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PUBLIC ACCESS TO THE BEACHES: A SURVEY OF RECENT STATE ACTIONS

David J Brower
Chapel Hill, NC

Mar 1980

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Public Access to the Beaches: A Survey of Recent State Action

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BEACH ACCESS PROGRAMS

Jurisdiction	Federal Approval Date By Fiscal Year (ends 9/30)	Overview	Program	Evaluation
Alabama	1979	0	P	
Alaska	1979		P	
California	1978	0	P	E
Connecticut	1980 est.	0		
Delaware	1979	0	P	
Guam	1979		P	
Hawaii	1978	0	P	E
Louisiana	1980 est.	0	P	
Maine	1978	0	P	E
Maryland	1978	0	P	E
Massachusetts	1978	0	P	
Michigan	1978	0	P	E
New Jersey	1978	0	P	E
North Carolina	1978	0	P	E
Oregon	1977	0	P	E*
Pennsylvania	1980 est.	0		
Puerto Rico	1978	0	P	E
Rhode Island	1978	0	P	E
South Carolina	1979	0	P	
Texas	1981 est.	0	P	
Virgin Islands	1979		P	
Washington	1976	0	P	E
Wisconsin	1978	0	P	E

*Beach Bill

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FOREWORD

The purpose of this study is (1) to describe what is being done at the state level under the Coastal Zone Management Act to achieve more access to the nation's beaches for the public and (2) to suggest some things that could be done at both federal and state levels of government to achieve that goal.

The first step of the study was to obtain the approved Coastal Zone Management Programs and the Section 312 evaluations that had been completed. The relevant portions of each were extracted and are included in Part III. Then each jurisdiction was called on the telephone and either the program director or the person responsible for the beach access portion of the program was interviewed using the interview sheet included in Part V. The interview was then summarized and included in Part III. (Because of time limitations and some logistical problems not all of the above was obtained for all jurisdictions. A list at the front part III indicates the material and interviews that are a part of the study. Note that several states whose programs are not approved are included because of their special interest.)

In reviewing the materials collected and the results of the interviews three questions were asked:

1. What is the nature of state programs; how much progress is being made?

2. What problems are the states experiencing?

3. Are there exceptional programs or parts of programs that could be transferred to other states?

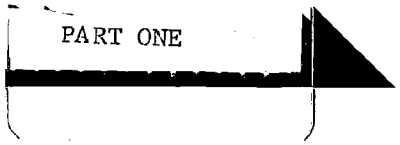
Part One of the study contains a general introduction to the beach access issue, a discussion of steps that are being taken to deal with the problem, case studies of eight state programs and some general conclusions.

Part Two contains the beach access portion of each Coastal Zone Management Program, the relevant portion of the evaluation of these programs if one had been conducted under Section 312 of the Coastal Zone Management Act and an overview of each program prepared for the responses to the interviews conducted. Not all of these are available for each program. The Table of Contents indicates what is included for each.

Part Three contains the Interview Schedule used to obtain the information summarized in Part Two and the Case Studies in Part One.

Part Four contains relevant sections of the Coastal Zone Management Act and the regulations implementing it.

Part Five is a bibliography.


PART ONE

Beach Access Problems, Programs and Progress

Introduction

Man throughout history has been drawn to the coast. The coast has been and continues to be a source of replenishment for mind, body and spirit in all cultures. In this country where the amount of disposable income and time is rapidly increasing, water related recreational activity continues to be the most popular form of outdoor recreation. The notion of simply "going to the beach" is still one of the most popular outdoor pastimes. But going to the beach is not what it once was. It used to involve quietly lying in the sun, peaceful picnics, beach grass blowing in the breeze, the cry of gulls, long, isolated walks. But now "going to the beach" often involves long lines of hot station wagons filled with grouchy parents, sullen children, and soggy sandwiches trying to get to a crowded beach filled with bodies, beer cans, styrofoam and stereos. In the process the beach-goers run the danger of conflict with hostile residents, defensive land owners and local governments who regard the beach as "theirs." For many, going to the beach has become unpleasant; for others, impossible.

As the popularity of coastal areas of this country increases, development in the coastal areas also increases to take advantage of that popularity. As development increases to meet increased demand, the supply decreases, and quite according to economic theory the price increases. The result is that the coast is becoming increasingly the haven for only upper income people. It is only the upper income groups who can afford the facilities, such as a motel room, a cottage, or a condominium, to assure that going to the beach is a real possibility.

The argument for a strong public policy encouraging public access to the nation's beaches is a simple one. There has always been a strong demand for the use of beaches, and that demand is increasing and will continue to increase for some time to come. The public now owns and/or has the right to use vast stretches of the coast. The problem is that often there is no way for the public to get to those portions of the coast that they have the right to use because it is separated from the nearest public road by privately owned land. The result is that many stretches of public beach are accessible only by long hikes, by boat or by trespassing on private land. This problem is becoming increasingly intense because private land that has been traditionally used by the public is being converted to more profitable uses by the owners, and in some cases accessways that have been dedicated to the public are being withdrawn. Unless there is a strong public policy to obtain new accessways and to protect existing ones, the amount of beach available to the public use will continue to decrease at the same time the demand for it is increasing.

There are two separate questions involved. The first, does the public have a right to use the beach? Then, if the public does in fact have the right to use the beach, how can the public get to the beach? It is the latter question that is the real "beach access" question.

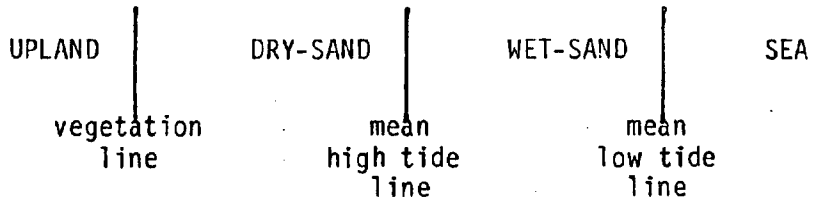
The paper will first explore the legal questions of beach ownership and of accessways to the beach. Then it will discuss the beach access requirements of the federal Coastal Zone Management Program and will conclude by describing eight state beach access programs and how they have responded to the federal program.

The Legal Right Of The Public To Use The Nation's Beaches

Can the owners of a coastal motel fence off the beach in front of the motel and reserve it for the exclusive use of motel guests? Can the public fish from the surf anywhere they want? Or use any beach for swimming, sunbathing, or picnicking? Supposing that they do have the right to use the beach, how can they get to it? To what extent can owners of water front cottages prohibit anyone from sitting on "their" beach or walking across their property to get to the beach?

These questions raise the issue of who owns the beach, and to what extent the public has a legal right to use the beach, and to gain access to it. The answers to these questions are based on sometimes complex legal issues and doctrines.

For the purposes of this discussion, the "beach" consists of four parts: the sea, the wet-sand, the dry-sand, and the upland. First, that area seaward of the mean low tide line is termed the sea, or sea bed (lake or lake bed in non-oceanic situations). Second, the area between the mean low tide and mean high tide lines, which is covered by the usual flow of tides, is termed the wet-sand. "Foreshore" and "tideland" are generally synonymous with this term. Third, the area between the mean high tide line and the line of vegetation, or dune line, an area inundated only during severe storms, is termed the dry-sand. Fourth, that area landward of the vegetation line is termed the upland. The following diagram illustrates this division.



The question of the extent to which the public has the right to use coastal beaches has come before the courts on several occasions. Major cases have been decided in New Jersey, California, New York, Oregon, Florida, and Texas. Each of these cases involved different factual situations and different aspects of the beach use and access questions. Each decision was also based on different legal theories.

The Sea

American courts have held consistently that navigable waters and associated tidelands are held in trust by the government for the public. In the leading case on this point, the U. S. Supreme Court in 1892 said that these lands are held in trust for the people so that public rights of navigation, fishing, and commerce could be preserved. The court further said that the state could not abdicate its control over these areas in any fashion that would diminish the public's right in the trust lands.

The Wet-Sand

As the following chart indicates, approximately three-fourths of the oceanic states have held that wet-sand beaches are publicly owned:

Publicly Owned		Privately Owned
Alabama	New Jersey	Delaware
Alaska	New York	Maine
California	North Carolina	Massachusetts
Florida	Oregon	New Hampshire
Georgia	Rhode Island	Pennsylvania
Hawaii	South Carolina	Virginia
Louisiana	Texas	
Maryland	Washington	
Mississippi		

In most of these states, the public ownership of the wet-sand beaches is subject to a "public trust."

The Dry-Sand

In almost all states the dry-sand is privately owned but in a number of states the courts have used a variety of theories or concepts to find public ownership or a public right to use the dry-sand portion of the beach:

Public Trust: Avon is a small resort community in New Jersey bordering the Atlantic. The city owned a dry-sand beach that for many years was free to all comers. In the 1950s, the New Jersey legislature allowed cities to start collecting user fees for the beaches to defray maintenance costs. Avon established such a fee, which was the same for residents

and non-residents. In 1970, Avon changed their beach fee ordinance so that it would charge non-residents about twice as much as residents to use the beach. Neptune City, a neighboring inland city, brought suit to challenge this change in the ordinance.

The court invalidated the ordinance. They said that where a municipality owns a dry-sand beach and dedicates it to public beach purposes, the public trust doctrine requires the beach to be open to all on equal terms. So while New Jersey cities could charge reasonable user fees, they may not discriminate between residents and non-residents.

Implied Dedication: In 1970 the California Supreme Court found that the public had a right to use two privately owned beaches.

The court said that when the public has used a beach for a long period of time, paying no attention to the fact that the beach is privately owned, the public acquires a legal right to use that beach. Unlike the common notion of "express dedication," where the private owner overtly conveys land to the public and the public body formally accepts the dedication, there are no formalities required for "implied dedications." The owner's intent to give the land to the public is implied from his conduct of not preventing public use of the beach. And the public's acceptance of the dedication is implied from public use of the beach.

Customary Rights: In 1969, the Oregon Supreme Court in Thornton v. Hay, employed the legal doctrine of "customary rights" to confirm the right of the public to use Oregon's dry-sand beaches.

This case involved the efforts of Hay, a motel owner, to fence in a portion of the dry-sand beach adjacent to his motel for the exclusive use of motel guests. The publicity generated by this action helped trigger legislation recognizing the public's right to use the dry-sand beaches of the state. However, since legislation of this sort cannot change or determine property rights, the matter of Hay's fence was sure to wind up in court.

And wind up in court it did when, after a winter storm destroyed his fence, Hay replaced it without obtaining a permit required by the legislation. The state went to court seeking an order to force Hay to remove the fence.

In reviewing Hay's claim of a right to exclude the public from this dry-sand area, the Oregon court noted that the public had been freely using the state's dry-sand beaches as if they belonged to the public for over sixty years. At no time had anyone sought or obtained the upland owner's permission to use the dry-sand area. Virtually everyone, including the upland owners, had always assumed that the public had a right to use the dry-sand area. For these reasons, the court held that the public had obtained the right to continue to use the dry-sand beach.

Prescriptive Easements: If it is found that the public has acquired a prescriptive easement for the use of a specific beach area, then the public has a right to continue to use the area in the same fashion as before. What had started out as a trespass becomes, when enough time passes without the owner evicting the trespassers, a legal right to use the beach. The owner still "owns" the property, but cannot do anything on it that would reduce the public's established rights to use it.

The Upland

In all states, the upland, that area above the vegetation or dune line, is privately owned with the exception of land acquired by the public. Many of the "adverse possession" doctrines applied to the dry-sand portion of beach have been applied and are available to be applied to the upland portions of the beach as well. Indeed many of the cases referred to in the Dry-Sand section dealt with public rights in the upland as well as in the dry-sand areas.

Typically, however, public rights in the upland portion of the beach are obtained through some sort of acquisition program. The National Seashores and the many state and local parks that are found on the coast are the product of these programs. A few states (Oregon, Rhode Island and California) have been especially active while others have done very little.

From this description it can be seen that vast portions of the nation's beaches are owned by the public and/or the public has the right to use them. The pattern of public rights varies from state to state. In some states, the public owns only the sea, in some they own from the vegetation line seaward, but in all states, the public does have the right to use some portion of the beach even if it is only the land below the water which can be used only by wading.

The Great Lakes

While the Great Lakes are technically "inland lakes" rather than oceans, their shorelands share many of the attributes and problems of oceanic coasts. Some of the areas have a number of the physical characteristics of ocean beaches; many areas are also increasingly being faced with the same public versus private use conflicts that led to the litigation discussed earlier.

Over the years, state and federal courts have developed a strong position that the states must manage the Great Lakes in a fashion to benefit all residents of the state; that the Great Lakes are a public resource that cannot be appropriated for private gain or use. In fact, the U. S. Supreme Court's landmark decision on the public trust doctrine, Illinois Central R.R. v. Illinois, set aside an attempt of the

Illinois legislature to convey part of the lake bed of Lake Michigan. However, as is the case in many oceanic states, this doctrine has generally been interpreted only to protect public rights lakeward of the "ordinary high water mark".

What Can Be Done About Access?

Concern about the ability of the public to have access to the coast and to make use of the coastal beaches is by no means a new issue. The public trust doctrine was developed by the Romans in part to ensure that the public could make use of the shore. The public trust doctrine was incorporated into English law, brought to the colonies and later adopted by the United States. In Hawaii, a system of trails leading to and along the coast, that under tribal law could be used by all of the people, led to what is now known as the "Ancient Trails Doctrine." In 1959 the Texas legislature adopted the Texas Open Beaches Act which was passed after private landowners attempted to close some Galveston Island beaches to the public. Shortly before the turn of the century, a part of the Oregon beach was declared to be a public highway in an effort to keep it open to the public. In 1913 that policy was extended to all of the Oregon wet-sand beaches by the Oregon legislature.

From 1913 until the early '60s, most Oregonians were secure in their belief that they owned the entirety of the Oregon beach. Certainly they had been free to use the entire beach without interference until the owner of a motel erected a fence on the dry-sand portion of the beach and posted a sign that read: "Surfsand Guests Only Please." This led to the passage of the Oregon Beach Law in 1967 which was similar to the Texas Open Beaches Act. This Act codified into law already existing public rights to dry-sand beaches and gave the State Highway Commission the authority to police, protect, and maintain them. The Act said that the legislature:

> . . . recognizes that over the years the public has made frequent and uninterrupted use of the ocean shore . . . sufficient to create easements in the public through dedication, prescription, grant or other use . . . the Legislative Assembly hereby declares that all public rights . . . are vested exclusively in the State of Oregon.

Both of these acts codified the common law of beach ownership and gave the Attorney General legislative authority to protect that ownership. Both acts have been challenged several times but have been consistently upheld by the courts.

Other states have dealt with access through park programs, but few acted with the force and direction of Oregon and Texas.

Coastal Zone Management Act

In 1976, in order to give added direction and focus to the coastal zone management program, Congress added Section 305(b)(7) the Shorefront Access Amendment to the Coastal Zone Management Act. The amendment requires that "the management program for each coastal state include . . . a definition of the term 'beach' and a planning process for the protection of, and access to, public beaches . . . ." The Report of the House of Representatives Committee on Merchant Marine and Fisheries commented on Section 305(b)(7):

> The Committee wants, by this requirement, for state Coastal Zone Management Programs to identify their publicly held coastal areas and to devise policies which will either provide for their protection, where that is appropriate as with ecologically significant wildlife areas, and for their ready access as is appropriate with a public beach. Whereas the present management programs must include an inventory and designation of 'areas of particular concern,' this new requirement focuses particular attention on publicly held properties and directs that plans for their best management be included in the state program.
>
> Access to public beaches and other attractions in public ownership in the coasts has come to be identified as one of the critical problems facing local and state governments . . . . The Committee position is that action is needed now to help provide the needed access, especially, in urban areas, and that to wait will only mean additional expense to the taxpayers. The key gain is that the purchase of such access, as is provided in the addition to Section 315 (2) . . . be tied to a comprehensive plan. That is the intent of this new requirement under 305 program development--that all such purchases fit into an overall program for each state.

Regulations implementing 305(b)(7) were hurriedly drawn, and the state managers were advised to "expedite" their shorefront plans. This was interpreted by them, apparently correctly, to mean "don't spend much time on this, it isn't very important."

The result of this less than enthusiastic performance of OCZM in implementing the shorefront access planning amendment resulted in a wide range of uneven responses from the states. Thus far twenty-one states have prepared shorefront access planning elements. Of these, seventeen have been approved by OCZM. They vary from being almost totally devoid of substantive content to being very imaginative and creative. Generally the states that had been concerned with beach access prior to passage of 305(b)(7) prepared the more significant programs, and the states that were uninterested before were still uninterested.

The substance of the programs fell into several areas:

Access to access

Several states concluded that the chief problem was not the lack of accessways but the inability of people to get to the accessways. From this observation a number of programs were developed which involved some sort of mass transit. New Jersey and North Carolina experimented with shuttle buses running from remote parking lots to accessways. Hawaii attached surfboard racks to some of the buses serving the coast of Oahu so that surfers could use mass transit to get to the beach. In the San Francisco metropolitan area, special buses go to the Golden Gate Recreation Area and Point Reyes National Seashore. Time sharing programs for industrial and commercial parking lots have been suggested whereby the public would lease private parking lots or spaces that are not used on weekends. On the negative side, the lack of parking and inability to provide it has been used as a rationale for denying access and as a means of limiting it.

Management of existing access

Perhaps the most interesting access programs have been developed in this area. States have developed programs to systematically review their coastal areas to discover accessways that are already in the public ownership and areas of beach that the public has the right to use. Sometimes known as "protection of public property rights programs" public ownership and use rights are documented and programs to protect them in the future are developed. These range from the ancient trails of Hawaii and early rights of way contained in Rhode Island's King James Charter to deeds "lost" in an eastern North Carolina courthouse and "unowned" islands in Maine.

Acquisition

There are any number of variations on this theme that are used by various public bodies to obtain accessways.

Purchase: A number of states have active programs to purchase accessways. Oregon and California, for example, have been systematically buying relatively small accessways along the coast with the intent, in the case of Oregon, of providing an accessway every 1.5 to 3 miles. Up until now the U. S. Land and Water Conservation Program has been a reliable source of federal money for this sort of purchase program. Some states (Massachusetts, Michigan, Oregon and New Jersey) have or are studying the possibility of creating special state funding sources to acquire accessways. One of the interesting variations is the rights that are suggested for purchase. For example, an easement acquired by the public to use an accessway restricted to the use of lot owners in a subdivision or the acquisition of an access easement on top of a utility right of way, etc.

As a condition of a permit: Several states and many communities require that accessways be dedicated to the public as a condition of obtaining a permit to develop or subdivide a parcel of shorefront land. In some states, the developer is simply precluded from closing existing accessways, but in others they are required to provide new accessways, and in others they must provide and develop (pave and landscape) the accessway.

As a condition of public expenditure: Some programs such as the Corps of Engineers beach nourishment program and a number of state programs require that before public funds can be spent on a beach project some arrangement to ensure public access to that beach must be established.

Acquisition as a part of a coastal regulatory program to mitigate loss in market value: It has been suggested that oceanfront lots should be acquired for access in situations in which the regulations imposed by the coastal zone program come close to leaving the owner with no reasonable use of his land and thus tempting a taking challenge. A related suggestion is the acquisition of properties destroyed or seriously damaged by a natural hazard, thus providing access and preventing the redevelopment of a hazardous area. An obvious advantage to the latter program is that Federal Insurance Administration funds may pay a part of the purchase price.

Acquisition through usage: The acquisition of an easement by the public through continuous usage under some form of implied dedication or customary use doctrine has already been discussed and is often a part of management programs.

Federal land: The federal government and the Department of Defense in particular own a great deal of the coast, and much of it is located close to urban centers. It has been suggested that at least a part of the coast owned by the military could be opened for civilian recreation without jeopardizing the national security. In some few cases military bases have been declared surplus and made available to state and local governments for public use.

Case Studies

The eight state beach access programs that are described in this section were prepared in response to the federal Coastal Zone Management Act although as will be seen several of the states were active in beach access long before Section 305(b)(7) was adopted. All of the programs have been approved by the Office of Coastal Zone Management except for Texas which, as of this writing, is not participating in the federal program. As will be seen, these are not presented as models but rather as examples of how states are dealing with beach access.

California

California public policy has long recognized the recreational value of its coastal resources but access to the beaches decreased as coastal development increased. The state constitution and federal Coastal Zone Management Act provided the incentive and authority for an aggressive state program which among other things requires new development to provide public access to the shore.

While the definition of the public portion of the California beach is the area from mean high tide seaward, the California Constitution guarantees access across private property to all coastal tidelands. Over the years this right has been defined by various statutes and court decisions. California courts have recognized an implied dedication if the public has used a privately owned area for at least five years.

California's coastal management program addressed the access issue extensively prior to the adoption of the 1976 amendments to the federal Coastal Zone Management Act. The California basic access policy is to "maximize public access to and along the coast and maximize public recreation opportunities in the coastal zone consistent with sound resource conservation principles and the constitutionally protected rights of private property owners." The policies of the management program expand on this theme asserting that development shall not interfere with the public's right of access to the shorefront where it has been acquired through use or legislative authority, including use of the dry-sand portion of the beaches and rocky coastal beaches to the first line of vegetation. The policies also call for public access from the nearest public roadway to the shoreline and along the coast wherever possible and in addition for the provision of adequate public facilities (such as parking lots and bathrooms) in order to distribute use throughout the area and prevent overcrowding.

At the heart of the California coastal management plan's access element is the consistent exercise of development review and permit conditioning. All proposed coastal developments must be reviewed for their consistency with state policies among which is the provision of adequate access from the nearest public road. This access provision usually results in the dedication of an easement, but can also include a requirement that the developer provide a stairway or ramp to the beach, a public parking lot, or a bikeway. The dedication requirement has been unpopular with developers, but continues to be upheld in court. The major problem with the dedicated rights-of-way is finding a public body willing to accept and maintain them. The California legislature requires that a public body must agree to maintain a right-of-way before it may be opened to the public. The financial cutbacks imposed by Proposition 13 have discouraged local governments from accepting the burden of maintenance, security and liability that accessways carry with them. The California Coastal Commission and California Coastal Conservancy are currently working together to find agencies and homeowner groups which are willing to accept these responsibilities.

The coastal management program also coordinates the efforts of many other agencies to acquire coastal land for public recreational purposes. The State Urban Coastal Bond Act which was passed by California voters in 1976 provided $145 million for the acquisition of coastal areas and $10 million for the California Conservancy to begin its acquisition program. Approximately $250 million of state and local bonds have been approved for acquisition purposes during the last six years.

The California Coastal Commission has recognized that the lack of public transportation prevents many citizens from getting to the coast. Thus, although coastal management program funds do not directly subsidize any transportation programs, local governments are being encouraged by the Coastal Commission to arrange for transportation to the beaches through their transit authorities. Transportation programs also work to reduce the demand for parking at the point of access.

Coastal management officials continue to seek solutions to four major shorefront access problems in California. In southern California there is inadequate transportation to the coast and inadequate parking to serve coastal recreational demands. In many areas of northern California agricultural land must be crossed to get to the shorefront. In rocky coastal areas, topographic conditions such as steep bluffs pose hazards for those seeking to use the beach below. Finally, as is the case in most coastal areas, the delicate balance between the right of public access and the protection of natural resources must be struck.

Maine

Shorefront access is a delicate political issue in the state of Maine, which has a long tradition of private property rights along the coast. As a result, state coastal management officials have been cautious and conservative about developing new public access opportunities and/or attitudes.

Except in a very few cases, private ownership extends to mean low tide or 100 rods (503 meters) from mean high tide (whichever is less). The Colony Ordinance of 1641 authorized private land ownership in the intertidal zone, subject to public rights for fishing, fowling and navigation. Recreational rights are notably absent from this list. Since that time there has been no litigation or legislation redefining shoreline ownership and the attitude toward public access to the shoreline remains basically closed.

Only a small percentage of Maine's predominantly rocky coast is sandy beach. An inventory by the Maine State Planning Office found that only 75 miles or 27% of the state's coast was sandy. Of this, approximately .5% belong to the federal government, 8.5% belong to the state government, 12.5% belong to local governments and 78.5% are in private

ownership. Thus, publicly owned sandy beaches are extremely limited in Maine. Boating access is perhaps a more important issue in the state, not only for recreational boaters and fishermen, but also for commercial fishermen whose livelihood depends on their access to the water.

Traditionally, Maine's coastal communities have provided access to the shorefront for local residents only. Where a town beach or a town harbor has been established, its use is generally restricted to local residents. State coastal program officials had intended to work with the Attorney General to set forth a broader state position for public shorefront access and use rights, but the case upon which this process was to start was dismissed and the program has not been pursued.

There has been little or no change in Maine's policy toward shorefront access since the passage of the 1976 amendments to the federal Coastal Zone Management Act. State officials are wary of introducing shorefront access legislation for fear that it will be defeated and that a "legislative intent" argument could then be used against any future attempts to provide public access. They also assert that there is little demand for increased access. Thus, there has been little activity at the state level to develop new access policies or to create new access opportunities. Provision of shorefront access remains at the discretion of the property owners.

Given this political environment, the shorefront access policy statement of the Maine coastal management program is, not surprisingly, weak. It contains some definitions, ideas for planning and inventory and a description of existing Maine legislation which protects existing shorefront access. The two major pieces of legislation cited are the Coastal Wetlands Alteration Act and the Mandatory Shoreland Zoning and Subdivision Control Act. The former requires permits for dredging, draining, filling, and the construction of permanent structures on or over any tidal or subtidal land and conditions these permits on the protection of existing navigational and recreational uses. The latter enables municipalities to plan, zone, and control the subdivision of land to "conserve shore cover, visual as well as actual points of access to inland and coastal waters, and natural beauty." Both of these existed prior to 1976 and neither takes an aggressive stance toward access (i.e. both protect "existing" access only). The policy statement does not propose any stronger methods for expanding access opportunities.

Some coastal management program projects have had an affect on shorefront access. Coastal Zone Management funds have been granted to approximately a dozen municipalities for feasibility and design studies for the development of urban waterfront parks and fish ports and have also sponsored a State Bureau of Parks and Recreation study to identify potential sites for acquisition as state shorefront parks. Approximately fifteen communities have taken advantage of the Title Search Assistance Fund for legal research to identify existing public access points. Finally, CZM funds were used for a study which identified potential sites

for fish piers. The state is now using Economic Development Administration and bonds funds to construct six of these facilities.

The legal definition of shorefront ownership and the conservative political attitude toward public access are the major obstacles which state coastal program officials face.

Michigan

The rights of private owners of lakefront property are so extensive in Michigan that state officials have decided that providing access across private property to the shore is an inadequate solution to meet recreational needs. Instead, they have focused on acquisition and development of whole shorefront parcels to be managed as public recreation areas.

According to Michigan law, the high water mark is the legal boundary between public and private ownership. The state holds the "bottomlands" located on the lakeward side of the ordinary high water mark in public trust under the provisions of the Submerged Lands Act. Riparian private property owners hold the land above the ordinary high water mark and have exclusive use of the state-controlled bottomlands when they become exposed by declining water levels. Thus, the public has a right to use the water, but access to the shore is limited by the "one foot in the water at all times" rule.

Historically, the state of Michigan has sought to increase public access opportunities by actively encouraging state, county, township and municipal acquisition of shorefront property. Three major sources of funds have been used to finance and acquisition. The Michigan Waterways Funds, which has been administered by the Michigan Waterways Commission since 1945, matches a 90% federal contribution with a 10% state or local contribution to develop facilities for public access to Michigan waters. These funds have been used for the construction of boat launching ramps to docks. Nearly 1,000 public access sites have been built and equipped for boaters since this program began. Since 1965 the Michigan Department of Natural Resources has allocated federal Land and Water Conservation Funds for recreation-related acquisition and development programs throughout the state. Shorefront properties have been a major priority of the Michigan LAWCON program. In 1976 the Michigan Recreational Land Trust Fund Program was established. The fund raises revenues from leases and royalities from oil, gas, and mineral extraction activities on state lands and uses this money to acquire property as public recreation sites.

Michigan's response to the 1976 access amendments to the Coastal Zone Management Act has not been particularly innovative. Basically, the coastal management program has been used to reinforce existing state access policies and programs. The Department of Natural Resources, which has the responsibility for the state's environmental and recreational

programs, is the lead agency for coastal management. Policy is set at the state level and technical assistance and grants are made available to the local level to implement access programs.

The Michigan shorefront access policy statement follows the OCZM guidelines and refers extensively to the policies defined in the 1974 Michigan Outdoor Recreation Plan (SCORP) and those expressed by various divisions of the Department of Natural Resources. The emphasis on public acquisition of land for recreational purposes is reinforced, but few other management techniques for increasing shorefront access are presented.

Coastal management officials have defined their responsibilities toward access in terms of providing technical assistance and "seed money" to local communities to help leverage additional funding for the acquisition and development of access sites. Approximately half of the Michigan coastal management program access budget goes toward grants to local communities. The majority of these grants fund projects which create, improve, or preserve shorefront access. At the time of application for state coastal management funds for project feasibility review and design, local communities are asked to identify potential funding sources for land acquisition and/or project development. After the design phase is complete, state coastal management officials provide technical assistance to help procure this outside funding.

Urban waterfront parks have been popular local projects which increase shorefront access opportunities. In Detroit three small, existing parks will be tied together by a riverfront walkway, part of which extends through an industrial section of the city. Similarly, several small public parcels in Mackinaw have been tied together with a walkway which necessitated the granting of easements across private property. In St. Ignace, a 3/4 mile long promenade will provide visual access to the shore, but no physical access. Bike path designs have been funded in Detroit, Marquette, Grand Haven and Sault Ste. Marie.

Michigan coastal management funds have also been granted to seven state parks for the construction of boardwalks which provide access across dunes and wetlands while preserving these environmentally fragile areas.

The major access problems which Michigan coastal management officials cite as needing ongoing attention are a lack of shorefront access in urban areas (especially Detroit) and protection of sensitive environmental areas from the pressures exerted by those seeking access to the shore.

New Jersey

Although the legal definition of the "public" portion of the beach allows for liberal use of New Jersey beaches, a history of shorefront development and exclusionary local regulations has made access to the beach itself difficult. The New Jersey Department of Environmental Protection is currently implementing regulatory, financial incentive and transportation programs designed to open up more shorefront access opportunities for the public.

The public portion of the New Jersey beach is from the vegetation line seaward. Thus, the public has the right to use both the wet-sand and dry-sand portions of the beach. However, most shorefront developments have blocked visual and/or physical access to the shore. Some municipalities which own land adjacent to the vegetation line have enacted laws or regulations which make shorefront access inconvenient, expensive or impossible for non-residents. Inland residents have been deprived of adequate access to shorefront recreation areas.

The state of New Jersey placed the responsibility for administering its coastal management program within the Department of Environmental Protection. The Department has begun to take a more aggressive stance on providing public shorefront access. Actions of the Department are based on New Jersey's simply stated shorefront access policy:

> "Coastal development adjacent to coastal waters shall provide maximum practicable public access to the shorefront, including both beach and built-up waterfront areas and both visual and physical access. Shorefront development that limits public access and the diversity of shorefront experiences is discouraged."

The Department of Environmental Protection is currently using four methods to implement its shorefront access program. First access regulations are imposed on new shorefront developments. The Department of Regulation requires that each project provide "maximum practicable access" to the shorefront as a condition for the issuance of a development permit. Projects can provide access through such means as public walkways, boat launch ramps, or public parking lots. Second, shorefront access conditions are also placed on Shorefront Protection Funds, which finance dune restoration, erosion control and beach nourishment projects. Municipalities which accept these funds must pledge to establish and maintain public access to the area being funded. Third, provision of waterfront access is an eligible activity encouraged by CZM grants to local communities. Grants of this type are being used for such projects as developing urban waterfront parks. Fourth, the Department of Protection sponsors shuttle bus transportation each summer weekend from a parking lot near the Garden State Parkway to a state beach 12 miles away. Approximately 8,000 people each summer take advantage of this service which provides shorefront access to inland residents of New Jersey.

New Jersey coastal management officials continue to search for solutions to the state's four major shorefront access problems: (1) the best beaches are difficult to get to without a private auto; (2) almost none of the beaches are free any more (most charge an admission price); (3) the supply of bath-houses and parking lots is inadequate to meet demands; (4) the large amount of development on the shorefront is causing major erosion problems which could necessitate the closing of beaches to use by the public.

North Carolina

Unlike most coastal management programs, the North Carolina Coastal Area Management Act places major responsibility at the local level. As a recent addition to the coastal management mandate, the issue of shorefront access is being treated in a similar manner.

Lack of adequate public access to beaches had been a concern in North Carolina prior to the passage of the 1976 amendments to the federal Coastal Zone Management Act. Each year coastal communities were experiencing an increase in the volume of day visitors to their beaches, yet few of these municipalities had the incentive or tools to meet demands for access. According to North Carolina law, the public has a right to use the wet-sand portions of the beach, but in order to get to these areas, privately owned upland areas must be crossed. Coastal communities perceived their financial resources to be inadequate to acquire, police, maintain and service accessways to the public portion of the beach on a large scale. Private property owners were generally unwilling to allow public access across their land. Some communities had passed ordinances which required subdivison developers to dedicate the ends of streets running perpendicular to the beach and other accessways to the public. However, these accessways have traditionally been unmarked and tend to have little or no parking capacity.

In keeping with the coastal management framework which had already been established, general shorefront access policies were established in 1978 at the state level, but the primary responsibility of insuring adequate public access to the public portions of the beach was delegated to the local level. The shorefront access policy statement in the North Carolina Coastal Management Program declares that state policies are designed to "supplement and strengthen any local efforts."

The state's shorefront access policies assert that:

-development shall not interfere with the public's existing rights of shorefront access (i.e. those acquired through public acquisition, dedication, or customary use established through the courts);
-public beach area projects will not receive state or federal funding unless provisions are made for adequate public access

(including rights, identification and parking);
-coastal dunes shall be protected;
-the state shall continue to support and improve highway, bridges and ferry access to coastal areas;
-the state shall continue to support the development of fishing pier facilities;
-access shall be made available to people of all socio-economic groups.

The North Carolina Coastal Resources Commission (CRC) had mandated coastal communities to include a shorefront access element in their updated land-use plans, which are due to be submitted to the CRC for review and approval during the fall of 1980 and 1981. Specific issues to be addressed in these plans include the definition of "access," identification of existing and potential access points within the jurisdiction, identification of methods for improving access and provision of adequate parking to meet access needs. The CRC hopes that the state's shorefront access program will be adequately defined by these local plans; the Commission does not anticipate designing a program at the state level unless the local plans prove inadequate.

Approximately $100,000 of 306 funds have been granted to local communities to assist in shorefront access planning. Twelve municipalities have been granted funds to either develop beach access plans or design waterfront parks which will increase public access opportunities. Edenton a peninsula which juts into Queene Anne Bay will be developed as a park; a bulkhead will be installed to stem erosion, an icehouse will be restored for use by the public, and a parking lot will be developed. Wilmington is planning a six block long riverfront park. Cape Carteret, a non-beach community, is studying the feasibility of acquiring land for a parking lot at Emerald Isle to allow Cape Carteret residents access to beach areas. Holden Beach, Washington Park, Kill Devil Hills, Nags Head, Surf City and Carteret County are among the localities which have conducted studies to identify potential and existing access points and tools for developing more.

The North Carolina Office of Coastal Management has imposed provision of shorefront access as a condition on some major Coastal Area Management Act (CAMA) permits. Large oceanfront projects such as hotels and condominiums have been encouraged to provide public walkways and parking lots, but the permit review officials are unsure of their legal authority and have therefore been somewhat inconsistent in exercising this option.

During the summer of 1979 the North Carolina Department of Natural Resources and Community Development's Office of Coastal Management and Wrightsville Beach jointly funded a shuttle bus to bring people from a feeder parking lot in Wilmington to Wrightsville Beach. By all accounts, the experiment was a failure; ridership was extremely low and the project lost money. Some reasons cited for the failure include inadequate advertising and locating the feeder lot too near the beach (i.e. people

who had driven as far as the feeder lot decided that they might as well drive the remaining distance to the beach). There are no plans to fund a revised attempt at providing mass transportation for beach access in North Carolina.

Oregon

The state of Oregon has been a forerunner in guaranteeing public access to the shore. Sanctions for public use of the beach date back to the nineteenth century. Oregon had passed a Beach Law which opened all beaches to public use long before the federal Coastal Zone Management Act was passed and thus had no problem complying with the 1976 amendments. State and local officials are now using the coastal management program to extend access rights into estuarine areas.

In 1893 the beaches of Clatsop County, Oregon were declared to be a public highway. In 1913 the Oswald West Act extended this policy by declaring that all wet-sand beaches were public highways. The "public" portion of Oregon beaches had been generously defined as the area from the non-aquatic vegetation line seaward. Thus, Oregon residents have historically had good use of the shorefront.

By the mid-'60s the state legislature was becoming increasingly concerned about the potential loss of public use of and access to Oregon's beaches as development pressures increased. In 1967 the Oregon Beach Bill was passed; it declared all beaches to be open to public use. A concerted effort has also been made to keep as much of Oregon's coastal land as possible in public ownership. Thirty state parks are located in coastal areas. The goal of providing public accessways every 1.5 to 3 miles along the coast has nearly been met.

The Oregon Department of Land Conservation and Development (DLCD) has been designated the lead agency for coastal management. Prior to the adoption of the 1976 amendments to the federal Coastal Zone Management Act the DLCD had defined the state's policies for shorefront access in the Statewide Planning Goals. Oregon DLCD officials consider shorefront access provision an important element in the state coordinated land-use planning process. The DLCD also coordinates the many access-related programs which various state agencies administer. Among these are the Oregon Beach Access and Parks Acquisition Program, the Department of Fish and Wildlife Angler Access Program. Each update of Oregon's Statewide Comprehensive Outdoor Recreation Plan (SCORP) provides supply and demand information and policies on shorefront access which are consistent with Statewide Planning Goals.

The Department of Land Conservation and Development is in the process of extending access program development and enforcement to the local level. Cities and counties are presently preparing comprehensive land use plans which are to comply with the Statewide Planning Goals.

Among the shorefront access issues to be addressed in these plans are the identification of further public access needs and the development and adoption of tools and controls to meet them. The local land use plans are due for LDCD review in July 1980. Based on the information gathered from these plans, state level coastal management officials will design a program of technical assistance to help strengthen and/or supplement the local plans and programs.

Oregon coastal management officials are presently working on the next step toward increasing public access to the shore. The issue of balancing access to estuarine areas with the protection of their fragile ecosystems is currently being studied for future policy and program development.

Rhode Island

The state of Rhode Island has a plentiful supply of shorefront access opportunities via public parks and beaches, conservation areas, scenic view points, and rights-of-ways. The physical configuration of the state and its shoreline allow many people to live within walking and biking distance of the coast. Coastal management program officials have given public recreational use and enjoyment of the coastal region a high priority. Thus, the shorefront access element of the Rhode Island coastal management program stresses the ongoing verification of public rights-of-way, publication of their location, and continued evaluation of development proposals to insure that they do not jeopardize the public's right to use and enjoy the shore.

Legal rights to shorefront access have a long history in Rhode Island. During the seventeenth century the King James Charter designated rights-of-way to the shoreline for fishermen and seaweed collectors. Since that time, some of these rights-of-way have been built upon, some forgotten, and others kept in continuous use as accessways. In more recent times, the state and many municipalities have been active in setting aside coastal land for development as public recreational areas. Eighty-five parks of various sizes currently provide public access to the shoreline; 66 of these are locally managed, 18 are state parks, and 1 is managed by the federal government.

Thus, even before the Coastal Zone Management Act was passed and a state CZM program was set up in Rhode Island, state and local officials had developed management capacities for providing public access to the shore. The Rhode Island Department of Environmental Management is the lead agency for most forms of recreational access; it implements various recreational programs and policies and has the authority to acquire and manage parks, beaches, launch ramps and conservation or management areas as set forth under Title 42, Chapter 17 of the Rhode Island General Laws. The amendment to the Coastal Resources Management Council's enabling

legislation has assigned the Council the responsibility for identifying and opening public rights-of-way to the shore. Local municipal recreation authorities also establish and maintain recreation areas which provide shorefront access.

The shorefront access policy statement in Rhode Island's coastal management program is one of the best written to date. It recognizes that the state is already richly endowed with public shorefront access opportunities, but also points out that the distribution of coastal rights-of-way is geographically uneven, that public rights-of-way along substantial lengths of shoreline remain unverified, that public rights in many presumed rights-of-way are contested, that parking at popular rights-of-way is frequently inadequate, and that vandalism, littering and trespassing on neighboring private areas are issues of growing concern. Four access policies are set forth:

(1) Public recreational use and enjoyment of parks and beaches is a high priority use of the coastal region.

(2) No permit shall be issued for development if it interferes with public use or enjoyment of the shore.

(3) Legally protected rights-of-way are to be verified and their existence publicized.

(4) The Coastal Resources Management Council recognizes the management responsibility of the Department of Environmental Protection and municipal recreation authorities as they relate to public beaches and parks, and shall endeavor to support these responsibilities to the maximum extent, consistent with other Council policies and requirements.

The coastal management program in Rhode Island is funding efforts to solve two of the major shorefront access problems in the state: lack of lateral access at beaches (i.e. access to both the "wet-sand" and "dry-sand" portions of the beach) and ill-defined rights-of-way to the beaches. Coastal management officials are also exercising the permit review power to place conditions on new coastal development in order to protect shorefront access opportunities for the public.

The "public" area of Rhode Island beaches is generally defined as the area from the mean high water mark seaward. 306 funds are currently underwriting a study to investigate the potential of broadening this definition of public beach. The constitutional, legislative, and judicial principles of shorefront access are being examined in anticipation of the drafting of future legislation to open up more of the beach to the public.

306 funds are also being used to complete the process of verifying the King James Charter rights-of-ways. This effort was begun with mostly

volunteer assistance in the mid-1960's. The earlier study identified as many rights-of-way as possible without doing a full scale search of legal documents. The rights-of-way which were identified by that study are presently being maintained through a partnership between the Coastal Resources Management Council (which uses CZM money to fund two maintenance workers) and the Rhode Island Marine and Fisheries Division (which uses state funds for four to six maintenance workers). Maintenance includes grass cutting, trash collection, rock clearing and stairway construction and maintenance.

Using CZM funding, the state has hired twelve attorneys to document every possible right-of-way. Public meetings are being held on a town-by-town basis to identify public perceptions of rights-of way, land is surveyed, and title searches are conducted. Program administrators intend to file new deeds which will document existing public accessways. All practical rights-of-way will be opened; those in environmentally sensitive areas and those located very close together will not necessarily be kept open and maintained.

The third major element of Rhode Island's shorefront access program is the stringent use of the development permit review power. Permits for development within the coastal zone are always conditioned on protecting the existing public access to the shorefront.

Thus, the Rhode Island coastal management program is currently working to solve two of the major shorefront access problems (beach use, ownership and identification of access), but other access issues remain to be dealt with. Among concerns voiced by coastal management officials are the lack of parking near access and the disappearance of natural coastal areas as development pressures grow.

Texas

The state of Texas does not yet have a coastal management program approved by the federal Office of Coastal Zone Management, but public access to the shorefront is protected under the provisions of the Texas Open Beaches Act of 1959. Access planning and program management falls under the jurisdiction of the Texas Parks and Wildlife Department.

The Texas Open Beaches Act was passed in reaction to attempts by private landowners to close some Galveston Island beaches to the public, thereby challenging a right which the public had acquired through the continuous use of the beaches, bays and gulf waters of Texas since the time of Spanish ownership. The Texas Open Beaches Act guarantees the public unrestricted access to and the use of (1) the state owned portion of beaches below the mean high tide line (wet-sand), and (2) the larger area extending from the mean high tide line to the first line of vegetation (dry-sand) in all areas where the public has acquired a right of use of easement by presecription, dedication, or continuous use. The

The provisions of the Act do not apply to any beaches on barrier islands or peninsulas that are not accessible by public road or common carrier ferry. This includes San Tose Island, Matagorda Island, and the Matagorda Peninsula west of the Colorado River channel. A coastal area is considered accessible if it meets any of the following three criteria:

(1) if it is presumptively legally open

(2) if it is in public ownership

(3) if for any reason the public has a legally protected right of access to and use of the area.

The Texas Open Beaches Act is enforced by the Texas Attorney General, county attorneys, and criminal district attorneys. Early judicial tests of the Open Beach Act by littoral landowners failed to either invalidate the Act or find any beach covered by the Act to be closed to the public. These early failures, combined with a policy of rigorous enforcement by the State Attorney General and local legal officers, have discouraged any subsequent attempts to close a beach which is covered by the Act.

The Texas Parks and Wildlife Department (TPWD) has employed two methods to obtain public access to the shorefront. First, a program has been established to provide boat ramps in coastal areas. Second, a land acquisition program has been instituted to provide public recreation areas along the coast.

The TPWD Special Boat Fund is supported by revenues collected from boat registration fees and a portion of the unclaimed water boat fuel taxes. The state provides 70% of a boat ramp project's cost if the locality where the access facility is to be located provides the remaining 30%. A completed project includes a boat ramp, parking area and access road. Once the facility is constructed, it is maintained by the TPWD. Recently, approximately three boat ramp projects have been constructed in coastal areas each year.

The TPWD has the authority to acquire new public shorefront recreation areas as the public need arises. Determination of this need is based on the Texas Outdoor Recreation Plan (TORP). Acquisition is funded by the TPWD's Fund 31, which is supported by a portion of the state cigarette tax revenues. Approximately $11 million are available each year for acquisition and development. Local acquisition projects are assisted by federal Land and Water Conservation Funds which are administered by TPWD.

The provision of increased public access to Texas beaches has caused some management problems. Among the major problems which must be addressed are congestion (even though other accessible beaches are not crowded, Galveston and Mustang Beaches and the North Padre Islands sustain heavy use), vehicular traffic on the beaches (which can endanger non-vehicular beach users), and litter.

Conclusions

It will probably surprise no one that the accomplishments of the states ranged from virtually none to a great deal. Those states which reported a great deal being accomplished were invariably those which reported a commitment to public access to beaches preceding the passage of the Coastal Zone Management Act. In the states with little or no prior interest in beach access, in some cases, participation in the CZMA moved them to action but in others little change occurred.

What emerged is that in the states with a strong commitment to and a political foundation for beach access prior to the CZMA, the beach access amendment 305(b)(7) and the regulations that followed meant very little. The availability of money under Section 305 for planning and under Section 306 to implement their programs served to strengthen but not substantially change the already existing programs. In a few states the CZMA served as a catalyst to bring together incipient concerns and mold them into what appears to be significant programs. In other states the responses to 305(b)(7) and the regulations are merely perfunctory; enough to get the program approved by OCZM but not enough to make much impact.

The states with a commitment to beach access have been encouraged and strengthened by CZM. Where there was some concern this has often been nurtured and brought to life but where there was no commitment a few states have made some tentative steps forward, but others have done as close to nothing as possible.

Commitment A primary problem appears to be that some of the states are just not interested in becoming involved in achieving access. This was explained in the interviews by:

(1) the political environment in which the state CZM Program had to exist is either indifferent or negative to beach access for the public.

(2) there are other more important things that had to be done and "next year" access will be given a higher priority.

(3) we have done it all and there really isn't much more we can do.

Identity Three quite different perceptions of the access program emerged:

(1) Facilitator of access. These states view their role as arranging for more access ways by whatever means available. Their job is to increase the number of sites the public can use to get to the beach.

(2) Maintenance of existing access. These states view their role as enhancing already existing accessways by providing walkways, bath houses, parking lots, etc. through construction programs and by providing regular maintenance such as trash pickup, etc.

(3) Recreation programs. These states view the access problem as being one of "access to access", that is getting people to the already existing accessways by providing mass transit, parking lots, etc.

Funding A majority of the states interviewed cited money for acquisition as one of their greatest needs. Many urged funding of 315(2). When asked about using HCRS money for access, their common response was that they could not adequately control HCRS money that was spent in the coastal zone and could not successfully compete for the remainder.

Funding 315(2) would provide funds which would be under the control of the state CZM Programs but the effect of this might be to drive away other funds since the other agencies might reason that they no longer had to concern themselves with access since 315(2) funds could do it all. Thus the net effect of funding 315(2) might be a reduction of funds available for access. If however, 318(c) were amended to clearly state that 315(2) money could be used as matching grants for other federal programs the net effect would undoubtedly be the opposite.

Training and Information Exchange There are a great many things that are being done by some of the states and that have been suggested in the literature that could be transferred to other states. To date, however, there has been very little communication amongst the states and therefore the "wheel has been reinvented many times over," The major reason for the lack of communication is that there are no formal or informal channels through which to communicate. The Coastal Zone Information Center does a masterful job circulating published materials but often the most important things to be communicated have not been published: they are ideas, theories, practices that have not and probably will not be published, but nevertheless would be of immense value. A relatively small investment in research and training could yield great returns.

Relationship with DOD The Department of Defense owns large segments of the coast including a great many beaches which are available for use by the military but not the general public. Programs to share these areas with or to transfer them to the public have not been worked out.

Role of the State The role the states play varies tremendously from state to state, but there are essentially three types:

(1) strong state programs in which the state government has assumed major responsibility for obtaining and managing access. In these states, local programs often play a part but are not critical to the success of the program.

(2) strong local programs with the state providing help in the form of technical assistance, encouragement, funding, and the like, but with little or no action at the state level.

(3) local programs that depend almost completely on local initiative with the state providing pass through funding for discreet planning projects.

PART TWO

ALABAMA

Alabama's coastal program was approved recently and is now in the preliminary stages of implementation. State coastal officials have targeted recovery from Hurricane Frederick as the highest priority and therefore other program elements, such as beach access, have not yet been addressed.

The Alabama Coastal Area Management Program and Final Environmental Impact Statement

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

and

Alabama Coastal Area Board
August 1979

APPENDIX D

SPECIAL PLANNING ELEMENTS

I. SHOREFRONT ACCESS AND PROTECTION PLANNING

A. A Procedure for Assessing Public Areas Requiring Access or Protection

1. Public Access Inventory

A total of 10,963 acres of shorefront publicly owned or maintained recreation areas are available for access in the two counties (Figure D-1). Public access in Baldwin County is provided by 9248 acres of public owned recreation areas. About 1715 acres of publicly owned land provide access in Mobile County (modified from Trussell, in press).

a. Dauphin Island

At this time only one-half mile of Gulf shoreline on Dauphin Island is open to the public. These areas are the Casino (528 acres) and Fort Gaines (10 acres). Shell Mound Park (3 acres) provides visual access to Dauphin Island Bay. The uninhabited portion of western Dauphin Island had been leased by Mobile County from a private concern for the past decade. However, the lease has expired, and the owners wish to sell the land. If purchased by the state, approximately eight additional miles of shoreline would be available for public access. Access to the waters surrounding Dauphin Island is provided at a county facility with twelve boat ramps on the island's eastern end.

b. South Mobile County

Very little public access to coastal lands and waters is provided in south Mobile County. One publicly owned boat ramp in Bayou La Batre is the only public access point along Mobile Bay and Mississippi Sound south of the Mobile city limits.

c. City of Mobile

Four access points to coastal waters are provided by the City of Mobile. At the foot of Government Street in downtown Mobile, the Anchor Bed and Waterfront Park (less than ½ acre combined) provide visual access. Luscher Park (23.0 acres) provides boat and visual access to upper Dog River. McNally Park (50.0 acres) provides visual, boat, and beach access. Bayfront Park (18.9 acres) in the Brookley Complex is now in the planning stages.

d. Mobile-Tensaw River Delta

Several public and private facilities provide access to the Mobile-Tensaw River Delta. Chickasabogue Creek Park (1050 acres), the U.S.S. Alabama Recreation Area (32 acres), and Meaher State Park (1327 acres) provide recreational facilities, and boat ramps are available at Chickasabogue Creek as well as at Meaher State Park, Chacaloochie Bay, and Appalachee River in the lower delta.

Figure D-1 Publicly owned or maintained recreation areas

Name		Acres
1)	Casino, Dauphin Island	528
2)	Fort Gaines	10
3)	Shell Mound Park	3
4)	Anchor Bed and Waterfront Park	0.5
5)	Lucsher Park	23
6)	McNally Park	50
7)	Bay Front Park (under development)	19
8)	Chickasabogue Creek Park	1050
9)	U.S.S. Alabama Recreation Area	32
10)	Meaher State Park	1327
11)	Daphne Park	0.5
12)	Fairhope beach/park	38
13)	Mullett Point Park	10
14)	Fort Morgan	410
15)	Perdue Property	1297
16)	Gulf Shores public beach	5.5
17)	Gulf State Park (main section)	5687
18)	Gulf State Park (undeveloped western section)	160
19)	Gulf State Park (undeveloped eastern section)	283
20)	Romar Beach State Park	5
21)	Alabama Point Wayside Park	25
	TOTAL	10,963.5

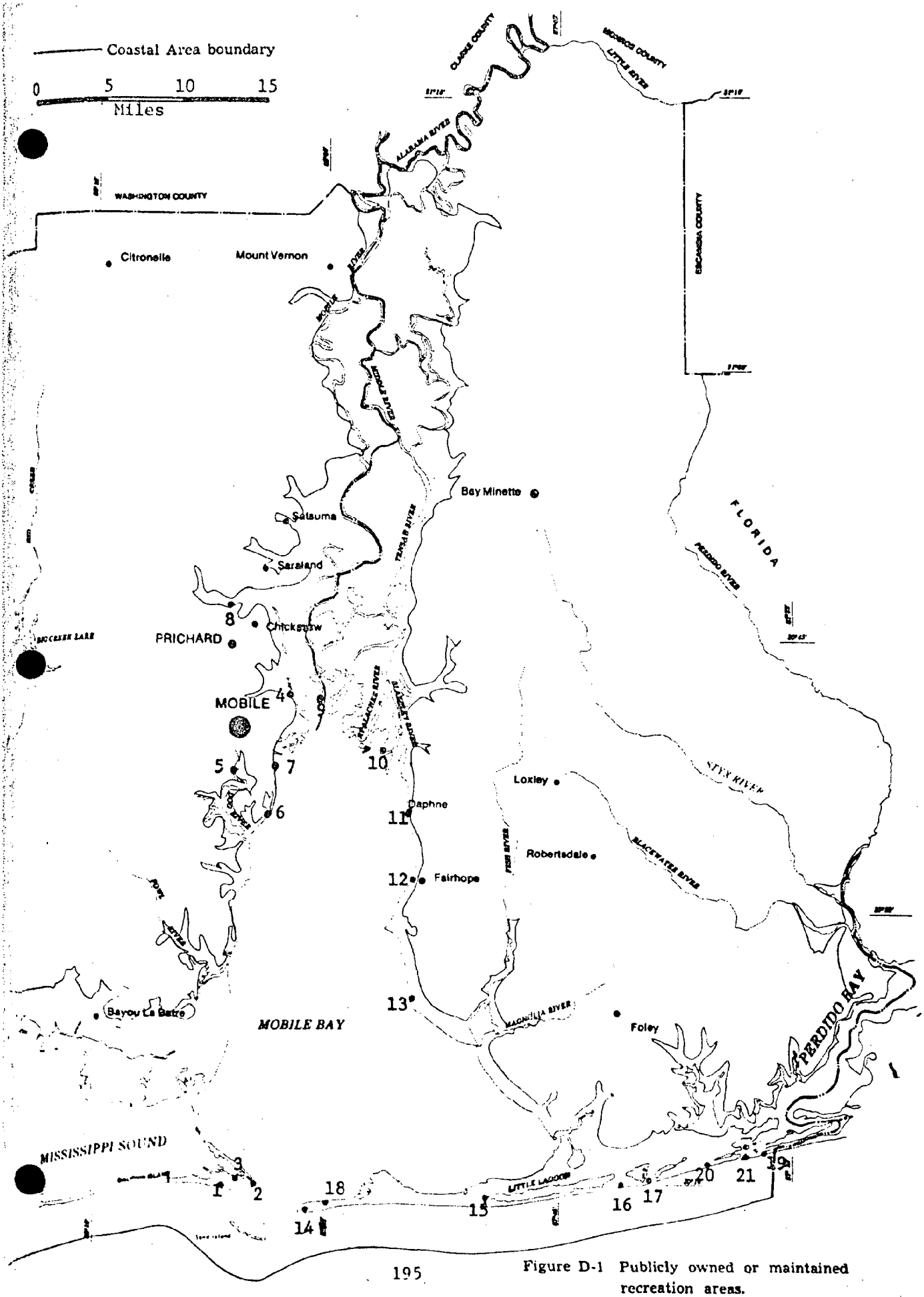


Figure D-1 Publicly owned or maintained recreation areas.

e. South Baldwin County

Public access to the Gulf of Mexico, Mobile Bay and other estuarine waters is adequately provided for in south Baldwin County. Along Mobile Bay, access is provided from a small park with boat ramp in Daphne, from two boat ramps and 38 acres of beach and park in Fairhope, from one boat ramp and 10 acres of bayside park near Mullett Point, and from two boat ramps at Weeks Bay. Two other ramps along the northern shore of the Fort Morgan peninsula provide access for boats to lower Mobile Bay and the Gulf of Mexico. 410 acres of state park at Fort Morgan on the peninsula's western tip also provide access, as well as an opportunity to explore a piece of south Alabama's colorful history.

Access to coastal waters is also available from approximately 5.5 acres of public beach provided by the town of Gulf Shores and Gulf State Park with 6160 acres in 5 units. These areas adequately provide the beach access desired by both local residents and regional or national tourists alike. Boat access is provided from publicly maintained ramps at Cotton Bayou and Boggy Point. Other ramps in southeastern Baldwin County are planned for Lillian and Old River.

f. Other Access to Coastal Waters

Access to coastal recreational opportunities is further provided by numerous fish camps, privately operated boat ramps, and marinas. These privately owned operations, which usually charge a fee for the access opportunity they provide, supplement the public areas previously discussed and often provide access to areas where no public facilities are available. This is especially true in the upper reaches of the Mobile-Tensaw River Delta (see Figure D-2).

3. Coastal Area Board Public Access Priorities

The Coastal Area Board recognizes the need for more public access opportunity in both counties, most especially Mobile County. To help alleviate this growing public access problem the five following priorities have been identified for action by the Coastal Area Board.

a. Acquisition of Dauphin Island's West End

Acquisition of public access rights to the west end of Dauphin Island will easily provide the opportunity for public access that Mobile County needs. Efforts are being made to alleviate a worsening public access problem by acquiring this property. Until the spring of 1978, this area (including its nearly 8 miles of Gulf shoreline) had been leased by Mobile County for public use. The property is now for sale by its owners, no access is provided as the lease has not been renewed, and neither Mobile County nor the State of Alabama has been able to appropriate the necessary funds for acquisition.

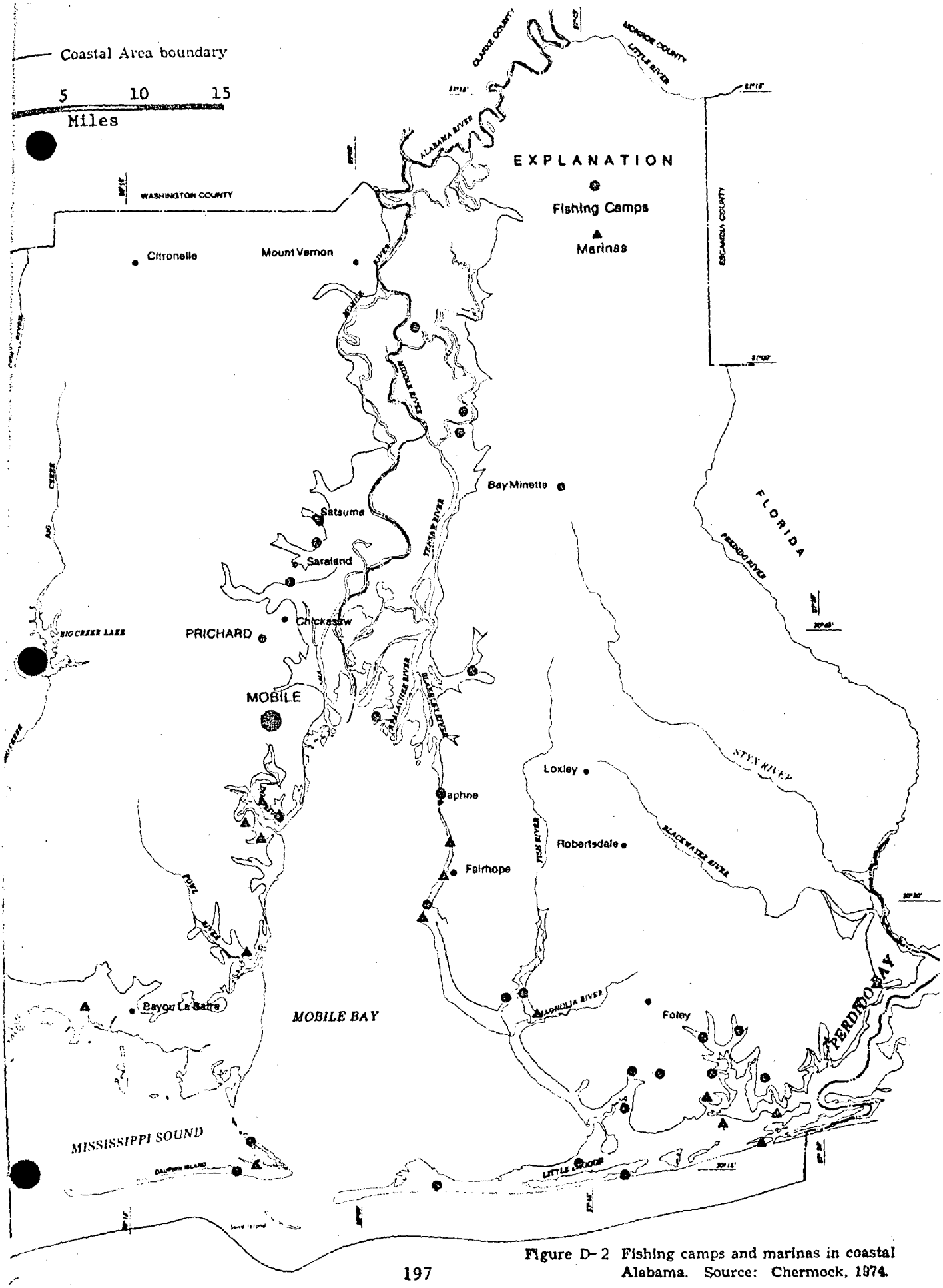


Figure D-2 Fishing camps and marinas in coastal Alabama. Source: Chermock, 1974.

b. Develop Access Opportunities within the Urban Waterfront

The provision of public access to coastal Alabama's urban waterfronts is another of the CAB's priorities. Though urban waterfronts are usually of high density land use, opportunities for public access do exist. It is exactly this high density of land use and high level of waterfront activity which creates public access demand. Waterfront urban parks have been very successful in other parts of the country. In coastal Alabama, these parks could provide access convenient to a large population, and could assist in the revitalization of our urban centers.

c. Provide More Boat Access to Coastal Waters

Presently, many opportunities for boat launching into coastal waters do exist. Nearly every publicly owned piece of waterfront property provides this type of facility. Also, many boat ramps are provided by the Alabama Department of Conservation and National Resources from properties purchased or leased over a long period (usually not less than 20 years) for this purpose. In addition, many privately operated launches are available for public use, usually at a reasonable cost.

The Coastal Area Board recognizes the value of these facilities and strongly supports the provision of public boat launching opportunities. The CAB also recognizes the need for additional launching sites, particularly from the shores of South Mobile County. Not only can more launches be provided where demand is highest, but they can also be provided in close proximity to existing sites such as that on the eastern end of Dauphin Island. This will reduce waterway, traffic, and parking congestion at pre-existing sites.

d. Development of Facilities Supporting Commercial Fisheries and Recreational Boating

The Coastal Area Board recognizes an existing need for facilities which provide commercial fisheries support and marina facilities for recreational boating. A facility providing commercial fisheries support could include inexpensive dockage and layover space, fuel, unloading facilities, ice house, minor refitting services and supply houses. These same facilities could provide services to recreational boaters. One further value of this type of facility would be its value as a tourist attraction, for facilities of this type could easily be operated and maintained in an attractive condition.

e. Guarantee of Public Access Rights to Tidelands, Submerged Lands, and Navigable Waters

In Alabama, a problem arises concerning ownership and access to tidelands, submerged lands, and navigable waters. Much of the law concerning ownership of these three areas is rooted in early English common law. The Crown held these areas in trust for the people, and after the American Revolution, the states continued to hold these properties in trust for the people. Title to tidelands, submerged lands, and navigable waters is in the state.

The tidelands, however, are sometimes occupied, possessed, and claimed by private individuals. Steps taken to enforce this claim include the erection of fences or other forms which imply restricted access. Questions arise concerning the limits of these tidelands, especially where accretion, erosion, reliction and filling has occurred.

Submerged lands also are often falsely claimed and/or restricted. Though owned and controlled by the state, private persons can lease these lands for specific purposes. In the case of oyster growing on state owned bottom within 600 yards of a riparian owners shore, there is belief that some riparian owners actually "own" this submerged land. This is not the case, however, and without enforcement of the public's rights to these areas, public recreational use of these lands is limited.

The title to navigable waters lies with the State. The Federal Government does have interest in these waters regarding interstate commerce and navigation, pollution control, and water resources.

"The absence of suits to quiet title and other forms of litigation, and the absence of a strong State policy concerning the tidelands causes the law in this area to be tentative, ill-defined, and vague" (SCORP Vol. 13, 1971). The Coastal Area Board seeks to clear the ownership of these lands, to establish a clear control by the State, and to open their use to unrestricted public access.

B. A Definition of the Term "Beach" and an Identification of Public Areas Meeting that Definition

Beaches are sandy shoreline areas characterized by low relief, generally of gentle slope, and some vegetation. The beach extends from the waterline to 1) a change in physiographic form such as a dune or bluff, 2) a change in sediment type, such as clay from sand, and/or 3) a change in vegetation type.

Gulf beaches are those sand beaches of the mainland and islands in Alabama which are subjected to the direct wave action of the Gulf of Mexico. The upper limit of Gulf beaches is usually a transition from halophytic, succulent, prostrate plant forms such as Hydrocotyl bonariensis (pennywort) Cakile epentula (sea rocket), Iva imbricata (no common name), and Ipomoea stolonifera (seaside morning glory) to a zone occupied by grasses, shrubs, and the same prostrate forms mentioned above. Some grasses indicative of this transition are Uniola paniculata (sea oats), Spartina patens (saltmeadow cordgrass), Panicum amarulum (dune panicgrass), and Distichlis spicata (saltgrass). Shrubs found at this transition are Solidago pauciflosculosa (seaside goldenrod), Ceratiola ericoides (seaside rosemary), Ilex vomitaria (yaupon), Quercus virginica var. maritima (live oak), and Myrica cerifera (waxmyrtle).

Estuarine beaches are narrow, low energy beaches occurring along the protected margins of Mobile Bay, Perdido Bay, Mississippi Sound, and their various tributaries. The upper limit of estuarine beaches in Alabama can

be distinguished easily by any or all of the three boundaries mentioned previously, that is:

1) a change in physiographic form,
2) a change in sediment type, or
3) a change in vegetation type.

C. Articulation of Enforceable State Policies Pertaining to Shorefront Access and Protection

The Coastal Area Board has long recognized the importance of public access to Alabama's beaches for all citizens. Thus, the following policies pertaining to shorefront access have been formulated. The Coastal Area Board's operational rules and regulations by which the policies will be implemented are presented in parentheses.

1. Coastal Development

The Alabama Coastal Area Board will encourage and support to the maximum extent practicable the continued development of the economic resources of the Coastal Area, including the port, industrial, energy and recreational resources, so that they may continue their full contribution to the economic well-being of all citizens, and development within coastal Alabama will be carried out in a manner which is consistent with the Board's policies for natural resources. (Chapter 4, Section VI, Operational Rules and Regulations for public access).

2. Recreation

Public access to and use of existing recreational lands and waters such as beaches, marinas, and fishing grounds, will be safeguarded, and the Coastal Area Board encourages the development of additional recreational opportunites to enhance the well-being of Alabama citizens as well as residents of other states. (Chapter 4, Section VI, Operational Rules and Regulations for public access).

3. Beach and Dune Protection

Recognizing the natural value of beaches and dunes for erosion control, wildlife habitat, and recreational opportunities, it is the policy of the Alabama Coastal Area Board to maintain the natural integrity of the beach and dune systems and to restore and enhance these valuable resources where feasible. (Chapter 4, Section VI, Operational Rules and Regulations for beaches and dunes).

D. A Method for Designating Shorefront Areas as Areas of Particular Concern or Areas for Preservation and Restoration

One approach to preserving public access to Alabama's coastal area is the nomination and designation of shorefront areas as Geographic Areas of Particular Concern (GAPC) or Areas for Preservation and Restoration (APR). None of the GAPC's or APR's presently designated has been established for their public access value. However, a process for designating additional areas as GAPC's and APR's has been established and is described in Chapter 4, Section IV. One criteria for both GAPC and APR designation is recreational value or opportunity.

E. An Identification of Legal Authorities, Funding Programs and other Techniques that can be used to Meet Management Needs

Aside from the policies set by the Coastal Area Board and opportunities for provision of public access through designation of GAPC's and APR's, various existing legal authorities and funding programs are available to meet the Coastal Area Board's management needs with respect to public access.

1. State Statutes

Statutes within the Code of Alabama, 1975 which directly contribute to the provisions of visual and physical public access include:

a) Section 9-7-1 through 9-7-22 . Alabama Coastal Area Board.
This Act creates a reconstituted Coastal Area Board with responsibility and authority for developing, coordinating and maintaining a coastal area program for the area in direct proximity to the coasts of Alabama to insure the enhancement of tourism and orderly economic development along coasts; and to provide for the promulgation of regulations and provisions for the enforcement of this act.

One provision of this act states that when necessary to achieve conformance with the management program provided for in the Act, the Board shall have the power to acquire fee simple and less than fee simple interest in land, water and other property under the procedures of Title 19, Code of Alabama, or other means, so long that such power shall not apply to property and interest therein which is devoted to public use. This power vested in the Board will enable the acquisition or interest in lands for public access purposes, provided this conforms with the Board's management program.

b) Section 9-14-1 through 9-14-29. Department of Conservation and Natural Resources - State Park System
The State Park System is defined to be comprised of existing and after-acquired parks, monuments and historical sites, and parkways.

The statute provides the authority by which sites designated by the Coastal Area Board to have particular scenic, historic, archaeological, scientific or aesthetic value may be preserved and maintained. The Department of Conservation and Natural Resources is specifically authorized to accept lands for inclusion within the State Park System (see Appendix B, Section D-3).

Section 9-15-1 through 9-15-53. Department of Conservation and Natural Resources - State Lands Division.
Authority over state owned lands for their utilization and management in accordance with the Management Program is provided. Control is assured over the coastal lands and beaches from coastal waters up to the mean high tide boundary, if effectively implemented. The legal authority to manage and preserve this "unused" land will provide public access if effectively implemented (See Appendix B, Section D-4).

d) Sections 23-1-1 through 23-1-228. State Highway Department
On the authority of the "Highway Beautification Act" the State Highway Director is "authorized to acquire land necessary for the restoration, preservation and enhancement of scenic beauty and the establishment of rest areas (associated with state highway)." By this authority, coastal areas having special aesthetic and scenic qualities may be preserved in accordance with coastal management program objectives (see Appendix B, Section G).

2. Federal Programs

Federal programs useful to the provision of visual and physical public access in Alabama include:

a) Coastal Zone Management Program Administration

- Authorization: Coastal Zone Management Act of 1972, Section 306, Public Law 92-583; Coastal Zone Management Act Amendments of 1976, Section 306, Public Law 94-370.

- Administration: National Oceanic and Atmospheric Administration, Department of Commerce. Funds are channeled through the Alabama Coastal Area Board upon approval of the state's Coastal Zone Management Program.

- Eligibility: Any coastal state whose Coastal Zone Management Program has been approved by the Secretary of Commerce.

- Types of Assistance: Project grants are available. At least 33 1/3 percent of the total project cost must be provided by the applicant. Federal funds from other sources cannot be used to match.

- Uses and Use Restrictions Applicable to Public Access: Grants may be used only to administer the State's approved Coastal Zone Management Program. States are encouraged to apply implementation funding for these purposes in which there are national interests including the provision of access to and use of the shorefront and urban waterfronts. Other purposes include the management of designated areas of particular concern.

b) Outdoor Recreation - Acquisition, Development, and Planning

- Authorization: 16 U.S.C. 1-4 et seq. Land and Water Conservation Fund Act of 1965; Public Law 88-578; 78 Stat. 897; as amended by Public Law 90-401 (82 Stat. 354); Public Law 91-485 (84 Stat. [illegible]); Public Law 91-308 (84 Stat. 410); Public Law 92-347 (86 Stat. [illegible]); Public Law 93-81 (87 Stat. 178); Public Law 94-422 (90 Stat. [illegible]); and Public Law 95-42 (91 Stat. 210).

- Administration: Heritage Conservation and Recreation Service, Department of Interior. Funds are channeled through the Alabama Department of Conservation and Natural Resources, Outdoor Recreation Section.

- Eligibility: For acquisition and development grants, the DCNR Outdoor Recreation Service, may apply for assistance for itself, or on behalf of other state agencies or political subdivisions, such as cities, counties, or park districts. Individuals and private organizations are not eligible.

- Types of Assistance: Project grants available to 50 per cent of cost. Under certain conditions, all or part of the project sponsor's share may be from certain other Federal assistance programs, such as Title I Community Development. Funds are available for obligation during the fiscal year in which appropriated and for the following fiscal years.

- Uses and Use Restrictions Applicable to Public Access: Acquisition and development grants may be used for a wide range of outdoor recreation projects and support facilities for these same projects. Facilities must be open to the general public. Development of basic rather than elaborate facilities is favored. Priority consideration generally is given to projects serving urban populations.

c) Economic Development - Grants and Loans for Public Works and Development Facilities

- Authorization: Public Works and Economic Development Act of 1965; Public Law 89-136, as amended; 42 U.S.C. 3131, 3132, 3135, 3141, 3171.

- Administration: Economic Development Administration, Department of Commerce.

- Eligibility: States, local subdivisions thereof, and private or public nonprofit organizations or associations representing a redevelopment area are eligible to receive grants and loans. Corporations and associations organized for profit are not eligible.

- Types of Assistance: Project Grants and Direct Loans. The basic grant rate may be up to 50 per cent of the project cost. Severely depressed areas that cannot match Federal funds may receive supplementary grants to bring the Federal contribution up to 80 per cent of the project cost. Additionally, redevelopment areas located within designated economic development districts may, subject to the 80 per cent maximum Federal grant limit, be eligible for a 10 per cent bonus on grants for public works projects. Long-term (up to 40 years) low interest loans may be made to the applicant when financial assistance is not otherwise available from private lenders or Federal agencies on terms which would permit accomplishment of the project.

- Uses and Use Restrictions Applicable to Public Access: Grants for public tourism facilities are available. To qualify, these projects must fulfill a pressing need of the area and must: 1) tend to

improve the opportunities for the successful establishment or expansion of industrial or commercial plants or facilities, 2) assist in the creation of additional long-term employment opportunities, or 3) benefit the long-term unemployed and members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964. In addition, proposed projects must be consistent with the currently approved overall economic development program for the area in which it is located.

d) Public Land for Recreation, Public Purposes and Historic Monuments

- Authorization: Recreation and Public Purposes Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4, as amended by 90 Stat. 2759-60.

- Administration: Bureau of Land Management, Department of the Interior.

- Eligibility: States, Federal and State instrumentalities and political subdivisions, including counties and municipalities, and nonprofit corporations. Individuals do not qualify.

- Types of Assistance: The sale, exchange, or donation of property and goods is available. For public recreation purposes, a price of $2.50 per acre with a minimum of $50 per transaction, lease at $0.25 per acre per year with minimum payment of $10 per lease.

- Uses and Use Restrictions Applicable to Public Access: Available public lands may be leased or purchased for public recreation and other recreational and public purposes. The applicant cannot secure lands under this act for any use authorized under any other public land law. If applicant attempts to change use of land to other than that for which land is conveyed, or transfer title without consent of the Secretary of the Interior, title of land will revert to the United States.

e) Disposal of Federal Surplus Real Property

- Authorization: Section 203 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 385, as amended, 40 U.S.C. 484; Section 13 (g) of the Surplus Property Act of 1944, as amended 50 U.S.C. App. 1622 (g); Public Law 80-537, 62 Stat. 240, as amended, 16 U.S.C. 667 b-d; Section 414 of Public Law 91-152, 83 Stat. 400, as amended, 40 U.S.C. 484b; and Section 218 of Public Law 91-646, 84 Stat. 1902, 42 U.S.C. 4638.

- Administration: General Services Administration; applications are made to the Heritage Conservation and Recreation Service, Department of the Interior.

- Eligibility: States and local government agencies are eligible to apply for surplus real property for park, recreational, ..., and general public purposes.

- Types of Assistance: The sale, exchange, or donation of property and goods is available.

- Uses and Use Restrictions Applicable to Public Access: Surplus real property may be conveyed for public park or recreation use at discounts up to 100 per cent. Surplus property conveyed for public park or recreation use must be used for the purposes so conveyed in perpetuity. Surplus real property which is not deeded to public bodies is generally offered for sale to the public on a competitive bid basis.

3. Other Means to Provide Access

Other states and political subdivisions have used various means to provide access to beaches. These means include a) the acquisition of fee simple and less than fee simple interest in land, water and other property, b) the acquisition in fee by gift, c) the legal determination of public rights of access, d) police power, e) preferential taxation, and f) passage of legislation providing access. The Coastal Area Board may find some of these means useful in providing more public access, especially with respect to their five established priorities discussed earlier.

a) Land for public access purposes can be obtained through the acquisition of fee simple or less than fee simple interest. The Coastal Area Board is given the power to acquire fee simple and less than fee simple interest in land, water and other property under the procedures of Title 19, Code of Alabama, or other means. This power is provided in Act 534 Section 5i.

Purchase of fee simple title involves the purchase of property by the state. This is the most direct means of acquiring access, however, because the state competes with other buyers for properties on the open market, this option can be the most expensive acquisition tool Purchase of fee simple title is efficient only where intensive use is anticipated and ownership would serve some useful public purpose.

Less than fee simple interest involves the granting by the property owner of a limited right or set of rights to a second party. Easements, one form of less than fee simple interest, are generally purchased in circumstances in which it is unnecessary and unfeasible to purchase the land itself. Affirmative easements are rights to use land, negative easements preclude a use of land.

A conservation easement is a method by which a landowner can secure both present enjoyment of his land and future limitations on the land's use. The owner retains title; the easement precludes certain uses of the land. Future owners must take title subject to the terms of the easement.

Leasehold agreements, a common form of less than fee simple ownership, a lesser (owner of land) grants a lessee (interested party) the right to use the land in a specified manner for a limited period of time. At the time of lease expiration, the restricted rights revert to the lesser.

b) Acquisition in fee by gift of land for public purposes is a highly desirable method of conveying property. Donation holds advantages for the donor especially with regard to tax savings, and is a relatively simple process which gives the state a measure of freedom to vary the uses of the property as it sees fit. The landowner can include use restrictions in the deed of transfer to ensure the land will be used according to the donor's wishes, however, the receiving government must accept the conditions attached to the grant.

c) There are many theories supporting the creation of public access rights over private land of non-consenting landowners.

Prescriptive easements refer to a process by which one person obtains the right to use another's land in a specified manner because of continued adverse and notorious use of this land for a considerable number of years. The original landholder maintains title, however, law now recognizes a new party's right to continue that use.

Adverse prescription and possession are legal doctrines which recognize that rights to land may be obtained through use and may be applied to maintain public access. For these rights to apply, use of property in question must be actual, adverse, continuous and uninterrupted, and either be so open, notorious, and visible, that knowledge of the use is implied to the owner.

In adverse possession, the claimant must be in possession of land, while under prescription, the claimant may have the use or privilege without possession.

Implied dedication is a common law doctrine in which the landowner by his conduct has indicated his intent to dedicate his land for public use, and that public use itself is evidence of the public's intention to accept the dedication offered. The public acquires the right to continue the use of such property, regardless of the landowner's later intent or actions.

The customary use doctrine establishes that customary use of land peaceably engaged, with or without landowner consent, for a long period of time without a claim of superior right interrupting such use, establishes public rights to that land irregardless of title. Securing beach access through the customary use doctrine, while requiring no capital outlay, would require lengthy court procedures and a documented history of public use.

d) A fourth means of acquiring public access is through police power. The two most useful police power techniques are the application of emminent domain and the imposition of land use controls and regulations.

Emminent domain is a process by which governmental entities can acquire proprietary interests in privately held land in exchange for compensation, regardless of the owner's willingness to sell. Compensation is usually fixed at market price. Land acquired through this process must be used for public use or benefit.

In acquiring shorelands and waters access with emminent domain, property can be condemned in fee, thereby acquiring land such as parking lots and parks. A second and less expensive application of emminent domain is to condemn easements for public rights-of-way.

A variety of land use and regulatory controls may be applied to secure and protect public access. Of course, for these regulations to be implemented, enabling legislation must be in place.

Zoning is a widely applied regulatory mechanism to manage development activities. Aside from preventing non-conforming uses, zoning has now become a means of creating recreation and open space zones.

Subdivision developers have been subject to a number of conditions for approval. These conditions might include the dedication of land for streets and utilities, and even the dedication of land for parks. Further, water access lots might be required as a condition for approval.

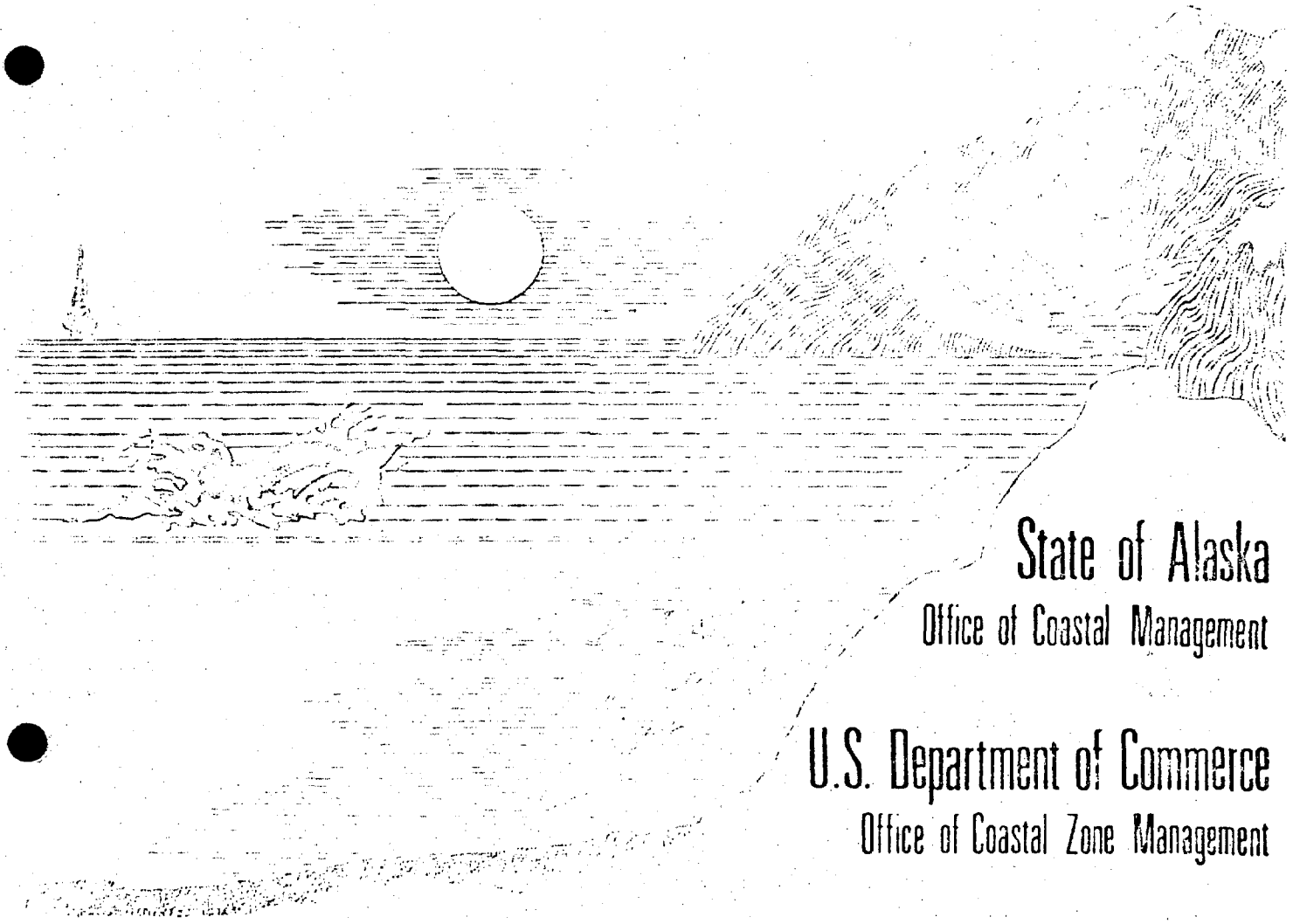
Other examples of land use control and its application to public access include the provision of pedestrian accessways through or between privately owned land and the dedication of roads to the public and their extension to the beach.

e) Preferential taxation is a process which can be applied to public access acquisition. A shoreland owner can be encouraged to maintain his property in low density development. Taxation is based on current use rather than assessment of potential. Postponement of taxes or deferral is another technique which can aid in providing public access, as can tax breaks as an incentive for land donation, discussed previously.

f) A sixth approach to providing public access involves the statutory establishment of public rights to beach utilization and access. The Texas Open Beaches Act (Tex. Stat. Ann. Sec. 5415 (d) (Vernon Supp. 1972)) in effect since 1959, is a model for future legislation regarding public access. Two presumptions are made in the Act which provide the public access: 1) "the State (of Texas) never divested itself of its protection of the people's right to use the beach by the grant in the beginning, and 2) that even if it did, in certain instances, and it can be shown, there is a presumption that the people have obtained a prescriptive right in the use of the beach by long usage." (Eckhardt, 1974)

The designation of a public zone and recognition of public rights is the necessary basis for a legislatively initiated access development program.

State of Alaska Coastal Management Program and Final Environmental Impact Statement



State of Alaska
Office of Coastal Management

U.S. Department of Commerce
Office of Coastal Zone Management

PREFACE

Unlike other coastal states, Alaska's 33,904 miles of coastline is virtually undeveloped and access to and along the shoreline is for the most part unhindered. However, there are many current developments that could dramatically change this situation. Industrial and residential construction in developed areas, d-2 legislation, Native land selection, homesteading, resource development and natural resource extraction will all affect the amount and location of shoreline available for public use.

The Alaska shoreline abounds with traditional and potential public use areas. Coastal areas have long been major tourist attractions. Recreation is one of the primary uses of the Alaska shoreline. The developments above can, and probably will, isolate vast coastline areas from public use. Public access to the shoreline should be planned for now to insure continued public use and enjoyment of this important natural resource.

This planning process is developed in the spirit of the increasing awareness of the value of wise management of the coastal zone resource.

The time factor for implementing this program is short. As each of the mentioned issues is settled, the preservation of public use areas and the reservation of access will become more difficult.

I. INTRODUCTION

The federal Coastal Zone Management Act of 1972, as amended, specifically calls for states to develop a planning and management process to address public access to and protection of coastal areas. Federal regulations pursuant to Section 305 (b)(7) of the Act cite six elements that are required in order for a state to adequately address the access and protection issue in the context of its coastal management program.

This addresses the questions enumerated in federal program approval regulations and describes the state's coastal planning process which assures that public access to coastal resources is adequately considered through the Alaska Coastal Management Program.

Accordingly, this discusses, in major part, current issues that affect shoreline use and access; the importance of assuring access to certain areas; and the need for additional, coordinated planning and management activities to evaluate and manage areas that are critical for public access.

Section II discusses, in brief, the origins of public concern for access to coastal areas. Section III discusses a number of important statewide issues that will affect or limit shoreline access. Section IV discusses technical and legal definitions that apply to beaches, including a summary of state regulations relating to shoreline access and protection. Section V identifies critical areas (generically and specifically) where access and protection should be provided. Section VI describes the planning program.

II. HISTORICAL PERSPECTIVE

The conflict of private use versus public use of the coastal shoreline and tidelands dates back to the time of England's Magna Charta, the foundation of English Common Law, which is the basis of the American legal system. At this time in England's history, private title to the coastlands was interferring with coastal commercial activity. English common law expanded the jus publicum (public rights) principle to hold the shoreline and tidelands in public trust, even if title had been granted to individual subjects. These public rights to the shoreline held fast up to the time of American Independence and were maintained by the original 13 states and passed on to the non-colonial states as they were admitted to the Union. In short, early American law clearly intended for the states to hold title to their tidelands and submerged lands.

The recent history of legislation concerning coastal zone management and shoreline access in Alaska can be traced to the 1940's and 1950's when the federal government expanded the states' boundaries to include a point three geographical miles seaward of the ordinary low water mark outside inland waters with the passage of the Submerged Lands Act of 1953 (Public Law 83-31; 67 Stat. 29). When the Alaska Statehood Act of 1959 (Public Law 85-508) became law, Alaska received full ownership of

its tidelands and submerged lands pursuant of the Submerged Lands Act of 1953.

The Alaska Constitution further addresses shoreline access in Article VIII when it discusses common use of resources in their natural state (Section 3) and public access to navigable and public waters (Section 14).

The environmental awakening years in the late 1960's saw certain states, such as Oregon, move to preserve their beaches for public use. The Oregon Beach Bill of 1967 (Chapter 601 of 1967) assured continued public use of Oregon's beaches based on doctrines of customary use.

Later, the U.S. Congress, realizing the importance of coastal resources, enacted the Coastal Zone Management Act of 1972 (Public Law 92-583, 86 Stat. 1280) and the Coastal Zone Management Act Amendments of 1976 (Public Law 94-370). These laws not only recognized the commercial and industrial importance of the coastal zone, but also the importance of the natural, recreational, ecological, cultural, and historic resources to the present and future well-being of the people of individual states and the nation as a whole.

Alaska, working within the federal framework, enacted the Alaska Coastal Management Act of 1977. This act established the basic framework in which the Alaska Coastal Management Program is to evolve.

In summary, three themes are evident:

1. Both Congress and the Alaska Legislature have recognized the importance of the proper management of the coastal zone for the benefit and enjoyment of the people now and in the future with the passage of their respective Coastal Zone Management Acts.

2. The State of Alaska, therefore its people, owns the tidelands, submerged lands, and lands beneath navigable and public waters.

3. The federal government and the Alaska State Constitution recognize the importance of access to coastal shoreline areas and navigable waters.

III. CURRENT ALASKA ISSUES AFFECTING SHORELINE ACCESS

Many current issues will have a significant effect on shoreline access in Alaska. These issues can be grouped under the general headings of upland ownership, tideland ownership, and local and state coastal management planning programs. The generally unrestricted access to the coastal zone enjoyed by past generations of Alaskans is coming to a rapid end. Shoreline access will become more and more limited as each one of these issues is settled. These issues exemplify the usefulness of a comprehensive planning process that will identify and reserve shoreline access and protect shorefront areas.

A. Upland Ownership

Land ownership patterns in upland areas can play a critical role in planning programs to protect public access opportunities. A number of issues in Alaska relate to future public coastal access.

1. Alaska Native Claims Settlement Act

The Alaska Native Claims Settlement Act (ANCSA) will have a lasting effect on shoreline access in Alaska. Forty-four million acres of unreserved federal land will be transferred to the Native Corporations, and 36 percent of all coastal townships contain Native selections. Section 17(b)(1) of ANCSA gave the authority to review and reserve easements through Native selected lands to the joint Federal-State Land Use Planning Team (LUPT). The LUPT relinquished its authority to the Secretary of the Interior, who delegated the task to State Director of the Bureau of Land Management (BLM). Guidelines for reviewing easements through Native selected lands were promulgated in 1976 by Secretarial Order 2982.

Included in this order was a continous shoreline easement 25 feet above the mean high water mark. Order 2982 was successfully contested in District Court by the Native Corporations in Calista v. Andrus, 435 F. Supp. 664 (D. AK 1977). Current Secretarial policies assure that public access easements which are necessary for access to public lands and major waterways will be reserved. General easements for recreation and scenic purposes will not be reserved before or after conveyance of lands under ANCSA. Access easements will be granted only through Native selected lands to preserve existing transportation corridors between two coastal communities, two upland public land areas, or a community and a public land area. Access easements will also be reserved across Native selected lands to the coastline only if significant present use occurs on lands below the mean high tide mark.

Site easements may be reserved for boat and float plane pullout access upon a shore and for temporary camping, loading, or unloading for a period of no more than 24 hours upon a shore, along an access route, at a trailhead, or within a reasonable distance of these points where it is necessary to provide for the use of and access to public lands and major waterways. Site easements will be designated on the coastline only at determined intervals along the coast where there is a need to use coastal waters for travel or access to upland public lands. The spirit of the current easement policy, however, is to grant a minimum number, only where necessary and only when no alternatives are available. Further, the BLM intends to designate all easements by September of 1978.

2. D-2 Legislation

Section 17 (d)(2) of the ANCSA granted the Secretary of the Interior authority to withdraw up to 80 million acres of unreserved public lands and to add them to the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems in Alaska. Wilderness classifi-

cation may disallow most vehicular traffic. Pending d-2 legislation, if enacted, will have a limiting effect on shoreline access for vehicular oriented recreation. Access through the wilderness areas to the shoreline will be provided for foot travel. Boats will be permitted unlimited access to the shoreline from saltwater. Aircraft access will be allowed where landing sites have been used. D-2 lands not classified wilderness may permit some roads for vehicular access.

The extent of shoreline access on d-2 lands will depend on the final classification of these lands. Non-wilderness National Forest and National Refuge lands will potentially be the least restrictive, allowing access to most recreationists. Lands classified wilderness would be the most limiting, allowing access via navigable saltwater (by boat or floatplane), on foot and in special situations by air in upland areas. All valid existing rights will be recognized on d-2 lands.

3. Subdivision of Private Lands

In the past, shoreline access in Alaska has been virtually unrestricted. In many cases, people have gained access to the shoreline by traversing or trespassing over whatever land they had to, whether it was private, borough, state or federal. Alaska's small population and lack of development have made this situation possible. However, in recent years, Alaska's population has grown tremendously and urban expansion and second homes outside population centers have become more common. This trend will continue. To meet the demand of the increasing urban and community development and second home development and to cope with high property taxes, landowners in outlying areas are subdividing their holdings. The Matanuska Valley and Kenai Peninsula are areas where subdividing activities are evident. These activities are reducing access to the shoreline.

4. Uses of Public Lands Adverse to Shoreline Access

Certain uses of state public lands could have a lasting adverse effect on shoreline access. Ideally, if an individual leases or purchases state lands adjacent to the shoreline, public access will be guaranteed in accordance with Alaska Statute 38.05.127. However, there are cases where the conveyance or leasing of public lands caused the disruption of access from one point on the shoreline to another. The shoreline staging dock at Nikiski on the Kenai Peninsula is an example of industrial activity disrupting the pedestrian flow along the coastline below the mean high water mark. Numerous other cases of this situation are documented in communities such as Cordova, Juneau, Ketchikan and Kodiak, where filling of tidelands has occurred for industrial purposes.

Shoreline access also has a visual as well as physical mode. Industrialization, urban development, and other activities can disrupt visual access to the coastal zone.

5. Land Disposal Activities

Various state land disposal activities have been touched upon in previous sections. The Department of Natural Resources, Division of Land and Water Management is directed in 11 AAC 70.030 to include in land planning and disposal activities, provisions for access to public or navigable waters and to lands where heavy recreation or non-recreational use exists or is expected.

Homesteading is one type of land disposal employed by the state. Present and proposed homesteading activities, if not properly controlled, will have a significant affect on shoreline access as well as overall land management activities in the State. Homesteading will remove land from public use and restrict public access in varying degrees. Where Alaskans once had unrestrictive access they might find homesites with "no trespassing" signs. Uncontrolled homesteading could also disrupt visual access to the shoreline. Access to navigable waters along section line easements is not sufficient as these easements are not located with regard to topography, highways, resources valued by the public, or other adjacent land uses. Another means of disposing land is by leasing or selling acreage for recreational or residential, agricultural, or resource development use.

6. Vacation of Easements

An easement, when referring to coastal navigable and public waters, is defined by 11 AAC 70.910 as "the perpetual public right of access to the water and recreational use of the land covered by the easement; it does not include the right to camp overnight, to cut trees, to build structures, or trespass beyond the easement."

When property owners subdivide their lands they are usually required to provide easements to each lot. Easements are also reserved on section lines for utilities. Easements may also be obtained by customary use, dedication, and prescription. The majority of these are public property and individuals have the right to use these easements for public access. But these easements are often unmarked or undeveloped and thus unknown to the general public. State and local governments may vacate or make void these easements or rights-of-way and sell them to the adjoining property owner(s). The public land thus becomes private and public access is blocked.

The vacation of easements by governments can have a significant effect on limiting upland access to coastal resources if undertaken indiscriminately.

B. Tideland Ownership

State ownership of tidelands provides a major capability to assure public access is protected. Two issues are important when considering access across these lands.

1. Tideland Leasing

The State of Alaska owns all tidal and submerged lands from the mean high tide mark seaward for three nautical miles. The State holds title to the natural resources found in these lands (totaling about 34 million acres) except for some 25,000 acres of tidelands conveyed to individuals and muncipalities who were required to exercise their preference rights prior to 1965. The State may lease tidelands and submerged lands to private parties for resource extraction. Present tideland leases retain for the State the right to provide easements across leased lands. This provision becomes more important with the increasing number of tideland leases being let each year because these leases will have the net effect of limiting access across the tideland.

2. Dredging and Filling

Dredging and filling activities can block passage from one point on the shoreline to another or from one point on the shoreline to a point on the tidelands. These activities limit longshore access and access across the tidelands. Although tideland lease agreements and easement regulations reserve access rights to the State, dredging and filling activities as well as tideland leases for resource extraction may disrupt historic uses of these lands as well as critical habitat areas.

IV. DEFINITION OF BEACH

This section defines "beach" in terms of those areas of the coast which will be addressed in the shorefront access and protection planning process.

The ACMP Guidelines define "beach" as follows: "the area affected by wave action directly from the sea" (6 AAC 85.900(1)). The ACMP Standards define "coastal water" as "all water bodies in the coastal area, including wetlands and the intertidal area" (6 AAC 80.900(2)). "Wetlands" include those vegetated areas extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally-induced water table changes (6 AAC 80.900(19)). Intertidal areas are those areas subject to periodic or occasional inundation by tides (6 AAC 85.900(8)).

Hence, as defined above, those areas subject to the shorefront access and protection planning process are beaches and coastal waters.

V. CRITICAL AREAS WHERE SHORELINE ACCESS AND PROTECTION SHOULD BE PROVIDED

The state and federal coastal management acts recognize that the coastal zone is comprised of a variety of resources. These resources are to be managed in the best interest of the public. Recreation, historic, scenic, and wilderness resources are among those mentioned by the acts. Protection of and assurance of access to these areas should be facilitated by implementation of the ACMP.

A. Shoreline Recreation Areas

Shoreline recreation is one of the major activities that occurs in the coastal zone. The shoreline provides the public with a complete spectrum of recreation activities. In Alaska, these activities include, in part, hunting, fishing, clamming, camping, hiking, boating, wildlife observation, and beachcombing. The demand for shoreline access and recreation areas is increasing as their availability is decreasing. This trend is evident nationwide. Ducsik (1974) comments on the demand for shoreline recreation:

> "The demand for outdoor recreation, especially that which is water oriented, is growing rapidly as the trends toward more leisure time, more real income, and greater mobility enable larger proportions of our growing population to seek recreation of all types. The American coastal shoreline, as a unique recreational resource, is ideally situated to accommodate a wide range of these activities; most planners agree that the "hidden demands for recreational use of this resource are enormous, limited only by effective supply..."

The limiting effects of the issues discussed earlier may not become apparent for some time. However, it is important to institute protective measures to insure shoreline access for recreational and other purposes and to set aside areas of importance. The Alaska Coastal Policy Council has responded generally to shoreline access concerns by making the provision of access a high priority for district coastal programs and state agency activities in 6 AAC 80.060.

B. Shoreline Historic Sites

Alaska's coastal area has been a center for cultural development throughout man's history. Alaska Natives now and in the past have depended on coastal resources for food, clothing, shelter, and transportation. Early Russian settlers established trade centers on the coast. Gold seekers entered Alaska through the coastal communities of Skagway, Valdez and Nome. Today, the majority of Alaska's residents live in coastal communities.

Coastal areas are rich in sites of historical and archaeological significance. Statewide, nearly 4,000 sites have been identified and catalogued by the State Division of Parks Office of History and Archaeology -- 2,500 of which are located in coastal areas. A recent visitor survey conducted by the Division of Parks (1978) indicates that visiting historical areas is one of the top 10 activities pursued by people visiting state park areas. A marketing survey by the Alaska Travel Marketing Council showed visiting historic communities and resources to be an important "attractor" for the tourism industry. However, as commercial and residential development expands, the possibility of conflict rises.

The state has, in the ACMP Standards, a general obligation to identify historic, prehistoric, and archaeological sites at the state and local level. (6 AAC 80.150.) In addition, for protection of such sites, and for planning the protection of such resources, the state has a number of existing statutory provisions:

> The Department of Natural Resources shall develop a continuing plan for the conservation and maximum use in the public interest of the historic, archaeological and scientific resources of the state. (AS 41.20.020)
>
> The Department of Natural Resources shall locate, identify, and preserve in suitable records information regarding historic, prehistoric and archaeological sites, locations and remains. The information shall be submitted to the heads of the executive agencies of the state. (AS 41.35.070)
>
> Prior to public construction or public improvement of any nature which is undertaken by the state or by a private person under contract with or licensed by the state, the Alaska Department of Natural Resources may survey the affected area. If the Department determines that historic, prehistoric or archaeological values will be adversely affected by the project, the project may not be commenced until the Department has performed the necessary field work. Should artifacts be discovered during construction, the Department shall be notified and may stop the project until field work is completed. The cost of field work shall be paid by the agency sponsoring the project. (AS 41.35.070)
>
> A permit from the Department of Natural Resources is required prior to appropriation, excavation, removal or destruction of any historic, prehistoric or archaeological resources of the state. (AS 41.35.200)

C. Coastal Scenic Resources

The entire Alaska coastline is a scenic resource. Some areas on the coastline have more dramatic and spectacular scenic values than others. Visual and physical access are equally important for the enjoyment of scenic resources. Commercial and residential development can seriously disrupt visual access to the shoreline from public places. The City of Anchorage is an example where commercial development has partially disrupted visual access to the scenic features of the shoreline.

Physical access to and longshore access between the significant coastal resources can be disrupted by any of the developments discussed in earlier sections. Homesteading, industrial development, d-2, etc., all will limit the amount of available access to the scenic resources of the shoreline. The West Kenai Peninsula shoreline is noted as being a magnificent scenic resource. Subdivision of private lands and residential development are greatly limiting the amount of physical access to the West Kenai shore. This trend will continue, increase and affect other areas as population pressures increase.

D. Coastal Wilderness Resources

The Alaska Coastal Management Program conducted a series of workshops from September through November 1978. Nearly 2,000 questionnaires were filled out and returned at the workshop and through the mail. The purpose of the workshops was to educate the public on the functions of the Coastal Zone Management Program and to determine the primary concerns of the inhabitants of coastal communities. When asked if wilderness preservation near the coastal areas of their communities would be beneficial, 62% responded good, 20% bad, 13% no effect, and 5% other.

The concept of wilderness is vague. Wilderness is a personal state of mind. To one person, a bicycle ride in one of Anchorage's greenbelt areas is a wilderness experience. To another, wilderness would be kayaking along the pristine coastline of Prince William Sound. To some, the experience is just knowing that there is wilderness to enjoy. Generally, wilderness can be defined as an area where man is a visitor and the land and its systems are untrammeled by man. The majority of communities surveyed by the Coastal Zone Management Program consider wilderness beneficial or good for their community.

Presently, all federal land managing agencies are reviewing all lands under their management to identify any areas that meet the requirements of the National Wilderness Preservation Act of 1964. They will make recommendations for areas to be included into the National Wilderness System. The Alaska Division of Parks plans to introduce wilderness proposals to add areas to the state park system. Several wilderness proposals are included in d-2 legislation. Many areas in Alaska are de facto wilderness because of inaccessibility and rugged topography and will remain such after other wilderness legislation is completed.

Wilderness areas, by their very nature, limit access through them to pedestrian travel. Most motorized vehicles will be disallowed in wilderness areas. Shoreline access by boat or floatplane is permissible unless natural hazards prevent safe docking or landing. These areas will provide an opportunity, for those able, to enjoy a wilderness experience.

Perhaps the most critical issue facing wilderness today is not the preservation of such areas but providing access to them. The Alaska Native Claims Settlement Act and private land ownership, as discussed earlier, will significantly limit access to wilderness areas. Upland access to wilderness areas, as well as other public areas, is in jeopardy after the Native lands are conveyed. After conveyance, easements can either be purchased or obtained through the power of eminent domain. If the wilderness area borders the coastline, access to the area by way of the coastline is assured. However, natural hazards may prohibit access through the coastline, therefore, isolating the area without access.

VI. ACCESS AND PROTECTION STANDARDS AND RULES

The most important state regulations concerning shoreline access and protection are contained in the ACMP Guidelines and Standards set forth in 6 AAC Chapter 80. 6 AAC 80.060, "Recreation," provides:

> Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are:
>
> (1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or
>
> (2) the area has potential for high quality recreational use because of physical, biological, or cultural features.

Because the designation of recreational areas on or near the shoreline would be pointless if access to those areas were not also provided for in district programs, a requirement to that effect could be read into the "Recreation" standard. In order to make this requirement explicit and to clarify that it applies to activities of state agencies in the coastal area, the Alaska Coastal Policy Council, at its December 14, 1978, meeting, added the following new subsection to 6 AAC 80.060:

> (b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal waters.

This provision will go into effect upon its approval by the legislature.

6 AAC 80.160 provides for the designation by districts, the Council, and other agencies of "areas which merit special attention" (AMSA's). The types of areas suitable for designation and subsequent protection are listed in the standard and in AS 46.35.210(1). Among these are:

> "areas of substantial recreational value or opportunity"
>
> "areas needed to protect, maintain, or replenish coastal land or resources, including... beaches..."

Hence, this special area designation is available for heightened attention to shorefront access and protection.

It should also be noted that, of the habitat standards contained in 6 AAC 80.130, those dealing with rocky islands and seacliffs, barrier islands and lagoons, and exposed high energy coasts help assure the protection of beaches. The other habitat standards in general assure the protection of both beaches and coastal waters.

There are also other existing state regulations pertaining to shoreline access. The state Department of Natural Resources, Division of Land and

Water Management is responsible for the establishment of easements and rights-of-way across conveyed lands to navigable and public waters (11 AAC 70.00). Oceans, seas, bays, and inlets are defined as navigable or public waters by AS 38.05.365. 11 AAC 70.080 pertaining to easements to and along navigable and public waters, states:

> "The director shall reserve a continous easement for public access along any water affected by tidal action when land adjacent to that water is conveyed unless the director determines that such an easement is contrary to public interest. The easement must extend 25 feet upland and 25 feet seaward of the mean highwater line. Where access along the easement is difficult because of topography of obstructions, an alternate upland access route may also be reserved.
>
> If reasonable access is not otherwise available, the director shall reserve an easement or right-of-way to provide access to coastal or inland navigable or public waters in the conveyance of land adjacent to or containing that water unless the director determines that such an easement is contrary to the public interest. The easement must be at least 25 feet wide.
>
> Further additional easements may be reserved to provide increased access where heavy recreational or non-recreational activity exists or is anticipated, to protect portage routes, or to secure access between aircraft landing sites and nearby navigable or public waters.
>
> In determining the easements to be reserved to and along navigable and public water, the director shall solicit comment from the Department of Fish and Game and the Division of Parks and, if appropriate, from other state and municipal agencies."
>
> The authority for these rules is granted by Alaska Statutes 38.05.020, 38.05.035, and 38.05.127.

Alaska Statutes 38.05.020, 38.05.070, 38.05.035, and 38.05.127 grant the power to lease state owned lands, including tidelands, submerged lands, and lands adjacent to coastlines. Written into the current tideland lease agreement are the following stipulations concerning access and certain recreation activities:

> "The Lessor (State) expressly reserves the right to grant easements or rights-of-way across the land herein leased if it is determined to be in the best interest of the State to do so provided, however, that the Lessee (local government or private party) shall be entitled to compensation for all improvements or crops which are damaged or destroyed as a direct result of the easement or right-of-way.

The Lessee shall not deny the lawful pursuit or the hunting of game or the taking of fish, provided, however, the Director, upon request in writing, may allow the lands leased herein, or portions thereof, to be posted to prohibit hunting and fishing when it appears necessary in order to properly protect the Lessee and his property."

VII. THE GENERAL PLANNING PROCESS

The basic planning process for provision of access to coastal areas is embodied in the district coastal program development process. In organized areas, districts will assess shorefront access and protection needs; inventory resources including land and water areas, uses, and ownership of these areas; analyze resources in terms of anticipated needs and the environmental capability of lands and waters for uses and activities; and develop policies for shorefront access and protection. District programs will also include methods for implementing the programs and provisions for access.

The process will also rely on the efforts of state agencies, especially the Departments of Fish and Game and Natural Resources. The state will continue its programs of park and recreation area development and will probably continue the current practices of selecting park areas on and near shorelines, and imposing access conditions on disposal and lease of state-owned lands.

Both phases of the process must comply with the ACMP Guidelines and Standards, and will utilize the ACMP authorities and procedures for implementation.

The protection of shoreline areas will also be assured through the district program development and implementation process and state agency activities subject to the ACMP Guidelines and Standards, particularly the habitat standards of 6 AAC 80.130. In addition, however, the special management designation procedures described in Part II, Chapter 4, will be available for this purpose. Another means for protecting or providing shoreline access lies in the Department of Natural Resources. The Division of Lands may reserve easements or rights-of-way for access over state lands which are conveyed to others (11 AAC 70.030).

VIII. FUNDING SOURCES FOR FURTHER PROGRAM DEVELOPMENT, RESEARCH, AND ACQUISITION OF SHORELINE ACCESS

Funding sources are available to conduct further research and planning studies concerning shoreline access. These studies would further develop the Alaska Coastal Management Program's ability to meet the requirements of section 305(b)(7) of the federal Coastal Zone Management Act. Funding is made available for program expansion through section 306 management program development grants,. Further funding for research and planning activities is available through the Coastal Energy Impact Program established by the 1976 Amendments to the CZMA. Section 310 of the amended Act makes planning

grants available for research studies and technical assistance. If the planning and research studies indicate that the purchase of easements is necessary to insure shoreline access, Section 315 of the CZMA provides federal grants to purchase such easements. Grants are also available for acquisition through the Land and Water Conservation Fund administered by the Heritage Conservation and Recreation Service, U. S. Department of Interior

CALIFORNIA

Coastal program administrators in California have taken an aggressive stance on increasing public access to the state's shore. To some extent their commitment has been legally reinforced by the California Constitution; while the public beach in this state is legally defined as the area from mean high tide seaward, the state constitution prohibits blocking access to the public beach. Thus, the state's aggressive stance on making public access a condition of coastal development permits continues to be upheld in the courts. Required access may range from the dedication of an easement to the provision of a bike path, to the construction of a parking lot, depending on the size and location of the project.

The regional costal commissions are presently working with local governments to develop their local coastal zone plans and procedures for implementation. Access is an issue which is being addressed through plans and ordinances, as well as the permitting procedures which the local governments will soon inherit from the regional commissions.

Although development permit requirements are resulting in the dedication of numerous easements for public access to the shore, Proposition 13 has stymied their utilization. The state legislature requires that somebody must agree to maintain a right-of-way before it may be opened to the public. Proposition 13 cuts have discouraged local governments from accepting the burden of funding maintenance, security, and liability for these areas. Thus, many rights-of-way

which have been dedicated to the public remain legally closed. The California Coastal Commission and the California Coastal Conservancy are working together to identify these areas and find agencies or homeowner groups willing to maintain them.

Many transit authorities are providing bus access to coastal areas. These initiatives are not financially supported by the state coastal program, but the California Coastal Commission is encouraging local governments to arrange such services.

Approximately $250,000,000 worth of state bonds have been approved in the past six years for shorefront acquisition.

The California Coastal Commission is also committed to opening up housing opportunities along the coast for all income groups. Approximately 25% of the units in permit-seeking developments along the coast must be set aside for low and/or moderate income households. In many cases the local housing authority is given the right of first refusal in an effort to insure that these units will remain available for people in these income groups and not be sold for great profit later.

UNITED STATES DEPARTMENT OF COMMERCE

COMBINED

STATE OF CALIFORNIA

COASTAL MANAGEMENT PROGRAM

(SEGMENT)*

AND

FINAL

ENVIRONMENTAL IMPACT STATEMENT

AUGUST, 1977

PREPARED BY:

OFFICE OF COASTAL ZONE MANAGEMENT
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
3300 WHITEHAVEN STREET, N.W.
WASHINGTON, D.C. 20235

AND

CALIFORNIA COASTAL COMMISSION
1540 MARKET STREET
SAN FRANCISCO, CA 94104

*For the purposes of coastal zone management, California has been divided into segments including the areas covered by the Coastal Act and the Bay Plan. The San Francisco Bay Conservation and Development Commission (BCDC) submitted a program to OCZM in accordance with Section 306(h) of the CZMA. The BCDC program was approved by the Secretary of Commerce on February 16, 1977. This program covers the rest of the coastal zone of the State.

B. Public Access

Public access to all coastal tidelands is guaranteed by the California Constitution. Over the years, this right has been expanded by various statutes and court decisions that recognized the historical public use of the coastline for recreation. Moreover, nearly half of California's 1,072 mile coastline is in public ownership, although about 75 miles of the publicly owned shoreline are along military lands generally not available for public access.

Despite these legal guarantees and historic public use of the California coastline, much access to the shoreline was lost when homes, businesses, and industries cut off existing public access to the shore. Increasing recreation demands put a heavy burden on the publicly owned recreation areas. As a result of this situation, much of the debate over whether Proposition 20 should be approved focused on the public access issue.

To address this problem, Proposition 20 required that a public access element be developed as part of the coastal planning process so that maximum visual and physical use of the coastal zone by the public could be achieved. Moreover, while the Coastal Plan was being prepared, the Coastal Commission was required to condition most development permits that it issued so that access would be provided as a part of new coastal projects.

As a result of the Coastal Commission's analysis of the public access issue, a major section of the Coastal Plan was devoted to the subject (see Coastal Plan, pp. 152-157). Another section of the Coastal Plan (pp. 173-174) addressed the need for public acquisition of some coastal lands for the purposes of increasing public access and protecting coastal resources. A third section of the Coastal Plan outlined a proposal for a new State agency that would be empowered to protect coastal resources and to increase public access through a variety of acquisition and management techniques (see Coastal Plan, pp. 192-193).

Because the Coastal Commission's assessment of public access needs found that the shortage of access would become more critical as more of the coast is developed, both the Coastal Plan and the Coastal Act call for the provision of access along much of the coast except where special problems are encountered. The Coastal Act's basic access policy states:

> "The Legislature . . . finds and declares that the basic goals for the state for the coastal zone are to . . .(c) maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners." (30001.5)

Statutory Provisions. Chapter 4, Section C (Geographic Areas of Particular Concern Within the Coastal Zone) discusses the types of areas that need special protection and outlines the management policies that will apply to these areas.

The State's major polices on shoreline access make up Article 2 of Chapter 3 of the Coastal Act and include:

> "In carrying out the requirement of Section 2 of Article XV of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." (30210)
>
> "Development shall not interfere with the public's right of access to the sea where acquired through use, or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation." (30211)
>
> "Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway." (30212)
>
> "Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive of the Government Code and by Section 2 of Article XV of the California Constitution." (30212)
>
> "Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area." (30212.5)
>
> "Lower cost visitor and recreational facilities, and housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. New housing in the coastal zone shall be developed in conformity with the standards, policies, and goals of local housing elements adopted in accordance with the requirements of subdivision (c) of Section 65302 of the Government Code." (30213)

Section 30211 contains California's definition of "beach" that is called for in Sections 305(b)(7) of the CZMA, it is "dry sand and rocky coastal beaches to the first line of terrestrial vegetation".

In addition to these policies that address public access directly, two of the Coastal Act's policies on development amplify the need to protect both physical and visual access to the coast. These policies state:

> "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting". (30251)
>
> "The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automibile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development". (30252)

Decisions on the appropriateness of public access in a particular area will be made under the provisions of Section 30212 through the Coastal Commission's regulatory process and through the local coastal program development process.

/ementation Techniques

Three major legislative elements were enacted in California in 1976 that provide techniques for the continuing refinement, implementation, and management of areas needing protection or public access. First is the Coastal Act with its access and resource protection policies that will be implemented by the Coastal Commission and incorporated into local coastal programs. The second implementation tool available is provided by the establishment of the State Coastal Conservancy, which has at its disposal a number of techniques for the preservation of agricultural lands, restoration, enhancement, reservation, and protection of coastal resources, and increase of public accessways. The State Coastal Conservancy is discussed further in Chapter 10, Section C.

The enactment of the State Urban Coastal Park Bond Act of 1976 is the third major program that is available to implement the State's access and resource protection policies. The Bond Act was approved by California voters in November 1976. It provides $145 million for the acquisition of coastal areas and $10 million for the State Coastal Conservancy to begin its program. In enacting the Bond Act, the State Legislature stated that:

> "There is a pressing need to provide statutory authority and funding for a coordinated state program designed to provide expanded public access to the coast, to preserve prime coastal agricultural lands, and to restore and enhance natural and man-made coastal environments." (5096.113(j))

In purchasing areas with funds provided by the Bond Act, the following criteria and priorities will be used:

> "(1) The first priority for the acquisition of coastal recreational resources is as follows:
> (i) Land and water areas best suited to serve the recreational needs of urban populations.
> (ii) Land and water areas of significant environmental importance, such as habitat protection.
> (iii) Land and water areas in either of the above categories shall be given the highest priority when incompatible uses threaten to destroy or substantially diminish the resource value of such area.
> (2) The second priority for the acquisition of coastal recreational resources is as follows:
> (i) Land for physical and visual access to the coastline where public access opportunities are inadequate or could be impeded by incompatible uses.
> (ii) Remaining areas of high recreational value.
> (iii) Areas proposed as a coastal reserve or preserve, including areas that are restricted natural communities, such as ecological areas that are scarce, involving only a limited area; rare and endangered wildlife species habitat; rare and endangered plant species range; specialized wildlife habitat; outstanding representative natural communities; sites with outstanding educational value; fragile or environmentally sensitive resources; and wilderness or primitive areas. Areas meeting more than one of these criteria may be considered as being especially important.
> (iv) Highly scenic areas that are or include landscape preservation projects designated by the Department of Parks and Recreation; open areas identified as being of particular value in providing visual contrast to urbanization, in preserving natural landforms and significant vegetation, in providing attractive transitions between natural and urbanized areas; or as scenic open space; and scenic areas and historical districts by cities and counties." (5096.124)

Many of the sites recommended for acquisition by the Coastal Commission will be purchased with Bond Act funds because these criteria are based, in part, on the criteria the Coastal Commission used in developing its acquisition recommendations.

Further refinement of the public access and shoreline protection policies are provided in the Coastal Commission's Interpretive Guidelines and in Coastal Act Policies section of the Local Coastal Program Manual (see Attachment A).

C. Shoreline Erosion

Coastline erosion in California, particularly in Southern California, has long been the subject of studies and corrective projects by Federal, State, and local construction agencies.

The State of California has carried out a shoreline erosion program for about 30 years. Since 1970, the State Department of Navigation and Ocean Development (DNOD) has had the primary responsibility for studying shoreline erosion, developing means for stabilizing eroding areas, and administering a program to provide financial assistance for the construction of erosion control projects.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management
Washington, D.C. 20235

SECTION 312 EVALUATION FINDINGS
THE CALIFORNIA COASTAL ZONE MANAGEMENT PROGRAM

BACKGROUND

Section 312 of the Coastal Zone Management Act (CZMA) requires a continuing review of states with federally approved coastal management programs. The purpose of the review is to evaluate performance of the states with respect to coastal management and adherence to approved management programs.

The California Coastal Management Program (CCMP) is comprised of two segments. The management program for the San Francisco Bay segment, administered by the Bay Conservation and Development Commission (Bay Commission), was approved on February 16, 1977; the management program for the remaining segment of the coast, administered by the California Coastal Commission (Coastal Commission), was approved on November 7, 1977. Federal program implementation funding in the amount of $6,000,000 has been awarded during that time.

As part of the Office of Coastal Zone Management's (OCZM) evaluation responsibilities, a review of the CCMP was conducted in San Francisco, Los Angeles and Sacramento from September 11 to 14, 1978 and recent visits during the Spring of 1979 have updated our information. Grant Dehart, Policy and Program Evaluation; Carol Sondheimer, Acting Pacific Regional Manager; William Brah, Assistant Pacific Region Manager; and John O'Donnell, External Relations, participated in the review which included meetings with Bay Commission and Coastal Commission staffs, representatives of state agencies, ports, cities and counties, environmental groups, business interests, academicians, and federal agencies involved in the state's coastal management program. A list of individuals attending these meetings is provided in Appendix 1. No public meeting was held as part of the review, but interested persons were invited to submit written comments on the state's performance, and several were received.

At the time of the review, independent evaluations were also being conducted by executive and legislative branches of the state government. On October 1978, the Department of Finance published the California Coastal Commission Management Planning and Staffing Needs. On February 1979, the Assembly Office of Research published An Assessment of the California Coastal Planning Process. Both these reports were occasionally referred to during the preparation of this report.

C. Increased Access to the Coast for Recreational Purposes. In this area the following results had occurred at the time of the evaluation site visit:

(1) In issuing its shoreline development permit, the Bay Commission has attached conditions requiring provision of public access. In the period covered by this report, more than 22 acres of new shoreline access has been provided.

(2) To improve implementation of this policy to provide "maximum available public access", the Bay Commission is completing a public access plan supplement to the Bay Plan. The access supplement consists of three parts. The first part contains findings and conclusions concerning additional public access areas for nine geographic areas, which together comprise the entire shoreline. The second part contains guidelines for the appearance and design of public accessways. The third part addresses implementation and contains amended public access policies on access, appearance, design and scenic views. The public access supplement will serve as a comprehensive advisory guide to the Bay Commission in providing for and maintaining shoreline public access.

(3) To implement its policy of providing "maximum public access," the state and regional coastal commissions have attached public access conditions to coastal development permit approvals. As a result, numerous public accessways have been dedicated. For example, in the Malibu area alone more than 125 access easements along the coast, and more than one dozen accessways from the public road to the beach have been required. The Coastal Commission formed an interagency coastal accessway group, which includes the Conservancy, to develop an effective accessway management program, addressing accesssway acceptance, liability, maintenance and improvement issues.

(4) The Bay Commission approved or amended three special area plans for Benicia, San Francisco and South Richmond waterfronts. Another special area plan for Redwood City was identified. These plans focus on public access, water-related industry, and appearance and design of development. They are implemented through Bay Commission permits.

(5) The Bay Commission approved an amendment to its special area plan for the San Francisco waterfront. The amendment allows marina and associated commercial and recreational uses in the vicinity of Pier 39, and substantially reduces the allowable redevelopment intensity from piers 9 through 24. A total design plan for this area is being completed as a condition of the approved special area plan.

CONNECTICUT

Eighty-five miles of Connecticut's approximately 500 mile long coastline is sandy beach area. Forty percent of these beaches are accessible to the public. State coastal program administrators have concentrated on opening up the larger beaches and have tended to ignore the smaller ones.

Four large state beaches at approximately equal distances across the Connecticut shoreline have been developed. Previously the highest priority was acquisition to put these parks together. Now the priority is beach development (including beach nourishment) and transportation programs to get people to these beaches.

Presently a non-CZM program (Title XX) provides bus service from urban areas to recreational areas of the participant's choice. Approximately 20% of the participants prefer to come to the beach. The state coastal program is currently working on a major study for providing adequate parking lot facilities and public transit (bus and rail) to the large state park which is situated halfway between Bridgeport and New Haven. Coastal administrators plan to publish a brochure illustrating state coastal areas available by public transit.

To some extent coastal administrators impose conditions on development permits to encourage beach access. Any coastal structure requiring permits is conditioned on at least not diminishing existing access. Further, the state's coastal act gives priority to water-dependent activities. Thus, for a condominium type of project to accrue adequate points to receive a permit, it usually has to deed access easements to

the municipality or actually construct the accessways in order to make the project palatable.

DELAWARE

Because most of Delaware's Atlantic-exposed beaches are already owned by the state government and open to the public, the state has a head start on shorefront access. The state's coastal program has developed mechanisms for encouraging public access through private property and has settled private v public ownership disputes. The program has also increased access for the handicapped to its beaches.

The Delaware State Beach Act requires that all private lands which receive state assistance for maintenance or nourishment must dedicate an easement to the public. This beach maintenance program is independent of CZM Funding, since it depends on a state revolving fund.

CZM 305 and 306 funds have been used to settle ownership disputes. A $250,000 program sponsored a survey of the coast, title searches, historical research, and litigation over disputes dealing with public v private ownership of patented and unpatented land dating back to William Penn's era.

The state coastal program has sponsored the retrofitting of public beach houses for handicapped access and the building of ramps to get wheelchairs to the beach.

Public transportation alternatives have been investigated without CZM funding assistance. The Delaware Authority for Regional Transit runs a bus from Wilmington to the beach during the summer. The State Park Department conducted a feasibility study of public transportation to its beaches last year and concluded that the costs for staging, parking and transit would be higher than justifiable, given the few people expected to be served.

UNITED STATES

DEPARTMENT OF COMMERCE

FINAL

ENVIRONMENTAL IMPACT

STATEMENT

PROPOSED

COASTAL MANAGEMENT PROGRAM

FOR

THE STATE OF DELAWARE

July, 1979

Prepared by:

Office of Coastal Zone Management
National Oceanic and
Atmospheric Administration
Department of Commerce
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A.2.

Beach And Shoreline Access

THE SUPPLY AND DEMAND FOR ACCESS TO DELAWARE'S PUBLIC BEACHES AND OTHER SHORELINES SHALL BE STUDIED PERIODICALLY THROUGH THE STATEWIDE COMPREHENSIVE OUTDOOR RECREATION PLANNING PROCESS(SCORP). WHEN THE NEED FOR ADDITIONAL ACCESS FACILITIES TO THESE PUBLIC BEACHES AND SHORELINES, BEYOND THOSE ALREADY IN PLACE, THE STATE WILL UNDERTAKE EFFORTS TO PROVIDE SUCH ACCESS AS LONG AS IT CAN BE DONE IN A MANNER CONSISTENT WITH THE PURPOSES FOR WHICH THESE LANDS WERE SET ASIDE.

Delaware is fortuate to own a substantial amount of shore and beach land, particularly along the Atlantic coast, which is readily accessible to the public. There is, at present, plenty of publicly accessible beachfront in Delaware. Growth in public usage of these lands, however, has been increasing yearly and there may come a time when the demand for access facilities, particularly parking and sanitation, will approach the existing and planned supply. The policy recognizes this possibility and provides for continued monitoring of beach and shore use, so that additional access areas can be provided in advance of the need. For a detailed assessment of access to all public shorelines in Delaware, the reader is referred to Working Paper No. 8, Beach Erosion Control and Shoreline Access Planning.

Other policies which act to protect public shorelines and beaches and access thereto may be found in Sections 5.B.1. (Public Lands) and 5.B.2. (Natural Areas).

AUTHORITIES

Management of the barrier beaches in Delaware is vested in DNREC pursuant to Title 7, Chapter 68, of the Delaware Code (Beach Preservation Act of 1972) and the regulation adopted thereunder. During development of the CMP it became evident that the Regulations Governing Beach Protection and the Use of Beaches needed to be modified to provide the predictability required for federal approval of the CMP. As mentioned in the discussion under Policy 7, these proposed changes will not take effect until after the new building line has been surveyed and another public hearing is held. Although the proposed regulation would be an improvement over the present one, it is the opinion of the Attorney General's Office that the present regulation contains sufficient authority to enforce the policies in the CMP. Moreover, the Secretary of DNREC and the Director of OMBP have signed a Memorandum of Understanding which states that DNREC will interpret the present regulation in a manner consistent with CMP policy until such time that the new regulation is adopted.

5.A.2.

Working Paper No. 8, Beach Erosion Control and Shoreline Access Planning, contains a copy of the proposed regulations that went to public hearing in August 1978. Although this regulation will be modified as a result of the building line survey and the hearing officers report, it should provide interested persons with an idea of the kind of changes contemplated.

Statutes which help the State acquire and protect access to public beaches and shorelines include the Nature Preserves Act (Title 7, Chapter 73 of the Delaware Code), Title 7, Chapter 45 (Public Lands), and Title 7, Chapter 47 (State Parks). For the most part these statutes and the policies derived from them serve other purposes beside shoreline access and are more appropriately discussed in Subsections on Natural Areas (5.B.2.) and Public Lands (5.B.1.). Insofar as these policies provide and protect access to public shorelines, they have been incorporated here by reference. Working Paper No. 8 contains a detailed discussion of the applicable policies and authorities.

In addition to these laws, several other State statutes used to implement the CMP by protecting various natural resources also help protect the beaches and shorelines. In this regard, the Delaware Environmental Protection Act, the Delaware Wetlands Act, and the Delaware Coastal Zone Act are particularly important. These statutes are discussed elsewhere in the document and in Appendix E (Legal Authorities and Organization).

AUTHORITIES TABLE TWO

Policy Number	Authority
1	7 Delaware Code 6801, 6803, and 6810
2	7 Delaware Code 4701(c)
3	7 Delaware Code 6803(c); 7 Delaware Code 6151; Regulations Governing the Use of Water Resources and Public Subaqueous Lands, Regulation IV, Section 1.
4	Regulations Governing Beach Protection and the Use of Water Resources and Public Subaqueous Lands, Regulation IV, Section 4.
5	Regulations Governing Beach Protection and the Use of Beaches, Section 3.01.
6	Regulations Governing Beach Protection and the Use of Beaches, Sections 3.01, 4.01, 4.02

Policy Number	Authority
	Regulations Governing the Use of Water Resources and Public Subaqueous Lands, Regulation IV, Section 4
7	Regulations Governing Beach Protection and the Use of Beaches, Section 1.
8	7 Delaware Code 6803(c) and 6803(d); Regulations Governing Beach Protection and the Use of Beaches Section 3.02
9	7 Delaware Code 6803(b) and 6806
10	7 Delaware Code 6801, 6803(f), 6806, and 6810.
11	Executive Order Number 61
12	Executive Order Number 61
13	Executive Order Number 61
14	7 Delaware Code 4701(c); Executive Order Number 61

Pending revision of the Regulations Governing Beach Protection and the Use of Beaches enforcement of the policies contained herein have been assured through a Memorandum of Understanding between the Secretary of the Department of Natural Resources and Environmental Control and the Director of the Office of Management, Budget, and Planning.

APPENDIX C - SPECIAL MANAGEMENT AREAS

Some Delaware areas are of particular concern because of their coastal-related values or characteristics, or because they may face pressures which require attention beyond that provided in the general CMP planning and regulatory system. This attention could take several forms including increased public expenditures, intergovernmental coordination, technical assistance, or additional maintenance. Most importantly, the attention might foster public awareness of the importance of the special areas, thereby generating support for their wise utilization in the future.

The federal Coastal Zone Management Act (CZMA) and regulations adopted pursuant thereto require that the CMP consider the following: (1) areas of particular concern; (2) priorities of uses; (3) other areas of particular concern; (4) areas for preservation or restoration; (5) shorefront access and protection planning; and (6) shoreline erosion/mitigation planning.

5. Shorefront Access and Protection Planning

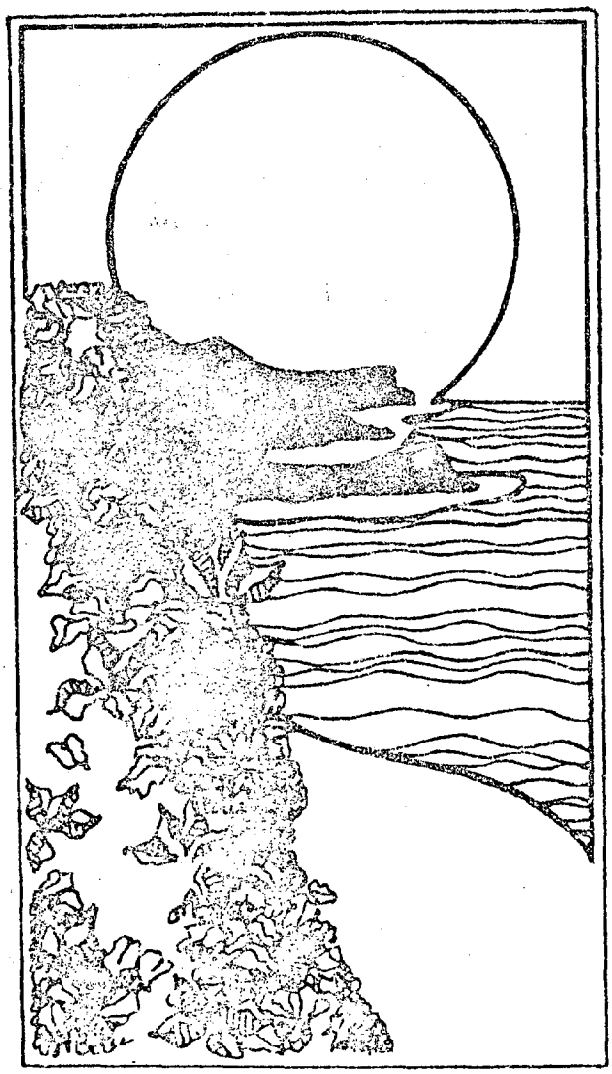
The CMP must develop a planning process that can identify public shorefront areas appropriate for access or protection. The basic purpose in focusing special planning attention on shorefront access and protection is to express more than local concern with respect to additional access or protection needs for public beaches and other public coastal areas of environmental, recreational historic, esthetic, ecological or cultural value and to include these areas for special management attention within the purview of the CMP. Fortunately, adequate public access to and protection of Delaware's ocean front beaches are assured by virtue of the State Park holdings in this area. Program document Sections which combine to satisfy the planning requirement include 5.A.2. (Beaches) 5.B.1. Public Lands 5.C.5. (State-owned Coastal Recreation and Conservation Lands), 5.D.5. (Recreation), and, to a lesser extent, 5.A.1. (Wetlands), 5.A.3. (Coastal Waters, 5.A.4. (Coastal Strip and Underwater Lands), 5.B.2. (Nature Preserves), 5.C.1. (Woodlands and Agricultural Lands), 5.C.2. (Historic and Cultural Areas), and 5.D.9. (Transportation Facilities). In addition, Working Paper No. 8, Beach Erosion Control and Shoreline Access Planning, provides a detailed inventory and analysis of Delaware's publicly accessible shorelines.

This long list is not surprising given that the requirement deals with the access and protection needs for other shorefront areas beside beaches. These shorefront areas are comprised of many types of coastal resources, each of which the CMP considers to some extent.

Volume 1 of 2

Guam Coastal Management Program and Draft Environmental Impact Statement

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



(5) An identification of legal authorities, funding programs and other techniques that can be used to meet management needs.

(1) The approach developed for assessing those shoreline areas requiring management attention for public access or protection included:

(a) Analysis of available data relative to shoreline and reef physiography, shoreline use, proposed development, recreation, military lands and public opinion,

(b) Data-base development including on-site physiographic study of all shore and reef areas within the definition of "beach",

(c) Coordination with the Department of Parks and Recreation for identification of public, private, and military beaches, projected demands for beach recreation areas, plans for expansion of public facilities and criteria for evaluation of publicly-owned beaches with development potential, and

(d) Analysis of existing legal authorities for provision of public access and shoreline protection.

This planning approach resulted in the preparation of a study by the GCMP entitled, Beach Access on Guam. The study identified all of the island's beaches and classified them in respect to public access: open access, access with owner's permission and restricted access. Beach availability statistics derived from the study are summarized below and the Beach Strand Inventory is found in Table 6.

Access Category	Number of Beaches	Length
Beaches Adjacent to GovGuam Lands with Open Access	14	8.5 Kilometers 5.1 Miles
Beaches Adjacent to Private Lands with Access by Owner's Permission	49	39.5 Kilometers 23.7 Miles
Beaches Adjacent to Federal Lands with Open Access	6	5.5 Kilometers 3.3 Miles
Beaches Adjacent to Federal Lands with Restricted Access	13	13 Kilometers 7.8 Miles
Total Beach Strand	82	66.6 Kilometers 39.9

TABLE 6 BEACH STRAND INVENTORY

Place Name	Length (Meters)	Width (Meters)	Ownership	Inland Access
1. Amantes Pt.-Biji Pt.	594	1-15	Private	None
2. Fafai Beach	366	8-32	Private	Secondary Road
3. Gogua Beach	220	3-10	Private	Through Okura
4. Naton Beach	1775	8-27	Private	Secondary Road
5. Ypao Beach	671	5-8	GovGuam	Secondary Road
6. Ypao Pt.	40		Private	None
7. Alupang	27		Private	None
8. Dungcas	846	3-8	Private	Secondary Road
9. Dungcas-Trinchera Gap	1844	3-16	Private	Through Private Property
10. Trinchera Beach	693	3-16	GovGuam	Marine Drive
11. Naval Cemetary	175	16	GovGuam	Marine Drive
12. Agana	1619	3-16	GovGuam	Marine Drive
13. Anigua-Pigo	213	3-12	Private	Through Private Property
14. Adelup	667	3-19	GovGuam	
15. Asan	594	319	Private	Marine Drive
16. Asan Pt.	853	6-19	Private	Marine Drive
17. Piti	1585	10-20	Federal	Marine Drive
18. Tapungan Channel	149	3-10	Federal	Marine Drive
19. Hotel Beach	244		Federal	Paved Road
20. Atantano River	1020		Federal	Restricted
21. Orote Peninsula #1	80	3-10	Federal	Restricted
22. Orote Peninsula #2	202	3-16	Federal	Restricted
23. Orote Peninsula #3	65	3-16	Federal	Restricted
24. Gabgab Beach	524		Federal	Base Pass
25. Tipalo Beach	236		Federal	Base Pass
26. Dadi Beach	1330	2	Federal	Base Pass
27. Rizal Beach	1330	2	Federal	Primary Road
28. Togcha Beach	1505	15	Private	Primary Road
29. Salinas Beach	1505	1[illegible]	Private	Primary Road
30. Gaan Pt.	1909	19	Private	Primary Road
31. Bangi Pt.	1909	19	Private	Dirt Road
32. Chaligan	1798	23	Private	Primary Road
33. Nimitz Beach	1798	23	Federal	Primary Road

34.	Taleyfac River	1798	23	Private	Dirt Road
35.	Taelayag Beach	1402	15	GovGuam	Dirt Road
36.	Sagua Beach	1006	27	Private	Foot Trails
37.	Facpi	1062	12	Private	Foot Trails
38.	Acgugao Pt.	472	12	GovGuam	Foot Trails
39.	Sella Bay & Abong	1457	34	GovGuam	Foot Trails
40.	Cetti Bay	610	3-16	Private	Foot Trails
41.	Fouha Bay	100		Private	Foot Trails
42.	Umatac Bay	229	23	GovGuam	Primary Road
43.	Machadgun Pt.	457		Private	None
44.	Mamatgun Pt.	457		Private	Dirt Road
45.	Toguan Bay	966	9	Private	Primary Road
46.	Ajmo Beach	381	9	Private	Primary Road
47.	Bile River South	53	5-14	Private	Primary Road
48.	Pigua River	136	5-20	Private	Primary Road
49.	Cocos Island	524	5-25	Federal	None
50.	Cocos Island	1247	5-25	Private	None
51.	Cocos Sand-Islet	118	34	GovGuam	None
52.	Pigua Beach-Ada	975	1-5	Private	Primary Road
53.	Aang Beach	1303	3-10	Private	Primary Road
54.	Liyog River Mouth	137		Private	
55.	Ayajan Bay	213	124	Private	Primary Road
56.	Aga Bay	122	3-5	Private	Primary Road
57.	Guijen Pt.	701	5-15	Private	Primary Road
58.	Atao Beach-Acho Pt.	610	15	Private	Dirt Road
59.	Acho Pt.	427	20	Private	
60.	Agfayan Bay	118	20	Private	Primary Road
61.	Inarajan Bay & Guae	678	2-60	Private	
62.	Pauliac Bay	457	1-20	Private	Foot Trails
63.	Perez Beach	412	to-50	Private	Primary Road
64.	Asiga Beach	107		Private	
65.	Asalanso River Mouth	141	15	Private	
66.	Talofofo Bay	335	46	GovGuam	Primary Road
68.	Cruz Beach	123	42	Private	Dirt Road
69.	Jones Beach	823	42	Private	Dirt Road
70.	Ipan Beach	480	23	GovGuam	Park
71.	Togcha	427	15	Private	Dirt Road

72. Ylig Bay	290	27	Private	Dirt Road
73. North Ylig	109	15	Private	Dirt Road
74. Tagachan	118	30	GovGuam	Park
75. Pago Bay	1543	15	Private	Dirt Road
76. Tagua Pt. Mouth	4938	69	Federal	Restricted
77. Tarague	572	61	Federal	Restricted
78. Jinapsan	2065	38	Private	Through AAFB
79. Ritidian	1562	46	Federal	Restricted
	1734	46	Federal	Restricted
	255	23	Federal	Restricted
80. Uruno Beach	2084	34	Private	Through Base
81. Falcona Beach	594	27	Private	Through Base
82. Haputo Beach	310	19	Federal	Restricted
83. Tilaan-Tanguissan	412	38	Federal	Secondary Road

(2) The preceding table identifies those areas that are defined as "beach" in the definition developed in another GCMP study entitled Atlas of Reefs and Beaches on Guam. The definition utilized in the context of shoreline access and protection is:

> An accumulation of unconsolidated deposits along the shore with their seaward boundary being at the low-tide or reef flat platform level and extending in a landward direction to the strand vegetation or first change in physiographic relief to topographic shoreline.

(3) Enforceable policies and legal authorities for shoreline access and protection are detailed in Chapter III, "Coastal Management Program Policies", and Chapter VI, "Authorities". The overall GCMP policy regarding public access states:

> The public's right of access shall be ensured to all non-Federally-owned beach areas and all territorial recreation areas, parks, scenic overlooks, designated conservation areas and other public lands; agreements shall be encouraged with the owners of private and Federal property for the provision of reasonable access to, and use of, resources of a public nature located on such land.

Policies for Shore Area Development, Urban Development, Hazard Areas, Housing, Fragile Areas, Visual Quality and Recreational Areas also collectively support requirements for shorefront access and protection. Chapter VI, "Authorities", specifically outlines the regulatory mechanisms and agencies concerned with shoreline access and protection. Appendix 1 contains the complete text of referenced authorities.

Public Law 14-41, established a resort-hotel zone with height, setback and design regulations and provides support for shorefront access consideration within resort areas. Flood Hazard Areas and Regulations preclude the development of flood control measures which would impair public access within shoreline areas. The regulations generally inhibit creation of hazardous conditions which would restrict shorefront access. Wetland Rules and Regulations also encourage open space within coastal wetlands and mangrove areas, thus promoting open access to such lands.

The Territorial Beach Areas Act (GCG, Section 13451), declares as the public policy of the Territory, that:

> "It is the public right to have unrestricted access to the ocean shores of Guam for common use by all the people of Guam, and therefore that strip of public land above the high mean watermark must be preserved and protected for generations to assure free access to the beaches of the Territory to the maximum extent, to

> preserve the natural beauty of Guam's beaches, and to alleviate the health problems caused by construction near tidal areas. It is, therefore, the purpose of this Chapter to forever preserve and maintain the sovereignty of the Territory heretofore legally existing over the ocean shores of the Territory so that the public may have the free and uninterrupted use thereof; to protect, settle and confirm the public rights the use of the ocean shore heretofore acquired by public dedication, prescription, or otherwise and to authorize the reacquisition of the ocean shore where a portion thereof has been lost to private ownership and no public rights exist therein as a result of dedication, prescription, or otherwise.

(4) The Conservation District designation of shoreline areas on the Land-Use Districting Map further ensures their protection and encourage their accessibility to the public. Either site specific locations or the beach areas as a general class can be designated as APC's through the Governor's authority to issue Executive Orders, by the TPC through their rule-making authority or specifically so designated within the Seashore Reserve Plan.

(5) The Territorial Seashore Protection Act (P.L. 12-108) provides the primary legal mechanism for shoreline management. This legislation requires issuance of permits for development within the Seashore Reserve and preparation of a Seashore Reserve Plan. Applications for development within the Seashore Reserve Plan are reviewed by the Territorial Seashore Protection Commission. Currently, the Seashore Reserve extends only 10 meters inland from the mean high watermark having been reduced from the original 100 meter boundary in the wake of Supertyphoon Pamela to facilitate shoreline reconstruction.

Consistent with the original intent of the Act, and to facilitate development of the required Seashore Reserve Plan, the GCMP has proposed amendment of this 10 meter boundary. Utilizing roadways and natural clifflines and assessing potential impacts of future development along Guam's coastline, the GCMP has prepared a series of maps outlining a broader and more useful inland boundary. Legislation submitted to the Guam Legislature, if adopted, would recognize these maps as the amended Seashore Reserve boundary and provide an excellent tool for shoreline management. Shoreline areas outside the Seashore Reserve are subject to the other authorities identified in Chapter VI.

C. SHORELINE EROSION AND MITIGATION PLANNING

Section 305(b)(9) of the CZMA requires a planning process for assessing the effects of shoreline erosion, and studying and evaluating ways to control or lessen the impact of such erosion, and to restore areas adversely affected by such erosion. The following discussion explains why shoreline erosion is not a significant problem on Guam. Briefly, the geological structure of

Hawaii

The state of Hawaii's coastal configuration reduces the distances which must be travelled for shorefront access, but increases the administrative contraints of implementing access programs, since seven different counties are involved.

The state owns all shoreline up to the highest reach of the wash of the waves, as evidenced by the vegetation or debris line, whichever is higher. However, since 74% of the sandy beach coastline is abutted by privately owned or managed land, perpendicular access to the public portion of the beach is a problem. The Hawaii coastal management program seeks to overcome the perpendicular access problem through two methods: the conditioning of coastal area permits on the provision of public access to the shore and the development of a Statewide Trail and Access System.

Three types of permit conditions can potentially affect coastal development. First, county subdivision approval is conditioned on the dedication of adequate public access to the coastal shoreline by right-of-way or easement if none exists. Second, Special Management Area permits are conditioned on the provision of adequate access to publicly owned or used beaches. Third, since all public shorelands are within State Conservation Districts, permits for activities there are conditioned on the protection or improvement of existing accessways.

State law (Act 69, 1974) provides for the conceptual planning, coordination, development, land acquisition, construction and implementation of a Statewide Trail and Access System which will provide

public access to and around the shore. A preliminary plan prepared by the Department of Land and Natural Resources in 1977 identified existing access resource potentials. The plan recommends several legal mechanisms for establishing public rights-of-way for the trail system, including: implied dedication, Native Hawaiian Right, Ancient Trail Doctrine and Public Trust Doctrine. A combination of state, county and federal funds will also be used to acquire property for the shoreline access routes. One million dollars was appropriated to the Department of Land and Natural Resources as "seed money" for program administration.

Many Hawaiians live within walking distance of the shore. For those who do not, county bus systems provide access to beaches. Oahu sponsors special "Surf's Up!" buses equipped with surfboard racks.

306 funds are currently being used by the counties of Hawaii and Kauai to inventory existing and potential accessways and develop institutional means to fund, open up, and manage new access areas.

State of Hawaii Coastal Zone Management Program and Final Environmental Impact Statement

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

SHOREFRONT ACCESS AND PROTECTION PLANNING

Hawaii's Coastline

The general coastline of Hawaii's major and minor islands is 750 miles, fourth longest among all States and territories in the nation. Hawaii's coastline varies greatly in physical characteristics from island to island as well as from one district to another on the same island.

Due to the volcanic origin and mountainous nature of the islands, a bold and rugged coastline predominates, encompassing towering cliffs of 1,000 feet or more along the northwest coast of Kauai and somewhat less precipitous cliffs on Hawaii, Maui, and Lanai. In contrast, low lying, sweeping beaches are found primarily on Maui, Oahu, and Kauai. Low and rocky shoreline areas with occasional small pocket beaches reated by inshore and barrier coral reefs or an intermittent low shore interrupted by bold headlands are found extensively along the east and north sides of Oahu and Lani and the south coast of Molokai.

Public Coastal Areas -- Defined and Described

For the purposes of Hawaii's CZM Program "beach" is defined as all land up to the highest reach of the wash of the waves, as evidenced by the vegetation or debris line, whichever is higher. 1/

The State of Hawaii owns all shoreline or beach areas as defined above. These public lands are within the State Conservation District and subject to the permit requirements of the DLNR under Regulation 4. (See Appendix 10.)

Although all beaches are publicly owned, the lands abutting Hawaii's 185 miles of sandy beach on the six major islands are owned and managed by both public agencies and private parties. According to the State Comprehensive Outdoor Recreation Plan (SCORP) of 1975, the Counties manage 30.18 linear miles of upland 2/ areas adjacent to sandy beaches; State agencies manage 6.20 linear miles; and the Federal government manages 10.53 linear miles.

1/ With respect to the interpretation of the term "highest wash of the waves," the Hawaii Supreme Court held "... that where the wash of the waves is marked by both a debris line and vegetation line lying further mauka (inland); the presumption is that the upper reaches of the wash of waves over the course of a year lies along the line marking the edge of vegetation growth." County of Hawaii vs. Sotomura, (1973)

2/ "Upland" means the land area beginning at the vegetation line and extending landward from there.

County management is primarily of recreational beach parks. For recreational, environmental, ecological, aesthetic, historic, and cultural purposes the State administers lands for State parks, Marine Life Conservation Districts, and historic monuments. The DOT manages lands necessary for recreational boating purposes, State harbors and waterfront improvements, and beaches encumbered with easements in favor of the public. The Federally administered areas are primarily under the Department of Defense and not open to the public except for certain sandy beaches which are open on weekends for recreational use.

Although State and County management of upland areas guarantees access to the publicly owned beach areas, 137.19 linear miles (74%) of the sandy beach coastline is abutted by privately owned or managed lands. In fact, providing access to the shoreline has become a major problem in the State because adjoining landowners exercise control over perpendicular access. Specific private uses include residences, hotel and tourist facilities, industrial developments, and agricultural activities. Federal agencies also have restricted public use of shoreline areas

Statewide Trail and Access System

Accessibility is a major factor in determining the magnitude of usage of public areas This determination involves the examination of access linkages for personal transportation to areas valued by the public because of their environmental, recreational, aesthetic, cultural, or historic qualities.

State law (Act 69, SLH 1974) provides for the conceptual planning, coordination, development, land acquisition, construction and implementation of a statewide trail and access system to meet recreational needs; to provide a showcase for cultural and environmental education; to assure that economic development is compatible with natural and cultural resources; and to provide non-vehicular modes of transportation in urban as well as natural areas.

The preliminary Statewide Trail and Access System plan prepared by the DLNR in 1977, has identified access resource potentials, including coastal access, which currently exist in Hawaii. As data sources such as SCORP are updated, the determination of demand and need for shoreline access will be similarly revised.

The Plan's inventory includes specific information on the jurisdiction, length, type (i.e., access, jeep, bike), finish (development standard), grade, amenities, and status of availability for general public use of identified access routes. Qualitative indicators such as the natural, functional, and cultural aspects of the trail experience expand the scope of the inventory beyond assessment only in terms of utility.

The trail system consists of functional, administrative, and jurisdictionally distinct trail components, overlayed by a proposed statewide policy of definition, classification, and standards. In this manner, a network of various transportation modes utilizing trails, paths, and corridors for diverse purposes such as vehicular recreation, hiking, and shoreline access, will be established. Unifying mechanisms will include a common classification system to be used by all managing agencies and minimum design standards to improve the trail experience and promote public safety. Coordination efforts at the State level will assist in resolving conflicts among users, management agencies, and landowners and in setting statewide priorities.

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State Policies Regarding Shorefront Access and/or Protection

State policy for shorefront access and/or protection in all areas of the State is set forth in the Hawaii CZM objectives and policies (see Chapter 2) dealing with recreational resources; scenic and open space resources; historic resources; coastal ecosystems; and economic uses. Other State laws providing related policy and responsible agencies are cited in Table 5.

In addition, the statutory guidelines of the SMA permit process (see Table 4, page 79) require consideration of both physical and visual access including the imposition of reasonable terms and conditions for their provision and preservation. State law (Chapter 205, HRS) has also established the State policy of protection for the shoreline by means of the shoreline setback requirements (see page 21).

Identification of Funding Programs and Other Implementation Techniques to Meet Management Needs

State, County, and Federal funding resources for the acquisition of shoreline access routes will be utilized in conjunction with existing authorities for the purchase and provision of public rights-of-way. When this is not applicable, the several Counties may purchase land for public rights-of-way to and along the shoreline under Chapter 115, HRS. Along cliffs or other areas where the topography prohibits safe transit along the public shoreline area, the Counties can, through condemnation, acquire public transit corridors along the shoreline which must be not less than six feet wide.

An appropriation of $1 million was recently made to the DLNR to carry out this program and to assist the Counties in their responsibilities under the program. The funds are available through 1979 and may be applied to match County funds for the purchase of such rights-of-way.

The DLNR has the authority to acquire "resource value lands" by purchase, gift, or eminent domain, subject to the Governor's approval (Chapter 173A, HRS). This includes "lands which have natural, environmental, recreational, scenic, or historic value." Provision is also made for the acquisition of park and trail systems to assure access to these areas. Grants may also be made to Counties for the acquisition of these routes and lands by eminent domain.

Prior to the disposition of any public lands, the DLNR is required to lay out and establish across such lands rights-of-way to public beaches from the nearest highway (Chapter 171, HRS).

When finalized, the Statewide Trail and Access System plan will provide a comprehensive framework for the coordination of existing acquisition programs. U. S. Bureau of Outdoor Recreation Land and Water Conservation Fund grant monies used to acquire beachfront land for parks, for example, will be coordinated with access acquisition priorities.

The Plan also recommends several legal mechanisms for the establishment of public rights-of-way including implied dedication, Native Hawaiian Rights, the Ancient Trail Doctrine and the Public Trust Doctrine. These could be used in support of actions to open existing rights-of-way to the public and to prevent the loss of publicly used rights-of-way. Land exchanges

between the State and private property owners (Chapter 171, HRS) and private surrender of land for public purposes for a term of not less than 20 years (Chapter 183, HRS) are possible methods of providing new land for public access routes.

In regard to visual access in urbanized areas, Chapter 57, HRS directs the Counties to prepare urban design plans for all areas designated for urban design in the County. Required elements of such plans include "Historic sites, significant natural land and water features, and views and vistas which must be protected and enhanced." In addition, Chapter 57, HRS provides that "Buildings and structures should be restrained from encroaching upon the shoreline and other designated land forms as well as street and road rights-of-way. Manmade features on the land should not be in conflict with natural formations along the shoreline." Urban design plans have been prepared for such areas as Kakaako on Oahu and Kailua-Kona on Hawaii as well as for the entire island of Kauai.

Methods for Designating Shoreline Areas for Special Consideration

Under the Hawaii CZM Program, the designated SMAs and the applicable guidelines for development review, provide for special consideration of physical and visual access to all shoreline areas.

Areas which meet the requirements for designation as Marine Life Conservation Districts (see page 66), Natural Areas Reserves (see page 66), and Conservation District lands are placed under direct State jurisdiction for conservation purposes (see page 69).

Particular attention has been directed toward the preservation of islands under these various State programs. For example, the State has recently established a Hawaii State Seabird Sanctuary incorporating 36 islets and rocks from the island of Hawaii to Kure in the leeward chain to protect seabird habitats. In addition, all off-shore islands have been placed within the Conservation District by the LUC (Chapter 205, HRS) and are subject to Regulation 4 permits from the DLNR.

Shorefront access and protection is an integral part of the Hawaii CZM Program which will involve an on-going process of assessment and review of those public coastal areas of environmental, recreational, historic, aesthetic, ecological and cultural value which need special management attention.

C. Recreational Access and Protection of Cultural, Historic, and Aesthetic Coastal Resources

The following results have occurred in this area:

o An inventory and mapping of existing and potential public access to and along the shoreline of Hawaii County is completed for the western side and coverage of the remaining shoreline will be finished this year. This study will provide baseline analysis for the two additional phases of the County's comprehensive public access acquisition program: 1) development of priorities, and 2) standards for SMA permit conditions related to access. Acceleration of this program will give the County a strong basis for making access related decisions. Intensified efforts in the grant period should lead to completion of the remaining phases.

o A demonstration historic sensitivity mapping study is almost completed for the island of Kauai. Refinement of the mapping system, including incorporation of archaeological criteria and format revisions to improve its practical utility, has been conducted with the assistance of the State Historic Preservation Office. The mapping system provides a model for use on other islands and can be programed into a proposed computer information system. Expansion of the study to map other areas in the State is being considered for the forthcoming grant period.

o The DOT enforcement staff has been increased, providing improved security in public boating facilities and the near shore waters and regulation of recreational boating and harbors activities. The addition of one staff person has allowed the existing staff to attend training programs leading to certification as a boat pilot permitting the DOT to expand its marine enforcement coverage.

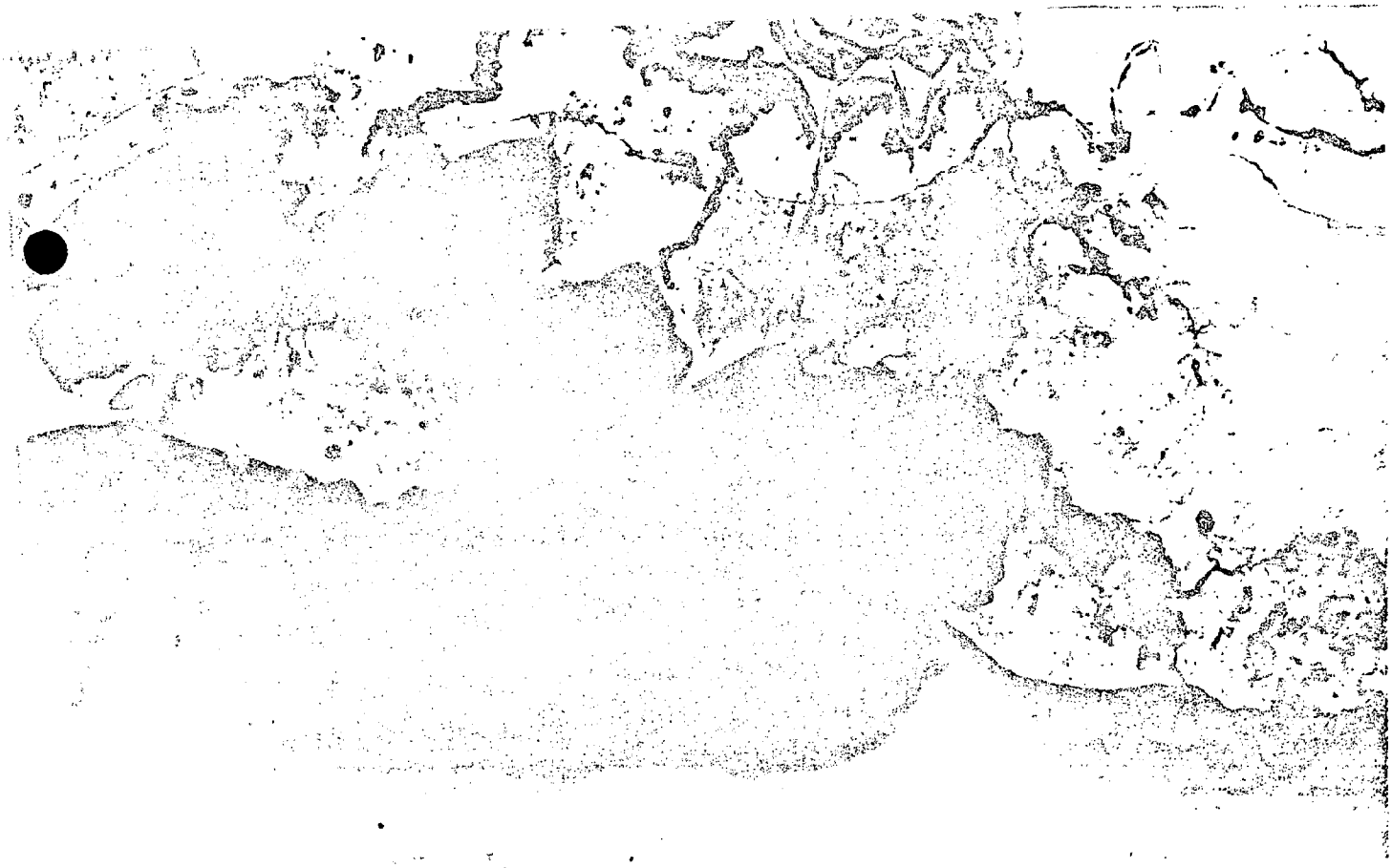
o Permit conditions included in recent SMA permit approvals have included requirements for public coastal access and archaeological surveys in excess of other statutory requirements, thereby strengthening the Counties' ability to protect historic and recreational coastal resources.

o State transportation engineers have begun designing a loading dock to be constructed this fall adjacent to an existing boat ramp and beach park on the Puna coast of Hawaii County. The dock project is part of a plan to improve the area for use by fishermen and boaters. The Army Corps of Engineers is currently constructing a breakwater to decrease the rough waters in the area and further enhance its recreational usefulness.

LOUISIANA

The physical configuration of Louisiana's coast makes shorefront access difficult. Coastal wetlands reach so far inland, hampering landward access. Few beaches exist. While water access is possible, few boating facilities have been provided.

Coastal program officials recently completed the Louisiana Shorefront Access Plan, which inventories existing and potential sites for shoreline access and recreation. No access program has been developed yet.



LOUISIANA COASTAL RESOURCES PROGRAM

DRAFT ENVIRONMENTAL IMPACT STATEMENT

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
OFFICE OF COASTAL ZONE MANAGEMENT

and

LOUISIANA DEPARTMENT OF
TRANSPORTATION & DEVELOPMENT
COASTAL MANAGEMENT SECTION

APPENDIX d

SHORELINE ACCESS AND PROTECTION

A) INTRODUCTION

Section 305(b)(7) of the CZMA requires a planning process for access to and protection of public beaches and other public coastal areas. The process developed by the state must include the factors listed in Section 923.24 of the federal program approval regulations. These are:

- A procedure for assessing public beaches and other public areas requiring access or protection; and a description of appropriate types of access and protection.
- A broad 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, esthetic, ecological or cultural value
- An identification and description of legal authorities, enforceable policies, funding programs and other techniques that can be used to meet management needs.

B) HISTORICAL SITUATION

With its many bays, coastal lakes and marshes, Louisiana has a tremendous amount of shoreline. The coast is as diverse as it is long, featuring sandy beaches, marshes, swamps, barrier islands and historic sites. There is a great potential for public recreation along the coast, but this potential has not been fully realized for several reasons.

One reason for the underutilization of beaches in Louisiana is the extent of the coastal wetlands which, following the shore, reach ninety miles inland rendering landward access difficult. Another factor hindering public access to and use of the shore is the development of camps or vacation homes. These second homes present two problems:

- Residential developments may directly block landward access to the shore;
- Camps are often abandoned and left to deteriorate in the water or on the beach or shore.

Other general factors which have limited shoreline access and facilities follow:

- The Louisiana coastal shore is not utilized as much for more intensive outdoor recreational pursuits (i.e., swimming, camping...) as for hunting...

- Topography has dictated a reliance on water access, hence the great number of boat launches. However, currently available boat ramps are not adequate to meet demands on use or location.

- There is a lack of bathing beaches and beach facilities and a great demand for such areas.

- Of the many sites along the coast, few are developed to their full recreational potential.

- Due primarily to terrain, certain coastal areas are underutilized, shifting recreational use to more suitable areas.

C) REQUIREMENTS

1) Procedure for Assessing Public Areas Requiring Access or Protection

The LCRP has inventoried existing and potential sites for beach and shoreline access and recreation. The Louisiana Shorefront Access Plan, a study conducted during development of the LCRP, contains maps and other information concerning existing, potential and recommended sites for shoreline access. Figure d-1 lists and maps existing recreation sites and access points.

The LCRP will continue to assess areas for public access and recreation based on the following considerations: the need and priority of islands; the provision of increased physical and visual access; the natural and cultural features; the needs of urban residents; and the present supply versus future demand for public facilities. In the continuing assessment of the need for shoreline protection the following elements have been and will be considered; environmental, esthetic and ecological preservation; the protecton of areas for public uses; and the preservation of islands. Furthermore beaches and barrier islands are specifically mentioned as areas that may be designated special (Section 213.10(A)).

Local programs are expected to contain an assessment of public recreational areas along the shoreline and their patterns of use. Financial and technical assistance by the Secretary of DOTD to other state agencies and local governments for shoreline access and protection is also available under Section 213.10(E) of Act 361, which provides for such assistance in managing specific sites in the coastal zone.

2) Definition of "beach"

In Louisiana, the seashore, i.e., the area of land along the coast which lies between low water and mean high water, is publicly owned and available for public use. Such state ownership and public use of seashores also applies to the shores of water bodies referred to as "arms of the sea". A body of water is considered an arm of the sea if it is located in the immediate vicinity of the open coast and is directly overflowed by the tides.

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3) Enforceable Policies, Legal Authorities Funding Programs and Other Techniques for Shorefront Access and Protection

Act 361 recognizes shorefront areas and beaches as valuable features and directs that ways should be provided to enhance opportunities for their use and enjoyment for recreation (see Section 213.8 (c)(4)(10)). Specific state policy on shoreline access is expressed in several other sections of the coastal use guidelines:

- Guideline 1.3(i) states that proximity to beaches and likely impacts on them are considered in evaluating all proposed activities, to the extent allowed by the specific guidelines.

- Guideline 1.3(n) provides for consideration of the effects of a proposed project on navigation, fishing, public access, and recreational opportunities.

- Guideline 1.4(e & q) states that in siting of any facility on a shoreline or beach, any adverse alteration or destruction should be avoided or minimized.

- Guideline 1.6 states that all uses should be conducted to permit multiple uses including recreation.

- Guideline 3.8 states that "Linear facilities involving dredging shall not traverse beaches, tidal passes, protective reefs of other natural gulf shorelines unless no other alternative exists".

- Guideline 5.2 directs that "Shoreline modification structures shall be designed and built using best practical techniques to minimize adverse environmental impacts" to prevent loss of the shoreline.

- Guideline 6.8 states "Surface alterations which have high adverse impacts on natural functions shall not occur to the maximum extent practicable, on barrier islands and beaches, isolated cheniers, isolated natural ridges or levees, or in wildlife and aquatic species breeding or spawning areas, or in important migratory routes".

Funding for recreation and natural preservation projects is available for the planning, design, land acquisition, construction, management, promotion and technical assistance related to such projects. The following is a brief description of possible funding sources, including both federal and state funding sources:

- First Use Tax (see appendix e)

- The Heritage Conservation and Recreation Service of the U. S. Department of the Interior is a prime source of funding for public shorefront access planning and development. Grants for acquisition and development of public outdoor recreation projects may be used for boat launches, picnic areas, camp grounds and support facilities such as roads, water supply, etc.

Generally priority for such grants is given to projects serving urban populations. These grants provide 50 percent of the cost of acquisition and development. There is also a joint HCRS/OCZM urban waterfront revitalization demonstration grant program.

- The National Park Service administers the Historic Preservation Act, Public Law 89-665, which provides up to 70 percent matching funds to states and local governments for the purpose of acquisition, preservation and development of historic sites. This source of funding is particularly appropriate for the forts along the Louisiana gulf coast.

- The Coastal Energy Impact Program (CEIP), administered in Louisiana by the Department of Transportation and Development provides grants and loans to accomodate growth and other impacts from new and expanded coastal energy activities. Grants for recreational projects (100 percent) are given a high priority. Since the impacts of oil and gas exploration and production are evident in most areas of the coastal zone, this program is a particularly appropriate funding source.

- The Soil Conservation Service (SCS) of the U.S. Department of Agriculture has the authority, through local soil and water conservation districts, to assist in recreation area development and in the planning and application of conservation practices. Assistance applicable to shorefont recreational planning development includes recreation area development, access roads, protection for heavy use areas, park and lake construction, management of wildlife wetland habitats, and grading and shaping of recreation land.

  The Watershed Protection and Flood Prevention Act of 1954 gives the SCS authority to provide technical and financial assistance for projects involving public water based recreation is available and all installation costs are eligible for loans. That act also authorizes reimbursable advances for preservation sites.

- The U. S. Army Corps of Engineers, under the Federal Water Project Recreation Act of 1965 (Public Law 89-72) may fund up to 50 percent of the separate costs for recreation facility development at a water resource development project location. The local sponsors of the project must agree to operate, maintain and replace the constructed facilities when needed. It should be noted that due to a recent decision (May, 1978) the cost of lands donated to the Corps for recreational development may not be considered as part of the 50 percent share of local project sponsors.

- The Federal Highway Administration appropriates funds to the State Office of Highways for highway construction and improvements. Providing access to the state's scenic and recreational areas is an important aspect of this program. These funds may

also be used for recreational use of rights-of-way, corridors, small parks, and the designing, planning and construction of access ramps to public boat launching areas from highway bridges. In urban areas, bicycle and pedestrian facilities projects may be eligible for funding on a 70-30 percent matching fund basis.

- The Louisiana Department of Wildlife and Fisheries is responsible for the management and protection of wildlife and fish resources in the state. Providing outdoor recreational opportunities such as boat launches, adequate access and facility construction are part of the duties of the Department of Wildlife and Fisheries.

- Another possible source of funding is through the Department of Housing and Urban Development in the form of Community Development Block Grants. Assistance from the grant may be used for the acquisition of real property; for the provision of recreation; conservation of open space, scenic areas or natural resources; and the installation or construction of public works and related facilities. In order to obtain a Community Development Block Grant, a summary three-year plan which identifies community needs and methods to meet the needs must be supplied by the applicant.

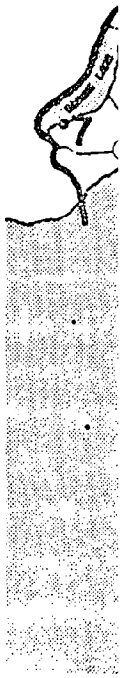
- The Louisiana Office of Tourism and Promotion assists designated "tourist promotion agencies" with matching funds for approved projects. Applications are submitted to the appropriate Economic Development District by local tourist promotion agencies.

- The Economic Development Administration (EDA) of the U. S. provides up to 80 percent funding for public works facilities construction. To be eligible for such funding, the project must respond to a local economic need, since EDA's mandate is specifically concerned with economic development and aiding and encouraging employment.

Parish	Site #	Name & Description
Cameron	(1)	Rockefeller State Wildlife Refuge: 64,500 acres; birdwatching, fishing
	(2)	Sabine National Wildlife Refuge: 142,717 acres; limited hunting, birdwatching, fishing
	(3)	Rutherford Beach State Park: camping, swimming, sun bathing, fishing
	(4)	Hackberry Beach: Swimming, sun bathing, fishing
	(5)	Holly Beach: swimming, sun bathing, fishing
	(6)	Cameron Camping Area: swimming, camping, fishing
	(7)	Sabine Lake Boat Launch
	(8)	Calcasieu Ship Channel Boat Launch
	(9)	Mermentau River Boat Launch
Vermillion	(10)	Paul J. Rainey Private Wildlife Refuge: 27,000 acres; birdwatching
	(11)	Intracoastal City Boat Launch
Iberia	(12)	Marsh Island State Wildlife Refuge: 78,000 acres; birdwatching, fishing
	(13)	Shell Keys Federal Wildlife Refuge: 8 acres; birdwatching
	(14)	Commercial Canal Boat Launch
St. Mary	(15)	Cypremort Beach: 3,000 foot manmade beach; picnicking, swimming, sun bathing, fishing
	(16)	Burns Point: picnicking, swimming, sun bathing, fishing
	(17)	Intracoastal Canal Boat Launch

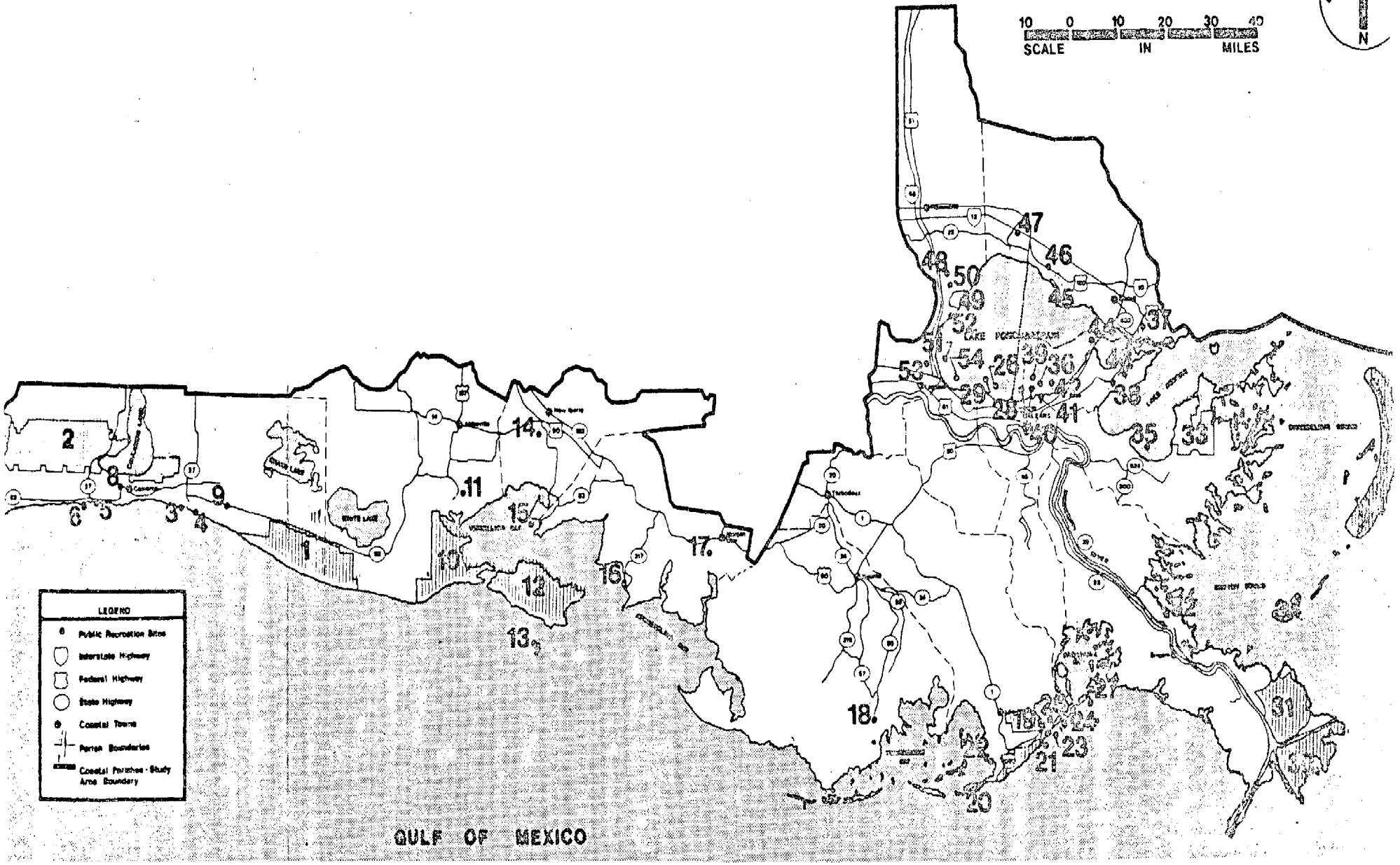
Parish	Site #	Name & Description
Terrebonne	(18)	Cocodrie Boat Launch
LaFourche	(19)	Wisner State Wildlife Management Area: 21,600 acres; hunting, fishing
	(20)	East Timbalier Island National Wildlife Refuge: 337 acres; birdwatching
	(21)	Elmer's Island: swimming, sun bathing, fishing
	(22)	Fourchon: boat launch, swimming, sun bathing, fishing
Jefferson	(23)	Grand Isle State Park: (East End and West End combined) 140 acres; camping, swimming, sun bathing, fishing
	(24)	Grand Isle Beach: swimming, sun bathing, fishing
	(25)	Grand Isle Fishing Pier: (old La. 1 bridge) fishing
	(26)	Linear Park: 10 miles along Lake Pontchartrain; biking, hiking, jogging, picnicking, fishing
	(27)	Fort Livingston: Grand Terre Island; historic fort.
	(28)	Bonnabel Boulevard Boat Launch
	(29)	Williams Boulevard Boat Launch
Plaquemines	(30)	Pass a Loutre State Wildlife Management Area: 66,000 acres; limited hunting, fishing, birdwatching
	(31)	Delta National Wildlife Refuge: 48,800 acres; fishing, birdwatching
	(32)	Bohemia State Wildlife Management Area: 33,000 acres; hunting, fishing, birdwatching

Parish	Site #	Name & Description
St. Bernard	(33)	Biloxi Wildlife Management Area: 39,580 acres; hunting, birdwatching, fishing
	(34)	Breton Islands National Wildlife Refuge: 7,500 acres; birdwatching, fishing
	(35)	Fort Proctor: Lake Borgne historic fort
Orleans	(36)	Pontchartrain Seawall and Lakeshore: swimming, fishing, jogging, walking, biking, picnicking
	(37)	Fort Pike: 125 acres; historic fort, picnicking, fishing, boat launch
	(38)	Fort Macomb: historic fort
	(39)	Municipal Yacht Harbor: public marina
	(40)	Orleans Marina: public marina
	(41)	West End Boat Launch
	(42)	Seabrook Bridge Boat Launch
	(43)	Chef Menteur Pass Boat Launch
	(44)	South Shore Boat Launch
St. Tammany	(45)	St. Tammany Wildlife Refuge: limited hunting, birdwatching, fishing
	(46)	Fountainbleau State Park: 2,755 acres; camping, hiking, biking, swimming, sun bathing, fishing
	(47)	Fairview Riverside State Park: 100 acres; on Tchefuncte River 2 miles from Lake Pontchartrain; camping, swimming, sun bathing, fishing, boat launch
Tangipahoa	(48)	North Pass Boat Launch
St. John	(49)	Manchac State Wildlife Management Area: 5,261 acres; hunting, fishing, boating, crawfishing
	(50)	Akers Fishing Pier: (old U.S. 51 bridge)
	(51)	Frenier Beach: boat launch
	(52)	Ruddock Boat Launch
	(53)	LaPlace Boat Launch
St. Charles	(54)	Bonnet Carre East Levee Small Boat Launch



IGURE D-1

EXISTING PUBLIC SHORELINE RECREATION SITES AND ACCESS ROUTES



MAINE

Shorefront access is a delicate political issue in Maine, where private property owners vociferously oppose attempts to let the public use the coastal areas. Except in a very few cases, private ownership extends to low tide or 100 rods (503 meters) from high tide (whichever is less).

A colonial ordinance dating back to the mid-seventeenth century authorized private land ownership in the intertidal zone, subject to public rights for fishing, fowling, and navigation, but no mention was made of recreational rights. Maine coastal officials are interested in testing these recreational rights in the courts, but a case which they had planned to use as a feeler in this effort was recently dismissed and the Attorney General's office is now backing off from its former commitment to this issue.

The state coastal program has created a Title Search Assistance Fund to help communities identify public access points. To date approximately 15 communities have participated in this program. Once the access points are determined, communities are more likely to allow their own residents to use them and tend to discourage "outsiders."

State coastal officials say that they are not aware of any great clamor for improved beach access, and are therefore uncertain about how large a program to develop. They are more aware of inquiries about boat access and have helped fund the Fish Pier Development Program. A study identified potential pier development sites and a combination of Economic Development Administration and state bond issue money was

used to fund the construction of six state-sponsored piers on the coast. Six additional sites are being examined by local governments which received CZM funding for fish port planning studies.

Because of the political climate of beach access in Maine, state coastal officials are hesitant to propose any state legislation. They fear that if such legislation is rejected, the courts will cite that defeat as "legislative intent" and use it against beach access cases.

DRAFT

SHOREFRONT ACCESS AND PROTECTION PLANNING IN MAINE

Fulfilling Requirements of Section 305 (b) 7 of the
Coastal Zone Management Act Amendments of 1976.

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1. PROCEDURE FOR ASSESSING AREAS REQUIRING ACCESS OR PROTECTION

The purpose of assessing areas requiring additional access or protection planning is to express more than local concern with respect to additional access or protection needs for beaches and other coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value. Because the needs and means for access improvement and site protection are in many cases quite different, assessment of each is treated here separately.

1.1 Assessing Access Needs

The procedure for assessing coastal physical access needs in Maine is a six-fold approach based on the following activities and studies:

1.11 Public Facilities For Boats Program

1.12 Inventories of Public Coastal Areas

1.13 Analysis of State Park Use

1.14 Statewide Comprehensive Outdoor Recreation Plan

1.15 Surveys and Studies

1.16 Litigation

Although physical access is emphasized here, visual access to the shore and the ocean is also very important. Visual access is discussed separately below (1.17).

1.11 Public Facilities For Boats Program - One approach to the assessment and provision of actual access to the coast is offered in the State's Public Facilities for Boats Program. Administered by the Bureau of Parks and Recreation, a Public Facilities For Boats Plan was prepared by the Bureau (January, 1976) to guide the provision of access sites. Funding for the Program comes from the Boating Facilities Fund. Money from this Fund is to be used among other things, to "acquire, construct and maintain, within the funds available, public facilities for boats in the waters of the State, including but not limited to launching ramps, parking sites and access roads."

1.12 Inventories of Public Coastal Areas - The second aspect of an assessment and documentation of access needs is an inventory of publicly owned properties in the coastal area. Undertaken cooperatively by the State Planning Office and the Bureau of Parks and Recreation, the inventory covers publicly owned coastal area parcels, not including submerged lands. Public lands throughout Maine's coastal area are being included, not just those contiguous to the water, to help assess the possibility of banking land.

Complementing this is an inventory of public accessways to the water, including those on public beaches, being undertaken by the State Planning Office (unpublished). Local officials and knowledgeable citizens have been contacted for this information. All claimed public accessways identified in this manner are being mapped and described on inventory forms. By identifying the parcels of land in which the public holds proprietory rights, it can be insured that existing public land is not lost by adverse possession or other procedures, or so encumbered by adjacent development as to destroy the existing access or use potential.

The successive step in needs assessment is the selection of sites which have high potential for public access. This has been done in part in a report, The Maine Coast: Recreation and Open Space, prepared for the Committee on Coastal Development and Conservation. The report identifies coastal sites suitable for resource protection or outdoor recreation. The Waterways Division of the Bureau of Parks and Recreation also selects sites suitable for recreational boat access as mentioned above.

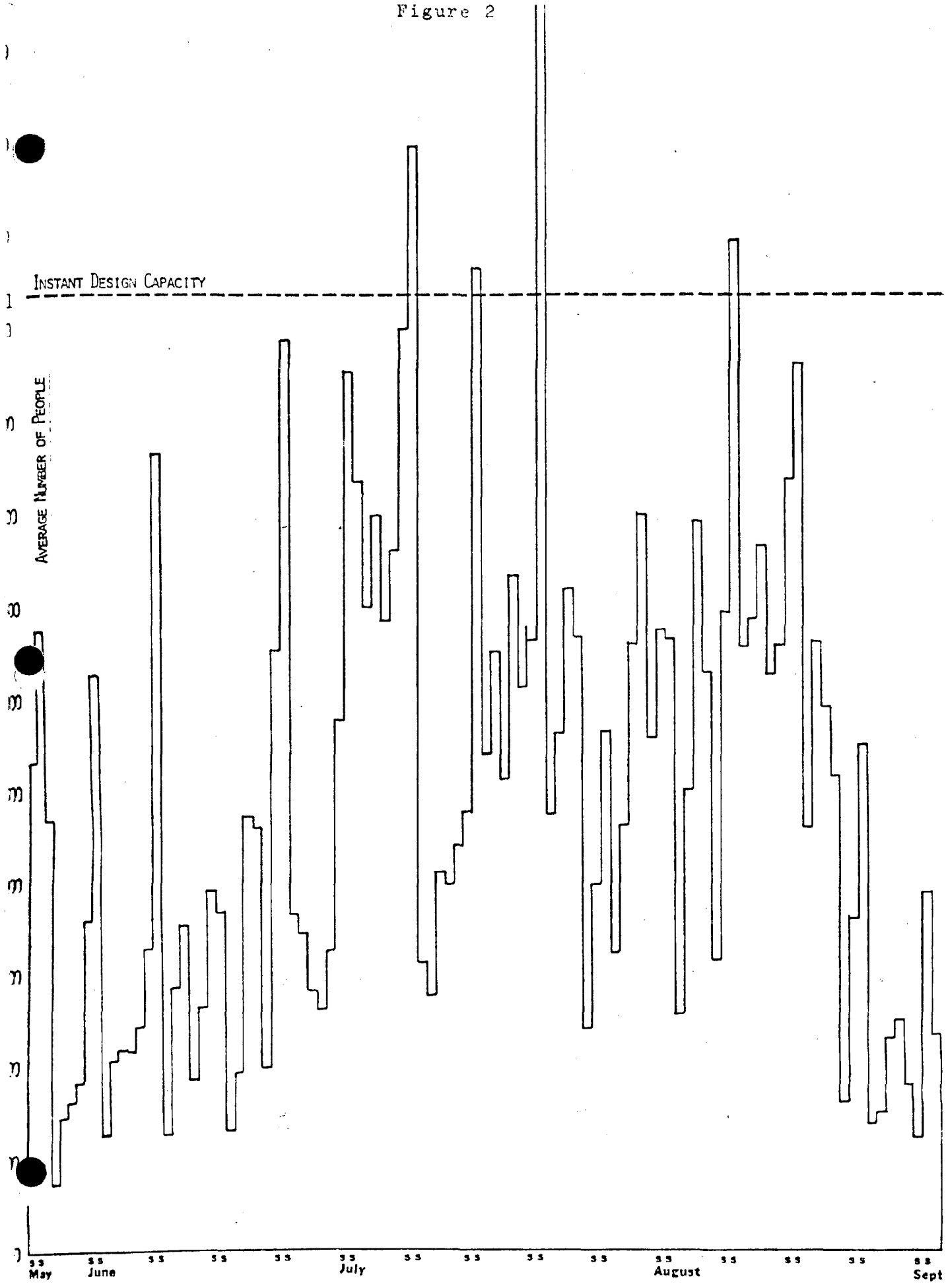
Once potential sites have been selected, onsite assessments can be conducted to determine the relative suitability of each for public access use. This field inventory should consist of two major parts: (1) a physical characteristic/ownership component, and (2) an assessment of environmental impacts.

The product of the foregoing will be a definition of what the State intends to do, where it intends to do it, and how it proposes to do it. This process has been initiated. Prior to adoptic or other action extensive public discussion will be required.

1.13 Analysis of Park Use - The third aspect of an assessment of access needs is analyses of public use of supervised state parks and memorials. Histograms were prepared by the Bureau of Parks and Recreation as part of its State Park System Plan (in preparation) to show public use patterns. Each graph was prepared by determining the average number of people using an area each day during the operating seasons of 1974, 1975 and 1976. Areas of the same use-type were grouped and this information was plotted for the 101 day period between Memorial Day weekend and Labor Day. The shapes of the resultant graphs indicate how visitation is distributed in time. Figure 2 is the graph for Popham Beach, Peacock Beach and Reid State Parks, three swimming-picnicking parks in the coastal area.

An indication of the extent to which the public is utilizing existing recreational capacities can be gained by examining the figures. (In this respect, the reader is cautioned that the graphs represent, for the most part, groups of facilities of the same use-type. Thus, individual facilities may exhibit use patterns which differ from those illustrated.) All graphs were prepared in the same scale making it possible to compare directly the volume of use. Instant Design Capacities on each graph refer to the total number of people who can be accommodated at the areas at any given moment.

Figure 2



SWIMMING/PICNICKING (PEACOCK BEACH, POPHAM BEACH AND REID STATE PARKS)

1.14 SCORP - The fourth aspect of assessing access needs is the analysis of facility and land deficiencies for recreation activities in the Statewide Comprehensive Outdoor Recreation Plan (1977). Detailed analyses of a number of coastal related activities were prepared for the four coastal planning districts in Maine. Table 1 is a summary of calculated land deficiencies in the coastal planning districts.

The Maine SCORP also identified the need for "a study of the needs for additional State Park areas with visual or foot access to the Maine coastal shoreline." 1/

1.15 Surveys and Studies - The fifth aspect of access needs assessment is a series of Maine resident preference surveys. A 1975 survey conducted for the SPO found that 53% of the coastal area respondents favored increasing publicly accessible coastline in Maine. 2/ These figures are consistent with an earlier survey which found that 55% of those interviewed across the state reported they would like to see the State spend more money to acquire coastal beaches and scenic areas, were the funds available. 3/ In a 1977 survey, 42.6% of those surveyed in the coastal area said that, public coastal land was less than adequate. 4/

In addition to the statewide and coastal surveys citied, there have been in recent years a number of local and regional studies and surveys which have reported the problems of access needs along the Maine coast. At a recent meeting of the Land and Water Resources Planning Committee of the Hancock County Planning Commission, the "lack of access to the shoreline by fishermen due to increasing sales of shore property for residential use" was identified as a serious problem. 5/

1/ Maine Bureau of Parks and Recreation, Maine Statewide Comprehensive Outdoor Recreation Plan (Augusta, 1977) p. II-18.

2/ Maine State Planning Office, Citizen Evaluation of Public Policy in the Coastal Zone (Augusta, 1975), prepared by the Social Science Research Institute, Univ. of Maine, p. 85.

3/ Maine State Planning Office, An Appraisal by the People (Augusta, 1973), prepared by Northeast Markets, Inc., p.30.

4/ Maine Bureau of Parks and Recreation, Maine Resident Outdoor Recreation Participation and Preferences - A Look of the Coast (Augusta, 1977), prepared by Northeast Markets, Inc.

5/ Meeting of the Land and Water Resources Planning Committee, Hancock County Planning Commission, February 15, 1978.

Table 1
DISTRICT SUMMARY OF LAND DEFICIENCIES IN MAINE*

Activity	Planning District											
	Southern			Cumberland			Mid-Coast			Eastern		
	1976	1980	1990	1976	1980	1990	1976	1980	1990	1976	1980	1990
Swimming				X	X	X	X	X	X			X
Camping						X						
Picnicking	X	X	X	X	X	X		X	X			
Boating	X	X	X	X	X	X	X	X	X			
Canoeing										X	X	X
Interpretive Trails	X	X	X	X	X	X	X	X	X			
Hiking	X	X	X	X	X	X	X	X	X			X
Horseback Riding				X	X	X						
Ski Touring	X	X		X	X	X	X	X	X			X
Bicycling	X	X	X	X	X	X	X	X	X			

*An X indicates a deficiency.

Source: 1977 Maine Comprehensive Outdoor Recreation Plan

Other studies have cited the need for public access in Maine as well. A 1975 Assessment of Water and Related Land Resources in New England listed access to recreation areas as lacking in three of seven coastal water basins in Maine. 1/ A 1973 Open Space Plan for the Bath-Brunswick region specified sites for the acquisition for boat launch and recreation areas. 2/ RC&D Projects on the coast have identified lack of access for area residents as among serious problems. 3/

Related to these studies are the activities of towns in identifying existing accessways. The communities of Brunswick, Belfast, and Southwest Harbor for example, have conducted indepth investigations to locate existing public rights of way to the water. Funded by a grant from the Maine Coastal Program the town of Cumberland is currently researching the public's legal rights to the shore in several southern Maine communities.

To promote increased local activity of this sort, the Time and Tide RC&D in midcoastal Maine has conducted workshops on locating old public rights of way. A report is being issued to reach more towns interested in this same type of project. 4/

1.16 Litigation - The final aspect of Maine's process of access evaluation is an ongoing program of litigation. Currently several law suits relating to various aspects of the access issues are pending. 5/ As opportunities arise, legal issues will be raised and the Maine Attorney General will intervene in the public's interest where appropriate.

1/ New England River Basins Commission, 1975 Assessment of Water and Related Land Resources, New England Region Summary Report, Severe Resource Problems and Recommendations for their Resolution, (Boston, December, 1977) p. 143.

2/ Bath/Brunswick Regional Planning Commission, Open Space Plan, prepared by Community Planning Services, 1973.

3/ Time and Tide RC&D, Program of Action, assisted by USDA, et al, 1974; Down East RC&D Council, Framework Plan, assisted by USDA, et al, 1977.

4/ Maine Department of Marine Resources in cooperation with Time and Tide RC&D, Public Access to Maine Shoreline: A Workshop Discussion, DMR Fisheries Information Series #1, June, 1978.

5/ Suits are pending, e.g. in the communities of Brunswick and Deer Isle.

1.17 Visual Access - Visual access to the water is as important to many users of the coast as is physical access. The Maine Department of Transportation provides highway rest areas in scenic coastal locations. The Maine Comprehensive Outdoor Recreation Plan also recognizes the value of coastal scenery and supports the protection of outstanding coastal areas coupled with the provision of visual access to the shore. 1/

In addition, of all the states, the most prevalent use of conservation easements as a technique for shoreline preservation has been in Maine. Conservation easements have been granted on approximately 9,000-10,000 acres of private lands in the coastal area to protect shorelands and to preserve the visual attractiveness of the coast.

1/ Maine Bureau of Parks and Recreation, Maine Comprehensive Outdoor Recreation Plan (August, 1977), p. II-18.

1.2 Assessing Protection Needs

Presented here is a review of those activities undertaken or underway to assess needs for the protection of important coastal sites i Maine. The development of a process for the protection of such areas is also dealt with in other sections of Maine's coastal Program concerned with Geographic Areas of Particular Concern (Appendix C), Areas for Preservation or Restoration (Appendix D), and Goals, Objectives and Policies (Section 6).

The procedure for assessing coastal protection needs in Maine is a manifold approach involving the conservation of:

1.21 Critical Areas

1.22 Wildlands

1.23 Rivers

1.24 Wildlife Areas and Wetlands

1.25 Islands

1.26 Historic Sites

1.27 Beaches

A summary of thirteen principal statutes governing land and water use and quality on the coast is presented at the end of this sectic (1.28).

1.21 Critical Areas - The systematic identification, registration and conservation of coastal critical areas is the first aspect of protection needs assessment.

In 1974, an act establishing a State Register of Critical Areas was enacted. Under this legislation, the State Planning Office has the responsibility to develop a Critical Areas Program for the purpose of identifying, documenting, and encouraging the conservation of critical areas. An eleven member Critical Areas Advisory Board was created to advise and assist the State Planning Office in this endeavor. The Critical Area Program essentially refines an inventory completed through the Natural Resources Council in 1972. This initial project by the NRC established an interest in the identification and protection of natural areas.

According to the legislation, critical areas are officially recognized (registered) areas which contain natural features of state significance--either highly unusual natural features or outstanding examples of more common features. Critical areas may include exceptional plant or animal habitat, areas of great geological or historical interest, and outstanding scenic areas. Examples include colonial bird nesting sites, naturally occurring rhododendran stands, significant fossil deposits, and scenic gorges and waterfalls.

The Critical Areas Program consists of two phases: Registration and conservation. The registration process consists of the identification of subjects for investigation, the preparation of planning reports on priority subjects, recommendations for registration from the planning reports, a preliminary decision on the registration with a 60 day review period for the landowner, and final registration if appropriate. The conservation process is dependent upon the cooperation of the landowners and may, with the owners consent, involve management agreements and the sale or donation of property rights. In this process, the State Planning Office attempts to maintain a close relationship with the owners of critical areas. Wide dissemination of information on critical areas is not encouraged without the landowners consent.

As discussed in 2. below, the Critical Areas Program has undertaken an inventory and detailed description of the sand beaches of the Maine coast. This information goes a long way toward long term protection of coastal beach systems.

1.22 Wildlands - The second aspect of protection needs assessment deals with the "wildlands" of Maine's coastal area. The Maine Land Use Regulation Commission (LURC) has a mandate to plan for and zone all land use in the unorganized territory of Maine (often colloquially called the "wildlands"), including six unorganized townships and 254 islands in the coastal area. To assist in the evaluation of the attitudes of Maine residents toward wilderness conservation at least three surveys have been undertaken.

Lessees In the Unorganized Townships of Maine, by the Maine Land Use Regulation Commission, collected background information, opinions and attitudes, and lease information from lessees of land in the unorganized area. When asked what they liked particularly about the Maine woods, 80 percent indicated the quiet and solitude, 64 percent the wilderness atmosphere, 66 percent the fishing opportunities, 54 percent the hunting opportunities, 12 percent the vacation communities, and seven percent other. At the very least, these responses indicated a desire to protect and maintain the natural environment characteristics of the unorganized area.

Maine, An Appraisal by the People, conducted for the State Planning Office in 1973, also addressed the wilderness issue. The survey found that the features of Maine that respondents liked the most were its scenic beauty and its wide open, uncrowded feeling. The same survey found that a majority of respondents statewide supported the maintenance of undeveloped wildlands.

An Analysis of the Attitudes of Residents Toward Land Use In Maine's Unorganized Area undertaken for the Land Use Regulation Commission in 1974, found that 88 percent of the Maine residents surveyed felt that "certain wilderness areas, lakes and rivers should be set aside for primarily primitive recreation like hiking and canoeing." Eighty-three percent of the respondents favored State regulation of land use in the unorganized areas of Maine.

A synopis of these studies indicates an underlying concern for the protection of Maine's "wilderness" but at the same time a recognition of the need for industry and jobs. There seems to be a desire to balance the two, to have some of both if at all possible.

One method of limiting development in the unorganized area is through the planning and zoning responsibilities of the Maine Land Use Regulation Commission. Existing areas are being identified by the Commission and zoned as protection districts. These efforts may also serve as an inventory of important recreation and natural areas. From the inventory list, important areas could be selected for possible acquisition by federal or State agencies.

The Land Use Regulation Commission has published a Comprehensive Land Use Plan (September, 1976) for the plantations and unorganized townships of the State. The Commission has also conducted and published A Preliminary Study of the Coastal Islands in the Land Use Regulation Commission's Jurisdiction (April, 1976). Both of these documents go a long way toward outlining the State's interest in conserving its coastal wildlands.

1.23 Rivers - Although Maine does not have a State wild and scenic rivers program, there has been considerable activity recently regarding assessment of rivers deserving protection, including several rivers in Maine's coastal basins.

Maine has passed special legislation for the zoning and protection of the Saco River in southern Maine and it has the limited river zoning and regulating protection afforded by the Land Use Regulation Commission.

Maine has one designated wild and scenic river, the Allagash. Though State administered, the Allagash is designated as a National River under the National Wild and Scenic Rivers Act of 1968. Several coastal rivers in Maine have been suggested as potential study rivers under the Act. These include the Machias River, the St. Croi: River, the Kennebec River and the Sheepscot River. Recently the National Park Service has been surveying rivers throughout the country, utilizing general criteria, to preliminarily determine which rivers might qualify for further in depth study as potential national wild and scenic rivers. This survey effort has just been completed for Maine and several rivers are expected to meet the general criteria.

In addition, 25 coastal basin rivers in Maine have been recommended for screening as potential wild, scenic and recreational rivers in a report, The Maine Coast: Recreation and Open Space, prepared for the Committee on Coastal Development and Conservation.

To assess the attitudes of residents toward wild and scenic rivers, the subject was addressed in the 1973 survey, Maine, An Appraisal by the People, in the context of several recreation questions. On a statewide basis, the protection of wild and scenic rivers was e third most popular in a list of seven choices. The protection o. wild and scenic rivers was number one or number two priority in several districts, including York County.

1.24 Wildlife Areas and Wetlands - The acquisition or protection of wildlife areas and wetlands in Maine's coastal areas are largely accomplished through the programs of the Department of Inland Fisheries and Wildlife and the Department of Marine Resources and through the regulations of the Coastal Wetlands Alterations Act and the Site Location Act, administered by the Department of Environmental Protection, and the Stream Alteration Act administered by the Department of Inland Fisheries and Wildlife.

The long term acquisition objectives of the Department of Inland Fisheries and Wildlife include the acquisition of vulnerable salt marsh areas and coastal eider and seabird nesting islands. To aid in the assessment of which islands to acquire the Department has been cooperating in a multiyear study of significant nesting islands with the U.S. Fish and Wildlife Service and the State Cooperative Wildlife Unit. Exhaustive nesting inventories have been undertaken and a selection procedure formulated to select habitat of highest significance.

The zoning activities of the Land Use Regulation Commission in the unorganized area of Maine is also a means of assessing the need for protection of coastal wildlife areas and wetlands. LURC's final comprehensive plan, approved in 1976, includes a Wetland Protection Subdistrict, a Flood Prone Protection Subdistrict, and a Fish and Wildlife Protection Subdistrict.

Finally, the mandatory shoreline zoning law for organized towns in Maine offers some protection of smaller wildlife or wetland areas at the local level. Each town is required to identify fragile wetlands and important wildlife areas. Many of these areas are put into resource protection districts or other zones of restricted use.

1.25 Coastal Islands - Maine's coastal islands are unique to the entire eastern coast of the United States in that few other states have islands with such geological and biological diversity. Many have argued that these islands are not only nationally significant but of worldwide significance as well. As such, a strong case can be made for the protection of a representative sample of Maine's coastal islands from development.

A number of agencies and organizations in Maine are involved in the assessment and protection of islands. One hundred-three coastal island properties are owned by federal or state public agencies or private conservation organizations in Maine. Several others are held by local governments for recreation or resource conservation. At the state level, the principal island conservation activities are undertaken by the Department of Inland Fisheries and wildlife, the Bureau of Public Lands, the Bureau of Parks and Recreation, and the Land Use Regulation Commission.

The work of the Department of Inland Fisheries and Wildlife and the Land Use Regulation Commission concerning island evaluation and protection is described above (1.22 and 1.24).

The Coastal Island Registry, a program of the Maine Bureau of Public Lands includes jurisdiction over approximately 1,300 islands which have not been registered with the State.

The Coastal Island Registry was created to clarify and establish the State's interest in coastal islands and to develop and implement management policies for the use and protection of State owned islands. In accordance with MRSA Title 33, Chapter 25, the Registry is authorized to identify, described and assign numbers to all ledges and islands in Maine's coastal waters, to require registration of all these islands, and to promulgate all rules and regulations necessary to carry out its lawful purposes. As amended in 1975, the law further requires the Registry to review all claims to coastal islands and determine the validity of these claims through a systematic search and analysis of island titles.

The second phase of the Registry program, a review of island titles, is underway. The Bureau of Public Lands must review each island registration with a view toward disallowing registrations by or on behalf of persons who are not true owners of the islands. This involves the review and title search of up to 1,500 islands followed by an administrative process and possibly judicial proceedings.

At the same time, the Bureau is developing A Management Plan for the Unregistered Coastal Islands of Maine. The plan will allocate management responsibility for specific islands to public agencies which have a clear interest in assuming such responsibilities. For example, islands which are significant as bird nesting sites will be transferred to Fish and Wildlife. Islands which lend themselves to recreational development will be transferred to Parks and Recreation. The plan will suggest the most suitable use of each island based largely on natural resource inventories already completed for the islands. Many islands will be set aside for resource protection in the public interest.

Other island protection efforts in Maine relate to island trusts and conservation easements. The passage, in 1971, of an Act to Provide for Coastal Island Trusts outlined a method by which municipalities, the State, and the Federal government could work together towards planning for and protecting significant island groupings. The legislation resulted primarily from a federal study of coastal islands. A major recommendation of that study was the Casco Bay Islands be initially studied as a model island grouping.

As of the end of 1976, the Maine Coast Heritage Trust had secured conservation easements on 64 entire islands and 57 portions of islands. The recipient agencies for these easements include the State Bureau of Parks and Recreation, the National Park Service, the Nature Conservancy, the Department of Inland Fisheries and Wildlife, the Maine Audubon Society, and several municipalities. (See 1.17 and 5.2 for further discussion of conservation easements.)

1.26 Historic Sites - The recognition of sites of historic significance is the sixth aspect of assessing protection needs in Maine.

At the State level, it is primarily the responsibility of the Maine Historic Preservation Commission to screen and nominate areas on the coast as candidates for the various national historic registers. Twenty-three coastal sites in Maine are National Historic Landmarks. Of the 328 Maine sites on the National Register of Historic Paces, 215 are located in coastal area communities. Twenty-five of the 32 sites in Maine on the National Register of Historic Districts are in coastal towns.

The Historic Preservation Commission is also responsible for the preparation and maintenance of the State Comprehensive Historic Preservation Plan, and all of the state responsibilities as required under the National Historic Preservation Act.

Additionally, the Bureau of Parks and Recreation directly administers twenty-two historic sites and memorials in the coastal area.

1.27 Beaches - Maine's coastal beaches are one of the state's most important social, ecological recreational assets. They also represent a large part of the public's access to the sea. As such they are treated separately below.

1.28 Statutes - Currently there are about 75 state laws, administered by more than a dozen separate agencies, which pertain to management of coastal resources in Maine. Many of these have already been mentioned in this discussion. Table 2 is a summary of thirteen principal state statutes governing land and water use and quality along the coast.

Table 2

PRINCIPAL STATE STATUTES GOVERNING LAND AND WATER USE ALONG THE MAINE COAST

STATUTE	PURPOSE
Coastal Wetlands Act (38 M.R.S.A. 471-478)	Directs the Board of Environmental Protection to regulate uses that harm tidal and subtidal lands.
Coastal Island Trust Act (12 M.R.S.A. 641-646)	Enables coastal island trusts adm tered by coastal island commissi be set up to control and guide t velopment of Maine's coastal isla
Submerged Lands Act (12 M.R.S.A. 514-A)	Reaffirmed the State's ownership submerged lands.
Coastal Conveyance of Petroleum Act (38 M.R.S.A. 541-560)	Established an oil spill prevent clean-up program financed by a f oil brought into Maine ports.
Land Use Regulation Commission (12 M.R.S.A. 681-689)	Directs LURC to zone all land us unorganized areas of the state, ing six unorganized townships a islands in Maine's coastal area.
Mandatory Shoreland Zoning Act (12 M.R.S.A. 4811-4814)	Requires municipalities to enact enforce zoning for shore areas 250 feet of water.
Protection and Improvement of Waters Act (38 M.R.S.A. 356)	Mandates that the quality of all waters be protected from degrad
State Plumbing Code (22 M.R.S.A. 42)	Sets up minimum standards for s waste water disposal.
The Subdivision Law (30 M.R.S.A. 4956)	Specifies that communities have proposed subdivisions to see th meet minimum state criteria.
Site Location of Development Act (38 M.R.S.A. 481-489)	Controls large development proj through a permit procedure.
Protection and Improvement of Air Law (38 M.R.S.A. Ch. 4)	Directs the Board of Environmen tection to regulate all air emi protect public health, property, natural resources.
Solid Waste Management Act (38 M.R.S.A. Ch. 13)	Encourages programs that will r the volume of and assure the en mentally sound disposal of soli and promote the reuse and recov valuable resources.
Conservation of Marine Species Act (12 M.R.S.A. 3504)	Gives the Department of Marine broad regulatory powers to man almost all phases of marine fi

2. DEFINITION AND IDENTITY OF BEACHES

2.1 Confusion of Terms

Beaches can be defined in a variety of ways. The Maine courts have had a difficult time defining the beach and the shore. The study, Maine Law Affecting Marine Resources, included the following definitions from shorefront cases:

> What is the sea shore must first be defined. The sea shore must be understood to be the margin of the sea in its usual and ordinary state. Thus, when the tide is out, the low water mark is the margin of the sea, and when the sea is full, the margin is high water mark. The sea shore is therefore all ground between high water mark and low water mark (Storer v. Freeman, 6 Mass 435, p. 439; Laysesk v. Bangor Bank, 8 Me. 85 pg. 90 (1831).
>
> . . . . By beach, it is to be understood the shore or strand; and it has been decided, that the seashore is the space between high and low water mark (Coltis v. Hussey 15 Me. 237, 241 (1839).
>
> . . . . The word beach, must be deemed to designate land washed by the sea and its waves; and to be synonymous with shore (Littlefield v. Littlefield, 28 Me. 180, 181 (1848).
>
> The 'shore' is the ground between ordinary high and low water mark, the flats, and a well defined monument (Montgomery v. Reed,69 Me. 510, 514 (1879); Morrison v. Bank, 88 Me. 155, 160, 33 A. 782 (1895).
>
> The word [shore] strictly means that space which is alternately covered and exposed by the flow and ebb low water mark (Morrison supra).

The term intertidal zone also refers to the area between high and low water, the area over which the ordinary tides flow daily.

2.2 Ownership

Federal regulations state that the purpose of defining the term "beach" is to aid in the identification of those public beach areas requiring further access and/or protection. In states where most of the shoreline is beach frontage and public ownership extends only to high tide or the line of vegetation, planning for improved access to and protection of public beach areas is a relatively easy task. In Maine the situation is quite different.

In Maine, except in a very few cases, private ownership extends to low tide or 100 rods (503 meters) from high tide whichever is less. However, many beaches in this state, while technically privately owned, have for years been used as public common lands. In several instances coastal communities have budgeted funds for private beach maintenance (e.g. Scarborough, Wells, York, Saco). In one or two

towns recent research has suggested that beaches heretofore thought to be private may actually be publicly owned (e.g. Kittery).

Hence, there are no definitive figures on beach ownership for the entire Maine coast. The Army Corps of Engineers in its National Shoreline Study, issued in 1971, estimated that only one-half of one percent of the Maine coast was in public recreational use though 3.2% was in local, state or federal public ownership[1/] (not all of which is available for public use). A report on Coastal Conservation Priorities, prepared for the State Planning Office in 1973, estimated total coastal federal ownership to be 1.2%, state ownership 1.3%, and local ownership 0.5% of the shoreline of the Maine coast[2/].

Total linear (mean high tide) sand beach ownership has been estimated as follows:

Table 3

Jurisdiction	Miles (Km)	% of Coast	% of Beach
Federal Beaches	0.2 (0.3)	*	0.3
State Beaches	6.3 (10.1)	0.2	8.5
Local Beaches	9.2 (14.9)	0.3	12.6
Private Beaches	58.2 (93.7)	1.7	78.6
TOTAL**	73.9 (119.2)	2.1	100.0

*Less than 0.01%
**Columns are not necessarily additive due to rounding

Clearly, public beaches, as defined, comprise a small percentage of the total coastal frontage.

Regardless of the statistics, ownership does not tell the entire story. Some private beaches along the Maine coast are used as if they were public and some publicly owned beaches remain unavailable because they are inaccessible or undeveloped.

To add to this confusion the public has certain rights along specific parts of the beach irrespective of ownership (except perhaps on federal military lands). Anyone can, for example, moor or rest a boat on tidal flats, sail over the flats, cross the flats to go to or from one's boat, take on or discharge passengers or cargo, fish, dig clams and worms, and hunt for wildfowl below the high water mark.

1/ U.S. Army Corps of Engineers, National Shoreline Study, North Atlantic Region (NY, 1971), p. 103.

2/ Reed and D'Andrea, Coastal Conservation Priorities Plan (South Gardiner, Maine, 1973), p. I-6.

These rights are stated in the Colony Ordinance of 1641 as amended in 1647 which it is generally assumed, forms the basis for public shore rights in Maine. The Colony Ordinance was enacted in Massachusetts and Maine was previously a territory of that Commonwealth. Notably absent from the list of permitted uses of the intertidal area is mention of recreational activities. Judicial interpretation of the application of the Colony Ordinance in Maine suggests that recreational bathing may be a permitted shore use, although the point has never been clearly tested. In any case, it is certain that the right of trespass across private lands to the seashore as applies to Great Ponds is not in force. The inability to get to the intertidal zone across private property from inland points makes public recreational rights for most people a moot advantage.

2.3 Definitions

Beaches can be defined in geologic terms as coastal accumulations of unconsolidated materials (sand beaches of particles ±0.625mm - 2mm in diameter; cobble beaches of particles ±2mm - 256mm in diameter) around the limit of wave action.

Beaches can also be described in terms of their physiographic parts (Figure 3). Seaward of the mean low tide line are the offshore zones of the sea; the land under the sea is the seabed or submerged marine lands. The area between mean low tide and mean high tide lines, which is subject to the normal flow of the tides, is the wet sand. "Foreshore", "intertidal zone", and "tideland" are used synonymously with this term. The area between the mean high tide line and the line of vegetation, the storm ridge scarp, or an artificial structure parallel to the water line, such as a seawall, is the dry sand or backshore. The wet sand and dry sand together comprise the beachface. The area landward of the vegetation line, the storm ridge scarp, or a seawall or similar structure is the upland.

2.31 Access Planning - For purposes of access planning, beaches are defined as all local and state sand beachface areas on the coast as well as the tidelands where the public has the rights specified in the Colony Ordinance of 1641-47 and the submerged marine lands held in trust by the sovereign State of Maine for the public. This definition encompasses both public sand beaches, which are among the State's most important recreational resources, and shorelands below mean high tide where the public has an interest in commercial as well as recreational pursuits.

In identifying access needs the following is being analyzed: (a) the supply of existing public facilities and areas, (b) the anticipated pressures for future use of these areas, and (c) the capability and suitability of existing areas to support increased access.

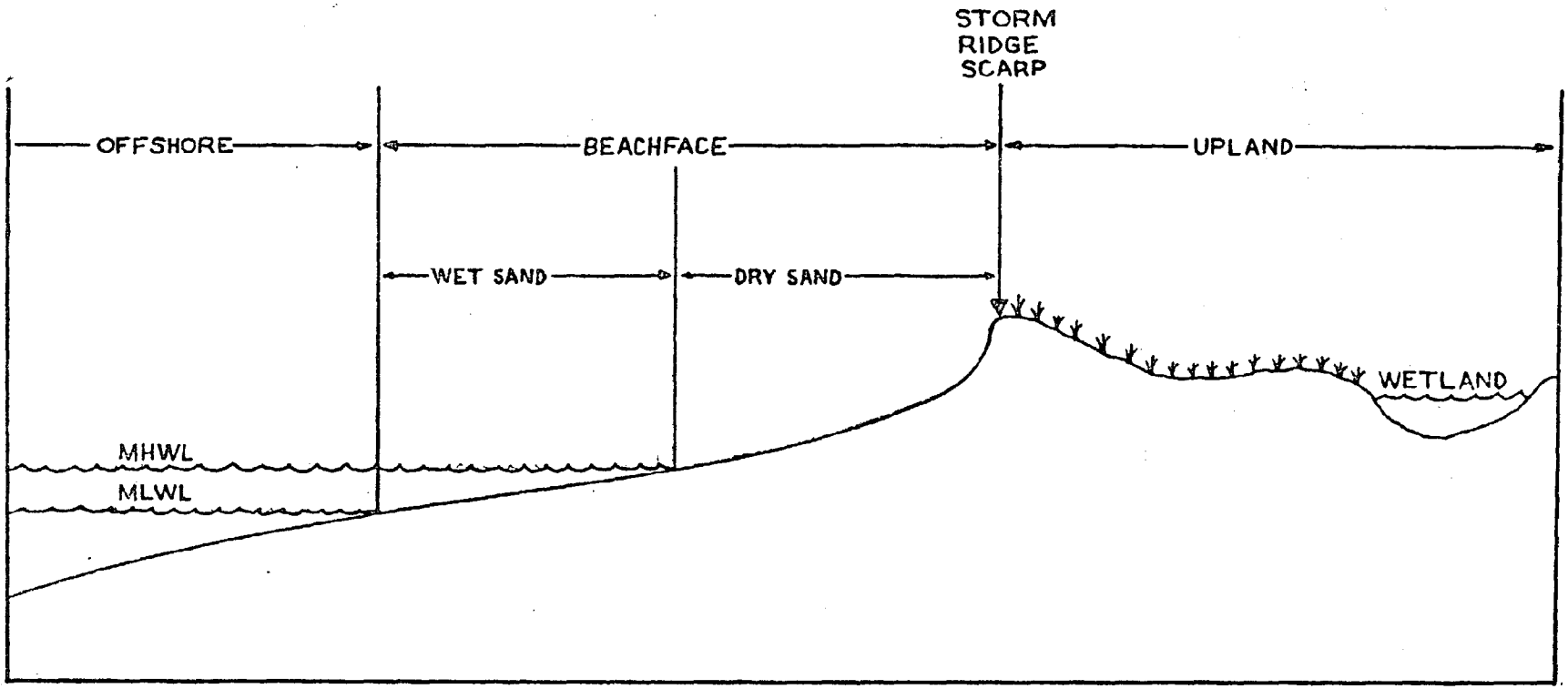


Figure 3 Shoreline Terminology

The body of literature available for use in determining access needs includes the following:

Creteau, Paul G. Principles of Real Estate Law. Portland: Castle Publishing Co., 1977.

Ducsik, Dennis. Shoreline for the Public. Cambridge: The MIT Press, 1974.

Henry, H.P. Coastal Zone Mgt. in Maine: A Legal Perspective. Prepared for the Maine SPO, 1973.

Maine Association of Conservation Commissions. "Boat Access Site Needs Survey Results." Kennebunkport, 1977.

Maine Audubon Society. "Areas of Concern Questionnaire Results." Falmouth, 1977.

Maine Bureau of Parks and Recreation. Maine Comprehensive Outdoor Recreation Plan. Augusta, 1977.

_____. Maine Resident Outdoor Recreation Participation and Preferences Survey - A Look at the Coast. Augusta, 1977.

_____. 1975 Visitor Use Survey: Day Use State Parks & Coastal Municipal Beaches from Portland to Kittery. Augusta, 1975.

Maine Department of Transportation. File information on "Highway layouts." Right of Way Division, Augusta.

Maine State Planning Office. File information on public access ways to water. Augusta, 1976.

New England River Basins Commission: Summary Report: Severe Resource Problems and Recommendations for their Resolution. Boston, 1977.

Northeast Markets, Inc. Maine, An Appraisal By the People. Prepared for the Maine State Planning Office, 1973.

Parks, Richard B. "Public and Private Rights to Maine Tidal Waters." in Maine Fish and Game (Summer, 1967).

Social Science Research Institute. Citizen Evaluation of Public Policy in the Coastal Zone. Prepared for the Maine State Planning Office, 1975.

Waite, G. Graham. "Public Rights in Maine Waters," in Maine Law Review, 17. 1965.

In addition, there are a number of local and regional reports, prepared over the past ten years, which have identified access needs in particular coastal areas.

Ongoing programs concerning beach access planning are described above (1.1).

2.32 Protection Planning -- For purposes of protection planning, beaches are defined as those state and local sand beachface and dune sites identified (1) by the Maine Critical Areas Program as significant geological and/or botanical ecosystems and (2) by the Maine Bureau of Parks and Recreation as significant recreational beach systems. This definition includes those public sand beaches which are among the State's most important natural and recreational resources.

It is anticipated that nonsand beaches, including those in the public domain, will be inventoried and studied by the Critical Areas Program. All beach systems, sand and nonsand, which meet the following criteria could be considered areas of particular concern:

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

(2) areas of substantial recreational value and/or opportunity;

(3) areas of significant hazard if developed due to storms, floods, erosion and salt water intrusion; or

(4) areas needed to protect, maintain or replenish coastal lands or resources.

The Maine Critical Areas Program has identified 44 principal coastal beaches with a cumulative length of 60 km. From this list, 29 beaches were selected for field checking based on the geological and botanical criteria outlined in Attachment A. To date, two dozen coastal beach sites have been placed on the State Registry of Critical Areas.

The Critical Areas Program list of beaches does not include many of the states major recreational beaches. However, these are precisely the beaches which most need protection to preserve their recreational values. Thirty-four sand beaches have been identified as of state level recreational significance in a report prepared for the Bureau of Parks and Recreation. These were selected due to their size, sand texture, history of use or geographic location. The major of these beaches are located southwest of Casco Bay.

A number of the beach areas identified for the Critical Areas Program and the Bureau of Parks and Recreation are publicly owned. These beach areas can be managed for resource conservation under Shoreland Zoning, the statutes of the Land Use Regulation Commission, the Submerged Lands Law and the Coastal Wetlands Act.

The administration of each of these laws is described in Section 7 of Maine's Coastal Program. That these laws are being enforced to protect the public rights in Maine's coastal beaches is evidenced by the denial of an application to construct a seawall on Popham Beach. The project was denied, in part, because it was found that it would "unreasonably interfere with existing recreational and navigational uses in that the wall will restrict the use of the beach by the public" and "may contribute to erosion of adjacent properties."

There is a growing body of literature on beach protection in Maine, including public beaches. In determining the needs for protection of public coastal beaches, consideration is being given to such factors as (a) environmental, esthetic or ecological conservation (including protection from overuse and mitigation of erosion losses[1]), and (b) protection for public use benefits (including recreational or historic uses). These factors have been considered in the preparation of the draft document Maine's Coastal Beaches: Recreation and Conservation, prepared for the Bureau of Parks and Recreation.

Among the sources available for guidance in the protection of Maine's coastal beaches are the following:

Maine Audubon Society. Seawall Policy. Approved April 5, 1978

Maine Bureau of Parks and Recreation. 1975 Coastal Beach Analyses-Kittery to Portland. Unpublished. Augusta, May, 1975.

_____. Maine Comprehensive Outdoor Recreation Plan. Augusta, March, 1977.

_____. 1975 Visitor Use Survey: Day Use State Parks and Coastal Municipal Beaches from Portland to Kittery. Augusta, September, 1975.

_____. "Southern Coastal Research-Initial Report". Unpublished memorandum by B.L. Walker, Augusta, April 15, 1975.

_____. Maine Resident Outdoor Recreation Participation and Preferences Survey.

Natural Resources Council of Maine. Resolution Re: The Need for a Comprehensive State Policy Regarding Protection of the State's Sand Beaches. Approved March 10, 1978.

[1] See also the element of Maine's Coastal Program dealing with erosion/mitigation planning.

Nelson, B.W. and L.K. Fink, Jr. Geological and Botanical Features of Sand Beach Systems in Maine. Prepared for the Maine Critical Areas Program, 1978.

St. Pierre, James A. Maine's Coastal Beaches: Recreation and Conservation. Prepared for the Maine Bureau of Parks and Recreation, 1978.

Timson, Barry and Donald Kale. Maine Shoreline Erosion Inventory. Unpublished. Prepared for the Maine State Planning Office, 1977.

Trudeau, Philip, Paul J. Godfrey and Barry S. Timson. Beach Vegetation and Oceanic Processes Study of Popham State Park Beach, Reid State Park Beach, and Small Point Beach. Unpublished. Maine Department of Conservation and Soil Conservation Service. September, 1977.

Maine Board of Environmental Protection. Policy on New Seawalls. Adopted May, 1978.

Ongoing programs relating to beach protection planning are described above (1.2).

3. ACCESS AND PROTECTION PLANNING POLICIES AND LEGAL AUTHORITIES

3.1 Access Policies and Legal Authorities

As discussed in section 2.2, all coastal planning in Maine must progress within the unusual framework of the Colony Ordinance of 1641-47, which authorized private land ownership in the intertidal zone, subject to certain public rights:

> It is declared, that in all creeks, coves, and other places about and upon salt water, where the sea ebbs and flows, the proprietor, or the land adjoining, shall have propriety to the low water mark, where the sea doth not ebb above a hundred rods, and not more wheresoever it ebbs further.
>
> Provided, that such proprietor shall not by this liberty have power to stop or hinder the passage of boats or other vessels, in or through any sea, creeks or coves, to other men's houses or lands.[1]

While private ownership of the intertidal lands limits the public's opportunities along the seashore, the Colony Ordinance also specified the public's rights in the area between high and low tide.

> Every inhabitant who is an householder shall have free fishing and fowling in any great ponds, bays, coves and rivers, so far as the sea ebbs and flows within the precincts of the town where they dwell, unless the freemen of the same town, or the general court, have otherwise appropriated them.[2]

Original authority, then, to provide public access to the shore is rooted in this mid seventeenth century statute. For without the ability to get to the intertidal zone across private property, it is difficult, and in many cases impossible, to exercise those rights explicitly reserved for the public.

Besides the Colony Ordinance, a number of policies pertaining to the improvement of physical and visual shorefront access in Maine have been articulated in recent State statutes and other documents. These policies, with legal authorities, are listed in Table 4.

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[1] From the 1814 Edition of Ancient Charters and Laws of the Colony and Province of Massachusetts Bay, p. 148.

[2] Ibid.

Table 4

STATE POLICIES AND LEGAL AUTHORITIES PERTAINING TO SHOREFRONT ACCESS

Purpose	Authority
Require permits for activities on or over tidal or subtidal lands to insure no unreasonable interference with recreational and other uses.	*Coastal Wetlands Act, 38 M.R.S.A. §471-478
Subject shoreland areas to zoning and subdivision controls in order to conserve cover, visual as well as actual points of access to inland and coastal waters and natural beauty.	*Shoreland Zoning, 12 M.R.S.A. §4811-4814
Assure that activities do not unreasonably interfere with navigational or recreational uses of rivers above head of tide.	*Stream Alteration Act, 12 M.R.S.A. §2206-2212
Acquire in behalf of the State, land or any interest therein within the State, with or without improvements, by purchase or gift, and by eminent domain.	*Bureau of Parks and Recreation, 12 M.R.S.A. §203
Acquire, construct and maintain public facilities for boats to improve public access to the public waters of the State.	Bureau of Parks and Recreation, Public Facilities for Boats Program, 38 M.R.S.A. §321-329
Identify methods and procedures to assure public access to navigable waters for recreation purposes.	Department of Environmental Protection responsibilities under Federal Water Pollution Control Act Amendments of 1977, Section 208(b)(2)(A)
Permits will not normally be approved for new seawalls or similar obstructions inasmuch as they interfere with recreational and navigable uses of the intertidal zone.	Policy of the Board of Environmental Protection
Acquire, construct, operate, and maintain such harbor facilities as may be necessary to implement the planned development of coastal resources, ports and harbors.	Department of Transportation, 23 M.R.S.A. §4206
Enhance and protect the natural scenic beauty of the State by controlling the indiscriminate use of outdoor advertising.	*Maine Traveler Information Services, 23 M.R.S.A. §1901-1925
Assure that the subdivision of land is conducted in such a way that air and water quality standards are maintained and scenic values and areas of natural beauty are conserved.	*Subdivision law, 30 M.R.S.A. §4956
Retain land or water areas in their natural, scenic, open or wooded conditions (to preserve visual access).	*Conservation Restrictions, 33 M.R.S.A. §667-668
Protect outstanding coastal areas and provide adequate visual or foot access to coastal shoreline.	Bureau of Parks and Recreation, S.C.O.R.P.

*Enforceable policies.

Those that refer to enforceable laws which provide some control over the restriction of the public's rights in shore areas are distinguished by an asterisk. The most important laws pertaining to the protection of physical access are the Coastal Wetlands Alteration Act and the Mandatory Shoreland Zoning and Subdivision Control Act.

3.11 Coastal Wetlands Act - A history and description of uses and areas regulated by the Coastal Wetlands Act are included in Section 7.3 of Maine's Coastal Program. Briefly, the purpose of the law is to assure that dredging, draining, filling, or construction of permanent structures on or over any tidal or subtidal land, is conducted such that it *does not unreasonably interfere with existing navigational or recreational uses*, cause unreasonable soil erosion, unreasonably interfere with the natural flow of any waters, unreasonably harm wildlife or freshwater, estuarine, or marine fisheries, or lower the quality of any waters. The law requires that any person proposing such activity first obtain a permit.

Permits for alterations may be issued by the Board of Environmental Protection (BEP) (provided the alterations are consistent with the standards in the Act) or by a municipality, provided the municipality has a) established a planning board, b) adopted a Shoreland Zoning ordinance approved by the BEP and by the Land Use Regulation Commission, and c) has made provision by ordinance or regulation for prompt notice to the BEP and the public upon receipt of the application and for written notification to the applicant and the BEP of the issuance or denial of a permit. The BEP may, after a public hearing, revoke the municipality's permit granting authority.

Persons proposing to permanently alter an intertidal or subtidal area must fill out the permit application form supplied by the Department of Environmental Protection (DEP) or by the municipality, if that municipality has permit granting authority. Applicants must indicate the location of the proposed project on the appropriate U.S.G.S. topographic map, and submit it with both a sketch of the project and a scale drawing of the coastal wetland to be affected (showing the project in detail, the landowner's property boundary lines, and low and high water marks). The applicant must describe: a) the present use of the wetland, b) the project, and c) the measures which will be taken to protect the surrounding area from any adverse effects of the project.

When the application is received by the DEP, it is checked for completeness and then assigned a permanent identification number. A visit to the site is made by at least a Department of Marine Resources staff member, and perhaps representatives of the Department of Inland Fisheries and Wildlife or the Soil Conservation Service. A summary of the information is then sent to the following Review Agencies, with a request for their comments within two weeks: the municipality, the Department of Marine Resources, the Regional Planning Commission, the Soil and Water Conservation Commission, and the Department of Inland Fisheries and Wildlife. After the review comments are received, the application is acted on by either the Department of

Environmental Protection staff or by the Board of Environmental Protection.

The DEP staff act on the following types of applications: a) pile structures entirely above mean low water, b) repairs and/or maintenance necessary to preserve or restore an existing structure or land contour or one which has existed on the applicant's property within one year prior to the date of application, if the proposed project will not result in any harm to the natural environment, c) erosion preventive measures, d) trenching operations where there will be immediate restoration, e) marine railways or ramps where no significant dredging or filling is involved. The staff order is then written either approving, denying, or approving with conditions, and the order is mailed to the applicant.

If the BEP action is required, a working document with recommendations is prepared by the DEP staff and mailed to the BEP members one week prior to the next scheduled Board meeting for its consideration and deliberation. At the meeting, a decision is made on the application to either approve, approve with conditions, deny, or set a date for a public hearing on the application. Within 30 days after receipt of an application, the BEP or the municipality must either issue or deny the permit, or order that a public hearing be held within 30 days of the order. If a public hearing is held, the permit must be issued or denied within 30 days after adjournment of the hearing. An applicant may request a public hearing.

Before issuing a permit, the BEP must notify the municipality where the planned activity is proposed and consider any comments received from the municipality within a "reasonable period" (usually two weeks). A permit issued by the BEP is effective on the date of approval, while a permit issued by a municipality does not become effective until 10 days after issuance. Immediately after issuance of a permit by a municipality, a copy of the application for the permit and the permit issued must be sent to the BEP. The BEP may then review the permit and either approve, deny, or modify it. Failure of the BEP to act within 30 days of receipt of the permit from the municipality constitutes effective approval of the permit.

If a permit is denied, the applicant may request a hearing by the Board or municipality. An average of perhaps half a dozen applications are appealed annually, and perhaps one of those may be reversed. Within 10 days of the applicant's receipt of the final Board decision, anyone who is aggrieved by the decision may petition the BEP for an opportunity to present new or additional evidence which may result in reconsideration of the conditions of approval or denial. The BEP may, within 30 days of receipt of such petition and after appropriate notice, grant the petition in full or in part, order a public hearing, or dismiss the petition. Municipalities which hear an application may handle appeals in the same manner as does the BEP.

Anyone aggrieved by any order or decision of the Board or municipality in regard to any matter upon which there was a hearing before the Board or municipality and of which a transcript is available, may within 30 days after notice of the filing of such order or decision appeal to the Superior Court. The court's review is limited to

questions of law and to whether the Board or municipality acted regularly and within the scope of its authority. The decision of the Board or municipality is final so long as supported by substantial evidence. The court may affirm, reverse, or remand the decison of the Board or muncipality for further proceedings.

Any filling, dredging, depositing, altering, or erecting of permanent structures which takes place on tidal or subtidal land without a permit or contrary to the provisions of a permit is a violation of the law and is subject to a fine of not more than $500 for day of violation, regardless of whether or not the violation was unintentional. In the event of a violation, the Attorney General may institute proceedings to prevent further violation and to compel restoration of the affected area to its prior condition. Enforcement of the regulations in the law can be carried out by all law enforcement officers, but is primarily done by the Department of Marine Resources (DMR) coastal wardens, and to a lesser extent by Department of Inland Fisheries and Wildlife wardens, under a formal cooperative agreement with the DEP.

To date, in at least one case a wetlands alteration permit to repair a seawall on a sand beach has been denied. The BEP rejected the application because, among other things, *"the project will unreasonably interfere with existing recreational and navigational uses in that the wall will restrict the use of the beach by the public."*

Recently the Board of Environmental Protection has approved a policy that hereafter it will normally be unable to make the necessary favorable findings of fact set forth in the Coastal Wetlands Law when an application is made for new seawalls on sand beaches. By emphasizing the burden of proof on applicants, the Board has clearly recognized that seawalls can be "physical obstructions in the intertidal zone which obstruct public rights in that zone."

3.12 Shoreland Zoning Act - A detailed history and description of uses and areas regulated by the Shoreland Zoning Act are to be found in Section 7.4 of Maine's Coastal Program.

Section 4811 of the statute specifies that one purpose of the act is to "conserve shore cover, *visual as well as actual points of access* to inland and *coastal waters* and natural beauty."

The Act states: "Cities and towns pursuant to presently existing enabling legislation are authorized to plan, zone, and control the subdivision of land." Section 4813 gives the Department of Environmental Protection (DEP) and the Land Use Regulation Commission (LURC), power to adopt suitable ordinances, following consultation with the State Planning Office (SPO) for those municipalities that fail to meet the requirements of the Act, and requires the municipalities to administer and enforce the State imposed ordinance.

The role of the DEP, LURC, and SPO is that of ensuring that the objectives of the law are met. The State Planning Office is responsible for coordinating the efforts of the Board of Environmental Protection and the Land Use Regulation Commission and ensuring that municipalities and all state agencies mutually cooperate to accomplish the purposes of the Act.

The Act requires towns to submit their shoreland ordinances to the State Planning Office for review for conformance with the laws. In practice, this administrative procedure has worked well, and despite inadequate funding, the State Planning Office (with assistance from the Regional Planning Commissions) has helped the coastal towns achieve reasonable shoreland ordinances. Nonetheless, there is still more to be done as many ordinances should be strengthened and refined.

The Act makes provision for ensuring that municipalities enforce their ordinances:

> If a municipality fails to administer and enforce zoning ordinances adopted by it or the State, pursuant to the requirements of this chapter, the Attorney General shall seek an order of the Superior Court of the county in which the municipality lies requiring the municipal officials to enforce such zoning ordinance. The Attorney General shall be made a party to all civil and criminal actions in which the pleadings challenge the legality of any ordinance or portion thereof adopted pursuant to the guidelines promulgated under section 4813.

Every coastal town administers and enforces its own "Shoreland Ordinance." Decision making typically rests with the Code Enforcement Officer, who is often the Town Manager, or the Planning Board, depending on the permit required. (In some towns the Board of Selectmen act as the Planning Board.) Appeals are generally heard by a Board of Appeals appointed by the municipal officers.

Each local shoreland ordinance lists which uses require a permit from the Code Enforcement Officer or the Planning Board and, although exact submission requirements may vary locally, applications must be submitted in writing. Additional information may then be required to determine if the application conforms with the ordinance. Generally, action as to whether a permit has been approved, approved with conditions, or denied, should occur within 60 days of receipt of a complete application. No permit can be denied if it is in conformance with the provisions of the ordinance. Among other things, the minimum Guidelines require that the Planning Board of Enforcement Officer find that the proposed use *"will conserve actual points of public access to waters,"* and *"will conserve visual points of access to waters as viewed from public facilities."*

Any person found in violation of any provision of a local shoreland ordinance may, after reasonable notice, be fined for each violation.

3.2 Protection Policies and Legal Authorities

Enforceable State policies and legal authorities pertaining to shoreland protection have been articulated in the section of Maine's Coastal Program concerned with Goals, Objectives and Policies

(Section 6). Drawn from the eleven "core" laws of Maine's Coastal Program, the primary protection policies can be summarized as follows:

- Assure that development in shoreland areas is conducted so that healthful conditions and water quality are maintained, wildlife habitat is conserved and structures are placed so as to conserve shore cover, water access, and points of natural beauty.

- Assure that the subdivision of land is conducted in such a way that air and water quality is maintained, soils remain stable, safe highway conditions prevail, and scenic values and areas of natural beauty are conserved.

- Assure that activities in coastal wetlands conserve wildlife, and freshwater, estuarine or marine fisheries and their habitats, through a permit procedure.

4. DESIGNATION OF SPECIAL MANAGEMENT AREAS

Areas of Particular Concern and Areas for Preservation or Restoration may be considered special because of their coastal related values or because they may face pressures which require detailed attention.

4.1 Areas of Particular Concern

Maine's Coastal Program has defined as geographic areas of particular concern all land areas within 250 feet of normal high water of any great pond, river, or salt water body in the state's coastal area (Appendix C). The Shoreland Zoning Law and Land Use Regulation Commission, in its jurisdiction, provide a means to control and guide development in these areas.

4.2 Areas for Preservation or Restoration

Besides this, the Program includes as areas for preservation or restoration (1) Class A waters, (2) resource protection districts within 250 feet of shoreline and (3) certain specified protection districts under the jurisdiction of the Land Use Regulation Commission (Appendix D). Each of these areas has been designated under existing state law for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values.

The Coastal Program is also supportive of Maine's Critical Areas Program (Appendix D3). The Critical Areas Program identifies, documents, registers, and encourages the conservation of areas with natural features of state significance. The Program has been described in greater detail elsewhere in this discussion.

5. LEGAL AUTHORITIES AND FUNDING PROGRAMS

Every level of jurisdiction and each agency has specified concerns and responsibilities pertaining to shorefront access and protection. The following concepts outline general responsibilities of legal authorities.

> Federal jurisdiction - protection, acquisition, development and management of land and facilities of national importance;
>
> State jurisdiction - protection, acquisition, development and management of land and facilities of statewide importance;
>
> Municipal jurisdiction - protection, acquisition, development, and management of land facilities of local importance.

Of course, there is cooperation among jurisdictionswhere, for instance, the federal government provides financial assistance for state and local programs as through the Land and Water Conservation Fund.

The provision of increased access and protection opportunities depends to a large extent upon adequate funding at all levels. It is germaine to cite the major funding sources through which monies are available for access and conservation projects in coastal Maine.

5.1 Federal

A major source of federal funds for public recreation and open space projects in Maine is the Land and Water Conservation Fund (LAWCON) administered by the Heritage Conservation and Recreation Service. The State of Maine received $1.75 million in LAWCON monies during fiscal year 1977. Beginning in FY 1980, Maine is expected to receive approximately $4.7 million annually due to a recent amendment to LAWCON authorizing a total national expenditure of $900 million annually. This new level means a major increase in matching funds available to the State. In addition, LAWCON monies can be matched with revenue sharing funds under Public Law 94-488. They can also be matched with Community Development Block Grants.

The U.S Fish and Wildlife Service has three major refuges in coastal Maine; the Rachel Carson National Wildlife Refuge in southern Maine and the Moosehorn and Petit Manan National Wildlife Refuges in Washington County. Additions, funded through the sale of "duck stamps" will be made to the Rachel Carson Refuge to round out the 4,011 acre total authorized acquisition. Further funding may be available under recent amendments to the Land and Water Conservation Fund. The Service now has authority to purchase

"nationally significant wildlife ecosystems" and "unique wildlife ecosystems." Increases in authorized LAWCON monies bring the national projected funding level to $75-80 million per year for FY 1980-89. The Service may, in the near future, acquire one or more large coastal island properties in eastern Maine to add to its refuge holdings.

The National Park Service during the 1970's, has been preparing a master plan for Acadia National Park. This process continues and is expected to include a review of proposed island acquisitions in Hancock and Knox Counties.

The U.S. DOT, Bureau of Public Roads can assist the state highway department in the control of outdoor advertising, and the screening of junk yards under the Highway Beautification Act of 1965, both of which improve visual attractiveness of coastal areas.

The Office of Coastal Zone Management has funds for three types of relevant programs. Coastal Zone Management monies can be used for (1) state regional and local planning for coastal resource conservation and development, (2) the establishment of estuarine sanctuaries, and (3) the acquisition of lands to provide access to public coastal areas, particularly beaches, and to preserve coastal islands. The last of these is the most relevant to this discussion. Under Section 315 (2) of the CZMA Amendments of 1976, the Secretary of Commerce is authorized "to make 50% grants to any coastal state to acquire lands to provide access to public beaches and other public coastal areas." To meet these ends, an annual appropriation of $25,000,000 through FY 1980 has been authorized.

While not a direct funding program, federal surplus properties should also be mentioned. Several military service branches, including the Air Force, Navy and Coast Guard, hold important pieces of real estate on the Maine coast. If and when these become available as surplus properties, the State or local governments could acquire them for open space and access.

5.2 State

A principal source of funds for outdoor recreation and resource conservation at the state level is the Maine Bureau of Parks and Recreation. As of November, 1977, the Bureau had $3.2 million remaining from two land acquisition bond issues and $1.8 million from a development bond issue approved in referendum. Much of the acquisition money will be used to purchase land inland at Bigelow Mountain under a referendum mandate approved by Maine voters in 1976. Besides these bond issue funds, the Bureau anticipates a $25,000 legislative appropriation in matching funds during FY 19[illegible] for community recreation projects. Finally, $16,050 remains in a nonlapsing account available on a 50 percent matching basis to local conservation commissions for open space and recreation planning.

There are a number of considerations which affect the funds needed and available for development of unimproved properties currently

held by the Bureau of Parks and Recreation. Pending litigation over the ownership of public lot grass and timber rights is one variable. If the State does not win its claim to ownership of the rights, the Bureau may be able to use the donated value of the rights as the State's share to apply for matching LAWCON monies. Another unknown factor is the cost of development of some presently undeveloped holdings. Estimates have been made for most but not all of these parcels. Third, development costs of many projects are not matched 50-50, state-federal, since some improvements are not eligible for federal reimbursement. The match is often closer to 60-40, state-federal.

All of these considerations aside, it is estimated that through 1980 the State will be able to come up with funds sufficient to match about 40 percent of the Land and Water Conservation Fund monies allocated to Maine as potential matching funds for both state and local projects.

As discussed in 1.11, the Bureau of Parks and Recreation also administers the State's Public Facilities for Boats Program, financed through a Boating Facilities Fund. Money for the fund comes from a segment of the gasoline tax paid by the nonhighway gasoline user. Based on the 1965 legislative "finding of fact" that motorboat users account for at least 1.25% of the total gasoline consumption, there is set aside 1.25% of the total excise tax on internal combustion engine fuel sold or used within Maine (excluding aircraft). From this 1.25% are deducted refunds paid to purchasers and users of gasoline for commercial motorboats. Eighty percent of the balance of the 1.25% after paying out such refunds is credited to the Boating Faciliti-s Fund. About $350,000 is channelled to the fund annually.

Aside from the Bureau of Parks and Recreation, the major state agency with funding for land conservation and access is the Department of Inland Fisheries and Wildlife. In 1974, a $4 million referendum was approved by voters for acquisitions by the Maine Department of Inland Fisheries and Wildlife. The Department planned to allocate these funds according to the following habitats:

1.	Upland Areas	40-50% of money
2.	Coastal Salt Marsh	20-25%
3.	Inland Wetland and Stream Flow Augmentation	20-25%
4.	Eider Nesting Islands	5-10%
5.	Miscellaneous.	5-10%

Some coastal lands have already been acquired by the Department with these monies; approximately $1.3 million dollars remains. The Department also provides water access in important coastal areas for wildfowl hunters.

Visual access on the coast is enhanced both by the activities of the Maine Department of Transportation and the granting of conservation easements by private landowners to State and other land holding agencies.

In addition to budgeting money for highway rest areas, the Department of Transportation also will assist in the implementation of the Maine Traveler Information Services Act, which is designed to protect the scenic beauty of Maine roadsides by controling indiscriminate use of outdoor advertising. Both of these programs improve visual access to the shore.

Under Maine statutes Title 33 § 667-668, "conservation restrictions" are defined and authorized for acquisition by any governmental body having power to acquire interest in land. Some nongovernmental organizations may also accept conservation easements under particular circumstances, for example, if they hold title to lands adjacent to or within sight of the land for which an easement is being sought. To date about 9,000 acres of private lands have been encumbered with conservation easements in the coastal area. Easements have been accepted along the Maine coast which restrict development, thus preserving visual access, by the National Park Service, the U.S. Fish and Wildlife Service, the Maine Bureau of Parks and Recreation, the Maine Department of Inland Fisheries and Wildlife, the National Audubon Society, the Nature Conservancy, the Maine Audubon Society, and a number of coastal towns.

5.3 Local

According to the 1977 Statewide Comprehensive Outdoor Recreation Plan, through 1990 communities in Maine are expected to provide approximately $23 million for acquisition of land for outdoor recreation statewide. Local funds are provided through municipa recreation committees and/or conservation commissions.

Attachment A

CRITERIA FOR PROPOSED COASTAL SANDY BEACH AND DUNE CRITICAL AREAS

1. Beach and Dune areas must be in a natural state.
2. Geographic distribution.
3. Scientific and educational values.
4. Only geological and botanical criteria are considered.

Geological Criteria - Two criteria were developed to determine the geological significance of a beach or dune area. One criterion was whether an area constituted a good example of the various geomorphic types and features. The second criterion was to include those examples which, either through their dune and beachface morphology or actual response behaviour, manifest the interaction between the physical elements of beach systems and various process agents. These criteria produced two lists, those geomorphic types and features which occur in Maine and those various process agents which leave their imprint on Maine beaches and dunes. These lists are as follows:

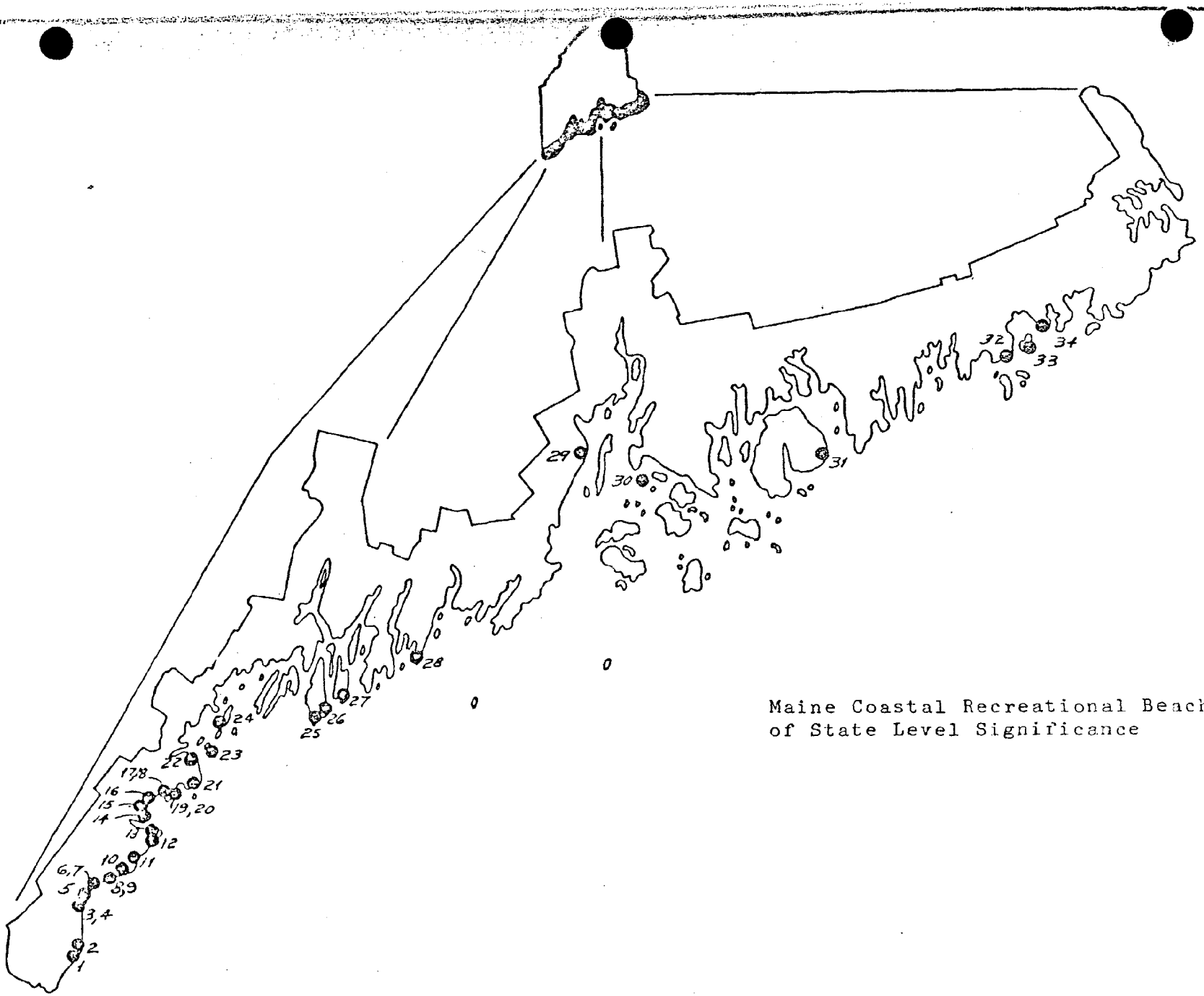
Botanical Criteria - All undisturbed coastal sand dune and berm plant habitats in Maine are significant simply because of their limited extent. Additional criteria for the determination of significant coastal sandy dune and berm plant habitats are based on the following botanical features.

- Landward to seaward zonation caused by salt spray effects, soil nutrient changes, and sand burial or deflation rates.
- Mosaic floristic patterns in stabilized parabolic dune fields.
- Dune field successional stages subsequent to accretion, fire, foot traffic, grazing, cutting or eolian activity.
- Vegetation development in overwashes and breaches.
- Vegetation patterns on perennially accreting berms and spits.
- Good stands of species with limited acreage in the state; e.g. American Beachgrass, Beach Heather, Wormwood, Jointweed.
- Disjunct populations, especially stands of American Beachgrass north of Reid State Park.
- Geographic trends in abundance or ecotype which are of scientific value.
- The range limits of the following coastal sandy dune and berm plants in Maine: wormwood, beach plum, beach heather, earthstar puffball, jointweed, pinweed, seaside spurge.

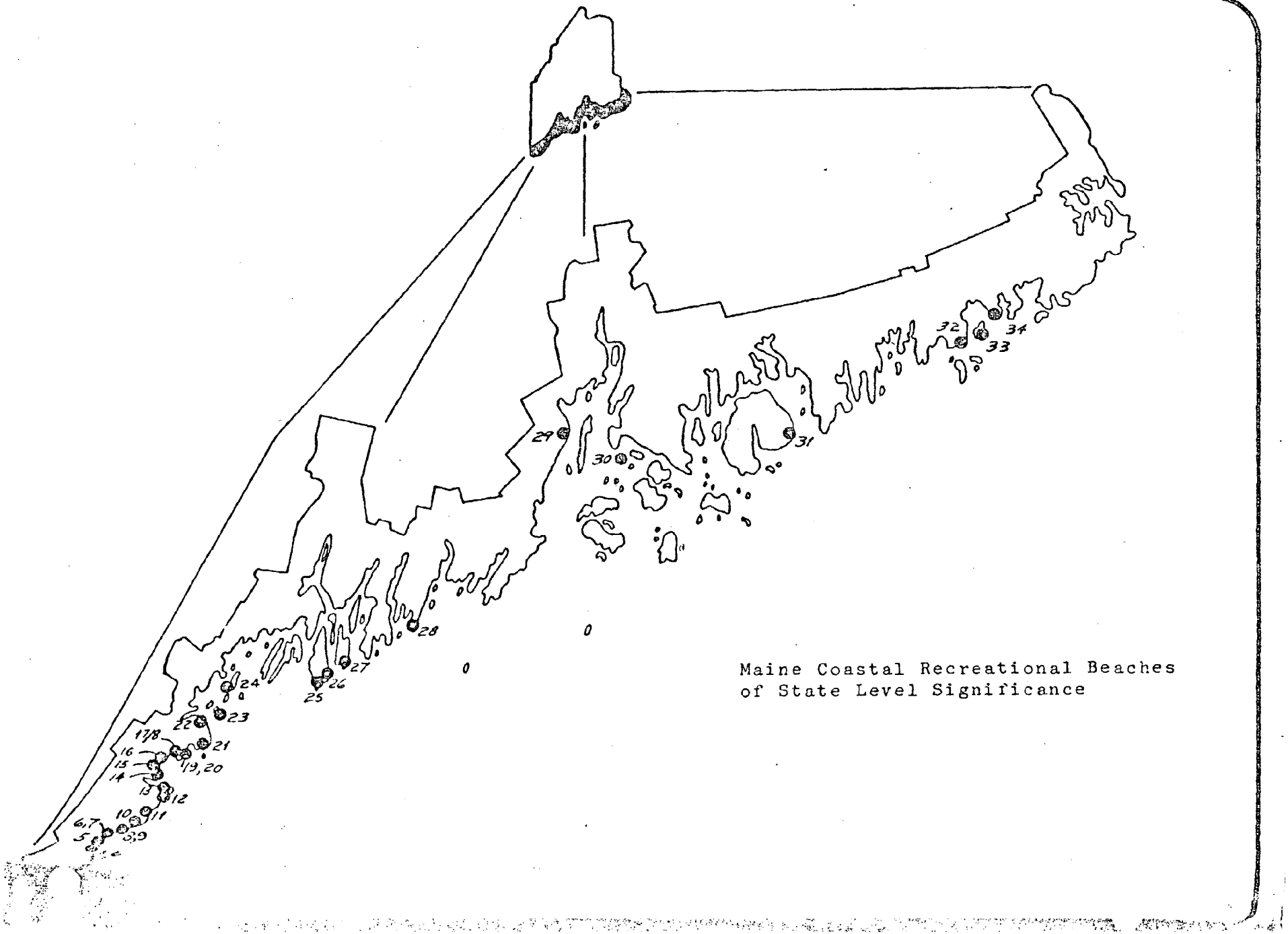
Source: Bruce W. Nelson & L. Kenneth Fink, Jr. Geological and Botanical Features of Sand Beach Systems in Maine, prepared for Maine Critical Areas Program, March 1978.

1. Ogunquit Beach
2. Laudholm Beach
3. Crescent Surf Beach
4. Parsons Beach
5. Goose Rocks Beach
6. Western Beach
7. Scarborough Beach
8. Main Beach, Ram Island Farm
9. Strawberry Hill Beach, Ram Island Farm
10. Crescent Beach
11. Bailey Beach
12. Seawall Beach
13. Popham Beach
14. Reid Beach
15. Pemaquid Beach
16. Louds Island Beach
17. Pond Island Beach
18. Merchant Island - Pocket Beach
19. Merchant Island - Cuspate Foreland Beach
20. Marshall Island - Sand Cove Beach
21. Marshall Island - Carbonate Sand Beach
22. Swan's Island - Irish Cove Beach
23. Swan's Island - Fine Sand Beach
24. Sand Beach
25. Sandy River Beach
26. Roque Island Beach
27. Roque Bluffs Beach

Index Map of Significant Maine Beach Geological and Botanical Sites



Maine Coastal Recreational Beaches
of State Level Significance



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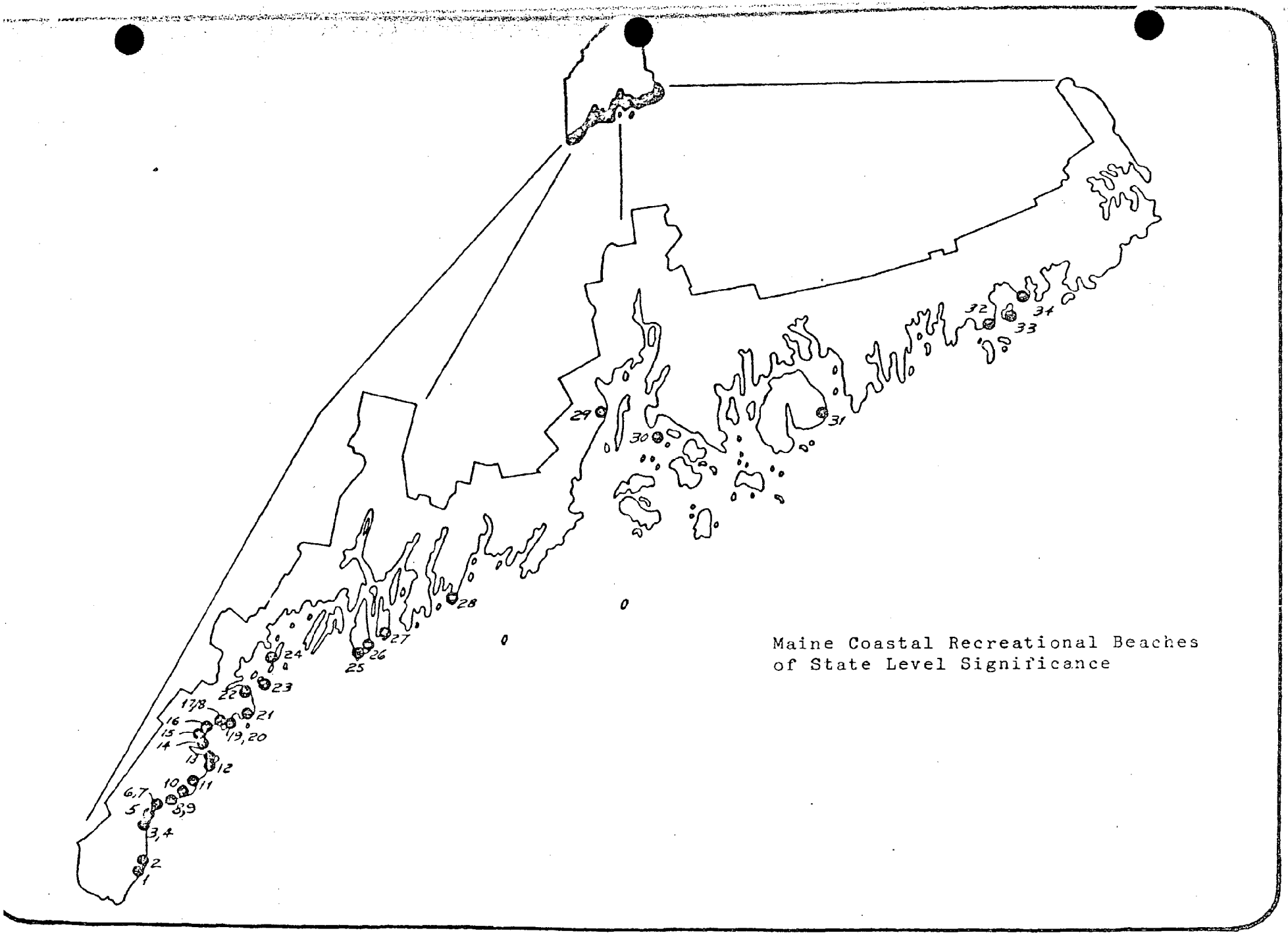


Maine Coastal Recreational Beaches
of State Level Significance

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management
Washington, D.C. 20235

EVALUATION FINDINGS FOR THE MAINE COASTAL MANAGEMENT PROGRAM COVERING THE GRANT PERIOD OCTOBER 1, 1978 TO MAY 30, 1979

I. BACKGROUND

Section 312 of the National Coastal Zone Management Act requires continuing review be made of states with federally approved coastal management programs. This review is designed to evaluate performance with respect to coastal management activities and adherence to the approved management program. This evaluation covers the first eight months of the grant period.

The Maine Coastal Program (MeCP) was approved in September, 1978, and its first Section 306 program implementation grant was awarded for a 12 month period begining October 1, 1978. The $1,200,000 federal grant was matched by $309,000 from non-federal sources including the State, the lead agency, regional planning agencies, counties, and the Maine Municipal Association. In addition to the basic Section 306 implementation grant, the state received supplemental grants of $100,000 to improve the management capability of the State Department of Environmental Protection and $132,000 for fisheries management.

In connection with the Office of Coastal Zone Management's (OCZM) evaluation responsibilities, an on-site review of the MeCP was conducted by OCZM from June 4 through June 8, 1979. Rosella Sussman and Zoraida Carballeira of the Policy and Evaluation staff and Nancy Carter of the State Programs staff participated in the review.

The site visit included meetings with representatives of the State Planning Office (SPO); the Departments of Environmental Protection (DEP), Transportation, Marine Resources, and Conservation; Regional Planning Commissions; local officials and citizens; and various Federal agencies involved in the MeCP. Public meetings were held in Augusta on June 4, 1979 and in Camden on June 5, 1979, in connection with the evaluation. A list of individuals who provided input to the evaluation is attached.

II. SUMMARY FINDINGS

The State of Maine is adhering to its approved coastal management program. Progress is being made toward reaching the goals of the MeCP, resulting in significant accomplishments and benefits to Maine and the nation. As a result of program implementation, specific substantive and procedural results in a number of aspects of coastal management are being achieved. These are described in the section below entitled Accomplishments. Adoption of regulations under the State's Coastal Wetlands and Site Location

C. Recreational Access and Protection of Cultural, Historic and Aesthetic Resources

The accomplishments of the MeCP in increasing access to the coast for recreation purposes, including revitalization of urban waterfronts and enhancing cultural, historic and aesthetic coastal resources are incremental improvements in areas where there are many needs. Special efforts to improve coastal access and enhance these special coastal resources are being undertaken on the local, regional, and state levels. From these varied activities the following results have occured:

1) In addition to the State boating facilities program, which develops or improves about 12 sites a year, several towns are conducting feasibility studies for development of local piers and launching facilities. This local government attention to increasing public access to the coast will result in greater recreational use of coastal waters and thereby also strengthen Maine's cultural and historic marine heritage.

2) The RPCs are carrying out a project with coastal towns to revise and update shoreline access maps. Maps are being reviewed on a town by town basis and will be used to verify or add to an earlier inventory of the State's current coastal access status. The project also includes local identification of other recreational deficiencies which will be used to improve the State Comprehensive Outdoor Recreation Plan.

3) Four local projects are addressing problems related to public access to the coast through direct methods such as conducting title searches to establish or verify public rights of way. Other towns concerned with enhancing public access and utilization of the waterfront address their problem less directly using methods such as placing parks and recreational facilities on the water or improving parking and sidewalks to make their urban waterfronts a vital part of the community.

For example, the town of Biddeford's project is focused on the revitalization of an underused area centered around a historic grainery located at the water's edge. A conceptual plan for the waterfront revitalization includes the restoration of the grainery (by the Heritage Conservation and Recreation Service), development of commercial water-related businesses, provision of a public park and fountain, relocation of the nearby waste treatment plant's outfall, consideration of views to the water, and improvements in the adjacent roads for greater safety and access. The main thrust of the Calais waterfront plan is to secure greater public use and access to a seven acre area including a rebuilt municipal pier.

4) In Ogunquit Village the town project is improving access to the waterfront area used by lobstermen, local residents, and tourists. An innovative plan to limit vehicular access to fishermen servicing their boats and to residents who must enter the area to reach their homes, combined with a small mall/park for visitors and shoppers, has resolved the conflict between the area's users and enhanced the viability of the pier as an integral part of the community. Towns also are addressing traffic problems caused by intensive and/or conflicting coastal uses as part of their waterfront plans or harbor development projects.

5) The Attorney General's office is working to set forth the State's position for public shoreline access and use rights. As cases are brought challenging the public right to the use of the shoreline, the State will be prepared to present better arguments and establish a basis for further action to improve or expand public access and rights to the coast.

Maryland

Maryland beaches are public property from the vegetation line toward the water. Thus, lateral access is not a problem in this state and attention has instead been focused on providing perpendicular access to the public areas of the beach.

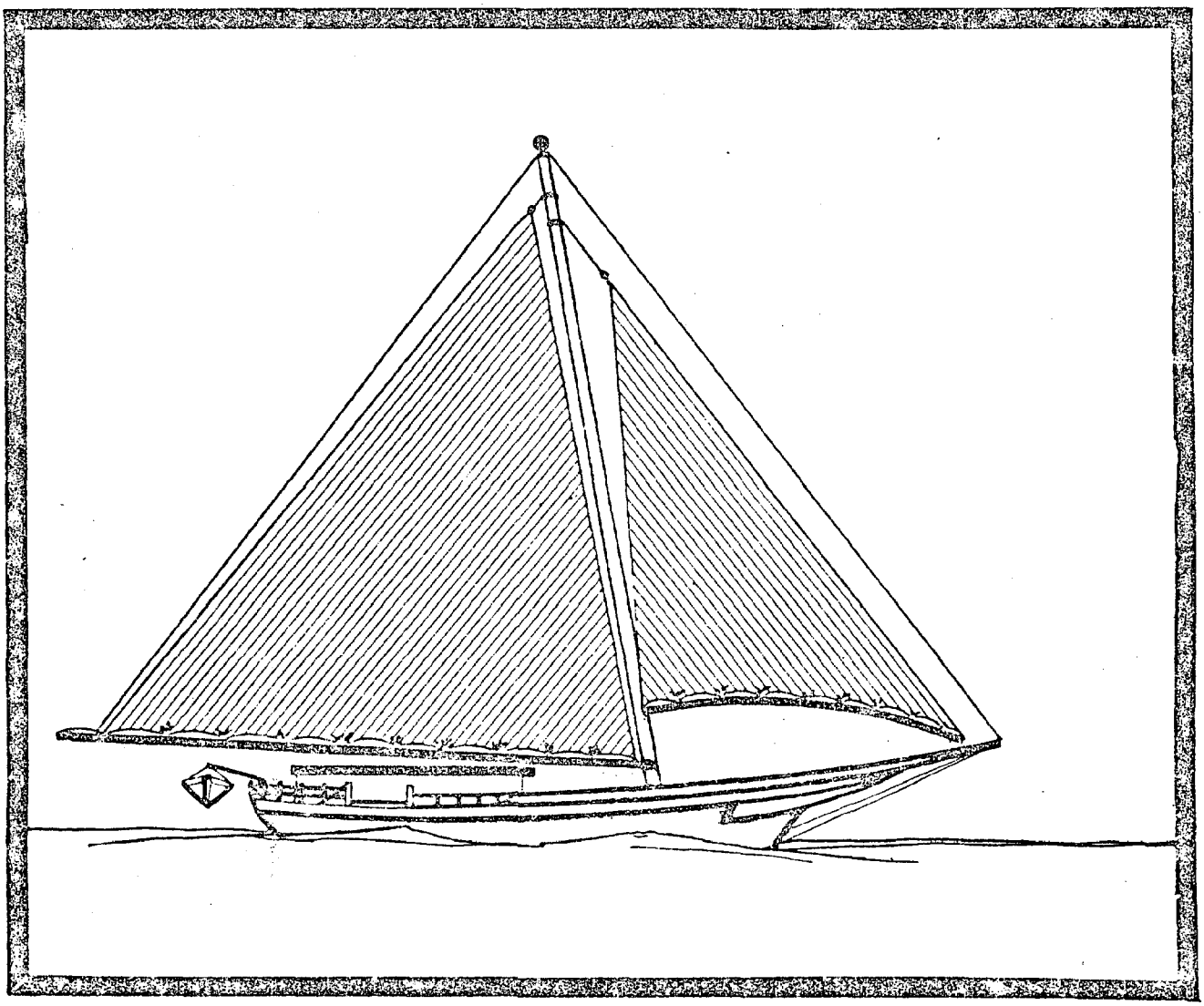
A network of seven state beach parks, seven county beach parks, and two federally maintained coastal areas (Eastern Neck National Wildlife Refuge and Assateague Island (and National Seashore) provide the major shorefront access opportunities to the public. However, most of these areas are situated on the Atlantic Coast; access to the Chesapeake Bay Coast is more limited.

The Maryland Coastal Management program is currently sponsoring the Bay Access Program in an effort to open up more access points to the Chesapeake. Local (county) governments are encouraged to use 306 funds for studies identifying existing and potential access points, including potential multiple use sites (i.e. providing access through an existing development). The results of these studies will be used in tandem with Maryland's SCORP policies and programs to seek funding for acquisition of land to further access opportunities.

Maryland has used Coastal Energy Impact Program (CEIP) money to fund access projects near utility sites. CEIP funds are being used to acquire beach areas at Betterton Beach in Kent County, where an electricity generating plant and its coal wharves have blocked public access to the shore. CEIP funds are also being used for acquisition of land for public beach areas near a nuclear power plant in Culvert County.

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



SE OF BEACH AREAS

ituation

Because of concern about the provision of adequate public access to and otection of public shore areas, there was included in the 1976 Amendments to ie Coastal Zone Management Act the requirement that a State's coastal zone nagement program must include "a definition of the term "beach" and a planning ocess of the protection of and access to, public beaches and other public coastal eas of environmental, recreational, historical, esthetic, ecological, or ltural value."

The regulations issued pursuant to the Amendments further state that the anning 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 gently sloping shore area of the Atlantic Ocean, Chesapeake Bay or other tidal ters covered by sand or similar material, and the lower portion of which is shed by waves or tides. Public beach areas meeting this definition are ted in Table III-2.

The only extensive beach areas in Maryland lie along its Atlantic coastline Fenwick and Assateague Islands. There are also a number of less extensive ach areas on Chesapeake Bay.

The process and legal authorities by which public access to these areas is sured is described below. In addition, the Maryland Department of Transportation ves considerable attention in its system planning efforts (see the section of is Chapter on Land Transportation Facilities) to identifying ways in which an equate transportation network can be maintained between the Atlantic Coast ach areas and the heavily populated Baltimore-Washington area where the jority of the beach users live. In the mid-1970's a second bridge across the esapeake Bay was built to reduce traffic delays and studies are underway on ys to eliminate potential bottlenecks at Kent Narrows, Vienna and Cambridge. ssible alternatives for the elimination or reduction of such bottlenecks careful examination since the removal of wetlands and/or existing velopment 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 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

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management
Washington, D.C. 20235

EVALUATION FINDINGS FOR THE MARYLAND COASTAL MANAGEMENT PROGRAM

COVERING THE GRANT PERIOD OCTOBER 1, 1978 - SEPTEMBER 30,1979

I. BACKGROUND

Section 312 of the Coastal Zone Management Act (CZMA) requires continuing review of states with federally approved coastal management programs. This review is designed to evaluate performance with respect to coastal management activities and adherence to the approved management program.

The Maryland Coastal Management Program (MCMP) was approved in September, 1978. Maryland's first-year 306 program implementation grant award from the federal government was $1,400,000. The State contributed $415,248.

In connection with the Office of Coastal Zone Management's (OCZM) evaluation responsibilities, an on-site review of the MCMP was conducted in Annapolis, Baltimore, Easton, Ocean City and Salisbury from June 12-15, 1979, by Carol Sondheimer, Chief of Policy and Program Evaluation; Catherine Morrison, Program Analyst; John Phillips, Regional Manager, South Atlantic Region; Marcella Jansen, Program Assistant, South Atlantic Region; and Lynn Holloway, Staff Attorney.

The on-site review included meetings with representatives of the Department of Natural Resources (DNR), including Secretary James Coulter and staff from the Coastal Zone Unit (CZU) and the Water Resources Administration (WRA); state and federal agency representatives; Delegate Gerald Winegrad; representatives of local government, environmental interests and business and port interests. Two public meetings, sponsored by the Coastal Resources Advisory Committee (CRAC) were held; one in Annapolis June 12 and one in Easton June 14. A list of persons attending these meetings is attached (Appendix 1).

In addition, written comments were received by the U.S. Army Corps of Engineers, U.S. Coast Guard (Department of Transportation), Department of Housing and Urban Development, Department of the Air Force, National Marine Fisheries Service, People's Counsel, Regional Planning Council, Natural Resources Defense Council, Inc., Committee to Preserve Assateague Island, the Maryland Conservation Council, and the Maryland State Department of Economic and Community Development.

C. In the Area of Increased Access to the Coast for Recreation Purposes, and Protection and Restoration of Historic, Aesthetic and Cultural Resources

- o CZU has submitted a revised shoreline access element to OCZM, providing increased access to the Bay. It is currently circulating within OCZM for review.

- o As part of an Archeological Resource Management Study funded by by the CZU, an archeological field survey of the Maryland bay shoreline was undertaken. Approximately 20% of the shoreline was examined and over 100 new prehistoric sites were identified, more than doubling the previously known sites. This information is utilized by the Maryland Historic Trust in carrying out their preservation responsibilities.

MASSACHUSETTS

Coastal program officials in Massachusetts identify beach access as a "sensitive issue" in their state. Although the legal definition of the public beach is the area below mean high water, many property owners do not honor that delineation and make it difficult or impossible for the public to utilize the shoreline. To date the state's coastal program officials have only done preliminary planning and staffing up, but during 1980 acquisition and access are expected to be major elements of the program.

Massachusetts coastal program administrators state that the major beach access priority should be the identification of key waterfront parcels which will be coming up for sale and the development of mechanisms for acquiring them. Because of the recently imposed 100% valuation on property, people are deciding that they cannot afford to continue to hold their shorefront property and are putting it on the market. The private sector is acting faster than the public sector and undeveloped parcels are being bought for development before the state or local governments can act to protect their undeveloped state for the public.

In an effort to stem this tide, the Massachusetts coastal program has funded one staff position in the Department of Environmental Management office which administers HCRS land and water conservation funding. This staff member identifies key coastal parcels and lobbies for their acquisition with the limited LAWCON funds. State coastal officials also convinced the governor to put $1 million for beach

acquisition in his proposal FY81 budget to the legislature. The chances of its appropriation are unknown at present. During program year 1980 coastal officials will continue to explore acquisition alternatives.

Grants which are awarded to local governments by the state coastal zone management program for port and harbor development projects are conditioned on the provision of waterfront access.

The Massachusetts coastal program helped fund a feasibility study for public transportation between three urban areas (Boston, Lowell and Fall River/New Bedford) and beach areas. The Massachusetts Department of Environmental Management will now continue to work with the regional transit authorities and federal funding sources to implement the program.

One interesting non-CZM funded beach access project began last year under the auspices of the Department of Environmental Management. State and HCRS LAWCON funding were combined to purchase seventeen miles of abandoned railroad right-of-way on Cape Cod for a bikeway. Long range plans are to provide train service from Boston to Chatham and a bikeway from Chatham to Provincetown, with intermediate stops at a state campground and the Cape Cod National Seashore.

MICHAEL S. DUKAKIS
GOVERNOR

EVELYN F. MURPHY
SECRETARY

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

MEMORANDUM

DATE: July 29, 1977

SUBJ: Fulfillment of 305 (b)( ) Regulations: Shorefront Access Planning

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SHOREFRONT AREAS PLANNING

(1) A procedure for assessing public areas requiring access or protection.

The CZM program sets forth a procedure to determine access needs based on three factors: the adequacy of existing publicly owned recreation areas to meet demand; transportation availability to existing sites; environmental impacts of recreation on coastal resources.

In Massachusetts, private shorefront ownership to the mean high water mark was granted by a 17th century Colonial Ordinance, and those private property rights have been upheld by successive Massachusetts court decisions. The result is that beach recreation is primarily dependent on public acquisition of lateral beach access.

The state and coastal towns have, over the years, acquired lateral shorefront lands for public beaches. However, such acquisitions have not been adequate in all areas to meet demand. Several steps were taken to analyze where and why recreation was deficient: First, the CZM program used the demand/supply analysis from the State Comprehensive Outdoor Recreation Plan (SCORP) to identify regions where public shorelands were not adequate to meet current and projected coastal recreation needs. (CZM Plan pp. 194-195).*

*The SCORP data was refined and supplemented by a CZM inventory of Coastal Recreation, including information on ownership and access. (CZM Plan, Chapter 5 maps). As described in the Public Participation Appendix, these maps will be updated on a systematic, periodic basis.

Next, transportation networks and plans were evaluated relative to the location of existing recreation sites to determine if people from "high need" areas could reach regions with adequate recreation. Questionnaires were distributed both by SCORP and by CZM (see Public Participation Appendix) to help determine the significance of transportation problems.

Based on the evaluations and questionnaires, the improvement of transportation to existing public sites was determined to be crucial to improving access and meeting recreation needs in Massachusetts. Policies 21 and 22 were written to establish a procedure under which the CZM program would support the planning and funding of non-automobile transportation alternatives or trails to existing public sites. Under these policies, projects are consistent with CZM objectives when: existing transportation is inadequate; the recreation site is under-utilized because of lack of parking; benefits from improved transportation will stimulate commerce; or the improved transportation will serve many recreation sites. (Summarized from page 205)

The CZM Questionnaire also indicated that many existing Massachusetts recreational beaches are used inefficiently or are underutilized. Upgraded maintenance, improvement of related facilities or small expansions would greatly improve use thereby improving the "supply" of beach recreation. Policies 23 and 25 were written to establish criteria for determining where existing sites could be improved to support increased access. Under the procedure, increased access can be achieved through improving maintenance and facilitating multiple use when:

-- Opportunities for physical expansion are limited; or

— The operational aspects of activities do not conflict; e.g., picnicking, and sunbathing; or

-- Improved management and maintenance can control operational conflicts between uses; or

— The seasonality of the activities facilitates multiple use sequencing; or

-- Recreational use of non-recreational areas can be accommodated on weekends; or

-- Improvements in water quality provide expanded opportunities for water contact sports; and

-- Where there is adequate access for additional uses to benefit from such improvements; and

-- Resources are capable of supporting increased use with degradation.

If projects meeting the above criteria do not sufficiently increase beach supply in order to meet demand, expansion of existing sites or new acquisitions of lateral access will be made. CZM favors such expansions/acquisitions when the following criteria are met: (Policies 25 and 26)

— Undeveloped areas abutting or near existing recreation sites are suitable for expansion; or

— Existing sites are over-utilized and there is no nearby substitute which might shift demand for the activity; or

— Other public improvements have been made or are proposed on/near existing recreation sites; for example, where state or federal funding has been used to slow or prevent erosion of beaches; and

— Access, including transit, roads and parking, is sufficient or will be sufficient subsequent to implementation of transportation improvements under Policy (21).

With regard to the protection of public recreation areas, Massachusetts CZM first compiled an inventory of public coastal recreation sites. As would be expected, the locations of these sites coincide with the most significant ecological resources - barrier beaches, sandy beaches, dune, salt marshes, salt ponds, and shellfish beds. As a result of staff research and the findings of sensitivity analyses performed by the University of Massachusetts under subcontract to Massachusetts CZM, policies were written to define appropriate/permissible uses for these areas (Policies 1 and 2). The policies allow a wide range of recreational uses provided certain conditions are met in constructing and siting associated facilities. Other development activities which could adversely impact ecological or recreational values are prohibited or conditioned as appropriate.

Policy 27 was also developed to establish a case by case review of development activities that could negatively impact existing public recreation sites, in order to ensure that such impacts are minimized through appropriate mitigation steps.

Policies 3-6 of the Marine Environment program, as well as 8-12 of the Coastal Hazards program, and 13-16 of the Visual Environment section provide direct and incidental protection to recreation values through management of water quality impacts, dredging and mining impacts, and visual impacts, among other aspects.

(2) A definition of the term "beach" and an identification of public areas that meet that definition.

"Beach" is defined in two ways. The first is the physical description to which the Marine Environment policies apply (CZM Plan p. 35). Beaches defined this way are Geographic Areas of Particular

Concern (see page 35). The second definition relates to ownership and access policy. Massachusetts beaches except for publicly owned beaches, are private to the mean low water mark. CZM defines public beaches as those which are publicly owned, possess perpendicular access open to the greater public, with a minimum of 25 parking spaces. Shorelines that meet this public beach definition are listed at the end of the Recreation section (pp. 220-223) and shown on the maps in Volume II. These beaches are of sufficient public concern that Massachusetts CZM will ensure that proposed adjacent developments do not jeopordize the public benefits provided by the sites (Policy 27), and determine if access can/should be increased as defined in (1) of this memo.

(3) Articulation of state policies pertaining to shorefront access and/or protection.

All Recreation policies and Marine Environment policies relate to these broad issues. They are listed on pages 204-216 and pages 79-107 of the CZM plan.

(4) A method for designation of shorefront areas as areas of particular concern for protection and/or access purposes, if appropriate.

As discussed in (2) above, policies were developed which provide for the protection of the resource areas significant for both ecological and recreational values. These areas are designated as GAPC's on the regional maps contained in Volume II. Protection is ensured for these GAPC's as articulated in the Marine Environment Policies 1-5, Coastal Hazards Policies 8-10, and Recreation Policy 27. Permissible recreation activities for specific categories of GAPC's are described in these policies.

Complexes of GAPC's are designated as APR's where the collective importance of the GAPC's warrants the highest level of management. Acquisition for limited access to APR's is also a high priority (Policy 26).

(5) A mechanism for continuing refinement and implementation of necessary management techniques, if appropriate.

The Recreation policies establish a priority for management techniques. Transportation improvements, as determined through criteria in Policy 21, are the highest priority (p. 284). The second priority management technique is to expand the physical size of existing sites or purchase new sites in areas with a high need: "CZM's first priority is to improve transportation to and maintenance of existing facilities. Where those policies are not sufficient to improve recreation within areas of high need, CZM will provide funds for acquisition of new land." (p. 212)

As projects are completed or land is acquired, the CZM inventory and SCORP inventory - will be updated. Needs will be reevaluated, and priorities for management techniques will be updated relative to new needs. Regional Advisory Councils will be helping in the update, establishing new priorities for recreation actions consistent with the policies. The role of the Councils is documented in the Management Chapter (p. 364).

Thus, the management techniques needed will be dependent upon the need for various projects established through the SCORP and Citizen Advisory Councils.

(6) An identification of funding programs and other techniques that can be used to meet management needs.

Each Recreation policy is followed by a section describing both the overall strategy and specific agencies needed to implement the respective policy (pp. 204-216). Each policy will be implemented by funds, programs, or agencies that are best suited to the advocated action.

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SRS:mc

MICHIGAN

Riparian property owners in Michigan have the right to restrict access to the beach. Thus, for the public to legally use the shore in front of private property, the "one foot in the water" rule tends to be imposed. The state coastal program does not include measures to obtain easements across private land to the shore because program officials feel that an abundant supply of accessible shorefront exists through the federal, state, county, and city park systems.

Michigan Coastal Zone Officials have defined their responsibilities toward shorefront access in terms of helping communities leverage additional funding for acquisition and development of access sites. Approximately half of the state's CZM funds are committed to grants to local communities. Many of these grants go to projects which create, improve, or preserve shorefront access.

When a community applies for planning money from the state coastal program it must also identify potential funding sources for development. Once the planning phase is complete, state coastal program officials frequently offer technical assistance for the development funding search. Frequently used sources for acquisition and development are HCRS Land and Water Conservation funds and the Upper Great Lakes Regional Commission.

CZM grants are frequently used to finance urban waterfront park planning. In Detroit three small, existing parks will be tied together by a riverfront walkway, part of which extends through an industrial section of the city. Similarly, several small public parcels in Makinaw city have been tied together with a walkway which necessitated

the granting of easements across private property. In St. Ignace, a 3/4-mile long promenade will provide visual access to the shore, but no physical access. Bike path designs have been funded in Detroit, Marquette, Grand Haven and Sault Ste. Marie.

State CZM funds have also been granted to seven state parks for the construction of boardwalks which provide access across dunes and wetlands while preserving these environmentally fragile areas.

On the Upper Peninsula some property owners who hold shorefront land for forestry and investment purposes allow for public use of their land. While the state coastal program is aware of this, nothing has been done to encourage or coordinate such gestures.

Administrators of the Michigan Land Trust Fund use royalties from oil and gas exploration to buy property for public recreational use. Great Lakes shoreline has been established as a priority item in this program.

FILE COPY

State of Michigan Coastal Management Program Planning Processes

- Energy Facility Siting
- Shorefront Access
- Shoreland Erosion

September 1978

INTRODUCTION

It is widely recognized that the need for public access to Michigan shorefronts is growing. As the quantity and variety of these demands grows, the need to increase or control access to these areas becomes more critical. Michigan, therefore, submits this "Preservation and Access Planning Process" for review and approval as an integral part of its state Coastal Management Program, as authorized by the federal Coastal Zone Management Act of 1972 (P.L. 92-583, as amended).

The Act charges in Section 305(b)(7) that each state Coastal Management Program include "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." To meet this charge, states must describe how they will consider public shorefront areas for protection and/or increased physical or visual access. More specifically, they are required to develop processes which:

1. Define and identify beaches and other public shorefront areas eligible for protection and/or increased access (page 19);

2. Assess such area's requirements for protection and/or increased access (page 22);

3. Designate certain shorefront areas as coastal areas of particular concern (APCs) for protection and/or access purposes (page 38);

4. Refine and implement needed management techniques (page 39);

5. Articulate state policies pertaining to shorefront public access or protection (page 40); and

6. Identify existing local, state and federal programs to address indicated needs (page 41).

All components of the access planning process related to these tasks (i.e. all data, problem statements, policies, review and evaluation procedures, decision-making criteria and action programs) have been well documented in Michigan's Coastal Management Program and Final Environmental Impact Statement, June 1978. Publication of that document culminated a three and one-half year program development period which actively involved all levels of public and private interests. Participation included the development of program concerns, goals, APC nominations, action programs, project proposals and a number of formal program reviews. Since components of the access planning process, e.g. policies, authorities are included in the FEIS program descriptions, this document will elaborate on specific access planning task requirements, and will reference the FEIS frequently to avoid duplication.

CHAPTER I

DEFINE AND IDENTIFY BEACHES AND OTHER PUBLIC SHOREFRONT AREAS TO BE INCLUDED IN THE ACCESS PLANNING PROCESS

Michigan proposes to use the processes outlined in this report to document and address the needs of its beaches and other shorefront areas for public access and/or preservation.

Michigan's Coastal Management Program defines the term "beach" as the area on the Great Lakes and their connecting waters extending inland from the Low Water Datum elevation to the ordinary high water mark.* In less technical terms, this means the state-owned bottomlands lying between the lake elevation noted on navigation or federal harbor improvement charts, and the place where there is a marked change in the soil, the soil configuration, or the terrestrial vegetation (Figure 1).

This definition allows the Coastal Management Program to address the variety of needs required by Michigan's resources and by the public. Most Michigan residents and travelers might refer to beaches as developed, sandy recreation areas. But they also value experiences associated with rocky areas, wetlands, sheer bedrock cliffs, man-made shorelines and other shorefront environments. Their demands for these experiences must also be addressed in our program.

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*The ordinary high water mark is established by the Submerged Lands Act, Act No. 247 of the Public Acts of 1955, as amended. The Act defines this mark as "the line between upland and bottomland which persists through successive changes in water levels, and below which the presence and action of the water is so common or recurrent as to mark upon the soil a character, distinct from that which occurs on the upland, as to the soil itself, the configuration of the surface of the soil and vegetation." The Low Water Chart Datum and the ordinary high water mark for each of the Great Lakes are stated below as elevations above sea level, international Great Lakes datum of 1955:

Lake	Low Water Chart Datum	Ordinary High Water Mark
Superior	600.0 feet	601.5 feet
Michigan-Huron	576.8 feet	579.8 feet
St. Clair	571.7 feet	574.7 feet
Erie	568.6 feet	571.6 feet

Actual on-site location of the ordinary high water mark is confirmed for the Great Lakes and connecting waterways by field survey. Ordinary high water marks for connecting waters which link the Great Lakes are interpolated from established ordinary high water marks for adjoining lands. The ordinary high water mark of inland waters is determined under the authority of the Inland Lakes and Streams Act, Act No. 346 of the Public Acts of 1972, as amended.

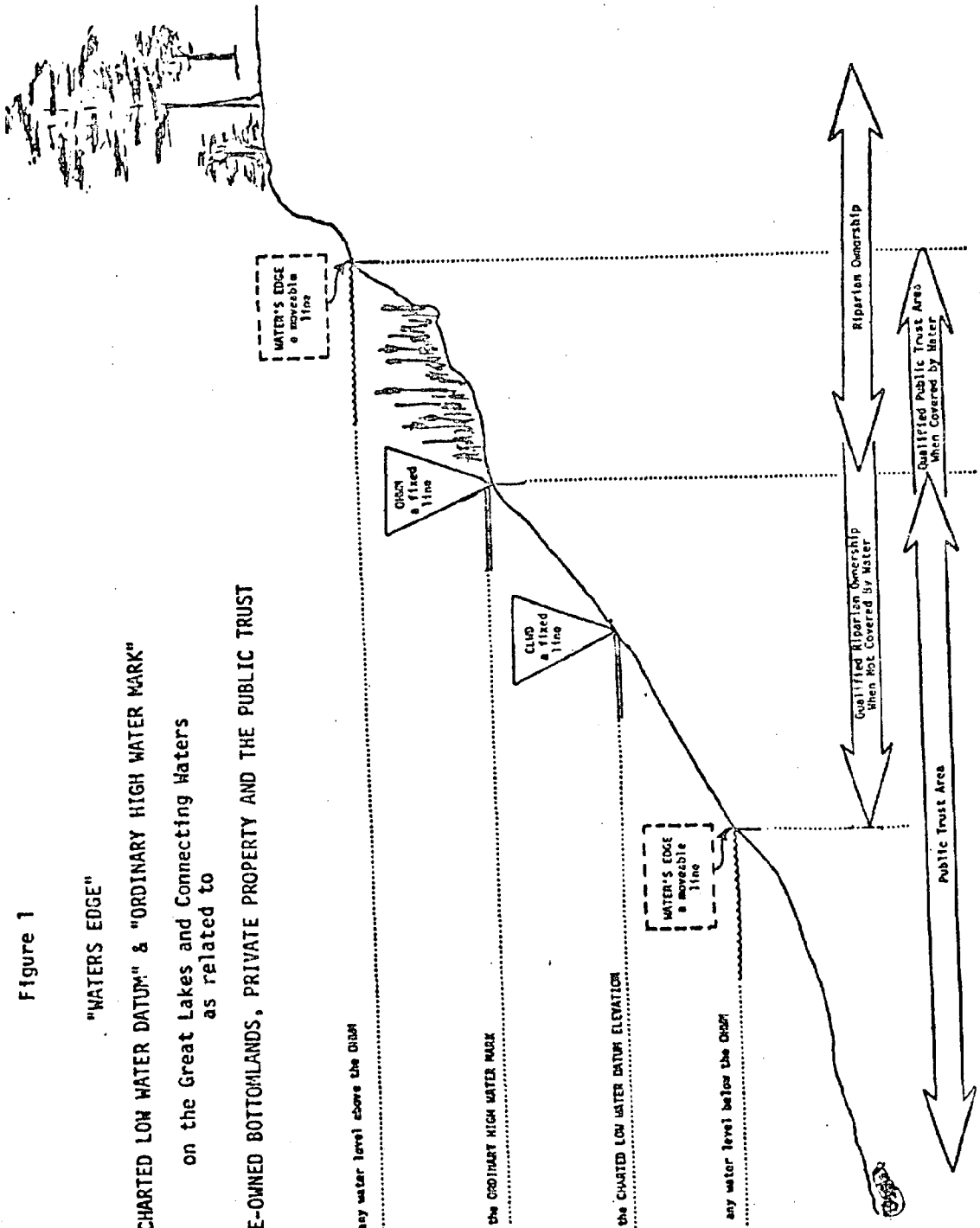
Figure 1

"WATERS EDGE"

"CHARTED LOW WATER DATUM" & "ORDINARY HIGH WATER MARK"

on the Great Lakes and Connecting Waters
as related to

STATE-OWNED BOTTOMLANDS, PRIVATE PROPERTY AND THE PUBLIC TRUST



This definition is also compatible with the boundary between state-owned bottomlands, public trust interests, and private property interests (Figure 1). The ordinary high water mark is the legal boundary separating state controlled bottomlands and waters from private property. Riparian private property owners hold fee title to the ordinary high water mark. Michigan manages bottomlands lakeward of the ordinary high water mark in the public trust under provisions of the Submerged Lands Act, Act No. 247 of the Public Acts of 1955, as amended. Access to the shoreline and rights of use are related to the water's edge. Riparians have exclusive use of exposed state controlled bottomlands to the water's edge--provided that their use is temporary and does not include unauthorized dredging, filling or modification of the bottomlands. The public has the right to fish, hunt, wade, navigate, etc., whether the water's edge lies above or below the ordinary high water mark.

Shorefront water levels, soils, soil configurations and vegetation have been identified historically in field surveys made to satisfy Act 247 requirements. As needed, Department staff will use aerial photography, field inspections and maps such as the coastal boundary maps to augment the surveys in determining the current location and extent of these areas.

Needs associated with these areas involve either increasing public acreage, or increasing lakeward and landward ingress and egress to acreage now in public ownership (state, local or federal). Though there are very real needs for acquiring additional public properties, the federal Coastal Zone Management Act does not now fund such acquisitions. The term "access", then, is used here to include physical access, visual access or the protection of such access to maintain the value of existing shorefront attractions. Physical access may be pedestrian or vehicular such as parking areas, boat ramps, foot or bicycle paths, boardwalks, ferry service or other transport facilities. Visual access may include scenic viewpoints, setback lines, building height restrictions and light or lighting requirements. Protection provided to maintain the values identified for such areas may include conservation, preservation or restoration activities, such as buffer areas, increased policing, boating safety, or other access controls. These lists are by no means inclusive; other innovative and creative approaches to providing access needs will be actively encouraged throughout Coastal Management Program implementation.

Shorefront areas eligible for increased access or protection have been listed and described in FEIS Chapter IV as: (1) Areas of Natural Hazard to Development, including areas prone to flooding or erosion; (2) Areas Sensitive to Alteration, including ecologically sensitive areas such as wetlands, natural areas, sand dunes and islands; (3) Areas Fulfilling Recreational or Cultural Needs, including areas managed to recognize recreation, historic, educational, archaeological or other cultural values; (4) Areas of Intensive or Conflicting Use, including coastal lakes, river mouths, bays and urban areas; and (5) Areas of Natural Economic Potential, including water transport facilities, mineral and energy resource areas, prime industrial sites, and prime agricultural areas.

CHAPTER II

DEVELOP A PROCEDURE TO ASSESS SUCH AREAS FOR PROTECTION AND/OR INCREASED ACCESS NEEDS

A number of procedures will be used to assess needs for shorefront protection and increased access. Each procedure evaluates access-related needs in terms of their ecological, environmental, recreational, historical, aesthetic or cultural values. These evaluations will emphasize but will not be limited to access proposals made to Michigan's programs for Coastal Management, for the Land and Water Conservation Fund, for the Michigan Recreation Land Trust Fund and for the Michigan Waterways Fund. Evaluations will focus first on questions related to the supply of existing public facilities and area, the anticipated demand for future use of the proposed facilities, and the capability/suitability of the resource to support the proposed action.

Coastal Management Program assessments will primarily involve review of areas of particular concern (APCs) to identify local, regional and statewide needs for access or protection. FEIS Chapter IV describes how legislated (i.e. designated) and nominated forms of APCs are used to document access concerns for Areas of Natural Hazard to Development, Areas Sensitive to Alteration or Disturbance (including islands); Areas Fulfilling Recreation or Cultural Needs; Areas of Conflicting Use; or Areas of Natural Economic Potential. Appendix D of the Draft Environmental Impact Statement (DEIS) shows the current geographic density and distribution of legislated APCs. To a smaller degree, other Coastal Management Program elements such as the statements of concern and action program recommendations documented in FEIS Chapter III also indicates access needs.

The Coastal Management Program will also evaluate a significant number of APCs and Coastal Management Program project proposals for funding each year. If current trends continue, the majority of these projects will address access-related concerns. Criteria for Coastal Management Program eligibility and evaluation are shown in FEIS Chapters IV and V.

The Land and Water Conservation Fund, the Michigan Recreation Land Trust (Kammer) Fund and the Michigan Waterways Fund are the major access programs now operating in Michigan. As described in FEIS Chapters V and VI, access proposals submitted to these programs are received by the Department of Natural Resources (DNR) which is the designated administering agency for each fund. Their eligibility requirements and evaluation are quite similar; each relies on state as well as local comprehensive outdoor recreation plans to identify and evaluate access and protection needs. With successive updates of these plans the access-related needs for each program increase; each year, applications more than double the amount of funds available. As agencies of the Department of Natural Resources, the coordination of these proposals with Coastal Management Program APCs and Action Programs is assured by the organizational structure detailed in FEIS Chapter V.

From DEIS Appendix C, other state incentive and regulatory programs evaluate shorefront areas eligible for increased public access or protection. The Coastal Management Program will also use their program inputs (permit applications, requests for technical assistance, grant proposals, etc.) as indicators of Michigan's access needs. As above, coordination of these proposals with Coastal Management Program APCs and action programs is assured by the organizational structure detailed in FEIS Chapter V. Evaluation criteria for each of these programs is included in FEIS Chapter III and also in DEIS Appendix A. Chapter VI of this report lists these programs by name.

These decision-making processes use three major sources of technical data. As mentioned, APCs indicate a variety of coastal access-related needs. Detailed supply and demand estimates are also computed in dollars, acres, user-days and other factors by studies done as part of the Land and Water Conservation and the Waterways programs. These estimates determine the character of recreation throughout Michigan in terms of who participates and who provides for that participation. Breakdowns are provided by type of recreation experience and geographic distribution. Figures are kept current through annual updates for the Department capitol outlay budgets, as well as development of new surveys, plan documents and strategies. Land and Water studies are based primarily upon exhaustive telephone surveys every three to five years, while Waterways studies are based upon mail surveys of licensed boat owners every three years. Coastal Management Program staff has contacted these programs to begin extracting coastal data from these statewide figures.

As a partial indication of coastal access and preservation needs, the following points are extracted from the 1974 Michigan Outdoor Recreation Plan.

> Michigan needs an estimated 213,700 acres of local (county, township or municipal) public park facilities by 1980. Some 95,500 acres of such facilities are now operating, leaving a 1980 deficiency of some 118,200 acres. If only a portion of this need were addressed, both local and state access programs would be severely depleted. Costs estimated for addressing only 15% of this deficiency (17,700 acres) are $37 million; for 10% of the deficiency (11,700 acres) costs are $25 million.

Department of Natural Resources' Parks Division has determined that:

> There is an urgent need to consolidate lands within state parks known as "inholdings" to assure quality recreation. This need is most critical in southeastern Michigan, due to rapid urban sprawl and related development. Areas possessing undisturbed or unusual unique natural areas, suitable for scientific, educational and aesthetic value, are being converted to other uses. The majority of the undisturbed natural areas are located in northern Michigan and are prime targets for residential development companies. More emphasis should be placed on acquiring significant scenic sites and/or areas

> including waterfalls, Great Lakes shorelands and river frontages before they are lost to private development. There is a great deficieny in designated motorized recreation vehicle areas resulting in the unlawful use of and damage to the natural features found in existing state parks, other public land, and large tracts of undeveloped private lands. The greatest need for designated vehicle areas is in southern Michigan, near the highest concentration of vehicle users. There is a need for expansion of new areas of state park size and caliber, located where significant natural features are available to serve a variety of future outdoor recreation needs. The integrity of historic sites possessing statewide significance is being threatened by the encroachment of various types of incompatible uses. There is a need for a continuing source of funding which would enable the completion of the facility development in many state parks. The development program is generally spread out over several years and the lack of sufficient funds to complete this development would mean a significant reduction in recreation opportunities on existing public lands.

Department of Natural Resources' Waterways Division has determined that the character of boating in Michigan is in active change and that:

> The trend toward increased numbers of boats on trailers continues, with associated needs for an expanded system of launching sites on all types of waters. Continuing growth of the new Great Lakes sport fishery has created demand for mooring and launching sites on the Great Lakes and the connecting river mouths which was far beyond previous levels of programming, and which will require years of catch-up effort. Conflicts and problems of recreational use of lakes and streams arise not only from the sheer increase in amount of boating, but also because of the multiple use of these resources for various types of boating and recreation. Lake and stream boating resources are not distributed over the state in same proportions as the population of the state. This is advantageous in that it offers a wide range of boating environments, from "wilderness" to "urban". But it also means that programs must equitably distribute boating opportunities to all portions of the state; and as the number of facilities increases and operating costs jump, an increasing proportion of available funds must be allocated to operation and maintenance, leaving a lesser proportion for purchase and development of new sites. Concurrently, land costs continue to increase strikingly. Also, construction costs are not only increasing but many sites must be built to higher standards than once prevailed in order to handle the increasing number of boats, and boats of larger size. Many existing sites need rebuilding to these higher standards.

Department of Natural Resources' Fisheries Division has determined that:

> In southern urban areas, concentrated populations are less accessible to most water resource bases for fishing than are the northern populations. Private land control, degradation of water quality and conflicting uses (such as water skiing, speed boating, etc.) further limits the resource base in southern Michigan. Access is becoming a critical problem on lakes and streams even in the northern Lower and Upper Peninsula. If current trends continue, many miles of trout and anadromous streams will be fenced, excluding public use. Acquisition offers only a partial solution since these lands are some of the most expensive in the state. Leasing or other contract agreements may help. Ways must be found to assure private landowners that anglers will not overrun their property or their waterfront. On lakes, the state should limit or zone boating as necessary based on the total use of the lake by landowners and the public; and through Fish and Game Fund revenues finance many Department functions, many of these functions do not produce direct benefits to anglers. The planning, engineering and environmental enforcement required to continue receiving this federal support are reducing funds actually available for fisheries work.

For a more detailed description of how such Recreation Plan directions are used in assessing and addressing access needs, the Michigan Land and Water Conservation Fund, the Michigan Recreation Land Trust Fund, and Michigan's Waterways Fund are detailed below.

Michigan Land and Water Conservation Fund Program

The federal Land and Water Conservation Fund Act (Public Law 88-578) was passed by Congress in 1965. This Act created the Land and Water Conservation Fund (L&WCF). The purpose of the program is to provide funds to federal and state activities which preserve, develop and assure access to outdoor recreation resources. Fundable activities are planning and the implementation of acquisition and/or development projects recommended by the plan. Michigan's participation in the program is authorized by the Outdoor Recreation Resources Act (Act No. 316 of the Public Acts of 1965).

A portion of the fund (up to 60%) is allocated to the states. Michigan's first grant was approved in 1965 for initial planning. Since then, over $64 million have been distributed to Michigan for planning, acquisition and development projects. Because the fund requires that federal dollars be matched by an equal amount of nonfederal contributions, the program has already produced over $125 million of outdoor recreation investments for Michigan. Amendments to the Act passed in 1977 authorize an increase in Michigan's total annual apportionment from under $6 million to about $18 million by 1980.

Michigan's Land and Water Fund is administered by the Office of Budget and Federal Aid of the Department of Natural Resources. The Department's Recreation Services Division is responsible for developing and updating the State Outdoor Recreation Plan portion of Michigan's program.

Counties, cities and other local governmental units may participate in the annual grant application process by submitting proposals to the Department of Natural Resources. State sponsored projects have been submitted by the Department of Natural Resources divisions of Land Resource Programs (including Coastal Management Program), Mackinac Island State Park, Forestry, Wildlife, Waterways and Fisheries. It has been Michigan's policy to make equal portions of its allocation available for locally sponsored and state sponsored projects.

As Department staff, it is standard procedure for administrators of the L&WCF and the Coastal Management programs to refer proposals and recommendations to one another. Often proposals are submitted to both programs. Another more structured avenue for this coordination is the Department's Standing Committee for Shorelands and Water, which includes representatives of these and other Department programs.

State sponsored projects are selected for funding by the Department's Executive Office in consultation with relevant divisions. The selection is based upon Department policy concerning agency roles, objectives and priorities. The major source of these policies is the State Outdoor Recreation Plan and the local plans developed under its guidelines. Other policy direction is taken from Executive Orders of the Governor, state legislation, and the Department of Natural Resources Policies and Procedures Manual.

Local projects are selected for funding by a grants committee comprised of several Department of Natural Resources division chiefs and executives. As eligibility requirements, each local proposal must be sponsored by a local unit of government, must relate to state and local outdoor recreation plans, and must have a minimum project cost of $10,000.

Under either sponsor, projects may propose to acquire new facilities, expand existing facilities, and/or acquire interest in lands for such uses. Ineligible types of development include indoor recreation structures, historic preservation or restoration, mobile recreation uses, and others. Ineligible acquisitions include historic sites and structures, musueum or archaeological uses, game refuges, fish production areas, indoor facilities use, and others. Grant application forms show a complete list of ineligible and eligible proposals.

The main purpose of the L&WCF local grants-in-aid program is to help provide suitable and adequate land and water areas and facilities for public outdoor recreation use. It is recognized that needs for outdoor recreation areas and facilities far exceed available funds. Criteria have been established as a guide for selecting projects which best satisfy the purpose of the program. The determination of projects to be funded will be rendered on an objective and equitable a basis as possible. The following criteria are used when determining priorities of eligible projects:

*conformity to state and local plans.
*need for the facility.
*projected use of the facility by all segments of the public.
*urgency of the project.
*appropriateness of financial request.

Proposals which the Department determines have the greatest potential are scored and ranked according to quantified criteria shown in Figure 2. A proposal receives the highest number of points in each category that are applicable to that proposal. This scoring system allows an objective evaluation of the merits of each proposal relative to the Department's plans and policies, and assists in identifying priority proposals.

In addition, when analyzing the requests of local government agencies for funds to acquire or develop park lands, consideration will be given to the stewardship history of the applicant for:

1. Protecting its existing park, recreation and open space resources, including protection against diversion of lands designated for park, recreation and open space purposes.

2. Operating and maintaining areas to acceptable standards.

3. Making available its recreation facilities on a non-discriminatory basis.

4. Providing for proper staff to plan, develop and maintain the park system.

5. Performance on previous grants under the L&WCF and State Recreation Bond programs.

The local plan will be reviewed concurrently with the application and the project will be rated according to the extent it is identified in the plan and satisfies acknowledged needs. Guidelines and technical assistance for developing local recreation plans and for planning acquisition or development projects are available from the Recreation Services Division, Department of Natural Resources.

Each year the Department follows the following schedule sequence in soliciting, reviewing and selecting L&WCF proposals for funding:

FEBRUARY	Land and Water proposal forms available to local units of government.
MARCH 15	Preapplication submission deadline, including copies of relevant local recreation plans and for development projects only, copies of a deed or lease for the subject property. In addition, A-95 Notice of Intent sent to state and respective regional clearinghouses.

FIGURE 2

MICHIGAN LAND AND WATER CONSERVATION FUND
CRITERIA FOR LOCAL PROJECT PROPOSALS

Criteria	Possible Point Value
ES THE PROJECT HAVE THESE SPECIFIC ELEMENTS?	
Is the project specifically designed to serve the recreation needs of (1) seniors, (2) handicapped, or (3) economically depressed individuals? Will this project offer (1) multi-season or (2) multi-activity use?	
This project meets two or more of these conditions.	2
The project meets only one of these conditions.	1
The project meets none of these conditions.	0
UMENTATION OF DEFICIENCIES/NEEDS	
Is the project adequately identified in the planning materials and/or documentation as a major deficiency in the community and does the community show evidence of the project in a C.I.P.	2
Community identification of the project as a significant deficiency is marginal.	1
No documentation to identify project as a deficiency.	0
NCY OF PROJECT (for acquisition proposals only)	
Will this site or resource be lost for recreation use in the immediate future if not acquired	2
Slight possibility for conversion of site or resource in the immediate future to an undesirable use.	1
No immediate danger.	0
ASONABLENESS OF LAND AND WATER PORTION OF OJECT COST	
Per capita cost is $2.00 or less.	2
Per capita cost is more than $2.00 but less than $3.25.	1
Per capita cost is $3.25 or more.	0
Per capita cost is determined by dividing the land and water amount requested by the applicant's 1970 population.	
HARE OF LAND AND WATER CONSERVATION FUND EVIOUSLY ALLOCATED TO THE UNIT OVER PREVIOUS ARS SINCE PROGRAM BEGAN	
Local unit has received no land and water funds.	2
Local unit has received less than state's per capita.	1
Local unit has received more than state's per capita.	0

Criteria	Possible Point Value
ACCESSIBILITY	
Site can be reached by all types of transportation modes which are appropriate for that type of site. Access is safe, rapid and convenient. Location is in immediate proximity to expected user populations.	2
Site can be reached by most, but not all, transportation modes which are appropriate for that type of site. Access may be relatively inconvenient for part of the service area population. User may have to travel some distance to profit.	1
Access to the site is limited and inconvenient for a large part of the service area population.	0
POPULATION DENSITY OF APPLICANT	
From the population densities charted for all areas of Michigan in the application form, show the population per square mile and its associated point value (from 0 to 2).	0-2
AVAILABILITY	
Does the project serve 3 or more age groups?	2
Does the project serve at least two of the age groups?	1
Does the project serve only one age group?	0
14 years & under 25-39 years 60+ years 15-25 years 40-59 years	
ABILITY OF THE LOCAL UNIT TO ADEQUATELY MAINTAIN, OPERATE AND PROGRAM THE FACILITY	
Local unit has a park and recreation commission, a full-time park and recreation director, program and budget for operation and maintenance.	2
Local unit has a park and recreation commission, a part-time director, a program and a budget for maintenance and operation or has a commission, a budget and utilizes another department for maintenance and operation.	1
No evidence of budget for parks and recreation or commission.	0
RECORD OF PERFORMANCE ON PREVIOUS GRANTS*	
Projects final billed G.I.A. within two years of project agreement (L & W) or otherwide handled grants in an exceptional manner or if local unit has not receive grants from Department for L & W score a 2.	2
Projects final billed and completed within three years of project agreement.	1
Active project approved prior to 12/73 (L & W) or otherwise exhibited unsatisfactory progress on L & W or Bond projects.	0
*For local units with more than one project, calculate average.	

MAY & JUNE — Department of Natural Resources staff:

- visits project site with the local project representative.
- seeks additional information on the proposed activity. Coastal Management Program assistance to staff is available and encouraged; project review and comment through standard Department operating procedure.
- where appropriate, explores possibilities of coordinated funding with other Department programs, and obtains formal resolutions of intent from local units governing body.
- tentatively scores and ranks proposed based upon quantified criteria.

JULY 1 — Department formalizes, scores and prioritizes list. This list establishes which applications will be sent to the Heritage Conservation and Recreation Service of the U.S. Department of the Interior (HCRS).

The local units with the highest-ranking projects will be requested to submit a full application to the Department of Natural Resources. Upon receipt from the local unit, the full application is submitted by the Department of Natural Resources to HCRS. At this point, project approval is dependent upon federal action. If the application is approved by HCRS, the desired amount of funds will be obligated to the project. A project agreement will be executed between the HCRS and State of Michigan, and a similar agreement will be executed between the state and the local unit. This agreement will be the binding contract authorizing expenditures of public funds. Monies released to Michigan upon individual approval of these project applications must then be matched with an equal or greater amount of nonfederal contribution. When these funds are obligated, actual implementation may begin.

Michigan Recreation Land Trust Fund Program (commonly known as the Kammer Fund Program)

The Kammer Recreational Land Trust Fund Act of 1976 (Public Act 204) was passed by the Michigan Legislature and signed by the Governor on July 23, 1976. This Act created the Michigan Land Trust Fund. The purpose of the program is to provide a new source of funds for public acquisition of recreational lands. Funds are accrued from the sale of oil, gas and mineral leases and royalties from oil, gas, and mineral extractions on state lands.

The Trust Fund will accumulate revenue on a continuous basis until the Fund contains the sum of $100 million, excluding interest. At least 2/3 of the revenues credited to the Trust Fund in any fiscal year will be held to be carried forward in the Trust Fund year to year. Up to 1/3,

but not more than $2.5 million, of the revenues credited to the Trust Fund in any fiscal year may be used for land acquisition. All interest and earnings of the Trust Fund may also be used for acquisition.

The Michigan Land Trust Fund is administered by a Board of Trustees composed of five members: They are: the Chairman of the Natural Resources Commission, the Director of the Department of Natural Resources, and three citizen members appointed by the Governor. One of the citizen members is to be from a group representative of sportsmen's associations or interests. The Board meets at least bi-monthly. All meetings are open to the public. The Office of Budget and Federal Aid of the Department of Natural Resources has been designated as staff to the Board.

Any individual, group or organization may submit a land acquisition proposal. The Board reviews the proposals for conformance to its goals, and for the significance and availability of the land. Nominations submitted are considered by the Board for acquisition and management by the state. Also, the Board will consider funding local land acquisitions when management of the land is more appropriate at the local level, the proposal presents an outstanding recreational opportunity, and public ownership of the land is imperative.

It is standard procedure for staff of the Kammer and Coastal Management programs to refer proposals and recommendations to one another. In this way, proposals may have an increased opportunity for funding and a greater exposure for management attention. Typically, this is accomplished through Michigan's Shorelands and Water Advisory Committee, which includes representatives of these and other Department of Natural Resources programs.

Overall, the program's expressed goal is to give Michigan citizens direct participation in process which uses an innovative, long-range recreational land acquisition effort to meet today's needs, while responding to needs of the future. The Board has also adopted more specific goals to recognize certain social and environmental opportunities as well as problems.

Each of these specific goal statements is directly reflected in the Board's eligiblity requirements. The Board has stated it will consider only those acquisition proposals which meet at least one of the eligibility requirements below.

*The land is within 50 miles of an urbanized area of a Standard Metropolitan Statistical Area.

*The land provides potential for preserving or enhancing rare or scenic areas or resources which are of at least regional significance.

*The land provides access to and use of Great Lakes and connecting waters shoreline.

*The land provides potential for preserving or enhancing fragile areas or resources that are sensitive and vulnerable to exterior forces.

*The land provides access to and use of inland lake, river or stream frontage of recreational value, or is within a floodplain offering recreational opportunities.

*The land has potential for presenting innovative and/or educational recreational opportunities.

*The land has potential for preserving essential habitat or offering protection for endangered and threatened species of fish, wildlife or plant life.

*The land provides potential for hunting and/or fishing opportunities.

*The land is within the Pigeon River Country State Forest.

The Department of Natural Resources' Office of Budget and Federal Aid, as the Board's staff, reviews the proposals for eligibility and significance. Proposals which the Board determines have greatest potential are scored and ranked according to the quantified criteria shown in Figure 3. A proposal receives the highest number of points in each category that are applicable to that proposal.

This scoring system allows an objective evaluation of the merits of each proposal relative to the Board's goals, and assists in identifying priority proposals.

The score of a proposal based on the quantified criteria, however, is not the sole factor the Board considers in making final funding recommendations. Other factors include project cost and feasibility, agency interest in administering the land, availability of land, public input, etc. Proposals which have been designated as areas of particular concern in Michigan's Coastal Management Program also receive this consideration.

When analyzing funding requests for local government acquisitions, consideration is also given to applicant's stewardship history for:

1. Protecting its existing park, recreation and open space resources, including protection against diversion of lands designated for park, recreation and open space purposes.

2. Operating and maintaining areas to acceptable standards.

3. Making available its recreation facilities on a non-discrimination basis.

4. Providing for proper staff to plan, develop and maintain the park system.

5. Having an adequate local recreation plan.

(The local plan will be reviewed concurrently with the application. The project will be evaluated by the extent it is identified in the plan and

FIGURE 3

MICHIGAN LAND TRUST FUND ACQUISITION CRITERIA

Criteria	Possible Point Value
NEAR AN URBAN AREA:	
The site is in an urbanized area of a SMSA or in an area exhibiting characteristics of such an urbanized area	10
The site is in a SMSA	7
The site is within a 50-mile radius of a SMSA urbanized area	5
The site is outside a 50-mile radius of a SMSA urbanized area	0
S TO AND USE OF GREAT LAKES:	
The proposal will provide access to and use of Great Lakes and connecting waters shoreline in an area lacking such access and there is documented need for such use and access	10
The proposal will provide access to and use of Great Lakes and connecting waters shoreline in an area where such access exists, but there is documented need for such use and access	8
R FRONTAGE OR FLOODPLAIN:	
The site provides for access to and use of inland lake, river or stream frontage of recreational value. The site possesses special features of a floodplain worthy of preserving in their natural state and offering recreational opportunities	10
ITY OF SIMILAR FACILITIES:	
The proposal offers recreation opportunities not readily available to the target population and there is documented need for the proposal	10
The proposal offers recreation opportunities that are readily available to the target population but there is documented need for the proposal	7
OF THE RESOURCE:	
The proposal saves a resource from alteration or destruction by conflicting or incompatible uses where such uses are imminent and the resource is irretrievable	10
The proposal saves a resource from alteration or destruction by conflicting or incompatible uses where such uses are imminent	8
The proposal acquires a resource, the loss of which would be considered irretrievable	6
The proposal acquires a resource where there is no imminent threat of loss	0
ECTION FOR ENDANGERED AND THREATENED SPECIES:	
The proposal will protect essential habitat for endangered or threatened species where such protection meets the mutual goals of the Michigan Land Trust Fund and the Endangered and Threatened Species Program and where public recreational benefits will be derived while ting no threats to preserving the essen- habitat	10
ON RIVER COUNTRY STATE FOREST:	
The proposal involves acquisition of land or capital improvements for the Pigeon River Country State Forest	10

Criteria	Possible Point Value
SCENIC AREA OR RESOURCE:	
The proposal allows public access to pleasing distant views and panoramas or to natural features that are picturesque and scenic in their own right. These views or features shall be of at least statewide significance and interest.	10
As above, except that these views or features shall be of at least regional significance and interest.	5
FRAGILE AREA OR RESOURCE:	
The proposal acquires a fragile area or resource where the loss would have far-reaching implications beyond the site	10
The proposal acquires a fragile area or resource.	7
RARE AREA OR RESOURCE:	
The features of the area or resources are rare for the state and of statewide significance	10
The features of the area or resources have a low level of occurrence throughout the state	7
The features of the area or resources have a low level of occurrence throughout the region	5
The features of the area or resources are not unusual for the state or region	0
RECREATION SUITABILITY OF THE SITE:	
The site is suitable for the intended uses or proposed development offering capacity for full public use	10
The site is not suitable for the intended uses or has limitations for the proposed development which would hinder full public use	0
RECREATION USE POTENTIAL:	
The proposal has potential for providing year-around or multi-activity recreation opportunities	10
The proposal has potential for recreation that is single season or single activity	3
INNOVATIVE RECREATION OPPORTUNITY:	
The proposal promotes and demonstrates new ideas in recreation or natural resource management that can have broad and long-term benefits to society	10
EDUCATIONAL RECREATION OPPORTUNITY:	
The proposal offers educational experiences which develop a greater public awareness and recognition of the important recreation and natural resource management hold for society	
The plans for the educational program evidence a realistic commitment by the interested agency; there is demonstrated capability; and the educational features are a significant element in the overall use scheme	10
HUNTING AND/OR FISHING:	
The proposal provides access to and use of lands and/or waters which offer quality hunting and/or fishing opportunities	10

satisfies acknowledged needs. Guidelines and technical assistance for developing local recreation plans and for planning acquisition or development projects are available upon request from the Recreation Services Division, Department of Natural Resources.)

The following schedule has been adopted by the Board for the 1978 program. Future years will follow generally the same pattern although specific dates may vary somewhat.

APRIL 1 — Land acquisition proposal forms available to the public.

JUNE 1 — Land acquisition proposal submission deadline.

JUNE — Board staff evaluates proposals for eligibility and conformance to goals, and determine which agencies (Department of Natural Resources or a local unit of government) have an interest in owning and managing the lands for public recreation purposes.

JULY — Board meeting. The Board reviews staff evaluations and, as appropriate, seeks additional information or documentation on proposals to be given further consideration. Coastal Management Program staff available to provide area of particular concern and other information at Board's request.

JULY-AUGUST — The staff:

- seeks additional information on the proposed acquisition of land and arranges site inspections as requested by the Board. Coastal Management Program assistance to staff is available and encouraged; program review and comment through standard Department operating procedure.
- explores possibility of full or partial donations.
- where appropriate, explores possibility of fund contributions by local units and obtains formal resolutions of commitment from local unit's governing body.
- scores and establishes tentative priorities based on quantified criteria.

SEPTEMBER — Board meeting. Board reviews the staff's score plus information regarding proposal priority and feasibility. The Board selects highest priority projects for further consideration and a preliminary estimate of value.

OCTOBER — Staff obtains value estimates and other pertinent information the Board will need to make acquisition recommendations.

NOVEMBER	Board meeting. The Board considers all value estimates and other new information that may affect funding decisions. Board makes tentative list of recommended lands, and asks for further evaluation, including input from other Department programs such as Coastal Management Program.
JANUARY	Board meeting. Board considers any new information and confirms final list of recommended land acquisitions. This list and the Board's Annual Report is submitted to the State Legislature.

In January of each year the Board is required to submit to the Legislature a priority list of lands recommended for acquisition with Trust Fund monies. This submittal must include a description of the process and rationale for developing their recommendations. The Legislature must approve the list and appropriate funds. The Department of Natural Resources' Lands Division must approve the appraisal for the lands prior to any actual purchase. It is expected that land acquisition will not occur before the summer following submission of the list of lands to the Legislature.

Michigan Waterways Fund

The Michigan Waterways Fund was established in the state Waterways Commission Act (Act No. 320 of the Public Acts of 1947). This legislation authorized Michigan and its Waterways Commission to participate in the federal harbors of refuge program promulgated in the national Rivers and Harbors Act of 1945 (Public Law 79-14). The purpose of these programs is to provide funds to state and local agencies which construct or develop facilities for public access to Michigan's waters. Fundable activities are planning, acquisition and development of public access sites (such as boat launch facilities), harbors of refuge and harbor or dock improvements.

Nearly 1,000 public access sites have been built and equipped for Michigan boaters. Most of these sites are operated by the Department of Natural Resources. Others, owned and operated by local communities, were built under a grant-in-aid agreement where the state's Waterways Fund provided between 50 to 90 percent of development costs.

Harbors of refuge and harbor or dock improvements are constructed with equal amounts of state and federal Waterways Funds. Local agencies must agree to contribute a nominal cash contribution for construction and also to operate the facility. Sixty-five protective harbors have been developed since program initiation.

Together these three programs--access sites, harbors of refuge and harbor or dock improvements--make $2-2.5 million in state Waterways Fund annually available to match federal and local contributions to water access projects. Federal contributions have occasionally equalled but never exceeded the amount of their state match. Federal funding levels are decreasing.

Michigan's Waterways Fund is administered by the Department of Natural Resources' Waterways Division. Major duties include grant administration and the resulting construction, operation and development of water access facilities. The six-member Waterways Commission advises the Division in these duties; Commission members are citizen appointed by the Governor.

Counties, townships and municipal governments may participate in the annual grant application process by contacting the Waterways Division or the Waterways Commission. State projects (i.e. most boating access sites) have been generated by the Department of Natural Resources divisions of Land Resource Programs (includes Coastal Management Program), Waterways, Forestry, Fisheries, Recreation Services, Parks, Wildlife, as well as the Department's Office of Budget and Federal Aid.

As Department staff, it is standard procedure for the Waterways Division and the Coastal Management Program to refer proposals and recommendations to one another. Several projects have been submitted to both programs. Another more structured method for this coordination is the Department's Standing Committee for Shorelands and Water, which includes representatives of these and other Department programs.

State operated projects are selected for funding by the Department's Executive Office in normal budget reviews in consultation with its relevant divisions and its Waterways Commission. The selection is based upon Department policy concerning agency roles, objectives and priorities. The primary source of these policies is the Natural Resources Commission as advised in waterways matters by the Waterways Commission. Other policy direction is taken from Executive Orders of the Governor, state legislation, Department Policies and Procedures Manual, and the State Outdoor Recreation Plan.

Local projects are selected for funding by Waterways Division staff in consultation with the Waterways Commission. As eligibility requirements, each local proposal must be sponsored by a local unit of government by furnishing needed land and land rights, contributing to first costs of construction; and agreeing to own, operate and maintain facilities in the public interest and on a nonprofit basis.

Projects may propose to construct new facilities or to expand or upgrade existing facilities. Related engineering and economic studies are also fundable. Though most activities are eligible for funding, property acquisitions are ineligible for funding in local project proposals.

The program's overall goal is to provide a safe marine highway for small craft along the entire Michigan shoreline of the Great Lakes. From the Outdoor Recreation Plan, management objectives within this goal are to:

*respond to growth in the recreational fleet with adequate facilities.

*minimize exposure of recreation craft to storms and other weather hazards by providing adequate facilities at optimum locations.

*preserve and protect the public interest in waters of the state and access thereto.

*develop increased quality and variety of boating experiences.

Outdoor Recreation Plans and a survey of licensed boat owners document that needs for these programs far exceed available funds. The following criteria are used to help determine which projects should be funded each year:

*need for continued funding from a previous Waterways grant.
*engineering and economic feasibility.
*conformity to state and local plans.
*proximity to other facilities.
*proximity to boating populations.
*proximity to public roads.
*proximity to critical fish habitats or important recreation fisheries.
*influences of nearby islands, lakes, river mouths and bays.

There are no point values or other priorities associated with these criteria. Proposals which the Department determines have the greatest potential are chosen according to an objective evaluation of all proposals submitted each year. Studies of each project's engineering and economic feasibility are reviewed concurrently with supply and demand studies conducted by the Department. Guidelines and technical assistance for developing locally sponsored project proposals within these guidelines is available from the Waterways Division field and administrative staffs.

Each year the Department follows the following schedule in soliciting, reviewing and selecting proposals for funding:

MARCH 1	Deadline for new project proposals to be funded this fiscal year. Submittal includes formal request for consideration and proof that eligibility criteria can be met.
MARCH	Department's Waterways Division staff completes preliminary engineering and economic feasibility studies for each proposal. Projects the staff determines infeasible will not receive priority attention in further reviews this year.
APRIL	For all remaining projects, the Department of Natural Resources staff: - visits project site with local representatives. - seeks additional information on the proposed activity. Coastal Management Program assistance to staff is available and encouraged; project review and comment through standard Department operating procedure.

- where appropriate, explores possibilities of coordinated funding with other Department programs and obtains formal resolutions from local government sponsors.

- tentatively ranks state proposals and local proposals in each program for Waterways Commission review.

JUNE — Department formalizes and prioritizes lists of state and local grants for each program. This list reflects concensus of all relevant field staff, administrators and commissions.

At this point, project funding approval is dependent upon legislative approval. When the State Legislature approves the annual Department budget, project agreements are executed. State projects require only budetary documents, but local projects involve a number of contracts for designs, construction and continued operations. Execution of these agreements usually takes place in the same year the application is made; this obligates the expenditures. In most cases, however, actual work begins in the new fiscal year, which begins on October 1.

Policy and Procedural Direction to Assess Protection and Access Needs

As stated, a primary policy and decision-making tool in each of these programs is the State Comprehensive Outdoor Recreation Plan (SCORP). The plan is developed by Department of Natural Resources programs, reviewed Department-wide, approved by the Department of Natural Resources' Director, adopted by the Natural Resources Commission, and endorsed by the Governor. Technical details are kept current by periodic updates. The Coastal Management Program has recently participated and will continue to be involved in the SCORP development.

To reemphasize the above recreation program descriptions, the plan's policy guidelines, procedures for allocating points to project proposals and the data shown in various portions of the plan each indicate that the Great Lakes provide Michigan's major opportunity to increase public recreation access.

More specifically, recreation/access surveys and water resources indices reaffirm the prominance of the Great Lakes for recreation use. Comparing shoreline regions, the plan shows that most publicly owned lands are located in the Upper Peninsula or northern Lower Peninsula away from population centers. Those population centers are also the areas of highest access demands. Nevertheless, the more population regions in the southern Lower Peninsula can now attract extremely small per capita recreation use and only a small fraction of federal-state recreation budgets. The plan concludes that in higher populated regions it is especially critical that water resources, water use and related impacts must be managed as effectively as possible. Water related resources must, therefore, be made more accessible, maintained better and more aggressively protected against overuse or misuse. Past damage must be

repaired wherever practical to do so. Public access and support facilities must be provided to assure people can use the resources available; if use is excessive, controls will be necessary. Accordingly, current acquisition and development programs must place greater emphasis in those resources and geographic areas. The Great Lakes and their shorelines offer the greatest opportunity to help address these ever-increasing needs. In these points, the 1979 SCORP (to be released this January after formal Natural Resources Commission adoption) is essentially a refinement of the data, issues and policy direction of the 1974 plan.

The following table and related maps were developed from the current SCORP Summary and the Coastal Management Program Draft Environmental Impact Statement to illustrate the access-impact of these and other access related programs. Figure 2 tabulates the location and type of coastal public recreation lands which have been purchased, planned, developed or maintained to a large degree by these funds. Figures 3 through 5 show the distribution and density of those parks, game areas and access sites along Michigan's shores; these areas help satisfy various needs for increased coastal access. Figures 6 through 8 show the current distribution and density of designated erosion, environmental and flood areas under the state Shorelands Protection and Management Act; these designations address the needs for protection of valuable coastal environments. These illustrations may be used together as an inventory of Michigan's coastal access and protection areas.

Figure 2

COASTAL PUBLIC RECREATIONAL LANDS*
-in acres by coastal region and county-

AREA	FEDERAL				STATE					LOCAL		FEDERAL, STATE AND LOCAL		TOTAL ALL LAND
	National Forests	National Parks	Wildlife Refuges	% of All Land	State Forests	State Parks	State Game Areas	Water Access Sites	% of All Land	Total	% of All Land	Total	% of All Land	
REGION 1														
Coastal Counties	-	-	4,500	.2%	-	17,292	19,582	68	1.9%	32,145	1.6%	73,588	3.7%	1,975,350
Region	-	-	4,500	.2%	-	53,895	24,615	364	2.7%	50,526	1.7%	133,890	4.6%	2,896,000
REGION 4														
Coastal Counties	-	-	-	-	85	1,196	3,682	131	.5%	846	< .1%	5,940	.6%	1,070,592
Region	-	-	-	-	85	1,196	3,682	131	.5%	846	< .1%	5,940	.6%	1,070,592
REGION 7														
Coastal Counties	102,628	-	8,857	3.7%	52,854	1,927	54,775	290	3.6%	2,573	< .1%	223,884	7.3%	3,050,624
Region	122,571	-	8,857	6.7%	486,551	6,978	74,405	1,594	7.1%	6,026	.1%	656,982	36.5%	5,497,856
REGION 8														
Coastal Counties	57,549	-	-	6.8%	-	4,157	43,789	2,634	6.0%	534	< .1%	108,663	12.9%	841,920
Region	276,868	-	-	14.2%	81,560	8,364	82,825	5,420	4.6%	6,582	.2%	461,629	12.0%	3,853,312
REGION 9														
Coastal Counties	108,904	-	9	6.5%	317,835	3,636	-	1,074	19.3%	2,104	.1%	433,562	26.0%	1,670,848
Region	295,664	-	9	9.6%	750,578	13,555	-	4,387	24.9%	3,398	.1%	1,067,412	34.6%	3,083,008
REGION 10														
Coastal Counties	64,587	8,300	3	3.8%	305,736	12,610	21,163	2,538	17.7%	4,256	.2%	419,193	21.7%	1,936,256
Region	158,957	8,300	3	5.6%	575,960	12,642	22,393	2,828	20.3%	6,118	.2%	787,201	26.1%	3,017,408
REGION 11														
Coastal Counties	371,454	-	-	16.5%	668,719	20,102	-	1,990	30.7%	311	< .1%	1,062,576	47.3%	2,247,040
Region	371,454	-	-	16.5%	668,719	20,102	-	1,990	30.7%	311	< .1%	1,062,576	47.3%	2,247,040
REGION 12														
Coastal Counties	503,337	28,400	98,015	14.3%	991,704	3,793	-	8,440	22.8%	3,395	< .1%	1,637,084	37.2%	4,407,104
Region	503,337	28,400	95,015	14.3%	991,704	3,793	-	8,440	22.8%	3,395	< .1%	1,637,084	37.2%	4,407,104
REGION 13														
Coastal Counties	903,242	133,828	-	26.8%	207,286	65,348	-	5,156	7.2%	3,961	.1%	1,318,831	34.1%	3,871,488
Region	903,242	133,828	-	26.8%	207,286	65,348	-	5,156	7.2%	3,961	.1%	1,318,831	34.1%	3,871,488
REGION 14														
Coastal Counties	60,203	-	-	5.9%	1,988	4,363	8,274	155	1.5%	2,803	.3%	77,786	7.6%	1,024,640
Region	60,203	-	-	5.9%	1,988	4,363	8,274	155	1.5%	2,803	.3%	77,786	7.6%	1,024,640
COASTAL TOTAL	2,171,904	170,538	111,384	11.1%	2,546,207	134,460	151,245	22,476	12.92%	52,929	.2%	5,361,143	24.3%	22,095,872
STATE TOTAL	2,692,296	170,538	111,384	8.2%	3,764,252	218,191	262,359	30,908	11.75%	103,867	.3%	7,353,795	20.2%	36,363,136

*Reproduced from Michigan State Comprehensive Outdoor Recreation Plan Summary, 1974, pp. 10 and 11.

Figure 3

STATE LEGISLATED AREAS OF PARTICULAR CONCERN

COASTAL STATE PARKS

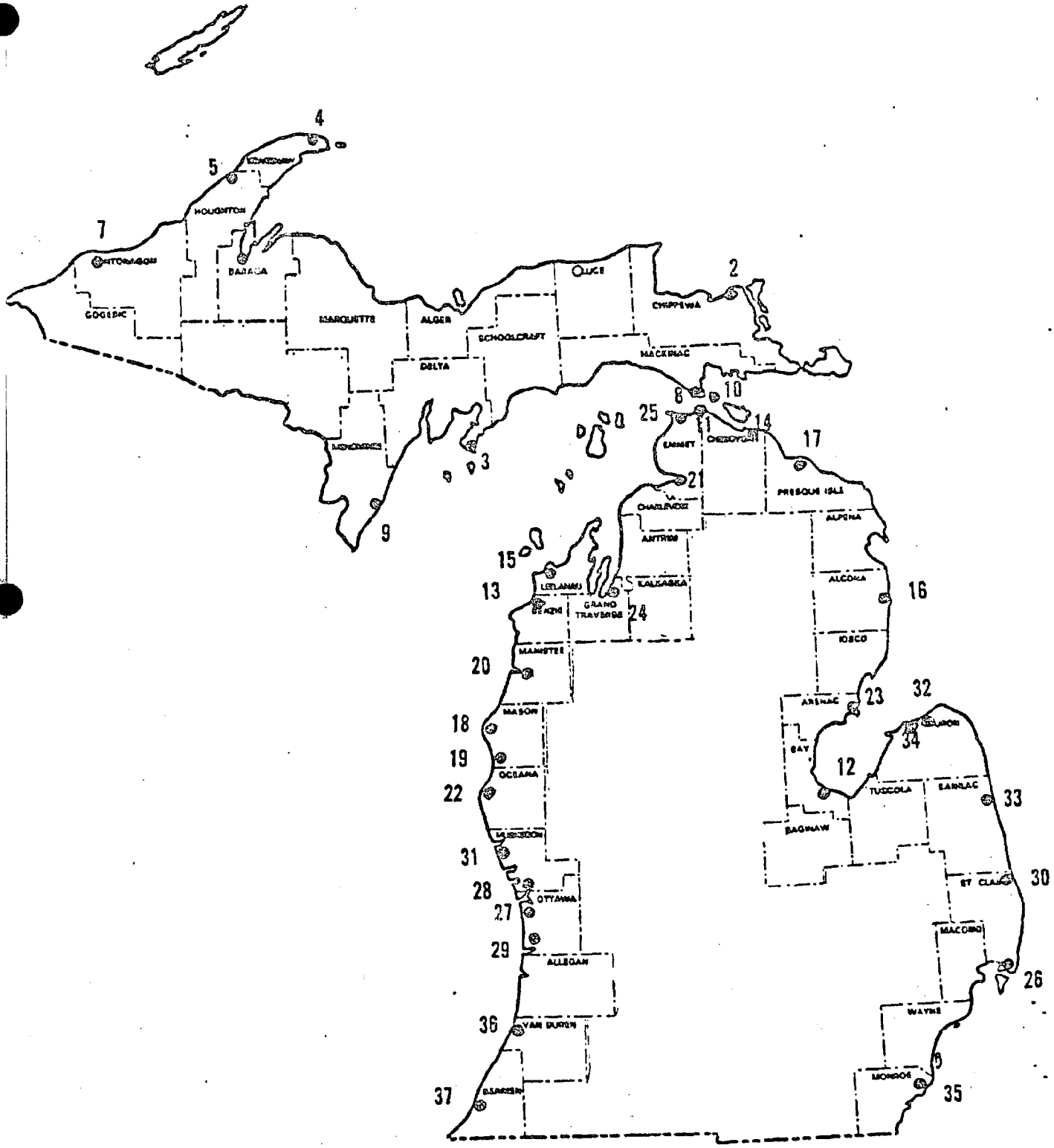
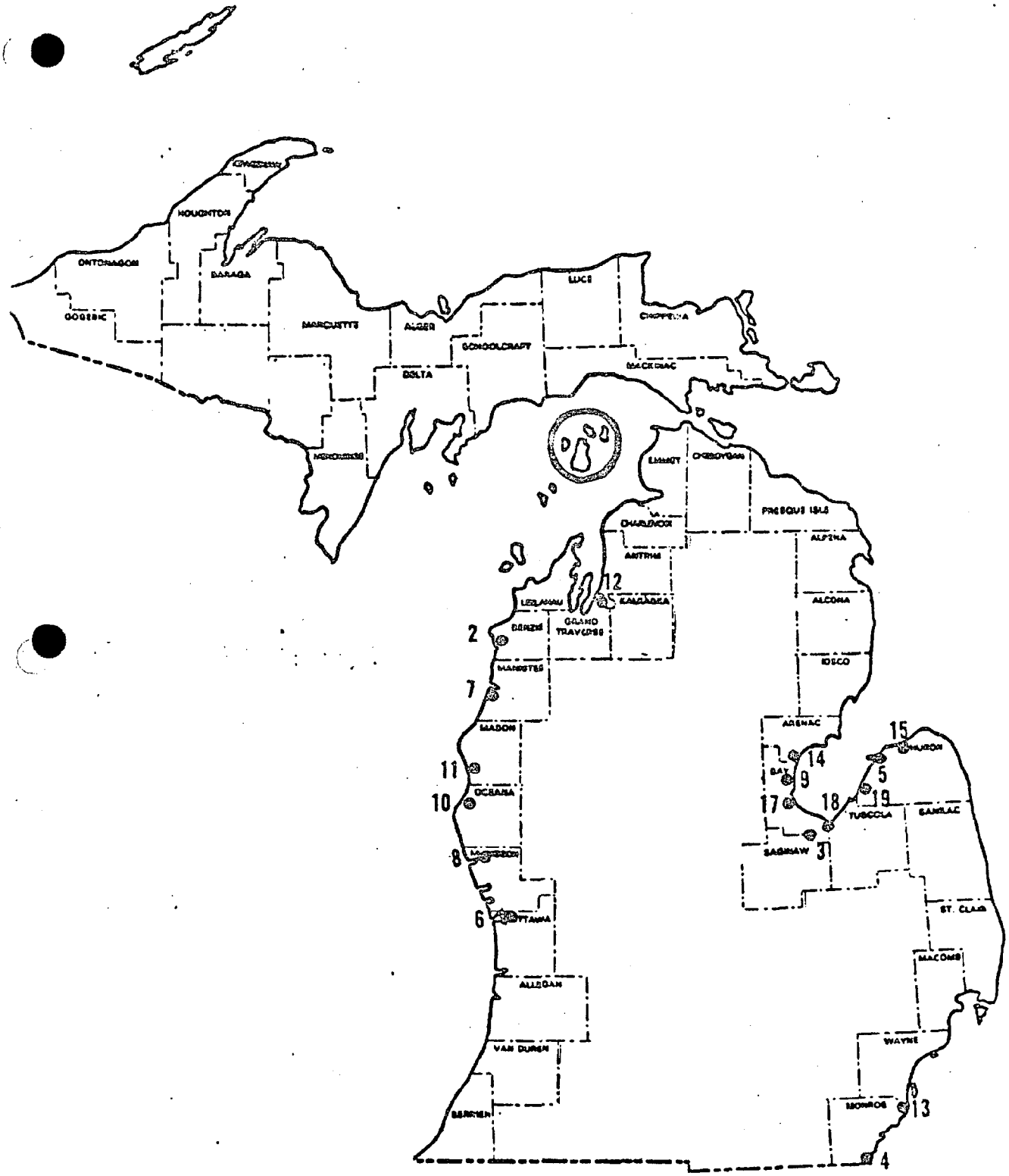


Figure 4

STATE LEGISLATED AREAS OF PARTICULAR CONCERN

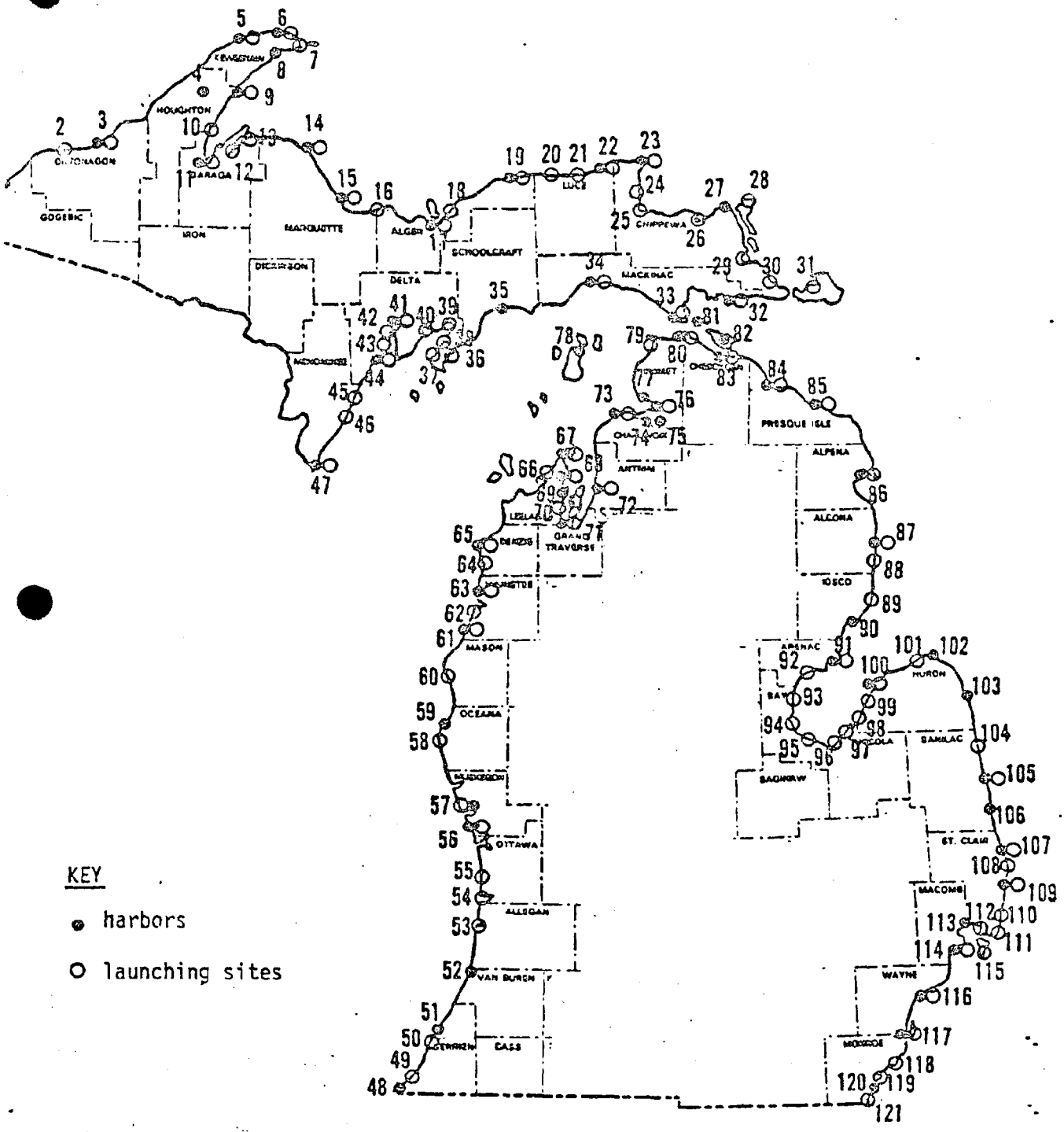
COASTAL STATE GAME AND WILDLIFE AREAS*



*Under the Protection and Preservation of Wildlife Act (Act 230, Public Acts of 1925), Protection of Game and Regulation of Take and Possession (Act 275, Public Acts of 1), Game Law (Act 286, Public Acts of 1929), Wildlife Sanctuaries Law (Act 184, Public Acts of 1929), etc.

STATE LEGISLATED AREAS OF PARTICULAR CONCERN

COASTAL RECREATIONAL HARBORS AND LAUNCHING SITES*

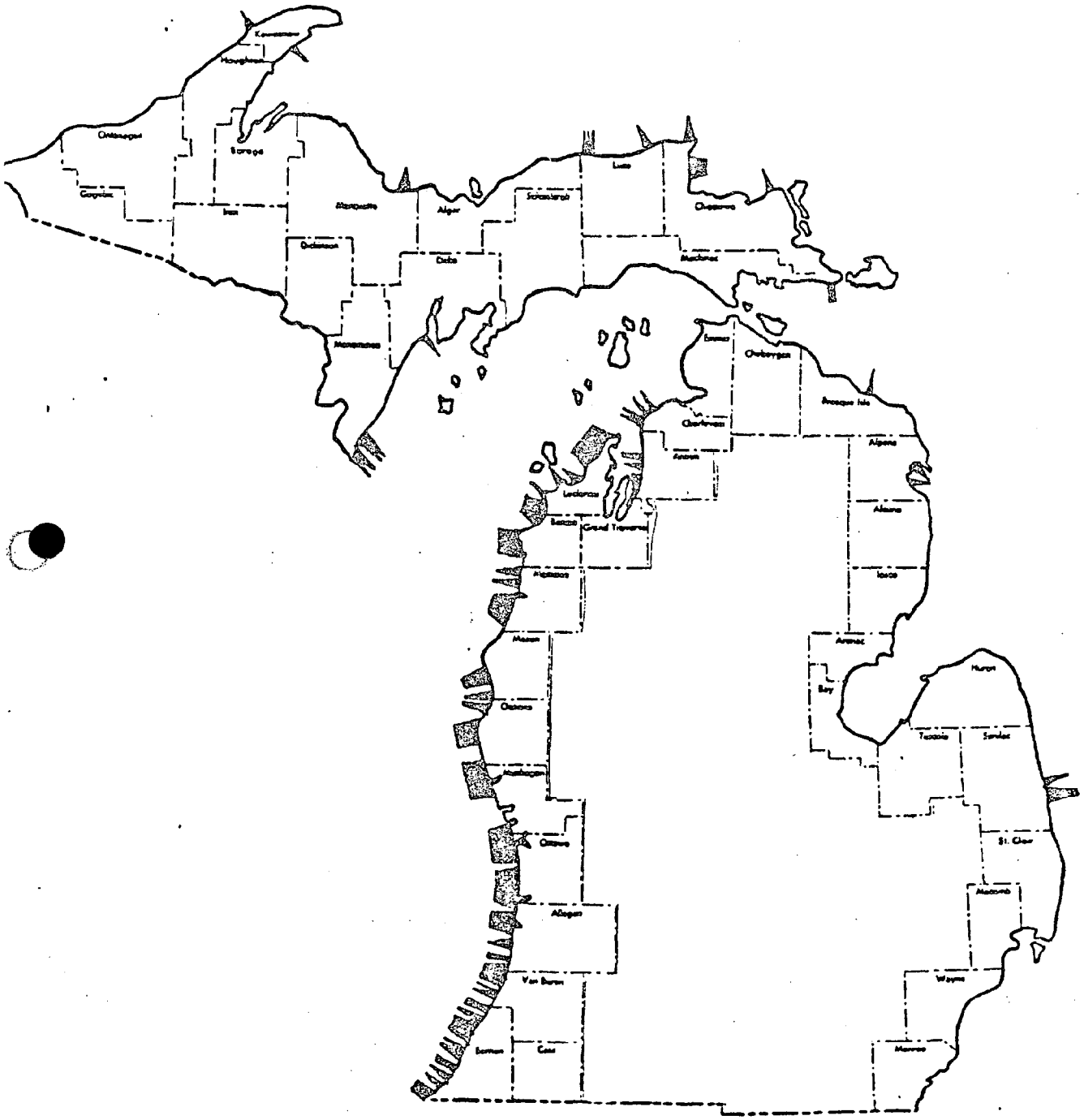


* Under the Recreational Docking Facilities Act (Act 320, Public Acts of 1947), the Commercial Docking Facilities Act (Act 125, Public Acts of 1955) and the Cheboygan Lock and Dam Complex Act (Act 187, Public Acts of 1964).

Figure 6

STATE LEGISLATED AREAS OF PARTICULAR CONCERN

COASTAL HIGH RISK EROSION AREAS*

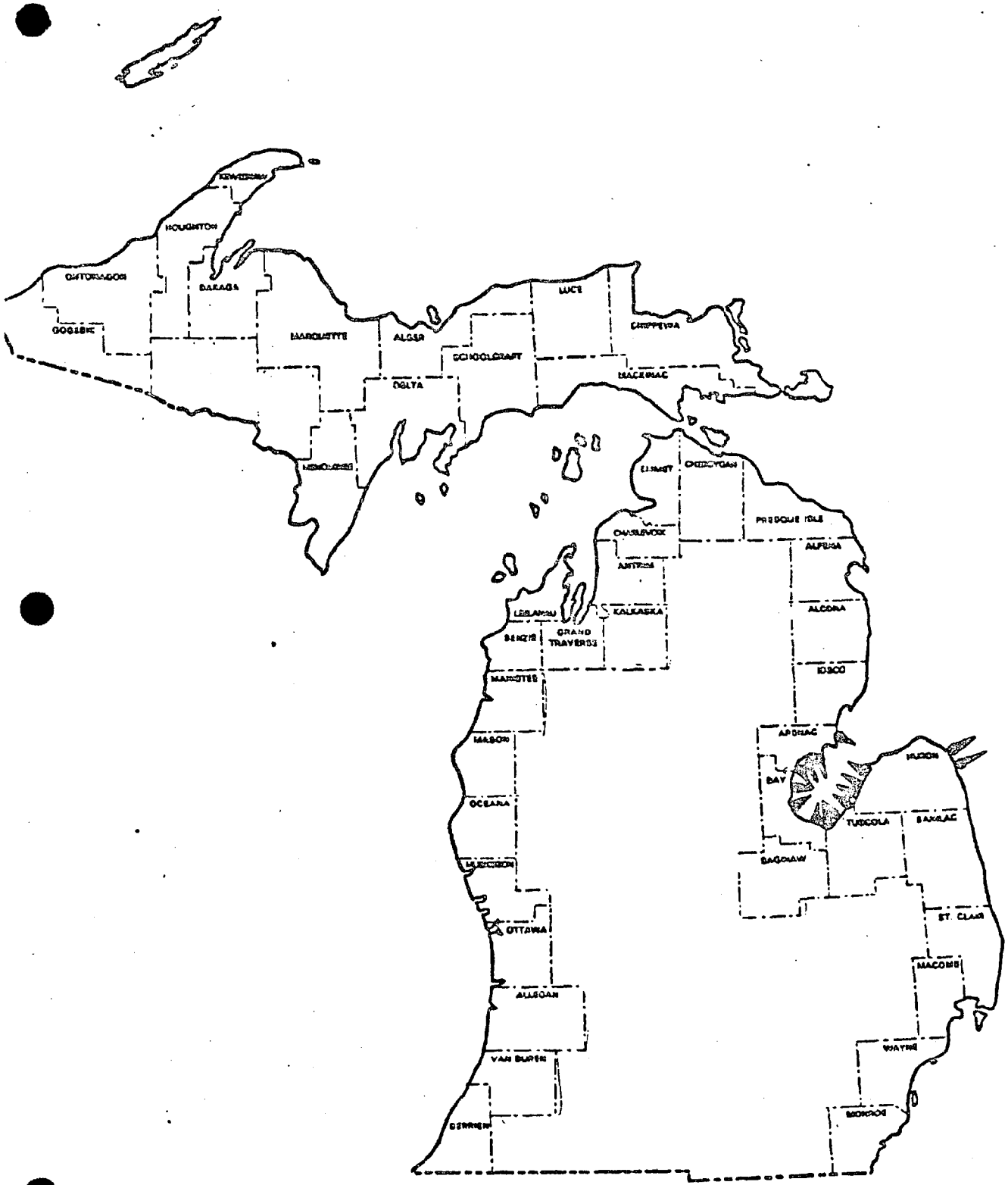


*Under the Shorelands Protection and Management Act (Act 245, Public Acts of 1970).

Figure 7

STATE LEGISLATED AREAS OF PARTICULAR CONCERN

COASTAL ENVIRONMENTAL AREAS*

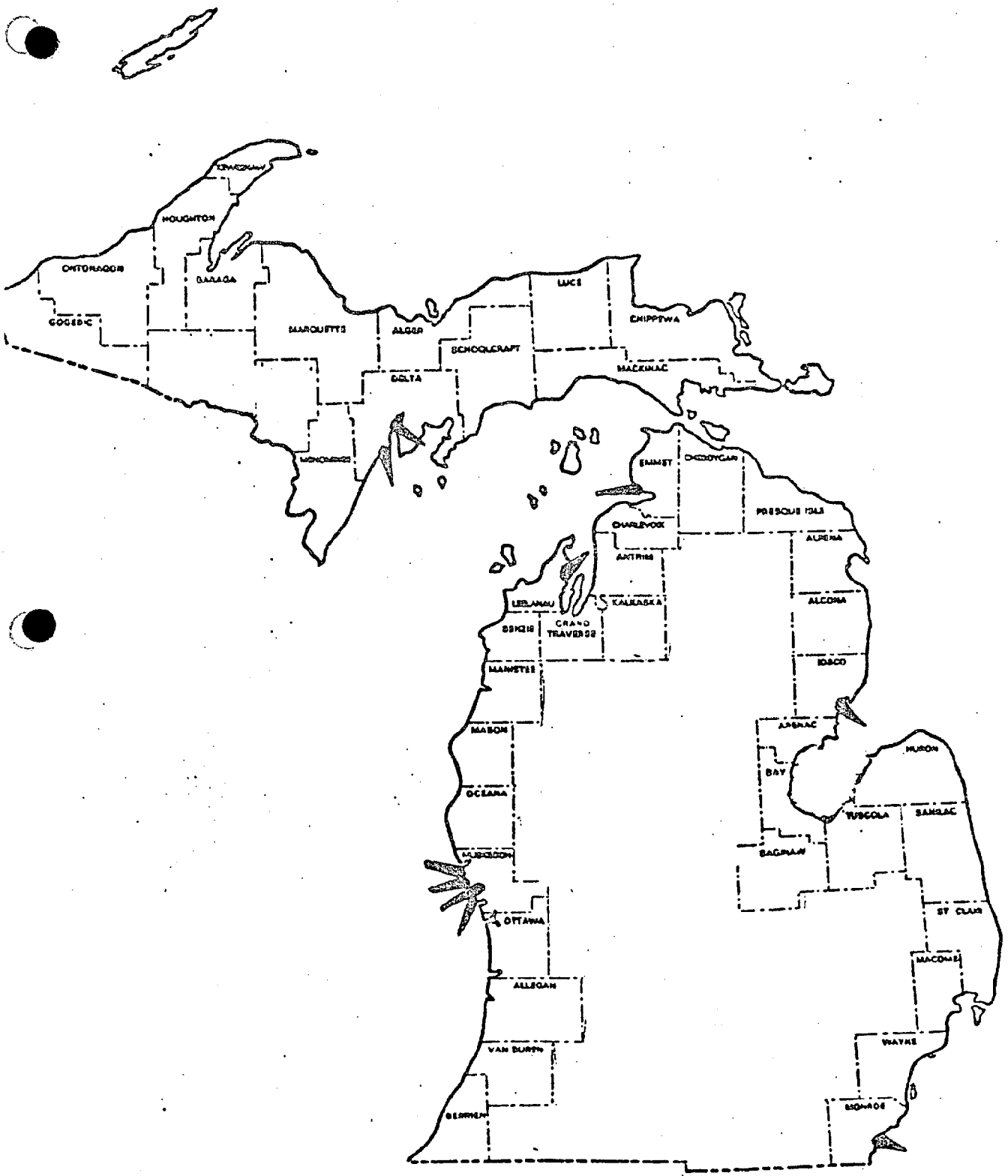


*Under the Shorelands Protection and Management Act (Act 245, Public Acts of 1970).

Figure 8

STATE LEGISLATED AREAS OF PARTICULAR CONCERN

COASTAL FLOOD HAZARD AREAS*



*Under the Shorelands Protection and Management Act (Act 245, Public Acts of 1970).

CHAPTER III

DESCRIBE A METHOD TO DESIGNATE APPROPRIATE SHOREFRONT AREAS AS AREAS OF PARTICULAR CONCERN FOR PROTECTION AND/OR ACCESS PURPOSES

The method used to identify shorefront areas as areas of particular concern (APCs) for preservation or restoration purposes is fully described in FEIS Chapter IV. This process is an ongoing element of Michigan's Coastal Management Program. As such, it will provide a continuous opportunity for any individual, interest group or unit of government to recommend that specific shorefront sites receive specific management attention for access-related needs in the operation of Michigan's Coastal Management Program.

This process includes the nomination, review, prioritizing and opportunity for implementation of APCs nominated by the public for a variety of purposes. As one example, the City of St. Ignace nominated its waterfront for restoration and a promenade redevelopment. It might be noted that as described in Chapter IV, the acronym APR (areas of preservation or restoration) is used to indicate the highest priority for implementation of all APCs. As used there, it signifies the most critical and immediate management priority, and specifies the appropriate generic management technique.

In addition, Michigan's APC process also provides a more commital form of APC which is legislated by state statute. These legislated (i.e. designated) APCs have legal assurance that a specific site or class of sites will be managed for a specific purpose. Unlike nominated APCs, their management and resultant use priorities are certain and enforceable by state statute. Examples of those areas which are owned or operated by the Department of Natural Resources include state parks, game and wildlife areas, and wilderness areas, wild areas or natural areas. Others are regulated by the Department or other state agencies. They include high risk erosion areas, flood risk areas, environmental areas, Great Lakes sand dunes, port districts, harbors of refuge, public access sites for boating and fishing, natural river areas and historic districts--all of which are regulated for increased access, state/local access controls and/or preservation.

Coordination and environmental review requirements shown in FEIS Chapter VI assure that all APCs to be implemented will be compatible with one another and with other plans, policies and ongoing projects.

CHAPTER IV

DESCRIBE A MECHANISM FOR CONTINUED REFINEMENT AND IMPLEMENTATION OF NEEDED MANAGEMENT TECHNIQUES

The Coastal Management Program is committed to an annual review and evaluation of its overall effectiveness. Management techniques related to individual sites or classes of sites will be refined. These mechanisms are described in FEIS Chapters IV and V. Each process has emphasized access issues throughout program development. The program's implementation phase will accordingly emphasize action on preliminary site designs, nature trails, lighthouse restoration and other access related needs.

Additional state coordination and refinement of these techniques is also shown in Chapter V. Mechanisms include the internal organization of the MDNR and its various commissions and advisory committees; the role of the Department and the Division of Land Resource Programs in controlling activities having a direct and significant impact on Michigan's coast; state consideration of uses of regional benefit; rule making and appeals processes required in the Administrative Procedures Act (Act No. 306 of the Public Acts of 1969); activities of the Standing Committee on Shorelands and Water; activities of the Citizens Shorelands Advisory Council; environmental reviews required by the Michigan Environmental Protection Act (Act No. 127 of the Public Acts of 1970), by the Governor's Executive Order 1974-4 which establishes the Michigan Environmental Review Board and the Inter-Departmental Environmental Review Committee; activities of the Governor's Cabinet Committee on Environment and Land Use; and the overall conduct of Michigan's Coastal Management Program involving the various levels of coastal interests.

Additional federal coordination and refinement of these techniques shown in Chapter VI includes participation of federal programs in the development and implementation of Michigan's Coastal Management Program; state-federal interagency agreements; state administration of federal programs; state consideration of the national interest; Coastal Management Program participation in various federal, multistate and international resource management groups; requirements of the federal Fish and Wildlife Coordination Act of 1934; environmental impact statement reviews required by the National Environmental Policy Act of 1969; A-95 review requirements of the federal Intergovernmental Cooperation Act of 1968; and federal consistency provisions of the federal Coastal Zone Management Act of 1972.

Beyond these procedural mechanisms, Michigan's Coastal Management Program also intends to propose policies and procedures to address coastal access concerns where such direction does not now exist. Examples of this effort include specific policy guidelines for Great Lakes islands, procedures for evaluating federal consistency, and computerized data storage and retrieval to streamline permit reviews.

CHAPTER V

ARTICULATE STATE POLICIES PERTAINING TO ACCESS AND/OR PROTECTION

General State Policy

The state policies below document the general state authority to acquire and manage property and property rights. These policies, when coupled with more site-specific policies, demonstrate Department of Natural Resources and Coastal Management Program commitment to provide coastal access.

It is the policy of the State of Michigan that the Legislature has supervisory jurisdiction over all state-owned lands used as forest preserves, game areas and recreation areas, has power to provide for their sale or other dispersion by law; has power to designate such lands or a state land reserve (Article IV and Article X of the State Constitution).

It is the policy of the State of Michigan that when private property must be taken for public use, it might first be secured in a manner prescribed by law and must be taken only after just compensation has been determined in proceedings in a court of record (Article X of the State Constitution).

It is the policy of the State of Michigan that the state, as well as counties, townships, cities, villages and certain boards and commissions all have power to acquire land for the use and benefit of the public, including power to condemn if necessary. Condemnation must, however, follow prescribed condemnation proceedings to establish the necessity, and propriety of each taking action as well as the amount of compensation to be paid (Act No. 149 of the Public Acts of 1911). Significant acquisitions involving federal aid must complete environmental reviews required by the A-95 process and the National Environmental Policy Act. Department of Natural Resources acquisitions must complete environmental reviews by the Michigan Environmental Review Board required in Executive Order of the Governor 1974-4.

It is the policy of the State of Michigan that the Department of Natural Resources buy, sell, lease, exchange or condemn as well as accept gifts or grants of land and other property (Act No. 17 of the Public Acts of 1921).

General Program Policy

Within these guidelines, FEIS Chapter III links problems, concerns and more specific policies to coastal action programs. Each of the five resource groups used to describe Michigan's coastal area include at least one such link between access-related problems and Coastal Management Program actions.

In areas of recreation value, for example:

It is policy of the State of Michigan to improve the accessibility of state land and water resources to the widest possible range of socio-

economic classes consistent with environmental protection and public safety needs; to respond to changing trends in demand for recreational pursuits while minimizing conflicting use through management policies consistent with carrying capacity principles; to acquire, manage and regulate recreational and cultural areas for preservation of natural beauty; to provide management incentives and regulatory controls for land and water resources of the state to ensure continued recreational use as well as the survival of fish and wildlife populations; to develop protective measures for sites and objects having aesthetic, geologic, archaeologic, natural or scientific values through various state controls; and to increase recreational opportunities through an extension of state programs (1974 Michigan Recreation Plan).

It is policy of the State of Michigan to provide and develop facilities for outdoor recreation (Act No. 17 of the Public Acts of 1921); to protect and preserve public right-of-way which lead to frontage on lakes, streams, or the Great Lakes (Natural Resources Commission Policy No. 3201); that state-owned lands other than state parks and recreation areas shall be managed for purposes for which they are best suited and in a manner which will benefit the general public in the most prudent and accommodating manner (Natural Resources Commission Policy No. 2604); that state parks and recreation areas shall be managed to afford optimum opportunities to enjoy a variety of recreational pursuits by the general public (Natural Resources Commission Policy No. 2605); to serve the public interest for recreational trails by expanding, as possible, facilities on state lands and by providing the leadership in planning and coordinating statewide trails systems for each of the major trails sports (Natural Resources Commission Policy No. 2504); that wildlife management, habitat improvement and public hunting be carried on in all parts of the recreation areas where such operations do not conflict with intensive use areas (Natural Resources Commission Policy No. 2108); and to provide interpretive services in state parks (Natural Resources Commission Policy No. 2403). It is policy of the Natural Resources COmmission that the Department of Natural Resources shall establish priorities for fisheries management on waters of the state primarily on the basis of need, expected public benefits, and the desire for a balanced program. Riparian ownership and the level of public access of any particular water should have a bearing on the management priority decision, but should not transcend the first consideration (Natural Resources Commission Policy No. 3110).

Likewise, for areas of cultural value:

It is policy of the State of Michigan to encourage the establishment of historic districts; to provide for the acquisition of land and structures for historic purposes; to provide for preservation of historic sites and structures; to provide for the creation of historic district commissions; and to provide for the maintenance of publicly owned historic sites and structures by local units (Act No. 169 of the Public Acts of 1970).

It is state policy to maintain a state register of historic sites which may involve state agencies in environmental review proceedings (Act No. 10 of the Public Acts of 1955 and Executive Order 1974-4); to designate

natural rivers for the purpose of preserving and enhancing its values for water conservation, its free flowing condition and its fish, wildlife, boating, scenic, aesthetic, flood plain, ecologic, historic and recreational values and uses (Act No. 231 of the Public Acts of 1970); to provide for the preservation of farmland, historic or open spaces through agreements or easements with the state or with local governing bodies in which the two parties jointly hold the property either in a term of years or in perpetuity (Act No. 116 of the Public Acts of 1974); and to participate in the inventory and registration of historic places on the National Register through the director of the Michigan History Division, Department of State, as state historic preservation officer, authorized under the National Preservation Act of 1966 (Public Law 89-665).

It is state policy that environmental impact statements be prepared for major state activities which may result in the alteration or destruction of a significant element of the human, natural, amenity or historic resources of the state (Executive Order 1974-4).

Major Regulatory Policies

Though FEIS Chapter III commits Michigan's Coastal Management Program to certain program actions, it cites both regulatory and incentive policies extracted from Executive Orders of the Governor, formal statements of the Natural Resources Commission, and from state and federal regulations. More site-specific, enforceable policies are elaborated in DEIS Appendix D to describe several regulatory programs which provide protection of access areas.

The most significant of these regulations are: the Shorelands Protection and Management Act (Act No. 245 of the Public Acts of 1970); the Great Lakes Sand Dunes Protection and Management Act (Act No. 222 of the Public Acts of 1976); the Submerged Lands Act (Act No. 247 of the Public Acts of 1955); Inland Lakes and Streams Act (Act No. 346 of the Public Acts of 1972); the Soil Erosion and Sedimentation Control Act (Act No. 347 of the Public Acts of 1970); the Natural Rivers Act (Act No. 231 of the Public Acts of 1970); the Floodway Encroachment Act (Act No. 167 of the Public Acts of 1969); and finally the County Zoning Approval Act (Act No. 183 of the Public Acts of 1943).

Major Direct Assistance Policies

To provide direct funding, technical assistance to state and local entities for access and protection purposes the following policies apply:

It is the policy of Michigan's Department of Natural Resources to acquire and preserve frontage on the Great Lakes for public use, including specifically, a generous acreage of all types of the unique coastal sand dune formations represented in Michigan (Policy of the Michigan Department of Natural Resources' Natural Resources Commission, adopted unanimously on March 24, 1924 as proposed by Superintendent of Michigan's State Park system, Mr. P. J. Hoffmaster).

It is policy of the State of Michigan to authorize participation by the state and its subdivisions in programs of federal assistance relating to the planning and development of outdoor recreation resources and facilities; that the Department of Natural Resources be authorized to prepare and maintain, and keep up-to-date a comprehensive plan for the development of the outdoor recreation resources of the state in conjunction with the federal Land and

Water Conservation Program (Act No. 316 of the Public Acts of 1965). As stated, the SCORP documents are formally adopted by the Department of Natural Resources Director, the Natural Resources Commission and the Governor. As such, SCORP provides the Department of Natural Resources policy commitments and procedural guidelines which specifically address access and protection needs.

It is state policy to create a state recreational land acquisition trust fund to be funded by the sale of oil, gas and mineral leases in the Pigeon River State Forest and in certain other land and from the royalties accruing from the oil, gas and mineral leases sold in the Pigeon River Country state Forest and in certain other land; to create the state recreational land acquisition trust fund board; and to provide for the administration and uses of the fund (Act No. 204 of the Public Acts of 1976).

It is state policy that the Michigan Waterways Commission provide for the acquisition, construction, and maintenance of harbors and channels; to provide for the regulation and control of boating within the boundaries of this state; and to provide for state participation in certain federal programs (Act No. 320 of the Public Acts of 1947).

It is state policy to protect and preserve public rights-of-way which lead to frontage on lakes, streams or the Great Lakes (Natural Resources Commission Policy No. 2301).

Operational Policies

Where existing policies may not address day-to-day issues, the Department of Natural Resources will aggressively help develop appropriate solutions and operational policy commitments. Such access-related issues currently involve various Department and local interests in coastal zoning, permit and environmental reviews, as well as in realty transactions.

In reviewing (1) zoning ordinances, (2) plat, building or subdivision permit applications or (3) Farmland and Open Space agreements, it is the cooperational policy of the Department and the Coastal Management Program to help local communities negotiate for needed public access. The State Supreme Court and State Attorney General, however, have ruled that access deeds or donations cannot be made a condition of Department approvals. Yet, when reviewing environmental impact statements and related management plans for major projects, the Department frequently finds that proposed activities may threaten, restrict or destroy public access opportunities. In these cases, the Department's operational policy is to require appropriate mitigation or compensation as part of the environmental review process.

Where the Department itself is a coastal landholder, the operational policy is not to sell, exchange or relinquish its title or its associated access rights. This policy holds for Great Lakes shorelands as well as other riparian lands.

As these and other issues produce new policy through Exeuctive Order of the President or the Governor, federal or state legislative bodies, or the Department of Natural Resources' Natural Resources Commission, they will also be recognized in Coastal Management Program implementation. The State Comprehensive Outdoor Recreation Plan is the most current, detailed and often-used articulation of these access policies. The Coastal Management Program will continue its active contribution to the development and implementation of these policies.

CHAPTER VI

IDENTIFY EXISTING LOCAL, STATE AND FEDERAL PROGRAMS TO ADDRESS INDICATED NEEDS

DEIS appendices show the local plans and ordinances (Appendix B) and the incentive and regulatory programs of state (Appendix C) and federal agencies (Appendix A) involved in Michigan's coast. Though most of these programs may address some type of access and/or protection needs, the following state and federal programs furnish the majority of coastal access-related project proposals and funds. Many of these programs require local interface by requiring: (1) local project sponsors, (2) consistency with local plans or laws, and (3) local commitment to operate and maintain the facility. In coastal areas, the Coastal Management Program will augment local and federal coordination through mechanisms described in Chapters II - IV herein.

State programs providing the majority of access funds are: (1) the Michigan Recreation Bond, and other funds for Land and Water Conservation Fund at $5 million per year; (2) the Michigan Recreation Land Trust (Kammer) Fund at $2.5 million; (3) the Michigan Waterways Fund for public boating access sites, harbor or dock improvements and harbors of refuge at $3.3 million; and (4) the Michigan Historic Preservation Grant Program at $1 million. Of these, the Kammer Fund is unique to Michigan in that it uses resources from oil and gas leases on state lands to finance new recreational acquisitions; all others are directly linked to both local and federal funding sources for accomplishing access proposals. All but the Historic Preservation Grants Program are administered within the Department of Natural Resources. Summary descriptions of programs 1-3 are included in Chapter II of this report. Major state programs providing regulatory and incentive techniques to address access concerns include: (1) Great Lakes high risk erosion, flood risk and environmental areas programs provide access controls in critical environmental areas and in areas hazardous to development; (2) the state game and wildlife areas program provides habitats for hunting, research and other purposes; (3) the state parks program provides recreation, education and other access; (4) harbors of refuge and mooring facilities program enhances the quality and quantity of boating access at such sites; (5) the port districts program provides access for commercial navigation; (6) the state historic districts program protects significant historic structures; (7) the wilderness areas, wild areas and natural areas program preserves unique or archetypical areas by state acquisition; and (8) the natural rivers program provides access controls to preserve and enhance values identified for such areas. Each is outlined in FEIS Chapter IV and detailed in DEIS Appendix C.

Major federal access-related programs taken from FEIS Chapter VI and DEIS Appendix A include: (1) the federal Land and Water Conservation Fund at $10.2 million; (2) the federal Rivers and Harbors Fund at $3.2 million; and (3) the federal Historic Preservation Grant Program at $1 million. Though these sources offer the most potential for increased coastal access monies, other federal programs provide a great deal of Michigan's existing coastal

access sites. The most significant of these programs in acreage terms includes: Department of Interior programs for national parks, national lakeshores, national trails systems, surplus federal lands, inventory of federally owned islands; inventory of wetlands; and registers of historic sites and endangered species; and Department of Agriculture's national forest programs.

Since inception of Michigan's Coastal Management Program, participants have identified concerns which will require increasing attention to site specific and statewide access or protection needs. During program development, the program participated in an Office of Coastal Zone Management study to assess the feasibility of state acquisition of less than fee simple interests in property; published a property owners manual to guide residential construction in sensitive sand dune and wetland areas; and conducted a continuing demonstration project to evaluate low cost measures to control shore erosion.

During fiscal year 1977-78, the program continued to address such needs, but also began to phase in site-specific actions.

Ongoing fiscal year 1977-78 activities included maintenance of the APC process and technical assistance to local governments for access controls such as zoning for hazardous or sensitive areas. Coastal Management Program also partially financed the administration of the Great Lakes Sand Dunes Protection and Management Act (Act No. 222 of the Public Acts of 1976). During the period, the Department conducted inventories, technical studies and analyses required to begin implementing the Act. The first seven Great Lakes sand dune areas were also designated for protection against indiscriminate mining and reclamation.

Fiscal year 1977-78 site specific projects met a number of significant and long-standing access-related needs. As an example, an inventory of potential sites for new recreational marins and boat launching sites was conducted, and included development of feasibility criteria which were not previously available, enhanced implementation potential for Upper Peninsula sites where APCs indicated a critical need, and linked marina development with inventories of fish spawning sites and other environmental areas of potential impact. In addition, a field inspection of the St. Clair Flats area, an APC, accelerated DNR management and acquisition efforts in this area. A study of offshore sources of sand investigated potentials for beach nourishment and also provided a portion of the economic alternatives to mining sand dunes which are required under Act 222 of the Public Acts of 1976. Measures were evaluated and recommended to stabilize the eroding sand dunes in a number of our state parks. In conjunction with DNR's $10 million metro fishing program, conceptual design criteria and plans were developed for roads, parking, handicapped use, piers and ponds. A harbor line established for Kalamazoo Lake will be used to regulate new structural development for the coastal lake and its marshes. An appraisal of the Luther-Uhl Dune, an APC, expedited purchase and preservation of this unique natural area by the Kammer Program. Several Upper Peninsula localities now have recreation plans for developing proposals to other funding programs. And finally, waterfront revitalizing and development

projects with the cities of Marquette, St. Ignace, Grindstone City and Detroit initiated planning and site design on APCs respectively for redevelopment of an obsolete coal dock as a park/marina, a seawall and promenade, a historic preservation "charette", and an acceleration of a linked waterfront metropark complex.

From this experience, Michigan also proposed that its Coastal Management Program demonstrate coastal needs for the funding of low cost construction projects. With approval from the federal Office of Coastal Zone Management, Michigan and a number of local interests will complete this demonstration program in fiscal year 1978-79. As a result, an additional number of creative and innovative access projects will be completed along Michigan's shorefront in the upcoming year, including several nature trails and interpretive centers for coastal state parks, and three historic site restoration projects.

In line with Department priorities for recreational development in southeast metropolitan Michigan, the heavily urbanized "downriver" portion of Detroit will develop a coastal recreation inventory strategy, which is similar to a local recreation plan. Preliminary designs for a five parcel linked park project, an APC, between Detroit's central business district and Belle Isle will accelerate development scheduled under Land and Water funds. Detroit's Engle-Reid riverfront recreation park, an APC, will be redesigned in light of recent new acquisitions. Detroit's Fort Wayne complex, a 96-acre APC on the National Historic Register, will be landscaped, lighted and partially furnished as part of a historic and scenic restoration program conducted by the Michigan History Division, National Park Service and others. In other areas, the City of Grand Haven will accelerate its Adams Street Park development with new plans and designs. The City of Norton Shores will acquire the Swett property sand dunes for use as a public natural and education site with coastal funds providing a site plan and designs. Local groups will rennovate the historic Schoolcraft House in Sault Ste. Marie and open it to the public. Several additional Upper Peninsula communities will complete local recreation plans. The state will design the idle Mill Creek site for a recreation and historic development to compliment the Mackinaw Island State Park. Eight state parks along Michigan's coast will develop new nature trails and interpretive centers for wetlands and sand dunes. The state will devise a fee schedule for leasing its state-owned bottomlands for marina use, eliminating time delays and lost revenues. And finally, the program will actively encourage Kammer Program acquisition of development rights easements in the Salt River Marsh adjacent to Lake St. Clair.

A number of APCs have already received administrative review and funding from other access-related programs. Over 20 APCs have been referred to the Kammer Program for fiscal year 1978-79 funding. Two of these have already been approved, the St. Johns Marsh and the Luther-Uhl Dunes projects. Another dozen APCs were referred for Land and Water, Waterways or Historic Preservation grants in fiscal year 1978-79, but were not funded.

More than 130 applications (100 from local units and 30 from state agencies) were considered for fiscal year 1978-79 coastal funding, totalling over $5.6 million. Others were received after review deadlines or were referred

from other programs. Staff consulted on a small number of still other projects which were not submitted. From that number, several viable projects are now being developed. Preliminary examination of future funding requirements shows that these projects, APCs and a few projects resubmitted for subsequent funding will be considered for the fiscal year 1979-80 grant. From these trends, the Coastal Management Program will soon experience shortfalls common to other state access and protection programs. Michigan Coastal Management Program definitely intends to respond by continuing and expanding its emphasis on access and protection issues.

To help fill data gaps to address these issues, program staff has begun assembling coastal breakdowns of data reported in the State Comprehensive Outdoor Recreation Plan for future evaluation of project proposals. A complete set of the Bureau of Land Management's inventory/resource analysis of federally-owned Great Lakes islands has also been obtained. This information is needed to develop policy guidance for acquisitions and other Department actions related to islands. Program staff has also begun to explore with the Heritage Conservation and Recreation Service possibilities for publication of an inventory/users manual for federal recreation related programs in Michigan. Such future data requirements will likely be minimal, however.

CONCLUSION

In conclusion, our experience in Michigan shows that coastal access is a long-standing issue. Its impact is growing. The quantity and variety of access/protection needs along Michigan's shorefronts exceeds capabilities of currently available sites.

It is Michigan's goal to address these needs through effective utilization of ongoing processes already used in its Coastal Management Program. The federal Coastal Zone Management Act requires that coastal programs: (1) define and identify eligible areas; (2) describe evaluation procedures; (3) apply APC processes; (4) refine management techniques; (5) articulate state policies; and (6) identify programs for implementation. Except for federal consistency determinations, Michigan now uses each of these access and protection processes. They are the standard procedures already used to make coastal and other resource management decisions. In their prior reviews and current actions, the participation of local, state and federal interests is well established.

Through the Coastal Management Program, Michigan intends to focus these processes on coastal access and protection matters. Coastal Management Program inputs will be fiscal and technical. This review, approval and implementation process allows Michigan to: (1) put new financial and technical emphasis on identified coastal access requirements; (2) formally commit the Coastal Management Program's participation in these processes in concert with other local, state and federal interests; and (3) support appropriation of additional federal funds to Michigan for addressing coastal access needs.

It is important to note that, at this writing, access portions of the federal Coastal Zone Management Act, Section 315(2), have been authorized but not yet appropriated by Congress. Without specific access funding, the Coastal Management Program must depend on other programs to implement the majority of needs it has documented. With these funds, it can meet a number of these needs directly. Michigan strongly urges that adequate federal funds be appropriated to specifically increase the access and protection effectiveness of its Coastal Management Program and other programs as well.

4) The State is working with the Army Corps of Engineers, in coordination with the DNR high-risk erosion program, to use non-polluted (by EPA standards) dredge spoils for beach nourishment projects. The efforts have been sucessful to date when tied into Corps harbor mitigation and maintenance dredging projects.

5) Amendments to existing zoning enabling legislation have increased the potential for local responsibility for zoning, planning, and resource protection. The DNR is increasing its activities in informing local governments of the changes in the zoning enabling laws and in providing technical assistance in ordinance and plan development. New authorities available to local units include establishment of performance standards and special "partial zoning" overlay districts to protect natural resources, keep development out of hazardous areas, and site facilities. Other changes in the statutes include safeguards against exclusionary zoning ordinances and an update in the purposes of zoning.

C. In the area of INCREASED COASTAL RECREATIONAL ACCESS AND PROTECTION OF CULTURAL, HISTORIC, AND AESTHETIC RESOURCES, the following results have been accomplished:

1) The Detroit City-wide Task Force, in developing a master plan for the provision of public services, has given first priority to the Riverfront planning element. MCMP funding accelerated the planning phase, providing incentives for the City to move more quickly toward implementation of public access plans. The high quality of the conceptual renderings for riverfront revitalization and access improvement have been an aid to the City in obtaining funds to implement the plan and to broaden the planning base. For example, the Engel-Reid Riverfront development project was so well received that it attracted nearly $100,000 in additional planning funds from local industry, such as Detroit Edison, to expand the plan to include a greater area of the riverfront. One of the linked riverfront parks which was designed through MCMP funding is authorized for construction next year by a Land and Water Conservation grant.

2) Many local projects related to recreational resources are underway. Park plans are being developed in the cities of Marysville, Mackinaw, Menominee, Norton Shores, Ludington, Detroit, and Grand Haven, in Harrison and Peninsula Townships, and in Wayne and Marquette Counties. Waterfront development plans which include enhancement of recreational resources are being developed for several cities including Detroit, Monroe, and Benton Harbor-St. Joseph.

3) Seven State parks have received funds to increase public access to the shoreline and at the same time protect or restore fragile natural areas. In most cases these projects include constructing boardwalks and stairs over wetlands and sand dunes to control public use in the area. By guiding where

people go, by making it easier for park users to reach the shorefront, fragile areas, sensitive to passage, are protected against damage from over use. Dune stabilization projects are being carried out as an adjunct to the installation of stairs and boardwalks in a two-pronged erosion control-user access effort.

Other park improvements such as interpretive signs, markers, and dioramas are increasing user awareness and appreciation of these coastal ecosystems.

4) Low-cost construction activities to address coastal preservation or restoration needs included five historic restoration projects. In Detroit restoration of the Fort Wayne Riverfront Parade Ground and shoreline will include adaptation of its use to include outdoor activities and historical re-enactments which will increase its potential as a tourist attraction. Restoration of the exterior of the Schoolcraft House on the St. Marys River in Sault Ste. Marie was designated by the City as their highest priority restoration project. Historic markers to be placed in Whitefish Township will increase appreciation of the State's history. Restoration of the Beaver Island Lighthouse will allow the building to be used as an environmental learning center. Relocation of the Grosse Ile Custom House on an island in the Detroit River will be completed in June, 1979.

5) A harbor development study underway on the St. Joseph River Harbor will be used to determine objectively whether or not developemnt of a commercial harbor there is feasible. If an economic advantage to utilizing the port can be demonstrated, a comprehensive development strategy to facilitate a public and private partnership for the development of a multi-modal transportation system will be initiated. In addition to preliminary site engineering, the following problems are to be addressed: relocation of non-water dependent industries, dredging depths and dredge spoil disposal, facility siting, administrative alternatives for managing the twin city port authority, and accommodation of both commercial and recreational users.

6) The City of Sault Ste. Marie is studying the possibilities for economically beneficial uses of industrial sites on the St. Marys River. A conceptual plan containing a recommended implementation strategy for the waterfront industrial area will be prepared.

7) Alternative sites for the Muskegon end of a Sea Bridge, a system of transporting up to 1000 semi-truck trailers daily by barge across Lake Superior from Milwaukee, have been identified and evaluated. Site specific designs will be produced this summer for the top three sites. The Muskegon-Milwaukee Sea Bridge will provide a vital component in the revitalization plans for Muskegon coastal resources.

8) The Muskegon central business district lakefront redevelopment conceptual plan has taken a comprehensive approach to analyzing the resources available in the city. The plan includes a strategy to maximize the benefits of

key developments and to encourage private interests to provide a majority of the revitalization effort. MCMP funds are being used to "leverage" funds from other agencies and the private sector.

9) The MCMP has been very successful in coordinating with the Land and Water Conservation Fund for construction of projects being designed under MCMP grants. The coordination for most projects with the application for the project to the MCMP and feasibility of obtaining construction funding is one of the primary criteria for approval of design and feasibilty projects.

D. In the area of IMPROVING PUBLIC DECISION MAKING AND INTERGOVERNMENTAL COORDINATION AND COOPERATION, the following have occurred:

1) The State has been working with the Army Corps of Engineers to eliminate delays in the joint state-federal processing of dredge and fill permits. In the past year the processing time has decreased from about 60 days to 20 days for the vast majority of permits processed. Before the joint processing procedure was established the average processing time for a routine permit was between 120 to 150 days.

Every six months the Corps and the DNR have an enforcement conference to resolve problems that have arisen regarding their joint responsibilities. This approach has proven to be very effective. Difficulties steming from differences in information requirements have been addressed, and now the main task is to reduce the joint permit processing time down to 17 days for routine permits.

2) Review of federal actions for consistency with the MCMP has been handled efficiently and expediously. On November 1, 1979, a meeting was held with representatives of all interested federal agencies to discuss federal consistency requirements and procedures. Minor problems have arisen since that meeting, but for the most part the process has moved very smoothly.

The State has reviewed 74 direct federal activities, two grants, and three "201" fact sheets for consistency with the MCMP. Only one project was finally declared inconsistent, an Army Corps of Engineers fill and bulkhead project that would have caused adverse impacts to an aquatic habitat. Federal agencies and the State agree that the review process has been carried out with great cooperation on both sides.

3) A Memorandum of Understanding between the DNR and the Michigan Department of Labor (which has statewide authority regarding local enforcement responsibilities for building codes) provides for coordinated permit review. The interagency agreement provides that local building code enforcement officers will not issue building permits in the 100 year flood plains or high-risk erosion areas unless the applicant has obtained the neccessary approval of the DNR.

NEW JERSEY

Shorefront access is a major priority in the New Jersey coastal policy. Recognizing that increased development pressures have left few beach areas available to the public and that the remaining beaches are difficult for most New Jersey residents to get to without an automobile, the state has embarked on a four part program to increase shorefront access. The elements of this program are: regulation of new development; conditioning the allocation of shorefront protection funds; utilization of incentive grants-in-aid; provision of public transportation to beach areas.

1. Regulation of New Development. While coastal zone officials within the Department of Environmental Protection do not feel that they have legal authority over existing development, they do exercise control over proposed development. Coastal developments of twenty-five units or more must be reviewed at the state level. The Department of Protection enforces the state coastal policy that "maximum practical access" be provided to the waterfront by making this access a requirement for development permit approval.

2. Conditioning the Allocation of Shorefront Protection Funds. In order for a municipality to receive shorefront protection money from the state coastal agency, it must provide public access to the area being funded.

3. Incentive Grants-in-Aid. Provision of waterfront access is an eligible activity encouraged by CZM grants to local governments. Grants of this type are being used for such projects as developing urban waterfront parks.

NEW JERSEY COASTAL MANAGEMENT PROGRAM

BAY AND OCEAN SHORE SEGMENT

AND

FINAL ENVIRONMENTAL IMPACT STATEMENT

August 1978

Prepared by:

State of New Jersey
Department of Environmental Protection
Division of Marine Services
Office of Coastal Zone Management
P. O. Box 1889
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U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Brendan Byrne
Governor

Daniel J. O'Hern
Commissioner

5.11 Public Services

5.11.1 Definition

Public services include a variety of essential facilities provided by either public or private institutions. Health, education, welfare, fire, police and community facilities are principal examples. Others such as child care and home services for the elderly may be important for certain developments.

5.11.2 Policy

Coastal development shall insure, to the maximum extent practicable, that adequate levels of public services will be provided to meet the additional demands for public services likely to be generated by the proposed development.

5.11.3 Rationale

New development places additional demands on public services. Unless the existing supply can satisfy these demands or extensions to the supply can be available when development is complete, the deficiencies may adversely affect the health, safety, or welfare of the proposed new users.

In coastal areas there are special problems associated with the high seasonal population fluctuation and the relatively high percentage of senior citizens who typically make greater demands on health services. These coastal issues make the demonstration of adequate service supply during peak demand periods an especially critical issue.

5.12 Public Access to the Shorefront

5.12.1 Policy

Coastal development adjacent to coastal waters shall provide maximum practicable public access to the shorefront, including both beach and built-up waterfront areas and both visual and physical access. Shorefront development that limits public access and the diversity of shorefront experiences is discouraged.

5.12.2 Rationale

New Jersey's coastal waters and adjacent shorelands are valuable public resources which are limited in area. They are protected by New Jersey's Shore Protection and Waterway Maintenance Program and patrolled by the New Jersey Marine Police which are both financed by all state residents.

Past developments have often blocked the waters from public view and/or made physical access to the waterfront difficult or impossible. In addition, some municipalities which own land immediately inland of the state-owned riparian land have enacted laws or regulations making waterfront access inconvenient, expensive or impossible for non-residents. These policies have served to limit the opportunity of inland residents for waterfront recreational activities.

Projects such as the experimental Beach Shuttle operated by DEP in the summer of 1977 to Island Beach State Park from Toms River serve to carry out the policy of providing maximum practical public access to the shorefront.

The basis for the Shorefront Access policy came in part from the research in the report entitled Public Access to the Oceanfront Beaches: A Report to the Governor and the Legislature of New Jersey. April 1977, prepared in part by DEP-OCZM.

5.13 Scenic Resources and Design

5.13.1 Policy

New coastal development that is visually compatible, in terms of scale, height, materials, color, texture, and geometry of building and site design, with surrounding development and coastal resources, to the maximum extent practicable, is encouraged. Coastal development that is significantly different in design and visual impact than existing development is discouraged, unless the new development upgrades the scenic and aesthetic attributes of a site and its region.

5.13.2 Rationale

Inappropriate design that ignores the coastal landscape and existing patterns and scale of development can degrade the visual environment and appearance of communities. New Jersey's coastal regions have strong architectural traditions which should be encouraged.

5.14 Secondary Impacts

5.14.1 Policy

Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy the Coastal Resource and Development Policies. The level of detail and areas of emphasis of the secondary impact analysis are expected to vary depending upon the type of development. Minor projects may not even require such an anaylsis. Transportation and wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a rigorous secondary impact analysis.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Md. 20852

EVALUATION FINDINGS

NEW JERSEY COASTAL MANAGEMENT PROGRAM: BAY AND OCEAN SHORE SEGMENT

BACKGROUND

Section 312 of the National Coastal Zone Management Act (CZMA) requires a continuing review of states with federally approved coastal management programs. The purpose of the review is to evaluate state performance with respect to coastal management and adherence to approved management programs.

New Jersey is preparing its coastal management program in two phases. The first phase of the program includes 1,382 square miles of land and related coastal waters in a region extending from the Raritan Bay along the Atlantic oceanfront to the Delaware Memorial Bridge. On September 29, 1978, this segment of the program, referred to as the Bay and Ocean Shore Segment (BOSS), was approved and a grant for $800,000 was awarded under Section 306 of the CZMA, matched by $200,000 from the State. The second phase of the program is anticipated to include the entire state under one program including the BOSS and the coastal areas in the northeastern part of the State along the Hudson River and related waters, in the Hackensack Meadowlands, and in the southwestern part of the State along the Delaware River and its tributaries. A Draft Environmental Impact Statement/Program document on this second phase is scheduled for release in the fall of 1979.

As part of the Office of Coastal Zone Management (OCZM) evaluation responsibilities, a review of the BOSS was conducted in Trenton, New Jersey on June 28-29, 1979, by Zoraida J. Carballeira, Policy and Evaluation Staff and Nancy Carter, State Programs Staff. At that time State officials and members of public interest groups were interviewed. A lists of persons contacted is attached as an appendix. Most of the statistical information included in these findings has been obtained from a report submitted by the New Jersey Department of Environmental Protection (DEP) in response to a request by the OCZM evaluation team.

SUMMARY OF FINDINGS

New Jersey is making good progress toward achieving the goals of its coastal management program and accomplishments have been identified in a number of areas.

and repairs to existing seawalls and bulkheads for a total of $800,000 in State funds. An additional $360,000 have been made available to Ocean City for emergency beach fill operations. According to DEP, municipalities are required to adopt dune protection ordinances in order to qualify for state funds under the Shore Protection Program.

III. Coastal Access. Findings in this area include the following:

o No quantified information was available on the extent of access (acres or miles of shoreline) protected by the permit programs during the six months period covered by this report; but the review team was provided with the permit for the Brigantine Townhouses which, according to the DEP exemplifies how access is addressed by permit conditions. This permit requires that the developer submit a plan for the development of a pedestrian pathway across the dune field and the development of a public accessway as a pre-condition for approval.

o This was the third year of operation for the beach shuttle project. This project was initiated through an OCZM demonstration grant in the summer of 1977 to provide transportation between Toms River and the Island Beach State Park in Ocean County. The "New Jersey 1977 Beach Shuttle Experiment" report issued by DEP in January 1979 shows that 7,594 riders took the shuttle during the 20 days it was in operation during one summer. This project contributes to the maximization of access to the largest State-owned beach in New Jersey, reduces overcrowded conditions in beach parking lots, and can be used as a model for similar projects in other parts of the State. The beach shuttle is considered a very successful project. The evaluation report also refers to a shuttle service between Atlantic County's mainland and Atlantic City in Ocean County; this service, however, is still in the planning stages.

o The proposed Dune, Beach, and Shorefront Protection legislative options do not specifically address "access." However, they will have an unavoidable impact on access since one of the regulated activities will be the development of pedestrian paths and walkways. One legislative option prohibits the construction of temporary, mobile, or permanent residential structures in coastal beach and dune area; the other option extends this prohibition to shorefront areas.

IV. Improved Public Decision-Making. Findings in this area include:

o At the core of coastal decisions in New Jersey is CLAM, consisting of a three-stage screening process containing a multiplicity of variables on environmental, socio-economic, and developmental characteristics. The system, in manual form, is now being used in the permitting process. Although CLAM is based on a highly specific set of policies, its application is not a purely mechanical one and many judgment factors may still enter into a decision. However, everyone interviewed acknowledged the benefits of CLAM, insofar as its objective policies and specificity contribute to the predictibility of the decision-making process. The nature of the

North Carolina

The increasing volume of day visitors who desire to use the resources of the North Carolina coast had raised concerns about shorefront access prior to the passage of the 1976 amendment to the federal coastal zone program. Few incentives or tools had been developed to help the coastal communities deal with these needs, however. The implementation of the North Carolina Coastal Access Management Act (CAMA) has recently provided the incentive to seek the tools necessary to open up better public access to North Carolina beaches.

In keeping with the style of the rest of North Carolina's coastal management program, the state's Coastal Resources Commission has delegated shorefront access responsibilities to the local level. Coastal communities have developed their own land use plans to meet CAMA requirements. Revisions to the original plans are due to be submitted for state review during the fall of 1980 and 1981. One element which the state has mandated these revised plans to address is shorefront access. Issues to be clarified in each plan include: definition of access; identification of existing and potential access points, identification of methods for improving access, and provision of adeqaute parking to meet access needs. State officials are waiting to evaluate these local plans before making any specific decisions about whether or not additional measures will need to be taken to improve shorefront access.

State officials have imposed the provision of shorefront access as a condition on some major CAMA permits. Large oceanfront projects such

as hotels and condominium developments have been encouraged to provide such amenities as public walkways and parking lots, but the permit review officials are unsure of their legal authority and have therefore been somewhat inconsistent in exercising this option.

An access provision technique which has been used by some coastal communities is the mandatory dedication of the ends of streets which are located perpendicular to the beach as public accessways. A local ordinance may require the developer to dedicate these accessways to the municipality. If the city or town does not accept or maintain these accessways, the right to the land reverts back to the developer.

Approximately $100,000 of 306 funds have been granted to local communities to assist in shorefront access planning. Twelve municipalities have been granted funds to either develop beach access plans or design waterfront parks which will increase public access opportunities. In Edenton a peninsula which juts into Queen Anne Bay will be developed as a park; a bulkhead will be installed to stem erosion, an icehouse will be restored for use by the public, and a parking lot will be developed. Wilmington is planning a six block long riverfront park. Cape Carteret, a non-beach community, is studying the feasibility of acquiring land for a parking lot at Emerald Isle to allow Cape Carteret residents access to beach areas. Holden Beach, Kill Devil Hills, Nags Head, Surf City, and Carteret County are among the localities which have conducted studies to identify potential and existing access points and tools for developing more.

During the summer of 1979 the North Carolina Department of Natural Resources and Community Development's Office of Coastal Management and Wrightsville Beach jointly funded a shuttle bus to bring people from a feeder parking lot in Wilmington to Wrightsville Beach. By all accounts, the experiment was a failure; ridership was extremely low and the project lost money. Some reasons cited for the failure include inadequate advertising and locating the feeder lot too close to the beach (i.e. people who had driven as far as the feeder lot decided that they might as well drive the remaining distance to the beach). There are no plans to fund a revised attempt at providing mass transportation for beach access.

Draft Environmental Impact Statement Prepared on Amendments to the North Carolina Coastal Management Program

Washington, D.C.
January 1979

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

A. SHOREFRONT ACCESS AND PROTECTION PLANNING

Introduction

North Carolina has developed the following planning process which identifies public shorefront areas appropriate for access or protection to fulfill the requirements of Section 305(b)(7) of the Costal Zone Management Act of 1972, as amended.

"(a) 923.25 Shorefront access and protection planning

"(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.

"(b) Comment. Statutory Citation, Subsection 305(b)(7):

The management program for each coastal State shall include (7) 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, esthetic, ecological or cultural value.

"(1) The basic purpose in focusing special planning attention on shorefront access and protection is to express more than local concern with respect to additional access or protection needs for public beaches and other public coastal areas of environmental, recreational, historic, esthetic, ecological or cultural value and to include these areas for special management attention within the purview of the State's management program. If appropriate, this special management attention may be achieved by designation of public shorefront areas requiring additional access or protection as

> areas of particular concern or areas for preservation or restoration. Since the specific planning requirements called for in this section are closely related to the broader requirements for areas of particular concern and areas for preservation and restoration, many of the requirements called for in paragraph (a) above can be met by completing the work called for in 923.21 (Areas of Particular Concern) and 923.24 (Areas for Preservation or Restoration)."

North Carolina fulfilled the requirement of 923.21 and 923.24 in obtaining program approval (see the North Carolina Coastal Management Environmental Impact Statement under Areas of Environmental Concern Chapters 1 and 5). The State's authority to designate beach areas as AEC's and to regulate development within them was given to the Coastal Resources Commission (CRC) through the Coastal Area Management Act (CAMA). The legislature's action of passing the CAMA, the CRC's action of designating beach areas as Areas of Environmental Concern and the action of the Department of Natural Resources and Community Development in implementing the regulatory program, established that beach areas are of statewide significance.

923.25(a)(2) A definition of the term "beach" and an identification of public areas meeting that definition has been partially satisfied through the AEC designation. The AEC guidelines describe beaches as, "lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either (a) the growth of vegetation occurs, or (b) a distinct change in the slope or elevation of the unconsolidated sands alters the configuration of the land form." While this definition has significance for regulatory purposes by providing a physical description of beaches it lacks a clear statement of public rights in beach areas and it does not apply to estuarine beaches. To fully comply with the requirements of Section 923.25(a)(2) the following definition has been adopted by the Coastal Resources Commission (pending public hearing) as that which shall be used in all policy decisions pertaining to public rights in beach areas. This definition also applies to both ocean and estuarine shorelines.

> Beach - land areas extending from the mean low to the mean high water line and beyond this line to where either (a) the growth of vegetation occurs, or (b) a distinct change in slope or elevation occurs, or (c) riparian owners have specifically restricted access above the mean high water line.

In all cases, the beach extends at least to the mean high water line. A legal analysis of the public's rights in beach areas is contained in Appendix 1 of this document and is taken from a Sea Grant publication written by David Brower entitled, "Access to the Nation's Beaches: Legal and Planning Perspectives."

In summary, the definition of the term "beach" used in the Guidelines for Areas of Environmental Concern and contained in the Appendix of the North Carolina Coastal Management Plan represents a component of the Ocean Hazard Area that is identified in order to give special regulatory protection to ocean beaches. This protection is given by precluding all development in beach areas and by stating that the land use priority in ocean hazard areas is recreation oriented development, i.e., providing beach access. The second definition of the term "beach" applies to both developed and undeveloped areas and states that the beach areas are not exclusive and the public does have rights in the areas described. However, this does not in any way require private property owners to provide public access. This responsibility is clearly stated in the policy section of this document as that of government and commercial interests.

923.25(a)91) A procedure for assessing public areas requiring access or protection.

923.25(c) Comment. In meeting the requirements of 923.25(a)(1) states should take the following into account:

> (1) States should make use of the analyses and considerations of statewide concern developed to meet the requirements of 923.21 dealing with areas of particular concern. It also is recommended that information contained in State Outdoor Comprehensive Recreation Plans be considered.

The analyses and consideration of statewide concern for beach areas is addressed in the approved North Carolina Coastal Program. In addition, two current State documents, the N. C. State Comprehensive Outdoor Recreation Plan and the N. C. Water Resources Framework Study, also speak to the protection and public access needs to beach areas (Appendix 2).

The SCORP identifies beach access as a major recreation issue, stating the immediacy of the problem and outlining a course of action to address these needs. This approach describes the process through which North Carolina will provide adequate public beach access and represents a joint effort between the Division of Parks and Recreation and the Office of Coastal Management. This process will be more fully discussed in Part 3 of this section.

The Water Resources Framework Study was initially developed independently of the coastal program because the coastal program was in the early stages of development. Currently, the two offices are working closely to refine State policies.

(2) If islands are not considered areas of particular concern, in the context provided by 923.21, then the protection needs should be addressed through this planning process. Analysis of the need and priority for protection will be useful in establishing eligibility for such funds as may be available for islands acquisition pursuant to subsection 315(2) of the Act.

Islands were not designated as Areas of Environmental Concern by the Coastal Resources Commission. However, consideration was given to the idea of designating the Barrier Islands. This action was not taken because it was felt by the CRC that the intent of legislature was to make designations by component parts of the coastal area rather than by broad categories such as islands. Under the current set of regulations, islands do receive protection through the systems concept used in designating the AEC's. For example, the ocean hazard areas are described and the regulations (Appendix B of the Coastal Management Plan) are based on the precepts of island migration and overwash and beach dynamics. Also, the estuarine categories are described as a unit, i.e., the Estuarine System and the regulations acknowledge the interdependences of these parts by allowing consideration of secondary impacts in regulatory decisions. In most cases, the regulations would not prohibit development but would clearly insure that it would proceed with regard for the affected biological and physical systems.

The Fragile Coastal Natural Resources Areas, another group of AEC categories, is an additional means by which protection can be given to islands. Under this procedure, a particular island or group of islands could be nominated to the Commission for designation as AEC's and a set of regulatory standards tailored to the specific protection needs of the island would be developed and enforced.

Establishing priorities for the protection of islands through acquisition is a consideration of the North Carolina Natural Heritage Program. The Heritage Program is charged with inventorying the unique and rare natural resources of the state and assessing the priorities for their protection. In order to keep the objectives of the coastal program in perspective with those of the State, the protection of natural areas, including islands, must reflect State priorities as set by the Heritage Program.

(3) In developing a procedure for identifying access and protection needs, States should analyze (a) the supply of existing public facilities and areas, (b) the anticipated demand for future use of these facilities, and (c) the capability and suitability of existing areas to support increased access. Based on these and other considerations, as appropriate, the State planning process shall include a description of appropriate types of access and protection, taking into account governmental and public preferences, resource capabilities and priorities.

The procedure for identifying access and protection needs closely follows the suggested format contained in 923.25(c)(3) above. The identification of access needs was accomplished through an extensive inventory process that is included along with an introduction and analysis of data in Appendix 3 of this document. The only information that was not fully incorporated in this study was that for private estuarine beaches and public boat ramps which is currently being gathered. However, two statements can safely be made at this point: that private beaches in estuarine areas are increasing in number and popularity; and that additional public boat ramps are needed particularly in the central coastal area including Carteret, Craven, and Pamlico and Beaufort counties.

The protection needs are fully met through the regulatory program and all of the considerations suggested in 923.25(c)(5) were incorporated in the Commission's designation process. (See the N.C. Coastal Management Plan under Designation of Areas of Environmental Concern).

> (4) In determining access requirements, States should consider both physical and visual access. The emphasis, however, should be on the provision of increased physical access. Special attention should be given to recreational needs of urban residents for increased shorefront access. Physical access may include, but need not be limited to, footpaths, bikepath boardwalks, jitneys, rickshaws, parking facilities, ferry services and other public transport. Visual access may involve, but need not be limited to, viewpoints, setback lines, building height restrictions, and light requirements.

Visual access needs have been left to the discretion of local governments to be expressed through policy statements contained in the local land use plans. While the Coastal Area Management Act clearly addresses esthetics in the purposes section 113A-102, it is the decision of the CRC that this is a local concern to be expressed through the land use plans and not be a consideration of the regulatory process, except in those cases where local governments have adopted clear policies that render a project inconsistent with the local plans.

Physical access requirements will be determined by local governments through the land use planning process, by the CRC through the development of the planning guidelines, and local plans approval and by the Division of Parks and Recreation through grants for acquiring public access rights and site facilities. Local governments will determine their public access needs in the context of the land use plan based on the guidelines developed by the CRC. The CRC will, in turn, review the plans individually and as a region to insure that the public demand for access is met. This review

will focus particularly on the needs of seasonal/day visitors from nearby urban areas and balance these needs with the availability of local resources. Finally, the Division of Parks and Recreation in cooperation with CRC efforts will award access funds.

923.25(c)(3) Articulation of enforceable State policies pertaining to shorefront access and protection.

At the present time, there are three sets of enforceable State policies including the protection policies as expressed through the AEC regulatory guidelines and the access policies expressed in the N.C. SCORP and in the N.C. Water Resources Framework Study. Each of these policy sets have clear lines of enforceability.*

An additional set of State policies developed by a subcommittee of the Coastal Resources Commission, is currently being considered by the Commission for adoption and will be enforced through the Governor's Executive Order as part of the (to be) approved State Coastal Management Program. This statement of policy reads as follows:

SHOREFRONT ACCESS POLICIES

Declaration:

It is hereby declared to be the policy of the State of North Carolina to foster, protect, improve and ensure optimum access to recreational opportunities at beach areas consistent with public rights, rights of private property owners and the need to protect natural resources from overuse. These policies reflect the position that in areas other than State parks, the responsibility of providing adequate beach access rests primarily with local units of government. Thus, the following policies are intended to supplement and strengthen any local efforts.

Definition:

The term "beach" as used in these policies is defined as areas extending from the mean low to the mean high water line and beyond this line to where either (a) the growth of vegetation occurs, or (b) a distinct change in slope or elevation occurs, or (c) riparian owners have specifically and legally restricted access above the mean high water line.

* The N.C. Water Resources Framework Study references the authorities contained in the SCORP and the State's authority of eminent domain in establishing its enforceability.

This definition is intended to describe those shorefront areas historically used by the public. Whether or not the public has rights in the defined areas above the MHW mark can only be answered by the courts. The public does have clear rights below the MHW mark. The following policies recognize public use rights in the beach areas as defined but do not in any way require private property owners to provide public access to the beach.

IT IS STATE POLICY THAT:

1. Development shall not interfere with the public's right of access to the shorefront where acquired through public acquisition, dedication, or customary use as established by the courts.

2. The responsibility of insuring that the public can obtain adequate access to public trust resources or the ocean, sounds, rivers and tributaries is primarily that of local governments to be shared and assisted by State and Federal Government.

3. Public beach area projects funded by the State and Federal Government will not receive initial or additional funds unless provisions are made for adequate public access. This must include access rights, adequate identification and adequate parking.

4. Policies regarding State and Federal properties with shorefront areas intended to be used by the public must encourage, permit and provide public access and adequate parking so as to achieve maximum public use and benefit of these areas consistent with establishing legislation.

5. State and Federal funds for beach access will be provided only to localities that also provide protection of the frontal dunes.

6. The State should continue in its efforts to supplement and improve highway, bridge and ferry access to and within the twenty county coastal area consistent with the approved local land use plans. Further, the State should, wherever practical, work to add public fishing catwalks to appropriate highway bridges and should incorporate catwalks in all plans for new construction and for remodeling of bridges. It is the policy of the State to seek repeal ordinances preventing fishing from bridges except where public safety would be compromised.

7. In order to avoid weakening the protective nature of frontal dunes, no development will be permitted which would involve the removal or relocation of frontal dune sand or frontal dune vegetation. 7 NCAC .0306 (c). The sands held in the frontal dune are recognized as vital for the nourishment and protection of ocean beaches.

8. All land use plans and State actions to provide additional shorefront access must recognize the need of providing access to all socioeconomic groups.

C. Recreational Access and Protection of Cultural, Historic, and Aesthetic Resources

Through the promulgation of policies and revisions to AEC standards, the NCCP has begun to address a commitment to promote and encourage recreational access and preserve unique cultural resources. In this area the following has been accomplished:

- The CRC has adopted revised AEC standards for estuarine systems that prohibit uses which interfer with public rights of access.
- The CRC has adopted revised standards for Ocean Hazard Areas that prohibit development that unduly interfers with legal access to or use of beaches and specifies potential damage to historic and archeological resources as criteria for permit denial.
- The CRC has revised the Fragile Coastal Natural Resource Areas AEC to include cultural resources (historic, archeological,and architechural resources) of more than local significance in order to protect and preserve these resources.
- The CRC has adopted shoreline access policies that affirm the public's right of access to the shorefront where acquired through acquisition, dedication, or customary use.

OREGON

Public access to the beach has a long and healthy tradition in Oregon. Long ago, the beach served as the major north-south highway. Throughout the years major shorefront areas have been kept open to the public; approximately 70% of the Oregon coast is currently in public ownership and the Oregon Beach Law grants the public the right to use the entire beach below the non-aquatic vegetation line. Thirty state parks have been established along the state's coastline. Public access points exist at least every two to three miles.

Since beach access in Oregon is adequate, state officials are concentrating on improving access to estuarine areas. Local governments are presently in the process of completing comprehensive plans (due for State Land Conservation and Development Commission review in July 1980) which are required to address the issue of public access to these river, bay, and wetland areas. Based on information gathered from these plans, the Oregon coastal management program administrators will design a program of technical assistance to help strengthen and/or implement these plans.

ROBERT W. STRAUB
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310 PHONE (503) 378-4926

September 26, 1978

Robert Knecht, Administrator
Office of Coastal Zone Management, NOAA
Page Building #1
3300 Whitehaven St. NW
Washington, DC 20006

Dear Mr. Knecht:

As the Director of the Department of Land Conservation and Development, the State of Oregon's lead agency for coastal management designated by the Governor pursuant to Section 306(c)(5) of the CZM Act, I am submitting three amendments to the approved Oregon Coastal Management Program. I am also requesting, pursuant to CFR 923.81(c), your review and approval of the amendments.

This submittal, pursuant to CFR 923.81(g), is by definition an "amendment" to Oregon's Coastal Management Program. These amendments (Attachment 1) are designed to meet the new requirements of the Act to have state's describe planning processes for:

-Energy Facility Siting, 305(b)(8) and CFR 923.14;
-Shorefront Access and Protection, 305(b)(7) and CFR 923.23; and,
-Shoreline Erosion and Mitigation, 305(b)(9) and CFR 923.26.

The new requirements represent a decision by Congress to give specific emphasis and support to energy facility siting, shorefront access and shoreline erosion planning processes. Although all three topics were implicit in the federal act of 1972, Congress felt that additional state emphasis was necessary.

Oregon's approved Coastal Management Program implicitly considers and provides for the three planning processes called for in the new requirements. However, to be responsive to Congressional intent, the Commission has supplemented the OCMP with brief descriptions of existing processes and policies focusing on these special topics. The attached amendments were adopted by the Land Conservation and Development Commission on September 15, 1978.

SHOREFRONT ACCESS AND PROTECTION

Concern for shorefront access and protection in Oregon goes back to the nineteenth century. In 1893, the beaches of Clatsop County were declared to be public highway. This was followed in 1913 by the Oswald West Act, which declared all wet sand beaches to be public highway. In 1967, the Legislative Assembly, prompted by the threatened loss of public use of and access to Oregon's beaches and enacted the "Beach Bill." This provides for public use of the ocean shore in perpetuity.

Since the passage of the 1967 Beach Law, it has been general state policy to provide with the cooperation of other agencies, beach access at intervals between 1½ to 3 miles or to major beach areas inaccessible from other access points because of intervening promontories or other barriers. The need for access varies by location, resource type, and mix of public and private lands. Concern for access to public beaches and other public coastal areas is demonstrated by the fact that two-thirds of the state's parks and waysides are in the coastal zone. In addition, thirty-eight percent (38%) of the land of the Oregon coast is held in public ownership by the federal government.

DEFINITION OF BEACH

Beach

To correctly identify access and protection programs affecting Oregon's public beaches it is necessary to define and describe the area considered to be public beaches. Beach is defined in Oregon's Coastal Management Program as follows:

> "gently sloping areas of loose material (e.g. sand, gravel and cobbles) that extend landward from the low-water line to a point where there is a definite change in material type or landform, or to the line of vegetation"

Public beaches are those areas meeting the above definition held in public ownership or with a public right of access. Public beaches include the "Ocean Shore." This is the land lying between extreme low tide of the Pacific Ocean and the line of vegetation as established and described by Oregon Revised Statute 390.770. Although only approximately half of the Ocean Shore area is in public ownership, all of it is open to public access by statute (ORS 390). The Ocean Shore area is completely mapped with the eastern most zone line approximating the vegetation and 16-foot elevation line.

The extent of public ownership of the Ocean Shore is shown on Department of Transportation maps.

A diagram of the public beach area as defined is shown in Appendix B.

Other Public Areas

Other public areas are defined as areas held in public ownership or those that are held with a public right of physical or visual access. These areas include but may not be limited to islands, coastal shorelands, headlands, coastal waters and wetlands, forest lands and other natural resource lands in the coastal zone.

Attention to access and protection needs occurs through both the coordinated comprehensive land use planning process (ORS 197) and special-purpose statewide statutes. It applies to public coastal areas of value as well as to public beaches. Overall state policy direction for access and protection needs is contained in the Statewide Planning Goals developed by LCDC. This overall policy is supplemented by special purpose statewide statutes and programs. Various statutes define the public "ocean shore" beach area, and provide for the State's Beach Access and Parks acquisition programs, the Department of Fish and Wildlife's Angler Access Program; and, the State Marine Board Facility Grant Program. The Statewide Comprehensive Outdoor Recreation Plan (SCORP) also provides supply and demand information and policies on access. These policies and programs must conform with the policy direction set by the Statewide Planning Goals.

Together the planning process and the statutes assure adequate protection of access to public beaches and other coastal public areas of environmental, recreational, historic, aesthetic, ecological or cultural value.

Geographic Areas of Particular Concern designated in Oregon's approved Coastal Management Program include coastal agricultural lands, beaches and dunes and estuaries. Need for both access and protection in such areas was reflected in public, resource agency and legislative concerns over the use of and problems associated with shorefront access in these areas. As a result of the threat to and need for special state management regulations for these areas which are more specific than for the more general Goal subjects. More specific state designations are not needed at this time because the Statewide Planning Goals require that local comprehensive plans designate areas for access and protection as well as preservation and restoration in certain cases.

Statewide Planning Goals

Several of the Statewide Planning Goals establish standards for shorefront access and protection. Specifically Goal 8 Recreational Needs requires that agencies with responsibility for recreation areas, facilities and opportunities plan to meet "the recreational needs of the citizens of the state and visitors."

Goal 5 Open Spaces, Scenic and Historic Areas, and Natural Resources requires the provision of programs that will "(1) insure open space; and, (2) protect scenic and historic areas and natural resources for future generations..." Additional requirements for protection of coastal resources are included in Goal 16, Estuarine Resources, and Goal 17, Coastal Shorelands.

Goal 18 Beaches and Dunes allows permits for beach-front protective structures to be issued only where development existed on January 1,. 1977. The Goal further directs that the Oregon Department of Transportation develop criteria for issuing permits which provide that "necessary access to beach is maintained" and "visual impacts are minimized." (see Table 2, page 4.) Another goal requirement is that comprehensive plans and implementing actions "provide for diverse and appropriate use of beach and dune areas consistent with their natural limitations."

Other goals add to the state's policy regarding public access and resource protection. Goal 4 Forest Lands requires identification of "forested lands needed for recreation" and Goal 12 Transportation requires planning for a transportation system that is based on identified need and consideration of all modes including bicycle and pedestrian. Such a system will provide visual and physical access facilities to coastal shorefront areas.

The Statewide Planning Goals for the protection of, and access to, public beaches and other public coastal areas of value are listed in Table 1 Summary of Statewide Planning Goal Requirements for Shorefront Access and Protection Management. References to Guidelines for shorefront access accompanying the Statewide Planning Goals are also provided in Table 1. Guidelines provide state policy guidance to cities and counties in preparation, adoption and implementation of comprehensive plans, and to state agencies and special districts in the preparation of plans, programs and regulations for compliance with the Goals. These selected references have been included because the Goals, in most cases, focus

on resource types and call for generic land use designations, facilities and/or activities. Visual and/or physical access is regarded as an explicit aspect of considering use designations for resource lands.

Comprehensive Plan Development and Coordination

Cities and counties are responsible for preparing comprehensive plans that comply with the Statewide Planning Goals and conform with the needs of other agencies. Identifying and providing for public shorefront access needs and adopting appropriate controls is an important part of the planning process. The following describes how the basic steps of the comprehensive planning process meets the requirements of the Coastal Zone Management Program Approval Regulations CFR 923.25:

-Identification of Problems and Needs

Local governments, citizens and state and federal agencies will identify access problems and needs related both to existing public beaches and other coastal public areas. This identification process addresses where access is currently provided and where access is not now provided to coastal waters, public beaches and other public areas of value. Local governments will assess shorefront access and protection problems and needs to determine possible management techniques. State and federal agencies will provide assistance and identify problems and needs that are other than local in nature.

-Collection of Inventories

Local governments and state and federal agencies will identify existing facilities, anticipated demand, and capabilities for increased shorefront access and protection. State and federal agencies will identify how and where access is provided on public lands under their jurisidiction.

-Evaluation of Alternatives

State and federal agencies will assist local governments in developing and evaluating alternative policies for management, protection and provision of access to public beaches and other public areas to assure that access is considered where problems or demonstrated needs exist.

-Plan Adoption

Based on the alternatives and input of state and federal agencies and the public, local governments will adopt plans, policies and ordinances for shorefront access and protection. Plans will establish access and protection requirements. They will also describe appropriate types of access and protection techniques in conformance with Statewide Planning Goals, special purpose statutes and programs.

-Plan Implementation

In their review of specific development proposals that may contribute to and/or affect the protection of, and access to public shorefront areas, local governments must apply the policies and management requirements in their plans and ordinances. Cities and counties are responsible for developing agreements with special districts defining how special districts will carry out their responsibilities in conformance with the Goals and in compliance with acknowledged comprehensive plans. Cities and counties are also expected to take into account state and national needs. State and federal agencies are expected to make their needs known during the preparation and revision of city and county comprehensive plans. State agencies have described how they will assure that their activities conform to acknowledged comprehensive plans through their State Agency Coordination Programs approved by LCDC.

State Agency Authorities

Several state agencies administer programs designed to plan for the protection of and access to public beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological or cultural value. The Department of Transportation (ODOT) administers federal Land and Water Conservation Funds, and issues permits for beach-front protective structures. The Division of State Lands also issues permits for the deisgn and placement of structures and fill along navigable waterways. The State Marine Board has the authority to regulate boating acitivites on state coastal waters and administers the State Marine Facility Grant Program. There are several other state agency policies and financial assistance programs that assist in the management of shorefront access. These state policies and financial assistance programs are summarized in Table 2 Summary of State Agency Authorities and Policies for Shorefront Access and Protection. State agency programs are funded in part, by permit applications, available federal funds, and legislative appropriation.

TABLE 1: SUMMARY OF STATEWIDE PLANNING GOAL REQUIREMENTS FOR SHOREFRONT ACCESS AND PROTECTION MANAGEMENT

Goal	Federal Requirements Addressed-CFR 923:25	Goal Requirement
5. Open Spaces, Scenic and Historic Areas and Natural Resources	(1) (2) (3) (5)	Requires that "programs shall be provided that will (1) insure open space (2) protect scenic and historic areas and natural resources for future generations." Requires the location, quality and quantity of resources be inventoried, and where no conflicting uses have been identified, managed to preserve their original character, Where conflicting uses have been identified, conflicting uses shall be determined and programs developed to achieve the goal. Open space consists of "any land area that would, if preserved and continued in its present use" promote conservation of beaches. See also Guidelines A. 1,5 B. 8 in Appendix 4, OCMP
8. Recreation	(1) (2)	Requires government agencies having responsibility for recreation areas, facilities and opportunities plan to meet "the recreational needs of the state and visitors. See also Guidelines 1-5, 7 and 10 in Appendix 4, OCMP.
16. Estuarine Resources	(1) (2) (3) (4)	Comprehensive plans for each estuary are to provide for appropriate uses "with as much diversity as is consistent with the. . .biological, economic, recreational, and aesthetic benefits of the estuary." See also Guidelines A. 2(d), A. 3 (e) and (f), B and E in Appendix 4, OCMP.
17. Coastal Shorelands	(1) (2) (3) (5)	"to conserve, protect, where appropriate develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water dependent uses, economic resources and recreation and aesthetics."

Goal	Federal Requirements Addressed-CFR 923:25	Goal Requirement
(Inventory Requirement)	(1) (2) (3) (5)	Inventories shall be conducted to provide information necessary for identifying coastal shorelands and designating uses and policies. These inventories shall provide information on the nature, location, and extent of geologic and hydrologic hazards and shoreland values, including fish and wildlife habitat, water dependent uses, economic resources, recreational uses, and aesthetics in sufficient detail to establish a sound basis for land and water uses management. See also Guidelines A. 3,5,8-10,C,E in Appendix 4 OCMP.
18. Beaches and Dunes	(1) (3) (4) (5)	Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate use of beach and dune areas consistent with their ecological, recreational, aesthetic, water resource, and economic values, and consistent with the natural limitations of beaches, dunes and dune vegetation for development.
(Inventory Requirements)	(1) (2) (3)	Inventories shall be conducted to provide information necessary for identifying and designating beach and dune uses and policies. Inventories shall describe the stability, movement, groundwater resource, hazards and values of the beach and dune areas in sufficient detail to establish a sound basis for planning and management. For beach and dune areas adjacent to coastal waters, inventories shall also address the inventory requirements of the Coastal Shorelands Goal.

Goal	Federal Requirements Addressed-CFR 923:25	Goal Requirement
(Implementation Requirement 5)	(1) (5)	Permits for beach front protective structures shall be issued under ORS 390.605 .. 390.770, only where development existed on January 1, 1977. The Oregon Department of Transportation, cooperating with local, state and federal agencies shall develop criteria to supplement the Oregon Beach Law (ORS 390.605 .. 390.77) for construction of beach front protective structures. The criteria shall provide that: (1) visual impacts are minimized; (2) necessary access to the beach is maintained; (3) negative impacts on adjacent property are minimized; and (4) long-term or recurring costs to the public are avoided. See also Guidelines E in Appendix 4, OCMP.

Goal	Federal Requirements Addressed-CFR 923:25	Goal Requirement
(Comprehensive Plan requirements)	(1) (2) (3)	Based upon the inventory, comprehensive plans for coastal areas shall: (1) identify beach and dune areas; and (2) establish policies and uses for these areas consistent with the provisions of this goal.
(Implementation Requirement 1)	(1) (3)	Local governments and state and federal agencies shall base decisions on plans, ordinances and land use actions in beach and dune areas, other than older stabilized dunes, on specific findings that shall include at least: (1) the type of use proposed and the adverse effects it might have on the site and adjacent areas; (2) temporary and permanent stabilization programs and the planned maintenance of new vegetation; (3) methods for protecting surrounding area from any adverse effects of the development; and (4) hazards to life, public and private property and the natural environment which may be caused by the proposed use.
(Implementation Requirement 3)	(1) (5)	Local governments and state and federal agencies shall regulate actions in beach and dune areas to minimize the resulting erosion. Such actions include, but are not limited to the destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damange), the exposure of stable and conditionally stable areas to erosion, and construction of shore structures which modify current or wave patterns leading to beach erosion.

TABLE 2: STATE AGENCY AUTHORITIES AND POLICIES FOR SHOREFRONT ACCESS AND PROTECTION

Agency	Statute	Federal Requirements Addressed-CFR 923.25	Authority - Policy
Department of Transportation	ORS 390.610-755 Ocean Shores Statutes	(1) (2) (3) (5)	Gives the State Transportation Commission the authority to police, prot and maintain the beaches and stipulat any improvements or alterations to the ocean shore seaward from the 16 foot elevation line require a permit from the State Highway Division. Establishes the right of public acces and a commitment to public protection of all beaches, regardless of prior ownership.
State Parks Beach Access Program	ORS 390.605 Ocean Shore Definition	(2) (3) (5)	Defines "ocean shore" and State Recreation area.
	ORS 390.615 State Ownership of Beach Right of Public Assess	(2) (5)	Ownership of Pacific Shore, declarati as state recreation area.
	ORS 390.630 Acquisition	(5)	Acquisition along ocean shore for state recreation areas or access.
	ORS 390.640-658 Improvement Permits	(1) (3) (5)	Permits required for improvements on ocean shore; exceptions, procedures and standards; judicial review of permit. DOT evaluates the following concerns in its review of Beach Improvement Permit Applications: - Project Need-There must be a critic Need or adequate justification for project to come seaward of the beacl zone line and alter the ocean shore area.

Agency	Statute	Federal Requirements Addressed-CFR 923.25	Authority - Policy
			- Project Modifications-There are no reasonable project modifications that would better serve public rights reduce or eliminate problems or avoid long term cost to the public. - Public Costs-There are no reasonable special measures which might reduce or eliminate significant public costs Alternatives such as nonstructural solutions provision for ultimate removal responsibility for structures when no longer needed, reclamation of excavation pits, mitigation of project damages to public interests, or a time limit on project life to allow for changes in public interest have been considered. - Structural Safety-The project should not be a safety hazard to the public due to inadequate structural foundations, lack of bank stability, or the use of weak materials subject to rapid ocean damage. Implementation Requirement 5 of the Beaches and Dunes Goal establishes additional criteria that DOT must apply in considering beach improvement permits.
	ORS 390.690 State Authority Over Ocean Shore	(3) (5)	Title and rights of the state unimpaired.
	ORS 390.705 Prohibits Certain Kinds of Development	(3) (5)	Prohibition against placing certain conduits across recreation areas and against removal of natural products.

Agency	Statute	Federal Requirements Addressed-CFR 923.25	Authority - Policy
	ORS 390.715 Pipe Permits	(3) (5)	Permits for pipes, cable or conduit across ocean shore and submerged lands.
	ORS 390.725 Removal Permits	(3) (5)	Permits for removal of products along ocean shore.
	Administrative Policy of ODOT on Implementation of Beach Access Program		General policy to provide, with cooperation of other agencies, a public access site at intervals between 1½ to 3 miles, or to major beach areas inaccessible from other access points because of intervening promontories or other barriers.
	ORS 390.725 Beach Log Removal	(1) (3) (5)	Beach Log Removal Policy adopted March 30, 1976. The program prohibits logging of the beach unless such removal can be shown to provide a significant public benefit, e.g., to enhance physical or visual access. Restricted use of motor vehicles and aircraft on the Oregon beaches by time and location. Specific transportation commission resolutions define the limitations by county.
	ORS 390.310 ORS 390.150	(3) (5)	Authority to "acquire by purchase, agreement, donation, or by exercise of power of eminent domain, real property or any right or interest" for access and protection of public beaches and state parks.

Agency	Statute	Federal Requirements Addressed-CFR 923.25	Authority - Policy
ODOT	ORS 390.950--390.989 Recreational Trails	(1) (3) (4) (5)	Institute a system of recreation trails and prescribes methods of which, and standards according to which, additional trails may be added. The program objective is a network of trails to any major recreation attraction without motor vehicles. Highest priority is the Oregon Coast Trail. Long-range plan has been approved for a continuous Oregon Coast Bicycle Route (1972).
	Grant-in-Aid Program (SB 5537)	(1) (5)	State Parks and Recreation Branch administers the Federal Land and Water Conservation Fund. Substantial portion of the fund is distributed to local governments. Coordination is accomplished, in part, through the comprehensiv planning process.
	ORS 390.110 Development and Rehabilitation Program	(1) (3) (5)	Authority "to develop, construct, improve operate and maintain" acquired recreational areas.
	ORS 390.010 Historic Preservation	(1) (3) (4) (5)	Recognizes the public interest in increasing recreational opportunities related to "preservation and restoration" of structures, objects, facilities and resources of Oregon history, archaeology and natural science.
	ORS 358.475 Special Tax Assessment for Historic Properties	(1) (5)	Authority to provide special tax benefits to properties on the National Register with the provision of public access to the property.

Agency	Statute	Federal Requirements Addressed-CFR 923.25	Authority - Policy
State Parks Scenic Waterways Program	ORS 390.815-855	(1) (3) (4) (5)	Establishes a State Scenic Waterways System "to preserve for the benefit of the public selected parts of the state's free-flowing rivers" and "to protect natural values and recreational opportunities along designated free-flowing rivers." Criteria established by statute. (Two coastal rivers, the Rogue and Illinois, have parts designated as scenic waterways. Six others, the Nehalem, Nestucca, Siletz, Trask, Alsea and Chetco, are identified as potential scenic waterways.)
State Marine Board	ORS 488.875 Grant-in-Aid	(1)	Provides for grants to cities, counties, port districts, parks and recreation districts for the construction and maintenance of boating facilities. Authorized to acquire property.
	ORS 488.860(6) Marine Facilities Plan	(1)	Requires the preparation of a Marine Facilities Plan.
	ORS 488.600(3) SSW Permits	(1) (3) (5)	Authorizes the Marine Board to regulate boating on State Scenic Waterways by a permit system.
South Slough Estuarine Sanctuary Management Commission	ORS 496	(1) (3) (4) (5)	Provides for the management of the South Slough Estuarine Sanctuary (1) to maintain integrity of the estuary (2) protect the estuary from uses which may alter or effect the sanctuary and (3) preserve the area for long term scientific and educational use. A statutory policy in the sanctuary shall be open to the public except as necessary to achieve management objectives.

Agency	Statute	Federal Requirements Addressed-CFR 923.25	Authority - Policy
Department of Fish and Wildlife	ORS 496.012 506.201-506.211 Angler Access Program	(1) (3) (4) (5)	ORS 496.012 provides for the enhancement and public enjoyment of wildlife. ORS 506.201-506.211 authorizes the acquisition and development of property policies to carry out 496.012 are articulated in the Fish and Wildlife Management Plan. Master Plans for Angler Access implement the Plan. Emphasis on streams and lake shorefronts.
	501.005-501.045 506.201-506.211 Wildlife Management Areas	(1) (3) (4) (5)	Sets criteria and establishes authority to acquire wildlife management areas for recreation facility development boat launches, viewpoints, protection, etc. Acquisition is possible through purchase, lease, agreement, or gift.
Division of State Lands	ORS 273.562-592 Natural Areas Preserves	(1) (3) (4) (5)	Establishes the Natural Areas Reserves Advisory Committee to identify state lands which due to their unique character should be preserved for research and development. OAR 141-50-890 provides management criteria for Natural Area Preserves.
	ORS 541.605-695 Fill and Removal Law	(1) (3) (5)	Authorizes the Division to issue permits for the design and placement of structures and fill along navigable waterways. OAR 141-85-270 provides criteria for riprap permits.
	ORS 274.705-274.860 Leasing of Submerged and Submersible Lands	(1) (3) (5)	Requires leases for use of state submerged and submersible lands. Authority to terminate a lease if the use under the lease becomes intolerable.

Agency	Statute	Federal Requirements Addressed-CFR 923.25	Authority - Policy
State Department of Forestry	ORS 530.010-530-490	(1) (3) (5)	Authorizes the State Forester to manage, control and protect state owned lands for production of forest crops, recreation and other uses. Management objectives include maximum growth and harvest of forest products consistent with the need to protect recreational opportunities. Recently adopted Recreation Policy encourages the development of recreation opportunities, acquisition of access to state forest lands, hiking trails, camps waysides, boat ramps, picnic areas, etc.
Department of Economic Development	ORS 777.850-777.890 Port Revolving Fund	(5)	Establishes the Port Revolving Fund. Funds could be used to provide facilities and greater public access to shorefront areas.
Deparment of Revenue	ORS 307.115	(5)	Provides tax exemption on property owned by qualifying nonprofit corporation and used exclusively for public park or recreation purposes.
	ORS 308.740-790 Special Assessments	(5)	Provides special assessment for open space lands.
	ORS 271.710-750 Acquisition	(5)	Authorizes public bodies to acquire scenic or conservation easements when in the public interest.

National Oceanic and Atmospheric Administration
Office of Coastal Zone Management
Washington, D.C. 20235

FINDINGS

EVALUATION OF THE OREGON COASTAL MANAGEMENT PROGRAM

COVERING THE GRANT PERIOD JUNE 1978 - JUNE 1979

I. BACKGROUND

Section 312 of the Coastal Zone Management Act (CZMA) requires continuing review of states with federally approved coastal management programs. This review is designed to evaluate performance with respect to coastal management activities and adherence to the approved management program.

The Oregon Coastal Management Program (OCMP) was approved in May, 1977.

Oregon had its first-year 306 grant extended for one year and was awarded a supplement simultaneously. Thus, the first and second year 306 grants are running concurrently, with work on both to be completed June 30, 1979.

FY '77:	$1,850,000	(Federal)
	$ 462,500	(State)
	$2,312,500	(Total)
FY '78:	$1,500,000	(Federal)
	$ 409,636	(State)
	$1,909,636	(Total)
FY '77 & 78:	$3,350,000	(Federal)
	$ 872,136	(State)
	$4,222,136	(Total)

In connection with the Office of Coastal Zone Management's (OCZM) evaluation responsibilities, an on-site review of the OCMP was conducted in Salem and Portland from February 26 to 28, 1979, by Catherine Morrison, Policy and Program Evaluation Staff; Eileen Mulaney, Regional Manager, Pacific Region; Rebecca Barber, Assistant Regional Manager; and John O'Donnell, External Relations Staff.

The on-site review included meetings with Department of Land Conservation and Development staff, state and federal agency representatives and representatives of environmental groups and business and port interests. A public meeting was held the evening of February 27, 1979. A list of individuals attending these meetings is attached (Appendix 1).

C. In the Area of Increased Access to the Coast for Recreation Purposes, and Protection and Restoration of Historic, Aesthetic and Cultural Resources:

1. Increased Public Access to the Shorefront

Historically, Oregon has had a strong commitment to preservation of public access to the shoreline. In Oregon, the wet sand beaches are owned by the public, and legislative policy assures that there will be extensive access points along Oregon's 350 mile coast. Two public access studies were completed as part of the Shorefront Access Amendment process, the first documents existing policies, while the second evaluates existing programs and makes recommendations.

A study is underway of recreational boating activity in the estuaries which should result in a management program for siting future boating facilities.

THE BEACH BILL

Most Oregonians had always believed that all of the beaches seaward of the vegetation line were public. It was a widespread misconception, however, perpetuated by the public's historical and continuous free recreational use of the dry sand. Because use of the wet sand strip is dictated by the ebb and flow of the tide, the dry beaches have been the principal recreational playground. Many citizens believed the public had acquired a "claim of right" to all the beaches.

The 1913 Os West legislation had further contributed to the misconception. West has always been popularly lauded for saving the beaches. Few persons were aware that his legislation, and subsequent amendments, applied only to the beach seaward of the ordinary high tide line. Most recreationists did not realize that on some beaches they actually were using private land.

Consequently, prior to the 1967 Beach Bill, Oregonians were secure in their belief. In actuality, however, the state's legal jurisdiction over beaches was unclear because of ambiguities and technicalities in existing laws that confused and complicated the issue.

For one thing, some property deeds for beach front land showed ownership to the ordinary high tide line. Those private owners legally held some dry sand areas. Federal court cases involving shore lands disputes had used the ordinary or mean high tide as the landward boundary of state ownership. Some jurisdictions had defined "ordinary high tide" as the average of all high tides over a specific span of years. Others had defined it as the vegetation line. Although Oregon had been given

ownership of "tidelands" when admitted to the Union, specifically what area that encompassed had not been defined. Regardless of legislative intent, Oregon had not clearly determined the landward limit of the public beach, and indications were that the private owners might be in a better legal position than the state.[1]

Further, the Highway Commission had identified two problems specific to the 1965 beach legislation.[2] Although the commission recognized public rights between the vegetation and ordinary high tide lines, through dedication, prescription or grant, the 1965 legislation limited the "state recreation area" to *below* the line of ordinary high tide.

Secondly, the legislation had amended the 1947 beach law to read, ". . . no portion of such shore shall be alienated by any of the agencies of the state, *except as provided by law.*" Interpretations varied, but clearly the amendment implied that the legislature could sell part or all of the beach.

In July and August of 1966, citizens complained to Tom McCall, then secretary of state, and Glenn Jackson, chairman of the State Highway Commission, concerning the denial of public access to beach property at the Surfsand Motel at Cannon Beach.[3] William Hay, owner of the motel, had built a low barricade of logs around a dry sand area adjacent to the motel, for the exclusive use of his guests. Hay put cabanas in the enclosure and posted signs that warned: "Surfsand Guests Only Please." William Nokes, investigator for the Highway

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[1]Forrest Cooper, State Highway Engineer, to Governor Tom McCall, September 2, 1966, Highway Division General Files, Oregon Department of Transportation.

[2]David Talbot, "State Highway Department Statement in Support of HB 1601," cited in Minutes of House Committee on Highways, May 7, 1967, Oregon Legislative Assembly, 1967 Regular Session. Hereafter cited as House Highway Committee Minutes.

[3]Richard Byrne to Glenn Jackson, July 14, 1966; William G. Nokes to Files, August 15, 1966; and Laurence F. Bitte to Tom McCall, August 25, 1966, cited in House Highway Committee Minutes, March 23, 1967.

Department, visited the motel in early August, 1966, and confirmed the situation.[4]

The questions raised by the Surfsand Motel incident were: 1) Does private ownership of beach property legally extend seaward to the ordinary high tide line? 2) Does the private owner of beach property have the right to build seaward of the vegetation line onto the sandy beach, and who issues such building permits? 3) What legally constitutes a beach and can disparate definitions be applied to the term? 4) Is it legal to close a portion of the sandy beach which has been used by the general public for more than 50 years?

The State Parks and Recreation Advisory Committee, under the chairmanship of Loran L. "Stub" Stewart,* met in late July, 1966 and discussed the Surfsand Motel incident.[5] The committee was particularly concerned about the state's uncertain legal position. The calamitous potential of the issue was illustrated by a Parks Division study which showed that 112 of Oregon's 262 miles of sandy beach were in private ownership which extended to the ordinary high tide line.[6] The committee knew the state might have to spend millions to purchase the private land.

The Parks Advisory Committee recommended to the State Highway Commission that a legislative remedy be explored immediately to clarify the state's legal position and avoid another Surfsand Motel incident. George Rohde, then chief counsel for the Highway Commission, his assistant Frank McKinney* and Jim Kuhn, title attorney, took on the task.

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[4] *Ibid.*

*Other State Parks Advisory Committee members were Eric W. Allen, Jr. (Medford), Alfred D. Collier (Klamath Falls), E. R. Fatland (Condon), Donald G. McGregor (Grants Pass), George D. Ruby (Portland), Lestle J. Sparks (Salem), and P. M. Stephenson (Salem). Warren A. McMinimee (Tillamook) was appointed to the committee April, 1967.

[5] Parks Advisory Committee Minutes, July 29, 1966.

[6] State Parks and Recreation Division, *Oregon's Coastal Beaches,* June, 1966.

*McKinney was also the lead trial counsel in the subseqeunt Fultz and Hay beach property litigations.

Highway legal counsel concluded that a law or laws could be adopted to preserve public beach rights. Counsel was well aware of the "fee title" problem. Any law establishing public rights on the dry sand beaches would be tested in court. Private owners were likely to charge that their land was being confiscated, or claim compensation for its public use. But, counsel was sure Oregon could legally establish public recreational easement rights on dry sands in private ownership without having to purchase or condemn property.[7]

In part, counsel based the conclusion on a precedent-setting Texas court case. In 1964 the Texas Supreme Court upheld the 1959 Texas Open Beaches Act on the theory of implied dedication, a common law acceptable in Oregon.[8] Since Oregon's beach use had been similarly open and widely known, counsel believed the theory of implied dedication was sound. It could be proven that private owners, excepting Hay, had never tried to disrupt public use of the beaches.[9]

The first beach legislation was written by the three lawyers at the recommendation of the Parks Advisory Committee. HB 1601 was modeled after the Texas Open Beaches Act, and became popularly known as the "Beach Bill."* The Beach Bill was brief. It recognized public rights to easements on the beach through prescription, dedication and grant, between the vegetation and ordinary high tide lines. It authorized the Highway Commission to protect, administer and supervise such public rights. It amended the wording of the 1965 beach legislation to read that ". . . no portion of such shore or rights in land along such shore shall be alienated by any of the agencies of the state except as provided by *special*

[7]Interview with Frank McKinney, July 3, 1975.

[8]Seaway Co. vs. Atty's Gen., 375 S.W. 2d 923 (Tex. Civ. App. 1964).

[9]McKinney Interview.

*A companion bill, HB 1600, stated that all future seaward accretions on the beach would belong to the state rather than upland owners. Since the beach controversy was over HB 1601, this discussion will concern the latter only.

law." This would protect the beaches from future sale. The bill maintained the status quo by allowing citizens to continue to use dry sand beaches for recreational purposes. It did not deprive private owners of their property or their rights since they could still use their property, subject only to the public's recreational easement.

The Beach Bill was presented to the Parks Advisory Committee for final review and approval on February 16, 1967. The committee formally chose to support HB 1601 because ". . . it reaffirms, delineates and makes more specific, Oregon's historic attitude toward public rights on the ocean beaches."[10]

Glenn Jackson and the Highway Commission* also endorsed the measure. It was introduced in the legislative session on February 22, 1967, by Representatives Sidney Bazett (R-Grants Pass) and Stanley Ouderkirk (R-Newport), and Senator Anthony Yturri (R-Ontario) at the request of the State Highway Commission. The bill was sent to Representative Bazett's House Committee on Highways** and the first hearings on the Beach Bill were held March 7 and March 23.

Among the Beach Bill's chief supporters, at first, were the Highway Commission, the Parks Division and Parks Advisory Committee. David Talbot, State Parks superintendent, testified on March 7. He emphasized that both the Highway Commission and the Parks Advisory Committee had given long and detailed attention to the beach problem, and that ". . . the assumption of . . . expanded responsibilities will by no means be easy or inexpensive." Further, Talbot said:

> The Highway Commission has managed the coastal

[10]Parks Advisory Committee Minutes, February 16, 1967.

*Other Commissioners were Kenneth N. Fridley (Wasco) and David B. Simpson (Portland). Fridley was replaced by Fred W. Hill (Helix/Pendleton) in April, 1967.

**Hereafter referred to as House Highway Committee. Other committee members were Representatives Howard (D-Portland), Anunsen (R-Salem), Elder (R-Eugene), Hanneman (R-Cloverdale), McKenzie (R-Sixes), Meek (R-Portland), Holmstrom (D-Gearhart), Smith (R-Burns), Turner (D-St. Helens), and Leiken (D-Roseburg).

> beaches for many years and has always sought to carry out the intent of the beach laws enacted by the various legislative assemblies which gave limited jurisdiction to the Highway Commission. We believe that HB 1601 is necessary at this time to enable the Highway Commission to adequately protect and manage the beaches for permanent public enjoyment . . .[11]

Chairman Stewart and the Parks Advisory Committee deserve much of the credit that the beach legislation was ever introduced. The committee, determined to pursue the legislation, gave continual support to the Beach Bill during the entire legislative process. Chairman Stewart testified before the House Highway Committee on March 23. He affirmed the Highway Commission's legislative responsibility to provide outdoor recreation opportunities for Oregonians and visitors. Stewart added:

> The Parks and Recreation Advisory Committee was given the question of what to do about the beach problem and what policy should be taken by the Commission. The bill before you gentlemen is their answer . . . House Bill 1601 is not a land grab. We have the finest beach recreation areas in the nation; and the Highway Commission, through this bill, wants to keep it that way for the public.[12]

Even in early 1967 few Oregonians were aware they might lose free access to and use of Oregon's beaches. Nor were they aware of the proposed legislation to prevent that loss. Throughout March and April the House Highway Committee received testimony from coastal real estate firms, private property owners and others who opposed the Beach Bill.

The opposition initially focused on a technicality in the first draft of the Beach Bill. The line of vegetation was not specifically defined other than to say it existed. The Highway counsel believed that in beach areas where

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[11]Talbot, "Highway Department Statement," p. 3.

[12]Loran L. Stewart, "Testimony of HB 1601," cited in House Highway Committee Minutes, March 23, 1967, pp. 3, 5.

there was no vegetation, a line could be established by connecting adjacent vegetated areas.[13] This technical point was soon overshadowed by a larger controversy involving whether the vegetation line should be used at all.

There was other opposition to the bill. Private builders believed the Beach Bill was inadequate unless it provided for certain kinds of non-adverse building seaward from the vegetation line, such as buried sewers, cable lines and stairways from private land down to the beach. The advocacy role of the State Highway Commission in protecting public rights was questioned. Some opponents believed the bill would threaten all private property rights on the coast. Others said the real issue was a proposed prescriptive right and that beach front owners should be compensated if the state were to establish public easements to dry sand areas. Opponents claimed the Beach Bill violated both the Fifth and Fourteenth amendments to the U.S. Constitution with regard to private property rights.

Others claimed the bill was inadequate in protecting Oregon's beaches because under existing law the state could acquire land only through purchase, grant or condemnation. Still others said public rights to easements and prescriptions were a matter to be determined in a court of law, not by the legislature.

Neither Beach Bill supporters nor the opposition, it seemed, were making much headway with the House Highway Committee. The Beach Bill was foundering amid heated committee debate on a proper course of action. On April 6 the committee amended the Beach Bill so that it became a statement of policy, which recognized public rights on the beaches and gave the Highway Commission authority to protect those rights.[14] On April 18 a motion to table the bill and put it into a post legislative interim study committee failed, as did

[13]McKinney Interview.

[14]House Highway Committee Minutes, April 6, 1967.

another to send the amended bill to the floor with a "do pass" recommendation.[15] The House Highway Committee was stalemated.

On May 1 Chairman Bazett, a staunch ally of the Beach Bill, warned that without strong public support the bill would die in his committee. At the same time, Matt Kramer of the Associated Press launched a series of newspaper articles which clearly described the beach issue to the public. He warned of the possible loss of the public's right to use the beaches should the bill fail. Subsequently, aroused citizens flooded the House Highway Committee with letters and telegrams. Within a few days the committee had heard from more than 10,000 persons, most of whom supported the bill.*

Daily television coverage and newspaper headlines trumpeted the controversy: "Battle Lines Drawn Over Beach Issue," "Dry Sands Bill Survives Raid by Opposition," "Another New Ploy in the Beach Battle," "This Sand is Your Sand, This Sand is My Sand." The Beach Bill had suddenly become the most explosive issue of the 1967 session.

In early May there was constant pressure and hectic efforts to get the Beach Bill out of committee. Governor McCall and State Treasurer Robert Straub, strong supporters of the bill, called for legislative action. On May 5 McCall, with Straub's endorsement, wrote Chairman Bazett: "We cannot afford to ignore our responsibilities

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[15] *Ibid.,* April 18, 1967.

*One of Kramer's final articles on the Beach Bill was in recognition of Sidney Bazett's efforts to keep the bill alive. He stated that "... the only thing that prevented a quiet burial (of the Beach Bill) was the fact that a genial ... legislator turned uncommonly stubborn about it. In fact, there would be no Beach Bill but for Representative Sidney Bazett." (Grants Pass *Courier,* July 6, 1967). The public support for the Beach Bill generated by Matt Kramer's news stories was another important factor in its passage by the legislature. He gained national recognition for contributing to greater public understanding and awareness of natural resource issues. After his death in 1970, the Oregon State Highway Commission erected a memorial plaque in his honor at Oswald West State Park.

to the public of this state for protecting the dry sands from the encroachment of crass commercialism."[16]

On May 8 House Democrats tried unsuccessfully to remove the Beach Bill from the House Highway Committee. Their motion failed on a roll call vote.[17] House Speaker F. F. Montgomery (R-Eugene), Representatives James Redden (D-Medford), Lee Johnson (R-Portland) and Paul Hanneman (R-Cloverdale), and highway legal counsel George Rohde all worked feverishly, drafting amendments to the bill. One news report stated: "Amendments to the Beach Bill littered the legislature like drift wood." Chairman Bazett added: "We've got amendments coming out of our ears."[18]

The furor continued. A pro-Beach Bill group, *Citizens to Save Oregon Beaches,* headed by Laurence Bitte of Portland, threatened to begin an initiative petition if the legislature failed to approve the bill.

House Speaker Montgomery on May 11 offered Beach Bill amendments (which were essentially a substitute bill).[19] Montgomery's amendments recognized property rights of both public *and* private citizens and established as a boundary line 200 feet landward from the ordinary high tide line. His proposals drew fire from both political parties and enmeshed committee members in a new dispute. Chairman Bazett charged Montgomery had watered down an already weakened bill. Straub called it ". . . the most scandalous giveaway of public rights in this country."[20]

In testimony before the committee Straub said the original bill emphasized prescriptive rights which the

[16]Harold Hughes, "McCall Slaps GOP's Tabling of Beach Bill," *The Oregonian,* May 5, 1967, p. 1.

[17]Oregon Senate and House Journal, 1967.

[18]*The Oregonian,* "Legislative Rebellion Explodes Over Beach Issue," May 13, 1967, p. 1.

[19]House Highway Committee Minutes, May 11, 1967.

[20]Harold Hughes, "Uproar Spurs Public Hearing Over Beaches," *The Oregonian,* May 11, 1967, p. 1.

public had acquired through its historic use of the beach. Passage, he said, would prevent a take-over by private interests and give Oregonians time to fortify their legal claim to the beaches.[21]

From the beginning Governor McCall urged the legislature to pass a substantive bill protecting public rights to dry sand areas. Since much of the controversy was over an acceptable boundary line, McCall asked nine experts at Oregon State University, including engineers, oceanographers, biologists and geologists to develop a boundary formula. On May 11 McCall issued a statement announcing that he would personally visit the Oregon beaches to test the scientific formula for beach definition.[22]

The day before McCall's beach visit, the House Highway Committee met without Chairman Bazett, despite the chairman's refusal to call a meeting. He feared members would pass a bill out of committee to embarrass the governor, and before McCall had a chance to add technical language to the bill. But, the committee agreed only to draft more compromise amendments, and asked Representatives Redden and Johnson, House Speaker Montgomery and highway legal counsel Rohde to cooperate in the task.[23]

On May 13 Governor McCall walked along five beaches between Salishan and Neskowin, accompanied by his team of experts, Representative Bazett, and a throng of aides, press and observers. The governor and his team subsequently offered a single rule of elevation to help solve the Beach Bill controversy. Their recommendation was a beach line at 16 feet above the sea level markers already established by the U.S. Coast and Geodetic Survey.

The 16-foot elevation was written into the compro-

[21]House Highway Committee Minutes, May 11, 1967.

[22]"Recommendation by Governor McCall for Preservation of Oregon's Beaches," Office of the Governor, State Capitol, May 11, 1967.

[23]House Highway Committee Minutes, May 12, 1967.

mise amendments and presented to the House Highway Committee on May 16. But the committee balked at McCall's proposal. They said the elevation was too high, and first adopted a 12-foot elevation line instead.[24]

Members argued that in some cases the 16-foot elevation line did not include the entire beach. In other cases, especially around estuaries, it extended beyond the beach area. After more lengthy debate, on May 18 the committee finally agreed on the 16-foot elevation above sea level and a 5.7-foot elevation plus 300 feet at estuaries.[25] The compromise gained the support of Governor McCall, State Treasurer Straub, House Speaker Montgomery and Representatives Redden and Johnson. The House Highway Committee recommended that the State Highway Commission survey the entire coast to establish a permanent zone line for approval by the next legislative session in 1969.[26]

Representative Fred Meek moved to send the Beach Bill to the House floor with a "do pass" recommendation. His motion carried by a vote of 8 to 2. Representatives Paul Hanneman and Rod McKenzie voted against the motion. After ten hearings and thousands of words of testimony, the amended Beach Bill reached the floor of the House of Representatives on May 23, 1967.

It passed the House 57 to 3. The bill was then referred to the Senate Judiciary Committee.* A number of amendments were adopted, including a re-statement of the policy declarations to clarify legislative intent regarding the public's recreational right on the beaches. The Beach Bill passed the committee unanimously and was approved by the Senate 27 to 0 on June 6. The House

[24] *Ibid.,* May 16, 1967.

[25] *Ibid.,* May 18, 1967.

[26] House Highway Committee Minutes, "Statement Concerning HB 1601," May 18, 1967.

*Committee members were Senators Mahoney, chairman (D-Portland), Yturri, vice chairman (R-Ontario), Boivin (D-Klamath Falls), Burns (D-Portland), Cook (D-Gresham), Eivers (R-Milwaukie), Fadeley (D-Eugene), Husband (R-Eugene), Lent (D-Portland), McKay (R-Bend) and Willner (D-Portland).

of Representatives, despite substantive Senate amendments, passed the bill 36 to 20 on June 7.

With this victory the legislature declared a new policy in preserving and maintaining the state's jurisdiction over ocean beaches. The bill codified into law already existing public rights to dry sand beaches. It gave the State Highway Commission the authority to police, protect and maintain the property. The law included the stipulation that any improvements or alterations to the ocean shore seaward from the 16-foot elevation line (construction and fill or removal) required a permit from the state highway engineer. The bill provided for hearing procedures, and an appeal process for private property owners or developers.

The essence of the Beach Bill, enacted as Chapter 601, Oregon Laws 1967, stated that the legislature:

> . . . recognizes that over the years the public has made frequent and uninterrupted use of the ocean shore . . . sufficient to create easements in the public through dedication, prescription, grant or other use . . . the Legislative Assembly hereby declares that all public rights . . . are vested exclusively in the State of Oregon.

Governor McCall signed the bill into law on July 6, 1967, stating that ". . . it is one of the most far reaching measures of its kind enacted by any legislative body in the nation."[27]

Immediately after the Beach Bill became law the State Highway Commission, as requested by the 1967 legislature, began a survey of the entire coastline to establish a permanent landward beach zone line. The

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[27] *The Oregonian,* "McCall Hails Beach Bill," July 7, 1967, p. 13.

Ironically, within two weeks the Highway Commission publicized plans to re-route a section of the Highway 101 along the Nestucca sandspit (through two parcels of BLM land). The proposed route, supported by Governor McCall, was landward of the 16-foot line. Nevertheless, the plan was opposed by State Treasurer Straub and many citizens who believed the route would desecrate the beach. In late August, 1967, Secretary of the Interior Stewart L. Udall ordered the Bureau of Land Management to disapprove the Highway Commission's plan. The issue was re-opened in September, however, by Governor McCall, and more controversy ensued until late November when a final decision was made to abandon the sandspit route.

commission used survey points keyed to the Oregon Coordinate System* and connected the adjacent points with a straight line. The resulting survey line, which approximates the actual vegetation line, has proved to be more practical than either the vegetation line or the 16-foot elevation line.

The survey points were introduced to the 1969 legislature in HB 1045. The bill also included an amendment that all beach lands subject to public recreational easement would be exempt from taxation. It was approved without conflict and was signed by Governor McCall on August 22, 1969.[28]

*Assistant Highway Engineer Lloyd Shaw developed the survey method based on the Oregon Coordinate System, which is part of a nationwide grid system of latitudes and longitudes. The survey points or coordinates are keyed to the grid. When using this survey method, the result is a *horizontal* control rather than *vertical* elevations above sea level. In the case of the beach boundary, this method of survey was preferable because the resulting zone line is unaffected by natural changes in the beach terrain.

[28]Oregon Laws, 1969, Chapter 601.

PENNSYLVANIA

According to Pennsylvania law, the beach belongs to the riparian property owner. Thus, there is no point in establishing access ways across private property to the shore, since the shore is not a public area. Pennsylvania coastal program administrators are concentrating instead on opening up a series of small access points along Lake Erie to the west and the Delaware River to the east. Conventional tools such as fee simple purchase, easements, and leasebacks are being used to acquire public access in rural areas. The encouragement of multiple use areas (public use of private land) through a package of negotiated incentives is being investigated for urban areas.

Three hundred five funds are currently being used to fund four feasibility studies investigating the recreational and public access potential at four sites: one at each end of the Lake Erie shoreline and one at each end of Pennsylvania's Delaware River shoreline.

State coastal program administrators are currently assessing the legality of negotiating with private owners of undeveloped shorefront property for public access during the undeveloped period in exchange for such development bonuses as tax breaks, increased lot coverage, etc. Three hundred six funds are being used for a program which gives technical assistance to localities to teach them how to re-write ordinances to include sliding scales, waiver procedures, and negotiation bases for effecting these trade-offs. Where possible, program administrators hope to be able to continue public use after site development through negotiated weekend use of the parking lot and the development of a boat launch ramp.

Puerto Rico

Puerto Rican law states that "space on the coast...that is bathed by the sea in its ebb and flow" is included in the maritime zone and is therefore in the public domain. There are two notable exceptions to this. First, beaches on the federal military reservations at Roosevelt Road and Viegues are exempt from this provision. Second, Spanish Crown Grants, issued prior to 1886, may authorize some private landowners to exclude the general public from some beach areas, although the number of such grants and their legal validity is unclear. The provision of perpendicular access to the public beach across private property is the current concern in Puerto Rico.

The Puerto Rico Planning Board has adopted the following policy toward shorefront access:

> "Avoid construction of structures in beach areas and discourage those activities or land subdivisions in neighboring areas which would impede and/or prevent free physical access to these areas."

The Puerto Rico Coastal Management Program, adopted in 1978, states two shorefront access policies. First, if any beach which is presently owned by the federal government is declared surplus, it shall be held for permanent recreational use by the general public unless a more appropriate use is determined to be in the interest of general welfare. Second, shorefront development, whether public or private, shall, if practical, be designed to facilitate rather than obstruct shoreland access by the general public.

Since the approval of the Puerto Rico Coastal Management Program, Law #14 (as of 2/7/79) has been passed, requiring that access be

provided in new developments adjacent to the beach. The Department of Natural Resources has granted 306 funds to the Puerto Rico Planning Board to prepare a regulation to enforce this law. The final version of the regulation is due to be published in June 1980.

Puerto Rico

SHORELINE ACCESS AND PROTECTION: AN ADDITIONAL ELEMENT OF THE PRCMP

INTRODUCTION

The accompanying material on shorefront access and protection is in two parts:

1. A summary of relevant federal requirements and of the ways in which Puerto Rico proposes to respond to them. For convenience in determining compliance with federal requirements for the shoreline access element, a brief summary describes the requirements and the ways in which Puerto Rico proposes to respond to them. This summary constitutes the required Shoreline Access and Protection element of the PRCMP.

2. A reprint of the section on Beaches, pages 70-89, of the PRCMP. The PRCMP, as originally adopted, contains a long section on beaches. That section describes Puerto Rico's shoreline access problem. The section also establishes policies and proposes implementation measures to cope with those problems. Because this section provides essential information on Puerto Rico's shoreline access program, the section is set forth here for convenience.

PART 1: SUMMARY OF FEDERAL REQUIREMENTS ON SHORELINE ACCESS AND PROTECTION AND PROPOSED RESPONSES

To meet the requirements of Section 305(b)(7) of the Coastal Zone Management Act, the Coastal Management Program must include a planning process that can identify public shorefront areas appropriate for access or protection. This process must include the following five 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.

(1) Assessing public areas requiring access or protection

The staff of the PRCMP has conducted a field inventory of beach access. This field inventory considered such factors as shoreline characteristics, means of access, parking and other facilities, distance from other accessible beaches, recreation potential, ownership, uses of adjacent property, scenic values and visual access, impediments to access, and distance from urban areas.

The assessment of shoreline protection needs has been accomplished through the procedure for identifying areas of particular concern (discussed on pages B-7 to B-8 of the PRCMP). This procedure involved an inventory of natural and man-made coastal resources and consideration of a number of factors specified in federal regulations.

(2) Defining the term "beach" and identifying public areas meeting this definition

The following definition of the term "beach" appears on page B-5 of the PRCMP:

> Beaches are defined as unconsolidated shores of sand or gravel. The nature and origin of the materials that form

the beach can be terrigenous, marine, or volcanic. The particle size can range from 0.625 to 128 mm., which includes the size classifications for sand, pebbles, and cobbles.

Beaches are identified on Maps 3 and 11 of the PRCMP.

Public ownership of beaches is discussed on pages 71-72 of the PRCMP. With exceptions noted there, beaches and other coastal areas that are "bathed by the sea in its ebb and flow" are public domain.

(3) Policies pertaining to shorefront access and protection

The objectives and policies element of the Planning Board's island-wide Land Use Plan establishes the following policy on beach access:

> To avoid unnecessary loss of options for future use of these resources resulting from the establishment of new activities or from the authorization of new subdivisions, considering among others the following criteria:
>
> - Avoid the construction of structures in beach areas and discourage those activities or land subdivisions in neighboring areas which would impede/or prevent free physical access to these areas, the free appreciation of panoramic views, and the free access to the sun and its enjoyment by the citizenry.
>
> (Policy 17.04)

The PRCMP establishes the following additional policies on shore line access:

> APPROPRIATE ACCESS TO FEDERAL BEACHES HEREAFTER DECLARED SURPLUS. If any beaches now owned by the Federal government in Puerto Rico are hereafter declared surplus to the needs of the Federal government, such beaches shall be held for permanent recreational use by the general public unless more appropriate use is determined to be in the general welfare by the Government of Puerto Rico. (Page 73)

PUBLIC ACCESS TO BEACHES. Shorefront development, governmental and private, shall, if practical, be designed to facilitate rather than obstruct shoreland access by the general public. It is recognized that the general welfare sometimes requires access restriction (e.g., to protect critical environmental areas, to protect endangered species or for public safety and for security reasons). Nevertheless, de facto segregation of public beaches, as a result of development patterns that facilitate use by shorefront landowners while preventing access by the general public, is rejected in Puerto Rico. (Page 75).

In addition, the Law for the Conservation and Development of Culebra (Act No. 66 of June 22, 1975, art. 6) bars development on Culebra that "may interfere in any way with the free access of the public to the sea and beaches...." (Discussed at Page 75 of the PRCMP).

(4) Designating shorefront areas of particular concern

The PRCMP includes a procedure for designating areas of particular concern and areas for preservation or restoration. The PRCMP designates seven specified areas and all mangrove wetlands as Special Planning Areas (areas of particular concern). In addition, 26 areas are recommended for designation as Natural Reserves (areas for preservation or restoration); actual designation will be accomplished by future statute or administrative action. In the future, the Coastal Management Unit may recommend the designation of additional Special Planning Areas or Natural Reserves (discussed at Page 169).

Special Planning Areas and Natural Reserves include areas where the provision of shorefront access or protection is an important consideration. For example:

- Important beach and dune areas are included in the Isabela and Boca de Cangrejos Special Planning Areas.
- Mona and Monito Islands are recommended Natural Reserves.
- Vieques (non-federal portions only) is designated as a Special Planning Area.

Shorefront access and protection needs will be considered in preparing detailed management plans and policies for Special Planning Areas and Natural Reserves during the 306 phase of the coastal management program.

(5) Identifying legal authorities, funding sources

A complete discussion of legal authorities to implement policies and management techniques identified in the PRCMP is included in chapter 4 of the PRCMP. Of particular importance in regard to access are:

a) statutory provisions to assure compliance with adopted plans (including the PRCMP policies on access); and

b) regulations on Zoning (Reg. No. 4), Community Facilities (Reg. No. 9), and Simple Subdivisions (Reg. No. 11). (See also the discussion of these regulations on pages 85, 86 and 77 of the Beaches section of the PRCMP.)

The PRCMP recommends a number of additional measures -- refinements or wholly new measures -- which will improve the Commonwealth's ability to implement the access policies. These are discussed on pages 72-86 of the PRCMP.

Funding sources for shorefront access, which are discussed on page 78 of the PRCMP, include:

- section 315(2) of the Coastal Zone Management Act
- Land and Water Conservation Fund (LAWCON)

While these appear to be the major potential sources for funding purchase of accessways and shorefront areas, the following additional sources have been identified:

- the Community Development Block Grant Program. Under the Department of Housing and Urban Development's Block Grant Program, land acquisition for preservation and open space is a fundable activity. In some cases, block grants may be used to provide the local matching share for other federal aid programs.

- the Dingell-Johnson and Pittman-Robertson Programs. The U.S. Fish and Wildlife Service administers two programs for fish and wildlife restoration projects, which provide cost-sharing grants for land acquisition and management. Fish restoration funds, for example, have been used by some states to improve inadequate access to fishing waters. (FWS also provides funds for acquisition of lands for endangered species conservation.)

- Highway Research, Planning, and Construction. The Federal Highway Administration provides formula grants to state highway agencies for highway research, planning, and construction. Land acquisition may be funded and, for example, could be applied to bikeways or pedestrian walkways.

In addition to the above, programs which could provide funds for acquisition for protection purposes include:

- Estuarine Sancturaries Program. The Office of Coastal Zone Management provides matching (50%) grants for the acquisition, development, and operation of estuarine sanctuaries.

- Historic Preservation. The Heritage Conservation and Recreation Service provides grants to states for historic preservation, including acquisition of historic properties.

At the Commonwealth level, the Recreational Development Company, which administers Land and Water Conservation (LAWCON) funds in Puerto Rico, has identified a list of land acquisition and development projects for which these funds will be utilized. (See the 1977-1980 SCORP.)

The Puerto Rico Conservation Trust, organized as a charitable trust with governmentally-appointed trustees, administers a fund of several million dollars (contributed by some of the Island's major petroleum refiners) for acquiring or preserving natural areas. The Trust has acquired a number of key coastal properties in recent years.

PART 2: REPRINT OF BEACHES SECTION OF THE PRCMP

BEACHES

INTRODUCTORY FINDINGS

The beaches of Puerto Rico are coastal resources of great importance. These beaches vary from tiny pockets to broad deposits as much as a kilometer in length (e.g., Medians Beach in Loiza, Levittown beach). Beaches are of incalculable importance to Puerto Rico for recreation and tourism. Some 109 kilometers of the island's 608 kilometers of beaches are naturally suited to be prime recreation beaches.[1] These are shown on Map 11.

In addition, beaches are important for the protection of natural resources. For example, beaches on Mona and some other offshore islands are known nesting sites for sea turtles, including some endangered species. (See the section on Wildlife.)

Composition of the individual beach systems is dependent on the source of available beach materials. There are three dominant mineral assemblages which characterize Puerto Rico's beaches: Quartz sands with some feldspar; volcanic rock, serpentinite, heavy mineral assemblages; and calcium carbonate sands. The isolation of individual beach systems is emphasized by striking differences in composition between many adjacent beaches.

Extraction of sand from beaches, long a cause of severe damage, is no longer extensive. In the past, some beaches were stripped of virtually all their sand, which was then sold for use in construction. At present, however, there are no outstanding Commonwealth permits for sand extraction from beaches.* There does remain a problem of unauthorized extraction (see discussion in the section on Dunes); but beaches are no longer a major resource for the unauthorized extractors, who now prefer river-mouth and other deposits.

Erosion and water pollution affect beaches as well as other parts of the coast. Erosion has drastically reduced the size of some beaches; responsive measures are considered in the section on Coastal Erosion. Water pollution interferes with full recreational use of some beaches, notably in the Condado and Ocean Park sections of San Juan, where the Environmental Quality Board has found it necessary to place pollution-warning signs.

Several additional obstacles prevent recreational enjoyment of beaches by the general public:

A. Legal barriers exclude the public from a few beaches.

B. Some beaches, though legally public, are inaccessible because the public cannot cross adjoining land. Obstacles to access may be legal (no right of passage), or practical (e.g. no automobile access or parking area).

C. When recreational users reach the beach (or another part of the coast), they may find that squatters got there first.

D. Nearby highrise buildings may cast shadows or visually dominate the beach.

E. The narrow strip of beach available to the public may prove too small for optimum recreational use.

F. Inadequate public services—notably beach cleaning—may render the beach less enjoyable.

These obstacles, all of which must be overcome to assure optimum present and future use of beach resources, are discussed below.

A. ASSURING THE PUBLIC'S LEGAL RIGHT TO USE THE BEACHES THEMSELVES

FINDINGS

Most beaches in Puerto Rico are legally open to use by the general public. The

*Also, Federal law apparently prohibits extraction of sand from submerged lands (below mean high tide). See discussion above in the section on Reefs.

"space on the coasts ... that is bathed by the sea in its ebb and flow" is included in the maritime zone (zona maritimo-terrestre).[1] The maritime zone is public domain.[2]

The principal exceptions are beaches on the Federal military reservations at Roosevelt Roads and in Vieques.* A number of additional beaches formerly reserved for recreational use by military personnel (e.g. "Crashboat" in Aguadilla, Punta Sardinas) are now available for public use.

Spanish crown grants, issued prior to the Law of Ports of 1886, may authorize some private landowners to exclude the general public from some beach areas. The number of such grants, their legal validity, and the beach areas subject to them are unclear. Some proprietors do assert rights under such grants, however.

The absence or uncertainty of public right to use a few beaches is a problem to be addressed as opportunities present themselves.

RESPONDING TO THE FINDINGS

1. Registration of crown grants

   More information is needed to determine whether or not crown grants represent a significant potential threat to open beaches in Puerto Rico. To deal with similar uncertainties, the Commonwealth's recently enacted Water Law (Law No. 136 of June 3, 1976) requires registration of crown grants to water supplies. There is no comparable law, however, to deal with crown grants that may authorize exclusion of the general public from any portion of the maritime zone. The statute should establish a reasonable registration period, of perhaps one year, after which (1) unregistered grants would be void, and (2) the validity of registered grants would be expeditiously adjudicated in a manner fixed by the statute.[3]

*The legal status of the Caribe Hilton Hotel site, formerly part of the San Juan Naval Station and now held by a Commonwealth government corporation under a 999-year lease granted by the Federal government, is unique and unclear. (See opinion of the Attorney General of Puerto Rico, November 25, 1970, and La Haba v. Trib. de Contribuciones, 76 DPR 923 (1954); a right to exclude the public from a beach on that site has been asserted. The Federally owned beaches of Culebra are discussed in the Culebra Segment of the Puerto Rico Coastal Management Program.

2. Surplus Federal land

NEW POLICY ESTABLISHED. From time to time, the Federal government has declared some of its coastal holdings to be surplus. Future declarations of this type may present opportunities to extend beach access. The following policy is hereby established to take advantage of any such opportunities that may arise:

APPROPRIATE ACCESS TO FEDERAL BEACHES HEREAFTER DECLARED SURPLUS. If any beaches now owned by the Federal government in Puerto Rico are hereafter declared surplus to the needs of the Federal government, such beaches shall to the maximum extent practicable be held for permanent recreational use by the general public unless more appropriate use is determined to be in the general welfare by the Government of Puerto Rico.

B. PUBLIC ACCESS TO THE COAST*

FINDINGS

Some beaches, though legally public, are inaccessible because the public cannot cross adjoining land to reach them. In some places, there is no legal right to cross the adjoining land. In others, a right of passage exists, but there are practical obstacles to access--most often an absence of vehicle access or parking space.

Lack of access to the coast has not traditionally ranked high among Puerto Rico's problems. In towns and cities traditional street patterns often provided access. In the country, fishermen and others needing access were often able to cross shorefront property--sometimes with a legal right of passage, sometimes without one.

*A planning process for shoreline access is now being developed in accordance with Section 305(b)(7) of the CZMA.

The access problem has attracted most attention in the northeast part of the Island, where several shorefront projects are concentrated in outlying areas close to the San Juan Metropolitan Area.[1]

Unless new shorefront development provides access at least equivalent to that provided in the past, exclusion of the general public from public beaches could become a serious problem. As the citizens' report, Puerto Rico and the Sea, put it:

> "In the past, Puerto Rico has rarely encountered the beach exclusion problems that plague so many places in the United States and the Caribbean. The Island could well experience them in the future, however, together with the resentments and tensions they inevitably create. Steps are needed, and needed now, to assure that they do not arise as a result of developments being approved.[2]

There are several kinds of opportunities to provide needed access. Requiring access at new shorefront development appears to present the most important of these opportunities.

POLICY

The Objectives and Policies elements of the Planning Board's Land Use Plan establishes the following the following policy on public access to beaches:

"To avoid the unnecessary loss of options for future use of these resources resulting from the establishment of new activities and from authorizing subdivisions. The following criteria, among others, must be considered:

"...

- Avoid the construction of buildings in beach areas and discourage activities or land subdivision in neighboring areas which would impede free physical access

to these areas, prohibit the appreciation of panoramic view, and prevent free access to and enjoyment of the sea by the citizenry." (See Policy 17.04.)

No statute, however, formally establishes for all of Puerto Rico, an access policy like the one established for Culebra. There, a statute bars development which "may interfere in any way with the free access of the public to the sea and beaches..."[3]

NEW POLICY ESTABLISHED. The following policy is hereby established:

PUBLIC ACCESS TO BEACHES. Shorefront development, governmental and private, shall if practical be designed to facilitate rather than obstruct shoreline access by the general public. It is recognized that the general welfare sometimes requires access restriction (e.g. to protect critical environmental areas, to protect endangered species or for public safety and for security reasons). Nevertheless de facto segregation of public beaches, as a result of development patterns that facilitate use by shorefront landowners while preventing access by the general public, is rejected in Puerto Rico.[4]

IMPLEMENTING THE POLICY

1. Need: Beach access plans. To provide guidance in safeguarding and increasing access, there is need for a beach access plan designed to assure maximum feasible coastal access by the general public. The plan should take account of:

..the varied character of the coast from place to place (e.g., the long, continuous beaches in some areas, the tiny beaches and rocky headlands in others).

..the varied ways people enjoy using the coast (e.g., picnicking, sports, birdwatching) and the opportunity to plan access arrangements to restrict some areas for less intensive uses. "There is no need to make all shorefront access equally convenient: Some of the more rugged areas can be effectively reserved for the hardy few."[5]

..the varied means by which access can be established. For example, coastal access can be assured by designing new shorefront highways at locations that preclude the construction of buildings between the highway and the coast. Access can also be provided by providing a series of intensive-use facilities (such as Luquillo Beach), with nearby shorelands accessible to those who walk along the shore from those facilities. Other possibilities include permitting pedestrians access from a street near the shore and providing a place to park, or access by hiking or boat alone if the firm intent is to preserve the area in its undeveloped form.

..the need for public facilities (including, where appropriate, highways, public beach installation, parking facilities, pedestrian access ways). These must be sufficient to remove physical obstacles that could exclude the general public from the maritime zone. They must also be sufficient to assure that public access does not itself prevent enjoyment of the beach (e.g., where cars are parked on the beach itself). Since it is impractical to provide optimum facilities for all 109 kilometers of potential recreational beach, the plan should establish priorities.

2. Requiring new shorefront projects to provide access

The Planning Board has used the development control process, described in Chapter 4, to implement a longstanding policy of requiring public accessways at shorefront

projects. Approval of the Cerromar Hotel, for example, was conditioned on the establishment of a public accessway from the hotel parking lot to the beach.[6] Similarly, construction of an access road to the beach was required between the Rio Mar project in Rio Grande, and an adjacent project.[7]

In requiring accessways in projects such as these, the Board has apparently relied principally on its discretionary review powers. The only regulation requiring accessways through coastal developments is Planning Regulation No. 11, the Simple Subdivision Regulation, which applies only to small subdivisions.

Even Regulation No. 11 does not prescribe access requirements in any detail. As a result, specific access arrangements are established on an ad hoc basis for each project, without detailed policy guidance and usually without public awareness or discussion. The resulting arrangements vary from project to project and sometimes provide little access opportunity.[8]

Need: Regulation or statute specifying access dedication requirements. A regulation or, preferably, a statute should establish with certainty the obligation of shorefront developers to provide public accessways and should specify the nature of that obligation in as much detail as possible. The following requirement is recommended:

> Require Access Through New Developments. New developments shall provide public accessways to the shoreline except in those cases where it is determined that public access is inappropriate, such as where (1) adequate access exists nearby, (2) the topography makes access dangerous, (3) the proposed development is too small to include an accessway, (4) the coastal resources are too fragile to accommodate general public use, (5) public safety or military security precludes public use, or (6) the public accessway would adversely affect agricultural uses or natural systems.[9] Any decision that public access is inappropriate shall be consistent with a beach access plan recommended by the Secretary of Natural Resources and adopted by the Puerto Rico Planning Board.

The regulation or statute should assure that the accessway is permanent. The following is recommended:

In private developments, public access shall be ensured (1) either by dedication of fee title or an easement for the reserved accessway to a public agency, or (2) by the recording of a deed restriction, at the owner's option. Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept resonsibility for maintenance and liability for the accessway.

So that the general public may be aware of arrangements made for its access to the coast, the regulation or statute should require public notice and hearing before approval of any shorefront development.

3. Government purchase of accessways

The beach access plan, recommended above, may show that public purchase of land (or rights-of-way) is appropriate to provide access to some portions of the coast. This could be true, for example, in some rural areas where access is blocked and where no shorefront development is planned.

Federal financial assistance may be available to assist in the purchase of accessways:

The Federal Land and Water Conservation Fund Act of 1965 enables the Heritage Conservation and Recreation Service to provide funds to Puerto Rico for outdoor recreation areas and facilities.

A recent amendment to the U.S. Coastal Zone Management Act (Section 315(2)), authorizes Federal aid for the acquisition of land to provide for access to public beaches and other public coastal areas of particular value.

To obtain Federal aid under these programs, however, the Commonwealth must provide matching funds. In the future, competing demands for funds may leave the Commonwealth unable to afford substantial amounts to acquire beach accessways.

Need: Plan element evaluating need for acquisition to privide access. The beach access plan, already recommended, should evaluate the need for Commonwealth purchase of additional accessways and should identify accessways whose acquisition has highest priority.

4. Allowing public passage across shorefront property already owned by the Commonwealth or public corporations

The public is excluded from some beaches by property owned or leased by the Commonwealth or public corporations. It may be possible to open one or more of these properties without sacrificing resources or other public needs and without harming adjacent public or private lands.

Need: Plan element evaluating feasibility of providing passage. The beach access plan already recommended should (1) identify all shorefront properties, owned by the Commonwealth or public corporations, that could be made accessible to the general public; (2) identify inaccessible beaches that could be made accessible to the general public by allowing passage across those properties; (3) determine the feasibility of providing passage, consistent with public safety, security, and resource protection.

5. Protecting and clarifying existing accessways

Law and customary use may have created important access rights to the coast. Protecting and clarifying these rights appears to present a limited, but still important, opportunity to assure adequate access.

a. Rights-of-way from "time immemorial." Where the public has passed across property from "time immemorial," a legal right of passage exists. Use must have begun so long ago that "man cannot remember" the moment when it began,[10] and prior to 1889, when the Civil Code went into effect.[11]

Need: Identification of immemorial rights-of-way. The beach access inventory, already recommended, should identify longstanding accessways that may have been used since "time immemorial." If affected property is later developed, these accessways should be protected. In a few cases, the passages may be important enough to warrant the bringing of judicial proceedings or other measures to protect or clarify their status.

The burden for proving immemorial usage is heavy, however, so the opportunity to guarantee access by proving immemorial usage seems correspondingly limited.

b. Other rights-of-way. Except for immemorial rights-of-way, prolonged public use rarely results in a legal right of passage across private property in Puerto Rico.* Assertion of prescriptive rights accordingly appears to present few opportunities to assure beach access.

c. Servidumbre de vigilancia. The Law of Ports of 1886 establishes a servidumbre de vigilancia ("easement of vigilance"), apparently to facilitate the governmental function of patrolling the coasts.** The servidumbre adjoins the maritime zone, extending inland six meters from its landward edge; where the six-meter strip is impassable, shorefront landowners must permit authorized people to pass at a convenient place nearby.[12]

The servidumbre, if still valid, may create a highly beneficial right of access. As citizens' report, Puerto Rico and the Sea, noted:

> Today, as concern about pollution and its consequences (such as fish kills and oil spills) accentuates age-old needs for vigilance over coastal areas, it is essential that the existence of the servidumbre be definitely determined, publicized and enforced. The servidumbre creates, for purposes of coastal vigilance and also perhaps for the purposes, a right of passage along the entire coast of Puerto Rico. To create such a right anew, if it did not already exist, would be enormously burdensome and expensive.[15]

The validity and interpretation of the servidumbre are unclear, however.[16] Statutory clarification has been suggested.

*Only rights-of-way that are continuous and apparent may be acquired without title. See Civil Code, Art.475 (31 LPRA 1653). An even prolonged, continuous use has been interpreted as a use tolerated by the owner, who may prohibit it at any time. See Goenaga v. O'Neill, 1962, 85 DPR 170; Martin v. Correa, 1954, 76 DPR 12; Benet v. Registrador, 1945, 65 DPR 489; Polanco v. Ruiz, 1939, 55 DPR 785.

**The same law establishes a servidumbre de salvamiento (easement of salvage and life saving"), extending 20 meters inland, apparently for the benefit of shipwrecked sailors and fishermen driven from the sea by storms. Even if this servidumbre remains legally valid, it appears to create no access rights enabling the general public to get from the highways to the coasts. Any access rights created appear to run from sea toward land, not the other way around.

Need: Statute reaffirming legal validity of servidumbre. To remove present legal uncertainties, beach access legislation should include provisions reaffirming the continuing legal validity of the servidumbre de vigilancia.

C. REMOVING SQUATTERS FROM THE COAST

FINDINGS

Squatters have built structures on public property--both lands and waters--at several coastal locations. The most widely known of these invasions have occurred at La Parguera (Lajas), El Combate (Cabo Rojo), and Culebra.*

Squatting creates problems of exclusion and pollution. Squatters, relatively few in number, exclude the general public from the public space they occupy. They also despoil nearby areas, particularly by creating problems of sewage and solid waste disposal.

The squatter problem along the coast of Puerto Rico has two origins. One, which is not limited to public lands on the coast, arises from an acute shortage of housing for poor people.

The other arises, typically, from the desire of well-to-do people to have a second home for use on weekends and vacations.

The problem, particularly the removal of established squatters, is exceedingly difficult to solve.[1] Even though squatting is illegal, the removal of existing squatter homes presents delicate issues requiring sensitive handling. Some squatter communities have existed for many years, and squatters have come to expect that they will continue. Removal becomes even more difficult when squatters have no other homes.

RESPONDING TO THE FINDINGS

1. Controlling future land invasions

The Commonwealth has established a detailed administrative procedure that permits rapid action by the responsible agencies to terminate new land invasions and prevent expansion of old ones.[2]

*The squatter problem in Culebra, as well as the special laws and programs established to respond to it, are discussed in the Culebra Segment of the Puerto Rico Coastal Management Program.

2. Existing invasions by squatters who have no other homes

Law No. 132 of July 1975, enables some squatters to obtain title to the public land they occupy; titles are available only to squatters who had built a home and lived in it when the law was passed, and who had no other home.

Beaches, however, being public domain, cannot be privately owned.[3] Therefore, squatters on beaches (or any other part of the maritime zone) cannot obtain title to the land they occupy.[4]

In Culebra, squatters on public domain land may be removed, but a home must generally be provided for squatters who have no other home.[5] There is no comparable statutory right to a replacement home, however, for squatters removed from public domain lands elsewhere in the Commonwealth.

Needs: Housing for squatters. To permit removal from public domain lands of squatters who have no other homes, there is need to provide them with adequate housing elsewhere.

3. Other invasions of coastal lands and waters

The Commonwealth's Public Service Commission issued an administrative order in 1970 against the owners of summer homes built in coastal waters at La Parguera. A legal challenge ensued, which was finally resolved in 1976 in favor of the squatters; the Supreme Court of Puerto Rico concluded that the Public Service Commission lacked jurisdiction in the matter.[6]

Need: Sensitive regulation of established squatter communities. Provision of housing for needy squatters, though essential, is not a sufficient governmental response to the problems created by established squatter communities. In dealing with long-standing communities, such as that of La Parguera, the government must somehow take account of squatters' expectations developed during years of occupancy. Yet it must also respond to the problems of exclusion and pollution that squatters create.

Regulations responsive to these multiple concerns are now being prepared by the Department of Natural Resources for application at La Parguera and are expected to be issued in the summer of 1978. These would continue the present prohibition of new squatter homes, would prohibit rebuilding of existing homes destroyed by fire

or storm, and would require squatters to pay a reasonable rent for the public space they occupy for homes and piers. The regulation would further require each home to tap into a newly constructed sewer system or, for offshore homes where that is impossible, to provide tertiary treatment of sewage before discharge.

D. PROTECTING BEACHES AGAINST THE SHADOWS AND VISUAL DOMINATION OF HIGH-RISE BUILDINGS

FINDINGS

High-rise buildings on shorefront property cast shadows on some public beaches and dominate them visually. In the Condado and Isla Verde sections of the San Juan Metropolitan Area, tall buildings cast shadows on public beaches favored by sunbathers; during the winter tourist season, large sections of beach are shaded during much of the day.[1] Moreover, these buildings psychologically dominate the beach, detracting from its appeal as a natural recreation site. (See illustration, next page.)

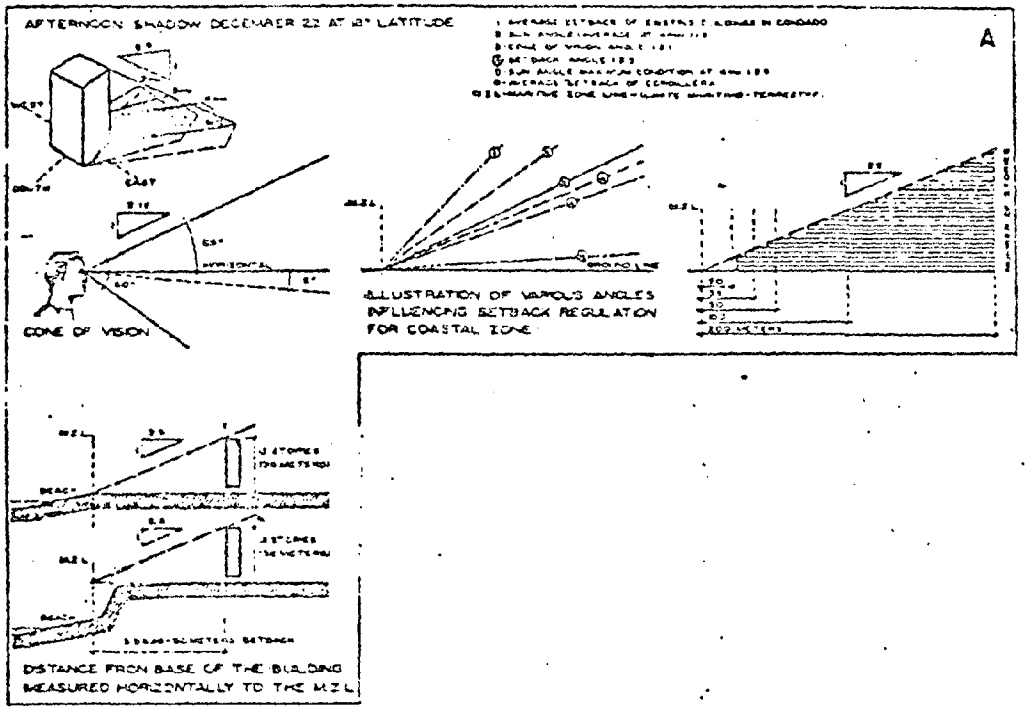
Future development need not cast shadows on public beaches and other coastal areas. At the winter solstice, when northern shadows are longest, the longest shadow between 10:00 a.m. and 4:00 p.m. is about 2.9 times the height of the structure. If future buildings are set back that distance, they will not cast a shadow on the publicly owned maritime zone.[2*]

Visual domination by buildings can also be avoided. There is a subjective element to determining when buildings dominate beaches. In general, however, structures appear to confine space when they exceed the upper limit of the normal cone of vision of a person looking forward. The cone of vision has a relationship of approximately 1:2.1. Thus, a building set back 2.5 times its height would not appear to confine or dominate the beach.[3]

POLICY

The Objectives and Policies element of the Planning Board's Islandwide Land Use Plan establishes, as general policy, the avoidance of "...the construction of buildings in beach areas and discourage activities or land subdivision in neighboring areas which would ... prevent free access to and enjoyment of the sun by the citizenry." (See Policy 17.04.)

*Greater setbacks may be needed in some cases for other purposes, notably for protection of buildings from coastal storm surges. See section of Flooding (including Hurricane Flooding).



A-COASTAL ZONE: THE SHORELINE SETBACK

Source: Puerto Rico Planning Board, The San Juan City Edges Project, Technical Report. August 1976, page 65.

IMPLEMENTING THE POLICY

Planning Regulation No. 4, the Zoning Regulation, was amended late in 1975 to require new buildings to be set back from the maritime zone a distance of at least 2.5 times their height.[4] This requirement applies in all zoning districts. Provision is made for exceptions in cases of small pre-existing lots, ports, and other specified cases.

E. PROTECTING AND ENLARGING PUBLIC BEACH HOLDINGS

FINDINGS

The narrow strip of beach accessible to the public is often too small for optimum recreational use. Even at little-used rural beaches, recreational opportunity may be enhanced by assuring public access to shady areas beyond the vegetation line. At intensively used beaches, still more space is needed for parking and other facilities. The narrow beach strips accessible to the public at many locations are insufficient to satisfy these needs.

There are opportunities to enlarge the publicly accessible areas, principally by acquiring shorefront property at the time of development.

RESPONDING TO THE FINDINGS

Acquiring shorefront land and facilities at coastal developments.

Developers have sometimes dedicated shorefront property to the Commonwealth. They have done so, for example, in conjunction with the establishment of coastal roads (e.g., Levittown). The dedication may also be specifically for recreational use (e.g., Parque Barbosa in Santurce; the recreation spaces in the Vacia Talega project as approved by the Planning Board in 1975).

Planning Board Regulation No. 9, the Community Facilities Regulation, obligates developers to furnish sites and facilities for recreation in new developments. The regulation does not, however, establish special requirements for shorefront projects. No provision requires (or even explicitly authorizes) the substitution of coastal recreation space and facilities (e.g., parking lots, bath houses) for the baseball fields and playgrounds normally required. Although the Board authorized such a tradeoff at Vacia Talega, this was done solely as an exercise of discretion.

Need: Refinement of Regulation No. 9 for coastal situations. Planning Regulation No. 9 should be amended to make explicit provision for beach recreation space and facilities at shorefront developments.

F. PROVIDING SERVICES AND FACILITIES FOR BEACH USERS

FINDINGS

There are 13 "full service" recreational beaches (balnearios) on the Island. At these beaches, identified on Map 11, the Commonwealth's Public Parks and Recreation Administration (PPRA) provides one or more services (e.g., lifeguards, first aid, beach cleaning) or facilities (e.g., parking lots, changing houses, rain shelters). These beaches occupy 20.85 kilometers of the coast.

Most of the Island's recreation beaches, however, including many intensively used urban ones, are largely unserviced. Vast stretches of beach are simply common property accessible to the general public, but without facilities and largely or wholly without services. This is true not only of relatively out-of-the-way beaches in rural areas, but also of intensively used urban ones.

It is neither feasible nor desirable to provide a full range of recreational services and facilities at all beach areas accessible to the public. The cost of providing full services and facilities would be prohibitive.[a] At the 13 balnearios, beach cleaning costs PPRA about $900,000 a year and occupies a staff of 245. In any event, many people enjoy—or even prefer—a beach experience without fences, lifeguards, and rain shelters.

It is accordingly essential that the beach access plan establish, as already recommended, priorities for providing additional beach facilities and services.

Early attention needs to be given to the problem of beach litter. Beach litter detracts from public enjoyment of many beaches. Although it is a problem even on many little-used beaches, it is acute at those (other than PPRA's balnearios) used intensively for recreation. Examples include Boca de Cangrejos and Mar Chiquita. Recreational boating has brought the problem even to offshore islands such as Cayo Icacos off the east coast.

Given competing demands for funds, there is little likelihood that optimum trash pickup can soon be provided for all 109 kilometers of potential recreation beaches.[1] Nevertheless, there are some opportunities to improve responses to the litter problem.

[a]Extension of facilities and services might, in addition to direct costs, subject the Commonwealth to additional liability—and thus costs—for personal injury to beach users. The legal and other aspects of this issue may need to be explored.

RESPONDING TO THE FINDINGS

1. Establishing clear responsibility for beach cleaning

Divided, unclear responsibility is a principal obstacle to adequate cleaning of the beaches (other than those in custody of PPRA):

The Department of Natural Resources has legal custody of all the public coastal areas "left over" after specific assignment of some areas to PPRA, the Ports Authority, and other public entities.

Municipalities are responsible for collecting solid waste (including litter) from beaches within their borders, according to a regulation of the Environmental Quality Board.[2]

The Tourism Development Company, in cooperation with the Right to Work Administration, has a beach brigade which cleans beaches between the Condado and Boca de Cangrejos in the San Juan Metropolitan Area.

Legislation proposed in 1973 by the Environmental Quality Board would create a Solid Waste Management Authority which would conduct a beach litter control program. Under bylaws proposed by EQB, the Authority would assume beach cleaning functions.[3]

Need: DNR assistance in beach cleaning. Until a Solid Waste Authority is established*, DNR should assist the municipios in carrying out their beach cleaning responsibilities. Areas of intensive cleaning should be selected by DNR, in cooperation with the municipios concerned, the EQB, and PPRA.

2. Providing adequate funds for beach cleaning manpower and equipment

DNR's 1976 budget for beach vigilance and cleaning, islandwide, was $525,000. The Department's five regional offices have a combined staff of 120 assigned to beach cleaning and surveillance. These staff members have only rakes and other simple equipment. Trash collected by DNR staff is normally removed in trucks belonging to the municipalities.

*A Solid Waste Authority was recently created by Commonwealth legislation. However, the law which created the Authority does not provide for beach cleaning.

Use of machines can improve beach cleaning at relatively low cost. In 1974, the Puerto Rico Industrial Association donated a beach cleaning machine to the Tourism Development Company (TDC). For the past 3 years, TDC's beach brigade has used this machine 5 days a week to clean beaches in metropolitan San Juan. Experience with the machine has been positive: beaches are being cleaned more often, and at a fraction of the cost and time required by manual labor.[4]

Need: Additional beach cleaning machines, manpower. Adequate funding should be made available for the purchase of additional beach cleaning machines and the hiring of manpower to operate them.

Need: Experimentation with renting beach concessions. Renting beach concessions to private individuals, contingent on their cleaning the beach in the concession area, warrants experimentation in areas where adequate public pickup cannot soon be provided. The granting of such concessions is authorized, subject to numerous safeguards, by Law No. 38 of September 27, 1949 (28 LPRA sec. 18); areas subject to such concessions must be open to the general public.[5] Adoption of regulations governing the use of beaches, presumably including concessions, is authorized by section 16(2) of the Planning Board Organic Act.

3. Litter reduction

Need: Litter reduction measures. Since trash cannot be picked up frequently from all beach areas, especially those that are remote and those where rocks or vegetation preclude use of beach cleaning machines, litter reduction measures are essential. Such measures should include:

..Persuasion: There should be a continuing public education campaign.

..Assistance: Many more trash containers should be placed at beach sites convenient to the public; and better arrangements for emptying them should be made.

..Enforcement: The anti-litter law (Law No. 21 of September 4, 1969) should be enforced.

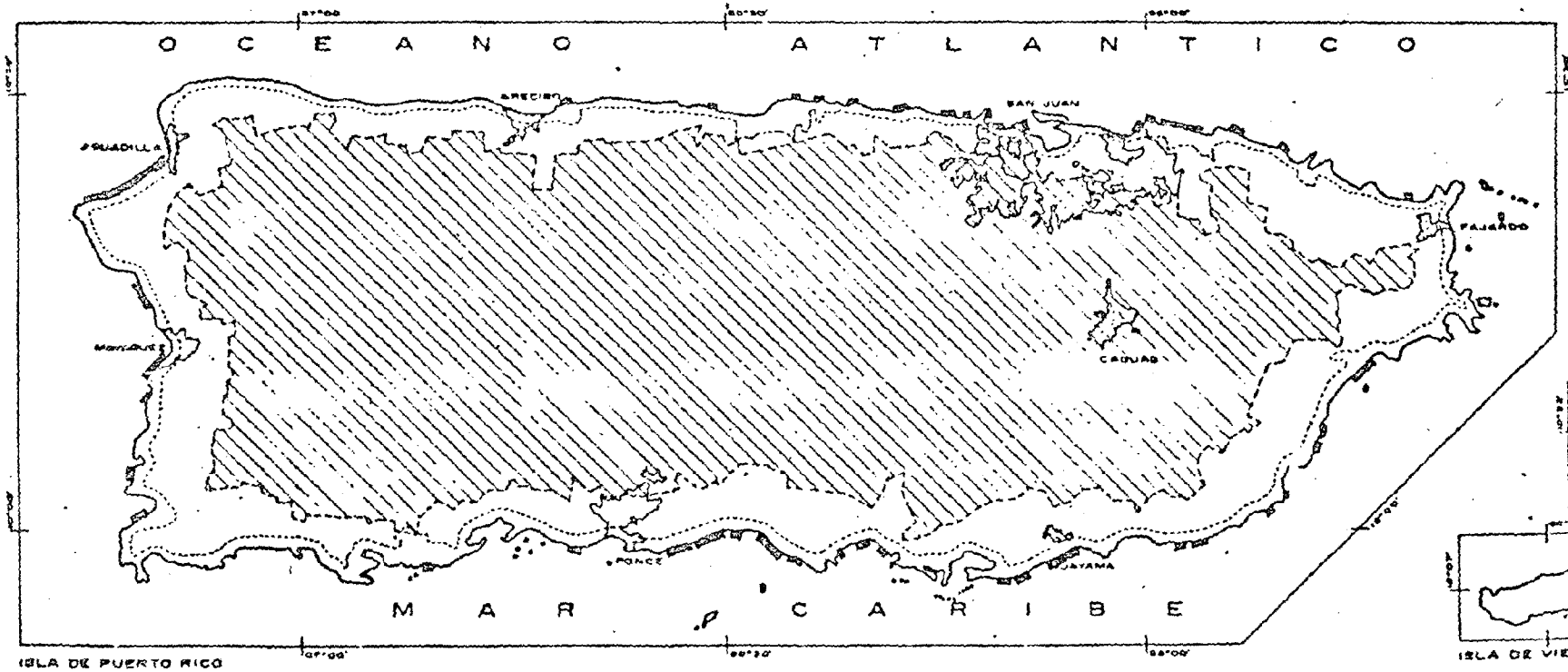
..Incentives: The use of returnable bottles and cans should be encouraged.

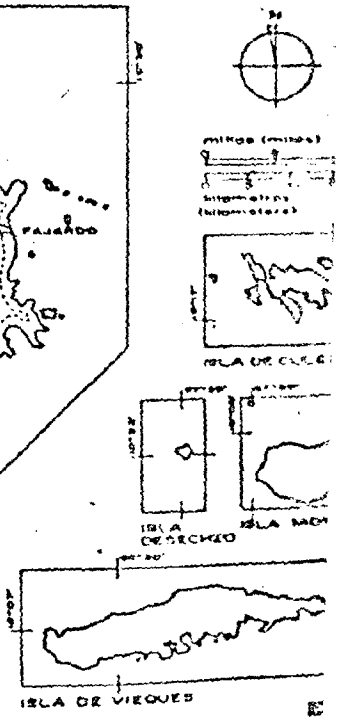
EROSION EROSION

LIMITE TERRESTRE APROXIMADO DE LA ZONA COSTANERA ---------- APPROXIMATE COASTAL ZONE INLAND BOUNDARY

LIMITE TERRESTRE DEL AREA DE ESTUDIO ---------- STUDY AREA INLAND BOUNDARY

Financial assistance provided in part by Coastal Zone Management Act of 1972, administered by Office of Coastal Zone Management, National Oceanic and Atmospheric Administration.





ISLA DE PUERTO RICO

FUENTE DE INFORMACION / SOURCE:

AREAS EN CONDICIONES SEVERAS DE EROSION

AREAS OF SEVERE EROSION CONDITIONS

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Md. 20852

EVALUATION FINDINGS

PUERTO RICO COASTAL ZONE MANAGEMENT PROGRAM

I. BACKGROUND

Section 312 of the Coastal Zone Management Act (CZMA) requires a continuing review of states with Federally approved coastal management programs. The purpose of the review is to evaluate performance of the states with respect to coastal management and adherence to approved management programs.

The Puerto Rico Coastal Management Program (PRCMP), administered by the Department of Natural Resources (DNR), was approved on September 18, 1978. Federal program implementation funds in the amount of approximately $1.4 million were awarded at that time.

As part of the Office of Coastal Zone Management's (OCZM) evaluation responsibilities, a review of the PRCMP was conducted in San Juan on June 11 through 15, 1979. Zoraida Carballeira, Policy and Program Evaluation; Jim Murley, Gulf/Islands Regional Manager; and Ann Berger-Blundon, Assistant Gulf/Islands Regional Manager, participated in the review which included meetings with the staff of several Commonwealth state and federal agencies, a public meeting in San Juan to solicit comments on the overall program, and a public meeting in the Tortuguero Lagoon area where DNR solicited comments on the proposed special management plan (SPA). (See attached Appendix.)

C. Coastal Access

Access to the shoreline for recreational and other purposes has not traditionally been a problem in Puerto Rico. This year's major achievements in this area are the following:

- The CMU reviewed seven permit applications where access was an issue and recommended to DNR that endorsement be denied. DNR transmitted six of thes recommendations to the PB.

- Article 17 of Law No. 76 of June 24, 1975, which created the Regulations and Permits Administration, was amended to require that all land development work adjacent to beaches provide public access to the beaches as a condition prior to approval and authorization by the RPA.

- The PB has made progress in the preparation of beach access regulations which have included extensive site visits, a classification of beaches according to various degrees of accessibility, and ownership studies. An outline for the proposed regulations addresses the impact of highrise buildings, urbanization, subdivisions, recreation and tourism.

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RHODE ISLAND

Rhode Island coastal officials have identified two major beach access problems in their state: lack of lateral access at beaches (i.e. access to both the "wet sand" and "dry sand" portions of the beach) and ill-defined rights-of-way to beaches. CZM funds are being used for two research efforts currently underway to develop recommendations for improving both of these situations.

The "public" area of Rhode Island beaches is generally defined as the area from the mean high water mark seaward. A study to investigate the potential of broadening this definition of public beach is currently being conducted by the coastal program staff. The constitutional, legislative, and judicial principles of beach access are being examined in anticipation of the drafting of future legislation to open up more of the beach to the public. The report is due to be submitted to a legislative committee in March 1980.

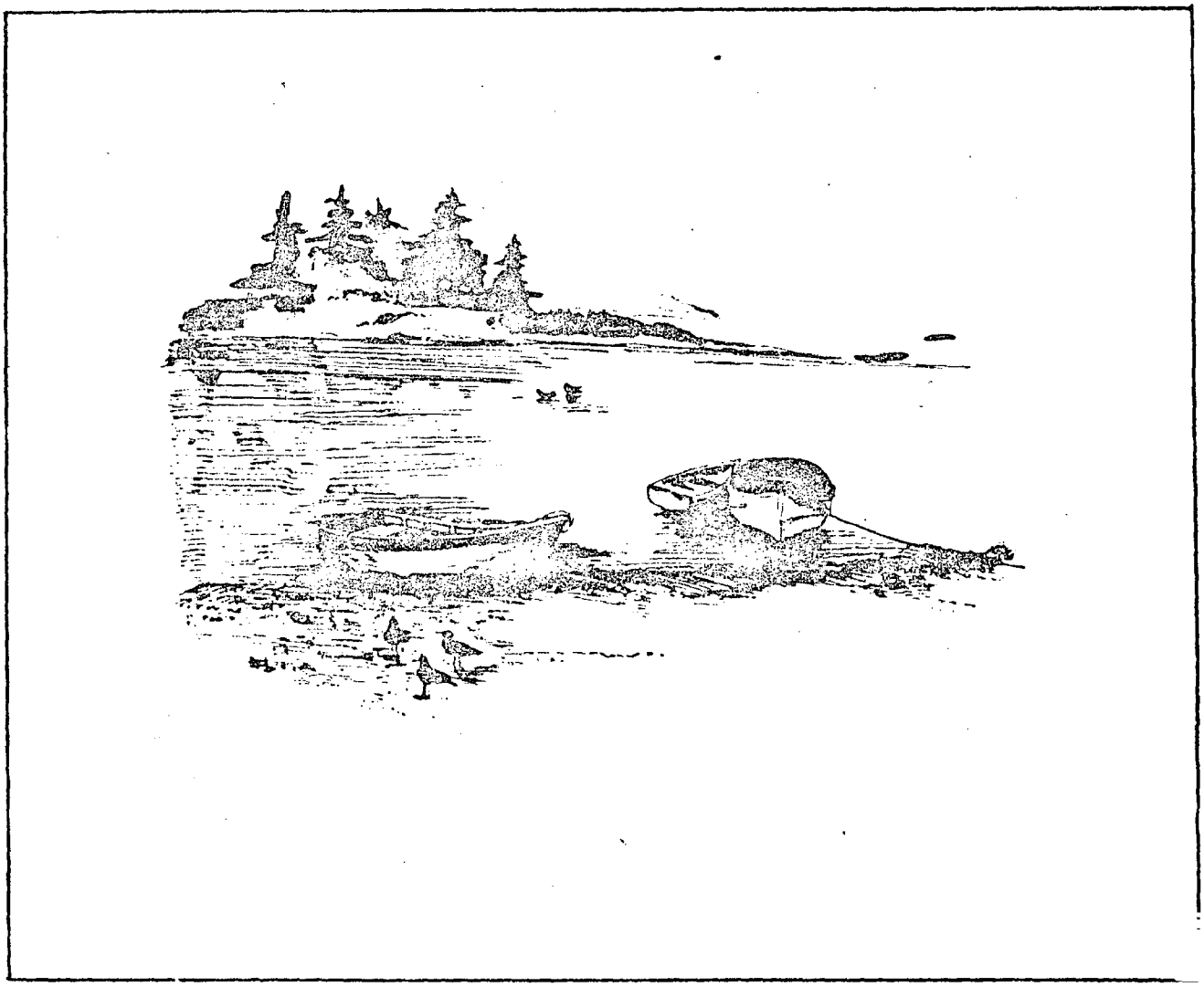
During the seventeenth century the King Tames Charter provided rights-of-way to the Rhode Island shoreline for fisherman and seaweed collectors. As time has passed, some of these rights-of-way have been built over and others have continued to be used by the public. During the mid-1960's the state sponsored a study which identified as many of these rights-of-way as possible without doing a full scale search of legal documentation. The rights-of-way identified by this study are presently being maintained through a partnership between the Coastal Resources Management Council (which uses CZM money to fund two maintenance workers) and the Rhode Island Marine and Fisheries Division (which uses state funds for four to six maintenance workers).

Zone Management

U.S.

State of Rhode Island Coastal Management Program and Final Environmental Impact Statement

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



410 PUBLIC ACCESS TO THE SHORE

410.0-1 FINDINGS:

1. Rhode Island is richly endowed with public shorefront access opportunities via public parks and beaches, conservation areas, scenic view points and rights-of-way. However, efforts to enhance opportunities through more effective utilization of existing areas and identification of additional sites are needed.
   - The distribution of coastal rights-of-way is uneven.
   - Public rights-of-way along substantial lengths of shoreline remain unverified.
   - Public rights in many presumed rights-of-way are contested.
   - Rights-of-way must be posted to encourage use and prevent trespass on private property.
   - Parking space at popular rights-of-way is frequently inadequate.
   - Vandalism, littering and trespass on adjacent private holdings are issues of growing concern.
2. The scenic qualities of the Rhode Island coastal region and shoreline are one of the state's greatest natural assets.
   - Much of the state's shoreline is highly scenic.
   - Many scenic areas are readily accessible to the public from designated overlooks and scenic highway routes.
   - Scenic viewing is a major recreational and tourist activity.
   - Additional scenic opportunities exist at local, state and federal recreational holdings and from both state and municipal highways. These opportunities require careful evaluation if they are to be utilized to their full potential.
   - Scenic viewsites are highly sensitive to the aesthetic impacts of adjoining development.
3. The state has numerous public and private boat launch ramps.
   - Ramps are unevenly distributed with deficiencies in upper Narragansett Bay where demand is concentrated.
   - Additional ramps should be sited in or near the major recreational boating harbors of the Bay. Acquisition costs can be extremely high in such areas however.
   - Ramp siting can have major environmental impacts where it contributes to increased boating activity in sensitive marine areas.
   - Ramps can have major social and aesthetic impacts where service roads are insufficient to handle increased traffic and/or where inadequate parking is provided.
4. Development of additional rights-of-way, scenic viewpoints and launch ramps will place additional management responsibilities on state personnel.

410.0-2 POLICIES AND REGULATIONS:

1. The Council finds that the public has a right to the use and enjoyment of the shoreline guaranteed under Article 17 of the State Constitution. Enhancement of public access to coastal waters is consequently a high priority use of the coastal region.
2. Applicants for Council permits for any development or activity contiguous to a posted public right-of-way, boat launch ramp or public view site shall be called upon to demonstrate by a fair preponderance of evidence that such development or activity or any development or activity related thereto will not interfere with or prevent public use and enjoyment. Where such interference or prevention is found the Council shall prohibit or require appropriate modification of the proposal in question.

C. The Council, working in coordination with the Department of Environmental Management, shall prepare periodic updates of the state rights-of-way, scenic view sites, and public launch ramp maps commencing in 1978. It shall insure maximum publicity and distribution of these maps to the general public.

D. The Council shall, commencing in 1978, designate all verified public rights-of-way, scenic view sites and launch ramps.

420 PUBLIC BEACHES AND PARKS

420.0-1 FINDINGS:

A. Rhode Island's ocean beaches and coastal parks are among the most popular recreational outlets. They are a resource of regional significance.
   - Substantial amounts of Rhode Island's coastline consist of sandy ocean beaches with high water quality. They provide an ideal environment for swimming and sunbathing and are heavily used by residents and visitors.
   - Saltwater bathing is by far the state's most popular outdoor recreational activity according to the State Comprehensive Outdoor Recreation Plan. Upwards of 92,000 people may visit public beaches on a good summer day.
   - Oceanfront facilities, especially those operated by the state, are clearly preferred by a majority of the public (some 70% of those sampled in a recent survey).
   - State beaches attract large numbers of out-of-state visitors each summer. Some 29% of all activity is attributable to these visitors.
   - Even higher proportions of out-of-state residents visit facilities such as Burlingame State Park's 755 unit camping area and Misquamicut State Beach, both of which are closer to population centers in nearby Connecticut than they are to Rhode Island's major upper Bay metropolitan areas.
   - Heavy weekend use of state beaches has created localized seasonal traffic congestion in some areas - notably in the towns of Westerly and Narragansett.

B. The state's many public beaches and parks are managed at the state level by the Department of Environmental Management and at the local level by municipal recreation agencies.
   - Maintenance and management are by-in-large not problems. The majority of facilities are of exceptionally high quality as is clearly evidenced by their continuing popularity.
   - Enforcement of rules and regulations and prevention of littering, vandalism and similar abuses, however, is a growing problem due to the increased responsibilities of and manpower shortages in the Department of Environmental Management's Enforcement Division.

C. Rhode Island is extremely fortunate in that unlike many coastal states it has an abundance of publicly owned beaches (Table 4-1).
   - Beach use is at levels well below design capacity a health 97 percent of the time according to the State Comprehensive Outdoor Recreation Plan.
   - The state's public beaches can comfortably service upwards of 173,000 people on a given day. Design day use (use on a good

C. The Council, working in coordination with the Department of Environmental Management, shall prepare periodic updates of the state rights-of-way, scenic view sites, and public launch ramp maps commencing in 1978. It shall insure maximum publicity and distribution of these maps to the general public.

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Town	Facility name	Ownership	Acreage	Shorefront	Inland
stown	Fort Wetherill State Park	State	51.0	X	
	DAR Memorial Park	Local	18.0		X
	Fort Getty	Local	41.0	X	
	Town Beach	Local	.3	X	
Providence	Haines Park	State	9.0	X	
	Squantum Woods	State	28.5		X
	Veteran's Pkwy	State	44.1		X
	Bourne Park	Local	7.5		X
	Bullocks Point Park	Local	14.0	X	
	Waddington Park	Local	5.3		X
	Bold Point Waterfront Pk.	Local	2.1	X	
	Central Avenue Park	Local	2.4		X
	Delle Femine Park	Local	10.0		X
	Sabin Point Waterfront Park	Local	5.0	X	
le Compton	Town Beach	Local	5.7	X	
Shoreham	Crescent Beach	State	18.7	X	
	Mott Park	Local	5.0		X
ort	Brenton Point Park	State	78.0	X	
	Fort Adams	State	52.5	X	
	Aquidneck Park	Local	7.7		X
	Easton's Beach	Local	11.8	X	
	Freebody Park	Local	4.3		X
	King Park	Local	7.9	X	
	Miantonomi Park	Local	30.0		X
	Norton Park	Local	12.9		X
	Spencer Park	Local	2.4		X
	Storer Park	Local	3.1	X	
	Touro Park	Local	1.8		X
smouth	Teddy's Beach	State	2.0	X	
	Sandy Point Beach	Local	9.0	X	

Table 4-1. State and Municipal Beaches and Parks in the Coastal Region (Over 1 Acre)

Town	Facility name	Ownership	Acreage	Shorefront	Inland
terly	Misquamicut State Beach	State	152.0	X	
	Westerly Beach	Local	10.0	X	
	Wilcox Park	Local	23.0		X
lestown	Burlingame State Park	State	2375.0		X
	East Beach	State	174.0	X	
	Town Beach	Local	14.3	X	
	Charlestown Breachway	State	15.0	X	
h Kingstown	Moonstone Beach	Leased by town	2.0	X	
aganSett	Fishermen's Park	State	91.8		X
	East Matunuck State Beach	State	25.7	X	
	Sand Hill Cove State Beach	State	30.0	X	
	Scarborough State Beach	State	26.0	X	
	Canonchet Beach	Local	7.0	X	
	Municipal Park	Local	4.0		X
	Narragansett Beach	Local	20.0	X	
	Thompson Park	Local	2.0		X
	Veteran's Park	Local	1.5		X
tol	Colt State Park	State	459.0	X	
	Bristol Town Beach	Local	27.2	X	
	Chestnut St. Park	Local	1.0		X
	Independence Park	Local	5.7		X
	Rockwell Park	Local	1.0		X
	Town Common	Local	8.5		X

Town	Facility name	Ownership	Acreage	Shorefront	Inland
orth Kingstown	Cocumscussoc	State	414.1		X
	Central Park	Local	136.4		X
	Down's Park	Local	64.6		X
	Feurer Park	Local	29.5		X
	McGuinn Park	Local	25.3		X
	Town Beach	Local	8.2	X	
	Walmsley Park	Local	6.0		X
awtucket	Seekonk River	Local	15.8	X	
	Ten Mile River	State	65.5		X
	Dunnel Park	Local	13.9		X
	Fairlawn Park	Local	39.0		X
	Slater Park	Local	208.3		X
	Payne Park	Local	1.2		X
	Novelty Park	Local	1.1		X
rovidence	Roger Williams National Park	Federal	5.0		X
	Dyerville Park	State	9.1		X
	Ardaene Park	Local	4.5		X
	Blackstone Park	Local		X	
	Branch Ave. Park	Local	1.0		X
	City Hall Park	Local	2.6		X
	Columbia Park	Local	1.5		X
	Davis Park	Local	10.1		X
	Fenner Park	Local	1.1		X
	Fox Point Park	Local	2.2	X	
	Hopkin's Park	Local	4.5		X
	India Pt. Park	Local	13.1	X	
	Lippit Park	Local	6.0		X
	Merino Park	Local	7.4		X
	Messer St. Park	Local	1.9		X
	Mt. Pleasant Park	Local	1.9		X
	Patterson St. Park	Local	1.7	X	
	Pleasant Valley Pkwy.	Local	5.4		X
	Richardson Park	Local	3.2		X
	Roger Williams Park	Local	415.1		X
	Wanskuck Park	Local	24.0		X
	Witherby Park	Local	1.6		X

Table 4-1. State and Municipal Beaches and Parks in the Coastal Region (Over 1 Acre)

Town	Facility name	Ownership	Acreage	Shorefront	Inland
verton	Grinnel's Beach	Local	2.5	X	
	Tiverton Beach	Local	45.0	X	
rren	Burr Hill Park	Local	7.6		X
	Janiel Park	Local	11.2		X
	Warren Town Beach	Local	2.3	X	
rwick	Goddard Park & Beach	State	489.2	X	
	Bayside Beach	Local	9.5	X	
	Conimicut Pt. Beach	Local	14.4	X	
	Gorton's Pond Beach	Local	4.1		X
	Naughton Ave. Park	Local	1.5		X
	Oakland Beach Area	Local	27.1	X	
	Sand Pond Beach	Local	3.3		X
	Warwick Park	Local	203.6	X	
	Warwick Pond Beach	Local	.4		X
rrington	Haines Park	State	73.1		X
	Latham Ave. Park	Local	3.9		X
	Orwood Dr. Park	Local	1.0		X
	Osamequin Park	Local	1.0	X	
	Sherwood Park	Local	4.5		X
	Town Beach	Local	1.3	X	
	Veterans Park	Local	215.0		X

July weekend day) only infrequently exceeds 92,000, leaving a margin of nearly 50% to absorb increased demand. Because of this additional capacity few state beaches approach saturation on any but the very hottest summer weekends.

- Additional public ocean beach acquisition for the above reasons does not appear to be a high priority for Rhode Island.

2. Rhode Island is less fortunate in the distribution of its public beaches. The state's major metropolitan concentration at the head of Narragansett Bay is removed considerable distances from the majority of facilities located along the open ocean shoreline.
   - Beach use is largely income-dependent. It increases dramatically in proportion to increases in family income.
   - In explaining this phenomenon the State Comprehensive Outdoor Recreation Plan cites high participation costs and lack of open space and other recreational opportunities in low-income urban areas.
   - Access is further complicated by the relatively low level of automobile ownership among low income urban families, by inadequate or nonexistent public transit service to outlying beach areas, and increasing costs of fuel.
   - Few opportunities for additional saltwater beach development exist in or near the Upper Bay's metropolitan concentrations due to intensive coastal development, water quality limitations, and less desirable coastal topography.

f. The recreational value of parks and beaches depends on a variety of environmental and aesthetic characteristics all of which are sensitive to change. It is frequently enough to disrupt just one of these to upset the delicate balance of factors which sustains recreational activity.
   - Beaches and parks are sensitive to onsite impacts associated with overuse or inappropriate use.
   - They are also highly sensitive to the environmental, aesthetic and other impacts of activities that take place elsewhere. The external impacts of abutting uses are of particular concern because they can have profound and immediate effects on recreational values, effects which have only been infrequently controlled in the past.
   - The variety of external impacts is great:
     . Increased traffic may compromise public access opportunities;
     . Noise, odors or other airborne "pollutants" may detract from recreational enjoyment;
     . Water pollutants may preclude water contact sports;
     . Physical changes may contribute to beach erosion or introduce sediments into previously pristine waters;
     . Large structures may compromise the visual attractiveness of adjacent recreational areas.

420.0-2 POLICIES AND REGULATIONS:

A. Public recreational use and enjoyment of parks and beaches shall be a high priority use of the coastal region. Activities and developments detrimental to such use and enjoyment shall have low priority.

B. Applicants for Council permits for any development or activity contiguous to a publicly owned and/or operated park or beach shall be called upon to demonstrate by a fair preponderance of evidence that such development or activity or any development or activity related thereto will not significantly interfere with or damage the recreational use or value of the affected park or beach.

It shall be further demonstrated by reliable and probative evidence that the coastal resources are capable of supporting the proposed activity including the impacts and/or effects upon:

1. Public access and traffic congestion;
2. Noise levels incidental to construction, use or operation of proposed contiguous facilities or developments;
3. Visual and aesthetic impacts on contiguous recreational activities;
4. Natural processes such as sedimentation, runoff, coastal erosion and the like which may adversely affect contiguous recreational areas or uses of those areas;
5. Air or water quality which may adversely affect contiguous recreational activities.

Where significant interference with or damage to recreational use or value is found the Council shall prohibit or require appropriate modification of the proposal in question.

C. The Council recognizes the management responsibilities of the Department of Environmental Management and municipal recreation authorities as they relate to public beaches and parks. It shall endeavor to support these responsibilities to the maximum extent consistent with other Council Policies and Regulations.

430 CONSERVATION AND MANAGEMENT

430.0-1 FINDINGS:

A. The Rhode Island coastal region is richly endowed with both public and privately held conservation and wildlife management areas. However, the social and environmental amenities these areas provide are so valuable and varied that it would be unwise to satisfy ourselves with what we have. (Listed in Table 4-2.)
   - Both the Department of Environmental Management and the Federal Fish and Wildlife Service are actively investigating additional coastal region purchases.
   - Acquisition is a particularly attractive method of protection because it allows for a variety of recreational and nonrecreational uses in addition to the primary conservation function.

B. Conservation and management areas are among the state's most important multiple-use recreational resources. A variety of recreational activities are frequently compatible with primary conservation and wildlife management objectives. These include:
   - Controlled hunting for waterfowl and upland game;
   - Hiking and cross country skiing;
   - Wildlife observation and scenic viewing;
   - Fishing and swimming.

C. A number of socially, economically and environmentally desirable non-recreational activities can often be pursued concurrently with primary conservation and management objectives.
   - These include many forms of agriculture and forestry.

D. Conservation and management areas have broad ranging social, economic and environmental significance. This significance has all too frequently gone unrecognized in the past.
   - They provide reservoirs of open space and undisturbed natural beauty. Their value in this regard will increase incrementally as the state's population grows.

ADDENDUM TO APPENDIX "C",
COASTAL MANAGEMENT PROGRAM

C.6 SHOREFRONT ACCESS AND PROTECTION

6.1 Federal Requirements:

Sec. 923.25 of NOAA regulations published in the March 1, 1978 issue of the Federal Register address the requirements of Sec. 305(b)(7) of the 1976 amendments to the Coastal Zone Management Act. They require the state to develop a procedure for identifying areas requiring access or protection, to define the term "beach" and identify public beaches, to adopt policies on access and protection and to demonstrate the legal authority to enforce these policies.

6.2 Criteria and Procedures for Identifying Public Access Areas

Council Findings and Policies on public access to the shore are contained in Chapter 4 of the Coastal Management Program. The following specific types of access areas are identified and evaluated:

Ch. 410 Public access including rights-of-way, scenic view points and launch ramps

Ch. 420 Public beaches and parks

Ch. 430 Conservation and management areas

Ch. 440 Recreational boating and boating facilities

Ch. 450 Historic sites

Ch. 470 The Bay Islands Park

Council Findings include inventories of these areas and and evaluation of present and projected future supply and demand. As noted, there exists a general surplus of recreational facilities on a statewide basis, although localized deficiencies exist in the upper Narragansett Bay metropolitan area. These localized deficiencies are created by the uneven distribution of access areas in the coastal region. Policies to address these deficiencies including expansion of substitute inland facilities, especially for swimming and continuation of a bussing program from metropolitan areas to state beaches on the South Shore are presently being implemented by the Department of Environmental Management. It is CRMC policy to support development of additional access and recreational facilities in the upper bay region in the near and long term, an example of which is the potential for recreational and access facilities in conjunction with the redevelopment of the Port of Providence and the East Providence waterfront.

Findings and Policies on public access areas were developed after careful evaluation of the supply, demand and qualitative assessments contained in the State Comprehensive Outdoor Recreation Plan (SCORP) and after extensive consultation with staff in the Statewide Planning Program and Department of Environmental Management responsible for producing the SCORP. In order to ensure that Council Findings and Policies remain consistent with the latest SCORP update (June 1978), this evaluation and consultation was repeated and uncovered no significant changes in the information on which present Council policies are based. As noted below, considerable progress towards the realization of goals described

in the SCORP and endorsed by the Council was found however.

6.3 Criteria and Procedures for Identifying Coastal Areas Requiring Protection

Council Findings and Policies on the protection of coastal natural systems and features are contained in Chapter 1 of the Coastal Management Program. The varying management considerations and protection requirements of the following systems and areas are identified:

Ch. 110.1 Block Island and Rhode Island Sounds

Ch. 110.2 Estuaries and coastal ponds including those suitable for conservation and low intensity use multiple recreational use, high intensity recreational use, general and urban uses

Ch. 120.2 Barrier beaches and sand dunes

Ch. 120.3 Cliffs, ledges and bluffs

Ch. 120.4 Coastal wetlands

Findings include inventories and assessments of specific geographic areas as well as data on generic systems. These are based on exhaustive reviews of existing literature on the state's coastal resources, much of it produced at the University of Rhode Island's Graduate School of Oceanography. Literature review was augmented by site visits and surveys

undertaken by Council staff and the URI Coastal Resources Center.

Additional coastal areas requiring some form or level of protection, are identified and evaluated throughout the Program. These include flood hazard areas (Ch. 130) and erosion prone areas (Ch. 140). The protective requirements of coastal access areas identified in Chapter 4 are also addressed in Council Findings and Policies relative to these areas.

6.4 Designation of Access and Protection Areas as Geographic Areas of Particular Concern

As indicated in Ch. 2.4 of Appendix 'C', GAPC's are designated on the basis of two principal criteria:

(1) Existing or proposed uses of the area or contiguous areas are inconsistent with resource characteristics, capability or potential.

(2) As a result; either or both of the following are likely to result, loss of a damage to a natural or manmade coastal resource, or inappropriate, wasteful or preemptive use of a coastal resource.

On the basis of these criteria as reflected in Council Findings in Ch.'s 120.2, 120.3 and 470 respectively, the following areas have been designated and are managed as GAPC's:

. Developed barrier beaches

. Erosion prone bluffs

. The Bay Islands Park

6.5 Designation of Access and Protection Areas as Areas to be Preserved or Restored:

Also as indicated in Appendix 'C' (Ch. 2.5), APR's are Geographic Areas of Particular Concern which have been found to be of significant value for purposes of recreation, conservation, or habitat preservation and are subject to pressures inconsistent with preservation of these values.

The following coastal access and protection areas have been designated APR's:

. Undeveloped barrier beaches (120.2)

. Coastal ponds (110.2)

. Coastal wetlands (120.4)

. Conservation/low intensity use estuaries (110.2)

. Sea cliffs (120.3)

. Public beaches and parks (420)

. Conservation and management areas (430)

. Public rights-of-way to the shore (410)

. Historic sites (450)

6.6 Definition of "Beach"; Identification of Public Beaches:

Council Findings relative to beaches and barrier beaches (Ch.'s 120.1 and 120.2) define these fea-

tures in terms of their physical characteristics, their flexibility in response to wave action and their storm mitigating functions. Public beaches are inventoried in Table 4.1 Chapter 420.0 by location, name, ownership and size.

6.7 State Policies Re Access and Protection:

Council Policies and Regulations set forth in the above referenced chapters of the Coastal Management Program specify various conditions and limitations on the use of identified coastal access and protection areas. They specify further conditions and limitations on contiguous uses of particularly sensitive features and areas. The majority of these conditions and limitations are implemented through Council permitting procedures.

The Department of Environmental Management is the lead state agency for most forms of recreational access and implements various programs and policies noted in Chapter 4. Responding to the growing demand for beach access, the Department has recently leased and obtained a purchase option on one large private beach adjacent to the state's popular facility at Scarborough and is negotiating for another.

The Council by legislative amendment to its enabling legislation has assumed responsibility for

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The Council by legislative amendment to its enabling legislation has assumed responsibility for

identifying and opening public rights of way to the shore. To this end it recently launched a major effort to verify title to the state's many coastal rights-of way. Twelve title attornies are currently involved in this effort which is supported by state and NOAA funds. In addition, the Council in July 1978 adopted policies for legally designating public rights of-way to the shore. These call for consultation with local officials after title verification, field surveys, public hearings in the host community and marking and management by the Department of Environmental Management after final Council action.

6.8 Implementing Authorities and Funding Sources

Council Policies and Regulations pertaining to coastal access and protection are implemented under authorities delegated by Title 46 Chapter 23-6 B and D of the General Laws of Rhode Island.

Department of Environmental Management authorities regarding the acquisition and management of parks, beaches, launch ramps, and conservation or management areas are set forth under Title 42, Chapter 17 of the General Laws.

Principle funding for implementation of management and acquisition programs is provided by state appropriation, bonds, the Office of Coastal Zone Management and the Land and Water Conservation Fund.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852

SECTION 312 FINDINGS

Evaluation of the Rhode Island Coastal Management Program Covering the Grant Period May 1978-February 1979

I. BACKGROUND

Section 312 of the Coastal Zone Management Act requires continuing review be made of states with federally approved coastal management programs. This review is designed to evaluate performance with respect to coastal management activities and adherence to the approved management program.

The Rhode Island coastal management program was approved in May 1978. The first Section 306 program implementation grant was awarded for a period of 12 months. This evaluation covers the first nine months of the grant period. The $1,000,000 Federal share was matched by $250,000 from Rhode Island.

In connection with the Office of Coastal Zone Management's (OCZM) evaluation responsibilities, an on-site review of the Rhode Island Coastal Management Program (RICMP) was conducted by OCZM from February 7 to February 9, 1979. Michael Shapiro and Rosalia Sussman of the Policy and Program Evaluation staff, Katherine Cousins and Dick O'Connor of the State Programs staff, and John O'Donnell of the External Relations staff, participated in the review.

The site visit included meetings with representatives of the Governor's Office (CZM lead agency), the Coastal Resources Management Council (CRMC), the Department of Environmental Management (DEM), the Statewide Planning Program (SPP), the Coastal Resources Center (CRC) of the University of Rhode Island, the Rhode Island League of Cities and Towns, and various Federal agencies involved in the Rhode Island coastal management program. A list of individuals contacted is attached.

C. In the area of increased coastal recreational access and protection of cultural, historic and aesthetic resources, the following results have been accomplished:

(1) An accelerated program to identify public ownership of coastal rights-of-way is midway through its two-year work program. Title research on 165 previously identified rights-of-way will be completed this grant year and public hearings on the researched rights-of-way titles have begun. The Council will designate public rights-of-way according to its regulations adopted in July 1978.

(2) An on-going maintenance program is improving the safety and accessability of approximately 30 currently used coastal rights-of-way.

(3) An in-depth assessment of recreational boating problems and opportunities will be completed in May, 1979. The study has identified areas where State agencies can facilitate recreational boating development without conflicting with conservation goals.

RECOMMENDATION:

Follow-up action on the boating assessment should be given high priority. Efforts should be made to coordinate RICMP activities with those of the Heritage Conservation and Recreation Service (HCRS) in the development of multiple use marinas. OCZM is available to assist in coordinating between the State and HCRS.

SOUTH CAROLINA

The South Carolina coastal management program encourages public access through regulation and through funding incentives. Permits for construction and alteration at beaches and dunes are conditioned on protection of existing access. Erosion control funds are conditioned on provision of full public access to the area receiving funds for protection.

State Of South Carolina Coastal Management Program and Final Environmental Impact Statement

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

UNITED STATES

DEPARTMENT OF COMMERCE

FINAL

ENVIRONMENTAL IMPACT STATEMENT

PROPOSED

COASTAL MANAGEMENT PROGRAM

FOR

THE STATE OF SOUTH CAROLINA

Prepared by:

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

and

South Carolina Coastal Council
Summerall Center, Suite 802
19 Hagood Avenue
Charleston, South Carolina 29403

chapter IV
special management areas

D. BEACH AND SHORELINE ACCESS

1. Introduction

The South Carolina coastal zone boasts 158 miles of Atlantic Ocean shoreline — this wealth of beaches is an invaluable and irreplacable resource for the State. The General Assembly recognized the increasing demands on **all** coastal resources in the passage of the South Carolina Coastal Management Act of 1977, which mandates development of a comprehensive coastal management program. Among the many findings and concerns expressed in the State legislation are those of protecting public access and preserving and expanding recreational resources. The following beach and shoreline access policies and existing management authority address these issues.

In order to receive Federal approval and thereby continued funding through the Department of Commerce, the State must also meet Federal requirements for shoreline access in its coastal management program. The rules and regulations from the Office of Coastal Zone Management for program development and approval read as follows:

> (1) The management program must contain a procedure for assessing public beaches and other public areas, including State owned lands, tidelands and bottom lands, which require access or protection, and a description of appropriate types of access and protection.
> (2) There must be a definition of the term "beach" that is the broadest definition allowable under state law or constitutional provisions, and an identification of public areas meeting that definition.
> (3) There must be an identification and description of enforceable policies, legal authorities, funding programs and other techniques that will be used to provide such shorefront access and protection that the State's planning process indicates is necessary.
>
> (Section 923.24, **Federal Register**, Vol. 44, No. 61, March, 1979)

2. Definitions

a. Beach

The South Carolina Coastal Management Act (Act 123 of the 1977 South Carolina General Assembly) defines "beaches" as "those lands subject to periodic inundation by tidal and wave action so that non-littoral vegetation is established". (Section 3(H). This definition includes that area of sand between mean low and spring high water, in other words, the foreshore and the dry sand beach up to the line of vegetation. Beaches are included in the management program as "critical areas", subject to the Coastal Council's direct permitting authority.

b. Public Beach and Public Access

According to the Federal Regulations "public beach" must be defined within each management program. In South Carolina it is defined in terms of State ownership or of demonstrated public use sufficient to create public rights in the land. In South Carolina there is no specific statutory right for public use of the beaches. However, the doctrine of the public trust forms the basis for the public's right to use the foreshore or wet-sand beach seaward or below the mean high water mark. Under this doctrine, title to the foreshore (below mean high water) is presumed to be held by the State in trust for her citizens unless title has been expressly granted to an owner out to the low-water mark.

Based on traditional concepts of law, or common law, the public has rights to use the foreshore for navigation and fishing. In recent years, this traditional interpretation has been expanding in other jurisdictions. In South Carolina, statutory expression in State legislation for coastal management and oil spill monitoring and control, and opinions of the S. C. Attorney General reflecting strong public interest in recreation, have to some degree broadened the common laws basis to include recreational uses within the public trust.

Upland access across to the wet-sand beach below mean high water is another important factor in identify-

ing public beach access. Unless the property landward of the wet-sand beach is owned outright by the State — through acquisition, express dedication from developers and owners, or through an express trust — assurance of public rights for use of the "dry-sand beach" or shoreline property adjoining the traditional public beach area below MHW can be made only on the basis of a case-by-case determination.

In South Carolina, confirmation through the courts of these so called "acquired" public rights for accessways on shoreline property will probably be based on the legal theories of (1) prescriptive easement and (2) implied dedication. A prescriptive easement requires a clear showing of continuous and uninterrupted public use without permission of the owner, for a 20-year period. Implied dedication requires evidence of the landowner's intent to dedicate the property for public use and of the public's acceptance by using the land. Under either theory, evidence supporting the extent of public use must be clear and convincing.

Litigation involving particular parcels of shoreline property is clearly an expensive, time-consuming, and cumbersome means for determining "public" versus "private" rights in a particular area. But in some instances where ownership is in question, it can be the only means for such determination. The S. C. Attorney General has brought several claims on behalf of public rights in the past; however, there is no clear statutory authorization for this role and no explicit duty for that office to undertake such an action. The viability of this course of action depends to a large degree on the ability or willingness of the Attorney General or of some concerned private party to initiate a public claim.

c. Existing Public Access (Full and Complete Access)

The South Carolina Coastal Council will use the following definition for "existing public access" for 1) determination of those areas eligible for public funds for erosion control and 2) as a basis for every permitting decision requiring consideration of public access. In addition, this definition fulfills the federal requirement that a definition of full and complete access be included in the State management plan.

The Council will find that a stretch of beach is accessible to the public if: (1) Reasonable provision is made for transportation facilities, including automobile parking, boat landings, bicycle racks and/or public mass transit. Facilities must be available on a year-round basis, and fees, if charged, must be nominal and serve only to offset actual costs. (2) Public walk-ways or access-points to the beach and lateral access to the dry-sand beach are open and readily apparent. (3) Access to the area is actually sought by members of the general public with reasonable frequency.

A "stretch of beach" may be delineated by such factors as physical or geographical boundaries (an inlet or marsh, for example) as well as by jurisdiction borders (municipal limits, for instance).

What constitutes "reasonable" for purposes of the preceding definition will be determined in part by the size and population of the surrounding area, the size of the stretch of beach itself, and the availability and nature of upland or marine rights-of-way to the general area of the beach.

3. Policies for Public Shoreline Access

a. Process of Policy Development

The South Carolina Coastal Council and its staff have worked throughout the period since their creation on July 1, 1977 on the background and study efforts for development of the shoreline access segment of the program. Prior to passage of the legislation which created the present Council, staff and gubernatorially-appointed Coastal Council members were working toward writing the various parts of the program. In 1976, an extensive study financed and coordinated through the coastal program and the S. C. Department of Parks, Recreation and Tourism was undertaken. This study on beaches and beach access, which formed the basis of the beach inventory presented at the end of this chapter, is entitled **Public Beach Access and Recreation in South Carolina** and was conducted by Hartzog, Lader & Richards. A special legal consultant to the Council has worked closely with the staff to fully explore the possibilities and problems regarding provision and protection of public beach access.

The Management Committee of the Coastal Council is one means for improved policy development. This sub-group of the full 18-member Council, which represents a wide range of interests and geographic areas received draft material from the staff and gave it careful, in-depth examination and review.

A more technical form of input to the policy formulation process has been a Beach Access Advisory Com-

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A more technical form of input to the policy formulation process has been a Beach Access Advisory Com-

mittee. This working group of experts from the recreation field, local and State government representatives, and citizens who personally encounter or deal with beach access issues, met several times to assist staff of the Council in drafting this segment of the program.

In addition, a group of citizens in each of the eight coastal counties and one in the inland area met on a monthly basis during the latter stages of development of the program to carefully study draft segments of the document, including beach and shoreline access. The input from these County Working Groups, which consisted of both general and specific, detailed comments, proved invaluable in assuring that the real issues and concerns of coastal residents and others in the State have been addressed by the program.

b. Findings

South Carolina has a unique opportunity at the present time for preserving valuable coastal resources and for realizing great social and economic benefits from these areas. The relative wealth of beaches and other shorelines of the coast are an asset for residents of the coastal zone and the State as well as for the Nation in terms of the many visitors to the area.

Provision of sufficient areas for public shoreline access, especially to the beach, which include adequate facilities and maintenance are important not only to recreational users — day visitors and tourists — but to residents and private property owners as well. The interests of this latter group are also met because pressure for use of or infringement upon private beachfront and the associated trespass or damage is reduced when properly designated public areas exist.

The inventory contained at the end of this section demonstrates the extent of existing public access to South Carolina beaches. The significant number of public boat landings and public shellfishing areas, which provide another form of public shoreline access, have also been identified.

Roughly 30% of the State's Atlantic Ocean shoreline or beach areas, including the adjacent dry-sand or upland shorefront, is owned by the State or Federal government. The need to preserve these beach areas in the public domain and insure their protection both as natural assets and for recreational opportunities is clear. Many of these beach areas have limited transportation access, often by private boat only with no boat landing facilities. Thus, a primary criteria for acquisition or expansion of new public beach areas is provision of ample means for transportation access. An additional criterion is availability of facilities related to beach activities, such as restrooms or changing areas.

In ocean-front areas with predominantly private ownership of the adjacent uplands, existing lateral public accessways across to the beach below mean high water also need preservation, enhancement and maintenance. In developed beach areas, especially those near urban centers where demand is greatest and is increasing, the provision of adequate parking for day-visitors is one concern of coastal management for improved public access. Efforts to encourage local governments and private developers to consider provision of public access-ways in future development plans, such as subdivision or resort proposals, is another focus of public access planning.

Recreational boating in South Carolina's coastal zone is a growing and important economic enterprise as well as a recreational pursuit. While there are currently a number of public boat ramps in the coastal zone, distribution is relatively poor in some areas. The need also exists for provision of new public ramps to meet growing demand; these should be constructed in an environmentally acceptable manner and offer improved facilities (lighting, trash receptacles, parking). (Other boating-related activities which provide shoreline access such as marinas and docks and piers are more often private or commercial endeavors rather than public, and are covered by the coastal management program under the resource policy section for the respective activity. (Section VI A-C of the Resource Policies, (Chapter III)).

Improved public access to riverine or estuarine areas for recreational purposes other than boating, such as swimming, picnicing or camping, can help reduce the extreme demand on Atlantic Ocean beaches by offering alternative water-front destinations. Recreational fishing and shellfishing are also significant pursuits for coastal residents and visitors. The limited public oyster grounds along the coast receive heavy use. (See Table 4 for locations.)

Several beaches, both recreational areas and wildlife preserves, have been designated as Geographic Areas of Particular Concern (GAPCs) in the coastal zone. These beaches have been categorized as Areas of Unique Natural Resource Value, and as designated GAPCs, receive special management attention.

Additional considerations are made based on the priorities of use of these areas and possible negative impacts when decisions are made by the Council on permit applications in the critical areas or review and certification procedures in the coastal zone.

c. Policies

1) The S.C. Coastal Council fully endorses and will support, further, and encourage the protection of and, wherever feasible, the expansion of public access to shoreline areas in the coastal zone.
2) The Council's evaluation to determine whether or not permit applications for alterations in the critical areas are approved will be guided by the policies specified in Sections 1 and 2 of the S.C. Coastal Management Act of 1977 and:

> The extent to which the development could affect existing access to tidal and submerged lands, navigable waters and beaches or other recreational coastal resources (Section 15(A)(5) S.C. Coastal Management Act of 1977).

3) The Council's review and certification of permit applications from other State agencies for projects in the coastal zone, including those outside the critical areas will consider:

> The extent of impact on the following aspects of quality or quantity of these valuable coastal resources:
>
> > Public recreational lands—conversion to other uses without adequate replacement, **interruption of existing public access**, or degradation of environmental quality in these areas (emphasis added). (See Chapter III, (C) Resource Policies.)

4) Public funds can only be expended for beach or shore erosion control in areas, communities or on barrier islands to which the public has full and complete access.
5) The highest priority for expenditure of public funds for acquisition of new parks and recreational areas along beaches or shorelines in the coastal zone will be given to areas which offer full and complete access to the public.
6) The Council encourages the extension of better access to existing publicly-owned recreation areas, particularly barrier islands, which currently only afford access by private boat and are appropriate for more intensive use. This should include access to the area, via ferry or provision of boat landings and other facilities; and also access across or through the area to the beach-front via paths or walkways. The type and extent of public access must be determined based on the human "carrying capacity" of the area in its natural state in order to protect natural beach features and other environmentally sensitive areas.
7) Lateral beach access-ways should be walk-over structures or staggered pathways at natural breaks in the dunes, to prevent disruption of sand dunes or vegetation. Although structures of this type are specifically exempted from direct permit authority, Coastal Council staff will be available at any time to assist in their planning and design so as to assure suitability to the environment.
8) The provision of additional parking space in upland areas adjacent to beaches should be a priority for recreational planning by both local and State agencies. Alternatives such as remote parking sites connected to the beach by public transportation, off-island parking, and authorized weekend and holiday use of private, commercial parking spaces should be explored. As mandated in Section 10 of the Act, Council staff will be available to provide technical assistance whenever needed.
9) Local governments in the coastal zone, particularly beachfront communities, are urged to incorporate considerations for provision of public access into their local ordinances and comprehensive plans, especially into subdivision regulations which can influence the location and design of new developmen that might affect public access.

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10) Private developers in beach areas, in considering the benefits not only for the public but for protecting private property interests, are encouraged to include provision of reasonable public beach areas and access-ways in their plans for new developments.

11) Recreational planning by State and local governments should include consideration of alternatives to actual ocean-front areas in order to offer other options for recreation and to relieve growing pressure on ocean-front communities. An example of such an alternative is the acquisition and development of recreational areas along rivers which provide for activities such as fishing, swimming or picnicing. Estuaries could also be utilized as recreational areas, provided that their development and use are compatible with the fragile nature of these areas.

12) The Council advocates the provision of joint-use public docks, public boat ramps and landings throughout the coastal zone in environmentally suitable locations, to meet the needs of recreational boating.

13) The Council advocates the provision of pedestrian access and fishing catwalks on all new bridges and roadways in the coastal zone, and recommends their addition to existing structures where possible.

14) The provision of new public oyster grounds, as well as the preservation of existing public grounds will be sought by the Council. (Public shellfish grounds are designated as Geographic Areas of Particular Concern.)

15) The resource policies for park facilities, as well as marinas, boat ramps, docks and piers will apply where appropriate to shorefront areas with public access. (See Resource Policies pertaining to these activities.)

16) The Coastal Council will coordinate planning and acquisition efforts very closely with the SCORP Exchange Council, as well as with State and Federal agencies concerned with public beach recreation.

17) The Council recognizes the overriding importance of good water quality as a recreational resource, and will strive to maintain and, where possible, improve existing standards. Chapter V, (D) details the procedure by which the Federal Water Quality Standards are incorported into South Carolina's coastal planning process.

Recommended Practices

1) The Coastal Council recommends that legislation be introduced to limit the liability of property owners and municipalities in case of injury or accident associated with public access to the beach.

2) The Coastal Council strongly supports the proposal generated by the S. C. Department of Parks, Recreation and Tourism to alter the structure of the State Recreational Land Trust Fund (which may now only be used for State parks) to permit local governments to use the Fund for the purpose of developing land for any recreational purpose. Use of the Fund would enable State and local governments to provide more high quality public access to the beaches.

3) It is recommended that abandoned bridges and railroad trestles be left standing to serve as fishing piers when safety considerations permit. Costs of maintenance may be offset by leasing the structures to a county or local government. It has been suggested in the Resources Policies section that railroad rights-of-way be allowed to serve as access points whenever possible. (II (D) of the Resource Policies)

4) In the planning and design of all public access areas, full consideration be given to assure access opportunities to elderly and handicapped visitors.

4. Legal Basis for Management Authority/Legislative Mandate

a. Permitting Authority in the Critical Areas

Three means of protection for access and use of public shoreline areas are afforded by the Council's permitting authority in the critical areas as granted under the S. C. Coastal Management Act. (1) Existing public access and any disruption or negative impacts of this access must be considered by the Council in granting or denying permits for alterations in the critical area. (Section 15) (2) Where local ordinances affecting critical areas are not as stringent as those in the Act, these are augmented by provisions of the Act. Both local and State permits must be obtained, in other words. (3) Critical areas, including beaches and primary sand dunes, are regulated with particular care through the existence of the permitting authority.

coastal resources". (Section 15(5)) The Council is further required to hold a public hearing on any permit application at the request of twenty affected citizens, and it may condition a permit "upon the applicant's amending the proposal to take whatever measures the Council feels are necessary to protect the public interest".

The Act requires that a party seeking a permit provide evidence of his interests in the affected property. When public rights of access are claimed on property for which a private owner seeks a permit, the State Attorney General is able to take appropriate administrative or judicial action to prevent the Council from issuing a permit for the activity until the rights in the property are determined. In the event that a permit is granted which does interfere with existing access rights in affected property, Section 15 allows persons adversely affected by the granting of a permit to appeal the initial decision to the Council. In addition, Section 18 of the Act provided that any person adversely affected by the permit may petition in the State circuit court having jurisdiction for review of the Council decision.

Another means of protecting and assuring public access rights in shoreline areas is the Council's authority to evaluate local ordinances affecting critical areas as part of the overall management program. (Section 10) In the critical areas, both local and State (Coastal Council) regulations apply. Where the requirements of the Act and the Permitting Rules and Regulations of the Council are more stringent than the local ordinance, the Council authority will augment the local ordinances, although all local requirements, including permit procedures, must be met as well. The Council also has a duty to cooperate with local governments and to make "(r)ecommendations to local and regional governmental units as to needed modification or alteration in local ordinances". (Section 10 (A)(4))

Finally, protection of the beach (as a critical area) from most construction activities can have the bonus effect of preserving dry-sand areas for customary recreational use. All Atlantic ocean-front beaches along South Carolina's coastline are, by definition, critical areas, and therefore subject to the direct permit jurisdiction of the Coastal Council. In most circumstances, only erosion control and similar structures will be considered as acceptable for permits in the beach critical area.

The primary ocean-front sand dunes adjacent to the Atlantic Ocean (within 200 feet of MHW) are also within the critical area. Development on this first row of sand dunes is subject to Council permit requirements, with consideration given to protecting against the destruction or disruption of these dunes which are fragile but important storm buffers and natural erosion controls.

The Council's policy for construction of nonwater-dependent structures on the beach or primary sand dunes is stated in R.30-13(D) of the Final Rules and Regulations for Permitting (Chapter 30, R.30-1-30-13, Code of Laws of South Carolina, 1976, as amended). It reads as follows:

> Nonwater-dependent structures such as commercial and residential buildings have been constructed on primary sand dunes or beach areas in the past. Such construction may seriously disrupt the dune/beach system and its vegetation, hampering their effectiveness as a storm and erosion buffer. The sitings of nonwater-dependent structures on the primary dunes or the beaches will be discouraged where other feasible alternatives exist. Design and construction options which minimize destruction of the dunes and dune vegetation will be encouraged.

The Council's direct permitting jurisdiction also considers public access to shoreline areas other than the actual beach-front. Shoreline areas up to spring high tide along the rivers, bays and inlets seaward of the critical area boundary are also included within the Coastal Council's permit authority, being designated under the category of "tidelands" and "coastal waters". (Section 3, S.C. Coastal Management Act). The final Rules and Regulations for Permitting apply to any alterations in these areas. In addition to the general considerations made on all permit applications for protecting public access, there are specific project guidelines for each type of activity, many of which encompass considerations of navigational and recreational access.

Enforcement authority and penalty provisions, as well as the previously mentioned permit appeals procedure, are available under the Coastal Management Act. Construction in violation of the Act can be restrained by a circuit court with jurisdiction "at the suit of the Council, the Attorney General, or any person adversely affected". (Section 16)

b. Erosion Control

The Authority of the Coastal Council to develop and institute erosion control policy, to issue permits for erosion control structures, and to expend public funds for shore erosion control in "areas where the public has full and complete access" also will have the effect of protecting existing access and of preserving beaches for public use.

1) Erosion Control Policy in the Management Program

Section 12 of the 1977 Coastal Management Act mandates that the South Carolina Coastal Council develop and institute a comprehensive beach erosion control policy.

Among the policy concerns addressed in this section of the Act are that the expenditure of public erosion control funds be made only in areas with full and complete public access (see (B)(3) below), that the Council has authority to remove...erosion control structures which are not in the public interest, and that ocean-front property which accretes beyond mean high water and beyond original private property boundaries will remain in trust for people of the State (See (C) below)

The Federal Coastal Zone Management Program guidelines also require that each state include a beach erosion segment in its management program. These requirements are met by Chapter IV (C) of the South Carolina Program document.

2) Permitting

Express policy in the Coastal Council's Final Rules and Regulations for Permitting for erosion control structures states clear preference for the "use of natural features of the dune and beach system rather than artificial protection". Among the criteria considered in permit applications for jetties and groins is that "care... be taken to insure that they do not interfere with public access". Recognizing the importance of the beach and dune system "to storage of sand and shoreline stability... (and) as a barrier which protects adjacent inland areas, the Statement of Policy finds that "enough room (should) be allotted between structures and the shoreline so that if natural erosion occurs, natural deposition can restore the beach..."

In the event of natural or artificial accretion, provisions in the S. C. Coastal Zone Management Act defining the Coastal Council's erosion control authority (Section 12) require that land seaward of the mean high-water mark that existed at the time of development remain undeveloped. These erosion policies and their application should ensure erosion control devices and other structures that are consistent with existing public use and access.

3) Funding

Section 12 (D) of the S. C. Coastal Zone Management Act provides the Coastal Council with the authorization to accept and spend Federal funds for beach or shore erosion control only in areas to which the public has "full and complete access". Section 12(E) of the Act makes Council expenditure of emergency State funding for erosion control also contingent on "full and complete access" to the beach in question. Most recently, the 1978 S. C. General Assembly enacted an amendment to Act 1377 of 1968 relating to the issuance of capital improvement bonds which provides that the "Coastal Council shall endeavor to maximize public access to the beaches of the coastal counties" and that none of the $600,000 bond revenue available for beach erosion or groin repair "shall be allocated to any project located in any beach not accessible to the public".

c. Networking Authority in the Coastal Zone

Section 8 of the South Carolina Coastal Zone Management Act of 1977 directs that in developing the management program, the Council must "consider all lands and waters in the coastal zone for planning purposes". Section 7(A) requires that "all other state and local agencies and commissions shall cooperate with the Council in the administration and enforcement of this act. All agencies currently exercising regulatory authority in the coastal zone shall administer such authority in accordance with the provisions of this Act and rules and regulations promulgated thereunder".

While the Council has no **direct** regulatory authority outside the critical areas, Section 8(B)(11) provides that the Council must "(d)evelop a system whereby the Council shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan".

The Council has actual authority through this indirect system to regulate activity in the coastal zone which

has a "direct and significant impact on coastal waters". The particular activities designated for management in the coastal zone were selected on the basis of four criteria, including "disruption of existing public access to a coastal resource." These activities are listed in Chapter III (C).

The "performance standards approach" of dealing with the impacts of an activity and the governi policies and processes are discussed in Chapter III (C), and legal authorities and networking among State agencies are addressed in detail in Chapter V (A) of the program document.

d. Accretion Policy

As part of the erosion control policy of Section 12 of the South Carolina Coastal Management Act, the General Assembly declared that property from natural or artificially-induced accretion along the ocean-front beyond the mean high water shall be "held in trust for the people of the State". The effect of this section of the Act pertaining to beach access is to emphasize the importance of ocean-front beaches as a public recreational resource and recognize the public trust doctrine for beaches below MHW.

Section 12(B) reads as follows:

> No property rebuilt or accreted as a result of natural forces or as a result of a permitted structure shall exceed the original property line or boundary. **Provided,** further, that no person or governmental agency may develop ocean-front property accreted by natural forces or as the result of permitted or non-permitted structures beyond the mean high water mark as it existed at the time the ocean-front property was initially developed or subdivided, and such property shall remain the property of the State held in trust for the people of the State.

e. Legal Actions to Determine Ownership

A major provision of the South Carolina Coastal Management Act of 1977 is contained in Section 22, which allows persons claiming title to lands between mean high water and mean low water in the coastal zone for file suit against the State of South Carolina to establish their claims. Under Judicial process, determinations would then be made of any existing right, title or interest to such tidelands.

Of significance here is that this section specifically **excludes** beaches from the definition of such tidelands. The effect of prohibiting such actions against the State in the case of beaches is to reinforce the presumed public ownership of beaches below mean high waer.

f. The Role of Local Government

Local governments are another existing authority which can enhance abilities to secure existing access rights. Outside the critical areas, the Council has no direct regulatory authority; however, Section 10 of the S. C. Coastal Zone Management Act creates a duty in the Council to cooperate with local governments and to make recommendations regarding modifications of local ordinances.

The most powerful tool of municipalities is subdivision regulation. South Carolina enabling legislation provides that subdivision regulations under local governing authority may "provide for the harmonious development of the municipality and the county", permit "the dedication or reservation of land for streets, school sites and recreation areas", and encourage "a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, prosperity, or general welfare". By considering beaches to be a necessary kind of open space and access-ways as essential to the enjoyment of that space, the Council will recommend that shorefront communities require developers to dedicate public easements to preserve rights-of-way to the ocean. The Council will suggest that municipalities encourage development plans that insure acquisition and maintenance of reasonable access routes, adequate dry-sand space, and adequate facilities, including parking.

In many cases these requirements will confirm existing rights in previously undeveloped property by incorporating frequently used beaches and pathways into development plats as dedicated public areas.

Through its recommendations, the Coastal Council can seek to influence the shape of local ordinances, not only to protect public rights, but to insure that private beachfront landowners and municipalities do not bear an unfair share of the costs of public use. Where beaches are especially popular and accessible so that traf trash, and safety become problems, the Council will recommend that local governments consider asessing

nominal fees to residents and visitors for parking or changing facilities. These additional funds should allow a community to provide better maintenance and necessary services where full and complete access is provided.

The preceeding sections (A-F) outline those sources of authority relevent to beach access which are specifically provided for in the enabling legislation. The Coastal Council recognizes that the beaches are a State and even a national resource, and consequently require State assistance to supplement and coordinate local efforts to provide and maintain access.

5. Other Resources Policies Affecting Public Access

Resource Policies for each of the identified activities subject to management can affect shoreline access in a number of ways. Activities which would adversely affect existing public recreational areas are discouraged, and activities which can increase public access to public shoreline areas are encouraged. Policies affecting critical areas are enforceable under the permitting authority of the South Carolina Coastal Council. Policies for the coastal zone outside the critical areas are enforceable under Section 8 of the South Carolina Coastal Management Act which gives the Council authority to review and certify State and Federal permits.

In critical areas, filling is prohibited in most circumstances, and construction over primary dunes and beaches is discouraged, to be permitted only where no feasible alternative exists. These regulations will work to preserve beaches for recreational uses as well as for the protection of upland property from erosion and storm damage.

Every kind of activity subject to management in the coastal zone — residential development, transportation, coastal industries, commercial development, recreation and tourism, dredging, public services and facilities, erosion control, and energy and energy-related facilities — is specifically discouraged if the project is in question would significantly impact "public recreational lands" by "conversion of these lands to other uses without adequate compensation or replacement, interruption of existing public access, or degradation of environment quality in these areas." Through its procedures for review and certification, the Council can refuse to certify any permit if the impact on existing public access to public recreational areas has not received adequate consideration.

Certain specific **enforceable** Resource Policies contained in the program will work to increase existing public access. For example, road and highway construction policy provides that "where appropriate, bridges and approaches should be designed to provide for the enhancement of public access by the utilization of fisherman catwalks, boat launching ramps and other structural features". In addition, the reuse of abandoned railway bridges as fishing piers or as other recreational facilities is encouraged.

Commercial development policy encourages development which includes public access: "Developers of commercial property on immediate beach or river-front are urged to provide some area for general public use in their plans." Boat ramp policy gives priority in justifying construction in critical areas or other environmentally sensitive areas to ramps intended for "public use, open to all citizens" over those ramps intended for restricted or private use.

Other **recommended** Resource Policies affecting access are articulated in regard to park, marina, boat ramp, and commercial recreation planning. Objectives of the State Outdoor Recreation Plan expressed by the S. C. Department of Parks Recreation and Tourism generally support increased recreational facilities and access to them. Recommended policy developed by the Council for parks in the coastal zone encourages the consideration of new scenic vistas to natural shoreline areas, the analysis of the recreational potential of surplus State and Federal lands, and the encouragement of park development along utility easements and abandoned rights-of-way.

Recommended policies for the siting of marinas and boat ramps encourage consideration of landward access, parking facilities, and comparable upland facilities to enhance recreational opportunities. Recommended policy for commercial recreation would increase accessibility and discourage remote strip development by locating tourist activities in areas convenient to population centers.

Both the Federal and S. C. Coastal Management Acts require the activities of regional benefit and concerns in the national interest be considered in the management program. Activities of Regional Benefit have been defined to include "Parks — recreational areas of State or regional significance".

The protection of public recreation areas and shoreline access as valuable coastal resources is considered to

be in the national intrerest. These designations provide an additional protection for existing public access. (See Chapter III(C)(2) and (3) for a complete discussion of the management of these activities.)

6. Funding Programs

In order to increase or upgrade existing public access, various funding programs can be used. The Council strongly supports the tapping of these funding sources for this purpose.

The Heritage Conservation and Recreation Service (HCRS) is the primary source of funds to be used for acquisition, improvement, development, and planning for public recreation areas. Funds from HCRS come to the State through the South Carolina Department of Parks, Recreation, and Tourism or to localities, counties, and recreational planning districts by applying to the Councils of Government.

Section 315 of the Federal Coastal Zone Management Act, as amended in July, 1976, states that:

> "The Secretary may, in accordance with this section and in accordance with such rules and regulations as the Secretary shall promulgate, make grants to any coastal state for the purpose of ... acquiring lands to provide for access to public beaches and other public coastal areas of environmental , recreational, historical, esthetic, ecological, or cultural value ..."

The legislation also specifies that any such grant may be made for no more than 50 percent of the cost of the project. These grants may be used for improving access to existing public areas by such means as acquiring easements and providing parking areas. However, no funds have been appropriated yet by Congress under Section 315.

An additional source of funds is the collection of nominal user fees for entrance, parking, and changing privileges. These funds can be used to cover the expenses of providing parking, life guards, restroom and changing facilities and clean-up for the public area. Shuttle bus services from remote parking areas can also charge user fees to cover their expenses in conjunction with any mass transit assistance grants available.

A final, although indirect, source of funds available for increasing or upgrading public access is the ta structure. Privately-owned land may be donated to a Federal, State, or local governing body, or to a charitable organization such as the Nature Conservancy. The donor may then deduct all or a portion of the appraised value of the land from his State and Federal income taxes. Although there is no provision for a carry-over at the State level, the tax advantage may be spread out over a period of years for Federal income tax purposes.

TABLE 1

SOUTH CAROLINA BEACH SURVEY

Beach Area	Length (Miles)	Approximate width above mean high tide (feet)	(Adjacent Land) Ownership	Public Access	Comments
Waites Island	2.3	93	Private	None	Only undeveloped maritime forest/dune area in Horry County.
North Myrtle Beach	9.3	125	Private	Excellent	Densely developed; good public access but limited parking; fishing pier.
Atlantic Beach	0.3	125	Private	Moderate	Limited parking facilities; fishing pier.
Myrtle Beach	15.7	70	Private	Moderate	Densely developed; active; active tourist economy, including numerous hotels, restaurants, attractions and 29 golf courses in the area; fishing pier.
Myrtle Beach State Park	1.2	100	State	Excellent	Camping, day use area, swimming pool and fishing pier, interpretive area.
Surfside Beach	2.1	50	Private	Moderate	Limited parking; beach access-ways not marked, some blocked by private structures. Community plans to improve situation in near future.
Garden City Beach	4.0	50	Private	Limited	Highly developed; fishing pier.
Huntington Beach State Park	3.0	70	State	Excellent	Camping, nature observation, playground, arts center.
North Litchfield Beach	1.5	75	Private	Limited	Limited access obscured by unmarked easements and prominent "No Parking" sign at entrance to island.
Litchfield by the Sea	1.0	-	Private	None	International Paper co. developing a private residential community.
Litchfield Beach	1.5	75	Private	None	8 access-ways but only 1 visible and that is prominently marked "Private".
Pawleys Island	2.5	50	Private	Limited	No public parking except some on-street, only 8 ocean access-ways.
Dubordieu Beach	2.2	50	Private	None	Controlled by a major land holder; private development on portion fronting beach, remainder undeveloped at present.
Bell Baruch Beach	11,000 ft.	50	Private	None	Private foundation, with State cooperation and research facilities.
North Island	8.0	50	State	Supervised boat only	Wildlife preserve.
South Island	1.0	100	State	Supervised boat only	Wildlife preserve.
Cedar Island	2.5	50	State	Boat only	Part of Santee Coastal Reserve.
Murphy Island	4.2	50	State	Boat only	Part of Santee Coastal Reserve.
Cape Romain Wildlife Refuge			Federal	Boat only	One of the nation's most outstanding wildlife sanctuaries; some areas designated wilderness.
Cape Island	6.0	166			
Lighthouse Island	1.5	180			
Raccoon Key	6.0	150			
Bull Island	5.7	100		Boat only	
Capers Island	1.8	50	State	Boat only	Incorporated into Heritage Trust Program. Public access is encouraged.
Dewees Island	1.8	50	Private	None	Privately owned, but State holds a scenic easement over the island.

TABLE 1 (Continued)

Beach Area	Length (Miles)	Approximate width above mean high tide (feet)	(Adjacent Land) Ownership	Public Access	Comments
Isle of Palms	6.2	100	Private	Moderate	Municipal parking lot, some on-street parking, no formally dedicated easements, fishing pier.
Sullivans Island	2.6	138	Private	Excellent	On-street parking in certain areas; good easement provisions.
Folly Island	5.2	88	Private	Moderate	Severe erosion problems; very limited public parking; fishing pier.
Kiawah Island	8.0	150	Private	Limited but good facilities	Private resort - restricted entry beyond designated public access area, fee charged.
Seabrook Island	1.8	50	Private	None	Restricted access resort.
Eddingsville Island	2.0	120	Private	None	
Botany Island	1.5	150	Private	None	
Botany Bay Island	2.5	150	Private	None	
Edisto Beach	3.0	80	Private	Moderate	Limited parking, mostly on-street; fishing pier.
Edisto Beach State Park	1.5	80	State	Excellent	One of State's most popular parks; playground, picnicing, hiking and environmental observation areas.
Pine Island	1.5	25	Private	None	
Otter Island	2.0	75	Private	None	
Harbor Island	1.5	150	Private	None	
Hunting Island State Park	3.8	70	State	Excellent	Camping, boating facilities, wildlife observation areas, etc.
Fripp Island	2.3	75	Private	None	Restricted access resort.
Pritchards Island	2.5	75	Private	None	Undeveloped.
St. Phillips Island	1.0	75	Private	None	Undeveloped.
Hilton Head Island	11.4	150	Private	Extremely limited	Moderately developed, most areas restricted to residents or guests.
Daufuskie Island	2.0	-	Private	Boat only	Access to island at public boat launch, but access across island is limited to the few public roads.
Turtle Island	-	-	State	Boat only	Wildlife Management, very poor sand beach.

SOURCE: **Public Beach Access and Recreation in South Carolina**, 1976, Hartzog, Laders & Richards. Council staff update.

TABLE 2

AVAILABLE BEACH ACCESS IN SOUTH CAROLINA

Beach	Access Points
North Myrtle Beach	36 public streets end at beach; walkways clearly marked. 117 pedestrian easements, most of which are dedicated to city or recorded on plats.
Atlantic Beach	4 beach access-ways at street endings between 29th Avenue South and 32nd Avenue South.
Myrtle Beach	Access at some street endings, limited day-visitor parking.
Myrtle Beach State Park	Freely accessible, ample parking (400 spaces for day-visitors, space for each campsite).
Surfside Beach	34 public access-ways, but none marked as public, none dedicated as easements.
Garden City Beach	
Huntington Beach State Park	Freely accessible; paved parking for 275 cars.
North Litchfield Beach	Although 6 streets and 10 footpaths end at the beach, none are marked or even clearly visible. Entrance to the island marked by "Warning: No public parking on North Litchfield".
Litchfield Beach	7 walkways and one path are shown on a plat of the community; however only 1 accessway is readily visible, and it is marked "private". No designated public parking.
wleys Island	Eight ocean access-ways. Public parking limited to the shoulder of the main road.
Note: State-owned North, South, Cedar, Murphy, and Capers islands are accessible by private boat only with restrictions. Federally-owned beaches are "Federally excluded lands" for purposes of coastal management.	
Isle of Palms	Relatively unrestricted access, although easements have never been formally dedicated except at pier where public parking is available for approximately 600 cars.
Sullivans Island	Access at the end of almost every block, public parking allowed on all streets.
Folly Island	Relatively unrestricted access. Parking in four privately owned lots and at metered spaces for approximately 275 vehicles.
Kiawah Island	Public access provided in designated area of the island only. Bath house facilities and parking for 160 cars available.
Edisto Island	Access between every 3 to 5 lots via unmarked footpaths. On-street parking available.
Edisto Beach State Park	Readily accessible. Parking facilities for 250 vehicles.
Hunting Island State Park	Readily accessible. Parking facilities for approximately 400 vehicles.
Hilton Head Island	Limited public access at some street ends.

SOURCE: **Public Beach Access and Recreation in South Carolina**, 1976, Hartzog, Lader and Richards.

TABLE 3

COASTAL BOAT LANDINGS

NAME	BODY OF WATER	PUBLIC	COMMERC
A. Beaufort County			
Sugar Hill Boat Landing	Sugar Hill Creek	X	
Combahee Boat Ramp	Combahee River	X	
Wimbee Creek Boat Landing	North Wimbee Creek	X	
Beaufort County Boat Ramp	Whale Branch	X	
Beaufort Co. Boat Ramp	Broad River	X	
Beaufort Co. Boat Ramp	Battery Creek	X	
Beaufort Co. Boat	Battery Creek & Beaufort River	X	
Beaufort C. Boat Ramp	Brickyard Creek	X	
Sam's Point Boat Ramp	Lucy Point Creek	X	
Beaufort Co. Boat Ramp	Factory Creek	X	
Beaufort Marina	Factory Creek		X
St. Helena Is. Boat	Beaufort River	X	
Harbor Island Boat Landing	Harbor River	X	
St. Helena Boat Landing	Capers Creek	X	
Russ Point Boat	Fripp Inlet	X	
St. Helena Boat	Station Creek	X	
Fort Freemont	Beaufort River	X	
Chechessee River Boat Landing	Chechessee River	X	
New River Boat Dock and Float	New River	X	
Alljoy Ramp	May River	X	
Beaufort Co. Boat Ramp	Broad Creek	X	
Broad Creek Marina	Broad Creek		X
Bluffton Boat Ramp & Landing	May River	X	
Buckingham Landing	Mackay Creek	X	
Jenkins Island	Skull Creek	X	
Johnson Creek Boat Landing	Johnson Creek	X	
Butchers Island Boat Landing	Wards Creek	X	
Pigeon Point Boat Landing	Beaufort River	X	
Freedom Mall Boat Landing	Beaufort River	X	
Fort Frederick Boat Landing	Beaufort River	X	
Downtown Marina of Beaufort	Beaufort River		X
Daufuskie Island County Float & Dock	New River	X	
Paige Point Boat Landing	Huspah Creek	X	
Harbor Town Marina	Calibogue Sound		X
Hilton Head Harbor	Intracoastal Waterway		X
South Beach Marina	Calibogue Sound		X
Marsh Harbor Marina	Broomfield Creek		X
B. Berkeley County			
Somerset Point	Lake Moultrie		X
Camp Moultrie	Lake Moultrie		X
Wilsons Landing	Lake Marion		X
Bonneau Beach Resort	Cooper River		X
Lions Beach Recreation Park	Lake Moultrie	X	
Rembert Dennis Boat Landing		X	
Cypress Gardens	Cypress Gardens Canal	X	
Cypress Gardens Landing	Cypress Gardens Canal	X	
Biggens Ramp	Tailrace Canal	X	
Speres Landing	Lake Marion	X	
Jamestown Landing	Santee River	X	
Bushy Park Landing	Cooper River	X	
Quinby Landing	Cooper River	X	
Wando Boat Landing	Wando River	X	
C. Charleston County			
Robert E. Ashley	Jeremy Creek	X	
Buck Hall	Intracoastal Waterway	X	
Moore's Landing	Intracoastal Waterway	X	
Claude W. Blanchard	Wando River	X	
Wando Woods Boat Ramp	Ashley River	X	

TABLE 3(continued)

NAME	BODY OF WATER	PUBLIC	COMMERCIAL
C. Charleston County (continued)			
Isle of Palms Marina	Intracoastal Waterway		X
Sullivan's Island	Conch Creek		X
Fisherman's Place	Intracoastal Waterway		X
Shem Creek	Shem Creek	X	
J. Mitchell Graham	Cooper River	X	
Remley's Point Boat Landing	Cooper River	X	
Paradise Island Boat Ramp	Wando River	X	
Ralph N. Hendricks	Wando River	X	
Norton Bridge	Ashley River	X	
Municipal Yacht Basin	Ashley River	X	
Brittle Bank Park	Ashley River	X	
Pierpoint Boat Ramp	Church Creek	X	
Rantowles Boat Ramp (Bulow)	Rantowles Creek	X	
Lloyd Flemming (Plymouth Ave.)	Wappoo Creek	X	
R. E. Seabrook	Wappoo Creek	X	
Penny Creek	Penny Creek		X
Stono Marina	Stono River		X
Limehouse	Stono River		X
J. F. Scignious	Folly River	X	
Battery Island	Stono River	X	
Cherry Point	Bohicket Creek	X	
Dahoo Bridge	Dahoo River	X	
Fontains	Big Bay Creek		X
Flowers Sea Food	Big Bay Creek		X
Willtown Boat Ramp	Edisto River	X	
Edisto Island Boat Ramp	Edisto River	X	
Prison Farm Boat Ramp	Ashley River	X	
D. Colleton County			
Mars Old Field Boat Landing	Edisto River	X	
Good Hope Boat Landing	Edisto River	X	
Long Creek Boat Landing	Edisto River	X	
Sullivans Boat Landing	Edisto River	X	
Lowndes Boat Landing	Edisto River	X	
West Bank Boat Landing	Edisto River	X	
Public Boat Landing	Combahee River	X	
Cuckolds Creek Boat Landing	Cuckolds Creek	X	
Field Point Boat Landing	Combahee River	X	
Wiggins Boat Landing	Old Chechaw River	X	
Chessy Creek Boat Landing	Chessy Creek	X	
Price Bridge Boat Landing	Horsecreek Creek	X	
Brickyard Boat Landing	Ashepoo River	X	
Bennetts Point Boat Landing	Mosquito Creek	X	
Fee Farm Creek Boat Landing	Fee Farm Creek	X	
E. Dorchester County			
Ashley Fishing & Recreation	Ashley River		X
F. Georgetown County			
Staples Lake	Great Pee Dee	X	
Port Hill	Great Pee Dee	X	
Peters Field	Great Pee Dee	X	
Mingo Creek Bridge	Mingo Creek	X	
Cowhead	Mingo Creek	X	
Browns Ferry	Black River	X	
Rocky Point	Black River	X	
Peters Creek	Black River	X	
Shrine Club	Black River	X	

TABLE 3 (continued)

NAME	BODY OF WATER	PUBLIC	COMMERCIAL
F. Georgetown County (continued)			
Pringles	Black River	X	
Pump House	Black River	X	
Pee House	Black River	X	
Pole House	Santee River	X	
Collins Landing	Santee River	X	
South Island Ferry	Winyah Bay	X	
Belle Island Marina	Winyah Bay		X
Moultrie		X	
Boulevard	Winyah Bay	X	
Nautica Marina	Winyah Bay		X
Gulf Marina	Winyah Bay		X
Exxon Marina	Winyah Bay		X
Hazard's Dock	Winyah Bay		X
Dirleton	Pee Dee River	X	
Chapel Creek	Pee Dee River	X	
Hagley	Waccamaw River	X	
Altman's Chapel Creek	Waccamaw River	X	
Wacca Wache	Intracoastal Waterway	X	
Wacca Wache Marina	Intracoastal Waterway		X
Gulf Stream Marina	Murrells Inlet		X
Captain Dick's Marina	Murrells inlet		X
Captain Alex Marina	Murrells Inlet		X
Snug Harbor	Murrells Inlet		X
Anchor Marina	Murrells Inlet		X
Inlet Port Marina	Murrells Inlet		X
Pawley's Island (3)	Pawley's Inlet	X	
G. Horry County			
Lumber River Landing	Little Pee Dee River	X	
Punch Pole Landing	Little Pee Dee River	X	
Sandy Bluff Landing	Little Pee Dee River	X	
Gallivants Ferry Landing	Little Pee Dee River	X	
701 Bridge Landing	Little Pee Dee River	X	
Yanhannah Ferry	Great Pee Dee River	X	
S. C. 9 Landing	Waccamaw River	X	
Starr Bluff Landing	Waccamaw River	X	
Red Bluff Landing	Waccamaw River	X	
Hardees Ferry Landing	Waccamaw River	X	
Conway Marina	Waccamaw River	X	
Jackson Bluff Landing	Waccamaw River	X	
Cox's Ferry Landing	Waccamaw River	X	
Old Chimney Landing	Waccamaw River	X	
Horry Ramp	Waccamaw River	X	
Bucksport Marina	Intracoastal Waterway	X	
Socastee Bridge Landing	Intracoastal Waterway	X	
Hague Marina	Intracoastal Waterway		X
North Myrtle Beach Landing	Intracoastal Waterway	X	
Vereen Marina	Intracoastal Waterway		X
Palmetto Shores Marina	Intracoastal Waterway		X
Ron-Tom Marina	Intracoastal Waterway		X
Brainard Landing	Intracoastal Waterway		X
Campground & Marina	Intracoastal Waterway		X
Bernards	Intracoastal Waterway		X
Exxon Marina	Intracoastal Waterway		X
Gulf Stream Marina	Murrells inlet		X
H. Jasper County			
Bolan Hall Boat Landing	Bahaw Creek	X	
Dawson Landing	Coosawhatchie River	X	

TABLE 3 (continued)

NAME	BODY OF WATER	PUBLIC	COMMERCIAL
H. Jasper County (continued)			
B & C Landing	Savannah River	X	
Tutens Landing	Boyds Creek	X	
Mill-Stone Landing	Savannah River	X	
Becks Ferry Landing	Savannah River	X	
New River Boat Landing	New River	X	
Corner Lake Boat Landing	Coosawhatchie River	X	
Union Boat Landing	Union Creek	X	
Turnbridge Boat Landing	Salt Water Creek	X	
Cook Boat Landing	New River	X	
Clasglow Boat Landing	Wright River	X	
I. Beaufort County Suspended Fishing Platforms			
Mackay Creek Fishing Platform	Rt. 278 Bridge Hilton Head Island	X	
Chechessee River Fishing Platform	Rt. 170 Bridge at Chechessee River	X	
Broad River Fishing Platform	Rt. 120 Bridge at Broad River	X	
Beaufort River Fishing Platform	Hwy. 21 Bridge Lady's Island	X	
Chowan Creek Fishing Platform	Hwy. 21 Bridge at Chowan Creek	X	
Harbor River Fishing Platform	Hwy. 21 Bridge Hunting at Harbor River	X	
Johnson Creek Fishing Platform	Hwy. 21 Bridge Hunting at Johnson Creek	X	

SOURCES: South Carolina Wildlife & Marine Resources Department, **A Guide to Saltwater Recreational Fisheries in S. C., 1977.**

Waccamaw Council of Governments

Berkeley-Charleston-Dorchester Council of Governments

Lowcountry Council of Governments

Texas

Texas does not yet have a federally approved coastal management program, but public access to the shorefront is protected under the provisions of the Texas Open Beaches Act of 1959. Access planning and program management falls under the jurisdiction of the Texas Parks and Wildlife Department.

The Texas Open Beaches Act guarantees the public unrestricted access to and use of: (1) the state owned portion of the beach below the mean life tide line and (2) the larger area extending from the mean low tide line to the first line of vegetation in all areas where the public has acquired a right of use of easement by prescription, dedication, or continuous use. The provisions of the Act do not apply to any beaches on barrier islands or peninsulas that are not accessible by public road or common carrier ferry. This includes San Tose Island, Matagorda Island, and the Matagorda Peninsula west of the Colorado River channel. A coastal area is considered accessible if it meets any of the following three criteria:

(1) if it is presumptively legally open

(2) if it is in public ownership

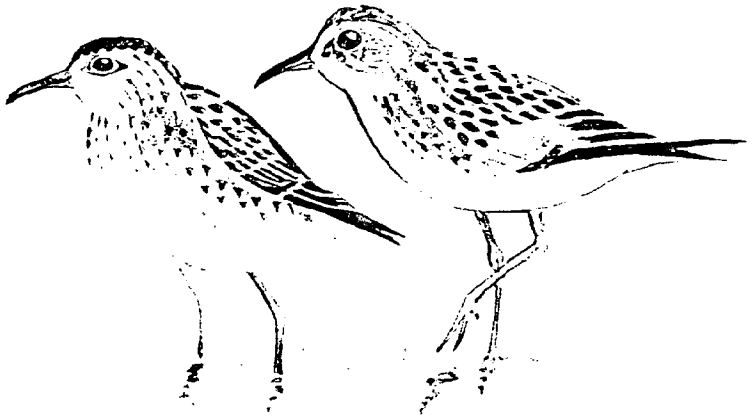
(3) if for any reason the public has a legally protected right of access to and use of the area.

The Texas Parks and Wildlife Department has employed two methods to increase public access to the shorefront. First, the Special Boat Fund finances the construction of approximately three boat ramps and accompanying parking lots and access roads in the coastal area each

year. Second, Fund 31 and money raised through bonds are used to acquire and develop new public shorefront recreation areas as the public need arises. Local acquisition projects are assisted by federal Land and Water Conservation Funds which are administered by the Texas Parks and Wildlife Department.

The provision of increased public access has caused some management problems. First, even though other accessible beaches are not crowded, Galveston and Mustang beaches and the North Padre Island sustain congestion from very heavy use. Second, vehicular traffic on the beaches often poses a danger to non-vehicular beach users. Third, litter is becoming an increasing safety and aesthetics paroblem.

ACCESSIBILITY AND PROTECTION OF TEXAS SHOREFRONT AREAS



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GENERAL LAND OFFICE

UNDER THE DIRECTION OF

Bob Armstrong
Commissioner, General Land Office

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Senator A. R. Schwartz

JUNE, 1978

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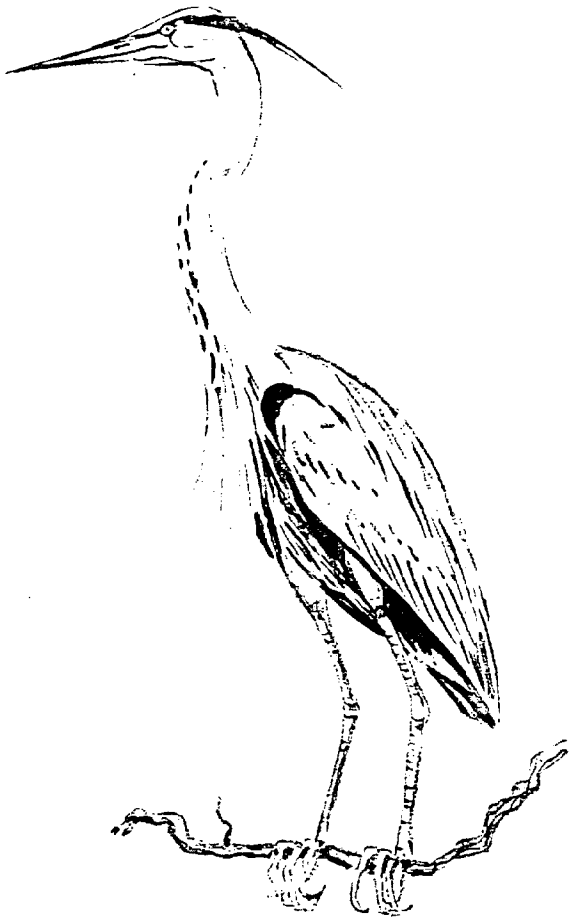


INTRODUCTION

This report analyzes the accessibility of the state's public coastal areas—the shore subject to the ebb and flow of the tide, the submerged lands beneath the bays and Gulf of Mexico, and all publicly owned uplands contiguous to coastal waters—and of those beaches, either publicly or privately owned, to which the public is guaranteed right of access under the Texas Open Beaches Act.

The analysis includes an assessment of current accessibility, means of meeting future recreational demand, and problems associated with the recreational use of shorefront areas to which the public had always had free access. The protection of these areas is discussed only insofar as it affects their accessibility and recreational use.

Information for this investigation was gathered through study of published reports and ongoing research projects; four meetings held by the Texas Coastal Management Program in Brownsville, Corpus Christi, Freeport, and Galveston during October, 1977; and correspondence and conversation with local government officials and with managers of state and federal parks and wildlife refuges.

A set of shorefront inventory charts and seven maps accompany this report. The maps depict areas of erosion and accretion, active and potential washover channels, easily accessible Gulf shoreline, boat ramps, and ownership of shorefront areas. The charts catalog information on road access, shoreline mileage, ownership of littoral property, land use, beach regulations and management, public amenities, and physical features of identifiable segments within each of the 12 Texas counties fronting on the Gulf of Mexico.

The Texas Open Beaches Act

The Texas Open Beaches Act (TEX. NAT. RES. CODE Sec. 61.011 et seq.) is the principal statutory guarantee of the public's right to use and have access to the public beaches of the state. It was passed in 1959 after private landowners attempted to close some Galveston Island beaches to the public, challenging a right the public had acquired through continuous use of the beaches, bays, and Gulf waters of Texas since the time of Spanish ownership.

The Open Beaches Act guarantees the public unrestricted access to and use of (1) the state-owned portion of Gulf beaches below the line of mean high tide and (2) the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf, but no more than 200 feet landward of the mean high tide line, in all areas where the public has acquired a right of use or easement by prescription, dedication, or continuous right.

The act reverses the usual burden of proof, shifting it from the public easement claimant to the landowner, in any case in which the public's right to use a beach is challenged. In any such suit, a showing that the beach area in question is between the mean low tide line and the line of vegetation is *prima facie* evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea;

(2) there has been imposed upon the area subject to proof of easement a prescriptive right or easement *in favor of the public* for ingress and egress to the sea. (emphasis added)

The provisions of the act do not apply to any beaches on barrier islands or peninsulas that are not accessible by public road or common carrier ferry. This exclusion currently applies to San Jose Island, Matagorda Island, and Matagorda Peninsula west of the Colorado River Channel. Of the total 377 miles of Texas shorefront facing the open Gulf, 293 miles are currently covered by the provisions of the act and open for public use.

On the remaining 84 miles of Texas Gulf shorefront, composed of the barrier islands and peninsula named above, the only clear public right is to use of the "wet" beach, the state-owned strip of tidally inundated beach between the lines of mean high tide and mean low tide (fig. 1). The public's right to use the "dry" beach (the beach above the line of mean high tide) along these shorefront areas has never been judicially determined, and the extent of the public's right to have access to either the wet beach or the dry beach from the landward side is unclear. However, at present, the private landowners in these areas do not attempt to exclude people who confine their activities to the beach itself.

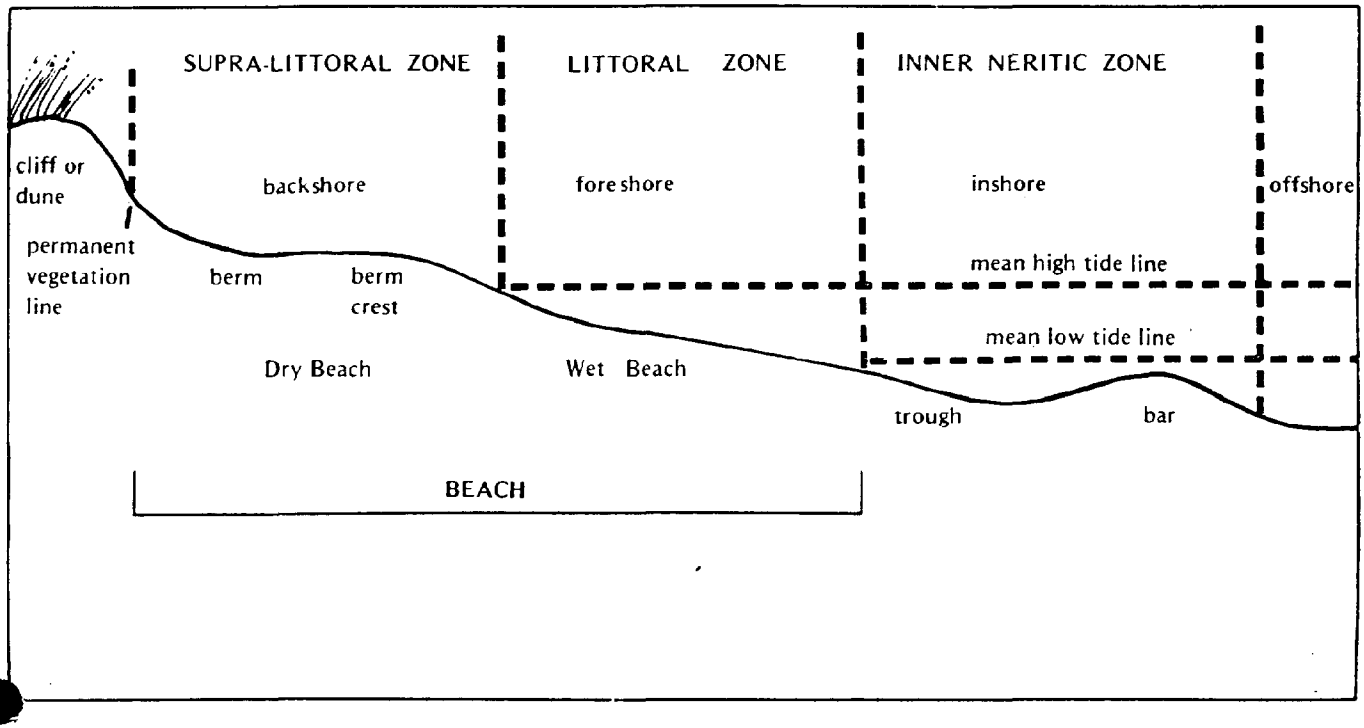
While the Texas Open Beaches Act guarantees the public's right of access only to Gulf beaches, subsequent state laws, culminating in the Coastal Public Lands Management Act of 1973, have protected the public's right to use and enjoy other public coastal areas of the state.

The Texas Outdoor Recreation Plan

Decisions concerning the number and location of new parks and recreational facilities in the Texas coastal area are based on Volume V of the ten-volume *Texas Outdoor Recreation Plan* (TORP). This plan, which covers all aspects of outdoor recreation in Texas, is the most thorough management program for outdoor recreation prepared by any state.

The TORP was developed as a result of a 1958 federal act establishing the Outdoor Recreation Re-

Figure 1

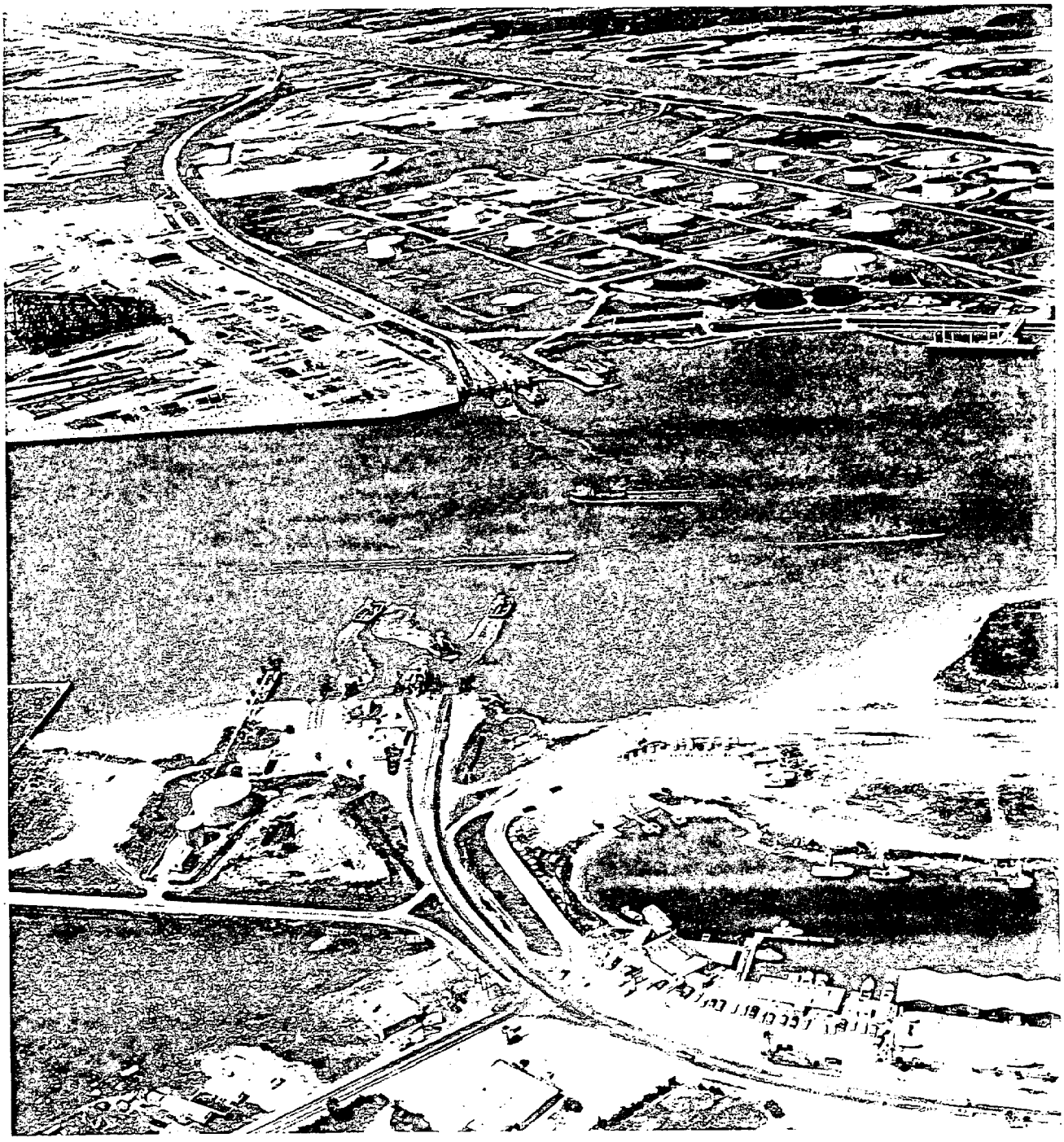


Geomorphological profile of a generalized beach as defined by the TCMP (adapted from Bird, 1968; King, 1972; and Komar, 1976–with modifications).

source Review Commission. In 1962, the commission issued a report entitled *Outdoor Recreation in America,* which led to the creation of the Bureau of Outdoor Recreation[1] and the federal Land and Water Conservation Fund. In order to obtain matching funds for recreational land acquisition and development from the Land and Water Conservation Fund, states were required to prepare an up-to-date, comprehensive outdoor recreation plan. The Texas Parks and Wildlife Department (TPWD), directed by the 59th Texas Legislature to develop such a plan, published the TORP in 1965. The plan was updated in 1968 and 1975. States are now required to update their plans every five years.

Information contained in the TORP has enabled the Texas Parks and Wildlife Department to allocate federal Land and Water Conservation Fund monies efficiently and equitably to local governments. It is also used to guide the allocation of the state's dedicated and general-revenue park and recreation funds.

Volume V, *Outdoor Recreation on the Texas Gulf Coast,* describes the coastal region as a whole, covering such topics as climate, economy, industry, transportation, wildlife, and ownership of coastal land areas. Each of the 17 coastal counties is described separately in terms of land area, major freshwater resources, climate, wildlife, population, economy, saltwater accessibility, and recreational opportunities and requirements. The extensive analysis of present and projected (through the year 2000) demand for coastal recreation is used by recreational planners at all levels of government to determine priorities for the acquisition and development of coastal recreational facilities.



PORT ARANSAS FERRY

For purposes of this analysis, shorefront areas will be classified as "Gulf shorefront," "bay shorefront," and "bay and Gulf waters."

The Gulf shorefront is the most seaward line along which the waters of the Gulf of Mexico meet the Texas upland. It is composed of the seaward faces of the Texas barrier islands and peninsulas, and the mainland shore along the Sabine and Brazos River deltas. The bay shorefront consists of the mainland-tidewater interface in all the bays and estuaries together with the landward shores of all the barrier islands and peninsulas of the Texas coast. The bay and Gulf waters include the waters of the bays and estuaries and the waters of the open Gulf of Mexico that lie within state boundaries.

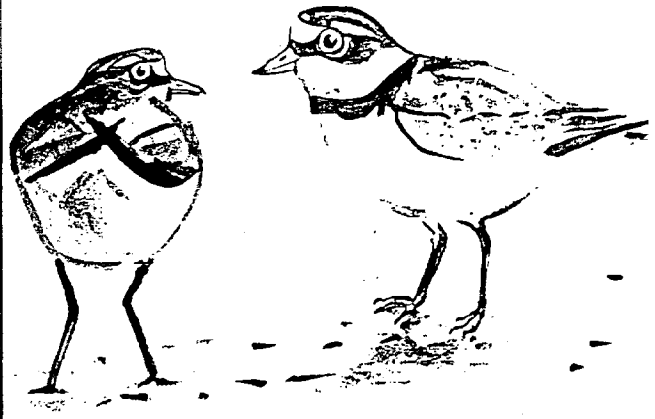
Definitions

Beach

The Texas Coastal Management Program defines "beach" as an area of high wave energy, consisting of an accumulation of unconsolidated sediment (sand, shell fragments, pebbles, or similar material) extending along the seaward shore of the Gulf of Mexico from the mean low tide line shoreward to some natural physiographic change such as a dune or sea cliff or to the point where permanent vegetation is established (fig. 1, p. 8).

According to this definition, almost all of the Texas shoreline that fronts on the waters of the open Gulf is classified as beach. The only Gulf shore areas excepted are the first 11 miles of shoreline west of Sabine Pass and one mile of the original Brazos River delta (U.S. Army Corps of Engineers, 1971). These 12 miles consist of coastal mud flats or marshes. Because of the constantly changing character of the Texas coastline, the one mile of mud flat at the old Brazos River delta has evolved into a sandy beach, while the beach located on the southern side of the new Brazos River delta could now be more aptly described as mud flat. All bay shores of the state, which consist primarily of mud flat, marsh, or bluff, are excluded by this definition, although 16 miles of bay shore may be described as "beach-like" (U.S. Army Corps of Engineers, 1971).

The Texas Coastal Management Program's definition of beach is consistent with the Open Beaches Act in that the act refers only to the Gulf shore and not to any of the bay shores. The definition also appears to be consistent with public opinion: in the public meetings on beach access held by the program in October, 1977, participants clearly regarded only the shorefront facing the open Gulf as beach.



CURRENT ACCESSIBILITY

Accessible

A coastal area is considered "accessible" if it is presumptively legally open for public access and use under the Open Beaches Act, if it is in public ownership and held open for public access and use, or if for any other reason the public has a legally protected right of access to and use of the area. This definition differs from the definition of accessible bay and Gulf frontage used in the TORP, which considers only physical accessibility. The Texas Coastal Management Program uses the term "accessible" to denote legal openness because this is more in keeping with the intent of the "Shorefront Access" element of the Coastal Zone Management Act Amendments of 1976.

The Gulf shorefront that is classified as accessible (legally open under the Open Beaches Act) is further defined by the terms "easily accessible" and "accessible with difficulty." These terms refer to physical ease of access.

A segment of Gulf shorefront is considered "easily accessible" if the general public can reach it with a reasonable expenditure of effort: via public road, by driving along the shore from a public road in a conventional two-wheel-drive vehicle, or by walking no more than one mile from a point which can be reached by a two-wheel-drive vehicle. This term corresponds to the TORP definition of "accessible Gulf shorefront."

A segment of Gulf shorefront is considered to be "accessible with difficulty" if it can be reached only by driving along the shorefront itself in a four-wheel-drive vehicle, by walking more than one mile, or by boat. Examples of such areas are the lower four-fifths of Padre Island National Seashore (accessible by four-wheel-drive vehicle, walking, or boat) and the shorefront area between the San Bernard River and the Brazos River (accessible by boat only).

The bay shorefront is legally open to the public between the lines of mean high and mean low tide by virtue of public ownership of the bays. Mileage figures for accessible bay shorefront in this report are taken from TORP estimates, based on access via known public roads.

The bay and Gulf waters are state-owned and legally open to public use. Their accessibility is assessed in terms of the availability and distribution of boat ramps and reliable navigation channels. Though closely associated with the use of the coastal waters, marinas and other boat storage facilities are not considered in the evaluation of the accessibility of bay and Gulf waters.

Inaccessible

A shorefront area is considered "inaccessible" if the public has no presumptive right of access to or use of it. The only areas on the Texas coast which fall into this category are the beaches of San Jose Island, Matagorda Island, and West Matagorda Peninsula—the areas excluded from coverage by the Open Beaches Act.

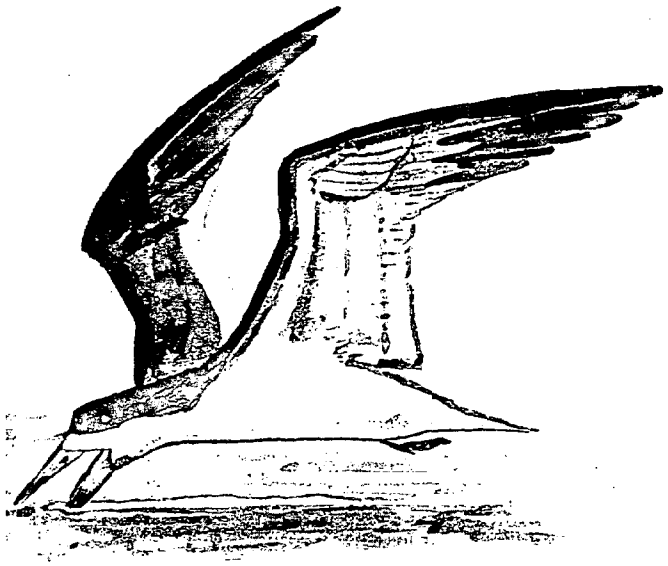
Publicly Owned Uplands

The public parks and refuges that lie adjacent to the coastal waters are, of course, all easily accessible to the public and are major avenues of access to the shorefront and waters of the Texas coast. They also ensure that these areas will not become inaccessible to the public as a result of private development which might eliminate accessways. Table 1 shows the total acreage of shorefront parks and refuges county by county; the maps that accompany this report show the locations of these areas.

A total of 478 miles of public land fronts on the Texas coastal waters, 128 miles along the Gulf shoreline and 350 miles along the bay shores. Approximately one-half of the publicly owned Gulf shoreland is in Padre Island National Seashore; the rest is well distributed throughout the coast (table 2).

Accessibility of Gulf Shorefront

The Texas Gulf shorefront extends 377 miles and includes 365 miles of beach.[2] One hundred seventy-three miles of the Texas Gulf shorefront



[2]Texas Coastal Management Program figures, calculated from maps prepared by the Bureau of Economic Geology at the University of Texas. The U.S. Army Corps of Engineers has calculated 373 miles of Texas Gulf shoreline.

Table 1

ACREAGE OF PUBLIC SALTWATER-ASSOCIATED PARKS AND REFUGES IN TEXAS COASTAL COUNTIES, 1971-1973 (TORP, VOL. V, 1975)

	Managing Entity						
	Federal			State*	Local		
County	Corps	NPS	USFWS	TPWD	Municipal	County	Total Acreage
Orange	0	0	0	0	0	0	0
Jefferson	0	0	0	15,221	2,562	0	17,783
Chambers	0	0	9,837	0	0	58	9,895
Harris	0	0	0	0	0	48	48
Galveston	172	0	0	1,922	497	1,791	4,382
Brazoria	0	0	25,039	878	0	466	26,383
Matagorda	0	0	0	0	4	0	4
Jackson	0	0	0	0	0	4	4
Calhoun	0	0	0	2	22	43	67
Refugio	0	0	0	0	8	0	8
Aransas	0	0	54,800	313	0	72	55,185
San Patricio	0	0	0	0	3	0	3
Nueces	0	0	0	3,570	154	548	4,272
Kleberg	0	37,056	0	0	0	25	37,081
Kenedy	0	87,027	0	0	0	0	87,027
Willacy	0	8,035	0	0	0	0	8,035
Cameron	0	0	38,198	218	0	387	38,803
TOTALS	172	132,118	127,874	22,124	3,250	3,442	288,980

*State acreages updated with 1978 data.

are easily accessible to the general public, and 120 miles are accessible with difficulty. The inaccessible areas—on San Jose Island, Matagorda Island, and West Matagorda Peninsula—comprise 84 miles of the Texas Gulf shoreline. Thus, a total of 293 miles (78 percent) of the Texas Gulf shoreline is accessible to the public (table 3).

In analyzing the adequacy of public access to the Gulf shorefront, the Texas Coastal Management Program concentrated on the easily accessible beaches because these areas afford the majority of beach recreational opportunity in the state. For purposes of this analysis, the coast is divided into upper, central and lower regions. Comparison of the regional distribution of easily accessible beaches (table 4) and recreational activity levels (fig. 2) indicates that there is a high percentage of easily accessible beach in those areas of the coast where the demand for recreational beaches is highest.

Table 2

OWNERSHIP OF THE TEXAS GULF SHOREFRONT IN LINEAR MILES (General Land Office, Gulf Shorefront Inventory, 1977)

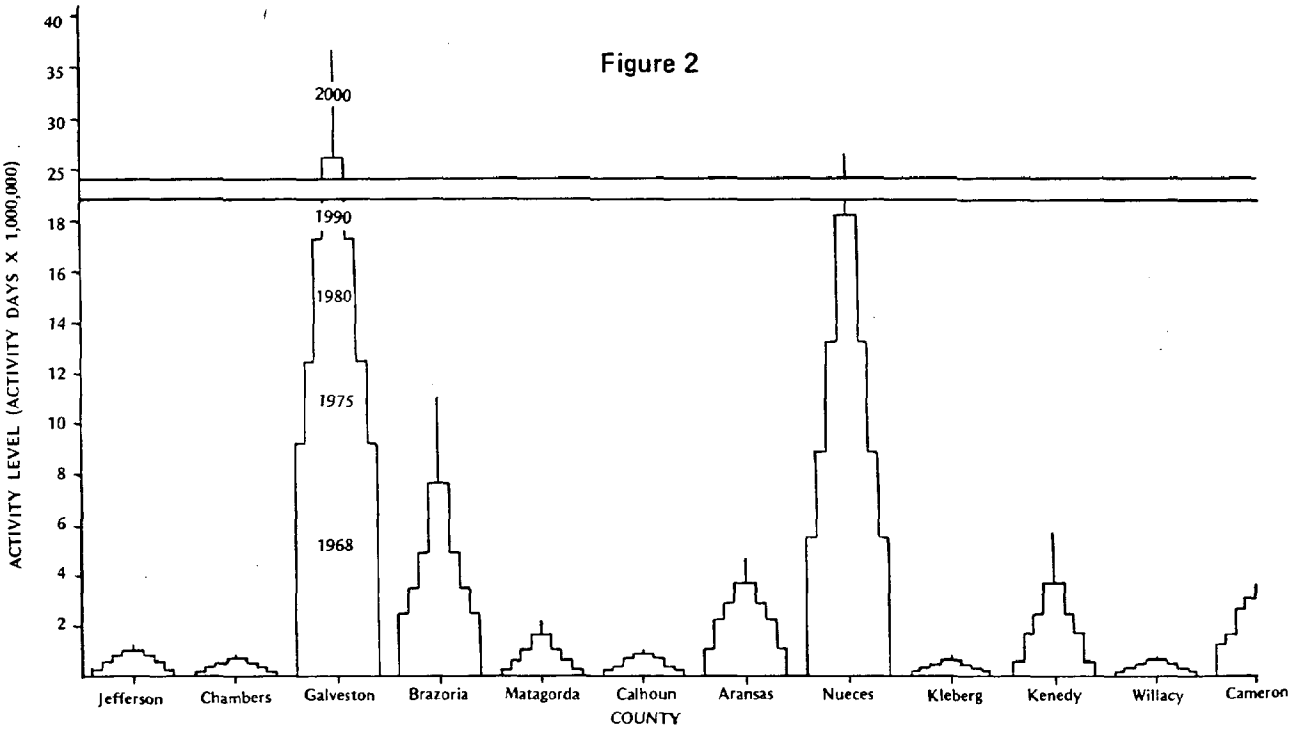
County	Littoral Ownership			
	Private	State	Federal	Local
Jefferson	27.8	5.5	–	–
Chambers	1.0	–	–	–
Galveston	47.5	1.6	–	9.3
Brazoria	23.1	1.0	6.2	(0.04)
Matagorda	60.9	0.2	–	–
Calhoun	9.9	–	27.5	–
Aransas	19.4	–	–	–
Nueces	13.0	5.8	–	1.9
Kleberg	6.8	–	15.5	–
Kenedy	–	–	48.1	–
Willacy	10.5	–	3.0	–
Cameron	28.3	1.2	–	1.6
TOTALS	248.2	15.3	100.3	12.8
Percent of Total Gulf Shoreline	65.9	4.1	26.6	3.4

Table 3

LINEAR MILES OF ACCESSIBLE GULF SHORELINE IN TEXAS BY COUNTIES (General Land Office, Gulf Shorefront Inventory, 1977)

County	Shoreline Mileage	
	Accessible	Total
Jefferson	33.3	33.3
Chambers	1.0	1.0
Galveston	58.4	58.4
Brazoria	30.3	30.3
Matagorda	33.5	61.1
Calhoun	-0-	37.4
Aransas	-0-	19.4
Nueces	20.7	20.7
Kleberg	22.3	22.3
Kenedy	48.1	48.1
Willacy	13.5	13.5
Cameron	31.1	31.1
TOTALS	292.6	376.6
Percent of Total Gulf Shoreline	77.6	100.0

Figure 2



Historical and projected recreational participation (fishing, surfing, swimming, camping, picnicking, walking, hiking, and nature study activities) on Gulf beaches in the Texas coastal counties (adapted from TPWD, 1977, based on TORP data).

Table 4

REGIONAL DISTRIBUTION OF ACCESSIBLE AND INACCESSIBLE TEXAS GULF SHOREFRONT IN LINEAR MILES (Adapted from Gulf Shorefront Inventory, GLO, 1977)

Region	Accessibility (miles of shorefront)			Total
	Easy	Difficult	Inaccessible	
Upper*	104	19	–	123
Mid	10	24	84	118
Lower	59	77	–	136
Totals	173	120	84	377
Percent of Total Gulf Shoreline	46	32	22	100

*The upper coastal region has 12 miles of non-beach shorefront, of which 2 miles are easily accessible and 10 miles are accessible with difficulty.

The upper coastal region, which includes Jefferson, Chambers, Galveston, Brazoria, Orange, and Harris Counties, has the highest population (2,348,166 in 1970) and the highest level of recreational activity. This region also has the greatest amount of easily accessible Gulf shorefront—104 miles of the total 123 miles of shorefront along Jefferson, Chambers, Galveston, and Brazoria Counties. There are 12 miles of non-beach in the upper region, of which two miles are classified as easily accessible. Of the 111 miles of beach shorefront along the upper coast, 102 miles are classified as easily accessible to the general public. Only nine miles of beach in the upper coastal region—all of it south of the Brazos River mouth—are classified as accessible with difficulty.

The central region, which consists of Matagorda, Calhoun, Aransas, Jackson, and Refugio Counties, contains 118 miles of Gulf shorefront. All of the shorefront along Matagorda, Calhoun, and Aransas Counties is beach. Only 10 miles, all in Matagorda County, meet the criteria of easy accessibility; 24 miles are accessible with difficulty; and 84 miles are inaccessible. The total population of the five-county region is low (77,115 in 1970), as are recreational levels (fig. 2, p. 14). Therefore, even this small supply of easily accessible beach appears adequate to meet current recreational demand in the central coastal region. However, as the region grows and recreationists from the more populous regions seek less crowded beaches, additional easily accessible beach may be needed.

The lower coastal region includes San Patricio, Nueces, Kleberg, Kenedy, Willacy, and Cameron Counties. Of 136 miles of Gulf shorefront in this region (all of which is beach), 59 miles are easily accessible. The remaining 77 miles of beach can be reached via four-wheel-drive vehicle or walking; 54 miles of this difficult-access area are within Padre Island National Seashore. Current recreational activity levels are high for the regional population (474,614 in 1970), which seems to indicate that a substantial number of visitors come from outside the region. The easily accessible Gulf beach is located near the major population and tourist centers of Corpus Christi and South Padre Island, and thus far has proven adequate to meet the regional demand. In the future, additional road access may be needed north of the city of South Padre Island as the local population and tourist industry of that area grow.

The recreational activity levels for Kleberg and Kenedy Counties presented in figure 2 (p. 14) are in accordance with data contained in the TORP. However, information obtained from those familiar with the lower coastal region indicates that Kleberg County has much more recreational activity than the TORP figures show, particularly on the Gulf shorefront at Malaquite Beach (the main activity center of Padre Island National Seashore). Conversely, Kenedy County, where the Gulf shorefront can be reached only by four-wheel-drive vehicle, probably sustains less recreational activity than the TORP figures indicate. These discrepancies appear to be due to imperfections in the data collection and processing procedures used by the Texas Parks and Wildlife Department in preparing the coastal volume of the TORP. Except for these two counties, TORP figures on coastal recreational activity levels appear to be valid and useful for planning.

Accessibility of Bay Shorefront

The 2,125 miles (U.S. Army Corps of Engineers, 1971) of bay shore along the Texas coast is almost entirely a combination of marsh, tidal flat, and bluff. Wave energy in Texas bays is too low to create sandy, devegetated dry beach areas. The U.S. Army Corps of Engineers Shoreline Study (1971) found that only 16 miles of Texas bay shore is characterized by beach-like unconsolidated sediment. Consequently, very little of the Texas bay shore is either amenable to or desirable for the

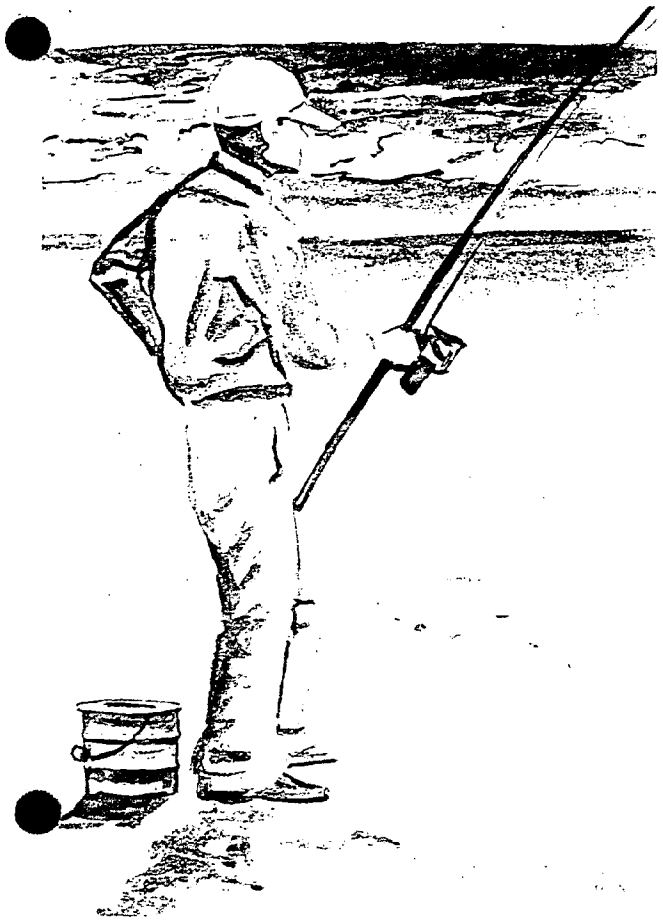
same sort of intensive and diversified recreational activities that occur on the Gulf beaches. The bay shores of Texas, therefore, have never been subject to the same sort of public demand and general public use as the beaches fronting the open Gulf. Bay shorefront recreation is largely limited to fishing (either from the bank or by wading the shallows) and waterfowl hunting.

The TORP states that 529 miles of bay frontage is easily accessible to the public through a combination of publicly owned parks and refuges and public road rights-of-way. Most of the 16 miles of beach-like bay shore has been acquired by local governments for public parks, including Sylvan Beach (Harris County), Magnolia Beach (Calhoun County), and Loyola Beach (Kleberg County).

Generally, the 529 miles of easily accessible bay shore has been adequate to meet current recreational needs according to the local officials, recreational planners, and residents of the bay areas.

Accessibility of Bay and Gulf Waters

The Texas coastal submerged lands lying beneath the bays and Gulf, as well as the waters themselves, are publicly owned. There are 15 major bays, which cover 1,537,000 acres. Connecting these bays are the Gulf Intracoastal Waterway (426 miles) and its tributary channels, which provide safe daytime navigation for both small craft and deep-draft boats (TORP, 1975). The state-owned Gulf area, which extends out to the 3-marine league line (10.35 miles), comprises approximately 2,508,000 acres.



The bay waters are extensively used for recreational activities—boat fishing, pleasure boating, skiing, and pier and jetty fishing. Access to the bays is provided through boat ramps, upland public park areas, easily accessible bay shore, and a variety of private commercial facilities open to the public. Of these, boat ramps (both public and commercial) are the primary means of access.

In 1973, the Texas Parks and Wildlife Department identified 278 coastal boat ramp lanes available to the public (TORP, 1975). The department predicted that 319 additional ramp lanes would be needed to meet the 1975 demand, and 147 more would be required by 1980. The TPWD's inventory of coastal facilities, which includes boat ramps, has not been updated since 1973. Since there are no other recent inventories, it is not possible to determine whether demands projected for 1975 have been met. Information obtained from other sources—council-of-governments publications, county maps, and a Texas A&M Sea Grant publication entitled *A Recreational Guide to the Central Texas Coast* (1974)—indicates that publicly available boat ramps are fairly well distributed along the coast. However, statements and information received in the course of this study indicate that there is a shortage of boat ramps throughout the coast.

The 2.5 million acres of Gulf waters within the state's jurisdiction are used by the public primarily for fishing (surf and offshore) and boating. Access for surf fishing and swimming is obtained via the public beach. The offshore areas of the Gulf are reached from protected bay shore harbors through the natural passes and river mouths that breach the barrier islands and mainland coast (though navigation is sometimes difficult even for small boats) and through the channels maintained for deep-draft navigation.

Twelve channels provide access to the open Gulf: (1) the maintained channels—Sabine Pass, Bolivar Roads, the Freeport Channel, the Colorado River Channel, the Matagorda Ship Channel, Aransas Pass, the Port Mansfield Channel, and Brazos-Santiago Pass; and (2) the natural channels—San Luis Pass, the Brazos River, Pass Cavallo, and the Rio Grande. Boats used in the Gulf are generally large sailing and fishing craft, which are moored in the numerous bayside marinas along the coast. Small boats can be launched from the Gulf beach during calm weather, but this means of access tends to be neither reliable nor safe. Overall, access to the Gulf waters appears to be adequate for recreational boating and fishing throughout the Texas coast.

Gulf Shorefront

Public access to the Gulf shorefront is protected by the Texas Open Beaches Act. The act is enforced by the state attorney general, county attorneys, district attorneys, and criminal district attorneys. Each of these officers is empowered to seek a court order or injuction to have any physical obstruction or barrier removed from a public beach, or to prohibit any other restraint or interference which restricts reasonable free access to a useable beach.

Penalties for violation of the Open Beaches Act may be assessed under TEX. NAT. RES. CODE Sec. 61.014. This statute makes it unlawful to claim, by written or oral communication, that a public beach or accessway is closed to the public. The attorney general or appropriate local legal officer may assess a fine of $10 to $200 for each day of violation.

Early judicial tests of the Open Beaches Act by littoral landowners failed to either invalidate the act or find any beach covered by the act to be closed to the public. (See *Seaway Co.* v. *Attorney General,* 375 SW2 923; and *Galveston East Beach,* v. *State,* Cause No. 87,893, in the 10th Judicial District, Galveston County.) These early failures, combined with a policy of rigorous enforcement by the state attorney general and local legal officers, have discouraged any subsequent attempts to close a beach covered by the act.

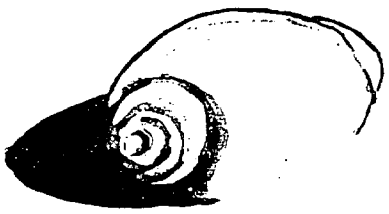
Bay Shorefront

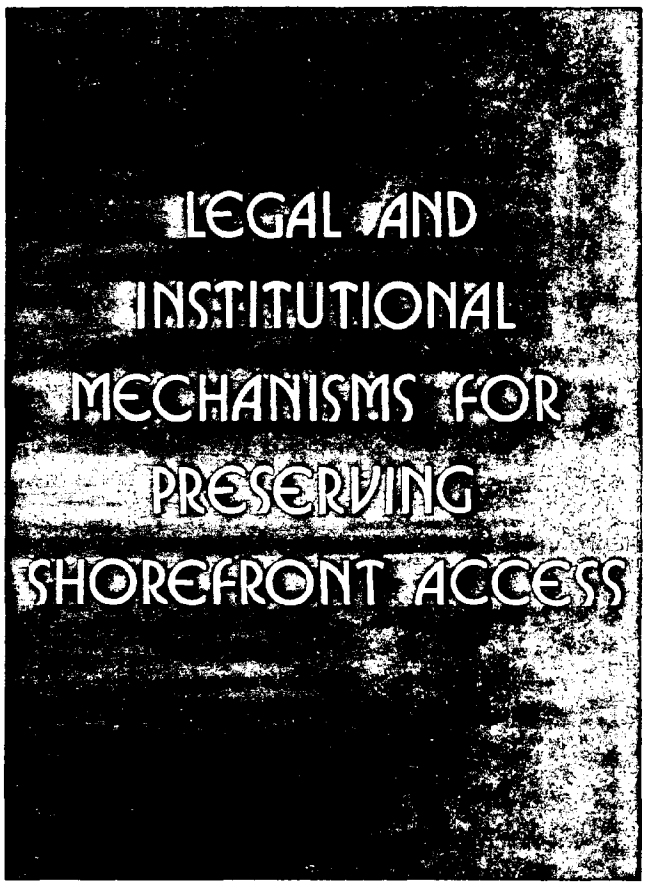
Access to public bayshore areas through federal, state, county, or city parks and refuges is protected by the various public entities that own and operate those recreational facilities.

Bay shore access that is afforded by public highway rights-of-way is protected by the Texas State Department of Highways and Public Transportation (SDHPT). The SDHPT adheres to a policy of allowing such rights-of-way to be used for access to the bay shores as long as such usage does not create a hazard to public safety. This policy was strengthened by the passage of House Concurrent Resolution 56 during the 1977 session of the Texas Legislature. The resolution expressed a state policy that all state agencies and institutions possessing substantial areas of undeveloped land should, to the fullest extent possible, make such lands available to the public for outdoor recreational use.

Bay Waters

The bay waters of the state are publicly owned, and public use of them is a legally protected right. Because access to the bays is afforded through a combination of publicly owned bay shore areas,





public roads, and public and commercial boat ramps, protection of access to these upland areas also protects access to the bay waters.

Public access to the bay waters could be threatened if the number of types of commercial activities permitted effectively excluded the public from large areas of the bays. However, the bay waters have been kept open for public use by the School Land Board's adherence to the policies of the Coastal Public Lands Management Act of 1973 (TEX. NAT. RES. CODE Sec. 33.001).

Activities permitted in the state's bays fall into five categories: (1) those related to oil and gas development, (2) those related to the protection of fish and wildlife, (3) those related to public recreation, (4) those related to navigation, and (5) those related to commercial fishing.

Oil and gas development (see TEX. NAT. RES. CODE Sec. 52.011), the preservation of fish and wildlife habitat (see TEX. NAT. RES. CODE Sec. 33.105), and the development of public recreational facilities (see TEX. NAT. RES. CODE Sec. 33.105) are all subject to the authority of the School Land Board and governed by the policies of the Coastal Public Lands Management Act of 1973 (TEX. NAT. RES. CODE Sec. 33.001-33.176).

The Coastal Public Lands Management Act states that the surface estate in the coastal public lands is an important and valuable asset dedicated to the Permanent School Fund and declares that it shall be managed pursuant to the following policies, among others:

(a) The natural resources of the surface estate in coastal public lands shall be preserved. *Such resources shall be construed to include the natural aesthetic values of those areas and the value of such areas in their natural state for the protection and nurture of all types of marine life and wildlife.*

(b) *Uses which the public at large may enjoy and in which they may participate shall take priority over those uses which are limited to fewer individuals.*

(c) The public interest in navigation in the intracoastal waters shall be protected.

(d) *Utilization and development of the surface estate in such lands shall not be allowed unless the public interest as expressed by this Act is not significantly impaired thereby.*

(f) *For the purposes of this Act, the surface estate in coastal public lands shall not be alienated except by the granting of leaseholds and lesser interests therein, and by exchanges of coastal public lands for littoral property as provided therein.* [emphasis added]

Navigation-related activities in Texas bay waters are conducted by specially created navigation districts (see TEX. WATER CODE Sec. 60.001). These districts have acquired rights to use certain submerged bay lands for navigation-related purposes. Most of the granting instruments conveying these rights have specifically reserved the right of the public to hunt and fish on these lands and waters. Although some of the instruments do not specifically reserve such rights, these lands and waters have been uniformly regarded as open for such public use. Navigation district activities have therefore not constituted an impediment to public access or use. In fact, the creation of channels and harbors has in most cases increased the accessibility of bay waters.

Commercial fishing in Texas waters is regulated by the Texas Parks and Wildlife Department (TEX. PARKS AND WILDLIFE CODE Sec. 47.001 et seq.) for the purpose of

> . . . the conservation of an ample supply of wildlife resources in the places covered by this chapter to insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources. This chapter provides a flexible law to enable the commission to deal effectively with changing conditions to prevent depletion and waste of wildlife resources.

Gulf Waters

Gulf waters within the three-marine-league jurisdiction of Texas are also the property of the state (TEX. NAT. RES. CODE Sec. 11.012). These waters, like bay waters, are considered by Texas courts to be held in trust by the legislature for all the people. Consequently, only the legislature, by specific enactment, may grant these lands to a private individual (*City of Galveston* v. *Menard,* 23 Tex. 349). The General Land Office, as manager of the Texas Gulf water bottoms, therefore follows the policy of granting only the interests authorized to be granted by the legislature. These interests have been limited almost entirely to three kinds: (1) patents for navigational purposes, (2) leases for oil and gas development, and (3) easements for pipelines. None of these interests interferes with public use of the Gulf waters, and navigational channels and offshore oil platforms (which attract fish) have usually improved public access to and enjoyment of the Gulf waters.

The rapid growth of the Texas coastal population, combined with an increase in the number of coastal visitors from other parts of the state and nation, will create a demand for additional shorefront recreational space and improved access. This demand may be met by:

1. making more easily accessible those public coastal areas that are now accessible with difficulty by providing new access roads and boat ramps;
2. providing public access roads or ferries to areas that are currently inaccessible (not covered by the Open Beaches Act);
3. buying more public parkland adjacent to the shorefront; or
4. banning or otherwise controlling vehicles on heavily used beaches, either entirely or during peak use periods.

The last alternative, banning or otherwise controlling vehicles on the beach, must be implemented in such a way that it does not in fact reduce ease of access by making it expensive or inconvenient for the average beach visitor to reach and use the beach.

CHAPTER EIGHT

Shoreline Access

This chapter represents a portion of the development of the shorefront access and protection element of the Virgin Islands CZMP (pursuant to Section 305(b) (7), CZMA Amendment of 1976, P.L. 94-370). This chapter focuses on the shorefront access aspect. It presents a brief legal analysis of the shoreline access issue, defines shoreline, outlines enforceable policies, identifies critical access areas and identifies funding sources. The development of a process for the protection of shoreline areas of environmental, aesthetic, recreational historical, cultural and ecological value are demonstrated in other sections of the Program.

Goals and policies related to shorefront protection are contained in Chapter Five, Authorities and Organizations of the program and Sections 903 and 906 of the Virgin Islands Coastal Zone Management Act (VICZMA). Designation of areas for shorefront protection and guidelines on use are found in Chapter Six, Areas of Particular Concern. The method for designating shorefront areas as areas of particular concern or as areas for preservation and restoration is also outlined in Chapter Six and Section 909 of the VICZMA.

The protection needs of the offshore islands and cays have been addressed by the Virgin Islands Program. Chapter Seven contains guidelines for their use and protection. Chapter Six designates certain islands as areas of particular concern and outlines further use/protection guidelines. The Section 903 Goals and Findings and Section 906 Policies speak to the islands protection issue.

BACKGROUND OF THE PROBLEM

The importance of the shoreline to the lives of the people of the Virgin Islands is clear. However, in the last quarter century, the patterns of shoreline use in the Territory have been drastically altered. Several beaches and shoreline areas available to many users have disappeared due to dredging, the mining of sand, landfill operations, or commercial developments. Some have been severely altered as a result of the secondary effects of shoreline development. Additionally, access to beaches has been intentionally or unintentionally restricted by shorefront development. Accordingly, shoreline and particularly beach access has developed into an important social, cultural, political, and legal issue in recent years.

Over the past several years, considerable legislative and judicial attention has been devoted to preserving and establishing the public's right to utilize the shorelines of the Virgin Islands. Considerably less attention and energy has been directed to providing public access rights to the shoreline or towards resolving a variety of problems associated with increased public use (congestion, parking, safety, liability, maintenance, etc.)

The principal issue involved with shoreline access is that of the public's right to free and unrestricted utilization of the recreational beaches of the Virgin Islands. The territorial government took action to remedy the latter situation by enacting the "Open Shorelines Act" (No. 3063) in 1971. Essentially, the Act affirms the public's right to use the shorelines of the islands. The shoreline, as defined by the Act, includes "the area along the coastline ... from the seaward line of low tide, running inland a distance of 50 feet; or to the extreme seaward boundary of natural vegetation which spreads continuously inland, or to a natural barrier; whichever is the shortest distance.

While this legislation creates a "zone of public use", and assures seaward access and lateral use and access along the shoreline, it does not assure landward access. An upland property owner is not required to permit beachgoers to cross his land to reach the zone of public use. Because of the terrain, and the pattern of development in the islands, landward access is often a critical factor in beach use.

Even when landward access is available (as is generally true of hotels), development may significantly alter the character of the beach not only in an aesthetic sense, but also in terms of the numbers and types of users it attracts.

The declining availability of prime beaches and other amenity areas places an increased burden on those remaining. Some beaches are so heavily used that congestion and parking are becoming problems, and use conflicts among swimmers, divers, picknickers, fishermen and boatsmen arises. In many areas unsanitary, unsightly, even dangerous, conditions prevail. With the exception of the few public facilities, the Virgin Islands government has not assumed general responsibility for maintenance or liability. Since resident and tourist populations are growing steadily, increasing demand is inevitable and can be expected to exacerbate these shoreline access and use problems.

MEANS OF ACQUIRING ACCESS

The Virgin Islands Government can acquire public accessways and shoreline areas in a variety of ways. These include: (1) acquiring shoreline areas and accessways via the

expenditure of public funds or donations; (2) seeking judicial confirmation of existing access and use rights via implied dedication or customary use; and (3) obtaining accessways to shoreline areas and/or facilities as a condition of granting certain development permits or tax incentives. The principal attributes of each type of action are outlined below:

(1) ACQUISITION THROUGH EXPENDITURE OF PUBLIC FUNDS

One means by which public access can be provided is for the Virgin Islands government to acquire such access by fee simple purchase or gifts. Such direct action, although usually requiring the expenditure of public funds, affords certain advantages that the other means do not. For example, acquisition of access can be effected with less time or delay than would be involved in acquiring access by judicial determination. Similarly, planned acquisitions could implement broader recreation programs or plans and could be planned and coordinated with the ongoing programs of other territorial agencies. Such acquisitions could be made in fee simple ownership or in lesser interests such as easements.

Purchase in fee simple would vest all ownership rights in the Territorial Government. This is the most expensive option and is efficient only where intensive use is anticipated and the ownership of the beach uplands would serve some useful public purpose. Where only moderate use and no further public facility development are intended, there is little point in increasing public holdings of economically unproductive land.

The Virgin Islands government may secure an easement (that is, a particular portion of the ownership rights) on beachfront land without assuming ownership. In this case, an easement would consist of the right of the public to cross the beach uplands, or a specified portion to reach the shoreline. Easements may be acquired by gift, negotiation, condemnation, or required as a condition for a development permit.

Securing beach access easements assures the public of its right to use the shoreline, and allows the economic use of the uplands to remain in the private sector. In particular, it facilitates beach access in areas which are already developed. The concept of purchasing easements has been relatively untried in the Virgin Islands, and it is difficult to estimate cost, in advance.

Easements or fee simple ownership also may be obtained through gifts, but for the most part will require purchase through negotiation or condemnation. The former solutions are preferrable, and the revised Organic Act of 1954, does provide the Legislature with the authority to enact legislation for the condemnation of lands, or interest in such

lands, for public purposes. There would be little doubt that a properly drawn statute that provided for condemnation of access easements to the shoreline would be constitutional. Furthermore, acquisitions pursuant to its authority would be similarly valid.

(2) JUDICIAL DETERMINATION

There are two primary theories supporting the creation of public access rights over private land of non-consenting landowners. One theory is implied dedication. Closely akin to this theory is the doctrine of adverse possession and prescription which, for the purpose of this discussion, will be analyzed in the same manner as implied dedication. The other theory is customary use.

ADVERSE POSSESSION, PRESCRIPTION, IMPLIED DEDICATION

Adverse possession, prescription, and implied dedication are legal doctrines which recognize that under certain circumstances, rights to land may be obtained through use and may be applied to maintain public access to privately held shoreline areas. To secure this right under adverse possession and prescription, the use must be actual, adverse, continuous and uninterrupted on the lands of another, and either be conducted with the knowledge of the owner, or so open, notorious, and visible, that knowledge of the use is implied to the owner.

There are subtle, if not clearly agreed upon, distinctions between adverse possession and prescription. In adverse possession, the claimant must be in "possession" of land, while under prescription the claimant may have the use or privilege without possession. Furthermore, under the doctrine of prescription the owner may enjoy the use in common with the claimant. With adverse possession he may not.[1] The Virgin Islands Code (Title 28, Chapter 1, Section 11) statutorily defines adverse possession. The Code recognizes that exclusive actual, physical, adverse, continuous or notorious possession of real property after fifteen years or more shall be conclusively presumed to give title thereto, except as against the government.

The theory of implied dedication is also a common law doctrine and, as in adverse possession and prescription, the key issue is whether a landowner by his conduct (expressed implied actions) has indicated an intent to dedicate his land for public use, and that the public use

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[1] Downing v Beid (Fla. Supreme Court 1958) 100 Sd. 2nd, 57,64,65

itself is evidence of the public's intention to accept the dedication offered. The landowner's inaction may be evidence of his acquiescence in the public use and thus of his intention to donate land. A recent California Supreme Court decision recognized and affirmed the importance of adverse public use, rather than the owner's donative intent, as being the critical doctrinal element supporting the conclusion of public use.[2] The court allowed the dedication of use only after five years of public use.

Whether the theory is implied dedication or prescriptive rights the results are the same: the public, by using the property in a particular way for a particular purpose, in a manner adverse to the true owner for a period of five years, acquires the right to continue to use such property, regardless of the landowner's later intent or actions. In light of recent litigation, implied dedication will necessitate the documentation of access or use over a period of time. While this procedure may require little capital outlay, there may be lengthy legal procedures, thus making this option less satisfactory than others.

CUSTOMARY USE

Customary use (or customary right) is a legal doctrine which arose in medieval England and which until recently had little application in the United States. The doctrine establishes that customary use of land peaceably engaged, consensual or not, for a long period of time without a claim of superior right interrupting such use, establishes public rights in such land without regard to the record title held by private landowners.

Customary right arose in favor of the community and was strictly limited to a small geographic location. Examples of local customary rights included the right to place nets on a certain beach, to use a certain green, or pasture animals in a certain field. Traditionally, only easements of passage or use are obtained through custom. Recent court rulings, however, have expanded this doctrine. The Oregon Supreme Court ruled that the doctrine applied to the entire State coastline, rather than just the particular property under litigation.[3]

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[2] Dietz v King and Gion v City of Santa Cruz - The Court upheld that there had been an implied dedication of an easement for recreational purposes because the public had used the land for more than five years with "knowledge of the owner, without asking or receiving permission to do so."

[3] State ex rel. Thornton V., V, Hay, 462 P. 2nd 67 (1969).

The doctrine of customary use of beaches was recognized as being applicable in the Virgin Islands in the recent decision of the United States of America and Government of the Virgin Islands v St. Thomas Beach Resorts, Inc., VIDC Number 74-339, affirmed by the Third Circuit of Appeals, Number 75-1242 (3d Cir., 1967), more commonly known as the Bolongo Beach case. The court upheld the constitutionality of the Open Shorelines Act which sought to recognize and maintain this public right of use. However, it did not address the issue of rights to traverse private property for the purpose of gaining access to the shoreline.

Securing beach access through the customary use doctrine would require no capital outlay on the part of the Virgin Islands Government. It would, however, require lengthy court procedures and a documented history of public use over a long period of time. This action has one built-in advantage. Culturally important beaches which have sustained public usage over a period of years are those properties for which a case for customary usage can be most easily documented. However, while it may be feasible to use this doctrine to secure the use of the shoreline, its applicability for assuring access is questionable.

(3) OTHER MEANS OF ACQUIRING ACCESS

Subdivision and zoning regulations offer two possible means of obtaining public accessways to the shoreline. Since private development of uplands along the coastline may often impair public shoreline access, developers can be required to dedicate public easements for beach access where the subdivision would block existing or potential shoreline access. Regulations can be drafted to require applicants to dedicate lands (and improvements) to public use as a pre-condition to receiving development approval.

The rationale for requiring such dedications has been clearly upheld by most courts in the United States. The process and result of development creates demands on existing public facilities, or for new facilities, which should be satisfied in whole, or in part, by the developer. Although these requirements are usually applied in the context of parks, playgrounds, streets or drainage facilities, and sometimes even schools, this rationale can be applied to providing public access to the shoreline as well. Indeed, whether the specific rationale is that the purchaser will benefit from the dedication (or improvements) as well as the general public, or that the development of the land will inevitably produce increased pressures on such resources or preclude public use the result is that reasonable public dedications can be required. This theory is most appropriate in the subdivision context

where the process of subdivision clearly justifies and provides a rationale for such dedications. However, such dedications can also be required as part of a rezoning application, or grant of a conditional use or special exception permit.

Although there are advantages and disadvantages to such requirements, the advantages, particularly in the Virgin Islands, are so significant that dedication requirements could be the critical factor in insuring a successful beach (or shoreline) access program.

This means of acquiring public accessways can be utilized by the Virgin Islands Government through the Industrial Incentive Act (Title 29, Chapter 12) and VICZMA the Coastal Zone Management Act of 1978 (Title 12, Chapter 21). These statutes provide means by which the dedication of accessways may be required as a condition of receiving tax exemption status or a coastal zone permit. The relevant provisions of these Acts are discussed below.

SHORELINE ACCESS POLICIES

Several Virgin Islands laws contain enforceable shorefront access policies. The most notable is the provision in the "Open Shorelines Act" which provides for lateral public access along the coastline from the line of low tide running inland a distance of 50 feet or the line of natural vegetation or natural barrier.

The Industrial Development Law provides a stipulation that as a requirement for tax exemption each business with a coastal site "grant to the Government of the Virgin Islands a perpetual easement upon and across such land to the beach or shoreline to provide for an unrestricted access thereto to the public".

The Virgin Islands Coastal Zone Management Act of 1978 is explicit in its enuciation of enforceable access policy. In the Act the legislature determined that the basic goals (section 903) of the Virgin Islands for its coastal zone are to:

> (6) preserve what has been a tradition and protect what has become a right of the public by insuring that the public, individually and collectively, has and shall continue to have the right to use and enjoy the shorelines and to maximize public access to and along the shorelines consistent with constitutionally protected rights of private property owners;
>
> (7) promote and provide affordable and diverse public recreation opportunities in the coastal zone for all residents of the Virgin Islands through acquisition, development, and restoration of areas consistent with sound resource conservation principles;

In Section 906 the Legislature has declared it a policy;

> (5) To foster, protect, improve, and ensure optimum access to, and recreational opportunities at, the shoreline for all the people, consistent with public rights, constitutionally protected rights of private property owners, and the need to protect natural resources from overuse.

(6) Development shall not interfere with the public's right of access to the sea where acquired through customary use, legislative authorization or dedication, including without limitation the use of beaches to the landward extent of the shoreline.

The Coastal Act not only provides for the dedication of "perpendicular", or "landward" access, but outlines a procedure for assessing whether an access easement is appropriate. Before requiring the dedication, the Commission or Commissioner is directed to consider the five criteria found in policy (7) below.

(7) The Commission may require that public access from the nearest public roadway to the shoreline be dedicated in land subdivisions or in new development projects requiring a major coastal zone permit. Factors to be considered in requiring such dedication of public access include(i) whether it is consistent with public safety or protection of fragile coastal zone resources; (ii) whether adequate public access exists nearby; (iii) whether existing or proposed uses or development would be adversely affected; (iv) the type of shoreline and its appropriate potential recreational, educational, and scientific uses; and (v) the likelihood of trespass on private property resulting from such access and the availability of reasonable means for avoiding such treapass. Dedicated accessways shall not to required to be opened to public use until a public agency or private association agrees to accept responsibility for providing off-street parking areas and for maintenance and liability of the accessway, shoreline, and beach areas.

The Act further clarifies the conditions placed upon access by stating:

Nothing in this subsection shall be construed as restricting existing public access nor shall it excuse the performance of duties and responsibilities of public agencies as provided by law to acquire or provide public access to the shoreline. This provision shall not be construed as requiring free use of private facilities on land adjoining any beach or shoreline but only as requiring access to the beach or shoreline to the general public as a condition precedent to the grant of a coastal zone permit.

BEACH INVENTORY

In addition to policies which insure shorefront access where appropriate, public sentiment has directed the management program to focus on securing access and providing adequate services and/or facilities in those areas having the greatest need. Consequently, attention should be directed toward ensuring that some of the higher quality undeveloped beaches be acquired and developed as public beaches. If conveniently located and properly developed with attractive facilities, such public beaches can attract and accommodate a larger share of resident demand. Establishing good public beaches should ease some of the pressure on other areas, would make it easier for the government to provide for maintenance, resolve conflicts among user groups, and insure that some undeveloped beaches are preserved for the future.

Not all of these objectives can be attained by enforcing the "zone of public use" provision of the Open Shorelines Act or the easement dedications under the Industrial Incentive and Coastal Zone Management Acts. The construction of public facilities and preservation of undeveloped beaches will require not only the acquisition of accessways, but sufficient upland property. In an effort to identify particular shorefront areas where either access should be acquired, or beach and upland property purchased, the Coastal Management Program looked to a study by the Department of Conservation and Cultural Affairs.

In the spring of 1976, the Office of Planning and Development of the Department of Conservation and Cultural Affairs, in conjunction with the CZMP study of the Virgin Island Planning Office, undertook a complete field inventory of Virgin Islands beaches. An evaluation of this type was mandated by the Open Shorelines Act. The study was undertaken to help determine the area where landward access and major public beaches should be established.

The beach inventory procedures were developed to assess the particular conditions in the Virgin Islands. Objective physical, recreational, and land use data for each beach as well as an evaluation of the scenic and environmental quality of the site was recorded. The beach inventory form is included in Appendix F, and copy of the inventory for Cruz Bay, St. John, is included as an example of the manner in which information was collected.

BEACH EVALUATION AND RECOMMENDED CRITICAL AREAS

The criteria which were used to identify and evaluate the critical shoreline areas are discussed below.

CRITERIA FOR EVALUATION BEACHES

1. Accessibility - Beaches were evaluated on the basis of proximity to population concentrations, and by the presence of an access road usable by the general public. This factor will prove of importance since the territorial government may become responsible for beach maintenance.

2. Beach Quality - Evaluation of beach quality was based on factors such as the area of the beach, the beach material, the type and appearance of shoreline vegetation, the attractiveness of the user's view from the beach, and the beach's scenic quality. These factors are complementary rather than cumulative. Therefore, a very attractive small beach may receive a heavier weighting than a large uninteresting one.

3. Potential for Multiple Activities - In addition to swimming, the potential of each beach for other water-related activities, such as snorkeling, offshore diving, or pleasure boating was noted. The inventory of land-based activities included picnicking, tidal pool walking, and the possible educational opportunities offered by historic ruin or a salt pond. Beaches which offer users a choice of activities were rated more highly than "swimming only" beaches.

4. Environmental Damage Potential - At several of the beaches inventoried, the existing land use was natural open space. Very often these areas constitute extremely fragile offshore and onshore environments. This is expecially true of several beaches, in northeast St. Croix which cannot sustain heavy use without environmental damage.

5. The Multiple Effects - Priority attention was given to the sites which are potentially the basis of a complex recreational facility, or where a single easement will provide access to an extensive shoreline.

6. Access - Priority attention has also been given to those areas which ranked high in criteria threatened 1-5 and where access is threatened. These areas included beaches and shoreline areas where access is presently restricted, or where impending or proposed development may restrict free access in the near future.

RECOMMENDED AREAS FOR GOVERNMENT ACTION

In developing recommendations regarding the areas where government action is needed to improve public access and use, consideration was given to several other factors besides beach inventory information. Supply and demand was a major consideration. The Coastal Zone Management staff was concerned about the availability of public beaches near highly populated areas. A second consideration was the need to alleviate user conflicts and problems at heavily used beaches. Third consideration was availability of adequate land adjacent to desirable beaches for parking and beach facilities. A final factor given consideration was public attitude.

Throughout the course of program development of a number of informal and formal public meetings and hearings were held to obtain public sentiment regarding shorefront access. Many individuals and groups expressed concern, commented, and made suggestions concerning both the issue of access in general and as it relates to specific shorefront areas. This input was taken into account and considered in the development of the following list of critical areas where it is recommended that access and use need to be improved. Only St. Thomas and St. Croix are dealt with, since the most significant beaches on St. John are already within the National Park. Further study of these areas will be undertaken in order to develop a specific program for action.

St. Croix

1. West Christiansted - Christiansted is heavily populated and has several large public housing projects and hotels, but is lacking in terms of good beaches. The best beach runs westward from Antille Airboats to St. Croix by the Sea. Most of the shoreline here, however, is extensively developed with condomimum complexes and therefore beach access and facilities are largely restricted to condominum residents. A good public beach is needed in this area for Christiansted residents.

2. Cane Bay/Davis Bay - Cane Bay and Davis Bay are two beautiful undeveloped beaches on the northwest shore. They currently serve many tourists, as well as residents

from all over the the island. Cane Bay experiences the heavier use partly because an access fee is charged at Davis Bay and partly because it is so popular with scuba divers, fishermen and picknickers. On the weekends user and vehicular congestion is extreme and potentially dangerous. Both beaches have maintenance and sanitation problems. Davis Bay should be acquired and developed as public beach. The government should assist with maintenance at Cane Bay Beach and should acquire some land for parking and restrooms.

3. Machenil Bay/Ha'penny Bay

This area is centrally located on the south shore and is very popular with local residents. Its attractiveness is due to its accessibility, as well as the quality of the beach and swimming conditions - features which are rare on the south shore. The accessibility of this area, however, poses maintenance, sanitation and liability problems for adjacent property owners. One of these two beaches should be acquired and developed as a public beach.

4. Chenay Bay/Coakley Bay

Reasonably convenient to Christiansted on the northeast shore, both of these areas have good potential for multiple activities. Both Bays have attractive beaches with good picknicking, swimming and snorkeling. Some both are adjacent to salt ponds of considerable ecological value, and there is also potential for educational and scientific activities. Green Cay, which was recently set aside as a wildlife preserve, is a quarter mile off Chenay Bay. Coakley Bay has some ruins of historic interest as well. Chenay Bay, or alternatively Coakley Bay, should be acquired and developed as a public beach.

St. Thomas

1. Smith Bay

Smith Bay is located on the east end of St. Thomas near the growing population centers of Tutu and Estate Smith Bay. The crescent shaped white sand beach approximately 1/4 mile long, is in a protected bay. The beach uplands are relatively undeveloped at this time although there are tentative plans proposed for a golf course. In addition to good swimming and snorkeling, the beach is a popular picknicking area which is used by organized groups with the owner's permission. The vegatative cover is not dense but there are many large shade trees on the beach and fine views of St. John and offshore cays.

Because of the high use potential of Smith Bay and the growing development pressure on the surrounding area, high priority should be given to public acquisition of Smith Bay Beach and the upland area.

2. Mueller Bay

Mueller Bay is located on the east end of St. Thomas in Redhook Bay. Mueller Bay contains two beach areas; Vessup Beach and Mueller Beach, both of which can provide important recreation opportunities for East End residents. Access to Mueller Bay is currently limited since it is necessary to cross private property to reach the beaches. The east end of St. Thomas is experiencing one of the fastest growth rates in the Virgin Islands. The demand for housing, new tourist facilities, public services, and recreational areas in this area is intense. Therefore, the government should take steps to secure the Mueller Bay Beaches, including sufficient area for public facilities before this option is foreclosed by private development.

3. Magens Bay Beach - South End

The extreme southern end of the Beach is not publicly owned. Since this portion of the bay is presently zoned W-1, there exists the possibility of some future development threatening the naturaland unique character of Magens Bay Beach. Accordingly, the southern end of Magens Bay Beach should be acquired.

4. Botany Bay

Estate Botany Bay comprises the westernmost end of St. Thomas. Included within the estate are: two beaches, (one in Sandy Bay and one in Botany Bay,) a long expanse of highly scenic but steep shoreline, and an important historic site. At the present time, landward access is limited since the surrounding upland is in private ownership.

Negotiations between the owner of Estate Botany Bay and the Virgin Islands Government are in progress. Possibly certain portions of the estate will be donated to the Territorial Park System. In addition, public access rights to Sandy Beach Bay may be granted.

Since Estate Botany Bay and particularly the shoreline and beach areas are of outstanding recreational, educational and scenic value, every effort should be made to ensure that this area can be enjoyed by island residents.

5. Frenchman's Bay

Frenchman's Bay is situated on the southeast coast of St. Thomas; directly north of Green Cay. The beach at Frenchman's Bay is the only undeveloped one remainin between Morningstar and Benners Bay.

Presently, access to Frenchman's Bay is by boat only. The potential recreationa and educational value of this shoreline area is high and there is adequate leve land behind the beach for parking and other necessary facilities. The adjacent salt pond and nearby offshore island, Green Cay add to the educational and aesthetic value of the site.

The government should make an effort to acquire Frenchman's Bay Beach. Access from the main road to the beach and sufficient space for parking must also be secured.

6. Neltjeberg Beach

Neltjeberg Beach is located on the northwest coast of St. Thomas due south of Inner Brass Island and directly west of Ruy Point. The Virgin Islands Government already owns 17.42 acres of Estate Neltjeberg including and access-way from the main road to the beach. The area already owned by the government is inadequate to provide for public use. The beach should be purchased, as well as some of the surrounding upland area for parking. Neltjeberg Beach and the surrounding area should be incorporated into the Territorial Park System.

NEW GOVERNMENT RESPONSIBILITIES

Regardless of whether improved public access and use are secured through purchases, gifts, judicial determinations, or the conditioning of development permits and incentives, the Government of the Virgin Islands will probably have to assume some liability and responsibility for support services. Public safety and maintenance are two important issues.

The government's liability in case of injury or death on newly opened beaches is unclear. The best, but most expensive, protection would be the provision of lifeguards. At a minimum a warning will have to be posted on each beach. The presence of lifeguards, however, might also help to deter crime and littering problems. The introduction of the mounted patrol has been highly effective in St. Thomas in protecting public safety on the beaches. The ex-

pansion of this program may be appropriate.

In studying the maintenance problem, interviews were conducted with the maintenance supervisors at Magens Bay, the National Park Service on St. John, and the College of the Virgin Islands (Brewer's Bay Beach).

The maintenance effort will depend on the intensity of beach use, the desired level of maintenance, and consists primarily of the removal and disposal of trash. The Magens Bay Authority requires a full-time crew of nine to maintain that heavily used beach at a moderate level. In season, a three man National Park Service crew works full time on the maintenance of Trunk Bay, St. John, and receives some additional assistance from the lifeguards. Finally, the College of the Virgin Islands employs one maintenance worker full time at Brewer's Beach, which receives consistent, frequent use. These examples overstate the possible obligation of the Territorial Government since each of those crews performs activities, e.g., cutting back brush, other than cleanup. It is unlikely that existing Department of Conservation crews will "stretch" to cover additional beach cleanup, especially as properties are acquired for the Territorial Park System. The formation and equipping of additional crews will require a budget of $100,000 - $150,000 per year.

IDENTIFICATION OF FUNDING PROGRAMS THAT CAN HELP MEET MANAGEMENT NEEDS

Depending on the proposed scope of such an acquisition program, the major difficulty to implementing such an effort would be financing the costs of such land acquisition and management. Financial assistance in securing shoreline access is forthcoming from Section 315(2) of the CZMA Amendments, which authorizes grants for up to 50 percent of the cost of acquiring lands to provide access to public beaches and other public coastal areas of value.

The Land and Water Conservation Fund, Bureau of Recreation, U.S. Department of the Interior; Community Development Block Grants, U.S. Department of Housing and Urban Renewal; and the Virgin Islands General Fund, among others can also provide sources of funding for land acqusition and management.

In addition, administrative funds (Section 306 of the national Coastal Zone Management Act) can be used to fund beach maintanance. The funds can be utilized for the purchase of

beach cleaning equipment and to hire the necessary staff and personnel.

FURTHER RECOMMENDATIONS CONCERNING PUBLIC SHORELINE ACCESS AND USE

Based upon investigations conducted by the CZM staff and the Department of Conservation and Cultural Affairs, as well as public discussion, and input, the following actions and guidelines are recommended:

1. Continued public use and enjoyment of the shoreline should be guaranteed.

   a. To accommodate increasing demand for recreational opportunities and ease the resulting strain on accessible recreational resources, several new public beaches should be aquired on both St. Croix and St. Thomas.

   b. In other areas where it is appropriate and feasible, public access rights, under implied dedication and customary use doctrines, should be established.

   c. The subdivision and zoning laws should be amended to allow the requirement of a dedicated accessway in instances where this is appropriate and desirable.

   d. Vigorously enforce the provisions of the Industrial Incentive and Coastal Zone Management Acts which require the dedication of accessways for public use.

   e. The beach inventory conducted by Conservation and Cultural Affairs should be refined and expanded to assess other shoreline areas where public access and use should be improved.

   f. Development should be discouraged from encroaching on public use areas not currently protected by the Open Shoreline and Coastal Zone Management Acts. Such areas include bluffs, other areas landward of the statutory definition of shoreline.

   g. In urbanized areas, in addition to maintaining access to the shoreline, maximum feasible opportunity for lateral pedestrian access along the urbanized waterfront should be included on any development of alteration of the shoreline.

2. The territorial government should absorb the necessary costs of shorelines maintenance and safety resulting from public access and use. Additionallly, a program should be developed to educate the public regarding the constraints and responsibilities involved in using public accessways and shoreline areas.

3. The emerging Territorial Park System should be utilized to coordinate the acquisition and management of public accessways and shoreline areas.

BEACH ACCESS PLANNING PROCESS

INTRODUCTION

The State of Washington is uniquely endowed among the 48 contiguous states in terms of the range of its marine shoreline types and their extent. It is ironic, but nevertheless true, that a majority of these shoreline areas are generally inaccessible to the public. In recognition of the need for additional areas for public recreation the state has enacted various pieces of legislation, and evolved various programs, to provide the full range of recreational opportunities for its citizens.

The following planning process details the nature of beach access and protection planning within the state. The primary focus of the process is on existing state government programs since collectively they provide a comprehensive and functional means for achieving the goals established by legislative and administrative policy. In addition to the descriptions of state programs, the process includes information relative to: the supply of, and demand for beach resources; types of beach access and protection considered to be appropriate by the state; the articulation of state policies (both legislative and administrative); the designation of shorefront areas as areas of particular concern; a mechanism for continuing refinement of necessary management techniques; and funding programs which can be used to meet management needs. Each of these sections was drafted in response to the federal regulations concerning development of a beach access planning process.

I. PROCEDURE FOR ASSESSING PUBLIC AREAS REQUIRING ACCESS OR PROTECTION

GENERAL

It is important to realize that state and local programs are generally geared to a coherent process for providing beach access through the Interagency Committee for Outdoor Recreation (IAC). The IAC acts as a kind of central clearinghouse for outdoor recreation programs through the twin vehicles of the Statewide Comprehensive Outdoor Recreation and Open Space Plan (SCORP), with its articulation of outdoor recreation funding priorities, and the administration of the state's outdoor recreation account. Disposition of limited funding is thus channeled to the facilities which are most needed. The current edition of SCORP recognizes that beach-oriented recreation is in high demand and relatively short supply and this recognition is carried over into the priorities for funding it establishes. Determination of specific projects to be funded is based on the needs identified in SCORP and such factors as geographic location, number of persons to benefit, etc.

The protection of beach resources is most comprehensively accomplished through the local master programs developed under the Shoreline Management Act, although direct acquisition programs provide a more complete protection method. Shoreline master programs provide a means whereby shorelands possessing outstanding

natural characteristics can be afforded a substantial degree of protection from development, while those areas which are suited to modification are generally placed under more permissive designations. The substantial development permit process provides the enforcement capability necessary to insure that the provisions of local master programs are carried out. The Shoreline Management Act thus provides a planning process which is complete in and of itself, and which also effectively complements the range of state environmental protection programs.

A. SUPPLY AND DEMAND

The Department of Natural Resources (DNR) estimates that there are approximately 2,700 miles of marine coastline in the State of Washington. Within this coastline are a wide variety of shoreline types ranging from wide, sandy beaches to rugged, rocky areas. In general, the state's marine shoreline can be divided into two broad geographical categories. The Puget Sound, Strait of Juan de Fuca and north Pacific coastal areas were heavily influenced by glacial activity and, as a result, the beaches are narrow and are backed by forested bluffs. From the mouth of the Quinault River southward the beaches are wide and sandy and, in many areas, are backed by extensive dune formations.

Approximately 1,800 of the 2,700 shoreline miles are contained within Puget Sound and the Strait of Georgia. This region contains few beach areas which are not inundated at high tide. Bluffs ranging from 10 to 500 feet in height rim a majority of the sound making access to beach and intertidal areas difficult. The north shore of the Olympic Peninsula borders the Strait of Juan de Fuca. Rugged, rocky shoreline predominates in the western portion of the strait while further eastward the coastal features are more reminiscent of Puget Sound. The Pacific coastline south from Cape Flattery to the Quinault River can generally be described as rugged and rocky. This section comprises some of the last remaining coastal wilderness left in the continental United States, and except for several Indian reservations, is contained within Olympic National Park. South of the Quinault River broad sandy beaches are the predominant feature. These beaches are perhaps used more heavily by recreationists than any other in the state.

Data taken from the Washington CZM program document indicates that approximately 1,160 miles of marine shoreline are in state ownership today. This figure constitutes slightly more than 40 percent of the total marine shoreline in the state. Local governments also manage numerous marine shoreline parcels. These parcels are generally small in size but they contribute a great deal to recreational supply due, in many cases, to their close proximity to population concentrations. The departments of Game and Fisheries and the State Parks and

Recreation Commission manage approximately 400 miles of the state's ownership and the DNR manages the rest. The total mileage figures are misleading, however, when considered in the context of beach access since some state-owned tidelands are located in rocky areas where access is all but impossible, and in many other areas the uplands are privately owned and the tidelands are inaccessible except by boat. The IAC has estimated that only 222 miles of saltwater frontage are in public recreation ownership when tidelands with private upland ownership are excluded.

The demand/supply analysis contained in SCORP indicates a user needs deficiency of 16,345 acres of saltwater shoreland. This deficiency considers only upland ownership; tidelands are not included. Since this needs figure was computed in 1973, it is likely that the current need exceeds supply by an even greater margin. SCORP data estimated a 1970 demand of 17,615,000 activity occasions while the 1980 projection is 19,288,000 activity occasions on saltwater shorelands. These estimates were based upon population increase only and are probably low since historical trends have shown that the propensity of the people to recreate has increased at a far greater rate than the rate of population increase.

A public lands inventory was recently compiled by the IAC which identified the availability of public outdoor recreational sites and facilities throughout the state. Included in the inventory is a survey of recreational areas with saltwater frontage and an identification of associated facilities such as parking, shore access, pier or dock availability for fishing, boat launching lanes, trails, or swimming beach. Standards will be developed and employed to integrate this most recent supply data with demand estimates to determine deficiencies in type, size, and location of recreational facilities throughout the state.

SCORP figures indicate that nearly 74 percent of the saltwater shoreland demand is generated in the central Puget Sound area. Not surprisingly, this area also contains the largest population concentration in the state. Since potential saltwater recreational sites within the district are few, most of the demand is accommodated outside the area. IAC's origin - destination studies have shown that the Pacific Ocean beaches, San Juan Islands, and Hood Canal are the most popular destinations although all coastal recreation areas receive substantial usage. Saltwater shorelands also receive a great deal of use from citizens living in Eastern Washington as well as from out-of-state visitors.

Although some existing marine shorefront facilities may be underused, it is most certainly the case that many areas are now taxed beyond their carrying capacity. Since the population of Washington State is increasing at a rapid rate, the supply of recreational opportunities must increase proportionately to avoid aggravating the current supply shortfall.

B. APPROPRIATE TYPES OF ACCESS OR PROTECTION

Given below are descriptions of the types of beach access and protection which are considered appropriate for funding under Section 315 of the Coastal Zone Management Act of 1972. Funding through other sources need not be limited to these forms of access and protection although they do constitute the principal types provided by state and local government.

1. Access

a. Lateral - lateral access consists of acquiring use rights to extensive areas of beach. The acquisition of these use rights can be through either direct purchase or any of a number of less-than-fee acquisition techniques. In practice, most acquisitions of this type are related to recreation facilities which consist of upland property as well as beach areas (e.g., a state park or wildlife refuge), but it is possible that only beach property could be acquired (e.g., acquisition of a stretch of privately owned tideland connecting two areas of publicly owned tideland).

b. Perpendicular - perpendicular access is access consisting of an easement or corridor from a publicly owned facility (e.g., a public roadway) to a beach area. Such access can be acquired through direct purchase or by gaining an easement across private property by any of several means. Also included would be such land as is necessary for auxiliary facilities such as parking and restrooms. The most common situation which would occasion the acquisition of perpendicular access is where private property separates an extensive area of publicly owned tidelands (e.g., the ocean beaches) from a public roadway.

c. Boat launching - boat launching facilities consist of ramps and hoists used for launching recreational watercraft. Since many of Washington's public beaches are inaccessible except by boat, these facilities are of extraordinary importance in the overall beach access situation. Examples of the types of beaches which are accessible only by boat include many stretches of Puget Sound tideland where the upland is in private ownership and also publicly owned beaches on islands which have no ferry service.

d. Boating destination - since Washington has several state parks which are accessible only by boat (usually consisting of all or a portion of an island) it is appropriate to consider mooring facilities as legitimate access types when they are an integral part of an access to such recreation sites.

e. Urban facilities - the definition of urban facilities constituting an appropriate type of beach access is necessarily more flexible than the definition applied to other types. Since most urban waterfront areas have been radically altered from their original condition by the works of man, the standard definitions simply do not apply. Such facilities as piers, docks, walkways, and other types of structures allowing visual or physical access to the water are considered as forms of beach access for the purposes of this planning process.

f. Visual - any facility which provides visual access to a beach or waterfront area is considered as a legitimate form of beach access. Such facilities include, but are not limited to, scenic overlooks, scenic roadways, viewing platforms, and such waterfront structures as piers and docks.

2. Protection

a. Reserves - reserves are areas which are set aside for the protection of unique or important environmental or cultural attributes. Generally this type of protection is accomplished through direct acquisition or by changing the status of lands which are already in public ownership. In some cases, reserves are open for a particular type of consumptive use (e.g., hunting on Game Department Wildlife Recreation Areas) but most reserves are maintained as relatively inviolate sanctuaries. Examples of the various types of reserves include wildlife refuges and historical sites.

b. Regulatory programs - various types of regulatory programs can be used to provide protection for environmental or cultural qualities. Included among these are land use planning techniques (zoning, setback requirements, etc.), permitting under environmental statutes (Shoreline Management Act, Corps of Engineers Section 10 and 404 permits, etc.), and special purpose statutes designed for historical preservation or preservation of archaeological sites. These protections may be applied by either local or state government under the police power doctrine.

C. CURRENT PROGRAMS

The following material describes those programs that are currently operational within state and local government which relate to the provision of beach access and protection.

1. Access

a. DNR tidelands management policy and tidelands marking program - at the time of statehood in 1889, the State of Washington asserted its ownership in the beds and shores of all navigable waters up to and including the line of ordinary high water. From statehood to 1968, the state pursued a policy of selling public tidelands to private individuals. In 1968 the practice was restricted by policy directive and was discontinued by law in 1971. Approximately 1,160 miles of the tidelands originally owned by the state are in state ownership today. Some 400 miles of these tidelands are managed by the State Parks and Recreation Commission or the departments of Game and Fisheries with the remainder being managed by the DNR.

The DNR manages its tidelands for three principal uses. Approximately 75 percent of the tidelands are open for public recreational uses while the remaining 25 percent are committed for either commercial use or are held in reserve status. Reserve status implies an area of educational or scientific interest or utility or an area of special environmental importance and is conferred to prevent degradation of the area's resources. The principal characteristic of the DNR management policy is to emphasize multiple use. Every effort is made to avoid permanent single-purpose use on lands which have a multiple-use potential.

Since the majority of tidelands managed by DNR are accessible to the public only by boat, the department has embarked on an extensive program of marking public beaches. This program involves the placing of signs on the beaches to enable boaters to recognize the publicly owned lands.

The DNR Recreation Division has authority to acquire public access routes to managed tidelands. Priority is given to acquiring access from mainland tideland sites to public road systems. Where tideland recreation sites exist on islands without a central or public road system, no upland access will be attempted.

The DNR works on a cooperative basis with the State Parks and Recreation Commission in the development of upland parks adjacent to tideland areas. Tidelands management in such areas is turned over to the Parks and Recreation Commission by DNR if control of the tidelands is requested.

b. Game Department access programs - the Washington Department of Game operates five boat launching facilities on marine waters. These facilities were constructed to provide access for either hunters or sports fishermen. Several of them are located either on or adjacent to wildlife recreation areas managed by the Game Department and are intended for use primarily by waterfowl hunters. The remainder were constructed for use by saltwater sports fishermen. The Department of Fisheries has management authority over most marine fishes (e.g., salmon and other fish categorized as food fish) but the Game Department has authority over sea-run trout which are categorized as game fish. There is the possibility that additional launching facilities may be constructed in the future as need arises and funding is available.

The Game Department operates several wildlife recreation areas on marine waters. These lands are managed for wildlife habitat and are used for hunting in season. The beaches and wetland areas associated with these facilities are open to public use.

c. Fisheries Department programs - the Department of Fisheries is responsible for management of the state's food fish and shellfish resources. Two programs are operated which provide forms of beach access. The first program is funded through the IAC and consists of providing boat launching facilities and public fishing piers (with related artificial reefs) and also the acquisition of tidelands.

The second program operated by the Department of Fisheries which relates to beach access is the management of several areas of tidelands which have been legislatively designated for public recreational use. Clamming and gathering of other shellfish is the principal recreational activity conducted on these lands.

d. Interagency Committee for Outdoor Recreation - The IAC consists of 12 members including five citizens appointed by the Governor and representatives from the seven state agencies most directly concerned with outdoor recreation.

The IAC is the agency charged with distribution of the funding contained in the state's Outdoor Recreation account. The funding sources which make up this account include Referendum 28 (part of a statewide capital investment program known as the Washington Future Program), Initiative 215 (unclaimed pleasure boat marine fuel taxes), and the federal

Land and Water Conservation Fund. IAC also has responsibility for preparation and maintenance of the Statewide Comprehensive Outdoor Recreation and Open Space Plan (SCORP).

IAC funding is divided equally among state agencies and local government. Participating agencies from state government are the departments of Game, Fisheries, and Natural Resources, and the Parks and Recreation Commission. Most units of local government are eligible for funding provided that they have developed a park and recreation plan or a recreation element in their comprehensive plan which has been approved by the IAC. Indian tribes within the state recognized by the federal government are eligible for Land and Water Conservation Fund monies.

Funding is provided up to a maximum of 75 percent for all projects which are approved by the committee. Priorities have been established for the types of projects which will receive the highest consideration. Acquisition of shorelines is currently a high priority for both local and state agencies.

e. State Parks and Recreation Commission programs - the State Parks and Recreation Commission (hereinafter referred to as State Parks) is empowered to acquire, develop, operate and maintain recreational areas for the enjoyment of the public. According to data contained in the Washington CZM program document, there are 65 state parks in the coastal zone with a combined total of 24,000 acres. These parks range in size from .5 acre to 4,934 acres.

Through a variety of methods State Parks has authority to acquire tracts of land, including shorelands and tidelands, for park and parkway purposes. Funding is received both through direct appropriation by the legislature and through the IAC. In park projects containing shorelands, such facilities as boat launches, docks, landings and access roads may be constructed to enhance recreational opportunities for the public. The Commission has set policy for acquisition and development of seven different types of parks over which it has jurisdiction. Four of these are important in terms of their relationship to beach access: state parks; recreation areas; launch areas; and ocean beach access areas. The remaining three will be discussed under the section of this planning process which deals with protection.

In addition to its jurisdiction over state parks, the Commission has management authority over the Seashore Conservation Area. This area consists of

the lands which fall generally between extreme low tide and ordinary high tide along the majority of the Pacific Ocean beaches of the state. Public access points have been provided at intervals along the Seashore Conservation Area to enable the public to reach the beach. Driving is generally allowed along the beaches since they are designated as ocean beach highways, but is restricted to the upper portion in order to protect the razor clam resource. The ocean beaches receive extremely heavy public usage throughout the year, particularly during extreme low tides when clam digging is at its best.

Development and maintenance of the state's Scenic and Recreational Highway System is shared between the Department of Transportation and State Parks. Several coastal highways have been designated as part of the system. Planning and design standards for Scenic and Recreational Highways may include provision of scenic observation facilities, hiking trails, campsites, boat launching facilities, and entrance and exist roadways to observation points.

f. Local Government Programs - units of local government assume a significant role in the provision of parks and recreational facilities in the coastal zone including the provision of beach access. SCORP data indicate that about 25 percent of Washington's public saltwater shorefront is managed by local government for recreational use. As a result of their proximity to population centers, local parks and recreational facilities may receive heavy daily use and support a relatively high percentage of the demand for recreational opportunities in the state.

Local governmental units (including cities, counties, and certain special purpose districts) have the authority to acquire, develop and maintain recreational sites and facilities for the use of the public. In exercising that authority, local agencies have provided parks fronting on saltwater, swimming beaches, boat launches and ramps, marinas, visual access points, and other facilities.

Municipalities in the State of Washington have legal authority to provide parks and recreational facilities both inside and outside the corporate boundaries. Counties normally acquire and develop facilities that will serve a broader range of recreational needs than the cities. Within the county or metropolitan area a park and recreational district may be established for the purpose of planning for, acquiring, developing, and managing recreational sites. Port districts also have certain responsibilities in

the provision of recreational opportunities. These include construction, operation, and maintenance of wharves, piers, and boat landings of all types. A port may be authorized to construct, improve, and operate public parks and recreational facilities when these facilities relate to the port's comprehensive plan of harbor improvement or industrial development.

2. Protection

a. Natural Area Preserves System - the Natural Area Preserves System is a program administered by the Department of Natural Resources and is designed to establish a statewide system of aquatic and land area preserves. Areas are designated on the basis of their natural character, archeological or historic value, the presence of rare of endangered species, or scenic beauty. Several areas within the coastal zone have been designated or are being considered for designation as natural area preserves.

Management practices for each preserve are developed to assure the persistance of the qualities that make it worthy of preservation. As a consequence, public visitation for educational or recreational purposes is limited to the extent that there is no significant modification of natural or existing conditions. Boat moorage buoys, landings, trails, or other unobtrusive facilities may be provided to allow and direct access through the preserve.

Certain tideland areas under DNR jurisdiction are classified as reserves. This program is distinct from the Natural Areas Preserves System. Areas designated as tidelands reserves are set aside on the basis of their unique or special environmental qualities. Public access to such areas is not encouraged in order to preserve the ecological values for which they were set aside.

b. Open Space Taxation Act - The Open Space Taxation Act authorizes the assessment and taxation of certain lands on the basis of current use rather than true and fair value. The Act is designed to provide an incentive to property owners or contract purchasers to limit development of lands in order to protect or conserve natural and scenic resources. Farm and other agricultural lands, timberlands, and open space lands may qualify for current use classification.

As a voluntary program, property owners may apply to the granting authority for the current use assessment.

Members of the local legislative body(ies) comprise the granting authority which rules on applications and may attach conditions of approval. The granting authority, for instance, is authorized to require that the landowner provide an easement as a condition of approval. This is potentially useful in securing or maintaining access to publicly owned shorelands through private property.

If the granting authority accepts an application, an Open Space Taxation Agreement is sent to the applicant for his acceptance or rejection. In return for a current use tax assessment, the landowner agrees to not apply his classified land to any other use for a perod of ten or more years. Change of use or withdrawal of the land from classification prior to the expiration of the agreement period may subject the owner to additional taxes and other monetary penalties.

The Open Space Taxation Act may serve to protect or conserve resources in or near the coastal zone. Recreational opportunities, public access, and visual access may be enhanced.

c. Game Department habitat acquisition - The Department of Game is responsible for the management of both game and nongame wildlife. Protection is afforded to wildlife whether they are located on either private or public lands. The department acquires habitats for protection of nongame wildlife under a program funded by the sale of personalized license plates. The Game Department has estimated receipts from license plate sales at $250,000 annually. These monies will be used for all facets of the department's nongame wildlife programs, of which habitat acquisition is just one.

The department's purchase of wildlife habitat for inclusion in the state system of Wildlife Recreation Areas is important for protection purposes but has previously been considered in this planning process under access. This is due to the fact that the principal purpose for which such lands are acquired is to provide lands suitable for wildlife-oriented recreation such as hunting or fishing. It is true, however, that the placement of such wildlife habitat in Game Department ownership does provide a direct method of protection and a degree of control over unsuitable uses unattainable on lands which are not so owned.

d. Fisheries Department programs - the Department of Fisheries operates a system of oyster reserves which

were established by action of the legislature. These reserves are maintained for the purpose of providing oysters for sale, with the revenue being used for the maintenance and betterment of the reserves. An additional purpose is to insure that sufficient stocks exist to supply oysters to private growers and processors and to provide oysters for stocking on public beaches. The bulk of the oyster reserve acreage is in Willapa Bay but several sites are located in Puget Sound.

e. State Parks and Recreation Commission - as mentioned in Section (I)(c)(1)(e) of this planning process, the State Parks and Recreation Commission has adopted policies for the acquisition and development of seven different types of state parks. Three types are significant in terms of their relevance to the protection of public coastal areas: natural areas; conservation areas; and heritage areas.

Parks designated as natural areas are obligated to the conservation of the natural environment and for low density outdoor recreational activities. Protection of wildlife and natural features is the primary management objective for these areas. Site selection guidelines include geographically locating natural areas throughout the state for unobtrusive recreational use.

State conservation areas are established to protect, conserve, and selectively develop outstanding environmental basins for a wide range of outdoor recreational and conservation uses. These areas generally encompass a variety of physiographic features, one or more of which may have been threatened by uses incompatible with the provision of outdoor recreational facilities.

State heritage areas are designated for the preservation of unique geologic, paleontologic, archeologic, historic, scientific, ecologic and cultural features. Activities allowed on these areas are essentially limited to those directly associated with interpretation of the selected features of the sites. Where a degree of selectivity exists, priority is given to establishing state heritage areas near major population centers and along primary travel routes.

There are currently several natural areas located in the coastal zone but no conservation or heritage areas. The possibility exists, however, that either or both types may be acquired by State Parks in the future.

f. IAC funding distribution - the IAC grants funding for land acquisition and development to state agencies and to local government. The program was explained in Section I(c)(1)(d) of this planning process. A portion of these monies is used for acquisition of lands which can be categorized under one or more of the protection programs explained in this section of the planning process. Examples include the Game Department habitat acquisitions under the Wildlife Recreation Area program and certain categories of state parks.

3. Regulatory and Planning Programs

In addition to those state and local programs which relate directly to beach access or protection, there are several statutes which can best be described as regulatory or planning in orientation which are pertinent to this discussion. Only those which are most directly applicable will be covered below:

a. Shoreline Management Act - the Shoreline Management Act provides for a comprehensive planning and regulatory process for governing of activities conducted on shorelines of the state. The administrative focus of the program is on local government with state government acting in a review and support capacity. Under the terms of the Act, local governments are required to prepare master programs which place shorelines into one of four categories (environment designations) for the purpose of determining the level of use intensity which is most appropriate for them. Goals, policies and regulations are then developed for 22 types of use activities which are likely to be conducted on shorelines and these are in turn related to the environment designations.

The Shoreline Management Act relates to the protection of beaches and shoreline amenities primarily through its regulatory provisions and the permit system set up to enforce those provisions. The primary thrust of the Act is toward providing protection for shoreline resources while at the same time fostering all reasonable and appropriate uses. Master programs are designed to be applicable to individual jurisdictions and, hence, to reflect local desires consistent with state guidelines.

Beach access is provided for in the Act in that master programs are required to contain both a public access element and a recreation element. Conditions may also be attached to permits requiring the provision of public access as a part of project approval. Additionally, master programs must reflect

that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas and other recreational activities for the public.

b. Local government land use controls - local governments possess various planning and regulatory authorities which can be used to protect beach resources and provide increased public access. The shoreline master programs developed by each local government in the coastal zone provide a major tool in this regard and have been explained in the previous section.

Local governments also possess general land use planning authority by virtue of enabling statutes passed by the state legislature. Under this legislation it is possible for such standards as setbacks, parcel size, height limitations and permitted uses to be specified for a given area, with the zoning ordinance being the primary vehicle for realization of these standards.

In granting permits for waterfront developments, local governments may optionally require that some form of public access be provided as a condition for approval. This option may be pursued through the shoreline substantial development permit process or through some other locally administered permit system.

The state legislature has limited the possible actions of cities and counties with respect to vacation of streets and roads which abut on fresh or salt water. Local governments may plan for such areas only in the context of providing boat moorage for launching sites, parks, viewpoints, recreational areas, educational areas, or for port purposes. These prohibitions do not apply if the property is zoned for industrial uses.

II. BEACH DEFINITION AND IDENTIFICATION OF PUBLIC AREAS MEETING THE DEFINITION

A. BEACH DEFINITION

The term "beach" must necessarily be defined flexibly in order to cover the full range of shoreline types which are important at one time or another for public use or enjoyment. Although not specifically mentioned in the definitions, facilities such as boat launches and docks which are associated with the beach types described below are considered to be an integral part of those beaches. The definitions will apply to areas under public ownership or management as well as to other areas

available for public use. The beaches to be considered under this planning process are as follows:

1. Nearshore - an indefinite zone extending seaward from the line of extreme low tide.

2. Foreshore - the zone regularly covered and uncovered by the rise and fall of the tide, extending from the line of extreme low tide to the line of mean high tide. The substrate may be composed of rock, cobbles, gravel, sand, mud or silt, or any combination thereof. The foreshore may be quite extensive, as in the case of mudflats or sand beaches, or it may be essentially a vertical face, as in some rocky areas. This zone is sometimes known as the intertidal zone or tidelands.

3. Backshore - this zone extends upland from the line of mean high tide to a point where a marked change in material or physiographic form exists or to the line of permanent vegetation. It is thus of variable width throughout the coastal area. The backshore is usually acted upon by waves only when severe storms are combined with high tide.

4. Sand dunes - low mounds, ridges, banks, or hills of wind-blown sand commonly found along low lying seashores above the high tide level. Dunes may be bare or covered with vegetation and capable of shifting from place to place while retaining a characteristic shape. Typically, dunes exhibit four distinct features:

    a. Primary dunes - the first system of dunes shoreward of the water, having little or no vegetaion, which are intolerant of unnatural disturbances.

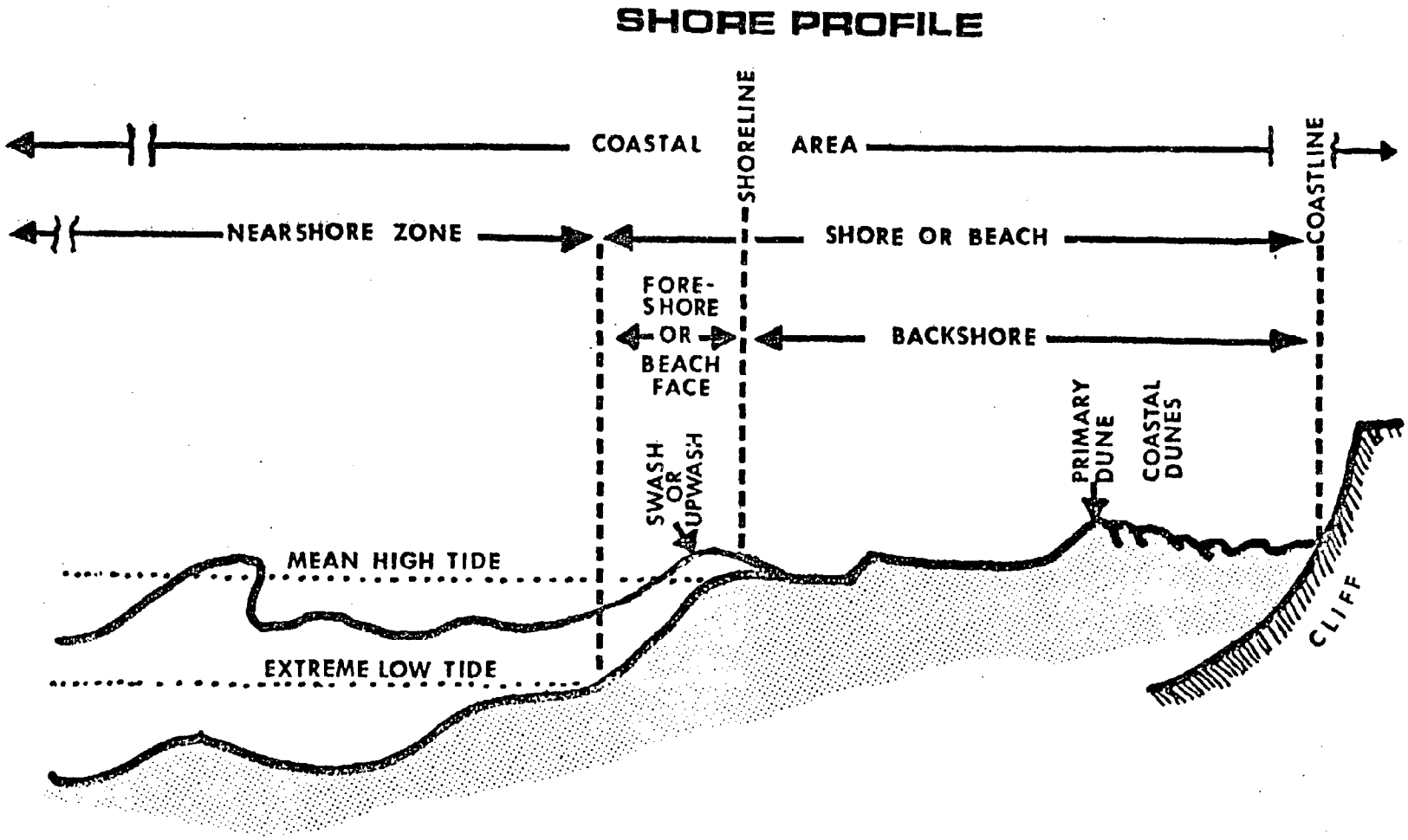
    b. Secondary dunes - the second system of dunes shoreward from the water, with some vegetative cover.

    c. Back dunes - the system of dunes behind the secondary dunes, generally having vegetation and some top soil, and being more tolerant of development than the primary and secondary systems.

    d. Troughs - the valleys between the dune systems.

5. Spits and bars - Spits and bars are natural formations composed of sand and gravel and shaped by wind and water currents and littoral drifting. Generally a spit is formed from a headland beach (tall cliff with a curved beach at the foot) and extends out into the water (hooks are simply hookshaped spits). While spits usually have one end free in open water, bars generally are attached to land at both ends. These natural forms enclose an area which is protected from wave action, allowing life

FIGURE 1


SHORE PROFILE
COASTAL
SHORELINE
AREA
COASTLINE
NEARSHORE ZONE
SHORE OR BEACH
FORE-
SHORE
OR
BEACH
FACE
BACKSHORE
SWASH
OR
UPWASH
PRIMARY
DUNE
COASTAL
DUNES
MEAN HIGH TIDE
EXTREME LOW TIDE
CLIFF

forms such as shellfish to reproduce and live protected from the violence of the open coast.

6. Pocket beach - a small, crescentic beach formed at the head of a bay by materials eroded from adjacent headlands and carried to the bayhead by longshore currents and/or storm waves. Also known as a bayhead beach.

7. Wetlands - transitional zones between marine and upland environments. Marshes, bogs, swamps, floodways and river deltas are included in this category.

8. Uplands - publicly owned or managed areas landward of the backshore which provide visual access to coastal waters.

9. Islands - generally speaking, islands are land masses surrounded by water. It is impossible to state with absolute certainty the size at which an entire island should be considered as a "beach." Therefore, islands which are relatively small in size and are held in public ownership will be considered "beaches" while larger islands will be considered in the same manner as the mainland (i.e., in terms of the component parts of its beaches; foreshore, backshore, etc.).

10. Urban waterfronts - waterfront areas associated with heavily developed or urbanized locations. Generally they are associated with cities but may include adjacent areas. Urban waterfronts may include not only the nearshore, foreshore and backshore but also a variety of waterfront facilities such as public viewpoints, docks, piers, walkways, bike paths and parking areas.

The definition of "beach" developed above encompasses nearly all coastal features which currently or potentially have access or protection needs or values. Taken together, the elements of the definition represent the wide range of coastal resources which meet public recreational needs, or require protection for the maintenance of physical or biological resources or recreational opportunities.

B. IDENTIFICATION OF PUBLIC AREAS MEETING THE DEFINITION OF "BEACH"

A variety of sources identify public areas along Washington's coast which meet the definition of "beach" set forth in the preceding section. These sources are described below. No attempt will be made to identify individual sites requiring access or protection.

In 1971, the IAC completed a Statewide Recreational Lands Inventory. The inventory included a quantification of publicly owned saltwater shorelands, historical or cultural areas, outstanding natural areas, and scenic and recreational roads

and highways. This inventory utilized the "area-type" concept wherein recreational areas were typed based on major environmental features together with the use capabilities of land and water resources contained within them. With the use of conversion standards, acquisition and development needs were assessed. Deficiencies in acreage were computed on a statewide basis for such areas as saltwater shorelands, freshwater shorelands, regional and local recreation areas, and trails. The results of the inventory were used in production of the 1973 version of the Statewide Comprehensive Outdoor Recreation and Open Space Plan. As mentioned in the Supply and Demand section of this planning process, a user-needs deficiency of 16,345 acres of saltwater shorelands was determined.

A public lands inventory was compiled in 1977 by the IAC which identified public outdoor recreational facilities and sites throughout the state. This current inventory differs from the one conducted in 1971 in that it is designed to reveal facility-specific rather than area-specific deficiencies. The inventory included a survey of recreational areas with saltwater frontage and an identification of associated facilities such as parking, shore access, pier or dock availability for fishing, boat launching lanes, trails, or swimming beach. Supply data and demand estimates will be used to determine deficiencies in type, size, and location of recreation facilities throughout the state.

The State Parks and Recreation Commission has produced and periodically updated an inventory of the lands under its jurisdiction. All State Parks' lands are identified by name, type of park, location, acreage, and if applicable, feet of saltwater frontage. The inventory also includes a chronological listing of land acquisitions and disposals, and indicates which lands are under lease, easement, permit or license for use by other agencies.

An ocean beach study was conducted by State Parks in 1976 to analyze the seashore conservation area (discussed in part (I)(c)(1)(e) of this planning process). The study included recommendations for preservation and conservation of the Pacific Ocean beaches. Parks and access roads were depicted on maps, with the availability of parking facilities indicated for each park.

The Washington State Attorney General has expressed an opinion concerning public use of the Pacific Ocean beaches (AGO#27,1970). It is the opinion of the Attorney General that "the public, vis-a-vis the private upland owner, has the right to free and unhindered use and enjoyment of the wet and dry sands area of the Pacific Ocean beaches, by virtue of a long established customary use of those areas." The wet sand area is defined as "that area over which the tide ebbs and flows on a regular, daily basis: generally below, or seaward of, the line of mean high tide." The dry sand area is defined as "that area lying

between the line of mean high tide and the line of permanent visible vegetation." The rights of the public to the use of those ocean beaches do not extend over the wet and dry sand areas within the external boundaries of the Quinault Indian Reservation.

The State Parks and Recreation Commission shares management of the state's scenic and recreational highways with the state Department of Transportation. Designated highways and development guidelines are set forth in the Scenic and Recreational Highway Act of 1967.

Another document which is useful in identifying public areas suitable for greater access or protection is the Washington Marine Atlas, produced by the DNR in 1977. Features depicted in the Atlas include beaches and shoreside public parks, public access tidelands, marinas, boating rendezvous and anchorage areas, underwater recreation areas (for scuba diving), and salmon and nonsalmon sports fishing areas. Agencies responsible for management of these public sites and facilities are listed in the Atlas. DNR has also published several documents which identify those beaches which have been marked under the department's public beach marking program.

DNR, together with the departments of Game and Ecology, the State Parks and Recreation Commission and the IAC is currently working with the Nature Conservancy, a private conservation organization, on a statewide natural areas inventory. This two-year project is designed to lead to development of a natural areas plan with identification of areas suitable for protection in the natural areas preserves system. The inventory will become an official addendum to SCORP and will be used for the establishment of funding priorities.

The National Shoreline Study produced by the U.S. Army Corps of Engineers in 1971 provides data on the resource base of Washington's coast. This inventory considers such factors as physical characteristics, historical changes and ownership characteristics of the state's shoreline. Shorelines with beach or without beach (having bulkheads, marsh, rocky coastlines or revetments) are distinguished.

Local government park and recreation plans, as well as the inventories completed under the Shoreline Management Act, are valuable in identifying access or protection needs in coastal areas. This is particularly significant considering the extent to which local government manages the state's public shorelands. Several local governments have developed publications intended to identify public access areas within their boundaries. Examples include the Shoreline Access Study done by Island County and a map produced by the City of Seattle which identifies access and viewpoints.

All of the studies, inventories or publications referenced above provide data relative to the existence and location of publicly owned shorefront areas. Decisions relating to acquisition of access to individual parcels must necessarily be subject to individual agency priority and funding availability.

III. ARTICULATION OF STATE POLICIES

This sections contains policies which have been articulated by both the legislature of the State of Washington and state administrative agencies pertaining to beach access and protection. Reference will be made to the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), and other documents. The organization of this section will follow a format based on the agency most responsible for administration of the statute, WAC chapter, or other document cited.

Part A of this section contains policy statements which are generally substantive in nature and most directly express the state's management philosophies and concerns relating to the provision of beach access and protection.

Other state policies applicable to beach access are either procedural in nature, provide authorities to state agencies and local government, or otherwise less directly express the state's philosophies. These policies are reproduced and/or summarized in part B.

Part A POLICY STATEMENTS

1. Department of Ecology

The Department of Ecology is responsible for administration of the Shoreline Management Act (Chapter 90.58 RCW) and several sections of the Washington Administrative Code which derive from this statute.

RCW 90.58.020 - LEGISLATIVE FINDINGS -- STATE POLICY ENUNCIATED --USE PREFERENCE. [Pertaining to shorelines of statewide significance:] Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational, uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and

environment of the shoreline area and any interference with the public's use of the water.

RCW 90.58.320 - HEIGHT LIMITATIONS RESPECTING PERMITS. No permits shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-16-040(4)(b)(i) - NATURAL ENVIRONMENT. The natural environment is intended to preserve and restore those natural resource systems existing relatively free of human influence. Local policies to achieve this objective should aim to regulate all potential developments degrading or changing the natural characteristics which make these areas unique and valuable.

The main emphasis of regulation in these areas should be on natural systems and resources which require severe restrictions of intensities and types of uses to maintain them in a natural state.

WAC 173-16-040(4)(b)(ii) - CONSERVANCY ENVIRONMENT. The objective in designating a conservancy environment is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to insure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization.

The designation of conservancy environments should seek to satisfy the needs of the community as to the present and future location of recreational areas proximate to concentrations of population, either existing or projected. For example, a conservancy environment designation can be used to complement city, county, or state plans to legally acquire public access to the water.

WAC 173-16-040(4)(b)(iii) - RURAL ENVIRONMENT. The rural environment is intended for those areas characterized by intensive agricultural and recreational uses and those areas having a high capability to support active agricultural practices and intensive recreational development.

WAC 173-16-040(4)(b)(iv) - URBAN ENVIRONMENT. In the master program, priority is also to be given to planning for public visual and physical access to water in the urban environment. Identifying needs and planning for the acquisition of urban land for permanent public access to the water in the urban environment should be accomplished in the master program. To enhance waterfront and insure

maximum public use, industrial and commercial facilities should be designated to permit pedestrian waterfront activities. Where practicable, various access points ought to be linked to nonmotorized transportation routes, such as bicycle and hiking paths.

WAC 173-16-040(5) - SHORELINES OF STATEWIDE SIGNIFICANCE.

(d) Protect the resources and ecology of shorelines. Development guidelines;

(i) Leave undeveloped those areas which contain a unique or fragile natural resource.

(iii) Restrict or prohibit public access onto areas which cannot be maintained in a natural condition under human uses.

(e) Increase public access to publicly owned areas of the shorelines. Development guidelines:

(ii) Locate development inland from the ordinary highwater mark so that access is enhanced.

(f) Increase recreational opportunities for the public on the shorelines. Development guidelines:

(1) Plan for and encourage development of facilities for recreational use of the shorelines.

(ii) Reserve areas for lodging and related facilities on uplands well away from the shorelines with provisions for nonmotorized access to the shorelines.

WAC 173-16-060(2) - AQUACULTURE

(b) Recognition should be given to the possible detrimental impact aquacultural development might have on the visual access of upland owners and on the general aesthetic quality of the shoreline area.

WAC 173-16-060(3) - FOREST MANAGEMENT PRACTICES

(c) Shoreline areas having scenic qualities, such as those providing a diversity of views, unique landscape contracts, or landscape panoramas should be maintained as scenic views in timber harvesting areas. Timber harvesting practices, including road construction and debris removal, should be closely regulated so that the quality

of the view and viewpoints in shoreline areas of the state are not degraded.

WAC 173-16-060(4) - COMMERCIAL DEVELOPMENT

(a) Although many commercial developments benefit by a shoreline location, priority should be given to those commercial developments which are particularly dependent on their location and/or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

(c) An assessment should be made of the effect a commercial structure will have on a scenic view significant to a given area or enjoyed by a significant number of people.

WAC 173-16-060(7) - OUTDOOR ADVERTISING, SIGNS AND BILLBOARDS

(c) Vistas and viewpoints should not be degraded and visual access to the water from such vistas should not be impaired by the placement of signs.

(d) Outdoor advertising signs (where permitted under local regulations) should be located on the upland side of public transportation routes which parallel and are adjacent to rivers and water bodies (unless it can be demonstrated that views will not be substantially obstructed).

(e) When feasible, signs should be constructed against existing buildings to minimize visual obstructions of the shoreline and water bodies.

WAC 173-16-060(8) - RESIDENTIAL DEVELOPMENT

(c) Subdividers should be encouraged to provide public pedestrian access to the shorelines within the subdivision.

WAC 173-16-060(9) - UTILITIES

(b) Whenever these facilities must be placed in shoreline areas, the location should be chosen so as not to obstruct or destroy scenic views. Whenever feasible, these facilities should be placed underground, or designed to do minimal damage to the aesthetic qualities of the shoreline area.

(c) To the extent feasible, local government should attempt to incorporate major transmission line rights of way on shorelines into their program for public access to and along water bodies.

WAC 173-16-060(10) - PORTS AND WATER-RELATED INDUSTRY

(b) Port facilities should be designed to permit viewing of harbor areas from viewpoints, waterfront restaurants and similar public facilities which would not interfere with port operations or endanger public health and safety.

(c) Sewage treatment, water reclamation, desalinization and power plants should be located where they do not interfere with and are compatible with recreational, residential or other public uses of the water and shorelands.

WAC 173-16-060(11) - BULKHEADS

(c) Consider the effect of a proposed bulkhead on public access to publicly owned shorelines.

WAC 173-16-060(18) - ROAD AND RAILROAD DESIGN AND CONSTRUCTION

(e) Scenic corridors with public roadways should have provision for safe pedestrian and other nonmotorized travel. Also, provision should be made for sufficient viewpoints, rest areas, and picnic areas in public shorelines.

WAC 173-16-060(20) - ARCHEOLOGICAL AREAS AND HISTORIC SITES

(b) Where possible, sites should be permanently preserved for scientific study and public observation.

WAC 173-16-060(21) - RECREATION

(a) Priority will be given to developments, other than single-family residences which are exempt from the permit requirements of the act, which provide recreational uses and other improvements facilitating public access to shorelines.

(b) Access to recreational locations such as fishing streams and hunting areas should be a combination of areas and linear access (parking areas and easements, for example) to prevent concentrations of use pressure at a few points.

(f) To avoid wasteful use of the limited supply of recreational shoreland, parking areas should be located inland away from the immediate edge of the water and recreational beaches. Access should be provided by walkways or other methods. Automobile traffic on beaches, dunes and fragile shorelands resources should be discouraged.

(g) Recreational developments should be of such variety as to satisfy the diversity of demands from groups in nearby population centers.

(h) The supply of recreation facilities should be directly proportional to the proximity of population and compatible with the environment designations.

(i) Facilities for intensive recreational activities should be provided where sewage disposal and vector control can be accomplished to meet public health standards without adversely altering the natural features' attractive recreational uses.

2. Interagency Committee for Outdoor Recreation (IAC)

The IAC was created within Chapter 43.99 RCW (Marine Recreation Land - Interagency Committee for Outdoor Recreation) and charged with several functions including disbursement of funds contained within the state's outdoor recreation account and preparation of the Statewide Comprehensive Outdoor Recreation and Open Space Plan (SCORP). The following policies are drawn from the current edition of SCORP (pp. 9-16):

Recommendations:

2. Programs should give priority to providing water-oriented opportunities close to population concentrations.

3. Programs and policies should be emphasized and implemented to acquire legal public access to state-owned tidelands. Local subdivision regulations should require provisions for public access to public tidelands. Recreation agencies should purchase tidelands of recreational value to connect large pieces of tidelands managed by public agencies.

4. Public access, including necessary uplands should be provided to state-owned shorelands, especially to those state-owned islands, sand bars, and state-owned accreted land on rivers.

5. High priority should be given to the retention of those estuaries and/or mouths of rivers, especially those of statewide significance, which presently are in or nearly in a natural state.

15. Increased efforts need to be initiated to place smaller islands of this state, especially those in North Puget Sound, in public ownership and/or to retain them in as near a natural state as feasible.

16. Those swamp, marsh, or bog sites with natural qualities and having unique values for wildlife conservation, scientific, educational, or recreational purposes should be retained in their natural state.

17. Park and recreation areas and open space should not be subject to diversion to other uses. Where necessary, provision should be made for replacement in kind in the same general location.

24. A greater variety of recreational opportunities with easy travel distance should be made available to a larger segment of the population.

27. Outdoor recreational facilities should be located within easy access of persons living in heavily populated urban centers. High priority should be placed on recreational opportunities and projects for people with low mobility, particularly for those in central areas of larger cities.

40. Zoning, scenic easements, purchase and lease-back, preferential tax incentives and other landuse controls, particularly for land fronting on bodies of water and flood plains, should be used to protect recreational, esthetic and ecological values. State and local governments should be encouraged to revise codes, ordinances, regulations and enforcement practices where revision will enhance such programs.

3. Department of Natural Resources (DNR)

Among DNR's responsibilities are the management of the state's marine bedlands and tidelands and administration of the state Natural Area Preserves system. The following policies are drawn from the "Land Use Allocation Plan [for] Department of Natural Resources Managed Marine Lands" developed by DNR in February 1973:

Policy 2: Public Use

To provide for the protection and improvement of marine lands for public use.

Guidelines:

2. Whenever practical, leases of first class tideland will provide for public access to the water.

5. Where the state owns the abutting uplands, priority will be given to joint development of the uplands and second class tidelands for public use.

11. Motorized vehicular travel will not be permitted on DNR's managed public use tidelands.

Part B SECONDARY POLICIES

1. Department of Ecology

RCW 90.58.020 - directs the DOE and local governments developing master programs to give preference to certain uses on shorelines of statewide significance. Among other considerations, preference is given to uses which increase public access and recreational opportunities on the shoreline.

RCW 90.58.100 - defines the elements which must be included within each master program. Such elements address public access, coastal recreation, various shoreline uses, conservation of resources, and historic, cultural, scientific and educational values associated with the coastal zone.

RCW 90.58.240 - authorizes the DOE and local governments to acquire lands and easements on shorelines in order to implement master programs.

WAC 173-16-040(3) - further defines master program elements.

WAC 173-16-040(5) - establishes guidelines for development on shorelines of statewide significance. Guidelines include the requirement that master programs give priority to increasing public access to publicly owned shorelines.

WAC 173-16-060 - directs local government to identify the types of natural systems within which uses are proposed and to impose development regulations such that the integrity of the natural systems may be maintained.

WAC 173-16-060(21) - guides local government in developing a recreation use element. Among other considerations, master programs should (1) encourage the use of linear access for linking shorefront parks and public access points, and (2) develop standards for the preservation and enhancement of scenic views and vistas.

WAC 173-16-070 - addresses the granting of variances and conditional use permits. One criterion for the granting of a conditional use permit is that the use will not interfere with public use of public shorelines.

2. Interagency Committee for Outdoor Recreation (IAC)

RCW 43.99.060 - creates the outdoor recreation account into which all monies made available for outdoor recreation purposes may be deposited.

RCW 43.99.080 - addresses the distribution of funds transferred to the outdoor recreation account.

RCW 43.99.110 - creates the IAC, defines the committee membership and establishes the terms of appointed members.

RCW 43.99.120 - requires the submission of plans from state or local agencies desiring funds from the outdoor recreation account.

RCW 43.99.124 - authorizes the IAC to receive funds and enter into agreements or contracts with federal agencies.

Within the Statewide Comprehensive Outdoor Recreation and Open Space Plan (SCORP) are two sections which contain recommendations or policies that relate to beach access or protection and are procedural in nature:

Recommendations (pp. 9-16)

1. Standards for shoreline development should be established and enforced throughout the state.

12. Puget Sound should be identified as a federal-state recreational waterway, a designation that recognizes its value for water related recreation.

14. Acquisition and development programs that combine recreation opportunities and environmental enhancement should be recognized as a special need in highly developed areas. Environmental quality criteria should be established to limit the encroachment of noncompatible uses on recreation and open space systems and prevent further deterioration of already damaged areas.

23. Washington should seek to exceed national outdoor recreation standards for recreation land acquisition and development in order to provide recreation areas and facilities comparable to the state's superior environmental oppbrtunities.

32. A fund source to implement the State Scenic and Recreational Highway System should be established. Criteria for inclusion to the system, standards for development, controls for the protection of scenic corridors, and priority for the funding and development of routes should be established.

Funding Priorities (pp. 53-57)

IAC LOCAL AGENCY PRIORITIES

General Priorities

Acquire and develop fresh and saltwater shorelines intended to provide facilities for multiple water-related activities.

Acquire, develop, and/or redevelop recreation areas for a wide variety of activities to serve the local population.

Specific Priorities

Listed below is the order of priority for acquisition and development of specific kinds of recreational areas. This list is not all-inclusive in that other types of lands may be considered for fund allocation where local plans or policy substantiate a public need for such lands. Development is intended to include major redevelopment projects where the conditions of existing recreation facilities have eliminated or drastically reduced use of the site. Within each of the seven priorities, facilities designed for multiple use will be given priority over single-purpose facilities.

1. Acquisition of Shorelines

2. Development of Local Recreation Areas

3. Development of Shorelines

4. Acquisition of "Locally Significant Features"

5. Acquisition of Local Recreation Areas

6. Trail Acquisition and Development

7. Acquisition and Development of Regional Recreation Areas

PRIORITY I - SHORELINES ACQUISITION

First priority is the acquisition of shorelines and necessary uplands to support multiple water-related activities accessible to local residents.

Priority order is:

1. Acquisition of shorelines in urbanized areas where the resource is in danger of being lost to other uses.

2. The acquisition of saltwater shorelines.

3. The acquisition of recreation sites on shorelines.

PRIORITY III - SHORELINES DEVELOPMENT

Third priority is the development of facilities to provide recreational opportunities which are related to or enhanced by water.

Priority order is:

1. The development of facilities which promote multiple use of shorelines and immediately adjacent uplands.

2. Development of swimming facilities and water-related upland uses.

3. The development of boating access, destination areas, and upland parking.

IAC STATE AGENCY CAPITAL BUDGET PRIORITIES

These priority objectives provide the framework through which the IAC will accomplish those programs which in its composite judgment provide a major emphasis toward correcting the recreational deficiencies in the state and in enhancing the existing outdoor recreation opportunities and scenic beauty now provided for the state's citizens and visitors. These priorities pertain to state agencies only and are not intended to reflect priorities or programs for other levels of government.

A. General Priorities

The general priorities for consideration of state agency capital requests are:

Acquire critical, scenic, and unique lands with recreation and/or conservation values which are not duplicated anywhere else within the state.

Develop outdoor recreation facilities for boating, camping, fishing, hunting, picnicking, sightseeing, trails and related outdoor recreation activities.

Acquire water-oriented lands especially where potential supply is limited.

Provide public access to existing state-owned or controlled lands, tidelands and beaches.

B. Specific Priorities

Listed below is the order of priority for acquisition and development of specific kinds of recreational areas. This list is not all-inclusive in that other types of lands may be considered for fund allocation where the public need for such lands is adequately substantiated.

1. Critical Resource Acquisition
2. Critical Resource Development
3. Saltwater Acquisition
4. Freshwater Development
5. Saltwater Development
6. Freshwater Acquisition
7. Regional Acquisition and Development
8. Trails
9. Scenic Roads
10. Forest

PRIORITY III - SALTWATER ACQUISITION

The highest priorities for saltwater shorelands will be given to acquisition of beaches and to public rights for access to publicly owned beaches which may be used with a minimum of development along the Pacific Ocean, Strait of Juan de Fuca, San Juan Islands, Hood Canal, Puget Sound, Willapa Bay, Grays Harbor and along the Columbia River as far inland as Cathlamet. These priorities include as well, provision for the acquisition of upland areas necessary for boating access, supportive parking, camping and other facilities which must be physically located away from fragile beach areas. However, the acquisition of such upland areas will be high priority only when contiguous to substantial publicly owned or controlled beach areas.

The priority order for acquisition is:

1. Acquisition of right of way for public recreational access to state-owned tidelands and beaches in the North and South Pacific Coast, North, Central and South Puget Sound and the lower Columbia districts.

2. The acquisition of boating access sites in the North Coast and the North, Central, and South Puget Sound districts.

3. Acquisition of boater destination areas in North Puget Sound.

4. Acquisition of large saltwater shoreland areas to provide regional-type recreational opportunities on all areas of Puget Sound.

5. Acquisition of saltwater access in the Lower Columbia River district.

PRIORITY V - SALTWATER DEVELOPMENT

Development priorities for saltwater shorelands are for the provision of recreational access to saltwater beach, tideland and water areas and necessary ancillary support facilities for fishing, boating, picnicking, camping and related emerging recreational activities.

The priority order for development is:

1. The development of public access to state-owned tidelands and beaches in the South Pacific Coast and North, Central and South Puget Sound districts.

2. The development of boating access sites in the North, Central and South Puget Sound districts.

3. Development of boating designation areas in the North, Central and South Puget Sound districts.

4. Development of boating access in the Lower Columbia District.

3. Department of Natural Resources (DNR)

RCW 43.30.300 - authorizes the DNR to: (1) develop primitive outdoor recreation facilities on lands under its jurisdiction; (2) acquire rights of way and develop public access to its lands; and (3) receive and expend funds from federal and state sources.

RCW 79.68.010 - directs the DNR to manage its lands under a multiple-use concept provided that certain conditions are met.

RCW 79.68.020 - defines multiple use.

RCW 79.68.050 - identifies multiple uses which may be compatible with financial obligations in the management of trust lands.

RCW 79.68.080 - directs the DNR to foster various uses of the aquatic environment under its jurisdiction.

RCW 79.68.090 - authorizes the DNR to adopt a multiple-use land resource allocation plan and lists the factors to be considered in any such plan.

RCW 79.70.010 - defines the purpose of the establishment of a state system of natural area preserves.

RCW 79.70.020 - defines terms relevant to the Natural Area Preserves Act.

RCW 79.70.030 - prescribes the powers which DNR may use to set aside, preserve and protect natural areas within the state.

RCW 79.70.040 - prescribes the powers DNR may use regarding transactions involving public lands designated as natural area preserves.

In February 1973 the DNR prepared a land use allocation plan for marine lands subject to its management. The following policies are drawn from this plan:

Policy 2: Public Use

To provide for the protection and improvement of marine lands for public use.

Guidelines:

1. Selected second-class tideland tracts of 1,000 contiguous feet or more, or smaller areas of special recreational quality, which have not been withdrawn for governmental or aquacultural uses, will be managed for public use.

3. Areas of second-class tidelands designated for public use will be identified as public use beaches, properly advertised and marked, and will be maintained on a regular basis for public use.

4. Areas allocated for public use will not be managed to produce a profit for a concessionaire or the administering agency without a lease fee being charged.

6. Selected second-class tidelands will be set aside for development of self-guiding marine nature walks.

7. Selected second-class tidelands capable of clam or oyster production, except those designated for aquacultural uses, will be set aside for public use.

8. Provisions shall be made to insure that traditional sports fishing areas are protected from competing uses that create obstructions.

9. Notice will be served to the current lessees of tidelands allocated for future public use, that prior to renewal of current leases, such leases will be modified to permit public use or will be terminated.

10. Bedlands abutting upland parks shall be considered for underwater parks.

12. In recognition of the increasing impact on the recreating public on the state's beaches, new programs will be devoted to public education about stewardship of state marine resources.

Policy 4: Protection of the Natural Marine Environment

To protect and enhance the quality of the natural marine environment.

Guidelines:

1. Provisions for leasing tidelands and beds shall include requirements for protecting the natural marine environment.

2. Areas of special educational or scientific interest or areas of special environmental importance may be withdrawn as reserves and protected from competing uses.

4. State Parks and Recreation Commission

The commission has jurisdiction over the Seashore Conservation Area and responsibility for the management of state parks. Administration of the Scenic and Recreational Highway System is shared between the Parks and Recreation Commission and the Highway Commission.

RCW 43.51.040 - authorizes the commission to acquire tracts of land, including shore and tidelands, for park and parkway purposes.

RCW 43.51.220 - authorizes the commission to establish landing facilities for small pleasure boats in the Puget Sound region.

RCW 43.51.250 - authorizes the commission to provide public and private access to tidelands.

RCW 43.51.650 - provides a declaration of principles regarding the establishment of the Seashore Conservation Area.

RCW 43.51.655 - establishes the Seashore Conservation Area and designates it boundaries.

RCW 43.51.660 - grants the State Parks and Recreation Commission jurisdiction over the Seashore Conservation Area.

RCW 43.51.665 - establishes principles and purposes to be followed in administering the Seashore Conservation Area.

RCW 79.16.172 - sets aside portions of the Pacific Ocean beaches as public recreation areas.

RCW 47.39.010 - creates a scenic and recreational highway system.

RCW 47.39.030 - allocates costs between the Highway Commission and the Parks and Recreation Commission for maintenance of the highway system.

RCW 47.39.050 - offers standards for consideration in the planning and design of scenic and recreational highways.

Several policies and philosophies have been endorsed by the Parks and Recreation Commission regarding the management of the various types of state parks. These statements are reproduced below:

> "State Parks are to continuously service man's spiritual, mental, and leisure time physical needs through the use of selected outstanding natural resources. This is to be accomplished by simultaneously protecting and conserving the resource; and by providing a full range of nonurban outdoor educational and recreational services and opportunities to a wide range of users with diversified interests and needs.
>
> "State Conservation Areas are to protect, conserve, and selectively develop outstanding environmental basins. They shall provide for a mix of sustainable outdoor recreation and conservation uses.
>
> "State Heritage Areas are to preserve and/or interpret selected areas or features for the education and enjoyment of the public.
>
> "State Launch Areas are to respond to man's needs to associate with water and to participate in boating oriented activities upon it. These areas are to provide a means by which the public can be assured of sustained access to state waters.

"State Natural Areas are to respond to man's needs for readily available "conservatories" of nature and open spaces. Emphasis is directed toward nature and the conservation of native flora, fauna, and the natural amenities of the area. Human wants for other than naturally existing educational and recreational opportunities are considered secondary to nature's requirement for the sustained maintenance of its natural balances.

"State Recreation Areas are to respond to man's needs for readily available areas for outdoor recreational pursuits. They are to provide a maximum volume and variety of outdoor recreational opportunities to a maximum number of participants. Primary emphasis is on the provision of service and facilities for large volumes of outdoor recreational activities with secondary recognition given to the conservation of the natural qualities of the area.

"State Ocean Beach Access Areas provide the public with opportunities for recreational activities in a beach environment. Public pressure for increased use of Washington's ocean beaches makes it necessary to provide certain recreational and sanitary facilities. Where feasible, the state ocean beaches shall be preserved in their present state; everywhere they shall be maintained in the best possible condition for public use. The access areas shall be developed to provide access while not infringing upon the intrinsic values of the beach environment and consistent with the provisions of the Seashore Conservation Act; Chapter 43.5.650 through 43.4.685 of the Revised Code of Washington."

5. Department of Fisheries

The Department of Fisheries conducts the majority of its recreation programs under the general authority granted by the legislature to the department and its director. These authorities are found in Chapter 43.17 and 75.08 of the Revised Code of Washington. In addition, several specific statutory provisions relating to the Department of Fisheries are described below:

RCW 75.24.060 - reserves to be productive, self-maintaining -furnish shellfish stock.

RCW 79.16.175 - Reserves certain public tidelands for public recreational use and the taking of fish and shellfish.

RCW 79.16.176 - authorizes the director of Fisheries to take action to provide access to the tidelands referred to above.

RCW 75.24.060 - provides policy for the management of oyster reserves.

RCW 75.08.030 - lists the facilities which shall be established and maintained by the director of Fisheries.

6. Department of Game

The Department of Game acquires lands for both access and protection purposes as well as managing the state's game and nongame wildlife.

RCW 77.12.175 - establishes a program which channels revenues from the sale of personalized license plates toward the support of wildlife resources in the state.

RCW 77.12.200 - authorizes the director of Game to acquire property for hatchery sites, eyeing stations, rearing ponds, habitats, sanctuaries, etc.

7. Local Governments

The authority for acquisition of land for park and recreation purposes and for the operation of recreation facilities is contained within Titles 35 and 35A RCW for cities and Title 36 RCW for counties. These titles also contain the planning enabling statutes for both cities and counties. Other distinct statutory provisions include:

RCW 35.79.030 - prohibits cities or towns from vacating streets abutting on salt or freshwater bodies unless such vacation is sought for certain public purposes.

RCW 36.87.130 - imposes a limitation similar to the above statute regarding the vacation of county roads.

RCW 58.17.110 - provides criteria for the approval or disapproval of subdivisions and dedications.

The following citations relate to the provision of park and recreation facilities by port districts.

RCW 53.08.260 - authorizes port districts to provide public park and recreation facilities.

RCW 53.08.270 - directs the port districts to submit plans for the acquisition or operation of any park or recreation facilities to other specified agencies for approval.

The following citations are drawn from the Open Space Taxation Act. Administration of the Act is by local government but responsibility for the issuance of administrative regulations and necessary forms lies with the State Department of Revenue:

RCW 84.34.037 - outlines procedures and authorities for the submission, review, and processing of applications for current use classification.

RCW 84.34.210 - authorizes local governments to acquire selected open space land, timber land, and farm or other agricultural land for public use.

IV. DESIGNATION OF SHOREFRONT AREAS AS AREAS OF PARTICULAR CONCERN

Additional areas of particular concern (APC's) will not be identified in this planning process. Those areas currently designated as APC's include several locations important for their recreational significance. In addition, the extraordinary protection granted by "shoreline of statewide significance" designations cover many other recreationally significant locations. Existing state and local programs are fully equipped to preserve and protect recreational resources and currently operate to a high degree of effectiveness in this regard.

V. IDENTIFICATION OF FUNDING PROGRAMS WHICH CAN BE USED TO MEET MANAGEMENT NEEDS

The principal sources of funding for acquisition and development of beach recreation and protection facilities are federal Land and Water Conservation Fund monies distributed by the Heritage Conservation and Recreation Service together with state funds provided through Referendum 28 (Washington Futures bond issue) and Initiative 215 (marine gas tax monies). These funds are distributed through the IAC funding process.

In addition to the funding provided through the IAC, several agencies receive direct funding from federal and state sources. Examples include the monies received by the Department of Game for nongame wildlife programs from the sale of personalized license plates and federal participation in the construction of boating facilities through Corps of Engineers assistance provided to local port districts.

Funding for regulatory programs is received from a variety of sources. Not the least of such funding programs is the monies granted to the state under Section 306 of the CZMA. Administration of the Shoreline Management Act by both state and local government is financially aided through this source. Most state agencies receive direct appropriations from the legislature for the conduct of regulatory programs under their control.

Section 315 of the CZMA authorizes the Secretary of Commerce to make grants to coastal states for the purpose of acquiring lands to provide for access to public beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological or cultural value, and for the preservation of islands. As yet, no funds have been appropriated for this purpose but it remains a potential source of acquisition monies which could be used to meet management needs.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management
Washington, D.C. 20235

EVALUATION FINDINGS

WASHINGTON COASTAL ZONE MANAGEMENT PROGRAM

COVERING THE GRANT PERIOD JULY 1978 - JULY 1979

I. BACKGROUND

Section 312 of the Coastal Zone Management Act (CZMA) requires continued review of states with federally approved coastal management programs. This review is designed to evaluate performance with respect to coastal management activities and adherence to the approved management program.

The Washington Coastal Zone Management Program (WCZMP) was approved in June 1976, the first CZM program in the Nation to gain approval. Federal support for its implementation, prior to this year's grant, totalled $3,700,000. This year's grant award from the Federal government for the third year of program implementation is $1,450,00. The State's matching share is $362,500.

In connection with the Office of Coastal Zone Management's (OCZM) evaluation responsibilities, an on-site review of the WCZMP was conducted in Olympia, Seattle and Everett from February 28 - March 2, 1979, by Catherine Morrison, Program Evaluation Staff; Eileen Mulaney, Regional Manager, Pacific Region; Rebecca Barber, Assistant Pacific Regional Manager; and John O'Donnell, External Relations.

The on-site review included meetings with the Department of Energy (DOE) staff; the Puget Sound Planners Group; representatives of the State Departments of Fisheries, Game, Natural Resources, Emergency Services, Planning and Community Afffairs, Parks and Recreation, and Social and Health Services; Federal Agency representatives; representatives of environmental groups; the University of Washington; and business interests. A public meeting was held the evening of March 1, 1979. A list of individuals attending these meetings is attached (Appendix 1).

WASHINGTON

Since Washington law excludes the public from beach areas above the ordinary low water mark, the provision of access is more challenging than in most other states. One method that the state has used to open the coast up to the public has been the acquisition of shorefront land; approximately 40% of the Washington coast is owned by the state and open to public use. The two other methods employed by the state to encourage increased shorefront access are: (1) requiring access as a condition of permits; (2) funding local studies to identify and develop access potential.

Development projects of a certain magnitude which are planned for the coastal zone must receive permits from the state coastal program staff. In most cases these permits are conditioned on the provision of shorefront access by the private property owner. The type of access required depends on the magnitude of the project, its total impact on the coastal area, the physical configuration of the adjacent shoreline, and the proximity of other access opportunities. In some cases the developer is required to build a platform from which the public may gain visual access to the shore. In other cases the private property owner might be required to build steps to the beach and allow the public lateral access to the sandy area between the water and vegetation line.

CZM funds are made available to the local communities to plan for the increased provision of beach access. State coastal program administrators are presently encouraging local officials to identify their existing access points and undertake studies to determine whether

or not more are needed. Such identification and user surveys are being undertaken in Scagit County, Island County, and Everett. At least eight communities have received grants to plan urban waterfront parks; one in Seattle will link two ferry terminals via a shorefront walkway. Kings County is investigating the possibilities of providing incentives for economic development projects to include public access. To date, most discussions with commercial and industrial property owners about joint use (i.e. industrial/recreational) have met with little success.

c. In the Area of Shoreline Access and Protection and Restoration of Historic, Aesthetic and Cultural Resources

Several activities currently underway will provide at least 280 new or improved access points or facilities.

(a) The City of Everett is a good example of a thorough approach to the question of access:

Everett developed a shoreline public access interview questionnaire and conducted interviews from July through October. The results are being processed through a Statistical Package for the Social Sciences (SPSS) Program. Eleven sites were selected; two, three or four samplings were taken at each site. This will help to evaluate shoreline user activities, opinions, and demographic data.

Concurrently, an origin and destination study is being processed through the Washington State Highway Department to determine shoreline user origin. Traffic counts were made at the eleven access areas to determine peak use hours. License plate numbers have been recorded through a joint effort of the Engineering and Planning Departments Inventory and mapping of public access areas, shoreline viewpoints, trails and historic sites are in progress. All the above will result in updating the public access element of Everett's SMP and is expected to provide consicerable additional access.

(b) Skagit County has completed a public access study. Seventy-nine sites have been identified. Plans are underway to print maps and place signs that will direct the public to these access points.

(c) King County initiated the use of incentives in the master program to encourage developers to include public access.

(d) Island County has identified 110 sites as part of its shoreline access study. Implementation has not yet begun.

(e) The City of Seattle has a series of projects underway that will provide additional and /or improved access:

- a major port exhibit is planned. It will be tied to a port-city walkway that will link the two ferry terminals.

- The City will grant shoreline development permits for water-related uses if public access of sufficient quality is dedicated.

- an Urban Beach Demonstration Project has been undertaken to solve both beach erosion problems and access needs. Four areas have been selected for improvement of public facilities. Consultant work is expected to be completed by June 1979.

- The City has identified 120 roads that provide access to the shoreline. Eighty sites for public access are available. Signing of these points has been proposed.

WISCONSIN

The Wisconsin coastal zone management program uses the incentive approach to encourage shoreline access. State administrators encourage local officials to trade erosion control measures (fence and wall construction, vegetation planting, etc.) for the provision of public access rights to private shoreline. State CZM funds are made available to local communities for planning and feasibility studies of various methods of providing public access to the shore. Some examples of these studies include:

KENOSHA - The feasibility of developing a historic waterfront site for use as a community recreational facility, including a special fishing pier for the elderly and handicapped was funded by the CZM program three years ago. Since then the site has been developed and CZM continues to assist in funding its management.

BAYFIELD - A CZM-sponsored study is investigating the realm of acquisition tools available to this community.

WASHBURN - A major waterfront development is still in the planning stages. Among its elements are the acquisition of land along the shoreline for public use, development of a 2-1/2 mile waterfront pedestrian and bike trail, and construction of a marina.

IRON COUNTY - CZM money was used to fund site analysis and planning of a six mile long recreational along the shoreline.

Wisconsin CZM administrators cite two shorefront access initiatives which occurred prior to the availabilities of CZM funding and which the state program is now seeking to replicate in other communities:

MILWAUKEE - Throughout the developmental history of the city, two thirds of the shoreline has been kept in the public domain as parkland.

SHEBOYGAN - The municipality floated a $.5 million bond for erosion control and traded protection of the shoreline for access rights to private property.

SHOREFRONT ACCESS AND PROTECTION PLANNING:

Compliance with Section 305(b)(7) Federal Requirements

by

Joan Gasperow

Wisconsin Department of Natural Resources

for

Wisconsin Coastal Management Program

Chapter 305(b)(7)

SHOREFRONT ACCESS AND PROTECTION PLANNING

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PREFACE

To fulfill the requirements of subsection 305(b)(7) of the 1976 amendments to the Coastal Zone Management Act of 1972, Wisconsin's Coastal Program must include a planning process that can identify public shorefront areas appropriate for increased access and/or protection.

There are five elements which must be included in the shorefront access and protection planning process:

"(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 State enforceable policies pertaining to shorefront access and protection;

(4) a method for designating shorefront areas as areas of particular concern (either as a class or a specific sites) 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."

-923.25 Federal Register, Vol. 43, No. 41

Like many aspects of the federal requirements for a Coastal Management Program, Wisconsin has ongoing program and policies which serve to fulfill the requirements for shorefront access and protection planning. This paper documents Wisconsin's compliance with the federal requirements cited above. The text describes Wisconsin's ongoing efforts in relation to federal rules.

I. Procedure for Assessing Public Areas Requiring Access or Protection

A. Summary of Shorefront Access and Protection Planning Process

The provision of shorefront access and resource protection is considered to be the responsibility of both state and local units of government in Wisconsin. To meet this responsibility, planning procedures are already in existence which fulfill the federal requirements specified by subsection 305(b)(7). Local units of government plan for shorefront access and protection by participating in the Outdoor Recreation Program. State government involvement is primarily through the procedures for feasibility studies for project acquisition and development by the Department of Natural Resources (DNR). The federal government is also involved by assisting local units of government with harbor planning.

The existing procedures for the Outdoor Recreation Program by local units of government, feasibility studies by the DNR and harbor planning by the U.S. Corps of Engineers are briefly outlined below. More detailed information on these planning programs and procedures, including eligible activities, funding priorities and how these procedures meet the federal rules (15 CFR 923.25(c)), are described in Part IB of this report.

New planning procedures for state assistance to local units of government for harbors of refuge will be established during the summer of 1978. These new procedures are a result of legislation signed in April 1978. The legislation is described at the end of Part IB of this report.

OUTLINES OF PLANNING PROCEDURES

Outdoor Recreation Program

1. Local unit of government develops a Comprehensive Outdoor Recreation Plan which includes:

   a. inventory of existing public facilities;

   b. anticipated demand for future use of facilities;

   c. capability and suitability of existing areas to support increased access;

   d. description of appropriate types of access and/or protection in light of government and public preferences, resource capabilities and priorities; and

   e. identification of specific projects

2. Local government officially approves the Comprehensive Outdoor Recreation Plan

3. DNR reviews plan to establish eligibility to receive LAWCON and ORAP funds.

4. Eligible unit of government contacts DNR Recreation Aids Specialist to discuss a potential project.

5. Recreation Aids Specialist meets with local officials at the proposed project site to discuss merits of project in relation to community needs, state policy and availability of funds.

6. Environmental impact assessment is prepared which considers primary and secondary impacts of project such as transportation requirements.

7. Local government works with Recreation Aids Specialist to submit application for funds, only if funding is likely to be approved.

8. Local government agrees to all contract provisions to receive LAWCON/ORAP funding and submits project for A-95 review.

9. Funding is approved by DNR Office of Intergovernmental Programs.

10. Local government undertakes approved project, maintains cost records, submits billings to DNR.

11. Recreation Aids Specialist inspects project and arranges for funds to be paid.

Feasibility Studies for Project Acquisition and Development

1. Preliminary proposal

2. Approval of proposed project by the Natural Resources Board

3. Feasibility Study for proposed project - evaluates current and projected needs in terms of:

   a. existing state, local and regional plans

   b. preservation of the resource

   c. resource potential for recreation activities

   d. criteria for each type of use

4. Approval of feasibility study by Natural Resources Board and Governor and authorization to undertake Environmental Impact Assessment process and master planning process.

5. Final approval of project by Natural Resources Board and Governor.

6. Project acquisition and development begins.

Harbor Planning

1. Expression of local interest and support for a harbor project

2. Reconnaissance Study by the U.S. Corps of Engineers

3. Detailed feasibility study includes evaluation of physical, environmental, economic, transportation, and engineering impacts of a harbor project

4. Development of plans and specifications by the U.S. Corps of Engineers

B. Detailed Information on Shorefront Access and Protection Planning Procedures

A procedure for assessing public areas requiring access or protection is required under the Federal Shorefront Access and Protection Planning Rules (15 CFR 923.25(a)(1)). The Federal rules state that the procedure should consider:

(a) supply of existing public facilities and areas (including public recreation areas, scenic natural areas, threatened floral/faunal habitat, wetlands, bluffs, islands, historic, cultural or archaeological artifacts, urban waterfronts, etc.);

(b) anticipated demand for future use of facilities (especially the recreation needs of urban residents, as well as environmental, esthetic or ecological preservation, protection of public use benefits, preservation of islands, and maintaining the value of existing public shorefront access facilities);

(c) capability and suitability of existing areas to support increased access; and

(d) description of appropriate types of access and/or protection in light of government and public preferences, resource capabilities and priorities (considering lateral and perpendicular physical access and visual access).

The purpose of the planning procedure is to develop a method which will allow for the eventual identification of specific areas of more than local concern for which provision of access through acquisition will be appropriate during program implementation. The rules further suggest that the State Comprehensive Outdoor Recreation Plan and the procedures for geographic areas of management concern be used to fulfill these requirements.

The Wisconsin Outdoor Recreation Program, Feasibility Studies for proposed project acquisition and development by the DNR, planning for harbor access under programs sponsored by the U.S. Corps of Engineers and DNR, and the new Wisconsin Harbors of Refuge Law will now be discussed as to their relation to the federal guidelines. Additional state policies and funding sources for shorefront access and protection are presented in parts III and V, respectivel

Wisconsin Outdoor Recreation Program

The purpose of the Wisconsin Outdoor Recreation Program is "to promote, encourage, coordinate and implement a comprehensive long-range plan to acquire, maintain and develop for public use those areas of the state best adapted to the development of a comprehensive system of state and local outdoor recreation facilities and services in all fields, . . . , and to facilitate and encourage the fullest public use thereof.

The outdoor recreation program is established as a continuing program to financially assist the state and local agency outdoor recreation program, including . . . public access, state park and forest recreation areas, fish and game habitat areas . . . highway scenic easements, state aids for local governmental parks and other outdoor recreational facilities, acquisition and development, state aids for county forest recreation areas development, related historic sites, . . . recreational planning . . ." (Section 23.30, (1) and (2), Wis. Stats.).

Funding for this program is provided by the Federal Land and Water Conservation Program (LAWCON) and the State Outdoor Resources Action Plan Program (ORAP). The Outdoor Recreation Program is implemented under the provisions of Chapter NR 50, Wisconsin Administrative Code.

Units of governments must meet certain planning requirements to be eligible for LAWCON and ORAP funds. The applicants are required to submit a comprehensive outdoor recreation plan for their area to the Department of Natural Resources which conforms to the state outdoor recreation plan; or applicants may qualify for eligibility if proposed projects are identified in approved plans of higher units of government (NR 50.03(1) and (4), Wis. Adm. Code). The State Outdoor Recreation Plan identifies state priorities for project by type and geographically.

Guidance for the creation of an acceptable outdoor recreation plan for county and local units of government is provided by the Department of Natural Resources Bureau of Planning.

It is recommended that the plan include the following sections:

1. Introduction - a description of the goals, scope and authority of the planning effort;

2. Summary - plan highlights including outstanding recommendations;

3. General characteristics of the plan area - including demographic information, transportation data, basic recreational resources, etc.;

4. Supply - including an inventory of all publicly and privately owned recreation areas and associated facilities available for public use, an assessment of the physical condition of these facilities, deficiencies of these areas, recreation areas outside the plan area that have a significant impact on the area, and potential recreation areas;

5. Recreation needs - a description of unsatisfied recreational demands by residents and nonresidents; and

6. Action program - a proposal to overcome the deficiencies in the recreational facilities of that municipality.

The six sections of this plan consider the required elements for shorefront access planning (supply, demand, capability/suitability of existing areas, description of appropriate types of additional facilities, and identification of specific access sites for which acquisition is appropriate).

The comprehensive outdoor recreation plan must project a recreation program for a minimum of five years. The plan must be formally approved by the municipality before eligibility for program funding can be established. Formal approval by a local unit of government entails some degree of public participation as required by an official action of any governing or administrative body in Wisconsin, such as public notice of meetings, open meetings, and publication of meeting proceedings. Revision of the plan must follow the same approval procedures as the original plan.

Many general provisions of the administration of Outdoor Recreation Program Grants and State Aids are relevant to the federal requirements for shorefront access and protection planning. The federal requirements suggest that the state consider such factors as environmental, esthetic or ecological preservation. Environmental quality is deemed to be essential and shall be preserved and enhanced by the Outdoor Recreation Program (NR 50.05(1), Wis. Adm. Code).

The federal rules require that the planning process include a description of appropriate types of access and protection taking into account governmental and public preferences, resource capabilities and priorities. This requirement is partially met by the Recreation Needs and Action Program sections of the comprehensive Outdoor Recreation Plan of a municipality. The requirement is also fulfilled by provisions in the Administrative Rules for the Outdoor Recreation Program which includes a listing of the types of projects which can be funded. Eligible projects fall into two categories: land acquisition and development.

Land acquisition projects eligible for assistance include: (1) areas with frontage on rivers, streams, lakes, estuaries and reservoirs that will provide water-based public recreation opportunities; (2) areas that provide special recreation opportunities such as flood plains, wetlands and areas adjacent to scenic highways; (3) natural areas and preserves and outstanding scenic areas where the objective is to preserve the scenic or natural areas, including areas of physical or biological importance and wildlife areas. These areas must be open to the general public for outdoor recreation use to the extent that the natural attributes of the areas will not be seriously impaired or lost; (4) land within urban areas for day use picnic areas . . . ; (5) land for recreation trails (NR 50.05(4), Wis. Adm. Code). Acquisition of lands which provide public access to navigable waters by means of water, road, trail or otherwise through the privilege of crossing public or private lands without involving trespass, is also eligible (NR 50.08(4)(a), Wis. Adm. Code).

Development projects eligible for assistance include: 1) observation and sight-seeing facilities such as overlooks, turnouts and trails; 2) boating facilities, such as launching ramps and docks; 3) picnic facilities; 4) camping facilities; 5) swimming, bathing and water sport facilities including beaches . . .; 6) fishing and hunting facilities, such as trails and fishing piers; 7) urban recreation areas; supporting facilities, including entrance and circulation roads, utility and sanitation systems, erosion control work, parking areas, toilet buildings and interpretive facilities where there is permanent professional naturalist staff and the facilities are on the land being used for nature interpretation; 8) renovation or development of an existing facility; 9) beautification of an area, such as . . . cleaning and restoration of areas which have been exploited, polluted, littered etc., . . .; 10) initial dredging for swimming beaches and boat launching ramps where it is necessary to make the area useable (NR 50.05(7), Wis. Admin Code). In addition to these general types of development projects, public access site development projects generally include parking areas, boat launching ramps and may include safety, health and protection of the area as well as the facilities required for the use of the area (NR 50.08(4)(b), Wis. Admin. Code).

Priorities are given to projects which meet urban needs (an additional consideration under the federal requirements for shorefront access planning), to activities of the general public over those for a limited group, to basic over elaborate facilities, to participant over spectator type facilities, to projects not having other public or private funds available to them, where a scarcity of recreation land exists, and to acquisition over development. Projects which may enhance or preserve natural beauty are encouraged (NR 50.06(4), Wis. Admin. Code). The 1977 State Comprehensive Outdoor Recreation specifies additional priority considerations including public access to the Great Lakes.

In addition to these general guidelines, the primary objective of the state access aid program is to provide public access where needed and none exists. Where access exists but is inadequate, improvement will be considered as a lower priority. Each access project must have a demonstrable public interest and need (NR 1.92(6), Wis. Admin Code). Priority is given to large lakes greater than 1000 acres of surface area and important stream sytems (NR 50.08(5), Wis. Admin. Code).

After establishing eligibility to receive funds under the Outdoor Recreation Program a municipality meets with the DNR District Recreation Aids Specialist to discuss the merits of a potential project in light of community and state needs, state policy and priorities, and availability of funds. An environmental impact assessment is conducted for each project which evaluates the primary and secondary impacts including factors such as transportation requirements. To minimize bureaucratic procedures, applications are prepared only for those projects which are likely to receive funding.

The level of funding available to local units of government for planning, acquisition and development is limited and highly competitive. The LAWCON and ORAP funds are divided between counties, state agencies and contingency funds. State agencies receive 40% of the funds. Counties receive 40% of the funds. The contingency fund is the remaining 20% of the allocation. Of the 40% allocated to counties, 30% is divided on an equal basis and 70% is divided on the basis of population. Thus a relatively small amount of the funding is available to the Lake Superior Counties.

Perhaps one of the most constructive roles that the Coastal Program can play with respect to providing public access and protection is to cover some of the costs associated with LAWCON/ORAP project planning. Although many of the project planning costs such as feasibility studies, site planning and engineering services are reimbursable items under LAWCON/ORAP funding, these expenditures can use a large amount of money which could better be used for acquisition and development. Acquisition and development funds aren't currently available through the Coastal Program. The submission of refined project proposals could enhance the opportunity for coastal projects to receive a larger share of a county's allocation.

Feasibility Studies by the Department of Natural Resources

A different planning procedure is used by the Department of Natural Resources (DNR) in developing proposals for land acquisition and development of facilities. A preliminary proposal is introduced for consideration by the Natural Resources Board. If the Board is interested in the project it will authorize the preparation of a feasibility study. The feasibility study is used to factually determine the need, desirability and suitability of a given area for DNR property establishment. Consideration is given in the plan to the State Comprehensive Outdoor Recreation Plan and all other DNR plans, the services provided by private enterprise, and to the responsibilities of local units of government. Potential projects are rated for the type of use they will receive, such as Wildlife, Fisheries (including access), Recreation, State Forests, State Parks, Wild Resources, and Scientific Areas, and Abandoned Railroad Grades. Examples of the criteria used to rate particular types of areas are given below.

Criteria for Fishery Access Areas -

a. Anticipated public use of the proposed area
b. Ranking area for needs according to NR 1.90, Wis. Adm. Code
c. Explanation of need
d. General proposal for Lake Management (especially for inland lakes)

Criteria for Recreation Areas -

a. Area is environmentally adaptable to intensive recreation uses
b. Located so as to provide regional recreational opportunities for urban areas
c. Transportation now available or potentially available to provide access to the area
d. Area meets regional and statewide needs
e. Area is accessible to large numbers of potential users

Costs for the proposed project acquisition, development, operation and maintenance, local attitudes, adjacent land uses, ownership, zoning, pollution problems, and alternatives are also discussed.

The completed feasibility study must be approved within the DNR, the Secretary's Office and then submitted to the Natural Resources Board. If the Board approves the feasibility study, it is forwarded to the Governor for approval, the Environmental Impact Assessment Process is initiated, public hearings are held, the project land appraisal is completed, and the Master Plan is developed. Approvals by the Board and Governor are preliminary, pending completion of the property master plan and environmental impact process.

Harbor Planning

The need for harbors of refuge and marinas along Wisconsin's Great Lakes shoreline has been documented in numerous studies (see Neuman, 1976, Public Access to the Great Lakes, Wis. DNR, for a summary of these studies). The development of harbors is primarily limited by the adequacy of sites and the availability of funding. Recognizing these limitations, current harbor planning is directed toward detailed feasibility studies initiated after local cooperation for funding is expressed.

The Preliminary Feasibility Report on Harbors Between Kenosha and Kewaunee is an example of one of the studies establishing needs for harboring access. The report was prepared by the U.S. Army Corps of Engineers and quantifies the need for recreational boating facilities in the study areas; quantifies the capacity of existing facilities to satisfy the needs, develops and analyzes alternatives to satisfy the remaining needs; identifies the costs, benefits and other significant adverse and beneficial impacts of the alternatives considered; specifies the cost sharing and division of responsibilities between federal and nonfederal interests for the actual development of harbors (under section 107 of the 1960 Rivers and Harbors Act); and concludes that more detailed investigation of individual harbor sites is necessary before harbor development can proceed. Detailed feasibility studies will only be conducted if the local government body provides preliminary assurances of local cooperation and interest in developing the harbor, if a project is recommended after detailed study.

To expedite the development of small craft harbors by the U.S. Corps of Engineers and local units of government, the Department of Natural Resources obtained a grant from the Upper Great Lakes Regional Commission to prepare detailed feasibility studies for Ashland, Cornucopia, Port Wing and Kewaunee. These studies provide information on environmental, economic, physical, transportation and engineering aspects of small craft harbor development.

Section 107 of the 1960 Rivers and Harbors Act provides authority for the Army Corps of Engineers to develop and construct small navigation projects that have not already been specifically authorized by Congress. These projects are a joint venture between the Army Corps of Engineers and the local unit of government. A project is undertaken only after the Corps receives assurance that the local unit of government will cooperate and meet its share of the costs. A reconnaissance study, followed by a detailed feasibility study, is prepared before actual engineering plans and specifications are developed.

Wisconsin Harbors Refuge Law

New legislation relating to shorefront access planning was signed into law in April 1978. Chapter 274, Laws of 1977 creates a Wisconsin Waterways Commission and establishes programs for financial and technical assistance to local governments for the development of recreational facilities. The Waterways Commission will:

1. Study the need for recreational boating facilities and boating safety programs;

2. Study the engineering, economic and environmental feasibility of proposed projects;

3. Establish a priority list for proposed projects; and

4. Approve DNR actions in developing and administering the financial assistance programs.

Planning procedures for the implementation of this program will be established during the summer of 1978.

II. Beach Definition

Federal regulations require a definition of the term "beach" and an identification of public areas meeting that definition (15 CFR 923.25(a)(2)).

Beach is defined as "the zone of unconsolidated material that extends landward from the water's edge to the base of the bluff or dune, or to the line of permanent vegetation".[1] Public areas which meet this definition include lands owned by the State and local governments. Unlike many states, in Wisconsin the lands between the Ordinary High Watermark and the water's edge (which usually fall within the boundaries of a beach as defined above), are not considered to be public areas. These lands have been interpreted by the Wisconsin Supreme Court to be exclusively for riparian use (Doemel v. Jantz, 180 Wis. 225).[2]

The Wisconsin Great Lakes shorefront includes a variety of physical elements in addition to beaches: bluffs of unconsolidated materials, bedrock outcroppings and wetlands. Many of these areas, including islands and beaches, could serve to meet the spectrum of Wisconsin's access and protection needs (ramp, harboring, shore, pier and visual access; protection of fish and wildlife habitat, erosion hazards, cultural, historical, aesthetic, recreational, ecological and environmental values). Public shorefront areas include state-owned lands adjacent to the Great Lakes and other shorelands in public ownership. Since the physical characteristics and public values of shorefront areas are unique, physical boundaries can only be defined on a case-by-case basis.

Under these definitions of beach and shorefront, essentially the entire Wisconsin Great Lakes shoreline, whether an urban waterfront, a wetland, or a forested area on a bluff overlooking Lake Superior, is potentially eligible to meet the needs of the public for access and protection. It is the responsibility of local units of government and authorized state agencies to meet these needs by utilizing the planning procedures, funding sources and techniques for management described in this report.

[1]Born, S. and D. Mickelson (1978) personal communication.

[2]For a more detailed discussion of this issue, see "Ordinary High Watermark - Great Lakes/1976" - Wisconsin Department of Natural Resources.

III. Enforceable State Policies

Articulation of enforceable State policies pertaining to shorefront access and protection is required under the Federal Shorefront Access and Protection Planning Rules (15 CFR 923.25(a)(3)).

The federal guidelines define shorefront access and protection to include physical access (beaches, trails, parking facilities, ferry service, etc.), visual access (waysides, zoning restrictions, etc.), environmental, aesthetic or ecological preservation (protection from overuse, mitigation of erosion, etc.), protection of public use benefits (recreational, historic or cultural uses), preservation of islands, and other protection necessary to maintain environmental, recreational, historic, aesthetic, ecological or cultural values of existing public shorefront attractions (CFR 923.25(c)).

All of these issues are closely related to the overall goal of the Wisconsin Coastal Program. The goal is directed towards coastal area preservation, protection, development, restoration and enhancement. This goal is supported by existing state policies. These policies, consideration of the national interest, and the impacts of these policies are explained in the State of Wisconsin Coastal Zone Management Program and Final Environmental Impact Statement (FEIS).

Those policies which specifically relate to access and protection of shorefront areas are listed in this section. Many of these policies are classified as "Managed Uses" by the Wisconsin Coastal Management Program. Managed uses are activities which have a direct and significant impact on the coastal environment and are managed under enforceable policies based on statutory authority. Coastal management program funds are available to assist in improving the management activity. Memoranda of Understanding between agencies and the Coastal Management Council ensure that these policies are enforced with consideration of the goals of the Coastal Management Program. The impacts of enforcement of managed uses regulations are discussed in the FEIS.

Another opportunity for involvement of the Coastal Management Program in enforcement of policies for shorefront access and protection is through the GAMC process which is discussed in Part IV of this report. The impacts of GAMC designation are discussed in the FEIS.

The following enforceable state policies pertain to shorefront access and protection:

2.0 The policy of the state is to conserve and enhance the natural land and water resources of the State by:

- a. Designating and managing special areas of the State, including scientific areas, state parks, state forests, and state wildlife areas, so as to protect and enhance fish and wildlife habitat, forest resources, lakes and streams, wetlands, recreation resources, and endangered plant and animal species.

b. Providing special management attention to the conservation and enhancement of the Great Lakes fisheries resources, by conducting fish rearing, fish stocking, and fisheries research programs; by regulating sport and commercial fishing; by designating certain portions of the Great Lakes as fish habitat protection areas.

c. Ensuring that the following activities that are engaged in or are subject to regulation by state agencies are conducted so as to minimize the destruction or degradation of coastal wetlands and to preserve the natural and beneficial values of coastal wetlands and the public interest therein. These activities include: 1) the acquisition, management and disposition of state lands and facilities; 2) construction activities assisted by or directly undertaken by state agencies; and 3) regulation of land and water uses in coastal wetland areas.

2.10 State fish management easements shall provide public access for public fishing. The property owner retains the right to use the stream and land for domestic purposes (including stock watering, dumping incidental to normal agricultural or horitcultural purposes). A permit will be required in these areas for removal of trees, shrubs, altering topography and erecting new structures. (See GAMC #1 and #5 and Wis. Stats. Section 23.09(2)(d)).

4.0 The state's policy on coastal community development shall be to ensure the orderly and balanced development of coastal communities, giving full consideration to economic, ecological, human resource, cultural, historic, recreational, and aesthetic values, and existing and future needs by:

a. Requiring local ordinances that ensure the efficient use, conservation, development and protection of the state's coastal resources in rural areas;

b. Ensuring that subdivisions are laid out in an orderly fashion, are properly surveyed and make adequate provision of public access to coastal waters;

c. Ensuring that the state's significant historic, architectural and archeological resources are identified, recognized and protected in all state activities and that efforts are undertaken to ameliorate any potential adverse effects caused by state action;

d. Designating and aiding in the restoration of blighted waterfront areas so as to protect and enhance public safety, aesthetics, and economic well-being;

e. Acquiring additional recreational lands in heavily populated areas of the state;

f. Ensuring that shoreland alterations are not detrimental to fish and wildlife habitat, navigation, flood flow capacity or the public interest; and

g. Providing assistance programs for recreational boating facilities and boating safety to remedy the problems of recreational use of the waters.

4.7 State aesthetic resources shall be protected and enhanced through the regulation of billboards, the screening of junkyards, the purchase of scenic easements, the development of parkways, and the establishment and operation of a Rustic Roads Program. (See GAMC #6, managed use #2 q, Wis. Stats. Sections 83.42, 84.09, 84.105, 84.30, and 84.31).

4.8 Public access of at least 60 feet in width shall be provided at not less than one-half mile intervals by all subdivisions abutting navigable lakes or streams. Once provided, public access to navigable waters shall not be discontinued without state approval. Providing public access to waters by the Department of Natural Resources is a variable requirement based on the quality of the resource, the space available and the levels of use experienced, respecting private rights and developments. (See managed use #2 1 and Wis. Stats. Sections 80.41 and 236.16(3) and Wis. Admin. Code NR 1.90, 1.91, 1.92).

4.9 The state shall establish a state park system and shall give principal emphasis to the acquisition of recreational lands in the heavily populated areas of the state and in places readily accessible to such areas. (See GAMC #1 and Wis. Stats. Sections 23.09 and 27.01 and Wis. Admin. Code NR 1.40.)

4.10 Local communities shall be encouraged to provide local recreational and educational opportunities through provision of state aids. The state shall provide technical and financial assistance to municipalities for the development of recreational boating facilities. (See GAMC #1 and Wis. Stats. Sections 23.30 and 30.92.)

4.11 Dredging, filling, placing structures upon, and removing materials from the bed of navigable waters shall not be allowed if it damages the public interest, is deleterious to fish or game habitat, materially obstructs navigation or reduces effective flood flow capacity. (See GAMC #2, managed uses 1a, b, f, and g and Wis. Stats. Sections 30.12 and 30.20.)

5.4 The state shall promote travel to Wisconsin's scenic, historic, natural, agricultural, educational, and recreational attractions. (See GAMC #1 and Wis. Stats. Section 560.23.)

7.5 The state shall establish and provide for a "public intervenor" in the Department of Justice with responsibility and authority to intervene in proceedings where necessary to protect public rights in waters or other natural resources. (See Wis. Stats. Section 165.07 and Part IV, Appendix H of the FEIS).

The following managed uses pertain to the policies listed above:

1. Water based managed uses

   a. Removing materials from the bed of the Great Lakes or other coastal areas.

   This activity is regulated by the DNR. If a navigable lake is involved, DNR must issue a contract before the activity commences (a permit is required for streams and non-navigable lakes). The decision-making standard is whether the contract or permit would be consistent with "public rights" or the "public interest," respectively. Removing materials is managed because the activity could potentially damage fish and game habitat and alter the quality of coastal waters. (Wis. Stats. Sections 30.20(2)(a) and (c)).

   b. Mining of metallic minerals

   This activity is primarily regulated by the DNR. Mine operators must secure prospecting permits and mining permits, submit operator's bonds and certificates of insurance, and secure DNR approval of their environmental impact records and mining and reclamation plans. The DNR has detailed standards for these requirements, based on protecting air, land, water, fish, plant and wildlife resources. The Department of Industry, Labor and Human Relations is also involved through regulating blasting and mine safety. Mining of metallic minerals is subject to the program because of its potentially harmful environmental effects on fish, aquatic plant life, and the quality of coastal air and water resources. (Wis. Stats. Sections 144.80 to .94, 24.39 and Wis. Admin. Code NR 130 and 131).

   c. Enlarging the course of a Great Lake or other navigable coastal water

   Engaging in this activity requires a permit from the DNR. The permits are issued if the DNR finds the project will not injure public rights or interests, cause environmental pollution, or materially injure riparian rights. Enlarging a navigable waterway is included in the program because of its potential to destroy fish and game habitat, affect navigation, and alter the quality of a resource for which the state is a trustee. (Wis. Stats. Section 30.19).

d. Constructing an artificial waterway within 500 feet of a Great Lake or other navigable coastal water

This activity also requires a DNR permit, with the same decision-making standard as item (c) above. This activity is included in the program for the same reasons as item (c) above. (Wis. Stats. Section 30.19(1)(a)).

e. Connecting an artificial waterway to a Great Lake or other navigable coastal water

This activity also requires a DNR permit, with the same decision-making standard as item (c) above. This activity is subject to the management program for the same reasons as item (c) above. (Wis. Stats. Section 30.19(1)(b)).

f. Depositing any materials in the Great Lakes or other navigable coastal waters

This activity requires a DNR permit unless the material is deposited behind a lawfully established bulkhead line. Permits are issued after DNR inspections and a finding that the activity will not "materially impair navigation or be detrimental to the public interest." There is a limited exception to the state permitting program for solely federal projects. Bulkhead lines are established by municipal ordinance and must be "in the public interest" and be approved by the DNR. Depositing materials in navigable coastal waters is included in the program because of the potential obstruction of navigation, reduction of effective flood flow capacity in streams, harmful effect on fish and game habitat, and pollution of a resource held in trust by the state. (Wis. Stats. Section 30.12 and 30.11(2)).

g. Placing any structures upon the bed of the Great Lakes or other navigable coastal waters

This activity also requires a DNR permit, unless the structure is behind a lawfully established bulkhead line. Permits are granted if the DNR finds the structure "does not materially obstruct navigation or reduce the effective flood flow capacity of a stream and is not detrimental to the public interest." This activity is subject to state-level management because of the possibility for obstruction of navigation, reduction of effective flood flow capacity, and potential impacts on shore erosion. (Note: This does not apply to federal aids to navigation). (Wis. Stats. Sections 30.12(1) and (2)).

h. Discharges of effluents into coastal waters

This activity is regulated by the DNR. Some discharges are totally prohibited and all other pollutant discharges require DNR permits. The DNR has detailed water quality, performance, and effluent standards for these permits. Discharge of effluents is regulated

under the state management program because of detrimental effects on fish and game habitat, effect on the suitability of a public resource for recreational purposes, and alteration of the quality of a resource held in trust by the state. (Wis. Stats. Sections 147.015(13), 147.02, 147.25 and Wis. Admin. Code NR 102, 103, 104, 200, 217, 221-297).

2. Land based managed uses

a. Grading or removing top soil which disturbs 10,000 square feet or more of the banks of the Great Lakes or other navigable coastal water.

This activity requires a permit from the DNR. Permits are issued if the project does not injure public rights or interests, cause environmental pollution, or materially injure public rights. Removing top soil or grading is included in the management program because of the potential detrimental impact of this activity on fish and game habitat, access to a public resource, and quality of coastal waters. (Wis. Stats. Sections 30.19 and 144.30(a)).

l. Platting subdivisions that create five or more lots of 1½ acres or less within a five year period

These subdivisions must be approved by several state agencies, as well as by localities with subdivision ordinances. The DLAD reviews, and must approve, plats for compliance with surveying, layout (including mandatory public access requirements for plats abutting navigable waters), and engineering requirements. The DOT reviews, and must approve, plats abutting state highways for compliance with safety requirements. The DHSS reviews, and must approve, unsewered plats for compliance with lot size, elevation, and soil percolation requirements. The DNR reviews plats within 500 feet of navigable waters for prevention of pollution to waters. It should be noted that subdivisions creating fewer or smaller lots are frequently subject to local review and approval. This activity is included within the coastal management program because of the potential environmental impact of subdivision construction, increased generation of sewage on coastal waters, the potential increased demand for public access to coastal recreational resources, and a concern for orderly development. (Wis. Stats. Chapter 236).

m. Using rural shorelands

Each county is required by state law to regulate the use of shorelands in unincorporated areas. DNR minimum standards require the ordinances to protect human health, aquatic life, and natural beauty and control land uses. If county ordinances are found to be inadequate, the DNR can adopt an ordinance for the county. (Note: All relevant coastal counties have DNR approved shoreland zoning ordinances.) Shoreland use is subject to management control because of potential impacts of various activities in these largely undeveloped areas on coastal water quality, fish spawning areas,

fish and aquatic life and the natural beauty of land and water resources. (Wis. Stats Sections 59.971, 144.26 and Wis. Admin. Code NR 115).

q. Using outdoor advertising

This activity is regulated at the state level by the state highway commission. In non-business areas, no advertising signs may be erected that are visible from interstate or federal-aid primary highways (excepting limited on-premise advertising). Persons engaging in the outdoor advertising business must be licensed by Dept. of Transportation. Outdoor advertising is included in the state management program because of the potential adverse aesthetic impacts on scenic coastal resources. (Wis. Stats. Section 86.19, 86.191 and 84.30).

IV. Designation of Shorefront Areas as Geographic Areas of Management Concern

The current process for designating Geographic Areas of Management Concern (GAMC) is described in the Wisconsin Coastal Management Program and Final Environmental Impact Statement. The process provides a method for designating shorefront areas as GAMC which is a federal requirement (15 CFR 923.25(a)(4)).

Eligibility for GAMC designation is based upon qualifying under one of the six categories of areas established by Wisconsin, demonstration of direct relationship to the area to the Great Lakes, location within the Coastal Program boundaries, and existence of clear management policy for the area which is consistent with the adopted goals and policies of the coastal program.

The six GAMC categories include:

1. Areas of significant natural, recreation, scientific or historic value;
2. Areas especially suited for water related economic development;
3. Hazard areas relating to erosion or flooding;
4. Areas approved as power plant sites;
5. Areas for preservation; and
6. Areas of restoration.

Most shorefront access or protection areas would fit into the first category, thus the area may be eligible for GAMC designation.

A GAMC must have a direct relationship to the Great Lakes. This relationship may be physical, social, or economic. Most shorefront areas which provide protection, physical access (lateral or perpendicular) or visual access have a physical relationship to the Great Lakes.

Location within the Coastal Program boundaries is an easily met requirement for shorefront access and protection areas, particularly since preference is given to those areas located on the immediate shore or within the water.

The existence of a clear management policy consistent with the policies and goals of the coastal program is perhaps the most important prerequisite for GAMC designation because it is the basis for a GAMC receiving funding. Since protection, enhancement, development, and recreational use of shorefront areas are among the general policies articulated by the Coastal Program, management policies for shorefront access and protection areas can qualify. The managing agency must demonstrate that it has the ability and authority to carry out the management policy and agree to carry out the stated policy before an area is designated GAMC. Designation of an area as a GAMC results in eligibility of the managing body to receive financial and technical assistance to assist in the implementation of the approved management policies for the area.

The requirement of a clear management policy associated with GAMC designation for a period of one to three years provides a mechanism for continuing refinement and implementation of necessary management techniques. This will be discussed in greater detail in the fifth section of this report.

In the initial GAMC designations, areas were designated either by class or specific site. Examples of class designation include nomination of all state wildlife areas within six miles of the shore of Lake Michigan and Lake Superior by the Department of Natural Resources and nomination of all unincorporated county shorelands 1000 feet landward of the Ordinary High Water Mark of Lake Michigan by Sheboygan County.

A class designation is particularly useful for the purpose of giving recognition to a large area or a management policy which applies to a large area. Class designation also saves a managing body from excess paper work both in the nomination procedure and later administration of the GAMC. It is suggested that a class designation should be made only by the single managing body that has authority over the included areas. Designation of a class of areas by multiple agencies would complicate the management agreement between the Coastal Council and the managing body. Possible classes of areas related to shorefront access or protection include but are not limited to: boat ramps, docks, harbors, swimming beaches, piers, breakwaters, waysides, overlooks, etc.

Examples of initial site GAMC designation included Virmond Park in Ozaukee County. Site designation should be used when that is the only site within a particular class for which the managing body is responsible or the particular site is in need of specific management assistance.

Specific details of the Wisconsin GAMC nomination procedure can be found in the program document.

V. Legal Authorities, Funding Programs and Other Techniques to Meet Management Needs

Federal requirements for Shorefront Access and Protection Planning include an identification of legal authorities, funding programs and other techniques that can be used to meet management needs (15 CFR 923.25(a)(5)).

Wisconsin's response to this requirement is described below.

A. Legal Authorities

The identification of legal authorities is incorporated into Part III of this report.

B. Funding Programs

Some funding program information is provided in Part I of this report. Information on additional funding sources is not provided in detail, since the availability of funding for various purposes often changes. Instead of listing all potential funding programs, the applicant is directed to the following reference materials and resource people to learn about funding opportunities and eligibility requirements:

1. Directory of State and Federal Recreation-Related Financial Assistance Programs for Local Recreation Departments in Wisconsin - this directory is prepared by the U.S. Department of the Interior - Heritage, Conservation and Recreation Service in cooperation with the Wisconsin Department of Natural Resources. It provides information on the following types of programs:

a. Federal and State acquisition and development programs such as LAWCON and Local Park Aids:

b. General operation and maintenance programs such as federally subsidized employment programs;

c. Planning programs such as Federal HUD '701' planning assistance;

d. Water-related programs such as small beach erosion control projects;

e. Trail-related programs, such as federal aid to highway programs;

f. Fish and Wildlife-related programs such as the state wildlife habitat aid program; and

g. Other special purpose programs such as the Wisconsin federal property program.

Revisions of this directory are made as necessary and are sent to directory recipients. Copies may be obtained from the Heritage, Conservation and Recreation Service USDI, Federal Building, Ann Arbor, Michigan 48107.

2. Recreation Aid Programs Newsletter - this newsletter is published twice a year and provides updated information on eligibility and funding levels for LAWCON, ORAP, and other special funding programs administered by the Wisconsin Department of Natural Resources. The newsletter is available from the Office of Intergovernmental Programs - Bureau of Aid Programs, Box 7921, Madison, Wisconsin 53707.

3. Recreation Aids Specialists may be contacted at the District Offices of the Department of Natural Recources to assist applicants seeking funding for access and resource protection needs.

C. Other Techniques

Other techniques which can be used to meet the management needs of shorefront access and protection areas include methods which provide for continuing refinement and implementation of necessary management practices. Methods include GAMC management agreements and Master Planning for properties managed by the Department of Natural Resources which are described below.

1. GAMC Management Agreements

As mentioned in Section IV, a GAMC may be designated for a period of one to three years and receive funding for management activities. The GAMC designation is accompanied by an agreement between the Coastal Council and the managing agency for the area to be managed according to specific policies. At the end of the period for which the area has been designated, the Coastal Management Council may consider the area for redesignation by reviewing management policies and implementation activities for the area. If the management policies and implementation techniques require refinement, a new management agreement may be negotiated, prior to redesignation and consideration for future funding.

2. Master Planning Process

The purpose of the Master Planning process is to ensure sound, long-range, comprehensive master planning of all Department of Natural Resources lands of significant public use or interest. The master planning process consists of two parts: the Master Plan and the Implementation Plan.

The Master Plan reflects the public interest in all ecologic, economic and social benefits that may be derived from the property, consistent with its natural resource capabilities and the statutes under which it was acquired.

The Master Plan is prepared for the ultimate expansion and development of the property. It is scheduled to be reviewed every 10 years. The Master Plan includes: Information and goals and objectives of the property; management policies which direct or limit the acquisition, development and operation of the property; resource capabilities of the area describing the potential for providing other management opportunities; resource management problems including present and anticipated resource protection and development difficulties; long range resources, recreation needs and justifications; analysis of management alternatives; and a recommended management program which should be updated as goals and objectives of the property are changed.

The Implementation Plan is prepared after the Natural Resources Board approves the Master Plan. The Implementation Plan is a schedule of actions and their costs for at least six years. Estimates and priorities are made for two years followed by tentative estimates for the next four years. These estimates are updated biennially. The Implementation Plan includes priorities and plan for acquisition, development, operations and maintenance of the property.

ENERGY FACILITY PLANNING PROCESS

Compliance with Section 305(b)(8)
Federal Requirements

by

Teresa Danovich

Office of State Planning & Energy
Department of Administration

for

Wisconsin Coastal Management Program

RECREATIONAL ACCESS AND PROTECTION OF CULTURAL, HISTORIC, AND AESTHETIC RESOURCES

Nine of the Community Development projects are directed at increased recreational access and protection of cultural, historic and aesthetic resources. The following is illustrative:

- The community of Washburn has developed a waterfront park with a walking trail and developed plans for a proposed ancillary marina.
- Iron County has completed the necessary base map and site analysis to expand the recreational activities in Saxon Harbor Park for camping and picnicking.
- Iron County has completed a site analysis and preliminary plan for a six mile long recreation corridor between Saxon Park and U.S. Highway 2. The project envisions picnic areas/ rest stops, a nature trail, and scenic overlooks.
- Kenosha County has hired a manager and director for the Kemper Center, and conducted a building and site analysis. The Center is intended to provide recreational access for the handicapped and elderly as well as the general public.

EVALUATION FINDINGS
WISCONSIN COASTAL MANAGEMENT PROGRAM
COVERING THE GRANT PERIOD
JUNE 1, 1978 TO JUNE 30, 1979

I. BACKGROUND

Section 312 of the Coastal Zone Management Act requires continuing review be made of states with federally approved coastal management programs. This review is designed to evaluate performance with respect to coastal management activities and adherence to the approved management program and to identify any program areas that need strengthening.

The Wisconsin coastal management program was approved on May 22, 1978. The first Section 306 program implementation grant was awarded for a period of 13 months. This evaluation covers the first nine months of the grant period. The $1,358,091 Federal share was matched by $412,398 from Wisconsin.

In connection with the Office of Coastal Zone Management's (OCZM) evaluation responsibilities, an on-site review of the Wisconsin coastal management program was conducted by OCZM from February 20 to February 23, 1979. Michael Shapiro and Edward Lindelof of the Policy and Program Evaluation staff, Peter McAvoy of the State Programs staff, and Dallas Miner of the External Relations staff participated in the review.

The site visit included meetings with representatives of the Division of State Planning and Energy (lead agency), the Department of Natural Resources and other state agencies, the Coastal Management Council, Regional Planning agencies, Port Authorities, Red Cliff Band of the Chippewa Indians, local officials and various Federal agencies involved in the Wisconsin coastal management program. Two public meetings were held on February 21, 1979. A list of individuals contacted is attached.

PART THREE

BEACH ACCESS INTERVIEW SHEET

1. Explain Project

2. What sorts of Beach Access things are going on in your state? At state level, local level, both, neither?

   Four areas of inquiry:

   A. The beach itself: To what extent does the public own the beach and/or have a legally established right to use it, or portions of it?

      (1) wet sand

      (2) dry sand

      (3) sections of either or both

   Is anything being done to modify existing situation? Acquisition of fee, easements, litigation ?

   B. Access ways connecting public road with public beach. Are there programs and/or projects to establish accessways? Acquisition of easements, parks, miniparks, etc. Condition of permits? Leveraging other funds?

C. Maintenance of beaches and accessways, including trash pickup, lifeguards, law enforcement. Who does it? In what ways? Is CZM involved?

D. Transit to accessways. Parking lots, Buses, shuttles, bike paths, etc.

3. Are there other interesting/unusual beach access activities?

4. What are the major B/A problems?

5. What are the impediments to solving them? What changes in the CZMA, regulations or practice would you make? Fund 315(2), Technical assistance (workshops, How to publications)

6. Has CZM imposed planning process accomplished much? Have things happened that would not otherwise have happened?

7. Who else is involved in B/A in your state?

A. State agencies

Parks, (SCORP) Highways, etc.

B. Federal government

NPS, Fish and Wildlife,
Corps of Engineers--especially their
B/A requirement
HCRS (Lawcon)

Get names, title and phone number.

Ask for printed stuff.

DJB

2/1/80

PART FOUR

MANAGEMENT PROGRAM DEVELOPMENT GRANTS

Sec. 305. (a) The Secretary may make grants to any coastal state--

(1) under subsection (c) for the purpose of assisting such state in the development of a management program for the land and water resources of its coastal zone; and

* * * * * *

(b) The management program for each coastal state shall include each of the following requirements:

* * * * * *

(7) 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, esthetic, ecological, or cultural value.

* * * * * *

For the sake of clarity and ease of reference, the entire 15 CFR Part 920 is reprinted below. New additions made solely as a result of issuance of these regulations are §§ 920.17, 920.18, 920.19, Subpart E, and §§ 920.60 and 920.61. Accordingly, 15 CFR Part 920 is revised as follows:

Subpart A—General

Sec. 1 Policy and objectives.
2 Definitions.
3 Applicability of air and water pollution control requirements.

Subpart B—Content of Management Programs

10 General.
11 Boundaries of the coastal zone.
12 Land and water uses subject to the management program.
13 Geographic areas of particular concern.
14 Means of exerting State control over land and water uses.
15 Designation of priority use guidelines.
16 Organizational structure to implement the management program.
17 Shorefront access planning.
18 Energy facility planning.
19 Shoreline erosion/mitigation planning.

Subpart C—Research and Technical Support

20 General.

Subpart D—Public Participation

30 General.
31 Public hearings.
32 Additional means of public participation.

Subpart E—Preliminary Approval

50 General.
51 Eligibility for consideration.
52 Approval criteria.
53 Review/approval procedures.

Subpart F—Applications for Development Grants

70 General.
71 Administration of the program.
72 State responsibility.
73 Allocation.
74 Geographic segmentation.
75 Application for initial grant.
76 Approval of applications.
77 Amendments.
78 Application for second year grants.
79 Application for third and fourth year grants.
80 Application for three new planning elements.
81 Applications for preliminary approval.

AUTHORITY: (Sec. 305, Coastal Zone Management Act of 1972, Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 94-370, 90 Stat. 1013).

Subpart A—General

§ 920.1 Policy and objectives.

(a) This part establishes guidelines on the procedures to be utilized by coastal States to obtain program development grants pursuant to section 305 of the Act, sets forth policies for the development of coastal zone management programs, and sets forth criteria for preliminary approval of State management programs.

(b) Coastal management programs developed by participating States shall comply with that policy of the Act which requires States to give full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development. As a result of consideration of these values and needs, States will identify issues and problems that confront or will confront their coastal zone and, relatedly, will articulate specific goals, objectives, policies, standards, guidelines and/or regulations to address these issues within the context provided by these regulations.

(c) *Comment.* Statutory Citation, section 303:

> The Congress finds and declares that it is the national policy * * * (t)o encourage and assist the States to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve the wise use of land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development.

* * * * *

Subpart B—Content of Management Programs

§ 920.10 General.

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

(b) Subsection 305(b) requires the inclusion of nine elements in the development of State coastal zone management programs. These minimum requirements are set forth below with accompanying commentary that is designed to guide State response to these key provisions of the program development effort. Prior to October 1, 1978, States may seek approval for their management programs (pursuant to section 306) even if three of these elements—those relating to the planning processes for shorefront access, energy facilities, and shoreline erosion/mitigation—are not yet completed. However, such States must be able to fulfill these requirements by October 1, 1978 and submit same by that date for review and approval, as amendments to their programs. Programs submitted after October 1, 1978 must include all nine elements in order to be approved pursuant to section 306.

(c) It is anticipated that an environmental impact statement will be prepared and circulated on a State's management program prior to its approval by the Associate Administrator, in accordance with the terms of the National Environmental Policy Act of 1969, as amended. The Associate Administrator will prepare and circulate an environmental impact statement on the basis of an environmental impact assessment and other relevant data prepared and submitted by the individual States.

* * * * *

§ 920.17 Shorefront access planning.

(a) *Requirement.* In order to fulfill the requirements of subsection 305(b)(7) of the Act, the management program must include a planning process that will identify public shorefront areas appropriate for increased access and/or protection. This process must include:

(1) a procedure for assessing public areas requiring access or protection;

(2) a definition of the term "beach" and an identification of public areas that meet that definition;

(3) articulation of State policies pertaining to shorefront access and/or protection;

(4) a method for designation of shorefront areas as areas of particular concern (either as a class or as specific sites) for protection and/or access purposes, if appropriate;

(5) a mechanism for continuing refinement and implementation of necessary management techniques, if appropriate; and

(6) an identification of funding programs and other techniques that can be used to meet management needs.

(b) *Comment.* Statutory Citation, Subsection 305(b)(7):

> The management program for each coastal state shall include * * * (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, esthetic, ecological, or cultural value.

(1) The requirements of this section should be read in conjunction with subsection 305(b)(3) of the Act, dealing with geographic areas of particular concern, the requirements for which are contained in § 920.13 and § 923.13 of this chapter. In developing a procedure for identifying access and/or protection requirements for public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value, States should make use of the analyses and considerations of statewide concern developed to meet the requirements of § 920.13. It is also recommended that information contained in completed State Comprehensive Outdoor Recreation Plans be considered. If islands have not been included in the areas considered under § 920.13, then their preservation needs should be considered under this subsection. Preservation should be considered broadly, in terms of ecological, environmental, recreational, historical, esthetic or cultural values.

(2) In developing a procedure for identifying access and/or protection needs, States should take into account (a) the supply of existing public facilities and areas, (b) the anticipated demand for future use of these facilities, and (c) the capability/suitability of existing areas to support increased access. Based on these and other considerations, as appropriate, the State's planning process shall include a description of appropriate types of access and/or protection, taking into account governmental and public preferences, resource capabilities and priorities.

(3) In determining access requirements, States should consider both physical and visual access. The emphasis, however, should be on the provision of increased physical access. Special attention should be given to recreational needs of urban residents for increased shorefront access. Physical access may include, but need not be limited to, footpaths, bikepaths, boardwalks, jitneys, rickshaws, parking facilities, ferry services and other public transport. To the extent that the provision of perpendicular access to public shorefront areas is insufficient to meet the purposes intended by this subsection, it is appropriate for States to consider lateral access. What this means is that where a State does not have a reasonable amount of public shorefront area above mean high tide or above the ordinary high water mark in the Great Lakes, then provision of perpendicular access may not serve a sufficient range of purposes in terms of increasing or enhancing the publics' ability to get to and to enjoy shorefront amenities. In such cases, consideration of the need for areas above mean high tide, or the ordinary high water mark in the Great Lakes, is appropriate. Visual access may involve, but need not be limited to, viewpoints, setback lines, building height restrictions, and light requirements.

(4) As part of this general planning process, States should develop a procedure which will allow for the eventual identification of specific areas for which provision of access through acquisition will be appropriate during program implementation. In conjunction with developing this procedure, States shall identify local, State or Federal sources for accomplishing particular access proposals. Particular attention should be given to coordination of management objectives with funding programs pursuant to subsection 315(2) of the Act, and pursuant to the Land and Water Conservation Fund (16 U.S.C. 460 et seq.) and other statutes as may be appropriate. It should be noted that the access referred to in this subsection is broader than the types of access that may be acquired using subsection 315(2) funds which is limited to the acquisition of lands or interests in lands for purposes of providing access to public shorefront and/or for the preservation of islands.

(5) In determining the needs for protection of public coastal areas, States should consider such factors as (a) environmental, esthetic or ecological preservation (including protection from overuse and mitigation of erosion or natural hazards), (b) protection for public use benefits (including recreational, historic or cultural uses), (c) preservation of islands, and (d) such other protection as may be necessary to insure the maintenance of environmental, recreational, historic, esthetic, ecological or cultural values of existing public shorefront attractions. Existing public shorefront attractions may be broadly construed to include, but need not be limited to: public recreation areas, scenic natural areas, threatened or endangered floral or faunal habitat, wetlands, bluffs, historic, cultural or archaeological artifacts, and urban waterfronts.

(6) The purpose of defining the term "beach" is to aid in the identification of those existing public beach areas requiring further access and/or protection as a part of the State's management program. States should define "beach" in terms of characteristic physical elements (e.g., submerged lands, tidelands, foreshore, dry sand area, line of vegetation, dunes) or in terms of public characteristics (e.g., local, State or Federal ownership, or other demonstrated public interest such as easements, leases, licenses, or traditional and habitual usage). At a minimum, the definition of what constitutes a public beach shall be as broad as that allowed under existing State law or constitutional provisions. States should take into account special features such as composition (e.g., non-sand beaches), location (e.g., urban or riverine beaches), origin (e.g., manmade beaches) and fragility (e.g., areas of shifting dunes). Where access may be complicated by questions of ownership and use of the foreshore or dry sand beach, States are encouraged to define beach in terms of its component parts, especially at the mean high tide line, or the ordinary high water mark in the Great Lakes. Finally, in defining the term "beach," States shall provide a rationale explaining the relationship between the definition developed and access and protection needs.

* * *

PART FIVE

BIBLIOGRAPHY

The following bibliography was excerpted from a much larger bibliography prepared by the Coastal Zone Information Center of much of the material contained in the Center.

California. Department of Justice. Office of the Attorney General.

Implied Dedication and Prescriptive Rights Manual Relating to California Coastal Commission Matters. Coastal Commission Special Studies Series. Prepared by Land Law Section and Public Resources Section--California Attorney General's Office. Los Angeles, California. 111 pp. including Appendices. 1977.

This manual is designed to assist in determining when the public has acquired the right of access to the sea through use. Includes several state cases.

California. California Coastal Commission and Santa Monica Mountains Comprehensive Planning Commission.

Cumulative Impacts of Small Lot Subdivision Development in the Santa Monica Mountains Coastal Zone. Prepared by Richard McClure, Consultant and Santa Monica Mountains Comprehensive Planning Commission. California. 80 pp. plus Appendices. January, 1979.

California. California Coastal Commission.

California Coastal Commission Biennial Report 1977-78. Prepared by the California Coastal Commission. San Francisco, California. 20 pp. January 1979.

This first biennial report of the California Coastal Commission reports the accomplishments of the CCC. Major topics covered include federal-state-local relationships, coastal planning, public participation, regional coastal commissions, power plant reports, oil development and tanker transport, commercial ports, public access, and others.

California. California Coastal Commission.

California Coastal Commission Recommendations to the State Legislature on Adjustments to the Coastal Zone Boundary. Prepared by California Coastal Commission. California. 69 pp. plus Appendices.

This report discusses proposed recommended adjustments to the inland boundary of the coastal zone. The appendices include maps of Commission recommendation for boundary adjustments, a history of the Coastal Zone, and a discussion of resources and access and the relevant Coastal Act policies.

BOUNDARIES; COASTAL ZONE/HISTORY; BEACH ACCESS; COASTAL ZONE/PLANNING/MANAGEMENT

Hawaii. Department of Planning and Economic Development. CZM Program.

Enhancement of Coastal Recreational Opportunities: A Description of Present Coastal Recreational Usage, Constraints, Data, and Research Possibilities in the State of Hawaii. Prepared by Allan Sommarstrom of the Pacific Urban Studies and Planning Program. University of Hawaii. Technical Supplement Number 6. Hawaii Coastal Zone Management Program. Honolulu, Hawaii. 64 pp. August 1975.

Examines elements involved in developing an approach to enhancing coastal recreational opportunities. Federal, state, and county recrea tion responsibilities and the present pattern of recreational land use and activity are described. Recreational constraints including: a limited number of sandy beaches, water pollution, access, overlapping governmental responsibility, tourism, and competing uses are described and analyzed. Available data sources on coastal recreation are listed and suggestions are made for enhancing recreation opportunities.

COASTAL RECREATION/TOURISM; BEACHES; BEACH ACCESS; POLLUTION-WATER; CONFLICTING USES; COASTAL ZONE/PLANNING/MANAGEMENT

Illinois. Coastal Zone Management Program.

Coastal Geological Studies. Third Year Work Product. Prepared by the Illinois State Geological Survey. Chicago, Illinois. Multi pp. October 1977. (CZIC)

Includes a series of four reports on offshore reefs, recreational capacity of beaches and bluffs, the effects of coastal processes on Waukegan and Great Lakes Harbors, and bluff recessiona and denudation.

BEACHES; BEACH ACCESS; COASTAL RECREATION/TOURISM; COASTAL URBAN AREAS; COASTAL ZONE/ISSUES/PROBLEMS

Indiana. State Planning Services Agency.

Public Access to the Indiana Shoreline of Lake Michigan and Selected Tributaries. Technical Report No. 305. Prepared by Scott Lines, Indiana DNR. Indianapolis, Indiana. 173 pp. April 1979.

Assess the Indiana shoreline for public recreational access and provides the necessary information for the development of state policy on lakefront public access. Beaches are defined, public areas meeting this definition are delineated and public shoreline areas other than beaches are examined for environmental, recreational, historic, aesthetic, ecological or cultural value. Principle to the report is the demand, supply an shortage analysis for each major recreational opportunity in the shoreline area. Accessibility of the fishery resource is analyzed. Inventory of legal authorities, funding programs, and other techniques are compiled to help meet the management needs identified in the study.

BEACHES; BEACH ACCESS; COASTAL RECREATION/TOURISM; CULTURAL/HISTORICAL RESOURCES; COASTAL ZONE/ISSUES/PROBLEMS

Louisiana. Department of Transportation and Development.

Louisiana Shorefront Access Plan. Prepared by Burk and Associates, Inc. Baton Rouge, Louisiana. 127 pp. August 1978. (CZIC)

The purpose of the document is to provide for the improvement of coastal shoreline recreational opportunities. Presents a list of shorefront locations which are appropriate for acquisition or expansion as public recreation or preservation areas. Also discusses the provision of access to existing and proposed public shorefronts. Facility recommendations, cost estimates, and possible sources of funding are included, as well as management guidelines. The process involves aesthetic, environmental, historical, cultural, recreational and ecological considerations.

COASTAL RECREATION/TOURISM; BEACH ACCESS; COASTAL ZONE/PLANNING/MANAGEMENT; COASTAL ZONE/ECONOMICS; COASTAL AESTHETICS; ENVIRONMENT; CULTURAL/HISTORICAL RESOURCES

Maryland. Maryland Coastal Zone Management Program.

Bay Access Park Study. Prepared by Earl Bradley, Tricia Bednarz, Kathy Fitzpatrick. Maryland Department of Natural Resources, Tidewater Administration. Annapolis, Maryland. 100 pp. Maps, photos. Expected date of publication, January 1980.

This study is part of the shorefront access element of the Maryland Coastal Zone Management Program. The purpose of the study is to compile into one report on a consistent information base, all available information on existing and potential recreational and natural areas bordering on the tidal waters of the state in order that priority areas for incorporation into State and local acquisition/easement programs can be identified.

BEACH ACCESS; COASTAL RECREATION/TOURISM; COASTAL ZONE/PLANNING/MANAGEMENT; COASTAL ZONE/PRIORITY OF USES; COASTAL ZONE/STATE-LOCAL

Maryland. Maryland Coastal Zone Management Program.

Private Waterfront Recreation Facilities in Maryland. Prepared by Kathy Fitzpatrick. Maryland Office of Tourist Development. Annapolis, Maryland. Approximately 75 pp. Maps. Expected date of publication, January 1980.

The intent of this inventory is to provide information to help the public gain access to the tidal waters of Maryland. The inventory includes the names and locations of sites and what facilities they provide. These sites are arranged alphabetically by county with maps and directions to help the user find the locations.

BEACH ACCESS; COASTAL INVENTORIES; FACILITY SITING/ COASTAL RECREATION/TOURISM; LAND USE

New Hampshire. Division of Regional Planning. Office of Comprehensive Planning. Coastal Resources Management Program (continued).

Attachment B-17 Socioeconomic Profile of Users of Coastal Recreational Facilities. 10 pp.

Attachment B-18 Recreational Fishing and Boating. 16 pp.

Attachment B-19 Ocean-Borne Shipping. No page.

Attachment B-20 Offshore Sand and Gravel Mining. No page.

Attachment B-21 Aquaculture. 3 pp.

Attachment B-22 Future Uses. No page.

Attachment B-23 Arbitrary Exclusions by Municipalities of Land and Water Uses of Regional Benefit. Prepared by the Strafford Rockingham Regional Council. 7 pp.

Attachment C-1 Inventory and Designation of Geographic Areas of Particular Concern. Prepared by the Strafford Rockingham Regional Council. 48 pp.

Attachment C-2 Use Constraints to be Applied to Areas of Particular Concern. Draft. Prepared by the Strafford Rockingham Regional Council. 27 pp.

Attachment D-1 An Assessment of the New Hampshire Political Climate Concerning Coastal Zone Management Issues. Prepared by David W. Moore. 43 pp.

Attachment E-1 Letter to Government Agencies Requesting Identification of Coastal Area Roles, Interests, and Responsibilities. 2 pp.

Attachment G-1 Zoning Summary. 3rd edition. Prepared by the Southeastern New Hampshire Regional Planning Commission. (Exeter, N.H.). 31 pp.

COASTAL ZONE/PLANNING/MANAGEMENT; COASTAL ZONE/PROGRAM DESCRIPTION; BOUNDARIES; LAND USE; WATER USE; GEOGRAPHIC AREAS OF PARTICULAR CONCERN; PERMISSIBLE USES; TRANSPORTATION; RECREATION; COASTAL ZONE/ISSUES/PROBLEMS; BEACHES/BEACH ACCESS; CULTURAL/HISTORICAL RESOURCES; NATURAL RESOURCES; COASTAL INVENTORIES; CAPABILITY/SUITABILITY; COASTAL RESOURCES; COASTAL ZONE/SOCIOECONOMICS; COASTAL ZONE/ECONOMICS; COASTAL ZONE/STATE-LOCAL.

New Jersey. Department of Environmental Protection. Office of Coastal Zone Management.

An Inventory of the New Jersey Coastal Area. 1975. Prepared by David J. Bardin. Trenton, New Jersey. Multi pp. September 1975. (CZIC)

Presents the results of a detailed inventory of coastal resources, problems, and opportunities along the New Jersey coastal zone. The text includes discussions for eleven coastal management issues in New Jersey, including coastal access, energy facility siting, housing and water resources. An extensive "reference profile" is appended and arranged alphabetically by topic. References include a citation, abstract, value for Coastal Zone Management, and constraints for Coastal Zone Management.

COASTAL ZONE/ISSUES/PROBLEMS; COASTAL INVENTORIES; COASTAL RESOURCES; FACILITY SITING; TRANSPORTATION; COASTAL RECREATION/TOURISM; LAND USE; WATER RESOURCES; AIR RESOURCES; HOUSING; ENERGY FACILITY SITING; BEACH ACCESS; BIBLIOGRAPHY.

New York. New York State Coastal Management Program.

Land and Water Uses: Coastal issues. Preliminary Technical Report. New York. Multi pp. October 1977. (CZIC)

Includes eleven individual papers in land and uses which address specific topics of concern including water and air quality management, beach erosion, and flood plain management, fish and wildlife, agriculture resources, recreational resources, public access, coastal aesthetics, economic development, OCS activities and energy facilities. Each paper identifies the most significant issues that are confronting the state with respect to the use of lands and waters within the coastal areas.

AGRICULTURE; AIR RESOURCES; BEACH ACCESS; COASTAL AESTHETICS; COASTAL ZONE/ECONOMICS; COASTAL ZONE/ISSUES;PROBLEMS; COASTAL ZONE/PLANNING; MANAGEMENT; ENERGY; EROSION; OCS; COASTAL RECREATION/TOURISM; FISH/FISHING; WATER QUALITY; WILDLIFE.

New York. New York Coastal Management Program.

New York State Coastal Management Program. Draft Report with Draft Environmental Impact Statement. Volume One. Albany, New York. Multi pp. March 1979. (CZIC)

Draft of the state program including boundaries, coastal policies and implementation on resource groups (aesthetics, agriculture, air quality, economic development, energy, fish, wildlife, flooding and erosion, OCS development, public access, recreation, water quality), federal consistency, and geographic areas of particular concern.

COASTAL ZONE/PROGRAM DESCRIPTION; COASTAL ZONE/PROGRAM DEVELOPMENT; BOUNDARIES; COASTAL AESTHETICS; AGRICULTURE; AIR RESOURCES; COASTAL ZONE/ECONOMICS; ENERGY; FISH/FISHERIES; WILDLIFE; FLOODS/FLOODING; EROSION; BEACH ACCESS; COASTAL RECREATION/TOURISM; WATER QUALITY; FEDERAL CONSISTENCY; GEOGRAPHIC AREAS OF PARTICULAR CONCERN

Oregon. Department of Land Conservation and Development.

State of Oregon Shorefront Access and Preservation Planning Process. Description of Existing Programs and Policies for Shorefront Access and Protection. Economic Consultants Ltd. Salem, Oregon. 108 pp. plus bibliography. September 1978.

This report includes a description of the existing policies and programs for providing public access to and protection of public beaches and other public coastal areas. The description is organized by level of government (state, local, federal), by agency or organization and by specific programs or policies administered by the agency or organization (see next two entries).

BEACH ACCESS; COASTAL ZONE/STATE-LOCAL; FEDERAL AGENCIES; COASTAL ZONE/ISSUES/PROBLEMS; COASTAL ZONE/PLANNING/MANAGEMENT.

Oregon. Department of Land Consservation and Development.

State of Oregon Shorefront Access and Preservation Planning Process Evaluation of Existing Programs and Policies for Shorefront Access and Protection. Economic Consultants Oregon Ltd. Salem, Oregon. 48 pp. plus attachments. September 1978.

This report respresents the second and final part of the review of Oregon's Shorefront Access Preservation Planning Process. The first part involved an identification of existing shorefront access and protection policies and programs as well as suggestions for improvements. Specifically, this report contains a discussion of whether or not the identified programs, policies and planning processes satisfy the requirements of the Statewide Planning Goals.

BEACH ACCESS; PERFORMANCE STANDARDS; COASTAL ZONE/ISSUES/PROBLEMS; COASTAL ZONE/PLANNING/MANAGEMENT

Oregon. Department of Land Conservationand Development.

State of Oregon Shorefront Access and Preservation Planning Process. Executive Summary. Economic Consultants Oregon, Ltd. Salem, Oregon. 15 pp. September 1978.

This executive summary briefly presents the major findings of the study of existing policies and programs for providing public access to and protection of public beaches and other public areas. The summary is presented in three topical divisions which correspond to the contents of the original two reports (see two entries above).

BEACH ACCESS; COASTAL ZONE/ISSUES/PROBLEMS; COASTAL ZONE/PLANNING/MANAGEMENT.

Texas. General Land Office.

Accessibility and Protection of Texas Shorefront Areas. Austin, Texas. 44 pp., illustrations, maps. June 1978. (CZIC)

Analyzes the accessibility of the state's public coastal areas, means of meeting future recreational demand, and problems associated with recreational use.

BEACH ACCESS; COASTAL RECREATION/TOURISM

Virginia. Office of the Secretary of Commerce and Resources

The Virginia Coastal Resources Management Program. Multi pp. April 1979. (CZIC)

Virginia's final management program. Includes chapters on objectives, boundaries, resources subject to management, shoreline erosion, public access, the energy facility siting process, planning and management of areas of particular concern, permitting, state organization and authority, state-federal relations, the role of local governments, financial assistance, and public participation.

COASTAL ZONE/PROGRAM DESCRIPTION; COASTAL ZONE/PLANNING/MANAGEMENT; BOUNDARIES; EROSION; BEACH ACCESS; ENERGY FACILITY SITING; GEOGRAPHIC AREAS OF PARTICULAR CONCERN; PERMITTING; COASTAL ZONE/STATE-LOCAL; PUBLIC PARTICIPATION

Wisconsin. Department of Administration. Coastal Management Development Project.

Public Access to the Great Lakes: A Policy Study. Prepared by the Wisconsin Department of Natural Resources. Draft. Madison, Wisconsin. 59 pp. Appendices, Executive Summary. March 1976. (CZIC)

Provides background information and lays out alternative futures relating to public access to Wisconsin's Great Lakes. Discussed are four major issues including 1) insufficient public access facilities, 2) environmental degradation resulting from increased access, 3) conflicts to public access facility development and use, and 4) insufficient public access to special groups. Existing policies, programs, and facilities are reviewed as are public access policies and management approaches. Bibliography and appendices included.

COASTAL ZONE/ISSUES/PROBLEMS; BEACH ACCESS; POLLUTION; CONFLICTING USES; COASTAL WATERS

Guam. Guam Coastal Management Program. Bureau of Planning.

Beach Access on Guam. Prepared by Robert Gomez. Guam Coastal Management Program. Bureau of Planning. Agana, Guam. 18 pp. October 1977.

A discussion of access to all beaches on Guam, problem areas and mapped identification of beaches.

BEACH ACCESS; COASTAL ZONE/ISSUES/PROBLEMS

Puerto Rico. Department of Natural Resources. Coastal Zone Management Program.

Analysis of State Rights Relevant to Coastal Zone Issues. Preliminary Report Task C. Prepared by German A. Gonzalez of Gonzalez Aviles Associates (Hato Rey, Puerto Rico). Puerta de Tierra, Puerto Rico. 109 pp. Appendices. 1975. (CZIC)

Presents a compendium and survey of laws which are presently available to control activities in the coastal zone, including the agencies which administer those laws. In addition to the issues of beach access, crown rights, squatters rights and the implications of the maritime terrestrial law have been examined.

COASTAL ZONE/LAWS AND LEGISLATION; GROWTH CONTROLS; BEACH ACCESS; COASTAL ZONE/STATE-LOCAL; LAND OWNERSHIP; COASTAL ZONE/PLANNING/MANAGEMENT

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