. We believe that the Maryland Program should give a small business the ability to determine ahead of time whether or not a permit is likely to be granted or denied. CZU staff will be available to help in these determinations. When more than one permit is needed, the project evaluation process should provide faster and more coherent decisions for the permit applicant than is available now.

6. OCZM believes that the project evaluation approach described in the Program will ensure detailed consideration of all relevant factors involved including economic and social concerns.

7. OCZM agrees that more can be done to clarify the program's relationship to local government and other groups. The CZU intends to work closely with local governments to ensure that they are integrally involved in the program. We believe the Maryland CZMP accomplishes the broad goals of the Federal Act as set forth in Sections 302 and 303.

The program will allow for future amendments and modifications and will ensure that this process is an open one. Additionally, this amendment or program refinement process will be in conformance with approved NOAA rules and regulations.

Lower Eastern Shore Counties
(Pollitt) (8/10/78)

Comments

8. Funding Responsibility

The approval of Maryland's CZMP carries with it a responsibility for adequate funding of the program.

If Maryland's plan is approved by the Federal authorities, identification of these funding commitments and associated responsibilities must be recognized and supported by all parties.

9. High Water Tables

Objective number 12 should be tempered to recognize that not all high water table areas are high hazard areas. It would be unreasonable to restrict development on the Eastern Shore solely on the criteria of high water table.

10. Area of Focus

There is no clear cut boundary for Area of Focus. The 100-year flood plain is referred to frequently in the plan but is very hard to define. If the flood plain is used, the majority of two of the Lower Shore Counties would be under the Area of Focus.

Lower Eastern Shore Counties
(Pollitt) (8/10/78)

Responses

8. With the approval of Maryland's CZMP, a grant for implementation will be awarded by OCZM. At a minimum, we think that Federal funding for Program implementation is assured for the next few years.

9. As presently worded, objective #12 does not restrict development in all high water tables but states that such development should be properly sited and constructed and only if necessary restricted.

10. Exact determination of the boundaries of the 100-year flood plain are underway in these four counties. Once determined, this area will represent the area of focus. In the interim, the appropriate boundaries of the flood plains have been made as shown in Chapter II of Part II of the FEIS.

A. PROGRAM SUMMARY

1. The Coastal Area

Maryland's coastal area can be divided into two distinct regions; the Atlantic Coast area which has a shoreline of 31 miles and the Chesapeake Bay area which is characterized by over 4,000 miles of greatly indented shoreline. These two areas have some features and issues in common, but many are unique to one or the other.

Maryland's Atlantic Coast is, like most of the Atlantic Coast of the United States from northern Florida to New York, bounded by barrier islands which are backed by coastal bays. Maryland's barrier island coastline consists of portions of two islands. Fenwick Island, the entire Maryland portion of which is incorporated into the municipality of Ocean City, is developed for intensive recreational use. Just south of Fenwick Island is Assateaque Island which is protected in a natural state as a State Park, a National Seashore, and a National Wildlife Refuge. While Fenwick Island supports intensive recreational development and Assateaque provides passive recreation, access to the entire Atlantic Coastline of Maryland is preserved through a combination of public ownership and a 1975 prohibition of construction east of the dune line by the State Atlantic Coast Beach Erosion Control District Act.
Behind the barrier islands is an estuarine barrier island bay system -- Chincoteague and Assawoman Bays. These bays are shallow and quite saline, supporting commercial shellfish harvesting and extensive acreages of cord grass dominated salt marshes. Recreational and second home development pressures are being felt in this area and could present a serious threat to these biologically productive areas.

The larger portion of Maryland's shoreline borders on the nation's largest and most productive estuary -- the Chesapeake Bay. While the two major sources of fresh water to the Bay -- the Susquehanna River (which provides over half the Bay's fresh water) and the Potomac River -- are major interstate rivers, the Bay proper lies entirely within Maryland and Virginia. Despite many stresses, the Chesapeake Bay is considered "generally healthy" with principal processes intact and highly productive.] revise

The Bay proper is 195 miles long and has a mean width of 15 miles. The Bay is gradually becoming wider and shallower due to the combined effects of sedimentation and shore erosion. A 1968 study by the Chesapeake Bay Institute of the Johns Hopkins University.

The salt content of the Bay varies from seawater at its mouth to almost fresh water at its head where the Susquehanna River flows into it. Nutrients from both rivers and the ocean make it possible for the Bay to support a wide variety of plants and animals. While declining in proportion to other industries, fishing and shellfish harvesting remain important industries in Maryland. The annual dockside value of Maryland's seafood catch is $75 million with a process value of $100 million. Maryland leads the nation in oyster and crab production. Rockfish and shad are important commercial fin fish. The seafood industry provides 6,000 jobs in the state, mostly in the Bay's Eastern shore. The industry has been important since the first settlers came to the Chesapeake's shores and has many unique characteristics which are worthy of protection.

Reuse

Waterborne commerce is extremely important in the Chesapeake Bay region. For example, over 160,000,000 short tons of cargo was shipped in the Chesapeake Bay last year and most of this cargo passed through the Port of Baltimore. The Port of Baltimore is estimated to provide ten percent of the gross state income and jobs within the State. Port related industry is estimated to contribute $1.7 billion to Maryland's economy annually. Petroleum and refined petroleum products are among the major commodities coming into the Port.

Reuse

The shoreline of the Chesapeake Bay is characterized by salt marshes with beaches small or absent with the major concentrations of salt marsh being on the Eastern Shore. Cord grass (Spartina), black neddlerush (Juncus) and salt grass (Distichlis) are typical species. The composition of Maryland's marsh communities varies both from the mouth to the headwaters of tributaries and from the southern to the northern portion of the Bay. This variation is due largely to the varied salinity conditions. Along the streams of the Lower Eastern Shore, tidal marshes grade into upland swamps. In the northern counties, salt meadow cord grass (S. Patens) quickly grades into cattails and sedges.

Maryland's Bay shoreline can be separated, both physiographically and culturally into two distinct subdivisions -- the Eastern and Western Shores of the Chesapeake Bay.

The Western Shore contains the two major metropolitan areas on the Bay and its tidewater tributaries as well as the predominantly rural southern Maryland shoreline, an area chosen as the site for both a nuclear power plant and a liquified natural gas facility because of its sparse population. Both the Baltimore-Washington Metropolitan region and the Southern Maryland counties are rapidly growing in population and residential and commercial development.

The natural environment of the Western Shore is characterized by rolling uplands well suited for agriculture, bounded by deep stream valleys. The shoreline often takes the form of steep bluffs and cliffs with narrow beaches at the base. Salt and freshwater marshes fringe the tributaries. Upland forests consist largely of mixed hardwoods -- oaks, hickory, sweetgum and oak-pine.

The Eastern Shore of Maryland is predominantly rural, based on an agricultural and seafood harvesting economy with little industrial development. The Eastern Shore, in particular Dorchester County, contains most of the State's tidal wetlands, and also has extensive wooded swamps such as the bald cypress swamp of the Pocomoke River. The upland forests are typically dominated by Loblolly Pine and Virginia Pine.

The Lower Eastern Shore experiences economic difficulties associated with high unemployment and low median income. Environmental regulation has been blamed in part for the difficulties in attracting new industry to the area, although the predominant factor would appear to be the relatively poor access to metropolitan markets.

2. Coastal Problems and Issues

Maryland's coastal problems are generally related to the fragility of the two ecosystems which characterize its coastal zone: the marsh/estuarine system of the Chesapeake Bay and its tributaries and the narrow and exposed beaches and barrier islands of the Atlantic Coast. In the past, these resources have been damaged by unplanned and largely unmanaged development, causing the loss of such valuable coastal resources as fisheries, wildlife habitat, beaches and marshlands. The need for economic growth as well as the maintenance of many local traditions also pose problems to Maryland. The siting of industrial and commercial facilities usually occurs on the heavily populated Western Shore, while the Eastern Shore has a low growth rate.

The discussion of coastal problems to follow will be divided into two geographic areas: the Atlantic Coast and the Chesapeake Bay and its tributaries. Although there are problems common to both areas, most are different in type or in magnitude.

a. The Atlantic Coast

The Maryland Coastal Zone Program attempts to address a number of important problems in this area, all of which are associated with heavy recreational demand for the 31 miles of ocean front beach. This very limited resource is intensively used on a seasonal basis, particularly by residents of the Washington and Baltimore metropolitan areas. Active

recreation is offered in Ocean City, the northern section of the State's beach, while to the south more passive recreation forms such as swimming, walking and wildlife observation are available. Although the problems in these two areas are obviously different, many activities occurring in one have significant spillover effects on the other.

Revise/update

Ocean City has promoted high rise condominium and hotel development at the water's edge so that the natural dune system has suffered. The lack of protective dunes which would normally nourish the beach naturally underscores Ocean City's most important problem -- beach erosion. This erosion has become particularly important in recent years because of the severe winter storms of 1977 and 1978 which washed away most of the sand. Stop gap measures such as moving sand with bulldozers have proved unsuccessful, and beach nourishment is now being considered as at least a temporary means of addressing the problem. The economic health of the areas is so inexorably linked to a viable beach area that an immediate solution is vital.

South of Ocean City, Assateague Island offers a completely different kind of public recreation; erosion is less of a problem as the dune system is preserved and development prohibited. Assateague's major problem relates to the fragility of this resource and to the fact that heavy public use may damage it. A large visitors center is now being planned in the southern portion of the inland near Chincoteague. These plans have generated some public opposition, both because of the impacts of such construction and because a visitors center would promote increased use of that section of the Island.

Revise

Although these two Atlantic Coast islands are used for very different purposes, they do experience some common problems. Severe erosion problems are already being experienced on Fenwick Island, and erosion is becoming a significant problem on Assateague's north end as well. It is believed that dune destruction in Ocean City will affect the sand transport system between these two islands so that less sand would be nourishing the beach at Assateague. A second common problem concerns beach access. People from Maryland's Western Shore and from the Washington Metropolitan area flock to the beaches during the summer months, particularly on the weekends. There is only one access point to serve those crossing the Chesapeake Bay. This situation led for years to traffic jams at the Bay Bridge and long driving times, obviously reducing public enjoyment of the beach experience. Construction of a second parallel span has alleviated the problem somewhat but other bottlenecks have emerged on the Eastern Shore.

Also of concern to both areas are possible impacts from oil spills and ocean dumping. A tanker accident off the Maryland coast could have disastrous implications for the beaches and for both the environmental and economic health of the area. Additionally, oil spills related to Outer Continental Shelf (OCS) development are a concern along the coast. Pipelines from the OCS production areas may be proposed to come ashore on Maryland's Atlantic Coast. Ocean dumping, which occurs in an area to the north and offshore, is another source of concern since emerging knowledge about toxic substances could point to dangers and possibly reduce the use of the beaches until the dumping is phased out.

These are some of the basic coastal issues facing Maryland's Atlantic Coast and have been identified as issues of concern in the Maryland CZMP. The way in which these problems will be addressed by the Maryland Coastal Program will be discussed in Section 3 to follow which is entitled "Coastal Program Structure". The most important authorities to be used in management will be the Wetlands Act, the Atlantic Coast Beach Erosion Control District Act and Water Pollution Control Laws. The Coastal Program will also provide a non-regulatory forum to help to solve such immediate concerns as Ocean City beach erosion -- a problem which necessitates close cooperation between local, state, Federal and private interests.

b. Chesapeake Bay

The problems associated with management of Chesapeake Bay are far more complex than the problems endemic to Maryland's Atlantic Coast. Its configuration, size and the nature of the lands adjacent to the Bay all contribute to make it a resource badly in need of comprehensive and coordinated management. Its large inflow of fresh water and shallow depth, along with heavy use, make the Bay an area that requires intensive management so as to reduce the stresses placed upon it. The discussion of the Bay's management problems to be addressed by the Coastal Program will be divided into the following six categories: recreational use, ports and commercial shipping, fisheries and other living aquatic resources, tidal wetlands and other natural areas, shore erosion and high hazard areas, and the siting of major facilities. The Coastal Zone Program proposes management solutions to each of these problem categories; these solutions are discussed in detail in Chapter III, Part II, of this document.

(1) Recreational Use

The major problems for the recreational users of the Bay relate to very high demand for boating and boating facilities and the limited public access to shoreline areas.

Recreational boating congestion and the impacts of marina development on wetlands and water quality are important issues. The demand for marina facilities already exceeds the capacity of existing facilities, and boat access areas for trailered boats are also in limited supply. This limited access for the boating public is a function of a greatly increasing demand for such facilities combined with high land costs, intense competition for land and increasing state and local restrictions on marina development.

Additional restrictions have been needed because of the environmental impacts of boating and related facilities. Impacts include increased shoreline erosion and turbidity, introduction of human wastes and other pollutants, as well as problems related to safety and congestion. The Coastal Zone Program proposes creative methods of solving these problems in the form of much better information concerning recreational demand and congestion issues; public investment policies which promote the siting of needed facilities in areas which can sustain them; comprehensive evaluation and review with the participation by all interested parties in boating activities; and rigorous enforcement of the State Wetlands Act.

describe how this has been done

The problems associated with other forms of shoreline access are less comprehensively treated by this program. While all of the area seaward of the mean high tide is in public ownership, public access is not assured. The small tidal range, lack of broad sandy beaches (such as those found on the Atlantic Coast), extensive marshland adjacent to shorelands, and the small percentage of adjacent shoreland in public ownership combine to limit public access to the Bay. The State will put a high priority on acquiring additional shorefront land on the Bay; one large area, called Wye Island, is now in the process of being acquired by the State for passive recreational purposes. Recreational swimming use of the Chesapeake Bay is limited by the Bay's shallow depth, its warm summer temperatures, and its heavy summer population of jellyfish.

describe success

(2) Ports and Commercial Shipping

The continued viability of the Port of Baltimore, as well as smaller ports such as Cambridge and Salisbury, is of great economic importance to the Bay region. Port development and the commercial shipping generated can have significant environmental effects on coastal resources. Of particular concern are the problems associated with dredging and maintaining navigational channels as well as the risks related to oil and liquified natural gas spills. The environmental consequences of dredging and oil spills are well known and will be managed by the Coastal Program.

Promotion of the Port of Baltimore is one of the objectives of the Program, and solutions to the associated problems of dredging and dredged spoil disposal are a Program commitment. This commitment includes the selection of the Hart-Miller Islands Diked Containment Area for the disposal of dredge spoil material from Baltimore Harbor and approaches; this area is designed to accomodate over one third of the dredge material to be generated in this area over the next twenty years.

Also of importance is a study entitled "Management Alternatives for Dredging and Disposal Activities in Maryland's Waters" which will be heavily relied upon in determining the ways in which additional dredge material might be disposed of in an environmentally sound manner. The disposal of unconfined dredge material from Baltimore Harbor in the open water portion of the Bay will be prohibited, and the Program will create a forum for further discussion of the problems and solutions to dredge material disposal.

Navigational safety is directly related to the danger of oil spills and is a problem on the heavily travelled Bay. The Coastal Zone Program will work in close cooperation with the Port Administration to improve navigational aids including the study of the feasibility of vessel traffic control systems, and will ensure that permits regulating the loading and off-loading of oil are strictly enforced and that in the event of spills, compensation fees are collected to pay for containment and cleanup.

(3) Fisheries and Other Living Aquatic Resources

Commercial and recreational fishing and shellfishing are important uses of the Bay which can be adversely affected by many other activities occurring both within and outside of the Bay. Over harvesting, competition for scare resources between commercial and recreational users, and water pollution from agricultural run-off, excess sewage, storm water run-off and industrial discharges all contribute to fisheries depletion. Another problem is the

lack of a comprehensive fisheries management program for the Bay which would include basic data to determine the health and integrity of aquatic biota. Present management of this resource is focused on harvesting regulations and shellfish replenishment activities.

Once the Program is approved, the State is committed to developing a fisheries management program which will provide the basic data and policy guidance necessary for ensuring the continued productivity of this resource. Also of importance are management of wetlands to ensure adequate nursery grounds for fisheries and maintenance of sufficient nutrient flow to the estuary. Unified control over the impacts of other activities which may adversely affect fisheries in accord with a set of specific policies is a substantive method of maintaining aquatic resources.

(4) Tidal Wetlands and Other Natural Areas

Tidal wetlands, which play a vital role in the health and productivity of the Bay, provide basic nutrients in the food chain and habitat for many fish and wildlife species, and help to protect water quality and to inhibit potentially damaging coastal flooding. Prior to passage of the State Wetlands Act in 1970, large wetland areas were being destroyed each year. There is still considerable pressure to alter tidal wetlands although all but a few exempted activities in wetlands require permits. In order to further protect this resource, the Coastal Zone Program has designated tidal wetlands as GAPCs with associated specific policies for issuing permits. There are other natural areas not presently managed by the Coastal Zone Program which will be designated for "Preservation" or "Conservation" status as part of the State Critical Areas Program. Both the Eastern and Western shores of the Bay have areas which have significant wildlife or historic value. The Coastal Zone Program will assist county governments in identifying such areas. Local governments will submit recommendations of such areas for designation as State Critical Areas to the Department of State Planning. These recommendations will include proposals for ways of managing the areas.

(5) Shore Erosion and Flood Hazard Areas

Although much of the Bay's shoreline is eroding at a slow rate, approximately 140 miles of it are being lost at the rate of four feet or more per year. The problems associated with erosion include loss of valuable waterfront property and the creation of additional sediments which can cover valuable oyster lands and fill tidal creeks and inlets. Poorly sited development may also further aggravate the shore erosion problem. The Coastal Zone Program

will deal with erosion in the following ways: it will provide technical assistance to individuals and localities; marsh will be protected and erosion control structures will be placed shoreward of the marsh; and state agencies will coordinate their activities so as to promote shoreline setbacks and to restrict development in high risk erosion areas.

revise; explain

Coastal flooding during hurricanes and storms is a major problem in the Bay. Development of riverine floodplains, which increases the magnitude and frequency of serious flooding, has occurred often in the past and has significantly increased the potential damaging impact of large storms. The Coastal Zone Program will address this problem by restricting development in the 100-year floodplain to minimize danger to life and property, to reduce flooding and to ensure maintenance of water quality, biological resources and other environmental factors.

how has this been done?

(6) The Siting of Major Facilities

Inadequately planned major facility siting has caused significant environmental damage to the resources associated with the Bay, as well as delays in the construction of regionally and nationally important facilities. The Maryland Coastal Program puts considerable emphasis on managing the siting of such facilities so as to ensure environmental protection while sustaining economic growth. The paragraphs to follow will discuss the issues associated with the following general types of developments of major size: OCS/Oil/Natural Gas, Electric Generation, Industrial, Commercial and Residential, Sewage Treatment, and Land Transportation facilities. The Program has produced a valuable work product, the Major Facilities Study, which was developed as an information base to enable state agencies and local governments to make better decisions regarding facilities siting. The Study identifies areas that are suitable for siting, both in a socio-economic and environmental sense and proposes methods for evaluating impacts and alternative development strategies.

Now that exploratory drilling has started in the Baltimore Canyon area, the onshore siting of facilities to support Outer Continental Shelf oil and gas development may occur in the Bay. The impacts associated with the siting of such large facilities as oil refineries could have a substantial impact on the Bay's resources if these facilities are not located properly. The Maryland Program has an excellent information base to use in evaluating proposals to site such facilities in coastal areas, including the previously mentioned Major Facilities Study. Oil related

facilities will be comprehensively managed under the Coastal Facility Review Act (CFRA) which includes an exhaustive socio-economic and environmental analysis of the siting to determine whether a CFRA permit should be issued.

The production and transmission of energy are potentially major contributors to environmental degradation of the Bay and adjacent lands, and require comprehensive environmental analysis. To solve this problem, the State established an innovative Power Plant Siting Program in 1971 which has been a model to many other states. The process established by this 1971 Act was structured to ensure that future demands for electric power would be met at reasonable costs while ensuring that the natural and socio-economic environments would be protected. The siting decision is made by the State and includes an analysis of the impacts of proposed new generating units, an assessment of impacts associated with existing generating facilities, and the acquisition of alternate sites.

Industrial, commercial and large scale residential facilities are often proposed for location on or near the Bay and are generally attractive to local governments. Yet these facilities can place a strain on public facilities, can cause additional flow of pollutants to the estuarine waters from non-point sources such as parking lots, and can disturb natural resources if not sited properly. The strain on existing public facilities can create a demand for new water, sewer, and road construction which in turn may promote more growth. These problems will be addressed by the Maryland Coastal Zone Program in the following ways: public investment funds will be used to ensure the proper siting of coastal facilities; and State and local plans and regulatory actions will be reviewed to ensure consistency with the Program in order to avoid undue burdens on public services and to minimize impacts on water quality and other valuable resources.

Sewer and land transportation facilities create similar problems, aside from impacts associated with the construction phase of a project. Inducement of additional growth in areas that cannot support such growth is of primary importance in the Bay area. The program addresses this problem by providing a mechanism for reviewing all water, sewer, and transportation plans for consistency with the Coastal Program and by establishing policies which discourage construction of inadequate or inappropriate sewer, water and transportation facilities.

3. Coastal Program Structure

The Maryland Coastal Program is based on existing laws and authorities. The State's objective in developing a coastal management program is to establish a comprehensive coordinated approach for the protection, preservation and orderly development of the State's coastal resources. The State has developed specific goals, objectives and policies for management of uses and activities which have a direct and significant effect on coastal waters. Management is to be achieved through the use of existing regulatory programs, an Executive Order, a Secretarial Order, Memoranda of Agreement between State agencies, and two new administrative procedures called "Project Evaluation" and "Program Review."

Maryland's program will affect a relatively large coastal area extending from its three-mile jurisdiction in the Atlantic Ocean to the inland boundaries of the counties bordering the Atlantic Ocean, Chesapeake Bay, and the Potomac River up to the District of Columbia. Thus, the counties of Anne Arundel, Baltimore, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Prince George's, Queen Anne's, Somerset, St. Mary's, Talbot, Wicomico, Worcester and the City of Baltimore are included in Maryland's coastal zone.

Within each of these 16 counties and one city, an "Area of Focus" has been identified for special attention. The Area of Focus in each locality has been established in cooperation with the local government, and in most cases coincides with the 100-year floodplain bordering the State's tidal waters. The second tier consists of the areas within the coastal counties but outside the "Area of Focus". This two-tier approach recognizes that activities occurring within the 100-year floodplain will most frequently have a direct and significant effect upon coastal waters but that certain major uses, such as energy facilities and major industrial facilities, may affect coastal waters regardless of their location within the coastal zone.

Management in the First Tier - Areas of Focus

The Area of Focus includes coastal waters, bays, estuaries, tidal wetlands, Chesapeake Bay beaches to mean high tide, Atlantic Beaches to the dune line, and upland areas to the boundary of the 100-year riverine and tidal floodplain. These areas encompass the State's most important coastal resources where direct and significant impacts are most likely to occur.

The most important state regulatory authorities for these geographic areas are:

Coastal waters, bays & estuaries:	Water Pollution Control Laws Wetlands Act State Boat Act Fisheries Laws

Tidal Wetlands & Chesapeake Bay Beaches:	Wetlands Act
Atlantic Beaches:	Atlantic Coast Beach Erosion Control District Act
100-year Floodplains:	Construction in or obstruction of 100-year floodplain of free-flowing rivers and non-tidal waters (Art. NR, Section 8-803) Flood Control and Watershed Management Act of 1976

This list is not comprehensive; authorities which will be described in the following section also apply to the Area of Focus. The purpose of including this limited list of regulatory authorities here is to show that all geographic areas within the Area of Focus are covered by comprehensive regulatory programs.

The Executive Order requires state agencies to use these authorities to implement the Coastal Management Program. A description of how this is accomplished is described in a section to follow entitled "Role of the Executive Order".

The Project Evaluation procedure, which is also described in a section to follow, will insure that nearly all activities proposed for the Area of Focus receive a comprehensive review and evaluation prior to any state agency permit decision.

Management in the Second Tier

In the coastal areas outside the "Area of Focus", implementation of the coastal policies will be accomplished through the following state authorities:

- Water Pollution Control Laws
- Water Appropriation Permits Act
- Sedimentation Control Act
- Surface Mining Act
- Power Plant Siting Program
- Coastal Facilities Review Act

- Laws governing Water Supply, Sewage, and Solid Waste Disposal Plans

- Air Quality Laws

- Transportation Planning Requirements

- Various public investment authorities which guide construction of public facilities, land acquisition and financial aid programs.

These laws are applicable throughout the coastal counties both inside and outside the Area of Focus; the Executive Order, described below, insures that they will be used to implement the coastal policies.

As noted above, nearly all activities in the Area of Focus will be evaluated by the state for compliance with coastal zone objectives and policies. In the second tier, on the other hand, the focus of the evaluations will be on proposed major facilities. Major facilities include OCS/oil/natural gas facilities, power plants, ports, industrial parks, mineral extraction facilities, large-scale residential developments, sewage treatment facilities, and transportation facilities. Other projects will receive an evaluation if they are considered likely to have a significant impact on coastal resources or on other coastal activities.

Role of the Executive Order

To insure that the preexisting statutes and regulations affecting land and water within the coastal zone are exercised in accordance with coastal goals and policies, the Governor of Maryland has issued an executive order which provides:

(1) That the approved Program constitutes official State policy;

(2) That State agencies must undertake their activities in a manner consistent with the Program;

(3) That all State agencies must participate in project evaluation; and

(4) That all disputes between State agencies be resolved promptly.

Before deciding whether to issue or deny a permit or to conduct proprietary or financial activities in the coastal zone, the Governor's Executive Order requires state agencies to review the coastal goals and policies and make their decisions to the maximum extent possible consistent with the Program.

Thus when the Water Resources Administration, for instance, is considering a water appropriation application, it is required by the Executive Order to consider not only the narrower standards and criteria set out in regulations governing issuance of water use permits but also to consider to the maximum extent possible under its statutory mandate whether issuance of the permit would violate any coastal goals or policies expressed in the Coastal Zone Management Program.

Does WRA do this does CRD? what does it and how?

If the proposed water use would be inconsistent with any of the coastal goals and policies, the Executive Order requires that the permit be denied or conditioned so that the coastal policies are not violated.

Obviously there will be differences in the amount of discretion that the state agency making a permit decision may exercise. In most instances, however, standards for decision-making set forth in Maryland laws and regulations are broad and the administering agency will have adequate discretion to take the state coastal policies into consideration.

To supplement the Executive Order, Memoranda of Understanding (MOUs) are being negotiated between DNR and the key agencies involved in coastal resource management. The MOUs add specificity and detail to the obligations incurred by each agency pursuant to the Executive Order. Such a MOU is currently in effect between DNR and the Department of State Planning; MOUs with the Department of Transportation, the Department of Health and Mental Hygiene, and the Department of Economic and Community Development will be signed prior to FEIS publication.

Revise

To insure coordination of activities within DNR, the Secretary of the Department will issue a Secretarial Order which addresses:

describe & include

(1) program coordination;

(2) project evaluation;

(3) program review, and

(4) Federal consistency.

does this need to be updated/revised as well?

Project Evaluation

describe process

Project evaluation is a process which will result in a consolidated review and comprehensive evaluation of any major activity proposed for the coastal zone. All local, state and Federal agencies having management responsibility over or an interest in the proposed project will be involved.

The end product of this evaluation will be a set of findings and recommendations concerning the proposed project and its consistency with the state's coastal policies; the Coastal Zone Unit will be responsible for seeing that these findings and recommendations are presented to each state agency making a regulatory, management or financial decision relating to the activity and that they become a part of the administrative record of the agency.

Program Review

In addition to evaluating the impacts of large projects on a case-by-case basis, the Program provides a means for reviewing existing programs and procedures dealing with coastal resources and activities for their consistency with the CZM Program. This program review process will be used to review such things as proposed legislation affecting coastal resources, issuance of new or amended regulations and development and revision of state and regional plans and local comprehensive plans and zoning ordinances. The purpose of the review is to create a forum in which all program participants can define conflicts, potential conflicts, or inconsistencies between programs involving coastal resources, and make formal proposals for administrative or legislative remedies. The Coastal Zone Unit of DNR will be responsible for conducting these reviews.

B. WHAT THE MARYLAND COASTAL PROGRAM WILL DO THAT IS NEW

Although existing state authorities will be used to implement and enforce the Maryland CZM program, several new and very important changes will occur in the way coastal resources are managed in the State. The need for better management of Maryland's coast has long been recognized. By participating in the program established by the FCZMA of 1972, the State has been able to develop a more coordinated and comprehensive system to manage the coastal resources. The most significant changes include:

New and specific State coastal management policies:

The State Program document (Part II) lists the objectives of the Program and a set of policy guidelines for each of the issues addressed in the Program. These explicit policies, which will be enforced by the State, provide a predictability in State resource decision-making not realized before. People proposing to undertake projects in the Coastal Zone will have a clearer understanding of what the State's position regarding their project will likely be. The Program's objectives and policies also provide the framework for cooperative action among governmental agencies to address coastal problems and resolve coastal policy questions.

Networking through the Executive Order and Memoranda of Understanding:

The specific policies mentioned above will assume particular importance in Maryland as a result of an Executive Order signed by the Governor which explicitly states that the Coastal Zone Management Program constitutes official policy for coastal resources and that State agencies must comply with these policies. Additionally, the Department of Natural Resources has signed a Memorandum of Understanding with the Department of State Planning and is negotiating MOUs with other relevant State agencies to ensure conformance of their programs and activities with the objectives and policies of the Coastal Zone Management Program. These other MOUs will be signed prior to Program approval.

Revise MOU's

Program Review Process:

As was also discussed previously, the Coastal Zone Management Program has created a new process for reviewing all existing coastal programs and procedures (i.e., current rules and regulations, local planning and zoning efforts, State coastal resource policies, etc.) in order to determine their consistency with the State's Coastal Management Program.

Project Evaluation Process:

This new administrative procedure that was discussed in the preceeding section, ensures that all major projects proposed for the Coastal Zone are comprehensively reviewed and evaluated. It creates, for the first time, a mechanism by which all interested and/or affected agencies and planning groups are brought together as part of the State decision-making process.

The FCZMA provides incentives and a national direction that cannot be provided by the State alone in addressing coastal issues and problems. The following are some of the anticipated effects of Federal Program approval:

- o Financial assistance to State agencies, particularly the Department of Natural Resources, to assure adequate and specialized staffs to carry out those agencies permit responsibilities in a more expeditious manner consistent with the coastal policies.

- o Financial and technical assistance to county governments in meeting their responsibilities under the Coastal Management Program.

- o Financial assistance for the Coastal Zone Unit to conduct project evaluations and program reviews.

More generally, approval of Maryland's Coastal Management Program will have the effect of providing a more coordinated and more clearly articulated framework for governmental decision-making by establishing the objectives and policies of the Program as the guiding principles for government decisions.

Federal approval also will bring into effect the Federal consistency provisions of the CZMA, thus requiring Federal actions which include Federal projects, licenses and permits, and assistance programs to be consistent to the maximum extent practicable with Maryland's Coastal Management Program.

C. THE FEDERAL COASTAL ZONE MANAGEMENT ACT (CZMA)

In response to the intense pressures upon and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act (P. L. 92-583) which was signed into law on October 27, 1972. The Act authorized a Federal grant-in-aid program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) Office of Coastal Zone Management (OCZM). The Coastal Zone Management Act of 1972 was substantially amended on July 26, 1976 (P. L. 94-370). The Act and the 1976 amendments affirm a national interest in the effective protection and development of the coastal zone, by providing assistance and encouragement to coastal States to develop and implement rational programs for managing their coastal zones.

Broad guidelines and the basic requirements of the CZMA provide the necessary direction for developing these State programs. These guidelines and requirements for program development and approval are contained in 15 CFR Part 923, as revised and published March 1, 1978 in the Federal Register. In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act that require management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

(3) Determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. The basis for management uses (or their impacts) and areas should be based on resource capability and suitability analyses, socio-economic considerations and public preferences;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to insure conformance to it.

In arriving at these substantive aspects of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate and Federal agencies.

Section 305 of the CZMA authorizes a maximum of four annual grants to States to assist them in development of a coastal management program. After developing a management program, the State may submit it to the Secretary of Commerce for approval pursuant to Section 306 of the CZMA. If approved, the State is then eligible for annual grants under Section 306 to implement its management program. If a program has deficiencies which need to be remedied or has not received Secretarial approval by the time Section 305 program development grants have expired, a State may be eligible for preliminary approval and additional funding under Section 305(d).

Section 307 of the Act stipulates that Federal agency actions shall be consistent, to the maximum extent practicable with approved State management programs. Section 307 further provides for mediation by the Secretary of Commerce when a serious disagreement arises between a Federal agency and a coastal State with respect to a Federal consistency issue.

Section 308 of the CZMA contains several provisions for grants and loans to coastal States to enable them to plan for and respond to on-shore impacts resulting from coastal energy activities. To be eligible for assistance under Section 308, coastal States must be receiving Section 305 or 306 grants, or, in the Secretary's view, be developing a management program consistent with the policies and objectives contained in Section 303 of the CZMA.

Section 309 allows the Secretary to make grants (90 percent Federal share) to States to coordinate, study, plan, and implement interstate coastal management programs.

Section 310 allows the Secretary to conduct a program of research, study and training to support State management programs. The Secretary may also make grants (80 percent Federal share) to States to carry out research studies and training required to support their programs.

Section 315 authorizes grants (50 percent Federal share) to States to acquire lands for access to beaches and other public coastal areas of environmental, recreational, historical aesthetic, ecological, or cultural value, and for the preservation of islands, in addition to the estuarine sanctuary program to preserve a representative series of undisturbed estuarine areas for long-term scientific and educational purposes.

D. FEDERAL PROGRAM REQUIREMENTS

The table below indicates which chapters of the Maryland Program Submission describe how the State's program meets the specific requirements of the CZMA program approval regulations.

Sections of Approval Regulations	Title	Final Environmental Impact Statement - Relevant Sections
923.31, 923.32, 923.33, 923.34	Boundaries	Chapter II
923.11, 923.12	Uses subject to management	Chapter III
923.21, 923.23	Areas of particular concern	Chapter IV
923.41	Means of control	Chapter III, generally Chapter VIII, generally
923.22	Guidelines on priorities of uses	Chapter IV
923.45 , 923.47	Organizational structure	Chapter I
923.25	Shorefront planning process	Chapter III, pages 133-144
923.14	Energy facility planning process	Chapter III, pages 227-246
923.26	Erosion planning process	Chapter III, pages 153-162
923.58, 923.51, 923.55, 923.3	Notice; full participation; consistent with Section 303	Chapters I, V, VI, and VII
923.56	Plan coordination	Chapter I, pages 61-70 Chapter III, Chapter V, generally Chapter VI, pages 322-327
923.57	Continuing consultation mechanisms	Chapter I, pages 61-70 Chapter III, Chapter V, generally Chapter VI, pages 322-327
923.58	Public hearings	Pages 462-464, Appendix C
923.47	Gubernatorial review and approval	Letter in Program Document
923.46, 923.47	Designation of recipient agency	Letter from Governor (December 1977) See also Executive Order 01.01.1978.05

Sections of Approval Regulations	Title	Final Environmental Impact Statement - Relevant Sections
923.41, 923.47	Authorities	Chapter I, generally Chapter III, generally Chapter VIII, generally
923.51, 923.52	Adequate consideration of national interests	Chapter VI, pages 327-337
923.24	Areas for preservation/restoration	Chapter IV, pages 303-304
923.41	Administer regulations, control development; resolve conflict	Chapter VIII, pages 376-412
923.41	Powers of acquisition, if necessary	Chapter VIII, pages 412-418
923.41, 923.42	Techniques of control	Chapter III, generally Chapter VIII, generally
923.13, 923.41, 923.43	Uses of regional benefit	Chapter VI, pages 327-328, 338 Chapter VIII, pages 431-434
923.51	Federal-State Consultation	Chapter VI, generally Appendix F
923.44	Incorporation of air and water quality requirements	Executive Summary Chapter III, Section A, generally, Section C.9, Section D Chapter VI, page 336 Appendix F, pages F 47 to F 49 (EPA) Chapter VIII, pages 400-401

E. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 REQUIREMENTS

On January 1, 1970, the President signed into law the National Environmental Policy Act (NEPA), which required each Federal agency to prepare a statement of environmental impact in advance of each major action that may significantly affect the quality of the human environment. An environmental impact statement (EIS) must assess potential environmental impacts of such action.

To comply with NEPA's requirement of preparing an EIS, OCZM has combined the State's coastal management program with a discussion of the environmental impacts. The CZMA is based upon the premise that the environmental aspects of the coastal management program should receive significant consideration in the development of State programs. Therefore, as you read this EIS, you should be aware that the State coastal management program is the core document included in its entirety, supplemented by the requirements of NEPA, Section 102(2)(c).

For the reviewers who are familiar with the NEPA requirements for the content of an EIS, the Table below will provide this information.

TABLE 2

Description of the proposed action	Part II
Description of the environment affected	Part III, Chap. 1
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Probable impact of the proposed action on the environment	Part III, Chap. 2
Alternatives to the proposed action	Part III, Chap. 3
Probable adverse environmental affects which cannot be avoided	Part III, Chap. 4
Relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity	Part III, Chap. 5
Irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented	Part III, Chap. 6
Consultation and Coordination with Others	Part III, Chap. 7

PART II

THE MARYLAND COASTAL ZONE MANAGEMENT PROGRAM

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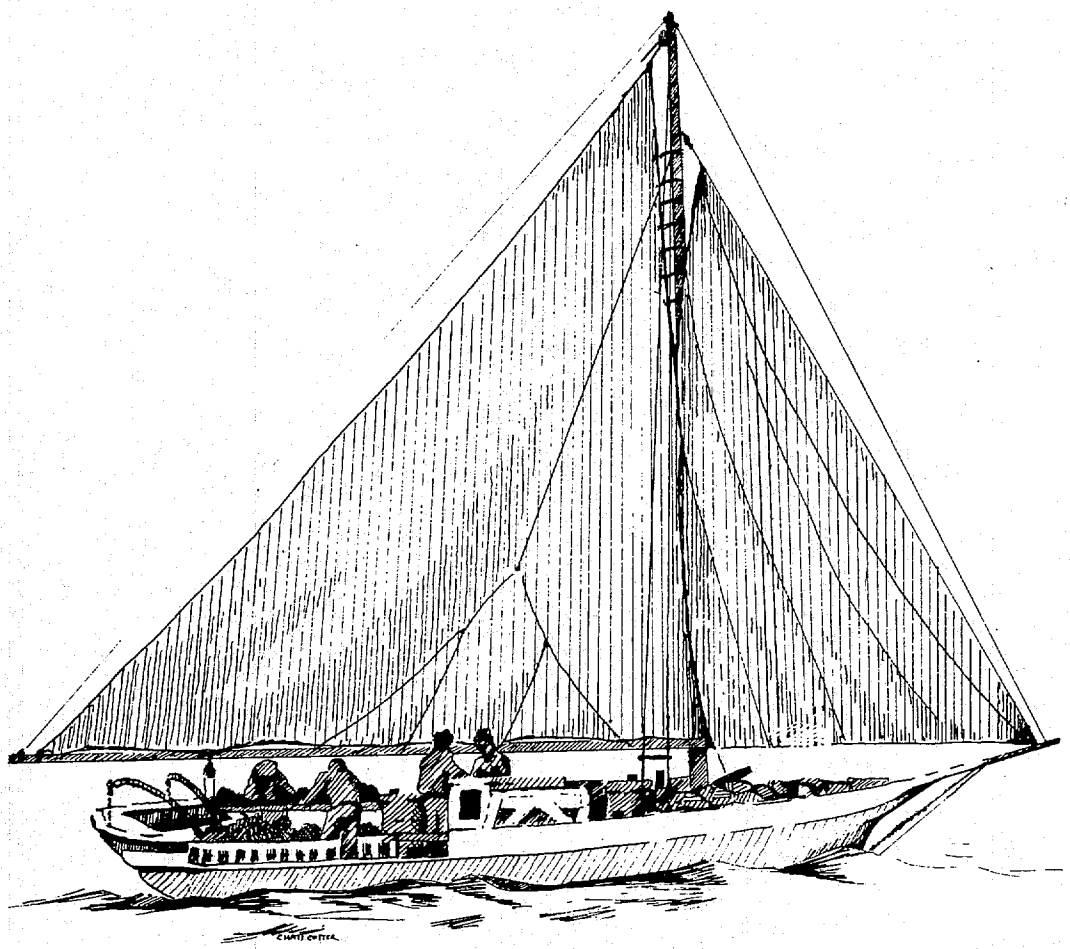
EXECUTIVE SUMMARY



The Coastal Zone - A Timeless Resource

Times have changed since the prehistoric predecessors of Modern Man roamed what is now the State of Maryland. The land and water were both enemy and provider to these primitive people, who foraged, hunted, and fished to wrest a subsistence living from the wild abundance of the natural resources around them.

Times have changed. The land is no longer an obstacle to our cars, trucks, mining equipment, and construction machinery. The water is no longer an obstacle to our recreational boats, our cargo vessels, and our off-shore oil rigs. And vast expanses are no longer obstacles to our jumbo jets.

Human beings can now control in large measure the fate of their own environment, and they can control the fate of the other living species with which they share that environment.

Times have changed. But something has remained unchanged from prehistory to the present day: the desirability and importance of land close to the water. The fertility and accessibility of coastal lands attracted our prehistoric ancestors, as evidenced by the fact that there are in Maryland an average of two prehistoric sites for every mile of shoreline. In fact, two-thirds of all the known archeological sites in the State's coastal counties are located within 200 feet of the water.

Today, the coastal zone is of no less importance. Maryland's port facilities provide nearly a quarter of a million jobs, and directly contribute $1½ billion to the State's economy - 11% of the entire gross state product. The coastal zone is literally the heartbeat of the State: 90% of the power which keeps Maryland's cities and towns lighted, warm, and functioning is generated in the coastal zone. revise

People are increasingly using the coast. Nearly three quarters of Maryland's entire $1.2 billion tourist trade is in the coastal zone, and many of those who come initially for a visit return later as permanent residents. The 1970 census showed that 76% of Maryland's total population lived in the coastal zone, and projections indicate that this percentage will increase to 85% by 1980. revise

Thus, Maryland's coastal zone is perhaps the single most vital factor in the State of Maryland's economic well-being, energy production, recreational activity, and population growth.

But the resources of Maryland's coastal zone are not infinite. As more people flock to the State's shores, as more industry brings more economic activity to the area, as more facilities and services are required to meet the needs of increased populations, the State's coastal resources can be stretched beyond their capacity, upsetting the delicate balance of inter-relating circumstances which have made Maryland's coastal zone so desirable for centuries. In fact, the horizon of the coastal zone's capacity to adsorb random growth may already be in sight. In the years between 1908 and 1968, some 200,000 acres of wetlands were lost. The State's harvests of striped bass have been fluctuating wildly, from a low of 314,000 pounds in 1933, to a high of over five million pounds in 1961, dwindling again to less than two million pounds in 1976. While Maryland led the antion in oyster harvests in the 1880's with annual harvests of between eight and ~~fifteen~~ million bushels, recent harvests have been less than 2½ million bushels. ↑ Recent problems with oyster industry

Man is no longer foraging, hunting, and fishing along Maryland's coastal zone with primitive tools and with a limitless supply of fish and game. With technological sophistication, he now has the capacity to alter the land, to construct immense residential developments and industrial complexes, to dig for fuel at unimaginable depths under the water, and inadvertently to alter or eliminate the very resources that have made the coastal zone the vital asset that it is.

The Development of the Maryland Coastal Zone Management Program

The Federal Act

Recognizing the value and the precarious position of the nation's coastal resources, the federal government passed the Coastal Zone Management Act of 1972. Through this Act, federal assistance was provided to coastal states to develop and administer management programs which "preserve, protect, develop, and, where possible, restore our coastal resources". It is this Act which has made possible the development of the Maryland Coastal Zone Management Program.

Basic Premises, Goals and Objectives

Because of its desirable location, richness in resources, and natural beauty, Maryland's coastal zone has attracted a broad diversity of industries, activities, and interests. It was recognized at the outset of the development of the Maryland Coastal Zone Management Program, that to be totally effective, a management program would have to balance these widely divergent activities and interests, taking into account the capacity of coastal resources to accommodate them. It was recognized that the coastal zone could in fact accommodate a wide variety of activities, and that the management program should strike a balance between preservation, conservation, and utilization, in order to provide the greatest possible benefit for the greatest number of Maryland's citizens both economically and environmentally.

Since the coastal zone contains diverse areas of particular scenic, scientific, geologic, hydrologic, biological, recreational, or ecosystem maintenance importance, the need to establish priorities for the use of different areas was clearly perceived. Four criteria were articulated as basic necessities in the evaluation of the compatibility between a coastal activity and the area in which it occurred. Any activity would be considered on the basis of the degree to which it: 1) preserved the quality of the State's coastal resources and the natural character of its shoreline, 2) required or was enhanced by a shoreline location, 3) resulted in long term benefits, and 4) was consistent with state interests and met needs expressed in a local comprehensive plan.

Second, it was recognized that certain areas are particularly vulnerable to natural hazards such as erosion and flooding, and should therefore receive special attention. It was also recognized that certain activities such as the siting and operation of major facilities (e.g., power plants) may degrade coastal resources significantly unless special attention is given to siting and operating them in a manner compatible with surrounding coastal resources.

Third, a basic premise of the development of Maryland Coastal Zone Management Program was the recognition that no area or activity should be considered in isolation, that national, state, and local interests should therefore be considered, and that the cooperation of federal, state and local agencies, under the leadership of the Maryland Department of Natural Resources, would be necessary for implementation of an effective Coastal Zone Management Program.

Finally, it was recognized that federal and state funds would have to be provided to state and local government agencies to implement fully the Coastal Zone Management Program.

It took three years to develop the Maryland Coastal Zone Management Program from these basic considerations and premises. In the first year, a thorough examination of past and present management efforts in coastal areas was undertaken. Inventories of coastal resources were taken. Significant coastal issues were identified and studied, and efforts were begun to establish the means of ongoing public participation in the Program. In the second year of development, a study of onshore development associated with Outer Continental Shelf activities was begun, and a comprehensive plan for disposal of dredge spoil was drafted. The inventory of coastal resources was completed, and an analysis of existing institutions and legal authorities relevant to management of coastal areas was undertaken. In the third year, the framework for public participation was completed, and through regional coordinators placed with local governments, local involvement in the determination of goals and objectives was obtained. Other technical studies, such as the Recreational Boating Study and the Upland Natural Areas Study, were also conducted to generate additional data needed for the development of the comprehensive Coastal Management Program.

The result of this three-year process is a coastal zone management program which is comprehensive in scope, and which takes into account not only coastal resources and activities, but also all existing authorities regarding the various aspects of these diverse resources and activities in the coastal zone.

Specific goals and objectives for the Maryland Coastal Zone Management Program have been developed. With their roots in the Program's basic considerations and premises, these goals and objectives have specific application to the various coastal uses and activities addressed by the Program, and they are reinforced by the strength of legislation which already exists. Thus, the validity and efficacy of these goals and objectives are not dependent upon the enactment of new legislation. These goals and objectives are listed on pp. 26-30.

> Purpose of revised Program Document

Program Content: Federal Thresholds

Perhaps the best way to summarize the content of the Maryland Coastal Zone Management Program is in terms of the federal thresholds on which the Program will be evaluated by the federal government. Seven thresholds were established by the federal Office of Coastal Zone Management, which reviews each state's coastal zone management program against these thresholds to determine whether or not the program will receive federal support for implementation.

Table ES-1

THE MARYLAND COASTAL ZONE MANAGEMENT PROGRAM'S GOALS AND OBJECTIVES

GOAL 1: To Preserve and Protect Coastal Resources

OBJECTIVES:

(1) To protect, maintain, and where feasible improve air quality in the State's coastal zone in order to protect public health, safety, and welfare, and the quality of the State's environmental resources.

(2) To protect, maintain, and improve the quality of the State's tidal waters for propagation of wildlife, fish and aquatic life, and for human use and enjoyment.

(3) To protect coastal aquatic areas of significant resource value and where possible, restore presently degraded areas of potentially significant resource value, such as viable oyster bars and clam beds, important fish migratory pathways, spawning, nursery and feeding areas, and wintering and resting areas for migratory birds.

(4) To protect, maintain, and where feasible, restore the integrity of the tidal wetlands of the State.

(5) To protect coastal terrestrial areas of significant resource value-areas having scenic, scientific, geologic, hydrologic, biological or ecosystem maintenance importance - such as non-tidal wetlands, endangered species habitat, significant wildlife habitat, and wintering and resting areas of migratory birds.

(6) To promote the protection and wise management of productive coastal agricultural and forested areas through cooperation with programs of the local Soil Conservation Districts, the Agricultural Lands Preservation Foundation, the Maryland Department of Agriculture, the Maryland Forest Service, the Department of State Planning and the Maryland Environmental Trust.

(7) To protect coastal cultural, historical, and archeological resources.

(8) To promote increased recreational opportunities in shoreland areas, to promote increased public access to tidal waters, and to assure that these occur in a manner which protects the quality of coastal resources and which maintains public health and safety.

GOAL 2: To Protect and Promote the Economic and Social Stability of Coastal Communities in an Environmentally Compatible Manner.

OBJECTIVES:

(9) To assist the people living in the coastal zone improve the quality and productivity of their lives in an environmentally compatible manner.

(10) To recognize, protect and promote the economic and social stability of coastal communities and the industries located therein through proper resource management, acknowledging that coastal residents, communities and industries are valuable resources in themselves.

(11) To ensure that management decisions concerning coastal resources and activities include consideration of measures to maintain or improve the economic and social stability of coastal communities.

(12) To promote, in cases in which existing and proposed coastal practices and activities must be modified, the identification of alternatives which will both provide protection to coastal resources and assist, to the maximum extent possible, the maintenance, protection, and improvement of the economic and social standards of coastal communities and the region of which they are a part.

GOAL 3: To Protect the Public Interest, Safety and Welfare in Natural Hazard Areas

OBJECTIVES:

(13) To give priority to non-structural management techniques for controlling tidal and riverine flood hazards, including the use of flood plains for open space uses such as agriculture, forestry and recreation, in order to lessen the danger to life and property, and to minimize adverse effects on biological resources and water quality.

(14) To promote the use of shoreline setbacks and the restriction of development in high risk erosion areas in order to reduce erosion-caused danger to life and property and to minimize the cost to the public and private sectors.

(15) To promote the use of shore erosion control techniques, where necessary, in a manner which provides long-term protection, minimizes adverse effects on natural systems (both biological and physical), and avoids damage to adjacent property owners.

(16) To promote the proper siting, construction, and where necessary the restriction of development in other natural hazard areas such as steep slopes and high water table areas to reduce the danger to life and property and to prevent adverse environmental impacts.

GOAL 4: To Locate Major Facilities only in Appropriate Coastal Areas so that Environmental Quality is Maintained

OBJECTIVES:

(17) To encourage the inland siting of facilities which are not shoreline dependent, and to encourage the location of necessary shoreline-dependent activities in shoreline areas where adverse social, economic, and environmental impacts can be minimized.

(18) To encourage the location of necessary new coastal facilities whether industrial, commercial or residential, in already developed areas capable of accommodating additional development, in areas suitable and planned for redevelopment, or in areas determined by scientific study to be environmentally and economically suitable for development.

(19) To discourage the location of major new or expanded facilities on or immediately adjacent to Resource Protection Areas or Hazard Prone Areas.

(20) To ensure the viability of Maryland's port areas, and to ensure that their development is carried out in an environmentally sound manner.

(21) To encourage the wise use of coastal mineral resources, with due regard for protection of the environment, and to encourage sequential multiple use of mineral lands where mineral extraction is deemed appropriate.

GOAL 5: To Promote Appropriate Methods of Use of Coastal Areas in Order to Prevent Deterioration of Coastal Resources

OBJECTIVES:

(22) To promote use of the State's coastal resources to meet social and economic needs in an environmentally compatible manner.

(23) To ensure consideration of the carrying capacity of air, land and water resources (both surface and groundwater), and the conservation of coastal natural areas in state and local regulatory decisions concerning coastal developments.

(24) To ensure that sufficient provision has been made for providing adequate water, sewer, and transportation services before new coastal developments are approved by state and local government agencies.

(25) To ensure that adequate consideration is given to social, economic, and environmental impacts in government decisions concerning the siting of public facilities in coastal areas, particularly those involving transportation and waste treatment facilities.

(26) To ensure the incorporation of storm water management measures in state and local regualtory programs that would require runoff from a development site, to maintain, to the maximum extent possible, the water quality and quantity conditions that prevailed prior to development.

(27) To promote the maintenance of natural buffers along, and natural drainage ways feeding to, coastal tributaries and estuarine waters, to minimize adverse environmental effects of coastal developments and activities.

(28) To identify and encourage the use of environmentally suitable methods of dredging and disposal of dredged material (including beneficial use of dredged material) to meet long-term needs resulting from navigational projects, state and local governmental projects, and major private projects, and to oppose the use of methods found to be environmentally unsuitable.

(29) To prevent the filling of the State's tidal waters unless there is no feasible alternative and the proposed project is in accordance with the goals, objectives and policies of the Coastal Zone Management Program.

(30) To oppose the dumping into ocean waters off the State of Maryland of any material which would adversely affect human health, welfare or amenities, the marine environment, ecological systems, or resources of economic value.

(31) To ensure the use of thorough assessments of probable energy costs and benefits, positive and negative economic effects, probable social and environmental impacts, and the value of the public resources involved, as the basis for decisions on the development and production of Outer Continental Shelf resources.

(32) To ensure that the coastal counties, if affected by development related to energy facilities, obtain sufficient financial and technical assistance to adequately plan for and cope with the social, economic or environmental impacts of such development.

(33) To ensure that hazardous substances are utilized and disposed of in a manner which prevents any toxic, lethal or sublethal effects to plant, aquatic or animal life, which prevents any adverse effect upon human health, and which prevents disposal of the substances into terrestrial or aquatic ecosystems.

GOAL 6: To Promote Intergovernmental Coordination and Public Participation in Coastal Zone Management Program Development and Implementation.

OBJECTIVES:

(34) To undertake studies and inventories, where needed, to provide the most complete and accurate information base possible for all levels of government and the public to use in management decisions and activities affecting coastal resources.

(35) To encourage the analysis of possible impacts on energy production and consumption, both natural and man-induced as part of management decisions concerning coastal resources and activities.

(36) To ensure the establishment of repositories of coastal zone-related documents, reports, and materials which are easily accessible to the general public in each of the coastal counties.

(37) To promote standardization of techniques and compatibility of federal, state and academic research efforts in the State's coastal areas.

(38) To ensure coordination and use of existing state and local government programs to achieve the CZMP's objectives.

(39) To ensure interstate coordination of plans for the management of resources which are shared with neighboring states such as migratory aquatic species.

(40) To ensure the review of state and local governmental programs, and those of the local Soil Conservation Districts, in order to identify possible modifications needed to facilitate achievement of coastal zone management goals, objectives, and policies.

(41) To promote coordination of state and local governmental programs with those of federal agencies and neighboring states to further the goals of the Coastal Zone Management Program, and to minimize duplication of efforts, conflicting actions, and regulatory permit processing delays.

(42) To provide adequate representation of the interests of the State of Maryland in federal decisions regarding the exploration, development and production of Outer Continental Shelf Resources.

(43) To provide full opportunity for participation by relevant federal, state, and local government agencies, concerned organizations and the general public, in the development and implementation of the Coastal Zone Management Program.

Boundaries

Each state's coastal zone management program must identify the specific boundaries of its coastal zone, both inland and seaward. Maryland's coastal zone boundary extends seaward to Maryland's three-mile jurisdiction in the Atlantic Ocean, and inland to the inland boundaries of the counties bordering the Atlantic Ocean, Chesapeake Bay, and the Potomac River up to the District of Columbia. Thus, the counties of Anne Arundel, Baltimore, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Prince George's, Queen Anne's, Somerset, St. Mary's, Talbot, Wicomico, and Worcester are included in Maryland's Coastal Zone, as is the City of Baltimore.

Within each of these 17 boundaries, an "Area of Focus" has been identified for special attention. The Area of Focus in each locality has been established in cooperation with the local government, and in most cases coincides with the 100-year flood plain bordering the State's tidal waters. This two-level geographical distinction (described in detail in Chapter II) simply reflects the greater probability of activities in coastal shorelands having a direct and significant effect upon coastal waters.

Land and Water Uses

The federal Act requires the State to identify uses of land and water in the coastal zone which are permissible, but which have direct and significant impacts upon coastal waters. The Act requires States to develop guidelines on these uses, and to ensure that local coastal regulations are without undue restriction of uses which are of regional benefit.

As a result of the inventory and analysis which was made of known activities and uses in the coastal zone, three basic criteria were developed to identify which of the many uses should be classified as "Uses and Activities of Concern" to the State's Coastal Zone Management Program:

1) The activity must have a discernible <u>impact</u> upon coastal resources;

2) The impact must be <u>direct</u>; and

3) The impact must be <u>significant</u>.

"Impact" is defined in this context as documentable change in any factor relevant to the maintenance of a coastal resource. An impact is "direct" when there is a documentable, causal relationship between the activity and the impact on the coastal resource. An impact is considered to be "significant" when a) it is broad in geographical scope, b) it affects a critical resource of concern to the State, c) it potentially violates State environmental standards, or d) it potentially conflicts with State or State approved local, economic, fiscal, land use, transportation, or water quality plans.

In addition to the nature of the use or activity itself, consideration has been given to the specific area in which it occurs - coastal waters, intertidal areas, shoreland areas, or areas within the inland boundaries of coastal counties. Uses and activities in the first three areas are most likely to have direct and significant impacts upon coastal waters, and most of the Program's attention therefore focuses largely on them. There are, however, significant exceptions, such as the siting and operation of major industrial facilities, whose size and method of operation will probably have an impact upon coastal waters, regardless of their specific location within the Coastal Zone.

Based on these criteria, the uses and activities listed below were identified as Uses or Activities of Concern to the Coastal Zone Management Program. Each of the uses and activities is dealt with in detail in Chapter III, and relevant goals and objectives are listed for each. The goals and objectives cited are drawn into sharper focus in specific policies, and management procedures reflecting these goals, objectives, and policies are specified in detail, with references to the relevant legal authorities.

This document has been designed to facilitate reference to any of these individual activities or uses, each of which is dealt with in a self-contained section of Chapter III, the backbone of this document, complete with references to goals, objectives, policy, management procedures, and legislative authorities. Background information is also provided on the existing situation and issues regarding the use or activity. Thus, anyone desiring a complete perspective on the Maryland Coastal Zone Management Program's treatment of a specific Use or Activity of Concern can simply remove the section of Chapter III from the rest of the document.

USES AND ACTIVITIES OF CONCERN TO THE MARYLAND COASTAL ZONE MANAGEMENT PROGRAM

A. Activities Occurring in Coastal Waters

1. Recreational Boating
2. Commerical Shipping (Oil Spill Containment and Prevention)
3. Dredging and Disposal of Dredged Material
4. Activities Associated with Living Aquatic Resources
5. Ocean Dumping
6. OCS Exploration, Production and Development
7. Coastal Pollution; Toxics, plastics, NPS.

B. Activities Occurring in Intertidal Areas

1. Use of Beach Areas
2. Activities in Tidal Wetlands

C. Activities Occurring in Shoreland Areas

1. Activities in Areas with Significant Shore Erosion
2. Activities in Coastal Tidal and Non-Tidal Flood Plains
3. Activities in Non-Tidal Wetlands
4. Use of Agricultural Lands
5. Use of Forested Lands
6. Channelization (and Small Watershed Projects)
7. Activities Associated with the Provision of Sufficient Recreational, Open Space, and Natural Areas
8. Activities Affecting Coastal Historical, Cultural, and Archeological Resources
9. Shoreland Activities in General

D. Major Facilities In The Coastal Zone

1. Onshore Outer Continental Shelf/Oil/Natural Gas Facilities
2. Electric Generating Facilities
3. Ports
4. Industrial Parks
5. Mineral Extraction Facilities
6. Large-scale Residential Facilities

7. Sewage Treatment Facilities
8. Transportation Networks

(Large-scale marinas were originally considered to be major facilities but upon further consideration have been incorporated into the section on Recreational Boating because they are located solely in the shoreland areas and because the boating activities that they engender is a major concern of the coastal zone management program.)

Geographical Areas of Particular Concern

This threshold of the federal Act requires State Programs to identify areas of particular concern in the Coastal Zone and to make special designations where required to restore or preserve these areas.

Accordingly, the Maryland Coastal Zone Management Program has identified "Geographical Areas of Particular Concern", which will be managed through the State's Critical Areas Program. Geographical Areas of Particular Concern (see Chapter IV) will include Resource Protection Areas (tidal wetlands, upland natural areas, productive and agriculture land, archeological and historic sites, and aquatic sensitive areas), and Developmental Critical Areas (power plant sites, facility sites related to activities on the Outer Continental Shelf, sites for heavy industry, large-scale residential projects, large marinas and ports, and mineral extraction areas).

Public and Government Involvement

A State's program is required by this federal threshold to include the participation of federal, state, and local governments, as well as other relevant public or private interests.

Maryland's Coastal Zone Management Program has established the Coastal Resources Advisory Committee, composed of representatives from state, federal, and local governments, and representatives from the private sector (public interest, industrial, and commercial). This group will be involved in all project evaluations, will ensure a fair assessment of all projects, and will prevent any single interest group from exerting disproportionate leverage in any aspect of the Program.

redefine CRAC's role?

State-Federal Interaction

A State is required to obtain federal involvement in the development and implementation of its coastal zone management program, and federal agencies are required (through "federal consistency") to abide by guidelines of the state's management program in any projects which they may undertake in the coastal zone.

The Maryland Coastal Zone Management Program itself has been developed with the full involvement and cooperation of the federal government, as described in Chapter VI. When the Program is approved and fully implemented, all relevant federal agencies will be involved in project evaluations or other actions, and all federal activities in the coastal zone (such as development projects, federal assistance programs, licenses and permits, and Outer Continental Shelf activities) will be required to conform to the policies of the Maryland Coastal Zone Management Program.

These federal thresholds require state programs to show how the state plans to control uses of land and water in the coastal zone, and to document that the state agency administering the program has the authority to do so.

The inventory and analysis of Maryland's legislative authorities concluded that the State of Maryland, through the Department of Natural Resources and other state agencies, has ample authority to implement and enforce the Maryland Coastal Zone Management Program.

The fact that Maryland's Coastal Zone Management Program has based its recommendations upon already existing state legislation should not be taken to mean that the Department of Natural Resources will not recommend new legislation to meet future needs. However, at the present time, to the extent that problems have been identified and are understood, and to the extent that a technical basis for making valid decisions exists, there is sufficient authority in the State of Maryland to satisfy the requirements of the federal Coastal Zone Management Act. Maryland has a broad variety of statutes controlling development of activities within the coastal zone, statutes which can be interpreted in the context of the policies and objectives of the Maryland Environmental Policy Act. Furthermore, the Maryland Courts have recognized that police powers may be used broadly to protect the natural resources of the state. Thus, by law, Maryland has adequate control over its coastal resources.

Authority to acquire interests in lands and waters is vested primarily within the Department of Natural Resources. The state owns all lands and waters below mean high tide, and the Department of Natural Resources may acquire land for purposes related to recreation, fishery, wildlife, conservation and power plant siting. Other state agencies may act to preserve historical sites and agricultural land. In addition, many land acquisition programs are financed by special funds. Thus, the State of Maryland can, with legislation which already exists, carry out its Coastal Zone Management Program.

Through the process of project evaluation, Maryland's Coastal Zone Management Program will implement the concept of "networking" to draw together the organizations and legal authorities which have jurisdiction over one or another aspect of a coastal zone activity. The Coastal Zone Management Program's project evaluation process will enable the consolidated review and evaluation of all major projects proposed in the coastal zone. This process will result in a net saving of time and money to both the applicant and the regulatory agencies. As soon as a major project with the potential for significant impacts is proposed in the coastal zone, the Coastal Zone Unit will draw together appropriate government agencies, other interested parties, and the applicant, to identify issues implicit in the proposal, and to select a team to evaluate the proposal. The Coastal Zone Unit is the staff component of the Department of Natural Resources vested with the responsibility for implementing the Coastal Zone Management Program.

In the evaluation process, the on-site and off-site cumulative impacts of the proposed project will be identified and examined. Based on the findings of that evaluation, each of the regulatory agencies involved will formulate its decision, and through this process, the efficiency, scope, and depth of decisions should be superior to what would be possible in an otherwise fragmented process.

Thus, through the project evaluation process, the Coastal Zone Management Program will identify and combine the diverse issues related to a specific coastal activity (or combination of activities). It will then draw together a network of the various agencies, statutes, and private interests relevant to the issues at hand, and will combine these diverse inputs into a single coherent focus on the coastal activity. The Energy and Coastal Zone Administration of the Department of Natural Resources will have responsiblity for the leadership in this process, with the participation of other units of the Department of Natural Resources, the Departments of State Planning, Agriculture, Economic and Community Development, Health and Mental Hygiene, and Transportation, the State Public Service Commission, the State Board of Public Works, the coastal zone counties, municipalities, and the Soil Conservation Districts serving them.

In addition to the evaluation of specific projects in the coastal zone, the Maryland Coastal Zone Management Program will include the ongoing review of regulatory and management programs relevant to the coastal zone. Thus, the Program will have a built-in mechanism to ensure that the State's legislative and organizational authorities will have the flexibility to keep current with the needs and pressures of changing times.

policy development

Significance of the Maryland Coastal Zone Management Program

The Maryland Coastal Zone Management Program offers the citizens of Maryland a comprehensive program which addresses the broad spectrum of public and private needs and resources associated with the coastal zone. It provides the method, the organizational framework, and the legal strength to balance the many pressures on the coastal zone, so that development, economic progress, and preservation of valuable natural resources can be accomplished in a reasonable manner, without the over-exertion of one influence at the expense of another - without the exploitation of natural resources which can lead to their eradication, and without, on the other hand, the halting of economic growth and development .

The Maryland Coastal Zone Management Program brings the interests of local, state, and federal governments, the interests of industry and commerce, and the interests of the public at large, into the coastal zone management process itself, through the Coastal Resources Advisory Committee and the networking concept.

The Maryland Coastal Zone Management Program, through the project evaluation process, gives substance to the networking concept and prevents potentially harmful activities from taking place unnoticed, by requiring their comprehensive review with the participation of the various public and private interests likely to be affected beneficially or adversely.

The Maryland Coastal Zone Management Program recognizes the need and provides the means for financial assistance to government agencies seeking to alleviate or prevent adverse impacts on coastal resources.

And, finally, the Maryland Coastal Zone Management Program is the first comprehensive, consolidated policy statement on the State's most economically and aesthetically valuable resource: the coastal zone. With its foundations in existing state and federal law, and with the built-in participation of public and private interests, the Program represents not a tentative collection of hopes for the future, but rather a solid program with roots in the present, and with the flexibility to meet the challenges and changing circumstances of the future.

Conditions have changed, and will continue to change. But the implementation of the Maryland Coastal Zone Management Program can ensure that the State's most aesthetically beautiful, recreationally active, naturally fertile, commercially viable, and economically significant resource - the coastal zone - can survive the stresses of the present and the uncertainties of the future. In the centuries since our prehistoric predecessors roamed the coastal zone, the vital importance of our coastal resources has not diminished. By involving and drawing into focus the diverse government agencies, private interests, and legal authorities relevant to the coastal zone, the Maryland Coastal Zone Management Program represents a Partnership for Balanced Action to preserve and enhance the value of the State's irreplaceable coastal resource, for present and future generations.

CHAPTER I

OVERALL IMPLEMENTATION FRAMEWORK

I. OVERALL IMPLEMENTATION FRAMEWORK

I. Introduction: Program Authorities

Coastal zone management in Maryland will be the combined and coordinated exercise of all existing and future land and water management authorities of several governmental units of the State. The Coastal Zone Unit's inventory and assessment of laws and the agencies which administer them reveals that six executive departments, two independent agencies, 16 counties, Baltimore City, and several municipalities already exercise considerable regulatory authority over Maryland's coastal zone with regard to land and water use.

To the extent that problems have been identified, are understood, and a sufficient technical basis for decision-making exists, there is sufficient authority in Maryland (1) to carry out the Program proposed in this document, (2) to satisfy the requirements of Section 306 of the federal Coastal Zone Management Act, and (3)to address the State's top priority coastal resource management problems. All-encompassing coastal zone management legislation would duplicate existing state-wide management programs.[1]

The authorities requirements of the federal Coastal Zone Management Act include the following:

Section 306(c)(7) of the federal Coastal Zone Management Act requires that:

> "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."

Section 306(d) 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, 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

---

[1] This Chapter is intended to present the framework of the Program, and thus summarizes both the federally mandated requirements for program authority and organization, and the State laws, regulations, and procedures that respond to those requirements. A more complete legal analysis of the authorities of the Program is found in Chapter VIII.

(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."

Chapter VIII contains an inventory of relevant constitutional provisions, legislation, amendments, regulations, and judicial decisions, as required by the Act, Section 305(b)(4). It also documents that the State and local governments have fully adequate powers of acquisition.

Section 306(e)(1) requires that an approvable management program provide for:

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

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

(2) Direct state land and water use planning and regulations; or

(3) State administrative review for consistency with the management program of all development plans, projects, or land or water use regulations, including exceptions of 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."

Chapter III, "Appropriate Land and Water Uses" further describes the laws and techniques which can be used to manage each appropriate land and water use. Discussion provided in that chapter identifies the management technique - i.e., state standards for local review, direct state planning and regulation, or state administrative review - employed by each law cited.

Section 305(b)(3) of the Act requires a management program to include "an inventory and designation of areas of particular concern with the coastal zone". The Act further states that a management program shall include "broad guidelines on priority of uses in particular areas." (Section 305(b)(5)).

Chapter IV outlines Maryland's approach to Geographic Areas of Particular Concern and the management techniques available through the State Critical Areas Program.

While at present, sufficient authorities are available to allow state and local governments to carry out a comprehensive program for management of coastal resources, these separate authorities must be fitted together through coordination of state and state-local programs. In the course of developing the State's Coastal Zone Management Program the Coastal Zone Unit identified stumbling blocks that prevented coherent operation of coastal zone program based on the cooperative exercise of a combination of authorities.

what is this now?

1. No clear statement of policies and priorities for coastal zone management had been assembled and officially endorsed.

2. Most permitting programs are designed to look at only one aspect of coastal impact.

3. Duplicative or overlapping evaluations often cause delays in permit letting for beneficial projects.

4. There is often disagreement on which inventories or studies constitute the best and most recent information on which to base management decisions.

5. There is no point of responsibility for assessing cumulative impacts of various permit actions.

6. Not all local comprehensive plans recognize existing state performance standards.

7. State programs often demonstrate unfamiliarity with local management priorities, problems, and plans.

This program document, particularly this chapter and Chapter III, describes how Maryland's Coastal Zone Management Program overcomes these obstacles, through establishing or clarifying objectives and policies, and through coordinating and broadening the regulatory review process for coastal projects, in accordance with an Executive Order of the Governor and Memoranda of Understanding between the Department of Natural Resources and the other Executive Departments involved in the program.

The next section of this Chapter addresses the organizational framework for implementing a Coastal Zone Management Program. Measures being taken or proposed to overcome the problems identified will be detailed. These measures include four implementation tools: (1) committing all program participants to a set of goals, objectives, and policies, (2) enhancing intergovernmental coordination in carrying out the Program, (3) providing for comprehensive review of all major activities in the coastal zone, and (4) assuring consideration of cumulative impacts in coastal management decisions. The Chapter concludes with a discussion of conflict resolution mechanisms.

II. Existing Organizational Structure

The federal Coastal Zone Management Act requires that the State be organized to implement its coastal management program (Section 306(c)(6)). In addition, the State Program must 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." (Section 305(b)(6)).

The Program must also identify the single state agency designated to receive and administer federal grants, and the lead agency for program implementation.

The chart on the following page (Figure I-1) shows the overall organizational structure of Maryland's Coastal Zone Management Program, consisting of six state executive departments, two additional agencies, 16 counties, Baltimore City, and the municipalities within the coastal zone, and the soil conservation districts which serve each coastal county. Within this network of state and local agencies, the Department of Natural Resources is the lead agency for program implementation. The roles of each state and local program participant are described below.

A. The State Role: Executive Departments and Agencies

In general, the role of state government in the Maryland Coastal Zone Management Program is to manage resource use either directly, or through setting and reviewing standards for local implementation. Any activity related to water quality or appropriation, or any activity which uses lands directly associated with state waters (submerged land, tidal wetlands, 100-year riverine flood plains, Chesapeake Bay beaches to the mean high tide, and Atlantic beaches to the dune line) are regulated directly by the State. Direct planning and regulatory activities of the State also include impact evaluation and/or siting of major facilities (power plants, coastal oil facilities, sewage treatment plants, port facilities, marinas, surface mining operations, and highways). With the exception of coastal oil facilities and surface mining operations, the State may acquire sites specifically for these uses. In certain other types of resource management activities, the State has, or is in the process of promulgating, standards and guidelines for local implementation. These activities include grading and sediment control, storm water management, the designation and management of State Critical Areas, the management of historic districts and scenic rivers (the Patuxent, the Severn, the Wicomico, and the Pocomoke), and comprehensive watershed flood management. Each of these state programs is carried out or overseen by one of six executive departments or one of two independent agencies.

The executive branch in Maryland is organized in secretariats. While an executive department may consist of several administrations, divisions, or bureaus, each of these units is responsible to one secretary, who in turn is responsible to the Governor and is a member of the Governor's cabinet. Each executive department functions as a cohesive unit. The secretary in charge of the department is responsible for:

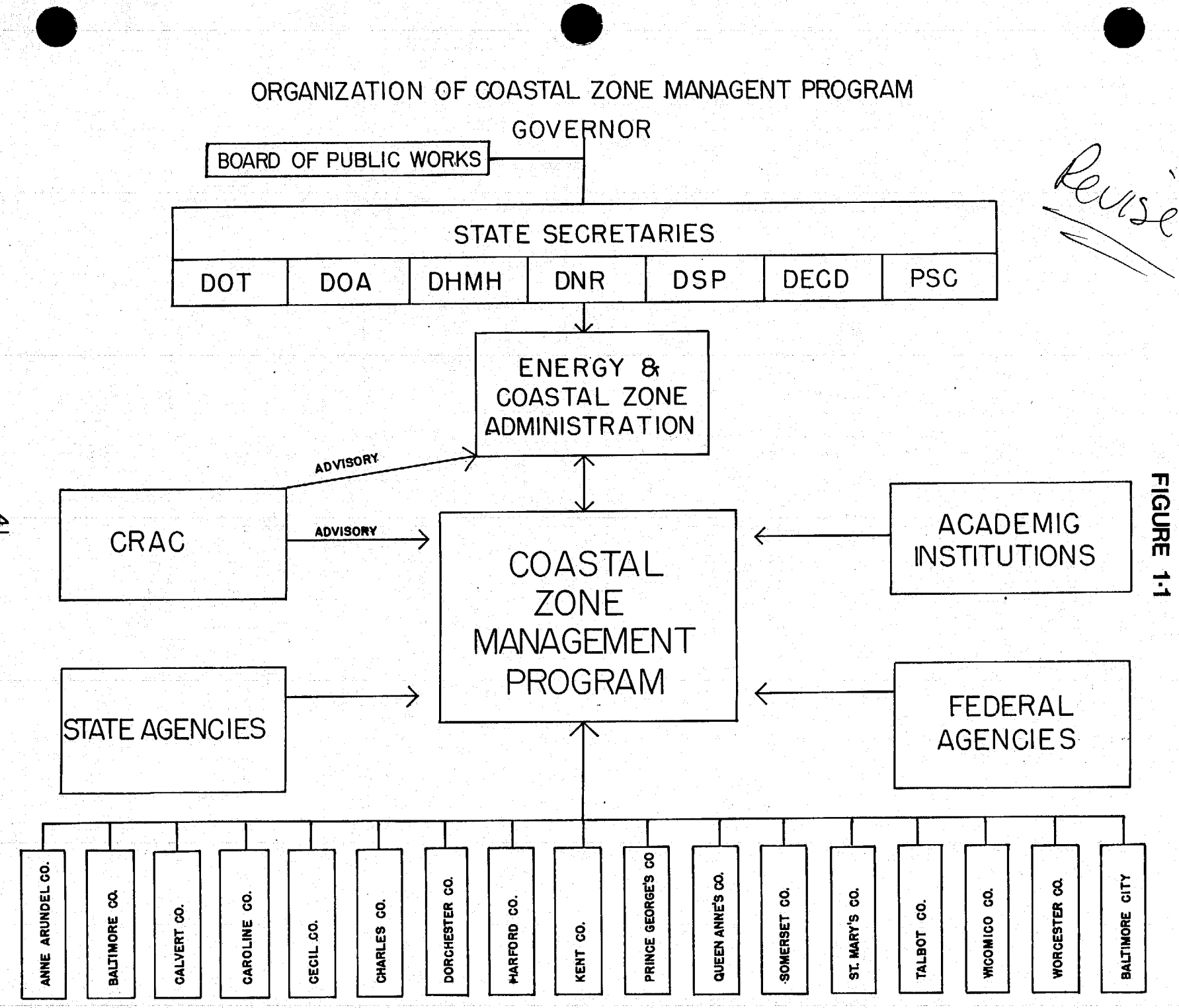

ORGANIZATION OF COASTAL ZONE MANAGENT PROGRAM
GOVERNOR
BOARD OF PUBLIC WORKS
STATE SECRETARIES
DOT
DOA
DHMH
DNR
DSP
DECD
PSC
ENERGY & COASTAL ZONE ADMINISTRATION
ADVISORY
CRAC
ADVISORY
COASTAL ZONE MANAGEMENT PROGRAM
ACADEMIC INSTITUTIONS
STATE AGENCIES
FEDERAL AGENCIES
ANNE ARUNDEL CO.
BALTIMORE CO.
CALVERT CO.
CAROLINE CO.
CECIL CO.
CHARLES CO.
DORCHESTER CO.
HARFORD CO.
KENT CO.
PRINCE GEORGE'S CO
QUEEN ANNE'S CO.
SOMERSET CO.
ST. MARY'S CO.
TALBOT CO.
WICOMICO CO.
WORCESTER CO.
BALTIMORE CITY

FIGURE 1-1

- establishing policy to be followed by the agencies, offices and other units of state government within his Department;

- efficient and orderly administration of the Department;

- comprehensive planning of programs and services within the jurisdiction of his Department;

- reviewing and approving the plans of all units of state government within his jurisdiction;

- the budget of his office and other units within his jurisdiction;

- the organization of his office, and recommendations to the Governor for changes in the organization and placement of units of state government within his jurisdiction;

- creation of citizen advisory bodies he deems necessary for the operation of his Department;

- advising the Governor of any modification, abolition, and transfer of advisory bodies within his jurisdiction;

- counseling and advising the Governor on any matters assigned to the Department; and

- carrying out the Governor's policy in matters assigned to the Department.

The Governor is responsible for the orderly and efficient operation of the executive branch. Any conflicts which arise between principle departments of the executive branch are ultimately settled by the Governor's office. The Governor is responsible for preventing overlap in duties and responsibilities between departments by transferring agencies between departments, issuing orders clarifying the duties of departments, or creating interdepartmental task forces when necessary (Article 41, Section 15C (1971)).

The Governor has issued an Executive Order which formalizes the structure of the Coastal Zone Management Program within the Executive Branch. The Executive Order states that the objectives and policies enumerated in the Coastal Zone Management Program are the policies of the State for management of coastal resources. The Executive Order also requires all State agencies, to the extent consistent with their statuatorily prescribed responsibilities and authorities, to:

a. conduct their activities in a manner consistent with the Program;

b. participate in the project evaluation process specified in the Program; and

c. address promptly and, to the extent feasible, resolve any conflicts with other agencies.

The Executive Order also reiterates that the Department of Natural Resources is the State agency designated to receive and administer Coastal Zone Management grants and instructs the Secretary of DNR to ensure that the State's interest is adequately represented in the administration of the federal Coastal Zone Management Program.

1. Department of Natural Resources

The Department of Natural Resources is the agency designated (by letter of the Governor of Maryland to the Director of the Federal Office of Coastal Zone Management, March 12, 1973) as the single agency to receive and administer the Coastal Zone Management Administration Grants. The Secretary of Natural Resources is authorized to:

> "...apply for, accept, and administer for the State any federal funds or appropriations of money for any purpose which may be hereinafter made out of the federal treasury by any act of the Congress." (Natural Resources Article, Section 1-103(c)(1974)).

The Department is also the lead agency for implementation. The Coastal Zone Unit within the Department provides the staff to support the Program, including the federally prescribed duties of a lead agency in applying for and administering federal coastal zone management funds, reporting periodically to the federal Office of Coastal Zone Management on implementation of the Program, and coordinating consistency reviews of federal actions.

Duties of the Department of Natural Resources include stewardship of the State's waters, fish and wildlife, forest, minerals, and recreational resources. The Secretary who heads the Department is responsible for:

> "...the development of coordinated policies for the preservation conservation, enhancement, wise use and perpetuation of the natural resources of the State. He is responsible for the efficient coordination of all natural resources activities of the State including the settlement of conflicts which arise among units within the Department of Natural Resources." (Natural Resources Article, Section 8-203(b)(1974)).

The Department may acquire by condemnation land, earth, gravel, stone, timber, material, or any improvement when necessary to carry out any legislative act or advance forestry, parks, recreation, or the work of the Department. The Department has a Board of Review consisting of seven members appointed by the Governor which hears appeals on any decision of the Secretary or unit of the Department, subject to administrative review.

The following units within the Department of Natural Resources are responsible for land and water use management programs:

Water Resources Administration (WRA)

Energy and Coastal Zone Administration (E&CZA)

Maryland Environmental Service (MES)

Maryland Environmental Trust (MET)

Capital Programs Administration (CAP)

Maryland Geological Survey (MGS)

Maryland Wildlife Administration (MWA)

Maryland Fisheries Administration (MFA)

Maryland Forest Service (MFS)

Maryland Park Service (MPS)

Boat Act Advisory Committee (BAAC)

Natural Resources Police (NRP)

Maryland Membership on Interstate Commissions

The Secretary of Natural Resources will issue a Secretarial Order which will formally establish the responsibilities of the various agencies of the Department in the implementation of the Coastal Zone Management Program. The Order will spell out procedures for agency participation in project evaluation, program review, and federal consistency reviews. (Figure I-2 is an organizational chart of DNR).

The Water Resources Administration of the Department of Natural Resources is responsible for the formulation of the State's Water Quality Management Program under Section 208 of the Federal Water Pollution Control Act Amendments of 1972. This program is the focal point of the State's attempt to manage water quality and the Coastal Zone through control of point and nonpoint sources of pollution as well as residual wastes and other regulatory and non-regulatory mechanisms, as appropriate.

The 208 Water Quality Management Program, when completed, will be an integral part of the Coastal Zone Management Program. Therefore, the staffs of the 208 program and the Coastal Zone Unit have and will work closely together in development of their two programs. They have recently issued a statement clarifying the relationship between the two programs. This statement stressed the following points:

1) The two programs have joint objectives for water quality management;

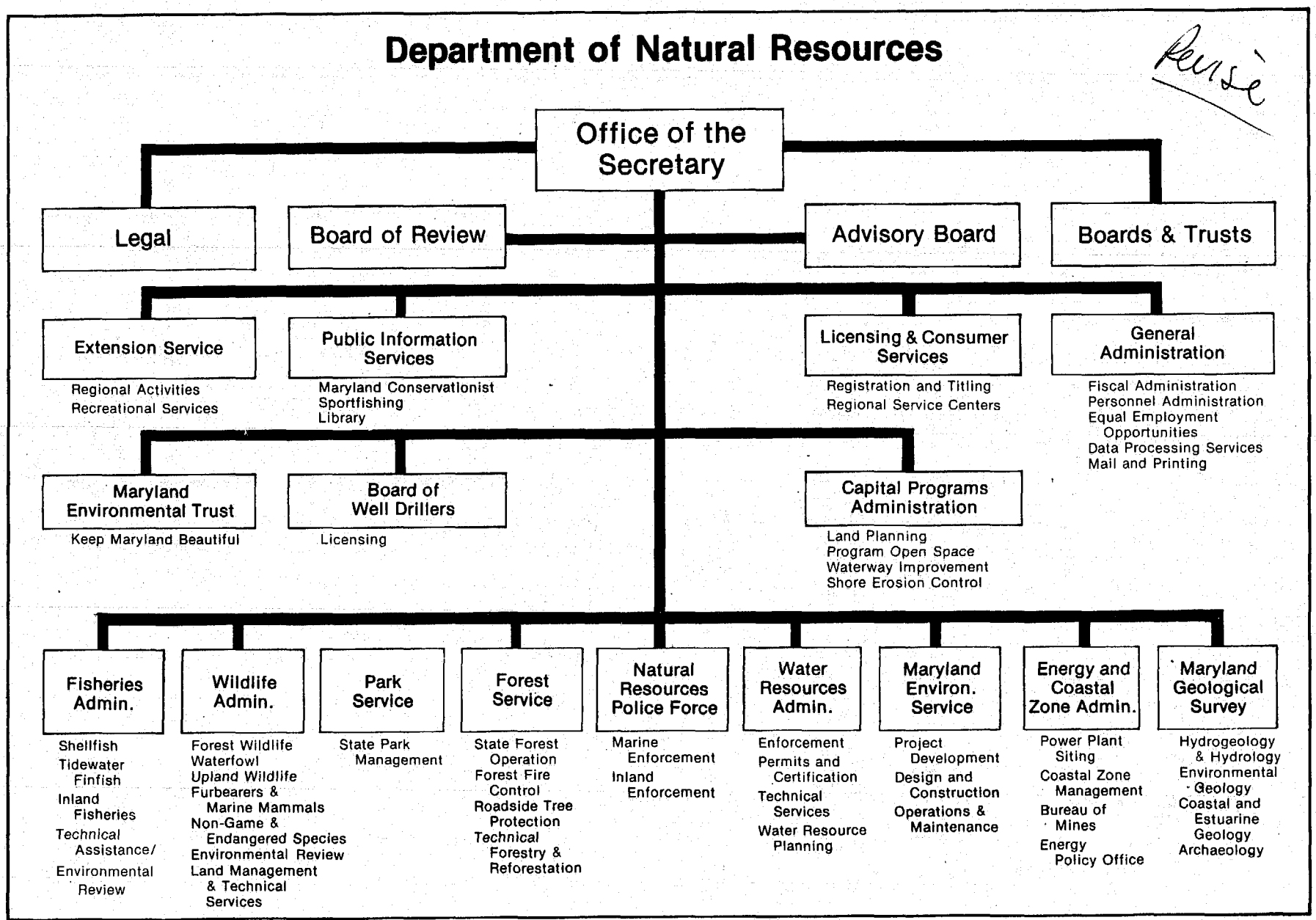
2) By virtue of the fact that the 208 program will be an integral part of the Coastal Zone Management Program when completed, the two programs will utilize the State's existing regulatory authorities for water quality management and other procedures as may be developed by the 208 program to accomplish these joint objectives;

3) Coordination in program development will be achieved through:

   a) joint utilization of the two programs' public participation mechanisms as much as possible; and

   b) Coastal Zone Unit support in the execution of the State's 208 work program is specified in that document.

Figure I-2


Department of Natural Resources
Office of the Secretary
Legal
Board of Review
Advisory Board
Boards & Trusts
Extension Service
Regional Activities
Recreational Services
Public Information Services
Maryland Conservationist
Sportfishing
Library
Licensing & Consumer Services
Registration and Titling
Regional Service Centers
General Administration
Fiscal Administration
Personnel Administration
Equal Employment Opportunities
Data Processing Services
Mail and Printing
Maryland Environmental Trust
Keep Maryland Beautiful
Board of Well Drillers
Licensing
Capital Programs Administration
Land Planning
Program Open Space
Waterway Improvement
Shore Erosion Control
Fisheries Admin.
Shellfish
Tidewater Finfish
Inland Fisheries
Technical Assistance/
Environmental Review
Wildlife Admin.
Forest Wildlife
Waterfowl
Upland Wildlife
Furbearers & Marine Mammals
Non-Game & Endangered Species
Environmental Review
Land Management & Technical Services
Park Service
State Park Management
Forest Service
State Forest Operation
Forest Fire Control
Roadside Tree Protection
Technical Forestry & Reforestation
Natural Resources Police Force
Marine Enforcement
Inland Enforcement
Water Resources Admin.
Enforcement
Permits and Certification
Technical Services
Water Resource Planning
Maryland Environ. Service
Project Development
Design and Construction
Operations & Maintenance
Energy and Coastal Zone Admin.
Power Plant Siting
Coastal Zone Management
Bureau of Mines
Energy Policy Office
Maryland Geological Survey
Hydrogeology & Hydrology
Environmental Geology
Coastal and Estuarine Geology
Archaeology

2. Department of State Planning

The Department of State Planning (DSP) functions as the Governor's principal planning department and serves all state and local agencies in an advisory, consultative, and coordinating capacity on state planning matters. While DSP powers are largely advisory, it has many responsibilities which give it great influence on a variety of state and local government activities. It uses its advisory influence to produce a balanced and integrated program for development and use of the State's resources.

The Department is presently preparing plans for the development of the State, including a State Land Use Plan. Once formalized, these plans will serve as a framework for the development, planning, and regulatory activities of all units of State government.

The Department of State Planning is responsible for preparation of the State's Capital Budget. It reviews all departments' capital improvements proposals for inclusion in the State Capital Budget, and assists all departments in preparation of short- and long-term capital improvements plans. The Department of State Planning also administers the A-95 Clearinghouse, prepares official State and county-wide and employment projections, and operates the Maryland Automated Geographic Information System (MAGI) which is available for use by other State agencies besides the Department of State Planning.

The major role of DSP in coastal zone management will be implementation of the two programs assigned to it by the State Land Use Act of 1974. These programs are the State Critical Areas Program (which will be the means of designation and management of Geographic Areas of Particular Concern within the coastal zone), and the review of local planning and zoning activities to determine when state intervention in land use decisions is necessary.

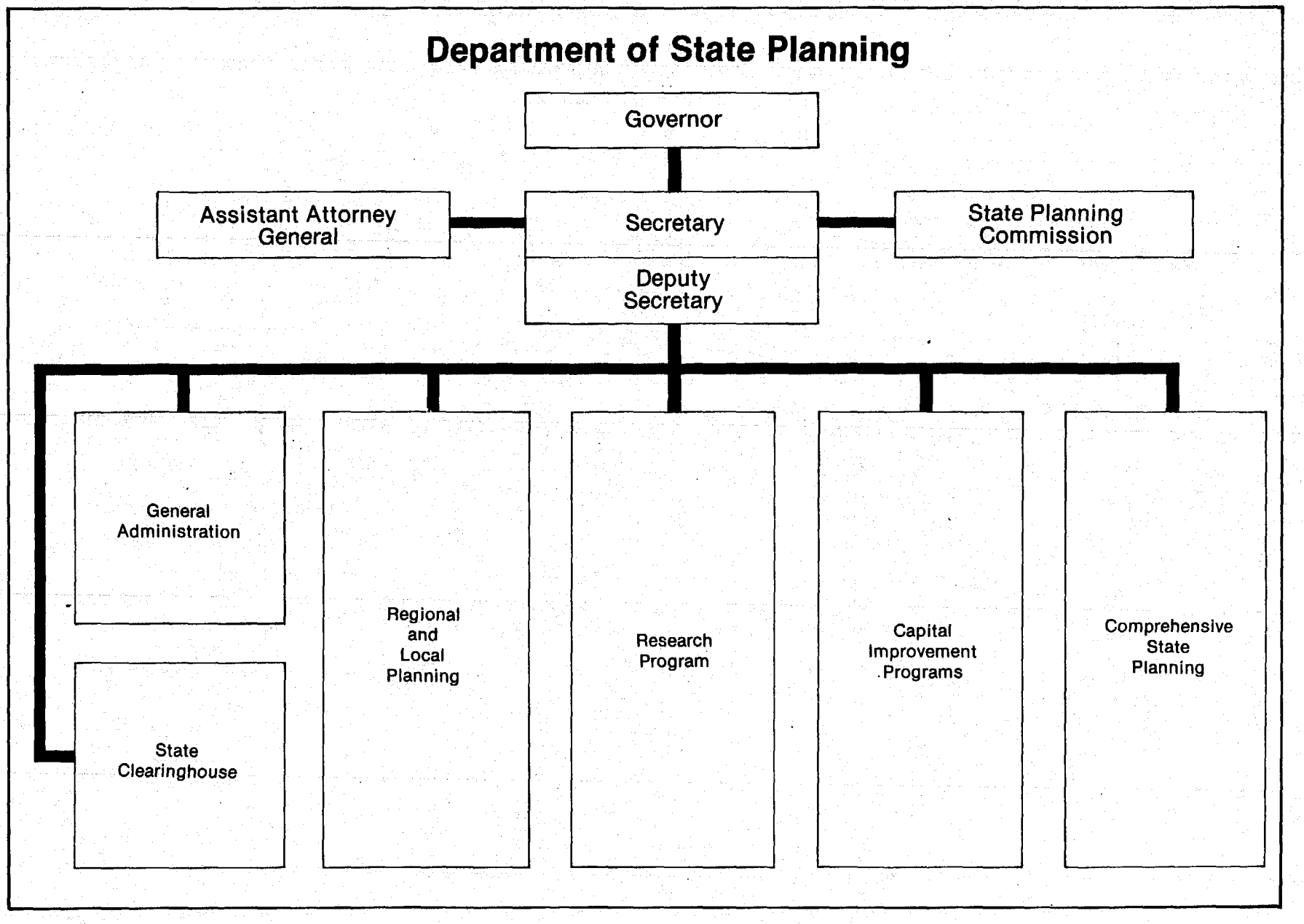
Because of this overview and coordinating role, DSP will be involved in project evaluations, program reviews and consistency reviews on a regular basis. Because of the major role DSP plays in coastal zone management, the staffs of DSP and the Coastal Zone Unit have worked closely in the development of the Coastal Zone Management Program. Points of agreement on program implementation have been formalized in a Memorandum of Understanding between the Secretaries of DSP and DNR (see Appendix I) and include:

Points of Agreement

a. Goals and objectives of the Coastal Zone Management Program.

b. Operation of the program within the framework of plans for the development of the State.

Figure I-3


Department of State Planning
Governor
Assistant Attorney General
Secretary
Deputy Secretary
State Planning Commission
General Administration
State Clearinghouse
Regional and Local Planning
Research Program
Capital Improvement Programs
Comprehensive State Planning

c. The procedure for Coastal Zone Unit participation in the process of Critical Area designation.

d. Department of State Planning intervention in local land use decisions concerning coastal resources upon request by Department of Natural Resources.

e. Plan and permit review by Department of State Planning using coastal zone management program goals and objectives.

f. Data management and the Maryland Automated Geographic Information System.

g. Cooperation between regional employees of the Department of State Planning and county-employed coastal technical assistants.

Figure I-3 shows the organization of the Department of State Planning.

Pause

2. The Department of Health and Mental Hygiene DOE?

The Department of Health and Mental Hygiene (DHMH), has an extremely wide range of responsibilities. As with DNR, all administrative units of DHMH answer to the same Secretary. All the responsibilities of DHMH which pertain to coastal zone management, however, are located within one DHMH administration - the Environmental Health Administartion (EHA).

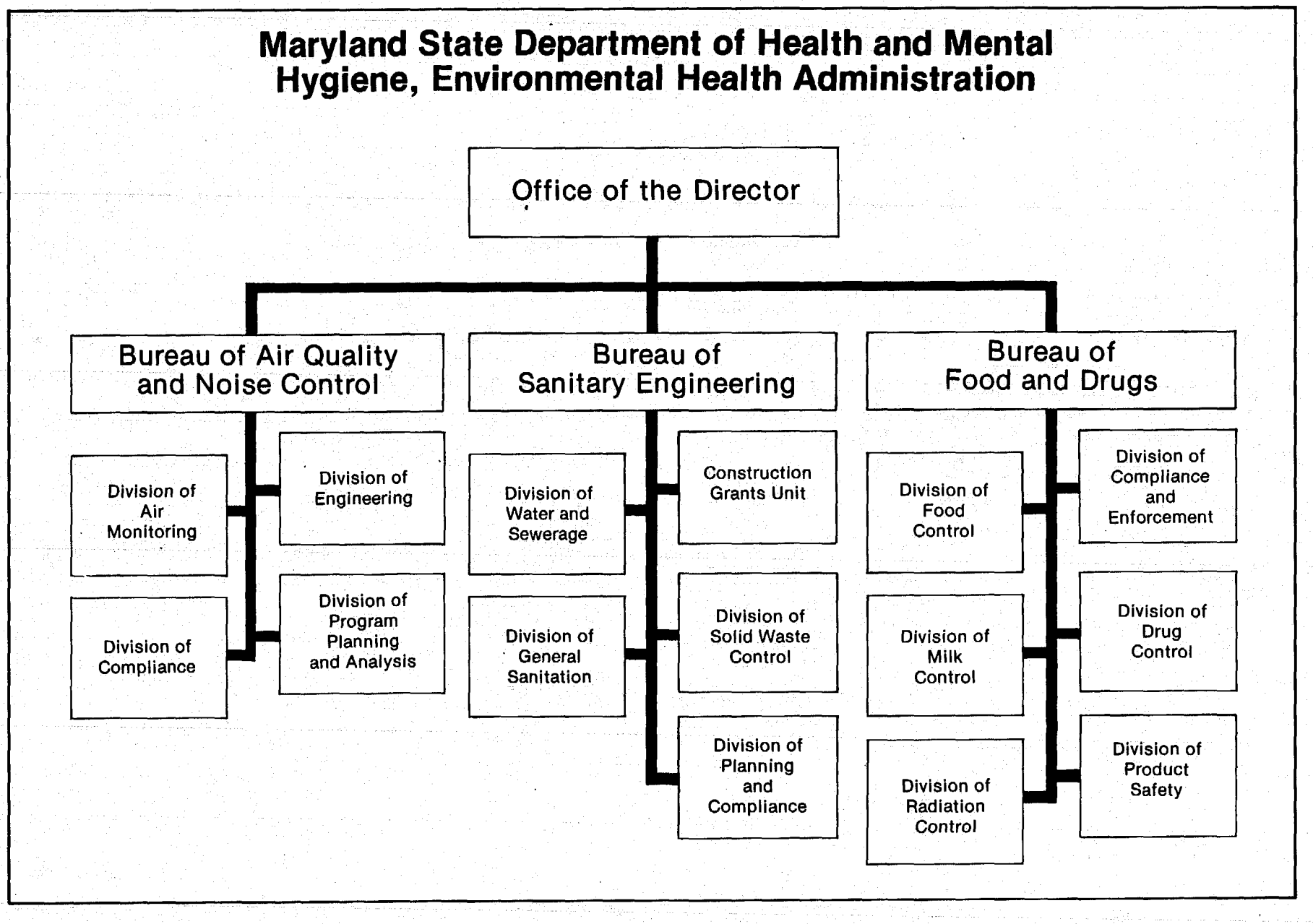
The Environmental Health Administration (EHA) assists WRA of the Department of Natural Resources in implementing the State's water quality program. The Environmental Health Administration administers sewage treatment facility construction grants authorized by P.L. 92-500 (federal Water Pollution Control Act Amendments of 1972) and the State's sewage treatment construction funds, in conjunction with DNR and DSP. It is responsible for overseeing the county water and sewerage planning process, establishing standards for individual water and sewerage facilities, and permitting the construction of water and sewage treatment facilities and individual additions to water and sewerage systems. Department of Natural Resources and EHA have exchanged a series of letters which establish procedures for the sewage treatment planning, funding, and permitting process. The relationship between DNR and EHA is also spelled out in the State's Continuing Planning Process for water quality.

The Environmental Health Administration is also responsible for the State's shellfish sanitation program, and determines when certain areas should be closed to shellfish harvesting. The Department of Natural Resources then enforces the closures. Department of Natural Resources and EHA have established a Memorandum of Understanding on the running of the shellfish sanitation program. Additionally, EHA is responsible for the State's air quality and noise regulation programs.

A Memorandum of Understanding between EHA and DNR on coastal zone management is being negotiated, and will address the following points:

a. Exercise of EHA's authorities consistent with the Coastal Zone Management goals, objectives and policies to the extent allowed by its legislative mandates.

FIGURE 1·4


Maryland State Department of Health and Mental Hygiene, Environmental Health Administration
Office of the Director
Bureau of Air Quality and Noise Control
Bureau of Sanitary Engineering
Bureau of Food and Drugs
Division of Air Monitoring
Division of Engineering
Division of Compliance
Division of Program Planning and Analysis
Division of Water and Sewerage
Construction Grants Unit
Division of General Sanitation
Division of Solid Waste Control
Division of Planning and Compliance
Division of Food Control
Division of Compliance and Enforcement
Division of Milk Control
Division of Drug Control
Division of Radiation Control
Division of Product Safety

b. Incorporation of air quality standards into the Coastal Zone Management Program, and involvement of EHA in project evaluations when air quality matters are concerned.

c. Incorporation of water quality standards into the Coastal Zone Management Program, and involvement of EHA in project evaluation when water quality, sewage treatment and refuse disposal are concerned.

d. Environmental Health Administration review of county water sewerage, and solid waste disposal plans for consistency with the goals, objectives, and policies of the Program.

e. Consistency of sewage treatment funding priorities and construction with the goals, objectives and policies of the Coastal Zone Management Program.

f. Participation of EHA in federal consistency reviews as appropriate.

Figure I-4 shows the organization of the Environmental Health Administration.

4. The Department of Transportation

The Maryland Department of Transportation (MDOT) has within its jurisdiction two administrative units which carry out major activities in the coastal zone. The State Highway Administration (SHA) is responsible for the State's primary and secondary road system and has extensive long-range highway planning responsibilities. It should be noted that all construction of highways by SHA requires grading and sediment control approval by WRA, as well as other permits involved in bridge or other stream bed alterations, or wetlands filling. Another unit of the Department of Transportation is the Maryland Port Administration (MPA) which was created for the purpose of improving existing port facilities and creating new port facilities when the public interest so requires. The Maryland Port Administration is involved in promoting and maintaining the Port of Baltimore and in developing other small port facilities in the State. Again, port development activities supported by MPA which involve dredging or filling require wetlands licenses and/or permits.

The Department of Transportation, in conjunction with other State agencies, has developed the Maryland Transportation Plan as the comprehensive statement of goals, objectives, and priorities of the Department of Transportation. Consistent with the Transportation Plan, the Department of Transportation has established an Action Plan which details the procedure by which transportation projects are identified, given funding priority, and routed and designed. The Plan provides for full participation of citizens, local governments and state agencies. While MDOT was required to establish this process only for highway plannig, it has also committed itself to applying the process to all modes of transportation (highway, port, aviation, rail, and mass transit).

The Department of Transportation has established an Action Plan which details the procedure by which transportation projects are identified, given funding priority, and routed and designed. The Plan provides for full participation of citizens, local governments and state agencies. While MDOT was required to establish this process only for highway planning, it has also committed itself to applying the process to all modes of transportation (highway, port, aviation, rail, and mass transit).

A Memorandum of Understanding between MDOT and the Department of Natural Resources will covers the following points:

a. Support of Coastal Zone Management goals, objectives, and policies in the transportation planning and construction processes through continued liaison between CZU and the MDOT comprehensive planning unit.

b. Methods by which project evaluation is carried out within the framework of the Action Plan and participation of DNR in that process.

c. Recognition of the Consolidated Transportation Program as an expression of the State's priorities for transportation funding, provided that projects therein meet State socio-economic and environmental standards and policies.

d. Recognition of the need for maintenance and enhancement of the State's ports, particularly the port of Baltimore, and the need for proper planning, design and implementation of port related facilities to minimize disruption of valuable environmental coastal resources.

e. Participation of MDOT in federal consistency reviews where transportation matters are involved (which will include, but not be limited to, all instances where roads cross navigable waters, and where commercially important channels are dredged).

5. The Department of Economic and Community Development

The Department of Economic and Community Development (DECD) was created to promote the economic and cultural welfare of the people of Maryland. The Department investigates and assembles information on the industrial opportunities and economic resources of the State, and encourages new industrial enterprises, expansion of existing businesses, and recreational and tourist development.

Important to implementation of the Coastal Zone Management Program are: (1) the assistance given by DECD to local governments in economic and community development planning, (2) acquisition and development of industrial park sites, and (3) the activities of the Maryland Historical Trust. DECD and DNR have developed a draft Memorandum of Understanding which will address the following major points:

a. Support of the Coastal Zone Management Program goals, objectives and policies in the Department of Economic and Community Development's promotional activities, programs for sustained economic development, and historic preservation activities.

b. Participation of DECD in the project evaluation process and recognition of the process as a means of resolving potential conflicts or making necessary trade-offs between environmental and economic goals for the coastal zone.

c. Participation of DECD in federal consistency reviews when matters of social, economic, or fiscal impacts of projects are involved.

d. Department of Economic and Community Development assistance to DNR in developing and implementing its Coastal Energy Impact Program.

The Department of Economic and Community Development has also accepted a major role in establishing the State Development Plan. The State Development Plan is mandated in Article 88C and is the responsibility of the Department of State Planning. These two departments have signed Memorandum of Understanding which clarifies their roles in development of the plan.

6. Department of Agriculture

The Secretary of Agriculture has general supervision, direction, and control of the provisions of the agricultural laws and "...generally of all matters in any way relating to the fostering, protection and development of the agricultural interest of the state," (AG Article Section 2-104(1974)). The important functions of the Department of Agriculture in coastal zone management include the regulation of pesticides, the preservation of productive agricultural land, and management of soil erosion problems.

Since the relationship of the Department of Agriculture and the Department of Natural Resources in the regulation of pesticides, hazardous substances and sedimentation is defined in the relevant legislation, it has not yet been determined if a Memorandum of Understanding is necessary. A Memorandum may be desirable to ensure the interests of the Department of Agriculture are fully represented in the program.

7. Independent Agencies

Two agencies which are not in these departments but which have coastal zone management responsibilities are the Public Service Commission and the Board of Public Works. The Public Service Commission comprises the Department of Public Utilities and is responsible for regulating common carriers and utility companies, including licensing of electric power plants. Its members are appointed by the Governor. In conjunction with the Power Plant Siting Program in the Department of Natural Resources, the Public Service Commission cannot license a power plant until it receives a recommendation on the site by the Power Plant Siting Program.

The Board of Public Works, consisting of the Governor, the Comptroller and the Treasurer of the State, is responsible for approving all disposition of state lands (including state wetlands). The Board of Public Works is responsible for approving expenditures of all sums appropriated through state loans, and funds appropriated for capital expenditures (except roads, bridges, and highways).

8. Maryland Council on the Economy, the Environment, and Energy

A Maryland Council on the Environment was created by an Executive Order of the Governor in 1970. This Council was reconstituted in June of 1978 by Executive Order 01.01.1978.08. The Council now consists of the Governor, the Lieutenant Governor, and the Secretaries of Budget and Fiscal Planning, Economic and Community Development, Health and Mental Hygiene, Natural Resources, State Planning and Transportation. The Council is to assist in the development of coordinated policy, and in the resolution of conflicts between the interests of private industry and the protection and development of the State's environment.

B. The Local Role

this section needs to be combined with the CBCAP plans.

1. Planning and Zoning

Resource management planning and decisions made at the state level often have wide-reaching land use ramifications. Nevertheless, the actual assignment of specific types of land use to specific areas, which we know as zoning, is and should remain the province of local governments in Maryland. State involvement in local land use decisions is required only when these decisions would produce an adverse impact on the State's natural resources, would interfere with the orderly operation of state-wide programs and furtherance of state policies, or would have implications for land and water uses in other jurisdictions. State participation in such decisions will occur through the intervention technique authorized in Article 88C, Section 2(q) of the State Code.

State administrative review of local development plans, zoning ordinances and variances, and special exceptions thereto for consistency with the state coastal management program is carried out by the Department of State Planning. The Department of Natural Resources and other departments assist DSP in this process. In cases where local decisions are in conflict with the State's interest DSP will intervene. Further explanation of the intervention technique, and how it can be used to meet the federal Coastal Zone Management Act authorities requirement, is provided later in this chapter, and in Chapter VIII. The full text of the guidelines for intervention in local land use decisions promulgated by the Department of State Planning is provided in Appendix E.

Maryland's local governments (counties and municipalities) are divided into three categories: chartered, non-chartered, and code. All have a similar, extensive degree of planning and zoning powers. Chartered counties are given an express grant of the State's police power (delineated in Article 24, Section 5). They may thus pass their own ordinances (so long as these do not conflict with state laws) and the State General Assembly may not pass a law specific to them. In effect, then, chartered counties have the most procedural freedom.

Non-chartered counties and municipalities exercise their planning and zoning powers pursuant to Article 66B, which spells out the relationship between comprehensive planning and zoning and certain procedures to which the county must adhere. While code counties may pass some ordinances in the manner of chartered counties, they derive their planning and zoning authority from Article 66B.

Has this changed?

The following are the coastal chartered, non-chartered, and code counties:

Chartered	Non-Chartered	Code
Anne Arundel	Calvert	Kent
Baltimore	Caroline	Worcester
Harford	Cecil	
Prince George's	Charles	
Talbot	Dorchester	
Wicomico	Queen Anne's	
	Somerset	
	St. Mary's	

Baltimore City is a municipality, but has a special charter. Its planning and zoning authority are spelled out in the State Code in Article 66B, Sections 2.01 to 2.11, and in the City Charter. Because of its size and importance, Baltimore City, like the counties, serves as a functional unit of the State for the implementation of state programs.

Revise

Table I-1 shows the date of the most recent comprehensive plan, the zoning ordinance, and the subdivision regulations of each coastal county and Baltimore City. It should be noted that many counties also have building codes. Consistent with the comprehensive plan must be the water, sewerage, and solid waste disposal plans of the county which show the staged development of servicing over a 10-year period. These plans - which must also conform to state level water supply and water quality planning - form the basis for evaluation of permits for construction of new hookups or facilities by the Environmental Health Administration.

The coastal zone boundaries, goals, objectives and policies, and geographic areas of particular concern are all guidelines for local governments' coastal zone management activities. Local governments will be asked to review all planning, zoning and other regulatory actions for consistency with the Coastal Zone Management Program. When actions occur that appear inconsistent with these guidelines, the Coastal Zone Unit (through project evaluation or program review) will determine whether the action is inconsistent, and will seek a consistent solution. When no consistent solution can be negotiated, the Coastal Zone Unit will request other state agencies with pertinent regulatory responsibility to enforce the guidelines of the Program. If this approach is not feasible, the Coastal Zone Unit will ask the Department of State Planning to intervene on behalf of the Program. The Department of State Planning has agreed to do this in the Memorandum of Understanding with the Department of Natural Resources. Further discussion of the local role in implementing the program will be found in Chapter V.

2. State Intervention in Local Decisions

The intervention authority is stated in Article 88C Section 2(q):

> The Department of State Planning shall have the right and authority to intervene in and become a party to any administrative, judicial, or other proceeding in this State concerning land use, development or construction. Upon intervention, the Department shall have standing and all rights of a party in interest or aggrieved party, including all rights to apply for judicial review and appeal. In addition, it may file a formal statement of environmental or economic impact expressing the views of the Department and any other unit of the State government. The right of intervention in any administrative, judicial or other proceeding in this State may be exercised only in accordance with applicable rules of procedure and law as they relate to the proceeding. The Department and the governing bodies of the local subdivisions shall establish procedures for notification of the Department of applications for zoning, permits, or authority to use, develop, or construct upon land which involves more than a local impact and is of substantial State or regional interest.

While the intervention regulations (see Appendix E for full text) make clear that intervention does not constitute a direct veto power, the technique does give the State a reasonable and rational mechanism for injecting the State's concerns into the decision-making process. Further, the Department of State Planning will be able to initiate an administrative or judicial appeal of a decision if it feels that the state viewpoint is not adequately taken into account.

revise

TABLE I-1

STATUS OF COUNTY PLANNING AND ZONING

County	Plan	Zoning	Subdivision Regulations	Building Code	P&Z Staff	Budget FY 76
Baltimore Metropolitan Area						
Anne Arundel	1972	1971	1969	X	48	$ 642,090
Baltimore City	1973	1971	1971	X	129	2,206,413
Baltimore County	1972	1974	1972	X	70	1,179,029
Harford	1969	1957	1959	X	15	224,054
Washington D.C. Metropolitan Area						
Prince George's	1964	1949	1961	X	117	2,184,520
Southern Maryland						
Calvert	1974	1967*	1972*	X	4	97,491
Charles	1974	1974	1974	X	7	97,000
St. Mary's	1974	1974	1974		7	168,366
Upper Eastern Shore						
Caroline	1967*	1967*	1972		2	31,760
Cecil	1974	1962*	1976	X	5	72,473
Kent	1975	1975	1975		4	31,870
Queen Anne's	1965*	1964*	1965*		5	54,665
Talbot	1973	1974	1974		4	39,900
Lower Eastern Shore						
Dorchester	1974	1975	1972		6	75,072
Somerset	1975	1971	+		4	32,950
Wicomico	1962	1968	1957	X	10	133,127
Worcester	1976	1965*	1967*		5	70,113

*Readopted in 1974

+Currently in adoption process

Intervention would mean little in a state in which local governments did not carry out an active planning and zoning process, since there simply would not be appropriate land use proceedings in which to intervene. This situation, however, is not the case in Maryland. All coastal counties have a comprehensive zoning plan and zoning ordinance which covers 100 percent of their land area. Zoning ordinances are backed up by subdivision regulations in all coastal counties. Comprehensive plans, as well as individual zoning decisions, are subject to Department of State Planning review. The intervention process thus is designed to support and take advantage of a strong, existing planning and zoning system.

An example of the use of the intervention procedure is found in the Otter Point Creek case. The Harford County League of Women Voters requested state assistance in a case involving a large-scale development which had potential for serious impact on Otter Point Creek marsh. Based on a report by the Coastal Zone Unit on the values of the marsh and the potential impact of the development, the Department of State Planning decided to intervene in the case. Specifically, it entered into the review of a decision by Harford County to allow a higher density of subdivision than was originally approved. The Department of State Planning also worked with the Department of Natural Resources to develop the State's position on the Corps of Engineers permit for the development and the associated state water quality certification. As a result of the intervention, the housing development was redesigned to move a portion of the development out of non-tidal marsh and flood plain areas and to institute stricter controls over the vegetation between the development and the marsh. As a result of the developer's agreement to these changes, intervention proceedings were dropped. (See Appendix E for full text of pleas).

The intervention procedure's greatest advantage, however, is that it can be used to prevent state-local conflicts, rather than simply to react to such conflicts. For example, if an area were zoned for high density development on a county zoning map but were within the boundary of wetlands, the county would be notified of this inconsistency with state law and policy through intervention. Whether or not the county zoning map reflected the wetlands boundary, the development would be generally unacceptable under the Wetlands Law. On the other hand, if all county zoning maps did reflect wetlands boundaries, the time, effort, and expense that went into a development proposal and its state level review could be saved.

C. Soil Conservation Districts relationship with CBCAP plans.

Each coastal county has a corresponding local soil conservation district within the Department of Agriculture. Each district commission consists of five Soil Conservation District supervisors, appointed by the State Soil Conservation Committee. A soil conservationist is assigned to the district by the U.S. Soil

Conservation Service. Under the State Sediment Control Law, the Soil Conservation Districts must approve sediment control plans before local governments may issue construction permits.

A major function of the district is to give farmers assistance in developing conservation plans for their farms. In addition, the districts may adopt and use regulations, subject to the Secretary of Agriculture's approval, to help conserve soil, water, other natural resources, and wildlife. At present, however, districts have found it necessary only to adopt advisory guidelines. The districts are playing a major role in the implementation of Phase II Water Quality Plans (non-point source pollution planning pursuant to Section 208 of the federal Water Pollutions Control Act Amendments of 1972).

The desirability of Memoranda of Understanding between DNR and the various coastal Soil Conservation Districts is under consideration. Since several units of DNR (notably the Water Resources Administration, the Forest Service, and the Wildlife Administration) have already established such Memoranda with the Districts, a set of Coastal Zone Managment Memoranda may be redundant. The Coastal Zone Unit will continue to explore means of ensuring coordination with the Districts, and among other DNR units, which would not add unduly to the Districts' administrative burdens.

D. Interstate Coordination

Maryland participates actively in several interstate coordination efforts. These efforts include efforts to improve a basic understanding and coordination of management efforts for the Chesapeake Bay, River Basin Commissions, and efforts to communicate with other coastal states in the Mid and South Atlantic regions on issues of mutual concern.

1. Chesapeake Bay

The Chesapeake Bay is the largest estuary in the United States, and the only estuary which is divided laterally between two states. This situation has led to a great deal of concern over coordinated management of this resource at both the federal and state levels. While informal management coordination has existed in the past, several recent activities have been directed at more formal coordination of research and management concerning the Bay.

In 1968 the Corps of Engineers undertook a major effort to catalog the existing conditions of the Chesapeake Bay. This effort culminated in The Existing Conditions Report. Subsequently, a Future Conditions Report was issued in 1977 to indicate what pressures are projected for the Chesapeake Bay in the future and to recommend management approaches to address such pressures. It is the State's understanding that the Corps of Engineers will ensure that efforts to implement these recommendations will be undertaken in a manner consistent with Maryland's Coastal Zone Management Program.

In 1975 Congress directed the Environmental Protection Agency to undertake a major five year study of the Chesapeake Bay. This Study, carried out by EPA in conjunction with both Maryland and Virginia, is directed at developing new information about several high priority problem areas, primarily the input of toxic substances into the Chesapeake Bay, eutrophication, and the decline of submerged aquatic vegetation. Also anticipated is a study of the management

network existing among federal, state, interstate and local agencies in the Bay area. As a result of this study, alternative means of improving management coordination will be proposed. The Department of Natural Resources has been given the responsibility for coordinating the State's inputs into the Chesapeake Study. Part of this responsibility will be to ensure the consistency of the efforts undertaken as part of the Chesapeake Bay Study with Maryland's Coastal Zone Management Program.

In April of 1977 the Governors of Maryland and Virginia called a Bi-State Conference of governmental officials, researchers, scientists and concerned citizens to assess the status of Chesapeake Bay resources and to discuss means of improving Bay management. This conference generated a high level of interest in both Maryland and Virginia. Subsequently, in 1978, both General Assemblies passed resolutions creating a Joint Maryland-Virginia Legislative Advisory Commissoin on Chesapeake Bay. The Resolution recognizes the Chesapeake Bay is a single natural system of great value and directs the Joint Maryland-Virginia Commission to report to the General Assemblies of both states prior to the 1980 session with recommendations on appropriate management and coordination of the Chesapeake Bay and on available alternative proposals for improved and effective coordination and management of the Chesapeake Bay and its uses.

discuss recent initiatives

2. River Basin Commissions

Maryland deals with impacts of major interstate tributaries which enter Maryland waters through participation in the following interstate organizations which are discussed in more detail in Chapter VII: The Susquehanna River Basin Commission, The Interstate Commission on the Potomac River Basin, and The Potomac River Fisheries Commission.

3. Regional and National Coordination

The Mid-Atlantic Governor's Coastal Resources Council serves as a means for the Mid-Atlantic States to communicate regularly on issues of regional concern. Its major focus has been on keeping the States of the region informed on issues concerned with the development of the Outer Continental Shelf and onshore and offshore impacts which may result. Maryland also participates in the Mid-Atlantic Fisheries Compact (see Chapter VIII, p) in the Coastal States Organization, and in periodic meetings of Coastal Zone Program managers in the South Atlantic Region.

III. Implementation

Four mechanisms will be used to ensure that all government units use their coastal management authorities to carry out the State's Coastal Zone Management Program. First, a consolidated set of goals, objectives, and policies for coastal zone management in Maryland has been promulgated (these are listed in the Executive Summary). These goals, objectives, and policies will be formalized through an Executive Order and through Memoranda of Understanding between the lead agency for coastal zone management - the Department of Natural Resources - and other government units. Second, an advisory group - the Coastal Resources Advisory Committee - has been established to represent local governmental program participants, citizens and special interest groups. Third, a procedure has been established by which individual proposals for projects which affect the coastal zone can be comprehensively evaluated for consistency with the state program. Fourth, a method for evaluating programmatic policies and decisions which influence coastal resources management has been established.

A. Goals, Objectives And Policies

The goals, objectives, and policies enumerated in Chapter III are consistent with policy statements in Maryland Law and Regulations and result from consensus of all interests and units of government with concerns and expertise in coastal zone matters. These goals and objectives will be formalized through the following process:

1. Certification of the Program by the Governor.

2. Formalization of the goals, objectives, and policies in an Executive Order of the Governor.

3. Establishment of Memoranda of Understanding between the Department of Natural Resources and each participant executive department[1] on (1) the participant department's role in implementing the goals, objectives, and policies, (2) the participant department's role in project and program evaluation, and (3) the interaction of specific programs of the department with coastal zone management.

4. Establishment of work agreements between the Department of Natural Resources and each county, which describe the tasks the local jurisdictions propose to accomplish in support of the goals and objectives including activities which assure compatible local and state plans, programs, management policies, and other joint actions relating to the coastal zone.

Revise case section →

B. Coastal Resources Advisory Committee

The Coastal Resources Advisory Committee has been formed to represent all participants in the Coastal Zone Management Program. The government of each coastal county and the Mayors of Baltimore City and Ocean City are represented on this Committee. Each county and the five regional citizen advisory groups each have chosen a citizen representative to the Committee. In addition, many interest groups are represented as voting members. Representatives of each of the six state executive departments, each of the federal agencies with coastal zone management responsibilities, and academic institutions provide non-voting technical support. Table I-2 shows the committee's compositionship.

The Coastal Resources Advisory Committee was constituted in June, 1977. The membership represents the organizations with responsibilities relating to coastal zone management and is able to function in the implementation of an approved and operational program.

The Committee provides a forum where entities involved in coastal resource activities can be kept aware of program actions and present their views on proposed program proposals. While the various interests represented on the Committee may

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[1]No Memorandum of Understanding is anticipated with the Public Service Commission or the Board of Public Works. The criteria these agencies must use in approving licenses for power plants and state wetlands alterations is defined by state law in such a way that they support the proposed coastal zone management program. Further, these agencies must rely on the evaluation and recommendations of the Department of Natural Resources in making licensing decisions. See Annotated Code of Maryland, Department of Natural Resources, Article Section 9-305 et seq., and Article 78A, Section 54.

TABLE I-2

Coastal Resources Advisory Committee

Appointed by Secretary Coulter

State Agencies

U.S. Department of Agriculture
U.S. Department of Economic & Community Development
U.S. Department of Health & Mental Hygiene
U.S. Department of State Planning
U.S. Department of Transportation (Md. Port Admin.)
U.S. Department of Transportation (other units)
Lt. Governor's Office
Maryland Boat Act Advisory Committee
Maryland Environmental Trust

Federal Agencies

U.S. Department of Agriculture
U.S. Department of Commerce
U.S. Department of Defense
U.S. Department of Energy
Federal Energy Regulatory Commission
Environmental Protection Agency
U.S. Department of Housing & Urban Development
General Services Administration
U.S. Department of Health, Education & Welfare
U.S. Department of the Interior
Nuclear Regulatory Commission
U.S. Department of Transporation

Special Groups

Bethlehem Steel Corporation
Chesapeake Bay Foundation
Chesapeake Bay Yacht Club Association
Chesapeake Research Consortium
Citizen Regional Representatives (5 at-large)
Delmarva Advisory Council
Delmarva Power & Light/Baltimore Gas & Electric and PEPCO (1 at-large)
Home Builders Association of Maryland
Izaak Walton League
League of Women Voters of Maryland
Maryland Aggregation Association
Maryland Association of Counties
Maryland Association of Realtors
Maryland Association of Soil Conservation Dist.
Maryland Bankers Association
Maryland Chamber of Commerce
Maryland Conservation Council
Maryland Farm Bureau
Maryland Petroleum Association
Maryland Watermen's Association
Maryland Wetlands Committee
Maryland Wildlife Federation
Regional Planning Council
Tri-County Council of Southern Maryland

Academic Institutions

Applied Physics Laboratory (Johns Hopkins University)
Center for Environmental & Estuarine Studies (University of Maryland)
Chesapeake Bay Center for Environmental Studies (Smithsonian Institution)
Chesapeake Bay Institute (Johns Hopkins University)
University of Maryland Graduate School

Appointed by Local Governments

Local Representatives

Anne Arundel	2
Baltimore	2
Calvert	2
Caroline	2
Cecil	2
Charles	2
Dorchester	2
Harford	2
Kent	2
Prince George's	2
Somerset	2
St. Mary's	2
Talbot	2
Wicomico	2
Worcester	2
Baltimore City	2
Ocean City	2

July, 1978

not always be in total agreement, the Committee's role as a regular communication channel ensures that they will be provided an opportunity to have their views considered and that they will be aware of the technical, environmental, and economic bases for decisions.

The Committee also provides a framework for formal public involvement and for coordination with local governments. Without the support of the public and of local governments which are aware of, have helped shape, and support the implementation of a Coastal Zone Management Program, there is little chance such a program will ever survive or effectively serve the public interest.

The Committee shall play an intensive advisory role in program implementation, primarily through the efforts of subcommittees and task forces. Each should have a broad composition containing representatives of State agencies, local governments, special interests, and citizen groups. Among the specific areas that the Committee, and the smaller groups it creates, may address include: (1) the Project Evaluation process, including the procedures and criteria that should be used in designating and evaluating projects; (2) the identification of coastal problems requiring further research and analytical studies for resolution; (3) the overall allocation of the Program's technical and financial resources; (4) Federal Consistency review; and (5) the implementation of the Coastal Energy Impact Program that was established by the 1976 Coastal Zone Management Act Amendments.

C. Project Evaluation

The purpose of the project evaluation process is to ensure that a comprehensive review is undertaken on all projects likely to have a significant impact on coastal resources. It should also enhance participation and communication in the existing comprehensive reviews of major facilities such as power plants, OCS/oil and natural gas facilities, sewage treatment plants and land transportation facilities. The process will not relocate decision-making in various agencies, nor will it require that regulatory or funding agencies exceed their statutory authority. It will ensure that all relevant factors - social, economic and environmental - are fully evaluated and that the activities of the various planning regulatory and enforcement agencies involved are coordinated before decisions are made.

1. Procedures for Initiating the Project Evaluation Process

In order to initiate the project evaluation process, a systematic procedure for alerting the Coastal Zone Unit to possible projects for evaluation must be established. Thus the Coastal Zone Unit will utilize the following sources of notification:

a. Counties: Counties will notify the Coastal Zone Unit of proposals for major facilities as described in Chapter III, "Land and Water Uses", and for other projects within the Coastal Zone which have potential for direct and significant impact on coastal resources. The type of activities likely to have such a potential are described in Chapter III. To accomplish such notification of the Coastal Zone Unit, the existing notification procedures already established by the counties with the regional staff of the Department of State Planning will be utilized to the greatest extent possible. In most counties, the Coastal Zone Management Program

has funded a technical assistant to work for the county on coastal zone matters. This person could assist the county in identifying projects for possible evaluation.

b. Department of State Planning - To implement its intervention responsibilities mandated by the State Lnad Use Act of 1974, the Department of State Planning screens and reviews zoning amendment applications, variances, special exceptions, comprehensive plans, subdivisions, and other land use actions of greater than local concern. The Department of State Planning's regional planners are responsible for the initial screening of local actions and notification of the State Office of projects which should be considered further for intervention activities. Additions to or changes to existing DSP criteria and procedures for screening and notification will be worked out to assure that CZU will be notified in an appropriate and timely manner. These criteria and procedures will minimize duplication and maximize cooperation between the agencies field and central offices. In addition, the DSP State Office will insure that the Coastal Zone Unit is notified of all proposed projects in the coastal counties in which the Department of State Planning is considering intervention.

Is this still the case?

The Department of State Planning is also responsible for the A-95 State Clearinghouse Process and the State Capital Budget and Program.

New Clearinghouse procedures will be developed, by the time of program approval, to assure proper Coastal Zone Unit participation in and review of projects through the State Clearinghouse. These procedures will minimize duplication and maximize cooperation between the two agencies without requiring additional or duplicate paper work of Clearinghouse applicants.

describe new procedures

The CZU will be provided an appropriate opportunity to comment on State Capital Budget and Program projects that are potentially in conflict with the goals, objectives and policies of the Coastal Zone Management Program.

All of these procedures will be in accordance with and in fulfillment of Memorandum of Understanding between the Department of Natural Resources and the Department of State Planning signed in February 1977.

c. Other State Agencies - The other state agencies fund, undertake, and permit projects in the coastal areas of the State. Through Memoranda of Understanding (and for other units of the Department of Natural Resources, Secretarial Order) procedures will be established for these agencies to submit projects to the Coastal Zone Unit that entail the potential for direct and significant impact on coastal resources. Types of projects likely to have such impacts are described in Chapter III.

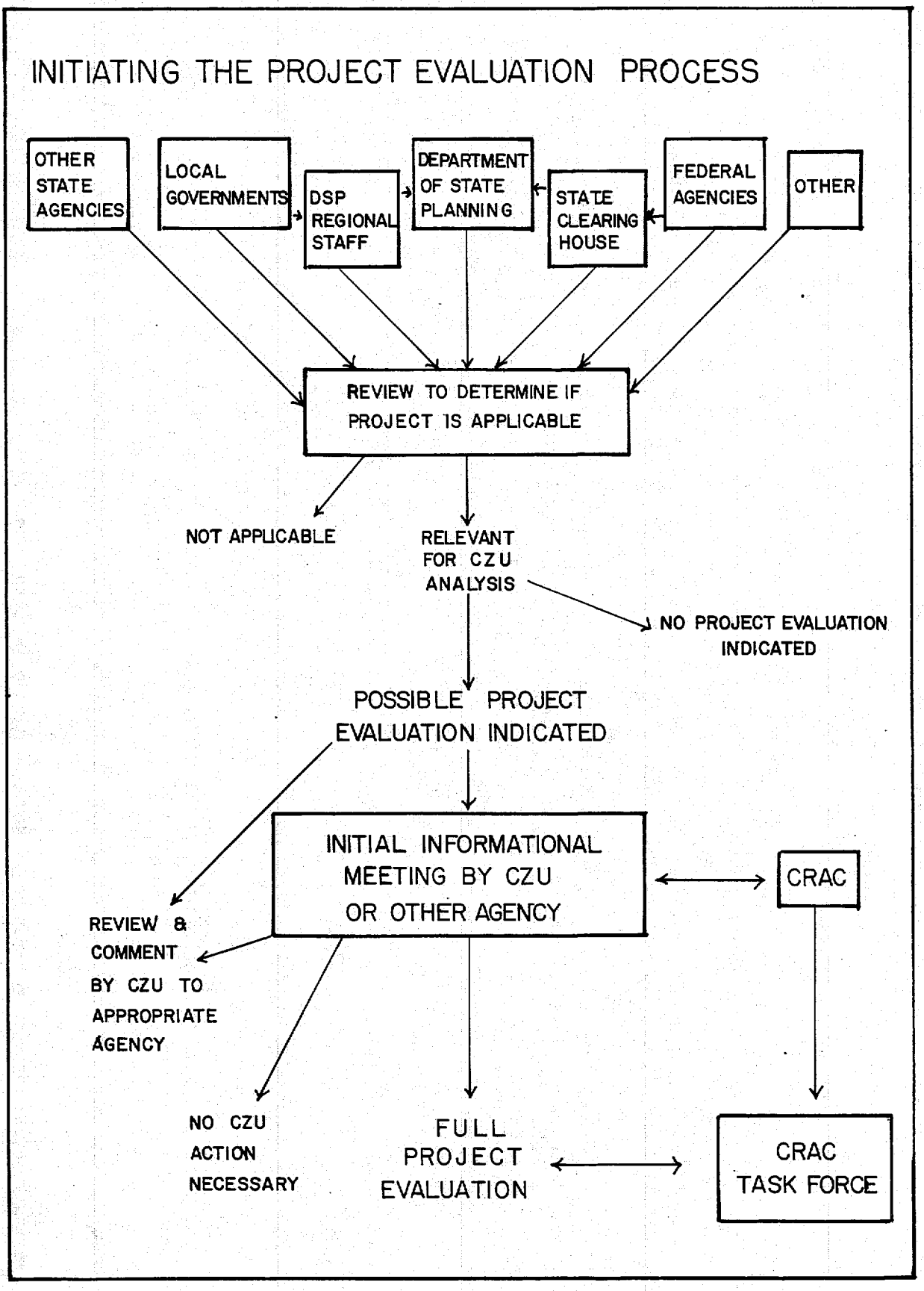
d. Federal Agencies - Federally conducted or funded projects appropriate for project evaluation will be identified through the State Clearinghouse process. Federally licensed or permitted activities will be identified through referral procedures spelled out in Chapter III, or will be established upon mutual agreement of the federal agencies and the Coastal Zone Unit.

e. Other Sources - Requests for project evaluation will be accepted from individual citizens, interest groups, other State agencies, and local governments, and will be reviewed by the Coastal Zone Unit for possible project evaluation.

2. Determining Applicability

The level of involvement of the Coastal Zone Unit in the evaluation of a project will depend upon the nature of the project and the scope of the existing regulating procedures. As shown in Figure I-5, the project evaluation process undertaken by the Coastal Zone Unit will consist of the following steps:

FIGURE 1-5


INITIATING THE PROJECT EVALUATION PROCESS
OTHER STATE AGENCIES
LOCAL GOVERNMENTS
DSP REGIONAL STAFF
DEPARTMENT OF STATE PLANNING
STATE CLEARING HOUSE
FEDERAL AGENCIES
OTHER
REVIEW TO DETERMINE IF PROJECT IS APPLICABLE
NOT APPLICABLE
RELEVANT FOR CZU ANALYSIS
NO PROJECT EVALUATION INDICATED
POSSIBLE PROJECT EVALUATION INDICATED
INITIAL INFORMATIONAL MEETING BY CZU OR OTHER AGENCY
CRAC
REVIEW & COMMENT BY CZU TO APPROPRIATE AGENCY
NO CZU ACTION NECESSARY
FULL PROJECT EVALUATION
CRAC TASK FORCE

a. Upon notification of a proposed project, the Coastal Zone Unit will review the project and decide (usually within 30 days) if it is applicable for Coastal Zone Unit consideration.

b. If it is decided that the project is of Coastal Zone Management concern, the project will be reviewed for possible conflicts with Coastal Zone Management Program objectives/policies.

c. If a possible conflict with the Program's objectives or policies is found, the Coastal Zone Unit will undertake (usually within 30 days) one of the following actions:

   i. Further review of the project and comment to the appropriate agencies on the aspects of the proposed project about which the Coastal Zone Unit has relevant information from its studies or from other sources.

   ii. Convene a meeting of relevant State and local agencies, and/or attend a meeting held by a State or local agency, to obtain more information on the project and to determine if coordination of governmental efforts is needed because of involvement of more than one unit of government. After these meetings, the Coastal Zone Unit may decide that (1) no further involvement is appropriate, (2) comments on certain aspects should be made to the relevant regulating agencies, or (3) a full project evaluation is necessary and the project should be submitted to CRAC for its consideration as described below.

   iii. Immediately submit the matter to CRAC because a full project evaluation is called for.

d. The full project evaluation process is described below. This level of evaluation would be automatic for most types of major facilities as defined in Chapter III **including** OCS/oil/natural gas facilities, sewage treatment facilities, and land transportation facilities. The other types of major facilities noted in Chapter III, namely industrial parks, mineral extraction facilities, and large-scale residential development, will be subjected to the project evaluation process and a full project evaluation undertaken if appropriate. In many cases, such as those involving power plants, sewage treatment plants, public ports, and transportation facilities, other governmental agencies may take the lead, with the Coastal Zone Unit participating as described in Chapter III and the respective Memoranda of Understanding. In such cases, coastal zone management concerns will be incorporated into existing evaluation and review procedures (including the time periods allowed for review).

A full project evaluation will also be undertaken, after consultation with the Coastal Resources Advisory Committee, on projects (1) upon request from other state agencies or local units of government in consultation with the Coastal Zone Unit, (2) upon determination by the Coastal Zone Unit staff that a full project evaluation is necessary to ensure a comprehensive review of the project to determine its consistency, or (3) upon request from citizens or interest groups, provided that the Coastal Zone Unit agrees that a full project evaluation is needed to assure consistency with the program's goals and objectives.

All requests for project evaluation will be subject to one of the above levels of review, and the rationale for choosing the level of review selected will be documented. The undertaking of a project evaluation will be timed so that the results will be available to relevant state and local decision-makers.

3. Procedures for a Full Project Evaluation (See Figure I-6).

a. After notification has been made that a coastal project is proposed and an initial determination has been made by the Coastal Zone Unit that a full project evaluation is warranted, the project will be submitted to CRAC for its consideration. If CRAC indicates that its involvement is warranted, a task force will be established immediately to aid the Coastal Zone Unit in the project evaluation. A meeting of the CRAC task force will then be held on possible issues that should be considered. The Coastal Zone Unit, at appropriate points during the project evaluation, will also meet with the CRAC task force to obtain its comments.

b. A technical round-table meeting will be convened for technical representatives of relevant governmental units and the applicant (if he desires to participate). The purpose of such a meeting will be to determine:

i. The issues which need evaluation including any related to national interest concerns.

ii. The information required by various approving authorities.

iii. The methods to be used to evaluate the project.

iv. The in-house information-gathering and analysis that each participating agency will undertake.

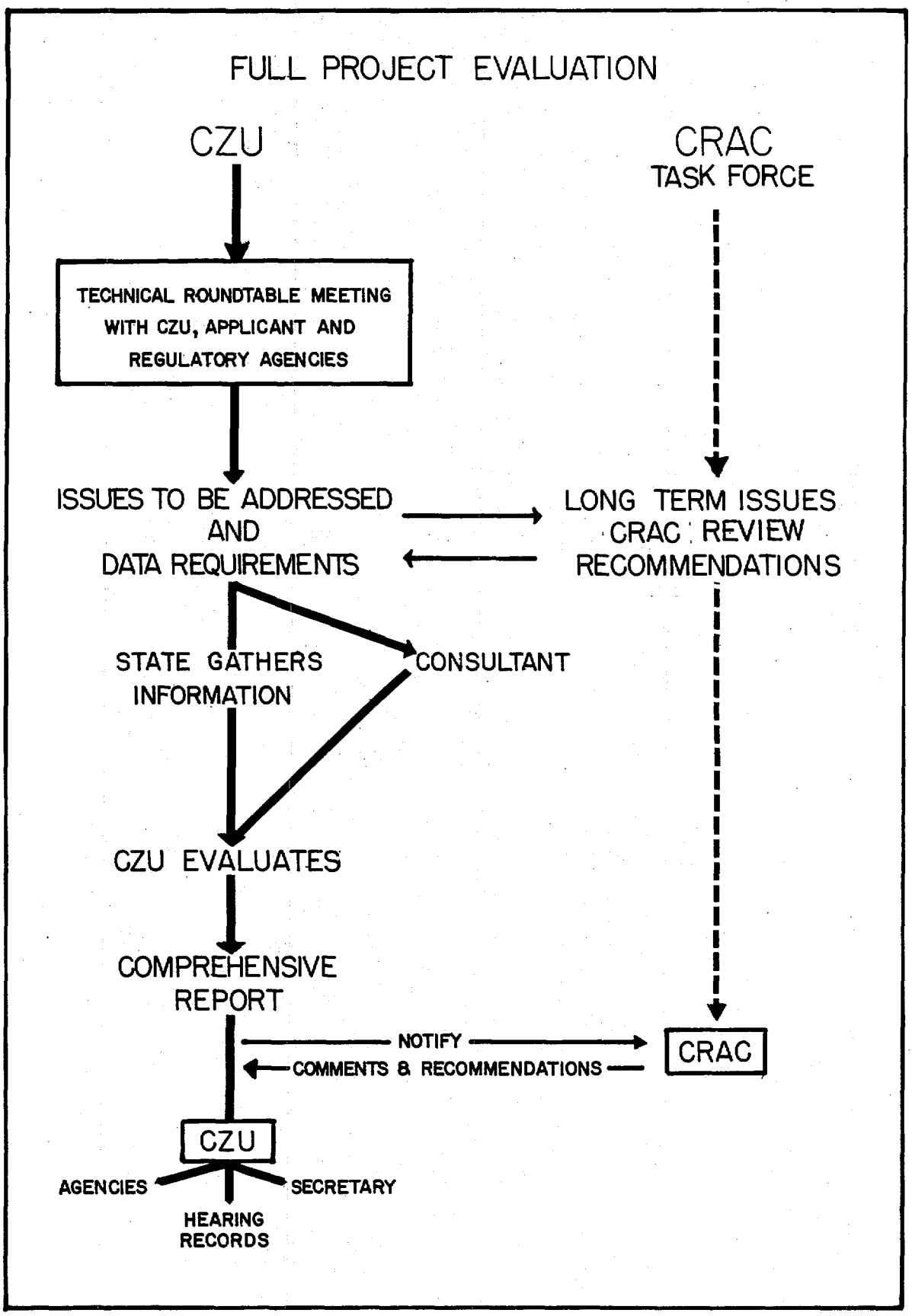
v. Additional information that will be required through contractual studies.

The Coastal Zone Unit will send to the CRAC task force a summary of the results of the meeting for its review and comment.

c. Following the round-table meeting, the Coastal Zone Unit will initiate the technical analysis of the project, which will consist of:

i. Gathering information on the nature and extent of the proposed project and the characteristics of the area in which it is to be undertaken. Appropriate maps and other existing sources of information will be used.

FIGURE 1·6


FULL PROJECT EVALUATION
CZU
CRAC
TASK FORCE
TECHNICAL ROUNDTABLE MEETING WITH CZU, APPLICANT AND REGULATORY AGENCIES
ISSUES TO BE ADDRESSED AND DATA REQUIREMENTS
LONG TERM ISSUES CRAC REVIEW RECOMMENDATIONS
STATE GATHERS INFORMATION
CONSULTANT
CZU EVALUATES
COMPREHENSIVE REPORT
NOTIFY
COMMENTS & RECOMMENDATIONS
CRAC
CZU
AGENCIES
SECRETARY
HEARING RECORDS

ii. Necessary contractual studies.

iii. Analysis of alternatives with the project, without the project, and with modification of the project.

iv. Incorporation of the results of analysis by the other government agencies.

v. Quantification of the impacts (economic, social, and environmental) wherever possible, associated with each of the alternatives.

d. Upon completion of a project evaluation, the findings and recommendations of the project evaluation, including any related to national interest concerns, will be brought by the Coastal Zone Unit to CRAC for its review. The findings and recommendations along with CRAC's comments will be submitted to the Secretary of Natural Resources and the relevant regulatory agencies for their action and for inclusion in public hearing records on any regulatory decisions that may be involved.

4. Considerations in Undertaking a Full Project Evaluation

The following factors are to be considered to determine whether they should be examined in detail in a full project evaluation. These will include but are not necessarily limited to the following:

A. Potential Environmental, Social, Economic Impacts

1. water quality impacts (point discharges, non-point discharges including stormwater runoff, sedimentation, toxic discharges, etc.)

2. air quality impacts

3. dredging and filling associated with the project

4. impacts on wetlands

5. impacts on fisheries

6. impacts on wildlife

7. rare and endangered species that may be affected

8. flooding and/or erosion risks related to the project

9. impacts on surface and/or groundwater supplies

10. impacts on agricultural and forestry resources

11. impacts on areas of recreational, aesthetic, historical or archeological significance

12. social, economic and cultural impacts, whether beneficial or adverse

13. impacts on coastal dependent developments

14. cumulative impacts resulting from similar developments

15. adequacy of public services proposed for project

16. impacts of projects on existing public services (water and sewer, transportation facilities, etc.)

B. Planning Concerns

1. The relationship of the project to local comprehensive plans, water and sewer plans, zoning and other local regulations and the position of the local government on the project

2. The compatibility of the project with the state land use, fiscal, economic transportation

3. Concerns of interested State and federal agencies

4. Key concerns of interested or affected citizens

5. Public Information Activities Related to Project Evaluation

In order to keep all interested parties aware of the projects which are being evaluated, the Coastal Zone Unit will:

a. Notify counties of all projects impacting their jurisdictions which the Coastal Zone Unit is going to evaluate.

b. List and briefly describe (location, type of activity) all projects subject to a full evaluation in the Maryland Register.

c. Briefly describe in the minutes of the meetings of the Coastal Resources Advisory Committee the status of project evaluations underway and the recommendations of the Committee regarding projects proposed by the Coastal Zone Unit for project evaluation. Anyone can request to be put on the mailing list to receive copies of these minutes.

d. Report project evaluation activities in the Coast and Bay Bylines.

e. Prepare and distribute news releases regarding full project evaluations to ensure that concerned or affected persons are aware of projects being evaluated.

f. Explore means of further dissemination of this information with the Department of Natural Resources' Office of Public Information.

D. Program Review

In addition to evaluating the impacts of large construction projects on a case by case basis as described under Project Evaluation, the Coastal Zone Management Program will review existing programs laws, regulations, and procedures deal with coastal resources and activities for their consistency with the Coastal Zone Management Program. The impact of new programs and procedures concerned with coastal resources will also be reviewed.

1. Proposed legislation affecting coastal resources and activities.

2. Issuance of new or amended regulations for any of the laws cited in this document (e.g., wetlands, water quality standards, State Critical Areas program).

3. Development of federal and state plans on which substantial future resource management decisions will be based (e.g., water quality management Plans, 208 plans, transportation plans, state development plans).

4. Development of local comprehensive and water and sewerage plans, annual comprehensive and water and sewerage plan updates, comprehensive rezoning based upon the comprehensive plan, etc.

5. Patterns of decision-making on small, individually insignificant projects which cumulatively have severe, adverse impacts on coastal resources.

The purpose of such reviews is to create a forum in which all program participants can (1) define conflicts or potential conflicts between programs or actions and the goals, objectives and policies for coastal resource management, (2) identify conflicts or inconsistencies between programs involving coastal resources and activities, or different state agencies, or state and local governmental agencies, (3) determine whether the conflicts arise from lack of technical information, and if so, call on the Coastal Zone Unit to supply such technical information, and (4) make formal proposals for administrative or legislative remedies, if necessary.

One of the most important roles of the Coastal Zone Unit in program reviews will be to determine the cumulative impacts of individual projects, and to identify when such actions may begin to have major adverse impacts on natural systems or on economic and social well-being, both in localized areas and in the Chesapeake Bay and Atlantic coastal bays system. Once a greater understanding of cumulative impacts is obtained, the Coastal Zone Unit will work with other governmental units to ensure that consideration of cumulative impacts are given sufficient weight in the decisions of state and local government, so that significant adverse impacts are prevented in order to provide the information base needed to undertake such evaluation, the Coastal Zone Unit will work with relevant government agencies regulating or funding coastal activities, to establish project tracking systems which would contain information on the type of project proposed, its location, and action taken on it.

Program review will take place at two levels. The first level will involve cooperative efforts among the Coastal Zone Unit, other state agencies, and/or local governments to resolve inconsistencies and policy differences between the Program's goals and objectives and state or local governmental programs. The technical assistants working with local governments, funded by the Program,

will provide needed staff support to enable local governments to participate in such reviews. In these situations, cooperative work efforts between the Coastal Zone Unit and state agencies and/or local governments should be sufficient to resolve the conflicts. An example of this type of review would be review and modification of local zoning ordinances and state regulatory policies, to ensure that compatible criteria are used at state and local levels for the siting of marinas and associated recreational boating facilities.

The second level of program review would involve situations in which there are major policy conflicts between program objectives, or in which inadequacies in existing programs are identified which need legislative or significant administrative remedy. For example, the question of providing adequate protection to non-tidal wetlands, while allowing reasonable use of coastal areas for agricultural practices, residential development, may require review.

A program review will be initiated upon determination of a programmatic inconsistency by the Coastal Zone Unit, upon request for assistance by other state agencies or local governments, and upon presentation of issues for programmatic conflicts by citizens, organizations, and other interested groups. Proposals for program reviews will be brought to CRAC for its advice. Since the first type of review will involve an agreed-upon approach to resolution of the problem, the review effort will be more informal, with a commitment to implement the review results at both the state and local level by appropriate agencies. In the case of the second type of review involving significant policy differences and possible program changes, a more formalized approach will be necessary.

As with project reviews, the first step will be a meeting of all appropriate agencies to discuss (1) the nature of the conflict or inadequacy, (2) specific issues the review should address, and (3) information that may be needed to resolve the issues. The Coastal Zone Unit, with the assistance of appropriate agencies, will then undertake a detailed study of the issue, and will prepare a report describing the issues involved, possible alternatives for resolution, and their ramifications. Such alternatives may involve legislative action or significant changes in administrative regulations.

The report containing the Unit's findings will be submitted to the CRAC for its review. The Unit's report containing suggested actions will be forwarded to the Secretary of Natural Resources and other governmental bodies. They will then take action to resolve the issues (including seeking new legislation if needed).

IV. Conflict Resolution

Each of the implementation tools described - goals, objectives, and policies, the Coastal Resources Advisory Committee, the project review process, and program review - are designed to enhance coordination and resolve potential conflicts before they appear. Whenever, in the process of project evaluation or program review, intergovernmental conflicts arise that cannot be resolved through those procedures, the following resolution mechanisms will be employed:

A. State-Local Conflicts

The Department of State Planning will be asked to intervene in any irresolvable conflict between the actions of state agencies or local governments and the goals and objectives of the Coastal Zone Management Program. While the final decision to intervene resides with the Secretary of State Planning, the Department of State Planning has agreed to use Coastal Zone Management Program goals and objectives in making determinations on when to intervene, and to honor requests of the Department of Natural Resources for intervention. Information developed as part of project evaluation or program review will be entered into the hearing record involved. The Coastal Zone Unit will develop any additional technical information necessary to support the intervention by the Department of State Planning.

B. Intradepartmental Conflicts

The Secretary of Natural Resources has issued a Secretarial Order which requires that all Units of the Department of Natural Resources ensure that their activities are consistent with the goals, objectives, and policies of the Coastal Zone Management Program. All Units are further directed to fully cooperate with and whenever appropriate actively participate in both the project evaluation and program review processes.

Any conflict that arises between the Coastal Zone Unit and another agency of the Department of Natural Resources concerning the implementation of the Program which cannot be resolved at the staff or administrative level, will be referred to the Secretary's office for resolution, based on the Secretary's interpretation of the goals and objectives of the Coastal Zone Management Program.

C. Interdepartmental Conflicts

Conflicts which arise between the Department of Natural Resources and other state departments in the implementation of the Program which cannot be resolved at the staff level or through remedies proposed by the Coastal Zone Unit with the advice of the Coastal Resources Advisory Committee, will require cabinet level negotiation. As head of the lead agency for implementation of the Coastal Zone Management Program, the Secretary of Natural Resources will take appropriate action to resolve such conflicts through cabinet level negotiation and, if necessary bringing them to the attention of the Governor. If the Secretaries or the Governor deem it appropriate, the Maryland Council on the Economy, the Environment, and Energy Production can be convened to consider the problem. The Governor, as head of the Executive Branch, is, and will remain, the final arbiter of any interdepartmental conflicts. The Program, however, now provides two sources of guidance in resolving such conflicts; these are (1) the goals, objectives and policies of the Program, which the Governor formally recognized in Executive Order 01.01.1978.05, and (2) the Memorada of Understanding in which procedures each department will follow are enumerated.

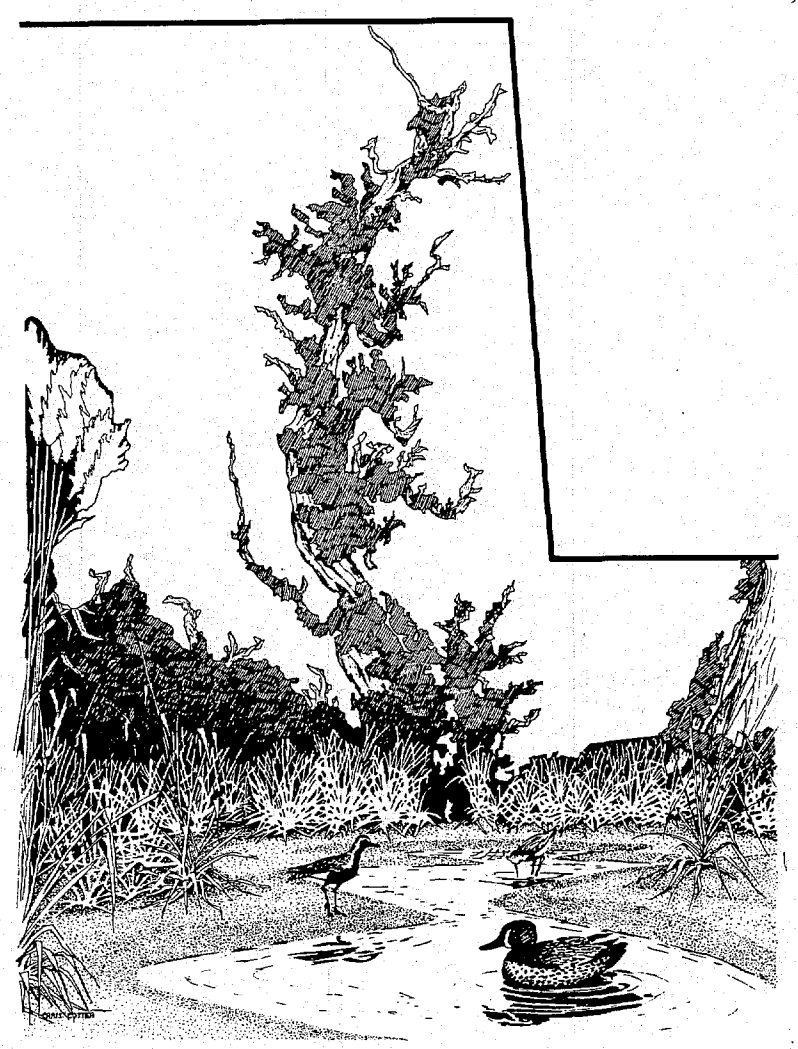
D. State-Federal Conflicts

State-federal conflicts can be minimized through continuing active participation of federal agencies in the program, through membership in the Coastal Resources Advisory Committee, and through participation in project evaluation and program review. Disagreements which arise over the conduct of federal activities or the exercise of federal authorities in Maryland's coastal zone will be resolved through mediation by the Secretary of Commerce as spelled out in NOAA regulations 15 CFR 930 subpart G (43 FR 10510 et seq., March 13, 1978).

In situations where Federal Interagency conflicts are perceived as obstacles to achieving CZM goals and objectives, or contributing to inconsistencies with CZM policies, the CZU will work with DSP, and other State agencies as appropriate to gain the assistance of the Federal Regional Council or the Federal agencies directly to resolve any problems. Additional discussion of this issue is contained in the section of the Federal Consistency.

CHAPTER II

MARYLAND'S COASTAL ZONE BOUNDARY



II. MARYLAND'S COASTAL ZONE BOUNDARY

Legislative Requirements

The federal Coastal Zone Management Act (P.L. 92-583) requires that each state program include "an identification of the boundaries of the coastal zone subject to the management program" (Sec. 305(b)(11)). The Act's definition of "coastal zone" includes:

> "... the coastal waters (including the lands 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 ... seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelands only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on 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" (Sec. 304(a)).
>
> Coastal waters are defined as "... 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" (Sec. 304(b)).

Based on the Coastal Zone Management Act of 1972 and the regulations promulgated under the Act, the federal Office of Coastal Zone Management has stated that the following areas, at a minimum, must be included within the coastal boundary:

1. All the coastal waters of a state extending from the State's three-mile jurisdictional limit inland to include the waters of the State containing a reasonable quantity or percentage of seawater.

2. Areas which are subject to periodic inundation by the tides, as well as adjacent areas where ecological systems are neither intertidal nor upland in nature, but which are distinctly affected by the pressure of tidal waters. These areas are termed transitional and intertidal areas.

3. Salt marshes and wetlands where the vegetation and wildlife are dependent upon the periodic inundation of tidal saltwater.

4. Beaches at least up to the line of vegetation, where identifiable.

5. Upland areas to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters.

Of these five areas, the State exercises direct control over three. The tidal waters of the State and the lands lying beneath are held in trust and managed by the State. This authority, provided by the Wetlands Act, extends to the sproing or seasonal high tide line in the case of vegetated wetlands, and therefore includes all the State's tidal wetlands. Beaches up to the Mean High Water (MHW) line also fall under the Wetlands Act. In addition, Atlantic Coast beaches are regulated directly by the State, in cooperation with Worcester County, through the Beach Erosion Control District. The remaining areas, beaches above the MHW line and upland areas, are regulated by county comprehensive zoning, with state reviews and possible intervention. Activities in these areas are also subject to the numerous state performance standards implemented by State and local government programs.

The areas which must be excluded from the coastal zone are those lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents, and the ocean waters of the United States beyond the State's three-mile jurisdictional limit. However, the Act provides that activities in such areas which may have an impact on the State's coastal zone must be consistent with the Program to the maximum extent practible. Thus, the State maintains an interest in some activities in these areas. Excluded federal lands are identified on the maps following this chapter.

Finally, the regulations advise that "The area (included in the coastal zone boundary) 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 " (Sec. 923.11(b)(1)). The procedure developed for identifying the coastal zone management boundary is fully described in Appendix A.

The Maryland Coastal Zone Boundary

Maryland is defining the management boundary of the Coastal Zone Program as the inland boundary of the counties bordering the Atlantic Ocean, Chesapeake Bay and the Potomac River, as far as the municipal limits of Washington, D.C. This includes each of the following local jurisdictions: Anne Arundel, Baltimore City, Baltimore, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Prince George's, Queen Anne's, Somerset, St. Mary's, Talbot, Wicomico and Worcester (see Map 1). This boundary encompasses all the areas whose inclusion is required by the federal Office of Coastal Zone Management. Seward in the Atlantic Ocean, the coastal zone boundary extends to the limit of Maryland's three-mile jurisdiction.

In addition, within each of these 17 local jurisdictions an "Area of Focus" is identified as a geographic guideline for program implementation. The "Area of Focus" is generally based on the 100-year flood plain bordering the tidal waters of the State. This two-level boundary reflects the fact that activities taking place on the shorelands bordering Maryland's coastal waters (the lands included within the Area of Focus) have a greater likelihood of having a direct and significant impact on these water than activities taking place elsewhere. This concept has already been established in Maryland law. Activities occurring in or adjacent to the waters of the state are more often subject to regulation than activities

occurring further inland. Two examples of this regulation are the Wetlands Act of 1970 and the Watershed Management Act of 1976. The Area of Focus represents the way the CZU has administratively incorporated this concept into the CZM Program.

The overriding factor in using the 100-year flood plain was hydrologic. The 100-year flood plain contains all areas which drain directly into the tidal waters of the state, all tidal wetlands, all beaches, and with the addition of bluff areas, the Area of Focus also encompasses all significant coastal hazard-prone areas. In addition, the local governments are required to develop watershed management plans for the 100-year flood plain area to address flood control and water quality issues.

The Area of Focus in each jurisdiction has been defined in cooperation with each of the local governments. The Area of Focus proposed for each of the Counties and municipalities in the coastal zone is described in Table II-1 and is shown on the maps concluding this chapter.

Differences between the delineation of Areas of Focus in each county are due to differences in physiography or development pressures among the counties. The suburban counties of the metropolitan Baltimore region, for example, requested a wider Area of Focus because of the intense growth pressures in that area. In southern Maryland, where there are high bluffs along the Bay and Potomac River and the flood plain is extremely narrow, an additional setback is included. In counties where a county planning or zoning district corresponds to or slightly exceeds the flood plain, the boundary of such a district is used at the request of the county government. Where contour lines or set distances from the shoreline are cited, these distances generally correspond to the 100-year flood plain.

The Area of Focus extends seaward to the extent of the State's jurisdiction in tidal water. Thus, it includes the Maryland portion of the Chesapeake Bay, and the ocean coastal waters as far as the three-mile limit. It also includes the Potomac River to the mean low water line on the Virginia Shore.

The significance of the Area of Focus designation is the relationship to the project evaluation procedures described in Chapter I. The Area of Focus represents the geographic threshold beyond which only major facilities will be subject to full project evaluation, unless special circumstances warrant this consideration (See Chapter III for delineation of major facilities). Within the Area of Focus, the Coastal Zone Unit will be notified of <u>all</u> projects which may have a potential for significant impact on the State's coastal waters or which may be inconsistent with the goals and objectives of the Coastal Zone Management Program. This notification requirement will apply to any projects that require state and/or local approval, as described in Chapter I. Local governments, with the aid of technical assistants funded by the Coastal Zone Management Program, are expected to have primary responsibility for identifying those projects within the Area of Focus which will need impact evaluations.

The other aspects of the Coastal Zone Management Program that will receive special consideration in the Area of Focus are Geographic Areas of Particular Concern (Chapter IV), the Coastal Zone Unit's role in intervention proceedings (Chapters I, VI and VIII), and technical assistance provided to counties (Chapter V).

In an Area of Focus, all sites designated by the Department of State Planning as State Critical Areas will also be termed Geographic Areas of Particular Concern (GAPC). Each State Critical Area outside an Area of Focus will be considered separately for GAPC designation. As the Coastal Zone Unit considers which areas to recommend as State Critical Areas, the Unit will generally limit its considerations to sites within the Area of Focus. However, the Unit will consider all sites where major facilities (as defined in Chapter III) are concerned, whether or not they are in an Area of Focus.

The first priority for Coastal Zone Unit participation in intervention proceedings will be given to cases within the Area of Focus. However, the Coastal Zone Unit will consider involvement in any intervention proceeding occurring in the coastal counties, if there is a conflict with the Coastal Zone Management Program's goals and objectives. This will also apply to any technical assistance to counties (over and above the staff position to be funded in each county). Also, projects within the Area of Focus will receive first consideration for provision of funds.

If a proposed project is located outside the boundary of the coastal counties but may have a significant impact on the waters within the coastal zone, then the Coastal Zone Unit will be involved in evaluation of that project as it relates to impacts on coastal resources. In addition, the Coastal Zone Unit will review all state programs as described in Chapter I that may have an impact on coastal resources, to ensure that they are consistent with the Coastal Zone Management Program's goals and objectives, even though the programs may cover an area broader than the official boundaries of the Coastal Zone.

The Coastal Zone Management Program's two-level boundary has several practical advantages. Through the inclusion of the entire area of each coastal county in the coastal zone, implementation of the Coastal Zone Management Program can be adapted to existing administrative and legislative bodies, and consistency can be maintained with the boundary of the State's Coastal Facilities Review Act. Additionally, the federal consistency provision of the federal Coastal Zone Management Act (Chapter VI) can be applied uniformly throughout a county, and all areas such as tidal wetlands, transitional areas, and intertidal areas, which are required to be included in the coastal zone, will be contained in the coastal zone boundary.

The primary reason for designating Areas of Focus is to allow state and local governments to focus their efforts on the areas where they are most needed to solve coastal problems, since it is in these areas their projects and activities are most likely to have a significant impact on the State's coastal resources. The Area of Focus designation facilitates application of the management program by defining the geographical area where the majority of issues related to the coastal zone arise.

The criteria used to delineate Areas of Focus for Anne Arundel County, Baltimore County, the City of Baltimore, and Harford County, are somewhat different from those used in more rural counties of the State. Because these counties are more urban than other coastal counties and face many unique problems, additional criteria have been used. In addition to the location of the 100-year

flood plain, other factors considered in these jurisdictions were the 20-foot contour interval, a 1,000 yard setback, shoreline industrial and residential sections, and areas where coastal site-specific issues have been identified. The actual Area of Focus for each of these counties and the City of Baltimore reflects the unique problems faced by each jurisdiction (see attached maps). The coastal zone planning process for determining the boundaries in these counties described in more detail in Chapter V.

The Area of Focus designation presented with this application for each of the coastal counties is considered preliminary until final flood hazard areas have been mapped for each county and all the Coastal Zone Management Program processes are operating. Before final Area of Focus designations are made, they will be reviewed by local governments and presented to the public and to the Coastal Resources Advisory Committee to ensure that each area included is adequate to meet the goals and objectives of the Coastal Zone Management Program.

TABLE II-1

Coastal Zone Management Boundary

Areas of Focus

Anne Arundel County[1]

The Planning Study Area as developed by the Baltimore Metropolitan Coastal Area Study.

Baltimore City[1]

The Planning Study Area as developed by the Baltimore Metropolitan Coastal Area Study.

Baltimore County[1]

The Planning Study Area as developed by the Baltimore Metropolitan Coastal Area Study.

Calvert County

100-year flood plain; bluff areas; and areas of critical state concern adjacent to the county's tidal waters.

Caroline County

100-year flood plain.

Cecil County

Final determination still in progress. Area of focus will be defined as a fixed distance from Mean High Water. This distance is tentatively set at 250 feet, but is subject to change until the county zoning ordinance is adopted.

Charles County

The 100-year flood plain plus a setback of 1,000 feet in bluff areas.

---

[1]See Chapter V.

Dorchester County

No preliminary boundary established due to insufficient information. A final line will be established at a later date based on the 100 year flood plain delineation now in progress. For the interim, project evaluation will only be considered for projects which are special exceptions to the approved Dorchester County zoning ordinance.

Harford County[1]

The Planning Study Area as developed by the Baltimore Metropolitan Coastal Area Study.

Kent County

The 100-year flood plain.

Prince George's County

The 100-year flood plain plus an additional extension of 1,000 feet inland in locations with high bluffs.

Queen Anne's County

The 100-year flood plain or 1,000 feet from Mean High Water, whichever is less.

St. Mary's County

Corresponds to the Waterfront Protection District as shown in the Comprehensive Plan for St. Mary's County.

Somerset County

The 100-year flood plain or the 20-foot contour interval, whichever is narrower

Talbot County

The area within 1,000 feet of the Mean High Water line or the 100-year flood plain, whichever is less.

Wicomico County

The 100-year flood plain, upstream on the Wicomico River to Salisbury city limits.

Worcester County

The 100-year flood plain for St. Martin's River, the ocean bays, the ocean shoreline and the Pocomoke River to Pocomoke City. On the Pocomoke River above Pocomoke City, flood prone areas as indicated by muck and alluvial soils and areas with slopes greater than 10% which border tidal waters.

TABLE II-2

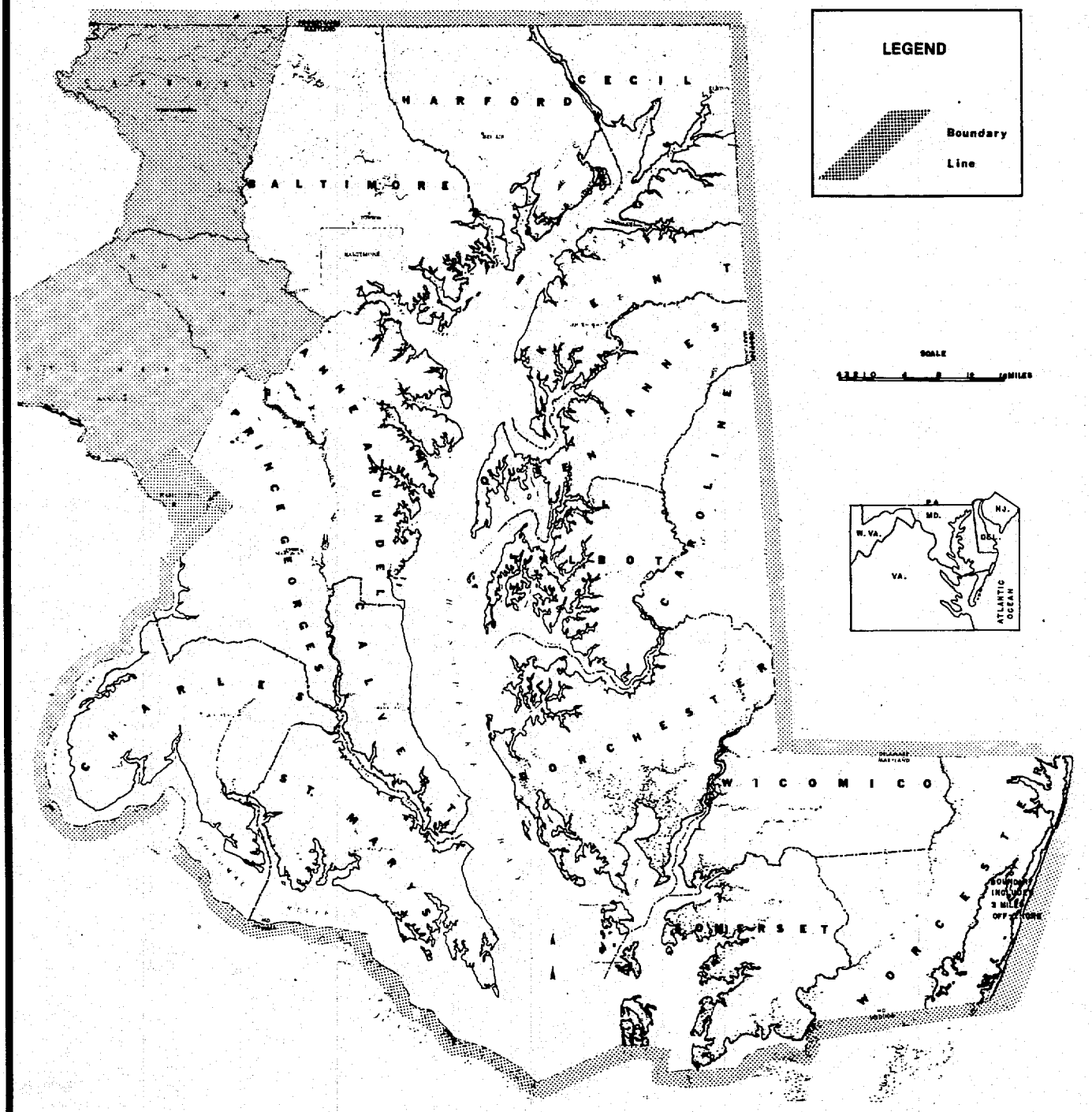
Federal Lands Owning Code Used on Following Maps:

50 Federal Government (General)
51 Department of Agriculture
52 Department of Air Force
53 Department of Army
54 Corps of Engineers
55 Department of Navy
56 Department of Commerce
57 Department of Health, Education and Welfare
58 National Institute of Health
59 Social Security Administration
60 Department of Transportation
61 Coast Guard
62 Nuclear Regulatory Commission
63 Federal Communications Commission
64 General Services Administration
65 National Aeronautics and Space Administration
66 Department of Interior
67 Fish and Wildlife Bureau
68 Postal Service
69 Veteran's Administration
70 Department of Justice
71 Department of Treasury

NOTE: All federal holdings less 10 acres in size are considered excluded even though not specifically identified.

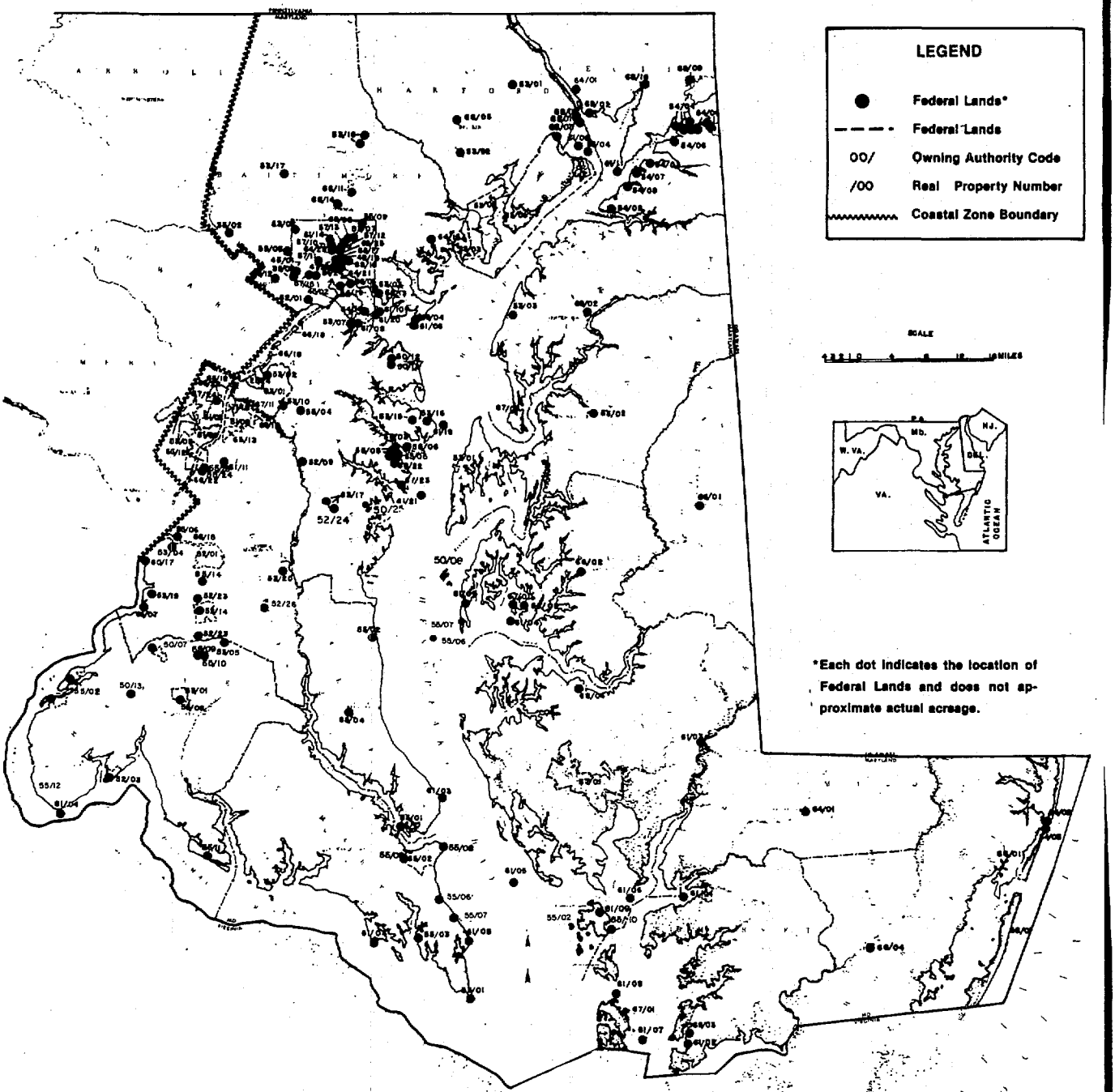
MAP 1

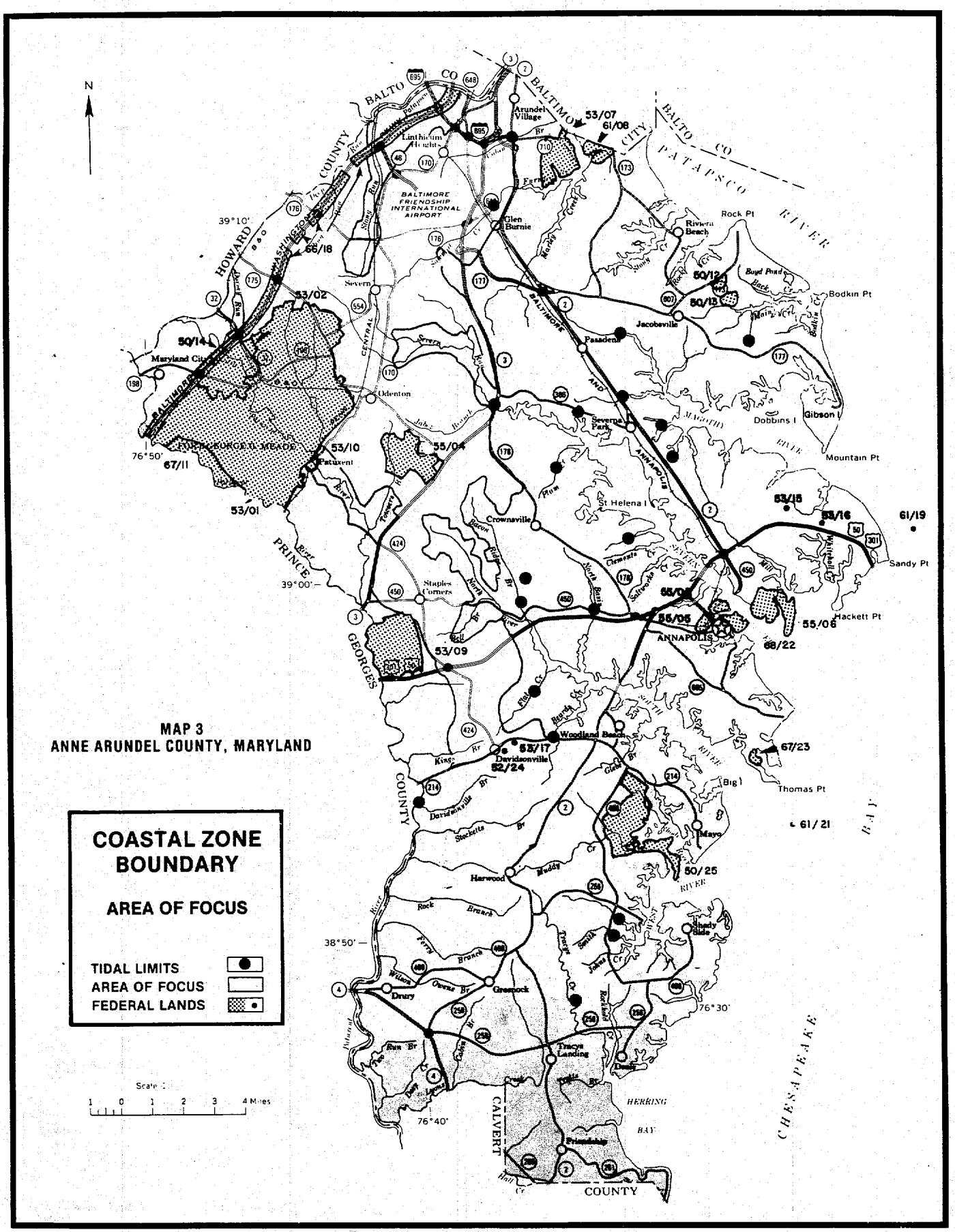
MARYLAND
COASTAL ZONE MANAGEMENT
PROGRAM BOUNDARY



MAP 2

MARYLAND
COASTAL ZONE MANAGEMENT
PROGRAM
EXCLUDED FEDERAL LANDS





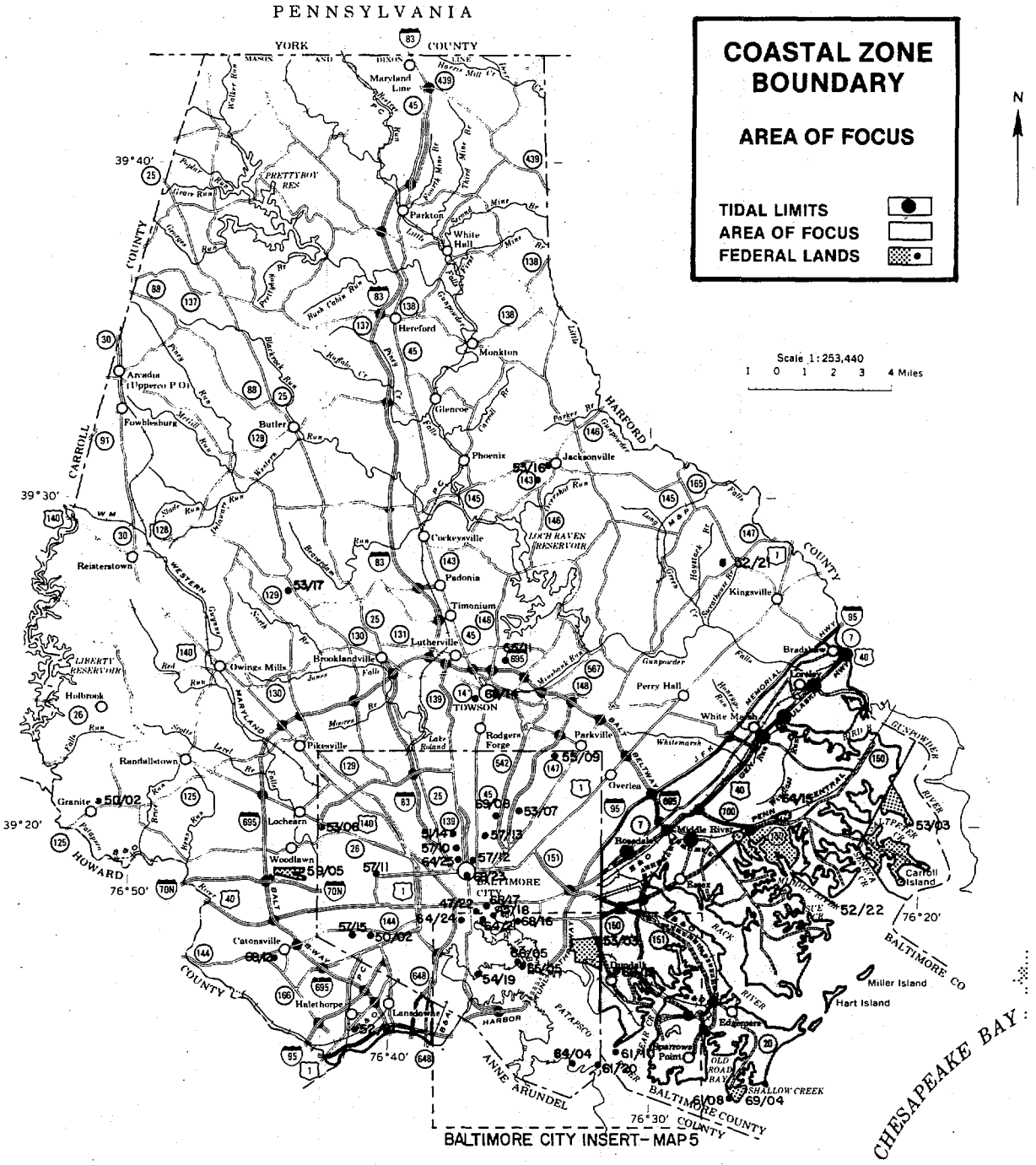
MAP 3
ANNE ARUNDEL COUNTY, MARYLAND

COASTAL ZONE BOUNDARY

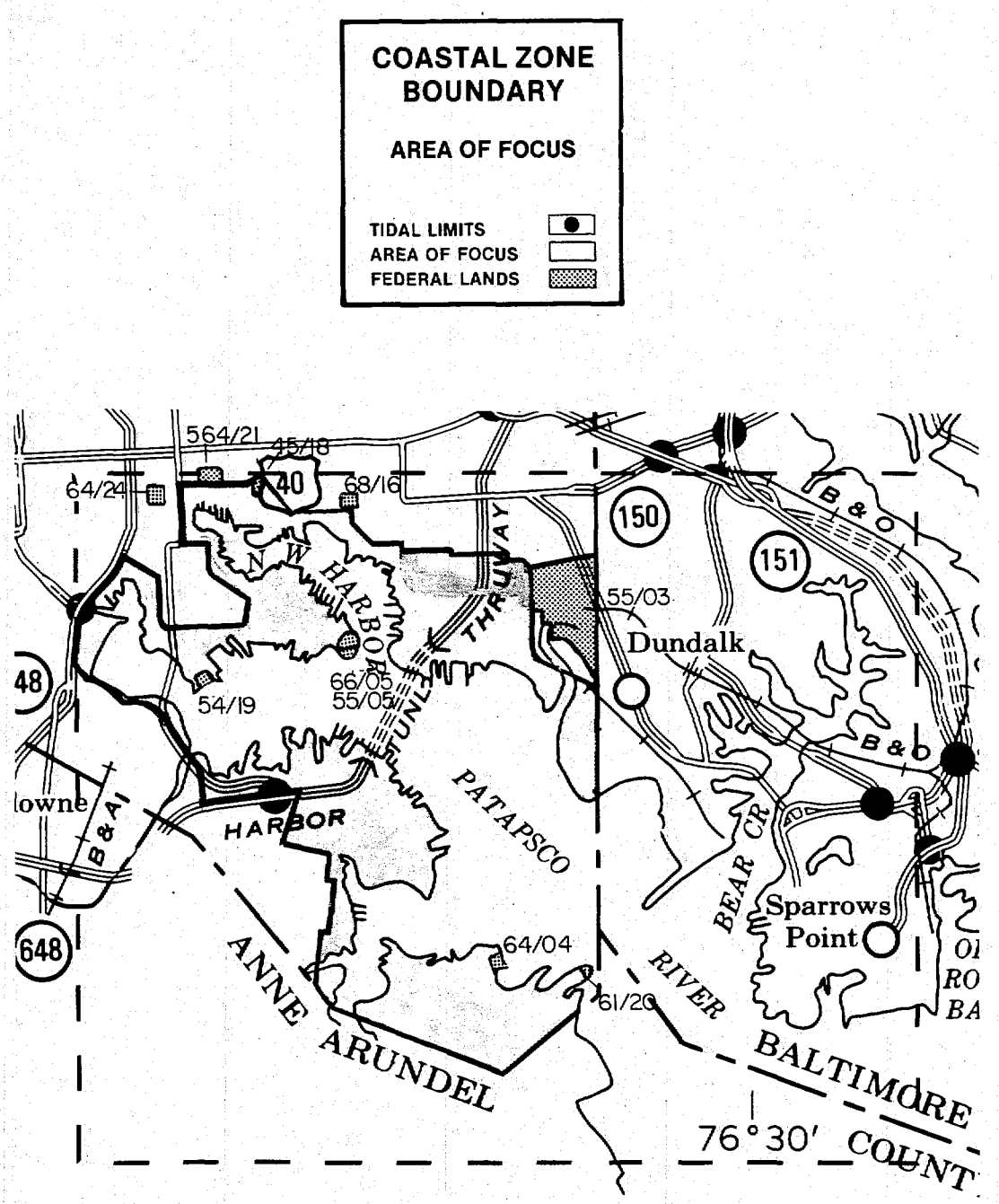
AREA OF FOCUS

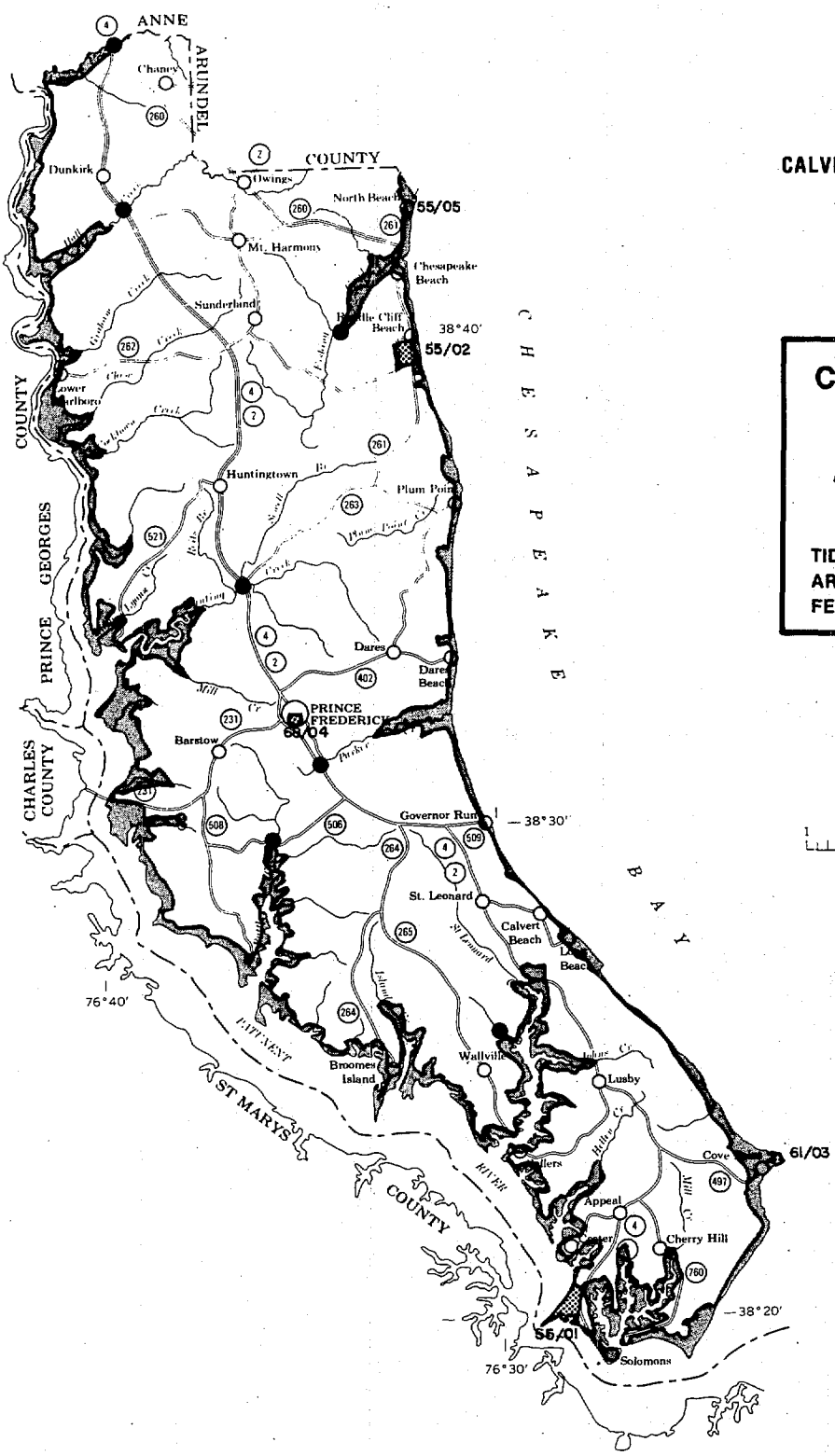
TIDAL LIMITS
AREA OF FOCUS
FEDERAL LANDS

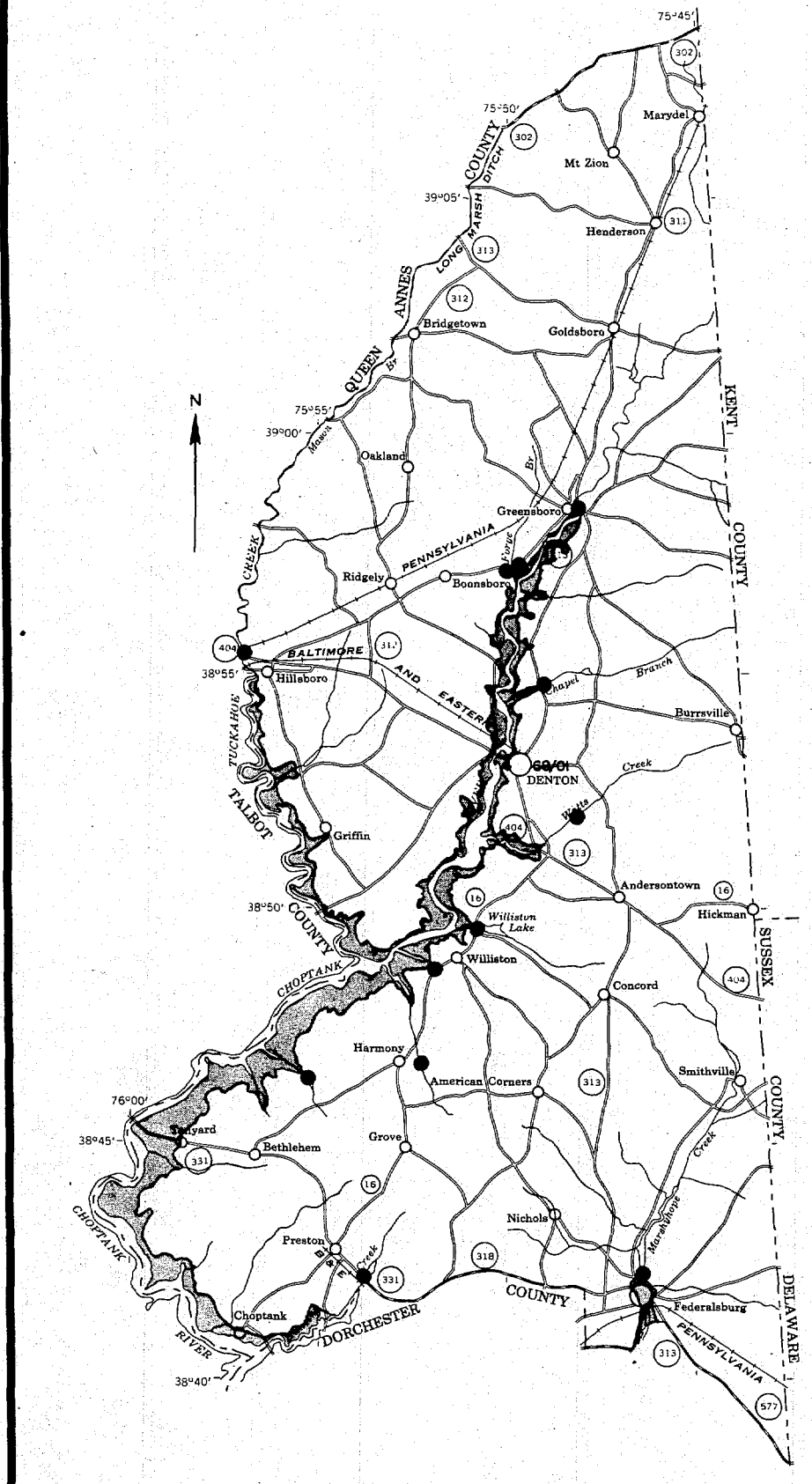
MAP 4
BALTIMORE COUNTY AND CITY



MAP 5
BALTIMORE CITY INSET




ANNE ARUNDEL COUNTY
CALVERT COUNTY
PRINCE GEORGES COUNTY
CHARLES COUNTY
ST MARYS COUNTY
CHESAPEAKE BAY
Dunkirk
Owings
North Beach
55/05
Mt. Harmony
Chesapeake Beach
Sunderland
Broomes Island
38°40'
55/02
Huntingtown
Plum Point
Dares Beach
PRINCE FREDERICK
60/04
Barstow
Governor Run
38°30'
St. Leonard
Calvert Beach
Wallville
Lusby
Cove Point
61/03
Appeal
Cherry Hill
38°20'
56/01
Solomons
76°40'
76°30'
N
MAP 6
CALVERT COUNTY, MARYLAND
COASTAL ZONE BOUNDARY
AREA OF FOCUS
TIDAL LIMITS
AREA OF FOCUS
FEDERAL LANDS
Scale 1:190,080
1 0 1 2 3 4 Miles



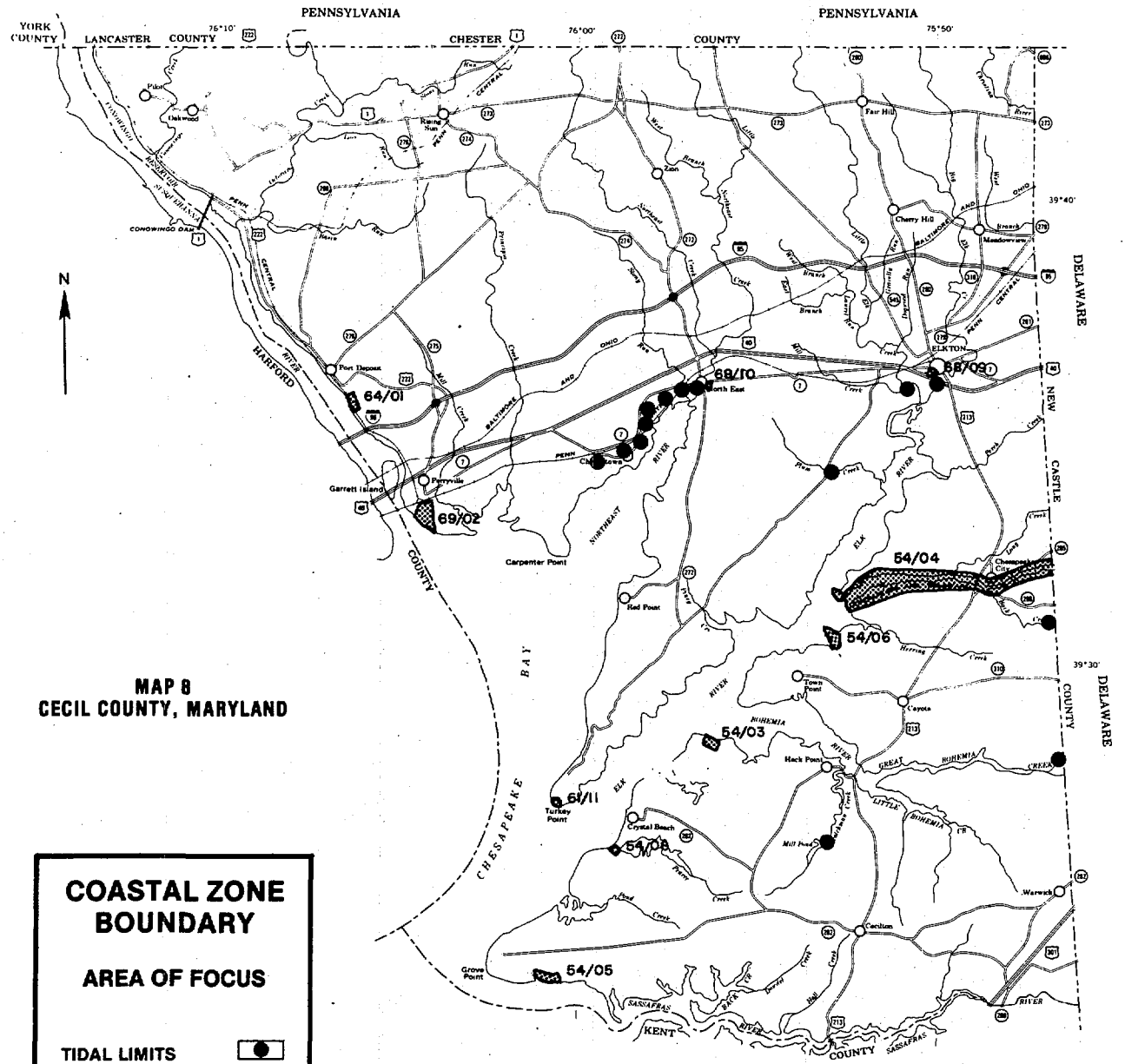
MAP 7
CAROLINE COUNTY, MARYLAND

COASTAL ZONE BOUNDARY

AREA OF FOCUS

TIDAL LIMITS
AREA OF FOCUS
FEDERAL LANDS

Scale 1:
1 0 1 2 3 4 Miles



MAP 8
CECIL COUNTY, MARYLAND

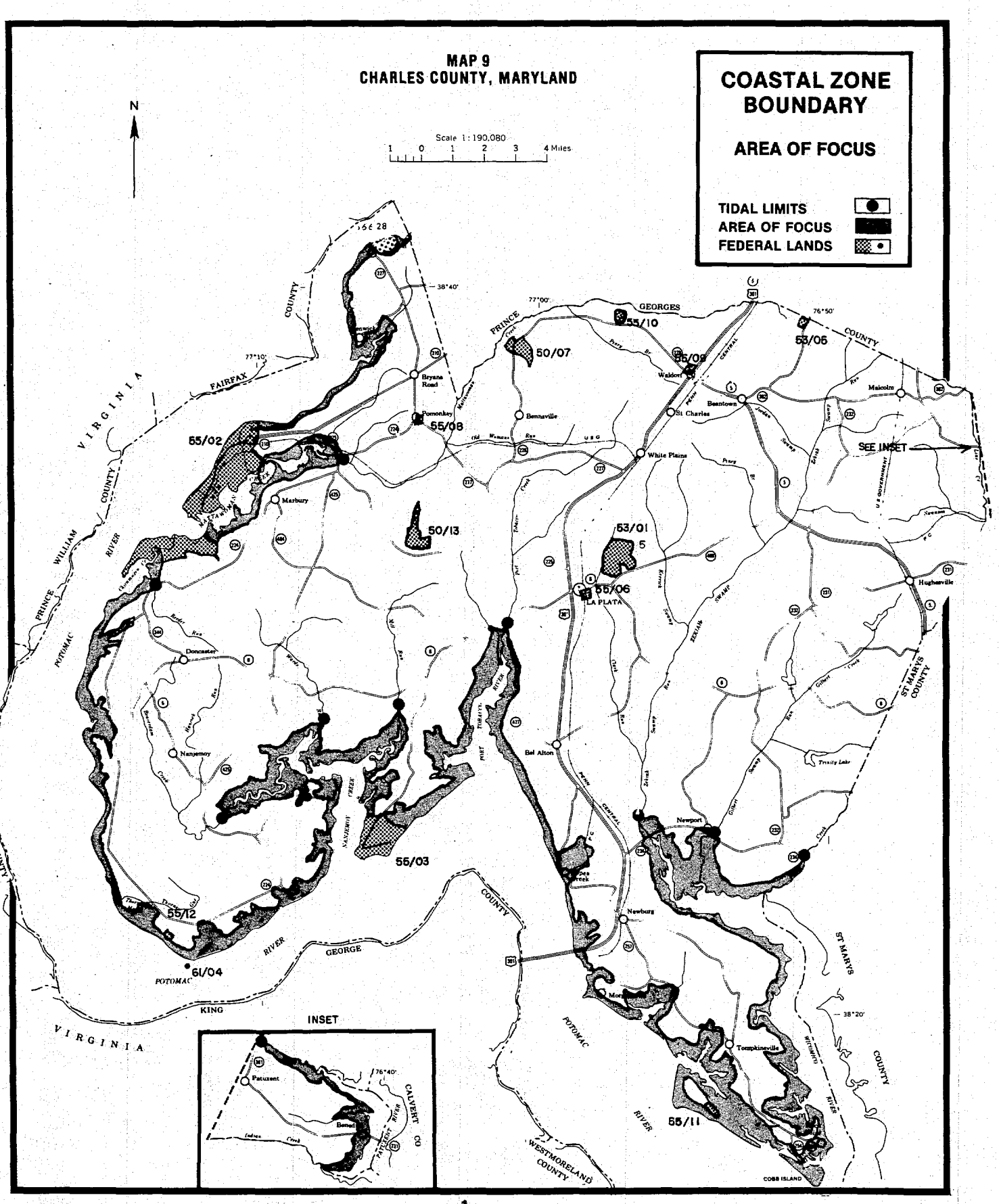
COASTAL ZONE BOUNDARY

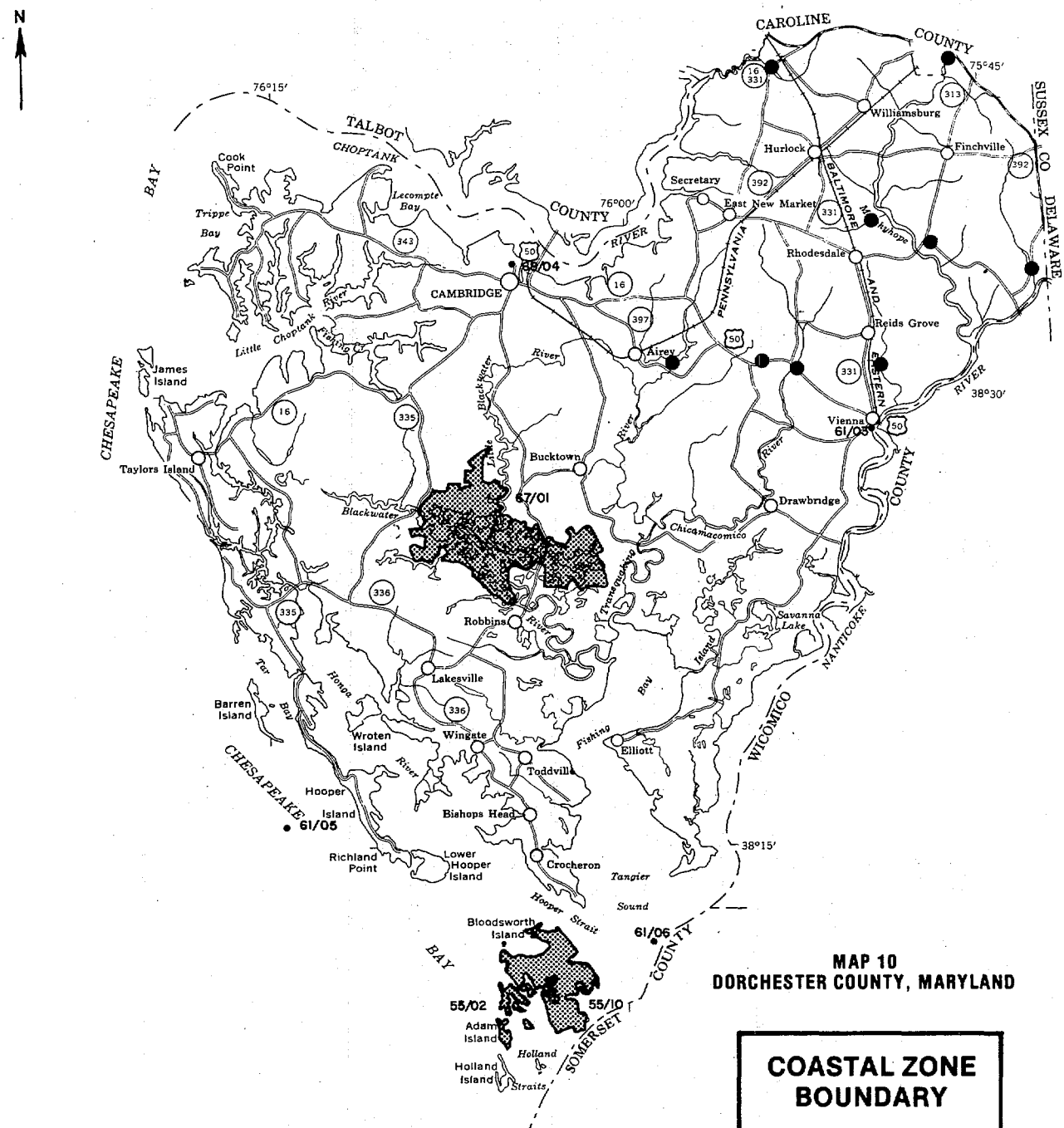
AREA OF FOCUS

TIDAL LIMITS
AREA OF FOCUS
FEDERAL LANDS

*** SEE TABLE II-I**

Scale 1:
1 0 1 2 3 4 Miles

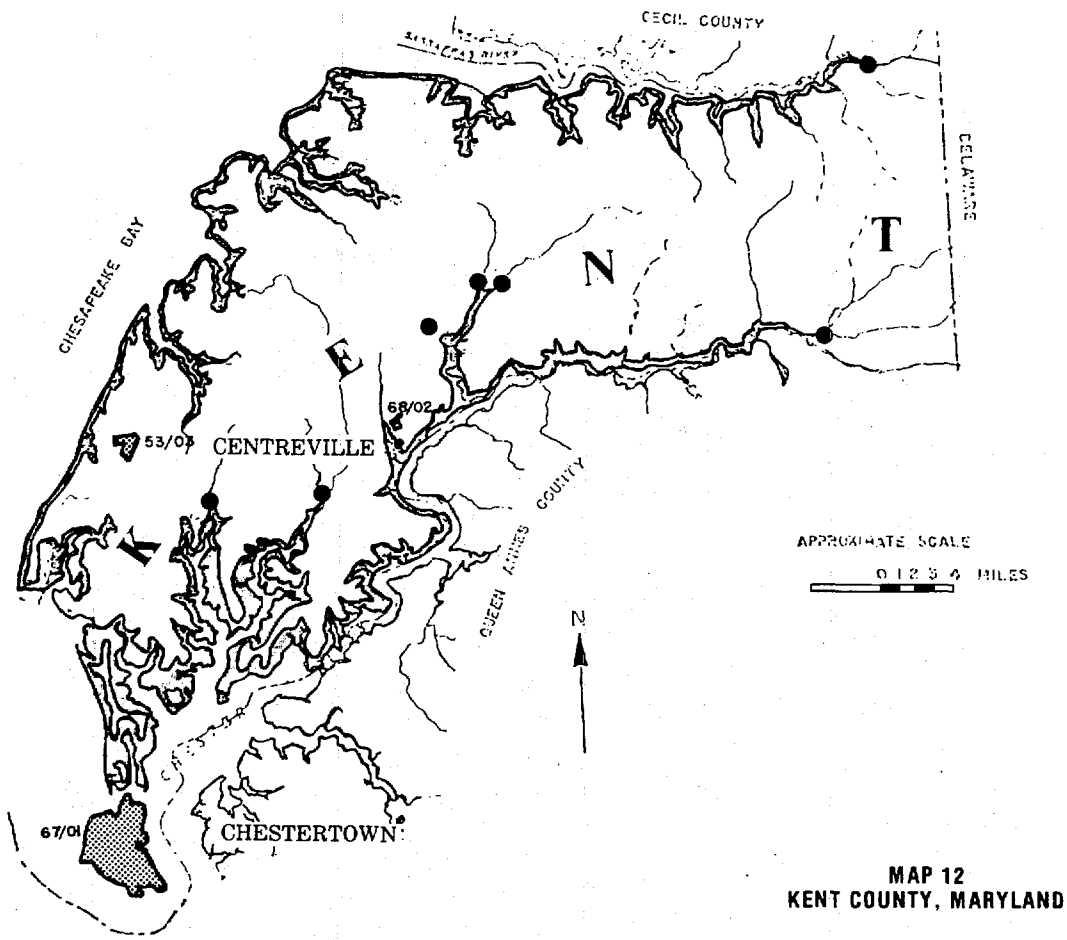

MAP 9
CHARLES COUNTY, MARYLAND
COASTAL ZONE BOUNDARY
AREA OF FOCUS
TIDAL LIMITS
AREA OF FOCUS
FEDERAL LANDS
N
Scale 1:190,080
1 0 1 2 3 4 Miles
55/02
50/13
55/03
55/12
61/04
50/07
55/10
55/09
53/06
55/08
53/01
55/06
55/11
SEE INSET
INSET
Bryans Road
Pomonkey
Bensaville
Waldorf
St Charles
White Plains
Beantown
Malcolm
Marbury
Doncaster
Nanjemoy
Bel Alton
La Plata
Hughesville
Newport
Newburg
Tompkinsville
Patuxent
Benedict
VIRGINIA
FAIRFAX COUNTY
PRINCE WILLIAM COUNTY
STAFFORD COUNTY
KING GEORGE COUNTY
PRINCE GEORGES COUNTY
ST MARYS COUNTY
CALVERT CO
WESTMORELAND COUNTY
POTOMAC RIVER
PATUXENT RIVER
WICOMICO RIVER
COBB ISLAND



MAP 10
DORCHESTER COUNTY, MARYLAND

* SEE TABLE II-I

PENNSYLVANIA
YORK COUNTY
LANCASTER COUNTY
CECIL COUNTY
BALTIMORE COUNTY
CHESAPEAKE BAY
MASON AND DIXON LINE
76°30'
76°20'
76°10'
39°40'
39°30'
N
Norrisville
Whiteford
Pylesville
Dublin
Darlington
CONOWINGO DAM
SUSQUEHANNA RIVER
Shawsville
Jarrettsville
Forest Hill
Lapidum
Level
Churchville
Havre de Grace
Upper Crossroads
BEL AIR
Benson
Aberdeen
Perryman
Abingdon
Van Bibber
Joppa
Edgewood
ABERDEEN PROVING GROUND
BUSH RIVER
GUNPOWDER RIVER
PENN CENTRAL
BALTIMORE AND OHIO
Atkisson Reservoir
53/01
53/02
68/05
68/06
68/07
68/03
61/08
66/04
MAP 11
HARFORD COUNTY AREA, MARYLAND
COASTAL ZONE BOUNDARY
AREA OF FOCUS
TIDAL LIMITS
AREA OF FOCUS
FEDERAL LANDS
Scale 1:190,080
1 0 1 2 3 4 Miles

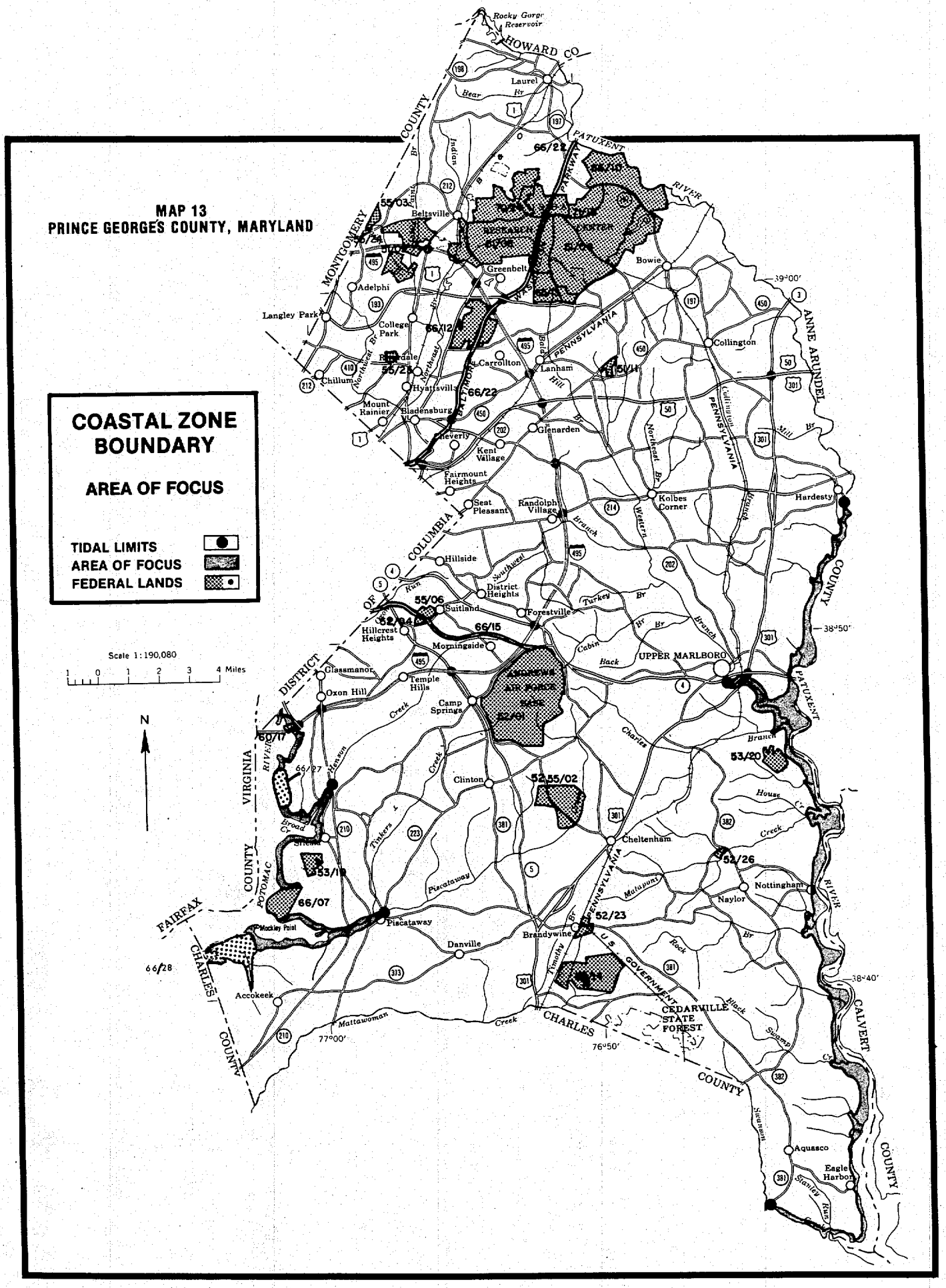


MAP 12
KENT COUNTY, MARYLAND

COASTAL ZONE BOUNDARY

AREA OF FOCUS

TIDAL LIMITS
AREA OF FOCUS
FEDERAL LANDS


MAP 13
PRINCE GEORGES COUNTY, MARYLAND
COASTAL ZONE BOUNDARY
AREA OF FOCUS
TIDAL LIMITS
AREA OF FOCUS
FEDERAL LANDS
Scale 1:190,080
1 0 1 2 3 4 Miles
N
HOWARD CO
MONTGOMERY COUNTY
ANNE ARUNDEL COUNTY
CALVERT COUNTY
CHARLES COUNTY
FAIRFAX COUNTY
VIRGINIA
DISTRICT OF COLUMBIA
PATUXENT RIVER
POTOMAC RIVER
Rocky Gorge Reservoir
Laurel
Beltsville
Greenbelt
Bowie
Adelphi
Langley Park
College Park
Carrollton
Lanham
Collington
Chillum
Hyattsville
Mount Rainier
Bladensburg
Cheverly
Glenarden
Kent Village
Fairmount Heights
Seat Pleasant
Randolph Village
Kolbes Corner
Hardesty
Hillside
District Heights
Suitland
Forestville
Hillcrest Heights
Morningside
UPPER MARLBORO
Glassmanor
Oxon Hill
Temple Hills
Camp Springs
Clinton
Cheltenham
Nottingham
Naylor
Piscataway
Danville
Brandywine
Mockley Point
Accokeek
CEDARVILLE STATE FOREST
Aquasco
Eagle Harbor
U.S. GOVERNMENT
PENNSYLVANIA
BALTIMORE
WASHINGTON
66/22
55/03
55/24
66/12
55/25
66/22
51/11
55/06
52/04
66/15
52/01
60/17
66/27
53/19
66/07
52/55/02
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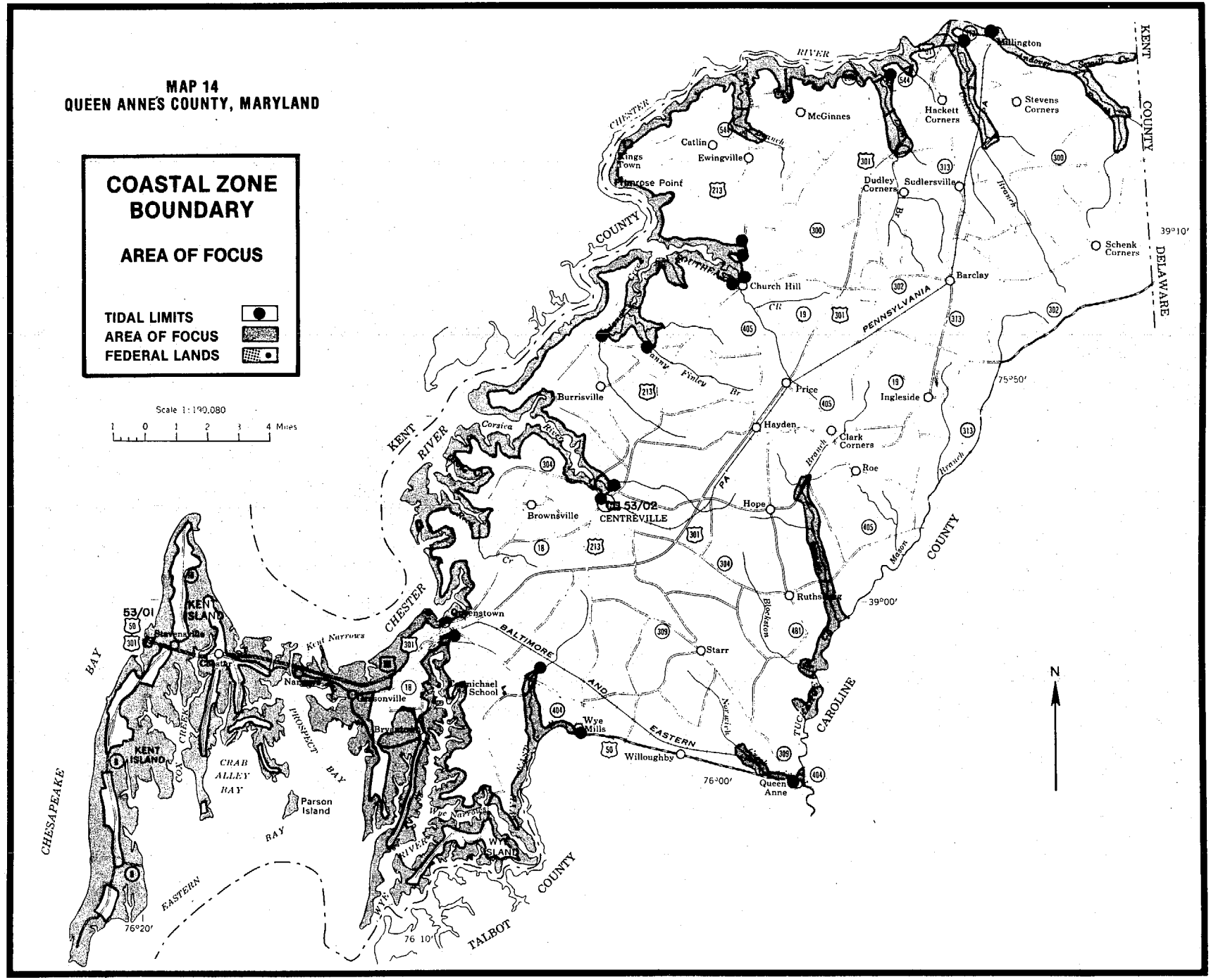
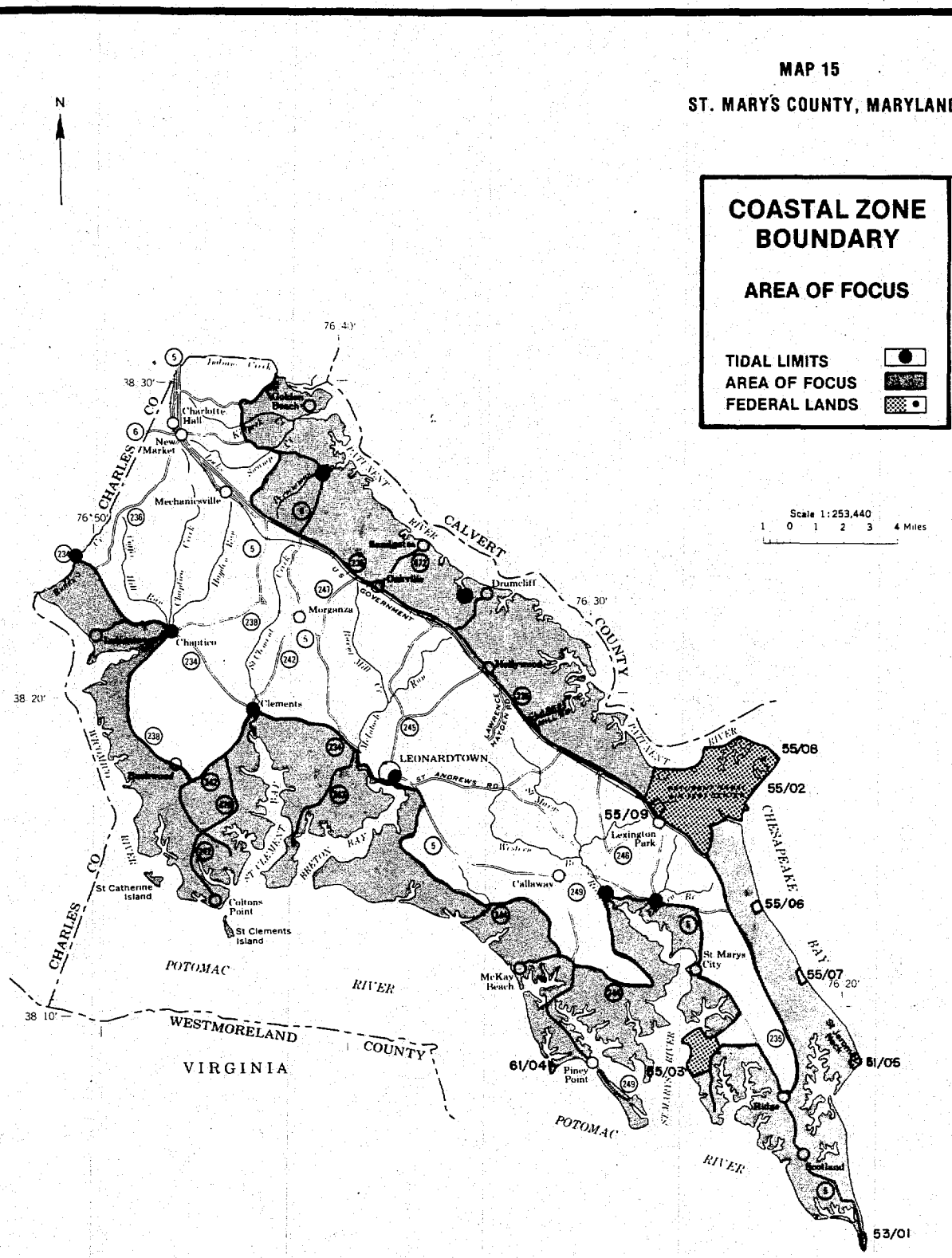
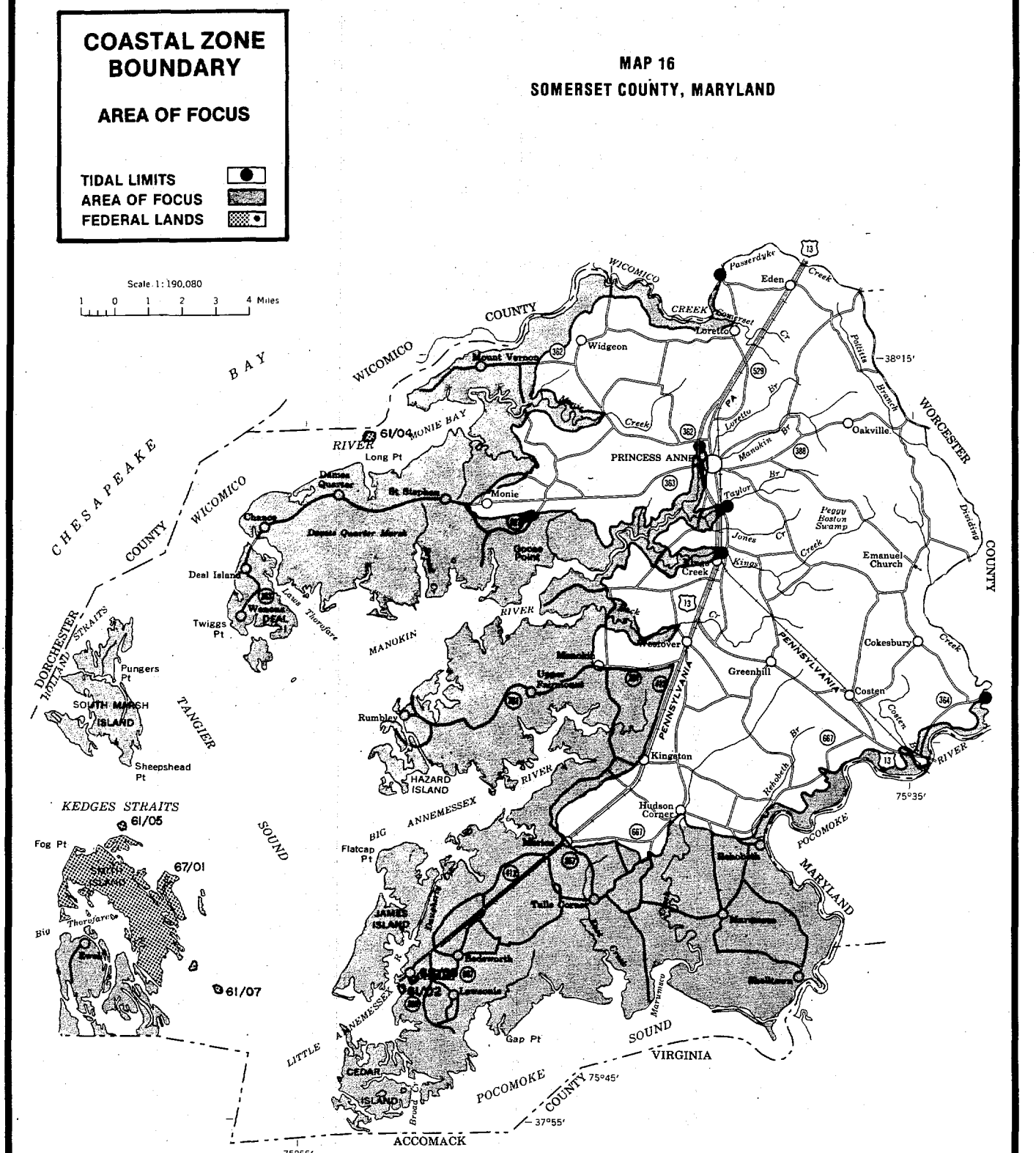
52/26
52/23
66/28
39°00'
38°50'
38°40'
77°00'
76°50'


MAP 14
QUEEN ANNES COUNTY, MARYLAND
COASTAL ZONE BOUNDARY
AREA OF FOCUS
TIDAL LIMITS
AREA OF FOCUS
FEDERAL LANDS
Scale 1:190,080
1 0 1 2 3 4 Miles
KENT COUNTY
DELAWARE
CAROLINE COUNTY
TALBOT COUNTY
CHESAPEAKE BAY
CHESTER RIVER
KENT RIVER
CHESTER
Millington
Hackett Corners
Stevens Corners
McGinnes
Catlin
Ewingville
Kings Town
Primrose Point
Dudley Corners
Sudlersville
Schenk Corners
Church Hill
Barclay
PENNSYLVANIA
Price
Ingleside
Burrisville
Hayden
Clark Corners
Roe
Brownsville
CENTREVILLE
Hope
Ruthsburg
Starr
Queenstown
BALTIMORE AND EASTERN
Wye Mills
Willoughby
Queen Anne
Kent Narrows
Stevensville
KENT ISLAND
Grasonville
Carmichael School
Bryantown
CRAB ALLEY BAY
PROSPECT BAY
Parson Island
WYE ISLAND
Wye Narrows
EASTERN BAY
COX CREEK
Corsica River
Finley Br
Mason Branch
Blockston
Norwich
Cr
39°10′
75°50′
39°00′
76°00′
76°20′
76 10′
N

MAP 15

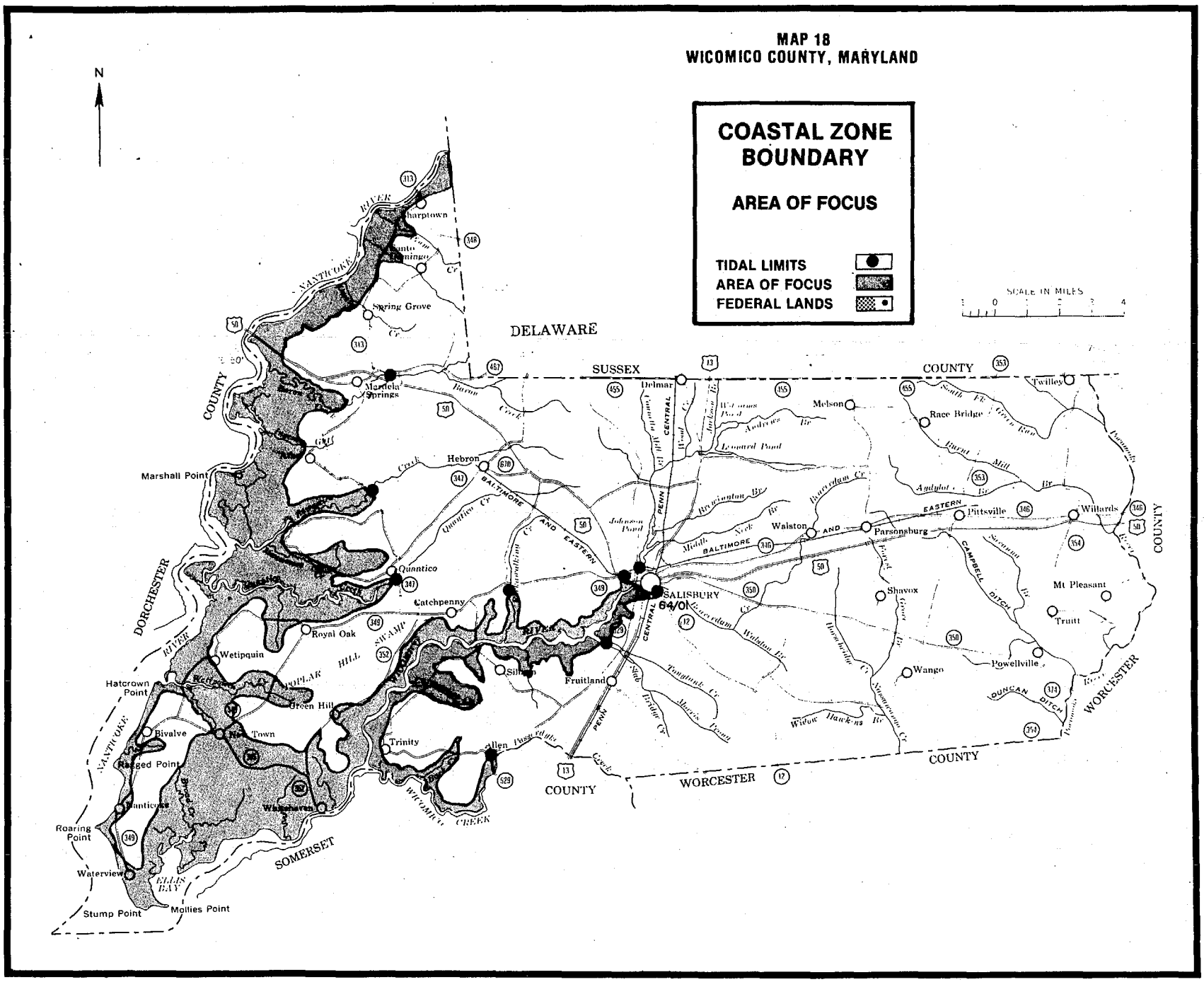
ST. MARY'S COUNTY, MARYLAND




COASTAL ZONE BOUNDARY
AREA OF FOCUS
TIDAL LIMITS
AREA OF FOCUS
FEDERAL LANDS
Scale 1:190,080
1 0 1 2 3 4 Miles
MAP 16
SOMERSET COUNTY, MARYLAND
CHESAPEAKE BAY
WICOMICO COUNTY
WICOMICO RIVER
MONIE BAY
Long Pt
Mount Vernon
Widgeon
Eden
Loretto
Passerdyke Creek
Somerset Cr
Pollitts Branch
38°15'
WORCESTER COUNTY
Oakville
PRINCESS ANNE
Manokin Br
Taylor Br
Peggy Boston Swamp
Jones Cr
Kings Creek
Emanuel Church
Dividing Creek
Cokesbury
Costen
Costen Br
Greenhill
PENNSYLVANIA
Westover
Manokin
Upper Fairmount
Rumbley
HAZARD ISLAND
Kingston
Hudson Corner
Rehobeth
Rehobeth Br
POCOMOKE RIVER
75°35'
MARYLAND
Marion
Tulls Corner
Marumsco
Sheltown
Bedsworth
Lawsonia
Gap Pt
VIRGINIA
POCOMOKE COUNTY
75°45'
37°55'
ACCOMACK
75°55'
Deal Island
Twiggs Pt
Wenona
DEAL
Chance
Dames Quarter
St. Stephen
Monie
Goose Point
Dames Quarter Marsh
Laws Thorofare
MANOKIN RIVER
DORCHESTER COUNTY
HOLLAND STRAITS
Pungers Pt
SOUTH MARSH ISLAND
Sheepshead Pt
TANGIER SOUND
KEDGES STRAITS
61/05
Fog Pt
67/01
SMITH ISLAND
Big Thorofare
Ewell
61/07
BIG ANNEMESSEX RIVER
Flatcap Pt
JAMES ISLAND
LITTLE ANNEMESSEX R
CEDAR ISLAND
Broad Cr
61/04
61/02

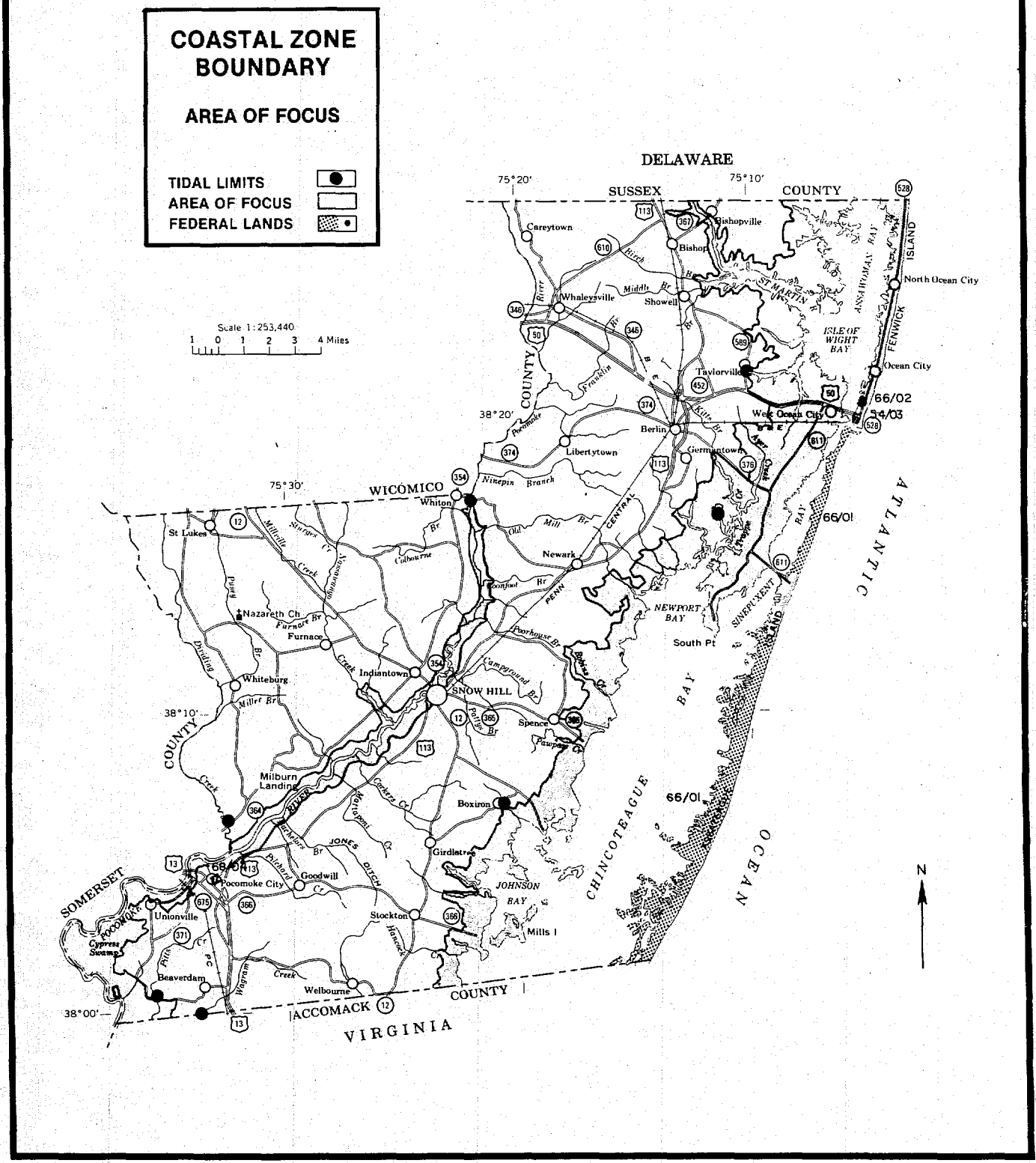
MAP 17
TALBOT COUNTY, MARYLAND

MAP 18
WICOMICO COUNTY, MARYLAND



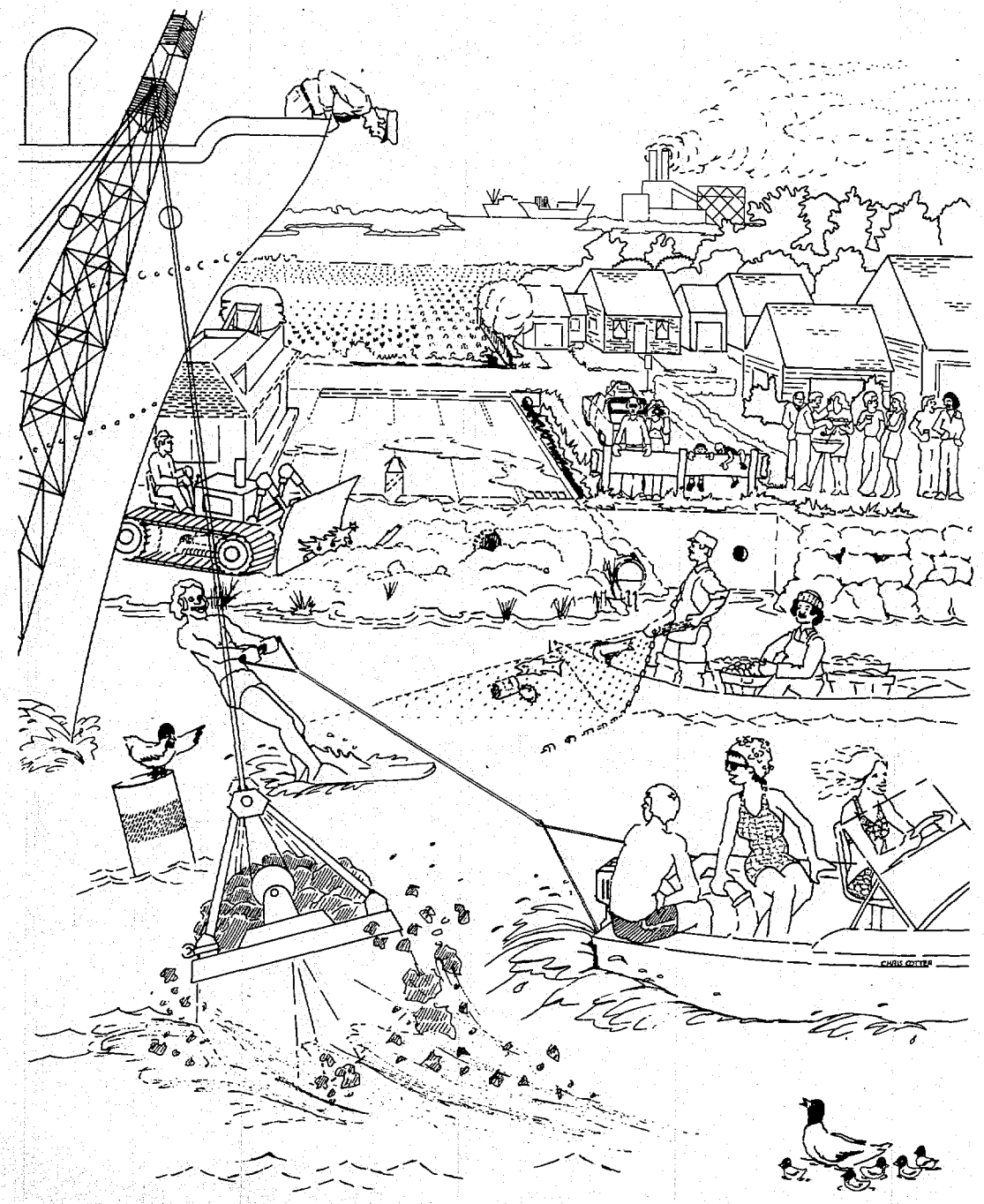
MAP 19

WORCESTER COUNTY, MARYLAND



CHAPTER III

APPROPRIATE USES OF LAND & WATER



III. APPROPRIATE LAND AND WATER USES

Legislative Requirements

The federal Coastal Zone Management Act of 1972 requires a state's Coastal Zone Management Program to define permissible uses of land and water within the coastal zone which have direct impact on coastal waters (Section 305(b)(2)). The Act further requires that a state's program include "broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority". Methods for meeting these requirements are described in detail in Section 306 of the federal regulations.

Section 923.12 of the regulations requires that: "States must develop policies and procedures by which uses determined to be subject to the management program willbe permitted, conditioned, modified and/or prohibited". Moreover, policies and procedures must be based on the following types of analyses:

1. Capability and suitability of resources to accommodate existing, projected, or potential uses.

2. Environmental impacts on coastal resources.

3. Compatibility of inland and alternative locations.

4. Evaluation of inland and alternative locations.

5. Coastal dependency of various uses, and other social and economic considerations (Section 923.12(c)).

Particular attention must be paid to determining use priorities in Geographic Areas of Particular Concern (GAPC's) (Chapter V).

In addition, the 1976 Amendments to the Coastal Zone Management Act require that the State develop:

- A definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value.

- A planning process for energy facilities likely to be located in, or which may significantly affect the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities.

- A planning process for (a) assessing the effects of shoreline erosion (however caused), and (b) studying and evaluating ways to control, or lessen the impact of such erosion, and to restore areas adversely affected by such erosion. (Section 305(b))

A two-pronged approach has been followed to meet the Act's requirements to identify appropriate land and water uses in Maryland's coastal zone.

1. Policy Base

A sound policy base for determining appropriate land and water uses has been established. With input from state agencies, local governments, and the general public, goals and objectives for coastal resources and activities have been developed as a framework for cooperative efforts by state and local management agencies implementing Maryland's Coastal Zone Management Program. From these goals and objectives, more detailed policies were developed for each coastal Use of Concern. These policies are based on existing State laws, and citations of statutes have been provided for each policy.

2. Coastal Resources

Inventories of significant natural and man-made coastal resources have been taken, the capabilities of coastal resources to support various uses have been analyzed, and the impacts of uses on the natural environment have been assessed. These efforts provide the technical base needed to identify appropriate coastal uses and areas that should be designated Geographic Areas of Particular Concern, and are described at appropriate points in this Chapter and Chapter IV.

Goals and Objectives of Maryland's Coastal Zone Management Program

The purpose of the Coastal Zone Management Program's goals, objectives, and policies, is to guide program implementation and to maintain the consistency of all projects permitted, funded, or undertaken in the State of Maryland. As described in Chapter II, Maryland's Coastal Zone Management Program will be implemented by the coordinated exercise of state and local governmental programs that have management responsibilities in the coastal zone. The Coastal Zone Management Program's goals and objectives have been reviewed by state agencies, local governments, and the general public, to ensure that they fully address Maryland's coastal zone management concerns, and to ensure that they provide a basis for coordinated exercise of state and local government programs, and federal programs through the federal consistency provisions of the Act.

A complete list of these goals and objectives appears in the Executive Summary of this document.

Determination of Appropriate Land and Water Uses in the Coastal Zone

Three criteria have been used to determine which uses are of concern to this Program: (1) the use must have an "impact" on coastal resources, (2) the impact must be "direct", and (3) the impact must be "significant". For the purposes of this determination, "impact" has been defined as a documentable change in any factor relevant to the maintenance of a coastal resource. That impact is considered "direct" when there is a documentable causal relationship between the uses or activity generating the impact, and its effect on coastal resources. An impact is considered to be "significant" if (1) it is broad in geographical scope, (2) it affects a critical coastal resource of concern to the State, or (3) it is of sufficient magnitude to be potentially in conflict with State environmental standards or potentially conflicts with State or State approved local economic, fiscal, land use, transportation, or water quality plans.

Consideration has also been given to the likely location of the use within the coastal zone: coastal waters, intertidal areas, shoreline areas, or areas within the inland boundaries of the coastal counties. Most of the Program's attention focuses on activities occurring within the first three areas, since it is here that activities are most likely to have a direct and significant impact on coastal waters. Principal exceptions are major facilities, whose size and operation are likely to have an impact on coastal waters no matter where they are located within the coastal zone.

While the coastal studies, inventories, and analyses provide the technical basis for determining uses of concern and their appropriateness in each area throughout the coastal zone, Program goals, objectives, and policies provide the policy basis.

General Objectives And Policies

Certain of the objectives and policies of the Coastal Zone Management Program listed below apply generally to all coastal uses and activities of concern to the Program. Some of the policies set forth are generally applicable to the activities of all State agencies, including those concerned with coastal resources and activities. Also noted are policies which apply generally to the actions of the Department of Natural Resources, and thus are relevant to the management of coastal resources and activities. Several of the general objectives listed below are also noted in discussions of particular coastal zone activities to which they are particularly relevant.

General Objectives

(1) To protect, maintain and where feasible, improve air quality in the State's coastal zone in order to protect public health, safety and welfare and the quality of the State's environmental resources.

(2) To protect, maintain, and improve the quality of the State's tidal waters for propagation of wildlife, fish and aquatic life, and for human use and enjoyment.

(3) To protect coastal aquatic areas of significant resource value and, where possible, restore presently degraded areas of potentially significant resource value, such as viable oyster bars and clam beds, important migratory pathways, spawning, nursery and feeding areas for fish and wintering and resting areas for migratory birds.

(4) To protect, maintain, and where feasible restore the integrity of the tidal wetlands of the State.

(5) To protect coastal terrestrial areas of significant resource value-areas having scenic, scientific, geologic, hydrologic, biological or ecosystem maintenance importance, such as non-tidal wetlands, endangered species habitat, significant wildlife habitat, and wintering and resting areas for migratory birds.

(6) To promote the protection and wise management of productive coastal, agricultural and forested areas through cooperation with programs of the Local Soil Conservation Districts, the Agricultural Lands Preservation Foundation, the Maryland Department of Agriculture, the Maryland Forest Service, the Department of State Planning and the Maryland Environmental Trust.

(7) To protect coastal cultural, historical, and archeological resources.

(9) To assist the people living in the coastal zone improve the quality and productivity of their lives in an environmentally compatible manner.

(10) To recognize, protect and promote the economic and social stability of coastal communities and the industries located therein through proper resource management, acknowledging that coastal residents, communities and industries are valuable resources in themseleves.

(11) To ensure that management decisions concerning coastal resources and activities include consideration of measures to maintain or improve the economic and social stability of coastal communities.

(12) To promote, in cases in which existing and proposed coastal practices and activities must be modified, the identification of alternatives which will both provide protection to coastal resources and assist, to the maximum extent possible, the maintenance, protection, and improvement of the economic and social standards of coastal communities and the region of which they are a part.

(22) To promote use of the State's coastal resources to meet social and economic needs in an environmentally compatible manner.

(23) To ensure consideration of the carrying capacity of air, land and water resources (both surface and groundwater), and the conservation of coastal natural areas in state and local regulatory decisions concerning coastal developments.

(33) To ensure that hazardous substances are utilized and disposed of in a manner which prevents any toxic, lethal or sublethal effects to plant, aquatic or animal life; which prevents any adverse effect upon human health; and which prevents disposal of the substances into terrestrial or aquatic ecosystems.

(34) To undertake studies and inventories, where needed, to provide the most complete and accurate information base possible for all levels of government and the public to use in management decisions and activities affecting coastal resources.

(35) To encourage the analysis of possible impacts of energy production and consumption, both natural and man-induced, as part of management decisions concerning coastal resources and activities.

(36) To ensure the establishment of repositories of coastal zone-related documents, reports, and materials which are easily accessible to the general public in each of the coastal counties.

(37) To promote standarization of techniques and compatibility of federal, state and academic research efforts in the State's coastal areas.

(38) To ensure coordination and use of existing state and local government programs to achieve the CZMP's objectives.

(39) To ensure interstate coordination of plans for the management of resources which are shared with neighboring states, such as migratory aquatic species.

(40) To ensure the review of state and local governmental programs, and those of the local Soil Conservation Districts, in order to identify possible modifications needed to facilitate achievement of coastal zone management goals, objectives, and policies.

(41) To promote coordination of state and local governmental programs with those of federal agencies and neighboring states to further the goals of the Coastal Zone Management Program, and minimize duplication of efforts, conflicting actions, and regulatory permit processing delays.

(42) To provide adequate representation of the interests of the State of Maryland in federal decisions regarding the exploration, development and production of Outer Continental Shelf Resources.

(43) To provide full opportunity for participation by relevant federal, state, and local government agencies, concerned organizations, and the general public, in the development and implementation of the Coastal Zone Management Program.

General Policies Applicable To All State Agencies

In enacting the Maryland Environmental Policy Act, (Natural Resources Article, Section 1-301 et seq.), the Maryland Legislature identified the following policies to be followed by all State agencies in all their actions, including those relating to coastal resources and activities:

1. The protection, preservation, and enhancement of the state's diverse environment is necessary for the maintenance of the public health and welfare and for the continued viability of the economy of the state, and is a matter of the highest public priority.

2. All state agencies must conduct their affairs with an awareness that they are stewards of the air, land, water, living and historic resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

3. Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to contribute to the protection, preservation, and enhancement of the environment;

4. It is the continuing policy of the state to cooperate with the federal government, other state governments, the District of Columbia, the political subdivisions of the state, and other concerned public and private organizations and individuals, in a manner calculated to protect, preserve, and enhance the environment.

5. The determination of an optimum balance between economic development and environmental quality requires the most thoughtful consideration of ecological, economic, developmental, recreational, historic, architectural, aesthetic, and other values.

6. Beneficial environmental effects of proposed actions can be identified and measures can be devised to obtain these benefits, if environmental evaluations are made a part of the decision-making process of the state.

7. Adverse environmental effects of proposed actions can be anticipated, minimized, and often eliminated if environmental evaluations are made a part of the decision-making processes of the state.

8. Environmental effects reports can facilitate the fullest practicable provision of timely public information, understanding, and participation in the decision-making processes of the state.

9. The General Assembly has an obligation to the people of Maryland to review and evaluate proposed appropriations, other proposed legislation, and the conduct of the state agencies in carrying out the policy set forth in this subtitle.

All laws, rules and regulations of the State are to be interpreted and administered in accordance with these policies (Natural Resources Article, Section 1-302). The Maryland Environmental Policy Act also requires all State agencies to identify, develop, and adopt methods and procedures to assure that:

1. Environmental amenities and values are given appropriate consideration in planning and decision-making along with economic and technical considerations.

2. Studies are undertaken to develop and describe appropriate alternatives to present policies, programs, and procedures that involve significant adverse environmental effects or unresolved conflicts concerning uses of available resources.

3. Planning and decision-making involving environmental effects are undertaken with the fullest practicable provision of timely public information and understanding, and in coordination with public and private organizations

and individuals with jurisdiction by law, special expertise, or recognized interest. (Natural Resources Article, Section 1-303)

Several other general policy statements are set forth by the Natural Resources Article. Although these statements appear within the enabling legislation of the Department of Natural Resources, all state programs must be conducted in a manner consistent with these policies:

1. Because the quality of the waters of this state is vital to the public and private interests of its citizens, and because pollution constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, and because the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is state public policy to improve, conserve, and manage the quality of the waters of the state and to protect, maintain, and improve the quality of water for public supplies, propagation of wildlife, fish and aquatic life, and domestic, agricultural, industrial, recreational, and other legitimate beneficial uses. Also, it is state public policy to provide that no waste is discharged into any waters of this state without first receiving necessary treatment or other corrective action to protect the legitimate beneficial uses of this state's waters, and to provide for prevention, abatement, and control of new or existing water pollution. The department shall cooperate with the agencies of other states and the federal government in carrying out these objectives. (Natural Resources Article, Section 8-1402)

2. Forests, streams, valleys, wetlands, parks, scenic, historic and recreation areas of the state are basic assets. Their proper use, development, and preservation are necessary to protect and promote the health, safety, economy, and general welfare of the people of the state. It is the policy of the state to encourage the economic development and use of its natural resources for the improvement of local economy, for the preservation of the natural beauty, and for the promotion of the recreational and leisure interest throughout the state. (Natural Resources Article, Section 8-102)

3. Forests, timberlands, woodlands, and soil resources of the state are basic assets, and the proper use, development, and preservation of these resources are necessary to protect and promote the health, safety, and general welfare of the people of the state. It is the policy of the state to encourage economic management and scientific development of its forests and woodlands to maintain, conserve, and improve the soil resources of the state, so that an adequate source of forest products is preserved for the people. Floods and soil erosion must be prevented and the natural beauty of the state must be preserved. Wildlife must be protected, while the development of recreational interest is encouraged and the fertility and productivity of the soil is maintained. The impairment of reservoirs and dams must be prevented, the tax rate preserved, and the welfare of the people of the state sustained and promoted. Where these interests can be served through cooperative efforts of private forest landowners, with the assistance of the state, it is the policy of the state to encourage, assist, and guide private ownership in the management and fullest economic development of privately owned forest lands. Where these public

interests cannot be served and adequately protected under private ownership, it is the policy of the state to acquire control of, and title to these lands as rapidly as the financial resources of the state permit. (Natural Resources Article, Section 5-602)

Policies Generally Applicable To The Actions Of The Department Of Natural Resources

The following policies apply generally to the actions of the Department of Natural Resources and guide its actions with regard to activities in the coastal zone:

1. The Secretary is responsible for the development of coordinated policies for the preservation, enhancement, wise use, and perpetuation of the natural resources of the state. He is responsible for the efficient coordination of all activities regarding the natural resources of the state, including the settlement of conflicts that may arise among units within the Department of Natural Resources. (Natural Resources Article, Section 1-104)

2. The Department of Natural Resources shall be responsible for planning, development, management, and conservation of the Chesapeake Bay and any other tidal waters, including their shore line and bottom, and any resources associated with these waters. Also, the Department may:

   a. Plan and develop public recreational facilities in or on the waters of the Chesapeake Bay and other tidal waters.

   b. Assist other state units to plan public recreational facilities for the Chesapeake Bay and other tidal waters.

   c. Cooperate with other units to carry out measures to protect tidal waterfront and waterways of the state against erosion and deposit.

   d. Act for the state to develop further navigation aids and improvement of waterways in the Chesapeake Bay and other tidal water areas of the state.

   (Natural Resources Article, Section 8-203(c))

3. The Secretary shall take every necessary step to enact appropriate intergovernmental agreements with other states to preserve the optimal state of the Chesapeake Bay, through organization of an interstate body to plan, manage, coordinate, and enforce the proper use of the Chesapeake Bay, so that every user of the bay area can obtain maximum advantage of the bay. (Natural Resources Article, Section 8-204)

4. The Department of Natural Resources shall exercise to the fullest extent possible the state's responsibility for its water resources, by planning and supervising multiple development and conservation of the waters of the state for the state's best interests and benefit. It shall develop a general water resources program which contemplates proper conservation and development of the waters of the state, in a manner compatible with multiple purpose management of each watershed or aquifer, or any other appropriate geographical unit. The program shall recognize and be consistent with functions of other state units. The department shall be guided by the program in the performance of its duties. (Natural Resources Article, Section 8-203(b))

Public Investments

Public investments in Maryland are guided by the statutes, regulations, and policies which rule other governmental activities described in the program document. Thus, since the Coastal Zone Management Program represents a commitment to proper management of the State's coastal resources, and since Maryland's Coastal Zone Management Program fulfills the mandate of the Federal Act, public investments will be subject to review with respect to the goals, objectives, and policies of this program the same as any other activity. The public investment authorities will be especially useful in carrying out the coastal objectives and policies related to development patterns, particularly objectives number 10, 11, 12, 16, 17, 18, 19, 20, 24, and 25. Many of the policies articulated in the section on major facilities are also policies which strongly affect development; the public investment authorities will also be used to insure that these policies are enforced.

While these public investment authorities have existed at the state level for some time, the Coastal Zone Management Program represents a unique attempt to exercise these authorities in a coordinated manner to implement a set of comprehensive state coastal policies. The Executive Order issued by the Governor provides the basis for such a comprehensive effort by recognizing the objectives and policies of the program as State policy and by requiring all State governmental agencies to conduct their activities in a manner consistent with the program.

DNR will review proposed public investment expenditures to determine their consistency with the coastal goals and objectives; if inconsistencies are discovered, DNR will inform the appropriate agency and if necessary rely on the conflict resolution process described on page 47 to resolve differences.

There are four major categories of public investment: transportation systems, sewer and water facilities, housing and industrial development, and all other publicly funded capital facilities such as prisons, hospitals, schools, recreation facilities, office buildings, and so forth. All of these are subject to review through State and County comprehensive and functional planning programs, through State and local regulatory and permitting requirements, through Memoranda of Understanding being developed between the Coastal Zone Management Program and other State agencies, and finally, through the administrative and legislative process which all authorizations for State Bond monies must pass. All of these local and State planning, management and regulatory programs and their relationship to this Coastal Zone Management Program are described elsewhere in this document. For the purpose of focusing on public investments as a special category, however, a few examples are described below.

1) Transportation - Major transportation improvements or changes are part of the State and local comprehensive planning process and are contained as an element in most local comprehensive plans. The State Transportation Planning Process and the description of how it relates to air quality planning is described on pages 285-296 of this document. A Memorandum of Understanding between the State Department of Transportation and the Coastal Zone Unit is being developed. This Memorandum of Understanding will contain a commitment to assure a thorough review of the State's Transportation Plans for program consistency. Consistency findings must be made on any Federally funded transportation projects and similar findings will be made for projects which are State and local funded. The State's Critical Areas and Intervention Programs are additionally available tools that may be used with respect to the development of transportation services.

2) Sewer, Water, and Solid Waste Facilities - State law mandates that the Department of Natural Resources and the Department of State Planning review County Water, Sewer, and Solid Waste Plans prior to Health Department action on these plans. As described elsewhere, these are legally binding plans which designate areas which are to receive sewer service, the staging of that service, and the details of the facilities that will provide the services, including sizing, cost, and location. In addition, the State of Maryland provides, through its own grant program, half of the local share for sewer facilities which receive Federal grants. The funds for the State share come from bond authorization which must be passed by the General Assembly and approved by the Governor. All Federal grants relating to sewer, water, and solid waste programs and facilities must be reviewed by Clearinghouse and be certified as consistent with the Coastal Zone Management program. The Federal grant cannot be awarded **without a final letter from the State Clearinghouse containing findings of consistency with the Coastal Zone Management Program. In addition, the Board of Public Works requires that the Clearinghouse letter be submitted to it along with the request by the Environmental Health Administration for the State share of funding before the Board will approve the State grant.**

3) Housing and Industrial Assistance Programs - State funding for these programs is provided through bond authorizations which must be approved by the General Assembly and the governor. State assisted projects are usually private projects and therefore they must meet all the local and State regulations and requirements to which any development is subject, including the program and project review procedures described in this document.

4) Most other State public investments are contained in two major bond bills submitted annually to the Legislature by the Governor. These are the General Construction Loan and the Public School Construction Loan. All State facilities are subject to State regulations and permitting requirements. For example, a new State office building will require a sediment control permit from the Water Resources Administration, a sewer and water construction permit from the Health Department, a discharge permit if new sewage treatment operations are involved from the Department of Natural Resources, and waterway construction permit if the project involves alteration of the cross section of 100-Year Floodplain, and so forth.

In addition to the fact that all projects funded, or partially funded, in the State Capital Program are subject to the planning, permitting and management programs discussed throughout this document, it is important to note that all State Capital authorizations must be enacted by the Legislature and signed by the Governor. Each project is subject to the Maryland Environmental Policy Act (Article NR, Title I, Subtitle 3), the Flood Control Measures in the State Projects Act which requires that all State projects be reviewed by the Department of Natural Resources for their impact on stromwater or susceptibility to flooding (Article NR, Title 8, Subtitle 9), the State's Sediment Control Law (Article NR, Title 8, Subtitle 11), and Health Department review for adequacy of water and sewerage systems. In addition to these provisions, the Coastal Zone Unit can comment on the consistency of projects with the goals, objectives, and policies of the Coastal Zone Management Program during the development of the Governor's Annual Capital Budget. After the Bond Bills for the Capital Budget are introduced to the Legislature, there is also an opportunity for the public or any State agency including the Coastal Zone Unit to the provisions in the Bond Bills. The Bills are subject to amendment and additions or deletions by the Legislature prior to enactment.

Once Bond funds for projects or programs are authorized, project approval must follow established procedures. By this time, projects have been determined to be consistent with Departmental programs and environmental, utility, and stormwater reviews have been made. Each project then proceeds through detailed planning, design, and construction. The Board of Public Works has final authority to implement the State Capital Programs and Projects. They generally meet every two weeks to consider Agenda items submitted by the responsible agencies requesting approval of the various implementation stages, contracts, change order, et cetera. The Board of Pbulic Works meetings are open to the public and the Secreatries of State Planning, General Services, Natural Resouces, and others, as appropriate, attend the Board of Public Works' meetings in an advisory capacity.

Since all the projects which are funded through this mechanism are subject to the project and program review strategies discussed elsewhere in this report, these actions will be carried out consistent with the policies of the State Coastal Zone Management Program. Because of the Governor's Executive Order on Coastal Zone Management and these other State program and project review activities which relate to the State Capital Program, there is assurance that comments relevant to implementation of CZMP will be considered and resolved through the Capital Budget review and approval process.

Implications Of Each Activity Or Use Of Concern

The remainder of this chapter discusses the uses and activities in the coastal zone that are of concern to the Coastal Zone Management Program. The uses or activities of concern for each area of the coastal zone are listed in Table III-1, in order of their discussion in this chapter. Each discussion consists of the following components:

1. Situation - The nature of the Use or Activity of Concern is described, the extent of its occurrence in the coastal zone is indicated, and the implications of the Use to coastal resources are discussed.

2. Issues - The Coastal Zone Management Program's objectives applicable to the situation created by the Use or Activity of Concern under discussion are listed, and the issues which must be addressed by investigations and decisions are delineated.

3. Policies - State policies regarding the Use or Activity of Concern are articulated, consistent with the identified Coastal Zone Management Program's objectives.

4. Implementation - Government agencies principally responsible for coastal management and/or regulations of the Use of Concern are listed as "Lead Agencies".

5. Management Procedures - The means through which the Coastal Zone Management Program's objectives will be met, and through which the relevant policies will be applied to the Use or Activity of Concern, are explained. Participating government agencies are cited and their role is explained.

6. The Coastal Zone Unit's Role - The role of the Coastal Zone Unit applying the "networking" concept is specified, particularly as it related to Project Evaluation and Program Review.

7. Authorities - Finally, all relevant statutory authorities, management techniques, and responsible agencies are listed.

Thus, each section on a particular Use of Concern is a brief, self-contained, complete discussion of the present situation and issues which need attention in Maryland's coastal zone, and the means through which that situation and those issues will be addressed by the Coastal Zone Management Program through the networking of existing governmental programs and the statutes on which they are based.

In addition, the requirements of the 1976 amendments concerning planning for shorefront access and preservation, shore erosion, and energy facilities are addressed by the policies, management procedures and Coastal Zone Unit actions discussed in the sections on Use of Beach Areas, Activities Associated with the Provision of Sufficient Recreational, Open Space and Natural Areas, and Activities Affecting Historical, Cultural and Archeological Resources; on Activities in Areas with Significant Shore Erosion; and on Onshore OCS/Oil/Natural Gas Facilities and Electric Generating Facilities.

TABLE III-1

ACTIVITIES/USES OF CONCERN IN THE COASTAL ZONE

A. Activities Occurring in Coastal Waters

1. Recreational Boating
2. Commercial Shipping (Oil Spill Containment and Prevention)
3. Dredging and Disposal of Dredged Material
4. Activities Associated with Living Aquatic Resources
5. Ocean Dumping
6. OCS Exploration, Production and Development

B. Activities Occurring in Intertidal Areas

1. Use of Beach Areas
2. Activities in Tidal Wetlands

C. Activities Occurring in Shoreland Areas

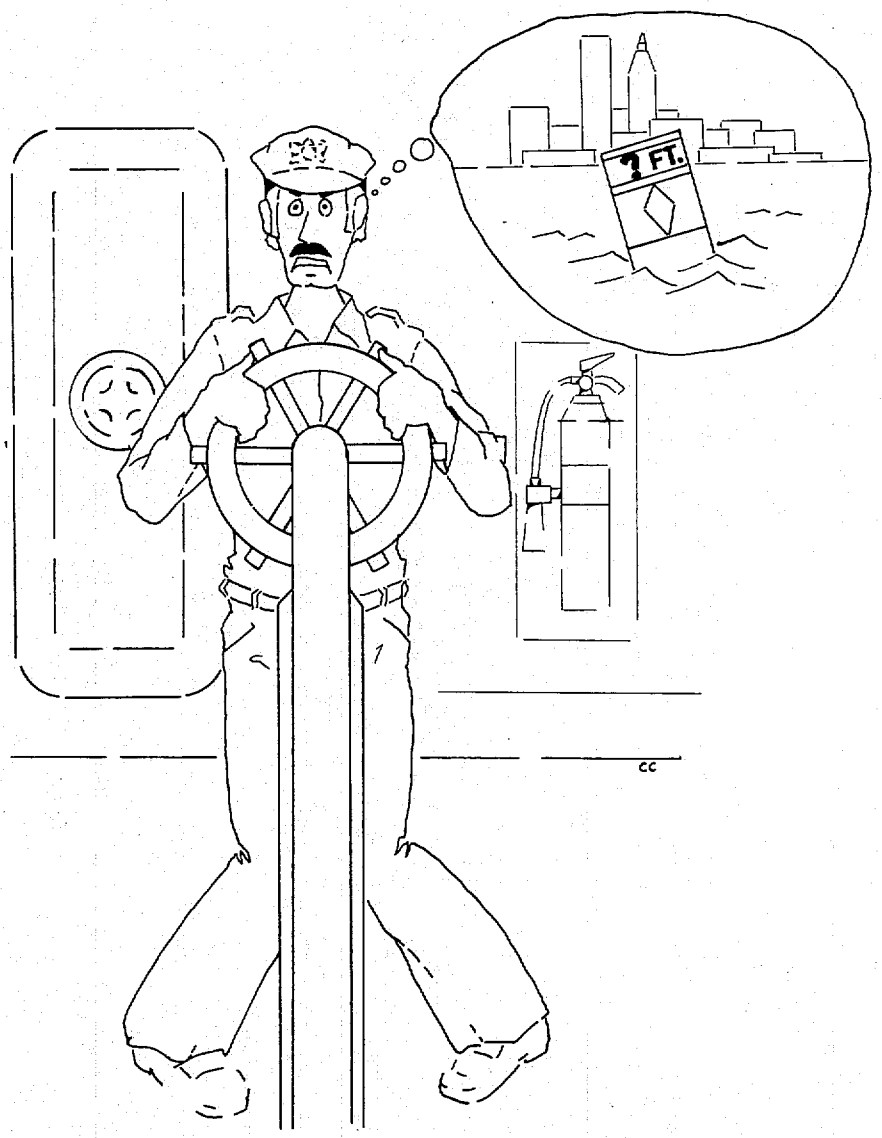
1. Activities in Areas with Significant Shore Erosion
2. Activities in Coastal Tidal and Non-Tidal Flood Plains
3. Activities in Non-Tidal Wetlands
4. Use of Agricultural Lands
5. Use of Forested Lands
6. Channelization (and Small Watershed Projects)
7. Activities Associated with the Provision of Sufficient Recreational, Open Space and Natural Areas
8. Activities Affecting Coastal Historical, Cultural and Archeological Resources
9. Shoreland Activities in General

D. Major Facilities In The Coastal Zone

1. Onshore OCS/Oil/Natural Gas Facilities
2. Electric Generating Facilities
3. Ports
4. Industrial Parks
5. Mineral Extraction Facilities
6. Large-Scale Residential Facilities
7. Sewage Treatment Facilities
8. Land Transportation Facilities

III·A.

ACTIVITIES OCCURRING IN COASTAL WATERS



A. COASTAL WATERS

The Coastal Zone Management Program focuses on the following activities occurring in the State's coastal waters, which are of concern because of their economic importance to the State and their impact on water quality and aquatic resources:

1. Recreational Boating
2. Commercial Shipping (Oil Spill Containment and Prevention)
3. Dredging and Disposal of Dredged Material
4. Activities Associated with Living Aquatic Resources
5. Ocean Dumping
6. OCS Oil and Gas Exploration, Production and Transportation

RECREATIONAL BOATING

Situation

Recreational boating in Maryland is not only a popular pastime for the state's citizens, it is also a bay-related economic factor second in impact only to the Port of Baltimore itself. In 1970, approximately $220 million was spent in Maryland on recreational boating. At present, over 127,000 registered boats cruise the state's waters, and this number is climbing at a annual rate of 9%.

The rapidly increasing popularity of recreational boating has given rise to an inter-related sequence of problems, which necessitate strengthened management efforts, thorough technical analyses, and creative solutions. Demand for marine facilities already exceeds the capacity of existing facilities. Thus, increasing numbers of Maryland's registered boats are trailered boats, which in turn have heightened pressures on existing launch facilities. This shortage of boating facilities is further exacerbated by a lack of sites for new facilities due to the high cost of waterfront land, intense competition for the available land, and increasing state and local restrictions on marine development.

Another problem resulting from increased recreational boating is the adverse effect upon the environment. Boating can increase shoreline erosion and turbidity levels. Discharge of human wastes and other pollutants can degrade water quality. Further investigations are necessary to assess thoroughly the significance of these adverse impacts and the best means to minimize them. In addition, safety and congestion problems have developed on some rivers heavily used for recreational boating.

Issues

This situation necessitates that state and local governments coordinate their activities and regulatory actions, with federal cooperation and consistency, to meet objectives identified in the Coastal Zone Management Program:

(2) To protect, maintain, and improve the quality of the State's tidal waters for propagation of wildlife, fish and aquatic life, and for human use and enjoyment.

(8) To promote increased recreational opportunities in shoreland areas, to promote increased public access to tidal waters, and to assure that these occur in a manner which protects the quality of coastal resources and which maintains public health and safety.

Investigations and regulatory procedures must consider whether or not a proposed action will:

- Provide new areas of access to recreational boating which are environmentally and socio-economically acceptable.
- Create adverse impacts on state or private tidal wetlands or other aquatic resources.
- Cause water quality problems, such as turbidity.
- Create or aggravate shore erosion.
- Decrease safety, increase congestion, or interfere unnecessarily with existing boating or other recreation activities.
- Would change the character of the water body on which they are proposed to be located.
- Cause inappropriate placement of mooring buoys.
- Create a need for adequate navigation **aids and maintenance of navigational channels.**
- Require changes in speed limits or the establishment of restricted and prohibited areas.

Policies

1. To foster the development, use, and enjoyment of the waters of Maryland, the Department of Natural Resources, in cooperation with other government agencies, will develop plans; will conduct educational programs, will improve waterways by deepening channels, acquiring and developing access areas, and clearing waterways of debris; will adopt regulations to promote safety; and will designate and mark channels. (Natural Resources Article, Sections 8-702, 8-703)

2. State funds will not be awarded for the siting of boating facilities in locations which would cause congestion, jeopardize safety, necessitate excessive dredging, interfere with other types of recreational activities, or entail any adverse impact on water quality or aquatic resources. (Natural Resources Article, Sections 1-302, 8-703, 8-707; DNR Regulations Section 08.05.04.02)

3. Location of a boating facility in the lower portions of a tidal tributary, where there is better flushing and access to open water and less need for dredging, is preferable and encouraged over a location in the headwater areas. Similarly, the development of boating facilities within the upper reaches of existing artificial (canal) systems is discouraged. (Natural Resources Article, Sections 1-302, 1-303, 8-703, 9-102, DNR Regulations Section 08.05.04.02)

4. The following criteria will be used (in addition to impacts on State and private wetlands, aquatic resources, and navigation) in establishing regulations (including revised regulations on wetlands, boating use, boat waste discharge, and mooring buoys) and in making State and federal permit decisions on recreational boating activities. The potential for creating or aggravating: (1) congestion and safety problems, (2) turbidity or other adverse water quality impacts, (3) shore erosion probles, (4) other adverse environmental impacts, (5) interference with recreational and commercial fishing, (6) interference with other types of recreational activities, and (7) impacts on the aesthetic qualities of the shoreline. (National Resources Article, Sections 1-302, 1-303, 4-202, 8-703, 9-102, 9-501; federal Water Pollution Control Act Amendments of 1972 Sections 402, 404)

5. Regarding projects undertaken to obtain riparian access, the public policy of the State is to preserve wetlands and protect water quality while providing for the riparian land owners right of access to navigable waters. Thus:

   a. Where reasonable access for a riparian property owner can be provided directly from fast land, creation of a channel through vegetated wetlands, filling for access, or extension of a channel inland shall be prohibited.

   b. Where access is to be provided to a subdivision or other multi-home development of community, a centralized boating access channel is preferable to multiple piers or channels. For isolated single family dwellings, a pier from fast land to open water shall normally fulfill the right of responsible riparian access.

   c. The ownership of land bordering upon tidal waters does not carry with it the automatic right to create channels to extend boat access.

   (Natural Resources Article, Sections 1-302, 9-102, 9-202, 9-306; pending revised DNR wetlands regulations)

6. All waters of the State shall be protected for use as water contact recreation, for fish, other aquatic life and wildlife. Additional protection shall be given for shellfish harvesting and recreational trout waters and waters worthy of protection because of their unspoiled character. (Natural Resources Article, Sections 8-1402, 8-1405; pending revised DNR water quality registration and titling)

7. Boats shall be operated:

   a. In observance of State regulations regarding boating registration and titling.

   b. In observance of the Inland Rules of the Road set forth in Coast Guard pamphlet USCG-169 dated May 1, 1977.

   c. In observance of speed limits and restricted skiing areas, as set forth in DNR Regulations 08.04.04.03 and 08.04.04.04.

   d. In avoidance of any fishing net lawfully placed and marked.

   e. With engines muffled in accordance with State noise standards.

   f. Without motors in State wildlands (unless allowed because of traditional use).

g. In accordance with other rules and regulations that may be established by the State to protect public safety and welfare, water quality or aquatic resources.

(Natural Resources Article, Section 8-704(b), pending DNR mooring buoy regulations)

8. The location of buoys for the mooring of boats will be consistent with State policy if the mooring location is not:

   a. In designated private or public shellfish areas.

   b. In cable-crossing areas.

   c. In navigational channels or in other places in which general navigation would be impeded or obstructed.

   d. In any public ship anchorage.

   e. Interfering with the operation of or access through any bridge.

   f. Within 200 yards of a public or private commercial bathing beach.

   g. Impeding or obstructing the riparian access of adjacent property owners.

   h. Hindering the orderly access to or use of the waterways by the general public.

   (Natural Resources Article, Section 8-704(b) pending DNR mooring buoy regulations)

9. Moorings are to be marked and maintained in accordance with federal regulations and such additional requirements as may be imposed by state regulations. (Natural Resources Article, Section 8-704(b); pending DNR mooring buoy regulations)

10. It shall be consistent with State policy for local governments to establish additional ordinances and regulations to address problems associated with recreational boating facilities and activities, providing they are consistent with State rules and regulations. (Natural Resources Article, Section 8-703, 8-707; Article 25, Section 5; Article 66B)

Implementation

Lead Agencies

1) Provision of recreational access - Waterway Improvements Section of Capital Programs Administration

2) Regulations of recreational boating activities - Marine Division of Natural Resources Police

3) Regulation of the location of recreational boating facilities

Federal: U.S. Army Corps of Engineers (participating agencies: EPA, U.S Fish & Wildlife Service, National Marine Fisheries Service)

State: Water Resources Administration (participating agencies: Md. Fisheries Administration, Md. Wildlife Administration, Department of State Planning, other State and local agencies as relevant)

Local: County Planning and Zoning Offices

4) Regulation of boat discharges

Federal: EPA (participating agencies: U.S. Coast Guard)

State: Water Resources Administration, Environmental Health Administration

Management Procedures

1. Provision of recreational access. The Waterways Improvement Fund administered by the Capital Programs Administration may be used to construct waterways (clear debris, dredge channels, establish navigation aids, etc.), evaluate water-oriented recreation needs, and develop comprehensive plans for waterways improvements. The Department of Natural Resources (DNR) may enter into agreements with the federal government, any municipality, or other political subdivision of the State, or any private agency, to share the cost of any development, construction, or improvement of waterways or facilities determined to have beneficial value to the boating public.

2. Regulation of recreational boating activities. The Marine Division of the Natural Resources Police enforces recreational boating regulations established under the provisions of the Boating Act by the Department of Natural Resources in conjunction with the Boating Advisory Committee.

3. Regulation of the location of recreational boating facilities. The location of recreational boating facilities is regulated by the Section 10 Permit Program of the U.S. Army Corps of Engineers and the Wetlands Permit/License/Water Quality Certification programs of the Water Resources Administration. These regulatory programs are described in more detail in the section Activities Occurring in Tidal Wetlands. In addition, the location of recreational boating facilities is regulated at the local level by Maritime zoning regulations and building permits.

4. Regulation of boat discharges. The Water Resources Administration is in the process of identifying sensitive areas of the State's tidal waters where no discharge of human wastes from recreational boats will be allowed, in accordance with the provisions of the 1972 Federal Water Pollution Control Act Amendments. Regulations requiring pump-out facilities at marinas are presently under review by the Environmental Health Administration of the Department of Health and Mental Hygiene.

Coastal Zone Unit Role

Project Evaluation

The Coastal Zone Unit will be involved in the regulatory process for recreational boating facilities of 50 or more slips in accordance with project evaluation procedures. Proposed projects will be reviewed for possible conflicts with the Coastal Zone Management Program.

Projects involving less than 50 slips are considered not likely to have significant impacts unless they involve alteration of vegetated wetlands or other special consequences, in which case they would be considered for project evaluation in accordance with relevant criteria.

Program Review

The Coastal Zone Unit will participate in efforts to address the following cumulative problems associated with recreational boating activities:

1. Recreational boating access: In conjunction with the Waterway Improvements Program, the Coastal Zone Unit will use the results of the Study Recreational Boating on the Tidal Waters of Maryland and other relevant sources of information to identify areas in which day-use boating facilities can be located in an environmentally acceptable manner. The Coastal Zone Unit will also cooperate with the Waterway Improvements Program to provide needed navigational aids and channel maintenance.

2. Boat discharges: The Coastal Zone Unit will assist the Water Resources Administration and the Environmental Health Administration to develop programs relating to waste discharges from recreational boats.

3. Safety and congestion factors: In conjunction with the Water Resources Administration, the U.S. Army Corps of Engineers, and local units of governments, the Coastal Zone Unit will refine the results of the Study entitled Recreational Boating on the Tidal Waters of Maryland to identify specific areas in which safety and congestion factors are of major concern, and to develop measures to address these problems. Initial attention will be focused on the Magothy and Middle Rivers, on which large new marinas are proposed.

4. Shore erosion: In response to House Joint Resolution 40, the Coastal Zone Unit will initiate an analysis of the impacts of boat wakes on shore erosion in small creeks and coves. If boat wakes are proven to have a significant effect, the Coastal Zone Unit will work with the Marine Division of the Natural Resources Police in the establishment of speed limitations and other measures to minimize such effects.

5. Mooring buoys: With the participation of relevant units of government and the Coastal Resources Advisory Committee, the Coastal Zone Unit will develop regulations concerning the registration of mooring buoys, taking into account such problems as infringement on navigational channels, trespass on the property of riparian property owners, and interference with recreational use of waterways.

Cumulative Impacts

As noted in the Section Activities Occurring in Tidal Wetlands, the Coastal Zone Unit will cooperate with the WRA and the U.S. Army Corps of Engineers on the establishment of an information base on all projects requiring Wetlands Permits and Water Quality Certification to make cumulative impact evaluations possible. In addition, the Coastal Zone Unit, in conjunction with other government agencies, will undertake studies of the cumulative impacts of such projects on water quality, wetlands, aquatic resources, shore erosion, recreation, and the character of the water body.

Local Governmental Efforts

The Coastal Zone Unit will assist local governmental efforts in developing revised comprehensive plans, ordinances, and regulations to address effectively problems with location of recreational boating facilities, and to ensure consistency with State regulatory programs and the objectives and policies of the Coastal Zone Management Program.

AUTHORITIES RELATING TO RECREATIONAL BOATING

a. Congestion/Shore Erosion/Water Quality

Statutory Authority	Controlling Mechanism	Agency
Wetlands Law Natural Resources Article (Art. NR), Title 9	Direct State Planning and Regulation	DNR (WRA)
State Boat Act Art. NR, Section 8-701 et seq.	Direct State Planning and Regulation	DNR (BOAC-Boating Advisory Committee) (Marine Policy)
Rivers and Harbors Act Section 10 Federal Water Pollution Control Act Amendments of 1972, Section 404	State Water Quality Certification and Federal Consistency	Federal: U.S. Army Corps of Engineers State: DNR (WRA)
County Comprehensive Zoning Authority with State Intervention Authority, Art. 66B and Art. 25 Sec. 5 (x); Art. 88C Sec. 2(q)	Local Planning and Regulatory/ State Intervention	Local: Planning and Zoning Offices State: DSP

b. Access

Statutory Authority	Management Technique	Agency
Waterways Improvement Fund Art. NR, Sections 8-707, 8-708, 8-709, 8-716, 8-723	Direct State Planning, State and/or Local Acquisition and Development	DNR (CAP - Capital Programs Administration)
Program Open Space Art. NR, Section 5-901 et seq.	Direct State Planning, State and/or Local Acquisition and Development	DNR (CAP)

COMMERCIAL SHIPPING (OIL SPILL CONTAINMENT AND PREVENTION)

Situation

The Port of Baltimore, a vital economic asset to the State of Maryland and to the nation, is the major center of commercial shipping in Maryland. Each year the port generates more than $1.5 billion, 11.7 percent of the Gross State Product. In addition to the money injected into the State's economy by the industrial, commercial and transportation complex which constitutes the Port, jobs are provided for approximately 249,000 Marylanders.

Several aspects of commercial shipping are of concern to the Coastal Zone Management Program: (1) the maintenance of adequate navigational channels, (2) the disposal of dredged material, (3) shore erosion aggravated by boat wakes, (4) the maintenance of the overall viability of the Port of Baltimore, (5) the establishment of a navigational safety system, and (6) the possibility of oil spills. The first and second concerns are discussed in the Section Dredging and Filling Activities. The fourth concern is discussed in the Section Ports. Shore erosion conditions are addressed by federal agencies having navigational authority over and, at least in part, by the proposed Boat Wake Impact Study. The remainder of this subsection discusses the State's approach on the remaining concerns.

Oil pollution control is of significant concern to the State, since 1,148 reported oil spills from all sources including commercial shipping occurred in 1974, 2,115 in 1975, and 2,133 in 1976. While many spills were in the 5-10 gallon range, at least 11 of these spills were in excess of 1,000 gallons, and the largest was 135,000 gallons. Additionally, in the annual report of the Oil Disaster, Containment, Cleanup and Contingency Program of WRA, it is conservatively estimated that 10 million gallons of waste oil and 3.5 million gallons of oil bilge and ballast waters are disposed of annually within the borders of Maryland.

Within the Chesapeake Bay, large oil spills have potentially serious impact on waterfowl, wetlands, benthic communities, and shoreline property within a few hours of the spill. Similarly, the discharge of toxic materials or other hazardous materials (e.g., sulfuric acid) transported on the Chesapeake Bay can have adverse impacts on aquatic resources.

The establishment of a navigational traffic system to monitor vessel traffic on the Bay is needed to reduce the possibility of collisions in the Bay, and thus aid in the prevention of oil spills and the release of toxic materials or other hazardous materials. In addition, the feasibility of alternative methods of transporting oil, such as pipelines, should be investigated as means to reduce the potential of oil pollution in the Chesapeake Bay and its tributaries.

Issues

This situation requires that state and local governments coordinate their activities and regulatory actions, with federal government cooperation and consistency, to meet the following objectives of the Coastal Zone Management Program:

(2) To protect, maintain, and improve the quality of the State's tidal waters for propagation of wildlife, fish and aquatic life, and for human use and enjoyment.

(20) To ensure the viability of Maryland's port areas, and to ensure that their development is carried out in an environmentally sound manner.

(33) To ensure that hazardous substances are utilized and disposed of in a manner which prevents any toxic, lethal or sublethal effects to plant, aquatic or animal life, which prevents any adverse effect upon human health, and which prevents disposal of the substances into terrestrial or aquatic ecosystems.

Management actions and regulatory procedures must:

a. Establish procedures and methods for the safe handling, transfer and storage of oil to minimize damage from oil spills, and to reduce the possibility of spills.

b. Establish the best possible oil spill contingency plans to minimize the impacts of oil spills when they do occur.

c. The establishment of procedures and methods for the handling, transfer, storage, and disposal of toxic materials.

d. Ensure the conservation and effective utilization of oil resources to meet state energy needs.

e. Examine ways to reduce the traffic of vessels containing oil and other toxic materials by encouraging less dangerous methods of transportation.

Policies

1. The Department of Natural Resources shall act for the State to develop needed navigational aids and improvements on waterways on the Chesapeake Bay and other tidal waters of the State. (Natural Resources Article, Section 8-203)

2. The Maryland Port Administration may:

   a. Provide for the preservation of navigation and the protection of public health within its territorial jurisdiction, by such means as the establishment of lines beyond which piers, bulkheads, wharves, pilings, structures, obstructions, or extentions may not be made or extended and by the construction, maintenance and repair of such structures.

   b. Establish regulations covering the handling of dangerous materials, the anchoring and moving of watercraft, and the discharge of refuse or similar material into navigable waters, in order to foster and facilitate navigation and prevent injury to persons or property.

   c. Make surveys or charts of navigable waters within its territorial jurisdiction and ascertain the depth and course of the channels of these waters. (Transportation Article Section 6-206)

3. No person may discharge, or cause to be deposited into the waters of the State, oil or other matter containing oil or bilge or ballast water which will pollute these waters, or which will violate the water quality standards of the State.

4. Any person discharging or permitting the discharge of oil into the waters of the State from a land-based installation, from vehicle in transit, or from a vessel, ship or boat of any kind, must report the incident immediately to the appropriate Federal authority and to the Administration, and must remain available until clearance to leave is given by the appropriate officials. (Natural Resources Article, Section 8-1410(b), Water Resources Administration Rules and Regulations, Section 08.05.04.07)

5. No one may engage in any commercial or industrial operation involving methods, facilities, standards, and devices for transfer, handling, transport storage, separation, removal, treatment, or disposal of oil or other unctuous substances, unless he has obtained a permit from the Department of Natural Resources indicating that the activities are in conformity with the prescribed rules and regulations to prevent pollution of the State's waters. (Natural Resources Article 8-1405, 8-1413, DNR Regulation 08.05.04.07)

6. The Department of Natural Resources and the Maryland Port Administration, in conjunction with the U.S. Coast Guard, shall develop and implement a program to prevent or respond to emergency oil spills, including requiring bonds for vessels transporting oil products and requiring persons responsible for oil spills to provide adequate compensation. (Natural Resources Article 8-1405, 8-1406, 8-1408, 8-1410, 8-1411, 8-1415, 8-1417; DNR Regulation 08.05.04.07)

7. All new facilities involved with the handling, storage, transfer, or processing of petroleum or natural gas products must be located where the potential for adverse impacts on aquatic resources is minimized, and must be built in a manner which assures compliance with state water quality standards. (Natural Resources Article, Section 6-508)

8. Generally, the use of pipelines will be encouraged for the transporting ashore of any petrochemicals produced in the Atlantic Outer Continental Shelf Area. (Natural Resources Article, Sections 1-302, 1-303, 6-502, and 6-508)

Implementation

Lead Agencies

State: Water Resources Administration - Oil Disaster, Containment, Cleanup, and Contingency Program.

Energy Policy Office: Energy and Coastal Zone Administration - development of State energy policy relating to energy needs, use, distribution and conservation.

Federal: U.S. Coast Guard - navigational safety, oil spill containment and cleanup in U.S. waters.

Management Procedures

Oil Handling Permits - The prevention of oil spills is a continuing effort of WRA, and is carried out in accordance with the requirements of WRA Regulation 08.05.04.07. To ensure that all users of oil are capable of preventing oil pollution, state law requires WRA permits for use, handling and storage, disposal, and transfer of oil. The requirements for a permit include meeting specific standards in the regulations and contingency plans for coping with an accidental spill. Thus, the State's approach to the problem of oil spills is to regulate the handling, storage and use of oil products, to minimize the possibility of oil spills, and to insure that contingency plans are made (at the facility level and at the state level) to respond effectively to oil spills if they should occur.

Oil Disaster, Containment, Cleanup, and Contingency Program - The Department of Natural Resources (WRA) is responsible for cleanup of discharges and spills. However, the Department can collect compensation fees for the cost incurred. Private individuals may not receive compensation for cleanup costs. Persons responsible for oil spills are liable to "any person" for damages to property caused by the spill. A Maryland Oil Disaster Containment Cleanup and Contingency Fund of up to $1 million is maintained from license fees for terminal facilities (the fee varies with the size of the facility). Compensation fees paid by dischargers replenish this fund.

Investigation of all oil spills in state waters is the responsibility of the Enforcement Division of WRA. The Maryland Port Administration is responsible for development of a program to respond to emergency oil spills in the Baltimore Harbor. WRA is responsible for development of a similar program in other waters of the State.

The objectives of the Oil Disaster, Containment, Cleanup and Contingency Program are:

1. To institute prompt measures to stop the discharge and to restrict and contain the spread of spilled oil.

2. To make equipment and supplies readily available for the containment and cleanup of oil spills.

3. To apply techniques and procedures to cleanup and dispose of spilled oil.

State Response to Open Water Spills - Since the U.S. Coast Guard requires eight to twelve hours to respond from its Elizabeth, N.C. base to an open water spill in Maryland, WRA has been developing the ability to respond immediately (within the hour) to any open water spill on the Chesapeake Bay or other state waters. An Ad Hoc Committee representing the Maryland Port Administration, the Maryland Environmental Service, WRA, the Maryland Wildlife Administration, the Maryland Fisheries Administration, the Maryland Petroleum Association (representing the State's oil industry), the Baltimore County Fire Department, the Baltimore City Bureau of Operations and Fire Department, the U.S. Coast Guard, and the U.S. Fish and Wildlife Service, was formed to address the problem of quick deployment for open water spills. As a result, the Oil Permits Section of WRA has acquired equipment, and has developed a contingency plan for open water spills. A report documenting the plan is near publication.

In late 1976, WRA and the U.S. Coast Guard conducted separate, successful demonstrations of their ability to respond to open-water oil spills.

Oil Transport Policy - Although to date there is no formal state policy on oil tanker traffic in the coastal zone, Maryland did join with the other states of the Mid-Atlantic Governors' Coastal Resources Council to seek a condition on the lease sale (No. 40) of Outer Continental Shelf (OCS) tracts, requiring that, wherever feasible and preferable, pipelines will be used to transport ashore any petrochemicals produced from those tracts. Pipelines have a considerably better record than tankers for transporting petrochemicals without spill.

Where oil tankers are being used, the State is considering the range of possible actions to protect the coast from tanker-related oil disasters. Navigational improvements (such as maintaining a safe channel depth, improving the piloting system, and establishing a vessel traffic system) may reduce the potential for oil spills and the discharge of toxic materials. The recent incorporation of the Energy Policy Office into the Energy and Coastal Zone Administration will help the State to develop a policy on energy, its transport and distribution within the State.

Hazardous Substances Transport - In addition to its general responsibilities relating to oil pollution and navigation, the U.S. Coast Guard is responsible for regulating the transport of dangerous materials (including toxic materials) on the Chesapeake Bay. As described in the Section Shoreland Activities in General, the Department of Natural Resources is responsible for regulating the storage and disposal of hazardous substances, including toxic materials.

Coastal Zone Unit Role

Project Evaluation

Proposals for the construction or expansion of all facilities involved with offlanding, transfer, or intermediate processing of oil and natural gas products will be subjected to a full project evaluation in accordance with the provisions of the Coastal Facilities Review Act for which the Coastal Zone Unit has responsibility.

Program Review

The Coastal Zone Unit will:

1. Work with WRA to refine oil spill contingency measures, including use of oil-spill trajectory models, and to determine likely dispersion patterns of oil spills.

2. Work with the Energy Policy Office to develop policies on the wise use and conservation of oil resources.

3. Work with the U.S. Coast Guard, the U.S. Army Corps of Engineers, and the State of Virginia to establish vessel traffic systems in the Chesapeake Bay as a measure to reduce the probability of oil spills or discharges of toxic materials from vessels.

4. Work with appropriate government agencies to investigate the feasibility of alternatives to commercial shipping for transporting oil.

AUTHORITIES RELATING TO COMMERCIAL SHIPPING (OIL SPILLS)

Statutory Authority	Management Techniques	Agency
General powers relating to Chesapeake Bay & Shorelines Art. NR, Section 8-203	Direct State Planning and Regulation	DNR
Oil Pollution laws Art. NR, Section 8-1405 1406, 1410, 1411, 1417 Regulation 08.05.04.07 (1974)	Direct State Planning and Regulation	DNR (WRA)
Federal Water Pollution Control Act Amendments of 1972, Section 311	Federal Consistency	Federal: U.S. Coast Guard, EPA State: DNR (E&CZA)
Coastal Facilities Review Act Art. NR, Section 6-501 et seq.	Direct State Planning and Regulation	DNR (E&CZA)
Dangerous Cargoes Transport	Federal Consistency	Federal: U.S. Coast Guard State: DNR (E&CZA)
Hazardous Substances Disposal Act, Art. NR, Section 1413.2	Direct State Planning and Regulation	DNR (WRA)

DREDGING AND DISPOSAL OF DREDGED MATERIAL

Situation

In the past, dredged material resulting from the maintenance and improvement of federally maintained harbor channels has been disposed of in open water sites. The Maryland Board of Public Works, whose responsibility it is to designate such sites, is the only state organization authorized to acquire and dispose of submerged State lands. Adverse impacts on shellfish beds from disposed dredged material were officially recognized by the Baltimore District Corps of Engineers in 1902. Throughout the years, watermen and environmentalists have objected to open water disposal, and the last deepening of the C&D Canal (1966-1968) brought complaints from watermen that mounds of sediment were interfering with drift netters working near the area of disposal. As a result of opposition to open water disposal, the Commission on Submerged Lands of the State Board of Public Works, in 1968, made the following recommendations to the Governor and the Board:

1. That in 1969, the State make available funds for the study, planning, and construction of a spoil containment area in the vicinity of Baltimore Harbor.

2. That, pending completion of the spoil containment area, dredging in Baltimore Harbor be severely limited, and that spoil from those projects approved be deposited at Pooles Island Deep.

3. That a westward extension of the Kent Island Dump site be approved, as proposed by the Baltimore District Engineer, to receive non-contaminated spoil dredged outside Baltimore Harbor. This action was recommended by an ad hoc committee of estuarine experts only after consideration of the best available environmental information. This information indicated that the probable environmental effects of disposing in the designated expansion area would be insignificant.

These recommendations resulted in the limitation of dredging in Baltimore Harbor to critically needed projects, and led to the selection of Hart-Miller Islands as a diked containment facility for the dredged material from the proposed deepening of the southern approach navigational channel to Baltimore Harbor to 50 feet.

Dredging operations will potentially generate 155 million cubic yards (mcy) of dredged material over the next 20 years, 140 mcy of which will result from Federal, State, and private dredging activities in Baltimore Harbor and the Chesapeake and Delaware (C&D) Canal and approaches. That total includes a federal program for deepening the Harbor approaches from 42' to 50'.

Existing containment sites along the C&D approach channel in Maryland currently have a total of 8.9 million cubic yards of acceptable capacity. The current maintenance dredging backlog associated with the C&D channel is 10 million cubic yards (cmy). Baltimore Harbor containment sites (privately owned) have a potential capacity of 2 to 4 mcy. Eight potential containment sites have been evaluated for development by the State. In 1977, three of these sites were recommended for development by the State Department of Transportation in a report to the Maryland House of Delegates Subcommittee on Law Enforcement and Transportation. Together these sites will provide approximately 30 mcy capacity.

The proposed Hart-Miller Islands Diked Containment Area is designed to accommodate 52 mcy, including 42 mcy produced by dredging the Congressionally authorized 50' channel for Baltimore Harbor.

In summary, existing containment capacity is insufficient to meet spoil disposal needs for the next 20 years.

Issues

In order to meet the needs of the next 20 years and beyond, a dredging management plan must be developed which uses an acceptable combination of alternative methods to dispose of dredged material, in a manner consistent with the following objectives of the Coastal Zone Management Program:

(2) To protect, maintain, and improve the quality of the State's tidal waters for propagation of wildlife, fish and aquatic life, and for human use and enjoyment.

(3) To protect coastal aquatic areas of significant resource value, and where possible, restore presently degraded areas of potentially significant resource value, such as viable oyster bars and clam beds, important migratory pathways, spawning, nursery and feeding areas for fish, wintering and resting areas for migratory birds.

(4) To protect, maintain, and where feasible restore the integrity of tidal wetlands of the State.

(20) To ensure the viability of Maryland's port areas and to ensure that their development is carried out in an environmentally sound manner.

(28) To identify and encourage the use of environmentally suitable methods of dredging and dredged material spoils disposal (including beneficial use of dredged material), to meet long-term needs resulting from navigational projects, state and local governmental projects, and major private projects, and to oppose the use of methods found to be environmentally unsuitable.

(33) To ensure that hazardous substances are utilized and disposed of in a manner which prevents any toxic, lethal or sublethal effects to plant, aquatic or animal life, which prevents any adverse effect upon human health, and which prevents disposal of the substances into terrestrial or aquatic ecosystems.

To develop a management plan for dredged material disposal the following requirements must be met:

- Economic and environmental effects of deepening the southern approach channel to Baltimore Harbor must be investigated.

- Acceptable sites for the disposal of dredged material from projects associated with the maintenance of navigation channels and Baltimore Harbor must be provided.

- Beneficial alternatives for the disposal of dredged material must be investigated.

- Procedures among State and federal agencies for the scheduling and implementation of maintenance and improvement of navigational channels must be coordinated.

- Biological, chemical and physical impacts of dredging and disposal operations must be ascertained.

- Methods for the selection of alternative disposal sites must be developed.

Policies

1. Dredging or filling will not be permitted in state or private wetlands without state approval. (See Section Activities Occurring in Tidal Wetlands for conditions under which dredging and filling will be allowed). (Natural Resources Article, Sections 9-202 and 9-306)

2. No dredged material containing designated hazardous substances shall be disposed of in any manner that would lethally or sublethally affect terrestrial or aquatic ecosystems. (Natural Resources Article, Section 8-1413.2, Department of Natural Resources Rules and Regulations, Section 08.05.05)

3. A system must be devised to minimize undesirable cumulative impacts of dredging, disposal, and related activities in the coastal zone. (Natural Resources Article, Sections 1-302, 8-1413.1 and 8-1601)

4. Continued intensive monitoring of large dredging projects, particularly those involving disposal of material in open water, is required. (Natural Resources Article, Section 8-1413.1)

5. The development of a method for choosing spoil disposal sites which is acceptable to state and federal regulatory agencies, is necessary for use by counties, municipalities, and other local dredging interests. (Natural Resources Article, Sections 1-302, 1-303, 8-1413.1 and 8-1601)

6. No material dredged from Baltimore Harbor shall be disposed of in an unconfined manner in the open water portion of Chesapeake Bay, or the tidal portions of its tributaries outside of Baltimore Harbor. (Natural Resources Article, Section 8-1602)

7. The proposed Hart and Miller Island diked disposal facility for material dredged from the federal channels in Baltimore Harbor and its approaches is required. (Natural Resources Article, Sections 1-302, 1-303, and 8-1601)

8. Further selection and development of the most feasible of the potential containment sites identified in Baltimore Harbor is required. (Natural Resources Article, Sections 1-302, 1-303, and 8-1601)

9. The economic and environmental feasibility of alternative uses of dredged material, such as transport to an inland reclamation site or production of lightweight aggregates, must be determined as part of the development of a long-term dredged material disposal plan. (Natural Resources Article, Sections 1-302, 1-303, and 8-1601)

10. Adequate notification of proposals for navigational channel maintenance and improvement must be provided to the State by the U.S. Army Corps of Engineers, and the responsibility of the various State agencies involved in such projects must be clearly defined. (Natural Resources Article, Sections 1-101, 1-104, 1-302, 1-303, 8-1402, 8-1405, 8-1413.1, 8-1601, 9-102, 9-202; Transportation Article 2-103, 6-102, 6-204, 6-206)

Implementation

Lead Agencies

Federal: U.S. Army Corps of Engineers

State: Department of Natural Resources (WRA); Department of Transportation (MPA); Department of General Services, Board of Public Works

Management Procedures

The U.S. Army Corps of Engineers has the responsibility for improving and maintaining navigation channels. The Philadelphia District has responsibility for the C&D Canal and its approach channel down to the Tolchester Point, and the Baltimore District has responsibility for channels in the remainder of the State's waters. While the Philadelphia District's responsibilities include provision of disposal sites, the Baltimore District's do not. The Department of Transportation, the Department of Natural Resources and the State Board of Public Works have responsibilities to develop the State's position on proposed Corps' operations, and to carry out activities relating to such projects.

The State has recently taken action to clarify the responsibilities of state agencies involved in such projects. In a letter from Acting Governor Blair Lee to the Baltimore District, the Maryland Department of Transportation was designated as the lead agency to carry out the State's responsibility for the Federal Baltimore Harbor Channel Project. The Department of Natural Resources will be responsible for evaluating disposal alternatives, monitoring dredging operations and initiating research efforts.

In addition, the Water Resources Administration and the Baltimore Ditrict of the U.S. Army Corps of Engineers have initiated discussions on the need for a process in which the Corps would notify the State early of schedules for channel maintenance and improvement, so that the State has adequate time to choose the best disposal alternatives.

Such discussions are taking place under the aegis of the newly formed Chesapeake Bay Dredged Material Disposal Committee. Agreements reached with the Baltimore District should provide a model for implementation with the other districts.

As described in more detail in the Section Activities Occuring in Tidal Wetlands and in Appendix G, the State Wetlands Permit/License/Water Quality Certification Program and the U.S. Army Corps of Engineers Section 10/Section 404 Permit Program are the principal programs regulating dredging and filling activities in the State's waters. Policies and procedures addressing potential impacts of dredging and filling activities in tidal wetlands, aquatic resources, etc., are described in the Section Activities Occurring in Tidal Wetlands, Living Aquatic Resources, etc.

Coastal Zone Unit Role

Project Evaluation

The Coastal Zone Unit will assist the Water Resources Administration to establish program coordination and review procedures. With regard to specific projects, the Coastal Zone Unit will be involved in project evaluations associated with major facilities, and will assist the Water Resources Administration in investigation of potential secondary impacts of dredging projects such as hydrologic changes offsite degradation of aquatic resources, etc.

Program Review

With financial support of the Coastal Zone Management Program, the Water Resources Administration has conducted a study of dredging and disposal of dredged material. The results of the study, which addresses short and long-term disposal options, regulatory mechanisms, administrative procedures, and monitoring activities are documented in the report, "Management Alternatives for Dredging and Disposal Activities in Maryland's Waters". The recommendations of the study are providing the basis for action by the Department of Natural Resources, particularly in clarifying the roles of the various governmental agencies to effect more coordinated solutions to dredging and dredged material disposal problems.

The Coastal Zone Unit will assist the Water Resources Administration in carrying out the recommendations of the report, including further study of unresolved aspects of the problem, such as identifying acceptable dredged material disposal sites. The Coastal Zone Unit will also assist the Water Resources Administration in ensuring the input of all interested parties in decisions regarding disposal options for specific projects, particularly those involving open water disposal.

AUTHORITIES RELATING TO DREDGING AND THE DISPOSAL OF DREDGED MATERIAL

Statutory Authority	Management Technique	Agency
Wetlands Law Art. NR, Section 9-306	Direct State Planning and Regulation	DNR (WRA) BPW
Monitoring of Chesapeake Bay Dumping Art. NR, Section 8-1413	Direct State Planning and Regulation	DNR/DHMH
Baltimore Harbor Dredged Spoil Overboard Dumping Prohibition Section 8-1601-16105	Direct State Planning and Regulation	DNR (WRA)
Rivers and Harbors Act of 1899, Section 10	Federal Consistency/State Water Quality Certification	Federal: U.S. Army Corps of Engineers State: DNR (WRA)
Federal Water Pollution Control Act Amendments of 1972, Section 404	Federal Consistency/State Water Quality Certification	Federal: U.S. Army Corps of Engineers State: DNR (WRA)

ACTIVITIES ASSOCIATED WITH LIVING AQUATIC RESOURCES

Situation

Living aquatic resources in the coastal environment are a major part of Maryland's recreational and commercial life and livelihood. The tremendous tonnage of fish and shellfish commercially harvested from Maryland waters has been known for many years, and recently there has been evidence to suggest that the size of recreational harvest of finfish is double that of the commercial catch. In addition, many of the migratory species found in the Bay, such as the highly desired striped bass, are only parts of much larger populations which may span the entire east coast. The extent of harvest pressure, in the Bay and offshore, exerts severe stresses on the resources of fisheries in Maryland's coastal zone.

Additionally, agricultural run-off, excess sewage, storm water run-off, and industrial discharges have had measureably adverse effects upon fisheries in the Chesapeake Bay and its tributaries.

The extent of stress on the living resources in Maryland's aquatic coastal environment is not fully known for several reasons. First, there has often been inadequate basic data of the aquatic biota. Second, there is currently no method which adequately detects changes in the health and integrity of the biota in Maryland's coastal zone.

Issues

This situation requires a coordinated effort of state and federal agencies with academic and research institutions, actively working to eliminate present information and management deficiencies in accordance with objectives of the Coastal Zone Management Program:

(2) To protect, maintain, and improve the quality of the State's tidal waters for propagation of wildlife, fish and aquatic life, and for human use and enjoyment.

(3) To protect coastal aquatic areas of significant resource value, and where possible, restore presently degraded areas of potentially significant resource value, such as viable oyster bars and clam beds, important migratory pathways, spawning, nursery and feeding areas for fish, and wintering and resting areas for migratory birds.

(4) To protect, maintain, and where feasible restore the integrity of the tidal wetlands of the State.

(33) To ensure that hazardous substances are utilized and disposed of in a manner which prevents any toxic, lethal or sublethal effects to plant, aquatic or animal life, which prevents any adverse effect upon human health, and which prevents disposal of the substances into terrestrial or aquatic ecosystems.

(37) To promote standardization of techniques and compatibility of federal, state and academic research efforts in the State's coastal areas.

(39) To ensure interstate coordination of plans for the management of resources which are shared with neighboring states, such as migratory aquatic species.

In the development of a comprehensive fisheries management plan for the biota of the Chesapeake Bay and the seaside bays, the following issues must be addressed:

- Recognition of the concept that the various parts of the Cheapeake Bay, such as river tributaries and embayments, interact to form an integrated environmental system, and that use of any part of the system affects the entire system.

- The standardization of data collection procedures in order to ensure that sufficient information is obtained to evaluate resource abundance and the effect of various harvest practices.

- Determination of the magnitude of the recreational harvest of finfish and shellfish, in order to assess the total impact of harvesting practices on living aquatic resources.

- The development of physical, chemical and/or biological sampling procedures that adequately measure changes in the quantity and health of living aquatic resources in the Chesapeake Bay.

- The development of procedures to resolve conflicts between the many uses of the coastal environment, procedures which are based upon evaluation of all aspects of the ecosystem--hydrological, biological, ecological, social and economic.

- The development of programs that naturally and/or artificially enhance finfish and shellfish populations.

- The development of a better understanding of the relationship between living aquatic resources and their biological environment.

- The development of interstate mechanisms for the management of aquatic resources that cross state boundaries.

Policies

1. Management plans for the conservation and preservation of the living aquatic resources of Maryland's coastal areas will be developed and implemented. (Natural Resources Article, Section 4-202, Section 4-602, Section 8-203)

2. Programs for conservation and restoration of (state and federally recognized) endangered or threatened species of fish, including the acquisition of land or aquatic habitat or interests therein, will be developed and implemented to insure their continued existence. (Natural Resources Article, Section 4-2A01 et. seq.)

3. The Department of Natural Resources shall acquire title to or control of areas of water or land in the state, as necessary to protect, propagate, or manage fish as state fish refuges. (Natural Resources Article, Section 4-401)

4. The commercial and recreational harvest of hard shell clams, soft shell clams, crabs, oysters, finfish, and lobsters shall be regulated so that the size of the population of the particular species involved will not fall below the level necessary to provide the optimum sustained yield. (Natural Resources Article, Sections 4-401 et seq., 4-601 et seq., 4-701 et seq., 4-801 et seq., 4-901 et seq., 4-1008 et seq., 4-1021 et seq., 4-1032 et seq.)

5. Measures will be taken to increase the productivity and utility of the state's natural oyster bars. (Natural Resources Article, Section 4-207, 4-1103)

6. No activity will be permitted that impedes or prevents the free passage of any finfish, migratory or resident, up or down stream. (Natural Resources Article, Section 4-501)

7. Dredging through an oyster bar or clam bed which causes adverse impacts to the aquatic resource located on the bar or bed will not be permitted. (Natural Resources Article, Section 1-302, 1-303, 8-802, 9-102, 9-202)

8. No activity to appropriate or use state waters in a manner which will adversely affect living aquatic resources will be permitted. (Natural Resources Article, Section 8-802)

9. Improvement, conservation, and management of living aquatic resources shall be carried out cooperatively by state and federal agencies. (Natural Resources Article, Section 8-1402)

10. No substance classified as a designated hazardous substance (DNR Reg. 08.05.05) shall be disposed of in any manner that would cause lethal or sublethal alterations to the aquatic ecosystem. (Natural Resources Article, Section 8-1413.2)

11. It is State policy to improve, conserve and manage the quality of the State's waters for the propagation of wildlife, fish and wildlife resources. (Natural Resources Article, Section 8-1402)

12. No material dredged from Baltimore Harbor shall be disposed of in an unconfined manner in the open water portion of Chesapeake Bay or the tidal portions of its tributaries outside of Baltimore Harbor. (Natural Resources Article, Section 8-1602)

Implementation

Lead Agencies

Maryland Fisheries Administration (aquatic resources generally)

Maryland Wildlife Administration (migratory birds)

Management Procedures

The Fisheries Administration for the State of Maryland has primary responsibility for development and administration of rules, regulations and management practices for fish and shellfish communities within Maryland's coastal zone. By legislative mandate, Maryland has a "public fishery". This has been interpreted to mean public access to any available resource. Because the finfish community has been naturally plentiful, management practices have been directed at providing spawning opportunities. Because of the significant fluctuation in abundance of shellfish over the years, management practices have attempted to provide an adequate harvestable population, primarily by intensive seeding efforts. Other shellfish management practices have included seasonal harvesting restrictions and limits on the size and sexual maturity of shellfish allowed to be harvested.

The Fisheries Administration also provides information on possible impacts of proposed projects permitted by the State on fish and shellfish resources. Particular attention is given to projects requiring wetlands permits.

The Maryland Wildlife Administration has responsibility for protecting wintering and resting areas of migratory birds, through review and comment on relevant projects or activities through the establishment of regulations on hunting and other activities, and through the cooperative programs with federal agencies concerned with protecting migratory bird species.

Coastal Zone Unit Role

Project Evaluation

The Coastal Zone Unit's role in evaluating projects affecting aquatic resources is described in detail in Chapters on specific activities.

Program Review

Maryland's Coastal Zone Unit will cooperate with the Coastal Resources Commission of Virginia, the agencies of both states, and the National Marine Fisheries Service, to develop comprehensive fishery management plans. These management plans will cover the general fishery biota of the Chesapeake Bay and the seaside bays as well as certain specific species. Negotiations are underway with the State of Virginia on the establishment of baywide aquatic resource management system, in accordance with the provisions of Section 309 of the Coastal Zone Management Act.

The Coastal Zone Unit is also interfacing with interstate groups concerned with management of the aquatic resources, such as the Northeast States Federal Management Board, the Atlantic States Marine Fisheries Commission, the National Shellfish Sanitation Program, the Oyster Institute of North America, and the two River Basin Commissions mentioned above.

Within the State, the Coastal Zone Unit is working closely with the Maryland Fisheries Administration, the Shellfish Advisory Board, the Maryland Water Resources Administration, and other intrastate agencies to develop and implement aquatic resource management programs. The Fisheries Administration has the major authority and responsibility for management of aquatic resources, and is the primary agency working with the Coastal Zone Unit to develop and implement management plans for finfish and shellfish populations.

In order for effective aquatic resource management plans to be developed, implemented and maintained, better information is needed on the abundance and harvest of finfish and shellfish. The Coastal Zone Unit will work with state and federal agencies, as well as with research institutions, to standardize data collection, procedures, and sampling methods which realistically reflect the living aquatic resources of the coastal environment.

Because the Chesapeake Bay is a unified system, decisions on particular activities should be based on assessments of the possible effects on the entire system. Through its project evaluation and technical assistance, the Coastal Zone Unit will promote the concept of the Bay as an integrated system, and will demonstrate a rational, integrated method of analysis based on evaluations of the hydrological, geological, ecological, social, and economic factors relating to each situation.

A handbook has been prepared by the Coastal Zone Management Unit in which various resource areas of finfish and shellfish have been mapped. The intent of this handbook is to focus the attention of local decision-makers on the dependency that finfish and shellfish have on Maryland's aquatic environment. It is also intended to serve as a reference book for these decision-makers in determining if further review of a proposed activity is warranted because of potential adverse affects on living resources.

AUTHORITIES RELATING TO LIVING AQUATIC RESOURCES

Statutory Authority	Management Technique	Agency
State Critical Areas Program Art. 88C, Section 2(b)(3) Regulation 16.00.02	State Standards for State and Local Implementation	DSP
State Boat Act Art. NR, Section 8-701, 8-703, 8-704	Direct State Planning and Regulation	DNR (BQAC, Marine Police)
Water Quality Program Art. NR, Section 8-1401 et seq. Regulations 08.05.04.01 et seq. Art. 43, Section 394(a)	Direct State Planning and Regulation	DNR (WRA) DHMH (EHA)
Wetlands Law Art. NR, Title 9	Direct State Planning and Regulation	DNR (WRA)
Chesapeake Bay Dumping Art. NR, Section 8-1413.1, 8-1601 et seq.	Direct State Planning and Regulation	DNR (WRA) DHMH
Sediment Control Law Art. NR, Section 8-1101 et seq. Regulation 08.05.03.01 56 Attorney General Op.'s 478 (1971)	State Standards for Local Implementation	DNR
Commercial and Sport Harvesting Art. NR, Title 4, Subtitles 7, 8, 9, 10	Direct State Planning and Regulation	DNR (Maryland Fisheries Administration) MFA
Endangered Species of Fish Conservation Act, Art. NR, Section 42A01 et seq.	Direct State Planning and Regulation	DNR (MFA)
Fish Refuges Art. NR, Section 4-401 et seq.	Direct State Planning and Regulation	DNR (MFA)
Oyster and Clam Culture Art. NR, Section 4-1101 et seq.	Direct State Planning and Regulation	DNR (MFA)
Federal Water Pollution Control Act Amendments of 1972 Section 312(f)(3)	Federal Consistency	Federal: U.S. Environmental Protection Agency State: DNR (WRA)
Hazardous Substances Disposal Act Art. NR, Section 8-1413.2	Direct State Planning and Regulation	DNR (WRA)
Construction In Or Obstruction Of Free-Flowing Rivers or Non-tidal Waters Including the 100-year Floodplain	Direct State Planning and Regulation	DNR (WRA)

OCEAN DUMPING

Situation

The State of Maryland is concerned about the environmental and economic impacts of the ocean dumping of municipal and industrial wastes at the Cape May dumpsite, located approximately 35 miles off the Maryland/Delaware line. EPA studies have shown that heavy metals contained in these wastes have accumulated on the ocean bottom, and in the muscle and viscera of bottom-dwelling organisms. Living fecal coliform bacteria, indicators of the presence of disease causing agents, have been detected in shellfish collected in and near the sewage sludge dumpsite. Changes in the composition of the bottom-dwelling community have been observed in a 100-square-mile area covered with sewage sludge. Large numbers of rock crabs from the dumpsite area have been observed with a blackened gill condition caused by sludge particles.

The federal Food and Drug Administration has already prohibited shellfishing along 142 square miles of ocean bottom around the Cape May site, and is considering expanding the area of closure. The Maryland Fisheries Administration estimates the dockside value of the shellfish within the existing area of closure at $2 million. The fact that the prevailing currents carry the ocean dumped wastes towards the Maryland coastline may result in an additional economic impact on the Ocean City tourist industry. It is even possible that the publicity associated with ocean dumping off the coast of Maryland may cause tourists to vacation elsewhere. This impact could have potentially serious consequences to the economy of Maryland's coast.

No industry or municipality in Maryland uses ocean dumping as a waste disposal technique. The Cape May dumpsite has been used since 1973, mainly by the cities of Camden, N.J., and Philadelphia, PA., and by E.I. Du Pont de Nemours titanium dioxide plant in Edgemoor, Delware. Prior to 1973, a site located 12 miles off the mouth of Delaware Bay was used by these dumpers. Presently, the only user of the Cape May dumpsite is the City of Philadelphia. As a result of testimony by the State of Maryland and other parties at ocean dumping hearings, Du Pont and the City of Camden have moved to a dumpsite located 90 miles offshore, off the edge of the continental shelf (referred to as DWD 106). Maryland does not support ocean dumping at DWD 106, but prefers its use to the Cape May site if ocean dumping is necessary at all.

Ocean dumping of industrial and municipal wastes is regulated by the federal Environmental Protection Agency pursuant to Title I, Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 (also referred to as the Ocean Dumping Act). EPA Region III is directly responsible for ocean dumping off the Coast of Maryland. Progress toward achieving the goals of the Ocean Dumping Act was minimal in the Mid-Atlantic region until the summer of 1975, when the Maryland Attorney General's Office became actively involved. Since Maryland became involved, the following progress has been achieved with regard to the three major dumpers using the Cape May site:

- Under the court order, the City of Camden must discontinue ocean disposal of sewage sludge by December, 1977; and is presently using site DWD 106.

- Du Pont must phase out the ocean disposal by the end of 1978, and is presently using DWD 106.

- The City of Philadelphia is under an implementation schedule leading to a phase out by 1981, but continues to dump at the Cape May site.

Issues

There is a basic conflict between the industries and municipalities who have used ocean dumping to their economic advantage, and those who are concerned with the public health, the health of the continental shelf's ecosystem, and the economic loss to offshore fisheries and to tourist industries of coastal resorts. This situation requires that State and local governments coordinate their activity and regulatory actions, with Federal government cooperation and consistency, to meet the following objective of the Coastal Zone Management Program:

(30) To oppose the dumping into ocean waters off the State of Maryland of any material which would adversely affect human, health, welfare or amenities, the marine environment, ecological systems, or resources of economic value.

Investigations and regulatory procedures must address the following concerns:

- Availability of alternative disposal or recycling techniques that are environmentally and socially acceptable.

- Timing of the implementation of alternative methods.

- Severity of the ecological impacts of ocean dumping.

- Desirability of the locations of the existing ocean dumpsites.

Policies

1. It shall be inconsistent to dump material which may adversely affect Maryland waters or coastal resources in the Atlantic Ocean within three miles of Maryland's coastline. (Natural Resources Article, Section 1-101, 1-104, 8-1402, 9-202)

2. The state shall actively participate in federal proceedings on ocean dumping in order to obtain early phase out of ocean dumping activities. (Marine Protection, Research and Sanctuaries Act: 33 USC Section 1401 et seq.; federal rules and regulations pertaining to Ocean Dumping: 40 CFR 222-227; Federal Administrative Procedures Act 5 USC Section 560; Natural Resources Article Sections 1-101, 1-104, 1-302, 1-303, 8-208, 8-1402)

3. It is the policy of the State of Maryland that the Ocean Dumping of materials which may adversely affect Maryland waters shall be consistent with the following:

   a. The process for selecting alternative disposal methods for waste materials should include a consideration of recycling techniques that will yield useful end products. For example, Du Pont has developed a process to recycle their acid wastes (from titanium dioxide production) to produce a product that they will sell at a profit by 1980. Sewage sludge can also be treated in several ways to create soil conditioners.

   b. When potentially harmful contaminants (e.g., heavy metals, disease causing organisms) cannot be removed from waste or recycled materials, then disposal or application techniques must provide for control over the fate of those contaminants.

   c. The applicant for an ocean dumping permit must demonstrate that his proposed actions are in compliance with the Ocean Dumping Act and the rules and regulations promulgated by EPA pursuant to the Act (40 CFR 220-227, 330 SC 1401 et seq.).

   d. Where ocean dumping is the only feasible alternative, dumping should be permitted only at previously used sites and at the site where the least environmental impact, threat to the public health, and loss of fishery resources is anticipated.

   e. Where an ocean dumping permit must be granted, it must contain, as a condition of compliance, a detailed schedule of deadlines leading to the implementation of an alternative disposal method and the total phase-out of ocean dumping by the earliest date feasible.

   f. Both research and monitoring must be conducted at each ocean disposal site, and must be coordinated with all other scientific programs in the Mid-Atlantic Bight. Both studies shall continue until all disposal activities are terminated, and until adverse impacts are dissipated or stabilized.

(Natural Resources Article, Sections 1-101, 1-104, 1-302, 1-303, 8-208, 8-1402)

Implementation

Lead Agencies

Federal: EPA (general regulation of ocean dumping)
U.S. Corps of Engineers (regulation of ocean disposal of dredged material)
U.S. Coast Guard (enforcement)

State: Attorney General's Office (participating agencies - Coastal Zone Unit, Water Resources Administration, Fisheries Administration)

Local: Ocean City

Management Procedures

Federal Agencies:

EPA regulates ocean dumping pursuant to Title 1 Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972. EPA staff promulgate rules and regulations, conduct permit hearings, develop criteria for evaluating permit applications, issue dumping permits, assess permit violations, conduct research and monitoring activities, and make annual status reports to Congress. The Department of Commerce conducts research on long-range and short-term ecological effects of ocean dumping; pursuant to Title II of the Marine Protection, Research and Santuaries Act. The U.S. Coast Guard is responsible for surveillance and enforcement, and provides platforms at sea for research activities. The Army Corps of Engineers regulates the ocean disposal of dredged materials pursuant to Title I, Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.

State Agencies:

The Marine Protection, Research and Sanctuaries Act requires EPA to consult with interested states in considering permit applications for ocean dumping. The Federal Administrative Procedures Act also gives Maryland standing to participate in these proceedings.

The Maryland Attorney General's Office is the lead agency for representing the State's interest in ocean dumping and provides legal counsel. The Coastal Zone Unit provides technical support on the environmental impacts of ocean dumping, and assists in the development of other types of technical information. The Water Resources Administration and Maryland Environmental Service provide expertise in alternative disposal methods. The Fisheries Administration provides information on offshore fisheries. Testimony given by the State at ocean dumping hearings has urged the adoption by EPA of the above policies in the administration of the ocean dumping provisions of the Marine Protection, Research and Sanctuaries Act.

Local Government:

Mayor Harry Kelly of Ocean City, Maryland, has long represented the interests of beach resort communities threatened by pollution of ocean waters, and is well known as an opponent of ocean dumping.

Coastal Zone Unit Role

Project Evaluation

Coastal Zone Unit staff assist in research and monitoring activities, develop technical evidence showing the degree of impact at and near the dumpsites, assist in demonstrating the feasibility of alternative waste disposal and utilization techniques, and provide information and testimony at the request of the Attorney General's Office.

Program Review

The Coastal Zone Unit and Attorney General's Office will pursue all available alternatives to effect a timely phase-out of all ocean dumping off Maryland's coast. Such actions may stimulate EPA to focus additional effort toward the task of clearly defining a national policy on ocean dumping.

AUTHORITIES RELATING TO OCEAN DUMPING

Statutory Authority	Management Technique	Agency
Marine Protection, Research and Sanctuaries Act 330SC §1401 et seq.		
Title I. Section 102:	Federal Planning and Regulation	EPA
Title I. Section 103:	Federal Planning and Regulation	Corps of Engineers
Title I. Section 107:	Federal Enforcement and Surveillance	U.S. Coast Guard
Title II	Federal Research	Dept. of Commerce (NOAA)
Ocean Dumping Rules and Regulations (40 CFR 222-227):	Public Hearings, Adjudicatory Hearings, Appeal to Administrator of EPA	State Agencies
Administrative Procedure Act (5 USC Section 560 et seq.)	Public Hearings, Adjudicatory Hearings, Appeals to Administrator of EPA	State Agencies
General Responsibilities of the Department of Natural Resources Natural Resources Article, Sections, 1-101, 1-404	Direct State Control	DNR
Granting of Wetlands Licenses Natural Resources Article, Section 9-202	Direct State Control	DNR/BPW

OCS OIL AND GAS EXPLORATION, PRODUCTION AND TRANSPORTATION

Situation

Faced with a steadily increasing demand for petroleum products and a diminishing store of domestic oil and gas resources, the federal government initiated, in December of 1974, an ambitious oil and gas leasing program for submerged lands on the entire continental shelf of the United States. Previously, offshore oil and gas development had evolved as an extention of exploration and production activities occurring in adjacent onshore areas. In contrast, the new federal program calls for the leasing of large expanses of submerged lands in frontier areas -- areas where no previous leases have been sold -- including the North Atlantic, Mid-Atlantic, South Atlantic, and areas off Alaska.

Concern has arisen because existing federal laws, rules and regulations, and management techniques, simplify the process of moving offshore from existing onshore production areas, and fail to address the unique problems associated with the new development of frontier areas.

The frontier area of principal concern to Maryland is called the Baltimore Canyon Trough. It is located due east of New Jersey and the Delmarva Peninsula. The Baltimore Canyon Trough is a submerged geological depression extending 300 miles parallel to the coastline from Long Island to the vicinity of Cape Hatteras. Geophysical data indicates significant potential for the discovery of oil and gas. In the Trough there are geological features that could provide a hydrocarbon reservoir and trap; the actual presence of a hydrocarbon source, however, is not certain. The U.S. Geological Survey estimates that as much as 0.4 to 2.6 billion barrels (bbl) of crude petroleum and from 2.6 to 12.8 trillion cubic feet (tcf) of natural gas may be discovered ultimately and produced over a 25-year period. The possibility remains, however, that there are no recoverable hyrdocarbons in the Mid-Atlantic OCS at all.

Coastal states in frontier areas share the need for: 1) state participation in the OCS development process, 2) availability of information to the states for planning, and 3) adequate scientific research. Early in 1974, the State of Florida persuaded the U.S. Department of Interior (DOI, responsible for leasing offshore lands) to establish an OCS Advisory Board (OCSAB) composed of representatives appointed by the governors of coastal states. The purpose of the Board was to provide state input and information exchange. Later, a second advisory board - Environmental Studies Advisory Committee (OCSESAC) - was created to provide DOI with technical advice. The original OCSAB retained responsibility for policy issues. The OCSESAC is presently being restructured. Mid-Atlantic coastal states (New York, New Jersey, Delaware, Maryland and Virginia) have coordinated policy development with each other, through the Mid-Atlantic Governor's Coastal Resources Council (MAGCRC).

To date, one lease sale (sale #40) has taken place in the Mid-Atlantic region -- 529,466 acres were leased under the bonus bid system for $1.1 billion. Additional sales (49 and 59) are scheduled for February 1979 and August 1981. Sale #40 had been invalidated by the U.S. District Court for failure to comply with the National Environmental Policy Act, but the District Court decision was reversed on August 25, 1977 by the U.S. Court of Appeals. In February, 1978, the Supreme Court decided not to consider an appeal of the Court of Appeals decision. It is estimated that exploratory drilling on tracts leased in Sale #40 will begin in the Spring of 1978.

The goal of the Mid-Atlantic states' cooperation has been to insure that offshore exploration proceeds in an orderly fashion in accord with a national energy policy, with provision for state involvement, with sufficient concern and safeguards for the environment, and for the economic and social structure of the affected coastal states.

Issues

This situation requires that the State work with other coastal states and federal agencies to meet the following objectives of the Coastal Zone Management Program:

(31) To ensure the use of thorough assessments of probable energy costs and benefits, positive and negative economic effects, probable social and environmental impacts, and the value of the public resources involved, as the basis for decisions on the development and production of Outer Continental Shelf resources.

(42) To provide adequate representation of the interests of the State of Maryland in federal decisions regarding the exploration, development, and production of Outer Continental Shelf resources.

Investigations and regulatory actions must address the following issues:

- Level of involvement and degree of influence of the states in policy and management decisions concerning OCS development activities.
- Availability of essential information from federal agencies and from industry for state and local government planning for onshore and nearshore impacts.
- Timing of the availability of the data generated by the DOI Environmental Studies Program relative to the rest of the OCS development process, and the mechanisms by which information generated by the Environmental Studies Program enters the decision-making process of the Secretary of DOI.
- Design of environmental studies to meet state and local governments' needs in planning for onshore and nearshore impacts, and the needs of industry in planning for safety and environmental protection.

Policies

1. The State of Maryland will actively participate in federal governmental proceedings concerning OCS developments to ensure that the State's interests are adequately considered. (Natural Resources Article 1-101, 1-104)

2. Maryland supports the federal leasing initiative, while seeking safeguards to ensure that pollution of its coast is prevented, and that onshore support operations neither disrupt local communities nor disregard State plans, policies and programs. Maryland seeks involvement in the administration of OCS lands to ensure that the safest, cleanest technologies are always employed on the Atlantic OCS. (Natural Resources Article, Sections 1-302, 1-303, 6-501 et seq.)

3. Maryland will review OCS exploration plans, development plans, and associated environmental reports to determine if federal license or permit activities associated with such plans are consistent with the Maryland Coastal Zone Management Program. In the case of development plans and their associated environmental reports, the State may, within 60 days of receipt of a development plan, recommend to the Mid-Atlantic District Supervisor that a development EIS be prepared in order to supplement data and information the State needs to make a consistency determination.

The criteria that Maryland will use in determining the need for an EIS include:

a. Location of structures near high seismic risk areas;

b. Location of structures near marine sanctuaries, wildlife refuges or areas of high ecological sensitivity;

c. Location of bottom-founded structures in areas of potentially hazardous natural bottom conditions;

d. Use of new and or unusual technology;

e. Onshore impacts from planned and or existing processing storage, treatment, or transportation facilities that were not adequately considered in a previous development EIS or differ significantly in magnitude, duration and nature of impact; and

f. Information contained in Summary Reports for the Mid and North Atlantic resource province do not provide sufficient detail by which Maryland may make a judgement concerning impacts.

(Natural Resources Article, Sections 1-104, 1-302, 1-303, 8-203 and 8-1402; Final Regulation 30 CFR Parts 251 and 252, 15 CFR Part 930 Sub-part E under the OCS Lands Act of 1953, the National Environmental Policy Act of 1969 and the Federal Coastal Zone Management Act of 1972 respectively.)

4. Since exploration and exploitation of the mineral resources of the Outer Continental Shelf will have significant impacts on Maryland as well as on other affected States, and in recognition of both the State and national interest in the effective management of the marine, coastal, and human environments, it is the policy of the State of Maryland that the following factors be recognized in federal decisions regarding OCS exploration and development:

a. The State of Maryland may require assistance in protecting its coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts; and,

b. The State of Maryland is entitled to participate, in order to protect its interests, in federal policy and planning decisions relating to exploration for, and development and production of, mineral resources of the Outer Continental Shelf. (Natural Resources Article, Sections 1-104, 1-302, 1-303, 8-203, 8-1402; Proposed Amendments to the Federal OCS Lands Act of 1953)

5. It is the policy of the State of Maryland that the right and responsibility of the State of Maryland to preserve and protect its human, marine, and coastal environments through such means as regulation of land, air, and water uses, through safety regulations, and through regulation of related development and activity, be recognized in federal decisions regarding OCS developments. (Natural Resources Article, Sections 1-104, 1-302, 1-303, 6-501 et seq., 8-203, 8-1402; Proposed Amendments to the Federal OCS Lands Act of 1953)

6. Operations in the Outer Continental Shelf must be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or property, or which may endanger life or health. (Federal OCS Lands Act of 1953; Natural Resources Article, Sections 1-104, 1-302, 1-303, 8-203, 8-1402)

Implementation

Lead Agencies

Federal: Department of the Interior
Department of Energy

State: Governor's Office (Participating Agencies Maryland Geological Survey, Coastal Zone Unit)

Management Procedures

Federal Agencies:

Under the OCS Lands Act of 1953, the Department of Interior is charged with administering the mineral development of the Outer Continental Shelf. With regard to hydrocarbons DOI: 1) selects areas for leasing; 2) supervises geological and geophysical exploration; 3) meets environmental protection requirements of the National Environmental Policy Act; 4) evaluates resources to determine the resource sale price; 5) conducts competitive bidding for the resources; 6) supervises exploratory drilling and production activities on awarded leases to assure environmental protection; 7) supervises resource conservation and safety measures; and monitors environmental conditions. These activities are carried on primarily by two agencies of the Department: the Bureau of Land Management and the Geological Survey.

The Department of Energy also has management and regulatory authority over certain specific aspects of OCS exploration and development. This authority involves: 1) fostering competition, 2) devising alternative bidding procedures, 3) establishing diligence requirements for operators, 4) establishing production rates, and 5) specifying the procedures, terms, and conditions for acquisition and disposition of federal royalty interests in kind.

Under Section 4(f) of the OCS Lands Act of 1953, the Secretary of the Army reviews and evaluates proposed construction of fixed structures and artificial islands on the OCS for impact on navigation and national security.

State Agencies:

The leadership for OCS-related issues is provided by the Governor's Office. A member of the Governor's staff represents the Governor on the DOI-OCS Advisory Board, and on the Mid-Atlantic Governor's Coastal Resources Council. The Director of the Maryland Geological Survey represents the Governor on the DOI-OCS Environmental Studies Committee, and works closely with the U.S. Geological Survey. Staff support to the Governor's Office is provided by the MGS, CZU and DSP. Staff capabilities include technical expertise in oceanography, economics, and petroleum engineering. Special consultation is provided by Frank Clark, the originial Chairman of the DOI-OCS Advisory Board.

The passage of the proposed Amendments to the OCS Lands Act of 1953 will allow the State to ensure that its interests are adequately represented in decisions regarding the exploration and development of OCS resources..

The State presently has authority over pipelines from OCS developments once they enter State waters. As discussed in the Section on Onshore OCS/Oil/Natural Gas Facilities, the siting of pipelines in State waters is regulated under the provisions of the Coastal Facilities Review Act administered by the Coastal Zone Unit.

Coastal Zone Unit Role

Project Evaluation

CZU staff attend DOI-OCS Advisory Board meetings, DOI-OCS Environmental Studies Committee meetings, and MAGCRC meetings. CZU staff represent Maryland at OCSESAC subcommittees to design baseline studies and to assess modeling capabilities. CZU has participated in the design of the Mid-Atlantic OCS baseline studies conducted by the Virginia Institute of Marine Sciences (VIMS), and represents Maryland at progress report meetings held at the VIMS lab. CZU staff provides economic and oceanographic technical support to the Governor's Office. Pre-leasing and post-leasing decision points in which states may participate include:

-- pre-leasing: geology-geophysics exploration permit, area selection and schedule preparation, call for nominations, tract selection, preparation of stipulations, notices to lessee, final decision on sale;

-- post leasing: exploratory permit plan, operating orders, notices to lessees, stipulations, EPA effluent guidelines, USGS regulations, development plan, development phase EIS, special stipulations, pipeline right-of-way request, DOT stipulations and regulations on pipleines.

Program Review

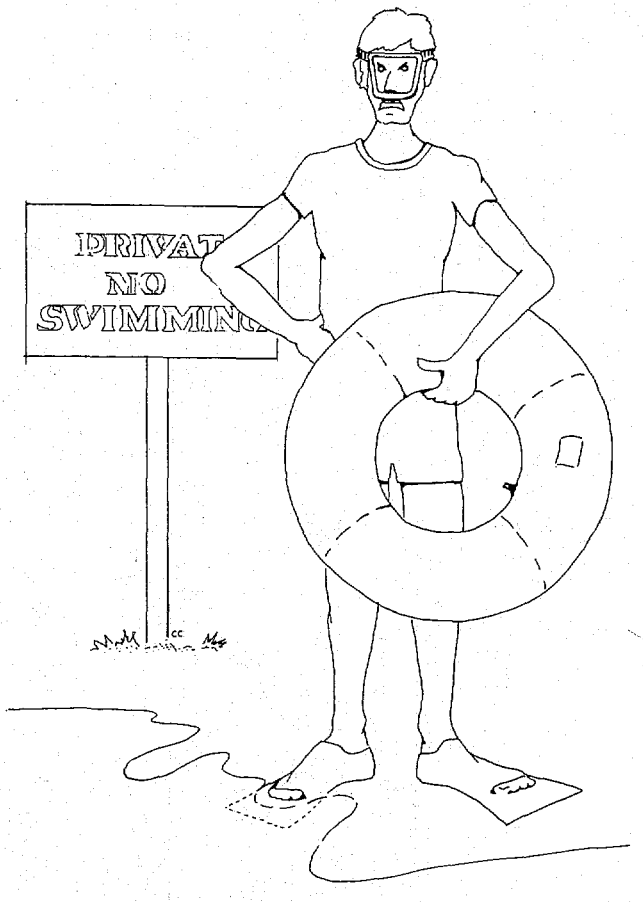
CZU, in cooperation with the Governor's Office, will ensure that OCS oil and gas exploration, production, and transportation in the Mid-Atlantic proceeds in an orderly manner with sufficient safeguards to provide protection from adverse economic, social and environmental impacts.

AUTHORITIES RELATING TO OCS OIL AND GAS EXPLORATION, PRODUCTION AND TRANSPORTATION

Statutory Authority	Management Technique	Agency
OCS Lands Act of 1953 (43 USC 1331)	Federal Consistency (Planning & Regulation)	DOI
OCS Lands Act of 1953 (43 USC 1331)	Federal Consistency (Planning & Regulation)	U.S. Coast Guard
OCS Lands Act of 1953 (43 USC 1331) and CZM Act of 1972	Federal Consistency (State Involvement)	State Agencies (particularly DNR & DSP)
Maryland Environmental Policy Act (Art. NR, Section 1-301 et seq.)	State involvement in Federal Proceedings; Direct State Planning and Regulation	State Agencies (particularly DNR & DSP)
Coastal Facilities Review Act (Art. NR, Section 8-501 et seq.)	Direct State Planning and Regulation	DNR (E&CZA)
Wetlands Law Art. NR, Title 9	Direct State Planning and Regulation	DNR (WRA)

III·B.

ACTIVITIES OCCURRING IN INTERTIDAL AREAS



B. INTERTIDAL AREAS

Intertidal areas are transition areas between tidal waters and coastal shorelands. Two types of use of these areas are of concern to the Coastal Zone Management Program:

1. Use of Beach Areas

2. Activities in Tidal Wetlands

USE OF BEACH AREAS

Situation

Because of concern about the provision of adequate public access to and protection of public shore areas, there was included in the 1976 Amendments to the Coastal Zone Management Act the requirement that a State's coastal zone management program must include "a definition of the term "beach" and a planning process of the protection of and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value."

The regulations issued pursuant to the Amendments further state that the planning process must include the following elements:

(1) A procedure for assessing public areas requiring access or protection;

(2) A definition of the term "beach" and an identification of public areas meeting that definition;

(3) Articulation of enforceable State policies pertaining to shorefront access and protection;

(4) A method for designating shorefront areas (either as a class or site specifically) as areas of particular concern or areas for preservation or restoration, if appropriate; and

(5) An identification of legal authorities, funding programs and other techniques that can be used to meet management needs.

To meet the requirements of 1976 Amendments, a beach has been defined as a gently sloping shore area of the Atlantic Ocean, Chesapeake Bay or other tidal waters covered by sand or similar material, and the lower portion of which is washed by waves or tides. Public beach areas meeting this definition are noted in Table III-2.

The only extensive beach areas in Maryland lie along its Atlantic coastline on Fenwick and Assateague Islands. There are also a number of less extensive beach areas on Chesapeake Bay.

The process and legal authorities by which public access to these areas is ensured is described below. In addition, the Maryland Department of Transportation gives considerable attention in its system planning efforts (see the section of this Chapter on Land Transportation Facilities) to identifying ways in which an adequate transportation network can be maintained between the Atlantic Coast Beach areas and the heavily populated Baltimore-Washington area where the majority of the beach users live. In the mid-1970's a second bridge across the Chesapeake Bay was built to reduce traffic delays and studies are underway on ways to eliminate potential bottlenecks at Kent Narrows, Vienna and Cambridge. The possible alternatives for the elimination or reduction of such bottlenecks needs careful examination since the removal of wetlands and/or existing development may be involved.

TABLE III-2

Public Beaches In Maryland's Coastal Zone

COUNTY	NAME	OWNERSHIP
Anne Arundel	Sandy Point State Park	State
	Mayo Beach	County
Baltimore County	Gunpowder State Park	State
	Cox's Point	County
	Miami Beach	County
	Turkey Point Park	County
	Rocky Point Park	County
Calvert	Calvert Cliffs State Park	State
Cecil	Elk Neck State Park	State
Harford	Flying Point Park	County
Kent	Eastern Neck National Wildlife Refuge	Federal
	Betterton Public Beach	County
St. Mary's	Point Lookout State Park	State
Somerset	Jane's Island State Park	State
Worcester	Assateague Island National Seashore	Federal
	Assateague Island State Park	State
	Ocean City Beach	Quasi - Public (Open to the public)

Due to the characteristics of the Chesapeake Bay shoreline (isolated, non-extensive, generally narrow beaches) there are no beach areas where only the wetland sand areas alone can be used for intensive recreational purposes even if access were provided. Therefore the provision of public access generally must include the acquisition of upland areas to provide adequate recreational areas. In addition, the sea nettles that invade the Bay and the Bay's warm temperature in the summer reduce its attractiveness for water-contact recreation purposes in comparison to the State's Atlatnic Coast Beach Areas. However, the Bay is heavily used for recreational boating purposes and the State is committed to providing adequate boating access through its Waterway Improvement Program.

Moreover, the State does have a commitment to providing recreational opportunities on the shorelines of Chesapeake Bay and its tributaries. The State addresses this commitment and the shorefront access and protection planning requirements of the 1976 Amendments largely through the acquisition and management of public lands in accordance with the State Outdoor Recreation Plan (SCORP).

The State is in the process of reassessing its recreation needs, including those relating to shorefront access and protection needs, through updating its SCORP which guides its acquisition of recreation and open space areas. Based on the information provided by the SCORP, the State will make appropriate modifications to address such needs in its acquisition programs which are briefly described below and described in more detail in the section of this Chapter on "Activities Associated with the Provision of Sufficient-Recreational, Open Space and Natural Areas". As noted in Table III-4 on p. 205, the State has acquired or is acquiring 57 areas in the coastal counties, most of which provide shorefront access to the Atlantic Ocean or Chesapeake Bay and its tributaries. The State is committed to fuller recreational development of these areas.

It also should be noted that, as described in more detail in the portion of Chapter V on the Baltimore Metropolitan Coastal Area Study, the local governments in the Baltimore region in conjunction with the Coastal Zone Unit have developed a series of recommendations regarding the provision of shorefront access and recreational opportunities in their jurisdictions which are presently being reviewed as to the action that should be taken on them in each jurisdiction.

In addition, as described in Chapter IV, the State's Critical Areas Program provides a mechanism for designating shorefront areas as Geographic Areas of Particular Concern.

Finally, the protection aspects of the 305B(7) requirement of the 1976 Amendments have been satisfied by the State's approach to the fulfillment of the requirements for Areas of Particular Concern and Areas for Preservation and Restoration described in Chapter IV. Such mechanisms as the State Critical Areas Program and the State Wetland Permit Program are utilized to ensure protection of public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value. In addition, the Program policies, as enumerated in this and other relevant sections of this Chapter, address protection needs.

Issues

This situation necessitates that state and local governments coordinate their activities and regulatory actions, with federal government cooperation and consistency, to meet the following objectives of the Coastal Zone Management Program:

(5) To protect coastal terrestrial areas of significant resource value--areas having scenic, scientific, geologic, hydrologic, biological or ecosystem maintenance importance - such as non-tidal wetlands, endangered species habitat, significant wildlife habitat, and wintering and resting areas for migratory birds.

(8) To promote increased recreational opportunities in shoreland areas, to promote increased public access to tidal waters, and to assure that these occur in a manner which protects the quality of coastal resources and which maintains public health and safety.

(15) To promote the use of shore erosion control techniques, where necessary, in a manner which provides long-term protection, minimizes adverse effects on natural systems (both biological and physical), and avoids damage to adjacent property owners.

State and local governmental actions relating to beach access and protection must address the following issues:

1. Possible adverse impacts on the stability or integrity of Assateague Island, or on the beaches and dunes of Fenwick Island caused by the burial of sewage outfalls, pipelines, or similar facilities.

2. The effectiveness or potentially adverse impacts of erosion control measures on beach areas and littoral ecosystems.

3. The preemption of beach areas (ocean or bay) for present or future recreational use by other proposed uses.

4. Increase priority to the acquisition of beach areas in State and local outdoor recreation programs.

5. Provision of shorefront access and protection of valuable public coastal areas.

Policies

1. The Department of Natural Resources shall, in the name of the State, purchase and manage lands suitable for state parks, scenic preserves, historic monuments, parkways, state recreational areas, forest culture, forest reserves, watershed protection, water conservation, open space, the protection, propagation or management of wildlife resources, and hunting. (Natural Resources Article, Sections 5-207, 5-901 et seq., to 10-208, 10-2A01 et seq., 10-801)

2. It is State policy to make funds available to local governments for the acquisition of outdoor recreation and open space areas and for the development of recreation facilities. The acquisition and development of land for recreation purposes with such funds shall be consistent with local comprehensive plans, and shall meet a need in whole or in part identified in the State Outdoor Recreation Plan. (Natural Resources Article, Section 5-904 et seq.)

3. The Department of Natural Resources, upon request, shall assist other state units, counties, towns, corporations, and individuals in preparing plans for acquisition and development of park recreation and natural areas, acquisition of multiple-use areas including protection of watersheds, management, and replacement of trees woodlots, and timber tracts. (Natural Resources Article, Section 5-201)

4. It is the State policy to encourage land owners to make their land available to the public for recreational use by limiting their liability towards persons using their land in accordance with Natural Resources Article, Section 5-1101 et seq.

5. The recreational and conservation policies of the State of Maryland shall:

   a. Encourage low intensity recreation on open tracts such as flood plains, wooded areas, steep slopes, and other significant natural features, provided proper safeguards are established to protect local environment.

   b. Encourage the use of utility easements as outdoor recreation and open space areas.

   c. Encourage the use of scenic easements of land as a visual part of open space and outdoor recreation.

   d. Explore the recreation potential of water bodies, agricultural research centers, and wildlife management areas.

   e. Acquire title to or control of land with conservation or recreation value, before encroaching development and rising land values preclude this possibility.

f. Provide public access to estuaries, the Chesapeake Bay, and every major river in Maryland.

g. Analyze surplus state and federal properties to determine whether they can be used for recreation.

h. Provide corridors for limited recreation uses such as bicycling, hiking, and others which relate to streams, shorelines and unique resource and historic areas.

i. Emphasize county and local development of coummunity parks and school/park complexes to maximize local recreational opportunities.

j. Control land use adjacent to parks and major scenic or historic sites to prevent encroachment and to preserve the surrounding aesthetics.

k. Protect free-flowing streams and rivers, and carefully evaluate proposed impoundments.

l. Encourage the preservation of submerged lands for wildlife and fish habitats.

m. Control shoreline development along the Bay and the ocean through state and local legislation.

n. Develop and implement a state-wide river and stream preservation program.

o. Encourage the recreational use of the Chesapeake Bay by acquiring public access points, particularly at the confluence of stream valleys and the bay.

p. Preserve outstanding natural and scenic areas, and irreplaceable historic sites and structures, and incorporate them into an open space system.

q. Utilize excessive slopes, flood plains, poorly drained lands and other unique natural resources as major sources of open space.

r. Continue to emphasize nature interpretation and nature-oriented facilities.

s. Emphasize the acquisition of development rights where feasible in rural areas, along stream valleys, bay and river or ocean shorelines, and discourage development incompatible with the recreation opportunities associated with these resources.

t. Continue implementing legislation and protection programs for the Chesapeake Bay and inland wetlands, with emphasis on appropriate land development regulations, conservation zoning land donations and purchase of development rights in lieu of outright acquisition.

u. Regulate and preserve all islands in the bay and all rivers wherever feasible for conservation and limited recreation use.

v. Create more wildlife sanctuaries and management areas in places that provide areas of unusual flora and fauna.

w. Encourage stewardship through the development of State and local policies and guidelines on tax abatements, tax credits, and special assessments for privately held open space.

x. Utilize scenic or conservation easements, purchase and leaseback agreements and subdivision regulations.

y. Preserve the best agricultural lands and geologic resource areas for continued production, or preservation as rural landscape.

z. Encourage the use of both public and private lands for outdoor recreation, including the purchase of public recreation rights and scenic easements to expand open space beyond publicly owned land, and the provision by land owners of recreational opportunities for the public under multiple-use income producing arrangements.

aa. Establish an interconnecting system of trails for walking, hiking, and bicycling along the ocean beaches, bays, estuaries, rivers and streams, linking activity centers. (Article 88C Natural Resources Article, Section 5-901 et seq.; Maryland Outdoor Recreation and Open Space Plan, Phase III-Action Plan pp 9-10)

6. With the exception of beach erosion, sediment control, storm control, and maintenance projects approved by both the Department of Natural Resources and the Worcester Soil Conservation District, it is State policy to prohibit the construction or placement of permanent structures east the dune line along Maryland's Atlantic Coast. (Natural Resources Article, Section 8-1105.1)

7. Activities which will adversely affect the integrity and natural character of Assateague Island will be inconsistent with the State's Coastal Zone Management Program, and will be prohibited. (Natural Resources Article, Section 1-302, 8-1105.1, 5-201)

8. Dredging, filling, and other activities which adversely affect the integrity of breach areas on Chesapeake Bay and its tributaries will be inconsistent with the State's Coastal Zone Management Program, and will be prohibited. (Natural Resources Article, Section 9-102, 9-202)

9. It is state policy to acquire additional beach areas and to provide additional beach access on Chesapeake Bay and its tributaries as part of the State's Outdoor Recreation Program. (Natural Resources Article, Section 5-903, Maryland Outdoor Recreation and Open Space Plan - Action Plan III page 9)

Implementation

Lead Agencies:

State: Department of Natural Resources -
Capital Programs Administration,
Water Resources Administration;
Department of State Planning (Comprehensive recreation planning acquisition of recreation and natural areas, technical and financial assistance to local ports)

Maryland Environmental Trust (Conservation easement program)

Department of Transporation (Highway planning transporation)

Local Governments: (Recreational planning and acquisition of recreational and natural areas to meet local needs)

Management Procedures

Atlantic Coast

Maryland's entire 31-mile Atlantic coastline has been preserved for public access and use. Public access to and use of the Ocean City beach area on Fenwick Island has been protected by the Atlantic Coastal-Beach Erosion Control District Act of 1975 which restricts construction seaward of the dune line.

Permits for beach erosion control carried out by Ocean City are subject to annual review by the committee of representatives of the Wetlands Permit Section of WRA, The Maryland Geologial Survrey, and the Shore Erosion Control Program. A few lots in Ocean City adjacent to the dune line have been acquired in order to enforce the ban on construction east of the dune line. Lots are acquired only if the land owner is deprived of all reasonable use of this land and could thus claim that an unconstitutional taking of property without compensation had occurred.

As noted above the Department of Transportation has the lead responsibility for planning for and constructing highway access to Ocean City. Through its comprehensive planning process it provides for the involvement of all relevant agencies to insure that all relevant factors are considered in the design or expansion of highways such as Route 50 to Ocean City. Because of the many factors to be considered in determining the most appropriate alternatives to addressing the potential bottlenecks from the Bay Bridge to Ocean City other State agencies, particularly the Department of Natural Resources, will substantially involve to insure full consideration of the tradeoffs involved.

Chesapeake Bay and Its Tributaries

The State Outdoor Recreation Plan provides the framework for the State's recreation, open space, and natural areas planning and acquisition. It contains an analysis of the supply of existing public facilities and areas, the present and anticipated future demand for such facilities and areas, and the capability and suitability of existing areas and facilities for meeting such demand, and the capability and suitability of areas not presently under public ownership for meeting such demands. It also contains a priority ranking system for guiding the State's acquisition and development activities. In addition, the State has undertaken several inventories of potential shoreline access, recreation, and open space areas including Chesapeake Bay: Inventory of Potential Shoreline Access, Recreation, and Open Space Areas Part I - Western Shore and Part II Eastern Shore; an inventory of potential boat access areas as part of the report Recreational Boating in the Tidal Waters of Maryland; and An Investigation Into Potential Park Sites With A Boating Focus - Southwest quadrant of the Bay. As described in more detail in the section of this Chapter on Activities Associated with the Provision of Sufficient Recreational, Open Space and Natural Areas, the Department of Natural Resources is responsible for administering the State's recreational, natural areas, and open space program and for acquisition and development providing technical and financial assistance to local governments for undertaking such programs at the local level. Funding comes principally from the State Program Open Space Program and the Federal Land and Water Conservation Fund. As noted in Table III-4 on p. 205, the State has an active acquisition and development program already underway in Maryland's Coastal Zone including the acquisition and, where appropriate, development of shorefront areas. Because of the State's commitment to completing the acquisition and development of existing areas, opportunities are somewhat limited in the near future for the acquisition of entirely new shorefront areas. Possibilities do exist for modifying the take-lines and development plan of areas already under acquisition to meet shorefront natural areas, recreation, and access needs. In addition, coastal areas of significant aesthetic, natural, scenic and cultural value can be protected through the conservation easement program of the Maryland Environmental Trust.

The State's Waterway Improvement Program as described in more detail in the section of this Chapter on Recreational Boating, provides funding for the development of facilities to benefit the boating public, particularly the provision of boating access so that people can take advantage of the recreational boating potential of Chesapeake Bay and other State waters. The State has constructed a substantial day-use boating facility at Sandy Point and is looking for other sites for such facilities. The potential exists for combining such a facility into a shorefront park with a boating focus.

In addition, through the efforts of the Coastal Zone Unit and other appropriate State agencies as described in the Program Review section that follows, the State will ensure during program implementation that shorefront acess and protection assessment prodcedures will be further developed and used in the State's acquisition and development program and in the disbursement of State funds to local governments through Program Open Space for local land acquisition and development for recreation and open space purposes. Part of this assessment process will include identification of shorefront areas that should be considered for designation as State Critical Areas to meet demonstrated shorefront access, open space and natural areas protection needs through the process described in Chapter IV.

As is the case with the State acquisition of recreational land, local recreational land acquisition with State funds has to be made in accordance with the SCORP and the State's Coastal Zone Management Program. In the disbursement of Program Open Space funds, particular attention will be given as to whether local goverments have given adequate provision to meeting shorefront access, open space, and natural area protection needs.

Finally, the State, in the longer term will use the assessment information developed to give adequate attention to acquiring appropriate new shorefront areas.

Island Protection

The State of Maryland has made significant progress in the protection and sensitive development of islands. In 1967, the State Board of Natural Resources adopted a resolution which requested that the Board of Public Works direct the Hall of Records to issue no patents to vacant islands in the State of Maryland and that all such islands be retained in State ownership and adminstered by the agency or agencies designated by the Board of Public Works. The Board of Public Works subsequently adopted this resolution, thereby providing a mean of protecting vacant islands for the public use.

The State has also identified certain islands with natural scenic and aesthetic characteristics, valuable plant and animal habit, and historic and archeological resources which merit acquisition. The State has determined that these islands should be acquired and managed to conserve and preserve them for low density outdoor recreation activities and open space. Wye Island in Queen Anne's County has been acquired by the State as a result of these findings. This approximately 3,500 acre island will be maintained in its natural state as open space for the benefit and enjoyment of Maryland's present and future residents. Low intensity outdoor recreation activities will also be permitted. In addition, Assateague Island is jointly owned by the national and State governments and Janes Island, which the State owns and manages is a State Park. Hart and Miller Islands, located near the Baltimore Metropolitan Area will be filled with dredge material from the Baltimore Harbor. After this occurs, the islands are to be used for recreational activities.

The State's Critical Area Program provides an additional mechanism for ensuring the proper management and use of islands. Designation of islands as State Critical Areas will include appropriate management techniques to ensure that they are appropriately utilized or protected.

Coastal Zone Unit Role

Project Evaluation

The Coastal Zone Unit will participate along with other units of the Department of Natural Resources in the review of the alternatives for the elimination or reduction of bottlenecks along Route 50 through the Comprehensive Planning Process undertaken by the Department of Transportation to ensure that Coastal Zone Management concerns are adquately addressed.

Program Review

The Coastal Zone Unit in corporation with the Capital Programs Administration will work with the Department of State Planning in accordance with the Governor Executive Order and the Department of Natural Resources Memorandum of Understanding with that Department to ensure that shorefront access and protection needs are given adequate priority in the SCORP planning process. As part of this effort the Coastal Zone Unit will analyze existing sources of information and in conjunction with relevant State and local agencies undertake supplementary studies if necessary to ensure a complete and detailed assessment of shorefront natural areas, open space, and access needs and opportunities.

The Coastal Zone Unit will work with the Capital Programs Administration and the Department of State Planning on utilizing the results of the SCORP and other relevant studies to identify ways in which the State's acquisition and development plans can be modified to ensure that adequate consideration is given to the provision of shorefront access and the protection of public coastal areas of recreational, historic, easthetic, ecological or cultural value. As noted above, in the near future, attention will be focused on providing additional shorefront access and providing adequate protection to other public coastal areas through adding to or providing appropriate developments in areas already owned or under acquisition by the State and acquisition of shorefront areas that provide boat access opportunities. However, the Coastal Zone Unit will work with the Capital Programs Administration to identify shorefront areas appropriate for inclusion in the State's acquisition program in the longer term.

The Coastal Zone Unit will work with the local governments in the Baltimore Metropolitan area on implementing the recommendations of the Baltimore Metropolitan Coastal Area Study concerning provision of park land and public access to the shoreline including alternatives not involving land acquisition. The Coastal Zone Unit will work with local governments in general on ways they can provide increased shorefront access and protect appropriate coastal areas including designation of such areas as State Critical Areas and thus as Geographic Areas of Particular Concern.

AUTHORITIES RELATING TO USE OF BEACH AREAS

Statutory Authority	Controlling Mechanism	Agency
Beach Erosion Control District Act Art. NR, Section 8-1105.1	Direct State Planning and Regulation	DNR (CAP)
State Comprehensive Outdoor Recreation Plan	Direct State Planning	DSP DNR (CAP)
Program Open Space Art. NR, Section 5-906	Direct State Planning and State and/or Local Acquisition and Development	DNR (CAP)
Wetlands Law Nat. Res. Art. Title 9	Direct State Planning and Regulation	DNR (WRA)
Rivers and Harbors Act Section 10 Federal Water Pollution Control Act Amendments of 1972, Section 402	State Water Quality Certification and Federal Consistency	Federal, U.S. Army Corps of Engineers DNR (WRA)
Sanitation Standards for Bathing Beaches Art. 43, Section 2-228 DHMH Regulation 10.17.24	Direct State Regulation	DHMH (EHA)
State Critical Areas Program Art. 88C, Section 2(b) (3)	State Standards for Local Implementation	DSP

ACTIVITIES OCCURRING IN TIDAL WETLANDS

Situation

Wetlands play a key role in Maryland's estuarine environment, providing basic nutrients in the food chain and habitat for many fish and wildlife species, helping to protect water quality, inhibit flooding and control shore erosion.

Prior to 1970, protection of Maryland's tidal wetlands was limited, and controls over dredging and filling of wetlands were primarily based on consideration of the effects of navigation rights rather than on ecological impact. Inadequate protection resulted in the loss of an estimated 23,777 acres of wetland area between 1942 and 1967. There is still considerable pressure to alter tidal wetlands.

Issues

This situation necessitates that state and local governments coordinate their activities and regulatory actions, with federal government cooperation and consistency, toward the objective identified in the Coastal Zone Management Program:

(4) To protect, maintain, and where feasible, restore the integrity of the State's tidal wetlands.

Investigations and regulatory procedures must consider whether or not a proposed action:

- Actually necessitates wetlands alteration.
- Can be met through alternatives that do not involve wetlands alteration.
- Will have adverse impacts on the productivity of the wetlands; wildlife habitat, fisheries, and shellfisheries.
- Is water-dependent.
- Creates a public benefit.
- Involves upland activities which will directly affect the productivity and integrity of adjacent wetlands.
- Contributes to adverse cumulative effects of minor wetlands alterations.

Policies

General

1. All vegetated tidal wetlands are Geographic Areas of Particular Concern. (Natural Resources Article, Section 9-102).

2. In granting, denying or limiting any wetlands permit or license, the State shall consider the effect of the proposed work on the public health and welfare, marine fisheries, shellfisheries, wildlife, economic benefits, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in Section 9-102 of the Natural Resources Article to protect wetlands and prevent their despoliation and destruction. (Natural Resources Article, Section 9-202, 9-306)

3. Dredging and filling of tidal wetlands, either state or private, is allowed only to the extent necessary to provide reasonable riparian access, to provide necessary shore erosion control, or to carry out necessary water-dependent activities, the public benefit of which clearly outweighs any harm done. All activities allowed on State or Private wetlands shall be undertaken in such a manner as to minimize adverse environmental effects. (Natural Resources Article, Sections 1-302, 9-102, 9-201, 9-306)

Hunting, Fishing, Trapping, Etc.

1. The dredging of seafood products by any licensed operator, harvesting of seaweed, mosquito control and abatement as approved by the Department of Agriculture, improvement of wildlife habitat approved by the Department of Natural Resources, and maintenance of drainage ditches approved by the appropriate Soil Conservation District do not require a state wetlands license. (Natural Resources Article, Section 9-202)

2. The following are lawful uses of private wetlands:

   a. Conservation of soil, vegetation, water, fish, shellfish and wildlife.

   b. Trapping, fishing, and catching shellfish if otherwise legally permitted. (Natural Resources Article Section 9-303)

Riparian Access

The public policy of the State is to preserve wetlands and protect water quality while providing for the riparian land owner's right of access to navigable waters. Thus,

1. Whenever reasonable access can be provided directly from fast land, creation of a channel through vegetated wetlands, filling for access, or extending access inland with artifical channels shall be prohibited.

2. In those cases where access is to be provided to a subdivision or other multi-home development or community, a centralized boating access channel or pier is preferable to multiple piers or channels. In the case of isolated single family dwellings, a pier from fast land to open water shall normally fulfill the right of reasonable riparian access.

3. The ownership of land bordering upon tidal waters does not carry with it the automatic right to create channels to extend boat access.

(Natural Resources Article, Sections 1-302, 9-102, 9-202, 9-306; pending revised DNR wetlands regulations)

Shore Erosion Control

The policy of the State is to preserve wetlands while allowing the riparian owner to exercise his right to protect his shore against documented erosion. (Natural Resources Article, Sections 9-102, 9-201, 9-303(4)) (See also the Section on Activities Occurring in Areas Undergoing Significant Shore Erosion)

Water Dependent Activities

Dredging and filling is allowed only for water-dependent activities on State or Private wetlands, and the filling of State or private wetlands for the purpose of creating fast land is generally considered contrary to the public interest. Water-dependent facilities, such as boat facilities, are those which cannot function in an area away from the shoreline. Non-water dependent facilities include (but are not limited to) restaurants and businesses, residences, apartments, motels, hotels, trailer parks, parking lots, officies, spoil and dump sites, lagoons for sewage or industrial waste, industries and factories, storage areas for small boats, recreational areas requiring filling above tidal level such as athletic fields, parking areas and picnic areas. In those cases where the public interest justifies approval

of projects involving the filling of Private or State wetlands, including those involving the creation of fast land, approval may be considered if the following conditions are satisfied (Natural Resources Article, Sections 1-302, 1-303, 9-102, 9-202, 9-306; pending revised DNR wetlands regulations):

- The project cannot feasibly be undertaken on an adjacent or nearby fast land location.

- It is not feasible to provide the project's intended service by an alternative means not involving the filling of wetlands.

- The creation of fast land shall occur only in those areas adjoining existing fast lands.

- No ecologically productive submerged wetlands, such as finfish and shellfish spawning and habitat areas, shall be destroyed.

- No areas important for the feeding, nesting, or resting of waterfowl or other valuable wildlife habitat shall be destroyed.

- Fill utilized for the creation of fast land shall be obtained from an appropriate land-based source and not dredged from adjacent Private or State wetlands.

- The creation of fast land shall not obstruct navigational channels, adversely affect the public's use of the waters of the state, including the public's right to navigation and fisheries, significantly affect major current patterns, or significantly alter the existing contour of the shoreline.

- In all projects involving the filling of State wetlands, compensation for fast land created in the public domain shall generally be provided to the State in an amount determined by the State Board of Public Works. (See Board of Public Works v. Larmar Corp. 262 Md. 64, 277A2d.427 (1971))

Construction and Maintenance of Drainage Ditches

Drainage ditches for mosquito control or agricultural drainage are generally allowed if they conform to the drainage standards and specifications of the Soil Conservation Service, if they are approved by the Department of Agriculture, and if they are constructed to minimize adverse environmental impacts. Construction of ditches and seeps on Private wetlands for the purpose of allowing irrigation water to flow to fast land are permitted if they are constructed in a minimally disruptive manner. (Natural Resources Article, Sections 1-202(d), 9-303)

Implementation

Lead Agencies

Federal: U.S. Army Corps of Engineers

State: Water Resources Administration and Board of Public Works

Participating Agencies

Federal: U.S. Fish and Wildlife
National Marine Fisheries Service
Environmental Protection Agency

State: Maryland Fisheries Administration
Maryland Wildlife Administration
Department of State Planning
Other state and local agencies as relevant

Management Procedures

All activities occuring on tidal wetlands except trapping, hunting, fishing, shellfishing, the cultivating and harvesting agricultural or horticultural products, and minor agricultural and drainage maintenance projects, are regulated by the state wetland permits and licenses and Water Quality Certification programs. Each proposed activity is evaluated by the Water Resources Administration with the assistance of relevant state agencies, for its impacts on the wetlands, water quality, wildlife habitat, fisheries, and shellfisheries. Larger projects are given a comprehensive review through participation of any federal, state and local agency with a special expertise or concern. The policies noted above are the criteria utilized by the Wetlands Section of the Water Resources Administration in permit decisions, and the Water Resources Administration is in the process of formalizing them into regulations.

The final State authority on making decisions on proposed wetland projects varies somewhat depending on whether State wetlands or private wetlands are involved. (The term tidal wetlands is used in this document to include both State and private wetlands.) State wetlands are defined as "all land under the navigable waters of the State below the mean high tide, which is affected by regular rise and fall of the tide". Private wetlands are "all lands not considered State wetlands bordering on or lying beneath tidal waters, which are subject to regular or periodic tidal action and which support aquatic growth". In the case of projects affecting State wetlands, the final decision is made by the Board of Public Works which is composed of the Governor, the Comptroller, and the Treasurer. In the case of private wetlands the Department of Natural Resources makes the final decision. In both cases, the decision is based on the recommendation of the Wetlands Permit Section of the Department of Natural Resources.

Whenever possible, the State's wetlands programs are coordinated with the Corps of Engineers, Section 10 and Section 404 permit programs. To further coordination, the Department of Natural Resources has established an agreement with the U.S. Corps of Engineers to undertake, to the maximum extent feasible, joint site reviews and hearings on projects falling under the jurisdiction of both agencies. The Corps has also established general permit procedures for the use of riprap for shore protection, the replacement of bulkheads, and the installation of piers and mooring piles. Under these procedures, their approval will automatically be granted if specified criteria are met and the State approves the project, except in special circumstances.

These permit procedures greatly reduce delays in Corps approval of routine projects, and allow special attention to be given to projects with special circumstances. Since the State participated in developing the criteria, most projects that meet the criteria will also receive prompt state approval, although the State reserves the authority to disapprove projects wherever necessary.

Coastal Zone Unit Role

Project Evaluation

The existing permit program generally gives adequate protection to tidal wetlands. In FY 1976 only 1.5 acres of vegetated wetlands and 45 acres (36 acres dredging, 9 acres filling) of open waters were altered by projects permitted by WRA. The Coastal Zone Unit will participate in the review of projects requiring the dredging or filling of a 1/4 acre or more of wetland because of the significance of their potential impacts. (See also sections on Dredging and Filling, Recreational Boating, Marinas and Activities Occurring in Areas Undergoing Significant Shore Erosion.)

Program Review

As described in Chapter IV, all tidal wetlands will be designated Geographic Areas of Particular Concern, and will be protected by existing programs. In the case of wetland areas which, due to their particular value, warrant special protection, designation as State Critical Areas for preservation will be sought. These efforts will be aided by the Tidal Wetlands Study undertaken by the Coastal Zone Unit, which provides detailed information on wetland vegetation types, their location, extent and value.

In addition, the Coastal Zone Unit will:

1. Cooperate with other State and federal agencies involved with review of wetland permits to establish mutually acceptable evaluation criteria and expeditious permit procedures.

2. Cooperate with WRA and U.S. Army Corps of Engineers on the establishment of an information base for all projects undertaken in wetlands areas, so that cumulative impact evaluations can be undertaken.

3. Cooperate with WRA and the U.S. Army Corps of Engineers to incorporate consideration of cumulative and long-term impacts into the existing permit processes.

4. Cooperate with local governments to modify, where necessary, local planning, zoning and regulatory programs to insure consistency with State policies.

5. Encourage, in cooperation with appropriate governmental agencies, the use of buffer zones between upland developments and wetlands.

6. Encourage the preservation of wetlands through the use of easements (and acquisition where appropriate).

7. Cooperate with WRA and appropriate federal agencies on the development of measures to restore presently degraded wetlands habitats and to ensure the monies received as compensation for the filling of State wetlands is used to preserve, restore, or improve wetland areas.

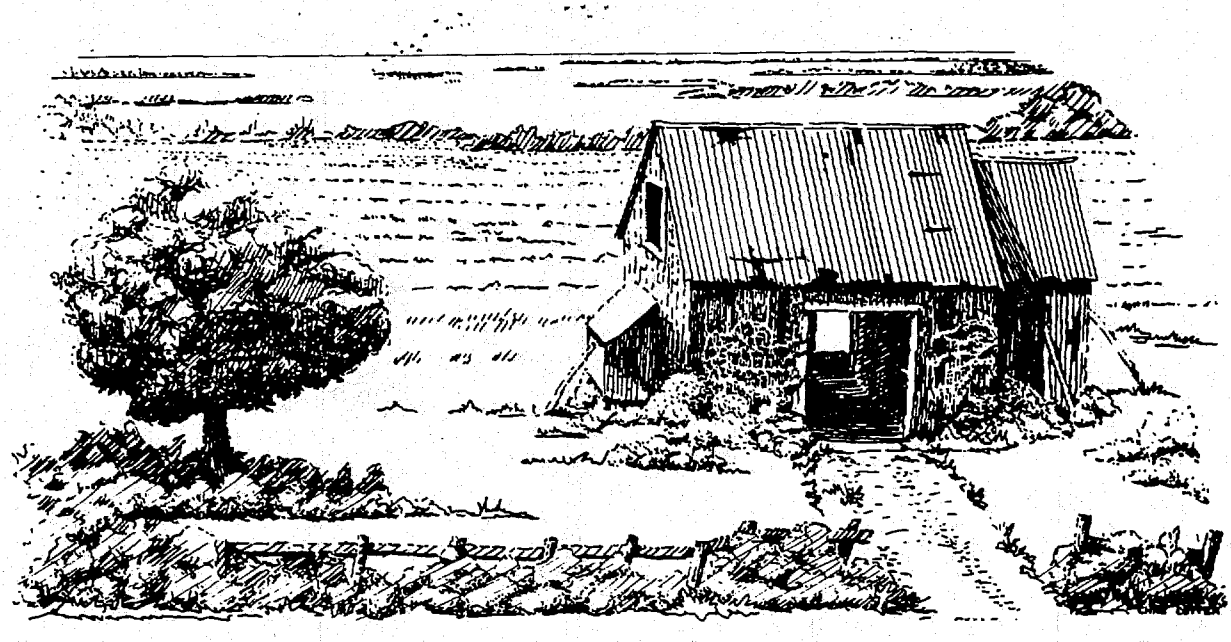
8. Cooperate with the State Department of Agriculture, the U.S. Department of Agriculture, and the U.S. Fish and Wildlife Service to evaluate the effectiveness of the Open Marsh Water Management method of mosquito control in the marshes of the lower Eastern Shore of Maryland.

AUTHORITIES RELATED TO TIDAL WETLANDS

Statutory Authority	Management Technique	Agency
Wetlands Law Art. NR, Title 9	Direct State Planning and Regulation	DNR (WRA)
Federal Water Pollution Control Act Amendments of 1972, Section 404 Rivers and Harbors Act of 1899, Section 10	Federal Consistency State Water Quality Certification	Federal: U.S. Army Corps of Engineers State: DNR (WRA)

III·C.

ACTIVITIES OCCURRING IN SHORELAND AREAS



C. SHORELAND AREAS

The land areas of greatest concern to the Coastal Zone Management Program are the shoreland areas adjacent to tidal waters, since use of these areas entail the greatest probability for direct and significant impacts on tidal waters. Uses of these areas have been separated into the following categories:

1. Activities in Areas Undergoing Significant Shore Erosion

2. Activities in Coastal Tidal and Non-Tidal Flood Plains

3. Activities in Non-Tidal Wetlands

4. Use of Agricultural Lands

5. Use of Forested Lands

6. Channelization (and Small Watershed Projects)

7. Activities Associated with Provision of Sufficient Recreational, Open Space and Natural Areas

8. Activities Affecting Coastal Historical, Cultural, or Archaeological Resources

9. Shoreland Activities Generally

ACTIVITIES IN AREAS UNDERGOING SIGNIFICANT SHORE EROSION

Situation

Areas undergoing significant shore erosion make up a sizeable portion of Maryland's Coastal Zone. Approximately 140 miles of Maryland's Chesapeake Bay shoreline lose four feet or more every year. Shore erosion is a natural process which contributes to littoral transport of material necessary to maintain beach aresas. However, use of waterfront property may be hindered by high erosion rates, and conversely, activities on the Bay and its shoreline often aggravate shore erosion. Sediments from shore erosion may cover valuable oyster lands and fill tidal creeks nad inlets. Inappropriate use of shoreline areas may upset natural processes and may even endanger human life and property.

On the Atlantic Coast, storm-induced shore erosion has adversely affected the beaches in front of Ocean City and may create a situation that poses a threat to property and human safety in Ocean City.

Because of the importance of shore erosion concern in Maryland and other Coastal states, the 1976 Amendments to the Coastal Zone Management Act included a specific requirement that States, as part of their Coastal Zone Management program, develop "a planning process for (a) assessing the effects of shoreline erosion (however caused) and (b) studying and evaluating ways to control or lessen the impact of such erosion, and to restore areas adversely affected by such erosion. The regulations issued in accordance with the Amendments state that "such a process must include the following elements:

(1) A method for assessing the effects of shoreline erosion;

(2) Articulation of State policies pertaining to erosion, including policies regarding perferences for non-structural, structural and/or no controls;

(3) A method for designating areas for erosion control, mitigation and/or restoration as areas of particular concern or areas for preservation and restoration if appropriate;

(4) Procedures for managing the effects of erosion, including non-structural procedures; and

(5) An identification of legal authorities, funding programs and other techniques that can be used to meet management needs."

Issues

This situation requires that State and local governments coordinate their activities and regulatory actions, with federal government cooperation and consistency, to meet the following objectives of the Coastal Zone Management Program:

(14) To promote the use of shoreline setbacks and the restriction of development in high risk erosion areas in order to reduce erosion-caused danger to life and property and to minimize the cost to the public and private sectors.

(15) To promote the use of shore erosion control techniques, where necessary, in a manner which provides long-term protection, minimizes adverse effects on natural systems (both biological and physical), and avoids damage to adjacent property owners.

The planning, scientific investigations and regulatory actions undertaken to meet shore erosion problems as part of program implementation will address the following issues:

- Identification of high-risk erosion areas and development of appropriate management measures for those areas.
- Effect of individual structures on wetlands, water quality, and aquatic resources.
- Possible aggravation of shore erosion by placement of shore erosion structures on only a portion of a beach.
- Cumulative effects of shore erosion control structures and methods on wetlands, water quality, and aquatic resources.
- Cumulative impact of shore erosion on the sediment budget of the entire Bay and of localized areas.
- Adequacy of shore erosion structures both cumulatively and individually.
- Possible aggravation of natural shore erosion by land-based agricultural and conservation practices.
- Identification of the role non-structural measures can play in addressing shore erosion problems.

Policies

1. The Department of Natural Resources shall:

   a. Develop and implement a public education program on shore and bank erosion, its causes and effects, the locations where it is a problem, and steps to control it.

   b. Provide technical assistance to individual property owners, municipalities, and counties having specific shore and bank erosion problems. (Natural Resources Article Section 8-1002)

2. In general, financial assistance for the installation of shore erosion control measures from the Shore Erosion Construction will be available only in cases where existing structures are endangered by severe erosion problems. The distribution of financial assistance from the Shore Erosion Control Construction Loan Fund will be based on the following factors: (1) the cost of the project, (2) the threat to existing structures from shore erosion, (3) the severity of the erosion, (4) the number of property owners affected by the erosion, (5) and the length of the eroding shoreline. The Department of Natural Resources shall supervise the design and erection on shore erosion protective devices financed by the State Erosion Control Construction Loan Fund and design, or cause to be designed, shore erosion control structures, including vegetative cover, in shore erosion control districts, and on state-owned lands. (Natural Resources Article Sections 8-1002 — 8-1004)

3. In undeveloped shorefront areas that have been identified as high-risk erosion areas the State will not provide funding for the provision of public services (water and sewer services, etc.) unless such provision would result in a significant public benefit. However the State, will provide technical assistance to local governments for the development of programs to reduce the danger to life and property through non-structural measures rather than measures which interfere with on-going natural process. (Natural Resources Artocle Sections 1-302, 1-303, 8-1002, 8-9A02; Governor's Executive Order 01.01.1978.05 (dated March 8, 1978); President's Executive Order 11988 (dated May 24, 1977); Water Resources Council Guidelines for Implementing Executive Order 11988 (dated February, 1978); HUD Flood Insurance Program Regulations, Section 1910.5)

4. In the development of comprehensive plans and regulations regarding shoreline areas, future development should be directed away from high risk erosion areas, and consideration should be given to reserving such areas for open space purposes through acquisition and other measures. In addition, a setback consisting of a natural buffer shall be required in such areas. The width of these buffers shall be based upon the erosion rate, the anticipated useful life of shoreline buildings, and the geologic, hydrologic, topographic and climatic characteristics of the areas in which they are located. (Natural Resources ARticle, Sections 1-302, 1-303, 8-1002, 8-9A02, HUD Flood Insurance Program Regulations, Section 1910.5)

5. For the purposes of maintaining the Atlantic Coast beaches of the State and Beach Erosion Control District, the integrity and continuity of the dunal system and assuring adequate maintenance thereof, to provide for shore erosion and sediment control and strom protection, and to minimize structural interference with the littoral dirft of sand and any anchoring vegetation, any land clearing, construction activity, or the construction or placement of permenent structures within the Beach Erosion Control District is prohibited. This prohibition does not apply to any project or activity approved by the Department and the appropriate soil conservation district specifically for storm control, beach erosion and sediment control, and maintenance projects designed to benefit the Beach Erosion Control District (Natural Resources Article Section 1105.1) (Please refer to subsection 2, Atlantic Coast Beach Protection and Restoration Measures under Management Procedures for the definition of the Beach Erosion Control District).

6. Because of their possible detrimental effect, shoreline protective structures shall not be approved or recommended for approval in the following cases, unless there is no alternative means to achieve a necessary public benefit, the need for which significantly outweighs the potential harm of the proposed project:

   a. Where marshland will be filled or otherwise destroyed.

   b. Where surface drainage channels will be filled or occluded.

   c. Where navigation will be adversely affected.

   d. Where unique or rare and endangered flora or fauna will be affected.

   e. Where important historical or archeological sites will be adversely affected.

   f. Where oyster bars or clam beds in adjacent open waters will be affected. (Natural Resources Article, Sections 1-302, 9-102, and 9-306, pending revised wetlands regulations)

7. Shore erosion control measures shall be undertaken in a manner that has the minimum adverse effect upon the ecological, economic, hydrological, aesthetic, historical, and recreational values in the area. (Natural Resources Article, Sections 1-302, 9-102, 9-202, and 9-306)

8. Where site conditions permit, the use of a sloping bank stabilized with vegetation, with or without riprap, is encouraged as an economical solution which preserves the natural conditions. (Natural Resources Article, Sections 8-1002 and 9-306)

9. The construction of bulkheads or other shore protection measures shall include only filling necessary to ensure the effectiveness of the structure, and shall be located at the mean high water line, or not further channelward than needed for proper tie-back emplacement, or in cases of a steep bank or cliff, no further channelward than needed to obtain a stable slope. (Natural Resources Article, Sections 9-202 and 9-306)

10. Where shore protection is needed and marsh exists in front of an applicant's land, it shall be provided by a structure placed behind the marsh or by a low-level riprap or similar structure placed at the seaward edge of the marsh, so that normal tidal flow into the marsh will be maintained. (Natural Resources Article, Sections 1-302, 9-120, and 9-306; pending revised Wetlands regulations)

11. Permits or licenses shall not be granted for protective structures or filling unless adequate provision is made for drainage from inland areas. The construction of bulkheads and other protective structures shall involve only such filling as is necessary for the effective operation of the shore protection work, and shall not be used for the creation of fast land from wetlands unless: 1) the proposed activity is water-dependent, and 2) the filling complies with other wetland policies (see Activities Occurring in Tidal Wetlands). (Natural Resources Article, Sections 9-102, 9-202, and 9-306)

12. Dredging for fill for the efficient operation of shore erosion control work shall be allowed only where 1) access to deposit land source material is not feasible or costs are excessive, and 2) the project is determined not to have an extended or permanently adverse environmental impact. Dredging seaward of an existing bulkhead will alter the graduated bottom depth that helps dissipate wave energy. If dredging is used for fill, adequate compensation may be required by the state for this material. Examples of cases where dredging to obtain backfill material may be permitted are:

    a. Where a steep bank or cliff exists and the nearshore water depths are shallow, so that trucking-in or barging-in fill material is not feasible.

    b. Where large trees or buildings prevent trucking-in fill material.

    In both situations, however, if grading is to be done, trucking-in fill material usually becomes feasible. The fact that dredged material may be less expensive than trucked-in fill is not a justification for dredging. (Natural Resources Article, Sections 1-302, 9-202, and 9-306; pending revised Wetlands regulations; Board of Public Works vs. Lamar Corp., 277A2d427, 202 Md. (1971))

13. Shore protection measures must satisfy the following criteria regarding quality and performance:

    a. No material that contains or will create pollutants shall be used in shore erosion control.

    b. Junk metal, tires, tree stumps or other such material that is not part of an approved interlocking structure shall not be used in any shore protection measures.

    c. If jetties or groins are used, they must be designed at a minimum length and height to serve the purpose intended, and must be placed only in locations not harmful to navigation or to nearby land. Such work shall be approved only if it does not interfere with public access, create adverse sand transport patterns or adversely disturb the aquatic ecosystem. (Natural Resources Article, Sections 1-303, 8-1402, 9-102, and 9-103 pending revised Wetland regulations)

Implementation

Lead Agencies

1. Technical and Financial Assistance

    Federal: U.S. Army Corps of Engineers

    State: Shore Erosion Control Section - Capital Programs Administration (Participating agencies: Maryland Geological Survey, Water Resources Administration)

    Local: Planning Offices may be involved in large projects or projects involving public land. Also, Shore Erosion Control Districts may be formed within a county by adjacent land owners with county consent.

2. Regulation of Shore Erosion Control Measures

Federal: U.S. Army Corps of Engineers (Participating agencies: Fish and Wildlife Service, National Marine Fishery Service, Environmental Protection Agency); HUD Flood Insurance Program

State: Water Resources Administration (Participating agencies: Shore Erosion Control Section, Maryland Geological Survey)

Local: Local government must adopt regulations concerning high-risk erosion areas consistent with HUD Flood Insurance Regulations and State Flood Control Watershed Management Act of 1976. In addition they may nominate areas with Shore erosion problems to be designated State Critical Areas)

Management Procedures

As described in more detail below, the State of Maryland follows the following general approach to shore erosion problems: (1) providing technical assistance to shorefront property owners regarding the best approach to cope with shore erosion problems throughout the coastal zone; (2) giving no-interest loans to property owners whose developments are threatened by shore erosion for the construction of shore erosion measures to the extent allowed by the financial limits of the Shore Erosion Loan Fund; (3) working with local governmental officials and the Corps of Engineers to undertake measures to protect Ocean City and its valuable recreational beach areas from shore erosion; (4) working with local governments to restrict development in undeveloped areas identified as high-risk shore erosion areas; (5) regulating proposed shore erosion measures to minimize potential adverse impacts; (6) undertaking research on shore erosion problems in order to be able to more effectively administer its program concerned with shore erosion problems.

1. Technical and Financial Assistance - The Shore Erosion Loan Fund, administered by the Shore Erosion Control Section of the Capital Programs Administration (Department of Natural Resources) provides no-interest loans to community or private property owners in need of shore protection. The fund is maintained by annual appropriations of approximately one million dollars by the General Assembly, and by repayment of loans through a special real estate tax levied by the State on private property benefitting from shore erosion control projects. The fund establishes priorities based on the rate of erosion, proximity of a structure to the eroding shoreline, the length of the eroding shoreline, and the number of property owners affected by the erosion. At the present level of funding, loans are generally given only in cases in which existing buildings are threatened by shore erosion. The fund designs and oversees construction and maintenance of the projects it finances. Perhaps more important, the Shore Erosion Control Section provides, upon request, technical assistance to any property owner the most appropriate method of protecting his property from shore erosion.

2. Atlantic Coast Beach Protection and Restoration Measures - In order to maintain the State's Atlantic Coast Beaches, the State legislature in 1975 passed legislation creating an Atlantic Coast Beach Erosion Control District consisting of that land along the State's Atlantic Coastline between the State's borders with Delaware and Virginia and bordered inland by a line which coincides, more or less, with the west crest of the existing natural dune on Assateague Island, and in Ocean City, is a mutually approved line to be known as the State-Ocean City building limit line, the exact location of which was defined through regulations by the Department of Natural Resources and surveying, plotting, and recording it. East of the line all construction is prohibited except for storm control, beach erosion, and sediment control projects and activities approved by the Department of Natural Resources and the local soil conservation district. In cases where the prohibition of building east of the line would constitute an unconstitutional take of property, the State purchases the property rights involved.

Because of the value of Ocean City beaches as a recreational resource and as protection to life and property in Ocean City, the State has had a continuing interest in maintaining their integrity. After the March 1962 storm that hit Ocean City over five successive tides and removed much of the beach area, the State worked with the Corps of Engineers and Ocean City to rebuild the beach and restore a line at Ocean City. Over the past few years, the State has supplied funds to Ocean City to install groins in an attempt to maintain the beach. Since the beach area has still been damaged by storms the State in conjunction with Ocean City and the U.S. Army Corp of Engineers is seeking a longer-term solution to the problem of maintaining Ocean City's beach. It is actively pursuing a beach replacement project to be undertaken by the U.S. Army Corps of Engineers in accordance with PL 84-826 and related laws. Included as part of the project will be analysis of its potential impacts on Assateague Island and the development of measures to mitigate such impacts, including possible alternatives to the jetties for the Ocean City inlet.

3. Regulation of Activities Occurring in Areas Undergoing Significant Shore Erosion - The Water Resources Administration is responsible for state assistance and oversight of local government efforts to meet the requirements of the HUD Flood Insurance Program.

In addition, the Water Resources Administration is responsible for administering the Flood Control - Watershed Management Act of 1976 which requires local governments to develop watershed management programs which are consistent with the States watershed permit program and HUD Flood Insurance regulations. The regulation adopted by local government to meetthe requirement of the Coastal Zone Management Act of 1976 will thus include shoreline setbacks and buffer area requirements for areas designated as high risk erosion areas. Full implementation of these regulations is dependent upon completion of the detailed delineation of the boundary of the 100-year flood plain. Table III-3 gives the completion dates for such delineation in each coastal county. Section 1910.5 of the HUD Regulations requires future development be directed away from high risk erosion areas and that shoreline setbacks be established in such areas.

4. Designation of Shore Erosion Hazard Areas as State Critical Areas - As described in more detail in Chapter IV on Geographical Areas of Particular Concern, the State Land Use Act of 1974 provides that shore erosion hazard areas can be designated as State Critical Areas. Such designation will include the development of management plans to address the shore erosion problem in the area. Once designated, such areas will also become Geographic Areas of Particular Concern. If the analysis of shore erosion problems undertaken as part of the Coastal Zone Management Program's implementation efforts indicates the need for additional attention to shore erosion problems in certain high-risk erosion areas, the Coastal Zone Unit will nominate such areas for designation as State Critical Areas.

5. Regulation of Shore Erosion Control Measures - All shore erosion structures are regulated by Corps of Engineers Section 10 permits and State Wetlands licenses or permits. These agencies review the proposed structures for effects on wetlands, water quality, and aquatic life, adjacent property, and navigation.

Under State law, property owners may undertake measures to protect their land from shore erosion and to reclaim fastland that they can prove has been lost because of shore erosion since 1972. This right will be recognized in the administration of the above policies regarding the location and construction of shore erosion control measures. Those policies are the criteria presently utilized by the Wetlands Section of the Water Resources Administration in permit decisions on applications for shore erosion control measures. The Water Resources Administration is formalizing them into regulations.

Coastal Zone Unit Role

Project Evaluation

The Coastal Zone Unit reviews all state wetlands permits and license applications, including those for shore erosion structures, for consistency with Maryland's Coastal Zone Management Program.

The Coastal Zone Unit will review all developments proposed for shoreline areas which have an erosion rate of 4 ft/yr or greater, to insure that the erosion hazard has been met adequately by use of a setback or other shore erosion control method.

Program Review

Technical Assistance:

The Coastal Zone Unit will assist ongoing efforts to provide technical assistance to communities and private property owners. One such effort has been the development of a manual on shore erosion measures, produced cooperatively by the Coastal Zone Unit, other units of the Department of Natural Resources, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the Chesapeake Research Consortium.

Regulation of Activities Occurring in Areas Undergoing Significant Shore Erosion:

The Department of Housing and Urban Development (HUD) Flood Insurance regulations require coastal communities to initiate shoreline setback regulations or to undertake other appropriate shore erosion measures to minimize the danger to human life and property from shore erosion. The Coastal Zone Unit will work with local communities and with the Water Resources Administration (the State agency responsible for administration of the flood insurance program) to develop management programs that will meet the HUD requirements. The CZM unit will also assist local governments who wish to strengthen management efforts in areas suffering from severe erosion, by requesting they be designated State Critical Areas and Geographic Areas of Particular Concern.

Atlantic Coast Beach Protection and Restoration:

The Coastal Zone Unit has been assigned the lead role within the Department of Natural Resources for working with the U.S. Army Corps of Engineers and Ocean City to develop a long-range solution to the problem of maintaining the integrity of Ocean City's beach.

Research on Shore Erosion Problems:

Research has been and will continue to be conducted assessing the effects of shore erosion of Maryland's coastline in order to improve the State's approach to shore erosion problems. The following projects have been undertaken as part of the Coastal Zone Management Program to provide baseline information needed to address shore erosion concerns.

The Coastal Zone Unit, in conjunction with the Maryland Geological Survey and the Water Resources Administration has mapped historic shore erosion data and the location of shore erosion structures on U.S.C.S. 7½" quad scale maps, and has tabulated such information by county and water body, in order to provide a regional perspective of the problems of shore erosion protection.

Also, the Maryland Geological Survey, with Coastal Zone Management support, is undertaking the Chesapeake Bay Earth Science Study which includes a major survey of the bottom and near-shore areas of Chesapeake Bay and the development of a sediment budget of the Bay. The results of this study should indicate those areas of the Bay where shore erosion causes major sedimentation problems and should provide basic information needed to better understand shore erosion processes in the Bay.

In addition, the Maryland Geological Survey has for a number of years taken detailed shore erosion measurements at points whithin the Chesapeake Bay and along the Atlantic Coast to obtain information on yearly variations of shore erosion correlated with storms and other events that may contribute to shore erosion.

This information can be used to identify areas having significant shore erosion problems. Additional information on such areas can be obtained from the U.S. Army Corps of Engineers (Chesapeake Bay Study - Future Conditions Report).

These sources of information can serve as a base for research projects to determine accurately the effectiveness and impact of shore erosion protection (structural and non-structural) in different areas along Maryland's coastline. Funding is presently being sought from the Environmental Protection Agency's Chesapeake Bay Research Program to undertake further research, particularly regarding the effectiveness and environmental impacts of shore erosion structures, both individual and cumulatively.

As part of the State's first year program implementation effort, the Coastal Zone Unit will ensure the funding of and actively participate in further assessment of shore erosion problems in Maryland and in the development of management procedures to address them. This assessment will include the identification of high-risk erosion areas, and the determination of appropriate management techniques including setbacks and buffer areas.

AUTHORITIES RELATING TO ACTIVITIES IN AREAS UNDERGOING SIGNIFICANT SHORE EROSION

Statutory Authority	Controlling Mechanism	Agency
Wetlands Law Art. NR, Title 9	Direct State Planning and Regulation	DNR (WRA)
Rivers and Harbors Act of 1899, Section 10	Federal Consistency/State Water Quality Certification	Federal: U.S. Corps of Engineers State: DNR (WRA)
Shore Erosion Control Program Art. NR, Sections 8-1101 et seq.	Direct State Planning and Funding	DNR (CAP)
HUD Flood Insurance Program	Local Implementation with State Overview	DNR (WRA)
State Critical Areas Program Art. 88C, Section 2(b)(3)	State Standards for Local Implementation	DSP
Flood Control and Watershed Management Act of 1976 Art. NR, Section 8-9A01 et seq.	State Standards for Local Implementation	DNR (WRA)

ACTIVITIES IN COASTAL TIDAL AND NON-TIDAL FLOOD PLAINS

Situation

The danger to life and property associated with flooding in Maryland's coastal counties is a major concern to Maryland's Coastal Zone Management Program. Millions of dollars of damage to public and private property was caused on Maryland's oceanfront by a major storm on Easter 1962. Tropical storm Agnes in 1972 killed 17 people, and inflicted more than $110 million worth of damage on land and $134 million damage to fishing and related industries on Chesapeake Bay. Hurricane Hazel in 1954 and a similar but more severe storm in 1933 inflicted major damage on Maryland's coastal areas including tidal flood plains on the Eastern Shore.

The impact of such storms is magnified by building on and development of floodplains, which may increase the magnitude and frequency of serious flooding problems. Such development may also adversely affect valuable biological resources found in flood plain areas.

Issues

This situation necessitates that state and local governments coordinate their activities and regulatory actions, with federal cooperation and consistency, to meet the following objectives of the Coastal Zone Management Program:

(13) To give priority to non-structural management techniques for controlling tidal and riverine flood hazards, including the use of flood plains for open space uses such as agriculture, forestry, wildlife habitat and recreation, in order to lessen the danger to life and property, and to minimize adverse effects on biological resources and water quality.

Planning and regulatory procedures, including necessary inventories and analyses, must determine whether a proposed project will:

- Take place in a tidal or non-tidal flood plain.
- Cause increased flooding upstream or downstream.
- Create or aggravate danger to life or property.
- Cause adverse impacts on water quality.
- Cause adverse impacts on the biological resources of coastal tidal and non-tidal flood plains.

Policies

1. Projects in coastal tidal and non-tidal flood plains which would create additional flooding upstream or downstream, or which would have an adverse impact upon water quality or other environmental factors, are contrary to state policy. (Natural Resources Article, Sections 1-302, 1-303, 8-9A02; pending revised watershed permit regulations)

2. The alteration of the cross-section of any non-tidal stream or body of water, including the 100-year flood plain, is, in general, contrary to state policy. (Natural Resources Article, Section 8-801, 8-803; pending revised watershed permit regulations)

3. In general, construction of residential, industrial, commercial buildings or other structures will not be permitted within the 100-year flood plain of any non-tidal stream of body of water. (Natural Resources Article, Section 8-801, 8-803; pending revised watershed permit regulations)

4. Before construction of any project planned or financed by the State, the Department of Natural Resources shall determine whether the project creates surface water runoff which may cause or add to flooding hazards on-site or downstream. Department of Natural Resources will take into consideration natural conditions, existing storm drainage, future development of the watershed and flood control structures.

   If the Department determines that any flooding hazard will be created by a project, and that the hazard cannot be eliminated by natural features, the Department shall require storm water management and/or retention measures to be included in the project.

   Such projects shall also meet the requirements of the Flood Control Watershed Management Act. (Natural Resources Article, Section 8-9H01 et seq. 8-905, 8-9A06)

5. Dredging channels is generally the least preferable means of accomplishing stormwater management and flood control. (Natural Resources Article, Section 1-302, 1-303, 8-801, 8-303, 8-1101; Maryland Interim Watershed Management Policy Nov. 1977)

6. In the development and implementation of flood plain management programs, including the adoption of rules and regulations by local governments to meet the requirements of HUD flood insurance regulations and the Flood Control Watershed Management Act of 1976 (Section 8-9A01 et seq.), all new or expanded developments (residential, commercial, and industrial) in a 100-year tidal flood plain shall be restricted to minimize danger to life and property, to prevent increased flooding, and to insure against adverse effects on water quality biological resources, or other environmental factors. Decisions regarding whether an activity will be allowed in the 100-year tidal flood plain will be based on the following factors:

a. The availability of alternate locations for the activity.

b. The permanence of the activity.

c. The effect of the activity on planned development of the area adjacent to it.

d. Whether good husbandry practices common to normal and efficient agricultural production will be followed.

e. Whether adequate drainage will be provided .

f. Whether support systems for the activity, such as water and sewerage facilities, road, and other utilities, will be adequately flood-proofed.

g. Whether the activity will increase the surface water elevation of the 100-year flood event.

h. Whether all permanent structures associated with the activity will be flood-proofed to withstand a 100-year flood.

i. Other relevant factors.

(Natural Resources Article, Sections 8-9A02, 8-9A05)

6. The Department of Natural Resources and local units of government shall coordinate activities undertaken to meet the provisions of Flood Control/ Watershed Management Act (Natural Resources Article, Section 8-9A01 et seq.) with those undertaken to meet the requirements of all related programs including the national flood insurance program, the sediment control program, and the State water pollution control and abatement programs. (Natural Resources Article, Section 8-9A05)

7. The Department of Natural Resources shall provide technical assistance to subdivisions in the interpretation of flood information and the drafting of local regulatory measures for flood control and watershed management. (Natural Resources Article, Section 8-9A04)

Implementation

Lead Agencies: Water Resources Administration and Local Governments

Management Procedures

There are four programs in the State that delineate coastal tidal and non-tidal flood plains and regulate activities occurring in them: the Federal HUD Flood Insurance Program, the State Watershed Permit Program (construction or objection of the 100-year riverine flood plain), Flood Control Measures in the State Construction Projects Act, and the Flood Control and Watershed Management Act of 1976.

The Water Resources Administration of the Department of Natural Resources helps local governments meet the requirements of the federal HUD Flood Insurance Program, which requires local governments to enforce regulations on flood plain development in exchange for guaranteeing flood insurance to communities meeting the program's requirements.

The Water Resources Administration also administers a permit program for all projects proposed in the 100-year riverine flood plain. No project is allowed which would create additional flooding upstream or downstream, or which would have an adverse impact on water quality. Moreover, it is stated in the program's regulations that the filling or reduction of flood plains or cross sections of non-tidal streams and surface water is considered to be generally against the State's interest. The regulations require that all permit applications for such operations must be accompanied by a hydraulic calculation of the effects of such a reduction or filling, as well as the expected benefits. The regulations for this permit program, called the watershed permits program, have been revised to document explicitly the criteria for permit decisions. These criteria are reflected in the policies noted above.

In addition, in accordance with the Flood Control Measures in State Construction Projects Act of 1976, the Water Resources Administration reviews all projects constructed or financed by the State, to insure that they create no surface water run-off which may cause or add to on-site or downstream flooding hazards.

Finally, the Flood Control Watershed Management Act of 1976 establishes a program of comprehensive management of 100-year tidal and non-tidal plains, for the purposes of "preventing and alleviating flood threats to life and health, reducing private and public economic losses, and to the extent possible, preserving of the biological values associated with their land and water resources". Areas of flood-hazard concern will be defined by the Department of Natural Resources. Rules and regulations on activities within such areas are to be adopted by local governments, based on the recommendation of the Department and subject to its approval in the case of interjurisdictional watersheds. Implementation of this Act will be coordinated with implementation of the HUD Flood Insurance Act and other related programs to avoid duplication of effort and to ensure compatability between the two programs.

In delineation of the 100-year flood plains, priority has been given to riverine flood plains where the danger from flooding is greater than in other areas. Increased attention is now being given to coastal flood plains and the development of management plans that address the concerns associated with such areas which may differ from those associated with riverine floodplains.

Table III-3 gives the completion dates for the detailed delineation of the boundaries of the 100-year flood plain both riverine and tidal in each coastal county in conjunction with the HUD flood insurance program. These boundaries will provide the basis for full implementation of flood control-watershed management programs by local governments as well as more effective administration of State floodplain management efforts. In addition, the Water Resources Administration is in the process of developing watershed models for selected tributaries which will provide additional information on the impacts of future development on flooding and other watershed characteristics.

Table III-3

Completion Dates for the Delineation of
100-Year Flood Plains in Coastal Counties

County	Completion Date
Anne Arundel	July 1979
Baltimore	Completed
Baltimore City	Completed
Calvert	Dec. 1980
Caroline	Completed
Cecil	Oct. 1980
Charles	Dec. 1980
Dorchester	July 1979
Harford	Oct. 1980
Kent	Dec. 1980
Prince George's	Completed
Queen Anne's	Dec. 1980
St. Mary's	Sept. 1978
Somerset	Oct. 1980
Talbot	Dec. 1980
Wicomico	Dec. 1980
Worcester	Completed

Coastal Zone Unit Role

Project Evaluation

The existing procedure for permit reviews adequately addresses the first four issues. Thus, the Coastal Zone Unit's involvement in review of projects applying for watershed permits will be directed to ensuring that sufficient consideration is given to protection of the biological values of flood plains. The Coastal Zone Unit will be notified of all projects requiring watershed management permits which involve landscaping or filling of more than 1 acre, or which require any construction in the flood plain.

Program Review Procedure

The Coastal Zone Unit will assist the Water Resources Administration and local governments in carrying out the provisions of the Flood Control and Watershed Management Act of 1976, by providing assistance in the delineation of coastal flood plains, the identification of biological values in coastal flood plains, and the development of rules and regulations to meet the Act's requirements. Part of their effort will involve the development of a model control floodplain ordinance to be used by local governments in meeting the requirements of the Flood Control-Watershed Management Act. Two pilot projects are underway which can be models for similar projects in other coastal areas. A cooperative effort is underway among the Coastal Zone Unit, the Water Resources Administration, Dorchester County and the HUD Flood Insurance Program to delineate Dorchester County's coastal flood plain and to develop regulations for activities in it. This cooperative method and its results should be applicable to other counties, particularly low-lying Eastern Shore Counties. A second pilot project is a cooperative effort among the Coastal Zone Unit, the Water Resources Administration, and Wicomico County, to develop a watershed management program on Wicomico River tributaries which meet the requirements of the Coastal Zone Management Act, the Flood Control-Watershed Management Act of 1976, and the 208 Water Quality Program. It is expected that the technical approach and management methods developed will be applicable to other low-lying watersheds on the Eastern Shore, where watershed management concerns other than flooding *per se* are dominant.

AUTHORITIES RELATING TO COASTAL TIDAL AND NON-TIDAL FLOOD PLAINS

Statutory Authority	Management Techniques	Agency
Construction in or obstruction of free flowing rivers and non-tidal waters including the 100-year flood plain Art. NR, Section 8-803	Direct State Planning and Regulation	DNR (WRA)
Flood Control and Watershed Management Act of 1976 Art. NR, Section 8-9A01 *et seq.*	State Standards for Local Implementation	DNR (WRA)
Flood Control Measures in State Construction Projects Art. NR, Section 8-905	Direct State Planning and Regulation	DNR (WRA)
Federal Flood Insurance Program	Federal Consistency	Federal: U.S. Dept. of Housing and Urban Development State: DNR (WRA)
Federal Water Pollution Control Act Amendments of 1972, Section 404 Rivers and Harbors Act of 1899, Section 10	Federal Consistency State Water Quality Certification	Federal: U.S. Army Corps of Engineers State: DNR (WRA)

ACTIVITIES IN NON-TIDAL WETLANDS

Situation

Non-tidal wetlands play an integral role in coastal ecosystems, providing valuable wildlife habitat and food, particularly to waterfowl and fur-bearing animals. Many types of rare or unique plant species are found in these wetlands. They also play an important hydrologic role as buffers, by moderating the effects of storm water run-off, by providing aquifer recharge areas, and by filtering out sediments and pollutants contained in these waters.

Because of their natural value, non-tidal wetlands are of significant concern to coastal zone management. Drainage projects for increased agricultural production, filling for creation of construction sites for residences and other urban projects, filling for road, bridge, or utility crossings, and upland projects which modify the volume, velocity and quality of runoff, are all examples of alterations which may destroy the natural value of non-tidal wetlands.

All non-tidal wetlands are presently under federal (Army Corps of Engineers) or State (Water Resources Administration) jurisdiction. Regulations alone, however, fall short of a comprehensive management program preserving the integrity of these areas, and more information is needed to establish this more comprehensive program.

Wetland areas that are within the 100-year flood plains of rivers are regulated both by the state watershed permit and by the U.S. Army Corps of Engineers Section 10/404 permit systems. General permits have been issued by the Corps of Engineers for use of wetlands above the "headwaters" of a stream (the point where the median flow is less than five cubic feet/sec). Projects involving the filling of the uphill fringe of the flood plains of streams that drain less than 400 acres are exempt from state watershed permits. Wetlands associated with water bodies of less than ten acres, which are not part of a tributary system, are also subject only to the requirements of the Corps of Engineers' general permits. It is not known whether these areas not subject to individual permit requirements constitute a significant portion of the state's non-tidal wetlands, and thus it is not known whether they play an important ecosystem role.

An inventory of information, on location, size, vegetation types, and wildlife habitat values is not generally available to permit administrators in areas that are subject to individual permit requirements. Similarly, this information is not available for use by local governments in their programs of watershed management and flood control planning. Lack of inventories and maps may lead to confusion among land owners, administrators, and enforcement officers regarding where permits are actually required. However, the U.S. Army Corps of Engineers is initiating an effort to delineate the areas under their authority beginning on the Eastern Shore.

Issues

This situation necessitates that state and local governments coordinate their activities and regulatory actions, with federal government cooperation and consistency, toward the following goals and objectives of the Coastal Zone Management Program:

(5) To protect coastal terrestrial areas of significant resource value-areas having scenic, scientific, geologic, hydrologic, biological or ecosystem maintenance importance - such as non-tidal wetlands, endangered species habitat, significant wildlife habitat, and wintering and resting areas of migratory birds.

(13) To give priority to non-structural management techniques for controlling tidal and riverine flood hazards, including the use of flood plains for open space uses such as agriculture, forestry, wildlife habitat and recreation, in order to lessen the danger to life and property, and to minimize adverse effects on biological resources and water quality.

(27) To promote the maintenance of natural buffers along, and natural drainage ways feeding to, coastal tributaries and estuarine waters, to minimize adverse environmental effects of coastal developments and activities.

Investigations and regulatory procedures must consider whether or not a proposed action:

- Involves an area that is of significant value for general wildlife habitat, food chain production, nesting, spawning, rearing, or resting sites for aquatic and land species (particularly for migratory birds, anadromous fish, and endangered species).
- Adversely affects such an area in any way.
- Destroys or degrades the hydrologic role of a wetland area mitigating flood and storm water impacts, maintaining the integrity of other wetlands in the watershed, or serving as a recharge area.
- Can feasibly and practically be undertaken elsewhere, in a non-wetland area.
- Is designed to prevent avoidable destruction of wetlands and to minimize unavoidable destruction.
- Involves hazardous or toxic wastes or fill material.
- Contributes significantly to a public benefit (such as maintenance of a strong agricultural community, or provision of necessary pipeline and public utility corridors)

Policies

1. The alteration of the cross section of any non-tidal stream or body of water, including the 100-year flood plain is, in general, contrary to state policy. (Natural Resources Article, Section 8-801, 8-803; pending revised DNR watershed permit regulations)

2. It is in the public interest to preserve the biological values of the land and water resources of the 100-year flood plain. (Natural Resources Article, Section 8-801, 8-9A02)

3. As part of the State flood management program, the Department of Natural Resources and local governments shall undertake cooperative efforts to provide for comprehensive watershed management and for the biological and environmental quality of the watersheds of the State. (Natural Resources Article, Sections 8-801 and 8-9A02)

4. The Department of Natural Resources is responsible for the conservation and management of the state's wildlife, wildlife resources, fish, fish resources, and aquatic life including (1) the acquisition of areas as wildlife management areas, wildlife refuges, and fish refuges that are necessary to protect, propagate or manage fish or wildlife, (2) the aquisition of non-tidal wetland areas which warrant preservation, (3) the undertaking of fish restoration projects in accordance with PL81-681 (The Dingell-Johnson Act) and wildlife restoration projects in accordance with PL75-415 (The Pittman-Robertson Act); and (4) the undertaking, in conjunction with other state agencies, of programs necessary for the conservation and protection of non-game threatened or endangered wildlife, plants, and fish, including the acquisition of land or aquatic habitat or interests therein. (Natural Resources Article, Sections 1-302, 1-303, 4-202, 4-405, 4-406, 4-2A06, 5-207, 5-801, 5-805, 5-902, 10-202, 10-208 10-209, 10-801, 10-805, 10-2A06)

5. The filling and dredging of non-tidal wetland areas of biological and/or hydrological value within the 100-year flood plain will not be permitted, unless no feasible alternative for accomplishing a necessary public good exists and measures are taken to minimize adverse environmental impacts. (Natural Resources Article, Section 1-302, 1-303 8-801, and 8-803; pending revised watershed permit regulations)

6. All biologically and hydrologically significant non-tidal wetland areas should be given high priority for designation as Areas of Critical State Concern for conservation or preservation. (Natural Resources Article, Sections 1-302 and 1-303; Article 88C Section 2(b)(3))

7. Dredging channels is generally the least preferable means of accomplishing storm water and flood control management. (Natural Resources Article, Sections 1-302, 1-303, 8-801, 8-803, and 8-1101; Maryland Interim Watershed Management Policy, Nov. 1977)

8. Agricltural drainage shall be permitted only to the extent it provides substantial agricultural benefits, and shall be carried out in ways which minimize environmental damage. Each project must meet the following requirements:

   - There must be a demonstrated need for the project.

   - The lower end of the system must be as far upstream as possible.

   - Good conservation practices must be used during construction.

   - Sediment transport must be minimized through sound conservation practices.

   - Construction must not occur during spawning time when such restriction is deemed inappropriate.

   - Provisions must be made for continued maintenance.

   - Environmental impacts must be considered.

   (Natural Resources Article, Sections 1-302, 1-303, 8-801, 8-803, 8-1402, 8-1405; Maryland Interim Watershed Management Policy, Nov. 1977)

The following policies guide the administration of U.S. Army Corps of Engineers Section 10/404 permit program and further define what activities are appropriate for non-tidal wetland areas in Maryland.

9. Proposed activities and development involving the discharge of dredged or fill material in or affecting the nation's waters and wetlands shall:

   a. Involve the minimum possible amount of discharge into wetlands or the waters of the United States with any amount of discharge avoided wherever possible.

   b. Avoid preventable significant damage to fish, wildlife and/or other environmental resources.

   c. Avoid jeopardizing the continued existence of threatened or endangered species, or destroying or modifying the habitat of those species determined to be critical in accordance with the federal Endangered Species Act.

   d. Avoid disruptions of fish spawning and nursery areas. Dredging and disposal operations should be scheduled to avoid interference with fish spawning cycles and to minimize interference with migration patterns and routes.

e. Avoid restricting or impeding the movement of aquatic species indigenous to the waters, hampering the passage of normal or expected high flows, or causing the relocation of the waters (unless the primary purpose of the fill is to impound waters). If the discharge creates an impoundment water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow must be minimized. Discharges into breeding and nesting areas for migratory waterfowl must be avoided.

f. Avoid (individually or cumulatively with other developments on a waterway or group of related waterways) unnecessarily destroying, damaging, or degrading fish, wildlife, naturally functioning aquatic and wetland ecosystems and/or the dependent human satisfaction.

((40 CFR 230.5(b)) 40 FR 41295-6 September 5, 1975; 40 FR 55813-17 December 1, 1975; (33 CFR 323.4(b)) 42 FR 37146 July 14, 1977)

Implementation

Lead Agencies

Federal: U.S. Army Corps of Engineers (Participating Agencies: EPA, U.S. Fish and Wildlife Service, National Marine Fisheries Service)

State: WRA (Participating Agencies: Wildlife and Fisheries Administrations)

Management Procedures

Regulation of construction within non-tidal wetlands fall under the jurisdiction of the U.S. Army Corps of Engineers and the Water Resources Administration. Non-tidal wetlands in Maryland are under the jurisdiction of the Corps of Engineers' federal permit systems governing the discharge of dredged and fill material pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972. From a national perspective, the degradation or destruction of aquatic resources by filling operations is considered the most severe adverse environmental impact of activities subject to permit by Section 404. The Corps of Engineers and the federal agencies involved in review of 404 permits have developed complete regulations in the issuance and review of permits (40 FR 55810, December 1, 1975; 40 CFR 231, 40 FR 41292, September 5, 1975; 33 CFR 323, 42 FR 37144, July 19, 1977).

While all wetlands fall within the Section 404 permit system, the Corps of Engineers has issued a nationwide permit for projects in wetlands that are associated with streams above the headwaters (i.e., above that point where the average flow is less than five cubic feet per second), and for those projects associated with bodies of water of ten acres surface area or less. In Maryland, the point where the average flow is less than five cubic feet per second has been determined to be equivalent to the point at which the stream's drainage area is less than 5 sq. miles. Under this nationwide permit, projects must meet the following criteria:

1. No discharge of dredged or fill material will destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

2. All discharge will consist of suitable material free from toxic pollutants in other than trace quantities.

3. The fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution.

4. The discharge will not occur in a component of the National Wild and Scenic Rivers System, or in a component of the Maryland Scenic Rivers System.

Individual permits can be required in these areas presently subject to general permit, upon the request of the Administrator of EPA.

The Corps may also issue general permits for minor and temporary work including the following activities:

Dredged or fill material placed as backfill or bedding for utility line crossings (provided there is no change in construction bottom contours).

The repair, rehabilitation, or replacement of any previously authorized, currently serviceable fill, or of any currently serviceable fill discharged prior to the requirement for authorization.

Such work must not be located near a public water supply intake or occur in a shellfish area, or disrupt the movement of indigenous species of aquatic life.

All other activities involving fill will be subject to individual permit from the Corps of Engineers with review by the U.S. Fish and Wildlife Service and the Environmental Protection Agency. A water quality certification from the State will also be necessary, whose review procedure will be essentially the same as that associated with Corps permits for tidal wetlands (see the Section Activities Occurring in Tidal Wetlands)

Permits are required from the State Water Resources Administration for any work which alters the cross section of any non-tidal stream or other body of water. One purpose for this permit is to prevent alterations of flood plains from increasing flood hazards upstream or downstream. The permit process does, in addition, provide the opportunity to review proposed projects for impacts in water quality, wildlife habitat, and other biological resources. Non-tidal wetlands not associated with riverine flood plains are not covered by this permit system.

Activities not requiring permits include the following:

1. Agricultural drainage systems with limited drainage areas.

2. Placement of land fill along the uphill fringe of flood plains of small non-tidal streams with drainage areas of less than 400 acres, provided that adequate measures are taken to avoid adverse impacts on water quality.

3. Storm drainage systems draining less than 400 acres, built by or under permit from a county or city which drain small areas.

Other agencies of DNR and of other departments may participate in the review of these permits. The Wildlife Adminstration and the Fisheries Administration are routinely involved.

As noted in the section on Activities in Tidal and Non-Tidal Flood Plains, the requlations for this permit program are being revised to document explicitly the criteria used to make permit decisions. These criteria are reflected in the policies noted above.

Coastal Zone Unit Role

Project Evaluation

The Coastal Zone Unit will be involved in the regulatory process for activities involving alteration of non-tidal wetlands (in accordance with the project evaluation procedures described in Chapter I in the case of all projects in areas of value identified in the Upland Natural Areas Study, or projects in which more than ¼ acre of land is proposed for alteration. Proposed projects will be reviewed for possible conflicts with the Coastal Zone Management Program, particularly for possible adverse impacts on areas of high biological values. CZU will provide data on the impact to biological resources of proposed activities, and will place the value of particular non-tidal wetlands in a statewide perspective. Whenever it appears that substantial impact to any significant non-tidal wetlands area may occur, a full project evaluation will be undertaken to make recommendations to the Secretary of Natural Resources on appropriate State action and on the federal consistency decision on Section 404 permits involved. Projects involving less than 1/4 acre are considered not likely to have significant impacts by themselves unless they involve substantial permanent alteration or other special consequences.

Program Review

Cumulative Impact:

CZU, in conjunction with the Corps of Engineers and the Water Resources Administration, will ensure that all permit data is entered into appropriate data systems (such as the RAMS data base and the WRA Query system) and made available to CZU. CZU will initiate studies to determine the rate at which non-tidal wetlands are lost, and the impact of various developmental activities on the viability of these areas. The results of such studies will indicate whether modifications are needed for existing regulation programs to adequately protect non-tidal wetlands

State Critical Areas:

Areas of significant resource value will be identified and suggested to counties as state critical areas for conservation or preservation.

Data Base:

CZU will assemble all information presently available on non-tidal wetlands in Maryland's coastal zone and provide it to all permit administrators. In addition, CZU will work with other governmental agencies to acquire additional information needed on the nature, location, and extent of non-tidal wetlands in Maryland.

Permit Coordination:

In cooperation with the Water Resources Administration, State regulatory mechanisms will be examined and revised where necessary to enable the state to accept delegation of the Corps of Engineers permit responsibility, if appropriate changes are made in federal law and regulations. In lieu of delegation, refinement of existing Memoranda of Agreement with the U.S. Army Corps of Engineers will be undertaken to insure close coordination of State and Federal efforts regarding non-tidal wetlands.

AUTHORITIES RELATING TO NON-TIDAL WETLANDS

Statutory Authority	Management Technique	Agency
State Critical Areas Program Art. 88C, Section 2(b)(3)	State Standards for Local Implementation	DSP
Construction in or obstruction of free-flowing rivers on non-tidal waters including the 100-year flood plain Art. NR, Section 8-803	Direct State Planning and Regulation	DNR (WRA)
Flood Control and Watershed Management Act of 1976 Art. NR, Sections 8-9A04 et seq.	State Standards for Local Implementation	DNR (WRA)
Non-Game and Endangered Species Conservation Act Art. NR, Section 10-2A05 et seq.	Direct State Planning and Regulation/Habitat Acquisition	DNR (MWA, CAP)
Federal Water Pollution Control Act Amendments of 1972 Section 404	Federal Consistency/State Water Quality Certification	Federal: U.S. Army Corps of Engineers State: DNR (WRA)

USE OF AGRICULTURAL LANDS

Situation

Much of Maryland's coastal zone is rural. In Maryland's coastal counties, over one million acres of land, divided among more than 10,000 farms, are committed to agricultural uses. Agriculture is a major contributor to the coastal economy, as well as to the coastal character and scenic beauty. Increasing suburbanization and demand for second home development, however, is consuming much of Maryland's productive agricultural land. Conflicts have arisen between agricultural activities and coastal activities dependent on the aquatic environment. Farming has been identified as a potential contributor to non-point source pollution in several studies, including the River Basin Plans developed by WRA in accordance with 1972 Water Pollution Control Act Amendments. Conflicts also arise between farmers wishing to maintain or increase the drainage of agricultural land through stream channelization, and groups representing fish and wildlife interests.

Issues

This situation necessitates that state and local governments coordinate their activities and regulatory actions, with federal government cooperation and consistency, to fully implement existing agricultural preservation programs, to develop accurate and adequate information on environmental impacts of agricultural activities, and to meet the following objectives of the Coastal Zone Management Program.

(6) To promote the protection and wise management of productive coastal agricultural and forested areas through cooperation with programs of the local Soil Conservation Districts, the Agricultural Lands Preservation Foundation, the Maryland Department of Agriculture, the Maryland Forest Service, the Department of State Planning and the Maryland Environmental Trust.

(22) To promote use of the State's coastal resources to meet social and economic needs in an environmentally compatible manner.

(34) To undertake studies and inventories, where needed, to provide the most complete and accurate information base possible for all levels of government and the public to use in management decisions and activities affecting coastal resources.

(40) To ensure the review of state and local governmental programs, and those of the local Soil Conservation Districts, in order to identify possible modifications needed to facilitate achievement of coastal zone management goals, objectives, and policies.

Investigations and regulatory procedures must consider:

- Whether or not a proposed facility or development will affect agricultural land in production.
- What impact, if any, agricultural practices such as erosion control measures and the use of agricultural chemicals, will have on water quality and aquatic life.

- The impact of land use plans and regulations on the viability of existing farms.

Policies

1. It is State policy to preserve agricultural land and forest land in order to provide sources of agricultural products for the citizens of the state, to control the urban expansion which is consuming agricultural land and woodland of the State, to curb the spread of urban blight and deterioration, and to protect agricultural land and woodland as open space land. A principal preservation mechanism shall be the establishment of agricultural districts and the acquisition of agricultural land preservation easements. (Agriculture Article, Section 2-501 et seq.)

2. It is State Policy to provide for the conservation of the soil, water and related resources, and for the control and prevention of soil erosion, in order to preserve natural resources, control floods, to prevent impairment of dams and reservoirs, to assist in maintaining the navigability of rivers and harbors, to preserve wildlife, to protect the tax base, the public lands, and the health, safety and general welfare of the people of the State, and to enhance their living environment. (Agriculture Article, Section 8-102(d))

3. It is State policy that to conserve soil resources and to control and prevent soil erosion, it is necessary that land-use practices contributing to soil waste and soil erosion be discouraged and discontinued. Appropriate, soil-conserving, land-use practices should be adopted and carried out. (Agriculture, Article, Section 8-102(c))

4. It is State policy that a soil conservation district constitutes a political subdivision of the State and that it exercises public powers. In carrying out the responsibilities of a district, district supervisors are authorized to:

   a. Conduct surveys, investigations, and research relating to the character of soil erosion, the preventive and control measures needed; disseminate information concerning preventive and control measures; conduct soil conservation and soil erosion control demonstration projects within the district, and provide financial and other assistance to land owners for erosion control and prevention operations.

   b. Carry out preventive and control measures within the district, including engineering operations, cultivation methods, and growing of vegetation, changes in land use, and similar measures on State owned or controlled land, with the cooperation of the agency administering and having jurisdiction over them, or any other land within the district, with the cooperation of the owner.

   c. Develop comprehensive plans for conserving soil resources and controlling and preventing soil erosion within the district, including the specification of engineering operations, cultivation methods, the growing of vegetation, cropping programs, tillage practices, and changes in land use; and encourage their adoption by land owners within the district.

d. Approve or disapprove plans for clearing, grading, transportation, or otherwise distributing soil pursuant to Section 8-1104(a) of the Natural Resources Article, and to adopt general criteria and specific written recommendations concerning the control of erosion and siltation of pollution associated with these activities.

e. Adopt rules and regulations governing land use in the district in order to conserve soil and prevent and control soil erosion. Such regulations may require necessary engineering operations, including the construction of terraces and other necessary structures; observance of particular methods of cultivation such as contour cultivating and planting, planting, of water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; observation of specific cropping programs and tillage practices; and retirement from cultivation of any highly erosive area on which erosion may not be controlled adequately if it is cultivated.

f. Provide for other means, measures, operations, and programs that may assist conservation of soil resources and prevent or control soil erosion in the district, with due regard to the legislative findings set forth in Section 8-102.

(Agriculture Article, Sections 8-306 and 8-307)

5. It is State policy that no one may discharge any liquid, gaseous or solid substances in such concentration which, when applied, discharged, or deposited in the waters of the state may exert a poisonous effect detrimental to man or to the propagation, cultivation or conservation of animals, fish or other aquatic life. (Natural Resources Article, Section 8-1405, Department of Natural Resources Rules and Regulations, Section 08.05.04.01 and .06)

6. It is State policy to set rules and regulations regarding the sale, offer, use, or storage of pesticides (including herbicides) and other articles which constitute a water quality problem, in order to protect public health, safety and welfare and to protect present and future use of the waters for public water supply, the propagation of fish and other aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses. The Department of Natural Resources shall defer this responsibility to the Department of Agriculture, as long as it regulates these uses adequately. (Natural Resources Article, Section 8-1405, Department of Natural Resources Rules and Regulations, Section 08.05.04.08; Agriculture Article 5-204 and 5-209)

7. It is State policy that the Water Resources Administration regulate agricultural waste discharge in order to prevent the waters of the State from falling below water quality standards. (Natural Resources Article, Section 8-1413)

Implementation

Lead Agencies

State: Department of Agriculture (control of pesticides, agricultural lands preservation) Water Resources Administration (non-designated area 208 efforts, control of toxic substances) Department of State Planning (review of projects for consistency with State policies and programs) Department of Taxation and Assessment (regulation of agricultural land assessment); Maryland Environmental Trust (conservation easement program)

Regional: Regional Planning Council - 208 efforts in Baltimore region
Council of Governments - 208 efforts in Washington region

Local: Soil conservation districts (development of form conservation plans, regulation of farming practices)

Management Procedures

Preservation of Agricultural Land:

The Maryland Agricultural Land Preservation Foundation of the Department of Agriculture has the authority to establish agricultural districts and to acquire easements in order to preserve agricultural land. Through its conservation easement program, the Maryland Environmental Trust has obtained easements on 5,730 acres of which approximately 3,000 acres is agricultural land. In addition, Maryland State Law requires that the assessment of lands (including timberlands) actively devoted to agricultural use shall be based on that use and not on its value if subdivided.

The Department of State Planning takes into consideration the State policy to preserve agricultural land when reviewing residential and other developments for consistency with state plans, programs and policies. In addition the State Department of Agriculture reviews County Water and Sewer Plans for impacts to Agricultural Lands.

Conservation of Soil Resources:

The District Soil Conservation Supervisors provide overall guidance and support to local groups and individuals for the purpose of conserving soil and related resources. One of their major responsibilities is to work with individual farmers to develop conservation plans to minimize soil erosion and other adverse impacts on water quality and other environmental factors.

Pesticides:

All pesticides used within Maryland must be registered with the Maryland Department of Agriculture. In addition, the Department regulates the use of pesticides by requiring that all businesses engaged in pest control be licensed with the Department before they can use any pesticide. Businesses must employ one or more persons who are certified as to competence by the Department to qualify for licensing and all employees of the business are registered with the Department. Private applicators who use restricted use pesticides must also be certified by the Department.

Point and Non-Point Sources:

Water Resources Administration requires discharge permits for those agricultural activities that result in a definable discharge of waste or waste water to the waters of the state. A definable discharge may be from either a point or non-point source, and must be of such quantity and frequency that it can be identified and related to the source by flow, constituents or other

means. Agricultural waste management plans must be submitted to the Water Resources Administration for approval after review by the appropriate District Conservationist.

The Water Resources Administration, Baltimore Regional Planning Council and the Washington Council of Governments are currently engaged in water quality planning efforts to determine what agricultural activities may be non-point sources of pollution, and to determine the magnitude of that pollution.

Coastal Zone Unit Role

Project Evaluation

Project Evaluation and Program Review - Agriculture in general is considered compatible with the CZMP. Project evaluations will not be done on specific agricultural operations or practices, with exception of channelization projects and small watershed projects pursuant to P.L. 566. All project evaluations involving shoreland uses (see Sections Other Shoreland Activities, Industrial, Parks, Sewage Treatment Plants, Activities Occurring in Tidal and Non-Tidal Flood Plains etc.) will consider the impacts of these uses on the viability of existing farms.

Program Review

The Coastal Zone Unit will provide technical data and other resources to the 208 planning agencies. CZU will maintain close contact with the Water Resources Administration's Planning Section, the Soil Conservation Districts, and the designated Metropolitan 208 agencies, to prevent duplication of effort. The 208 Water Quality Management Program, when completed will be incorporated as an integral part of the CZMP. The CZU will also continue its involvement in the Delmarva River Basins Study in order to develop a long range plan for agricultural needs on the peninsula.

LEGAL AUTHORITY

Statutory Authority	Management Technique	Agency
Ag. Land - Md. Ag. Land Presev. Found. Ag. Art. Sec. 2-501 to 515	State & Local planning and acquisition	Md. Land Presev. Found.
Soil Conservation Ag. Art. Sec. 8-101 to 310		State Soil Conservation Commit. & local Soil Conserv. Dist.
Conservation Easement Program Art. N.R., Sec. 3-203	Easement Acquisition	DNR (MET)
Ag. Land Assessment Art. 81, Sec. 19	Direct State Regulation	Dept. of Assessments & Taxation
Md. Pesticide Reg. & Labeling Ag. Art., Sec. 5-101 to 211	Direct State Regulation	Dept. of Ag.
Water Poll. Control & Abatement N.R. Art. 8-1413	Direct State Regulation	DNR (WRA)
Water Poll. Cont. Act Amends. of 1972, Sec. 208	State, regional & local planning	DNR (WRA), RPC COG, Soil Conserv. District
State Land Use Act	State & Local Planning and review of projects for consistency with State policy & programs	DSP
Poll. Control & Abatement Nat. Res. Art., Sec. 8-1405 and 8-1413	Direct State Regulation	DNR (WRA)

USE OF FORESTED LANDS

Situation

The importance of timber products, and the value of private and public forests as natural buffers, wildlife habitat, and recreational areas, necessitate sound management of woodlands. Most of Maryland's 1,535,000 acre coastal forest area is privately owned, and is under the owner's care and management. However, others also influence the uses of private forest lands, such as the forest product industry, recreationists, public agencies, as well as the public interest at large. There are four state forests totalling approximately 20,000 acres in the state's coastal zone: Doncaster State Forest in Charles County, Elk Neck State Forest in Cecil County, Wicomico State Forest in Wicomico County, and Pocomoke State Forest in Worcester County. These forest areas must serve a variety of purposes: timber products, wildlife habitat, watershed protection, and recreational activities such as hiking, camping, hunting, and fishing.

Issues

State and local agencies must coordinate their activities and regulatory actions with federal government cooperation and consistency to meet the following objective of the Coastal Zone Management Program:

(6) To promote the protection and wise management of productive coastal agricultural and forested areas through cooperation with programs of the local Soil Conservation Districts, the Agricultural Lands Preservation Foundation, the Maryland Department of Agriculture, the Maryland Forest Service, the Department of State Planning and the Maryland Environmental Trust.

State and local programs and regulatory actions must consider whether or not a proposed forestry practice or proposed non-forestry activity on forested land will:

- Have adverse effects on water quality.
- Adversely alter the value of the area in providing wildlife habitat, watershed protection, or natural beauty to coastal areas.
- Be consistent with comprehensive management practices in the case of State forests.
- Be consistent with forestry board guidelines in the case of privately owned forests.

Policies

1. Forests, timberlands, woodlands and soil resources of the state are basic assets and the preservation of these resources is essential. It is the policy of the state to encourage economic management and scientific development of its forests and to conserve and improve soil resources to preserve an adequate source of forest products. (Natural Resources Article, Section 5-602, Agricultural Article, Section 2-501)

2. Where the objectives of the state can be achieved through cooperative efforts of private landowners, with the assistance of the state, it is the policy of the state to encourage and assist the private owernship and management of forest lands. Where private ownership cannot achieve the objectives of the State, it is the state's policy to acquire forested lands as rapidly as the financial resources of the state permit. (Natural Resources Article, Section 5-602)

3. It is state policy to protect woodland areas through the conservation easement program of the Maryland Environmental Trust and State agricultural land preservation efforts which include the establishment of agricultural districts and acquisition of agricultural easements. (Natural Resources Article, Section 3-301 et seq., Agricultural Article, Section 2-501, et seq.)

4. It is the state's policy to comprehensively manage state forests in order to provide for the following activities: watershed protection, wildlife protection, hiking and general recreation, natural beauty appreciation, wilderness protection, protection of significant natural, historical or archeological features, and timber harvesting. In undertaking such comprehensive management, the following practices shall be followed:

   a. "All timber harvesting activities shall be thoroughly reviewed to minimize adverse environmental effects. Selective cutting shall be practiced in designated natural beauty and recreational areas. Clearcutting, where necessary, shall be modified to protect and improve watershed and wildlife habitat values."

   b. Practices shall be undertaken to insure the maintenance of healthy populations of animal life.

   c. Carrying capacity limits on recreational uses will be established when needed to protect resources or to maintain the quality of recreational experience.

   d. All activities are to be undertaken in a manner which minimizes the potential for water, air or noise pollution, including the use of alternative areas if necessary.

   e. Protection shall be given priority over development where proposed activities would not adequately protect remaining resources. Natural methods shall be favored over artifical protection methods for forests, watersheds, or floodplains.

f. Aesthetics will be given full consideration in the planning and implementing of all forest operations.

g. Forest management goals and policies will be applied to resolve potential conflicts in the various forest zones. Resolution will entail an examination of the conflicts between alternative uses of a forest area. Consideration will be given to all potential locations of each conflicting use in the forest, and to the possibility of meeting the needs of the conflicting uses in other forests. (Natural Resources Article, Section 5-102, 5-207, 5-602; Maryland Forest Service Handbook)

5. The Department of Natural Resources shall establish Forestry Districts to guide the use of private woodlands and forests. The powers and duties of the district board shall include (but not be limited to) efforts to:

a. Promote private forestry by assisting landowners in forest management, tree planting, conservation and development of tree crops, and protection of forests from fires, insects, and diseases.

b. Assist private owners of forest land with advice on construction of flood control measures, seeding and planning of waste slopes, abandoned or eroded lands, and development of wildlife by planting trees, bushes, and shrubs which produce food or cover.

c. Enter into agreements with landowners within its county or district for a specific period of years.

d. Cooperate with other government agencies to achieve forest conservation, better forest growth and public education on forest conservation and management measures.

e. Develop comprehensive forest management plans for conservation of soil resources and for control and prevention of soil erosion within the county or district.

f. Promulgate safeguards for proper forest land use, such as those intended to:

(i) Provide for adequate restocking, after cutting, of trees of desirable species and condition.

(ii) Provide for reserving, for growth and subsequent cutting, a sufficient growing stock of thrifty trees of desirable species to keep the land reasonably productive.

(iii) Prevent clear-cutting, or limit the size of a tract to be clear-cut in areas where clear-cutting will seriously interfere with protection of a watershed, or in order to maintain a suitable growing stock to insure natural reproduction. However, any rule dealing with clear-cutting shall establish a procedure by which

any operator of forest land may secure a permit to clear-cut particular lands upon proof that he has a bona fide intention to devote the land to use other than forest use; that the lands are appropriate for the proposed use; and that devoting the lands to the new use will not seriously interfere with the protection of the watershed.

(Natural Resources Article, Section 5-606)

6. The Department of Natural Resources, upon request, shall assist other state units, counties towns, corporations, and individuals preparing plans for park, recreation and natural area acquisition and development, acquisition of multiple-use areas, including protection of watersheds, and the management and replacement of trees. (Natural Resources Article, Section 5-201)

7. In order to promote conservation of forest resources, it is State policy to allow land owners with five or more acres to place their land under the forest conservation and management program. (Natural Resources Article, Section 5-302)

8. The Department of Natural Resources, shall promote a program of roadside tree planting, maintenance, and control to obtain beneficial road stabilization, visual aesthetics, and buffers for agricultural and open areas. (Natural Resources Article, Section 5-402, 5-602)

Implementation

Lead Agencies

State: Maryland Forest Service

Local: Forest District Boards

Management Procedures

The Maryland Forest Service has the primary responsibility for managing activities in State Forests.

The Maryland Forest Service is also responsible for providing technical assistance and guidance to the privately owned forest land throughout the coastal zone. General forest resource management assistance includes the preparation of forest management plans, reforestation plans, timber stand improvement and harvesting plans as well as assistance to the primary wood using industries. In addition, the State has been divided into forest districts. Each district has a forestry board with members appointed from the area by Maryland Forest Service. The purpose of the districts is to make forestry expertise available to landowners, promote good foresrry practices, and assist in watershed management practices. To that end, forestry boards develop comprehensive forest management plans, and may enforce Maryland Forest Service rules and regulations, recommend new rules and regulations, and promulgate "safeguards" for proper forest land use. Through a Memorandum of Understanding with the Soil Conservation District, woodland conservation practices are incorporated into the conservation farm plans of those cooperating in the district, along with erosion control and sediment reduction measures.

The Maryland Forest Service also operates the following programs relevant to coastal woodlands:

1. Forest Conservation and Management Program

The purpose of this program is to encourage people "to keep or develop lands for productive woodland purposes, to prevent floods and the wasting of soil (and) to provide open and wooded areas for the use and enjoyment of residents and sojourners".

The Program enables any owner of five or more acres of forest to enter into a contract with the Department of Natural Resources. The owner agrees to use his land in a manner consistent with the purposes of the program for a specified time. In return, the owner is granted an exemption from an increase in assessed valuation of the land during the contract period.

A full market valuation of the tract is made at the termination of the contract, at the time of harvest or at the time of conveyance to a new owner who does not assume the obligations of the contract. If the new valuation is greater than the old, a new tax bill is computed by allocating the increased value in approximately equal annual increments from the date of the contract to its termination, mutliplying by the tax rate for the respective year. This additional tax then becomes immediately due and payable.

2. The Seed Tree Law

This program is in response to a dwindling supply of loblolly pine and requires woodland owners who have harvested pine timber to assure a regrowth of loblolly pine by either (a) replanting the area satisfactorily or (b) leave seed trees to adequately restock the area harvested through natural regeneration of loblolly pine.

3. Roadside Tree Program

The Department of Natural Resources is authorized to plant trees along roadsides, to regulate the care of roadside trees, and to establish nurseries for the propagation of roadside trees. A permit from the Department is required before any person may cut down or trim a roadside tree.

4. Forest Protection

The Forest Service is responsible for the control and suppression of wild fires, insects, and disease and for the enforcement of forest laws, rules, and regulations.

Forest harvest operations come under a blanket permit of the Water Resources Administration which is granted to licensed forest product operators in the state. Operations carried out must comply with the criteria and procedures aimed at controlling erosion and abating sedimentation.

5. Water Quality Impact Studies

The Forest Service is working with the Water Resources Administration and the regional governments responsible for determining the effects of forestry practices or water quality through the 208 Program.

Coastal Zone Unit Role

Project Evaluation

Project evaluation on forestry practices is not anticipated. However, the values of forested areas will be considered in all project evaluations on developmental activities (see the Sections Shore Erosion Control, Activities in Flood Plains, Activities in Non-Tidal Wetlands, Onshore OCS/Oil/Natural Gas Facilities, Electric Generating Facilties, Industrial Parks, Mineral Extraction Facilties, Large-Scale Residential Developments, and Transportation Networks).

Program Review

1. The Coastal Zone Unit will maintain close contact with agencies responsible for non-point source pollution planning under the Federal Water Pollution Control Act Amendments of 1972, to insure that all relevant factors concerning forestry management practices are considered.

2. The Coastal Zone Unit will work with the counties and the Maryland Department of State Planning and other relevant State agencies to consider significant coastal forested areas, particularly those identified in its Upland Natural Areas Study, for designation as State Critical Areas.

AUTHORITIES RELATING TO THE USE OF FORESTED LANDS

Statutory Authority	Management Technique	Agency
State Forest Natural Resources Article, Section 5-201	Direct State Planning and Regulation	DNR, Maryland Forest Service (MFS)
Forest Conservation and Management Natural Resources Article, Section 5-301 et seq.	Direct State Planning and Regulation	DNR (MFS)
Forest Conservancy Districts Natural Resources Article, Section 5-601 et seq.	State Assistance Program State Guidelines for Local Implementation	DNR (MFS)
Forest Protection Natural Resources Article, Section 5-608 to 5-610, 5-701 et seq.	Direct State Planning and Regulation	DNR (MFS)
Road-side Tree Program Natural Resources Article, Section 5-401 et seq.	Direct State Planning and Regulation	DNR (MFS)
State Critical Areas Program Article 88C, Section 2(b)(3)	State Standards for Local Implementation	DSP
Conservation Easement Program	Easement Acquisition	DNR (MET)

CHANNELIZATION (AND SMALL WATERSHED PROJECTS)

Situation

Channelization, the modification of natural stream channels, is a method which is used in Maryland to increase the productivity of agricultural land, and in the past, to reduce the frequency of damaging floods. Channelization includes the following alterations of natural stream courses: 1) riprapping or lining of channel, 2) clearing of obstructions and accumulated bedload material, 3) widening, 4) deepening, and 5) realignment of existing channels. The effect of these modifications is to move water off the land at an increased rate and volume, thus reducing the potential for damage by flooding. Channelization can also lower the existing water table adjacent to the modified channels, increasing the permeability and, in turn, the productivity of the soil. Channel modifications have been an integral part of agricultural drainage in Maryland. Frequently, channel modifications are part of small watershed projects which also may include impoundments or reservoirs for flood control, sediment control, and recreation.

Several environmental problems are often associated with the use of channelization. Deterioration of water quality is one such problem, and the protection of water quality is of primary concern. After channelization, water which formerly remained on the land or in the soil is transported into aquatic systems. Agricultural chemicals (i.e., fertilizers, pesticides, and herbicides) are transported along with surface and ground waters into aquatic systems, where they may pose a hazard to the health of the aquatic ecosystem. Construction of channel modifications creates suspended sediment, and removal of stream bank vegetation during construction can result in increased sedimentation as well as increased water temperatures. Improper channel bank stabilization and channel maintenance can also cause sedimentation in aquatic systems. The resulting impairment of water quality can interfere with the spawning of fish and the growth of beneficial aquatic vegetation. The location of channel modifications and impoundments often involves non-tidal wetlands, particularly on the Eastern Shore. Activities in these wetlands can reduce or destroy the valuable functions of wildlife habitat, sediment entrapment, and groundwater recharge.

Issues

Careful project planning and the development of alternatives to channelization and impoundments are needed to avoid the associated environmental problems. Planning and regulatory efforts by federal, state, and local governments should be consistent with the following objectives of the Coastal Zone Management Program:

(5) To protect coastal terrestrial areas of significant resource value-areas having scenic, scientific, geologic, hydrologic, biological or ecosystem maintenance importance - such as non-tidal wetlands, endangered species habitat, significant wildlife habitat, and wintering and resting areas of migratory birds.

(6) To promote the protection and wise management of productive coastal agricultural and forested areas through cooperation with programs of the local Soil Conservation Districts, the Agricultural Lands Preservation Foundation, the Maryland Department of Agriculture, the Maryland Forest Service, the Department of State Planning and the Maryland Environmental Trust.

(13) To give priority to non-structural management techniques for controlling tidal and riverine flood hazards, including the use of flood plains for open space uses such as agriculture, forestry, wildlife habitat and recreation, in order to lessen the danager to life and property, and to minimize adverse effects on biological resources and water quality.

(27) To promote the maintenance of natural buffers along, and natural drainage ways feeding to, coastal tributaries and estuarine waters, to minimize adverse environmental effects of coastal developments and activities.

Project planning and review and regulatory procedures need to take into consideration whether or not a proposed project will:

- Degrade existing water quality of streams and associated water bodies.
- Create detrimental sedimentation during or after proposed channel alterations.
- Interfere with the spawning of anadromous fish.
- Create adverse impacts on non-tidal wetlands, forests, and associated aquatic systems.
- Create adverse impacts on water quality in the watershed due to increased agricultural activity.

Policies

1. The Department of Natural Resources is responsible for conservation and management of wildlife, wildlife resources, fish, fish resources and aquatic life within the State. (Natural Resources Article, Sections 4-202, 10-202)

2. The Department of Natural Resources will cooperate with federal, state, and local agencies in water resources projects and projects affecting the waters of the state, including approved projects under PL 566 (the federal Watershed Protection and Flood Prevention Act). (Natural Resources Article, Section 8-903)

3. It is the public policy of the State (taking into account varying ecological, economic, developmental, recreational, and aesthetic values) to preserve tidal wetlands, including tidal waters to the seaward limit of the State's jurisdiction, and to prevent their despoliation and destruction. (Natural Resources Article, Section 9-102, 9-202)

4. It is in the public interest to preserve the biological values associated with the land and water resources of the 100-hundred year flood plain. (Natural Resources Article, Sections 8-801 and 8-9A02)

5. The filling and dredging of non-tidal wetland areas of biological and/or hydrological value within the 100-year riverine flood plain will not be permitted, unless no feasible alternative for accomplishing a necessary public good exists and measures are taken to minimize adverse environmental impacts. (Natural Resources Article, Sections 1-302, 1-303, 8-801, and 8-803; pending revised watershed permit regulations)

6. Wherever possible, non-structural measures to reduce flood hazard will be utilized. Similarly, non-structural practices will be utilized to increase agricultural drainage wherever feasible. (Natural Resources Article, Sections 1-302, 1-303, 8-801, 8-803 and 8-9A02; Maryland Interim Watershed Management Policy, November 1977)

7. Channelization in areas where adverse impacts would be created upon water quality, aquatic resources, non-tidal wetlands, and wildlife habitat is generally not consistent with State policy. (Natural Resources Article, Sections 1-302, 1-202, 8-801, 8-803, and 8-9A02; Maryland Interim Watershed Management Policy, November, 1977)

8. Dredging channels is generally the least preferable means of accomplishing storm water and flood control management. (Natural Resources Article, Sections 1-302, 1-303, 8-801, 8-803, and 8-1101; Maryland Interim Watershed Management Policy, November, 1977)

9. Agricultural drainage shall be permitted only to the extent it provides substantial agricultural benefits, and shall be carried out in ways which minimize environmental damage. Each project must meet the following guidelines:

   - There must be a demonstrated need for the project.
   - The lower end of the system must be as far upstream as possible.
   - Good conservation practices must be used during construction.
   - Sediment transport must be minimized through sound conservation practices.
   - Construction must not occur during spawning time when such restriction is deemed appropriate.
   - Provisions must be made for continued maintenance.
   - Environmental impacts must be considered.

   (Natural Resources Article, Sections 1-302, 1-303, 8-801, 8-803, 8-1402, 8-1405; Maryland Interim Watershed Management Policy, November, 1977)

10. The natural values of affected floodplain forests and non-tidal wetlands will be considered in the siting of impoundments and these areas will be avoided if possible. Such impoundments shall provide a minimum flow release for downstream users. (Natural Resources Article, Sections 1-302, 1-303, 8-801, 8-803, and 8-9A02)

Implementation

Lead Agencies

Federal: U.S. Army Corps of Engineers, SCS (PL 566 Projects)

State: Water Resources Administration

Management Procedures

Agricultural Drainage

The President's Executive Orders on Environmental Protection issued May 24, 1977 address wetlands and federal activities affecting them:

> "Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities..."
>
> "Each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable measures to minimize harm to wetlands which may result from such use."

The U.S. Army Corps of Engineers regulates by permit, dredge and fill activities occurring in the floodplains of streams below the headwaters (i.e., below that point where the average flow is less than five cubic feet per second) (Section 404, Federal Water Pollution Control Act Amendments, 1972). This program is described in the Section on Activities Occurring in Non-Tidal Wetlands.

The Soil Conservation Service is presently operating under Conservation Planning Memorandum 15, issued on May 5, 1975, by the Soil Conservation Service Office, USDA, Washington, D.C., which states that the SCS would avoid construction, including channelization, in wetlands of Type 3 through 20 as described in the U.S. Fish and Wildllife publication, Circular 39.

The Water Resources Administration coordinates all review and comment between the agencies within the Department of Natural Resources both on Federally sponsored projects and projects submitted to them and federal agencies for approval. Project proposals which are evaluated include small watershed projects under PL 566, which are sponsored by the Soil Conservation Service (SCS) and the lcoal organizations.

Routinely involved DNR agencies are the Wildlife Administration, the Fisheries Administration, and the Coastal Zone Unit. The U.S. Fish and Wildlife Service is also involved in review and comment of project proposals, and more recently, in the initial planning of the project. With PL 566 watershed projects, DNR involvement begins with the issuance of a Preliminary Investigation by the SCS and the local district organization, and continues through the completion of an environmental impact statement on the project.

The Water Resources Administration also administers several permit programs which may affect channelization proposals. These include:

1. Regulation, by permit, of any construction or repairs to dams or obstructions to the 100-year flood plain or rivers. All permit applications for such operations must be accompanied by a hydraulic calculation of the effects of any reduction or filling, as well as summary of the expected benefits. (See Section on Activities Occurring in Tidal and Non-Tidal Floodplains)

2. Wetlands permits - regulatory procedures are described in the Section on Activities Occurring in Tidal Wetlands.

3. Water Quality Certification - Under Section 401 of the Federal Water Pollution Control Act (P.L. 92-500; 86 Stat. 816, 33 USC 1411), any applicant for a federal permit to conduct an activity which may result in a discharge into navigable waters is required to obtain a certification from the State that the discharge will comply with the application water quality standards. The certification also pertains to the subsequent operation of the facility.

Other agencies of DNR and other departments may participate in the review of these permits.

Channelization for Stormwater and Flood Control Management Purposes

Because of associated adverse impacts, the State is discouraging channelization for stormwater and flood control management purposes. The Department of Natural Resources is administratering its planning and regulatory programs accordingly.

Coastal Zone Unit Role

Project Evaluation

The Coastal Zone Unit will be involved in the regulatory process for activities involving channelization, in accordance with the project evaluation procedures described in Chapter I. CZU will be involved with all projects in areas identified to be of value in the Upland Natural Areas Study, and projects in which more than 1/4 acre of land area is proposed for alteration. Proposed projects will be reviewed for possible adverse impacts on areas of high biological value. CZU will provide data on the impact to biological resources of proposed activities and will place the value of particular natural areas in a state-wide perspective. Whenever it appears that substantial impact to any significant natural areas may occur, a full project evaluation will be initiated to make recommendations to the Secretary of Natural Resources on appropriate State action and on federal consistency decisions on Section 404 permits.

Projects involving less than 1/4 acre are considered not likely to have significant impacts by themselves unless they involve substantial permanent alterations or other special consequences.

Program Review

Cumulative Impact:

CZU, in conjunction with the Corps of Engineers and the Water Resources Administration, will ensure that all permit data is entered into appropriate data systems (such as the RAMS data base and the WRA Query system) and made available to CZU. CZU will continue to participate in the development and completion of the Delmarva River Basins Study (Type IV) along with the Soil Conservation Service, the U.S. Fish and Wildlife Service, and other DNR agencies. The Study will identify priority areas which should not be affected and will coordinate SCS planning efforts and state agency review and comment.

State Critical Areas:

Significant areas will be identified and suggested to counties as state critical areas for conservation or preservation.

Data Base:

CZU will assemble all information presently available on non-tidal wetlands in Maryland's coastal zone and will make this information available to all permit administrators.

AUTHORITIES RELATING TO CHANNELIZATION

Statutory Authority	Management Technique	Agency
State Critical Areas Program Art. 88C, Section 2(b)(3)	State Standards for Local Implementation	DSP
Construction in or obstruction of the 100-year flood plain of free-flowing rivers and non-tidal waters Art. NR, Section 8-803	Direct State Planning and Regulation	DNR (WRA)
Non-Game and Endangered Species Conservation Act Art. NR, Section 10-2A05	Direct State Planning and Regulation	DNR (MWA, CAP)
Wildlife Management Art. NR, Section 10-202	Direct State Planning and Regulation	DNR (Wildlife Administration)
Fishery Management Art. NR, Section 4-202	Direct State Planning and Regulation	DNR (MFA)
Wild & Scenic Rivers Act Art. NR, Sections 8-401 & 8-410	Direct State Planning and Regulation	DNR (CAP)
Wetlands Law Art. NR, Title 9	Direct State Planning and Regulation	DNR (WRA)
Federal Water Pollution Control Act Amendments of 1972 Section 404	Federal Consistency/State Water Quality Certification	Federal: U.S Army Corps of Engineers

ACTIVITIES ASSOCIATED WITH THE PROVISION OF SUFFICIENT RECREATIONAL, OPEN SPACE AND NATURAL AREAS

Situation

The population in Maryland's coastal zone has increased greatly within the last decade. Increased leisure time, purchasing power, and the desire to escape congested living for outdoor relaxation and recreation has had a significant impact on the coastal zone. Many people have chosen to live in or very near shoreland areas and find employment in these areas. Many more have chosen to live on or very near shoreland areas, commuting distances of an hour or more to and from work in order to enjoy evenings of recreation in coastal areas. Still others, employed and residing in metropolitan areas such as Baltimore, Washington, York, and Wilmington seek recreation in Maryland's coastal zone on weekends and holidays.

Accompanying the rapid rise in population has been an increasing need to protect open space and natural areas, in order to provide sufficient wildlife habitat, to maintain wildlife populations, and to meet the increasing demands for active and passive recreation opportunities and "wilderness" experiences.

However, the state parks, forests, natural environmental areas and wildlife management areas in Maryland's coastal counties adjacent to the State's tidal waters comprise only a small fraction of Maryland's shoreline. To meet the demands noted above, additional recreational and natural areas adjacent to or near the Maryland's shoreline are needed. The State is in the process of acquiring one such area, the 2,700 acre Wye Island, to ensure that it is maintained as one of Maryland's last undeveloped islands.

Issues

This situation requires that state and local governments coordinate their activities and regulatory actions, with federal cooperation and consistency, to meet the following objectives of the Coastal Zone Management Program.

(5) To protect coastal terrestrial areas of significant resource value-areas having scenic, scientific, geologic, hydrologic, biological or ecosystem maintenance importance - such as non-tidal wetlands, endangered species habitat, significant wildlife habitat, and wintering and resting areas of migratory birds.

(8) To promote increased recreational opportunities in shoreland areas, to promote increased public access to tidal waters, and to assure that these occur in a manner which protects the quality of coastal resources and which maintains public health and safety.

State and local government action relating to the provision of coastal recreational, open-space, and natural areas must address the following issues:

- The identification of areas worthy of protection as coastal recreational areas, open space, or natural areas (including wildlife management areas and wildlife refuges).

- The type of coastal recreational and natural areas most needed.

- The identification of areas that could meet those needs.

- The level of activity consistent with the carrying capacity of areas acquired as coastal recreational and natural areas.

- The protection of areas identified as valuable for coastal recreational, environmental or open space until acquisition can take place.

Policies

1. The Department of Natural Resources is responsible for conservation and management of wildlife and wildlife resources of the State. (Natural Resources Article, Section 10-202)

2. It is state policy a) to conserve species of wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as viable components of their ecosystems, b) to protect threatened and endangered plant and wildlife species by prohibiting the taking, possession, transportation, exportation, processing, sale, offer for sale, or shipment within this State of endangered species, and by carefully regulating these activities with regard to the threatened species, and c) to establish programs, including the acquisition of land or aquatic habitat or interests therein, necessary for the conservation of non-game threatened or endangered species of wildlife or plants. (Natural Resources Article, Sections 10-2A02 and 10-2A06)

3. The Department of Natural Resources shall, in the name of the State, purchase and manage lands suitable for state parks, scenic preserves, historic monuments, parkways, state recreational areas, forest culture, forest reserves, watershed protection, water conservation, open space, the protection, propagation or management of wildlife resources, and hunting. (Natural Resources Article, Sections 5-207, 5-901 et seq., to 10-208, 10-2A01 et seq., 10-801)

4. The Department of Natural Resources shall establish a state wildlands system on state-owned lands, which shall be administered for the use and enjoyment of the people of Maryland, in a manner that will leave them unimpaired for the future use and enjoyment as wildlands, will provide for their protection and preservation of their wildland character, and will promote the gathering and dissemination of information regarding their use and enjoyment as wildlands. (Natural Resources Article, Section 5-1203)

5. It is State policy to protect, though a scenic and wild rivers program, those rivers of Maryland (or portions of them) and related adjacent land areas that possess outstanding resources of scenery, fish, wildlife, and other valuable recreation resources of existing and potential benefit to the citizens of the State. The Program, to be administered by the Department of Natural Resources, shall provide for wise management of resources on the land and preservation of their scenic, agricultural, and wild qualities. Development will be limited to fishing, hunting, hiking, horseback riding, natural and geological interpretation, scenic appreciation, and other activities in which the general public can appreciate and enjoy the value of these areas as scenic and wild rivers in a setting of natural solitude.

   Before specific plans for use and development of water and related land resources are approved, including construction of improvements, diversions, roadways, crossings, channelizations, locks, canals or other features which change the character of a river or waterway or destroy its scenic value, full consideration and evaluation of the river as a scenic and wild resource shall be given.

   A dam or other structure impeding the natural flow of a scenic and wild river may not be constructed, operated, or maintained, and channelization may not be undertaken without the specific approval of the Secretary of the Department of Natural Resources.

   Every State unit shall recognize the intent of the Scenic and Wild Rivers Program and take whatever action is necessary to protect and enhance the scenic and wild qualities of the designated rivers. The Department shall utilize the scenic and wild rivers system and all related information to assist and cooperate with any other State and local unit which exercises jurisdiction and authority over land use planning and management. (Natural Resources Article, Section 8-401 et seq.)

6. It is State policy to make funds available to local governments for the acquisition of outdoor recreation and open space areas and for the development of recreational facilities. The acquisition and development of land for recreation purposes with such funds shall be consistent with local comprehensive plans, and shall meet a need in whole or part identified in the State Outdoor Recreation Plan. (Natural Resources Article, Section 5-904 et seq.)

7. The Department of Natural Resources, upon request, shall assist other state units, counties, towns, corporations, and individuals in preparing plans for acquisition and development of park recreation and natural areas, acquisition of multiple-use areas including protection of watersheds, management, and replacement of trees woodlots, and timber tracts. (Natural Resources Article, Section 5-201)

8. It is the State policy to encourage land owners to make their land available to the public for recreational use by limiting their liability towards persons using their land in accordance with Natural Resources Article, Section 5-1101 et seq.

9. It is the State policy to:

   a. Sponsor, assist, conduct, or otherwise cause to be undertaken, comprehensive programs of research and education pertaining to the aesthetic, natural, health and welfare, scenic, or cultural qualities of the state environment, including the provision of financial grants to public and private agencies, organizations, and persons engaged in consulting and other special participation in these programs; and to

   b. Acquire property or any interest therein which is natural, environmental, aesthetic, scenic, or cultural significance, or of significance to the health and welfare of the public.

   (Natural Resources Article, Sections 3-201 and 3-203)

10. The recreational and conservation policies of the State of Maryland shall:

   a. Encourage low intensity recreation on open tracts such as flood plains, wooded areas, steep slopes, and other significant natural features, provided proper safeguards are established to protect local environment.

   b. Encourage the use of utility easements as outdoor recreation and open space areas.

   c. Encourage the use of scenic easements of land as a visual part of open space and outdoor recreation.

   d. Explore the recreation potential of water bodies, agricultural research centers, and wildlife management areas.

   e. Acquire title to or control of land with conservation or recreation value, before encroaching development and rising land values preclude this possibility.

   f. Provide public access to estuaries, the Chesapeake Bay, and every major river in Maryland.

   g. Analyze surplus state and federal properties to determine whether they can be used for recreation.

   h. Provide corridors for limited recreation uses such as bicycling, hiking, and others which relate to streams, shorelines and unique resource and historic areas.

i. Emphasize county and local development of community parks and school/park complexes to maximize local recreational opportunities.

j. Control land use adjacent to parks and major scenic or historic sites to prevent encroachment and to preserve the surrounding aesthetics.

k. Protect free-flowing streams and rivers, and carefully evaluate proposed impoundments.

l. Encourage the preservation of submerged lands for wildlife and fish habitats.

m. Control shoreline development along the Bay and the ocean through state and local legislation.

n. Develop and implement a state-wide river and stream preservation program.

o. Encourage the recreational use of the Chesapeake Bay by acquiring public access points, particularly at the confluence of stream valleys and the bay.

p. Preserve outstanding natural and scenic areas, and irreplaceable historic sites and structures, and incorporate them into an open space system.

q. Utilize excessive slopes, flood plains, poorly drained lands and other unique natural resources as major sources of open space.

r. Continue to emphasize nature interpretation and nature-oriented facilities.

s. Emphasize the acquisition of development rights where feasible in rural areas, along stream valleys, bay and river or ocean shorelines, and discourage development imcompatible with the recreation opportunities associated with these resources.

t. Continue implementing legislation and protection programs for the Chesapeake Bay and inland wetlands, with emphasis on appropriate land development regulations, conservation zoning, land donations and purchase of development rights in lieu of outright acquisition.

u. Regulate and preserve all islands in the bay and all rivers wherever feasible for conservation and limited recreation use.

v. Create more wildlife sanctuaries and management areas in places that provide areas of unusual flora and fauna.

w. Encourage stewardship through the development of State and local policies and guidelines on tax abatements, tax credits, and special assessments for privately held open space.

x. Utilize scenic or conservation easements, purchase and leaseback agreements and subdivision regulations.

y. Preserve the best agricultural lands and geologic resource areas for continued production, or preservation as rural landscape.

z. Encourage the use of both public and private lands for outdoor recreation, including the purchase of public recreation rights and scenic easements to expand open space beyond publicly owned land, and the provision by land owners of recreational opportunities for the public under multiple-use income-producing arrangements.

aa. Establish an interconnecting system of trails for walking, hiking, and bicycling along the ocean beaches, bays, estuaries, rivers and streams, linking activity centers. (Article 88C Natural Resources Article, Section 5-901 et seq.; Maryland Outdoor Recreation and Open Space Plan, Phase III-Action Plan pp 9-10)

Implementation

Lead Agencies

State: Capital Program Administration - Administration of Program Open Space, Land Planning Services

Other Agencies: Department of State Planning - Development of State Outdoor Recreation Plan in conjunction with Capital Programs Administration and other units of government; Maryland Environmental Trust - conservation easement program

Management Procedures

Maryland's approach to providing sufficient public access for recreational boating purposes and protection for agricultural and forested lands has been described in previous sections.

The State receives some money from federal funding programs available to all States - the Land and Water Conservation Fund, (for general open space acquisition) Dingell-Johnson Fisheries Restoration Fund, (for fish restoration and management projects) and the Pittman-Robertson Wildlife Restoration Fund, (for wildlife restoration projects). In addition, the State has funding available from its Program Open Space (POS), administered by the Capital Program Administration of the Department of Natural Resources. Funding for the program is derived from a 0.5 percent state title transfer tax and the scale of State bonds. POS appropriations for FY 1970 - 1978 have totalled $173,600,000.

To the extent that federal funds are available, Program Open Space funds are used to match acquisition grants from the Land and Water Conservation Fund. This money can also be used with Waterway Improvement funds when development includes facilities of benefit to the boating public on the State's navigable waters.

One half of the total funds available under Program Open Space are to be used by the Department of Natural Resources and the St. Mary's City Commission. This money is to be used for land acquisition projects only Matching money from the Land and Water Conservation Fund can be used either for acquisition or for development. All proposed state acquisition projects must be submitted in advance to the General Assembly. A portion of the state share of the fund is to be used for making grants to the City of Baltimore for city park acquisition or development. All Baltimore City projects are to be reviewed by DNR. Project costs are to be reviewed by the State Board of Public Works.

The other half of the funds available under Program Open Space will be appropriated by the General Assembly to assist local governing bodies in acquisition and development projects. A committee appointed by the Governor will determine the annual apportionment formula based primarily on current and 10-year projected population figures, as well as transfer tax revenues. Local projects must be evaluated by DNR and sent to the Department of State Planning for Clearinghouse review and comment. If DNR approves the project, and if it falls within annual apportionment limits, it will be sent to the State Board of Public Works for commitment of funds. All local projects for a given year must be submitted to DNR and DSP in advance as part of an annual program.

Of the money available under Program Open Space for local governmental units, one half must be used for land acquisition (except in Baltimore, where local funding is available in addition to money provided directly from the State share). Local acquisition projects may be funded up to 100% by State funds, or by a combination of State and federal funds. The other half of the local share can be used for acquisition and/or development. The State will supplement federal money so that 75 percent of the total project cost is funded.

In order to qualify for funding under Program Open Space, all local projects must be part of a comprehensive, local recreation plan. In addition, all state and local projects must be consistent with the recommendations in the Maryland Outdoor Recreation and Open Space Plan developed by the Department of State Planning in conjunction with the Capital Programs Administration and other relevant government agencies. In the past, local governments have concentrated their efforts on the acquisition and development of intensive recreational areas such as tennis courts, ball fields, basketball courts, and neighborhood parks, rather than larger passive recreation and natural areas. Recently, a few counties have begun to acquire the latter as part of recreation and open space efforts.

Program Open Space also includes an advance option and purchase fund, so that options on critical land can be obtained in advance of purchase. This fund is part of the State portion of POS funds.

The process of selecting sites to be considered for state acquisition with both Land and Water Conservation and Program Open Space funds is conducted by the Capital Programs Administration (Land Planning Services Division). The same process is used for selecting and acquiring areas as state parks, forests, natural environmental areas, and wildlife management areas. The process is not

rigidly defined, but essentially consists of staff review of potential sites recommended by other DNR agencies, state legislators, local governments, and the general public. The staff of the Land Planning Services Division also identifies sites for consideration on the basis of its review of resource inventories such as the Chesapeake Bay: Inventory of Potential Shoreline Access, Recreation and Open Space Areas, Upland Natural Areas Study, Wetlands Vegetation Study, and Maryland Outdoor Recreation and Open Space Plan, and its state-wide analysis of land acquisition needs.

Other programs and processes relating to land acquisition in Maryland include those involving the State Scenic and Wild Rivers Program, the claiming of federal surplus lands, and those associated with the Nature Conservancy, Wetlands Acquisition Fund, and the Maryland Environmental Trust.

The purpose of the Wild and Scenic Rivers Program, administered by the Land Planning Services Division, is to protect those rivers in Maryland (or portions of them) and adjacent land areas possessing outstanding scenery, fish, wildlife, and other valuable recreational attributes. Nine rivers, including five in the Coastal Zone (the Anacostia, the Patuxent, the Pokomoke, the Severn, and the Wicomico in Charles County), are presently included in the system.

In addition to preparing management plans for each of these rivers with the assistance of an advisory board, the Land Planning Services Division is responsible for (1) taking inventory of all other rivers in the state, to identify additional rivers for possible inclusion in the system, (3) reviewing permit applications relating to the use and development of the water and land resources of scenic rivers. Local governments have the principal direct responsibility for implementing the management programs for the rivers included in the system, and state agencies carrying out their management responsibilities, are required to take whatever action is necessary to protect the qualities of the rivers.

The availability of federal surplus lands is announced through the A-95 Clearinghouse process. The Maryland Department of State Planning reviews the positions of state and local government agencies regarding the claiming of the available surplus lands and makes recommendations to the U.S. General Services Administration, which is responsible for disbursing surplus lands. The Nature Conservancy, a private conservation organization which makes funds available for land acquisition, works in close cooperation with Program Open Space. The Wetlands Acquisition Fund is derived from the transfer of license to state-owned wetlands, and is used for the purchase of privately owned wetlands.

The Maryland Environmental Trust is a semi-autonomous unit, administratively located in DNR. The purpose of the trust is to conserve and improve the State's environment, including its land, water, air, wildlife, scenic, and open space resources. Through educational and other media, the Trust encourages and motivates the populace of the State, and promotes continuing interest, in perpetuating the aesthetic, natural, scenic, and cultural qualities of the State's environment.

In addition, the Trust: (1) acquires and maintains properties of aesthetic, scenic, cultural value or of value to the public health and welfare, by gift, purchase, or bequest, (2) receives appropriations, gifts, or bequests to carry out its purpose, (3) cooperates with and assists state, federal, and local governmental agencies, private or public foundations, and individuals, to further the purposes of the Trust, and (4) promotes the establishment of local committees to work with the Trust to further its objectives at the local level. The Trust presently has an extensive program to acquire conservation easements on areas with significant environmental value. This conservation easement program helps to conserve farmland, woodlands, stream corridors, unique or rare natural areas, or other kinds of open space, by arranging non-development agreements with private landowners. The Trust is responsible for easements on 5,730 acres in 13 counties and Baltimore City, most of its in the Coastal Zone. Most notable are three miles and 1,680 acres of Potomac River frontage in Charles County, 1,182 acres on the Chesapeake Bay in Kent and Queen Anne's Counties, and 300 acres along tributaries of the Little Choptank River in Dorchester County. The majority of M.E.T.'s acreage has been acquired in the past year.

Even with the variety of land acquisition programs in the State, acquisition of new shoreland areas is likely to be limited under present sources of funding. The State has a backlog of funding needs associated with completing the acquisition of already authorized parks, wildlife management areas, etc. Table III-4 shows the State's land acquisition and development activities relating to Coastal Zone recreation open space and natural areas.

Coastal Zone Unit Role

Project Evaluation

All projects proposed for areas within the takelines of proposed state recreational, parkland, and natural areas, and all zoning, rezoning, and special exceptions for such areas will be subject to the project evaluation process, to determine how that value for parkland purposes can be maintained until acquisition can take place.

Program Review

The Coastal Zone Unit will work with the Land Planning Services section of Capital Programs Administration to identify suitable shoreland areas for acquisition as recreational open space and natural areas.

The Coastal Zone Unit will work with Capital Programs Administration and local governments to insure that greater priority is given to acquisition of coastal recreational, open space, and natural areas with Program Open Space funds.

The Coastal Zone Unit will work with local governments and the Department of State Planning to insure that appropriate zoning is maintained or enacted for areas proposed for acquisition in coastal recreational and open space areas.

Table III-4
Existing and Proposed Acquisition Relating to Recreation, Open Space, and Natural Areas in Maryland's Coastal Zone

State Parks

NAME	COUNTY	LOCATION	TOTAL ACREAGE	ACREAGE ACQUIRED (As of July 1978)	BALANCE TO BE ACQUIRED
Assateague	Worcester	Atlantic Ocean	756	756	0
Calvert Cliffs	Calvert	Chesapeake Bay	1,402	1,117	225
Chapel Point	Charles	Potomac River	828	828	0
Elk Neck	Cecil	Chesapeake Bay	2,268	1,764	504
Greenwell	Saint Mary's	Chesapeake Bay Tributary (Patuxent R.)	605	605	0
Gunpowder	Baltimore, Harford	Chesapeake Bay	15,096	11,199	3,897
Jane's Island	Somerset	Chesapeake Bay	3,150	2,940	210
Jonas Green	Anne Arundel	Chesapeake Bay	6	6	0
Martinak	Caroline	Chesapeake Bay Tributary (Choptank R.)	99	99	0
Matapeake	Queen Anne's	Chesapeake Bay	35	25	10
Palmer	Harford	Inland	463	463	0
Patapsco Valley	Anne Arundel, Baltimore, Carroll, Howard	Inland	11,171	9,949	1,222
Pocomoke River	Worcester	Chesapeake Bay Tributary (Pocomoke R.)			
a. Milburn Landing			370	370	0
b. Shad Landing			545	545	0
Point Lookout	Saint Mary's	Chesapeake Bay	705	518	187

NAME	COUNTY	LOCATION	TOTAL ACREAGE	ACREAGE ACQUIRED (As of July 1978)	BALANCE TO BE ACQUIRED
Purse	Charles	Potomac River	148	148	0
St. Clement's	Saint Mary's	Potomac River	3	1	2
Sandy Point	Anne Arundel	Chesapeake Bay	813	813	0
Samllwood	Charles	Potomac River	473	399	74
Susquehanna	Harford, Cecil	Susquehanna R.	2,846	2,248	598
Tuckahoe	Queen Anne's, Caroline	Inland	3,880	3,408	472
Wye Oak	Talbot	Inland	29	29	0
TOTAL 20 Parks			45,691	38,290	7,401

State Forests

Buckingham	Anne Arundel	Inland	137	137	0
Doncaster	Charles	Inland	1,600	1,485	115
Elk Neck	Cecil	Chesapeake Bay	2,996	2,996	0
Pocomoke	Worcester	Inland	17,285	11,800	5,485
Seth Demonstration	Talbot	Inland	125	125	0
Wicomico	Wicomico	Inland	1,215	1,110	105
TOTAL 6 Forests			23,358	17,653	5,705

Natural Environmental Areas

NAME	COUNTY	LOCATION	TOTAL ACREAGE	ACREAGE ACQUIRED (As of July 1978)	BALANCE TO BE ACQUIRED
Mattawoman	Charles	Potomac River Tributary (Mattawoman Ck.)	9,435	176	9,259
Severn Run	Anne Arundel	Chesapeake Bay Tributary (Severn R.)	1,618	1,171	447
Soldiers Delight	Baltimore	Inland	2,076	1,440	636
Zekiah	Charles	Potomac River Tributary (Wicomico R.)	5,000	14	4,986
TOTAL 4 Natural Environmental Areas			18,129	2,801	15,328

Natural Resources Management Areas

Bay Access Areas		Chesapeake Bay	350	0	350
Bush Declaration	Harford	Chesapeake Bay	500	97	403
Cedarville					
a. Park	Prince George's	Inland	340	340	0
b. Forest	Charles		3,290	3,158	132
c. Fish Hatchery			200	200	0
Fair Hill	Cecil	Inland	5,551	5,551	0
Hart-Miller Pleasure Island	Baltimore County	Chesapeake Bay	244	244	0
Patuxent River Park	Prince George's	Chesapeake Bay Tributary (Patuxent)	1,200	0	1,200
Patuxent River Wildlife Sanctuary	Anne Arundel	Chesapeake Bay Tributary (Patuxent)	500	0	500

NAME	COUNTY	LOCATION	TOTAL ACREAGE	ACREAGE ACQUIRED (As of July 1978)	BALANCE TO BE ACQUIRED
Wye Island	Queen Anne's	Chesapeake Bay	3,500	2,379	1,121
TOTAL 8 Natural Resources Management Areas			15,675	11,969	3,706
Wildlife Management Areas					
Bowen	Prince George's	Chesapeake Bay Tributary (Patuxent R.)	400	313	87
Cedar Island	Somerset	Chesapeake Bay	2,880	2,880	0
Cheltenham	Prince George's	Inland	10	10	0
Deal Island	Somerset	Chesapeake Bay	15,200	11,733	3,467
E. A. Vaughn	Worcester	Atlantic Ocean Bay Chincoteague	4,045	1,750	2,295
Ellis Bay	Wicomico	Chesapeake Bay Tributary (Wicomico R.)	1,924	1,924	0
Fairmont	Somerset	Chesapeake Bay	3,846	2,446	1,400
Fishing Bay	Dorchester	Chesapeake Bay	17,570	14,548	3,022
Idylwild	Caroline	Inland	3,180	2,816	364
Merkle	Prince George's Charles	Chesapeake Bay Tributary (Patuxent R.)	2,420	1,342	1,078
Millington	Kent	Inland	4,341	3,266	1,075
Myrtle Grove	Charles	Potomac River Tributary (Mattawoman Creek)	2,314	831	1,483

NAME	COUNTY	LOCATION	TOTAL ACREAGE	ACREAGE ACQUIRED (As of July 1978)	BALANCE TO BE ACQUIRED
Pocomoke River	Worcester	Chesapeake Bay Tributary (Pocomoke R.)	505	505	0
Pocomoke Sound	Somerset	Chesapeake Bay	1,122	1,122	0
St. Clements	Saint Mary's	Potomac River	61	61	0
Sinepuxent Bay	Worcester	Atlantic Ocean Bay (Sinepuxent)	25	25	0
South Marsh Island	Somerset	Chesapeake Bay	3,000	2,973	27
Taylor's Island	Dorchester	Chesapeake Bay	4,973	973	4,000
Wellington	Somerset	Inland	389	389	0
TOTAL 19 Wildlife Management Areas			68,205	49,907	18,298
TOTAL 57 Areas			171,058	120,620	50,438

The Coastal Zone Unit will work with the Department of State Planning, local governments, the Maryland Environmental Trust, Capital Programs Adminstration, the Maryland Forest Service, the Maryland Wildlife Administration, and other relevant government units and private organizations to identify coastal areas of significant natural resource value and to develop programs to protect them which may involve less than full fee acquisition.

AUTHORITIES RELATING TO PROVISION OF SUFFICIENT RECREATIONAL ACCESS

Statutory Authority	Management Technique	Agency
State Outdoor Recreation Plan Art. NR, Section 5-906, Art. 88C	Direct State Planning	DNR (CAP) DSP
Program Open Space Art. NR, Sections 5-901 to 5-906	Direct State Planning and Acquisition State and/or Local Acquisition and Development	DNR (CAP)
Conservation Easement Program Art. NR, Section 3-203	Easement Acquisition	DNR (MET)
Public Recreation on Private Land Art. NR, Sections 5-110 et seq.	State Assistance to Aid Private Activity	DNR (CAP)
Acquisition of Wildlife Areas Art NR, Sections 10-208, 10-2A01, et seq., 10-801	State Acquisition	DNR (CAP)
Acquisition of Forest Park Areas Art. NR, Section 10-208, 10-2A01 et seq., 10-801	State Acquisition	DNR (CAP)
State Wildlands Art. NR, Section 5-1203	Direct State Planning and Management	DNR (CAP)
Endangered Species Art. NR, Section 10-2A01 et seq.	Direct State Planning and Management	DNR (CAP and Md. Wildlife Administration)
Scenic and Wild Rivers Program Art. NR, Section 8-401, et seq.	State Planning with State and Local Implementation	DNR (CAP)

ACTIVITIES AFFECTING COASTAL HISTORICAL, CULTURAL AND ARCHEOLOGICAL RESOURCES

Situation

The coastal zone of Maryland, particularly that of Cheapeake Bay and its tributaries, is especially rich in archeological and historical resources. Archeological findings, thus far, indicate that Paleo-Indians lived in the area around 10,000 B.C., when what is now Chesapeake Bay was an extension of the Susquehanna River. With glaciers on the wane climate and food supplies changed, and the cultural and racial characteristics of these early occupants developed and diversified. Although their living areas changed in response to a multitude of factors, these early residents were hunters and gatherers, and spent much time along the water. Much remains to be learned in this field of prehistory, since little effort has been expended to date in archeological study.

Recorded history indicates that the shores of Maryland may have been visited by European explorers as early as 1498, when John Cabot sailed along the eastern shore of what is now Worcester County. Between then and 1634, when the first permanent settlement was established at what is now St. Mary's City, explorations were made throughout the shoreline by various Europeans. It is known that the Virginia Company established trading posts, as well as food-producing fields and orchards on Kent Island, and at the mouth of the Susquehanna River, prior to settlement of St. Mary's City. The first structures used by the Europeans were provided by the Indians, and were used for dwelling and worship. The structural materials used at the time have not withstood the rigors of climate and time, and much of this early history remains to be learned.

Water transportation and seafood production have shaped the development of Maryland. Settlements spread over the Eastern Shore, and on the Western Shore as far as the mountains, largely by way of water, which afforded the easiest mode of transportation. Water transportation continued to be a critical factor in the development of the new land and it was not until after 1950 that the population spread out of the tidewater region.

Although tangible reminders of our past can still be found in villages, isolated remanents of plantations, mill communities, centers of religous activity, educational institutions, and urban centers, our historic resources have been increasingly obliterated by the rigors of climate, fires, and urban development.

Issues

In order to preserve the remaining elements of Maryland's cultural and aesthetic heritage, both for enjoyment by the citizens of Maryland and for the benefits that their scientific study will yield, State and government agencies must coordinate their activities and regulatory actions, in cooperation with those of federal governmental agencies, to meet the following objective of the Coastal Zone Management Program:

(7) To protect coastal cultural, historical, and archeological resources.

In planning public projects, and in reviewing private projects in coastal areas, the following elements must be considered so that historical, cultural, and archeological resources can be protected adequately:

- The existence of known cultural, historical, and archeological resources in the proposed development site.

- The likelihood of yet undiscovered cultural, historical, and archeological resources in the proposed development site.

- Determination of the value of cultural, historical and archeological resources likely to be affected by the proposed project, and the development of mitigating measures to minimize such impacts.

- The establishment of procedures for salvage, and for archeologic and historic analysis of resources before development occurs, in cases where unavoidable impacts would occur in the absence of viable alteratives to the proposed development.

- Determination of whether the value of the cultural and archeological resources in question warrants full fee requisition on purchase of easements in order to assure adequate protection.

Policies

1. State agencies are required to conduct their affairs with an awareness that they are stewards of air, land, water, living and historic resources. (Natural Resources Article, Section 1-302)

2. The Division of Archaeology of the Maryland Geological Survey in the Department of Natural Resources shall, in cooperation with other government agencies both in state and out-of-state, preserve and protect the State's archaeological resources and further archaeological knowledge through research, education, excavation projects, and the retrieval and preservation of significant objects, both generally and in conjunction with public construction projects, and through regulation of archaeological activities on state owned or controlled lands (Natural Resources Article, Section 2-703)

3. It is State policy to protect and preserve historical, archaeological, and scientific information, and to protect objects found on privately owned lands in the state. Archaeological excavations on privately owned lands are discouraged except when approved by the State archeologist. (Natural Resources Article, Section 2-301)

4. Historic areas of the State are considered basic assets, and their proper use and preservation through State action, including acquisition, promotion of action by others, and educational activities, are necessary to protect and promote the health, safety, economy, and general welfare of the people of the State. (Natural Resources Article 5-102, 5-207; Article 41, Section 181E)

5. Local governments may establish historic districts in accordance with the provisions of Article 66B Section 8.01 et seq. to preserve structures of historic and architectural value. (Article 66B; Section 8.01 et seq.)

Implementation

Lead Agencies

Federal: U.S. Army Corps of Engineers (consideration of archeological, historical and cultural values in Section 1.1404 permit decision)

Heritage Conservation and Recreation Service (HCRS)
National Register of Historic Places
Interagency Archeological Services
Advisory Council on Historic Preservation

State: Division of Archaeology, Maryland Geological Survey (promotion of archeological knowledge, review of state projects, conduct of archeological research)

Maryland Historical Trust (review of Federal and State funded and permitted projects; acquisition of properties of historical (including archeological), cultural, and aesthetic value; maintenance of State Register, nomination of properties, to Federal Register)

State Planning (critical areas programs)

Local: Establishment of historic district nomination of areas for state critical areas designation

Management Procedures

The State Archeologist of the Maryland Geological Survey cooperates with professional and amateur archeologists in Maryland, promotes archeological knowledge and interest, maintains artifacts, records and maps site surveys (conducted in-house or reported by amateurs, collectors, or other interested citizens). He acts as technical advisor in contracts for archeological investigations, and reviews field work, reports, and final recommendations.

In addition, the State Archeologist reviews state-initiated projects for their archeological resources, conducts archeological preservation and restoration projects associated with State projects, and promotes archeological knowledge in Maryland. He also furnishes from his records generalized information to the Corps of Engineers, the Department of Natural Resources, the Maryland Historic Trust, and the Department of State Planning, for use in reviewing the potential impact of proposed projects on archeological resources.

The Maryland Historical Trust conducts a continuing survey and inventory of the state's historic sites, for use in nominating sites for the Maryland Historic Sites Inventory, and for the National Register of Historic Places, maintained by the Heritage Conservation and Recreation Service, U.S. Department of the Interior. This survey work plays a critical role in the Trust's historic preservation efforts. Four types of historic survey's are carried out by Maryland Historical Trust: 1) comprehensive county and city surveys; 2) thematic surveys; 3) National Historic District surveys and 4) Building Analysis Reports. All sites included in these surveys are done in the detail necessary for their inclusion on the Maryland Historic Register and the National Historic Register. Through these surveys, sites are currently being added to the Trust's inventory at a rate of 2000-3000 sites per year. In order to keep the State's inventory historic sites up to date, a computerized filing system has been implemented and the results of all new survey work must be compatible with this file system.

The Maryland Historical Trust also reviews all construction and development projects which require federal or state permits or funding, for their impact on historic and archeological resources. It protects sites of historical, cultural, and archeological importance, by suggesting mitigation procedures, by undertaking full fee acquisition or purchase of easements, by funding preservation and restoration projects, and by carrying out an extensive educational program.

The Baltimore District, U.S. Army Corps of Engineers has a staff archeologist, and considers impacts on known historical and archeological resources in its Environmental Impact Statements, and in its permit decisions.

The U.S. Army Corps of Engineers has a staff archeologist, and considers impacts on known historical and archeological resources in its Environmental Impact Statements, and in its permit decisions.

The Department of State Planning administers the State Critical Areas Program, in which historical and archeological sites may be designated.

Local governments participate by nominating areas for designation as State Critical Areas, and by establishing historical districts. There are twenty five local committees in the Maryland Historical Trust program that broaden the Trust's influence and assist in projects affecting their areas. Each county of the State has a committee, in addition to those of Baltimore and Annapolis, that undertake their own projects in addition to their advisory role to the Trust.

Coastal Zone Unit Role

Project Evaluation

The Coastal Zone Unit has funded and participated in a study to expand existing data on archeological resources in Maryland's coastal zone. In addition to identifying a large number of archeological sites, this study provides basic information for estimating the likelihood of additional significant archaeological resources in shoreline areas. The unit will give full consideration to the protection of historical, cultural, and archeological resources in project evaluations of proposed shoreline development, and in regulation of coastal activities.

The Unit will work with the Maryland Historical Trust and the State Archeologist to insure that known archeological sites, or sites that have a potential of singificant resources, as identified in the Archeological Resources Management Study, are given consideration in Federal, State and local governmental decisions.

Program Review

The Unit will work with other government agencies to expand information on the state's historical, cultural and archeological resources, so that these resources can be fully appreciated by government and private interests in their activities.

AUTHORITIES RELATED TO CULTURAL, HISTORIC ARCHEOLOGICAL RESOURCES

Statutory Authority	Management Technique	Agency
Maryland Historical Trust Art. 41 Sections 181A et seq.	Easement Acquisition	DECD (MHT)
Historic Zoning Art. 66B, Sections 8.01 to 8.13	State Standards for Local Implementation	DECD (MHT) DSP
Archeological Resources Law Art. NR, Sections 2-301 et seq.	Direct State Planning and Regulation	DNR (CAP)
Purchase of Lands Art. NR, Section 5-207		DNR (CAP)

SHORELAND ACTIVITIES IN GENERAL

Situation

In previous sections of this chapter, shoreland activities have been discussed that are of Coastal Zone Management concern because of their particular characteristics, or because of the characteristics of their geographic location. In addition, shoreland activities in general may be of concern of their significant contributions to the cumulative impact of similar activities in the same area, because of their consistency with the carrying capacity of the area in which they are proposed to be located, because of lack of adequate water, sewer, and transportation services, or because of offsite impacts such as air pollution emissions, noise emissions, point discharge into coastal waters, sedimentation, stormwater runoff and other non-point pollution.

Issues

To respond to these concerns, State and local governments must coordinate their activities and regulatory actions, with federal cooperation and consistency, to meet the following objectives of the coastal zone management program:

(1) To protect, maintain, and where feasible improve air quality in the State's coastal zone in order to protect public health, safety, and welfare, and the quality of the State's environmental resources.

(2) To protect, maintain, and improve the quality of the State's tidal waters for propagation of wildlife, fish and aquatic life, and for human use and enjoyment.

(5) To protect coastal terrestrial areas of significant resource value-areas having scenic, scientific, geologic, hydrologic, biological or ecosystem maintenance importance - such as non-tidal wetlands, endangered species habitat, significant wildlife habitat, and wintering and resting areas for migratory birds.

(22) To promote use of the State's coastal resources to meet social and economic needs in an environmentally compatible manner.

(23) To ensure consideration of the carrying capacity of air, land and water resources (both surface and groundwater), and the conservation of coastal natural areas in state and local regulatory decisions concerning coastal developments.

(24) To ensure that sufficient provision has been made for providing adequate water, sewer, and transportation services before new coastal developments are approved by state and local governmental agencies.

(25) To ensure that adequate consideration is given to social, economic, and environmental impacts in government decisions concerning the siting of public facilities in coastal areas, particularly those involving transportation and waste treatement facilities.

(26) To ensure the incorporation of storm water management measures in state and local regulatory programs that would require runoff from a development site to maintain, to the maximum extent possible, the water quality and quantity conditions that prevailed prior to development.

(27) To promote the maintenance of natural buffers along, and natural drainage ways feeding to, coastal tributaries and esutuarine waters, to minimize adverse environmental effects of coastal developments and activities.

(33) To ensure that hazardous substances are utilized and diposed of in a manner which prevents any toxic, lethal or sublethal effects to plant, aquatic or animal life, which prevents any adverse effect upon human health, and which prevents disposal of the substances into terrestrial or aquatic ecosystems.

Planning and regulatory activities concerning shoreland developments first must consider whether a proposed development:

- would have adverse impacts upon water quality, aquatic areas of significant resource value, tidal and non-tidal wetlands, significant wildlife habitat areas, archeological sites, or historic sites;

- would occur on productive agricultural or forest land, or affect agricultural production on neighboring farms;

- would have adverse impacts on a State Critical Area designated for preservation or conservation, or its buffer area;

- would be located where it would create danger to life and property or where it would create or aggravate off-site hazards due to flooding, shore erosion or other natural hazards.

If the proposed activity involves any of these effects, then policies and procedures described previously will be applied.

In addition, shoreland developments must be reviewed in consideration of the following factors, which relate to minimizing off-site impacts, and which ensure that the carrying capacity of areas are not exceeded:

- Strict application of air and water quality, waste water disposal, sediment and stormwater, and other standards in development plans;

- Consistency with State development plans, State water quality river basin plans, and local comprehensive plans, water and sewer plans, and zoning;

- Service by adequate facilities -- including water supply, waste treatment and transportation;

- Adequacy of sediment and stormwater measures, both structural and non-structural, to minimize off-site impacts.

Policies

1. It is state policy to maintain that degree of purity of air resources which will protect the health, general welfare, and property of the people of the State. (Article 43, Section 690)

2. It is State policy that the people of the State have the right to an environment free from noise which may jeopardize their health, general welfare, and property, or which degrades the quality of life. Therefore, environmental noise standards should be established to protect public health and the general welfare with an adequate margin of safety based on knowledge of the adverse effects of excessive noise, including temporary or permanent hearing loss, interference with sleep, oral communication, work, or other activities, adverse physiological responses or psychological distress, adverse effects on animal life, devaluation or damage of property, and unreasonable interference with the enjoyment of life or property. (Article 43, Section 822, and 828)

3. It is State policy that no construction of any plant, building or structure, and no appropriation or use of any water of the State can begin unless an appropriate permit has been issued by the Water Resources Administration, based upon submittal of satisfactory proof by the applicant that the granting of the permit will not violate water quality or jeopardize its natural resources, by overdrawing water supplies, or by other unacceptable configurations. (Natural Resources Article, Section 8-802)

4. It is State policy to improve, conserve, and manage the quality of the waters of the state and to protect, maintain, and improve the quality of water for public supplies, for propagation of wildlife, for fish and aquatic life, and for domestic agricultural, industrial, recreational, and other legitimate beneficial uses. It is also State policy to provide that no waste is discharged into any waters of this State without first receiving necessary treatment or other corrective action to protect the legitimate beneficial uses of this State's waters, and to provide for prevention, abatement and control of new or existing water pollution. (Natural Resources Article, Section 8-1402)

   All domestic sewage shall be disposed of by an approved method of collection, treatment, and effluent discharge that meets the requirement that it does not cause pollution of the ground surface, ground water, bathing area, lake, pond, watercourse, or tidewater, or create a nuisance. (Natural Resources Article, Section 8-1402; Article 43, Section 387C, Department of Health and Mental Hygiene Rules and Regulations, Section 10.03.27.47)

5. County water and sewer plans shall provide for the orderly expansion and extension of community and multi-use water supply systems, community and multi-use sewerage systems and solid waste disposal systems, in a manner consistent with all applicable county and local comprehensive land use plans. Sizing and staging of facilities construction shall also be consistent with these plans. Adequate facilities shall be provided for to prevent the discharge of untreated or inadequately treated sewage or other liquid waste and to ensure that treatment, recovery, or disposal of solid wastes complies with State laws relating to air pollution, water pollution, and land use. (Article 43, Section 387C)

6. No building permit, subdivision plan, map or plat, providing for individual or community water supply or sewerage system, or for solid waste acceptable facilities, shall be allowed if it is not in conformance with a county water or sewer plan. Thus:

a. No building permit shall be approved (i) where existing facilities are inadequate to serve the proposed development, taking into consideration all other existing and approved developments in the service area, or (ii) which will cause facilities for conveyance, pumping, storage or treatment of water, sewage or solid waste to be overloaded.

b. No subdivision plat shall be approved in areas where facilities for conveyance, pumping, storage, or treatment of water, sewage, and solid waste to serve the proposed development, (i) would not be completed in time to serve the development, or (ii) if completed, would not be adequate to serve the development without overloading of the facilities.

(Article 43, Section 387C)

7. In order to prevent soil erosion and sediment transport from polluting and despoiling state waters to such a degree that fish, marine life, and recreational use of the waters are affected adversely, the Department of Natural Resources shall establish criteria and procedures for the counties and the local soil conservation districts to implement soil and shore erosion control programs. These procedures may provide for departmental review and approval of major grading, sediment, and erosion control plans. (Natural Resources Article, Section 8-1101)

8. It is the policy of the Water Resources Administration (a) to minimize loss of life and property from flood damage by promoting State and local programs which prevent the development of new damageable property, (b) to assist in the development and construction of sound, cost-effective flood control structures, (c) to implement a storm water management program which will effectively prevent an increase in the magnitude and frequency of flood flows, thus preventing and increase in flood hazard, (d) to maintain the integrity of the natural stream channel geometry, and (e) to encourage the design and implementation of storm water management systems which minimize the entrainment of pollutants and/or provide a reasonable degree of control of storm water before runoff reaches the stream system. Flood control structures are considered the least desirable of the available management methods of handling runoff-related problems. (Natural Resources Article, Title 8, Subtitles 8, 9, 9A, 11, and 14, 56 Attorney General Opinions 478 (1971); Maryland Interim Watershed Management Policy (November, 1977))

9. Storm water runoff collection, storage and/or conveyance systems should simulate as closely as possible the features and functions of the natural drainage system which are largely free of capital, energy, and maintenance cost. The system selected should strike a balance among capital costs, operations and maintenance costs, public convenience, risk of significant water-related damage, pollution prevention, fish and wildlife habitat preservation, environmental protection or enhancement and other community objectives. When engineering a site for a storm water management, two overall concepts must be considered: (a) perviousness of the system should be maintained or enhanced, and (b) the rate of runoff should be slowed. Methods

which tend to reduce the volume of runoff are preferred over methods which tend to increase the volume of runoff. When considering possible solutions, preference should be given to vegetation and porous systems over non-vegetative or impervious choices. (Natural Resources Article, Title 8, Subtitles 8, 9, 9A, 11 and 14, 56 Attorney General Opinions 478 (1971); Maryland Interim Watershed Management Policy (November, 1977))

Implementation

Lead Agencies

State: Department of Health and Mental Hygiene (Air Quality, Noise Control, Sewage Plant Contruction, Review of Water or Sewer Plans)

Water Resources Administration (Water appropriation, water quality, sediment and stormwater control, non-point pollution control, hazardous substances control)

Department of State Planning (review of local plans and regulations; development of General Development Plan)

Regional: Council of Governments
Regional Planning Council (non-point pollution planning)

Local: Soil Conservation District's (sediment control)

Local Planning and Zoning Offices (development of comprehensive plans, zoning ordinances, and other regulations)

Management Procedures

The principal focus of coastal zone management efforts with regard to shoreland activities, in addition to the concerns discussed in previous sections, is to ensure that they have minimal adverse offsite impacts, and that they do not overwhelm (singly or cumulatively) the carrying capacity of the area in which they are located. The management procedures used by State and local governments to address such concerns are summarized below. The legal authorities on which such procedures are based at both the state and local level are described in detail in Chapter VIII "Legal Authority".

Local Governments:

Most factors related to shoreland activities are only of local interest, and are addressed by local governments through comprehensive plans, zoning, and regulation of activities, and developments within their boundaries. All of Maryland's counties have, in fact, developed comprehensive plans, zoned all the land within their boundaries, and established regulations to address particular problems. They are also required to develop water and sewer plans to direct services to developments within their jurisdictions. Thus, local governments in Maryland have a substantial planning and regulatory infrastructure for addressing problems associated with coastal resources and activities. The State becomes involved in

local land use decisions where such decisions would produce an adverse impact on the State's natural resources, unduly tax the State fiscal resources or public services, would interfere with the orderly operation of state-wide programs and furtherance of state policies, or would have implications to land and water uses in other jurisdictions.

Department of State Planning:

The Department of State Planning has the responsibility to review local developmental plans, zoning ordinances, variances, and special exceptions for consistency with state policies and interests. It may intervene in local decisions to represent State interests, on its own initiative or upon the request of another State agency, local government or interested person, in accordance with the intervention procedures authorized by Article 88C, Section 2(g). The Department of State Planning is also responsible for State plans to coordinate development in the State. Included in these plans will be recommendations for the most desirable patterns of land use within the State. These plans are to be developed with the cooperation and advise of appropriate federal, state, regional, and local government agencies.

Environmental Health Administration (Department of Health and Mental Hygiene:

The Environmental Health Administration administers sewage treatment facility construction grants authorized by P.L. 92-500 (federal Water Pollution Control Act Amendments of 1972) and the State's sewage treatment construction funds, in conjunction with DNR and DSP. It is responsible for overseeing the county water and sewerage planning process, establishing standards for individual water and sewerage facilities, and permitting the construction of water and sewage treatment facilities, and individual additions to water and sewerage systems. The activities of EHA with respect to the regulation of water and sewerage facilities is further described in the Section on Sewage Treatment Facilities.

The Environmental Health Administration is also responsible for the State's air quality and noise control, and solid waste disposal regulatory programs.

The State's Air Quality and Noise Control Programs are administered by the Bureau of Air Quality and Noise Control (BAQNC) of the Environmental Health Administration of the Department of Health and Mental Hygiene.

BAQNC is organized into four divisions: Air Monitoring and Surveillance, Program Planning and Evaluation, Compliance, and Engineering. The Planning Division inventories and computerizes registered sources of air pollution, and uses this information in air quality planning and impact assessment. The Engineering Division regulates point sources of air pollution and provides technical assistance to applicants attempting to meet emission standards. The Compliance Division reinforces regulatory actions by inspecting and evaluating industrial sources of pollution, and by coordinating legal actions with the Attorney General and county health departments. The Monitoring Division operates an automated monitoring system to determine air quality, and to establish a Pollutant Index for the Baltimore Region and the Metropolitan Washington Council of Governments.

All existing air pollution sources in the State must be registered with the Bureau. Major sources require annual operations permits, and new sources must obtain a permit prior to the onset of construction.

There is little room for discretion in the administration of air quality permits. After regional standards have been determined, applicants must demonstrate that they can comply with the standard. Because the sole ground for permit denial is noncompliance with the emission standards, the flexibility in the program lies in the planning process by which standards are determined. Presently, Maryland's standards are more stringent than the minimum Federal standards promulgated by EPA. Visual emissions, for example, are strictly prohibited. Emissions standards have been established for the entire State, segmented into seven air quality regions.

The State presently has the following non-attainment air quality areas. The Baltimore metropolitan area is a non-attainment area for photo-chemical oxidants. A few high traffic areas in Baltimore City are non-attainment areas for carbon monoxide. A few areas of Baltimore City, Baltimore County and Anne Arundel County are non-attainment areas for total suspended particulate matter. Prince George's County as part of the Washington, D.C. metropolitan area is a non-attainment area for photo-chemical oxidants.

In the Baltimore and Washington metropolitan areas, the Regional Planning Council and the Metropolitan Washington Council of Government have been designated the lead agenices in their respective areas for developing transportation control plans to address the photo-chemical oxidant problems since automobiles are the primary source of the photo-chemical oxidant problems. These plans are likely to include strategies for encouraging the use of public transportation over single-occupancy automobiles and improved inspection-maintenance programs for automobile emissions.

The State is in the process of developing additional regulations regarding stationary sources which emit hydrocarbons and thus contribute to the photo-chemical oxidant problems. The State is also developing regulations concerning suspended particulate matter to control fugitive dust and fugitive emissions. The efforts noted above to address photo-chemical oxidant problems are expected to control the carbon monoxide problem.

All prevention of significant deteriorating areas in the State are Class II areas. The State will promulgate prevention of significant deterioration regulations in Spring of 1979 in accordance with EPA regulations.

Noise emission standards, first issued in August, 1975, vary with time of day and with type of land use zone (residential, commercial, industrial). County and municipal governments are required to identify the State's sound level limits on all zoning maps, comprehensive plans, and other appropriate documents.

To the maximum extent possible, local agencies will enforce noise standards. The State's Noise Regulation Program responds to complaints from individuals or units of local government about noisy conditions. Compliance is encouraged by stiff fines and flexible variance allowed by the regulations. When violations are detected, a schedule of compliance is negotiated.

The siting of sanitary landfills and refuse disposal sites, the handling and transfer of solid waste, and the disposal of sludge, are regulated by the Bureau of Community Health Protection of the Environmental Health Administration. Solid waste disposal sites must be consistent with county solid waste plans. State evaluation does not begin until local approval has been secured. The State approval process for sanitary landfills involves the Water Resources Administration, the Maryland Geological Survey, and any other interested agencies. The State conducts an environmental suitability analysis to determine whether the use of the site and the mode of operation poses any threat to public health and safety of water resources. Land-use questions such as the effect of the landfill on neighboring land values are resolved at the local level. Usually, only one out of four sites are acceptable to the State.

The Department of Natural Resources:

The Department of Natural Resources is responsible for a variety of programs to minimize the offsite impacts of shoreland development and to ensure that the carrying capacity of coastal resources is not exceeded by shoreland developments. These programs are described below.

Water Quality:

Control of direct discharges to tidal waters is basic to Maryland's approach to minimizing offsite impacts of shoreland activities. Under Maryland law, it is illegal for any person to discharge pollutants into Maryland's waters without a permit from the Water Resources Administration (WRA) of the Department of Natural Resources. A permit is also required from WRA before anyone can "construct, install, modify, extend, alter, or operate any industrial, commercial, or recreational facility or disposal system, or any state-owned treatment facility, or any other outlet or establishment, the operation of which would result in or be capable of causing a discharge of pollutants into the waters of the state". (Natural Resources Article, Section 8-1413) A permit issued under Maryland's water quality permit program also qualifies a federal National Pollution Discharge Elimination System (NPDES) permit.

To ensure the effective administration of this program, WRA has established a computer system in which information concerning water quality conditions (obtained from an extensive sampling program) and the status of permits are stored for ready access, so that permit decisions on the proposed discharge area can be made based on as much information as possible. The Water Resources Administration is also undertaking a water quality modeling system to determine cumulative impacts of discharges into tidal waters, and the relative contribution of point and non-point discharges to water quality problems. The Water Resources Administration is also responsible for issuing water quality certifications in conjunction with U.S. Army Corps of Engineers Section 10- 404 permits.

Non-Point Pollution:

Detailed examination of sources and the control of non-point pollution in Maryland's waters is proceeding with grants provided under Section 208 of the Water Quality Amendments of 1972. Two regional agencies, the Baltimore Regional Planning Council and the Washington Council of Governments have been designated to develop 208 plans for their regions. These two regions include the coastal counties of Harford, Baltimore, Anne Arundel, Prince George's and Baltimore City. The remainder of the state is non-designated, and the 208 plan for it is being developed by the Water Resources Administration. This project consists of the following tasks:

1. setting of priorities for investigation of water quality problem areas;

2. inventory and projections for population, land use, environmental parameters, etc.;

3. assessment of pollution loads from point and non-point sources;

4. development of alternatives management strategies;

5. development of alternative segment analyses and impact assessment tools;

6. selection of appropriate segment analysis and impact assessment tools; and

7. final plan preparation.

The final 208 Water Quality Management Plans must integrate and build upon the work done in local comprehensive sewer and water plans, the 303(e) water quality management plans, the 201 facilities plans, Md. Environmental Service regional plans (where available) and other state planning efforts that affect water quality. The State Steering Committee for Water Quality Management, which is composed of respresentives of state and federal agencies, local governments, and citizen representatives, coordinates these water quality efforts.

Water Appropriations:

A permit is required from WRA before anyone may use or appropriate any surface or underground waters within the State. Before it approves a permit, WRA must receive satisfactory proof that the proposed use will not violate Maryland water quality standards, overdraw the water supply, or have other adverse impact on the State's natural resources. In accordance with a legislative mandate, WRA has developed a statewide water supply program to evaluate and implement projects to satisfy projected water supply needs. The program's information base is used to review not only individual projects but also county and water supply plans, to identify deficiencies, and to evaluate alternatives to correct such deficiencies.

Hazardous Substances

The Department of Natural Resources was given the responsibility by the Hazardous Substances Disposal Act for designating and regulating the disposal of hazardous substances.

Anyone operating a facility for the disposal of a designated hazardous substance must receive a permit from DNR. If the facility operator must also obtain a permit for refuse disposal from the Department of Health and Mental Hygiene, he need not get two permits. DNR conditions are simply incorporated into the Department of Health and Mental Hygiene permit conditions. Anyone who transfers hazardous substances to a disposal facility must receive a certification and have his vehicle certified by DNR.

The Water Resources Administration sets fees for permits, based on the potential threat that hazardous substances may present to the environment, the costs of monitoring the disposal operation, and the costs of developing the programs. Fees for permits, certification, or permit renewal are retained in a Hazardous Substance Control Fund, which is used for emergency removal and mitigation of hazardous substances, and for monitoring and control of hazardous substances.

Sedimentation/Stormwater Management:

Sedimentation, the most pervasive type of non-point source of pollution, has been a focus of Maryland's attention for several years. The Water Resources Administration and the County Soil Conservation Districts have developed criteria to determine appropriate methods to control soil erosion and sedimentation. According to state law, these methods must be adopted and implemented by county and municipal governments, with the assistance of Soil Conservation Districts. Before someone may begin any land clearing, construction, or development, he must obtain a permit from the appropriate county, based on approval of his sediment control plans by the soil conservation district. Projects undertaken by a state or federal agency, or projects undertaken on state-owned land, must be approved directly by WRA. The Water Resources Administration also has a continuing responsibility for administrative review of local programs, to assure their effective implementation.

According to the Attorney General's interpretation in 1971 of the Sediment Control Act, State and local governments have the authority to include stormwater management measures into sediment control ordinances. The Water Resources Administration is now in the process of developing policy and criteria for stormwater management, to be incorporated into the sediment control regulatory process at both state and local levels. In addition, several counties have recently passed stormwater management ordinances. Local Soil Conservation Districts may also include stormwater management requirements in their policies and procedures for review and approval of sediment control. Increased attention to this effort has been spurred by passage of the Flood Control Measures for State Projects Act of 1976, which requires incorporation of stormwater management or retention measures into any project, constructed or funded by the state, which has the potential of causing additional flooding.

Increased emphasis on maintaining natural features of a development site (such as natural buffers and natural drainageways) as a valuable supplement to man-made measures for sediment control and stormwater management, has become part of the State's efforts to refine state and local sediment control programs and to incorporate stormwater management concerns into such programs.

Coastal Zone Unit Role

Project Evaluation

Shoreland activities will be subjected to the project evaluation process in accordance with referral mechanisms established with other state agencies, local governments, and the Department of State Planning regional personnel (as discussed in Chapter I and in previous sections). Developments will be analyzed to determine if the relevant concerns have been addressed adequately. To complement the efforts described in previous sections, the Coastal Zone Unit will work with local governments and the Department of State Planning to resolve any outstanding issues, utilizing intervention procedures only after other alternatives have been tried. Issues subject to State or federal regulatory authority will be brought to the attention of appropriate authorities for action.

Program Review

1. As described in more detail in the chapter on Local Government Involvement, the Coastal Zone Unit will provide technical and financial assistance to local governments, to enable them to address problems associated with coastal resources and activities, and to incorporate coastal zone policies into their comprehensive plans, regulations, and zoning ordinances.

   The Baltimore Metropolitan Coastal Area Study undertaken by the Coastal Zone Unit, local governments in the area, the Regional Planning Council, the Department of State Planning, the Department of Transportation, and the Department of Economic and Community Development, has been a prototype effort to ensure coastal zone management concerns are integrated into on-going local planning and regulatory efforts.

2. As information becomes available on measures to control non-point pollution and on mechanisms to ensure that the carrying capacity of areas are not exceeded, the Coastal Zone Unit will work with the Water Resources Administration, the Department of State Planning and local units of government, to incorporate such information into local planning and regulatory activities.

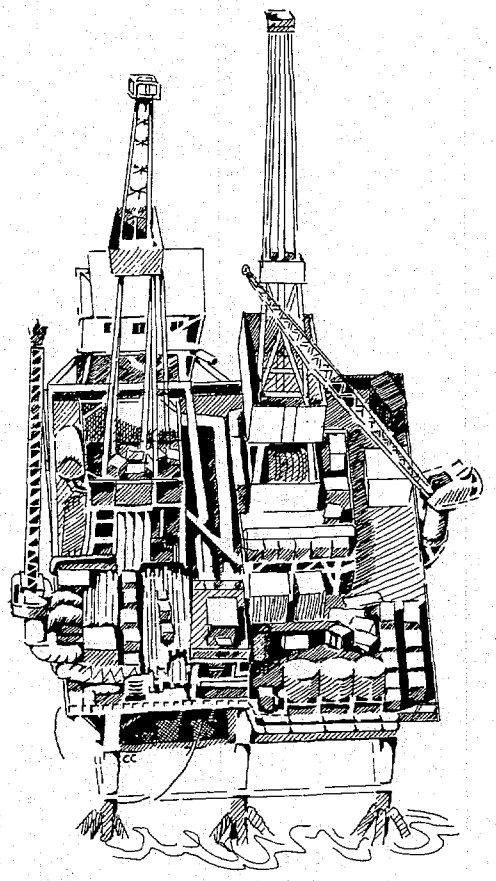
3. Coastal Zone Unit will initiate the development of a data system recording the location, size, and other factors of all subdivisions and other developments in the area of focus, in order to determine the pattern, rate and cumulative impacts of shoreline developments occurring within them.

AUTHORITIES RELATING TO SHORELAND ACTIVITIES IN GENERAL

Statutory Authority	Management Technique	Agency
Water Quality Permits Art. NR, Section 8-1413	Direct State Planning and Regulation	DNR (WRA)
Air Quality Program Art. 43, Section 690 *et seq.*	Direct State Planning and Regulation	DHMH (EHA)
Noise Control Art. 43, Section 824	Direct State Planning and Regulation	DHMH (EHA)
Water Appropriation Permit Art. NR, Section 8-801 8-802	Direct State Planning and Regulation	DNR (WRA)
Hazardous Substances Disposal Act Art. NR, Section 8-1413.2	Direct State Planning and Regulation	DNR (WRA)
Sediment Control Law Art. NR, Section 8-1101, *et seq.* interpreted by 56 Att'y Gen. Op's 478 (Ap. 6, 1971)	State Standards for Local Implementation	DNR (WRA)
DSP General Authority/ Intervention Procedures Article 88C	Review of Local Plans and Decisions with State Intervention	DSP

III·D.

MAJOR FACILITIES IN THE COASTAL ZONE



D. MAJOR FACILITIES

The Maryland Coastal Zone Management Program will give particular attention to the siting and operation of major facilities such as sewage treatment facilities, energy facilities, and transportation facilities. In the non-shoreland portions of the coastal zone, they will be the primary concern of the Program.

Specific Legislative Requirements

Several of the requirements of the Coastal Zone Management Act and the regulations issues pursuant to it, pertain specifically to such facilities:

- National Interest: Section 306(c)(8) of the federal Coastal Zone Management Act requires that the State's Coastal Zone Management Program give "adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature". With regard to such facilities, the State must give consideration to any applicable interstate energy plan or program. "Adequate consideration of the national interest" means that Maryland must consider such facilities in a national context, and must not arbitrarily exclude or unreasonably restrict them without good and sufficient reasons.

  The Coastal Zone Management Program Administrative Rules and Regulations (Section 923.15) list a number of facilities which are other than local in nature, the siting of which may therefore be national interest. These include (but are not limited to): energy production and transmission facilities, mineral resource lands and facilities, interstate transportation networks, and sewage treatment plants. Considerations of national interest have been integrated into Maryland's procedure for taking inventory of coastal resources and identifying existing or potential uses based upon analyses of resource suitability and impact.

- Energy Facilities Planning: Section 305(b)(8) of the Act requires that a State's Coastal Zone Management Program include:

  > "A planning process for energy facilities likely to be located in or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities."

The regulations issued pursuant to that section require that the planning process include the following elements:

(1) Identification of energy facilities which are likely to locate in, or which may significantly affect, a State's coastal zone;

(2) Procedures for assessing the suitability of sites for such facilities;

(3) Articulation of State policies for managing energy facilities and their impacts, including a clear articulation of policies regarding conditions that may be imposed on site location and facility development;

(4) Identification of how interested and affected public and private parties may be involved in the planning process, and a discussion of the means for continued consideration of the national interest, in the planning for and siting of energy facilities that are necessary to meet more than local requirements, after program approval; and

(5) Identification of legal authorities and management techniques that will be used to implement State policies and procedures.

- Uses of Regional Benefit: Section 306(c)(2) requires that a state's Coastal Zone Management Program include a method for ensuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude uses of regional benefit.

To meet these requirements, Maryland's Coastal Zone Management Program's approach has been to ensure that state and local goverments:

1. Make decisions on the location and operation of major facilities based on best available information and methods concerning land and water resource capability and economic suitability.

2. Use the project evaluation process (see Chapter I) to ensure that decisions regarding major facilities are made in the most objective manner possible, taking into account existing economic, social and natural conditions.

For the purposes of the Program, the term "major facilities" includes any development meeting one or more of the following criteria:

1. A facility which may be needed to meet the national or state interest (as defined by law).

2. A facility that is required to service or support another facility which may be needed to meet the national or state interest.

3. A public facility which represents a major investment of public funds, and whose effectiveness may be seriously affected by its location.

4. A facility which may have or create direct and significant economic, environmental, social, and fiscal impacts upon the citizens of Maryland.

The following types of facilities meet the criteria described above and are subject to various state authorities. All have been identified by the Coastal Zone Management Act of 1972 and the regulations issued pursuant to it as having implications which are larger than local in scope. The siting of these facilities may entail issues of national interest.

1. OCS-Related/Oil/Natural Gas Facilities

   a. pipelines
   b. intermediate production terminals
   c. processing plants (for liquid natural gas)
   d. refineries
   e. storage facilities
   f. operation bases
   g. fabrication yards

2. Electric Generating Facilities

   a. fossil-fuel plants
   b. nuclear-fuel plants
   c. transmission lines

3. Ports

4. Industrial Parks, particularly those used by:

   a. primary metal production industries
   b. chemical and allied product industries
   c. food and kindred product industries
   d. stone, clay, glass product industries

5. Mineral Extraction Facilities

6. Large-scale Residential Facilities

7. Sewage Treatment Facilities

8. Land Transportation Facilities

The Major Facilities Study was undertaken by the Coastal Zone Unit to develop an information base to enable state agencies and local governments to make better decisions regarding the siting and operation of the first six types of such facilities. The latter two types are the subject of study by state agencies, as described in the last two sections of this chapter. The purpose of the Major Facilities Study is to identify:

1. Areas within Maryland's coastal counties in which the natural and socio-economic environments are suitable for major facilities.

2. Areas where expansion or increased use of existing sites can take place without significant adverse impacts.

3. A method for evaluating the potential impacts of proposed major facilities and alternative development strategies.

Identification of such areas will enable state and local units of government to evaluate development proposals for compatibility with their long-range objectives, alternatives to the proposed development, and potential economic, fiscal, social, and environmental impacts.

The process of identifying such areas has involved the following steps: (1) development of an inventory of the relevant operating characteristics of each major facility, (2) regional screening to identify areas with high potential (from a natural, social, economic, and environmental standpoint) for suitable sites for such facilities, and (3) development of a method for resolving conflicts associated with the siting and operation of major facilities.

The results of the Major Facilities Study have been recently published in four Volumes: Volume 1 - Regional Screening and Conflict Resolution; Volume 2 - Power Plant Siting - Eastern Shore; Volume 3 - Economic, Fiscal and Social Assessment Handbook; and Volume 4 - Environmental Assessment Handbook. An Executive Summary has been widely distributed to interested federal, state, and local agencies; organizations; interest groups; and persons. Distribution of the Study itself is based on ensuring that agencies and organizations likely to utilize study results in carrying out their responsibilities receive copies and then distribute the remaining copies for several informational purposes to persons and organizations requesting copies.

The results of the study will be used as a valuable information base by the Energy and Coastal Zone Administration in making Coastal Facilities Review Act permit decisions on energy facilities as well as evaluating potential power plant sites on the Eastern Shore. In addition, workshops will be held for local governmental officials to ensure that they can fully utilize the results of the study in evaluating proposed energy facilities.

In addition, the results of the study will be used:

1. By local governments to identify areas for designation as State Critical Areas.

2. By the Power Plant Siting Program to identify potential power plant sites.

3. By the Department of Economic and Community Development to identify priority development areas to receive funding under the Maryland Industrial Land Act.

4. By the Maryland Port Administration in its port development programs.

5. By State and local regulatory agencies in making permit decisions on projects other than major facilities where the methodologies developed in the Study provide a useful evaluation approach.

The subsections that follow describe, for each type of facility, the factors of concern to the Coastal Zone Management Program. Relevant program objectives and policies are specified, appropriate authorities are listed, and the Coastal Zone Unit's role in project evaluation and program review is described. The regulatory authorities and management procedures described in the previous sections, particularly the Section Shoreland Activities in General, also apply to decisions on the siting and operation of major facilities.

The facilities covered by the Coastal Facilities Review Act and the Power Plant Siting Act are the specific energy facilities in Maryland that would be covered by Section 305(b)(8), namely, those energy facilities likely to locate or significantly affect the coastal zone. These facilities are listed above under categories 1 and 2. - OCS Related/Oil/Natural Gas Facilities and Electric Generating Facilities." The procedures, policies, and implementation mechanisms described in the subsections on these two types of facilities will be used in conjunction with the Major Facilities Study to meet the requirements of Section 305(b)(8).

As is the case with almost all of the facilities listed above, public hearings are required as part of the process for certifying oil related facilities under the Coastal Facilities Review Act and for licensing power plant sites under the Power Plant Siting Act. In addition, public involvement in siting decisions for all major facilities including energy facilities, will be undertaken through the procedures detailed in Chapter VII, The Public Role in Coastal Zone Management. Specifically, the public will be provided opportunities to review and comment on the siting process and evaluations of projects through the CRAC participation, public information newsletters and media efforts, and public at-large meetings and review sessions.

ONSHORE OCS/OIL/NATURAL GAS FACILITIES

Situation

The United States Department of Interior is leasing tracts of the nation's Outer Continental Shelf (OCS) to increase domestic production of oil and gas. The resulting increase in exploration, development and production of offshore petroleum resources is likely to affect a number of communities along the Atlantic Coast. Lease sales affecting Maryland are lease sale 40, held in 1976, lease sale 49, scheduled for February 1979, and lease sale 59, scheduled for August 1981.

The location, types, numbers, characteristics, and timing of onshore support and processing operations for Atlantic OCS energy activities are triggered by offshore events and activities related to OCS exploration, development, and production. Significant (economically viable) discoveries of oil and gas reserves may create the need for several types of onshore facilities -- including fabrication yards, service bases, pipeline facilities, various types of production terminals, refineries, auxiliary industrial facilities, gas treatment plants, and marine terminals. Each type of facility is associated with a different, sometimes overlapping, phase of the OCS development process, and each has varying economic (e.g., labor, income), environmental, and social effects on existing community conditions.

At present, it is not known how much oil and gas exists off Maryland's coast. There have been only a few deep exploratory wells in the Baltimore Canyon Region (the OCS Resource Province off the coast of Maryland, Delaware, and New Jersey). The U.S. Geological Survey estimates that as much as 0.4 to 2.6 billion barrels (bbl) of crude petroleum and from 2.6 to 12.8 trillion cubic feet (tcf) of natural gas may be discovered and produced over a 25-year period. The possibility also remains, on the other hand, that there are no recoverable hydrocarbons in the Mid-Atlantic OCS.

Both the search for and production of offshore oil and gas is fraught with uncertainty. Many factors not clearly understood include:

1. The mix of oil and gas present.
2. Where and when it will be found.
3. Its quantity.
4. Its means of extraction and transport to shore.
5. Where and how it will be processed.

All of these factors are initially unpredictable, except within broad limits. They become clear only gradually, as each oil and gas field is proven to be economically viable and is actually brought into production.

In the lease sale #40 area, exploratory drilling, the first step in OCS development, will begin by the end of 1977. Estimates for offshore activities must be made to anticipate onshore consequences, and strategies must be developed to prepare to deal with them.

Most recent studies indicate that the need for expanded or additional refinery capacity is minimal. Studies conducted by the American Petroleum Institute, the Bureau of Land Management, and the Office of Technology Assessment see no need for increasing refinery capacity as a result of new discoveries of oil and gas in the Atlantic region. Any demand for new or expanded refineries will result from increases in demand (energy consumption) rather than as a consequence of identifying new sources of supply. In the short term, Atlantic petroleum resources would simply substitute for more expensive foreign sources of oil and gas. However, the demand for oil and related products is projected to exceed refinery capacity over the next quarter century. Therefore, in the long run, new or additional refinery capacity will probably be needed in the Atlantic Coast region.

Maryland has been preparing for potential development of oil and gas resources on the OCS for over two years. The Coastal Facilities Review Act was passed by the Maryland General Assembly in 1975. Rules and Regulations for that Act were promulgated by Maryland in 1976.

Technical studies have also been undertaken. Studies completed or underway include:

1. Maryland Outer Continental Shelf Development of State and Local Powers to Manage Onshore Impacts of Offshore Development; August, 1976.

2. Identification and Analysis of Mid-Atlantic Onshore OCS Impacts; January, 1976.

3. The Maryland Major Facilities Study; October, 1977.

Maryland is also cooperating with federal agencies in the review and analysis of multi-state and national OCS studies including:

1. Onshore Facilities Related to Offshore Development

   New England River Basin Commission - RALI Project

2. Development and Testing of a Set of Methodologies to Assess Selected Onshore Impacts of Offshore Petroleum and Gas Development

   National Science Foundation, Office of Coastal Zone Management, Bureau of Land Management

The Maryland Major Facilities Study (see pp. 229-230 is of particular importance. It provides means whereby Maryland may interact with oil and gas organizations on siting and site evaluation. Areas displaying least negative environmental constraints and maximum economic opportunities for OCS onshore facilities have been identified, and will be published as part of the Major Facilities reports.

Non-OCS related oil and gas facilities are also of concern to the State of Maryland including liquid natural gas facilities, refineries and related facilities.

Of particular interest is the Cove Point Liquified Natural Gas facility located in Calvert County on Maryland's lower western shore on a 1,022 acre tract situated on the Chesapeake Bay. This facility was built by the Columbia LNG Corporation in coordination with the Consolidated Natural Gas Company in response to the increased demand for natural gas in the United States and the diminshed supplies of domestic sources. It handles imported natural gas that has been liquified to convert it into a form that is practical for water transportation. The construction of the facility was completed early in 1978 with the first LNG tanker arriving in March, 1978.

The CoverPoint facility consists of a land facility and a Bay-docking and offshore terminal. The land facility is comprised of a storage section with four tanks each holding 62,000 cubic meters (375,000)barrels) of LNG, a re-gasification (vaporizer) facility, administrative and control buildings, fire water tanks, send out pumps and service buildings. The Bay-docking and offshore terminal is located approximately 5,300 feet offshore. It has two tanker berths along a 2,500 foot pier which is connected to shore by an underground tunnel containing both LNG pipes and vapor return lines. Present operating plans for the facility call for two ships to arrive every week. Columbia has submitted an application to DOE to increase this rate to three ships per week, which can be accommodated by the existing facilities. Maryland is closely following the progress of this application.

Issues

State and local governments must coordinate their activities and regulatory actions concerning the siting and operation of major facilities, with federal government cooperation and consistency, to meet the following objectives of the Coastal Zone Management Program:

(17) To encourage the inland siting of facilities which are not shoreline dependent, and to encourage the location of necessary shoreline-dependent activities in shoreline areas where adverse social, economic, and environmental impacts can be minimized.

(18) To encourage the location of necessary new coastal facilities whether industrial, commercial or residential, in already developed areas capable of accommodating additional development, in areas suitable and planned for redevelopment, or in areas determined by scientific study to be environmentally and economically suitable for development.

(19) To discourage the location of major new or expanded facilities on or immediately adjacent to Resource Protection Areas or Hazard Prone Areas.

(31) To ensure the use of thorough assessments of probable energy costs and benefits, positive and negative economic effects, probable social and environmental impacts, and the value of the public resources involved, as the basis for decisions on the development and production of Outer Continental Shelf resources.

(32) To ensure that the coastal counties, if affected by development related to energy facilities, obtain sufficient financial and technical assistance to adequately plan for and cope with the social, economic or environmental impacts of such development.

(42) To provide adequate representation of the interests of the State of Maryland in federal decisions regarding the exploration, development and production of Outer Continental Shelf resources.

Investigations and decisions must consider whether or not:

- Studies utilize sound, state-of-the-art methodology.
- Adequate environmental, socio-economic data, and data regarding OCS exploration, production and development are available.
- Lack of data delays decisions.
- Recommendations conform with all applicable State and Federal environmental statutes and regulations.
- Recommendations would mitigate significant environmental and socio-economic impact.
- Recommendations resolving conflicts, where attainment of State and Federal standards or prevention of significant impact is not in question, are developed with an appropriate balance between economic cost and environmental benefit.
- Adequate coordination is maintained with agencies and organizations affected by siting decisions, in order that their concerns may be factored into studies and recommendations in a timely manner.
- The public has ready access to information and the opportunity to provide input and feedback on issues of concern.

Policies

1. Facilities covered by the provisions of the Coastal Facilities Review Act (CFRA) are subject to comprehensive state review prior to permit decisions on their siting, construction, and operation within Maryland. CFRA facilities are defined as:

   - Pipelines carrying crude oil or natural gas ashore from offshore sources.

   - Intermediate production terminals or refineries.

   - Crude oil storage facilities; natural gas transmission, processing or storage facilities; operation bases; or fabrication yards.

2. No CFRA facility certification will be granted in a coastal county unless:

   a. The facility meets all applicable air, water, noise, and solid waste laws of the State.

   b. The facility conforms with county or local land use planning, and with the official county or local comprehensive zoning map, the State Development Plan, and the State Coastal Zone Management Program.

   c. The facility would have no significant adverse effect upon the natural environment of the area, its scenic or natural beauty, its rare or irreplaceable natural resources, or its unique historic sites.

   d. The facility would not be located or constructed so that adverse effect upon the public health, safety, or welfare would result.

   e. The facility would not pose an undue burden on the water supply of the site or region.

   f. The facility would not contribute to undue environmental degradation or resource exhaustion.

   g. The facility would have no adverse affect upon areas identified and designated as State Critical Areas.

   h. The facility would not impose a burden on existing State regional or county public facilities beyond their respective capacities.

   i. New public facilities, if required as a result of the construction and operation of the facility:

      1. Would be completed in time to serve the facility, or

      2. Would be adequate to serve the facility without causing over-loading or the public facilities.

   j. There are fewer undesirable environmental, economic, fiscal, and cultural consequences in its proposed location than in other locations.

   (Natural Resources Article 6-508)

Implementation

Lead Agency: Energy and Coastal Zone Administration

Management Procedures

The location of oil, natural gas, and OCS-related facilities in the State's coastal counties is regulated by the Coastal Facilities Review Act (CFRA), and is administered by the E&CZA in conjunction with other state agencies and local units of government. Facilities covered under this Act include natural gas facilities, pipelines, intermediate oil production terminals or refineries, oil and gas storage facilities, operation bases, and fabrication yards. These facilities must receive certification from the Department of Natural Resources before construction may begin. The Secretary of Natural Resources is required to designate someone to draft an environmental, economic, and fiscal statement on the proposed facility, to be used to determine whether to issue the permit. The Secretary also receives advisory comments from the Secretaries of State Planning, Health and Mental Hygiene, Economic and Community Development, and Transportation.

The CFRA specifies that, before the State can process a permit application including the impact statement, the county where the facility is to be located (or where the pipeline is to terminate) must certify that all appropriate local approvals will be granted or that it wishes to stay its decision. If there is no local government action within 60 days after notice of application appears in the Maryland Register, the Department of Natural Resources may assume that the local government has stayed its decision and may proceed. However, the Secretary of Natural Resources may not issue a CFRA permit until the local government certifies its approval of the project.

The review of pipelines presents a special case, since in many cases pipelines may be able to cross Resource Protection Areas, such as tidal wetlands, with minimal adverse impacts, if proper installation procedures are followed. Objective #14 may not be applicable in the case of certain pipeline proposals.

In addition, it should be noted that Baltimore City is presently exempted from the provision of the Coastal Facilities Review Act. However, any CFRA-type facility proposed to be located in Baltimore City must comply with the regulatory authorities listed in the previous sections of Chapter III, particularly those noted as relating to Shoreland Activities in General (water quality permits, air quality permits, water appropriation permits, etc.). Public Hearings will be required as part of the permit reviews undertaken under thise regulatory authorities. Since Baltimore City is an air quality region classified as a "non-attainment area", the location of oil refineries or similar processing facilities in Baltimore City is questionable.

Moreover, the Major Facility Study referred to previously covers the entire coastal zone, including Baltimore City, and thus provides procedures for assessing the suitability of sites for such facilities in Baltimore City. Also, a full project evaluation will be undertaken on any CFRA-type facility proposed for Baltimore City to ensure that all relevant factors are considered in permit decisions made regarding it.

Coastal Zone Unit Role

Project Evaluation

The Coastal Zone Unit has been designated as the state agency to carry out the comprehensive review of on shore OCS/oil natural gas facilities required by CFRA. Such reviews will constitute full project evaluations. Project evaluations for CFRA-type facilities inside Baltimore City will be undertaken at the time an applicant seeks zoning amendments, requests state funding assistance, or applies for a specific state permit, whichever occurs first.

As noted in the Section III of Chapter VI, "Consideration of the National Interest in State and Local Coastal Zone Management Decisions", the Coastal Zone Unit will invite federal agency representatives to participate in such evaluations to present their national interest concerns in a particular facility. If necessary, the Unit will also request the Department of State Planning to intervene in local land use decisions in support of the findings and recommendations of such evaluations including those involving national interest considerations.

Program Review

The Coastal Zone Unit will help local governments plan for and cope with the consequences of coastal petroleum and natural gas facilities, with technical information from such sources as the Major Facilities Study, and with funds from the Coastal Energy Impact Program.

The Coastal Zone Unit will also work with those federal agencies which have responsibility for review and approval of the siting, construction, and operation of onshore OCS/oil/natural gas facilities, to insure that the State's interest is represented and considered in their actions.

AUTHORITIES RELATED TO ONSHORE OCS/OIL/NATURAL GAS FACILITIES

Statutory Authority	Management Technique	Agency
Coastal Facilities Review Act (Natural Resources Article, Section 6-501 et seq.)	Direct State Planning and and Regulation	DNR (E&CZA)

ELECTRIC GENERATING FACILITIES

Situation

Additional fossil fuel and nuclear power plants will be needed in the future, in spite of the successful implementation of energy conservation programs by individuals, and by commercial and industrial establishments. Realistic projections of demand growth, approximately 5% per year, indicate that Maryland will require an additional 11,000 megawatts of generating capacity by 1992. Assuming that the size of future power plants is equivalent to 2,400 megawatts for nuclear plants and 1,600 megawatts for fossil plants, as many as 5 nuclear power plants or 7 fossil fuel plants (or a combination of both) will be needed by 1992.

Because the production and transmission of energy are potentially major contributors to environmental degradation, decisions regarding energy policy alternatives require comprehensive environmental analysis. In the production and distribution of electricity, conflicts between environmental constraints, citizen preferences, and socio-economic issues relating to power plant siting have been widely publicized. Recognizing the understandable controversy surrounding efforts to increase the production of electric power, the State of Maryland established a Power Plant Siting Program (PPSP) in 1971. The enabling legislation, which specifies that the surcharge which funds PPSP will expire in 1985, was structured to ensure that future demands for electric power would be met at reasonable cost, while stimultaneously ensuring that the natural and socio-economic environments would be protected. The law provides for the development of a sound public policy framework for resolving conflicts among various interest groups, by providing scientifically sound information for decision-makers. In addition to predicting the impact of proposed new generating units, assessing the impact of existing generating facilities, and acquiring alternate sites for needed generation, scientific information gaps are being filled by a long-range, stably-funded, and well-designed research program.

Utility plans for constructing and operating new power plants determine the number and location of utility-owned sites to be studied by the Site Evaluation segment and the Impact Assessment segment of the program. For the past several years, utility plans have been subject to fluctuation, due in part to changes in energy demand patterns, utility financing problems, and regulatory uncertainty. These fluctuations are continuing. Applications have been submitted to NRC for Douglas Point (construction permit) and Perryman (early site review). The Brandon Shores plant will come on-line in 1980. Also requiring evaluations are other utility-owned coastal sites listed in the utilities' 10-year plans: Sollers Point and Northwest (BG&E), Canal Site and Seneca Point (Philadelphia Electric). In addition, Delmarva Power and Light Company is undertaking studies to identify a site on the Eastern Shore. The Power Plant Siting Program,

through its Site Acquisition segment, is also in the process of identifying a suitable site on the Eastern Shore. When this site is acquired, it will be banked for utilization by Delmarva Power and Light Company to meet either immediate or long-range needs.

Maryland has one significant hydroelectric facility in its coastal zone. The Conowingo Hydroelectric Project located on the Susquehanna River between Harford and Cecil Counties. The reservoir created by this Project extends into Pennsylvania. The Project, consisting of the dam, powerhouse, reservoir and transmission lines, was constructed under a license issued by FERC (formerly FPC) on February 1926 and which expired in February 1976. Since then, FERC has issued an annual operating license. The powerhouse has a total installed capacity of 512,000 kw and is owned and operated by the Susquehanna Power Company and the Philadelphia Electric Company.

In 1965 four addition turbines went into operation at the Powerhouse. Changes were made at the tailrace and time for water retention behind the dam was increased. Shortly thereafter and up to the present, Maryland has experienced a number of fishkills. Studies conducted by Maryland indicate that these fishkills are due to low disolved oxygen conditions and a constantly changing water column in the lower portion of the Susquehanna River over a 24-hour period as requirements for energy from the Project increase or decrease.

At issue are adverse impacts created by dam operation on fishery production, aquatic habitat, water quality, water supply and salinity. Maryland, through its participation on the Susquehanna River Basin Commission, is supporting measures that will mitigate such impacts and protect the natural resources and users of downstream areas between the Dam and the Chesapeake Bay.

During the spawning season, a 5000 CFS release is required by agreement between Maryland and the utilities. Maryland is supporting implementation of fish passage facilities at Conowingo and the other hydroelectric projects on the Susquehanna. These fish passage facilities will allow the restoration of the river's migratory fishery. The Susquehanna Basin Commission has established a regulation that consumptive use be compensated for when the flow at any point of intake is less than the 7 day 10 year low flow frequency. New federally licensed projects and existing federally licensed projects that wish to increase consumption of water are subject to this regulation. Studies now underway will determine specific minimum flows necessary to protect aquatic habitat, assimilate wastes and maintain water quality standards below the Conowingo Dam.

A major external influence on State power plant site evaluation and monitoring activities is exerted by the evolution of State and Federal laws and regulations. State air quality standards have been revised. State water quality regulations are being revised, requiring studies to determine if cooling towers must be retrofitted. New EPA regulations for Prevention of Significant Deterioration require new techniques for predicting and measuring long-range air pollutant dispersion. NRC regulations have established a new procedure, Early Site Review, which allows site suitability to be determined prior to a construction permit application. Legislation enacted by the 1977 General Assembly requires that PPSP work with local governments to determine transmission line routes from State-owned sites to the existing transmission grid.

The effect of State and Federal laws and regulations created a need to expand impact prediction and assessment from a site perspective to a regional scale. Areas of regional study currently include aquatic impact, hydrologic modeling, long-range transport of air pollutants, socio-economic impact modeling, and regional-based site selection techniques.

Issues

This situation requires that state and local governments, with federal cooperation and consistency, develop accurate and adequate information for decisions related to the environmental and socio-economic impact of existing and proposed power plants, to ensure adequate electric power on reasonable schedules at reasonable costs with a minimum depreciation of the quality of Maryland's environment, consistent with the following objectives of the Coastal Zone Management Program:

(17) To encourage the inland siting of facilities which are not shoreline dependent, and to encourage the location of necessary shoreline-dependent activities in shoreline areas where adverse social, economic, and environmental impacts can be minimized.

(18) To encourage the location of necessary new coastal facilities whether industrial, commercial or residential, in already developed areas capable of accommodating additional development, in areas suitable and planned for redevelopment, or in areas determined by scientific study to be environmentally and economically suitable for development.

(19) To discourage the location of major new or expanded facilities on or immediately adjacent to Resource Protection Areas or Hazard Prone Areas.

(32) To ensure that the coastal counties, if affected by development related to energy facilities, obtain sufficient financial and technical assistance to adequately plan for and cope with the social, economic or environmental impacts of such development.

(41) To promote coordination of state and local governmental programs with those of federal agencies and neighboring states to further the goals of the Coastal Zone Management Program, and to minimize duplication of efforts, conflicting actions, and regulatory permit processing delays.

Investigations and decisions must consider whether:

- Studies utilize sound, state-of-the-art methodology.
- Environmental, socio-economic, and power plant data are adequate.
- Need for additional data unnecessarily delays decisions.
- Recommendations conform with all applicable State and Federal environmental statutes and regulations.

- Recommendations would mitigate significant environmental and socio-economic impacts.

- Recommendations resolving conflicts, where attainment of State and federal standards or prevention of significant impact is not in question, are developed with an appropriate balance between economic cost and environmental benefit.

- Adequate coordination is maintained with agencies and organizations affected by siting decisions, in order that their concerns may be factored into studies and recommendations in a timely manner.

- Members of the public have ready access to current information and the opportunity to provide input and feedback on issues of concern.

- Procedures for improving the siting process, such as joint State-federal hearings, early site review, and delegation of environmental decision-making from federal to state agencies, have been investigated.

Policies

1. It is the State's policy to ensure that adequate electric power is provided on reasonable schedule, at reasonable costs and with the least possible depreciation of the quality of Maryland's environment. (Natural Resources Article, Section 3-304).

2. In reviews of applications for certificates of public convenience and necessity, the following criteria will be considered in evaluating power plant sites and transmission lines. (Natural Resources Article, Section 3-304):

   a. The recommendations of local governments and state agencies;

   b. Present and future power demands;

   c. Impact upon system stability and reliability;

   d. Economic impact (including fiscal and employment impacts and impacts on public services); irretrievable commitments of resources;

   e. Environmental impact on air and water quality;

   f. Impact upon wetland areas;

   g. Impact upon fish and wildlife resources and habitats;

   h. Radiological impacts;

   i. Noise impacts;

   j. Aviation safety;

   k. Potential impacts on aesthetics and on historic and archeological sites;

   l. Potential impacts on public open space, recreational, and natural areas; and

   m. Potential impacts on state critical areas.

3. Power plants shall be sited, constructed, and operated in a manner which minimizes their impacts on tidal wetalnds, aquatic resources, terrestrial resources, significant wildlife habitat, public open space, recreational, and natural areas, air and water quality, and the public health, safety, and welfare. (Natural Resources Article, Sections 1-302, 1-303, 3-301 et seq., 8-1402, 8-1405, 8-1413, 9-102, 9-202, and 9-306)

4. A certificate of public convenience and necessity will not be granted to any facility which would violate federal or state air or water quality standards. (Natural Resources Article, Sections 1-103, 3-304, 8-1413, Article 78, Section 54A, 54B, 57 Attorney General Opinions 439 (1972))

5. The State will utilize its power plant monitoring and research programs to determine how power plants affect human health and welfare and the vitality of the State's natural resources. (Natural Resources Article, Section 3-303, 3-304)

6. The State will identify, evaluate and acquire 4 to 8 power plant site. (Natural Resources Article, Section 3-305)

Implementation

Lead Agencies: Power Plant Siting Program
Public Service Commission

Management Procedures

State Agencies

The Maryland Power Plant Siting Program (PPSP) is an interdepartmental program involving six State Departments - Agriculture, Economic and Community Development, Health and Mental Hygiene, Natural Resources, Planning, and Transportation - with DNR as lead agency. The five Departments are represented on all advisory committees. PPSP staff coordinate studies with other Departments. Special arrangements are made as needed. For example: PPSP and DSP jointly administer a study forecasting long-term electric energy demand. A PPSP staff member is responsible for liaison with Bureau of Air Quality and Noise Control (BAQNC) location at BAQNC offices, to facilitate communication. A PPSP staff member works in DHMH's Environmental Laboratory, where radiological data analysis equipment, purchased by PPSP and DHMH, is centrally housed. PPSP coordinates the official recommendations from all six state Departments, which are provided to the Public Service Commission at its public hearings on certificates of public convenience and necessity for power plants. Communication (primarily regarding technical information) is also maintained with the Energy Policy Office (EPO). Statewide energy policy programs being developed by EPO and the Coastal Zone Management Program will provide useful frameworks for the results of PPSP studies.

As noted above, Maryland's participation in the Susquehanna River Basin Commission provides a mechanism for ensuring that the Conowingo Hydroelectric Project is operated in an environmentally acceptable manner.

Local Government

Local governments are represented on the Power Plant Siting Advisory Committee (PPSAC). Public meetings on PPSP studies are arranged in cooperation with local governments. PPSP provides information from its studies to local governments and solicits input from them, particularly on sites of local interest. Prior to issuance of a Certificate of Public Convenience and Necessity, the PSC considers recommendations from local governing bodies and representatives as part of the formal public hearing process. When a state-owned site is acquired, the county government is requested to establish an Interim Use Advisory Committee, which makes recommendations on interim uses of the site to PPSP.

Citizen Groups

Citizen groups are represented on PPSAC and the Environmental Research Guidance Committee (ERGC). Public meetings are held on site-specific studies to inform the public and to obtain input from them. All information developed by PPSP is available to the public.

Coordination of Government Agencies and Outside Organizations

1. Advisory Committees:

   a. Power Plant Siting Advisory Committee (PPSAC):

      This independent committee is composed of representatives of State and local agencies, utilities, citizens group, and other institutions. It periodically reviews PPSP activities and advises the Secretary of DNR on policy matters.

   b. Environmental Research Guidance Committee (ERGC):

      This committee is composed of experts familiar with research on environmental and socio-economic impacts. It advises PPSP on technical aspects of the program's research element.

   c. Major Facilities Study Steering Committee (MFSSC):

      This ad hoc committee, composed of representatives of state and local agencies, citizens groups, and industry, advises PPSP and the Coastal Zone Unit of E&CZA on their joint study of major facility siting in Maryland's Coastal Zone. PPSP will use this study as a basis for acquiring a power plant site on the Eastern Shore.

2. Federal Agencies

   a. Specific Licensing Proceedings:

      PPSP represents Maryland in NRC licensing proceedings and provides technical support to other state agencies, particularly the Water Resources Administration and the BAQNC, in their dealings with federal agencies such as EPA and the U.S. Army Corps of Engineers on air and water quality licensing matters.

b. General Licensing Considerations:

PPSP is actively involved with the Federal/State Siting Coordinating Committee, which seeks to identify and implement means for improving the licensing and permitting process. As a result of this Committee's work, Maryland became the first state to hold a joint hearing with the NRC on a proposed nuclear power plant at Douglas Point.

c. Technical Information Exchange:

PPSP conducts research projects jointly funded by federal agencies (e.g., the Chalk Point Cooling Tower Project jointly funded by PPSP, ERDA, EPA, and EPRI). Technical consultation prior to and during licensing proceedings is conducted between PPSP technical contractors, federal contractors, and staff, to identify issues of mutual concern, resolve potential conflicts, and exchange data.

Coastal Zone Unit Role

Project Evaluation

Working relationships have been established between Coastal Zone Unit and PPSP (sister units of the E&CZA) regarding the evaluation of power plants. For example, potential power plant sites on the Eastern Shore are being identified as part of the Major Facilities Study.

The Power Plant Siting Program will also incorporate certain concerns in its project evaluations to permit comprehensive analysis of the conflicts between economic cost and environmental benefit in the siting, construction, and operation of power plants. These include:

1. Considering inland sites for electric generating facilities as part of the Regional Screening Method for selecting candidate power plant sites.

2. Considering the trade-offs between constructing new facilities or expanding electric generating facilities at existing sites in the evaluation of PSC Ten-Year Plan.

3. Encouraging beneficial, multiple use of new coastal power plant sites.

Program Review

The Coastal Zone Unit will assist local governments to plan for power plant siting, construction, and operation, by providing funds for technical assistance to develop programs that mitigate secondary growth impacts of such facilities. Funds earmarked by the Coastal Zone Management Program for local governments will be used. Coastal Energy Impact Program (CEIP) funds may also be requested for financing necessary improvements in public services, and for replacing or restoring environmental or recreational areas lost to the power plant. Priorities for funding CEIP requests will be subject to evaluation by the Coastal Zone Unit with the assistance of CRAC.

AUTHORITIES RELATING TO ELECTRIC GENERATING FACILITIES

Statutory Authority	Management Technique	Agency
Power Plant Siting Act (Natural Resources Article, Section 3-301 *et seq.*)	Direct State Planning and Regulation	DNR (E&CZA)

PORTS

Situation

The ports of Maryland, including Baltimore, Cambridge, and Salisbury, constitute major economic enterprises that serve the needs of major import, export, and regional waterborne commerce of Maryland and the nation. Other ports such as Piney Point and Cove Point are single purpose ports. Directly and indirectly, they provide a substantial number of jobs and income to the State.

The port of Baltimore contains a mix activities related to waterborne commerce, such as public marine terminals operated by the Maryland Port Administration, private marine-oriented industries such as Bethlehem Steel and Sea-Land, railroad and road on-off loading centers, and agricultural processing operations such as the Amstar sugar refinery.

The port of Cambridge, developed with public funds by the Maryland Port Administration, serves the agricultural industry on the Eastern Shore. Salisbury Port is a privately developed and operated port area which receives refined oil products, agricultural products and dry bulk goods. Piney Point is a single purpose post, receiving and storing refined oil products for use in Southern Maryland. Cove Point is a single purpose port for receiving and processing liquid natural gas.

Existing port areas in the state, as well as proposed future port areas, are currently being studied to determine what types of new port-related activities might be stimulated by new port facilities. Baltimore Harbor is Maryland's largest single economic entity as well as the largest, most diversified port. Project studies on expansion and development of port facilities to meet present and future port needs in Baltimore Harbor are underway. Studies investigating the feasibility of a commercial port at Crisfield are also underway. There are already two existing ports on the Eastern Shore. The potential facility at Crisfield would have to compete with them for the limited markets for the Eastern Shore imports and exports. However, there is increasing support for the concept of a regional port complex involving Crisfield, Cambridge, and Salisbury. Based on the results of the studies underway, the State of Maryland will determine if development of port facilities at Crisfield is economically advantageous to the local and state interests. The studies will also recommend implementation alternatives.

Port development can have major environmental consequences, especially in relatively undisturbed areas. The considerable dredging required to create and maintain navigation channels can modify the hydrology of a harbor, result in salinity variations, degrade existing aquatic resource values, and create a disposal problem. The problems associated with dredging and maintaining navigational channels and the State's approach to resolving them is described in the Section on Dredging and Dredged Material Disposal. In addition, ports that handle oil products involve risks of oil and/or liquid natural gas spills. Ports also have landside impacts, since a port generates a large volume of rail and heavy truck traffic and usually spurs intensive industrial and urban developments.

Other factors of concern to the State of Maryland relating to port development and operation include the following:

1. Factors relating to port technology and environmental conditions that involve complicated port development procedures;

2. Corps of Engineers operations, budgets, and inflationary pressures that have reduced the amount of dredging possible at a constant funding level;

3. Mini-landbridge operations which cause diversion of containerized cargo from one port to another, with part of the cost absorbed by the ship operator;

4. Hazardous substances, vessel traffic control systems, and operations of deepwater terminals;

5. The lack of a clearly defined, national policy for water resource development and water transportation;

6. Methods of ensuring optimal allocation of the limited capital available to port development; and

7. Corps of Engineers adoption of regional and programmatic approaches to port dredging projects.

Issues

This situation necessitates that state and local governments coordinate their activities and regulatory actions with federal government cooperation and consistency, to meet the objectives identified in the Coastal Zone Management Program:

(17) To encourage the inland siting of facilities which are not shoreline dependent, and to encourage the location of necessary shoreline-dependent activities in shoreline areas where adverse social, economic, and environmental impacts can be minimized.

(18) To encourage the location of necessary new coastal facilities whether industrial, commercial or residential, in already developed areas capable of accommodating additional development, in areas suitable and planned for redevelopment, or in areas determined by scientific study to be environmentally and economically suitable for development.

(19) To discourage the location of major new or expanded facilities on or immediately adjacent to Resource Protection Areas or Hazard Prone Areas.

(20) To ensure the viability of Maryland's port areas, and to ensure that their development is carried out in an environmentally sound manner.

(24) To ensure that sufficient provision has been made for providing adequate water, sewer, and transportation services before new coastal developments are approved by state and local governmental agencies.

(25) To ensure that adequate consideration is given to social, economic, and environmental impacts in government decisions concerning the siting of public facilities in coastal areas, particularly,those involving transporation and waste treatment facilities.

(28) To identify and encourage the use of environmentally suitable methods of dredging and disposing of dredged material, (including beneficial/ use of dredged material) to meet long-term needs resulting from navigational projects, state and local governmental projects, and major private projects, and to oppose the use of methods found to be environmentally unsuitable.

(29) To prevent the filling of the State's tidal waters unless there is no feasible alternative and the proposed project is in accordance with the goals, objectives and policies of the Coastal Zone Management Program.

(33) To ensure that hazardous substances are utilized and disposed of in a manner which prevents any toxic, lethal, or sublethal effects to plant, aquatic or animal life, which prevents any adverse effect upon human health, and which prevents disposal of the substance into terrestrial or aquatic ecosystems.

Investigations and regulatory procedures must consider whether or not a proposed action will:

- Provide needed port capacity and improvements in an environmentally suitable and economical manner.
- Create adverse impacts on state and private tidal wetlands or aquatic resources.
- Involve excessive dredging and disposal of dredged material.
- Cause water quality problems such as oil spills.
- Create or aggravate shore erosion problems adjacent to navigation channels.
- Decrease safety or increase congestion, and interfere with existing ship traffic.
- Provide for adequate and safe navigation aids and maintenance of navigation channels.
- Necessitate additional data, thus delaying regulatory decisions.
- Utilize sound, state-of-the-art methods, and to adequate environmental socio-economic data in all studies.

- Conform with all applicable State and Federal environmental statutes and regulations.

- Mitigate significant environmental and socio-economic impact.

- Maintain adequate coordination with agencies and organizations affected by siting decisions, so that their concerns may be factored into studies and recommendations in a timely manner.

- Ensure that the public has ready access to current information, and the opportunity to provide input and feedback on issues of concern.

Policies

1. Maryland will plan, develop, maitain, operate, and regulate - in cooperation with local jurisdictions and as a supplement to the facilities and services provided by private enterprise - a transportation system which adequately meets the need for movement of people and goods while: supporting local, regional, state and national goals; providing for and facilitating a pattern of physical development which can be effeciently served by transportation; preserving the unique qualities of Maryland's historical and natural resources; maintaining fiscal integrity, and strengthening the economy of Maryland. In order to develop and operate such a transportation system, Maryland will develop and maintain a continuing comprehensive and integrated transportation planning process, including a State Master Plan for Transportation. (Transportation Article, Section 2-103; Maryland Transportation Action Plan)

2. The development of port facilities in existing port areas by the private sector is in the public interest. However, private operators in port areas have a responsibility to provide modern port and harbor facilities suited to the public that they serve. Therefore, if private facilities are inadequate or inadequately operated at any time, the Maryland Port Administration may construct and operate any supplementary public facilities that are required to meet the public interest. (Transportation Article, Section 2-103)

3. In carrying out its duties, the Maryland Port Administration may acquire, construct, reconstruct, rehabilitate, improve, maintain lease, repair, and operate port facilities within its territorial jurisdiction, including the dredging of ship channels and turing basins and the filling and grading of land. It may designate the location and character of all port facilities and improvements and regulate all matters related to the location and character of these facilities and improvements. However, the Maryland Port Administration must comply with all local planning and development regulations, state and federal standards to the same extent as a private commercial or industrial enterprise. (Transportation Article, Section 6-204, 6-501)

4. The expenditure of public funds requested for port construction and operation, including the dredging of ship channels and turning basins, and the filling and grading of land, will be evaluated on the bases of a) existing and projected business conditions, freight rates and port services, b) physical surveys of channel conditions and structures, c) need for port facilities to develop, improve, and more speedily handle commerce, d) economic impact of these funds on existing public facilities, e) beneficial effects of the project on the environment f) measures such as monitoring, maintenance, and replacement that might minimize potential adverse environmental effects and maximize potential beneficial environmental effects; and g) reasonable alternatives to the project that might have fewer adverse environmental effects or greater beneficial environmental effects (including the alternative of no action). Loans to local subdivisions for the acquisition or construction of port facilities shall be based on such considerations. (Transportation Article, Sections 6-204, 6-307; Natural Resources Article Section 1-302, 1-303)

5. Location and regulation of private port facilities necessary to service OCS exploration, development, and production will be evaluated pursuant to the Coastal Facilities Review Act. (Natural Resources Article, Section 6-501)

6. The Governor shall ensure that state interests are adequately represented in federal decisions regarding deep-water port applications. The State's position shall be based upon a comprehensive analysis of the proposed project by the Department of Natural Resources, subject to review by the State Legislature. The following factors shall be considered in the development of the state's position:

   a. Environmental factors including: the effect on the marine environment; the effect of land-based developments related to deepwater port development; the effect on human health and welfare; the effect on the state's Coastal Zone Management Program under Sections 301(A) and (B) of the Federal Coastal Zone Management Act of 1972 and the effect of other considerations that the Secretary of the federal Department of Transportation may deem appropriate.

   b. Economic, social and cultural factors.

   c. Impacts on existing and future state and local public facilities and services.

   d. Evidence presented at public hearings held within the State, either required under the Federal Act or conducted by the State.

   e. The findings of any statement prepared pursuant to Section 6-506 of the Coastal Facilities Review Act, and the status of any permit action pursuant to that Act.

   f. Views of all interested state agencies, and county or local governments.

   (Natural Resources Article, Section 3-501 et seq.)

7. Baltimore Harbor is the State's primary maritime commercial and industrial center. Consequently, new privately operated port facilities designed to open new areas of the coastal zone will be discouraged unless a port-related development is necessary to serve a specific necessary industrial use requiring water access. (Transportation Article Section 2-403, 6-102, 6-204, 6-606; Natural Resources Article, Section 1-302, 1-303, 8-203, 8-1402, 8-1405, 9-102, 9-202, 9-306)

8. Commercial port facilities must be adequately sited, constructed and operated pursuant to a) local comprehensive plans, zoning ordinances, and performance contracts, b) all applicable air, water, noise and solid waste laws of Maryland, c) the Maryland Coastal Zone Management Program, d) the State Development Plan, e) the State Critical Areas Program, and f) the Coastal Facilities Review Act. Commercial port facilities which cause congestion problems, safety problems, excessive dredging, adverse impacts on water quality and aquatic resources are not consistent with the public interest. (Transportation Article Section 2-103, 6-102, 6-204, 6-206, 6-304, 6-305, 6-309; Natural Resources Article, Section 1-302, 1-303, 6-501 et seq., 8-203, 8-1402, 8-1405, 9-102, 9-202, 9-306)

Implementation

Lead Agencies:

Maryland Port Administration (development and operation of public ports, assistance to provide ports as appropriate)

Water Resources Administration (water resources regulations)

Coastal Zone Unit (port facilities associated with onshore OCS facilities)

Management Procedures

Public Ports

The Maryland Port Administration of the Maryland Department of Transportation, conducts all public facility planning, acquisitions, construction, and operation. General procedures for conducting Maryland Port Administration activities are outlined in Maryland's Transportation Action Plan. The Action Plan calls for comprehensive master planning, systems planning, and project planning prior to the acquisition or construction of a public port facility. Opportunities for involvement at all stages of the planing process are provided to all other state agencies and affected local subdivisions.

After plans are completed, additional public and agency review is afforded at permit review stages. Permits and licenses requiring local approval, and related to water quality, wetlands, and Corps of Engineers Section 10-404 authority will be addressed at this stage.

Local and Private Ports

Local governments may sponsor local studies for private port development. If public funds are utilized, public input and review procedures are incorporated into study implementation. If private funds are utilized, a port project is not subject or review until it is brought forward for local zoning, and state, and federal permits. Local governments may also apply to the Maryland Port Administration for funds to acquire or construct port facilities. When a port project is brought forward, it will be reviewed by the Department of State Planning for consistency with provisions of the State Land Use Act of 1974. Private port projects are also regulated by local governments, and require issuance of wetland licenses/water quality certification and Corps of Engineers Section 10-404 permits. If a port facility is associated with an onshore OCS facility, it is subject to a comprehensive review under the provision of the Coastal Facilities Review Act. However, it should be noted that Baltimore City is presently exempted from the provisions of the Coastal Facilities Review Act. However, facilities constructed within its boundaries are still subject to applicable federal, state and local regulations.

Deepwater Ports

The 1977 State Deepwater Ports Act requires the Governor to submit to state's position on proposed deepwater ports applications to the Federal Government within 30 days of the last public hearing held on the application, so that the State's views will be adequately addressed in the federal government's decision on the application. The Governor is to develop the State's position based upon review of the application by the Department of Natural Resources, and action will be taken by the state legislature to confirm or modify his recommendations on the proposed application.

Coordination with Federal Agencies

Present federal authority over ports and harbors is fragmented among more than 50 federal organizations. The major federal agencies involved in port development and operation are the U.S. Army Corps of Engineers, the Maritime Administration, and the U.S. Coast Guard. Of particular importance are the activities of the U.S. Army Corps of Engineers which involve the approving, constructing, and maintaining of waterway access projects for ports and harbors and the issuing of permits for the dredging and disposal of dredged material associated with port development and maintenance.

Maryland works with these organizations to ensure that state and federal actions are properly coordinated.

Coastal Zone Unit Role

Project Evaluation

The procedures outlined in the Maryland Transportation Action Plan provide for a comprehensive cooperative review of publicly-funded port developments with the Department of Transportation playing the lead role. The Coastal Zone Unit will ensure that those issues pertaining to consistency with the Coastal Zone Management Program are fully considered in the planning phase of such reviews.

Privately constructed port projects will be subjected to the project evaluation process as described in Chapter I, to ensure that all Coastal Zone Management Program goals, objectives and policies are addressed at the earliest stages of port development. Conducting a unified review with all interested concerns will assist in timely and efficient permit evaluations. Special emphasis will be placed on economic justification, site suitability, as well other environmental and economic impacts of the proposed action.

Private ports where there will be a transfer of oil-related products and materials will be subject to a full project evaluation as outlined in On Shore OCS/Oil/Natural Gas Facilities.

The Coastal Zone Unit involvement in Federal port-related projects, such as dredging of navigation channels and development of vessel traffic system is described in the Section on Dredging and Dredged Material Disposal and Commercial Shipping.

Program Review

In establishing working arrangements between the Coastal Zone Unit, the Maryland Port Administration and the Division of Transportation, Planning, and Development of the Department of Transportation, local governments, and private individuals or corporations, the following concerns regarding the siting construction and operation of port facilities will be addressed:

1. The continued development of state and local planning procedures that consider a) the overlapping private, local, state and federal responsibilities associated with harbor and port improvements, b) Maryland's competitive position relative to other ports in the Mid-Atlantic service area and to competitive hinterlands, and c) the scarcity of waterfront land, especially where other types of urban activities compete for the same waterfront location.

2. Continued cooperative state and local port planning programs that address the need for the long-term capital investments in channel improvements, land acquisition, landward transportation facilities, terminals, and equipment.

3. Initiation of studies and inventories to improve the existing information base on port development and management.

4. Use of methods and tools developed as part of the Major Facilities study to assist public and private organizations plan for and anticipate the benefits and costs of port development.

AUTHORITIES RELATED TO PORTS

Statutory Authority	Management Technique	Agency
Transportation Article Subtitle 6 MPA	Direct State Planning and Regulation	Maryland Port Administration
Natural Resources Article Subtitle 3 MEPA	Direct State Planning and Regulation	Maryland Port Administration Department of Natural Resources
Coastal Facilities Review Act Natural Resources Article Section 6-501 et. seq.	Direct State Planning and Regulation	Department of Natural Resources (E&CZA)
Natural Resources Article Title 9 Wetlands Law	Direct State Planning and Regulation	Department of Natural Resources (WRA)
Natural Resources Article Section 3-501 et. seq. Deepwater Ports	Direct State Planning and Regulation	Department of Natural Resources (E&CZA)
Article 41 Section 330-346 MILA	State Standards and Funding for Local Acquisition	Department of Economic and Community Development (EDD)
County Comprehensive Zoning and Subdivision Regulations (Article 88C, Section 2(q); Article 66B; Article 25, Section 5(d) and Article 88C(q)	Local Planning and Regulation/State Inverven-tion	Department of State Planning
Rivers and Harbors Act (Section 10) Federal Water Pollution Control Act Amendments (Section 404)	Federal Consistency/State Water Quality Certification	Federal: U.S. Army Corps of Engineers State: DNR (WRA)

INDUSTRIAL PARKS

Situation

An industrial park is generally defined as an assembly of land under one management which provides facilities useful for several kinds of industries. The development of a park is generally based on a comprehensive plan containing land use requirements such as:

- Street design which facilitates truck and other traffic.
- Rail and utility layout.
- Proper setbacks, minimum lot size, floor area ratios, and buffer zones.
- Architecture and landscape requirements.
- Off-street parking and loading regulations.

The average size of an industrial park in the United States is 312 acres, although projects in excess of 500 acres are becoming increasingly commonplace (Urban Land Institute, 1975). Ultimately, the size of an industrial park is determined by market demand, absorption rate of the development period, the constraints of available sites, and the nature and extent of government regulations. A typical industrial park accommodates a variety of uses, including manufacturing, warehousing and distribution facilities, research and development, and commercial uses. A broad range of manufacturing activities are locating in industrial parks, and in fact, most types of manufacturing industries are suitable for location within an industrial park.

The marketability of the industrial park concept is of great importance to the local community, and industrial park locations have proven to be extremely attractive to industry for reasons such as the presence of related or "linked" industries, the availability of utilities and transport services, the compatibility of continguous land uses, and the savings resulting from the absence of traditional start-up costs.

The extent of environmental and socio-economic impact on the area around an industrial park largely depends upon the size of the park, its resident industries, and prevailing conditions in the surrounding area.

The advantages of Maryland's geographical position are widely recognized by American industry. The State lies at the center of a large multi-state economic region encompassing the northeast, southeast, and mid-west market areas. The diversity of Maryland's industry is evidenced by the fact that of the 451 types of manufacturing industry classified by Standard Industrial Classification, 363 are located in Maryland, making products as divergent as apple juice and zinc castings.

Maryland provides industries with a variety of site choices and locations: Industrial park locations include both urban and suburban settings in such locales as Baltimore, Cambridge, Salisbury, and Easton. Baltimore, Cambridge, and Salisbury offer sites for water-oriented industries. Local municipalities and counties have zoned lands for industry or are establishing industrial districts on municipally owned land. The City of Crisfield in Somerset County is currently investigating the feasibility of a port-oriented industrial park to serve the agricultural industry on the Eastern Shore.

Issues

This situation necessitates that state and local governments coordinate their activities and regulatory actions, with federal cooperation and consistency to meet the following objectives of the Coastal Zone Management Program.

(17) To encourage the inland siting of facilities which are not shoreline dependent, and to encourage the location of necessary shoreline-dependent activities in shoreline areas where adverse social, economic, and environmental impacts can be minimized.

(18) To encourage the location of necessary new coastal facilities whether industrial, commercial or residential, in already developed areas capable of accommodating additional development, in areas suitable and planned for redevelopment, or in areas determined by scientific study to be environmentally and economically suitable for development.

(19) To discourage the location of major new or expanded facilities on or immediately adjacent to Resource Protection Areas or Hazard Prone Areas.

(20) To ensure the viability of Maryland's port areas, and to ensure that their development is carried out in an environmentally sound manner.

(22) To promote use of the State's coastal resources to meet social and economic needs in an environmentally compatible manner.

(24) To ensure that sufficient provision has been made for providing adequate water, sewer, and transportation services before new coastal developments are approved by state and local governmental agencies.

(38) To ensure coordination and use of existing state and local government programs to achieve the Program's objectives.

Investigations and decisions must take into consideration whether or not:

- Studies utilize sound, state of the art methods.
- Social, economic and fiscal data are adequate.
- All recommendations conform with state and federal environmental statutes and regulations.
- Adequate public services are available or will be provided.
- All recommendations would mitigate singificant economic disfunctions and protect fiscal soundness.
- Adequate coordination is maintained with agencies and organizations affected by siting decisions in order that their concerns may be factored into studies and recommendations in a timely manner.
- The public has ready access to current information and the opportunity to provide input and feedback on issues of concern.

Policies

1. It is State policy to provide for the economic welfare of the State's residents through programs and activities that develop properly the State's natural resources and economic opportunities. The State promotes and encourages the location of new industries and buisnesses in Maryland as well as the expansion of existing industries. (Article 41, Section 258)

2. The acquisition and preservation of industrial sites can best be accomplished by cooperative programs between the State and its political subdivisions, including loans to local governments. A decision on a loan to a local government will be based on the following considerations:

   a. Whether the project may reasonably be expected to attract industry and create new employment opportunities.

   b. The amount of benefit, in terms of economic development and employment opportunities, which the project may reasonably be expected to generate in relation to similar benefits of other proposed projects, and in the context of the total funds available for lending.

c. Whether the project, as planned, will be in compliance with zoning, sanitary, and other laws or regulations applicable to the project.

d. Whether and to what extent federal or other funds are available or are likely to become available for the project.

e. The positive and negative effects of the proposed project on the environment, including environmental effects that are likely if the proposal is implemented, and effects that are likely if it is not implemented.

f. Measures that might be taken to minimize potential adverse environmental effects and maximize potential beneficial environmental effects, including monitoring, maintenance, replacement, operation, and other follow-up activities.

g. Reasonable alternatives to the proposed action (including the alternative of no action) that might have fewer adverse environmental effects or more beneficial environmental effects.

(Natural Resources Article, Section 1-302, 1-303, 1-304 and Article 41, Section 439, 440, and 441)

4. Industrial parks will be carefully sited and planned to insure compatibility with surrounding land and water uses, constraints imposed due to standards of air, noise and water quality, minimization of other environmental impacts, and provision or availability of adequate water supply, waste water treatment, and transportation facilities. (Natural Resources Article, Section 1-302, 1-303, 8 1405, 9-102; Article 88C)

5. Industrial park areas identified within state critical areas designated for utilization purposes will be given priority for state or federal funds used for acquisition or construction of industrial parks. (Article 88C 2(g); Article 41, Section 440, 441)

Implementation

Lead Agencies: State: Department of Economic and Community Development; Department of State Planning

Local: Planning and Zoning Offices

Management Procedures

State Agencies:

Where state or federal funds are involved in the development of the industrial park, the Department of Economic and Community Development acts as lead agency, with staff-level coordination with the Departments of Natural Resources, State Planning, Health and Mental Hygiene, and Transportation.

State funding is available for the following sources all administered by the Department of Economic and Community Development:

Maryland Industrial Lands Act - Local governing bodies and counties can obtain loans up to $500,000 per project to purchase these lands, which can then be sold or leased to industries wishing to utilize the land. In addition, there exists a program to loan local governing bodies funds up to $1,500,000 to finance selected infrastructure costs of industrial parks, including construction of shell buildings.

Maryland Industrial Development Financing Authority (MIDFA) - Provides up to 90% guaranteed mortgages for real estate and 70% for machinery and equipment. This program is limited to manufacturing, warehousing, research and development, tourism facilities, corporate headquarters, and regional office buidlings. Interest may be exempt from income tax in accordance with Internal Revenue Service regulations.

Industrial Revenue Bonds - 100% financing for real estate, machinery, and equipment, is possible for manufacturing, warehousing, research and development facilities, corporate headquarters, regional office buildings and pollution control facilities. Interest may be exempt from income tax pursuant to Internal Revenue Service regulations.

Development Credit Corporation (DCC) - Loans for 100% of costs are possible, although loans are generally made for less than 75%. Any business or industrial enterprise unable to obtain funds from conventional sources is eligible. Interest is charged at a rate not more than 4% in excess of the prevalent prime rate on unsecured commercial loans in the City of Baltimore.

Maryland Area Redevelopment Act - In designated areas, the State of Maryland can match the participation of the communities in the financing of EDA projects to a maximum of 5% of the total cost. The interest rate charged by the State is limitied to 4%.

Funding assistance for the development of industrial parks is also available from federal agencies such as the Economic Development Administration (EDA); Small Business Administration (SBA & SBIC); and Farmers Home Administration (FmHA).

The Department of Economic and Community Development considers the following factors in reviewing applications for state and federal financial assistance for industrial parks, in addition to the policies stated above:

1. project description - including location, size, slope, geologic characteristics, current land use, title condition, development schedule, financing schedule;

2. service inventory - including rail, truck, air, water transportation needs, utility needs, water, sewerage, and solid waste needs;

3. environmental impact study - including impacts on adjacent properties, air, land, water, noise impacts;

4. general suitability of the project for incorporation into an industrial park - including such factors as local industrial absorption over time analysis of industrial prospects, industrial orientation factors (labor, markets, resources, amenities) and community attitudes;

5. zoning description - including present and anticipated zoning;

6. other laws and regulations which must be enforced - including air quality, water quality, land use;

7. description of land acquisition plan;

8. appraisal of current market value of land;

9. existing employment coordination;

10. analysis of industrial land supply in the county;

11. analysis of economic impact and feasibility of the proposal;

12. estimated local costs;

13. evidence of a shortage of suitable industrial sites.

Applicants for state funds are instructed to contact appropriate state and local agencies for input into all aspects of the application, particularly environmental and economic impacts. Applicants for federal funds must submit a full EIS as stipulated by NEPA.

The Water Resources Administration and Environmental Health Administration are involved when the industrial park applicant applies for construction-related permits and approvals, such as these related to wetlands, flood plain alteration, water quality, air quality, and water and sewer facilities.

The Department of State Planning reviews both the zoning map and individual zoning changes from other uses to industrial uses for compatibility with state plans, programs and policies.

Local Government:

Industrial parks are zoned for use through the County Comprehensive Planning and Zoning Process. Thus, sites chosen should be compatible with planned uses of surrounding land, and with the county's schedule for provision of public water, utilities, sewerage solid waste, and transportation facilities.

Coastal Zone Unit Role

Project Evaluation

All applications to the Department of Economic and Community Development for funds to assist a local government or municipality defray costs of industrial land or an industrial park project for these industries will be

forwarded to the Coastal Zone Unit. Coastal Zone Unit shall determine if adequate consideration has been given to all economic and environmental issues in accordance with the project evaluation process described in Chapter I. Particular attention will be paid to industrial parks involving industries handling: food and kindred products, chemical and allied products, stone, clay, and glass products, and primary metals products.

For parcels of land greater than 100 acres, all rezoning or zoning classification changes allowing any such industries will be subject to project evaluation process.

Such project review will enable decision makers to consider environmental as well as economic constraints prior to receiving requests for permits for the project. Project evaluation will also enable local and state agencies to consider fully the merits of zoning changes and the optimal allocation of state funds for industrial development.

It should be noted that proposals involving individual industries will be subjected to the project evaluation process if they involve one of the concerns discussed in previous sections (e.g., proposed location in tidal or non-tidal floodplain etc.).

Program Review

1. Coastal Zone Unit will encourage counties desiring industrial growth to make use of the industrial park concept rather than make case-by-case determinations on every industrial rezoning or zoning change.

2. Coastal Zone Unit and the Department of Economic and Community Development will assist counties to locate and evaluate potential industrial park sites, through the use of the Major Facilities Study.

AUTHORITIES RELATING TO INDUSTRIAL PARKS

Statutory Authority	Management Technique	Agency
Maryland Industrial Land Act (Article 41, Section 440 to 446)	State Standards and Funding for Local Land Acquisition	DECD (EDD)
Maryland Industrial Development Finance Authority and Industrial Buildings for Counties and Municipalities (Article 41, Section 266)	State Standards Bonding and Funding Local Land Acquisition	DECD (EDD)
County Comprehensive Zoning and Subdivision Regulations, DSP review/Intervention (Art. 88C, Section 2(q); Art. 66B; Art. 25, Section 5(d) and Art. 88C(2)(q)	Local Planning and Regulation/ State Intervention	DSP
State Critical Areas Program (Art. 88C, Section 2(b)(3)	State Standards for Local Implementation	DSP

MINERAL EXTRACTION FACILITIES (SAND AND GRAVEL)

Situation

Sand and gravel have been defined as "continuously graded, unconsolidated materials that appear in the earth's surface, generally resulting from the natural disintegration of rocks".

Estimates of sand and gravel supply have been made for parts of Maryland's Coastal Zone. It has been estimated, for instance, that there are 3.6 billion tons in Southern Maryland. However, there is no published estimate of accessible sand and gravel deposits which might produce economic yield. In some areas, notably the metropolitan Baltimore area, there is not such abundance. Many deposits have been covered by urban and suburban development, and, in some areas, mining conflicts with other land uses, so that mining is impossible. It is estimated that a 10- to 15-year supply for general construction does exist within the State.

However, currently available data on sand and gravel resources is insuffcient. In areas where there is sand and gravel, the suitability for mining is dependent on a number of factors, and on-site inspection and core drilling is usually required.

The Maryland Geological Survey is currently in the process of compiling information on sand and gravel resources. It is based upon literature review, field investigations, aerial photographs at 1:20,000 scale, LANDSAT photographs, and personal communications with operators and mapping geologists. The end result of this project will be publication of a mineral resources map for each county. The completion date for this compilation has not been set. The map for Anne Arundel County was, however, published in December, 1976.

Total combined commercial consumption was more than 12.5 million short ton (11.16 metric tons) in 1973, valued at close to $30 million. Over 98% of the sand and gravel used in Maryland in 1973 was transported by truck, and less than 2% was transported by rail.

There are approximately 150 active sand and gravel operations involving extraction sites in Maryland. Extraction sites are locations where sand and gravel are removed from the earth. Where processing, storage, or loading facilities are continguous to points of extraction, these facilities are included in the definition of extraction site. However, there are numerous borrow pits which are less than one acre in size and are not included in the above estimate.

Extraction operations range widely in size. Large companies have central storage and ancillary facilities of approximately 220 acres served by satellite feeder pits ranging from 10 to 50 acres. There are also numerous smaller independent operations with sites of 1 to 75 acres. Depending on the operator and the market, excavation and processing may be continuous, intermittent, or temporary.

Three distinct methods of extraction are practiced: dry pit, wet pit, and dredging of rivers, bays, and oceans. In the dry pit method, sand and gravel are removed from above the water table. Fifty percent of production in the United States is from dry pits. The wet pit method is a land operation, accounting for approximately 35% of the nation's production, by which materials are removed by dragline or barge-mounted dredges from above and beneath the water table. Dredging, accounting for 15% of the production in the USA, recovers sand and gravel from lakes, bays, rivers and estuaries. In some areas of the country, the depletion of onland supplies of sand and gravel will require the dredging of offshore supplies in the ocean where large deposits are believed to be located.

In a typical operation, sand and gravel are processed prior to transport to the user. Excavated materials are dumped into a hopper. After passing through separation,screens, gravel and rock are separated and crushed. The remaining materials are pumped to a hydroseparator and sandscrew separator, where coarse sand is cleaned and removed. Fine sand is then similarly treated. The sized, cleaned products are then stored separately, ready for transportation to the user. Where there is dredging, processing may take place directly on the dredge, or after pumping to a land-based site.

A by-product of processing is the waste effluent, which is generally treated in holding ponds where high concentration of suspended solids are removed. Waste fines may be settled out by detention, or may be treated chemically with flocculating agents. In many cases, operators are able to maintain closed systems whereby the processing water is recycled continuously.

Disposal of the sediment, or waste fines from process waters is a serious problem for many operators. Where available, already disturbed areas such as those previously mined are used. However, space for disposal is not often available, and is expensive when it is available. Approximately 90 million tons of waste fines are generated annually in the United States by sand and gravel operations, and only a small portion of these wastes can be recovered for productive use.

Implications of sand and gravel operations to the environment can be significant, and include:

1. Intrusions of operations into floodplains, which may cause an increase in the rate of sedimentation.

2. The reduction in aquatic and wildlife habitat by stripping and mining operations.

3. Compatibility of the operations to on-site or adjacent land and water uses, including reuse of mined areas after shutdown.

Issues

This situation requires state and local governments to develop accurate and adequate information on the economic supply and demand for sand and gravel resources, and the environmental impacts of extracting these resources, to coordinate their activities and regulatory actions, with federal government cooperation and consistency, to meet the following objectives of the Coastal Zone Management Program:

(2) To protect, maintain, and improve the quality of the State's tidal waters for propagation of wildlife, fish and aquatic life, and for human use and enjoyment.

(5) To protect coastal terrestrial areas of significant resource value-areas having scenic, scientific, geologic, hydrologic, biological or ecosystem maintenance importance wetlands, endangered species habitat, significant wildlife habitat, and wintering and resting areas for migratory birds.

(18) To encourage the location of necessary new coastal facilities whether industrial, commercial or residential, in already developed areas capable of accommodating additional development, in areas suitable and planned for redevelopment, or in areas determined by scientific study to be environmentally and economically suitable for development.

(19) To discourage the location of major new or expanded facilities on or immediately adjacent to Resource Protection Areas or Hazard Prone Areas.

(21) To encourage the wise use of coastal mineral resources, with due regard for protection of the environment, and to encourage sequential multiple use of mineral lands where mineral extraction is deemed appropriate.

Investigations and decisions must consider whether or not:

- Studies utilize sound, state-of-the-art methods.

- Environmental data are adequate.

- The proposed location and manner of operation conforms with all applicable state and federal environmental statutes and regulations.

- The proposed manner of location and operation mitigates significant environmental impacts.

- Adequate coordination is maintained with agencies and organizations affected by a mining operation, in order that their concerns are factored into studies and recommendations in a timely manner.

- Members of the public have ready access to current information and the opportunity to provide input and feedback on issues of concern.

Policies

1. While the extraction of minerals by mining is a basic and essential activity contributing to the economic well-being of Maryland, mining must be conducted in a way which minimizes its effects on the surrounding environment. Proper reclamation of mined land is necessary to prevent undesirable land and water impacts that are deterimental to the general welfare, safety, beauty, and property rights of Maryland residents. (Natural Resources Article, Title 7-6A02)

2. Permits for surface mining opertions will not be granted if:

   a. The operation will have an unduly adverse effect on wildlife or fresh water, estuarine, or marine fisheries.

   b. The operator has failed to provide applicable permits from all State and local regulatory agencies responsible for air and water pollution and sediment control.

   c. The operation will constitute a substantial physical hazard to a neighboring house, school, church, hospital, commercial or industrial building, public road, or other public or private property existing at the time of application for the permit.

   d. The operation will have a significantly adverse effect on the uses of a publicly owned park, forest, or recreation areas existing at the time of application for the permit.

   e. The operator does not posses a valid surface mine operator's license or is subject of action brought against by the Department of Natural Resources.

f. Inadequate consideration has been given to:

1. The effects of the proposed action on the environment, including adverse and beneficial environmental effects that are reasonably likely if the proposal is implemented or if it is not implemented.

2. Measures that might be taken to minimize potential adverse environmental effects and maximize potential beneficial environmental effects, including monitoring, maintenance, replacement, operation, and other follow-up activities.

g. Previous experience with similar operations indicates a significant probability that the operation will result in substantial deposits of sediment in stream beds or lakes, landslides, or will cause other water pollution.

(Natural Resources Article, Sections 1-302, 1-303, 1-304, 7-6A06, 7-6A07, 7-6A09)

3. No surface mining permit will be issued unless it is conditioned upon compliance with an approved mining and reclamation plan. (Natural Resources Article, Section 7-6A10)

Implementation

Lead Agency: Water Resources Administration (regulation)
Maryland Geological Survey (conduct of mineral resource surveys)

Management Procedure

State

In order to extract minerals other than coal, a surface mining permit must be obtained from the Water Resources Administration. When a complete application for such a permit is received, it is reviewed, approved, or denied within 60 days in accordance with the above policies. During this review period, the Department of State Planning reviews the application for zoning and land use consistency. The comments of other agencies, that may have concerns about the project, such as the Maryland Fisheries Administration and the Maryland Wildlife Administration are also requested. Depending on the physical nature of the area proposed for mining, permits for wetlands, watersheds, or discharge, may also be required. If more than one permit is necessary, the Water Resources Administration will hold joint hearings.

The Maryland Geological Survey is responsible for conducting periodic surveys of the status of mineral extraction sites and for compiling information on sand and gravel resources generally.

Local Government

Mineral extraction activities require from a county either a special zoning district classification, or a special exception to another type of zoning classification. Department of State Planning reviews county zoning decisions concerning sand and gravel mining regulations when reviewing zoning ordinances and maps.

Coastal Zone Unit Role

Project Evaluation

In order to assist Water Resources Administration in ensuring that Coastal Zone Management concerns are adequately considered, applications for permits for surface mining in the coastal zone's floodplain areas, other environmentally sensitive areas, or other areas in which significant environmental, social or economic impact may occur, will be subjected to the project evaluation process described in Chapter I.

Program Review

1. The Coastal Zone Unit will assist the Maryland Geological Survey and other government agencies to identify areas of significant mineral resource value.

2. Where mining is allowed by county zoning regulations, the Coastal Zone Unit will work with other units of the Department of Natural Resources and with units of local government to determine, to the extent possible with available data, whether mineral resources are present in quantities which make mining economically feasible, and to determine whether the minerals can be extracted in a manner which minimizes adverse environmental impacts.

3. The Coastal Zone Unit will work with the Water Resources Administration to develop permit and reclamation guidelines which would deter surface mining in environmentally sensitive or important areas.

AUTHORITIES RELATING TO MINERAL EXTRACTION FACILITIES (SAND AND GRAVEL)

Statutory Authority	Management Technique	Agency
Surface Mining Act (Natural Resources Article, Section 7-6A01 et seq.	Direct State Planning and Regulation	DNR (WRA)
County Comprehensive Zoning and Subdivision Regulations/DSP Intervention (Art. 88C, Section 2(q); Art. 66B; Art. 25, Section 5(d))	Local Planning and Regulation/State Intervention	County Planning and Zoning Office DSP

LARGE-SCALE RESIDENTIAL FACILITIES

Situation

The shorelines of the State are increasingly popular locations for large residential developments, both seasonal and permanent. The construction of such facilities may cause significant adverse impacts by exceeding the carrying capacity of areas to support such facilities, by exceeding the capacity of local communities to provide public services for them, by causing increased sedimentation and non-point pollution problems, and by disturbing areas containing valuable natural resources, including wildlife habitat and productive agricultural land. These residential facilities may also necessitate the construction of public facilities such as sewage treatment plants and highways, which in turn promote more growth. This situation is addressed in the Sections on Sewage Treatment Plants and Land Transportation Facilities.

Issues

This situation necessitates that state and local governments coordinate their activities and regulatory actions, with federal government cooperation and consistency, to meet the following objectives of the Coastal Zone Management Program:

(2) To protect, maintain, and improve the quality of the State's tidal waters for propagation of wildlife, fish and aquatic life, and for human use and enjoyment.

(5) To protect coastal terrestrial areas of significant resource value-areas having scenic, scientific, geologic, hydrologic, biological or ecosystem maintenance importance - **such as non-tidal** wetlands, endangered species habitat, significant wildlife habitat, and wintering and resting areas for migratory birds.

(18) To encourage the location of necessary new coastal facilities, whether industrial, commercial or residential, in already developed areas capable of accommodating additional development, in areas suitable and planned for redevelopment, or in areas determined by scientific study to be environmentally and economically suitable for development.

(22) To promote use of the State's coastal resources to meet social and economic needs in an environmentally compatible manner.

(23) To ensure consideration of the carrying capacity of air, land and water resources (both surface and groundwater), and the conservation of coastal natural areas in state and local regulatory decisions concerning coastal developments.

(24) To ensure that sufficient provision has been made for providing adequate water, sewer, and transportation services before new coastal developments are approved by state and local government agencies.

(25) To ensure that adequate consideration is given to social, economic, and environmental impacts in government decisions concerning the siting of public facilities in coastal areas, particularly those involving transportation and waste treatment facilities.

(26) To ensure the incorporation of storm water management measures in state and local regulatory programs that would require runoff from a development site, to maintain, to the maximum extent possible, water quality and quantity conditions that prevailed prior to development.

(27) To promote the maintenance of natural buffers along, and natural drainage ways feeding to, coastal tributaries and estuarine waters, to minimize adverse environmental effects of coastal developments and activities.

In order to meet these objectives, the following issues must be addressed in planning and regulating activities concerning large-scale residential developments in coastal areas:

- Strict application of air and water quality, waste water disposal, sediment and stormwater, and other standards in development plans;

- Consistency with State development plans, State water quality river basin plans, as well as local comprehensive plans, water and sewer plans, and zoning;

- Service by adequate facilities including water supply, waste treatment and transportation;

- Adequate sediment and stormwater measures, both structural and non-structural, to minimize off-site impacts;

- Provision of adequate recreational and open space areas;

- Impact on water quality, aquatic resources, tidal and non-tidal wetlands, significant wildlife habitat areas, archeological sites, or historic sites;

- Potential for creating danger to life and property, or for creating or aggravating off-site hazards due to flooding, shore erosion or other natural hazards;

- Impact on a State Critical Area designated for preservation or conservation, or on its buffer area;

- Impact on productive agricultural or forest land, or effect on agricultural production on neighboring farms;

Policies

1. Large-scale residential development must 1) be consistent with State and local plans and regulations; 2) minimize impacts on water quality, tidal and non-tidal wetlands, state critical areas, productive agricultural or forested lands, and historical/cultural/archeological resources; 3) avoid creating or aggravating natural hazard conditions; 4) avoid placing undue burdens on public services or fiscal, economic, or social conditions. (Article 88C; Article 66B; Article 25; Article 43, Section 387C: Article 45, Section 882 et seq; Natural Resources Article; Section 1-302, 1-303, 8-9A04, 8-1101, 8-1103, 8-1104, 8-1402, and 8-1405, 9-102, 9-202, 9-306)

2. It is State policy to utilize the intervention powers of the Department of State Planning to ensure that large-scale residential developments are sited, constructed and maintained in a manner which fully considers State interests. (Article 88C, Section 2(q); Natural Resources Article, Section 1-101, 1-104, 1-302, 1-303)

Implementation

Lead Agencies

State: Department of State Planning

Water Resources Administration (programs concerning water appropriations from surface and groundwater sources, discharges into state waters, etc., other state and local agencies may participate, depending on the issues involved)

Local: Planning and Zoning Offices, Soil Conservation Districts

Management Procedures

Large-scale residential developments are sited through the planning and zoning mechanisms of local units of government.

The local planning office also reviews proposals for zoning changes, amendments, special exceptions, and conditional uses involving residential development, and makes recommendations to the zoning administrator. Many counties have special regulations for new towns and planned unit developments.

Local units also play a role in managing residential developments through subdivision regulations and building code enforcement. In accordance with the provisions of the State Land Use Act of 1974, the Department of State Planning reviews zoning changes, amendments, special exceptions, variances, and conditional uses, which relate to large-scale residential developments as well as to subdivision approvals. The review is based on consistency with state plans, programs, and policies.

The Department of Health and Mental Hygiene (DHMH), in consultation with DNR and DSP, has the responsibility for approving the construction of sewage treatment plants and county water and sewer plans. Large-scale residential developments must be included in county water and sewer plans before either public or private water supply or sewage treatment systems can be installed or extended to service them. The Department of Health and Mental Hygiene has the authority to impose water and sewer moratoria, and to limit development if circumstances warrant.

Off-site impacts of such developments, such as water quality and water supply degradation, stormwater runoff, and flood plain and wetland encroachment, can be controlled through the various permit programs described earlier in this chapter.

Coastal Zone Unit Role

Project Evaluation

Initially, all new town proposals in coastal counties and all HUD's and residential developments involving 100 acres or 1,000 housing units within 2 miles of a floodplain on tidal waters will be reviewed to determine if they are of concern to the Coastal Zone Management Program in accordance with the project evaluation process described in Chapter I. As experience is gained in the implementation of the program, these criteria will be refined on a county by county basis to meet the needs of each specific coastal county. Developments meeting the criteria will be analyzed to determine if the concerns noted in the issues section above are adequately addressed or if further analysis and evaluation is necessary. The Coastal Zone Unit will work with local governments and with the Department of State Planning to resolve any outstanding issues, and intervention procedures will be utilized only after other alteratives have been tried. Issues involving concerns subject to State or federal regulatory authority will be brought to the attention of the relevant authority for action.

It should be noted that residential development, regardless of size, which involves one of the concerns addressed earlier (proposed location in tidal or non-tidal floodplain etc.) will be subject to the project evaluation process.

Program Review

As described in more detail in Chapter V, the Coastal Zone Unit will provide technical and financial assistance to local governments to enable them to address the issues involved with large scale residential developments in their comprehensive plans, water and sewer plans, regulations and zoning ordinances.

AUTHORITIES RELATING TO LARGE-SCALE RESIDENTIAL DEVELOPMENTS

Statutory Authority	Management Technique	Agency
Water Quality Permits Art. NR, Section 8-1402, 8-1405, 8-1413	Direct State Planning and Regulation	DNR (WRA)
Water Appropriation Permit Art. NR, Section 8-801, 8-802	Direct State Planning and Regulation	DNR (WRA)
Sediment Control (Stormwater Management Art. NR, Section 8-1101, *et seq.* interpreted by 56 Att'y Gen. Op's 478 (Ap. 5, 1971)	State Standards for Local Implementation	DNR (WRA)
Provision of Water, Sewer and Solid Waste Facilities Art. 43, Section 387C	State Standards for Local Implementation with State Review	County Health Depts. and Planning and Zoning Offices; DHMH, (EHA); DSP, DNR
County Planning and Zoning DSP General Authority/ Intervention Procedures Art. 88C, Art. 66B, Art. 25, Section 5	Review of Local Plans and Decisions with State Intervention	County Planning and Zoning Offices, DSP

SEWAGE TREATMENT FACILITIES

Situation

With increasing frequency, sewage treatment plants are being located with outlets on Maryland's tidal waters. However, the rate of treatment facility construction and expansion has not matched the rate of development in Maryland's coastal zone, and existing facilities are overtaxed and operating at decreased efficiency. While there is a need to proceed as quickly as possible to meet the need for new and improved treatment facilities, the situation presents several concerns to the Coastal Zone Management Program:

1. Conflicts occur between sewage treatment plants and other uses of tidal waters - particularly the growing and harvesting of shellfish. Shellfish sanitation regulations require an extensive buffer area around the outlet point, thus closing the area to shellfish harvesting, regardless of the level of treatment. On the other hand, evidence that improperly treated sewage is entering tidal waters can mean closure of an even greater water area to shellfish harvesting.

2. The potential for sewage treatment plants of large capacity to promote development is well known. Locating major new sewage treatment plants in coastal areas may increase high density growth pressures along the shoreline, where only low density development was formerly allowable under the health standards regulating installation of private facilities, particularly septic tanks.

3. Sewage facilities plants have the potential for major water quality impact beyond the health-related considerations mentioned above. Oxygen depleting materials, nutrients, and residual chlorine are the most important components to be considered. The State has formulated regulations and policies regarding removal of these substances and has issued NPDES discharge permits, based on local area and baywide studies. The present policies and discharge permits cannot be considered the final solution to all problems. Only additional research, especially the monitoring of the water quality changes effected by the present policies, will allow clarification of the remaining issues. In addition, more detailed investigation of alternative methods of sewage treatment is needed.

4. The physical location of new treatment facilities and their outfalls often has impacts on coastal resources such as upland natural areas, tidal wetlands, and aquatic resources.

Issues

This situation requires that state and local governments coordinate their activities and regulatory actions, with federal cooperation and consistency to meet the following goals and objectives of the Coastal Zone Management Program:

(2) To protect, maintain, and improve the quality of the State's tidal waters for propagation of wildlife, fish and aquatic life, and for human use and enjoyment.

(3) To protect coastal aquatic areas of significant resource value, and where possible, restore presently degraded areas of potentially significant resource value, such as viable oyster bars and clam beds, important migratory pathways, spawning, nursery and feeding areas for fish, and wintering and resting areas for migratory birds.

(4) To protect, maintain, and where feasible restore the integrity of the tidal wetlands of the State.

(5) To protect coastal terrestrial areas of significant resource value- areas having scenic, scientific, geologic, hydrologic, biological or ecosystem maintenance importance - such as endangered species habitat, significant wildlife habitat, and wintering and resting areas of migratory birds.

(7) To protect coastal cultural, historical, and archeological resources.

(17) To encourage the inland siting of facilities which are not shoreline dependent, and to encourage the location of necessary shoreline-dependent activities in shoreline areas where adverse social, economic, and environmental impacts can be minimized.

(19) To discourage the location of major new or expanded facilities on or immediately adjacent to Resource Protection Areas or Hazard Prone Areas.

(22) To promote use of the State's coastal resources to meet social and economic needs in an environmentally compatible manner.

(23) To ensure consideration of the carrying capacity of air, land and water resources (both surface and groundwater), and the conservation of coastal natural areas in state and local regulatory decisions concerning coastal developments.

(24) To ensure that sufficient provision has been made for providing adequate water, sewer, and transportation services before new coastal developments are approved by state and local government agencies.

(25) To ensure that adequate consideration is given to social, economic, and environmental impacts in government decisions concerning the siting of public facilities in coastal areas, particularly those involving transportation and waste treatment facilities.

Investigations and regulatory procedures relating to sewage treatment plants must consider:

- The treatment level and technology needed to meet water quality standards.

- The relationship of effluent discharge to overall stream flow.

- The capacity of the plant and its influence on growth patterns.

- The effect of the sewage treatment plant on availability of shellfish beds for commercial harvest.

- The direct effect of the plant's construction on sensitive natural areas such as wetlands or flood plains.

- The cumulative impact of increasing discharge of treated sewage into tidal water.

- The use of alternative solutions, such as disposal on land, individual treatment systems, and water conservation.

Policies

1. It is State policy to improve, conserve and manage the quality of the State's waters for public supplies, propagation of wildlife, fish and aquatic life and domestic, agricultural, industrial, recreational and other legitimate beneficial uses. (Natural Resources Art. Section 8-1402; Art. 43, Section 388)

2. It is State policy to provide that no waste is discharged into any waters of the state without first receiving adequate treatment to be consistent with effluent limitations and the maintenance of water quality standards. (Natural Resources Article, Section 8-1402, 8-1405, and 8-1413)

3. In the proposed formulation of state water quality management plans,including the designation of scenic areas and sewerage facilities, consideration shall be given to areas of critical state concern. (Natural Resources Art. Section 8-1042, 8-1404, 8-1405, Art. 88C)

4. It is State policy not to fund or authorize the construction of sewage treatment plants which are not consistent with the State's 208 Water Quality Management Plan. (Art. 43, Section 394; Natural Resources Art. 8-1402, 8-1404, 8-1405)

5. Sewage treatment plants must not be located in tidal or non-tidal wetlands, or in Areas of Critical State Concern designated for the purpose of preservation or conservation. (Natural Resources Article, Section 9-101 et seq.; Article 88C, Section 2(b))

6. In order to minimize shellfish bed closures, sewage treatment plant outfalls must not be located where they impinge upon the commercial harvest of seafood, unless no feasible alternative exists. (Natural Resources Article, Sections 1-302, 1-303, 8-1402, 8-1413)

7. Sewage treatment plants must not be located in flood plains unless no feasible alternative exists. When sewage treatment plants are located in flood plains, they must be adequately flood-proofed. (Natural Resources Article, Sections 8-801, 8-803, 8-807)

8. The effects of treated effluent materials on the aquatic resources of the Bay must be determined through research. Results of this research must be used to set water quality and effluent standards and to establish permit limitations. (Natural Resources Article, Section 8-1405)

9. Plans for new sewage treatment plants must consider the need for advanced wastewater treatment, nutrient removal, and other alternatives to meet state water quality standards and effluent limitations. (Natural Resources Article, Section 8-1402, 8-1405, and 8-1413)

10. Before construction can begin on installation or extension of any system of water supply, sewerage, or refuse disposal, the project must be approved by the Department of Health and Mental Hygiene in accordance with the Department's responsibility to protect public health, safety and welfare. In addition, the Department of Health and Mental Hygiene shall examine all existing public water supplies, sewerage systems and refuse disposal plants, and shall have power to complete tneir operation in a manner which shall protect the public health and comfort, or to order their alteration, extension, or replacement by other structures when deemed necessary. (Article 43, Sections 388 and 394)

11. Each county shall develop water and sewer plans which provide for the orderly expansion and extension of community and multi-use water supply, sewerage and solid waste disposal systems. Such plans shall be consistent with applicable county and local land use plans, and shall consider related aspects of land use, zoning, population estimates, engineering and economic factors, and all governmental, industrial, and other plans for privately owned facilities for water and sewerage at any level. The construction and operation of water supply systems and sewerage systems shall not be undertaken unless they are included in water and sewer plans approved by the Department of Health and Mental Hygiene, after consultation with the Department of Natural Resources (on matters pertaining to water allocation, adequacy of industrial waste treatment, and the effect of proposed withdrawals and waste discharges on waters of the State), the Department of State Planning (on the plan's adequacy, including its consistency with the local master plan), and the Department of Agriculture (on the impact of water and sewerage service on productive or potentially productive agricultural land). (Article 43, Section 387C)

12. Sewage treatment plants with significant excess capacity will not be approved unless they are consistent with the 208 Plan for the service area, and with population projections of the Department of State Planning. (Federal Water Pollution Control Act Amendments of 1972, Section 201; Article 43, Sections 387C, 394)

13. It must be deomonstrated that any proposed sewage treatment facility represents the most cost-effective means of meeting established effluent and water quality goals, recognizing social and environmental considerations. (Federal Water Pollution Control Act Amendment of 1972, Section 301; Article 43, Sections 387C, 394)

14. In the development of facility plans for new publicly owned treatment works, the utilization of land treatment processes to reclaim and recycle municipal wastewater should be given first consideration. If a method that encourages water conservation, wastewater reclamation and reuse is not recommended, the applicant for construction funds should be required to provide complete justification for the rejection of land treatment. (EPA Policy Memorandum, October 3, 1977). (The State is currently in the process of adjusting its policies to conform with this document.)

15. It is State policy to ensure that sewage sludge is managed and disposed of in such a way as to protect the public health and the environment from the hazards associated with this material, due to the presence of pathogenic organisms, parasites and heavy metals, or other toxic materials which may have adverse effects on humans or which may contaminate crops, groundwater, or surface water. No individual, corporation, municipality, county, district, or institution may engage in collection, handling, burning, storage or transportation of sewage sludge without first obtaining a permit from the Secretary of Health and Mental Hygiene (Article 43, Section 394(b); Department of Health and Mental Hygiene, Regulation 10.03.48)

16. Both the State and its political subdivisions have the legal authority to restrict access to sewage treatment systems in order to control growth, so that it is phased with the construction of associated public services, including sewage treatment facilities and other capital improvements. (Natural Resources Article, Section 8-1402, 8-1405, 8-1413; Article 43, Section 387, 394; 60 Op Att'y Gen. 508 (1975))

17. No building permit, subdivision plan, map or plat; providing for individual or community water supply or sewerage system, shall be allowed unless it is in conformance with a county water or sewer plan. Thus:

    a. No building permit shall be approved (i) where existing facilities are inadequate to serve the proposed development, taking into consideration all other existing and approved developments in the service area, or (ii) which will cause facilities for conveyance, pumping, storage or treatment of water, sewage or solid water to be overloaded.

    b. No subdivision plat shall be approved in areas where, taking into account all existing and approved subdivision plats and building permits in the service area, facilities for conveyance, pumping, storage, or treatment of water, sewage, and solid waste to serve the proposed development would (i) not be completed in time to serve the development, or (ii) if completed, would not be adequate to serve the development without causing overloading of the facilities.

    (Article 43, Section 387C)

18. In determining the acceptability of individual sewerage systems, the Department of Health and Mental Hygiene shall consider present and future population density, lot size, contour of the land, porosity and absorbancy of the soil, groundwater conditions, community sewer systems and proposed development. (Article 43, Section 387C)

19. State law on the development and approval of county water and sewer plans shall not limit or supercede any State, county, or municipal zoning ordinance, subdivision regulation, building code or the law or regulation which establish standards that provide greater protection to the public health, safety and welfare of the community. (60 Op. Attn'y Gen. 508 (1975))

Implementation

Lead Agencies

Federal: Environmental Protection Agency

State: Environmental Health Administration, Water Resources Administration, Department of State Planning

Local: Planning and Zoning Offices (participating agencies: local public works and health agencies)

Management Procedures

Sewage treatment facility planning and implementation is a process that involves several agencies at each level. Proposed sewage treatment facilities undergo extensive, comprehensive review, based on their consistency with the State's continuing Water Quality Planning Process, with local water and sewer plans, with local comprehensive plans, and with local facility plans. The facility plan developed for each plant represents alternatives to the planned facilities, and describes the environmental effects of the planned facility.

The following are Maryland's main planning and regulatory processes:

1. County Water and Sewerage Plans. Each county (in conjunction with the municipalities within its borders) is required to prepare a document delineating how it intends to develop sewerage facilities within its jurisdiction, in accordance with its general development plan. Each water and sewerage plan contains the designation of recommended discharge points and the delineation of the areas in the various categories of sewer service priority.

The Environmental Health Administration (EHA) of the Department of Health and Mental Hygiene reviews these plans for technical and legal accuracy and adequacy. The Environmental Health Administration may approve a plan only after it has considered the comments of WRA on the compliance of the water and sewerage plans with water quality plans, and the comments of the Department of State Planning on their land use impacts and their relationship to population projections.

2. Water Quality Management Plans. The Water Resources Administration is responsible for Phase I Water Quality Management Plans (pursuant to Section 303(e) of the Federal Water Pollution Control Act Amendments (FWPCA) of 1972) for the entire State, and for the Phase II plans in the non-designated portions of the State (pursuant to Section 208 of the FWPCA). The Baltimore Regional Planning Council and the Washington Council of Governments are responsible for the Phase II plans in their jurisdictions. Facilities plans, and regulatory efforts will have to be consistent with the 208 Plans once they have been developed.

3. Facilities Plans. In order for a local jurisdiction to receive federal funding for improvement or construction of sewage treatment plants, it must demonstrate to the Environmental Protection Agency that the proposed sewage treatment facilities are to be provided in an environmentally sound and cost-effective manner. To do this, a community prepares a facilities plan pursuant to Section 201 of the FWPCA. The Environmental Health Administration has overall responsibility in the State for the preparation of 201 Plans.

The Maryland Environmental Service, an agency of DNR, may act as a consultant in preparing these plans. Both local governments and the Maryland Environmental Service can acquire, construct and operate sites for treatment plants.

Priorities for expenditure of sewage treatment construction funds - both federal and state - are developed cooperatively by WRA, EHA, and DSP. The overall responsibility for assigning priorities and administering the funds, however, lies with the Secretary of Health and Mental Hygiene.

As noted in the policies, the location of treatment plants must be in conformance with approved area-wide waste treatment plans (208 plans) and their discharges must meet State effluent standards.

Serious consideration has been given to land treatment alternatives for sewage treatment, as the most viable alternative in some areas of the coastal zone, particularly smaller communities. In accordance with the recent EPA Policy Memorandum, land treatment processes will be given first consideration in all cases.

4. Restriction of Access to Sewage Treatment Facilities to Control Growth. According to an Attorney General's opinion in 1975, the state and its political subdivisions have the legal authority to restrict access to sewage treatment plants -- the state through its authority to review county water and sewer plans and the installation of sewage systems and to issue discharge permits, and the political subdivisions through their water and sewer plans. Such limitations shall apply only to proposed sewer mains. They shall not be used to stop development permanently, but rather to control growth so that it is phased with the construction of associated public services such as sewage treatment facilities and other capital improvements. Such restrictions are to be imposed pursuant to a territorial, regional, or basin plan, and shall thus not be arbitrary or capricious.

5. Sludge Disposal. The disposal of sewage sludge either by land treatment, placement in a sanitary landfill, trenching, or incineration requires prior approval by the Environmental Health Administration. In addition, 208 Plans developed under the Federal Water Pollution Control Act Amendments of 1972, and county water and sewer plans must include provisions for the diposal of sludge generated by proposed publicly owned treatment works.

At present, each location for sludge disposal, whether it is placed in a sanitary landfill or used for agricultural purposes, requires a separate approval. The State is now developing guidelines for generalized sludge disposal, based on the type of material that is produced by sludge composting. This is the result of research by Maryland Environmental Services and the U.S. Department of Agriculture on the sludge generated by Maryland's Blue Plains treatment plant.

6. Regulation. Individual sewage systems (e.g., septic systems) are regulated by local permits based on minimum state standards. No permits may be issued in areas in which sewerage already exists, is scheduled for completion within eighteen months or is in the final planning stages.

All sewage treatment construction and associated facilities (e.g., new sewer lines, hookups, sludge disposal etc.) are regulated by the EHA. No sewerage construction permit applications are accepted for review unless they are in conformance with the county plan.

Sewage treatment plants are regulated by both EHA and WRA. The Water Resorces Administration issues discharge permits, and EHA issues construction permits. The criterion for these permits is the capability of the treatment plant to meet the discharge standards. As part of the discharge permit requirements, municipalities are required to adopt and enforce adequate industrial discharge pretreatment ordinances if any significant industrial discharges would be handled by the treatment plant. In addition, the placement of sewage treatment plant outfalls must be in conformance with both county plans and state water quality management plans and regulations.

Coastal Zone Unit Role

Project Evaluation

To ensure that all relevant factors are addressed, the Coastal Zone Unit will participate in the existing review process for the siting and operation of sewage treatment plants in the following cases:

1. Proposed placement of a sewage treatment plant (a) in, or adjacent to, a state critical area designated for preservation or conservation, (b) within a flood plain, or tidal, or non-tidal wetland, significant wildife habitat area, or (c) with the outfall discharging into other significant aquatic resources area.

2. Where there is potential for direct hydrological impact on tidal waters containing shellfish or other significant aquatic resources.

3. Where there is potential for significant induced growth in presently low density shoreline areas.

Program Review

The Coastal Zone Unit will work within the present water quality planning process to assure that the cumulative impact of increased discharge of treated sewage effluent into tidal waters will be analyzed including effects on nutrient levels and shellfish bed closures.

The Coastal Zone Unit will work with local units of government, the Water Resources Administration, the Environmental Health Administration, and the Department of State Planning, to identify and resolve discrepancies between local water and sewage plans and local comprehensive plans, Water Quality Management Plans, and State programs and policies.

The Coastal Zone Unit will work with local units of government, the Water Resources Administration, the Environmental Health Administration, and Department of State Planning to analyze the potential growth-inducement impacts of sewage treatment plants, and to develop measures to deal adequately with such potential impacts.

The Coastal Zone Unit, in conjunction with the Fisheries Administration, will assist the Water Resources Administration in determining the impacts of chlorine and other residuals of living aquatic resources, and in identifying areas where the aquatic life is particularly sensitive to discharge.

AUTHORITIES RELATING TO SEWAGE TREATMENT PLANTS

Statutory Authority	Management Techniques	Agency
Federal Water Pollution Control Act Amendments of 1972	State and Regional Planning and State Regulation in accordance with Federal Standards	DNR (WRA) and DHMH (EHA)
Water Pollution Control and Abatement Maryland Ann. Code Nat. Res. Art., Sec. 8-1401 *et seq.*	State Planning and Regulation	DNR (WRA)
Regulation of the Location and Operation of Water, Sewer and Solid Waste Facilities Art. 43, Sec. 386A - 399	State Planning and Regulation	DHMH (EHA)
Regulation of the Collection and Disposal of Sewage Sludge Art. 43, Section 394	State Planning and Regulation	DHMH (EHA)
EPA Policy Memorandum Oct. 3, 1977	State, Regional and Local Planning, and State Regulation in accordance with Federal Standards	DNR (WRA) and DHMH (EHA)
Restriction of Access to Sewage Treatment Systems 60 Op. Att'y Gen. 508 (1975)	State and Local Regulation	County Planning and Zoning, Health and Public Works Departments; (DHMH) (EHA); DNR (WRA)

LAND TRANSPORTATION FACILITIES

Situation

In the past 20 years, the development of transportation facilities has played a major role in shaping the uses of Maryland's coastal areas. Beltways, built to aid access to and around central cities, e.g., Washington and Baltimore, have contributed to the movement of populations from cities to the suburbs.

Service facilities catering to through traffic have often been developed along rural interchanges of limited access highways. Businesses in these locations usually have small local markets and would not be able to support themselves without the highway. Thus the highway provides economic gain to the community, and may be a central factor in the community's economy.

In suburban areas around cities such as Baltimore, radial highways and beltways have drawn businesses and households away from downtown areas, and have helped create more dispersed housing and employment centers. In general, the bigger and faster the highway, the larger the impact, if the road provides access to desirable living and working areas.

If there is easy access to and from the highway - if there are unlimited curb cuts and all intersections are at grade level - development can occur along the sides of the highway in a "strip" of stores, restaurants, motels, gas stations, and apartments. Single-family housing may spread out behind these strips on the many crossing roads.

If the highway has limited access (such as an interstate highway) development will occur at interchanges, and cross streets may themselves become major arteries with their own strip development or office parks. The highly visible land along the road may be developed through construction of frontage roads.

Highway projects involve engineering activities associated with the construction, operation, and maintenance of the highway, such as land clearing and stripping, the use of herbicides, the application of road salts, and slope stabilization. These and many other activities may influence both the terrestrial and aquatic environments of the immediate project areas, and may have offsite impacts from sedimentation and stormwater runoff.

Proposed highway projects in the coastal zone of major concern include the Patuxent Freeway in Anne Arundel County and Route 50 improvements between Kent Island and Easton, and at Vienna, Cambridge, and Salisbury.

Other types of transportation facilities besides highways have significant implications for coastal resources and activities. In the Baltimore Metropolitan area, a rapid transit system is under construction in an attempt to alleviate transportation problems. However, construction of such a system involves questions of its fiscal impact due to its costs questions of which areas it should service, and questions of its potential for growth generation.

On the Eastern Shore, railroads are a principal means of transportating industrial, commercial, and agricultural goods to market. However, with the reorganization of railroads in the Northeastern United States, the continuation of some portions of the present railroad system is threatened.

The only large airport facility located in Maryland's coastal zone is the Baltimore Washington International Airport in Anne Arundel County. Smaller airport facilities in the coastal zone include Martin Airport in Baltimore County and those at Cambridge, Salisbury, and Ocean City. Aiport facilities are generally of coastal zone management concern only when their construction or expansion may have significant impacts on coastal resources and activities. The development of adjacent land is also of concern if it may conflict with noise impact zones.

The Maryland Department of Transportation and local transportation units have responsibility for planning and promoting all transportation projects, and have been cooperating on programs and projects for several years. State and Federal laws and regulations require impact assessments and regional studies relating to impact on air quality, growth projections, noise levels, and quantitative and qualitative socio-economic impacts, as well as consideration of impacts on water quality and environmental resources.

Issues

State and local governments must coordinate their activities and regulatory actions, with federal government cooperation and consistency, to meet the following objectives of the Coastal Zone Management Program:

(19) To discourage the location of major new or expanded facilities on or immediately adjacent to Resource Protection Areas or Hazard Prone Areas.

(22) To promote use of the State's coastal resources to meet social and economic needs in an environmentally compatible manner.

(23) To ensure consideration of the carrying capacity of air, land and water resources (both surface and groundwater) and the conservation of coastal natural areas in state and local regulatory decisions concerning coastal developments.

(24) To ensure that surficient provision has been made for providing adequate water, sewer, and transportation services before new coastal developments are approved by state and local government agencies.

(25) To ensure adequate consideration is given to social, economic, and environmental impacts in government decisions concerning the siting of public facilities in coastal areas, particularly those involving transportation and waste treatment facilities.

(26) To ensure the incorporation of storm water management measures in state and local regulatory programs that would require runoff from a development site, to maintain, to the maximum extent possible, water quality and quantity conditions that prevailed prior to development.

(38) To ensure coordination and use of existing state and local government programs to achieve the Coastal Zone Management Program's objectives.

Investigations and decisions must take into consideration whether or not:

- Transportation project plans and system studies utilize sound, state-of-the-art methods.
- Environmental, socio-economic and transportation data are adequate.
- Inadequate data delays regulatory or planning decisions.
- Recommendations conform to all applicable State and Federal environmental statutes and regulations.
- Adequate coordination is maintained with agencies and organizations affected by siting decisions so that their concerns may be factored into studies and recommendations in a timely manner.
- The public has ready access to current information and the opportunity to provide input and feedback on issues of concern.
- Procedures for improving transportation planning are investigated.

Policies

1. Maryland will plan, develop, maintain, operate, and regulate - in cooperation with local jurisdictions, and as a supplement to facilities and services provided by private enterprise - a transportation system which adequately meets the needs for movement of people and goods while: supporting local, regional, and state goals; facilitating a pattern of physical development which can be served efficiently by transportation; preserving the unique qualities of Maryland's historical and natural resources; maintaining fiscal integrity; and strengthening the economy of Maryland. In order to develop and operate such a transportation system, Maryland will develop and maintain a continuing comprehensive and integrated transportation planning process, including the creation and promulgation of a State Master Plan for Transportation. (Article Transportation Section 2-103; Maryland Transportation Action Plan)

2. Maryland will follow and implement procedures contained in Policy Procedure Memorandum 90-4 issued December 20, 1974, by the U.S. Department of Transportation, Federal Highway Administration, to insure that all relevant factors and interests are considered in any transportation improvement. (Article Transportation 2-103; Maryland Transportation Action Plan)

3. In planning for transportation improvements, Maryland will adhere to the following policies, which are further detailed in the Maryland State Transportation Plan and the Maryland Department of Transportation Executive Plan.

   a. Transportation services supported by the State of Maryland shall be based on a comprehensive assessment of the transportation function they are intended to serve.

   b. The State shall assess carefully the social, economic and environmental impacts of proposed improvements in transportation service and shall consider the relationships between these impacts, improved service and the cost of implementation. In developing plans and programs, the state will consider and document the impact of alternative modes, locations and operations, through each phase of the decision-making process. To improve Maryland's ability to anticipate the effects of proposed actions, a monitoring and evaluation program will be initiated to determine the actual impacts of facilities and programs.

   c. The State will not commit itself to any specific improvement or location until after completion of detailed evaluations of the transportation, economic, and environmental effects of alternate improvements and locations (including the "no-build" alternative, and including the alternative of improving existing facilities in lieu of new construction).

   d. The State will finance only those transportation service improvements which are consistent with approved comprehensive transportation plans and programs.

   e. Wherever feasible, the State will meet transportation needs through improvement of existing facilities rather than through the construction of new ones.

   f. Where needed and appropriate, the Department shall facilitate use of alternatives to the automobile for interregional travel.

   g. The State shall encourage energy-efficient use of all means of transportation and shall encourage such energy-saving measures as car-pooling, use of public transportation, bikeways, and traffic operations improvements.

   h. Transportation service improvements shall be planned and designed to allow for early, continuous and two-way communication with all segments of the public prior to selection of a course of action. Specific mechanisms for public involvement shall be established for each major project prior to undertaking substantial planning activities.

i. The state shall work with local governments to plan and design transportation facilities such as airports and major highways, to protect against adverse noise and air quality impact and to insure the compatibility of future development.

j. The State shall increase and facilitate accessability among the five regions of Maryland and between these regions and other states and countries.

k. The State supports continuation of essential commuter and rail freight service in all regions of Maryland.

l. The State shall provide and maintain an efficient, safe Maryland Primary Highway System linking the State's major population and industrial centers, recreation sites, and transportation terminals.

m. The State shall promote the development of Baltimore-Washington International Airport as one of the major domestic and international air facilities serving the Mid-Atlantic Region.

n. To maintain consistency with State development goals and to enhance the economic development potential of Maryland, the State shall promote an appropriate balance between land development and each component of the interregional transportation system.

o. The State supports private enterprise in maintaining and strengthening the system of moving goods in Maryland.

(Transportation Article 2-103, Natural Resources Article 1-302, 1-303; Maryland Preliminary Transportation Plan; Maryland Department of Transportation Executive Plan)

4. Decisions to proceed with a transportation project will be based on factors including (but not limited to) the following:

a. Volume as a precent capacity.

b. Construction and operation cost.

c. Accident data.

d. Socio-economic impact.

e. Environmental impact.

f. Contribution to state and local development goals and objectives.

g. Consistent evaluation of all alternatives, including the no-build alternative.

h. Mitigation measures that can be incorporated into design, construction, and operation of the project.

(Transportation Article 2-103, Maryland Transportation Action Plan)

Implementation

Lead Agency: Department of Transportation

Management Procedures

All transportation facility planning is now subject to a comprehensive multi-agency planning process described in the Transportation Action Plan and shown in Figure III-1. All facilities are subject to comprehensive evaluation both at the systems level and at the project and design levels by the Department of Transportation. The Consolidated Transportation Program (the Department of Transportation's five-year capital improvements program), which is prepared annually, is the result of the system planning effort. Environmental, social, economic impacts are weighed at all stages.

In the systems planning which is conducted at the State-wide, regional and local levels, the following factors are considered in accordance with the above policies:

1. Analysis of goals and constraints for local environmental impact and for implications to economic and social programs of Maryland.

2. Inventory and collection of statewide physical transportation data.

3. Analysis and forecasting of demand for modal facilities.

4. Identification and forecasting alternative plans based on such criteria as:

    a. Level of transportation service.

    b. Regional community growth and development.

    c. Conservation and preservation.

    d. Public facilities and services.

    e. Community cohesion.

    f. Displacement of people, businesses, and farms.

    g. Noise, air and water pollution.

    h. Aesthetic considerations.

The Planning and Design of individual projects involves the following steps:

1. Definition of project goals.

2. Assessing and gathering project-related data.

3. Refinement of the criteria developed at the systems planning level.

4. Identification and analysis of project alteratives, pursuant to NEPA.

5. Identification and analysis of potential social, cultural and environmental impacts of proposed projects.

6. Analysis of unresolved issues.

Environmental Effects Reports are required on projects using State funds. All projects are reviewed through the State Clearinghouse. In addition, transportation projects will require some permit approvals by the Water Resources Administration, after consideration of impacts on wetlands, stormwater runoff generation, water quality and aquatic resources at the project and design planning levels.

Coastal Zone Unit Role

Project Evaluation

1. The Coastal Zone Unit will assist the Department of Transportation (where appropriate) in systems planning activities at the statewide, regional and local levels for the following types of projects:

   - Interstate highways;

   - Two-lane to four-lane improvements;

   - Railroad lines;

   - Airports;

   - Public ports (See Ports Section); and

   - Any roadway serving a peninsula area, or which crosses tidal waters.

The Coastal Zone Unit, in conjunction with other units of the Department of Natural Resources, will also assist the Department of Transportation in the conduct of Project Planning activities for the above types of projects.

The purpose of Coastal Zone Unit's involvement during these two phases of transportation planning is to insure that long-term, off-site, and secondary effects of transportation projects on coastal resources are adequately considered in the siting and design stages of planning. This will be accomplished through the participation of Coastal Zone Unit in conjunction with the other units of the Department of Natural Resources in the Action Plan process.

2. The Coastal Zone Unit will also enlist the expertise of the Department of Transportation in the review of other coastal zone projects not directly related affecting transportation programs, for the purpose of determining potential impacts such development may have on existing transportation programs.

Program Review

The Coastal Zone Unit will review annually the Consolidated Transportation Program for consistency with the Coastal Zone Management Program in accordance with the Memorandum of Understanding between the Coastal Zone Unit and the Department of Transportation, to ensure integration of coastal concerns into Department of Transportation actions.

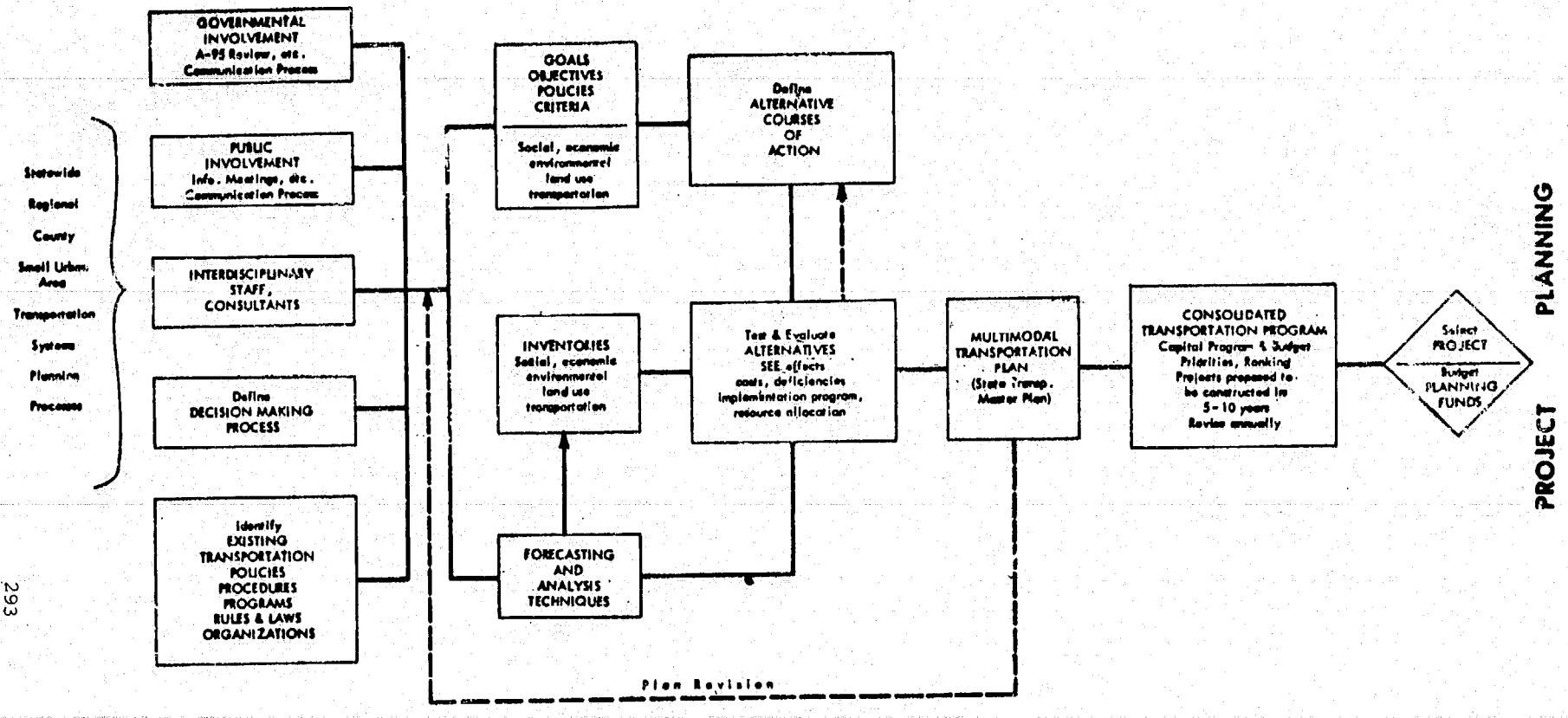
AUTHORITIES RELATING TO LAND TRANSPORTATION FACILITIES

Statutory Authority	Management Techniques	Agency
Article: Transportation Titles 2, 5, 6, 8	Direct State Planning and Regulation	MDOT
Federal Highway Act 1970 Section 109H	Federal Standards and Rules followed by State Agency	MDOT
Water Quality Permits Art. NR, Section 8-1402, 8-1405, 8-1413	Direct State Planning and Regulation	DNR (WRA)
Air Quality Program Art. 43, Section 690 et seq.	Direct State Planning and Regulation	DHMH (EHA)
Noise Control Art. 43, Section 824	Direct State Planning and Regulation	DHMH (EHA)
Water Appropriation Permit Art. NR, Section 8-801, 8-802	Direct State Planning and Regulation	DNR (WRA)
Sediment Control/Stormwater Management Art. NR, Section 8-905, 8-110, et seq. interpreted by 56 Att'y Gen. Op's 478 (Ap. 6, 1971)	State Standards for Local Implementation; State Regulation of Projects funded or undertaken by the State	DNR (WRA)

Figure III-1

TRANSPORTATION SYSTEMS PLANNING PROCESS

(STATEWIDE, REGIONAL AND LOCAL)



CHAPTER IV

GEOGRAPHIC AREAS OF PARTICULAR CONCERN

IV. GEOGRAPHIC AREAS OF PARTICULAR CONCERN

Legislative Requirements

Those coastal states developing a program responsive to the federal Coastal Zone Management Act of 1972 must identify geographical areas of special significance within the coastal zone. Section 305(b)(3) of the Act requires the management program to include "an inventory and designation of areas of particular concern within the coastal zone". Section 923.13(a) of the regulations pursuant to the Act requires that such inventories include the following:

(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 and resources, including coastal flood plains, aquifer recharge areas, sand dunes, coral and other reefs, beaches, offshore sand deposits, and mangrove stands.

An additional requirement of the Act regarding Geographic Areas of Particular Concern (GAPC) states that the management program shall include "broad guidelines on priority of uses in particular areas, including specifically those of lowest priority" (Section 305(b)(5)). The purpose of identifying a priority of uses is to articulate the State's interest in the preservation, conservation, and orderly development of specific areas in its coastal zone.

Lastly, Section 306(c)(9) of the Act requires the State to "make provisions whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or aesthetic values."

Existing Geographic Areas of Particular Concern: Vegetated Tidal Wetlands

The State of Maryland recognizes tidal wetlands for their generic significance as well as for their site-specific significance. All vegetated tidal wetland areas are considered a generic class of Geographic Areas of Particular Concern. The management authority applied in this generic consideration is the State Wetlands Act, which is implemented by Wetlands Permit Section of the Water Resources Administration. In addition, the Coastal Zone Unit will focus efforts on identifying site-specific vegetated tidal wetland areas which, due to their inherent natural value, warrant preservation. When identified, these areas will be suggested to the local governments and the DSP for recommendation as State Critical Areas suitable for preservation. (See discussion of State Critical Areas Program which follows.)

This approach emphasizes the State's recognition of the values of tidal wetlands as a whole. This recognition is set forth in the State Wetland's Act of 1970, which established the State policy to preserve its tidal wetlands and to prevent their despoliation and destruction. To carry out this policy, the Act divided the State's wetlands into two types -- State wetlands and Private wetlands -- and presented a management program for each. State wetlands are defined as "all land under the navigable waters of the State below the mean high tide, which is affected by regular rise and fall of the tide." Private wetlands are "all lands not considered State wetlands bordering on or lying beneath tidal waters, which are subject to regular or periodic tidal action and which support aquatic growth". Regarding State wetlands, the Act makes it unlawful to dredge or fill on these lands unless a license to do so has been issued by the State Board of Public Works. The Board bases its decision on recommendations from the Wetlands Permit Section of the Water Resoruces Administration. Regulation of activities in private wetlands is achieved through a permit system of the Wetlands Permit Section.

The full text of the Wetlands Act, as well as the order establishing wetland boundaries and the rules and regulations, is contained in Appendix G. These regulations are presently being revised to make more explicit the criteria that the Wetlands Permit Section uses in making recommendations on activities proposed for private wetlands. The policy guidelines on which these regulations will be based have also been included in that appendix.

The designation of Priority of Uses for this type of GAPC is discussed in detail in a section on Priority of Uses at the end of this chapter.

Continuing Identification of Geographic Areas of Particular Concern: The State Critical Areas Program

The State Critical Areas Program will be the principal mechanism that the Coastal Zone Management Program will use to meet the requirements of the federal Coastal Zone Management Act Regulations for the future designation of GAPCS, (CFR923.21-23). Through this program, areas of special significance within the coastal zone, as well as in the State as a whole, will be identified and designated State Critical Areas. Carred out by the Department of State Planning (DSP), the Critical Areas Program is mandated by the State Land Use Act of 1974 (Article 88C, Section 2(b)(3)) which gives the Department of State Planning the responsibility to identify "...areas of critical State concern, after consultation with and consideration of recommendations submitted to the Secretary (of the Department of State Planning) by the local subdivisions". The legislation further states that "Every county and the City of Baltimore shall make recommendations to the Department (of State Planning) as to the areas within their respective jurisdictions which sould be designated as being of critical State concern". Guidelines have been established for use by the local subdivisions in making their recommendations (see Appendix D; also included in that appendix is a sample critical area recommendation). The guidelines are also intended for use by citizens, organizations, and units of state and federal government, in making suggestions to the local governments.

The role of the Coastal Zone Unit is to assist the local governments and DSP in identifying coastal areas of critical state concern, by providing technical information and analysis of the types of areas discussed in this chapter.

The process of designating state critical areas has three stages: (1) preparation of recommendations by the local governments; (2) review and comment on recommendations by appropriate state agencies and other interested parties; and (3) formal designation of areas by DSP.

Preparation of Recommendations

Local governments solicit suggestions of areas from citizens, organizations, and units of state and federal government. Broad public participation is encouraged through the use of citizen advisory groups. A set of draft recommendations is prepared and presented at public hearings. The final recommendations are adopted by the local governments and submitted to DSP. All suggestions received by the local governments, including those not adopted as recommendations, are to be submitted.

Development of a set of recommendations includes the following steps: (1) an inventory of areas by general categories, (2) a determination of which areas are of critical state concern, (3) delineation of the boundaries of each specific area or site, (4) a description of the area in terms of its existing significant features, and (5) an identification of compatible uses and suggested management techniques. Each of these steps is described in detail in Appendix D. However, elaboration on step 5 is appropriate at this point.

In identifying compatible uses, the local governments are to classify recommended areas into one of the following three types of critical areas:

(a) "Critical Areas Suitable for Preservation" are areas where most forms and levels of alteration resulting from human activity may create

disturbances which have a high probability of resulting in a significant adverse impact upon the characteristics of the area, and where strict management is necessary to retain the area's inherent characteristics and attributes.

(b) "Critical Areas Suitable for Conservation" are areas where alterations through various forms and levels of human activities can be accommodated without significant adverse impact upon the inherent characteristics and attributes of the area, if appropriate management practices are followed.

(c) "Critical Areas Suitable for Utilization" are areas where alterations through human activity can be accommodated and encouraged, although there is potential for significant multi-jurisdictional, environmental, or fiscal impacts, which should be given consideration. Areas which are desirable for some predetermined use and should be maintained in their present state to prevent irreversible commitment of the site or its resources are also included in this type of area.

The intent of the three critical area types is to delineate the nature of the land use or uses which would be most appropriate in a specific critical area. The recommendation also includes an assessment of the particular types of land uses that might be compatible with a designated critical area and adjacent buffer areas.

An important part of the recommendation consists of the proposal of management techniques, to ensure that the future use or development of the area will be consistent with its attributes. Recommended management techniques may be carried out by local, state, or federal government, or by private parties. The sources of authority for managing a designated critical area include, but are not limited to, the following:

(a) Local planning and land use regulations: including zoning, subdivision, related health, sanitation, environmental, housing, and other regulations;

(b) Local acquisition, local tax incentives, or management of property owned by local government;

(c) State regulatory programs, such as those for the management of state wetlands, floodplains, water quality, air quality, and transportation;

(d) State acquisition, state tax incentives, or state management of state-owned land;

(e) Federal acquisition or federal management of federally-owned land; and

(f) Management by private citizens or organizations.

Table IV-1 lists the sources of authority that are available at the state and local level to manage those State Critical Areas that will be considered Geographic Areas of Particular Concern in the Coastal Zone Management Program. Chapter VIII contains a discussion of the Critical Areas Program, and the relationship of the DSP intervention authority to this Program (see pages 370 through 375).

Table IV-1
Geographic Areas of Particular Concern - Management Authorities

Type of Area	State Management Authorites	Local Management Authorities*
Resource Protection Areas		
Vegetated Tidal Wetlands	State Wetlands Permit Program; State Acquisition	Comprehensive County Plans
Upland Natural Areas (Includes Non-tidal Wetlands and Prime Recreation Areas)	Watershed Permit Program; State Acquisition; Maryland Environmental Trust Programs; CZM Act Amendments Implementation (Increased Public Access Grants Provision)	County Water and Sewerage Plans County Solid Waste Disposal Plans Subdivision Regulations
Productive Agricultural Land	Maryland Agricultural Preservation Foundation	Plat Maps
Archeological and Historic Sites	Maryland Historical Trust	Zoning Ordinances
Aquatic Resource Areas	State Water Quality Program; State Wetlands Permit Program; State Boating Regulations; State Sedimentation Control Program	Zoning Maps Historic Zoning
Hazard Prone Areas		Building Codes
High-risk Shore Erosion Areas	HUD-Flood Insurance Program; State Shore Erosion Loan Fund; State Wetlands Permit Program	Sediment Control Ordinances
Flood Hazard Areas	Watershed Permit Program; HUD-Flood Insurance Program; Flood Control-Watershed Management Act of 1975 Implementation	Sanitary Codes Land Acquisition Property Taxes
Developmental Critical Areas		
Facility Siting Power Plant Sites OCS Related Facilities Heavy Industry Sites Large-scale Residential Projects Large-scale Marinas	Power Plant Siting Program; Coastal Facilities Review Act Implementation; State Air & Water Quality Programs; Coastal Energy Impact Program, Maryland Industrial Land Act; State Wetlands Permit Program	Specific Local Laws Relating to Wetlands, Flood Plains, Oil Refineries, Recreation Facilities, etc.
Ports	Maryland Port Administration (Transportation Article, Subtitle 5); State Wetlands Permit Program	
Mineral Extraction Areas	Surface Mining Act of 1975 Implementation	

*The management of designated critical areas is primarily the responsibility of the local governments. The local governments have various authorities or powers which can be used to carry out a management program for a designated Critical Area. This list of local authorities can be used in any combination to implement a Critical Area designation of any type of area listed.

Recommendation Review

Upon receiving recommendations of critical areas from the local governments, DSP will distribute them for review and comment to the Coastal Zone Unit, as well as to other units of state and federal government, local governments, and interested citizens and organizations. During the review period, the Coastal Zone Unit or any other agency may recommend additional areas. The local governments will have an opportunity to review all proposed critical areas prior to the final designations by DSP.

Formal Designation

After consideration of the comments received on the proposed designations, DSP will formally designate Areas of Critical State Concern. Upon formal designation, the local governments will incorporate the critical areas into local plans and implement the designations where local responsibilities are involved.

If an activity is proposed that is incompatible with a Critical Area designation, DSP will intervene to ensure compliance with the management plan for the area. The Department of State Planning has adopted standards of intervention (see Appendix E). These standards establish a general policy that DSP will not intervene in critical area proceedings if the local government has adopted and is implementing a management plan for the area, consistent with the inherent characteristics which supported its designation.

The designation of Areas of Critical State Concern is an on-going process. The initial set of designations will be made in the Summer of 1978. The process will then take place on an annual basis beginning on July 1, 1979. This is a recurring process, and information on the coastal zone areas discussed in this chapter will be provided to the local governments as it becomes available for future critical area recommendations.

Geographic Areas of Particular Concern And State Critical Areas

In general, areas designated as State Critical Areas located within the coastal zone will become Geographic Areas of Particular Concern under the Coastal Zone Management Program. The majority of the GAPC designations will be located in the Area of Focus of the Coastal Zone Management Program, where all designated State Critical Areas will become Geographic Areas of Particular Concern. State Critical Areas located outside the area of focus will be considered for GAPC designation on a case-by-case basis. These would mainly consist of major facility sites and other areas designated as suitable for utilization (see discussion on Developmental Critical Areas). Another example of a State Critical Area located outside the area of focus which may become a GAPC would be a non-tidal marsh area located at the headwaters of a tributary to the Chesapeake Bay.

The designation of State Critical Areas will be a continuing process rather than a one-time effort. The designation of the initial set of State Critical Areas has not yet been completed. Formal recognition of State Critical Areas as Geographic Areas of Particular concern will, therefore, take place on an annual basis. Beginning with the first year after approval of this program, designated State Critical Areas in the area of focus and other selected areas (as discussed above) will be submitted to the Office of Coastal Zone Managemnet as a modification or an amendment to the Maryland Coastal Zone Management Program. Approval of this modification or amendment will take place in accordance with NOAA regulations (15CFR 923).

"In a designated State Critical Area that also becomes a GAPC, the specifics of the mangement plan developed for the area will become part of the Coastal Zone Management Program. This will mean that federal agencies, state agencies and others will have to comply with the management plan, as well as the overall objectives and policies of the Coastal Zone Program, in order to be consistent with the Program. In other words, the GAPC designation provides additional criteria against which to determine consistency, including federal consistency with the Program."

Three types of areas will be considered for designation as Geographic Areas of Particular Concern: (1) Resource Protection Areas, (2) Hazard Prone Areas, and (3) Developmental Critical Areas.

Resource Protection Areas

Resource Protection Areas are those coastal "areas of particular concern" containing resources of biological, recreational, aesthetic, scientific, historical or cultural importance. Specific areas within this category will be identified, and will be suggested to the local governments, for their consideration in preparing recommendations of State Critical Areas suitable for preservation or, in some cases, conservation. Resource Protection Areas include vegetated tidal wetlands, upland natural areas, prime recreational areas, productive agricultural land, areas of historic and archeological importance, and aquatic resource areas.

1. Vegetated Tidal Wetlands-as noted above, all vegetated tidal wetlands are considered a generic class of Geographic Areas of Particular Concern. It is recognized, however, that not all wetlands are of equal value. Some areas, due to significant natural value, warrant special attention which can be achieved through State Critical Area designation. To assure protection of these areas, some may be suggested for State or local acquisition.

   To aid the State in its wetlands management activities, the Coastal Zone Unit has undertaken a study to update, refine, and expand information obtained in a preliminary survey of the State's wetland areas in 1968. Work in progress includes the mapping of vegetation in the tidal wetlands, an ecological value assessment of each vegetation type, a vegetation productivity study, and an information summary that describes the extent in acres of vegetation types for each major watershed, county, and the State as a whole. The results of this study will be used by the Wetlands Pemit Section. It will also assist in determining which wetlands have unique, inherent natural value and thus deserve designation as state critical areas. The study is scheduled for completion in early 1978.

2. Upland Natural Areas

These areas will be suggested to local governments for recommendation as State Critical Areas suitable for conservation, or in some cases, preservation. To assist the local governments and DSP in identifying those upland natural areas within the coastal zone that are of critical State concern, the Coastal Zone Unit inventoried and field-checked approximately 700 sites. The areas investigated included non-tidal wetland areas greater than five acres in size, and forested areas primarily unaffected by human activities. Criteria were developed to characterize these areas, such as size, site type, vegetation cover, presence of unique, rare, or endangered plant and animal species, diversity of wildlife habitat, role as an aquatic buffer, and visual aesthetics. The Eastern Shore counties were field-checked during the summer of 1975 and the Western Shore counties were field-checked the summer of 1976. The data obtained has been computerized, and is available for individual sites.

The Coastal Zone Unit is presently evaluating the sites based on factors such as inherent natural value, or potential use for wildlife management, recreation, hunting, commercial forestry, scientific research, and education. Based on this evaluation, the highest priority areas will be those suggested to the local governments for recommendations as State Critical Areas.

3. Prime Recreation Areas

There are existing state and local programs, such as the State Program Open Space, to acquire and maintain areas for recreational purposes. To supplement the efforts of existing programs, the Coastal Zone Unit, through its Upland Natural Areas Study, will evaluate a natural area's potential for recreational purposes. Thus, some of the upland natural areas may be suggested for recommendation as State Critical Areas to be used for recreational public access to the Chesapeake Bay.

In addition, a part of the Maryland Outdoor Recreation and Open Space Plan identified potential outdoor recreation sites in the State. Some of these sites may be recommended for designation as State Critical Areas. Those located on tidal waters will become Geographic Areas of Particular Concern.

4. Productive Agricultural Land

Because the Maryland General Assembly has declared it state policy to preserve agricultural land, areas of productive agricultural land may be recommended by local governments for designation as State Critical Areas suitable for conservation. Should areas of productive agricultural land in the coastal zone be identified by either the Department of Agriculture or local governments, the Coastal Zone Unit will support the recommendation of State Critical Area designation for such areas. Any agricultural land within the coastal counties that is designated as a State Critical Area will be considered a Geographic Area of Particular Concern in the Coastal Zone Management Program.

5. Areas of Historical and Archeological Importance

These areas will be suggested for recommendation as State Critical Areas suitable for preservation or conservation. The activities of the Maryland Historic Trust fulfill the federal Coastal Zone Management Act requirement that areas of historical significance be identified in the coastal zone. The Coastal Zone Unit will support the recommendation of historic sites in the coastal zone for designation as State Critical Areas.

To assist in identifying important archeological sites in the coastal zone, the Coastal Zone Unit has undertaken a study designed (a) to compile available information of prehistoric occupation and use of Maryland's coastal zone, and (b) to assess the importance of environmental factors in determining areas likely to contain archeological sites. Sites that have been identified during the course of the study will be mapped. Sites identified within the area of focus will be suggested for recommendation as State Critical Areas. If designated, these will become GAPC's.

6. Aquatic Resource Areas

The Coastal Zone Unit is identifying areas within the aquatic portions of Maryland's coastal zone which contribute significantly to water dependent wildlife, fish and shellfish. These areas provide suitable habitat for these species during some or all phases of the species' life history. Oyster bars, marshes, and the range of rare and endangered species are examples of these areas. Some areas may be used only on a seasonal basis while others are used year-round. Also under consideration are areas which may be suitable for the development of a fishery resource in a particular area.

Identification of these areas is made with existing information such as sport surveys, commerical catch statistics, interviews, and environmental reports. Maps are being developed from this review, showing the location of those areas within Maryland's aquatic coastal ecosystem which provide the greatest contribution to the living aquatic resource.

The identified aquatic resource areas will be reviewed to determine which areas are most significant. These will then be suggested to the local governments and the DSP for recommendation as State Critical Areas.

As a result of the Aquatic Resource Areas Study, information on certain finfish and shellfish resource areas has been compiled into an aquatic resource handbook. The handbook has been provided to planning and licensing agencies as a basis for the initial evaluation of proposed activities within the coastal zone.

Hazard Prone Areas

Hazard Prone Areas, the second category of Geographic Areas of Particular Concern, are defined as areas which are unsuitable for development due to the danger of shore erosion, flooding, or other incompatible physical characteristics. Specific areas identified within this category will be suggested to the local governments, for their consideration in preparing recommendations of State Critical Areas suitable for preservation or conservation. Examples of Hazard Prone Areas include high risk shore erosion areas, flood plains, steep slopes, and high water table areas.

The two major areas of concern to the Coastal Zone Management Program in this category are areas of severe shoreline erosion, and flood hazard areas. In addition, other areas where there is known to be a danger in development due to incompatible physical characteristics may be suggested to local governments for recommendation as State Critical Areas.

1. High Risk Shore Erosion Areas

These areas will be suggested for recommendation as State Critical Areas suitable for conservation or, in some cases, preservation. To assist the local governments and DSP in identifying shore erosion areas of critical state concern, the Coastal Zone Unit has completed a Shore Erosion Mapping Study and an inventory of existing shore erosion control structures.

The products of the shore erosion mapping study are particularly useful in identifying areas of severe shoreline erosion. These consist of (a) a series of maps depicting the historic shorelines of 1845 and 1942 as well as the shoreline depicted on the particular quadrangle sheet which may vary from 1942 to 1967, and (b) a second series of quandrangle maps which depict historic shore erosion rates calculated from the historic shorelines shown on the first series of maps.

2. Flood Hazard Areas

Flood Hazard areas will be suggested as State Critical Areas suitable for conservation. The primary responsiblity for identifying flood hazard areas lies with the Water Resources Administration of the Department of Natural Resources. The State Flood Control-Watershed Management Act requires that rules and regulations be developed governing the activities which occur in those areas. The Coastal Zone Unit's efforts will concentrate on determining the environmental characteristics of these areas, to supplement the efforts of the Water Resources Administration. When the 100-year flood plain areas have been identified, the Coastal Zone Unit will concentrate on identifying those which are most critical from a flood hazard standpoint. These areas will then be suggested for critical area recommendation by local governments.

Developmental Critical Areas

Developmental Critical Areas, the third category of Geographic Areas of Particular Concern, are defined as (1) areas within Maryland's coastal zone that are identified as suitable for accepting various types of major facilities, and (2) areas where there is potential for expansion of an existing facility. The types of major facilities under consideration include Outer Continental Shelf energy-related facilities, power plants, heavy industry facilities, ports, large-scale residential projects, large-scale marinas, and mineral extraction facilities. Local governments will be notified of specific areas identified within this category for consideration for recommendation as State Critical Areas suitable for utilization.

To assist the local governments and DSP in identifying developmental areas of critical state concern, the Coastal Zone Unit, in conjunction with the Maryland Power Plant Siting Program, has undertaken a study (a) to identify and assess major facility sites in Maryland's coastal zone for the types of major facilities mentioned in the preceding paragraph, and (b) to develop methods for evaluating the social, economic, and environmental impacts of site-specific major facility proposals. The areas identified will be suggested for State Critical Area recommendation.

Areas for Preservation or Restoration

This requirement of the Federal Act is also addressed by the State through its Critical Areas Program. As described in this chapter, areas suitable for preservation will be identified and designated State Critical Areas as part of the Critical Areas Program. Examples of such areas may include specific tidal wetland sites, upland natural areas, or important historic sites. For some areas, such as tidal wetlands, if acquisition of a site is deemed necessary, funds are available for this purpose, e.g., wetlands acquisition fund.

The Maryland Environmental Trust also has the power to acquire property of aesthetic, scenic, or cultural significance for conservation purposes. Its conservation easement program helps to conserve farmland, woodlands, stream corridors, unique or rare natural areas, or other kinds of open space by arranging

non-development agreements with private landowners. The Trust is responsible for easements on 5,730 acres of land, most of it in the coastal zone. Included are three miles and 1,680 acres of Potomac River frontage in Charles County, 1,182 acres on Chesapeake Bay in Kent and Queen Anne's Counties, and 300 acres along tributaries of the Little Choptank River in Dorchester County.

Regarding areas for restoration, the major efforts are directed toward aquatic areas and water quality improvement. Areas will be identified in which water quality conditions should be maintained or improved to protect or restore important aquatic resources habitat.

Priority of Uses in GAPC's

Because the major implementation mechanisms for GAPC's are the State's wetland program and Critical Areas Program, the following disucssion addressed the priorities of uses as they apply to each of these program.

Vegetated Tidal Wetlands

All vegetated portions of tidal wetlands are a generic class of GAPC. Because the Wetlands Act established the State's policy to preserve its tidal wetlands and prevent their destruction, the highest priority is to preserve the integrity of the wetland ecosystem. As discussed previously, activities in tidal wetlands are regulated by a permit and licensing program administered by the Water Resources Administration. Prior to any dredging or filling within tidal wetlands, except as noted below, a State wetlands license, Private wetlands permit, or Notification (and subsequent approval) must be obtained from the State.

The following activities are uses of highest priority in tidal wetlands and do not require a license, permit, or notification to the State, if otherwise permitted by law:

(a) dredging of seafood products by licensed operators;

(b) harvesting of seaweed;

(c) mosquito control and abatement work, including alterations or modifications for mosquito control purposes, as approved by the Maryland Department of Agriculture, (Such work is regulated by the Department of Agriculture to minimize adverse environmental impacts);

(d) improvement of wildlife habitat approved by the Department of Natural Resources;

(e) maintenance of agricultural drainage ditches as approved by the appropriate Soil Conservation District, (Construction of new drainage ditches within State wetlands requires a State wetlands license);

(f) trapping, hunting, fishing and shellfishing;

(g) cultivation and harvesting of shellfish, including such reasonable excavation in Private wetlands as normally necessary in conducting such activities;

(h) cultivation and harvesting of agricultural or horticultural products, including grazing and haying;

(i) construction and maintenance of walkways, foot bridges, duckblinds, docks, boathouses, boat shelters, and other similar structures, provided that these structures are built on pilings, so as to permit the unobstructed flow of the tide and preserve the natural contour of the private wetland;

(j) construction and maintenance of tide gates designed to prevent the encroachment of salt water into agricultural drainage ditches; and

(k) the repair and maintenance of earthen dikes around a single residential dwelling, provided that such work does not involve the extension or increase in dimension of the existing dike.

The following activities are high priority uses in Private wetlands. A property owner must notify the Water Resources Administration in writing prior to commencing any of these types of activities. A determination is then made as to whether or not a permit is required.

(a) Alterations or modifications which are customary and permitted by existing regulations for the conservation of soil, vegetation, water, fish, shellfish, and wildlife, including fur-bearing animals;

(b) Improvements necessary to preserve access to navigable waters, or to protect Private wetlands against erosion; provided that any improvement authorized involving either the dredging or filling of State wetlands may not proceed unless a license for filling or dredging has been issued by the State Board of Public Works; and

(c) Installation and maintenance of underground utilities, provided that the surface of the wetland is restored substantially to its original condition.

Except as noted above, it is unlawful to dredge, fill, remove, or otherwise alter any tidal wetlands without a State wetlands license or a Private wetlands permit. Thus, the following types of activities are considered uses of lowest priority, and are prohibited without a license or permit.

(a) Filling, placement, dumping, or discharging on tidal wetlands of any loam, peat, sand, gravel, soil, or other similar substance; or any trash, garbage, debris, junk, or other polluting substance;

(b) Draining, excavating or dredging tidal wetlands or the removal of any loam, peat, sand, gravel, soil, or other similar substance; and

(c) Performing any act in tidal wetlands in a manner which would destroy the natural vegetation, substantially alter existing patterns of tidal flow, or otherwise alter or permit the alteration of the natural and beneficial character of such wetlands.

Except as specifically defined in the law, a riparian owner is not to be deprived of any right or privilege that he had prior to the passage of the Wetlands Act. In this regard the following guidelines are followed:

(a) Whenever reasonable access can be provided directly from fast land, creation of a channel through vegetated wetlands, filling for access, or extending access inland with artificial channels shall be prohibited.

(b) In those cases where access is to be provided to a subdivision or other multi-home development or community, a centralized boating access channel or pier is preferable to multiple piers or channels. In the case of isolated single family dwellings, a pier from fast land to open water shall normally fulfill the right of reasonable riparian access.

(c) The ownership of land bordering upon tidal waters does not carry with it the automatic right to create channels to extend boat access.

It is the general policy of the State to allow dredging and filling on State or Private wetlands only for water-dependent activities, such as boat facilities, which cannot function in an area away from the shoreline. The filling of State or Private wetlands for the purpose of creating fast land is generally considered contrary to the public interest. Examples, of structures, facilities, and activities that generally are not appropriate uses of tidal wetlands include (but are not limited to) commercial establishments; residential developments; spoil and dump sites; lagoons for sewage and industrial waste; industries and factories; storage areas for boats; and recreational areas requiring filling above tidal level such as athletic fields, parking, and picnic areas.

State Critical Areas

For each designated State Critical Area, guidelines for determining priorities of uses will be included in the management program. Particular types of land uses that are compatible with each critical area will be identified. This will ensure that the future use of each area is consistent with the intent of the critical area designation.

CHAPTER V

LOCAL GOVERNMENT INVOLVEMENT

V. LOCAL GOVERNMENT INVOLVEMENT

Legislative Requirements

Section 303(d) of the federal Coastal Zone Management Act, as amended, requires states 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."

In order to obtain federal approval, a state must demonstrate that:

1) It has developed and adopted a management program for its coastal zone with the opportunity for full participation by relevant federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private.

2) It has coordinated its program with local, area, and interstate plans applicable to areas within the coastal zone.

3) It has established an effective mechanism for continuing consultation and coordination between the management agency and local governments, and with other agencies within the coastal zone, to provide for their full participation in carrying out the purposes of the Coastal Zone Management Act.

4) It has held public hearings in the development of the management program.

Specific procedures for continuing consultation and coordination are also specified in the Act. The management agency is required, before implementing any decision which might conflict with any local zoning ordinance, to consult with the local government whose zoning authority would be affected. The local governments have 30 days to submit comments on a proposed program action. No action is to be taken during that period unless the local government waives its right to comment. If comments are submitted to the management agency (the Coastal Zone Unit) within 30 days by any local government, the management agency:

1) is required to consider the comments;

2) is authorized to hold a public hearing on the comments; and,

3) may not take any action within the 30-day period to implement the management program decision, even if the action is modified on the basis of comments.

Section 308 of the regulation states, "All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency material 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."

Regarding the financing of research and training which may be necessary, Section 310(b) states, "The Secretary may make grants to coastal states to assist such states in carrying out research, studies, and training required with respect to coastal zone management."

Operational Role of Local Governments

This chapter describes the operational role of the local governments in the implementation of Maryland's Coastal Zone Management Program. The procedures for involving local government which were implemented during the development of the program are described in Appendix B.

Local governments are expected to become a significant part of the Program, by conducting their planning, permitting, and other administrative functions in a manner that supports the goals and objectives for coastal zone management. Pass-through fundsare being provided to local governments in order to supplement their present capabilities and to ensure a greater commitment to their coastal management responsibilities.

The role of local government in the Coastal Zone Management Program has six components:

1) Coastal Management Structure for Local Governments

In each of the 17 coastal jurisdictions, elected officials have selected one or more agencies with planning, administrative, or economic development responsibilities, to act as lead agency for the Program. This designated lead agency is the principal contact for coastal management in that jurisdiction, and constitutes a direct link between local government and all state agencies with coastal responsibilities at policy and operation levels. The lead county agency is the recipient of program funding and manpower assistance as it becomes available for the local jurisdiction. The designated lead agencies (or individuals) for each jurisdiction are listed in Appendix B.

The pass-through funds have been made available to the local jurisdictions on the basis of contractual understandings negotiated by the lead agencies and the Coastal Zone Unit. The work funded consists of tasks that the local jurisdictions, with the concurrence of the Coastal Zone Unit, have proposed to accomplish in support of the Program's goals and objectives. In negotiating these agreements, priority is given to activities that assure more compatible local, area-wide, and state plans, programs, management policies, and other joint actions relating to the coastal zone.

The agreements recognize and maintain the traditional land use responsibility of the local governments. They depend on and support local governments' capability to implement the Program within their jurisdiction.

2) Technical Expertise for Local Management of the Coastal Zone

Some measure of expertise related to coastal matters is present in the local jurisdictions. However, where the level of expertise of existing personnel and government services is insufficient to meet coastal management responsibilities, the pass-through funds may be used to acquire full-time technical assistants with the requisite knowledge and experience.

The hiring of a technical assistant strengthens the capability of local governments to support the goals and objectives of the Coastal Zone Management Program through their planning, permitting, and administrative functions. Responsibilities handled by a technical assistant may include (a) representing or providing staff support to the local jurisdiction in project evaluations or program reviews, (b) aiding the local government in reviewing, analyzing, and drafting management plans for State Critical Area recommendations; and (c) identifying coastal problems which may require additional assistance, and providing documentation of these problems to the Coastal Resources Advisory Committee.

The Coastal Zone Unit supports regional coordination and assistance for dealing directly with coastal problems, and area-wide agencies should be considered as sources of technical expertise for local governments.

3) Financial Assistance to Local Coastal Zone Management Problems

If it is determined that additional funding assistance is necessary to solve particular coastal problems, financial assistance may be sought from the CZMP, the Coastal Resources Advisory Committee. Committee assist the Coastal Zone Unit in reviewing all requests for assistance from local governments, as well as from other sources, and in ranking them according to priorities for funding. Generally, highest priority for funding will be given to projects addressing problems which are common to several local governments and which are vital to the effective management of the coastal resources. Projects will be funded by the Coastal Zone Unit according to these priorities, and to the extent funds are available.

4) Involvement in Project Evaluation

The purpose of the CZMP is to improve the efficiency, timeliness, comprehensive scope, and credibility of local, state, and federal decisions on projects proposed for the coastal zone. The mechanism for achieving this is the project evaluation procedure described in Chapter I.

Through its review procedure, the designated lead agency of a local government will identify projects which have potential for serious impacts in the coastal zone, or that come into conflict with Program goals and objectives. Where locally screened projects have the potential for adverse impacts of greater than local concern, the agency may request a project evaluation. This procedure assures a complete and timely consideration of the comprehensive impacts of these projects, by all affected units of government. Local government is not burdened with additional review, delays, or repetition of effort of the other local or regional agencies. Although the Coastal Zone Unit is not a regulatory agency, it will analyze project proposals for consistency with the Program goals and objectives. When an inconsistency is identified, the Coastal Zone Unit will notify the responsible authority for appropriate action.

In addition to assisting local decision makers by providing project evaluations, the Coastal Zone Unit will continue to provide resource inventories and technical analyses. Some of the current resource studies relevant to local planning and decision making include:

A. Maryland Upland Natural Areas Study
B. Archeological Resources Management Study
C. Coastal Use Capability Study
D. Recreational Boating on the Tidal Waters of Maryland
E. Management Alternatives for Disposal Activities in Maryland Waters
F. Shore Erosion Control: A Guide for Waterfront Property Owners
G. Maryland Wetlands Case Maps
H. Historical Shoreline and Erosion Rates Maps
I. Shore Erosion Structures in Maryland: Their Location and Extent
J. Baltimore Metropolitan Coastal Area Study
K. Major Facilities Study

5) Local Participation in State-Wide Coastal Studies

The CZMP provides local governments with a stronger role in setting research and study priorities at the state level, because they will have a voice in future studies conducted by Maryland's Program. Their membership on the Coastal Resources Advisory Committee and their participation on special project steering committees guarantee them the opportunity to participate in setting research priorities and levels of funding, and in selecting contractors to undertake studies for the Program. Several local governments have already participated in this way on the Major Facilities Study.

6) Local Involvement in State Coastal Policy

The mayors of Baltimore and Ocean City, the executives and commissioners of the sixteen coastal counties, or their designees, are members of the Coastal Resources Advisory Committee. The Committee's present function is to advise the Secretary of Natural Resources on policy aspects of the Coastal Zone Management Program for Maryland. After federal approval of the Program, this body will provide a forum for the local government representatives, who will:

a. Present local concerns on state-wide actions prior to policy decisions. Such actions will include:

i. review of Maryland's program grant applications on a yearly basis before submission to the Department of Commerce, National Oceanic and Atmospheric Administration;

ii. participation in the setting of priorities for the Coastal Energy Impact Program and other funding programs available to states under the 1976 Amendments to the Act.

b. Ensure that the other participants of the Program fully recognize and consider local management operations, priorities, problems, and plans. The following subjects have been identified by local jurisdictions during program development as candidates for consideration by the Committee:

1. Federal Water Pollution Control Act programs administered in the State;

2. The Maryland Flood Plain Insurance Program;

3. The Federal Air Quality Program;

4. Federal and State dredging and disposal projects;

5. State park planning projects.

c. Ensure that changing priorities and programs at the local level are compatible with and reflected by those of other participants in the Program.

The Program's structure encourages local governments to initiate new management procedures, to modify existing programs, to update plans, and to monitor or enforce their coastal activities in a manner that supports the Program's goals and objectives. The method for implementing and operating this structure is described in Chapter I.

In addition, the Baltimore Metropolitan Coastal Area Study described below is a prime example of a cooperative effort with local governments to enhance State program with additional management mechanisms at the level.

The Baltimore Metropolitan Coastal Area Study - A Local-Regional Response to CZM Program Development

Maryland's pilot project for coordinating local government and regional involvement in coastal resource management is the Baltimore Metropolitan Coastal Area Study. This study was funded by a demonstration grant from the Department of Housing and Urban Development (HUD) and is proceeding with support from the Office of Coastal Zone Management (OCZM). The purpose of the demonstration project was to define the relationship between comprehensive land use planning activities carried out by the local jurisdictions and the Regional Planning Council (RPC), and the concepts of coastal zone management developed by the State under the Coastal Zone Management Act of 1972. The Study serves as a means to integrate objectives of HUD land use planning and Coastal Zone Management into local comprehensive planning activities and the Regional General Development Plan, and as a means to implement coastal zone management goals and objectives into local governments day-to-day activities such as planning, permitting, licensing, capital programming, and budgeting. Finally, the study identified coastal zone management roles and responsibilities appropriate to each member of the Regional Planning Council and State government.

The Baltimore Metropolitan Coastal Area Study outlines the process and issues that were addressed during program development for the Baltimore region, as well as issues that must continue to be evaluated as part of program implementation through the networking process. The Study, then, serves as an example of approach that local governments and a regional planning authority (the Baltimore Regional Planning Council) can use in conjunction with State agencies to evaluate, discuss, and resolve coastal issues of local and regional concern.

To accomplish the study, the Energy and Coastal Zone Administration drafted a memorandum of understanding with the Regional Planning Council. The memorandum stated that the Energy and Coastal Zone Administration and the RPC agreed to work together, in cooperation with Baltimore City and Anne Arundel, Baltimore, and Harford Counties, under a Unified Work Program to develop and coordinate all activities as required for HUD land use planning and CZM program development in the coastal area of the Baltimore Metropolitan Region.

To carry out the joint work program, the following committees were formed to perform, oversee, review, and approve the end products of the Study:

Task Force

The Task Force is an interagency group of technical personnel, funded with HUD and OCZM monies, and other personnel from various State agencies with a direct and continuing interest in the information assembled. This committee performs tasks specified in the work program and reports to the Technical Committee. Membership of the Task Force includes representatives from:

Anne Arundel County
Baltimore County
Baltimore City
Harford County
Regional Planning Council Staff
Energy and Coastal Zone Administration
Maryland Department of Transportation
Maryland Port Administration

Technical Committee

The Technical Committee is also an interagency group, which prepared the original work program and memorandum of understanding, and continuously commented upon and, when necessary, modified the work program. Members of the committee formally review the results of the Task Force's work, and provide commentary from their own agency's perspective. The Committee is responsible for integrating elements of Coastal Zone Management Program development, HUD 701 Planning, and 208 Water Quality Planning into the Study.

The Committee also serves as a forum for State, regional, and local interests to resolve problems regarding use of baseline information in the Work Program, and to communicate information to government agencies, the Advisory Committee, and the public. At completion of the Study, the Technical Committee will be responsible for overseeing the process of endorsement. Membership of the Technical Committee includes representatives from:

Anne Arundel County
Baltimore County
Baltimore City
Harford County
Maryland Department of Health and Mental Hygiene
Maryland Department of Transportation
Maryland Port Administration
Maryland Department of State Planning
Maryland Department of Economic and Community Development
Energy and Coastal Zone Administration
Regional Planning Council Staff

Coastal Zone Advisory Committee to the Regional Planning Council

The Coastal Zone Advisory Committee consists of members from local government, State government, academic institutions, private business, and appointed public participants. Federal agencies participate as observers. The Advisory Committee's role is to review and comment on documents prepared by the Technical Committee, and to provide recommendations to the RPC on coastal policy and related intergovernmental issues. The Advisory Committee wil also make recommendations to the RPC regarding the endorsement of the regional coastal zone Study.

In addition to the committees, the local governments in the region have established a coastal management structure in their planning offices. They have hired technical personnel to assist State personnel with program development, identified local coastal problems, and assisted in development of technical methods for management boundary determination, project evaluation, problem area determination, and public participation.

The Study Process

The course of action adopted by the Task Force and the supervisory committees for the overall study consists of three steps. First, coastal problems are described, recommended solutions are set forth, and commitments are made to analyze the proposed solutions. Second, the governments and agencies of the coastal area review the recommendations for endorsement. Third, a follow-up report is prepared on the outcome of the recommendations and the new commitments of the study participants to coastal zone management.

The first step of this process has been accomplished in the report "Baltimore

Metropolitan Coastal Area Study -- An Agenda for Action." It contains a realistic assessment of what should be done within the Baltimore metropolitan coastal area to manage coastal related resources and control the use of land. It is not a 'plan', but rather a set of recommendations on actions to be taken by the participants in coastal decision-making -- citizens, local governments, regional groups, and State government.

The first element of the Study is the delineation of the planning boundary. This process included the identification of issues of concern within the coastal area. Both general issues, such as the economic vitality of the Port, and site-specific issues, such as the revitalization of Fells Point, were included. The mapping of natural and economic features relevant to boundary determination and the examination of existing shoreline-related land and water activities led to a determination of a boundary by each jurisdiction.

In Anne Arundel County, the study area consists of the tidal rivers in the County and their entire watersheds up to the head of tide. The study area also includes the headwaters of the Severn River. This headwater area was included because it is a fish spawning area and an undeveloped natural area containing rare plants. In Baltimore and Harford Counties, the study area consists of the coastal plain. It includes the tidal rivers and their entire watersheds up to the head of tide. The study area in Baltimore City contains the shoreline, all land involved in port-related industrial activity, all marine terminals, all land recreation areas with shoreline access, and the adjacent residential communities of Fells Point, Brooklyn, South Baltimore, and Cherry Hill. The study areas in the four jurisdictions form a continuous boundary.

The second Study element is a framework for understanding the problems of the coastal area. It consists of a set of management concerns (e.g., the decline in the ability of coastal waters to perform their natural functions) and a list of specific geographic areas where these concerns are evident. With this problem framework as a guide, specific goals and objectives regarding these concerns are applied.

The third element is the heart of the Study. It contains a discussion of each problem area in the coastal zone and presents recommendations for its management. The first section, "The Quality of Our Waters", deals with such problem areas as water quality, shellfish and finfish resources, recreational boating, and commercial boating.

Water Quality

The region's coastal waters have been affected by impacts from such pollution sources as industrial wastes, failing sewage treatment plants and collection systems, agricultural runoff and sedimentation, urban stormwater runoff, and septic system failures.

In addition to identifying specific areas where municipal treatment facilities should be planned and constructed, study recommendations call for the agencies

planning facilities to investigate the feasibility of reducing sewage flows and to examine alternatives to central sewerage systems when studying areas containing failing septic systems. Also proposed are improved means of inspection and control of sewerage facility construction and operation, and a series of steps to provide for stricter control of runoff and better management of sediment control programs.

Shellfish and Finfish Resources

Findings focus on the variety of techniques and participants involved in shellfish/finfish resource management, the influence of land and water activities on the Bay's ability to support a productive fishery, and the lack of data with which to predict fishery production trends. Study recommendations call for establishment of a fishery management and monitoring network to be sponsored cooperatively by Maryland and Virginia, and the development of regional guidelines that ensure consideration of fishery management and production in coastal land use decisions.

Recreational Boating

Increasing demand for recreational boating opportunities has led to the intensified use of many regional tributaries, and an increase in shoreline deterioration, boating accidents, and boater complaints. Boating impacts (e.g., fuel leakage, damage to aquatic grasses, wildlife disturbance, disposal of raw sewage) are most significant in shallow, enclosed waters, areas of poor water quality, and areas of intense use. Problems of congestion and high accident rates are evident in nine of the region's ten tidal rivers. To solve these problems, more information is needed regarding the reasons for boating conflicts, such as information relating to mooring areas and site specific congestion problems.

Full realization of the region's recreational boating potential is hampered by inadequate access to the water, by lack of sufficient shoreline facilities, by physical obstructions, by restricted waters, and by conflicts with commercial boating (See Chapter III).

Study recommendations regarding these problems identify areas where recreational boating facilities could be provided, and demonstrate the need for improved licensing and safety regulations, the necessity to eliminate disposal of untreated waste from boats, and the need to increase our practical understanding of boating congestion and water use conflicts throughout the region.

Commerical Boating

In light of the frequency of major oil spills in coastal areas throughout the country, the potential of such an occurrence in Chesapeake Bay is a major concern. The physical characteristics and sensitivity of this estuary would indicate that potentially adverse impacts would be economically and ecologically substantial. While there are many chemical and petroleum-related products stored, manufactured, or transported on or near the Bay, oil is of particular concern because its impact on aquatic life is direct and immediate. The key Study recommendation calls for an oil spill risk analysis focusing on oil-related facilities which handle crude products.

The second section, "The Land/Water Edge", covers such areas as the Port of Baltimore, water-related employment centers, spoil disposal, wetlands, marinas, public access, and parkland.

The Port of Baltimore

Key concerns in the management of the Port are the limited number of feasible sites for terminal expansion, the necessity of channel improvements and associated spoil disposal sites necessary for the Port to maintain its competitive position, the type of terminal expansion required, and the long-term question of balancing economic vitality and environmental integrity. Study recommendations call for means to ensure a significant voice for the Maryland Port Administration in the use of land adjacent to deep draft channels, a regular maintenance dredging program, construction of the Hart and Miller Island spoil disposal facility, the construction of new terminal capacity, the conversion of certain facilities from break-bulk to container uses, and timely and consistent Federal and State action on the various permits required for Port improvements.

Water-Related Employment Centers

Given the limited amount of water-accessible land where significant employment levels can be generated, the problem of providing jobs and taxes with the least negative impact on coastal resources is a central concern. There is little water-dependent employment within the coastal zone, and much of the land with access to primary channels is now used for storage of such materials as ore and refined oil. Storage generates very little employment and constitutes an inefficient use of scarce water-accessible land. Remaining open land with frontage on access channels must be reserved for water-dependent industries and employment or, if they cannot be found, industries that are labor-intensive rather than land-intensive.

Study recommendations deal with such specific land use and transportation needs as the placement of fill at Port Covington to allow expansion of marine terminals, the provision of westbound ramps for the Beltway in the Hawkins Point/Marley Neck area, and the realignment and reconstruction of railyards in the Canton area to improve their operational efficiency. Areas covered include Fells Point, Falls Harbor, Locust Point, Canton, Curtis Bay, Hawkins Point, Thoms Cove, and Anne Arundel, Baltimore, and Harford Counties.

Spoil Disposal

Dredging operations in the region may generate 155 million cubic yards of spoil material over the next twenty years, 140 million cubic yards of which could result from Federal, State, and private dredging activities in Baltimore Harbor and the Chesapeake and Delaware Canal and approaches. Existing and proposed containment sites will not accommodate the maximum expected dredging quantities from the Harbor and related channels. The State must clearly establish its priorities regarding completion of major dredging projects, continuance of open water disposal, construction of State disposal facilities, and accommodation of material generated by the private sector in Baltimore Harbor. To this end, Study recommendations call for investigation of the impacts of and standards for open water disposal, the construction of inner harbor containment sites with a capacity of 20 million cubic yards over the next ten years, the provision of disposal areas for private interests when capacity exceeds the State's needs, and the immediate drafting of a 20-year schedule for selection, construction, and use of disposal areas for dredging projects.

Current management roles and regulatory responsibilities for dredging and disposal operations have led to problems in the following areas: planning and providing legal assurances for the deepening and maintenance of Federal channels

in Baltimore Harbor, responsibility and procedures for open water disposal, responsibility for long-range disposal facility planning, funding, and construction, monitoring of non-Federal dredging projects, and the review of project applications. Study recommendations call for the assignment of management responsibility for reviewing and scheduling disposal alternatives for major projects to a single lead agency, extensive monitoring of non-Federal dredging projects, improved procedures for State-Federal coordination of maintenance dredging and disposal schedules, the development of guidelines for acceptable disposal methods, and an investigation of the possibility of controlling water-oriented land use through regulations of new channel dredging.

Wetlands

Wetlands are a highly productive biomass, a source of nutrients, and an essential factor in the life cycles of economically important fish and shellfish. Physically, they control erosion mechanisms and trap sediment. Hydrologically, they are buffer systems to flood waters. The Maryland Wetlands Act of 1970 seeks to protect and regulates the use of tidal wetland areas. However, the Wetlands Act does not afford State protection of non-tidal wetlands.

Study recommendations call for the protection of both tidal and non-tidal wetlands from the effects of adjacent land use changes, internal alterations, dredge and waste disposal activities. Other recommendations call for a new compensation policy for fast land created from wetlands, increased fines for Wetland Act violators, a mandatory buffer zone around wetlands, and investigations of the feasibility of creation, of new marsh and the cumulative impacts of wetland alterations.

Marinas

Marinas, piers, mooring buoys, and boat launching ramps are among the most common uses of the region's shoreline and adjacent waters. Even so, current demand for launching ramps exceeds supply, and the demand for slips will exceed supply by 1990. The contribution of these facilities to the region's economy and to boating in general is beneficial, but there are are also social and environmental problems associated with them. For instance fuel leakage and spills from marina fuel docks and discharges of sewage and fuel from boats around a marina degrades water quality, and unless the marina is located in an area well-flushed by tidal currents, the damage to water quality may be long-lasting. The region's marinas are regulated at the Federal, State, and local levels, but comprehensive zoning regulations for marinas are in effect only in Anne Arundel County.

Study recommendations point out the need for better understanding of the impacts of marinas, piers, and mooring buoys, implementation of marina zoning regulations, coordination between local, state, and federal agencies evaluating marina applications, studies investigating the effectiveness of boat pollution regulations, and alternative waste disposal methods and facilities at marinas.

Public Access To The Shore

Even though the basic right of public access to all coastal tidelands is firmly grounded in Maryland law, homes, businesses, and industries have often cut off existing or potential public access to the shoreline, eliminated waterfront vantage points, used up available road capacity and off-street parking, and generally precluded the use of the shoreline for recreation. The severity of this lack of public access in an urban region is addressed in recommendations

proposing various methods of permanently securing public access, and calling for multiple, public-oriented uses of major coastal energy and public service facilities.

Parkland

Coastal park, open space, and recreation facilities are vital to the quality of life in the region, and their supply is currently extremely limited. Only eight miles (or less than four percent) of the region's 792-mile shoreline is in public parkland. Present coastal facilities are overused because regional demand for most coastal recreation activities exceeds the supply. Recent increases in State and local parkland acreage and the expansion of recreation facilities within the region have nearly kept pace with new demands, but the past supply deficit remains unfilled. Thus, even though the supply of parkland and recreation facilities has increased, it has not done so at a rate sufficient to meet existing demands.

Study recommendations call for balancing coastal development with adequate open space and recreation, placing acquisition priority on open space with maximum shoreline frontage, establishment of Regional Shoreline Park and Coastal Reserve systems, protection of existing parks from overuse, and increased use of zoning and subdivision controls to promote provision of open space.

The third section, "Inland Coastal Areas", deals with non-water related employment centers, land transportation, archeological and historic preservation, natural areas, agricultural resources, and mineral resources.

Non-Water Related Employment Centers

Certain employment centers not dependent on a shoreline location have impacts on the coastal environment. These centers include the I95-Route 40 corridor in Harford County; the Patapsco Neck, Back River Neck, and Middle River Neck areas of Baltimore County; the Middle Branch area of Baltimore City; and the Marley Neck area of Anne Arundel County. Problems facing these areas are described and guidelines for their future use and development are recommended.

Land Transportation

The transportation stimulus that originally made the region a natural hub for growth has been outpaced by development in many coastal areas, resulting in overutilization and congestion. This is particularly evident on coastal peninsulas where transportation options are naturally limited, in corridors where a single facility is used for both local and regional traffic, in residential communities lacking nearby employment opportunities, and in such bottleneck areas as Annapolis, Parole, and the South River Bridge. Also of concern are a) the coordination between policies and plans for county growth and realistic transportation opportunities, b) the special environmental problems encountered in locating a transportation system in the coastal zone, and c) the necessity for a well-coordinated regional transportation planning process.

Study recommendations call for growth controls on coastal peninsulas where the capacity of new or existing transportation facilities must be protected from overuse, discouragement of residential growth in the Marley Neck/Magothy River area until alternate transportation links are provided, application of traffic management techniques in Annapolis (e.g., staggered work hours, parking restrictions; rather than attempts to accommodate increased traffic flows), and improvement of access to the Mayo Peninsula to allow future growth. Planning

recommendations call for local and regional agencies to coordinate closely their land use policies with the State transportation planning process, special consideration of the environmental impacts of projects in the coastal zone, greater representation of MDOT's Modal Administrations in Baltimore City and Regional Planning Council transportation planning activities, and more emphasis on funding and the efficient use of existing facilities by coastal planning groups.

Archeological and Historic Preservation

The many historic, architectural, and archeological sites within the region's coastal areas provide a significant link with Maryland's past and an important addition to its educational and cultural resources. Efforts toward preservation, however, are hindered by the rapid loss of archeological sites in coastal areas to natural processes, a lack of knowledge about the relative importance and practical benefits of historic properties in the coastal zone, and uncertain coordination and support of preservation among government agencies and private groups. Study recommendations point out the need for consistent criteria in evaluating historic or archeological significance, a survey of archeological resources, an expanded public and agency review procedure, and better public understanding of the implications of preservation.

Natural Areas

There has been substantial destruction of natural areas in the coastal zone. The loss of these areas can be attributed primarily to the expansion of residential development and the resulting development of public and private support services. Significant natural areas have also been lost due to industrial expansion, including sand and gravel mining operations. Thus, urbanization of the coastal zone has resulted in the preemption of natural areas for other land uses. It has also meant an increase in incompatible land uses adjacent to natural areas, thus reducing their value. The cumulative impact of encroaching urban land uses upon natural areas seriously threatens the continuation of their ecological processes. Public benefits from coastal natural areas can only be assured if they are sufficiently protected from incompatible land uses.

Study recommendations call for specific limitations and controls on development near significant or fragile natural areas, the adoption of tree preservation ordinances, and priority acquisition of Natural Environment Areas and Natural Resources Management Areas within the region's coastal zone.

Agricultural Resources

Vast areas of agriculturally productive coastal land have been lost to urban expansion. The number of coastal farms in the region has steadily declined for two decades. The urbanization of the coastal zone has resulted in the location of subdivisions and homes that fragment agricultural land and ownership patterns, making many coastal farm operations less economical. Coastal development and land speculation have rapidly increased the cost of agricultural land and its tax assessment, thus increasing their operating costs and decreasing their economic viability. The retention of coastal agricultural land can help guide the region's future urban growth, reduce costs for public service extensions, provide beneficial use of land that could be hazardous or inappropriate for other types of development, and maintain such future land use options as the extraction of mineral resources.

Study recommendations call for tight zoning restrictions on the use of agriculturally productive land, the establishment of urban-rural demarcation lines to discourage random urbanization, taxing policies that encourage agricultural preservation and discourage land speculation, and subdivision regulations that discourage the reduction of agricultural parcels to an unproductive size.

Mineral Resources

Since most of the region's supply of sand and gravel is obtained from within the coastal zone, the management of this limited resource is of critical concern. Current management problems include the lack of accurate data on the availability of coastal mineral resources, land use conflicts caused by urban expansion into mineral producing areas, the environmental hazards of mining, and inadequate review procedures for mining permits.

Study recommendations focus on the need for better inventories of mineral deposits, the establishment of mineral-resource zones, improved enforcement of local and State mining, grading and sediment control regulations, and the establishment of watercourse buffers for coastal mineral extraction sites.

The final section, "Growth Pressures and Their Management", proposes planning techniques to manage future growth in sensitive coastal areas.

Growth Pressures

Policies for urban coastal zone management should be directed toward a pattern of centralized development for the Baltimore region. This reflects consideration of a number of alternative future regional development patterns, and a comparison of their consequences with the goals established for urban coastal management. The benefits of a centralized development pattern can be found in air, water, and energy resource use, land resource preservation, public facility and infrastructure commitments, and economic and fiscal patterns.

Recommended policies include the establishment of an urban/rural boundary, directing growth to existing communities where support facilities are available, the establishment of a permanent open space system in urban areas.

Local jurisdictions are to prepare "Coastal Guidance Packages" which determine how each policy will be implemented in each jurisdiction. These Coastal Guidance Packages will combine continuing land use planning activities, coastal management goals and objectives, and recommendations of the Study in a framework that includes a description of appropriate land and water uses, management policies and implementation techniques, applicable performance standards and guidelines, and points of consideration that are required for the State's project evaluation and program review process. The Coastal Guidance Packages should be prepared by the local jurisdictions, with technical assistance from Regional Planning Council staff and the Coastal Zone Unit, and should integrate ongoing adequacy-of-facilities studies, 208 planning, facilities planning, and comprehensive land use planning with the coastal zone management program.

State/Local Action on the Findings of the Study

The fourth and final element of the Study describes a three-step procedure for local/state decision-making and action on the findings of the study. The Coastal Zone Management Act requires specific management policies, legislative recommendations, and implementation tools at the conclusion of the program development stage. To this end, this portion of the Study analyzes the local and state role in coastal zone management and describes a process by which

each Study participant will examine the recommendations appropriate to its concerns.

As the first step in the study process, the Baltimore Metropolitan Coastal Area Study can be used as a guide tracing two years' work to coordinate action, to build consensus, and to resolve conflicts in the preservation, conservation, and use of its coastal lands and waters.

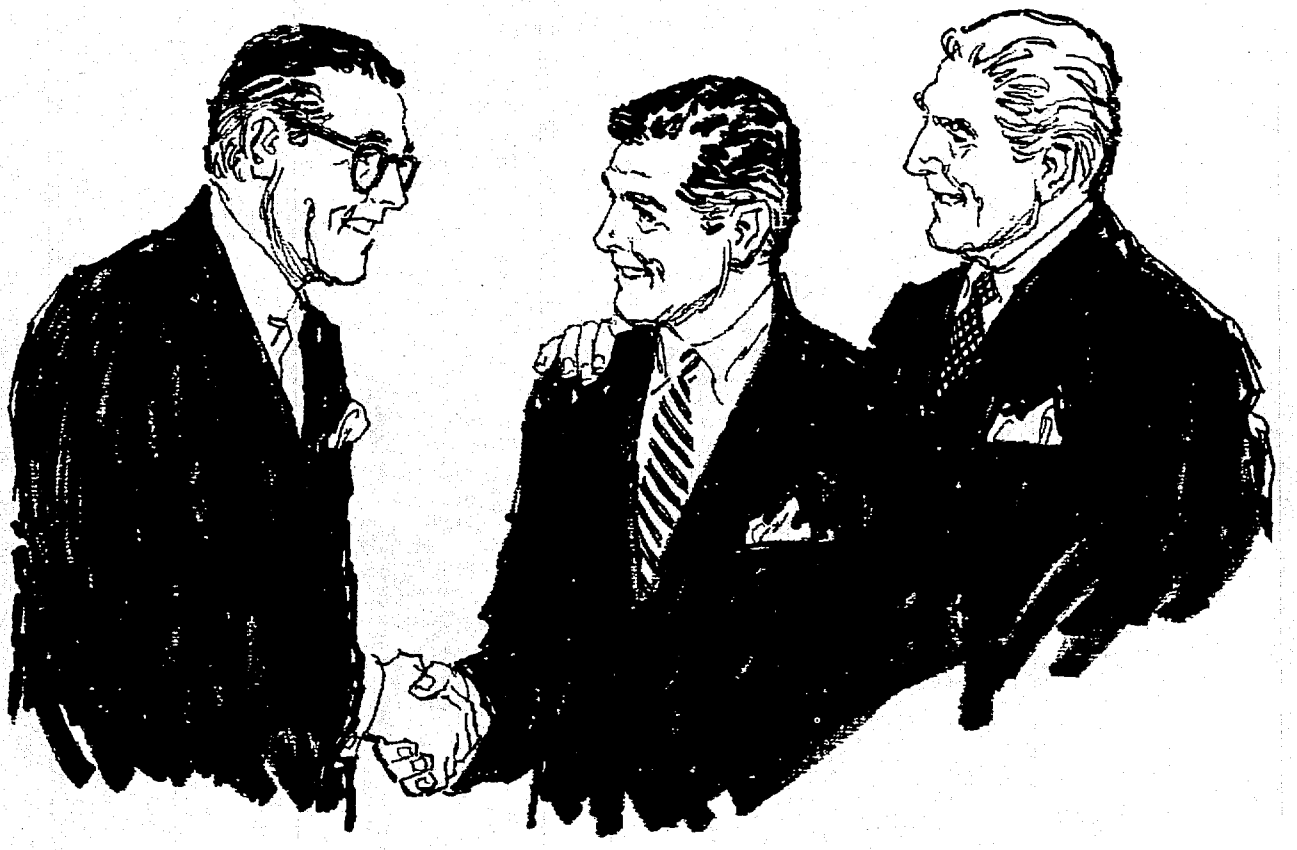
The second step in the overall process is the actual examination of the recommendations by the participating governments and agencies. The Baltimore Metropolitan Coastal Area Study was distributed regionally in March, 1978. From March through Spring 1978, participants in the Study will present the recommendations to policy-making bodies in each local jurisdiction and State agencies. These policy bodies will evaluate the recommendations and endorse those that are consistent with their goals and objectives.

The third step is the preparation and distribution of a report describing the outcome of the Study's recommendations and the new commitments of the study participants to coastal management. The final report will attempt to provide this resolution by describing how each jurisdiction and agency acted on the recommendations directed toward it, and what methods they have developed to carry them out.

The Coastal Zone Unit will incorporate into the State Program recommendations approved by Study participants as a result of this review assuming that they are consistent with the State Program. One of the major recommendations of the Study is that the local governments develop coastal guidance packages in order to fully integrate coastal zone concerns into their land use, zoning, and other relevant management activities. Adoption of the recommendations of the Study is considered to be an effective way to enhance the basis structure provided by the State Program at the time of its approval by the federal government. Incorporation of recommendations will take place during Maryland's first annual recertification of the Program. This recertification will occur one year from the date of approval of the Program by the Federal government. The endorsed recommendations will be placed in one of three substantive portions of the Program -- policies, project evaluation, or program review (see Chapter III). Recommendations that related to State policy, as opposed to local authority, will be added to the policy sections in Chapter III. Recommendations related to methods for evaluating projects will be incorporated into project evalutation procedures for the Baltimore Metropolitan Area. Recommendations relating to program review (studies, cumulative impacts, policy evaluation) will also be incorporated into the Program after review.

CHAPTER VI

STATE & FEDERAL INTERACTION



VI. State - Federal Interactions

The Federal Coastal Zone Management Act and the Maryland Coastal Zone Management Program establish reciprocal state-federal relationships. The State has provided, and will continue to provide full opportunity for federal involvement in the program. When the program is approved, federal agencies will be obligated to carry out their activities in a manner which is consistent, to the maximum extent possible, with the Program.

This chapter explains how (1) the State has consulted with federal agencies in the course of program development, (2) the State will consult with federal agencies in the implementation of the program, (3) the national interest in Maryland's coastal zone has been considered and reflected in the Program's design and content, and (4) the procedures for federal consistency will operate.

I. State/Federal Consultation

The federal Coastal Zone Management Act, in sections 306(b) and 307(c)(1), requires that the views of federal agencies principally affected by the program be adequately considered, and that these federal agencies be granted full opportunity for participation in the development and adoption of the program.

Federal regulations further require that States:

- Contact each relevant federal agency to develop arrangements or understandings regarding that agency's participation during program development;
- Provide for federal agency input on a timely basis;
- Summarize the nature, frequency, and timing of contacts with federal agencies;
- Evaluate federal comments received during program development;
- Indicate the nature of major federal comments provided during program development (I5 CFR 923.51; 42 FR 43571, August 29, 1977).

A. Federal Participation in Maryland's Coastal Zone Management Program Development

Maryland's Coastal Zone Unit has maintained open channels of communication with all interested federal agencies for discussion and resolution of technical and policy matters. These channels have been particularly useful in two-way exchanges during the second and third years of program development. The Coastal Zone Unit has met on numerous occasions with representatives of the Department of Interior to discuss OCS matters, has jointly funded a study of the Baltimore region with the Department of Housing and Urban Development, and has participated in an FEA-funded contract to assess the ability of middle atlantic states to manage the onshore impacts of offshore oil development. The Coastal Zone Unit has also participated in a number of technical studies sponsored by EPA, has worked closely with environmental officers of major defense installations on inventories of coastal resources, has interacted extensively with the Corps of Engineers on such issues as

dredging and spoil disposal assessment and policy, and has participated in Department of Agriculture (SCS) planning programs.

During the second and third years of program development, the Coastal Zone Unit has worked with the Federal Regional Council's ad hoc task force on coastal zone management in a successful effort to increase the participation of federal regional offices in program development. In addition to a day-long meeting on Maryland's Program, the Federal Regional Council has sponsored two general sessions to exchange views with federal agencies, and has inventoried all relevant Region 3 federal offices to determine their preparedness for, and involvement in, the program development process.

The Coastal Zone Unit has emphasized bilateral contact and discussion with interested agencies because it believes that each agency's interests can be understood best and incorporated into the program development process if they are given individual consideration. The results of extensive interchange with each relevant federal agency is catalogued in the worksheets in Appendix F. The worksheets on federal agencies digest each federal agency's interests in Maryland's Program and present the Program's response to those interests. Specifically, the worksheets identify:

- The agency's designated contact;
- Other federal and state agencies which participate in that agency's program;
- Federal property, under the jurisdiction of that agency, which is excluded from the coastal zone;
- The statutory authorities of that agency;
- The nature of coordination between that agency and the Coastal Zone Unit in the development of the program;
- Primary interests of that agency in the Coastal Zone Management Program;
- Permit programs subject to consistency (see also Table VI-5)
- The Coastal Zone Unit response to the federal agency's interpretation of its role in the program;
- Means of program coordination with that agency during program implementation; and
- Excerpts from federal agency letters of comment on the draft Coastal Zone Management Program, and Coastal Zone Unit responses to those comments.

During the first 18 months of program development, contacts were initiated and views exchanged with all interested agencies. Since early in 1976, the Coastal Zone Unit has initiated more formal coordination, according to the following timetable:

Contact Timetable

MARCH, 1976: Letters were sent to designated contacts, providing information on the state program and requesting federal agency views on the topics listed above and summarized in the worksheets. The Coastal Zone Unit expressed its willingness to document the exchange of views between agencies in an agreement on exchange of letters in support of the Coastal Zone Management Program. Responses to this initiative were received during April and May.

MAY, 1976: Federal agencies were mailed draft copies of the third year 305 grant proposal, and the request for proposal for the Major Facilities Study. Comments received from interested agencies contributed to the final version of these documents.

AUGUST, 1976: Quarterly Report on program development was routed to all relevant federal agencies.

SEPTEMBER, 1976: Working papers describing the Coastal Zone Unit's approach to establishing (1) program goals and objectives, (2) coastal zone boundaries, (3) geographic areas of particular concern, and (4) authorities and administrative structure, were routed to federal agencies for review. These documents and responses contributed directly to the design of the 306 program.

NOVEMBER, 1976: Federal agencies were sent copies of the Statement of Work pursuant to the Major Facilities Study, and a paper describing the "Strategy for the Establishment and Implementation of a Coastal Zone Management Program for Maryland." Each federal agency was sent a letter which described the Coastal Zone Unit's understanding of areas of interaction between specific federal programs and an implemented state coastal zone management program. Comments were received during December and January.

MARCH, 1977: Federal agencies were sent the draft of Maryland's Coastal Zone Management Program. Response from interested agencies were received during the spring and summer of 1977. Major comments on the draft program are summarized below. Responses to individual comments are found in the worksheets. Federal comments were addressed or incorporated into this version of the program document to the maximum extent possible.

OCTOBER, 1977: Federal contacts were invited to appoint designees to serve as ex officio members of the program's advisory group, the Coastal Resources Advisory Committee.

DECEMBER, 1977: Coastal Resources Advisory Committee members, including federal designees, received for review the program document to be submitted to NOAA later in the month.

MAY, 1978: Federal agencies receive Draft Environmental Impact Statement from NOAA for review.

MAY, 1978 through program approval: Because intergovernmental coordination is a continuing activity, the Coastal Zone Unit anticipates greater bilateral agency contact in the months leading to program approval. Meetings to discuss and resolve any remaining concerns of federal agencies, and to develop specific agreements on federal responsibilities in complying with federal consistency requirements, will be particularly appropriate during this period.

B. Federal Comments on the Draft Coastal Zone Management Program

Comments on the draft program distributed in March, 1977 were received during the spring and summer. These comments were applied in the revision of the program document. The following were major concerns expressed by federal agencies:

- The goals and objectives were not specific enough to indicate to federal agencies how State and local agencies will act in support of the program, and they were not specific enough to provide guidance to federal agencies seeking to make their actions consistent with the program.

- The program did not sufficiently recognize certain national interests, i.e., national security, the integrity of the Chesapeake Bay, energy (oil and gas) production, and transportation.

- The program did not provide for state over-ride over local decisions. This issue was of concern both to agencies that felt that local governments might exclude certain facilities with strict environmental standards, and to agencies that felt local environmental protection might be too weak.

- The continuing federal role in the program was ill-defined.

- The federal consistency section was not in accord with NOAA regulation.

- The project evaluation process might delay approvals of necessary or desirable projects, or notification might not be provided on a timely basis, thus undermining the process.

In response to these comments and to those of other groups, the following changes and additions have been made:

(1) Policy statements have been added to provide guidance to all participants in the program. With solid foundations in state or federal law, these policies are enforceable.

(2) A section on national interest has been added to this chapter, to identify how the program addresses each national interest identified by the State with the help of federal agenices.

(3) A Chapter on Legal Authorities has been added to demonstrate how the State meets the authorities' requirements of the Coastal Zone Management Act (Chapter VIII).

(4) A section on the continuing federal role in the program has been added to this chapter.

(5) The section on federal consistency has been revised and is now in complete accord with the most up-to-date NOAA regulations.

(6) The project evaluation process has been further delineated in Chapter 1.

C. Continuing Federal Involvement during Program Implementation

The design of the Maryland Coastal Zone Management Program depends upon participation from all levels of government. Federal agencies are defined as participants in the program and are expected to play a continuing role in the following activities:

1. The Coastal Resources Advisory Committee (CRAC)

Federal agency representatives serve as ex officio members of CRAC. The role of CRAC is described in Chapter I. CRAC will provide a forum for federal agencies' participation in the guidance of the program, and will keep federal representatives informed of major issues that arise in program implementation.

2. Project Evaluation and Program Review

Federal agencies are expected to participate in project evaluations and program reviews whenever a project or program involves its regulatory authority, or an area of special interest or expertise in the agency. Participation in project evaluation will provide federal agencies with the opportunity to express views on the national interest in any aspect of a particular project.

3. Federal Consistency

Procedures for federal consistency are described in this chapter. The Coastal Zone Unit and federal agencies may enter into agreements to further specify how these procedures can be simplified or streamlined.

4. Amendments to the Program

a. Goals, Objectives and Policies: As new concerns, issues, or national interests in coastal management are identified, either by the State or by the federal government, it may be necessary to make amendments or modifications to the program. As described in NOAA Regulations (15 CFR 932, Subpart I, 43 FR 4525 - 4529, March 1, 1978) amendment or modification to the program. will require federal review. Minor revisions will not require

formal federal review, but all federal agency contacts will be informed of proposed revisions and will be given the opportunity to respond directly to the Coastal Zone Unit. Federal agencies may propose amendments or revisions to the program whenever they believe that some change in circumstances justifies a change in goals, objectives or policies.

b. Geographic Areas of Particular Concern: The State Critical Areas program calls for ongoing review of critical area suggestions and annual designations. Many State Critical Areas will become Geographic Areas of Particular Concern. Federal agencies, like other interested parties, may suggest areas to local governments. These in turn, will be considered for nomination by the Department of State Planning. Identifying individual State Critical Areas as Geographic Areas of Particular Concern will require amendment or modification of the program, and thus will require federal review as described in NOAA regulations.

II. The National Interest and Uses of Regional Benefit

Federal agencies, responding to Maryland's Draft Coastal Zone Management Program, and in earlier correspondence and contact, cited those specific coastal activities and resources that are considered to be in the National Interest. Regulations issued by the Office of Coastal Zone Management also list activities and resources in which there may be a national interest (15 CFR 923.52).

These expressions of national interest, covering activities such as power plant siting and operation and natural resources such as wetlands, have been and will continue to be considered in the decision-making process by Maryland. The State recognizes the national interest in activities and resources, and neither arbitrarily excludes nor unreasonably restricts them. However, Maryland also recognizes that different national interests may conflict and therefore considers them collectively, so that decisions regarding them will strike a balance between resource use and preservation. As a basis for balanced decision-making, policy statements constituting minimum standards for resource management are set forth in Chapter III. These policy statements, as they relate to national interest, are summarized in Table VI-1 following this discussion.

If, during program implementation, a federal agency disputes Maryland's application of policies as contrary to the national interest, consultation and mediation procedures described under "federal consistency" may be followed.

During program implementation, the State will continue to consider the national interest in its decisions. During implementation, Maryland will take into consideration the following federal policy information, in addition to federal/state consultation:

1. Presidential policy statements and executive orders relating to energy, the environment, commerce, and recreation.

2. Future federal laws and regulations.

3. Future statements from federal agencies regarding national interests.

4. Plans, reports and research studies from federal and interstate groups, (e.g., interstate energy plans, river basin plans).

5. Testimony from federal officials at public hearings.

Uses of Regional Benefit

Table VI-2 on page 315 identifies uses of Maryland's Coastal Zone which should be considered uses of regional benefit. Uses of regional benefit are defined to mean those uses of the coastal zone which will clearly provide a public benefit to the citizens of more than one specific local jurisdiction. The following criteria were used to identify these uses:

(1) There must be a clear relationship between the location of the use and the region served by the use, and

(2) There must be recognition in State or federal statutes, regulations, policy statements and public hearing testimony, or in plans, reports, or research studies by federal, state or interstate groups that it is necessary or desirable to locate such uses within Maryland.

Once identified, the State must demonstrate that these uses will not be arbitrarily restricted by local laws and regulations. The methods to be used by the State to prevent arbitrary restrictions of uses of regional benefit are summarized on Table VI-2 and are discussed in more detail in Chapter VIII, PP. 431-435.

III. Consideration of the National Interest in State and Local Coastal Zone Management Decisions

The various national interests in Maryland's Coastal Zone, as expressed by federal participants have been carefully weighed and considered in the development of this program. This fact is evident in the summary of the

provisions of the program addressing the national interest shown in Tables VI-1 and VI-2. In all cases, where there is an identifiable national interest in a State or local decision, the State will weigh carefully these concerns through the project evaluation process as described on pp. 60-66. The findings and recommendations developed as a result of the project evaluation process will include consideration of the national interest(s) that may be involved.

As noted in the discussion that follows, the framework of the program makes it clear that the program will operate most smoothly with the participation of interested federal agencies.

A. Facilities in Which There may be a National Interest

A project evaluation will be done on any facility proposed for Maryland's coastal zone, in which there is a clear national interest. Generally these facilities will be automatically considered for project evaluation, because they are defined as major facilities. (See Chapter III, Section D). Any federal agency may, however, bring to the Coastal Zone Unit's attention the possibility that there is a national interest in a facility which is not a major facility.

Project evaluation is the means of weighing the various interests and concerns in decision on a coastal facility. Federal agency representatives are invited to participate in project evaluations to present their national interest concerns in a particular facility. The product of the project evaluation process will be both the technical analysis, and the issue analysis necessary for the State to develop a position on a given facility, specifically on whether the permits and approvals necessary for the facility will be granted, denied, or granted with certain conditions.

Within the framework of the evaluation process, the State will attempt to reconcile apparent conflicts between facilities in which there is a clear national interest and any adverse impacts to the State. For an example, use of Coastal Energy Impact Funds to offset potential adverse economic or environmental effects of energy facilities will be explored. The Major Facilities Study will be employed to compare the proposed site with possible alternative sites. Means of reducing or mitigating impact during construction and operation will be examined. Federal agencies will be asked to provide information on the comparative advantages or disadvantages of a particular location within the multi-state region.

The Department of State Planning will give all due consideration to the national interest in the exercise of its intervention authority as described on pp. 434-435.

B. Resources in Which There may be a National Interest

In addition to specific facilities, national interest concerns have been expressed in resources such as wetlands, living resources of the Chesapeake Bay, historic sites, and water and air quality. Again, these interests have been carefully weighed in developing goals, objectives and policies. In addition, the review of regulatory processes and management techniques that will be undertaken as part of the program review process described in Chapter I will provide an opportunity for the consideration of national interest. As in the case with project evaluation process described previously, national interest concerns as expressed by appropriate federal agencies will be considered in developing the State's position on program review issues. Furthermore, several of the programs of which the Coastal Zone Management Program is comprised, e.g., the State's water quality program, involve delegation of authority from the federal agencies. Thus they provide direct mechanisms for ensuring that national interest concerns as expressed by federal agencies are adequately considered.

TABLE VI-1
National Interest Considerations in Maryland's CZMP

COASTAL ACTIVITIES AND RESOURCES IN WHICH THERE MAY BE A NATIONAL INTEREST	SUMMARY OF PROVISIONS OF THE MARYLAND CZMP WHICH ADDRESS NATIONAL INTERESTS
Energy Production and Transmission - OCS development - onshore facilities - power plants - LNG facilities - distribution facilities - deepwater ports See objectives (17),(18),(19),(20),(21), (31),(32),(35) and (42) and also, policies and management procedures under "Appropriate Land and Water Uses: Major Facilities."	- Maryland has recognized that meeting energy needs is essential to sustain the health of the Nation and to improving the Nation's balance of payments status. Decisions on facilities to meet energy needs, however, will be balanced with other, sometimes conflicting economic, environmental and social goals. - The Coastal Energy Impact Program is a means of preventing, amerliorating or mitigating potential adverse environmental, economic and fiscal impacts of energy development. - The State has undertaken a Major Facilities Study to identify suitable energy facility sites on a regional scale, and to provide assistance to local governments, state agencies, and industry in analyzing the suitability of specific sites. - Maryland recognizes that the national public interest in assuring adequate facilities for production of energy resources requires that State and lcoal governmetns promptly and expeditiously assess the impact of those facilities and determine, at the earliest practicable time, whether to grant necessary state and local authorizations. - Criteria for State decisions for each type of energy facility are described in existing State legislation and will be consistent with the objectives for Major Facilities (See Section III-D). Generally, energy projects must meet the following criteria: a) Meets all applicable air, water, noise, and solid waste laws of Maryland; b) Represents optimal location from standpoint of risk to public safety; c) Represents optimal location from standpoint of economic and environmetnal impacts as compared to other locations. - Maryland recognizes that, without adequate planning, the establishment of oil-related facilities in the coastal area may have an immediate impact on the environmental, economic, fiscal, social and cultural well-being for the people residing in the area where these

facilities are established. Therefore, local concerns should be reflected in decisions on location of these facilities, and to that end, county governments should be actively involved in the planning for the coastal areas. If, however, the contemplated extent of oil-related facilities affects environmental, economic, social, and cultural factors beyond the borders of the particular subdivision involved, in addition to involving potential expenditure of State funds in excess of tax revenues derived from the facilities, then the State interest and the national interest become a factor in the consideration of the location of these oil-related facilities.

- It is the State's policy to ensure that adequate electric power is provided on a reasonable schedule, at reasonable costs and with the least possible depreciation of the qulaity of Maryland's environmetn.

- State policy recognizes that the construction of deepwater ports may have certain advantages over conventional ports in helping the State and the Nation meet energy requirements. These advantages may include assured access to the world's total petroleum fleet, reduced economic costs and environmental and safety hazards to harbors and shorelines. Procedures to ensure expeditious reivew of deepwater port applications and to protect the people of the State in the location construction and operation of deep-water prots have, therefore, been established.

- During project evaluations on national interest energy facilities, federal agencies will be given the opportunity to voice national interest concerns. The Department of Natural Resources also will raise national interest issues during porject evaluation, ensure their consideration in project evaluation findings and recommendations and enter the findings and recommendations in appropriate hearing records. The Secretary of DNR will request DSP intervention in support of the findings and recommendations, whenever he deems it necessary.

Employment and Income

- Ecomomic and social stability of coastal communities

See objectives (9),(10),(11),(12),(17),(18),(19),(20),(22),(24),(25), and (32). See also "Appropriate Land and Water Uses: Major Facilities."

- The State is committed to reducing uncertainty, delays and duplication in regulatory decisions in order to reduce the costs involved in complying with federal, State and local environmental standards.

- Maintenance and enhancement of water and air quality and the construction of facilities for these purposes, provides local employment, enhances

ecomomic opportunity and improves the quality of life.

National Defense and Aerospace

- military installations
- defense manufacturing
- aerospace installations

See objectives (17),(18) and (19).
See also policies listed under: "Appropriate Land and Water Uses: Major Facilities"

- Through the project evaluation process, the maintenance and enhancement of viable seafood, agricultural, manufacturing, recreational and other industries will be considered in making resource management decisions.
- Lands owned, in trust, or whose use is otherwise by law subject solely to the discretion of the federal government, are excluded from the Coastal Zone.
- Nothing in the Program arbitrarily excludes or unreasonably restricts militray or aerospace operations.
- In cases where defense manufacturing is a coastal project all policies of the CZMP apply. In instances where national security concerns are deemed to be paramount by federal agencies, federal consistency mediation procedures can be utilized by federal agencies.

Interstate Transportation

- highways
- airports
- navigation
- ports

See objectives (17),(18),(19),(20),(22),(24),(25), and (28).
See also policies and management procedures under "Appropriate Land and Water Uses:

- Commercial Shipping
- Ports
- Land Transportation Networks"

- Maryland is committed to providing a balanced, integrated transportation system serving the movement of persons and goods via air, rail, sea and land, while preserving the unique qualities of the State's historical and natural resources, maintaining fiscal integrity and strengthening the economy.
- Development of private facilities in existing port areas is encouraged in the public interest but may be supplemented by public port facilities. Expenditure of public funds for port construction and operation is based on comprehensive economic and environmental criteria.
- Port facilities are coastal dependent activities that will be promoted in appropriate locations so long as adverse enviornmental impacts are mitigated. Approval of associated activities such as dredging and filling of wetlands is considered in the basis of economic need, environmental impact and mitigation measures.
- Spoil disposal necessary to ensure timely port-related development in the future will be developed, including a permanent rehandling facility within the Baltimore Harbor.
- The State is committed to a strong program of oil pollution control and an effective oil disaster, containment, cleanup and contingency

Production of Food and Fiber

- agriculture

- fishing

- shellfishing harvesting

- forestry

See objectives (2),(3),(6), and (13). Also see policies and management procedures under "Appropriate Land and Water Uses:

- Use of Agricultural Lands
- Use of Forested Lands
- Living Aquatic Resources
- Channelization"

Recreation

- National Seashores

- parks

- forests

- beaches

- public access

See objectives (2),(8),(13), and (22)
See also, "Appropriate Land and Water Uses:

- Recreational Boating
- Use of Beach Areas
- Activities on Tidal Wetlands
- Activities Associated with Provision of Sufficient Recreational Open Space and Natural Areas"

program to prevent or mitigate impacts associated with commercial shipping.

- Highways shall be sited on the basis of comprehensive evaluation, including "no build", of the social, economic, and environmental impacts.

- Easements on agricultural lands are acquired to provide sources of agricultural products, to manage urban expansion, and to maintain open space areas.

- Decisions to convert use of coastal land and waters from agricluture to uses not associated with production of food and fiber must take into account the benefits of agriculture in providing a local source of products for Maryland residents in promoting economic stability and in countering out-migration of local workers.

- While dredging or filling in floodplains or tidal or non-tidal wetlands is generally against the public interest, agricultural drainage is considered for approval when it provides substantial agriclutural benefits, is carried out in ways which minimize environmental damage, and meets specific guidelines.

- Clam and oyster beds are valuable economic and natural resources which will be managed to maintain and enhance a viable shellfish industry.

- State Forest lands are managed to provide a variety of uses to meet public needs in an environmentally acceptable manner.

- The Department of Natural Resources, on the behalf of the State, acquires and manages lands suitable for State parks, scenic preserves, historic monuments, parkways, State recreation areas, forest culture, forest reserves, watershed protection, water conservation, open space, protection, propagation, or management of wildlife resources, and hunting.

- The State carries out a scenic and wild rivers program.

- The State makes funds available to local governments for acquisition and development of outdoor recreational and open space areas.

- The State has developed and is implementing a State Comprehensive Outdoor Recreation Plan which supports increased shoreline access.

- The State provides recreational boating facilities through the Waterways Improvement Program.

- All waters of the State are to be protected for use for water contact recreation as well as other uses.

Historic, Cultural and Archeological Values

- historic sites

- areas of cultural significance

- archeological sites

- Historic areas of Maryland are considered basic assets; and their proper use and preservation are necessary to protect and promote the general welfare of the people of the State.

- Historic sites are preserved through historic district zoning or through acquisition of easements.

See objective (7). See also, policies and management procedures under "Appropriate Land and Water Uses:

- Activities Affecting Coastal Historical, Cultural, and Archeological Resources."

- Historic sites may be placed on the federal or State historic registers to assure consideration of their value in federal and State decisions which may affect them.

- Archeological excavations on private land are discouraged except when overseen and approved by the State Archeologist.

- Archeological resources on State lands are protected by a permit system administered by the Maryland Geological Survey.

Preservation of Life and Property

- flood and storm protection

- shore erosion

- Maryland requires a flood management program for every watershed in the State.

- Projects in coastal tidal and non-tidal flood plains which would create additional flooding upstream or downstream or which would have an adverse impact upon water quality or other environmental factors, are contrary to the public interest.

See objectives (13), (14), (15), and (16). Also see, policies and procedures under "Appropriate Land and Water Uses:

- Activities Occurring in Non-Tidal Wetlands

- Activities Occurring in Coastal Tidal and Non-Tidal Flood Plains

- Activities Occurring in Areas Undergoing Significant Shore Erosion

- Channelization

- Shoreland Activities Generally."

- In general, construction of residential, commercial, or industrial developments is not permitted within the riverine 100-year flood plain of any stream or body of water.

- Shore erosion control measures shall be undertaken in a manner that thas minimum adverse effect upon the ecological, economic, hydrological, aesthetic, historical and recreational values in the area.

- The use of shoreline setbacks and the restriction of development in high-risk erosion areas shall be promoted.

Mineral Resources

- sand and gravel extraction facilities

See objective (21). Also see policies and management procedures under "Appropriate Land and Water Uses: Major Facilities."

- Mineral extraction is a basic industry contributing to the economic well-being of Maryland. However, minimg must be conducted so that adverse environmental effects are minimized. To mine sand and gravel in Maryland, a person must be licensed, obtain a surface mining permit and prepare and carry out a reclamation plan.

- Sequential multiple use of land used for mineral extraction purposes is encouraged.

Regional Sewage Treatment Plants

- Sewage Treatment Plants

See objectives (17),(18),(19),(24), and (25). Also see policies and management procedures under "Appropriate Land and Water Uses: Major Facilities."

- Sewage Treatment Plants are necessary to maintain water quality standards existing water uses.

- Sewage Treatment Plants will not be located in tidal or non-tidal wetlands, in floodplains, or where their effluent will impinge upon harvest of seafood resources, unless no feasible alternative exist.

- Before sewage treatment plants are constructed, county water and sewer plants must be prepared and must be consistent wtih the 208 Plan and population projections for the service area.

Air and Water Quality

See objectives (1),(2),(13),(23),(25),(26), (27), and (33). Also see policies and management procedures under "Appropriate Land and Water Uses:

- Recreational Boating
- Commercial Shipping
- Activities Associated with Living Aquatic Resources
- Ocean Dumping
- Major Facilities"

- Air quality shall be protected, maintained, and, where feasible, improved in the State's coastal zone.

- The quality of the State's tidal waters shall be protected, maintained and improved.

- All discharges into State waters and emissions into the air require permits and must meet standards equal to or more stringent than federal standards.

Wetlands

See objectives (2),(3),(4), and (5). Also see policies and management procedures under "Appropriate Land and Water Uses:

- Activities in Tidal Wetlands
- Activities in Non-Tidal Wetlands"

- The tidal wetlands of the State shall be protected, maintained and where feasible restored.

- Coastal terrestrial areas of significant resource value, particularly non-tidal wetlands, are to be protected.

- Dredging and filling in tidal wetlands and filling or channelization within non-tidal wetlands will be minimized through State and federal permit programs.

- All vegetated tidal wetlands are geographic areas of particular concern.

Barrier Islands

See objectives (8),(14), and (15). Also see policies and management procedures under "Appropriate Land and Water Uses:

- Use of Beach Areas
- Activities in Areas with Significant Shore Erosion
- Activities Associated with the Provision of Sufficient Recreational Open Space and Natural Areas."

- Construction of other than regulated shore erosion control measures are prohibited in beaches of Atlantic barrier islands.
- Assateague Island is protected in its natural condition as a National Seashore and State Park.

Endangered Species

See objectives (2),(3),(4),(5), and (19). Also see policies and management procedures under "Appropriate Land and Water Uses:

- Activities Associated with Living Aquatic Resources
- Activities in Tidal Wetlands
- Activities in Non-tidal
- Use of Forested Lands
- Use of Agricultural Lands
- Activities Associated with Provision of Sufficient Recreational, Open Space and Natural Areas."

- State law prohibits taking, killing, molesting, or distributing species on State or federal threatened rare or endangered species lists.
- A program of habitat protection for endangered and non-game species is required by State law.

Wildlife Refuges

See objectives (2),(3),(4),(5), and (19). Also see policies and management procedures under "Appropriate Land and Water Uses:

- Activities Associated with Living Aquatic Resources
- Activities in Tidal Wetlands
- Activities in Non-tidal Wetlands
- Use of Forested Lands
- Use of Agricultural Lands
- Activities Associated with Provision of Sufficient Recreational, Open Space and Natural Areas."

- The U.S. Fish and Wildlife Service is to be involved in all project evaluations which relate to projects which could affect wildlife refuges.
- Tidal wetlands and terrestrial areas of high wildlife value are to be protected.
- The State operates a system of wildlife preserves and wildlife management areas.

TABLE VI-2

Uses of Regional Benefit in Maryland's CZMP

USES OF REGIONAL BENEFIT	METHODS OF ASSURING THAT UNREASONABLE RESTRICTIONS OR EXCLUSION BY LOCAL LAND AND WATER USE REGULATIONS SHALL NOT OCCUR
1. Electric Generating Facilities	- State authority to select alternative future power plants sites and acquire them without need for local approvals. - State authority to approve or deny utility-owned sites for future electric generating capacity.
2. Transmission Lines	- State authority to approve or deny generator lead routes.
3. Wastewater Treatment Plants	- State approval of county water and sewer plans - State control over all waters of Maryland as related to quality, sanitary and physical conditions. - State approval of all construction projects related to Wastewater Treatment Plants.
4. Recreation	- State disbursement of Program Open Space Funds, including Federal dollars for local and state recreation projects. - State power of eminent domain for recreational land acquisition. - State right to control waters of State for all uses including water-based recreational uses. - State control of beach areas off Atlantic Coast east of dune line.
5. Transportation Facilities	- State disbursement of funds including federal funds for transportation-related projects such as roads, ports, rail, and air ports. - State power of eminent domain for land acquisition for transportation projects. - State establishment of priorities for transportation project planning, and construction.

IV. Federal Consistency

A. Introduction

Maryland's procedures for federal consistency respond to the intent of the Coastal Zone Management Act of 1972, as amended, and as specified in 15 CFR 930 (43 FR 10510, March 13, 1978). The basic consistency requirement of the Act is that federally conducted or supported activities which affect the State's coastal zone be consistent, to the maximum extent practicable, with an approved state management program. Applicants for federal licenses and permits, state or local recipients of federal funding, and federal agencies proposing projects and programs, will be required to determine whether their projects are consistent with the Program. The State generally will be able to prevent actions (with exceptions as explained in this section and regulations) which are not consistent with the Program.

The purpose of the consistency review is to:

-- plan for and manage impacts resulting from federal programs;

-- develop a factual analysis of the effects of a proposed federal action;

-- determine consistency by examining the results of that analysis in the context of the goals, objectives and policies of the Program;

-- screen all federal actions for those with significant potential impact, individually or cummulatively, on coastal resources or activities.

Federal consistency procedures should also provide a vehicle for active federal participation in the Program. Federal agencies should consider involvement in developing and maintaining a consensus on goals, objectives and policies for the coastal zone, and in exercising authorities in a manner that supports the agreed-upon goals and objectives of the Program, as a continuing part of federal participation in the Program.

The basis for determining consistency of federal actions with Maryland's Coastal Zone Management Program will be the goals, objectives and policies of the Program as stated in Chapter III. The goals, objectives and policies of the Program, are submitted for federal approval pursuant to Section 306 of the Act. Derived from extensive public and governmental interaction, these goals, objectives and policies represent a state-wide concensus on coastal management philosophies, and strike a balance among social, economic, and environmental concerns. A consistent action is generally defined as one which supports or furthers the goals, objectives and policies of the Program.

While in all cases the Coastal Zone Unit will have final responsibility for the State's consistency determination or the State's response to federal agency consistency determination, other appropriate state and local agencies will be expected to assist in the review. In routine cases, the Coastal Zone Unit will simply make a decision after being advised by the State and/or local agency which is presently responsible for reviewing the type of action involved. When the federal action involves substantial effects or is controversial, a project evaluation will be carried out to review the proposed action (See Chapter I). If a project evaluation will be carried out, the federal agency (and any other federal agency normally involved in the decision process) will be informed immediately and invited to participate.

Table VI-3 shows those state and local agencies which are likely to be involved in reviews of major federal actions. The Coastal Zone Unit will be responsible for:

- assuring the project evaluation process is carried through in a timely manner;

- answering questions raised by applicants or federal agencies;

- reconciling different points of view on consistency into a unified state response, and

- articulating the final state consistency determination or response.

The product of exhaustive review may be alteration in design and execution of projects and programs. Disagreements arising from this process should lend themselves to administrative resolution. Disagreements which persist to a point at which normal administrative resolution appears unlikely, may be appealed pursuant to NOAA Regulations, Part 930, Subparts G and H, (43 FR 10530 - 10533, March 13, 1978). Whenever beneficial, the Coastal Zone Unit, in consultation with federal participants, may develop guidance through memoranda of agreement for means to conduct or support specific activities in a manner that furthers the goals, objectives and policies of the Program. The current Memorandum of Agreement between the Maryland Department of Natural Resources and the Baltimore District of the U.S. Army Corps of Engineers, which defines the joint processing and evaluation non-routine (major) project applications for Department of Army permits and state permits, is an example of the type of guidance that might be developed.

Initially, federal consistency procedures will apply to all types of projects outlined in this chapter. After consistency procedures are implemented, the Coastal Zone Unit, in consultation with the appropriate federal and state agencies, may wish to narrow the coverage of these procedures. More precise definition of actions subject to consistency may also be handled on an individual basis by memoranda of agreement, after approval and implementation of the Program.

TABLE VI-3

State Agencies Which May Participate in Major Consistency Reviews

agency may participate in consistency review federal project will directly affect

	LOCAL GOVT.	SCD	DOA	DECD	EHA	DSP	MDOT	DNR: WRA	MWA	MFA	MFS	MES	MET	MGS	CPA	E&CZA: CZU	PPSP	EPO
Tidal Wetlands	X	X	X			X		X	X	X						X		
Nontidal Wetlands	X	X	X			X		X	X	X						X		
Upland Natural Areas	X	X	X			X		X	X		X		X		X	X		
Aquatic Resource Areas			X		X	X		X		X						X		
Atlantic Beaches	X	X				X		X		X				X	X	X		
Bay Beaches & Boat Access	X			X	X	X		X		X				X	X	X		
Open Space & Recreation Areas	X					X			X		X		X		X	X		
Forest Land	X					X		X	X		X		X		X	X		
Agricultural Land	X	X	X	X		X		X	X	X	X				X	X		
Historic Sites	X			X		X	X								X	X		
Archaeological Sites	X	X		X		X	X							X	X	X		
Social & Cultural Aspects	X	X	X	X		X									X	X		
Flood Plains	X	X	X			X		X		X				X	X	X		
Erosion Risk Areas	X	X	X			X		X		X				X		X		
Power Plant Sites	X	X	X	X	X	X	X	X	X	X	X			X		X	X	X
Oil or Natural Gas Facility Sites	X	X	X	X	X	X	X	X	X	X	X			X		X		
Heavy Industrial Facilities	X	X	X	X	X	X	X	X	X	X	X					X		
Mineral Extraction Facilities	X	X				X		X	X	X	X			X		X		
Intensive Residential or Commercial Facilities	X	X	X	X	X	X	X	X	X	X	X					X		
Ports	X	X	X	X	X	X	X	X		X						X		
Land Transportation Facilities	X	X	X	X	X	X	X	X	X	X				X		X		
Sewage Treatment Plants	X		X		X	X		X	X	X	X	X		X		X		
Living Resources																X		
Aquatic	X		X	X	X	X		X		X			X	X		X		
Terrestrial	X	X	X			X			X		X		X	X		X		

Agency Key

SCD	Soil Conservation District
DOA	Department of Agriculture
DECD	Department of Economic & Community Development
EHA	Environmental Health Administration
DSP	Department of State Planning
MDOT	Maryland Department of Transportation
DNR	Department of Natural Resources
WRA	Water Resources Administration
MWA	Maryland Wildlife Administration
MFA	Maryland Fisheries Administration
MFS	Maryland Forest Service
MES	Maryland Environmental Service
MET	Maryland Environmental Trust
MGS	Maryland Geological Survey
CPA	Capital Programs Administration
ECZA	Energy & Coastal Zone Administration
CZU	Coastal Zone Unit
PPSP	Power Plant Siting Program
EPO	Energy Policy Office

B. Actions Subject to Consistency

As stated in the federal regulations, federal consistency procedures apply to the following types of federal actions which occur in the coastal zone, or which substantively affect the coastal zone:

a) federal activities, including development projects;

b) identified federal licenses and permits;

c) Outer Continental Shelf activities described in detail in OCS plans.

d) identified federal assistance to state or local governments.

The State reserves the right to review the consistency determination on a federal action occurring outside the coastal zone. For this reason, federal agencies must determine which projects will significantly affect the state's coastal zone. If a project outside the coastal zone will significantly affect the coastal zone, the federal agency must provide the state with a consistency determination.

Table VI-4 summarizes the requirements and procedures that must be applied to each types of federal action. Specifically, the table indicates who makes the consistency decision, who must notify the State, and what the federal agency's responsibilities are.

1. Federal Activities

Federal activities which significantly affect the states coastal zone must be consistent to the maximum extent practicable with the State's program. Maryland will consider an activity consistent to the maximum extent practicable if:

(1) the activity does not inherently conflict with the goals, objectives and policies of the Program, (i.e. potential conflicts can be avoided through proper planning and design); and

(2) of the practicable alternatives available to carry out the activity, the alternative chosen is the most supportive of the goals, objectives and policies of the Program; and

(3) the project will not cause any violation of standards set by Maryland law or regulations cited in the Program; or

(4) the project is clearly necessary in the interest of national security and is carried out in a manner which minimizes conflict with program goals, objectives, and policies.

CZMA Section	307(c)(1) & (2) (Subpart C)	307(c)(3)(A) (Subpart D)	307(c)(3)(B) (Subpart E)	307(d) (Subpart F)
Federal Action	Direct Federal activities including development projects	Federally licensed and permitted activities	Federally licensed and permitted activities described in detail in OCS plans	Federal assistance to State and local governments
Coastal Zone Impact	"Significantly affecting the coastal zone"	"Significantly affecting the coastal zone"	"Significantly affect-the coastal zone"	"Significantly affect-the coastal zone"
Responsibility to notify State agency	Federal agency proposing the action	Applicant for federal license or permit	Person submitting OCS Plan	A-95 Clearinghouse receiving State or local government application for Federal assistance
Notification procedure	Alternatives chosen by Federal agency (subject to NOAA regulations)	Consistency certification	Consistency certification	OMB Circular A-95 notification procedure
Consistency requirement	Consistent to the maximum extent practicable with CZM Program	Consistent with the CZM Program	Consistent with the CZM Program	Consistent with the CZM Program
Consistency determination	Made by Federal agency (Review by State agency)	Made by Applicant with State agency concurrence	Made by Applicant with State Agency concurrence	Made by State agency
Federal agency responsibility following a disagreement	Federal agency not required to disapprove action following State agency disagreement (unless judicially impelled to do so)	Federal agency may not approve license or permit following State agency objection	Federal agency may not approve Federal licenses or permits described in detail in the OCS Plan following State agency objection	Federal agency may not grant assistance following State agency objection
Administrative Conflict resolution	Mediation by the Secretary of Commerce (Subpart G)	Appeal to the Secretary of Commerce by applicant or independent Secretarial review (Subpart H)	Appeal to the Secretary of Commerce by person or independent Secretarial review (Subpart H)	Appeal to the Secretary of Commerce by applicant agency or independent Secretarial review (Subpart H)

TABLE VI-4
FEDERAL CONSISTENCY MATRIX DIAGRAM

As stated above, the scope of this section and criteria for decisions may be refined and developed through state/federal consultation, then set out in memoranda of agreement. Except for such written agreements, these provisions apply to all federal activities that directly affect the State's coastal zone. Federal regulations 15 CFR 930.21 defined "significantly affecting" to mean causing significant:

- changes in the manner in which waters, lands, or other coastal zone resources are used;

- limitations on the range of available uses of coastal zone resources, or

- changes in the quality of coastal resources.

Maryland offers the following list of the types of activities which will, generally, directly affect its coastal zone and which thus require a consistency determination and notification to the State. This list is intended to guide federal agencies, and is subject to refinement and modification based on federal - state consultation during the program review process.

Actions on Excluded Federal Lands (see Chapter II and Appendix A for identification of Excluded Federal Lands):

- any activity which would cause a discharge as defined by Art. NR, Section 8-1401 air pollution as defined by Art. 43, section 69 1(a), involve a hazardous substance as defined by Art. NR, section 8-1413. 2(a)(2), or exceed noise standards pursuant to Art. 43 section 825, of the Annotated Code of Maryland.

- any activity which would lead to a significant non-point source of pollution to the State's coastal waters.

- the construction of any major facility as defined by the Coastal Zone Management Program (see Chapter III).

- plans which would cause construction or other activities as described above, or which would cause a significant change in population patterns, and thus require new major facilities within the coastal zone.

- any activity, such as dredging or building of structures in the flood plain, which would significantly change drainage patterns, and/or lead to a significant change in the natural or presently established fresh water flow regime entering the coastal zone from the federal property.

- the granting of any easements, rights-of-way, or rights-of-use across excluded federal lands, for any activity integrally related to the federal use of that land.

- Acquisition or disposition of land, and

- Conducting inventories and making designations of lands for the National Landmark Program to the National Historic Register.

- Aquatic Plant Control

Actions Outside (Landward) of the Coastal Zone:

Relatively few actions outside the coastal zone would have significant impacts on the coastal zone. Some projects, however, would have such an impact if they involved or would lead to:

- a significant change in the quality, quantity, or temporal pattern of fresh water entering the coastal zone, (e.g., dams on major tributaries to tidal waters), or

- a major facility in close proximity to the coastal zone which could result in significant impact on land or water use patterns or air quality in the coastal zone, and/or cause the construction of other new facilities within the coastal zone.

Actions Seaward of the Coastal Zone:

-Outer Continental Shelf leases and pre-lease activities[1]
-Designations of Marine Sanctuaries pursuant to the Marine Protection, Research, and Sanctuaries Act of 1972
-Fisheries Management Plans

Actions in the Coastal Zone:

- All development projects, including, but not limited to construction of buildings, reclamation projects, channel dredging, beach erosion control, flood control projects, and navigation projects

- Major research projects, management studies, or inventories conducted by the federal agency, that will be used in management decisions concerning Maryland's coastal resources.

- Actions which may significantly alter use patterns and the Chesapeake Bay or ocean tidal waters, (e.g. designations of special anchorage areas by the Coast Guard),

[1]Whether or not Outer Continental Shelf leases are actions subject to federal consistency is still under consideration by NOAA. Maryland reserves the right to review OCS leases and prelease activities if NOAA determines that these actions are subject to consistency.

Federal agencies must notify the State at the earliest practicable time of existing or planned federally conducted or supported activities directly affecting the coastal zone. Notification may be accomplished through the State Clearinghouse. The federal agency may notify the Coastal Zone Unit directly of all activities subject to consistency.[1] If the federal agency would normally send copies of plans or designs to other particular state agencies for review, they may send a copy of the transfer letter and the consistency determination to CZU. Federal agencies should notify the State of pending actions at least 90 days before the federal activity reaches a decision stage likely to restrict the use of alternative measures.[2] The notification will include a determination that the activity is consistent to the maximum extent practicable, and specify one of the following:

- the action is and will be undertaken in a manner consistent with the Program; or

- the action is not or will not be undertaken in a manner consistent with the Program but, in the view of the federal agency, necessary and justified because of some circumstances unforseen at the time of program approval; or

- the action is not consistent, but necessary in the national interest.

Relevant State agencies will review the federal determination of consistency, and CZU will agree or disagree with the determination within 60 days. Normally, however, the State's response will be forthcoming within the 45-day Clearinghouse review. Whenever CZU receives notification directly from the federal agency, it will forward either a status report or a response on the consistency review within 45 days of receipt of notification. The status report will inform the federal agency of the:

-- status of the matter

-- basis for further delay

-- approximate date expected for development of a response.

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[1]Agreements among CZU, State Clearinghouse, and individual federal agencies may be developed to identify the review mechanism for each type of activity. NOAA regulations prevent the State from establishing across the board notification requirements.

[2]The Coastal Zone Unit recognizes that the interests of national security or another overriding national interest may, in some cases, require a shorter notification period.

If the activity is determined by CZU to warrant project evaluation, the federal agency will be informed and invited to participate.

If, after 90 days, the State has not acted on a notification of consistency, state concurrence with the determination may be presumed. The State will attempt to include the response or status report with Clearinghouse comments. If no Coastal Zone Unit response or status report is included, however, the federal agency should not act until (1) the CZU responds, or (2) 90 days from the date of notification expire without further contact from the State.

Permit, Licenses, and Activities which are to be reviewed on a generic basis

Several permits, licenses, or authorizations granted by federal agencies are not practicable for the State to review on a case-by-case basis. For this reason, these permits, licenses or regulatory activities are listed as activities which are subject to consistency on a generic basis. The State may request pertinent federal agencies to provide the State with a determination on whether these activities are carried out in a manner consistent to the maximum extent practicable with the Program. The procedures outlined in Chapter I, "Program Review", could be used to resolve inconsistencies between federal and state programs. The State reserves the right to review any of the permits, licenses or authorizations listed below which would fall within the definition of section 307(c)(3)(A) (denoted by an asterisk) in the manner set out under unlisted licenses and permits (see page 331).

Federal agency	Permit or activity	Citation
U.S. Coast Guard	- authorization for handling of dangerous cargo by vessels in U.S. ports*	46 U.S.C. 170
	- authorization for handling of flammable or combustible liquids by bulk in U.S. ports.*	46 U.S.C. 391(a)
	- authorization for barges to tow over 100 tons.*	46 U.S.C. 395

U.S. Fish & Wildlife Service	- endangered species permits*	16 U.S.C. 153a
National Marine Fisheries Service	- permits for taking of marine mammals*	16 U.S.C. 1361-1407
Energy Regulatory Administration	- allocation of liquid petroleum feedstock (including naptha, propane, butane and natural gasoline) for SNG production	15 U.S.C. 751 et seq.
	- prohibition and conversion orders regarding use of coal[1]	Energy Supply and Environmental Coordination Act

2. Activities Requiring a Federal License or Permit

Activities which require a federal license or permit, and which significantly affect land or water uses in the coastal zone, must be consistent with the program. Maryland will consider an acitivty to be consistent if.

(1) The proposed project does not inherently conflict with the goals, objectives and policies of the program (i.e. any potential conflicts can be resolved through proper planning and design).

(2) The proposed project, by itself, or in combination with existing projects, does not cause an unacceptable level of adverse impact as defined by the policies.

(3) The project would not by itself, or in addition to existing projects, cause a violation of a standard set in a Maryland law or regulation cited in the Program.

Maryland will consider all of the federal permits and licenses listed on Table VI-5, for activities occurring in the coastal counties to "significantly affect the coastal zone". In addition, listed permits and licenses for activities outside the coastal zone will "significantly affect the coastal zone," if:

[1]Federal legislation presently being considered by Congress may effect the nature of this regulatory activity. If permits are required for exemption from prohibition and construction orders in the future, these permits will be subject to review as permits.

- they apply to activities related to Outer Continental Shelf (OCS) exploration, development, or production,[1]

- they apply to any other type of development activity on the OCS,[1]

- they apply to a significant change in the quality, quantity or temporal pattern of fresh water entering the coastal zone, in air quality, or involve hazardous substances or,

- they apply to activities occurring in close proximity to the coastal zone and would lead to significant impact on land and water use pattern or on air quality within the coastal zone, or would lead to requirements for new major facilities within the coastal zone.

Unlisted permits and licenses will be considered to affect the coastal zone if they in any way relate to construction within the Area of Focus of the Coastal Zone.

The federal consistency review procedures described below will apply to all of the licenses and permits listed on Table VI-5. They will also apply to licenses and permits which are unlisted, or which occur outside the coastal zone if the CZU determines that they will affect the coastal zone, and so notifies the applicant and the federal agency within 30 days of public notice of the federal license or permit. After approval of the Program, the list will be published in the Maryland Register and will be transmitted to all appropriate federal agencies. This list may be refined pursuant to section 307 of the Coastal Zone Management Act and Part 923 of NOAA regulations. Furthermore, CZU and federal agencies may, after program approval, develop agreements spelling out conditions under which consistency can be automatically presumed for minor activities requiring licenses and permits.

Applicants for listed federal licenses and permits are responsible for including a certification of consistency with their applications to federal agencies. Applicants should, as a preliminary matter, seek the views and assistance of appropriate state agencies (i.e. CZU and/or other appropriate agency listed on Table VI-5), regarding means of assuring that the proposed activity complies with, and will be conducted in a manner consistent with, the Program. Applicants may request the CZU to develop a consistency certification for them. As a matter of convenience to applicants, federal agencies should note on their application forms the requirement for a consistency certication.

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[1]If reviewed together with an Outer Continental Shelf plan submitted to the Secretary of Interior (see section 3 below), separate review will not be required.

At the same time that the applicant submits an application to a federal agency for a license or permit, the applicant will transmit a copy of the application to the appropriate state agency listed in Table VI-5 and/or the CZU. If the federal agency as a general rule sends the listed permit or license application to the appropriate state agency listed on Table VI-5, they should continue this practice. The CZU requests, however, that when notifications are sent directly to another agency, that a copy of the cover letter be sent to CZU.

3. Listed Licenses and Permits

The State will place legal public notice of the application and certification statement in the immediate area of the coastal zone which may be affected by the activity, and will notify affected units of government. The notice will include a summary of the application and certification statement, request for comments, and may, at the State's discretion, include notice of public hearings on the action. If hearings are scheduled, they will take place a minimum of 30 days after publication of the public notice. Whenever possible, the notices and hearings will be combined with any state or federal permit or license notices or hearings for the same project.

At the earliest practicable time after the close of the public notice comment period (but at maximum within six months of receipt of the applicant's certification statement), the State will decide whether the proposed listed license or permit activity complies with, and will be conducted in a manner consistent with the Program.

Table VI-5 Federal Licenses and Permit Subject to Consistency Review

Federal Agency	Permit Description	Citation	State Agency to Assist CZU
DEPARTMENT OF DEFENSE U.S. Army Corps of Engineers	construction of dams or ditches across navigable waters	River and Harbor Act of 1899: Section 9, 33 U.S.C. 401	WRA
	obstruction or alteration of navigable waters (including structures of the OCS)[1]	Id. Section 10, 33 U.S.C. 403	WRA
	establishment of harbor lines	Id. Section 11, 33 U.S.C. 404, 405	WRA and MPA
	temporary occupation of sea wall, bulkhead, jetty, dike, level, wharf, pier or other work built by the U.S.	Id. Section 14, 33 U.S.C. 408	WRA
	discharge of dredged spoil into waters of the U.S.[1]	Federal Water Pollution Control Act of 1972: Section 404, 33 U.S.C. 1344	WRA

Federal Agency	Permit Description	Citation	State Agency to Assist CZU
U.S. DEPARTMENT OF DEFENSE CONT'D	approval of plans for improvements made under Corps supervision at private expense	River and Harbor Act of 1902: 33 U.S.C. 565	WRA
	transportation of dredged spoil for the purpose of dumping it in ocean waters[1]	Marine Protection, Research, and Sanctuaries Act of 1972 Section 103, 33 U.S.C. 1413	WRA
	permit for artificial islands and fixed structures on the OCS[1]	Outer Continental Lands Act Section 4(f), 43 U.S.C.	MGS
U.S. DEPARTMENT OF ENERGY Economic Regulatory Administration	licensing import or export of natural gas	Natural Gas Act: 15 U.S.C. 717, Natural Gas Act: 15 U.S.C. 717b, Department of Energy Organization Act	E&CZA (EPO), PSC
Federal Energy Regulatory Commission	Orders interconnection of electric transmission facilities	Federal Power Act, Section 202(b), (16 U.S.C. 824a(b)	PSC, E&CZA (PPSP)
	Licenses for non-Federal hydroelectric projects and associated transmission lines	Federal Power Act, Sections 4(e) and 15, (16 U.S.C. 797(e) and 808)	PSC, E&CZA (PPSP)
	Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and LNG terminal facilities	Natural Gas Act, Section 7(c) (15 U.S.C. 717f(c))	MGS, PSC
	Permission and approval for the abandonment of natural gas pipeline facilities	Natural Gas Act, Section 7(b) (15 U.S.C. 7175(b))	MGS, PSC

	Federal Agency	Permit Description	Citation	State Agency to Assist CZU
U.S.	DEPARTMENT OF INTERIOR	the granting of any easement, right-of-way or rights-of-use across federal lands for any use not intergrally related to the federal use of that land.		dependent on area involved
	Bureau of Land Management	approval of OCS pipeline corridor rights-of-way[1]	43 U.S.C. 931(c), 20 U.S.C 185, also OCS Lands Act Section 5, 43 U.S.C. 1334	MGS
	Geological Survey	permit to drill[1]	43 U.S.C. 1334	MGS
		rights-of-use and easements for construction and maintenance of pipelines and associated structures[1]	Id.	MGS
		rights-of-use and easements for construction and maintenance of gathering and flow lines[1]	Id.	MGS
	National Park Service	construction of electric and communication lines across National Park Service land	16 U.S.C. 5	E&CZA (PPSP)

Federal Agency	Permit Description	Citation	State Agency to Assist CZU
U.S. DEPARTMENT OF TRANSPORTATION	permits for private aids to navigation	14 USC 83	WRA/MP
U.S. Coast Guard	permits for construction or modification of bridges or causeways in navigable waters	33 U.S.C. 401,491,525	WRA
	deepwater port permits	Deepwater Ports Act of 1974 33 U.S.C. 1501	MDOT
Federal Aviation Administration	approval of airport development project applications	49 U.S.C. 1716	MDOT
ENVIRONMENTAL PROTECTION AGENCY	permits for underground injection[2]	Safe Drinking Water Act Section 1421(c)(1), 42 U.S.C. 300h	WRA
	permit to operate underground injection wells in designated areas[2]	Resources Recovery and Conservation Act of 1976 42 U.S.C. 300h-3	WRA
	permits for handling and disposal of hazardous substances[2]	Resources Recovery and Conservation Act of 1976 42 U.S.C. 3257	WRA (parallel State permit)
	approvals under prevention of significant deterioration PSD regulations[2]	Clear Air Act of 1976 42 U.S.C. 1857c-5	EHA
	new source construction/operations permits[1,2]	Id. Section 111 42 U.S.C. 1857-6	EHA

Federal Agency	Permit Description	Citation	State Agency to Assist CZU
ENVIRONMENTAL PROTECTION AGENCY (CONT'D.)	approvals under National Emission Standards for Hazardous Air Pollutants (NESHAPS) Regulations	Id. Section 112 42 U.S.C. 1857c-7	EHA
	NPDES permits for discharges into the contigous zone and ocean waters[1]	Federal Water Pollution Control Act of 1972 Section 402, 403 33 U.S.C. 1342, 1343	WRA
	sludge runoff permits	Id. Section 405 33 U.S.C. 1342, 1343	WRA
	aquaculture	Id. Section 318 33 U.S.C. 1328	MFA
NUCLEAR REGULATORY COMMISSION	permits and licenses for the construction and operation of nuclear facilities	Atomic Energy Act of 1954, Sections 6, 7, 8 and 10 42 U.S.C. 2133, 5841	E&CZA (PPSP)

[1]If reviewed as part of, or in conjunction with, a plan for exploration, development or production of petroleum resources on the Outer Continental Shelf (OCS), further consistency review will not be necessary.

[2]Delegation of permit authority to the State is anticipated. When the State assumes primacy, federal consistency review provisions will no longer apply to individual permit applications.

The Coastal Zone Unit will be responsible for consistency reviews. Table VI-5 shows the state agency which will assist the CZU in making the consistency determination. This is the State agency which would normally comment on, or issue similar or concurrent permits to, the federal license or permit. Other state and local agencies may also participate in consistency reviews particularly if the project in question is in a location or is of a magnitude to warrant a project evaluation. (See Table VI-3).

If the State's determination has not been forthcoming within six months of receipt of the applicant's certification statement, then the State's concurrence shall be conclusively presumed. Notwithstanding the six month time limit, before 90 days have elapsed in processing the consistency action, the State shall notify the applicant and the federal agency of the status of the case, the basis for further delay, and the approximate date for the issuance of a decision.

During the process of review, if the CZU finds the activity in conflict with the program, it will consult with the applicant to attempt to agree on conditions which would make the activity consistent with the program. If conditions are agreed to, the CZU will note in its consistency determination that the activity will be consistent if the conditions are placed on the permit. If agreement cannot be reached during the review period, CZU will object to the applicants consistency determination.

If the CZU objects to an applicant's consistency certification, it will notify both the federal agency and the applicant, and describe (1) how the proposed activity is inconsistent, and (2) alternative measures, if any, which would make the activity consistent. CZU will also inform the applicant of his right to appeal the decision pursuant to NOAA regulations, Part 930, Subpart H, and send a copy of the objection to the Associate Administrator of NOAA.

Unlisted Licenses and Permits

If, through its monitoring of unlisted licenses and permits through National Environmental Policy Act Statements, State Clearinghouse, or other forums, CZU determines such a license or permit to have an effect upon the coastal zone, it will notify the applicant and the federal agency. Notification will be made within 45 days of the public notice or sooner. Once notified, the applicant and federal agency must comply with the procedures under "listed licenses and permits." The State's six month review period for the license or permit will begin as of the date of the original public notice for the license or permit.

3. Outer Continental Shelf (OCS) Activities

Activities occurring on the outer continental shelf off Maryland's shore which are subject to federal licenses or permits must be carried out in a manner consistent with the approved Maryland Coastal Zone Management Program. This includes (1) license and permit activities which are described in detail in a plan for the exploration, development, or production on the OCS, and (2) licenses and permits required for activities related to OCS exploration,

development, or production. These permits and licenses include, but are not limited to:

(1) Those for all activities described in detail in OCS Plan submitted to the Secretary of Interior, such as

- permits to drill (U.S. Geological Survey)
- rights-of-use and easements for construction and maintenance of structures and platforms on the OCS (U.S. Geological Survey)
- rights-of-use and easements for gathering and flow lines (U.S. Geological Survey)

(2) Licenses and Permits for all related activities which may not be described in the OCS Plan, such as

- pipeline corridor rights-of-way (Bureau of Land Management)
- permit for artificial islands and fixed structures on the OCS (U.S. Army Corps of Engineers)
- permit for transport of dredged material (U.S. Army Corps of Engineers
- permits for discharges or emissions pursuant to the Federal Water Pollution Control Act of 1972 or the Clean Air of 1970 (Environmental Protection Agency)
- authorization to tow barges of over 100 tons (U.S. Coast Guard)

Outer Contintental Shelf exploration, development and production of oil and gas will not inherently conflict with Maryland's program (See Chapter III, Section D). What may conflict is the manner in which these and related activities are carried out. OCS activities will be considered consistent with Maryland's Program if:

(1) Environmental baseline studies necessary to determine impact on coastal lands and waters are carried out;

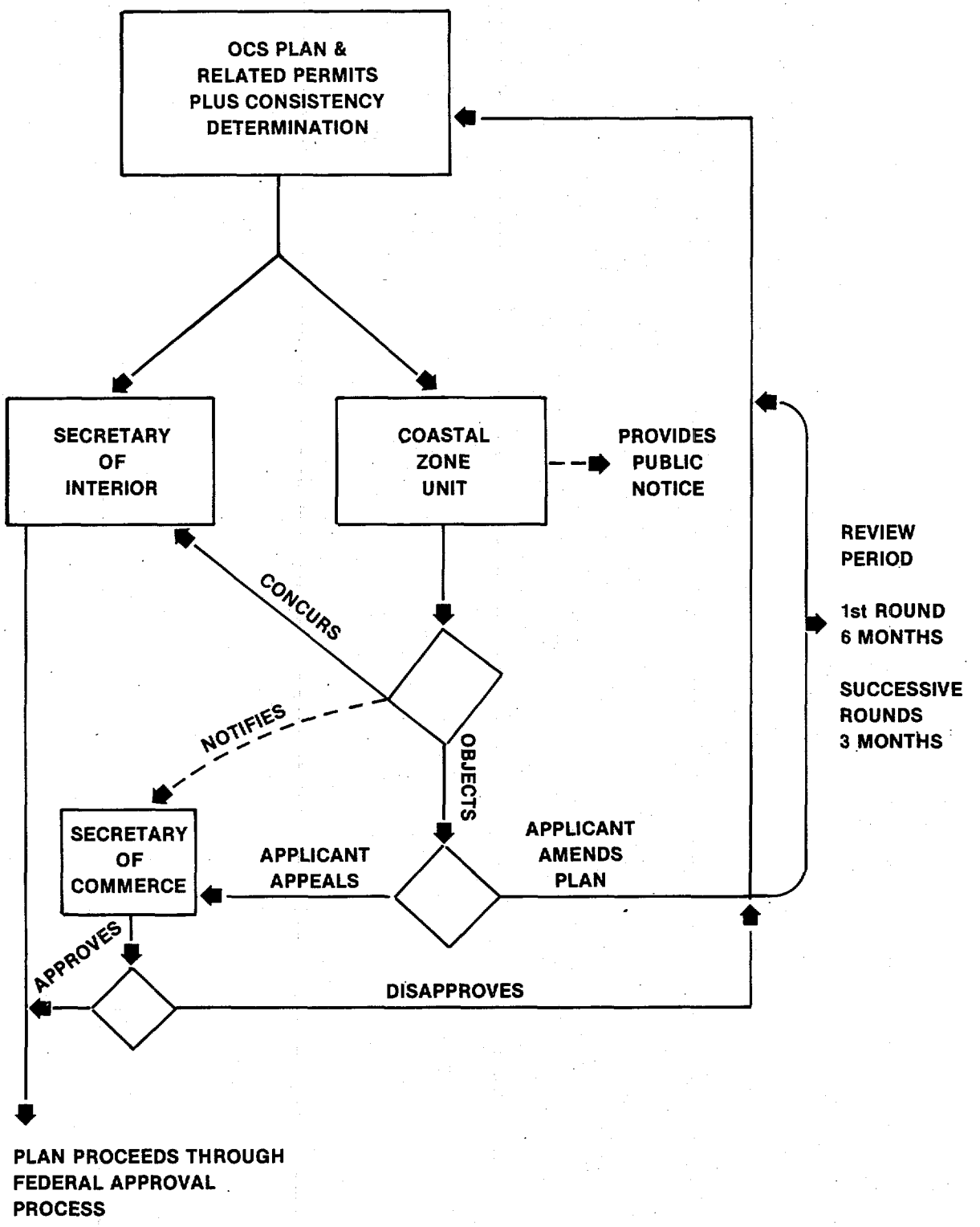
(2) All safeguards provided for in federal law are stringently applied and enforced, and

(3) Among the feasible alternatives available for each activity associated with OCS exploration, development and production, (e.g. alternatives have been chosen which have the least adverse impact on coastal alnds and waters.

(4) All policies for OCS oil and gas exploration, production and transportation (pp. 126-131) are followed.

The flow diagram (Figure VI-1) on the following page shows the process by which the Coastal Zone Unit reviews OCS plans and federal licenses and permits for OCS-related activities in accord with NOAA Regulations, 15 CFR Sections 930.70 et seq. If the CZU objects to any of the activities described in the plan, the Secretary of Interior may not approve the plan, nor can any of the permits described in the plan be issued, until either (1) the Secretary of Commerce finds, on appeal, that the activity is consistent with the purposes of the Coastal Zone Management Act, or (2) the applicant files an amended OCS plan and consistency determination to which the CZU concurs. State objection to the consistency determination for one license or permit for an OCS-related activity does not prevent federal agencies from:

Figure VI-I FLOW DIAGRAM OF OCS PLAN CONSISTENCY REVIEW



(a) issuing other licenses or permits to which the State has not objected, or

(b) issuing licenses or permits described in the OCS plan, provided the State has concurred with the consistency determination on the plan.

The process is meant to provide for one unified state review of all federal licenses or permits associated with an OCS plan. Then, once the plan is approved, the State will not object to any permits described in or associated with the plan unless conditions of the permits are subsequently changed. If, however, the applicant submits the plan for state review separately from the applications for OCS-related licenses and permits, each must go through the review process described in section B. above, separately. (See NOAA regulations, 15 CFR section 930.82).

After the OCS activity described in the OCS plan commences, the State will have the opportunity to object if the applicant fails substantially to comply with the plan. If the state believes that an applicant is not in compliance, it will adhere to the following procedures pursuant to NOAA regulations (15 CFR 930.86).

- CZU will file a claim with the U.S.G.S. and allow a reasonable time for remedy;

- if the applicant still fails to comply, CZU or the Governor will file written objection with the Secretary of Commerce.

If the Secretary of Commerce finds the lessee not in compliance, the lessee must file an amended plan for review as described above. The lessee and the Secretary of Interior have the opportunity to submit comments to the Secretary of Commerce before she makes her finding. If the Secretary of Commerce requires an amended plan, the lessee must comply with the first plan until the amended plan is approved.

4. Federal Assistance to State and Local Governments

Federal assistance to state and local governments for projects affecting the coastal zone may only be granted when such activities are consistent with the State's approved Coastal Zone Management Program. Assistance refers to grants, contractual arrangements, loans, subsidies, guarantees, insurance or other forms of financial aid.

Table VI-6 provides a tentative list of federal assistance programs which will be subject to state review for consistency with the Coastal Zone Management Program. This list will normally apply only to those activities occurring in the coastal zone, although the State will monitor assistance for projects outside the coastal zone, and will inform the federal agency and applicant on a case-by-case basis if a federally assisted project outside the coastal zone will be subject to consistency. This will occur only if the project would have those affects described on page **345** "Federal Activities, Actions Landward of the Coastal Zone."

All federal actions requiring notification to the State are presently reviewed under the auspices of State Clearinghouse. The application should indicate that it is an action subject to consistency review. The following process is outlined in the flow chart, Figure VI-2.

Figure VI-2 FEDERAL CONSISTENCY REVIEW THROUGH CLEARINGHOUSE

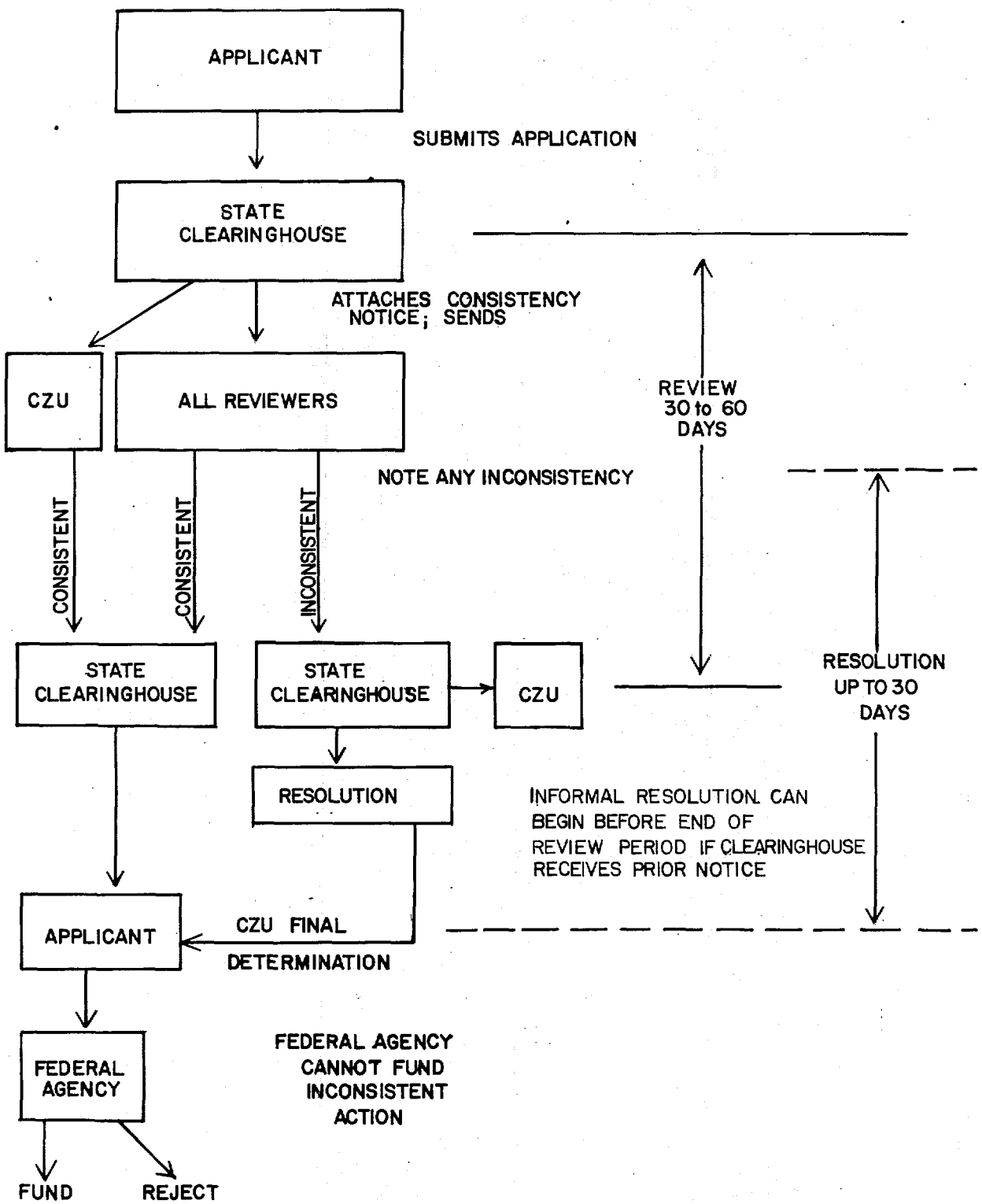


Table VI-6

Federal Assistance Programs

Subject to Consistency

U.S. DEPARTMENT OF AGRICULTURE

10.409 Irrigation, Drainage, and other Soil and Water Conservation Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection Flood Prevention Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.424 Industrial Development Grants
10.655 Assistance to States for Tree Planting and Reforestation
10.657 Cooperation in Forest Management and Processing
10.658 Cooperative Forest Insect and Disease Management
10.659 Cooperative Production and Distribution of Forest Tree Planting Stock
10.660 General Forestry Assistance
10.901 Resource Conservation and Development
10.904 Watershed Protection and Flood Prevention

U.S. DEPARTMENT OF COMMERCE

11.300 Economic Development-Grants and Loans for Public Works and Development Facilities
11.303 Economic Development-Technical Assistance
11.304 Economic Development-Public Works Impact Projects
11.305 Economic Development-State and Local Economic Development Planning
11.308 Grants to States for Supplemental and Basic Funding of Titles I, II, and IV Activities
11.405 Anadromous and Great Lakes Fisheries Conservation
11.406 Commercial Fisheries Disaster Assistance
11.407 Commercial Fisheries Research and Development
11.417 Sea Grant Support
11.500 Construction-Differential Subsidies

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

14.001	Flood Insurance
14.112	Mortgage Insurance-Construction or Rehabilitation of Condominium Projects
14.115	Mortgage Insurance-Development of Sales-Type Cooperative Projects
14.124	Mortgage Insurance-Investor Sponsored Cooperative Housing
14.125	Mortgage Insurance-Land Development and New Communities
14.126	Mortgage Insurance-Management Type Cooperative Projects
14.127	Mortgage Insurance-Mobile Home Parks
14.128	Mortgage Insurance-Nursing Homes and Related Care Facilities
14.129	Mortgage Insurance-Hospitals
14.203	Comprehensive Planning Assistance
14.207	New Communities-Loan Guarantees
14.218	Community Development Block Grants/Entitlement Grants
14.219	Community Development Block Grants/Discretionary Grants
14.701	Disaster Assistance

U.S. DEPARTMENT OF THE INTERIOR

15.400	Outdoor Recreation-Acquisition, Development and Planning
15.600	Anadromous Fish Conservation
15.605	Fish Restoration
15.611	Wildlife Restoration
15.612	Rare and Endangered Species Conservation
15.904	Historic Preservation
15.950	Additional Water Resources Research

U.S. DEPARTMENT OF TRANSPORTATION[1]

20.004	Boating Safety-Financial Assistance
20.102	Airport Development Aid Program
20.205	Highway Research, Planning and Construction
20.214	Highway Beautification-Control of Outdoor Advertising, Control of Junk yards, Landscaping and scenic enhancement
20.306	Rail Property Acquisition and Modernization Grant Assistance
20.505	Urban Mass Transportation Technical Studies Grants
20.506	Urban Mass Transportation Demonstration Grants
20.600	State and Community Highway Safety
20.700	Gas Pipeline Safety

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[1]The necessity for making consistency determinations or federally funded transportation projects will be further defined in the Memorandum of Understanding between the Department of Natural Resources and the Maryland Department of Transportation. Projects of a minor nature will generally not require consistency decisions; the MOU will spell out precisely the review method for each type of project.

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

80.041 Grants to States for Energy Conservation Plans
80.043 Supplemental State Energy Conservation Grant Program

NATIONAL SCIENCE FOUNDATION

47.036 Intergovernmental Program

WATER RESOURCES COUNCIL

65.001 Water Resources Planning

ENVIRONMENTAL PROTECTION AGENCY

66.001 Air Pollution Control Program Grants
66.005 Air Pollution Control Survey and Demonstration Grants
66.027 Solid Waste Disposal Planning Grants
66.028 Solid Waste Disposal Demonstration Grants
66.418 Construction Grants for Wastewater Treatment Works
66.419 Water Pollution Control-State and Interstate Program Grants
66.426 Water Pollution Control-Areawide Waste Treatment Management Planning Grants
66.433 Underground Water Source Protection-Consolidated Research Grants
66.500 Environmental Protection-Consolidated Research Grants
66.501 Air Pollution Control Research Grants
66.502 Pesticides Control Research Grants
66.504 Solid Waste Disposal Research Grants
66.505 Water Pollution Control-Research, Development, and Demonstration Grants
66.506 Safe Drinking Water Research and Demonstration Grants
66.600 Environmental Protection Consolidated Grants-Program Support
66.602 Environmental Protection Consolidated Grants-Special Purpose

The State Clearinghouse will attach an additional statement to the presently used Clearinghouse cover letter. This statement will alert all reviewers to the fact that the application must be consistent with the Maryland Coastal Zone Management Program in order to receive funding. Reviewers will be instructed to inform the State Clearinghouse if they know of any potential inconsistencies with the CZM. The State Clearinghouse will immediately notify the CZU of the finding of inconsistency. This review for consistency by State and local agencies other than CZU is considered necessary since other State agencies carry out portions of the Program and local agencies may be more familiar with a particluar project.

If, within the time period allowed for review, State Clearinghouse receives comments from one or more reviewers stating an application is inconsistent with the CZMP and a statement from CZU that the same application is consistent or vice versa, the State Clearinghouse will take appropriate action in an effort to resolve the disagreement. The final consistency determination will be the responsibility of the CZU and will be transmitted with the Clearinghouse review letter.

Reviewers will, of course, be able to object to federally funded projects based on grounds other than the Coastal Zone Management Program.

These procedures will be adopted by the Coastal Zone Unit and State Clearinghouse in a Memorandum of Understanding during the summer of 1978, after federal agencies have the opportunity to review of the Program. State Clearinghouse and CZU will respond favorably to any requests from federal agencies to establish more specific agreements with those agencies on review of projects they fund.

Clearinghouse Review and Project Evaluation

Normal time periods for Clearinghouse review - 30 to 60 days - do not allow for time for a full project evaluation to be undertaken. Full project evaluation will only be contemplated in a few cases, when the project was of major proportions. In most of these situations, such as construction of roads or sewage treatment plants, CZU will be involved at an earlier stage of review. Project evaluation in these cases will have already been carried out, and final Clearinghouse review would simply be the means for expressing the State's final consistency determination.

CHAPTER VII

THE PUBLIC ROLE IN COASTAL ZONE MANAGEMENT

VII. THE PUBLIC ROLE IN COASTAL ZONE MANAGEMENT

The role of the public in determining the fate of coastal resources is fundamental since the principal responsibility for their protection, development and conservation falls directly to citizens in their every day activities as users and landowners. However, because local, state and federal governments have enacted laws and initiated programs that define and affect the rights of users of coastal areas, it is in the government sector that much public interest in coastal management is focused. The Maryland Coastal Zone Management Program, in particular, addresses land values, private use of public resources, and public access to those resources over privately owned land. In this chapter, the Program sets forth the opportunities for timely public input into significant coastal policies and other actions of government. It also describes the formal relationships and functions of coastal government agencies with the public as an important aspect of documenting comprehensively how coastal management works in Maryland. Unfortunately, this cannot adequately convey the depth to which these relationships provide for individual property owner, farmer, waterman, or businessman interests on any particular issue. Therefore, it is important to reaffirm here that the relationships presented below respond to specific needs and concerns of the public.

The public role in coastal zone management entails participation in the ways existing laws and programs are presently carried out in coastal areas, and representation in the program review and project evaluation processes which are innovations of the Program. The Coastal Zone Unit provides support activities for this public participation, consistent with the following guidelines:

1. To provide information, where existing available information is insufficient, to enable private users to act in a manner consistent with current State coastal programs and policies.

2. To clarify existing coastal management programs with regard to potential conflicts and misunderstandings among competing users of coastal resources.

3. To disseminate this information in a manner which is understandable to the groups most likely to be affected.

4. To serve as ombudsman for citizen grievances concerning conflicting uses of coastal resources.

Public Information: Keeping The Public Aware of Coastal Zone Management Activities

The Coastal Zone Unit coordinates the distribution of accurate, understandable information on major coastal policy issues, on programs that affect coastal resources, and on public and private projects of State-wide concern. The purpose

of this public information is to evoke public awareness of the complexity of major coastal issues addressed by the government, and to summarize the salient aspects of these issues objectively, so that the involvement of an educated public in subsequent coastal actions will be possible. This process includes:

1. Newsletter. A bimonthly report has been initiated to keep its readers abreast of significant Program activities and to announce new developments. It also synopsizes coastal resource studies that will be useful to agencies and to the public in their coastal zone management efforts. The newsletter concentrated on discussions of the relationship of these studies and program activities to issues of importance to the citizens of the State. Space in the newsletter can be reserved for citizens' comments on issues of State-wide interest. The newsletter presently reaches over 4,000 persons, groups, government agencies and academic institutions.

2. Distribution of Specific Information. The Coastal Zone Unit produces fact sheets, action memoranda, study summaries and other special public education literature pertaining to coastal management. Factual information produced by other Program-related agencies may also be publicized and distributed. This information is sent to the Coastal Zone Unit's list of active individuals and groups most likely to be concerned with these issues. In addition, the Unit disseminates information through government information distribution centers around the State, such as libraries and local planning offices. Current technical and program information is provided to the main libraries of coastal jurisdictions. Branch libraries receive general material periodically, and specific information when requested.

3. Special Public Education Projects. When there are public education needs which can be met by single actions, the Coastal Zone Unit sponsors specific projects. These projects may be conducted either by the Coastal Zone Unit on its own, in cooperation with other public service agencies, or with private organizations.

   For example, the Maryland Cooperative Extension Service, funded by the Program, will provide handbooks for private property owners and concerned citizens, to explain how they may comply with existing State laws regarding coastal zone management, how they can realize the benefits of these laws, and how they may have a voice in public program actions in coastal areas.

4. Use of the Media. It is the intent of the Coastal Zone Unit to publicize significant meetings or other events of greater than local concern occurring in the coastal zone. Contacts have been established with TV and radio stations, and newspapers, to expand public exposure to program actions through news releases and special features. The Unit also encourages liaison between the media and local citizen representatives to the Coastal Resources Advisory Committee, so that local papers may regularly report citizens' perspectives on those coastal issues addressed by the Program. In addition, spot announcements for radio and TV are produced to give the broadest possible coverage to State-wide issues or special events.

5. Expert Spokesmen. The Coastal Zone Unit acts, upon request, as a coordinator to arrange appearances of knowledgeable speakers at workshops, conferences, and special citizen advisory meetings.

6. Public Accessibility to the Government. To meet the need for more direct public access to coastal management agencies, the Coastal Zone Unit complements other public information services at the State level.

Additionally, the Unit will man a "hot-line". This toll-free number to the Unit's office will be set up so that citizens can report problems or seek governmental information from anywhere in the coastal zone. The hot-line will be used in conjunction with "Direct line", a vehicle for handling citizens' written inquiries. Direct line is also a useful means for citizens to ask questions about state actions in coastal areas, or to propose issues for consideration by the Program.

The Maryland Cooperative Extension Service project will also serve to link public information services among all affected State departments. These citizens' guides will package information on sources of governmental assistance and will be widely distributed.

Finally, the Coastal Zone Unit is working on the establishment of an information retrieval system, making multi-departmental information on coastal resources more readily available to citizens and government agencies.

Public Participation In Coastal Zone Management Activities

Maryland's Program blends new opportunities with existing ways of obtaining public participation in coastal decisions. Whereas the implementation of the Coastal Zone Management Program is based on the networking of existing legal authorities and government agencies, the public participation element combines existing citizen advisory programs with the public involvement element in coastal project evaluations. Organizational opportunities, consisting of new and existing citizen advisory bodies at the State, local and regional levels, provide a forum for citizens and special interest groups to:

- seek consensus on specific controversial coastal management issues;
- evaluate how implementation of various portions of the Program reflect the needs and values of citizens in coastal areas;
- assure that as the Program is updated the priorities and needs of citizens are adequately considered;
- discuss how to reach and involve additional individuals and groups likely to be affected by the Program.

The following four elements are the backbone of the public participation component of the Program:

1. Coastal Resources Advisory Committee. In July, 1976, a 60-member Supplemental Committee was created by the Secretary of Natural Resources, to bring wider representation to the existing Chesapeake Bay and Coastal Zone Advisory Commission. The Commission, established by law as a unit of the Department of Natural Resources, has the duty to advise the Secretary on rules and regulations which he may adopt. The Committee evolved as an adjunct to the Commission, ensuring that Maryland's varied interests would be reflected during Program development.

   In June, 1977, the Committee was reconstituted as the Coastal Resources Advisory Committee. The composition of its membership was altered to represent more accurately the interests of organizations with functions related to coastal area management. Individuals representing local governments, umbrella groups, and important interests within the State now constitute the voting membership of the Committee. Individuals representing State and federal agencies and academic institutions provide technical support on a non-voting basis.

   Because its membership represents a broad-base of government, interest groups, and the general public, the Coastal Resources Advisory Committee occupies an important position providing guidance on best uses, conservation, and preservation of the State's coastal area resources.

   The Committee serves as a public forum for the Program, in which individuals and organizations involved in coastal resources activities are kept aware of Program actions and present their views on the Program proposals. The various interests represented on the Committee may not always be in total agreement with the direction of policy decisions. However, with the Committee as a regular communication channel, members are provided an opportunity to have their views integrated with the technical, environmental and economic bases for decisions.

   Another important function of the Committee is to guide Program implementation. This is accomplished primarily through the efforts of subcommittees and task forces having a broad composition of representatives from State agencies, local governments, special interests and citizens-at-large. The specific areas they address include:

   a. The Project Evaluation process, including the procedures and criteria that should be used in designating and evaluating projects.

   b. The identification of coastal problems requiring further research and analytical studies for resolution.

   c. The overall allocation of the Program's technical and financial resources.

d. Federal Consistency review.

e. The implementation of the Coastal Energy Impact Program established by the 1976 Coastal Zone Management Act Amendments.

The Committee also provides the framework for formal public involvement at the State level and for additional coordination between citizens and their local governments. Citizen representation is provided equal recognition with that of government officials. Each coastal county, plus Baltimore and Ocean Cities, has been given the opportunity to appoint a citizen representative as a voting member of the Committee. There are, in addition, five at-large citizen representatives elected from five geographical areas of the State.

Citizen representatives serve several functions. They can be a valuable information source to citizen bodies appointed by local government, and to the public at-large. They may also be a conduit through which local and regional citizen concerns can be carried to the State Committee. Finally, they can inform their respective local government officials of citizen viewpoints on coastal policy matters and other issues.

Although the Coastal Resources Advisory Committee is a broad-based organization, it cannot be all inclusive. The membership recognizes that its actions are more credible when it draws on the participation of the public-at-large for the interest and expertise necessary to make decisions truly comprehensive. For this reason, when tasks are initiated, the Committee and the Coastal Zone Unit jointly consider the need for additional advice.

Complete membership lists for the Chesapeake Bay and Coastal Zone Advisory Commission and the Coastal Resources Advisory Committee are included in Appendix C.

2. Local and Regional Committees. In the state's coastal jurisdictions, elected officials have set up local and regional citizen advisory bodies to study coastal management issues and make recommendations. These committees help shape comprehensive plans, zoning ordinances and local application of State and federal programs that affect land and water resources. Existing committees, or others formed in response to special interests in the Program, are encouraged to; i) review the Program continually for its impact in their area; ii) include Program elements in assessing proposed actions at the local and regional level; and iii) recommend actions to their local governments necessary to preserve compatibility between their policies and the State Program.

The Coastal Zone Unit will, upon request, provide technical information, assist in the review of local or regional plans and proposed procedures that may have greater than local impact, and provide additional public information.

Complete membership lists of special local and regional committees are included in Appendix C.

3. Advisory Opportunities Through The Coalition Of Special Interest Groups And Individuals. In addition to formal citizen advisory bodies, coastal management agencies receive comments and advice directly from individuals and special interest groups. The Coastal Zone Unit held at-large regional citizen meetings during the final year of Program development to facilitate direct public influence in the Program, without the encumbrance of additional formal organizations. From these meetings and other sources, a list of active individuals and groups is maintained.

The list is arranged by localities and issues, and can be made available to participating local governments or State-wide special interest organizations for selective use.

Prompt contact with knowledgeable citizens and special interest groups can also be made by the Coastal Zone Unit or other State agencies for timely public review and comment.

For issues of a regional nature, the list can be used as a basis for notification of public information meetings between two or more local governments, special interest organizations or other levels of government. These meetings can serve as forums and information gathering sessions, the results of which may be reported to the Coastal Resources Advisory Committee for assessment and recommended action.

An example is the series of four fact-finding forums held on the Patuxent River in early 1977. It was organized by the Coastal Zone Unit and co-sponsored by several public and private organizations with an interest in management of the river.

4. Cooperation With Other Public Participation Programs Related to the Coastal Zone. The Coastal Zone Unit works closely with the public participation programs of other agencies with an interest in coastal issues, to facilitate public understanding of the fundamental relationships between the programs, to improve efficiency by eliminating duplication of effort, and to provide for the greater productivity of each session.

The purpose of this cooperation, furthermore, is to exceed the original mandate of each program, by supplementing public participation activities that are intrinsic to each, and by supporting the mutual intent of each citizen advisory opportunity.

The two most important areas of cooperation at this time are the 208 Water Quality Planning Program (co-administered in this state by the Water Resources Administration, the Regional Planning Council, and the Washington Metropolitan Council of Governments) and the Environmental Protection Agency's Chesapeake Bay Program.

Situations in which the Coastal Zone Unit agrees to cooperate with the 208 Program include the following:

a. Where a problem is raised by the public and brought to the attention of either staff, and it appears to have relevance to the other program, this problem is referred by one public participation coordinator to the other agency coordinator for consideration and follow-up.

b. Where each program staff is available to meet with public and advisory groups of the other.

c. Where use of a single newsletter is proposed as an important means of efficient communication for both programs.

d. Where both staffs coordinate the timing and agenda of meetings sponsored by their respective programs.

e. Where both public participation program staffs seek to be actively involved in other programs affecting water quality management, encouraging similar efficiencies where public education and participation activities are concerned.

The public participation staffs of the Coastal Zone Unit, the Water Resources Administration, and the Regional Planning Council are encouraging similar means of cooperation with the Environmental Protection Agency's new Chesapeake Bay Program.

Public Involvement in Coastal Project Assessments

Just as there are multi-level agencies and programs which constitute the formal process of decision-making in coastal activities, there are multiple-level opportunities for the public to influence these decisions. On the one hand, there are various existing opportunities to review, evaluate, and testify on proposed coastal activities. Additionally, there will be unique opportunities that complement the Coastal Zone Unit's role as lead agency. The following are some examples of existing opportunities on the local level, outside the purview of the Coastal Zone Unit:

1. Planning and zoning commission hearings on variances to existing ordinances.

2. Public review of certain developmental permits.

3. Local review of proposed State and federal activities.

Every State agency participating in the Program provides opportunities for public assessment. For example:

1. Public hearings on wetlands permits.

2. Public review of proposed State guidelines or major studies, such as through the Boat Act Advisory Committee to the Secretary of Natural Resources.

Finally, there are coastal activities which require multi-level review and evaluation. Examples of combined federal, State and local assessment include:

1. Hearings on major energy facilities, such as power plants.

2. Cooperative planning, review, and funding of proper soil conservation practices at the local level through the Soil Conservation Service, Soil Conservation Districts and the Maryland Department of Agriculture.

These opportunities for public assessment are in most cases handled by the lead agency. The role of the Coastal Zone Unit is to expand public awareness of these procedures through such means as citizen guidebooks on regulatory and planning activities in the coastal zone.

Sometimes, however, these existing procedures are limited in their ability to offer a comprehensive public review of complex, multi-level coastal proposals. When the lead agency, the Coastal Zone Unit, and the interested public agree that additional efforts are needed to achieve a full airing of a proposal, the Coastal Zone Unit may be able to provide this service.

For example, in mid 1977, the Department of Natural Resources endorsed a controversial U.S. Army Corps of Engineers' project to maintenance dredge the western approach channel to the Chesapeake and Delaware Canal and to permit overboard disposal of spoil. The Coastal Zone Unit supported a public meeting to present the State's justification for the project, and to discuss the mitigation of possible adverse impacts. Subsequently, an information packet on the public issues of concern regarding the project was prepared by the Unit. Background information, the specifics of the project and its monitoring program were presented. The Packet was distributed to interested individuals and groups.

The Coastal Zone Unit is primarily responsible for determining Program consistency of proposed activities affecting the coastal zone. This is to be accomplished through:

1. Comprehensive project evaluations for major proposals which have the potential for significant impacts on coastal waters.

2. Procedures for resolving conflicting policies when applied to the evaluation of coastal related activities.

3. Program review, including identification of research and other funding priorities, and providing the means for assessing the cumulative impacts of small coastal projects.

The Coastal Resources Advisory Committee provides the main vehicle for public involvement in project assessment, and complements each of these tasks. For example:

1. Through the Committee, the Coastal Zone Unit lays out an explicit role for citizen participation in the Program's Project Evaluation process. Citizen representation is sought as soon as a project proposed for the coastal zone is selected for a full review. Citizens participate with government agencies in identifying key project issues and in monitoring the evaluation.

2. The participation of the Committee in procedures resolving conflicting coastal policies will provide the opportunity for greater public accounting.

3. Committee task forces may be formed for the consideration of major coastal research projects. Task forces share responsibility with funding agencies for selection of contractors and delineation of tasks.

The Coastal Zone Unit public participation staff provides support for the activities undertaken by the Coastal Resources Advisory Committee in project assessment. On occasion, it may be advantageous for the Unit to request the assistance of other public participation or educational agencies to devise special projects that will help the Committee assess public opinion.

Accountability To The Public For Coastal Zone Management Activities

All participating program agencies have the responsibility to make public the procedures and time schedules upon which they base coastal decisions. For example, State departmental rules and regulations must allow for interested individual's views before being promulgated. Questions raised about rationales or other aspects of significant decisions may be considered for Program Review through the Coastal Zone Unit's public participation mechanisms. The toll-free "hot line" and the information retrieval form "Direct line", make it easy for citizens to reach the Unit or other agencies and to be assured of a prompt answer to their concerns.

Program responses may take the form of personal telephone calls, written replies or personal meetings. In some instances, special reports or public forums may be appropriate. In all cases, a public accounting will be made on controversial aspects of the issue.

The Coastal Zone Unit has also formulated a policy on formal position statements submitted by citizens for consideration in Program implementation. Statements (resolutions, etc.) which are intended to represent the views of an entire group, such as a local citizens' advisory committee or private organization, should be duplicated and circulated by mail to all members of that group. Then, at the group's next meeting, action can be taken to accept, revise,

or reject the statement of position. When this process is followed, action taken by the group is considered by the Coastal Zone Unit to be a fair representation of the views of that group. That is, the appropriate governmental agencies will be notified, and if the issue is of larger than local concern, the Coastal Resources Advisory Committee will consider it.

During Program development, formal resolutions were submitted to the Coastal Zone Unit by the Maryland Conservation Council, and several of the regional citizens' advisory meetings were sponsored by the Unit. These resolutions were reviewed and responded to, and have helped shape the management program presented in this document. Resolutions submitted by the Maryland Conservation Council, representative of all those received, are reproduced in Appendix C.

Appeals of Public Policy Decisions Regarding Coastal Zone Management

When public accounting procedures fail to satisfy the concerns of individuals or groups, there are procedures for appeal of State actions under the Program. In such cases, if the individual has standing, he may resort to the administrative appeals provision of the Natural Resources Article, Section 1-107, which provides that:

> "Any person aggrieved by any decision, action or failure to act on the part of the Secretary or any unit within the department of Natural Resources is provided by subsection 1-106 of this article, and the rules and regulations adopted pursuant thereto, is entitled to appeal..."

Section 1-106 allows an individual to appeal any departmental decision subject to judicial review under the Administrative Procedures Act (Article 41 subsection 244, et. seq.) or any other provision of law. Article 41 in turn, provides judicial review for any person aggrieved by a final decision in a contested case and defines the term "contested case" as:

> "...a proceeding before an agency in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing."

Administrative appeals before the Department of Natural Resources are basically similar to appeals before other state agencies. Once an individual has exhausted his administrative appeals, he may seek judicial relief.

For citizens and groups without legal standing, the Coastal Zone Unit may be petitioned in writing on behalf of the State to intervene as an aggrieved party to the decision through the Department of State Planning's intervention authority. This procedure is described more fully in Chapters I and VIII.

Through the various organizations and procedural methods described in this chapter, the Maryland Coastal Zone Management Program has sought to provide for public participation through:

1. Information: reports, newsletters, the hot-line, and direct line.

2. Representation: The Coastal Resources Advisory Committee, and public hearings.

3. Appeal: To the Department of Natural Resources

Thus, the Maryland Coastal Zone Management Program, itself developed with public participation, fulfills the requirements of the federal Coastal Zone Management Act and provides for the direct involvement of the public that the Coastal Zone Management Program is designed to serve.

CHAPTER VIII

LEGAL AUTHORITIES

VIII LEGAL AUTHORITY

I Introduction

This Chapter has been developed in response to Section 305(b)(4) of the federal Coastal Zone Management Act (See Appendix I) which requires the management program for each state to identify the means by which the state proposes to control land and water uses. This Chapter will demonstrate that the State of Maryland has sufficient legal authority to implement the goals and objectives of its coastal zone management program and that the Maryland program complies with the requirements of Section 306(d) that it have authority:

(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.

The principal control technique to be used by Maryland is that specified by Section 306(e)(1)(B) of the federal act: "Direct land and water use planning and regulation." Maryland will utilize existing statutes, regulations and common law in order to achieve direct control. While Maryland does not have comprehensive coastal zone management legislation, this Chapter will demonstrate that the State does have the ability and authority to "network" together a large number of regulatory authorities in implementing its comprehensive program. There will be a discussion of Maryland's authority to tie together its diverse legal authorities, including the use of interagency memoranda of understanding and executive orders. It should be noted, however, that direct control is not the exclusive implementation technique which will be used. To a lesser extent Maryland will rely upon state establishment of criteria and standards for local implementation and state review of local and private land and water-use decisions.

The discussion of control over land and water uses is arranged according to the principal administrative agency responsible for implementation and is preceded by a discussion of the Maryland Environmental Policy Act. A general description of the purpose and jurisdiction of each department precedes the specific laws which it administers. Emphasis is placed on regulatory programs because Section 305(b)(4) requires an inventory of the State's means of control over land and water uses in the coastal zone. Some cooperative and funding programs are also included, however, because of their present or potential importance in influencing land and water management decisions. This inventory consists only of those laws presently in force, and is in no way a proposal for increased land or water management powers. It is Maryland's position that no additional authorities are necessary in order to meet the requirements for program approval. The analysis of land and water use regulations is followed by sections on conflict resolution, property acquisition and networking authority. Finally there is a discussion of Maryland's authority to meet the requirement of Section 306(e)(2) that the program provide a means of assuring that local land and water use regulations do not unreasonably restrict uses of regional benefit.

II Land and Water Use Regulation

A. The Maryland Environmental Policy Act (MEPA)

The Maryland Environmental Policy Act, (Natural Resources Article, Section 1-301 et seq.) will be an important consideration in the implementation of Maryland's coastal zone policies. The Act contains two substantive provisions. First, state agencies are required to prepare "Environmental Effects Reports" for each proposed state action significantly affecting the quality of the environment. The term "proposed state action" is defined narrowly to include "requests for legislative appropriations or other legislative actions that will alter the quality of air, land, or water resources."

The second requirement, as set forth in Section 1-303, mandates all state agencies to consider the environment in their decision-making processes:

> All state agencies, except where existing law expressly prohibits, shall identify, develop, and adopt methods and procedures that will assure that:
> (1) Environmental amenities and values are given appropriate consideration in planning and decision-making along with economic and technical considerations;
> (2) Studies are undertaken to develop and describe appropriate alternatives to present policies, programs, and procedures that involve significant adverse environmental effects or unresolved conflicts concerning uses of available resources; and
> (3) Planning and decision-making involving environmental effects are undertaken with the fullest practicable provision of timely public information and understanding and in coordination with public and private organizations and individuals with jurisdiction by law, special expertise, or recognized interest.

This language will assist in the implementation of Maryland's program in that it broadens the basis upon which administrative decisions are made. Environmental factors must be considered unless an agency's enabling legislation specifically provides otherwise. Adoption of the policies set forth in Maryland's program will enable the Department of Natural Resources and other state agencies to meet the requirements of Section 1-303.

MEPA is also important because of the policy statements which are set forth in Section 1-302. For example, Section 1-302(b) and (c) provide:

> (b) The protection, preservation, and enhancement of the state's diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the state and is a matter of the highest public priority;

(c) All state agencies must conduct their affairs with an awareness that they are stewards of the air, land, water, living and historic resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

Section 1-302(k) provides that:

> The policies, rules, regulations and public laws of the State shall be interpreted and administered in accordance with the policies set forth in this subtitle.

The adoption of these and other policy statements by the General Assembly provides a general statutory basis for the state's coastal zone management program.

B. The Department of Natural Resources

The Department of Natural Resources (DNR) is the principal state department charged with the regulation of the State's waters, fish and wildlife, forest, mineral, and recreational resources. The Secretary who heads the department is responsible for:

> ...the development of coordinated policies for the preservation, conservation, enhancement, wise use and perpetuation of the natural resources of the State. He is responsible for the efficient coordination of all natural resources activities of the State including the settlement of conflicts which arise among units within the Department of Natural Resources. (Article NR, Sec. 1-104).

The department is specifically assigned responsibility for:

> ...planning, development, management, and conservation of the Chesapeake Bay and any other tidal waters, including their shore line and bottom, and any resources associated with these waters. (Article NR, Sec. 8-203)c)).

This language is very broad and provides general authority for the state's management program.

The Department of Natural Resources is the agency designated (by letter of Governor Marvin Mandel to Robert Knecht, Director of the federal Office of Coastal Zone Management, March 12, 1973) as the single agency to receive and administer the Coastal Zone Management Administration Grants. The Secretary of Natural Resources is authorized to:

> ...apply for, accept, and administer for the State any federal funds or appropriations of money for any purpose which may be hereinafter made out of the federal treasury by an Act of the Congress. (Article NR, Sec. 1-103(c)).

The Department may acquire land, earth, gravel, stone, timber, material, or any improvement by condemnation when necessary to carry out the purposes of any legislative act or advance the aims of forestry, parks, or recreation, and the work of the Department (Article NR, Sec.5-208). The Department has a board of review (consisting of seven members appointed by the Governor) which hears appeals on any decision of the Secretary or unit of the Department subject to administrative review (Article NR Sec.1-106). The Department of Natural Resources is advised by a Chesapeake Bay and Coastal Zone Advisory Commission (Article NR, Sec. 8-202(b).

The following units within DNR are responsible for land and water use management programs as described below:

1. Water Resources Administration
2. Energy and Coastal Zone Administration
3. Capital Programs Administration
4. Maryland Environmental Service
5. Maryland Environmental Trust
6. Maryland Geological Survey
7. Wildlife Administration
8. Fisheries Administration
9. Forest Service
10. Park Service
11. State Boat Act Advisory Committee
12. Interstate Commissions

1. Water Resources Administration

The Water Resources Administration (WRA) is charged with responsibility to:

> ...exercise to the fullest extent possible the state's responsibility for its water resources by planning and supervising multiple purpose development and conservation of the waters of the state for the state's best interest and benefit. It shall develop a general water resources program which contemplates proper conservation and development of the waters of the state, in a manner compatible with multiple purpose management on a watershed or aquifer basis, or any other geographical unit. The program shall recognize and be consistent with functions of other state units. (Article NR, Sec.8-203(b)).

The following programs and laws are administered by WRA:

a. Water Appropriation Permits

Maryland's waters are broadly defined as both the surface and underground waters within the State, including a 100-year flood plain. (Article NR,Sec.8-101)). A permit from WRA is required before a person may use or appropriate state waters. (Article NR,Sec.8-802).

Use of water for domestic or farm purposes is exempted from the permit requirement. The Water Resources Administration must receive satisfactory proof that the proposed use will not violate Maryland's water quality standards or jeopardize its natural resources (Article NR, Sec.8-802). In response to the requirements of Sec.8-203 (above) and Sec.3-106(d) for comprehensive 5-year regional or river basin water supply facility plans, WRA has developed a State wide Water Supply Management Program. The purpose of the program is to evaluate and implement water supply developments to satisfy projected demands in the State, to identify limitations of local water supply plans, and alternatives for correcting such limitations. A permit is also required for the construction of wells, regardless of the type of water use.

b. Flood Plains and Flood Control

The Water Resources Administration regulates, by permit, the construction or repairs to dams and reservoirs or any streams or surface water changes in the course, current or cross-section, or obstructions to non-tidal rivers or their 100-year flood plains. The filling in or reduction of flood plains or corss sections of non-tidal rivers, streams and surface water is considered to be generally against the State's interest (WRA regulation .08.05.03.05). These regulations require all permit applications for such operations to be accompanied by a hydraulic calculation of the effects of such a reduction or filling, as well as the expected benefits of the project.

The authority of WRA to delineate a flood plain area and prescribe water quality standards with implementing regulations was upheld in 1974 when the Court of Appeals ruled the standards and regulations were not an unconstitutional taking (A.H. Smith Sand and Gravel Co. v. Department of Water Resources, 313 A.2d 820, 270 Md. 652 (1975)).

The Flood Control and Watershed Management Act gives WRA the power to designate interim flood hazard areas (Article NR,Sec.8-9A03). Appropriate subdivisions (county and municipal governments) are to adopt regulations within the flood control area (Article NR,Sec.8-9A04(a)). These regulations must require that any use, or its effects, are minimized to the most practical extent possible to protect against danger to life, water quality, or property from backed up or diverted water, obstructions sweeping downstream, or construction or alteration within the flood hazard area, (Article NR, Sec.8-9A07(b)).

The Water Resources Administration is also to establish state-wide watershed areas for flood control and planning

management (Article NR, Sec.8-9A05(a)). A state-wide flood control plan is to be developed by the subdivisions in cooperation with the Department of Natural Resources, the Department of State Planning, the Department of Agriculture, and other appropriate agencies (Article NR, Sec.8-9A05(d)). Interjurisdictional plans must be approved by DNR. The Water Resources Administration is to review the plan and recommend changes to the General Assembly every two years (Sec.8-9A06(c) and (d)). The Water Resources Administration may also request appropriate legal action by the Attorney General if the subdivisions do not enforce the provisions of the Act (Article NR, Sec.8-9A07(b)).

c. Water Pollution Control

Section 8-1405 of the Natural Resources Article gives the DNR broad authority to control water pollution including authority to promulgate water quality standards and effluent limitations and to prescribe conditions to be set forth in discharge permits. Generally, see regulation 08.05.04.

It is illegal for any person to discharge any pollutant into Maryland's waters without a permit from WRA (Article NR, Sec.8-1413(a)). A permit is also required from WRA before any person may construct, install, modify, or operate any industrial, commercial, or recreational facility or disposal system, state-owned treatment facility, or any other establishment, capable of discharging pollutants into the waters of the State (Article NR, Sec.8-1413(b)). A "pollutant" is defined as any waste or wastewater discharged from any publicly owned treatment works or industrial source and all other substances which will pollute any waters of the State (Article NR, Sec.8-1401(h)). If WRA determines that restrictions on access to treatment facilities are necessary to prevent water pollution, such restrictions may be included as a condition to the discharge permit (60 Md. Att'y. Gen. Op. 108 (1975)). Maryland's discharge permit program has been approved pursuant to the provisions of the Federal Water Pollution Control Act (33 U.S.C. Sec.1342(b)) and the Federal permit program has been delegated to the state.

The State's water pollution control law applies to ground water as well as surface water (Article NR, Sec. 8-101(k), 8-1405(b)(3)). Water quality standards established for ground water require approval by the Water Resources Administration for any discharge or disposal of waters or waste waters into the underground waters of the State. Discharge permits are required for all discharges except sanitary landfills and subsurface disposal systems which are regulated by the Department of Health and Mental Hygiene (DNR regulation 08.05.04.04(A)). Three types of aquifers have been identified and discharge parameters have been established for each (DNR regulation 08.05.04.04(B),(C)).

The Water Resources Administration has general authority to formulate pollution control regulations concerning oil storage, transfer, separation, removal, treatment and disposal (Article NR, Sec.8-1405(d)). These regulations have taken the form of an "Oil Handler's Permit" requirement (Regulation 08.05.04.07). The owner or authorized operator of an oil facility must demonstrate to WRA that he is both adequately equipped to prevent oil pollution and able to control oil spills. The discharge of oil in any manner into the waters of the State from any vessel or boat of any kind is specifically prohibited (Article NR, Sec. 8-1410). Licenses are required of all oil terminal facilities. An oil spill contingency plan and payment of a fee are requirements for obtaining the license.

Permit and license fees go into an Oil Spill Disaster Contingency, Containment, and Cleanup Fund used to support the State's oil spill cleanup efforts and to purchase necessary cleanup equipment.

It should be noted that a coastal oil facility as defined by the Coastal Facilities Review Act (which included various types of pipelines, intermediate production terminals or refineries, crude oil storage facilities, operations bases, and fabrication yards) does not have to receive a separate permit from WRA. However, the requirements for the Oil Handling Permit are incorporated into the coastal facility review and must be fulfilled before that permit is issued by the Energy and Coastal Zone Administration (Article NR, Sec. 6-505).

The Maryland Used Oil Recycling Act (Article NR, Sec. 8-1411.1; Chapter 230 Acts of 1978) prohibits, after January 1, 1979, the disposal of used motor oil by discharge, dump, or deposit into sewers drainage systems, surface or ground waters, any waters of the State or by incineration or as refuse or onto any private or public land. Used oil must be deposited in a receptacle or container installed or located at a designated collection facility. The Act requires DNR to establish designated collection facilities and encourages the recycling of used oil and the use of recycled oil products.

d. Control of Hazardous Substances Disposal.

The Hazardous Substances Disposal Act was enacted by the Maryland General Assembly in 1976 (Article NR, Sec.8-1413.2). The Act gives DNR the responsibility for defining and designating hazardous substances (Sec.8-1413.2(c)). Anyone operating a facility for the disposal of a designated hazardous substance must receive a permit from DNR. If the facility operator must also obtain a permit for refuse disposal from the Department of Health and Mental Hygiene, the DNR conditions are simply incorporated into the Department of Health and Mental Hygiene permit conditions (Sec.8-1413.2(i)). Anyone who transfers hazardous substances to a disposal facility must receive a certification, and have his

vehicle certified by DNR (Sec.8-1413.2(1)). The Water Resources Administration sets fees for permits based on the potential threat the hazardous substances may present to the environment, the costs of monitoring the disposal operation, and the costs of developing the programs (Sec.8-1413.2(j)). Fees for permits, certification, or permit renewal go into a Hazardous Substance Control Fund which is used for emergency removal and mitigation of hazardous substances from the waters of the State, identifying and restoring natural resources damaged by hazardous substances, and for monitoring and control of hazardous substances (Sec.8-1413.2(f)).

The Department of Natural Resources may condemn land or facilities when necessary to ensure proper care and monitoring or to protect public health or natural resources (Sec.8-1413.2(n)). An Advisory Council is established to advise the department in establishing regulations and in carrying out the hazardous substance management program (Sec.8-1413.2(d)). The council members represent the Department of Agriculture, the pesticides coordinator of the Cooperative Extension Service, the Department of Licensing and Regulation, the Department of Health and Mental Hygiene, the industries that manufacture and dispose of hazardous substances, and the public at large.

e. Sedimentation Control

The Water Resources Administration reviews and approves criteria and procedures which counties and local soil conservation districts use to implement soil and shore erosion and storm water runoff control programs (Article NR, Sec.8-1101). The Water Resources Administration must also review and approve local ordinances passed to implement the criteria under regulation 08.05.03.01 (B). Such review and approval of ordinances and their operation takes place every three years (id. at (B)(3)). A person must receive a permit from the appropriate county based on approval of his sediment control plans by the soil conservation authority before he may begin any land clearing, construction, or development (Article NR,Sec.8-1102,8-1104). The Water Resources Administration is the permitting agency for any state or federal project, or any project on state-owned land (regulation 08.05.02.01(D)(2)). Any local project sponsored with Program Open Space Funds (see Capital Programs, p. 388) or any project which, in the judgment of the appropriate soil conservation authority, has a significant potential for erosion and sediment damages to lands owned by the State or for lands within the take lines of Program Open Space, requires the approval of both WRA and the soil conservation authority (id. at (D)(3)). The Water Resources Administration has the option to review major grading, sediment, and erosion control plans, (Article

NR, Sec.8-1101). For a list of minor exemptions from the general requirements of Article NR,Sec.8-1101 et seq., as well as substitute agencies for soil conservation districts in specific counties, see regulation 08.05.03.01. Natural Resources Article, Section 8-1101 et seq, have been interpreted as authorizing soil conservation districts to impose storm-water management requirements. See 56 Op.Atty.Gen. 478(1971).

In 1978 a law was passed to require training for personnel involved in clearing and grading operations (Article NR, Sec. 8-1103.1; Chapter 299). Applicants for sediment and erosion control plans must certify that any foreman, superintendent, or project engineer who is in charge of on-site clearing and grading operations or sediment control associated with a construction project has attended a DNR approved training course in sediment and erosion control. Soil Conservation Districts may waive this requirement if the construction project involves four or fewer residential projects. Soil Conservation Districts may also conduct a training program, providing it meets DNR requirements.

f. Watershed Sediment and Waste Control: Patuxent and Severn River

A special program has been set up to protect the Patuxent and Severn Rivers. The Water Resources Administration has the power to promulgate protective regulations under Article NR, Sec. 8-1203. Moreover, it is illegal to dump raw sewage or any other waste into these two rivers (for more specific regulations see Article NR, Sec. 8-1201 et seq. for the Severn and Sec. 8-1301 et seq. for the Patuxent Rivers).

g. Beach Erosion Control District Act

Article NR, Sec. 8-1105.1(a) creates a beach erosion control district with the following borders: north, the Maryland-Delaware border; east, the Atlantic Ocean; south the Maryland-Virginia border; west, approximately the west crest of the dunal line for Assateague Island and the State-Ocean City Building Limit Line for Ocean City. No land clearing, construction activity, or placement of permanent structures except erosion control structures is allowed within the Beach Erosion Control District. Approval by DNR and the appropriate soil conservation authority is required for shore erosion structures, (Article NR, Sec.8-1105.1(b)). This permit is in addition to any county permit required under the Sediment Control Law (Article NR, Sec.8-1103, 1104). If these restrictions are in any specific case ruled a "taking" of private property, Program Open Space funds may be used to acquire the lands or property rights in question.

h. Wetlands

Maryland's wetlands have been divided into two categories--state owned and privately owned. State wetlands are defined by Article NR, Sec.9-101(m), as all lands under the navigable waters of the State below the mean high tide, which are affected by the regular rise and fall of the tide. The only

exception is that all such wetlands which have been transferred to private ownership by Maryland are considered private wetlands to the extent of the property interest transferred. Private wetlands include all lands not considered state wetlands which border on or lie beneath tidal waters which are subject to regular and periodic tidal action and which support aquatic growth, (Article NR, Sec.9-101(j)). NR Sec.9-102 provides that it is the public policy of the state to preserve wetlands and to prevent their despoliation and destruction while taking into account ecological, economic, developmental, recreational and aesthetic values.

A person may not dredge or fill state wetlands without obtaining a wetlands license from the Board of Public Works (Article NR,Sec.9-202(a)). The Secretary of DNR assists the Board in determining whether to issue a license and such decisions must take into account the values set forth above (Article NR,Sec.9-202(c)). The licensing requirements do not apply to dredging for seafood products by a licensed operator, harvesting seaweed, approved mosquito control projects or to improvement of wildlife habitat or agricultural drainage ditches.

The Water Resources Administration, with the advice and consent of the Maryland Agricultural Commission, has promulgated regulations for any dredging, filling, or other polluting of private wetlands. (Article NR, Sec.9-302), see "Order Establishing Wetland Boundaries and Rules and Regulations" (hereinafter, WRA Wetland Regulation)). Except for certain specified activities, a permit must be issued by WRA before any dredging, filling, or other polluting of private wetlands may be undertaken, (Article NR,Sec.9-306(a)) (WRA Wetland Regulation, Sections IV and V). The Water Resources Administration considers the effect of the proposed work on public health and welfare, marine fisheries, shellfisheries, wildlife, economic benefits, the protection of life and property from flood, hurricane and other natural disasters, as well as general wetlands public policy, in issuing a private wetlands permit. The Water Resources Administration may also attach conditions designed to carry out the purpose of Maryland's Wetlands laws, (WRA Wetlands Regulation, Section VI).

i. Surface Mining Act

The Water Resources Administration also regulates surface mining of all minerals other than coal. The 1975 Surface Mining Act was enacted in order to minimize the effects of surface mining on the surrounding environment (Article NR,Sec.7-6A02(a)). Section 7-6A02(a) specifically recognizes that surface mining is not desireable when there is "an unduly adverse effect on wildlife or freshwater, estuarine or marine fisheries." The Act established a fund for reclamation of surface mine land after mining has ceased (Article NR,Sec.7-6A04(a)). The Water Resources Administration is also authorized to adopt regulations, although none have been issued to date as the Act did not take effect until January 1, 1977, (Article NR, Sec.7-6A03). After January 1, 1977, a permit

must be obtained from WRA before surface mining activities may be undertaken (Article NR, Sec. 7-6A07(a)). The Water Resources Administration has the authority to modify an existing permit after giving notice to the permit holder and providing opportunity for a hearing if WRA finds that the conditions of the permit "fail substantially to achieve the purpose of the Act" (Article NR, Sec. 7-6A17(a)). The Water Resources Administration also has the power to suspend or revoke a permit for a violation of the Act or permit conditions (Article NR, Sec. 7-6A18(a)).

j. Maryland Geothermal Resources Act

Geothermal resources are defined as the natural heat of the earth higher than 120 degrees fahrenheit or 49 degees centigrade, or the energy, in whatever form, which may be extracted from the earth's natural heat. The definition includes fluids, brines, minerals in solution, steam, and associated gases, but excludes all hydrocarbon substances (Article NR, Sec. 8-8A-01(E)). A permit from the Department of Natural Resources is required for exploration for, or appropriation and use of geothermal resources. The Act requires a comprehensive review of geothermal development projects prior to issuance of a permit. Issuance of the geothermal appropriation permit is in lieu of well drilling and appropriation permits (Article NR, Sec. 8-8A-04, 8-8A-05). The act also allows the Department to take part in geothermal demonstration and development projects (Article NR, Sec. 8-8A-03).

2. The Energy and Coastal Zone Administration

The Energy and Coastal Zone Administration (E&CZA) was created by an Act of the Maryland General Assembly in 1976.

The Administration includes the Power Plant Siting Program, the Bureau of Mines, and the Coastal Zone Unit. The Power Plant Siting Program and Coastal Zone Unit have the responsibility for the siting of major energy facilities with great potential impact on coastal waters. The activities of the Bureau of Mines are confined to the western part of the State, overseeing coal mining and reclamation.

a. Power Plant Siting Program

The Power Plant Siting Program was established to fulfill three principal functions: (1) the research of issues related to power plant siting and related environmental and land use considerations; (2) the evaluation of sites proposed by electric companies; and (3) the acquisition of power plant sites for future use.

The Energy and Coastal Zone Administration, in conjunction with the Department of Health and Mental Hygiene, and the Public Service Commission, implements a long range (at least 10 years) power plant site plan. In conjunction with these two agencies, E&CZA studies potential sites for possible environmental effects and formulates a preliminary environmental statement on any proposed site (Article NR, Sec.3-304). This statement includes (but is not limited to)

the environmental impact at the proposed site, any adverse environmental effects which cannot be avoided if the proposed site is accepted, possible alternatives to the proposed site, and any irreversible and irretrievable commitments of resources which would be involved at the proposed site if approved. In addition, where appropriate, a discussion of problems and objections raised by other state and federal agencies and local entities is included. A plan for monitoring environmental effects of the proposed action and provision for remedial actions if the monitoring reveals unanticipated environmental effects of significant adverse consequences is developed. Sites found by E&CZA to be unsuitable on the basis of the environmental statement, will be deleted from the 10-year power plant site plan unless an electric company offers substantial evidence to the contrary (Article NR, Sec. 3-304). The Public Service Commission bases its licensing of power plants on the 10-year plan and the environmental statements (Article 78, Sec. 54B). Sites certified as suitable by DNR are exempted from local zoning regulations (Article NR, Sec. 3-306.1).

The Department is authorized to acquire sites by agreement or condemnation (Article NR, Sec.3-305(b)). Acquisition is based on existing research findings and a site suitability study which must be completed within two years of the time the site is identified (Article NR,Sec.3-305(a)). At this time, the Department has acquired the site, is in the process of acquiring another and is identifying additional sites on Maryland's Eastern Shore. Sites may be used on an interim basis for public recreational facilities and fish and wildlife refuges (Article NR, Sec.3-305(b)).

b. Coastal Facilities Review Act

The Energy and Coastal Zone Administration also has control over administering the Coastal Facilities Review Act (CFRA)(Article NR, Sec.6-501 et seq.). Various types of oil or gas pipelines, intermediate production terminals or refineries, storage facilities, operations bases, or fabrication yards for offshore activities (as defined in Article NR, Sec.6-501(e)) must receive a DNR permit before construction may begin. The Secretary of DNR designates an appropriate party to prepare an environmental, economic, and fiscal statement on the proposed facility to determine whether to issue the permit (Article NR, Sec.6-506(a)). The impact evaluation does not proceed until after the local government certifies all appropriate local approvals will be granted or until the local government stays its certification in order to use the results of the completed impact study.

The Department of Natural Resources also receives advisory comments from the Secretaries of State Planning, Health and Mental Hygiene, Agriculture, Economic and Community Development and Transportation in the preparation of the statement. The statement is to include (but is not limited to) an inventory of existing economic and environmental conditions at the proposed site; a project description of what is to be constructed, as well as the method and manner of construction, a complete description of the proposed facility (including anticipated size, effluent load, and production

levels); an assessment of the probable economic, fiscal, and environmental impact of the project on the natural environment of the area; recommendations for minimizing adverse economic, fiscal, or environmental impacts; an evaluation of the need for the proposed facility and relative merit of alternative sites; and in the case of refineries, a description of the manner of transportation of feed stock and the product of crude oil (Article NR, Sec.6-506(b)). Before a CFRA permit is granted, the requirements of all other DNR permits must be satisfied since the CFRA permit is issued in lieu of those permits (Article NR, Sec. 6-505). The decision to grant a permit is based upon a number of factors including whether the applicant has shown that the facility conforms to the State's coastal zone management program (Article NR, Sec. 6-508(a)(8)).

Section 6-502, which sets forth the legislative findings with respect to the siting of coastal facilities, recognizes the importance of Maryland's coastal resources, the need to resolve competing demands upon the coastal area, the need for adequate planning and the need to consider the national interests in siting facilities. These policy statements closely follow the Congressional findings contained in Section 302 of the federal Coastal Zone Management Act.

3. The Capital Programs Administration

The Capital Programs Administration is responsible for planning and carrying out the Department's land acquisition and other capital projects such as the construction of recreational boating channels and facilities, park development, and shore erosion control projects. The Capital Programs Administration also administers the State's scenic and wild rivers and wildlands programs.

a. Program Open Space

Program Open Space (Article NR, Sec. 5-901 et seq.) is the State's land acquisition program for state parks, natural areas, forests and wildlife management areas. This program will be discussed below in the section on authority to acquire interests in land and waters.

b. Wildlands Preservation System

This program, established pursuant to Article NR, Sec.1201, et seq., will be discussed below in the section on authority to acquire interests in land and waters.

c. Scenic and Wild Rivers Act

At this time, the Scenic Rivers system includes the Anacosta, Deer Creek (in Harford County), Monacacy, Patuxent, Pocomoke, Potomac (in Montgomery County and Frederick Counties, Severn,

Wicomico (in Charles County), and Youghiogheny Rivers, 1/ (Article NR, Sec.8-402(a)). The program provides for the wise management of resources on the land and preservation of their scenic, agricultural, and wild qualities with development limited to activities such as fishing, hunting, hiking, horseback riding, natural and geological interpretation of scenic appreciation, and other programs enabling the general public to appreciate and enjoy the value of the areas as scenic and wild rivers in a setting of natural solitude, (Article NR, Sec.8-402(b)). An Advisory Scenic and Wild Rivers Review Board exists for review and recommendation purposes (Article NR, Sec.8-402). Any new designations of rivers for the program must come from the Maryland General Assembly (Article NR, Sec.8-402). If any rule or regulation promulgated by DNR to implement the scenic rivers program would constitute a taking of a property right without just compensation, Program Open Space funds may be used to acquire the area, with the approval of the General Assembly (Article NR, Sec.8-410).

d. Waterways Improvement Fund

The Waterways Improvement Fund is supported by a boat title tax (Article NR, Sec.8-716). The Fund may be used to construct marine facilities beneficial to the boating public, improve recreational waterways (clear debris, dredge channels, establish navigation aids, etc.), evaluate water-oriented recreation needs, and develop comprehensive plans for waterway improvements (Article NR, Sec.8-708). The Department of Natural Resources may enter into agreements with the federal government, any municipality or other political subdivision of the State, or any private agency to share the cost of any development, construction, or improvement of waterways, or facilities determined to have beneficial value to the boating public (Article NR, Sec.8-723(d)).

e. Shore Erosion Control Program

The Shore Erosion Control Program administers a Shore Erosion Control Construction Loan Fund which provides long-term interest-free loans to individuals, municipalities and counties for construction of shore erosion structures. The fund is maintained by annual appropriations by the General Assembly, and by repayment of loans through a special real estate tax levied by the State on private

1/ Portions of the Patuxent, the Pocomoke, the Severn, and the Wicomico are tidal and fall geographically within the coastal zone.

property benefited by shore erosion control projects (Article NR, Sec.8-1005). The program establishes funding priorities for projects based on the rate of erosion, amount of silt being deposited into the water, public benefits, and other factors (Article NR, Sec.8-1003). The program designs and oversees construction and maintenance of the projects it finances (Article NR, Sec.8-1002). The program also cooperates with other units of federal, state, and local government in developing shore erosion control methods (structural and non-structural) and offers technical assistance to individuals, counties, and municipalities on specific shore erosion problems, (id.).

4. Maryland Environmental Service

The Maryland Environmental Service established by Article NR, Sec.3-101 et seq. is authorized to designate water supply, wastewater purification and solid waste disposal service regions and to prepare five year plans for such regions. The Maryland Environmental Service is not involved in wastewater management planning as the requirements of the Federal Water Pollution Control Act are being fulfilled by the Water Resources Administration. The Maryland Environmental Service may also agree to provide water supply, wastewater treatment and solid waste disposal services to municipalities and may be required to provide services upon the direction of the Secretary of Health and Mental Hygiene (Article NR, Sec.3-110). The Service is authorized to sell revenue bonds in order to finance the services it is authorized to provide (Article NR, Sec.3-113).

5. Maryland Geological Survey -- Division of Archeology

The duties of the Division of Archeology are to protect and encourage the preservation of prehistoric and historic sites located on privately owned lands in the State (Article NR, Sec.2-303). The Geological Survey must issue a permit before any excavation, appropriation, injury, or destruction may take place on a state-owned archeological site (Article NR, Sec.2-305). The Survey may promulgate regulations for the preservation of archeological sites and objects (Article NR, Sec.2-307).

6. The Wildlife Administration

The Wildlife Administration is the unit of DNR that carries out the Secretary's responsibilities "...for conservation and management of wildlife and wildlife responsibilities of the state." (Article NR,Sec.10-202). The Wildlife Administration has broad authority to regulate hunting (see Article NR, Title 10, subtitles 3, 4, 5, 6, and 7). The Wildlife Administration is responsible for carrying out the State's migratory bird law, the State's endangered species law, and for managing wildlife areas.

a. Migratory Bird Law

Except for unprotected birds and game birds hunted during open season, a person may not hunt, destroy, or possess a wild bird, whether it is killed in Maryland, or elsewhere (Article NR, Sec.10-401). Taking of wild and migratory bird nests is also prohibited (Article NR, Sec.10-402).

b. Non-Game and Endangered Species Conservation Act

The State endangered species law recognizes the federal act but the State has additional responsibility to protect non-game and endangered wildlife within its own borders. Hunting, possessing or selling of endangered species is prohibited (Article NR, Sec. 10-2A05(c)). The fine for violation is $1,000 (Article NR, Sec. 10-2A07). The Secretary of DNR is instructed to conduct research on endangered species of wildlife, and to use land acquisition and other authorities to carry out a program for conserving, protecting, restoring, and propagating selected endangered wildlife species (Article NR, Sec.10-2A06).

c. Wildlife Management Areas

Wildlife Management Areas will be discussed below in the section on authorities to acquire interest in land and waters.

7. Fisheries Administration

The Fisheries Administration is responsible for the conservation and management of fish, fisheries, fish resources, and aquatic life within the State (Article NR, Sec. 4-202). The Natural Resources Article provides comprehensive controls over sport fishing and commerical fishing. See Title 4, subtitles 7, 8, 9, and 10. Subtitle 11 authorizes a program of oyster and clam culture, including regulation or private culture, seeding and transplanting of oysters on public oyster bars, and closure of oyster bars for conservation purposes. Other laws include the Endangered Species of Fish Conservation Act. (Article NR, Sec. 4-2A01 et seq.), which is the parallel to the State Endangered Wildlife Act, and authorization to acquire and control use of state fish refuges (Article NR, Sec. 4-401 et seq.).

8. Forest Service

The Forest Service carries out DNR's responsibility to manage state-owned forests, and encourages sound management of privately owned forests (Article NR, Sec.5-201, 5-602, 5-603).

a. Woodland Conservation Areas

Landowners may contract with Maryland Forest Service to have their land placed iwthin the forest conservation and management program. For the first 15 years of the contract, the tax assessment valuation of the land may not be increased. The

landowner must abide by the guidelines of the program designed to best manage forest areas and protect watersheds (Article NR, Sec. 5-301 et seq.).

b. Forest Conservancy Districts

The State has been divided into forest districts. Each district has a forestry board with members appointed from the area by the Maryland Forest Service. The purpose of the districts is to make forestry expertise available to landowners, promote good forestry practices, and assist in watershed management practices. To that end, forestry boards develop comprehensive forest management plans, and may enforce Maryland Forest Service rules and regulations, recommend new rules and regulations, and promulgate "safeguards" for proper forest land use (Article NR, Sec. 5-601 et seq.).

c. Roadside Tree Program

The Department is authorized to plant trees along roadsides, regulate the care of roadside trees, and establish nurseries for the propagation of roadside trees (Article NR, Sec.5-406).

9. Park Service

The Park Service manages state-owned parks, scenic preserves, natural areas, parkways, and historic monuments. The Department may acquire such areas by condemnation, purchase or gift (Article NR, Sec. 5-207, 5-208).

10. State Boat Act

The State Boat Act, (Article NR, Sec. 8-701 et seq.) gives DNR authority to regulate boating activity on the waters of the State. Regulations promulgated pursuant to the Act concern safe recreational use of Maryland's waters including speed restrictions, rules of the road, safety equipment requirements and noise limits for pleasure craft. (DNR Regulation 08.04.04).

11. Interstate Compacts and Commissions

The Secretary of DNR is required by the Natural Resources Article to:

...take every necessary step to enact appropriate intergovernmental agreements with other states to preserve the optimal state of the Chesapeake Bay through organization of an interstate body to plan, manage, coordinate, and enforce the proper use of the Chesapeake Bay so every user of the bay area can obtain maximum advantage of the bay. (Article NR, Sec. 8-204).

The Secretary is also authorized to enter into agreement with other states in order to coordinate fisheries management programs (Article NR, Sec. 4-205).

The Department represents the State of Maryland on the following interstate commissions: The Susquehanna River Basin Commission, the Potomac River Fisheries Commission, and the Atlantic States Marine Fisheries Commission (Article NR, Sec. 1-102).

a. Susquehanna River Basin Commission

The Susquehanna River Basin Commission (SRBC) was formed to "conserve, utilize, develop, manage, and control the water resources of the Susquehanna River Basin under comprehensive, multiple purpose planning...". The Commission consists of the designee of the President of the United States and the designees of the Governors of New York, Pennsylvania and Maryland. (Maryland's designee is the Assistant Secretary of Natural Resources for Environmental Matters.) The Commission has the authority to develop a comprehensive plan and manage the water resources of the basin on the basis of that plan. The Commission's powers include approval or disapproval of any projects which cross state boundaries, involve the diversion of water, have significant impact on the resources of another state, or are part of the comprehensive plan (SRB Compact, Article 3.10.2).

The jurisdiction of the Commission is so defined that it ends near the upper tidal limit of the Susquehanna River and thus largely falls geographically outside the coastal zone of Maryland. However, as the Susquehanna is the major source of fresh water for the upper bay, actions of the Commission on upstream uses may have very direct and significant impacts on the Chesapeake Bay. The Compact recognizes this fact:

> The comprehensive plan shall take into consideration the effect of the plan or any part thereof upon the receiving waters of Chesapeake Bay. (SRB Compact, Art. 14.1)

The comprehensive plan does include this consideration. The predominant interest of the State of Maryland and its Coastal Zone Management Program in the management of the Susquehanna River Basin is the impact of the utilization of the basin's water resources on the Chesapeake Bay, and this is the interest represented by Maryland's member of the Commission (who represents one out of four votes).

b. Interstate Commission on the Potomac River Basin

An Interstate Commission on the Potomac River Basin consists of members from Maryland, Virginia, Pennsylvania, West Virginia, the District of Columbia and the President of the United States. The Commission, founded by Compact in 1940, plays a coordinating role, but does not have the authority to make management decisions or settle disputes.

Maryland has adopted the Potomac River Basin Compact as Article NR, Sec. 8-301. This compact would provide wider powers to deal with water pollution control, flood prevention, watershed management, water supply and recreation. While Virginia has also adopted the compact, other States whose participation would be necessary to form a compact Commission for the Potomac River have not adopted the compact, and thus, the compact is not in effect.

c. The Potomac River Fisheries Commission

The Commission was formed to further the vital interest of Maryland and Virginia in "...conserving and improving the valuable fishery resources of the tidal river portion of the Potomac River." (Article NR, Sec.4-306 Potomac River Compact of 1958; Preamble). The Commission consists of six members, three from each state (id., Article I Sec. 2). The Commission has the authority to make regulations concerning the taking of fish and shellfish from the Potomac River, and to license fishermen and shellfish harvesters who use the river (id., Art. III, Sec.4). Regulations are enforced by law enforcement agencies and offices of both states (id., Art. V, Sec. 1). The laws of Maryland pertaining to fish and shellfish remain in effect except to the extent modified by the Commission's regulations (id., Art. VII, Sec. 2).

d. Atlantic States Marine Fisheries Commission

The purpose of the Atlantic States Marine Fisheries Compact is to:

> ...promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of the fisheries industry, and by the prevention of the physical waste of fisheries (Article NR, Sec.4-301); Atlantic States Marine Fisheries Compact, Art. I).

C. The Department of State Planning

The Department of State Planning (DSP) functions as the State's principal planning department and serves as an advisory, consultive, and coordinative agency to all state and local agencies with regard to state planning matters (Article 88C, Section 1). While DSP powers are largely advisory, it has many responsibilities which give it great influence on a variety of state and local government activities. It uses its influence to produce a balanced and integrated program for the development and effective employment of the State's natural and other resources.

The Department of State Planning is responsible for preparation of the State's Capital Budget. It reviews all capital improvements proposals by State departments for inclusion in the Governor's Capital Budget. It also provides guidance to State departments in the preparation of short and long term plans. The Department also administers the A-95 Clearinghouse, establishes official population projections and operates the Maryland Automated Geographic Information System (MAGI).

Another function of DSP is to assist the E&CZA and the Department of Health and Mental Hygiene in publishing a biennial Maryland electric power plant environmental impact statement. The Department of State Planning is required to prepare a special section on the question of growth related factors which could necessitate development of a site in the 10-year Power Plant Siting Program, (Article NR, Sec. 3-304). The growth factors are incorporated in a model utilized by the Department to prepare electric energy demand forecasts.

The Department of State Planning also makes advisory comments to the Secretary of DNR on the selection of one or more appropriate parties to prepare an economic, fiscal and environmental impact statement for a Coastal Facilities Review Act (CFRA) permit, and on the decision to be made on a CFRA permit based upon the results of the statement.

Two programs, detailed below, are of major significance to the Coastal Zone Management Program.

1. State Critical Areas Program

The Department of State Planning has the authority and the responsibility for identifying and designating areas of Critical State concern (Article 88C section (2)(b)(3)). These are areas which have such unusual or significant importance that future use or development of these areas is of concern to the citizens of the State (COMAR section 16.00.02.01A).

Before making designations, the Department is required to consult with and to consider recommendations submitted by local jurisdictions (COMAR section 16.00.02.02.A). The Department is also required to consult with units of Federal and State governments, citizens, and interested organizations, and to seek advice of qualified professionals and experts (COMAR section 16.00.02.04.B).

Designation is for the purpose of ensuring that areas are adequately managed in a manner consistent with the state concern in the area. Techniques to be used for management may encompass the full array of local planning and zoning and state regulatory authorities, including acquisition (COMAR section 16.00.01.11.A.3). A management plan for each area communicating compatible uses and management techniques, will accompany each designation (COMAR section 16.00.01.12)

The State Critical Areas Program will be used by Maryland as a continuing process for designating Geographical Areas of Particular Concern under NOAA Regulations 15 CFR 923.23 a(2) (43 FR 8041, March 31, 1978). Once areas are designated by the Department of State Planning, State Critical Areas in the Coastal Zone will become GAPC's under sections 923.21 and/or 923.23 through modification or amendment to the Coastal Zone Management Program.

The relationship of the State Critical Areas Program and Geographic Areas of Particular Concern is more fully discussed in Chapter IV.

2. Intervention

Article 88C, Section 2 provides that the Department of State Planning shall:

> Have the right and authority to intervene in and become a party to any administrative, judicial, or other proceeding in this State concerning land use, development or construction. Upon intervention, the Department shall have standing and all rights of a party in interest or aggrieved party, including all rights to apply for judicial review and appeal. In addition, it may file a formal statement of environmental or economic impact expressing the views of the Department and any other unit of the State government.

Pursuant to this authority, the Department of State Planning (the Department) has promulgated "Standards for Intervention in Land Use Procedures." See Section 16.00.03 of the Code of Maryland Regulations (Appendix E). The Department has also entered into a memorandum of agreement with the Department of Natural Resources governing participation of the two Departments in the Coastal Zone Program (See Appendix H).

The Department's intervention authority will be used to assure that the goals, objectives and policies of the Coastal Zone Program will be accomplished. The discussion of interaction will focus on the expected exercise and effect of the authority of the Department in land use proceedings of local governments. The intervention authority also allows DSP to participate in decisions of units of State government, but it is believed that this interdepartmental aspect has been adequately encompassed in the design of the Coastal Zone Program itself. (See Chapter I).

The intervention authority does not abrogate any existing authority of local governmental bodies to plan or regulate land use within their jurisdictions, nor does it eliminate any existing private rights, either substantive or procedural.

In Maryland, all local governments exercise basically the same system of planning and land use regulation, one developed directly from the model acts promulgated by the United States Department of Commerce in the 1920's, "A Standard State Zoning Enabling Act" and "A Standard City Planning Enabling Act." The fundamental basis for planning and land use regulation is the comprehensive plan. The elements of a comprehensive paln are set forth in Section 3.05 of Article 66B of the Annotated Code, and apply to non-charter counties and to all municipalities. All local governments, whether they are governed directly by Article 66B or not, have plans which contain the elements stated in Article 66B.

The comprehensive plan includes the proposed development programs of the local government. Many of these programs, including water and sewer programs, are subject to State approval. The plan serves as a basis for the zoning regulations adopted by the local government as specified by Section 4.03 of Article 66B. In charter counties, which are not subject to Article 66B, this is required by county charters and case law. Other forms of land use regulation including zoning maps, granting of special exceptions and variances, and the regulation of subdivisions, must also be exercised consistently with the comprehensive plan.

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While the basic structure of local planning and regulation in Maryland is similar to that which exist in other States, there are three distinctive features. First, all major local governments in Maryland exercise planning and land use regulatory authority. The only exceptions are some very small municipalities, generally with a population of only several hundred, which are zoned by the surrounding county. In fact, virtually all local governments are in their second generation of plans and land use regulations, and many are embarking upon a third generation.

Second, a very simple system of local government exists in the State. The 23 counties and the City of Baltimore exercise planning and land use regulation powers over approximately 92% of the State's population. The 151 municipalities, regulate approximately 8% of the State's population. This situation is in marked contrast to that which exists in most of the other States where a fundamental land-use problem is the "Balkanization" of authority among hundreds or even thousands of local governments.

The third distinctive feature of Maryland is the rule of "change or mistake" applicable to all local governments in the State. The change or mistake rule provides that a local government may not change the zoning of an individual piece of property unless there has been a substantial change in the character of the neighborhood or a technical mistake was made in the original zoning. See, for example, Pattey v. Board of County Comm'rs., 271 Md. 352 (1974). The rule developed before the era of comprehensive planning, and applies to the text of the zoning ordinance and the map of zoning districts. Today, local governments must base zoning maps on a comprehensive plan, so that the rule has the effect of imparting legal force to the comprehensive plan itself. The change or mistake rule derives from a perception of the original or comprehensive zoning as the embodiment of a long-range plan of development which is legislative in form. See, for example, N.W. Merchants Terminal v. O'Rourke, 191 Md. 171 (1948). Stringent enforcement of the change or mistake rule can prevent the original zoning map from being amended without the establishment of a new plan.

With this strong system of comprehensive planning and land use regulation in place, the Maryland General Assembly in 1974 enacted the intervention authority. The State chose to enhance the existing system by asserting the State's interest in local land use decisions. As a result, local government land use decisions must reflect state-wide policies, because consideration of these policies becomes a basis for the decision. Examples of how state participation will ensure the accomplishment of state coastal zone policies will be described through a series of hypothetical situations in which DSP might intervene.

SITUATION ONE: LOCAL LAND USE DECISIONS AFFECTING AREAS OF CRITICAL STATE CONCERN

The State Critical Areas Program is explained in detail in Chapter IV. The program involves the designation of critical areas and the approval of management plans by the Department of State Planning following recommendations by local government. After designation, areas will be incorporated into local comprehensive plans. The management of such areas may be a state or local responsibility or a combination of the two. The Departments of State Planning and Natural Resources have agreed that some critical areas will be included as Geographical Areas of Particular Concern. The purpose of the identification and designation of Areas of Critical State Concern is to achieve management or regulation of those areas consistent with the reasons for their designation.

The Department will not, as a general policy, intervene in these critical areas if the Department finds that the local regulations or management measures will ahcieve management or regulations of the critical areas in a manner which is consistent with the inherent characteristics which supported their designation. This policy does not limit the Department from participating in any particular proceeding. There may be unusual or extraordinary circumstances which would require intervention.

Administrative or judicial review of proposed regultions or land use decisions would be for the purpsoe of determining whether these actions were "in accord with a comprehensive plan." In the case of a designated Area of Critical State Concern,

the geographical delineation of the area, the purpose for designation, and the uses which were compatible with the desigantion would be spelled out in the comprehensive plan. Accordingly, the plan would offer a clear basis for review of the regulations or decisions. A local government would not be able to arbitrarily or capriciously fail to uphold a management program. Intervention could be used to initiate a support administrative or judicial appeal.

SITUATION TWO: ZONING CHANGE OR ZONING MAP AMENDMENT

In many cases, a zoning change is necessary before major development may take place. Zoning changes would be of concern to the Coastal Zone Management Program if they involve potential adverse impacts on coastal resources. Whenever a rezoning is proposed, however, the Department of State Planning can ensure close analysis of its validity through the change or mistake rule discussed above, either in administrative or judicial proceedings. Local governments will not be able to rezone individual tracts unless there was error in the original zoning or the character of the area has changed so substantially as to justify rezoning. Department of State Planning testimony on the lack of a change or mistake will be a compelling consideration in decisions regarding the approval or rejection of a rezoning application.

SITUATION THREE: USE OF SPECIAL EXCEPTIONS AND FLOATING ZONES

A special exception is a use established by law as compatible with the other uses of the zone in which it may be located. Special exception uses, along with the criteria for their approval, are generally listed in the zoning ordinance, along with the uses automatically permitted in a particular zone. A local government may not deny a special exception unless a particular adverse impact would be caused by the exception.

A floating zone is a special use district of undetermined location. As in the case of a special exception use, the special use is established by law as compatible with the other uses of the zone in which it may be located, but the floating zone may be located at a particular spot only after the local zoning authority has expressly found that a project complies with the purposes of the zone and is compatible with adjoining uses. Of concern to the Coastal Zone Management Program would be a situation in which a new town, planned unit development, light industrial complex, or other special use allowed in a floating zone might be inapproriately sited so as to adversely impact coastal resources.

Local legal requirements for approval of special exception and floating zone uses include submission of detailed site plans for review by the local government. The purpose of the review is to ensure that the special exception of floating zone use, if allowed at its proposed location, will meet any specific criteria included in the zoning ordinance and also that it will not adversely affect adjacent property or persons. The standard of "no adverse effect" is basic to the approval of special exception and floating zone uses.

The Department of State Planning has the opportunity to intervene in either administrative or judicial proceedings related to the approval of special exception or floating zone uses to establish that any proposed development is inappropriate or will be inconsistent with the Coastal Zone Management Program. If it does so, the local government will not be able to make a legitimate finding of no adverse effect and will not be able to approve the speical exception or floating zone use. For example, if the Department can show that it will cause degradation of an adjacent marsh or undue strain on existing public facilities, a proposed use should be disapproved. If the local government did approve a development promising

to cause adverse effects, the decision would be subject to reversal in the courts.

SITUATION FOUR: COMPREHENSIVE REZONING BASED ON ORIGINAL OR NEW COMPREHENSIVE PLAN

The change of zoning which occurs through a comprehensive rezoning applies to an entire county or to an entire planning district within the county. It is not subject to the change or mistake rule. A local government which can not make zoning changes, due to the rule, can wipe the slate clean and produce a new zoning map for an entire county or district. The concern with comprehensive rezoning is that it may allow for a degree of development which might prove inconsistent with the Coastal Zone Management Program. A comprehensive rezoning must, however, be "in accord with a comprehensive plan", just as must the original zoning. If the comprehensive rezoning is not within the bounds of the county's planned pattern of development as envisioned by the current comprehensive plan, a new comprehensive plan would have to be developed first.

The Department of State Planning reviews both comprehensive plans and comprehensive rezonings and may intervene on the proceedings leading to their adoption. Comprehensive plans are reviewed by Department of State Planning to ensure that:

- All necessary elements of a plan are included and adequately addressed (these include: (1) a statement of goals, objectives, principles, policies and standards, (2) a land use plan element, (3) a transportation plan element, (4) a community facilities plan element, and (5) recommendations for regulations to implement the plan (Article 66B, Section 3.05(a) (1970)).

- The plan is consistent with State plans, policies, standards, and goals.

- The population projections on which the plan is based are valid.

- Other data on which the plan is based is current and valid.

- The policies expressed in the plan are supported by the data provided.

- The plan proposes adequate means of implementation.

The adoption of a comprehensive plan requires a resolution by the local legislative body after public hearings. If the Department of State Planning takes issue with any portion of the comprehensive plan, it will intervene before the adoption of the plan to recommend changes. Administrative review should be a persuasive tool due to the State's influence over development through such mechanisms as funding and approval of schools, transportation systems, water and sewage plans, and recreational facilities. Adoption of a plan is a legislative action and, therefore, if a plan meets the requirements of Article 66B it would not be subject to judicial challenge.

Comprehensive rezoning is also a legislative action and there is a strong presumption in favor of its validity. New zoning would be subject to appeal if it can be shown that (1) the rezoning is incompatible and unsupported by a comprehensive plan; or (2) does not promote, the public health, safety and welfare; or (3) the rezoning is arbitrary and capricious.

SITUATION FIVE: DEVELOPMENT ALLOWED BY EXISTING ZONING

Existing zoning may permit major development which, because of its location, would have an adverse effect on coastal resources and be inconsistent with the Coastal Zone Management Program. As stated above, this situation should be relatively rare, as most major development requires some zoning action by the local government. When it does occur, however, intervention in zoning proceedings cannot be used to stop the proposed development. Nevertheless, it is a situation in which the State has influence.

Intervention in this situation would apply to all local approvals in which the design of the proposed development were considered. These would include, for example, subdivision approvals, building permits, grading and sediment control permits, and approval of individual water supply or sewage treatment systems (i.e., wells, septic tanks). In addition, any development will be subject to the considerable development constraints imposed by state regulations and standards discussed above. As shown in the Otter Point Creek intervention example (see Appendix E) intervention can lead to extensive changes in the design of developments to prevent offsite impacts, even if the development is allowed by the current zoning.

Where the zoning of a particular land area is shown to be inappropriate - that is, where experience or scientific study since the time of the original zoning have shown that the uses allowed by the original zoning will create adverse social economic or environmental affects - the Department may wish to encourage rezoning of particular parcels or an entire district. In this situation the Department would be able to intervene in individual land use decisions to document the desirability of a rezoning. A mistake sufficient to authorize a change can be established if the assumptions on which a particular use was predicated prove, with the passage of time, to be erroneous, White v. Board of Appeals, 219 Md. 136, 148 A.2d. 420 (1959).

This analysis demonstrates that the Department of State Planning's intervention authority will be a useful tool in ensuring that local land use decisions are consistent with Maryland's Coastal Zone Management Program. It is important to note, however, that Maryland is not relying upon intervention in order to meet the requirements of the federal legislation. Maryland recognizes that intervention does not give the State direct authority to approve or disapprove local decisions, and, therefore, probably does not comply with the requirements of Section 306(e)(C) of the federal act. Nevertheless, intervention will be important to the success of Maryland's program.

D. The Department of Health and Mental Hygiene

The Department of Health and Mental Hygiene (DHMH), has an wide range of responsibilities. The responsibilities of DHMH which pertain to coastal zone management are, however, located within one administration of DHMH - the Environmental Health Administration.

The Environmental Health Administration (EHA) assists WRA in administering the State's water quality program. The Environmental Health Administration administers sewage treatment facility construction grants authorized by the Federal Water Pollution Control Act and the State's sewage treatment construction funds in conjunction with DNR and DSP. It is responsible for overseeing the county water and sewerage facilities and permitting the construction of both water and sewage treatment facilities as well as individual additions to water and sewerage systems.

The Environmental Health Administration is also responsible for the State's shellfish sanitation program and determines when certain areas should be closed. The Department of Natural Resources then enforces the closures. Additionally, EHA is responsible for air and noise regulations.

1. Water Supply, Sewerage, and Solid Waste Disposal Plans

All counties are required by DHMH to develop a county plan demonstrating how present and anticipated water supply and sewerage needs can best be met in a manner consistent with the use and enhancement of Maryland's water quality (Article 43, Section 387C(b), DHMH Regulation 10.03.26.08). The regulation requires plan objectives to guide Maryland's water supply-sewerage system development consistently with the State's population growth and economic development. No community water supply or sewage treatment system or individual water supply or sewage treatment system may be installed or extended in any geographic area unless these facilities are in accord with the county plan, (Article 43, Section 387C(d)(3); DHMH regulation 10.03.26.13). The county must submit "timely and adequate" annual reports to DHMH on its overall water-sewerage plan. If such reports are not filed by the county, then DHMH is authorized to withhold county construction permits until such review is accomplished, (Article 43, Section 387C (d)(5)). The Department of Health and Mental Hygiene must seek an advisory opinion from the DNR and DSP before giving final approval to any county plan (Id.) at (c)(1)(viii)).

The Environmental Health Administration grants permits to construct sewage treatment plants (Article 43, Section 394(a)). Permit applications are reviewed only after the discharge limitations have been set by WRA. The point of discharge and level of treatment must be consistent with both the county water and sewerage plan and the State Water Quality Management Plan.

The Environmental Health Administration has promulgated regulations which set standards on design and placement of individual (i.e., single home) water and sewerage systems. The regulations contain criteria relating to soil, type, lot size, and distance from waters used for drinking, contact, recreation, or shellfish growing (DHMH Regulations 10.02.27, 10.03.28).

2 Air Quality

The Department of Health and Mental Hygiene has the jurisdiction to regulate emissions into the air and ambient air quality standards, (Article 43, Section 690(b)). The Department of Health and Mental Hygiene requires permits for machines discharging emissions into the air, (although an exception is made for transportation vehicles and a special type of boiler used for farm or domestic purposes and electric company generating stations constructed after July 1, 1971), (Article 43, Section 706). Installation is defined generally as any article, machine, equipment or other contrivance or construction capable of generating, causing, or reducing emissions, (DHMH Regulation 10.03.35(T)).

3. Noise Control

The Department of Health and Mental Hygiene has responsibility for establishing ambient noise standards and promulgating regulations for their enforcement, (Article 43, Section 825). Regulations have been promulgated for the implementation of noise standards (DHMH Regulation 10.03.45).

E. The Department of Economic and Community Development

The Department of Economic and Community Development has a major role in establishing the State Development Plan. The State Development Plan is mandated in Article 88C and is the responsibility of the DSP. The two departments have developed a memorandum of understanding which clarifies their roles in developing the plan.

The Department consists of three major divisions: (1) Business and Industrial Development, (2) Housing Development, and (3) Cultural Development.

The Division of Business and Industrial Development is responsible for three programs that encourage industrial development: The Maryland Industrial Land Loan Program; Industrial Buildings for Counties and Municipalities; and the Maryland Industrial Financing Authority (which operates semi-autonomously). "Industrial Development" is defined somewhat differently by each program. The division also is responsible for assisting local governments in applying for, receiving and administering federal funds available through the Economic Development Administration.

The Cultural Development Division includes the Maryland Historical Trust, which will participate in implementation of the Coastal Zone Management Program objectives pertaining to historic and archeologic site preservation.

1. Maryland Industrial Land Act

The Maryland Industrial Land Act identifies a need to acquire potential sites for industrial use and to preserve such lands for future use (Article 41, Section 439(b)). The Secretary of Economic and Community Development may approve loans to local governments for industrial land acquisition, based on the suitability of the land for industrial use, the industry it is suited to, the likelihood of industry locating at the site, and the compliance of the expected use with zoning, sanitary, and other regulations applicable to the site, (Article 41, Section 440(a)). Loans may cover up to $500,000 (Article 41, Section 440(b)). The borrowing subdivision cannot sell or lease the land for purposes other than industrial growth and the Secretary may enjoin any sale or lease he finds inconsistent with this law (Article 41, Section 440(d)(1)). In addition to land acquisition funds, the Secretary may approve loans for engineering and planning studies of potential industrial sites (Article 41, Section 440(f)).

Loans up to $750,000 are also available for industrial park planning and development. Funds can be used for planning and/or engineering costs, land acquisition, water and sewer service and other utilities, access lighting, rail spurs, costs unique to a specialized industrial park, site preparation, and rehabilitation of existing building (Article 41, Section 441).

For the purposes of this act, the General Assembly created an Industrial Land Loan of $6,000,000 (Article 41, Section 445). Interest and repayment of principal of loans to local governments replenish this fund (Article 41, Section 446).

2. Industrial Buildings for Counties and Municipalities

The Industrial Buildings for Counties and Municipalities Act sets up a program of local acquisition of industrial land and buildings:

> ...to relieve conditions of unemployment in this State to encourage the increase of industry and a balanced economy in this State, to assist in the retention of existing industry in this State through the control, reduction or abatement of pollution to the environment, to promote economic development to protect natural resources, and in this manner to promote the health, welfare and safety of the residents of each of the counties and municipalities of the State. (Article 41, Section 266B)

Industrial lands and buildings are defined as any buildings or structures suitable for use as a factory, mill, shop, research and development facility, warehouse, assembly or fabricating plant, or office building related to these uses (Article 41, Section 266A). This act authorizes counties to borrow money by issuing revenue bonds to acquire industrial buildings (for factory, mill shop, processing plant, fabricating plant, offices, or necessary or useful machinery and equipment, port facility and pollution control facilities) to be leased or sold back to industrial concerns. The bonds and interest thereon are exempt from state and local taxes (Article 41, Section 266C).

3. Maryland Industrial Financing Authority

The Authority is a semi-autonomous instrumentality of the Department of Economic and Community Development whose members are appointed by the Governor. The State Treasurer or Comptroller and the Secretary of Economic and Community Development are ex officio members (Article 41, Section 266M). The Authority, subject to the authority of the Secretary and other laws of Maryland, ensures the payment of mortgage loans secured by industrial projects up to a limit of $60,000,000 (Article 41, Section 266T), for the purpose of encouraging industries to locate in, and discouraging industries from relocating out of the State (Article 41, 2660).

Counties are empowered to borrow money and execute mortgages as security to defray the costs of acquiring an industrial project, without pledging their full faith and credit. If counties act as mortgagors, the interest on the mortgage is exempt from state and local taxes (Article 41, Section 266W).

F. Maryland Historical Trust

The purpose of the Trust is to preserve and maintain historical, aesthetic, and cultural properties, buildings, and fixtures pertaining to Maryland's early history, (Article 41, Section 181A). The Trust has funding to accomplish this purpose (Article 41, Section 181I). The Trust assists local Historic District Commissions in their historic zoning functions enabled by Article 66B, Section 8.01 to 8.13.

The authority of the Trust to acquire interests in real property will be discussed below.

G. The Department of Transportation

The Maryland Department of Transportation (MDOT) has within its jurisdiction two administrations which carry out major activities in the coastal zone. The State Highway Administration (SHA) is responsible for the State's primary road system and has extensive long-range highway planning responsibilities. It should be noted that all construction of highways by SHA requires grading and sediment control approval from WRA, as well as other permits involved in bridge or other stream bed alterations or wetlands filling. Another unit of MDOT is the Maryland Port Administration (MPA) which is involved in the promotion and maintenance of the Port of Baltimore and development of other small port facilities in the State. Again, port development activities supported by MPA which involve dredging or filling require wetlands licenses and/or permits.

The Maryland Port Administration was created for the purpose of improving existing port facilities and creating new port facilities when the public interest so requires (Article 62B, Section 1). The Maryland Port Administration has jurisdiction in, adjoining, or in the vicinity of any of the navigable waters of Maryland (except in Queen Anne's County and only within certain geographic limits in Calvert, Charles, and St. Mary's Counties (Article 62B, Section 2). It has the authority in Baltimore Harbor to dispose of waste matter other than oil collected from commercial vessels (Article 62B, Section 5A). The Maryland Port Administration also has the power to establish lines beyond which no piers, bulkheads, wharves, pilings, structures, obstructions, or extensions of any character may be erected (Article 62A, Section 5(q)). It may also establish regulations to prevent any material from being deposited in or placed where it may fall or be washed into any navigable waters.

The Maryland Port Administration issues permits for construction within the waters of Baltimore Harbor. For minor projects, this is accomplished by a simple letter of permission. While MPA has no authority to enforce these permits, they will overlap in jurisdiction with the State wetland license and the U.S. Army Corps of Engineers permits for construction in navigable waters. The Maryland Port Administration generally responds to the Corps of Engineers' public notice, and MPA concerns (which are of a navigational nature) are generally incorporated in the Corps' permit. The major purpose of the MPA permit is to allow MPA to keep an accurate site-specific inventory of construction going on in the Harbor Area.

The Maryland Port Administration works together with the Water Resources Administration's Enforcement Division in the enforcement of oil spill laws and in the Oil Spill Disaster Cleanup, Containment and Contingency Program. The Maryland Port Administration is responsible for the cleanup of spills occuring within its jursidiction.

H. The Department of Agriculture

The Secretary of Agriculture has general supervision, direction, and control of the provisions of the Agricultural laws and "...generally of all matters in any way relating to the fostering, protection and development of the agricultural interest of the State." (Article AG, Sec. 2-104). The important functions of the Department of Agriculture in coastal zone management include the regulation of pesticides, the preservation of productive agricultural land, and management of soil erosion problems.

1. Pesticide Regulation

The Secretary of Agriculture has overall authority for administering the pesticide program under Article AG, Section 5-102(a). The Secretary of Agriculture has authority to implement pesticide regulations under Article AG, Section 5-104(a), and has power to remove from sale any pesticide which has been found to contaminate the environment by federal or state authorities (Article AG, Section 5-108). The Secretary's authority includes licensing of pesticide applicators, and establishment of standards on use, storage, and transfer of pesticides (Article AG, Section 5-210). The Department of Agriculture is also to participate in the implementation of the Hazardous Substances Act (Article NR, Sec.8-1413.2), and is represented on the Hazardous Substances Disposal Advisory Council.

2. Agricultural Land Preservation Foundation

This program will be dicussed below in the section on acquisition of interests in land and waters.

3. Soil Conservation District Act

Each county has a soil conservation district (Article AG, Section 8-201). The district commissions consists of five Soil Conservation District supervisors, appointed by the State Soil Conservation Committee. A soil conservationist is assigned to the district by the U. S. Soil Conservation Service.

In addition to the assistance given to farmers in developing conservation plans for their farms, the districts may adopt and use regulations subject to the Secretary of Agriculture's approval, to help conserve soil, water, other natural resources, and wildlife (Article AG, Section 8-205). At present, however, districts have found it necessary only to adopt advisory guidelines. The districts are anticipated to play a major role in the implementation of Phase II Water Quality Plans (non-point source pollution planning pursuant to Section 208 of the federal Water Pollution Act of 1972).

The districts also approve or disapprove plans for clearing, grading, transporting, or otherwise disturbing soil pursuant to Article NR, Sec.8-1104(A), Article AG, Section 8-306(a)(17). The appropriate soil conservation district's approval is a necessary prerequisite to the county or state grading permit that is required, (see DNR - Water Resources Administration, (f) Sedimentation Control on Page 432 of this chapter).

I. Joint Maryland-Virginia Advisory Commission on the Chesapeake Bay

Joint Resolution 12 passed by the Maryland General Assembly in 1978 creates a Legislative Advisory Commission on the Chesapeake Bay. The Resolution recognizes the Chesapeake Bay as a single natural system of great value shared by the two States. The resolution also recognizes a need for some new mechanism for effective coordination of management involving Maryland and Virginia and with appropriate participation by the federal government, regional commissions and agencies and local governments. The commission is composed of ten members; nine are appointed by the President of the Senate and Speaker of the House of Delegates representing economic, scientific and environmental interests and geographical areas of the Bay from the legislature and the private sector, and one member is appointed by the Governor.

The Commission is directed to join with its counterpart in Virginia to form a Joint Maryland-Virginia Commission. (A similar resolution of the Virginia General Assembly established a Virginia Legislative Advisory Commission). The Joint Commission is to (1) try to ascertain the public interest in appropriate management and coordination of the Bay, (2) examine and evaluate available alternate proposals for improved and effective coordination of management of the Bay and its uses, including, but not limited to such mechanisms as a Bistate Commission, Title II Commission, federally funded research programs, and the Coastal Zone Management Program, (3) to work in close harmony with existing public and private task forces and advisory committees which are currently studying Bay management and coordination, and report to the General Assemblies of both States prior to the 1980 session and (4) recommend the most desirable Bay management alternative.

J. Judicial Interpretation of Maryland's Police Powers

The statutes which have been discussed above involve the use of the State's police power. In order to fully appreciate the scope of these authorities, it is necessary to understand that Maryland Courts construe the police power broadly.

Maryland's police power must be used to promote the public health, morals, safety, or welfare of its citizens, (Dasch v. Jackson, 183 A. 534, 170 Md. 251 (1936)). The police power must serve the interests of the general public rather than those citizens of a particular class, the means must be reasonably necessary for accomplishment of the purpose, and the means may not be unduly oppressive upon individuals. (Maryland Coal and Realty Co. v. Bureau of Mines, 193 Md. 627, 69 A 2d. 471 (1949)). Maryland courts have held police power statutes and regulations to be those designed to protect the public health, comfort, safety, order, convenience, morals and general welfare, Stevens v. City of Salisbury, 214 A. 2d 775, 240 Md. 556 (1964).

Because all property rights are held subject to the fair exercise of a state's police power, no unconstitutional taking without just compensation occurs when property rights are limited by statutes and regulations formulated under Maryland's police power, (Bureau of Mines v. George's Creek Coal and Land Co., 272 Md. 143 (1974), 21 A. 2d 748. The only exception to this principle is the case when a law deprives the property owner of "all reasonable use", which is usually measured in terms of economic value (George's Creek, supra, 272 Md. at 170).

Three recent cases demonstrate that Maryland has broad police power authority to protect the State's natural resources. The case of Smoke Rise v. WSSC, 400 F. Supp. 1369 (1975) held that it is reasonable for a state to exercise its police power to prevent pollution of its water by human wastes and upheld the constitutionality of sewer moratoria which restricted property development. The case of A.H. Smith Sand and Gravel Co. v. Dept. of Water Resources, 313 A. 2d 820, 270 Md. 652 (1974), held that the Department's regulation prohibiting filling on land within the 50 year flood plain was constitutional. In Potomac Sand and Gravel v. Governor, 293 A 241, 266 Md. 358, cert. denied 409 U. S. 1040 (1972), the Court of Appeals held that Chapter 792 of the Laws of 1971, a public local law prohibiting dredging for gravel in the tidal waters or marshlands of Charles County, is constitutional. The Court specifically recognized the current trend to consider the preservation of natural resources as a valid exercise of the police powers.

K. Conclusion

This analysis of Maryland law demonstrates conclusively that Maryland has sufficient legal authority to ensure that the management of coastal land and water uses will be in conformance with the policies of the state's coastal zone

management authority. There is virtually no significant activity which may occur within Maryland's coastal zone which will not be regulated directly by a state agency. The State's comprehensive regulatory authority must be interpreted in light of the policy objectives established by the Maryland Environmental Policy Act. Article NR, Sec. 1-302(4) mandates that "The policies, rules, regulations, and public laws of the state shall be interpreted and administered in accordance with the policies set forth in this subtitle." As discussed above, Maryland governmental agencies are required to consider the environment in their decision-making processes unless there is a specific statutory provision to the contrary. None of the legal authorities discussed in this section contains such a prohibition. In addition, Maryland's statutory authority must be interpreted in light of the judicial recognition that the police power of the state may be used broadly to protect the state's natural resources.

III Resolution of Conflicting Uses

A. Introduction

Maryland law provides mechanisms whereby conflicts over competing uses of the coastal zone may be resolved at the intra-agency level, the inter-agency level, between the State and members of the public and between the State and Federal governments. Two sections in the Maryland Environmental Policy Act must be kept in mind in analyzing Maryland's ability to resolve conflicts. Article NR, Sec. 1-302(e) establishes the following policy.

> It is the continuing policy of the state to cooperate with the federal government, other state governments, the District of Columbia, the political subdivisions of the state, and other concerned public and private organizations and individuals, in a manner calculated to protect, preserve, and enhance the environment.

Article NR, Sec. 1-303(2) requires all state agencies to develop methods and procedures to assure that:

> Studies are undertaken to develop and describe appropriate alternatives to present policies, programs, and procedures that involve significant adverse effects or unresolved conflicts concerning uses of available resources.

B. Intra-Agency Conflict Resolution

Conflicts within Maryland agencies are resolved by the departmental secretary who is responsible for the overall management of his agency. For example, Article NR, Sec. 1-101(d) provides:

> The Secretary is responsible for the operation of his office and shall establish guidelines and procedures to promote its orderly and efficient administration.

More specific authority to resolve conflicts is provided by Article NR, Sec. 104(a):

> The Secretary is responsible for the development of coordinated policies for the preservation, conservation, enhancement, wise use, and perpetuation of the natural resources of the state. He is responsible for the efficient coordination of all the natural resources activities of the state including the settlement of conflicts that may arise among units within the Department of Natural Resources.

The Secretaries of all Maryland Agencies are vested with similar statutory authority. Generally see Article 41, Section 3A.

Within the Department of Natural Resources, conflict resolution will also be furthered by the Coastal Facilities Review Act (Article NR, Sec. 6-501 et seq.) which consolidates all permits issued by the department for coastal facilities as defined by the Act.

C. Inter-Agency Conflict Resolution

Several mechanisms exist whereby disputes between agencies over the proper use of the state's coastal zone may be resolved. Ultimate responsibility for inter-agency conflict resolution rests with the Governor as Article II, Section 1 provides that "The executive power of the State shall be vested in a Governor." The Governor's duties in this respect are further defined by Article 41, Section 15:

> The head of the Executive Department shall be the Governor of the State, who in addition to the rights, powers, duties, obligations and functions now or hereafter conferrred by law, shall also have supervision and direction over the officers and agencies hereby or hereafter assigned to the Executive Department.

As will be discussed below, the Governor is vested with authority to promulgate Executive Orders. Such an order could establish specific procedures to aid in the resolution of conflicts pertaining to the coastal zone.

There are other means of conflict resolution short of intervention by the Governor's office. As will be discussed below, interagency memoranda of understanding which may be used to "network" Maryland's legal authorities could establish procedures whereby agencies will work together to resolve disputes. Another potentially useful mechanism is the Council on the Economy, the Environment, and Energy Production created by Executive Order of the Governor in June 1978. The Council consists of the Governor, the Lieutenant Governor, and the Secretaries of Budget and Fiscal Planning, of Economic and Community Development, of Health and Mental Hygiene, of Natural Resources, of State Planning, and of Transportation. The purpose of the Council is to "assist in the development of a coordinated policy for the development of natural resources, the protection of the environment, and the stimulus of the economy." The Council is also to "assist in the resolution of potential conflicts between the interest of private industry and the protection and development of the State's environment." All state agencies are directed to cooperate fully with the council in the development and implementation of its policies.

In recent years, the Maryland General Assembly has acted to streamline the state's regulatory procedures by reducing the number of permits an individual must obtain from the state. This approach should also assist in the resolution of conflicts between state agencies. The Consolidated Permit Procedures Act, Article 78A, Section 56 et seq., authorizes the Board of Public Works to designate a coordinator who may develop master application forms for state permits. The law also authorizes consolidated hearings when several state permits are involved or when both state and local permits are necessary. While these provisions have not been

fully implemented, they could be utilized in the implementation of the coastal zone management policies. Permit procedures for power plants have also been consolidated by Article 78, Section 54B(a) which provides that a certificate issued by the Public Service Commission constitutes authority to dredge and/or construct bulkheads in the waters or private wetlands of the State, a permit to appropriate or use waters of the state and an air emission permit. Coordination of the state's evaluation of proposed power plants is provided through the Power Plant Siting Program.

The A-95 review process also provides for the resolution of conflicts between state agencies. Under procedures established pursuant to OMB Circular No. A-95, applicants for federal assistance must notify the State Clearinghouse of their intentions. Maryland's statewide clearinghouse function is performed by the Department of State Planning. The notification is then forwarded to appropriate State, regional and local governmental agencies for review and comment to ensure consistency with comprehensive state, regional and local plans. Any comments must be submitted with the application to the federal agency.

D. Conflicts Between the State and the Public

Conflicts between state agencies and other parties are resolved through the administrative and judicial appeals process established by Maryland law. Article 41, Sec. 3C states that unless otherwise provided by law each principal state agency shall have a seven member board of review to hear appeals from departmental decisions. The enabling legislation for each state agency provides greater detail. For example, Article NR, Sec. 1-107(a) provides that four of the board's seven members, shall be selected from and represent the general public and three shall have expertise in the areas regulated by the department. DNR's Board of Review has been limited in its scope of review to the evidence considered by the administrative agency. The Board may not conduct a de novo review. See, 62 Op.Atty.Gen. 1977.

1. Administrative Procedure

Maryland's Administrative Procedure Act, Article 41, Sec.244, et seq., provides that before an agency may adopt a rule or regulation, it must provide an opportunity for interested persons to comment orally or in writing. Public notice must be provided in the Maryland Register pursuant to the State Documents Law, Article 41, Sec. 256C, et seq.

The Administrative Procedure Act also requires that in any "contested case" all parties shall be provided an opportunity for an administrative hearing (Article 41, Sec. 251). A "contested case" is defined as "a proceeding before an agency in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing", (Article 41, Sec. 244(c)). All state agencies are required to promulgate rules and regulations establishing procedures for administrative hearings. It should be noted that in certain instances there is no provision for administrative appeal but only for direct judicial review. For example, Article NR, Sec. 3-307 states that the Department of Natural Resources Board of Review does not have jurisdiction over proceedings pertaining to the Power Plant Siting Program. Appeals of agency decisions on power plants are made directly to the state circuit courts.

Article 41, Sec. 255 provides that any party aggrieved by a final administrative decision in a contested case shall have a right to judicial review. Maryland courts have granted standing both to tax payers and property owners whose interests have been adversely affected by administrative actions. The test for taxpayer standing was summarized in Citizens Planning and Housing, et al v. County Executive of Baltimore County, et al, 273 Md. 333 (1974):

> From this decision and the long line of Maryland cases following in its wake, the principle has become established that a taxpayer may invoke the aid of a court of equity to restrain the action of a public official or an administrative agency when such action is illegal or ultra vires, and may injuriously affect the taxpayer's rights and property. (citations omitted). The corollary to this rule is that the taxpayer will be allowed such relief only when some special damage is alleged and proved, or a special interest is shown which is distinct from that of the general public. (citations omitted). This has been interpreted to require a showing that the action being challenged results in a pecuniary loss or an increase in taxes. (citations omitted). From among the profusion of cases decided by this Court on the question of standing, several emerge as worthy of particular comment here.

To have standing on the basis that his property interests have been adversely affected, an individual must demonstrate that his interests have been specially damaged. This principle was established by the Court of Appeals in Baltimore v. Gill, 31 Md. 375 (1869):

> It is certainly well settled that public wrongs cannot be redressed at the suit of individuals, who have no other interest in the matter than the rest of the public. Thus an individual cannot maintain a bill of injunction to prevent a public nuisance, unless he suffers thereby some special damage; and the principle governing cases of that kind has supposed to be applicable to the present case.

It should be noted that Maryland courts grant standing on a liberal basis. In Thomas v. Howard County, 261 Md. 422(1970) the Court stated:

> We and our predecessors have gone far in sustaining the standing of taxpayers to challenge the alleged and illegal and ultra vires actions of public officials.

and:

> In our opinion this is and has been a salutary policy conducive to the advancement of the public interest and should not be narrowed or impaired. We note with satisfication that the Maryland view in this regard represents the general trend of the authorities in our sister states and especially in the Federal Courts where the restrictive holding by the Supreme Court in Frothingham v. Mellon, 262 U.S. 447 (1923), has been substantially eroded.

In order to seek judicial review, an individual must have been a party to the administrative proceedings. In Montgomery County v. One Park North, 275 Md. 193 (1975), the Court of Appeals held that Article 41, Sec. 256A, which grants political subdivision status as parties, did not give standing to a county which had not been a party to the proceedings before the administrative agency.

2. Environmental Standing

The Environmental Standing Act (Art. NR, Sec. 1-501 to 1-508; Chapter 838, Acts of 1978) which became effective July 1, 1978, enlarges the class of persons who may sue to protect the air, water and other natural resources of Maryland.

Under the pre-existing law as described above, the plaintiff must himself have suffered special damages different from the damages suffered by the general public. If he had not suffered such special damages, then he lacked standing to sue, and the court would dismiss his complaint without rendering a determination on its merits.

Under the Act a person may bring an action for mandamus or equitable relief regardless of whether he has suffered special damages. However, an individual citizen must reside in the county or Baltimore City where the suit is brought or show that the activity complained of effects the environment where he resides. Moreover, the person's complaint must involve the failure on the part of a government agency either to perform a non-discretionary duty or to enforce an applicable standard under an environmental statute, rule, regulation or order. Thus, failure to perform any non-discretionary duties or to enforce applicable standards cited in the Program could become the basis for a citizen suit. Terms and procedures outlined in Memoranda of Understanding and information developed in project evaluations could become part of the administrative record used to determine whether adequate performance or enforcement had taken place.

In order to avail himself of the rights conferred by the Act, a person must give written notice at least 30 days prior to filing suit, to both the Attorney General's office and the governmental agency responsible for taking action with respect to the activity.

Several other limitations on the plaintiff's right to bring a suit are set forth in the Act. First, the Act does not abrogate the defense of sovereign immunity. Secondly, the Act does not apply to actions seeking monetary damages or changes in local zoning requirements. Thirdly, the Act does not abrogate the requirement that a person exhaust his administrative remedies prior to seeking judicial review of administrative action. Finally, the Act does not create substantive causes of action or theories of recovery.

A defendant who has been sued pursuant to the Act may move the court for a stay of proceedings if one of the following is pending: (1) an administrative enforcement hearing initiated by the proper governmental agency, (2) a court review of the administrative action taken by a governmental agency with respect to the activity complained of, (3) an action by the Attorney General or a political subdivision with respect to the activity, or an appeal from a judgement with respect to such an action. The stays are limited to 90 days, but may be extended for like periods if sufficient cause is shown. If the activity poses an imminent danger to the public or irreversible harm to the environment, however, the court may not stay the proceedings.

E. State/Federal Conflicts

The principal mechanism which will be used to resolve conflicts between Maryland and the federal government over the proper utilization of the coastal zone will be the federal consistency provisions of the Federal Coastal Zone Management Act. The use of federal consistency is discussed in detail in Chapter VI.

F. Conclusion

From this discussion, it is clear that the strength of Maryland's executive branch of the government ensures that conflicts over the proper use of the coastal zone will be resolved. Furthermore, where members of the public are impaired by a decision with which they do not concur, Maryland law provides for recourse to the courts which are the ultimate arbitrators in any conflict.

IV Authority to Acquire Interests in Land and Water

A. Introduction

Maryland has authority to acquire interests in land for many different purposes including recreation, conservation, historic preservation, fish and wildlife enhancement, port development and power plant sites. Land may be acquired by negotiation and/or condemnation. Title to all lands below the mean high tide mark is vested in the state and with the waters of the state are held in trust for all Maryland citizens. This section will discuss the land acquisition programs of each state agency.

B. The Department of Natural Resources

1. Authority to Acquire Property

Article NR, Sec. 5-1202(a) states that acquisition of interests or rights in real property for preservation of open spaces and areas constitutes a public purpose for which public funds may be acquired. The department is authorized to acquire by purchase, gift or lease the fee, or any lesser interest or development

right necessary to achieve that end. Article NR, Sec. 5-208 authorizes the department to condemn land, earth, gravel, stone, timber material or any improvements when such action is necessary to carry out the purpose of any legislative act or to advance the aims of forestry, parks or recreation and the work of the department. The department may acquire, by purchase, lease, condemnation, or gift, title or control of any area suitable to protect, propagate, or manage wildlife or for hunting purposes (Article NR, Sec. 10-801). The Department of Natural Resources may establish wildlife management areas on state-owned lands, where any disturbance of wildlife is prohibited (Article NR, Sec. 10-805). The Department may enter into agreements with landowners to establish wildlife management areas on privately owned land (Article NR, Sec. 10-806). Natural Resources Article, Sec. 4-401 states that the Department may acquire by lease, purchase, condemnation or gift, any area of water or land in the state suitable to protect, propagate or manage fish.

Units of the Department may acquire property for specific purposes. Article NR, Sec. 3-305 authorizes the Power Plant Siting Program to acquire an inventory of power plant sites. The Maryland Environmental Service may acquire, construct, improve and lease water supply, sewage treatment and solid waste facilities under the provisions of Article NR, Sec. 3-104. The Maryland Environmental Trust has the power to acquire by lease, gift, purchase, or by any other means, real and personal property, or any interest therein, of aesthetic, scenic, or cultural significance to the health and welfare of the public and to conserve, administer, invest or dispose of properties to further the purposes of the Trust (Article NR, Sec. 5-203). Finally, state funds may be used to purchase land within the Beach Erosion Control District on Maryland's Atlantic Coast if the regulation properties within the district constitutes an unconstitutional taking (Article NR, Sec. 8-1105.1(c)).

2. Capital Programs Administration

The principal land acquisition program of the department is Program Open Space (Article NR, Sec. 5-901, et seq.) which is funded by a transfer tax on all real estate transactions in the State. Half of these funds are used to acquire state parks, natural areas, forests, and wildlife management areas. The remaining funds are used to reimburse local governments for up to 100 percent of the costs of open space acquisition and up to 75 percent of the costs of park development. The implementation of any open space project partially or fully funded by State Program Open Space money must meet the needs identified in the Maryland Outdoor Recreation and Open Space Plan prepared by the Department of State Planning in cooperation with the Capital Programs Administration (Article NR, Sec. 5-906(b)). The Capital Programs Administration administers the local projects portion of Program Open Space and promulgates regulations governing applications and allowable project costs (Article NR, Sec. 5-906(c)). Any land acquired or developed under a State Program Open Space grant may not be converted from its outdoor recreation or open space use to any other use without permission from the Capital Programs Administration and the Department of State Planning, (Article NR, Sec. 5-906(e)(7)).

Program Open Space utilizes funds made available by the federal government through the Land and Water Conservation Fund Grant Program. To date, Maryland has received over $30 million from this fund. The process of selecting sites to be considered for acquisition with both Land and Water Conservation and Program Open Space funds is conducted by the Land Planning Services Division of the Capital Programs Administration. The site selection process is not rigidly defined, but consists essentially of staff review of potential sites recommended by other DNR agencies, state legislators, local governments and the general public. The staff of the Land Planning Services Division also identifies sites for consideration on the basis of its review of resource inventories such as the Chesapeake Bay -- Inventory of Potential Shoreline Access, Recreation and Open Space Areas, Upland Natural Areas Study, Wetlands Vegetation Study, and Maryland Comprehensive Outdoor Recreation and Open Space Plan; and its state-wide analysis of land acquisition needs.

The Capital Programs Administration also administers the Waterways Improvement Fund, Article NR, Sec. 8-707, which is financed through a 5 percent boat title tax, a boat registration fee and an annual allocation of $400,000 from vehicle fuel tax revenues. Fund expenditures are for (1) marking and dredging channels and harbors not within the scope of operation of the U. S. Coast Guard and the Army Corps of Engineers, (2) clearing debris, aquatic vegetation and obstruction from navigable waters of the State, (3) provision of hydrographic survey engineering services, and (4) construction of facilities of benefit to the boating public such as marinas, boat ramps, piers, and boat launching areas including accessory facilities (parking areas, comfort stations, etc.). Since the inception of the Waterways Improvement Program, 458 projects have been completed with an expended value of $2,493,682. 133 approved projects have not been initiated; 93 are presently under construction with an obligated fund value of $6,840,039.

The costs of dredging, channel marking and debris removal projects, including construction of boating facilities on state-owned land are also funded. The contribution of the Waterways Improvement Fund to the construction of boating facilities on county-owned sites is limited to 100 percent of the first $25,000 and 50 percent of costs in excess of $25,000.

3. The Maryland Environmental Trust

The Maryland Environmental Trust, Article NR, Sec. 3-201, et seq., is administratively located in the Department of Natural Resources. The Trust was created for the purpose of conserving, improving, stimulating, and perpetuating the aesthetic, natural, health and welfare, scenic, and cultural qualities of the environment, including (but not limited to) land, water, air, wildlife, scenic qualities, open spaces, buildings of any interest therein, and other appurtenances pertaining in any way to the State of Maryland. The Trust is also responsible for utilizing educational and other media to encourage and motivate the populace of the State and others to do so, and to promote continuing interest in and the study of such matters.

To carry out its duties the Trust: (1) acquires and maintains properties of aesthetic, scenic, cultural, or public health and welfare value by gifts, purchase, or bequest; (2) receives appropriations, gifts, or bequests to

carry out its purposes; (3) cooperates with and assists state, federal, and local governmental agencies, private or public foundations, and individuals to further the purposes of the Trust; and (4) promotes the establishment of local committees to work with the Trust in furtherance of the objectives of the Trust at the local level. The Trust has acquired rights and conservation easements to approximately 5,730 acres of land.

4. Wildlands Preservation Program

A State Wildlands Preservation System is established by Article NR, Sec. 5-1203 et seq. The definition of a wildlands area which may be included within the preservation system is broad. The statutory definitions refer basically to an area of land which is still in its natural condition and predominantly untouched by civilization, (Article NR, Sec. 5-1201(c)). Any State wildlands area must be managed so as to preserve its wildland character, (Article NR, Sec. 5-1203(a)). In order for an area to be designated a State wildland, the Secretary of DNR must recommend the designation to the General Assembly (Article NR, Sec. 5-1205). The General Assembly must then enact a bill including the area within the State Wildlands Preservation System. The Secretary may acquire privately owned land within the perimeter of a wildland with the consent of the owner (Article NR, Sec. 5-1216).

5. Woodland Conservation

Article NR, Sec. 5-301 et seq. requires the department to formulate a program of forest conservation and management. Under this program, any individual owning five or more acres of woodland may contract with the department to place the tract under a management program. During the period of the contract, property tax assessments may not be increased (Article NR, Sec. 5-304).

6. Fish Refuges

Article NR, Sec. 4-404 and 405 provides that the Department may create and maintain fish refuges and management areas. Private individuals owning waters suitable for fish refuges may lease such areas to the state. The department is authorized to adopt rules and regulations governing the use of refuge areas it either owns or controls (Article NR, Sec. 4-407).

7. Wildlife Management Areas

Article NR, Sec. 10-801 et seq. authorizes the department to establish and maintain state wildlife refuges in order to protect and propagate wildlife. Hunting is prohibited in such areas. Private property owners may lease suitable areas to the state. The department is required to promulgate rules and regulations for the proper administration of management areas.

8. State Wetlands

As has been discussed in Section II of this Chapter, any land under the navigable waters of the state below the mean high tide which is affected by the regular rise and fall of the tide is defined as "state wetlands", Article NR, Sec. 9-101(m). The only exception to this rule is lands which have been transferred by

the state to individuals and which are considered "private wetlands". Accordingly, title to all state wetlands is vested in the state. The granting of a wetlands license by the Board of Public Works pursuant to Article NR, Sec.9-202 constitutes a conveyance of the state's interest to the licensee.

9. Waters of the State

Article NR, Sec. 8-101(k) defines the term "waters of the state" broadly to include:

> ...both surface and underground waters within the boundaries of the State subject to its jurisdiction, including that portion of the Atlantic Ocean within the boundaries of the State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage. The flood plain of free-flowing waters determined by the Department on the basis of the 100-year flood frequency is included as waters of the State.

The term "waters of the state" should not be construed to mean that title to all such waters is vested in the State. Only navigable waters are held by the state in trust for the benefit of the public, Department of Natural Resources v. Ocean City, 224 Md 1, (1975). However, the state does have regulatory control over all waters. It should be noted that almost all the waters within the coastal zone are navigable.

C. The Department of State Planning

Although the Department of State Planning does not have authority to acquire and manage lands and waters, it is responsible for preparing the Maryland Outdoor Recreation and Open Space Plan, Article 88C, Section 2. This document includes guidelines for all future open space and recreation planning; a study of activity demand and facility deficits; state policies governing open space and recreation; statewide and regional recommendations for areas to be acquired and developed to meet identified needs; an outline of legal, fiscal and administrative guidelines to help implement goals; an overall program design for open space and outdoor recreation research, and acquisition and development of land. The Plan sets forth proposed acquisition and development schedules of federal, state and local governments in each region of the State. An acquisition priority system is developed based upon: resident population within one hour driving time of the project site, comparison of natural values of alternative sites, danger of despoliation of potential project sites due to the diversion of open space to more intensive uses, and need for additional and state natural resource acreage in each county of the State.

All acquisition and development projects funded by the State through Program Open Space must meet needs identified in the plan, Article NR, Sec. 5-906(b). Lands acquired with Program Open Space funds may not be converted to other uses without the written approval of the Department of Natural Resources and State Planning, Article NR, Sec. 5-906(e).

D. The Department of Agriculture

The Agricultural Land Preservation Foundation, Article AG, Sec. 2-502 was created for the purpose of preserving agricultural and woodland in order to provide sources of agricultural products within the State for the citizens of the State; control urban expansion which is consuming agricultural land and woodland of the State; curb the spread of urban blight and deterioration; and protect agricultural land and woodland as open-space land (Sec. 2-501). The Foundation acquires, by gift, purchase, devise, bequest or grant, easements in gross or other rights to restrict the use of agricultural land and woodland to maintain the character of the land (Sec. 2-504). Agricultural Preservation Advisory Boards were created in each county containing productive agricultural land to advise and assist the county governing body with respect to the creation of agricultural districts and approval of purchase of easements by the Foundation in the county, in reviewing the status of land under easement, to advise the Foundation concerning county priorities for agricultural preservation, to promote the preservation of agriculture within the county, and to perform any other duties assigned by the county governing body, Sec. 2-504.1. An Agricultural Land Preservation Fund was created to provide the costs of the Foundation and for purchasing agricultural land preservation easements, Sec. 2-505. Portions of a local subdivisions allocation of Program Open Space funds may be transferred to the Fund pursuant to Article NR, Sec. 5-903.

E. The Department of Economic and Community Development

1. The Maryland Historical Trust

The Maryland Historical Trust, (Article 41, Sec. 181A, et seq.) is authorized to acquire, preserve and maintain historic, aesthetic, and cultural properties and buildings "pertaining in any way to the province and State of Maryland from earliest times." The Trust may also accept gifts of property. It has been the policy of the Trust not to acquire fee simple, but rather to seek voluntary historic easements. Several forms of tax incentives are available for easement donation, and for maintaining the character of historic buildings and districts (Article 81, Sec. 12G).

2. Maryland Industrial Land Act

The Maryland Industrial Land Act is described in detail on page 377. The Act, administered by DECD sets up a program of financial assistance to local governments for the purpose of acquiring land for industrial development use. Land acquired through the Industrial Land Loan Fund must be suitable for industrial use in a manner consistent with existing state and local law and regulations, and once acquired it may not be used for purposes other than industrial growth. Actual acquisition is to be carried out by the subdivision involved. While the Act does not confer the power of condemnation to local governments for the purpose of acquiring needed industrial sites, local governments in Maryland have sucessfully exercised the power of eminent domain to acquire land for industrial purposes (Prince George's County, Maryland v. Collington Crossroads, Inc.; 275 Md. 171 (1975)).

F. Conclusion

This section demonstrates that Maryland agencies may acquire interests in lands for a broad variety of purposes and that the State holds title to all tidal waters and lands thereunder. These authorities ensure that Maryland will be able to acquire property interests when such action is necessary to achieve the goals and objectives of the state's coastal zone management plan.

V "Networking" Authority

A. Introduction

Maryland has no comprehensive coastal zone management law. However, as discussed in Section II, the state does have a broad variety of regulatory authorities pertaining to the coastal zone. Because Maryland will rely upon the coordinated implementation of many different statutes administered by several different state agencies, it must be shown that these authorities and agencies may be "networked" together in conformance with the program. This section will demonstrate that Maryland meets this requirement.

B. Maryland's Legal Authorities

As has been discussed above in Section II, Maryland's diverse legal authorities are tied together under the Maryland Environmental Policy Act, Article NR, Sec. 1-301, et seq. That Act establishes a number of policies which are consistent with the policies and findings identified in Sections 302 and 303 of the Federal Coastal Zone Management Act, including the following:

> The protection, preservation, and enhancement of the state's diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the state and is a matter of the highest public priority;
>
> All state agencies must conduct their affairs with an awareness that they are stewards of the air, land, water, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

> It is the continuing policy of the state to cooperate with the federal government, other state governments, the District of Columbia, the political subdivisions of the state, and other concerned public and private organizations and individuals, in a manner calculated to protect, preserve, and enhance the environment.
>
> The determination of an optimum balance between economic development and environmental quality requires the most thoughtful consideration of ecological, economic, developmental, recreational, historic, architectural, aesthetic, and other values.
>
> Beneficial environmental effects of proposed actions can be identified and measures devised to obtain these benefits if environmental evaluations are made a part of the decision-making process of the state.
>
> Adverse environmental effects of proposed actions can be anticipated, minimized, and often eliminated if environmental evaluations are made a part of the decision-making process of the state.

Article NR, Sec. 1-302(k) then provides that "The policies, rules, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in this subtitle." To the extent that Maryland's coastal zone management program reflects the policies set forth by MEPA, there is a clear mandate to Maryland administrative agencies to conduct their affairs in a manner which would be consistent with the coastal zone management program. MEPA ties all of Maryland's authorities pertaining to natural resources together in a manner which ensures that those authorities may be interpreted consistently with Maryland's program.

C. Agency Coordination

Even though Maryland's laws may be interpreted consistently with the management program, a question arises as to whether all agencies may be required to act in such a manner. A key to understanding that all agencies will work to fulfill the goals and objectives of the program is the authority vested in Maryland's executive branch of government. As discussed above, the Governor is directly responsible for all administrative agencies. The Secretaries of those agencies which will be involved in the management program are appointed by the Governor, with the advice and consent of the Senate, and serve at the pleasure of the Governor and are directly responsible to him. See, for example, Article NR, Sec. 1-101 which also provides that "The Secretary is responsible for carrying out the Governor's policies in the areas of natural resources research and development, management, and administration." Maryland's program will be officially adopted as the policy of the state when it is submitted for approval. The organization of Maryland's executive branch provides the structure for ensuring that all administrative agencies will adhere to these policies.

The responsibilities of Maryland agencies to follow the program may be formalized by interagency memoranda of understanding and by executive orders and evaluate their enforceability. There will also be a discussion of an order issued by the Secretary of the Department of Natural Resources because of the importance of "networking" the various units of that department.

D. Executive Orders Issued by the Secretary of DNR

Maryland law does provide specifically for executive orders issued by secretaries of state agencies. Article 41, Sec. 15CA(B)(2) includes within the definition of "executive order":

> A proposal, order or directive of the secretary of a principal department, changing the organization, placement or name of a unit of State government within the secretary's jurisdiction and approved in writing by the Governor.

While Article 41, Sec. 15CA gives explicit recognition only to orders "changing the organization, placement or name of a unit of State government", Maryland law implicitly authorizes departmental secretaries to establish organizational procedures. Article 41, Sec. 3A defines the scope of a secretary's authority. Secretaries are responsible for the efficient and orderly administration of their departments, for the comprehensive planning of programs and services. Section 3A(b) provides that any secretarial order changing the organization of a department is not effective until approved in writing by the Governor or promulgated by the Governor as an executive order. Article 41, Section 12 also addressed the general responsibilties of the heads of the principal departments and directs that they shall be responsible

> for the coordination of programs and activities within and between the principal departments for the elimination and prevention of duplication and overlapping of programs, activities and services within and among their respective departments.

The specific duties of the Secretary of Natural Resources are addressed by Section 1-104(a)(2) of the Natural Resources Article which directs the Secretary to:

> Study and evaluate any plan, program, or activity or any combination of plans, programs, or activities within one or more of the units of the department, and recommend any legislative, budgetary, or administrative changes to provide more effective administration, clarify responsibilities, terminate obsolete programs, establish desirable programs, or alter or amend programs to meet changed or changing conditions.

Section 1-101(d) provides that the Secretary is responsible for the operation of his office and shall establish guidelines and procedures to promote its orderly

and efficient administration. Section 1-101(b) states that it is the intent of the General Assembly in creating the Department to unify and coordinate policies, plans and programs which ensure the preservation, development, wise use and enjoyment of Maryland's natural resources.

In addition the Maryland Environmental Policy Act directs all state agencies to identify, develop and adopt methods and procedures which will assure that:

> Environmental amenities and values are given appropriate consideration in planning and decision-making along with economic and technical considerations.

See Natural Resources Article, Section 1-303(1).

Based upon these authorities, it is clear that the Secretary of the Department of Natural Resources may issue an order requiring the units of the Department to coordinate their activities in order to implement the state's coastal zone management program. Such an order would not be required to be approved by the Governor pursuant to Article 41, Sec. 3A(b) as the order would not involve a reorganization within the meaning of Sec. 3A(b). The nature of a reorganization requiring the approval of the Governor was discussed in 55 Opinions of the Attorney General 374, (1970) as follows:

> When the transfer of positions and funds reaches such proportion to be considered reorganization within or between the principal departments (such as 'centralizing and coordinating administrative staff, and clerical services within and among the divisions and departments within their jurisdiction,') the approval of the Governor, as Chief Executive Officer of the State Governments, is required.

The specific reorganization addressed in that opinion involved a consolidation plan affecting most of the boards and commissions within the jurisdiction of the Department of Health and Mental Hygiene. The Secretarial order issued to further the coastal zone management program would not result in a consolidation. Instead the order would establish procedures whereby the various units of the Department of Natural Resources would coordinate their activites to achieve the goals and objectives of the coastal zone program. The order would not create any new units or eliminate any existing units within the Department. Although such an order would not fall within the definition of "executive order" provided by Article 41, Sec.15CA and would not require the approval of the Governor, the order would be within the authority of the Secretary.

E. Executive Orders Issued by the Governor

The authority of the Governor to organize the executive branch of the government is addressed by Article III, Section 24 of the Maryland Constitution:

> The Governor may make changes in the organization of the Executive Branch of the State Government, including the establishment or abolition of departments, offices, agencies, and instrumentalities, and the reallocation or reassignment of functions, powers, and duties among the departments, offices, agencies, and instrumentalities of the Executive Branch. Where these changes are inconsistent with existing law, or create new governmental programs they shall be set forth in executive orders in statutory form which shall be submitted to the General Assembly within the first ten days of a regular session. An executive order that has been submitted shall become effective and have the force of law on the date designated in the Order unless specifically disapproved, within fifty days after submission, by a resolution of disapproval concurred in by a majority vote of all members of either House or the General Assembly. No executive order reorganizaing the Executive Branch shall abolish any office established by this Constitution or shall change the powers and duties delegated to particular officers or departments by this Constitution.

This language gives the Governor broad authority to structure the executive branch subject to the restriction that when changes are inconsistent with existing law or create new governmental programs they shall be submitted to the General Assembly in the form of executive orders.

This same authority is recognized by Article 41, Sec. 15C(a) which authorizes the Governor to propose and order organizational changes which are "not inconsistent with the law." Article 41, Sec. 15C(a) includes within the definition of "executive order" written orders, proclamations or directives issued over the Governor's signature pursuant to Article II, Sec. 24 of the Constitution or Article 41, Sec. 15C. The issue to be resolved is whether the executive order would involve a program change inconsistent with existing law. If the proposed order is inconsistent with present statutory authority, it must be submitted to the legislature for approval.

The proposed order may or may not be consistent with existing law. If the order directs all executive agencies to coordinate their activities with the Energy and Coastal Zone Administration and to consider the goals and objectives of the coastal zone program in their decision-making processes, the order would be consistent with existing law. As discussed above, the Maryland Environmental Policy Act requires all state agencies to give consideration to environmental factors along with economic and technical considerations. An order issued by the Governor would also be consistent with existing law if it required all state agencies to support the goals and objectives of the coastal zone program to the fullest extent possible under their enabling legislation.

If on the other hand an executive order mandated all state agencies to exercise their authority only in a manner consistent with the program, there would be a conflict with existing law. For example, it could be inconsistent with existing law if the Department of Health and Mental Hygiene refused to issue an air emission permit for a facility which would comply with all applicable air quality standards on the grounds that facility producing the emissions was in conflict with the management program. In other words, an executive order which requires an agency to make decisions in a manner which would be inconsistent with the substantive standards under existing law must be submitted to the legislature under Article III, Sec.24 of the Maryland Constitution.

Article III, Sec.24 also requires executive orders creating new governmental programs to be submitted to the General Assembly. An order issued by the Governor defining inter-departmental responsibilities under the coastal zone program would not create a new governmental program. Instead, it would mandate the coordination of existing programs and existing legal authorities. Responsibility for administering federal grants allocated pursuant to the Coastal Zone Management Act of 1972 was delegated to the Department of Natural Resources by a letter from Governor Mandel to Robert Knecht, Director of the Office of Coastal Zone Management, dated March 12, 1973. Secretary Coulter assigned program responsibility to the Energy and Coastal Zone Administration by Operation Order 76:1, dated July 1, 1975. Article 41, Section 3A(b) required this order to be approved in writing by the Governor and the requisite approval was granted in a letter from Governor Mandel to Secretary Coulter dated July 7, 1975.

It should be noted that the General Assembly has given legislative recognition to the coastal zone management program on more than one occasion. Chapter 320 of the laws of Maryland 1976 added the Energy and Coastal Zone Administration as a departmental unit. This legislation was requested because of Section 1-104(c) of the Natural Resources Article which requires the Secretary to submit such legislation whenever a transfer of departmental functions makes the name of an agency unit misleading. The Coastal Facilities Review Act (Article NR, Sec.6-501, et seq.) also provides legislative recognition of the program in that it requires a determination that permits issued pursuant to the Act be consistent with the state's coastal zone management program. Finally, Natural Resources Article, Sec. 8-202 establishes the Chesapeake Bay and Coastal Zone Advisory Commission. Accordingly, no further legislative action is necessary unless an executive order issued by the Governor is inconsistent with existing law.

F. Enforeceability of Executive Orders

A question arises as to whether an action could be brought to require compliance with intra-agency procedures established by the Secretary of the Department of Natural Resources and with inter-agency procedures established by the Governor. The basis of this question is Section 923.41 of the revised regulations proposed by NOAA to implement the Coastal Zone management program. These regulations require that if the legal basis of a state's program is a "networking" of existing authorities, the executive orders or interagency memoranda of understanding establishing the network must be binding and enforceable.

With regard to procedures established by secretarial order, it is first necessary to discuss the applicability of the Maryland Administrative Procedure Act (Article 41, Sec. 244). That Act requires that before agency rules may be adopted they must be published and interested persons must be afforded an opportunity to comment (Section 245(c)). The word "rule" is defined by Section 244(b) as follows:

> "Rule" includes every regulation, standard, or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, adopted by an agency, whether with or without prior hearing, to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations concerning only the internal management of the agency and not directly affecting the rights of or procedures available to the public.

This definition clearly recognizes that regulations governing internal agency matters may be promulgated without following the procedures required by Section 245(c). Any regulations establishing the organizational structure whereby the Department of Natural Resources implements the Coastal Zone program would fall within this exemption.

Review of state and federal cases involving executive orders indicates that it is possible for either the Secretary of the Department of Natural Resources or the Governor to issue an executive order which is legally binding.

Robinson v. Shapp, 350 A 2d. 464 (1976), involved an executive order issued by the Governor of Pennsylvania committing his administration to ending discrimination against persons because of their "affectional or sexual preference". State departments and agencies were instructed to "fully cooperate" in order to end the discrimination. The Court held the order to be "merely a statement of policy" and that it was without jurisdiction to determine its propriety. This is an example of an order used to express policy and which cannot be judicially enforced.

On the other hand, State Ex Rel. Karnes v. Dadisman, 172 SE 2d. 561 (1970) held that an executive order placing certain state employees under the state civil service commission was effective and gave a discharged employee all the rights afforded by the civil service rules and regulations. The basis for the order was a West Virginia statute which provided in part that:

> The governor may, by executive order, with the written consent of the civil service commission and the appointing authority concerned add to the list of persons in the classified service... .

Therefore, the order was based upon statutory authority.

Decisions by federal courts have followed this general pattern. In Independent Meat Packers Ass'n v. Butz, 526 F 2d. 228 (1975) the plaintiffs sought to challenge federal regulations on the grounds that they failed to consider inflation-related factors as required by an executive order issued by the President. The order stated that it was based upon the "laws and Constitution of the United States". The court held that the order had no legal effect because it was "a managerial tool for implementing the President's personal economic policies". Similarly, in Manhattan-Bronx Postal Union v. Gronowski, 350 F 2d. 451 (1965), the court refused to enforce a Presidential order requiring the recognition of employee organizations. The court viewed the order, which grew out of a federal task force on management-employee relations, as the President's personal policy of enhancing the attractiveness and efficiency of federal employment.

Other Presidential Orders, however, have been held to have the effect of law. In Farmer v. Philadelphia Electric Co., 320 F 2d. 3 (1965), an employee of a government contractor brought action claiming that his employer had violated an anti-discrimination provision of a contract with the U. S. government. The contract provision was based upon an Executive Order. The court held that the order had the force and effect of law because it was issued pursuant to the Federal Property and Administrative Services Act of 1949 which authorized the President to issue directives as he deemed necessary to effectuate the Act. See, 40 U.S.C. Sec.486(a) and (c). It is important to note that the executive order in question went beyond a statement of policy and required specific action by federal agencies. Other cases holding executive orders requiring government contractors to adhere to policies of non-discrimination to have the force of law are Legal Aid Society of Alameda County v. Brennan, 381 Fed. Supp. 125 (1974), Farkas v. Texas Instruments, inc., 325 F 2d. 629 (1967), and U.S. v. Duquesne Light Co., 423 Fed. Supp. 507 (1976).

Even when an executive order has the force and effect of law there is a conflict on the issue of the order's enforceability by a member of the public. In Farmer v. Philadelphia Electric Co., supra, the court stated that the order in question did not confer a private remedy. However, the court also ruled that the plaintiff would have to seek administrative relief first and, therefore, did not completely foreclose the possibility of judicial relief. The plaintiffs in Farmer sought relief against a government contractor. In Legal Aid Society of Alameda County v. Brennan, supra, the plaintiffs sought relief not against a government contractor but against federal officials. The court distinguised Farmer on this basis and held the private mandamus action to be proper. Farkas v. Texas Instrument Inc., supra, also involved an action against a government contractor. The right to bring the action was denied based upon the holding in Farmer. In Gnotta v. United States, 415 F 2d. 1271 (1969) the plaintiff claimed discrimination in violation of executive orders and brought action for damages against the federal government, his employer. The court held that the action should be dismissed because the language of the executive order did not "speak in terms of money damages".

On the other hand in Chambers v. U.S., 451 F 2d. 1045 (1971) the U.S. Court of Claims permitted an action for back pay by an individual who had been denied an equal opportunity for employment in violation of an executive order. The Court of Claims rejected the reasoning set forth in Gnotta, supra, and held

the federal Administrative Procedure Act provided the plaintiff with the right to seek judicial review of an administrative action. In Brookhaven Housing Coalition v. Kunzig, 341 Fed. Supp. 1027 (1972) the plaintiffs sought to enforce an executive order directing the Government Services Administration to be guided by the availability of low and moderate income housing in selecting federal building sites. The court stated:

> The Executive Order, having been issued and published by the President pursuant to statutory authority, is not a mere internal housekeeping arrangement, as asserted by defendants. Private citizens have a right to review compliance with both statutes and regulations... . This is a specific application of the general principle that government agencies may be required to live up to their own rules.

Based upon an analysis of the cases discussed above, it appears that the Secretary of the Department of Natural Resources and/or the Governor may issue orders which are legally enforceable. First, as was discussed above, there is sufficient statutory authority for orders detailing the procedures to be followed by Maryland agencies in implementing the State's management program. The enforceability of such an order depends upon the order's specific terms. If an order simply provides a general statement of policy with regard to Maryland's coastal zone management program it is unlikely that it would be subject to judicial review. If,however, an order sets forth specific procedures and steps which must be followed in implementing the program, the order would be enforceable.

While this conclusion as to the enforceability of a secretarial order is based upon the decisions cited above, the conclusion with regard to orders issued by the Governor is reinforced by the language of Article II, Section 24 of the Maryland Constitution. This section provides that an executive order which is submitted to the General Assembly because of an inconsistency with existing law shall "have the force of law on the date designated in the Order unless specifically disapproved" by the General Assembly. While Section 24 does not specifically provide that executive orders consistent with existing law have the force of law, we believe such an intent to be implicit. The phrase "force of law" is used only in conjunction with orders submitted to the legislature because the date on which such orders become legally effective would otherwise be unclear.

In addition, a third party could bring legal action to require compliance with the procedures established by executive order. If an individual were a party to a "contested case" the right to judicial review would be provided by Article 41, Section 255 of the Maryland Code (the Maryland Administrative Procedure Act). For example, if the Department of Natural Resources denied an application for a permit to dredge private wetlands without determining the consistency of the application with the coastal zone program as required by executive order, the applicant could appeal the final administrative decision of the Department pursuant to Section 255.

The right to seek judicial review, however, is not limited to contested cases. The Maryland Court of Appeals has long recognized that courts have an inherent power to review certain administrative actions. In Hecht v. Crook, 184 Md. 271, the Court stated:

> Courts have the inherent power, through writ of mandamus, by injunction, or otherwise, to correct abuses of discretion and arbitrary, illegal, capricious or unreasonable acts; but in exercising that power care must be taken not to interfere with the legislative prerogative, or with the exercise of sound administrative discretion... .

Also, see, Criminal Injury Compensation Board v. Gould, 273 Md. 486 (1975). This inherent power could be used to require Maryland agencies to follow mandatory procedures established by executive order.

In order to seek judicial review, an individual must have standing, which has been discussed above in Section III in the context of conflict resolution.

G. Memoranda of Understanding

The enforceability of a Memorandum of Understanding (MOU) is basically a question of contract law. Therefore, the first question to be resolved is whether state agencies are legally authorized to contract with one another. The statutory basis for agreements between agencies is provided by Article 41, Section 12:

> The heads of the principal departments shall, under the direction of the Governor, be responsible for the coordination of programs and activities within and between principal departments for the elimination and prevention of duplication and overlapping of programs, activities, and services within and among their respective departments.

Clearly, MOU's defining the roles of state agencies within the coastal zone management program are a principal means of fulfilling the responsibilities mandated by Section 12.

Whether MOU's are enforceable depends upon two factors: (1) are the obligations created by the MOU certain? and (2) is there mutuality of obligation? In Strickler Engineering Corps. v. Seminar, Inc., 210 Md 93 (1956), the Court of Appeals stated:

> In order to constitute a valid verbal or written agreement the parties must therein express themselves in such terms that it can be ascertained to a reasonable degree of certainty what the agreement meant.

On the other hand courts do not favor the destruction of contracts because of uncertainty. See, L & L Corporation v. Ammendale, 248 Md. 380 (1968). Applying these standards to the MOU which has been signed by the Secretaries of Natural Resources

and State Planning, it is clear that specific obligations have been created. Some of the obligations are necessarily set forth in general terms. For example, the Department of State Planning "agrees to utilize the goals and objectives of the Coastal Zone Management Program, once approved, in the execution of the Department's mandated duties... ." This obligation cannot be phrased more specifically because the exact manner in which the program's goals and objectives will be used must be determined on a case by case basis. The fact that the obligation is defined in general terms does not render the obligation uncertain.

Other objectives established by the MOU are more specific. For example, the Department of State Planning has agreed to give DNR access to the Maryland Automated Geographic Information System and DNR has agreed to provide technical advice to DSP in any intervention action brought by DSP concerning Maryland's coastal resources. We believe the obligations of DNR and DSP have been defined with sufficient specificity that the obligations are legally enforceable.

The MOU between the two agencies also creates mutual obligations. Mutuality of a contract means an obligation on each of the parties thereto to do, or permit to be done, something in consideration of the act or promise of the other. Mutuality does not imply that every stipulation in the contract be absolute and unqualified. See, Spear v. Orendorf, 26 Md. 37 (1866). The MOU between DSP and DNR clearly creates obligations on the part of both agencies. The mutuality of the agreement is unquestionable.

Given that Maryland agencies have authority to enter into MOU's and that such agreements will be enforceable if they create obligations which are certain and binding upon both agencies, the question of who could bring action to enforce the terms of a MOU must be addressed. Prior to July 1, 1976, Maryland agencies were protected from suits on contractual matters by sovereign immunity, University of Maryland v. Maas, 173 Md. 554 (1938). However, Chapter 450 of the Acts of 1976 waived sovereign immunity from actions in contract. Article 41, Section 10A(a) now provides:

> Unless otherwise specifically provided by the laws of Maryland, the State of Maryland, and every officer, department, agency, board, commission, or other unit of State government may not raise the defense of sovereign immunity in the courts of this State in an action in contract executed on behalf of the State, or its department, agency, board, commission, or unit by an official or employee acting within the scope of his authority.

Given the language of Section 10A there is no legal prohibition to a suit by an agency to enforce the terms of an MOU with another state agency. An MOU would constitute a written contract executed on behalf of a state agency by an official acting within the scope of his authority.

The fact that DNR could bring legal action meets the requirements of the federal coastal zone management regulations. Section 923.42(d)(5) of those regulations provides that interagency agreements will be considered enforceable if the State agency designated pursuant to Section 306(c)(5) of the Federal Coastal Zone Management Act can bring action to ensure compliance. DNR, the designated agency, would be a party to all MOU's and could bring the necessary action.

Whether a member of the public could exercise the rights of a third party beneficiary and bring action to enforce an MOU is difficult to answer because of the absence of case law on the question of contracts between governmental agencies. One case providing some guidance is Martinez v. Socoma Companies, Inc., 521 P. 2d 841 (1974), in which individuals sued to enforce a contract between private corporations and the federal government whereby the corporations agreed to train and hire the hardcore unemployed. The plaintiffs were unemployed residents of East Los Angeles who had been certified as eligible for funding. The majority opinion applied Section 145 of the Restatement of Contracts which provides as follows:

> A promisor bound to the United States or to a State or municipality by contract to do an act or render a service to some or all of the members of the public, is subject to no duty under the contract to such members to give compensation for the injurious consequences of performing or attempting to perform it, or of failing to do so unless,
>
> (a) an intention is manifested in the contract, is interpreted in the light of the circumstances surrounding its formation, that the promisor shall compensate members of the public for such injurious consequences, or
> (b) the promisor's contract is with a municipality to render services the non-performance of which would subject the municipality to a duty to pay damages to those injured thereby.

The opinion held that there was no intention to compensate members of the public. A dissenting opinion reasoned that Section 145 did not apply because the contract was intended to benefit a particular class of individuals rather than the public generally. The dissenting judge found the plaintiffs to be express beneficiaries and would have allowed the action under Section 133 to the Restatement, which grants third party beneficiary status to creditors and donee beneficiaries.

It should be noted that Section 145 contemplates payment of damages to members of the public whereas an action to enforce an MOU would seek specific performance. However, Section 145 seems applicable to MOU's in that such agreements are intended to benefit the general public rather than a specific class or group. Assuming that Maryland courts would follow the Restatement, third parties could seek to enforce MOU's if the agreements specifically grant the MOU's which have been signed by the Department do not contain such a provision.

The relevancy of the Restatement of Contracts and the majority opinion in Martinez have been criticized in the Harvard Law Review (88:646 (1974)). That article suggests that rather than applying the Restatement of Contracts, courts should consider the policy objects intended to be accomplished through the contract

> This method of deciding whether to allow a third party action under a government contract would be analogous to that followed in courts in deciding whether to imply a private right of action from a statute. When implying a private right of action, courts have carefully considered the impact of an additional remedy in the hands of private parties on the legislative policy underlying the statute. Courts tend to imply a right of action when there is evidence that existing remedies are inadequate and that additional remedies would increase the likelihood of compliance and afford direct relief of a class which the legislature wished to protect. Strong arguments against allowing such a right arise when it would interfere with the policy goals of the legislature by imposing disproportionate liability or impinging excessively on administrative discretion.

Applying this reasoning to MOU's, an argument can be made that members of the public should be able to bring legal action to require compliance with the provisions of MOU's. Such an action would be unlikely to result in excessive or unforeseen damage claims and thus a principal objective Section 145 of the Restatement would be accomplished. In addition, such actions would serve to further the policies incorporated within the coastal zone management program. However, whether the Maryland courts would follow this approach cannot be determined.

It is also possible that the Maryland Administrative Procedures Act, Article 41, Section 244, et seq. could be used by members of the public to enforce MOU's. If an administrative agency made a final decision in a contested case in a manner which is inconsistent with the agency's contractual obligations as set forth in an MOU, the agency's non-compliance could become an issue if the decision is subjected to judicial review. In our opinion, it would be more likely for third parties to use this mechanism to enforce the procedural requirements established by MOU's rather than to enforce any substantive requirements. It is unlikely that an MOU would be sufficiently specific to dictate the decision an agency would make in any particular factual situation. .

While one cannot predict how Maryland's Courts would react to the questions of the enforceability of MOU's by third parties, there is some basis for believing that third party actions would be allowed. The success of such actions would be increased if the MOU's specifically recognized the right of the public to bring thrid party actions.

H. Conclusion

Three principal factors will serve to bind Maryland's diverse legal authorities together to ensure the proper implementation of the State's coastal zone program. First, the Maryland Environmental Policy Act specifies that statutes and rules and regulations shall be interpreted in light of policies which are fully consistent with the goals and objectives of Maryland's program. Second, Maryland's executive agencies answer directly to the Governor who is responsible for overseeing the implementation of state policy. Third, there is a legal basis for enforceable executive orders and interagency memoranda of understanding which can specifically address the needs of the Maryland program. These factors will ensure the success of Maryland's "networking" approach to coastal zone management.

VI Uses of Regional Benefit

A. Introduction

Section 306(e)(2) of the federal Coastal Zone Management Act requires that Maryland provide a method for assuring that local land and water use regulations do not unreasonably restrict or exclude land and water uses of regional benefit. Maryland has identified the following uses of the coastal zone to be of regional benefit: power plants and associated transmission lines; wastewater treatment plants; recreational facilities; and transportation systems. These are discussed in Chapter VI. This section discusses how the various legal authorities mentioned above can be used to prevent these uses of regional benefit from being unreasonably restricted by local government.

B. Power Plants and Associated Transmission Lines

In Maryland, local governments have no direct control over the siting of electric generating facilities. Natural Resources Article, Section 3-306.1 provides that sites acquired and placed in the state power plant site inventory

> ...shall be used and operated for electric generating and associated on-site transmission purposes without regard to any local zoning rule, regulation, law, ordinance, and this use is not required to be submitted to or approved by any county or municipal zoning board, authority, or unit.

Article 78, Section 54A authorizes representatives of local governing bodies to sit with the Public Service Commission during hearings on proposed facilities. This right, however, does not provide any basis for local governments to unreasonably exclude power plants from the coastal zone.

In addition, Natural Resources Article, Section 3-305 directs the Department of Natural Resources to acquire in the name of the State a sufficient number of power plants to satisfy projected electric demands. Such sites are also exempt from local regulation. Section 3-305 also provides that following site

acquisition, the Secretary of Natural Resources and the governing bodies of any area through which a generator lead may pass shall mutually designate one or more desireable generator lead routes. After designation, each county through which the lead passes must designate the proposed utility corridor "by enactment of an ordinance or by incorporation in its appropriate land use plan". These provisions protect the viability of sites acquired by the state.

Although transmission lines are subject to local zoning controls, the lines are generally permitted as a special exception. An applicant for a special exception must demonstrate a need for the proposed facility. See, Linky Stores Inc. v. Board of Appeals of Montgomery County, 270 Md. 513 (1973). In the case of transmission lines, need is demonstrated by the issuance of a certificate of public convenience and necessity by the Public Service Commission. It would be virtually impossible for local government to refute the conclusions of the Commission as to need for a particular line. In addition, although there are no Maryland cases on point, political subdivisions may not use zoning regulations to totally exclude transmission lines. In Consolidated Edison Co. v. Village of Briarcliff Manor, 144 N.Y.S. 2d 379 (1955) a New York court held that an electric company has a public duty to provide electricity and, therefore, may not be totally prohibited from constructing electric lines. The court also reasoned that such an exclusion is an improper use of the police power because it is contrary to the public interest. Electric companies licensed in Maryland have the same obligation to provide service and there is very little question that the Maryland courts would not follow the holding of Consolidated Edison. The intervention authority of the Department of State Planning provide the state with a basis for challenging any attempt to use zoning to improperly regulate transmission lines.

C. Wastewater Treatment Plants

Several factors exist which assure that local governments do not unreasonably restrict the construction of sewage treatment plants. First, as discussed above, Article 43, Section 387C requires counties to prepare water and sewer plans and to submit such plans to the Department of Health and Mental Hygiene for approval. Water and sewer plans must:

> (1) Provide for the orderly expansion and extension of community and multiuse water supply systems, community and multiuse sewerage systems and solid waste disposal systems in a manner consistent with all applicable county and local comprehensive land use plans and sizing and staging of facilities construction shall be consistent with these plans.

and

> (2) Provide for adequate sewage treatment facilities which will prevent the discharge of untreated or inadequately treated sewage or other waste of a liquid nature into any waters, or otherwise provide for the safe and sanitary treatment of sewage and other liquid waste.

See Article 43, Section 387C(b)(4). These provisions impose an affirmative duty to provide sewage facilities in a manner consistent with the county's comprehensive

development plan. Plans which do not meet these criteria may be disapproved by the Department of Health and Mental Hygiene. Disapproval of a plan could have serious consequences for a local government as water supply systems, sewage treatment systems, subdivision approvals and building permit approvals must conform to an approved plan. Thus, there is a strong incentive for counties to plan for adequate sewage treatment facilities.

60 Opinions of the Attorney General 508 (1975) discusses the fact that local governments may control access to sewage treatment facilities in order to control development. That opinion, however, also states that access restrictions may not be used to stop development on a permanent basis. A failure by local government to provide sufficient treatment facilities to allow for controlled growth would be subject to challenge on constitutional grounds.

If local regulations unreasonably restrict the construction of sewage treatment facilities, the State can act to provide such service directly. Natural Resources Article, Section 3-104 authorizes the Maryland Environmental Service to acquire, construct and operate sewage treatment facilities. MES may exercise eminent domain in connection with providing such service. In utilizing its authority MES would not be subject to any local controls.

D. Recreational Facilities

The State has broad authority to provide recreational facilities and state-owned facilities are not subject to local regulation. In addition, the State retains control over recreation projects owned and operated by local governments which are funded by Program Open Space.

The Department of Natural Resources may acquire property for recreational purposes by purchase or condemnation (Article NR, Sec. 5-208). State funds have been used to acquire and develop different types of facilities including open space areas, camping facilities, beaches and boat launching areas. All navigable waters of the state are held in trust by the state for the benefit of the general public. The authority to regulate the use of these waters rests with the state.

As discussed above, one half of the funds available under Program Open Space are to be made available to local governing bodies for the acquisition and development of land for recreational and open space purposes (Article NR, Sec.5-903). Before making funds available for a specific project, the Department of Natural Resources requires the recipient of funds to sign a management agreement. The agreement requires the project to be properly maintained, to be open to the public in a non-discriminatory basis and to restore the project in the event it becomes unusable. Furthermore, no property acquired under Program Open Space may be converted to another purpose without the written approval of the Secretaries of Natural Resources and State Planning. As a prerequisite to such approval, the local governing body must replace the land with property of at least equivalent area and equal recreation or open space value (Article NR, Sec. 5-906).

The availability of Maryland's Atlantic Ocean beaches for recreational purposes is assured by Natural Resources Article, Section 8-1105.1 which prohibits any construction activity in the area between the ocean and the crest of the natural dune on Assateague Island.

E. Transportation Facilities

The ability of local governments to prevent the development of regional highway systems is pre-empted by state controls. The State Highway Administration is responsible for constructing and maintaining an adequate highway system (Transportation Art., Sec. 8-204) and also administers the road systems of Cecil, Kent, Talbot, Calvert, Charles and St. Mary's Counties. The Administration's responsibilities exclude Baltimore City. Activities of the Administration are not subject to local control or regulation.

The Maryland Port Administration is authorized to acquire, construct and operate port facilities within its territorial jurisdiction. The Authority of the Administration to acquire property is limited by Transportation Article, Section 6-304 which specifies that property may not be acquired by purchase or condemnation without the consent of the political subdivision in which the property is located. It should be noted, however, that this limitation does not apply to lands beneath the navigable waters of the State. Such lands are owned by the state and their use by the Port Administration does not require local approval. Furthermore, local approval of an Administration request to use fast lands may not be denied. Unreasonable decisions by local government could be challenged either by the Port Administration directly or by the Department of State Planning exercising its right of intervention. What would constitute an "unreasonable" decision is in further discussed below.

The State Aviation Administration is responsible for encouraging and establishing airports, airport facilities and air navigation facilities. The Administration may acquire property by purchase or condemnation and may establish and operate airports in the name of the state (Transportation Art., Sec. 5-404 and 5-405). The construction and operation of state facilities is not subject to local approval or regulation.

The Mass Transit Administration has jurisdiction within Baltimore City and Baltimore and Anne Arundel Counties. Within this area, the Administration may acquire property including land and rolling stock, terminals and other facilities (Transportation Art., Sec. 7-401). The Administration may operate any facilities it owns (Transportation Art., Sec. 7-501) and its operations would not be subject to local control or regulation.

F. State Intervention

The Department of State Planning's intervention authority has been discussed in detail in Section II C of this Chapter. This authority will be useful in challenging local land and water use decisions which disregard regional concerns. Article 88C, Section 2 authorizes the Department to file a formal statement of environmental or economic impact expressing the views of the State. Such a statement could include an analysis of the regional benefits of a specific proposal being considered by a local government and submission of the statement would require local consideration of those benefits. A local decision which fails to give consideration to the administrative record, including the statement, would be subject to attack as being unreasonable. Thus the state's intervention authority ensures that local governments cannot unreasonably deny uses of regional benefit.

G. Maryland's Definition of "Unreasonable" Local Restrictions

Section 923-43 of the federal Coastal Zone Management regulations specify that if a state relies upon administrative and/or judicial challenges to unreasonable local decisions excluding uses of regional benefit, the state must define what constitutes an "unreasonable" restriction. Maryland will consider local restrictions to be unreasonable if:

> (1) The restrictions are based upon quasi-judicial decisions which either do not fully consider the administrative record or are not supported by substantial evidence;

or

> (2) The restrictions are based upon a legislative act which does not bear a reasonable relationship to the general public interest in promoting the public health, safety and welfare.

The basis for this definition is decisions by the Maryland Court of Appeals. That Court has stated repeatedly that administrative decisions which are quasi-judicial in nature must be supported by substantial evidence. A decision is supported by substantial evidence if "a reasoning mind could have reached the factual conclusion the agency reached", see, Insurance Commissioner v. National Bureau, 248 Md. 292, 236 A 2d. 282 (1967) and State Department of Health v. Walker, 238 Md. 512, 209 A 2d. 555 (1965). A decision which does not consider the whole administrative record would be unreasonable. See, Insurance Commissioner, supra. The Court of Appeals has also held that legislative acts will be struck down as being unreasonable or arbitrary and capricious when the statute does not "bear a real and substantial relation to the public health, morals, safety and welfare of the citizens of the State." See, Steuart Petroleum Co. v. Board, 276 Md. 435, 347 A 2d. 854 (1975). It should be noted, however, that a legislative body has considerable discretion in determining what the public welfare requires and what measures are necessary for the promotion of the public welfare. See, Maryland Coal and Realty Co. v. Bureau of Mines, 193 Md. 627 (1949).

The ability of the State to challenge local restrictions which do not comply with this definition of reasonableness has been discussed in the context of the Department of State Planning's intervention authority.

H. Conclusion

This section demonstrates conclusively that Maryland may act to prevent local governments from unreasonably limiting those uses of the coastal zone which have been identified as being of regional benefit. The state may act to provide facilities directly in the case of power plant sites, wastewater treatment plants, recreational facilities, roads, airports, port facilities and mass transit. The ability to provide these services directly is supplemented by the Department of State Planning's ability to intervene in local proceedings and to challenge local decisions which fail to meet the standards of reasonableness set by the Maryland courts.

VII Conclusion

The federal Coastal Zone Management Act specifies that before Maryland's program may be approved there must be a determination that the state has sufficient authority to: (1) administer land and water use regulations and control development in conformance with the policies of the program; (2) resolve conflicts among competing uses; (3) acquire interests in land and waters as necessary to achieve program objects; and (4) prevent local regulations from unreasonably restricting land and water uses of regional benefit. In addition, because Maryland has no comprehensive coastal zone legislation and will rely upon a number of state agencies to implement the program, Maryland must show that it has the legal capacity to "network" together these authorities which will be used.

The control technique which Maryland will primarily utilize will be direct planning and regulation of land and water uses. Maryland has a broad variety of statutes controlling development and all activities within the coastal zone. These authorities must be interpreted in light of the policies and objectives of the Maryland Environmental Policy Act. Furthermore, the Maryland Courts have recognized that the police powers may be used broadly to protect the natural resources of the state. Together, these laws give Maryland more than adequate control over her coastal resources.

Maryland also possesses a broad variety of mechanisms to resolve competing uses of the coastal zone. Intra- and inter-agency disputes may be resolved because of the strong powers vested in departmental Secretaries and the Governor. Conflicts between agencies and citizens or local government will be resolved through the administrative and judicial review process and state-federal differences through the consistency provisions of the federal act.

Authority to acquire interests in lands and waters is vested primarily within the Department of Natural Resources. The State, of course, owns all lands and waters below mean high tide. The Department of Natural Resources may acquire land for recreational, fishery, wildlife, conservation and power plant siting purposes. Other state agencies may act to preserve historical sites and agricultural land. In additions, many land acquisition programs are financed by special funds. The ability of the state to prevent local governments from unreasonably restricting land and water uses of regional benefit is assured both by the authority of the state to provide services directly and without being subject to local controls and by the authority of the state to challenge the decisions of local government which are unreasonable.

Maryland's ability to network its legal authority together is based upon a number of factors. First, there is the leadership role provided by the Governor's office and his authority to issue executive orders. This is supplemented by the authority of departmental secretaries and the ability of agencies to utilize memoranda of understanding to establish formal working relationships. Finally, there are the legislative mandates of the Maryland Environmental Policy Act directing all state agencies to work together towards common objectives.

Together these authorities ensure that Maryland's Coastal Zone Management Program can be implemented in a manner which is fully consistent with all applicable federal laws and regulations.

PART III

FINAL ENVIRONMENTAL IMPACT STATEMENT

CHAPTER ONE: DESCRIPTION OF THE ENVIRONMENT AFFECTED

The State of Maryland has identified the inland boundary of the counties bordering the Atlantic Ocean, the Chesapeake Bay and the Potomac River as far as the municipal limits of Washington, D.C. as the coastal zone boundary under Federal requirements. This area has significance for both the State and the Nation, and it contains important natural and economic resources for Maryland. The following is a description of the environment affected by this coastal management program.

A. The Natural Environment

Land Resources

Maryland spans three physiographic provinces known as the Coastal Plain, Piedmont Plateau and the Appalachian Provinces which parallel the Atlantic shoreline in belts of varying width from New England to Florida. These provinces are underlain by rock strata of different types and geologic ages, and display a remarkable variety in geomorphology, pedology, geology, hydrology and biology.

The boundary between Maryland's Coastal Plain and Piedmont Plateau Province is evident in stream valleys where the softer creataceaous formations of the Coastal Plain are more easily eroded than the hard crystalline rock of the Piedmont Plateau, resulting in the formation of rapids and spectacular waterfalls. This boundary has had historical and social significance since it marked the head of navigation (e.g., Port of Baltimore) and furnished water power for mills and other industry.

Maryland's Coastal Plain falls within the northern embayed portion of the Atlantic Coastal Plain physiographic province. This area is characterized by drowned river systems and barrier beaches. At the end of the last ice age (Pleistocene), the melting of the glaciers caused sea level to rise, flooding river valleys all along the Atlantic coast. The Coastal Plain slopes gently seaward from the boundary between it and the Piedmont Province and continues off Maryland's coast for approximately 100 miles. Maryland's Coastal Plain in general is characterized by sedimentary deposits of low topographic relief ranging in age from present day sediments to sediments of approximately 140 million years ago, deposited by a variety of ancient marine environments.

Maryland's Coastal Plain can be broken in two distinct subdivisions; the Eastern and Western Shores of the Chesapeake. The Western Shore is characterized by rolling uplands (four times the elevation of the Eastern Shore) bound by deep stream valleys. The Western shoreline often takes the form of steep bluffs or cliffs with narrow beaches at the base. The Eastern Shore, on the other hand, is a flat almost featureless plain

whose shoreline gradually grades into marshes in the southern portion. Bluffs are common in the northern portion of the Eastern Shore as well as in the Western Shore counties.

The bedrock of the Coastal Plain is composed of layers of relatively unconsolidated sand and clay with small amounts of gravel. Mineral resources include iron ore (at least "carbonaceous ore", an early source of iron), mineral earth pigments, clay (for brick) and sand and gravel. Recent estimates suggest that 2-4 billion barrels of petroleum reserves may exist beneath the continental shelf off Maryland, although no discoveries have been made.

Maryland's Coastal Plain soils, east of Chesapeake Bay, consist of interstratified, sandy, silty, clay or gravel sediments. West of the Bay the surface sediments are older, more dissected, and more severely eroded. The nearly level to gently rolling features of the Coastal Plain make it well suited for agriculture. The Coastal Plain sediments are naturally acidic, but may be only slightly acidic or neutral where they have been farmed extensively and limed frequently. The nearly level to gently rolling features of the Coastal Plain make it well suited for agriculture. Approximately 120 soil series and 300 soil types are found in the Coastal Plain. In general, the soils of the Coastal Plain have more marked contrasts between well and poorly drained profiles than do the soils of the Piedmont and Appalachian provinces. Average temperatures in Maryland range from 27°F - 48°F in the winter and 66°F - 88°F in the summer; annual mean temperature is 56°F. Ocean City, Maryland, which experiences the "oceanic" climate, has an annual range of average temperatures from 54°F - 84°F. The average growing season is 200 days and ranges from 174-225 days. Maryland averages 41" of precipitation per year, with average monthly precipitation ranging from 2.0" in the winter to 4.4" in the summer. Long droughts are rare; short droughts, of little significance to agriculture, are common. Prevailing winds are from the NW from October-April and from the S and SW from May-September.

B. Living Resources - Land

The variety of vegetative communities found in the coastal zone range from typical dune and maritime forest communities on Maryland's barrier islands, to the freshwater marshes and oak-hickory forests bordering the northern portions of Chesapeake Bay. Over 300,000 acres of tidal marsh, divided among 30 community types, are still found in Maryland. Approximately 48 percent of the Coastal Plain is forested.

Maryland's Atlantic coast is bounded by barrier islands where typical dune communities are found. Beach grasses grade into dense shrub thickets backed by forests of loblolly pine and pitch pine.

The marsh communities also occupy extensive areas in the southern counties bordering Chesapeake Bay. Other marsh species such as salt grass (Distichlis sp.) and black needlerush (Juncus sp.) are intermixed with cordgrass. The composition of Maryland's tidal marsh communities varies both from mouths to the headwaters of the tributaries and from southern to northern portions of the Bay. The differences are primarily due to the progressive lessening of salt content of the water, farther away from the ocean.

Along the streams of the lower Eastern Shore, the tidal marshes grade into upland swamps. Typically red maple, blackgum, and sweetgum dominate these areas. Along the Pocomoke River, large stands of cypress swamp can be found. In these areas bald cypress and blackgum predominate with green ash and, rarely, Atlantic white cedar as associate species.

The upland forests of the Lower Eastern Shore are dominated by two species, loblolly pine and Virginia pine. This southern pine forest association is most common in the southern Eastern Shore counties.

Along the borders of the northern counties, the marshes are typically dominated by salt meadow (Spartina patens) cordgrass which quickly grades into cattails and sedges. The upland forests are predominantly mixed hardwoods with oaks, hickory and sweetgum being the dominant species. Oak-pine forests are also scattered throughout.

Maryland's coastal areas provide a wide variety of wildlife habitat for both game and non-game species, from the ocean and barrier islands to freshwater marsh and upland forest.

Maryland's wetlands support a wide array of wildlife, including Canada geese and ducks which use the marshes and estuaries of the Chesapeake Bay for resting and wintering. The marshes are also valuable as breeding and brood-rearing areas for waterfowl such as black ducks, mallard, and blue-winged teal. Large numbers of sandpipers, plovers, and other shorebirds utilize the marshes during their migration.

The endangered Bald Eagle is dependent on Maryland's wetlands. The largest breeding population of eagles in the eastern U.S. north of Florida occurs in the Chesapeake Bay region, and Maryland contains the majority of active nests. The Bay region also contains the highest breeding concentration of Ospreys in the United States. Many species of songbirds also utilize Maryland's wetlands, including the rare Swainsons Warbler which nests in the Pocomoke Swamp.

Numerous fur-bearing animals, such as muskrat, river otter, raccoon, and mink are found in the wetlands of the Coastal Plain. Upland wildlife such as deer, rabbits, and bobwhite quail frequently enter wetlands for cover and food.

Chincoteague and Sinepuxent Bays, behind the barrier islands, are bordered by large acreages of salt marsh dominated by the salt marsh meadow cordgrasses (Spartina sp.). These marshes are typically backed by shurb communities of marsh elder and high tide bush (Iva sp. and Bacharis sp.).

The diversity of upland wildlife habitats of Maryland's Coastal Plain support many species of upland wildlife. Bald eagles use extensive pine-oak forest adjacent to marshes and open water for nest sites. On the Eastern Shore, the forests support the entire population of the endangered Delmarva Fox Squirrel. Deer are common throughout the Coastal Plain and the old fields and hedgerows of the Eastern Shore produce large numbers of bobwhite quail. Many species of songbirds are found in the various upland habitats, and several of them approach the northern limits of their range in Maryland.

C. Aquatic Resources

Aquatic resources within Maryland's coastal zone occur in three distinct areas. These areas are the Chesapeake Bay, the Atlantic seaside bays and the three mile seward extension of the Atlantic coast. Although some flora and fauna are common to two or even all three areas, the community dynamics and abiotic conditions of the three areas are distinctly different. A general discussion of the status of the aquatic resources is therefore given separately for each area.

The Chesapeake Bay

The Chesapeake Bay is the largest estuary in the United States. The Bay and the land directly bordering it owe their origin to fluctuating sea levels during the Pleistocene period. The Bay is at most 10,000 years old, and much of it may be very much younger. Despite its comparative youth, the Bay is of impressive dimensions. The Bay proper covers 1,310 miles long and has a mean width of 15 miles. Maryland has over 4,000 miles of Bay shoreline within its boundaries.

Over half the fresh water contributed to the Chesapeake Bay is from the Susquehanna River. Other major sources are the Potomac, the Rappahannoc and the James Rivers. A 1968 study found the Susquehanna River also contributes 600 thousand tons per day of sediment to the upper bay, consisting primarily of silt and clay particles. Along with sedimentation, the Bay must cope with erosion. Thousands of miles of shoreline are subject to the effects of wind and waves. In some places, the shoreline has receded over 2,000 feet during a 90-year period.

The salt content of the Bay varies from nearly full sea water at the mouth of the Bay, to that of the inflowing fresh water of the Susquehanna River at the head of the Bay. The salt content also varies with lower salinities on the western side. Nutrients from both the rivers and the ocean make it possible for a wide variety of plants and wildlife to survive in the Bay.

The Chesapeake Bay has an extremely varied biota. Freshwater and estuarine resident species of flora and fauna are complimented with transitory marine species. These additions, usually seasonal, add to the overall diversity and dynamics of the Bay.

Seaside Bays

Maryland's 31 mile Atlantic coastline is protected from the ocean by barrier islands (Fenwick and Assateague). The formation of barrier islands has led to the development of a series of estuaries, referred to as the barrier island bay system. The barrier island bay system extends approximately 44 miles from the Maryland-Delaware boundary to the Chincoteague Inlet. In width, however, the system varies from four miles to only one quarter of a mile. The bay system is shallow and quite saline.

Coastal Seashore

The biota of this nearshore ocean coastal area are marine species common to the Atlantic Ocean. Benthos invertebrates are extremely diverse and abundant, and a variety of mollusks, some of which support extensive shellfish commercial harvesting, are found in or adjacent to Maryland's three mile wide area of jurisdiction. Finfish populations consist primarily of species common to the Mid-Atlantic area; this resource has traditionally experienced intense harvest pressure from domestic and foreign fisheries. With the passage of the Fishery Management and Conservation Act of 1976, the intense foreign pressure was greatly reduced.

At present, the nearshore coastal area is very productive, and the great diversity present here greatly enhances the overall aquatic resources of the State.

Socio-Economic Environment

In 1975, Maryland's population was 4.1 million, placing it 17th in the nation in terms of population, while only 42nd in terms of area. The 1975 Statewide figure represented a 5.7 percent increase since 1970 and Maryland's population is expected to continue to increase to a projected 6.2 million by the year 2,000.

The Baltimore SMSA Region and the Southern Maryland Region are among the fastest growing regions in the State. (It should be noted, however, that the population increase in the Baltimore SMSA Region, which accounts for slightly over half of the State's population, came from areas outside the city proper. Baltimore City experienced a 3.5 percent population drop from 1960-1970). The Eastern Shore Region lagged significantly behind State growth rates.

Economic Characteristics

Statewide, agriculture and fishing are decreasing, and the growth of manufacturing - the former backbone of Maryland's economy - is slowing. The non-commodity producing sectors (public administration, trade and professional services) have accounted for Maryland's economic growth.

Maryland's manufacturing sector in 1974 contributed $4.2 billion, ranking it 23rd in the nation. Primary metals and food products were the leading manufactured products. Manufacturing plays an important part in Maryland's coastal zone. Power companies, steel mills and chemical companies have all been drawn to its water resources.

Commercial transportation is a major contributor to Maryland's economy, The Port of Baltimore, the 8th largest foreign trade port in the United States (3rd in East Coast) in terms of total berths available, is estimated to provide ten percent of Maryland's gross State income and an estimated one out of ten jobs within the State. Port related industry contributes an estimated $1.7 billion to Maryland's economy.

Maryland ranks 36th in the nation in total value of agricultural products. Still, agriculture provides ten percent of Maryland's employment and contributed $424 million to the State's economy, primarily in poultry and grain operations. Agriculture is one of the predominate uses of Maryland's coastal zone, with close to one million acres divided between 9,000 farms.

The annual dockside value of Maryland's seafood catch is $25 million - with a process value of over $100 million. Fishing and seafood processing provide 6,000 jobs in the State, most as part of the Eastern Shore's seafood industries.

Recreation is an important industry in Maryland. In the coastal zone, $750 million is spent annually on recreation. An estimated $270 million was spent solely on boating related activities - most of which occurred in the coastal zone. Maryland's coastal zone also has a higher percentage of recreational homes than other sections of the State. In Worcester County, an estimated 36 percent of all dwellings are recreational homes.

The chart below shows how employment in a variety of industries varies within the three regions mentioned earlier and within the State overall.

INDUSTRIAL SPECIALIZATION OF MARYLAND REGIONS, 1970
PERCENTAGE OF SECTORAL EMPLOYMENT FOR EACH REGION

	Baltimore SMSA	Baltimore City	Other Region Balt. SMSA	Eastern Shore	Southern Maryland	Overall State of MD
Agriculture Forestry, Fishing	0.5		2.2	22.7	15.8	2.7
Mining				0.3	0.3	0.3
Construction	0.8		3.0	6.7	19.8	1.9
Manufacturing	44.7	44.4	43.9	47.6		29.3
Transportation, Communications and Utilities	8.4	9.2	7.1	3.2	5.3	7.3
Trade	6.8	4.5	8.4	7.2	2.6	6.2
Finance, Insurance and Real Estate	5.7	5.5	6.0	0.3	2.4	5.7
Services	10.8	15.5	6.8	8.0	10.3	14.1
Education	2.2	1.3	2.7		6.1	3.8
Hospitals and Health	4.9	8.9	1.6	1.6		3.8
Public Administration	15.2	10.8	18.3	2.4	37.5	24.9

Source: U.S. Bureau of the Census, Census of Population, Final Report PC(1) - C22 Maryland 1970.

D. The Institutional Setting

Currently in Maryland, coastal resource management is carried out largely by six State cabinet-level executive departments, and the sixteen coastal counties and Baltimore City. Although there has been some direct communication and coordination in the past, many coastal problems have not been addressed in a comprehensive or coordinated manner. Because there are conflicting policies that exist in the various levels of government, coastal management has, in some cases in the past, been fragmented in its interpretation and implementation.

A fuller description of the roles of State agencies and the local governments can be found in Chapter I, pages 15 - 20 and Chapter VIII, pages 351 - 409 of Part II. Federal agencies also play a major role, but currently no Federal consistency procedures (other than OMB 95 Review and only a few Federal-State interagency agreements) are in effect.

CHAPTER TWO: PROBABLE IMPACTS OF THE PROPOSED ACTION ON THE ENVIRONMENT

A Environmental Impact Statement normally contains two sections at this point; one describing the relationship of the proposed action to land and water use plans, policies and controls for the area; and the other, assessing the probable impact of the proposed action on the environment. In this assessment, it is convenient to examine these two sections together.

The Maryland Coastal Management Program represents an effort to develop a rational program that will accommodate development and economic growth while maintaining or enhancing the quality of the natural environment. The program will serve as a blueprint for the use of the resources specific to the Maryland coast by providing a set of carefully conceived land and water use standards, guidelines and policies.

The implementation of Maryland's Program will not produce new legislation or regulations causing sudden changes in the way resources are managed, but rather will bring a new approach and emphasis to the coastal decision-making process. This assessment is aimed, therefore, at the impacts that will result from this new decision-making approach. Probable impacts on air and water quality, aquatic resources, tidal and non-tidal wetlands, shore erosion and flood hazards, terrestrial resources, community and economic development including the siting of major facilities and governmental relationships are as follows:

A. Aquatic Resources

State activities beneficial to aquatic resources will include:

(1) The project evaluation process to ensure that the impacts of proposed projects on the aquatic resources will be determined prior to the issuance of permits. In particular, the evaluation process ensures that fisheries managers, local planning and zoning officials, and State permits administrators will be able to exchange pertinent information prior to regulatory decisions.

(2) Continued attention to resolving problems associated with dredging and dredged material disposal including identifying the full ramifications of proposed dredging projects, monitoring ongoing dredging projects to identify and rectify problems, and identifying acceptable dredged material disposal sites and other methods of using dredged material.

(3) Enhancement of research on management of commercial fish and shellfish species. Program approval may increase Maryland's eligibility for receiving additional Federal research funding.

(4) Eventual development of comprehensive State fishery management plans, in conjunction with the State of Virginia and relevant Federal agencies. Section 309 of the CZMA provides a conceptual framework for this effort.

B. Tidal and Non-Tidal Wetlands

The State's designation of vegetated tidal wetlands as Geographic Areas of Particular Concern provides additional management to these areas. This designation will make it clear that the State is particularly interested in protecting these areas and that State, local and private actions will be closely scrutinized to insure that the Wetlands Act and Program policies concerning these wetlands are enforced.

Through the Program, more detailed information has been and will be developed concerning the location, extent and value of vegetated wetlands in Maryland. Such information will enable better management decisions to be made on wetlands permit/license applications, and will likely lead to the designation of certain fragile wetlands as State Critical Areas for preservation.

The impacts of the program on non-tidal wetlands will largely come from the incorporation of additional information concerning the location and value of these areas into existing management programs such as the watershed permit program and into the State critical area designation process. The program will direct continued attention on the question of non-tidal wetlands management and the additional steps, if any, that need to be taken to ensure that they are adequately protected.

C. Shore Erosion and Flood Hazards

The Program will have a beneficial impact on the State's efforts to address problems associated with shore erosion. Through the Program, information has been gathered and mapped on historic shore erosion rates and the location and extent of shore erosion structures in Maryland. Such information provides the background necessary for fulfillment of Section 305(b)(9) of the CZMA; namely, the establishment of a planning process to include policies for assessing the effects and addressing the impacts of shore erosion.

State technical assistance efforts to shorefront property owners have been aided by development of a public information manual on shore erosion measures.

The program should also have a beneficial impact on the State flood hazard control efforts through bolstering existing technical assistance and regulatory programs, particularly the Flood Control and Watershed Management Act of 1976. Assistance has been and will continue to be provided with regard to the delineation of coastal floodplains, both tidal and riverine, the identification of biological values in coastal floodplains, and the development of regulations to meet the requirements of the above mentioned Act.

D. Land Resources

The Maryland Coastal Zone Management Program will affect State and local land use planning and regulatory activities, the designation and management of State critical areas, and the provision of sufficient recreational, open space and natural areas.

(1) State and Local Planning and Regulatory Activities

Through the Project Evaluation process, analyses of a proposed project's biological, hydrological, ecological, geological, historic, archaeological, socio-economic, fiscal and cumulative impacts will be undertaken. Where weaknesses in existing regulatory (and planning) procedures are identified, they will be addressed in conjunction with the relevant governmental bodies through the program review process. In addition, the inventories and research activities that have been and will be undertaken by the program will provide a better information base for coastal management programs.

(2) State Critical Areas

On the basis of inventories conducted by the Coastal Zone Unit and financial and technical assistance offered to counties through the Program, additional State Critical Areas designations should be made. These designations will include areas for preservation, conservation, and utilization resulting in part from such studies as the Upland Natural Areas Study and the Major Facilities Study. While the State Critical Areas Program provides no funding to local governments to assist in inventorying, planning, or managing State critical areas, the Maryland Program will help fill this void through the inventories it has undertaken and the work agreements with funding that have been established with local governments.

(3) Provision of Sufficient Recreational, Open Space and Natural Areas

The Coastal Zone Management Program will bolster existing recreational and preservation efforts through the identification of coastal areas worthy of protection because of their value for recreation, wildlife habitat, or unique characteristics, and will undertake cooperative efforts with local governments to acquire or otherwise protect these identified areas.

E. Air and Water Quality

Existing air and water quality standards and criteria are fully incorporated into the Maryland Coastal Management Program. Changes in State air and water standards are not anticipated as a result of this Program, but subsequent alterations made in these air and water standards will be incorporated into the Program. Beneficial air and water quality effects resulting from the implementation of this Program are as follows:

(1) An assessment of the projected air and water quality impacts of a proposed project through the Project Evaluation process. These projected impacts will be considered when local zoning and other related decisions are made. This process should be particularly helpful in determining non-point source contributions to water pollution at the stage where adverse impacts may be mitigated through project design or consideration of alternate locations.

(2) Upgrading the State water quality classification of certain water bodies or areas of the Bay. Areas identified as important aquatic resource areas (in which high water quality must be obtained or maintained) and subsequently designated State Critical Areas, will require upgraded classification.

(3) Studies will be carried out under the auspices of the Coastal Zone Unit placing major emphasis on the water quality requirements of existing water quality standards.

(4) Enhancement of existing water quality enforcement and research efforts by ensuring that governmental agencies, conducting research efforts such as the EPA Chesapeake Bay Program, are focused on critical problems and are coordinated with other ongoing public and private research efforts.

F. Economic and Community Development

Some economic development projects in coastal areas may not occur where probable adverse impacts of these projects clearly outweigh their potential benefits. On the other hand, the Project Evaluation process may resolve potential problems that would otherwise lead to delays in the permit process, and the Program's inventory and research efforts will identify preferred development areas. The Major Facilities Study discussed in Part II is a prime example of such an effort.

As noted previously, the Project Evaluation Process (or similar processes in the case of power plants, land transportation facilities, and sewage treatment facilities) will promote a coordinated comprehensive analysis of proposed economic development projects and the identification of measures in which adverse impacts can be minimized.

The work agreements established with local governments will allow them to address problems associated with economic and community development in coastal areas with resultant beneficial impacts to such communities. The Baltimore Metropolitan Areas Study described in Chapter V of Part II is illustrative of how the program can assist local governments to address such issues.

With respect to potential development associated with OCS activity, the technical and financial assistance provided by the Coastal Energy Impact Program (CEIP) can help local governments adequately plan for and cope with the problems associated with such activity. The State's Coastal Facilities Review Program will ensure that such developments are adequately analyzed, and that State and local interests are protected in management decisions made regarding such developments.

G. Governmental Relationships

The Management Program requires extensive coordination of existing State programs to provide sufficient authority, personnel and resources to implement the Program goals, objectives and policies. The Governor's Executive Order, signed March 8, 1978, declares that the Program constitutes official State policy for coastal resources and requires State agencies to abide by Program policies, participate in Project Evaluation, and work out conflicts as they arise. Memoranda of Understanding and a DNR Secretarial Order will be signed prior to the distribution of the FEIS. Working relationships between the Coastal Zone Unit and local governments will be refined through work agreements and pass through funding. These coordination efforts and working arrangements are discussed in detail in Chapters I and V of Part II and their impacts have been mentioned in previous portions of this section.

CHAPTER III: ALTERNATIVES TO THE PROPOSED ACTION

Given the nature of the proposed action, which is approval of the Maryland Coastal Zone Management Program, all Federal alternatives involve a decision to delay or deny approval. To delay or deny approval could be based on failure of the Maryland Program to meet any one of the requirements of the Federal Coastal Zone Management Act (CZMA). In approving a CZM program, affirmative findings must be made by the Assistant Administrator for Coastal Zone Management on more than twenty requirements.

The Maryland response to the need for wise coastal management was to "network" a number of existing State statutes and permit authorities under a comprehensive set of coastal policies. A Project Evaluation process, a Coastal Resources Advisory Committee, and a new State administrative office--the Coastal Zone Unit--were established to implement the Program. A Gubernatorial Executive Order was signed explicitly stating that the coastal program constitutes official policy for coastal resources, and that State agencies must comply with Program policies, participate in Project Evaluation and resolve interagency conflicts. Thus, Maryland has taken significant action to address State coastal resource issues.

Nevertheless, in the course of development of the Maryland Program, several potential deficiencies were identified. These deficiencies have now been addressed by Maryland, and the Assistant Administrator has made a preliminary determination that Maryland has met the requirements for approval under Section 306 of the Coastal Zone Management Act. In order to elicit public and agency comment and assure that the Assistant Administrator's initial determination is correct, this section identifies areas where there are possible deficiencies and considers alternatives of delay or denial based upon each. Before examining the alternatives, the following section identifies the generalized impacts that would result from delay or denial on any basis.

1. Loss of Federal funds to administer the program. Under Section 306, Maryland would receive approximately $1.3 million per year to administer its coastal management program. Most basic to a loss of Federal funds will be the inability of the State to provide adequate staffing and administrative support to coordinate and evaluate coastal actions and permits, and to assure that government agencies operate consistently with coastal policies.

Additionally, problems identified by Maryland may continue due to a lack of funds to address them. Local governments would also be without the funds necessary to identify and resolve local coastal resource issues. Pass-through funding for local coastal technical assistance would be essential for the most effective coastal management program.

To delay or deny approval of this program would also make it difficult for the State to give needed consideration to shorefront access, shoreline erosion, and energy facility siting.

2. Loss of consistency of Federal actions with Maryland's Coastal Zone Management Program and its policies. Program approval would mean that Federal actions, in or affecting the Maryland coastal zone, would have to be consistent with the State's program under Section 307(c) of the CZMA. This would be of particular concern to the State of Maryland as its coastal zone is heavily influenced by Federal activity.

3. Loss of adequate consideration of the national interest in the siting of facilities which are other than local in nature as required by Section 306(c)(8) of the CZMA. By delaying or denying program approval, States and local governments would be under no obligation to give adequate consideration to coastal resources and facilities that are of national interest. This could result in loss of public benefit that the use of such resources may provide. For example, failure to allow expansion of port facilities in the national interest to accommodate trans-shipment of coal for energy production could result in the need to use of different energy source. This may add to higher energy costs to the public. However, the national interest also encompasses a concern for the protection of resources such as water, air, wetlands and wildlife. Consideration of the need for the national interest in facilities must take into account the impacts of facilities on these key resources.

Program approval would mean that the State could undertake increased technical assistance to local governments and improved implementation of existing State programs. This would give the State and local governments an opportunity to give balanced consideration to both facilities and resources in the national interest. Lacking program approval, these considerations affecting resources in the national interest might not be made.

Federal Alternatives

Alternative I - The Assistant Administrator could delay or deny approval if the program is not adequately comprehensive to achieve the goals and objectives of the Coastal Zone Management Act as expressed by Congress in Sections 302 and 303 of the Act.

Congress noted in creating the Coastal Zone Management Act, in Section 302(g), "in light of competing demands...present State and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate." Readers may question whether the State has gone far enough in defining the scope of the Program to adequately address the competing demands on its fragile coastal areas.

OCZM has made an initial determination that the Maryland Program is adequately comprehensive in scope. The program contains five (5) goals, forty-three(43) objectives, and over two-hundred (200) policy statements which address the full range of considerations called for in Sections 302 and 303 of the Act. Policies addressing all of the following factors are included: air and water quality; historic, cultural and aesthetic resources; socio-economic concerns, open space and recreational use of the shoreline; floral and faunal communities; and water dependency of various activities and uses, including those related to energy. Included in the program are resource policies, coastal development policies, and government process policies. Existing State authorities and new administrative and management mechanisms will be used to implement this set of comprehensive coastal policies. Maryland originally developed goals and policies which were less comprehensive and more ambiguous than the policies contained in this document. A determination was made at that time that the policies were inadequate because (1) they lacked specificity and comprehensiveness; and (2) it was impossible to determine if the policies were enforceable. In response to this determination, the CZM staff redrafted the policies to achieve a greater degree of specificity. To address the problem regarding enforceability they cited (in parentheses immediately following each policy) the statute, rule, or other administrative device that will be used to insure that the policies are implemented. OCZM's preliminary determination that the program is sufficiently comprehensive was made after these changes were completed. However, because of the questions concerning the comprehensiveness of the program, the Assistant Administrator could delay or deny program approval. In this case the State could: (1) do nothing, or (2) broaden the scope of the program by developing new policies and modifying existing ones. If the State chose to "do nothing", the impacts would be those generalized impacts identified above for delay or denial of program approval.

Under the second option, it would be necessary for the State to develop additional policies and means to enforce those policies. This might require additional legislation or the establishment of new administrative mechanisms.

Alternative II - The Assistant Administrator could delay or deny program approval if the State lacks the ability to insure that the State coastal policies are enforced.

The principal control technique to be used by Maryland is that specified by Section 306(e)(1)(B) of the Federal act: "Direct land and water use planning and regulation." Maryland will utilize existing authorities including existing and recently revised regulations and common law in order to achieve direct control.

The principal regulatory authorities which will be used to implement Maryland's Program are: the Water Quality Act; Wetlands Act; State Boat Act; Sediment Control Law; Atlantic Coast Beach Erosion Control Act; Flood Control and Watershed Management Act of 1976; Water Appropriations Act; Laws regulating Water, Sewer and Solid Waste Facilities; various Fisheries Management Laws; the Power Plant Siting Act; and the Coastal Facilities Review Act. All of these regulatory programs, as well as all financial assistance and proprietary programs administered by State agencies, will be conducted consistent with the coastal policies articulated in the "Maryland Coastal Zone Management Program."

In addition to the Executive Order, an Order will be signed by the Secretary of DNR which sets forth specific procedures for administering the coastal management program. Finally, the DNR will enter into Memoranda of Understanding (MOUs) with the State agencies which administer authorities relevant to the CAM program, including the Department of State Planning, the Department of Health and Mental Hygiene, the Department of Transportation, and the Department of Economic and Community Development. OCZM has made a preliminary determination that the existing authorities, when networked by the Executive Order, the Secretarial Order, and the MOUs, furnish the State with a legal basis for implementing the coastal policies established in the 306 document.

The concerns most frequently voiced about this authorities scheme include:

1. The E.O. must be approved by the General Assembly.
2. The MOUs are not enforceable.
3. The "intervention authority" cannot be relied upon.
4. No new legislation is involved.

The Executive Order (E.O.)

The authority of the Governor to issue executive directives is addressed in Article III, Section 24 of the Maryland Constitution. This provision gives the Governor broad authority to structure the executive branch subject to the restriction that when changes are inconsistent with existing law or create new governmental programs, they shall be submitted to the General Assembly (G.A.) in the form of Executive Orders. The State of Maryland has taken the position that the Executive Order, which requires all State agencies to conduct their activities in a manner consistent with the Program, is not inconsistent with existing law and does not create a new governmental program. The State argues that because the E.O. contains the qualifying lauguage "to the extent consistent with statutorily prescribed responsibilities and authorities", it is consistent with existing law.

Additionally, the State does not view the coastal management program as a "new governmental program", but as one which mandates the coordination of existing programs and existing legal authorities. The State's position, then, is that the E.O. neither contradicts existing law or creates a new governmental program, and therefore is effective without G.A. approval. Furthermore, the State takes the position that the E.O. has the "force of law".

OCZM believes that the State's position with respect to the need for G.A. approval of the E.O. appears to be reasonable and acceptable.

Enforceability of MOUs

The State's position is that to the extent that MOUs create obligations which are certain and binding upon both agencies, they are enforceable as contracts by either party. Since sovereign immunity was recently waived by the State, there is no legal prohibition to a suit by an agency to enforce the terms of the MOU with another State agency. The legal analysis also explores the possibility of whether the public, as a third party beneficiary to the contract, could sue to enforce the agreement; no conclusion in this regard is reached.

The MOUs are seen as supplementary to the E.O.; they reflect commitments of the Secretaries of each agency to specific functions and obligations which will, in effect, implement the E.O.. In summary, the MOUs are enforceable by virtue of the E.O., and therefore it is not necessary for their enforceability to be otherwise scrutinized.

The intervention authority

While the intervention authority will be useful as a supplementary tool for coastal management purposes, it is not one of the "direct State control" mechanisms which is relied upon for implementation of the basic management program. Although it is referenced often throughout the document, it is always listed along with other authorities which provide a more direct form of State regulatory authority. OCZM sees the intervention authority as a useful mechanism for insuring that the national interest in certain resources and facilities is adequately considered by the State, as a "back-up for implementing the critical areas program (if other mechanisms fail), and as a secondary means of assuring that uses of regional benefit are not unreasonably restricted from the coastal zone (The primary means is through acquisition).

Is summary, OCZM generally agrees that the intervention authority has weaknesses that do not allow it to be used as a primary management mechanism and concurs with the State's decision not to identify it as one of their basic management tools.

Legislation

Because the Assistant Administrator has made a preliminary determination that the coastal policies can be implemented by existing authority, additional legislation seems unnecessary.

In view of the above reasoning, the Assistant Administrator has preliminarily determined that the State possesses the ability to insure that the State's coastal policies are enforceable. If, however, questions concerning the adequacy of authorities remain, the State can respond in two ways: (1) do nothing; or (2) attempt to address the criticisms by obtaining General Assembly approval of the E.O.; further addressing the issue of MOU enforceability; strengthening the"intervention authority"; or obtaining additional legislation.

Under option (1) above, the generic effects to Maryland's program would be those otherwise discussed. Option (2) would involve substantial time and effort by the State, including the preparation and presentation of legislation for the General Assembly or the obtaining of an attorney general's opinion concerning the enforceability of MOUs.

Alternative III - The Assistant Administrator could delay or deny approval if the national interest in the siting of facilities or the protection of natural resources in the coastal zone was not adequately considered.

Section 306(c)(8) of the CZMA requires that "the management program provide for adequate consideration of the national interest involved in planning for, and in the siting of, facilities...which are necessary to meet requirements which are other than local in nature."

The State proposes to meet this Federal national interest requirement through the use of several existing authorities and administrative mechanisms. Under existing law, the State has an obligation to consider the national interest when making decisions regarding the siting of power plants and certain facilities associated with the extraction and refinement of meneral and fossil fuel resources. To insure that other siting or use decisions which may involve national interest factors are considered by state agencies and local governments, the project evaluation process will be utilized. The purpose of this mechanism is to insure that a comprehensive review is undertaken on all projects likely to have a significant impact on coastal resources. All local, state or Federal agencies with regulatory authority over or expertise in the proposed project will participate.

The project evaluation will provide a forum for Federal agencies to express national interest concerns. DNR will insure that various national interest concerns are raised and considered by the Project Evaluation participants and that the findings and recommendations resulting from the project evaluation effort are entered into the official hearing record of all agencies with permit decisions over the proposed activity.

DNR will also request DSP intervention in local proceedings where important national interests which have been identified during the project evaluation process, should be considered or have been ignored and will initiate the conflict resolution mechanism where a State agency fails to consider project evaluation findings and recommendations.

If questions arise concerning the adequacy of this national interest section, the Assistant Administrator could delay or deny program approval. The State could (1) do nothing; or (2) adopt additional legislation or an administrative process to insure national interest factors are adequately considered.

If the State chose to "do nothing", the impacts would be those generalized impacts identified above for delay or denial of program approval.

Under the second option, it would be necessary for the State to develop additional legislation and/or administrative processes to expand upon the State's ability to consider the national interest.

CHAPTER FOUR - PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED

The probable environmental effects of the Maryland Coastal Zone Management Program will be, on balance, beneficial. Certain localized adverse environmental impacts may result, however, as the State seeks to balance the conservation of coastal resources with the recognized need for rational economic growth.

It is anticipated that some adverse impacts associated with the siting of major facilities such as power plants, energy production facilities and transportation facilities will continue after 306 approval. It is important to note, however, that the State exercises strong regulatory authority over these types of facilities to ensure that they are located in environmentally suitable areas; the Program also makes provisions for consideration of the national interest in the siting of these facilities.

Within the Area of Focus (described in Chapter II of Part II), the State exercises control over those uses which might have adverse environmental effects on coastal resources. Outside of these areas, state control focuses on the management of major facilities mentioned above in concert with applicable air, water, sedimentation and erosion control standards and other such programs. Beyond the area of focus, the sixteen county governments and Baltimore City will continue to have responsibility for a broad range of land use decisions. Some of these local decisions may have adverse environmental impacts which will not be controlled by this program.

CHAPTER FIVE - THE RELATIONSHIP BETWEEN LOCAL, SHORT TERM USES OF THE ENVIRONMENT AND THE ENHANCEMENT OF LONG TERM PRODUCTIVITY

The Maryland Program will use several innovative approaches discussed in the section entitled "What the Maryland Coastal Program will do that is New," to assist the State in carrying out a broad set of goals, objectives and policies for the management of coastal resources. These new approaches are designed specifically to overcome those obstacles to comprehensive management which encourage localized short term uses which might preclude long term uses of the coastal environment. The program recognizes the need and assigns responsibility to the Coastal Zone Unit for determining the long term cumulative impacts of those short term uses which, when assessed alone, might be considered to be of insignificant impact.

While some groups have expressed a desire for the Program to provide out-right bans on some coastal uses and to provide for State authority to veto local land use plans, this proposed Program is intended to balance the preferences of different interest groups based upon the objectives of State and Federal statutes and regulations.

CHAPTER SIX - IRRETRIEVABLE AND IRREVERSIBLE COMMITMENTS OF RESOURCES THAT WOULD RESULT FROM THE PROPOSED ACTION

The only irretrievable or irreversible commitment of resources that will result directly from the approval of the Maryland Program is the commitment of State and Federal funds and personnel for the purpose of achieving the goals and objectives of the Program. It is presumed that irretrievable and irreversible commitments of economic and environmental resources (such as those associated with the uses listed in the next paragraph) will occur during the implementation of the Maryland Program. This Program is designed to balance the need for development with the need for the protection and enhancement of coastal environmental resources.

It is anticipated that additional facility development will occur with respect to power plants, residential development, industrial and commercial development, mineral (other than fossil fuel) extraction, sewage treatment, boating and recreation, port development and expansion, channel maintenance and onshore development related to Outer Continental Shelf (OCS) gas and oil exploration and production.

Additional land and water areas, however, will be committed to preservation or conservation. At present, wetlands, Atlantic beaches, and state forests, parks, and wildlife management areas are so protected, and additional areas will be designated for preservation or conservation through the State Critical Areas Program.

No commitment is irretrievable or irreversible at the time of Program approval. The Program ensures that any such commitment is subjected to comprehensive review as an individual action and as an action contributing to the cumulative impacts taking place on coastal resources. Such review will ensure that those irretrievable and irreversible commitments of resources which are undertaken under the Maryland Program are made with full awareness of the consequences of those commitments.

CHAPTER SEVEN - CONSULTATION AND COORDINATION WITH OTHERS

Extensive public and private consultation, coordination, and input has been received in developing the Maryland Program. Additional input has been received from various Federal, State and local agencies throughout the development phase of the State's Program. These agencies have reviewed, in particular, the impact of the Program on their activities. Coordination with all local, State, Federal, public and private interests remains a key component of the Maryland Program. This is documented in the following portions of the Program:

Chapter V and Appendix B: Local Government Involvement

Chapter VII and Appendix C: Public Involvement

Chapter VI and Appendix F: Federal Consultation

Records of public meetings and other public forums sponsored by the program are available at the Coastal Zone Unit, Tawes State Office Building, Annapolis, Maryland 21401.

Key events in program coordination and consultation have been:

- Development of the Coastal Zone Management Program was underway on July 1, 1974. The program's first objective was to initiate necessary resource inventories and mapping on which to base the permissible uses and geographic areas of particular concern elements of the program.

- The Chesapeake Bay and Coastal Zone Advisory Committee, a five member gubernatorily appointed group, held its first meeting.

- The public participation effort was launched in late summer of 1974 with the hiring of a consultant charged with developing public information materials, making progress reports to citizens on program development, and obtaining public input through workshops.

- By the Fall of 1974, the staff had initiated contact with the Bureau of Land Management for Outer Continental Shelf Affairs, and began work with the Maryland Environmental Trust and the Maryland Bar Administration on legislation to prepare the State to deal with on-shore activities resulting from OCS development. The Coastal Facilities Review Act was passed in the 1975 legislative session.

- During the Winter of 1975, public information packets were distributed to concerned interest groups and individuals, and a workshop was held with leaders of major conservation groups to discuss alternate means of citizen involvement.

- In the Spring of 1975, a State-wide citizens conference on coastal zone management was held.

- The Baltimore Metropolitan Coastal Zone Management Study was initiated through a Demonstration Grant to the Regional Planning Council under a HUD/OCZM cooperative agreement.

- Review of State and local authorities available for coastal resource management in Maryland was initiated in July 1975.

- In March of 1976, formal contacts with each relevant Federal agency were made to ensure that formal liaison was maintained. Worksheets were developed with each agency to help define its role in the development and implementation of the program.

- During the spring, county governments were requested to designate a formal liaison to work with CZU in program development and implementation.

- In July of 1976, a Supplemental Committee to the Chesapeake Bay and Coastal Zone Advisory Commission was created. The purpose of the Supplemental Committee was to bring a wide representation of Federal, State, local, academic, public and special interests into a forum which could guide the program during the final year of program development. The Committee was reconstituted in March 1977 as the Coastal Resources Advisory Committee. See Chapter I, and Chapter VII, page 342 of Part II.

- During the Fall of 1976, public review drafts of four major program elements--permissible uses and goals and objectives, boundaries, Geographic Areas of Particular Concern, and Authorities and Organization--were presented at regional citizens meetings and to the Chesapeake Bay and Coastal Zone Advisory Commission Supplemental Committee. These drafts were also sent to State and Federal agencies for review.

- Technical assistants were established on a regional basis to assist counties in participating in the program.

- A "pre-draft" of the program was published in December 1976, and reviewed by State and local agencies and interest groups. A public meeting was held to receive comments on January 15.

- A Memorandum of Understanding on coastal zone management between the DNR and the Department of State Planning was signed in February.

- The Draft Coastal Zone Management Program was published and circulated in March 1977. Comments received in writing and at four public hearings during July, 1977 were used in reformulating the final program.

- Work agreements were reached with each county to provide funds to local government for technical assistance in Coastal Resource Management during the Summer of 1977.

- During the fall, the Coastal Resources Advisory Committee played an extensive role in reviewing drafts of sections of the final program document.

- December 6, 1977, the Program was submitted to OCZM.

- Additional Public Hearings in the Program held January 17-18, 1978.

- The State gave a presentation of the proposed program to regional Federal agencies in Philadelphia on February 22, 1978.

- The Governor signed the Executive Order on March 8, 1978.

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