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METHOD OF CONTROL
OF LAND AND WATER USES
IN THE COASTAL ZONE

BY
ANN H. BERGER



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Berger, Ann



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THIS DOCUMENT IS A CONDENSED AND PARTIAL REVISION OF MS. BERGER'S MASTER'S THESIS FOR THE GEORGE WASHINGTON UNIVERSITY. IT WAS PREPARED UNDER CONTRACT WITH THE OFFICE OF COASTAL ZONE MANAGEMENT, NOAA, 3300 WHITEHAVEN STREET, N.W., WASHINGTON, D. C. 20235.

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PREFACE

This paper represents a condensed and somewhat revised version of Ms. Ann Berger's Master's thesis entitled Coastal Zone Management; An Alternative. The specific revisions in this paper refer to: 1) the reordering and abbreviation of two chapters; 2) the completion of a telephone survey which was made to identify a future trend in the choice of a method of control; and 3) the deletion of two and a half chapters which were included previously for academic purposes.

Furthermore, most of the major ideas found in this paper are those of the author. However, some references were helpful and these may be found in an annotated bibliography at the end of the paper.

The author would like to express her appreciation to those who have helped with the research and the development of her concept. These people include: Dr. Stephen Fuller, MS. Berger's thesis advisor; Timothy Alexander, Interagency Coordinator, Office of Coastal Zone Management, and all the other helpful people at the Office of Coastal Zone Management.

Paul R. Stang
Office of Coastal Zone Management
Washington, D. C.

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SUMMARY

This paper examines the "methods of control of land and water uses in the coastal zone" which were authorized by Section 306(e)(1) of the Coastal Zone Management Act of 1972 (CZMA) and explained in Section 923.26 of the Office of Coastal Zone Management 306 regulations. These methods determine the manner in which the state's coastal zone management program will be implemented. Consequently, they are significant determinants of the type of state-local balance in a state's management program.

The three methods are:

- I. Local regulation according to state guidelines;
- II. Direct state regulation; and
- III. State administrative review of plans for consistency with state management program.

First, this paper describes the derivation of the three models from past experience in resource management at the Federal and state level, and identifies and analyzes the potential advantages for each method. Next, it documents a trend which indicates that more states are considering using Method I alone or in combination with either Methods II and/or III. Finally, it concludes that the most efficacious program would consist of a mix between Methods I and II. In the resulting "suggested method" the state would directly regulate regional uses, while there would be local government planning and regulation for all other uses.

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SECTION 1
INTRODUCTION

1. INTRODUCTION

1.1 Definition of Problem Area

Throughout history man has been dependent on the natural ecosystem. Initially man's dependence was related to the use of water for transportation and for fishing. As the result of the growing population, its increasing affluence, and the multiple capabilities provided by advanced technology, our coastal areas are subject to the pressures of increasing industrial, commercial, residential and recreational activities. In turn, increasing attention has been focused on the management of the coastal zone as a limited resource. This attention culminated in the enactment of the Coastal Zone Management Act (CZMA) of 1972.

The CZMA established a national policy:

- (a) To preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation's coastal zone;
- (b) To encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs...

To effect this policy, the CZMA makes funds available to assist coastal states in the development of state programs for the control and management of their coastal areas. The regulation of coastal waters has traditionally resided in the hands of the Federal and state governments, while the regulation of coastal lands has resided under the jurisdiction of county and local governments. The CZMA represents a reallocation of control and authority over land use decisions between the local and state governments. As a result, the CZMA is a significant congressional initiative in the emerging area of state-based controls over land and water use.

The major authorization for management of the CZMA is found in two sections of the statute. Section 305 deals with assistance to states to develop a management program including a resource inventory and a planning function. Section 306 deals with assistance to enable states to administer their management programs.

This study is concerned with Section 306 of the Act. Specifically, according to Section 306 (e)(1) A-C of the CZMA, a state coastal zone management program must provide for any

one of a combination of three approaches for the control of land and water uses within the coastal zone. That is:

- (a) The states may establish criteria and standards for local implementation, under state review and enforcement procedures;
- (b) They may engage in direct regulation; or
- (c) They may operate through the administrative review of local plans, projects and regulations for consistency with state management plans.

1.2 Objective of the Study

The major objective of this paper is to provide an understanding of the three methods of control of land and water use within the coastal zone as presented in Section 306(e)(1) of the CZMA of 1972. Thus, this paper investigates the following question: Is there a method of control or combination of methods of control (or elements thereof) which is more effective than those approaches presented in the CZMA? In order to answer the above question, the following subsidiary questions must be answered:

1. What is the state of the art in resource management?
2. What are the basic elements of each method of control? What are the theoretical advantages and disadvantages of each method of control?
3. What are the trends in terms of the approach used or to be used by each CZ state?
4. What can be learned from the use of a method by a selected state? (case studies)

1.3 Scope and Methodology

A search of existing literature and a review of the CZMA regulations was required to answer the first two questions, after which a brief telephone survey was made to the state coastal zone management offices or their representatives in order to determine the trends. Finally, it was necessary to analyze the three methods of control in terms of the various experiences of three states.

Several indices of effectiveness will be introduced in a discussion of the methods/ advantages and disadvantages. As far as possible these indices will be used to measure the performance of the methods of control as depicted by the selected states' experience.

1.4 Limitations

There are several constraints in the researching of this study. First, some states were not very direct or accurate in their responses to the telephone survey. As a result, the author had to interpret what was meant by the response. This may have imposed a bias on the results but it is assumed to be minimal.

Secondly, the case studies that are used do not necessarily reflect the experience that the coastal states have had applying management systems specifically to the coastal zone in compliance with the CZMA. However, the programs are the closest representation that the author could find that had some or total application to the coastal zone, at least two years experience and sufficient information written about them. Also it is recognized that the three methods of control may not be mutually exclusive and were not necessarily intended to be. However, in order to provide a basis for comparative analysis the methods shall be considered to be separate. Another limitation of this study is that the measure of the general indices is relative, not absolute. This is due in part to the scope of this study and the difference in the size and state commitment to each program.

1.5 Organization of the Study

Chapter II briefly describes the state of the art of resource management and includes a summary of the legal basis for governmental action. Chapter III presents an extensive discussion of the authorized methods of control of land and water use, their theoretical potentials and a summary of their advantages and disadvantages.

Chapter IV examines existing state regulatory legislation related to the coastal zone. Legislation is included if it is specifically written for the coastal zone and if it contains provisions for regulation of land and/or water uses. An indepth analysis of this legislation identifying the methods used by states at this time is not included. Following a discussion of the present trend, the paper uses results from the state survey to identify and analyze future trends.

Chapter V discusses the experience of three states, each initiating a different method of control. Specifically, this chapter examines the following: Washington State's Shoreline Management Act of 1971, Maine's Site Location Development Act of 1970, and Florida's Environmental Land and Water Management Act of 1972. The final chapter presents the findings from the above analysis, as well as an alternative model and several recommendations. In addition, this paper is followed by an annotated bibliography and an information package related to specific aspects of the study.

SECTION 2.

DERIVATION OF THE METHODS

2. DERIVATION OF THE METHODS

Experience in managing and controlling land and water uses in the coastal zone is limited. Therefore a brief description of the methods of control which have been used or proposed for other resource management programs at both the Federal and state level will be given. This description will be preceded by a summary of the legal basis for governmental action within the coastal zone.

2.1 Legal Basis for Governmental Action

Federal. The constitutional powers to regulate commerce among the several states and foreign countries¹ and to provide for the national defense has and continues to form the basis for Federal regulation of the coastal zone. Furthermore, the Federal government has a legal right to regulate health, customs and transportation within the coastal waters.

States. States in general have more direct power in managing the coastal zone than the Federal government. Most important is the police power,² which constitutionally empowers the states to act in the name of "health, safety, morals and general welfare." Other sources of legal power are: condemnation or eminent domain, where the state may take property for public purpose, with just compensation, taxation and spending, where the state can grant or withhold monetary incentives; and the common law trust doctrine where the state can hold land in trust for the public. Also states may do anything which does not conflict with Federal laws³ and is not expressly forbidden them in the Constitution,⁴ However, in most cases the states themselves have limited their own powers through their state constitutions.

Local. Local governments can only exercise the powers which have been delegated them by state legislation or through state constitutional provisions.⁵ These powers include the police power i.e., (zoning and subdivision regulations) and the power to impose property taxes.

In summary, except for the Federal government's constitutional powers relating to commerce and national defense, the management of the coastal zone has been left under the jurisdiction of state, particularly in terms of water use, and under jurisdiction of local governments (as delegated by the state), in terms of land use.

¹ U.S. Constitution, Article 1, section 5

² U.S. Constitution, Amendment 10

³ McCulloch v. Maryland. 4 Wheat. 316 (1819)

⁴ Gibbons v. Ogden. 9 Wheat. 6 L. Ed. 23 (1819)

⁵ For a discussion see Daniel Mandelker, Managing Our Urban Environment (New York: Bobbs-Merrill Co., 1960), Ch. 3

2.2 Resource Management

In order to determine the experience that has been encountered in using one method of control over another method, the following examines the state of the art of resource management: water, air, and land. Below a brief description of the more important contributions to the state of the art of control will be given.

Water. Two acts are of importance to a discussion of water management: the Water Resources Planning Act of 1965 and the Water Quality Act of 1965. The Water Resources Planning Act of 1965 created the Water Resources Council and provided for the creation of river basin and related land commissions. Simply, the Act requires that the Water Resources Council (Federal level) establish standards and procedures for the river basin commissions to follow when preparing comprehensive regional and river basin plans. The Water Quality Act of 1965 (now part of the Federal Water Pollution Control Act) requires the Secretary of Interior to establish water quality standards to be enforced by state and interstate agencies.

Air. In 1967, Congress passed the Clean Air Act which charged the state and local governments with the primary responsibility for controlling air pollution. The Act requires the states to submit a plan (for Federal review) through which national ambient air quality standards will be achieved. As a result of the provisions in this Act all 50 states have adopted air pollution legislation. ⁶

Land. As a National Land Use Policy Act has not yet been passed there has been no Federal direction as to what method of control states should use to regulate land use. Nor has there been a uniform approach by the states who have already enacted state wide land use legislation. For example, the states of Hawaii, Vermont, and Maine ⁷ all have established state land use programs. Though each program varied as to specifics ⁸, each state did provide for direct regulation through an appointed state agency or council. On the other hand, the state of Florida has taken another tack with the passage of the Environmental Land and Water Management Act of 1972. This legislation establishes state control in two categories: areas of critical state concern and development of regional impact. More importantly it provides that the state will review all plans and projects for consistency with a state land use plan.

⁶ See Grad, Treatise on Environmental Laws, pp. 2-97.

⁷ Hawaii - Land Use Act of 1967 (Haw. Rev. Stats chapter 205); Vermont - Environmental Control Law of 1970 (I.O.V.S.A. SS 6001-6091, Act no. 250); Maine - Site Location Development Law of 1970 (38 M.R.S.A. SS 481-488).

⁸ For discussion see Bosselman and Callies, The Quiet Revolution in Land Use Control.

2.3 Discussion

The important aspect of the experience in this area is dual. First, most Federal legislation in the resource management area has established the state's role in terms of a method of control. In the case of land use, the lack of a Federal land use act has resulted in varied uses of methods. Secondly, the CZMA has authorized three alternative methods of control or combinations thereof to be used by states. These methods of control have been derived from existing experience: 1) establishment of standards and criteria at one level of government for planning/regulation at a lower level (water and air resource management⁹); 2) direct regulation (land use management by Hawaii, Vermont and Maine); and 3) review of plans, projects., etc. for consistency with a state wide plan (Florida's land and water use management).

⁹ Also, the States of Washington and Wisconsin's, etc., experience in managing the coastal zone.

SECTION 3.

METHODS OF CONTROL

3. METHODS OF CONTROL

3.1 Elements of Control

The following methods of control are authorized in Section 306(e)(1) of the Coastal Zone Management Act of 1972:

Local Implementation with Guidelines. The first method (Method I) involves the state establishment of "criteria and standards for local implementation, subject to administrative review and enforcement of compliance." In other words, the state is required to establish general criteria and standards for coastal zone programs to be implemented by local governments. These criteria and standards, applied to specific local conditions, would be implemented by a suitable local zoning ordinance or regulation, while enforcement would be on a continuing basis by both the state and local governments. Administrative review would be carried on at the state level; the review would not be a review of merits of a specific case, but rather would consist of the review of local ordinances, regulations and enforcement activities for consistency with the established criteria and standards. If a local government then fails to adopt appropriate ordinances or regulations or fails to enforce existing regulations, the state would require that the deficiencies be corrected; if the deficiencies were to persist the state would take over the regulation of the geographic area in question.

Direct Regulation. Under the second method (Method II) of control "direct state land and water use planning and regulation," the state itself would establish detailed land water regulations for the entire coastal zone of the state. In this case, the state would be the decision-making body regulating the merits of specific cases. This option pre-empts the traditional role of local government control through zoning and regulation involving land or water uses in the coastal zone. Under this method both land and water use planning and regulation must be at the state level, though not necessarily by a single agency and the user must deal directly with the state agency(s).

Administrative Review for Consistency with State Management Plan. The third technique (Method III) involves "state administrative review for consistency with the management program of all development plans, projects, or land and water regulation, including exceptions and variances thereof proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and opportunity for hearings." In other words, this allows the local level of government to adopt its own zoning ordinances or regulations without being constrained by state criteria and standards other than the state program itself, except in certain circumstances which are subject to "automatic state review." These actions include: approval of a development plan or project proposed by a developer; granting of exceptions or variances; and the adoption of (new) land and water use regulations. ¹⁰

10 Federal Register, Vol. 40, no. 6, p. 1691.

More simply, this method suggests that all users and uses of the state coastal zone must be consistent with the state plan or be permitted under variance. This is analagous to comprehensive planning and zoning ordinances common at the municipal level, though much more complex.

3.2 Potentials of the Models

The following section will discuss the potential advantages and disadvantages of the three alternative methods of control. Criteria that will be used in this discussion are efficiency, uniformity, comprehensiveness and accountability. Each method will be compared to terms of the above criteria on a relative, not absolute, basis.

Efficiency. To assess efficiency, it is necessary to ask if the method can eliminate unnecessary bureaucratic duplication, and if it can reach decisions reasonably, quickly and economically. Because all planning and regulation would be done at the local level in Method I, and the majority of planning and all the regulation would be done at the local level in Method III, the tendency to establish an ineffectual bureaucracy is minimal. Such decentralization of management differs from the centralization of functions in Method II which creates the possibility of having an unmanageable bureaucracy.

Uniformity. Uniformity of decision-making and implementation is important to any regulatory system. Effectiveness is related to the continuity and equity that the use of a certain method will provide in controlling the uses of land and water in the coastal zone. Therefore, the important factors that should be examined are: a uniform basis on which regulatory decisions are made and implemented, and a means by which other interests (i.e. self-interest) other than those stipulated by the program can be put aside.

All three of the models require that some sort of planning be carried out, either indirectly or directly. For example, Method II does not require that a plan be made as part of its framework, though it does mention planning. Consequently, a state could use this model and never have a plan on which to base its regulations. Furthermore, because it stipulates that regulation be done on an individual basis, this lack of a guide for decision making provides for the potential of inconsistent regulation.

On the other hand, the remaining two methods provide that their regulatory systems be based on a unifying element. In the case of Method III, the unifying element is a management program which

usually is based on some sort of planning effort or a plan. However, the way the method is constructed, local regulations which were enacted prior to the establishment of the program would only be changed incrementally to become consistent with the management program. In other words, though the adoption of new land and water use regulations at the local level after the method was instituted would be subject to review for consistency; those regulations which were in use prior to the institution would only be subject to administrative review if a development or new regulation was introduced. The result is that not all regulatory decisions, despite administrative review, would be made on a uniform basis.

Method I is, in fact, the only method which provides a clear and specific basis on which regulatory decisions can be made. First, the state is required to establish criteria and standards on which local municipalities are to base their regulatory systems. Necessarily, these local regulatory systems would involve some sort of planning or a specific plan by which control could be developed. This method also directly requires that the local government not only have a regulatory system, but enforce it, or the state will directly intervene. Whereas in Method III, there is only an indirect requirement that the local municipalities regulate the resources. In fact, Method III provides local governments with the option to regulate. Therefore, on the whole, the first method of local regulation consistent with state guidelines has provided for the most uniform basis (relatively) on which regulatory decisions are to be made.

Speaking to eliminating the influence of other interests (not in the common good) that will exist surrounding the regulation of this resource, Method II will probably be less successful, while Method I will probably succeed relatively well. First, Method II is supposed to be applied to individual cases (such as in a permit system); as a result, it is applied incrementally. Without a plan or guidelines to guide the decisions on a case to case basis, there is no guarantee that other interests could not become involved.¹¹ This could effectively ruin the viability of this method in extreme cases and at least present a situation in which the equity of a decision could be questioned.

Method I and Method III have theoretically eliminated the dominance of local interests in regulatory decisions, because in the former these decisions must be consistent with state guidelines, while in the latter these decisions must be consistent with the management program. This removal of power is significant; it has been argued that the weakness of regulation at the local level is that political and economic interests are paramount in their decision making. Theoretically, if local governments are required to implement and enforce regulation consistent to guidelines or a plan, this weakness can be eliminated.

¹¹If, however, the Method did not stipulate that the regulation was to be applied on an individual basis, some sort of state zoning or prohibition might be used. Based on a resource plan this could eliminate the lack of uniformity which is inherent in the incrementality of this model.

In Method III, the system can be somewhat confusing. Therefore, a local municipality may not make a decision which is consistent with the management program because it does not understand the program. In time the state would overturn the decision or regulation if it was inconsistent with the management plan. However, it seems that it would be more efficient if the developer's alternatives were more clearly defined earlier in the process. On the other hand, Method I does not have this problem of a dichotomy between state and local governments standards, because the criteria and standards with which the local governments must be consistent are also those which the local government used to guide the establishment of the regulatory system.

Comprehensiveness. Comprehensive regulation in the coastal zone can best be defined ideally as the total control (depth and breadth) of all activities within the coastal zone. The factors which determine comprehensiveness in this case are thoroughness of planning and the coverage of the enforcement of the regulation.

As stated above, though Method II provides that planning be carried out directly by the state, it is not explicit as to the nature of the planning. If the state chooses to plan for the management of the coastal zone, it is probable that the state has the advantage of technical expertise and large funding. However, planning for a comprehensive CZM program is a large undertaking; so that even with expertise and funding available in large quantities, the state will be forced to limit the scope of its planning either to a few uses/users in depth or all uses and all users on a broad basis. Likewise, Method III has the same problem inherent (focusing in depth or in breadth) in its structure, for the management program is a result of state level planning which will lack either the necessary depth or necessary breadth which could make it comprehensive.

In contrast, by Method I planning is done at the local level. Local governments have the advantage of added depth due to proximity, which helps to compensate for the problems of limited expertise and adequate funding.¹² The necessary breadth is supplied by the fact that each municipality is required to have a system which is based on a uniform set of guidelines established at the state level.

¹² The state can provide the necessary technical expertise and funding to those municipalities which have the ability to plan for their part of the coastal zone. Otherwise, the state should be required to do some of the planning or require the next level of government to do it (i.e. the county).

The coverage of regulations is directly influenced by the thoroughness of planning. For this reason, what holds true for the methods in examining their thoroughness of planning holds true for the most part, here. Simply, Method II will be limited in the coverage of its regulation of the coastal zone, because of its "distance" from the resource and the enormity of the task. Also, if the state uses a permit system and applies regulation on a case by case basis, the state may not prohibit development but only regulate it. This, in one sense, implies that the regulation system is limited, in that the state is not using all the powers available to it in controlling the development of coastal resource.

Method III has the potential for effective regulation because regulation is carried out on a local level. With proximity, the regulation should cover all aspects (within the expertise of the local government) of the coastal zone.¹³ However, this coverage is also affected by how good the management program is which comes from the state level.

The determinant of the coverage of regulations in Method I is directly effected by the thoroughness of the planning on which the system is based. As Method I's planning is theoretically more comprehensive than that of the other models, it is assumed that coverage of the regulation would be more comprehensive among the three methods. The type of system, whether it involves acquisition, prohibitive orders, or permits, denotes a degree of coverage.¹⁴ However, because the system must be applied and enforced under a set of guidelines (which are assumed to be good), the coverage is ensured. Perhaps the only failing of local regulation is that impacts upon a jurisdiction's coastal zone may be caused by the actions of another jurisdiction and therefore be beyond the control of the first jurisdiction. Again, jurisdictional conflicts are assumed to be eliminated by the imposition of guidelines, which produce uniformity in decision making.

Accountability. Accountability means the obligations to furnish a justifying analysis or explanation of one's actions. Accountability can be examined in terms of the responsiveness of regulation to the needs of the coastal zone and its parts. To be effective control must be able to deal with both ecological and economic pressures at all levels of government. Therefore, in terms of responsiveness, accountability, determined first by an awareness of local problems, and then by the objectivity by which regulation is applied.

Method II is constructed such that the sole actor is the state. Regulation at the states level tend to minimize the conflict arising from the self-interests of local jurisdictions. However, the advantages gained by objectivity maybe more than offset because the state level may

¹³Since local regulation can optionally take the form of zoning ordinances, the regulation is more complete perhaps than permits and prohibitions.

¹⁴Coverage of control goes in a descending order from acquisition (total control) to prohibitive orders to permits (unless guided by standards).

be too far away from the immediate problems faced by the users of the coastal zone, and may lack the necessary information to regulate the coastal zone in a uniform and comprehensive manner. On the other hand, the state may well have the correct balance of proximity and objectivity in dealing with regional uses and impacts on the coastal zone. At the regional level, the state is closer to the problem than the national government and has a more objective perspective than local governments. As a result, the state may well be more accountable in regulating uses/users with regional impact.

Both Method III and Method I provide for regulation at the local level. Both also provide that this regulation be guided by an issuance from the state level. Theoretically, regulation (or option of regulation) at the local level provide for the necessary proximity to the problem area, while adherence to a management program and/or guidelines provides the necessary objectivity. In fact, this may not be true. Specifically, Method III basis its local regulation on consistency with a management program created at the state level. Planning at the state level can lack the necessary comprehensiveness (usually in depth) as discussed in previous subsections. Therefore, it lacks an awareness of some of the problems due to a lack of proximity. On the other hand, in Method I planning and regulation are done at the local level consistent to state criteria and standards. As a result, the planning and regulation are theoretically uniform and comprehensive and thus the balance between proximity and objectivity is maintained.

3.3 Summary of Advantages and Disadvantages

The following will provide a general summary of the advantages and disadvantages which have been discovered through an examination of each method.

Method I -- local regulation consistent with state criteria and standards.

A. Advantages:

1. Minimizes opportunities for ineffectual bureaucracies to develop;
2. Takes advantage of mechanisms and capabilities in existing programs;
3. Encourages a close working partnership among state and substate units of government;
4. Provides for decision-making to be close to where impact can be felt;
5. Uses a process that is relatively easy to grasp;
6. Provides a clear and specific basis on which regulator's decisions can be made (through guidelines);
7. Potentially could eliminate possibility of local self-interests from improperly influencing decision making;

B. Disadvantages:

1. Risks establishing a complex management system, which could require a high degree of sophistication and a large and detailed structure to operate;
2. Risks misinterpretation by local agencies or inconsistent enforcement of state set criteria and standards;
3. Deals with varying degrees of technically competent local government units;
4. Risks weakness in local regulation due to self-interests (political or economic);
5. Risks a lack of responsiveness to regional concern;
6. Lacks flexibility;
7. May take a long time to establish.

Method II -- direct state regulation.

A. Advantages:

1. Facilities program modifications to reflect changes in attitudes and conditions (flexibility);
2. Facilitates licensing and regulatory operations;
3. Increases the likelihood of equal treatment of all people in similar circumstances;
4. Potentially, minimizes the size of the technical staff necessary to implement management programs;
5. Potentially, eases access to final regulatory authority;
6. Provides a concept and process which are easy to grasp;
7. Potentially, control can be established quickly;
8. Potentially, allows greater responsiveness in regulation on a regional basis.

B. Disadvantages:

1. May create unmanageable bureaucracies;
2. Difficulty of policing and enforcing the management program;
3. Possible lack of checks and balances to identify and deal with potential inequities;
4. Potential difficulties of supplanting/duplicating traditionally local responsibilities, including the state agency's possible unawareness of or insensitivity to local problems and conditions;
5. Possibility of overlap or uncoordinated control, due to the potentiality of uses being regulated singly, instead of comprehensively;
6. Potential inadequacy of access to appeal decision without litigation;

Method III -- administrative review of plans, projects and regulations for consistency with a management program.

A. Advantages:

1. Potential for maximum state awareness and sensitivity to local problems and conditions;
2. Decision-making close to where its impacts would be felt (proximity);
3. Potential utilization or development of local initiative and prerogatives;
4. Extensive use of open public review;
5. Flexibility built into the program through local variances;
6. Provides local governments with the option to regulate;

partment and the localities, the local government has 90 days to resubmit revised plans. In instances where no master program has been submitted, the Department of Ecology will develop the master program. However, this does not preclude the option of allowing the local government to develop its own master program at a later time.

When the whole process for a master program is completed a "State Master Seacoast Land Use Planning Program" will be in effect,⁶ as a compilation of all the individual master programs. The individual master programs serve as the basis for a local permit system for the control of uses in the coastal zone. However, the permit program must be administered consistent with the Act and the guidelines, dividing development into categories of "development" and "substantial development" (costing more than \$1,000 or interfering with normal public uses). A permit decision may be challenged by the state Department of Ecology or any citizen, and will be revoked if the conditions specified therein are not complied with.

In summary, Washington's program involves the following steps:

1. State Department of Ecology issues proposed guidelines;
2. Local governments comment and negotiate with the Department of Ecology;
3. Public hearings;
4. Final guidelines;
5. Comprehensive inventory of shorelines by local governments;
6. Development of master programs by local governments based on State Guidelines;
7. Public hearings;
8. Approval/revisions by the Department of Ecology;
9. State plan from combined individual master plans; and
10. Local Administration of a permit program based on the master plans by local governments.

State of Maine

Though Maine's CZM program will be administered predominantly by state standards and criteria and local regulation, it has had substantial experience in the past with direct state regulation of elements of the coastal zone.

⁶ Proceedings of the Conference, p. 52.

⁷ Wetlands Control Act of 1967 (12 MRSA 4701-4709); the Site Location of Development Act of 1970 (38 MRSA 431-488); and the Wetlands Protection Act of 1971 (12 MRSA 4751-4758).

5. CASE STUDIES: EXPERIENCE WITH SPECIFIC METHODS

This chapter includes case studies of the experience of three state programs with various methods of control.

5.1 State Programs

Washington State

The Washington experience closely parallels that of Method I: state standards and criteria with local regulation. It is the first program to receive preliminary 306 approval by the Department of Commerce, therefore it may well provide a model for other coastal states. The state's Shoreline Protection Act of 1971 predates the enactment of the Coastal Zone Management Act by a year. The Act vests primary responsibility for planning and regulation of the "shorelands of the state"¹ at the local level. The state, on the other hand, is given control of certain areas, called "shorelines of state wide significance,"² with the power to supercede local plans or to negotiate with the local government concerning specific modifications.

An important part of the Washington method is the process it establishes to create land use plans and to devise a system for issuance of permits. This process begins with the issuance of provisional guidelines by the State Department of Ecology. Local governments comment upon the provisional guidelines and negotiated with the state to develop final proposed guidelines. Finally, public hearings are held and the guidelines are finalized.

After the guidelines had been approved, the major participants in the planning process became the local governments. Within a year and a half³, each community is required to complete a comprehensive inventory of its shorelines and a master program (or comprehensive plan) upon which the implementation of regulations can be based.⁴

Upon the completion of the individual master programs, the plans are submitted to the State Department of Ecology. The programs are then subject to public hearings in the local jurisdiction where the plan was made. At this point, the Department of Ecology can opt to override and substitute its own plan in case of "shorelines of state-wide significance."⁵ Moreover, the state can undertake negotiations with localities concerning "shorelines of the state". In the case of disagreements between the De-

¹ Shoreline Management Act, C.286, Sec. 3.

² C.286, Sec. 3e, 2e.

³ This period has been extended several times.

⁴ C.286, Sec. 8(1)

⁵ C.286, Sec. 9.

SECTION 5

CASE STUDIES: EXPERIENCE WITH
SPECIFIC METHODS

TABLE 3

THE TECHNIQUES WHICH STATES ARE CONSIDERING*

	STATE CRITERIA/ LOCAL REGULATION	STATE REGULATION	STATE ADMINISTRATIVE REVIEW
Alabama		x	
Alaska			
California	x	x	
Connecticut	x		
Delaware		x	
Florida	x	x	x
Georgia			
Hawaii			
Illinois		x	x
Indiana	x		
Louisiana	x		
Maine	x		
Maryland			
Massachusetts			
Michigan	x		x
Minnesota	x		
Mississippi			
New Hampshire	x		
New Jersey		x	
New York			
North Carolina	x		
Ohio		x	x
Oregon	x		
Pennsylvania			
Rhode Island	x		
South Carolina	x	x	
Texas	x		x
Virginia			
Washington	x		
Wisconsin			

*As of May, 1975.

Why each coastal state has chosen its specific technique is unclear. This study will not investigate this any further as most state spokesmen have been unable to indicate clearly why one technique was chosen over another.

Because of the apparent lack of a definitive legislative trend toward one approach versus another, it is necessary to examine the possibility of a future trend. This future trend could not be perceived through an examination of legislation in the past. Instead, it was accomplished by means of a survey of thirty of the coastal states¹ which was conducted by phone between February and May of 1975. Each state was asked to indicate which method or methods it was considering using at the implementation stage of the coastal zone management program. Note that some states are more advanced than others and have already insituted a method of control through legislation.

4.2 The Trend

The results of the survey of 30 coastal states are as follows:

TABLE 2
SUMMARY OF STATE METHODS OF CONTROL SURVEY

RESPONSES	FREQUENCY OF RESPONSE	% OF TOTAL
No decision as to method	10	33%
Local implementation	9	30%
State regulation	4	13%
State administrative review	0	0%
Combination:		
Local Implementation & state regulation	2	6%
Local Implementation & admin. review	2	6%
State regulation & administrative review	2	6%
All three methods	1	3%
	<u>30</u>	<u>100%</u>

The results of the survey are not conclusive, but there appears to be a definite trend toward the first approach, state standards and criteria with local implementation of regulations, either alone or in combination with one or the other of the remaining methods of control.

Three of the four states which have made or began work on applications for 306 Grants have stated with assurance that they intend to use the first approach or variations thereof to administer all or the majority of their coastal zone management programs. These states are Maine, Oregon and Washington. Table 3 indicates the responses of the other states to the survey in terms of which method(s) they are considering at this time.

¹The four coastal territories were not surveyed.

TABLE 1

ALTERNATIVE TECHNIQUES USED BY STATES

	State Criteria/ Local Regulation	State Regulation	State Administrative Review
Alabama		x	
Alaska		x	
California		x	
Connecticut		x	
Delaware		x	
Florida			
Georgia		x	
Hawaii			
Illinois			
Indiana			
Louisiana			
Maine	x		
Maryland		x	
Massachusetts		x	
Michigan	x		
Minnesota	x		
Mississippi		x	
New Hampshire		x	
New Jersey		x	
New York		x	
North Carolina	x	x	
Ohio			
Oregon			
Pennsylvania			
Rhode Island		x	
South Carolina			
Texas			
Virginia	x		
Washington	x		
Wisconsin	x		
American Somoa			
Guam			
Puerto Rico			
Virgin Islands		x	

4. STATE TRENDS IN REGULATION

4.1 Past Experience

State legislation pertaining to the coastal zone provides some perspective on which of the three methods states have used to control land and water use in the coastal zone. Table 4.1 shows the approach or approaches which each participating coastal state and territory is using, if any. ¹.

As of May, 1975 eleven (11) coastal states and three (3) coastal territories have yet to enact specific coastal zone legislation other than those acts which require that planning and study activities be carried out or those which deal with total state land and water use (not specifically in the coastal zone). On the other hand, those nineteen (19) states plus the Virgin Islands which have enacted specific regulatory provisions concerning the coastal zone, have done so using either of two models: state standards and criteria with local implementation; or direct state regulation and planning. As of May 1975, six (6) states use the former technique exclusively, while twelve (12) states and the Virgin Islands use the latter technique of regulation only. North Carolina uses both techniques.

Though approximately twenty-one percent (21%) of the coastal states and territories have established some kind of standards and criteria for the implementation of regulations at the local level and forty-one percent (41%) have established some form of direct state regulation, there appears to be no logical trend toward one technique at present or in the past. For example, in 1965 when Wisconsin passed the Shoreline Zoning Act ² which required local municipalities to regulate their shorelines through zoning according to specified state criteria, the Commonwealth of Massachusetts had also passed its Coastal Wetlands Act ³ which required that state permits be obtained for any dredging, filling or alteration of coastal wetlands. More recently, North Carolina has passed the Coastal Area Management Act of 1974 which requires the twenty coastal counties to develop land use plans according to state guidelines and to regulate local development. However, just one year before, Mississippi, New Jersey and New York ⁴ states all passed legislation which established direct state regulation of land and/or water uses in the coastal zone.

¹. Legislation was examined and included if it was specifically written for the coastal zone and contained specific provisions for the regulation of land and water uses.

2. Shoreline Zoning Act.

3. Coastal Wetlands Act.

4. Mississippi: Coastal Wetlands Protection Act (House Bill 140: 1973);
New Jersey: Coastal Area Facilities Review Act (Assem. Bill No. 1429:1973);
New York: Tidal Wetlands Act (Act 790: 1973).

SECTION 4.
STATE TRENDS IN REGULATION



B. Disadvantages:

1. Potential risk of extensive demands to adjudication by all interests;
2. Concept and process highly complex;
3. Necessitates the articulation of clear policies and objectives to local units and for having these reflect changes in conditions and attitudes (long educative process);
4. May lack comprehensiveness;
5. Takes a long time to establish;
6. Not much experience with this method.

More specifically, the state's Site Location of Development Act of 1970 provides an example of a method of control closely paralleling Method II.

The Act provides the Environmental Improvement Commission (EIC)^{7A} with among other functions, the power to control certain types of developments through a permit approval system. The types of developments to be regulated include:

1. Those requiring a health, air or water pollution license;
2. Those occupying more than 20 acres of land;
3. Those covering a ground floor area of over 60,000 feet;
4. Those requiring drilling for or excavating material resources;
5. Those requiring the use of a borrow pit for sand or gravel and larger than five acres.⁸

Developments in the above categories must submit an application to the EIC detailing the project, its history, its location objectives, performance standards, etc. The EIC then either approves the application or schedules a public hearing. The EIC approves permits according to four criteria as established in the statute:

1. Whether it meets air, solid waste, odorous and water supply requirements;
2. Whether there is adequate provisions for traffic impacts;
3. Whether it adequately fits in with existing uses, present scenic character, property values, etc.;
4. Whether it is to be constructed on suitable soil type.⁹

Permits may be conditioned to insure environmental quality based on other agencies recommendations. Hearings are to be held if the proposed development arouses public interest or more information is required from the developer. Appeals are to be made to the Supreme Court of the state. However, the statute provides for no civil liabilities to be imposed aside from compliance with State Regulations.

^{7A} Now known as the Board of Environmental Protection

⁸ 38 MRS, Sec. 482(2).

⁹ 38 MRS, Sec. 484.

State of Florida

The State of Florida's Environmental Land Water Management Act¹⁰ closely approximates the third alternative method of administrative review for consistency with the state management program, if not in practice then in theory. Two categories of management were specified by the Act: Areas of Critical State Concern (ACSC) and Developments of Regional Impact (DRI). The "regulatory machinery" used in the DRI process exemplifies the third method of control more exactly.

DRI's are defined as developments which have a substantial effect upon the health safety, or welfare of the citizens of more than one county.¹¹ In addition, twelve specific types of development are considered DRI's automatically:

1. Airports
2. Attraction and Recreation Facilities
3. Hospitals
4. Industrial Plants and Industrial Parks
5. Electrical Generating Facilities and Transmission Lines
6. Mining Operations
7. Office Parks
8. Petroleum Storage Facilities
9. Port Facilities
10. Residential Developments
11. Schools
12. Shopping Centers¹²

DRI's are regulated by local governments with automatic review by the state. The initial approval or denial of a DRI is made at the local level. The

¹⁰ Environmental Land and Water Management Act of 1972, Act 380.0-.11.

¹¹ Act 380.06(1).

¹² Bureau of Land and Water Management, What Is A DRI? (draft, Florida State, 1974). p.2.

state's role is limited to approval for consistency with the state's plan, not on the merits of individual decisions. The concept here is the fact that the state's role is not a pre-emptive one, but is established to aid local governments by integrating DRI reviews into the existing local land use decision making process.¹³

There are three instances where a developer may seek approval of a DRI:

- First, there will be instances where the proposed development is to be located in an ACSC. In these cases the developer must comply with the state and local regulations which have been adopted for this area.¹⁴
- Second, if development is to be located in an unregulated area, the local government and the state are to be given ninety days notice to permit the locality to adopt regulations or allow the state to declare the area an Area of Critical State Concern. If no action is taken within the time period, the developer may proceed.
- Third, in areas where there are existing local regulations, the developer submits a DRI application to the local jurisdiction and notifies the designated regional planning agency for that area. The regional agency makes its recommendations to the locality, but the decision rests at the local level. However, the local government's decision is subject to an administrative appeals process at the state level.

The following table provides a summary of the three states programs:

¹³ Ibid., p. 4.

¹⁴ Act 380.06(2).

TABLE 4
SUMMARY OF STATE PROGRAMS

	Washington	Maine	Florida
WHO	State guidelines; Local regulation	State regulation	Local regulation (or state when appropriate)
WHAT	1. Shorelines of state 2. Shorelines of state-wide sig- nificance	All developments occupying 20 or more acres	All developments of regional im- pact
HOW	Guidelines; estab- lishment of master programs; permit systems; default clause; appeals to state	Permit system; appeals to Supreme Court of state	Administrative review of all plans, projects and regulations; appeals through state review process
En- force- ment	By Attorney General with civil and crim- inal penalties	By Attorney General with no penalties	By state or local level with injunc- tive relief; no other penalties.

5.2 Analysis

Each state described in the preceding section of this chapter has used a different method for controlling the land and water uses in the coastal zone or in the state as a whole. The difficulties faced and the time involved in bringing their programs to the operational stage has varied. Each of the states is at a different stage of establishing its system of control. The direct state regulation technique used by Maine was set up and became effective almost immediately. On the other hand, Florida is still in the early stage of developing its regulatory system of administrative review of local regulation and development consistent to the state management program. Likewise, the State of Washington's system of local regulation with the state guidelines is not yet completed, but it is in its final stages of development.

The following discusses the experience each state has had in developing its method of control and in implementing the approach.

Washington

The State of Washington will base its coastal zone management system on using local regulation with state guidelines as its framework for controlling the land and water uses in the coastal zone. Developing this system has taken several years, however, parts of the system became operational almost immediately. Specifically, the permit system and appeals procedure went almost immediately into effect following draft guidelines from the state; these guidelines served as the basis for decisions until finalized standards and criteria could be made and master programs could be completed.

Another potential problem with Method I is its tendency to lack continuity that might arise within the local permit system; since regulations are applied on an individual basis, regulation is incremental. However, Washington has achieved continuity in its regulatory decision making by deriving each permit system from a master program, which in turn has been derived from a set of state criteria and guidelines. Also, Washington's approach attempts to eliminate the political and economic pressures at the local level.

Another advantage is that the master programs, when completed, become part of a state shoreline plan. The plan will provide added direction to both state and local governments in determining where growth and development will take place in the coastal zone. It will also indicate prior to application for a permit, what areas in the coastal zone are appropriate for various types of development. Again the plan(s) will provide a basis for more uniformity in the permit system.

Perhaps the most important advantage to the technique as enacted is the presence of a "default clause". This clause provides that the state can ensure that all of the coastal zone of Washington will be regulated, because if a municipality is unable or unwilling to plan for or regulate

their part of the coastal zone, the state will do it.

As a whole Washington's experience with its chosen technique has been good. Though it has taken several years to establish, regulation has been based on a plan and guided by state criteria and standards. This has provided for the necessary continuity and equity that is required in decision making from municipality to municipality. Finally, the default method which has been used with this technique potentially ensures that there will be total coverage of the coastal zone management in Washington.

Maine

Maine's technique of direct state regulation through a permit system is by its nature easily established. The only institutional arrangements that were necessary were the appointment of a commission, the budgeting of a staff and the education of the public and other governmental agencies of the intent of the law. As no specific and formal planning was required by the Site Location of Development Act, it was not necessary to spend interim time carrying out inventories and land use studies prior to the regulation of development.

Though the simplicity of establishing the system is an advantage, the system itself has several inherent problems. First, each permit is approved or denied on a project by project basis. Without guidelines, which might have resulted from an inventory and land use studies, there has been no guaranteed congruity of decisions concerning whether a development should not be permitted (with or without conditions). Secondly, because the members of the commission change periodically, the continuity that one body of members might have established could change. Therefore, without planning and/or guidelines, the State of Maine's use of direct regulation is or has the potential of lacking uniformity and therefore equity. Also, because of the permit system itself, Maine is unable to direct development to areas that need it economically and can handle it environmentally.

The experience that Maine has had using this approach is useful at this point in this discussion. Early in their experience, though constrained by a small staff and limited funding, the Commission manage a "fantastically good job."¹⁵ However at the same time there were administrative delays on the part of the Commission to follow up on permits in order to see if conditions placed on development were being followed.

Furthermore, friction developed between state and local governments in some cases. But as a whole there were few problems due to the fact that very few municipalities even had land use regulation at this time. However in 1971, Maine enacted the Mandatory Shoreline Zoning and Subdivision Control Act¹⁶ which provided municipalities with the authority to

¹ Bosselman. p. 195.

² P.L. 1971 c. 535.

plan and regulate inland and coastal lands. This has meant that more local communities have increasingly been subject to municipal regulation, intensifying the conflicts between the state and local governments over regulatory powers.

Certainly the use of direct regulation by Maine has been successful in dealing with the proposals for drilling and for refining petroleum on the coast of Maine. However, more importantly, Maine's experience with direct state regulation points out accurately both the disadvantages of the method as described in Chapter III and the fact that Maine did not avail itself of all the potential advantages which this model provides.

Florida

The Developments of Regional Impact System (DRI) did not actually go into effect until July 1973. Its implementation has involved the development of guidelines, the determination of the responsibilities delegated in the law, and education of local and regional personnel and developers.

The DRI regulatory apparatus in Florida based on the technique of administrative review of local regulations and development consistent to a state land use plan is very complicated. In order to establish the complete framework for the Florida system, all local municipalities must be regulated either by zoning or subdivision controls, the eight regional planning bodies must be established, and a state land use plan must be done. As a result, even at the early stages of setting up its regulatory system, Florida has run into several problems.

First, when the Act was passed local and regional bodies necessary for comprehensive coverage did not exist uniformly throughout the state. Specifically, twenty-eight of the sixty-seven counties and one-third of the cities did not have zoning or subdivision controls.¹⁷ Only in rare cases did those regulations which did exist have "any demonstrated relationship to a rational, well-conceived, publicly-adopted, comprehensive plan."¹⁸ Furthermore, only two regional planning agencies were in existence at the time. As a consequence, only part of the framework was in place at the time that the DRI legislation was enacted.

Another problem is that the state land use plan has not been completed nor will it be for sometime. As the land use plan is to be made through the combined efforts of regional planning agencies and state agencies, the plan's completion will be delayed until regional planning bodies are organized. The DRI system cannot work effectively without a plan because

¹⁷ Myers, p.27.

¹⁸ Ernest Bartley, Status and Effectiveness of Land Development Regulation in Florida Today (Tallahassee: Division of State Planning), p.16.

the plan would provide the basis for regulated municipalities to make proper decisions (not necessarily based on economic self-interests), and would provide unregulated areas with a basis for establishing land use controls. Also, without a state land use plan, the state must rely on regional planning agency and other agency reports in order to make a decision when it reviews regulations and proposed development plans.

The lack of a state plan together with only embryonic regional planning agencies will mean the continuation of adhoc planning for DRI's at the local level under these conditions. The system, operates on a project by project review basis, a technique which, as in Maine, tends to result in a lack of continuity¹⁹

Florida's use of a highly complicated model has resulted in one further problem; because the nature of DRI review has made it difficult to readily grasp the concept involved a rather lengthy educative process involving all levels of government, developers and the public at large has been necessary. Meanwhile, the state has attempted to establish some interim guidelines to make the purpose of the legislation more clear.

Other problems with the DRI process include: the constraints of the thirty day review period, the lack of sufficient funds, and the lack of data and expertise. More serious, however, is the effort by developers to avoid the DRI process by building in unregulated areas and "are getting receptive cities to annex them away from county regulations."²⁰ Also, since the regional planning agencies that do exist do not have the same boundaries as the water management districts set up by Federal statute, there is potential for jurisdictional conflict.

The advantage of the approach used by Florida is that the legislation requires a plan which should in turn guarantee, as much as possible, uniformity in decision making and review. However, the system remains incomplete until the necessary actors are in place and the plan is complete. So as a whole, Florida's technique suffers from inadequate institutional preparation, a long gearing up period, and the complexity of the legislation itself.

¹⁹ Remember that Florida's system is supposed to involve administrative review for consistency with the state plan, not of the merits of the facts on which the local decision was based.

²⁰ Myers, p. 29.

SECTION 6

SUGGESTED METHOD

6. SUGGESTED METHOD

This paper has attempted to provide an understanding of the three methods of control of land and water use within the coastal zone as presented in section 306 (e)(1) of the CZMA of 1972 by examining potential advantages and disadvantages, trends and case studies associated with the various methods. In conclusion, the necessary elements of a suggested method of control will be presented below.

6.1 Elements

A hypothetical model of control should have the following elements:

1. The concept of the model should be relatively easy to understand because it will be easier to implement and the public will not have to go through a long educative process in order to use it.
2. The method to be used should be able to function as soon as possible, in part or as a whole.
3. The control of water and land uses should be complete, which involves several elements:
 - the need for standards and criteria or a program to guide regulation and to give it continuity and uniformity;
 - the need for planning to provide the basis for regulation and for directing development and growth;
 - the need for comprehensive and responsive planning and regulations;
 - the need for default clause to ensure that the states will fill in gaps in regulation where the local governments are unable or unwilling to take the responsibility.
4. The provision of adequate technical expertise and funding at both levels of government.
5. The provision for an administrative review process by the state of local and state plans and regulations to ensure consistency with guidelines and/or the plan.

6.2 A Model

A hypothetical model¹ has been created using the information which was gained from the analyses of the three models in conjunction with the elements listed above. The potential and real advantages of the three models have been incorporated into an approach which is similar to Methods I and II, though the concept has been expanded and certain elements have been emphasized to ensure that this hypothetical model is complete. The model will be presented as a concept and then described in terms of its structure using the categories of who, what, how, and enforcement.

Concept. The concept for the model is based on a duality of regulation. First, some specific types of activities should be regulated at the state level because of the regional impact that they might have; it is assumed that the state can plan and regulate activities which have regional impact more effectively than can local governments because of their technical expertise, funding and objectivity. Secondly, all other activities within the coastal zone should be regulated at the local level to ensure comprehensiveness and responsiveness. Together, both systems of regulation are to be guided by state criteria and standards and eventually a plan to ensure continuity and uniformity. With this basic concept in mind, one can move to a more detailed description of the structure of the model.

Structure. The following will describe the hypothetical model in terms of:

1. Who will administer the regulations?
2. What is to be regulated?
3. How will the provisions be implemented?
4. By whom and how will the program be enforced?

Who? The primary responsibility of planning and regulation of the coastal zone in the state will be at the local level with advice and assistance from the state level. The responsibility for the planning and regulation of specific activities of regional importance will be at the state level.

What? The local level of governments will plan for and regulate the coastal zone which is within its jurisdiction as defined by the state. They will be concerned with all activities and users of the resources, except those activities/users which specifically come under the supervision of state regulation. The state will regulate those activities and users of the coastal zone which they deem as having an important regional impact.² These activities/users shall be enumerated immediately

1. The author realizes that the three methods presented in the Act were hypothetical also, and subject to political and economic pressures in the real world.

2. For example, energy facility sitings, airports, large industrial parks, new towns and so on would be examples of activities/users which have large regional impact.

after the initial inventory and planning stages of establishing this model.

How? First, the state will issue criteria and standards to both the local municipality and the state agency (s) which have been designated as the regulatory body(s). After a comments period and hearings, the final guidelines will be in effect.

Meanwhile, the local governments will have begun and inventory of their coastal zone and a coastal zone plan. Each plan will be adopted by the state and reviewed to see if it is consistent with final guidelines. At this time the state can either approve the plan, send it back to take care of discrepancies, or substitute its own plan. In instances where the municipality is unable to develop a plan, the state will develop the plan, though providing the option that the municipality might want to make a plan of its own at a future time. All the completed municipal plans will be put together to form a "state coastal zone plan." This planning process should take between two and three and a half years depending upon the size of the state and the level of government which is designated as local.

Secondly, at the local level these individual plans are used as a basis for a regulatory system which in turn must also be consistent with state guidelines and criteria. At the state level the "state coastal zone plan" will serve as the primary basis for their regulatory system, though the state will be allowed to edit the plan in order to reflect their expertise in the areas which they will regulate. The regulatory systems at both levels can be: one of many, such as zoning, prohibitive orders, permits, or acquisitions; or combination of techniques. Prior to the completion of the coastal zone plans, a permit system shall be instituted and guided by the state criteria and standards.

Appeals will be heard by an independent state board and can be made by any person, group, or agency, through the Attorney General.

Enforcement - Enforcement will be initiated by the state and local attorney generals. They will be empowered to seek injunctions and other types of court relief. Also there shall be both civil and criminal penalties which might be imposed, the severity of which shall be determined by the state legislation.

In summary, this model will provide for regulation almost immediately; will be relatively easy to comprehend; will be complete in that it is uniform, comprehensive and accountable; and will have the potential to direct development and growth. (See Table 6).

In conclusion, the most effective program would consist of a mix between Method I and II. According to the hypothetical model, it is suggested that the state would directly regulate activities of regional impact,³ while local governments would plan and regulate all other uses and activities.

³. As well as by areas of critical concern which is regulation by place, in addition to use.

TABLE 6
SUMMARY OF STATE PROGRAMS AND THE HYPOTHETICAL MODEL

	Washington	Maine	Florida	Model
WHO	State guidelines; Local regulation	State regulation	Local regulation (or state when appropriate)	State guidelines; Local reg.(general) state reg.(special)
WHAT	1.Shorelines of state 2.Shorelines of state-wide sig- nificance	All developments occupying 20 or more acres	All developments of regional im- pact	1.All activity in the CZ (local) 2. Specific activity in the CZ (state)
HOW	Guidelines; estab- lishment of master programs; permit systems; default clause; appeals to state	Permit system; appeals to Supreme Court of state	Administrative review of all plans,projects and regulations; appeals through state review process	Guidelines;estab- lishment of plans; regulatory system (local & state); default clause; appeals to state
En- force- ment	By Attorney General with civil and crim- inal penalties	By Attorney General with no penalties	By state or local level with injunc- tive relief; no other penalties.	By Attorney General with severe civil and criminal penalties

6.3 Recommendations

The following are two recommendations which are directly related to the establishment of the suggested model:

1. As state guidelines are important in insuring the uniformity of local decision making and regulation, so the establishment of Federal guidelines would have the same effect on the uniformity between the states. Therefore, it is recommended that Federal guidelines should be established as soon as possible.
2. In the past, political conflicts have interfaced with making wise land and water use decisions. It is recommended that when establishing a coastal zone management system it should be a bipartisan effort, to insure that the strongest possible program be enacted.

In conclusion, a better model for controlling the uses of land and water in our coastal zone can and has been constructed through the analysis of the inherent advantages and failings in the three methods of control as presented in the CZMA, and as implemented by the states.

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These two chapters provide a brief but concise description of the allocation of government responsibility for control of land development; and a summary of several methods of land use control. Chapter 6 concludes that there are three major options available to transfer land use decision-making power from local to higher levels of government.

2. Land Use Without Zoning. Bernard H. Siegan. Lexington, Mass.: Lexington Books. 1972. Chapter 9.

Chapter 9 describes the Federal and state solution in land use. It describes the National Land Use Legislation of 1971, specifically S. 992, and the ALIs Model Land Development Code, each of which espouses a method of control similar to those presented in the Coastal Zone Management Act.

JOURNAL ARTICLES

- *1. "The National Coastal Zone Act of 1972." Daniel R. Mandelker and Thea A. Sherry. Urban Law Annual, 1974, p. 119-137.

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- *2. "State-wide Land Use Planning." Richard F. Krochalis. Urban Land.
September, 1972. pp.8-13.

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- *3. "State-wide Coastal Plan Unveiled . . ." Report on South Coast Commission Meeting of 2/24/75. The Coastline Letter. No. 31, pp.1-3.

Evaluates the five possibilities of government structure: 1) a multi-purpose state agency; 2) a single state-wide agency; 3) a state-wide agency with regional components; 4) local government; and 5) local governments with a state-wide overseer agency.

- *4. "Florida Grapples with its Future." Dr. Robert Graham. Journal of Soil and Water Conservation. Vol. 28, No. 6. Nov./Dec. 1973. pp.260-262.

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- *5. "Land Use Law: Florida is a Major Testing Ground." Luther J. Carter. Science. Nov. 30, 1973. Vol. 182, No. 4115, pp. 902-908.

Describes Florida's Environmental Land and Water Management Act of 1972. It states that the law is a "process without a policy" and that there is a need for a comprehensive growth and conservation policy.

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Analysis of recent substantial coastal land use management laws. Provides a matrix of the purpose of the legislation by state.

REPORTS, PROCEEDINGS, ETC.

- *1. State Environmental Management. Elizabeth H. Haskell and Victoria S. Price. New York: Praeger Publishers, 1973. Chapters 4, 8.

As a whole the study examines nine states' reorganization of their environmental departments. Two of the states are Washington and Maine. The background given is brief and there is a good description of Maine's "site location" statute and the Environmental Improvement Commission.

- *2. The Quiet Revolution in Land Use Control. Fred Bosselman and David Callies. Prepared for the Council on Environmental Quality, Washington, D.C.: GPO, 1971. pp. 187-204, pp. 318-321.

The first selection provides a good description of Maine's Site Location law, its process, and its effectiveness in protecting the environment; the second selection briefly describes the state and local government roles in the control of land use.

- *3. A Description and Analysis of Coastal Zone and Shoreland Management Programs in the United States. Earl H. Bradley and John M. Armstrong. University of Michigan: Sea Grant Technical Report No. 20. March, 1972. pp. 110-128; pp. 267-298.

The selections noted describe Maine and Washington programs. In the former, several acts are highlighted; among them is the Site Location Act. In the latter, the Shoreline Management Program is described as well as the controversy between developers and conservationists as to the nature of this program.

- *4. Proceedings of the Conference on Organizing and Managing the Coastal Zone. June, 1973, in Annapolis, Maryland. Washington, D.C.: Council of State Governments. pp. 31-58.

This selection deals with the local involvement in the coastal zone and the states' role in coastal zone management. Both speakers emphasize the role of local government as the regulator. The latter speaker speaks in terms of the Washington experience.

- *5. Environmental Management for Puget Sound. Wallace H. Spenser. Seattle, Washington: University of Washington Sea Grant Programs. November, 1971. WSG-MP71-2.

This paper describes alternative means by which the uses of water and the adjacent land of Puget Sound can be organized and managed. Particular attention has been given to structural arrangements and methods of control.

6. Developments of Regional Impact. Division of State Planning. Tallahassee, Florida: Department of Administration. September 1974.

This report provides background information on the administration of the Development of Regional Impact programs during the first year and updates the facts and statistics concerning DRI's.

7. Slow Start in Paradise. Phyllis Myers. Washington, D.C.: The Conservation Foundation. 1974.

This report is part of a continuing series on the passage and implementation of state and regional land use programs. This report focuses on Florida's Environmental Land and Water Management Act and describes the

processes by which DRI's are regulated.

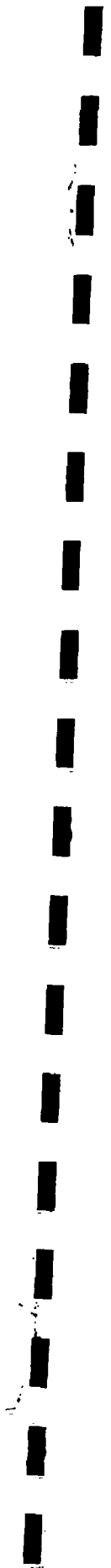
8. Shorelines Management: The Washington Experience. Proceedings of a Symposium in Seattle Center, June 24, 1972. Seattle, Washington: University of Washington Sea Grant Program. WSG-AS73-4.

This symposium discussed the needs of management, the experience in Washington during the early years, and the pros and cons of that experience.

LEGISLATION, REGULATIONS, ETC.

- *1. Coastal Zone Management Act of 1972, Section 306(e)(1) A-C.
- *2. Federal Register, Vol. 40, No. 6. p. 1691. Section 923.26 of Section 306 Regulations.
- *3. Shoreline Management Act of 1971. 1st ex. S.C. 286.
- *4. Site Location of Development Act of 1970, 38 MRSA 481-488, as enacted by P.L. 1969, C.571.
- *5. Environmental Land and Water Management Act of 1972, Chapter 380, Section 380.012-380.06.

Citations with an asterisk (*) are included in the information package.



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