Document 11-30

Written Statements From Parties Who Commented On The Massachusetts Coastal Management Program And The Draft Environmental Impact Statement

Washington, D.C.
February 1978

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

COMMENTS RECEIVED FROM FEDERAL AGENCIES

U.S. DEPARTMENT OF COMMERCE NOAA
COASTAL SERVICES CENTER
2234 SOUTH HOBSON AVENUE
CHARLESTON, SC 29405-2413

Property of CSC Library

HT393.M4 W89 1978
9967538
DEC 11 1978

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

MANPOWER,
RESERVE AFFAIRS
AND LOGISTICS

13 DEC 1977

Ms. Joellyn K. Murphy
Director, Federal Programs Division
Office of Coastal Zone Management
National Oceanic and Atmospheric
Administration
Department of Commerce
Rockville, Maryland 20852

Dear Ms. Murphy:

The Massachusetts Coastal Zone Management (CZM) Program and draft Environmental Impact Statement (EIS) have been reviewed within the Department of Defense in accordance with your memorandum dated October 12, 1977. The enclosed comments are recommended for inclusion in the final edition of the management program and EIS.

We appreciate the opportunity afforded us to comment on this report.

Sincerely yours,

[illegible]

Perry J. Fliakas
Deputy Assistant Secretary of Defense
(Installations and Housing)

Enclosure

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

NPOWER,
VE AFFAIRS
LOGISTICS

13 DEC 1977

Ms. Joellyn K. Murphy
Director, Federal Programs Division
Office of Coastal Zone Management
National Oceanic and Atmospheric
Administration
Department of Commerce
Rockville, Maryland 20852

Dear Ms. Murphy:

The Massachusetts Coastal Zone Management (CZM) Program and draft Environmental Impact Statement (EIS) have been reviewed within the Department of Defense in accordance with your memorandum dated October 12, 1977. The enclosed comments are recommended for inclusion in the final edition of the management program and EIS.

We appreciate the opportunity afforded us to comment on this report.

Sincerely yours,

Everett Harrington
for Perry J. Fliakas
Deputy Assistant Secretary of Defense
(Installations and Housing)

Enclosure

DETAILED DOD COMMENTS
MASSACHUSETTS DRAFT COASTAL ZONE
MANAGEMENT PROGRAM AND DRAFT
ENVIRONMENTAL IMPACT STATEMENT

VOL I MDCZMP

Commentary on Federal Consistency Procedures (Appendix A, page 52)

Add the words "to the maximum extent practicable", to the first sentence in order to accurately reflect the requirement of the statute.

Compelling Public Interest (Page 318)

It should be made clear that the term "Compelling Public Interest" includes items of national interest and more specifically considerations of the National Defense.

Federal Licenses or Permits (Page 351)

The term "applicant" should be defined to exclude Federal Agencies in accordance with the latest NOAA Federal Consistency regulations (paragraph 930.52).

VOL II MDCZMP

Introduction

Include a short statement covering the exclusion of the small parcels of Navy owned/controlled land in the Coastal Zone. The properties include Naval Reserve Centers in the Coastal cities and Squantum Naval Housing. In addition, Plate 18 should be modified with shading, for instance, to indicate the Naval Air Station, South Weymouth is Federal land.

EXCLUDED FEDERAL LANDS

Although Massachusetts expended considerable effort to coordinate with Federal agencies during program development, certain Army lands which are excluded from the coastal zone should be mapped in Volume 2 of the MCZMP, which provides a detailed site-specific description of Massachusetts' coastal zone. Army land holdings adjacent to Massachusetts' coastal zone include:

Installation	County	Acreage
Camp Edwards	Barnstable	10,689
Nike Boston - 05	Essex	76
Nike Boston - 15	Essex	6
Nike Providence - 29	Bristol	5
S. Boston Support Activity	Suffolk	34
USARC Fort Rodman	Bristol	13
USARD Hingham - Cohasset	Plymouth	758
USARC Quincy	Norfolk	1
USARC Roslindale	Suffolk	4

Statements on excluded Federal lands which appear on pages 26 and c-6 of the program, and page II-54 in the DEIS should be reworded to more accurately reflect the Federal Office of Coastal Management's guidance on this matter: "States must exclude from their coastal management boundaries those owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents." (15 CFR 923.33).

DRAFT ENVIRONMENTAL IMPACT STATEMENT

Summary (Paragraph 2)

Add "To the maximum extent practicable," to the last sentence to accurately reflect the requirement of the statute.

Part I (Paragraph A-5, page 1-1)

Rewrite first phrase to read "Restrict state and Federal development, if practicable, near designated public recreation areas ..."

Part I (Chapter 2)

In footnotes throughout the Chapter change "Policy will be applied to Federal Government activities ..." to read "Federal government activities will be expected to conform to this policy in accordance with NOAA's Consistency Regulations."

Part II (Chapter 6, paragraph 1 - National Defense and Aerospace)

Replace the phrase "All feasible alternative sites and mitigation measures ..." with "The reasonable investigation of feasible alternate sites ..." Also, Federal consistency mediation procedures will be "sought", rather than "invoked".

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

20 DEC 1977

OFFICE OF THE UNDER SECRETARY

IN REPLY REFER TO:

Honorable Robert Knecht
Acting Associate Administrator
Department of Commerce
National Oceanic and
Atmospheric Administration
Washington, D.C. 20235

Dear Mr. Knecht:

This Department has reviewed the Massachusetts Coastal Zone Management Program and DEIS, and I offer the following summary of comments for your consideration.

We have no objection to approval by the Secretary of Commerce of the subject document for the purpose of obtaining Department of Commerce funding. However, due to the limited geographic area covered by the coastal area as defined in the MCZMP, there does not exist a sufficient basis to determine that the requirements of the 701 Land Use Element have been met. The State of Massachusetts should be informed that any such approval of the Massachusetts Coastal Zone Program by the Secretary of Commerce cannot be construed as HUD approval of this document for the purposes of meeting the land use element requirement of the 701 Comprehensive Planning Assistance Program (24 CFR 600.72). HUD determination of approval of the State of Massachusetts land use element shall be in accordance with the procedures established in 24 CFR 600.73.

While it is possible that some future housing and community development proposals may be constrained by the MCZMP, we do not expect a substantial reduction in housing and community development activities in the coastal communities as a result of the MCZMP. We reached this conclusion because the coastal zone is defined very narrowly, and should have no affect on opportunities for housing and community development elsewhere in the coastal communities.

We would like to commend the Commonwealth's recognition of the significance of coastal hazards management to a well-formed, comprehensive coastal zone management program. The draft's devotion of an entire sub-chapter to an in-depth discussion of this issue is an exemplary effort which we hope will provide a model to other participants in our national coastal zone management efforts.

I am enclosing a more detailed compilation of both general and specific program concerns which may be useful to the implementation and management of the program. We appreciate the opportunity to comment on the Massachusetts program and look forward to continued coordination during its implementation.

Sincerely,

Robert C. Embry, Jr.
Assistant Secretary

Enclosure

Comments on Massachusetts Coastal Zone Management Program and DEIS

General Comments

1. Evaluation System

Although the proposed MCZMP touches on the need for evaluation as part of program management, program evaluation is not set forth as a major and distinct element. We believe it should be. The role of the State Executive Office of Environmental Affairs (EOEA) in evaluating the effectiveness of the CZMP implementation should be highlighted. The evaluation system should identify the state agencies to be evaluated, the method by which local decisions would be monitored as they involve the coastal area, and the criteria to be used. A few test cases should be reviewed in detail each year to determine the effectiveness of the CZMP and adherence to its policies. The objective of the evaluation system should be to reliably report on the quality of the process being undertaken at the state and local levels. Are decisions being made with respect to the location of housing which are consistent with CZMP policies? A checklist might be employed to review decisions against particular CZMP policies to determine which policies were followed and which were not. The evaluation system should help the State to determine the cumulative effect of individual decisions made at the local level which may be detrimental to the policies for the coastal area.

2. A-95 Review

We noted that the A-95 review system will be relied on to a substantial degree to screen projects for their potential affect on the coastal area. Consideration should be given to assist A-95 review agencies with respect to coastal concerns by issuing specific guidance materials, such as a checklist or worksheet, which could be used by reviewers. A CZM project review checklist or worksheet would help assure that certain key concerns were being included in project review, and that there would be a more standardized approach which would be easier to monitor and evaluate. The CZMP document itself would serve as the general reference source.

3. Sanctions and Other Corrective Actions

The MCZMP does not clearly identify what sanctions or other corrective actions would be employed by EOEA with respect to a locality or State agency failing to adhere to the coastal management policies. The need for such corrective actions could be envisaged both with respect to initiatives taken by others, such as private developers, or by State agencies and localities as part of their own administrative responsibilities.

4. Networking

The implementation of the CZMP relies heavily on the "networking" of State and local agencies, and existing State statutes and regulations. However, regulations have yet to be issued for many of the relevant State statutes. Also, many of the agencies identified have not previously been active in the coastal area. For example, regulations have not been issued as yet, according to pages 11-36 to 11-41 of the Draft EIS, for the following: Coastal Wetlands Restriction Program; Inland Wetlands Restriction Program; Self-Help Program; and the Scenic Rivers Program. Although the Department of Commerce is willing to accept the MCZMP without such regulations in place, stating that the authority still rests with the State through legislation, we suggest that a firm schedule be established for the issuance of all necessary regulations.

5. State Sewering Priorities

It is stated in the MCZMP and the Draft EIS that State sewering priorities already follow the policy of encouraging general development to locate in existing developed areas and adjacent lands by using Federal and State investment to provide sewage waste treatment and transportation services. Contrary to this statement, the Division of Water Pollution Control of the State Water Resources Commission has, and is currently using, a priority rating system for sewer construction grant projects which is determined primarily by type of project. Although there is some provision for supplemental "points" being awarded on the basis of design population served, this is only a secondary consideration and can be outweighed by other use effects. As a policy therefore, the sewer priority rating system does not really distinguish between effects on existing developed areas and other areas. While some attempts have and are being made to obtain modifications in the system by the State, much remains to be done to revise the "project type" orientation of the decisions so that they will be consistent with overall State growth policy. This, in fact, was recognized by the Governor in the recently released Growth Policy Report, which directs a specific recommendation, No. 29, at this very issue.

6. Need For Program Summary

We have found that large and complex documents, such as the MCZMP, are not readily usable by local officials in the performance of their daily responsibilities. We suggest that a more "readable" summary be prepared for general public and local official consumption. In addition, with respect to specific issues, we suggest that a question and answer worksheet be prepared and updated from time to time focusing on typical kinds of questions faced by local officials, i.e., building permits, and a "hot line" be established in the EOEA to respond to local official and public questions.

7. Federal Insurance Research

Page 124, paragraphs 1 and 5: For your information, we would note that the FIA is carrying out research in two areas discussed here, the results of which could be helpful to the Commonwealth in administering its CZMP. In paragraph 1, a market value threshold for defining "substantial damage" is proposed at 75%. We will soon be completing an investigation of various mechanisms for addressing substantially damaged or improved existing structures. Although the FIA relies on a 50% threshold for this purpose, one of the study findings suggests that differences between a 50%, 75% or 80% threshold are less significant than could be expected, since, for instance in the case of structures damaged by fire, losses tend to group in a very low range e.g., 5-15% or a very high range 85-100%.

The second area of research, also related to existing structures, deals with the feasibility of implementing Section 1362 of the Flood insurance Act of 1978, as amended. The description of this issue in paragraph 5, page 124, should be clarified to note that reliance on this approach can only be made in certain limited circumstances as described in the legislation. FIA is currently investigating all aspects of this issue in a comprehensive 18 month study, the results of which are expected by the end of 1978. Please feel free to contact HUD on the specific findings of these studies and their applicability to the CZMP's efforts to address existing uses in flood-prone areas.

Program Concerns

1. Overview and National Interest

Although the MCZMP proposes priorities for the use of land which if implemented would restrict housing development and general types of community development activities in the coastal area it is our general conclusion that the objectives of the proposed MCZMP are consistent with HUD policies and programs. The overall policy of the MCZMP is to encourage general development to locate in already developed areas or in areas contiguous to them. Other coastal policies, such as the restriction on development in areas below mean high tide or in ocean sanctuaries, should have limited impact on HUD programs in housing or community development. Many MCZMP policies do not change or add to existing development constraints with which HUD supported development must presently conform. HUD supported development is already subject to the Wetlands Protection Act and the Inland Wetlands Act; HUD regulations themselves, such as the Minimum Property Standards, which constrain development where soil can support limited sewage disposal systems and where sewers are not available; and NEPA for development proposed near recreation sites or designated historical sites if the development would have a nagative impact.

The primary areas in which the proposed coastal policies may affect HUD supported development activities would be in urban areas, especially in or adjacent to the waterfront, where there may be a competition for uses, and in the lesser developed areas near urban areas where single family residential construction might be anticipated. However, as pointed out in the Draft EIS, whether an area othewise meeting the normal conditions of development and the coastal policies is used for single family homes, high rise apartments, commerce or industry will continue to be decided by local governments.

2. Impacts of Coastal Policies on HUD-Supported Housing and Community Development Activities

The State has adopted 38 policies to guide activities on the coast, 15 of which are said to be enforceable through existing State laws and regulations. The remaining 23 are of an "encouragement" nature. With respect to HUD-supported housing and community development activities some policies will have no significant effect and same would apply with or without the MCZMP. Those which may affect HUD-supported housing and community development activities, are of most concern to HUD.

a. Policy 8b, "enforceable," may have some effect on single family residential developments in upland areas. However, this policy is designed to protect against coastal hazard areas, which, because of the risk of damage due to possible flooding, should not constitute prime residential areas.

b. Policy 17, "enforceable," prohibits preemption of present proposed maritime-dependent industrial uses in port and harbor areas. These areas may also be attractive for residential or non-industrial community development. Non-maritime development proposals would be permitted in port areas which are not maritime-dependent, providing a conflict does not arise between a project which is not maritime-dependent and a foreseeable maritime-dependent use. The clear intent of this policy is to give maritime-dependent uses priority over non-maritime development in ports and harbor areas. Since HUD does not engage in direct development, conflicts in proposed uses which may arise would be a subject for state and local decision-making, with all proposals for HUD financial support also subject to our own eligibility criteria, A-95 and environmental review. There are 13 ports and over 100 harbors identified in the CZMP to which this policy applies.

c. Policy 20, "encouragement," supports water front redevelopment and renewal in developed harbors in order to link residential neighborhoods and commercial downtown areas with physical and visual areas to the waterfront. Seemingly contrary to Policy 17, this policy actually encourages housing and community development activities in waterfront areas.

The key difference seems to be whether or not a port or harbor area is suitable for industrial or economic maritime-dependent uses. Since the two policies are somewhat contradictory, we suggest that their specific intents be clarified with further examples of what would or would not be possible under each. For example, Policy 20 could be addressed to waterfront park and building conversion and re-use, such as Atlantic Avenue in downtown Boston, and the Newburyport renewal project area.

d. Policy 26, "enforcement," provides for the acquisition and development of new public areas and facilities for coastal recreational activities. Once sites are acquired for recreational use they are no longer available for housing or other community development uses. As with Policy 17, the choice of uses rests with the State and localities. Some of the sites listed on pages 11-19 and 11-20 of the Draft EIS may already be under consideration for other uses, including housing.

e. Policy 35, "enforcement," seeks to upgrade public infrastructure in existing developed areas, assigning highest priority to infrastructure which meets the needs of urban and community development centers. This policy affects, for example, sewer and water facilities which may be funded through the CDBG program. The overall thrust of the policy is consistent with HUD objectives under the CDBG program of concentrating resources for central city and neighborhood revitilization in support of low and moderate income residents.

f. Policies 36 and 37, "encouragement," affect housing and community development, but are generally consistent with HUD policy of revitalizing existing development centers and encouraging clustering of new development.

g. Policy 38, "encouragement," encourages major development conforming to CZM policies and provides that OCZM will assist developers to reach such conformance. This policy may affect particular housing and community development proposals, but relies solely on existing constraints.

h. Policies 13 and 15 deal with the visual environment of development in the coastal area. The visual environment is an important but intangible quality, and as such is difficult to assess in advance with respect to the effect it may have on HUD-supported housing and community development activities.

3. Consistency with the 701 Land Use Element

The definition of the coastal area in the CDMP except for Cape Cod, Nantucket and Martha's Vineyard, is a very limited geographic coverage. Although the decision was deliberated and based on many factors, the result of limiting the coastal zone landward to 100 feet inland of a major road, rail or other visible right-of-way, does not enable us to make a judgement with respect to its satisfying requirements of the 701 land use element as provided under the HUD-OCZM agreement. The most we can say is that the general policy of the MCZMP of encouraging development in or adjacent to already developed areas is consistent with the overall objective expressed in the Massachusetts Growth Policy Report, City and Town Centers: A Program for Growth, which is expected to be the major document to be submitted in response to the land use element requirement. This is unlike other coastal zone programs with which we are familiar, which cover all of the political boundaries of a costal community as in the case of Maine, and communities not adjoining the coast as in the case of New Hampshire.

4. Flood Insurance

a. Page 116, paragraph 2, number 4: The current subsidy is approximately 50-55% for the costs of insurance.

b. Page 116, paragraph 2, number 5: At this time, FIA's regulations reflect the natural buffering role of dunes in its requirements (24 CFR 1910.3(e)(8)) as pointed out at page 120, paragraph 2. In addition, if the comment in this section is directed toward the "natural buffering capabilities" of coastal wetlands, there is not sufficient hard data to support regulation of coastal areas to protect such a role if and where it exists. FIA is initiating a study to determine whether such a function is carried out by coastal wetlands, which types of these perform such a role and under what circumstances, and how to regulate development to protect such a function if it is found to exist.

c. Page 116, paragraph 2, number 6: This statement implies that the purpose of the NFIP flood insurance subsidy is, as stated "to sustain development". This is clearly not the case. Congress established the subsidy to assure the provision of flood insurance coverage at rates that the property owner can afford, and in order not to penalize those who had inadvertently located in flood hazard areas prior to their delineation, or those who were made subject to increased risk as a result of the imprudent construction pracices of others.

d. A more basic problem involves point #6 which relates to other sections of the draft as well, notably, the discussion of the role of wetlands as buffers (see comments, above). The discussion in point number 6 is characterized by reliance on generalizations which are either unsupported or which lack necessary and careful qualification. Although it may seem logical to assume that the existence of an insurance subsidy would produce a bouyant affect on land values, this presupposes a depressing influence from either the delineation of an area as flood-prone, or the implementation of regulatory requirements in such areas. There have been no studies of of the effects of the NFIP's flood insurance practices on property values. The few studies of limited scope which have addressed the effects of regulations of flood-prone areas have generally been unable to identify any affect of such regulations on these values. Thus, the cause and effect relationship outlined here is simplistic and at best only one potential occurrence among a wide range of alternatives affected by many more actors than the FIA alone in its administration of the National Flood Insurance Program.

e. Page 122, paragraphs 3 and 4: Concern is previously expressed with the manner in which the draft discusses the relationship between the flood insurance subsidy and property values. However, the basic thrust of this discussion is strongly supported in a recent national policy statement which should be reflected here. In President Carter's Environmental Message of May, 1977, the issues of flood damage reduction, the preservation and restoration of the natural values of flood plains and wetlands, and long and short term and direct and indirect impacts to them are addressed. These issues and the criteria which are set for the federal executive agencies to address them are set out in Executive Orders 11988 and 11990, titled Floodplain Management, and Wetlands Protection, respectively. The mandates of these Orders are very strong and designed to establish the Federal agencies in a leadership role for state and local governments through avoidance of flood plains and wetlands for proposed actions wherever practicable. The Orders can be expected to significantly alter the manner in which Federal agencies carry out proposed actions which could affect these environmentally sensative and often hazardous areas.

Department of Energy
Washington, D.C. 20461

JAN 11 1978

Mr. Robert W. Knecht
Associate Administrator for
Coastal Zone Management
National Oceanic and Atmospheric
Administration
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Knecht:

We have reviewed the Massachusetts Coastal Zone Management Program as requested by your letter of October 12, 1977. The program contains the basic authorities and policies required to support implementation of a coastal zone management (CZM) program. We recommend approval of the program, subject to the condition that certain additional materials be provided within a set time frame agreeable to the State as refinements or amendments. Overall, we wish to commend the Commonwealth of Massachusetts for the comprehensive, balanced, and well coordinated development of its CZM program.

The program makes it clear that it will be the responsibility of the Energy Facility Siting Council (EFSC), not the CZM program, to plan and regulate the siting of major energy facilities in the coastal zone. EFSC is expected to discharge this responsibility consistent with the energy policies expressed in the coastal program and a Memorandum of Understanding between EFSC and the Office of Environmental Affairs (the primary office of responsibility for the coastal program). The statute prescribing EFSC's authorities and the implementing regulations for siting of energy facilities in the coastal zone are not included in the program materials submitted for review. This information is essential to full documentation of the energy facility planning and regulatory process required for approval of CZM programs. We request that the authorities and regulations of EFSC be provided as program amendments.

Page 11-55 of the Draft Environmental Impact Statement for the Massachusetts program lists factors to be considered by EFSC in evaluating the siting of energy facilities. The factors listed do not include economic feasibility. Lowest possible cost to Massachusetts energy consumers is a responsibility of EFSC (See Appendix A, page a-19). Economic feasibility should be added accordingly in the Final Environmental Impact Statement as a consideration in evaluating site suitability.

Page 28 of Volume 1 of the coastal program contains a statement on the permissible uses of "Significant Resource Areas." The program indicates "underground energy transmission lines" as a permissible use. We request clarification on the intended scope of this phrase concerning electric power lines, oil or gas pipelines, and cooling water intake or discharge pipelines.

Massachusetts has established several areas as "Ocean Sanctuaries." We believe additional information should be provided to identify special conditions, if any, which would affect the authorities of EFSC concerning the regulation of energy facilities potentially impacting ocean sanctuary areas. Any such significant conditions should be defined and explained in amendments to the program.

The Georges Bank OCS lease sale area is adjacent to Massachusetts. At one point in the program narrative (Vol. II, p. 160), a CZM Advisory Committee is quoted urging Massachusetts "to use the CZM plan as a means to establish strong State regulatory authority over onshore exploration and development support facilities," and "to establish and enforce stringent OCS policies." It is not clear from the program, including the lengthy discussion of OCS development (Vol. I, p. 247-254), how OCS development is being planned for and accommodated. We suggest (per our comments on the proposed Program Approval Regulations) a more positive approach to energy planning for OCS development be prepared and submitted as an amendment to the program.

We suggest updating features on the topographic maps presented in Volume 2 of the program. Please note that on plate 27 of the Manomet area that the Pilgrim Nuclear Power Plant does not appear.

We appreciate this opportunity to comment on the Massachusetts program and look forward to timely review of the suggested amendments to the program.

Sincerely,

Thomas E. Noel
Acting Assistant Secretary
Resource Applications

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 19 1977

Mr. Robert Knecht
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Page Building No. 1
3300 Whitehaven Street, N.W.
Washington, D. C. 20235

Dear Mr. Knecht:

The Offices and Bureaus of the Department of the Interior have completed an intensive review of Volumes I and II of the Draft Massachusetts Coastal Zone Management Program (MCZMP) and the Draft Environmental Impact Statement (DEIS).

We find the MCZMP to be potentially an excellent program. For the most part, the policies and procedures are adequately described and comprehensive. The Department commends the staff of the MCZMP, the members of the Citizen Advisory Committees, and others who helped prepare Volumes I and II. High quality staff work and a thorough understanding of the substantive issues are reflected in the documents. The Program appears well designed to strengthen the State's ability to both protect its fragile coastline and to channel economic development potential into existing and somewhat depressed port cities. The MCZMP recognizes the fragile and valuable nature of the coastal environment and seeks to preserve it.

We would also like to commend the staff of the Office of Coastal Zone Management, especially William Matuszeski, for the candor expressed in the alternatives section of the DEIS. Since the DEIS frankly discusses the program's strengths and weaknesses, we have focused attention on the issues you believe to be most important.

While we find the program commendable in many respects, our staff and the Bureaus expressed a large number of specific concerns and developed over one hundred recommendations which we believe would strengthen the program. Most of these relate to important issues. Several deal with specific requirements of the Coastal Zone Management Act and Regulations. We recommend that these be resolved prior to program approval. Others, in our opinion, may be adequately resolved during the first year of program

implementation. The majority of our concerns and recommendations are listed by subject in Attachment 1 and the balance by page number in Attachment 2.

Of the issues raised by our reviewers, concern over the enforceability of the MCZMP predominated. The "networking" concept of authorities brings a variety of interests into the implementation process. The three mechanisms to be used to assure compliance and enforceability are 1) memoranda of understanding (MOU's) between State agencies; 2) lead agency regulations providing program guidelines; and 3) completion and/or changes to affected agencies' substantive regulations.

Each mechanism, however, has serious uncertainties associated with it. The MOU's are thought to be "generally unenforceable" and are expected to be "entered into and dissolved according to the needs of each agency and CZM." The lead agency regulations (known as "21A regulations") have not yet been approved nor has a date been set for their approval. Neither have key substantive regulations such as those for the Ocean Sanctuaries and Scenic Rivers programs been developed in draft for review by Federal agencies. As acknowledged by the program document these and other substantive regulations are of critical importance to the management of Significant Resource Areas and Areas For Preservation and Restoration, essential elements of the coastal management program.

The CZMA requires that prior to approval the program must be enforceable and have "authorities necessary to implement the program." The regulations (Section 923.42(d)(4)) require that "each State agency . . . must be legally bound to exercise its authority in conformance with the State's coastal policies." If an MOU is used it must "bind the affected parties." These requirements are stated in absolute terms, not in terms which allow for dependence on the evolution of authorities after program approval or for a trial and error testing period to determine if MOU's are enforceable.

In essence, if a "networking" approach is to be effective, it must provide as much assurance of adequate authority as a strong comprehensive coastal management act passed by the Legislature and signed by the Governor.

The Department strongly supports coastal zone management and believes the State programs must operate from a position of strength to meet the intention of the Coastal Zone Management Act. While early approval is desirable in a number of respects, premature approval would place the MCZMP in an unnecessarily vulnerable position during the early stages of implementation, before adequate enforcement authorities are in place.

As you know, on December 19, 1977, Deputy Assistant Secretary Heather Ross and members of my staff met with your Northeast Regional Manager and her staff to discuss the issues raised in this letter and some of those in Attachments 1 and 2. We were most pleased to learn of your office's intention to insure that the 21A regulations are to be officially adopted prior to program approval. We believe this will help provide the necessary strength to effectively implement the program. We also were pleased to learn that the key substantive regulations must be in place prior to June 1, 1978. Finally, based on their explanation, we understand the function of the MOU's and the role of local programs and appreciate your intention to clarify these in the final program description.

We feel the meeting was highly productive and look forward to receiving the final program. If you have any questions about our other substantive comments, please contact Paul Stang or Ted Heintz (343-7258) of our staff.

Thank you.

Sincerely,

Larry E. Meierotto
Assistant Secretary --
Policy, Budget and Administration

Attachments

ATTACHMENT 1

Comments on the MCZMP

by Subject Categories

ENFORCEABILITY

The Department is seriously concerned that the Massachusetts Coastal Zone Management Program does not have adequate authorities, at this time, to be enforceable. Our three major concerns are:

> (1) the enforceability of the EOEA agencies' Memoranda of Understanding (MOU's) with the Secretary of EOEA, (2) the status of the Chapter 21A Regulation, and (3) the omission from the program of draft substantive regulations which are to be promulgated by EOEA agencies pursuant to applicable existing statutes.

We recommend that OCZM consider delaying "306 approval" or give preliminary approval, in accordance with Section 305(d)(2)(B) of the CZMA, until such time as:

> (1) a procedure has been incorporated into the program which provides grounds for bringing an action to ensure compliance of networked agencies with the MCZMP, (2) the EOEA Chapter 21A regulation is officially adopted, and (3) the regulations to be promulgated for the Waterways, Wetland Protection and Ocean Sanctuaries programs have been reviewed by Federal agencies and adopted by the State.

The basis for our concern over the enforceability of the MCZMP derives from statements in the MCZMP and the proposed NOAA Program Approval Regulations. The three primary mechanisms for implementing CZM policies are clearly stated in the MCZMP:

> "The Coastal Zone Management structure is essentially one where the line EOEA agencies will be primarily responsible for the implementation of the CZM policies. This will be accomplished via a Memoranda of Understanding with the Secretary and appropriate agencies agreeing to jointly implement the CZM program with the Executive Office and other EOEA agencies, via the regulations promulgated by the Executive Office adopting the plan as a statement of the State environmental policy, and via changes, if necessary, in the regulations of affected agencies." (Page 317, Volume 1; emphasis added)

MEMORANDA OF UNDERSTANDING (MOV's)

The first mechanism for implementing CZM policies is the group of MOU's between the Secretary of EOEA and appropriate EOEA agencies. The proposed CAM program approval regulations promulgated by the Department of Commerce (15 CFR Part 923; August 29, 1977) identify the requirement for enforceable MOU's in network programs, in Section 923.42(d)(5):

> "Interagency agreements (such as memoranda of understanding or agreement) must be binding and enforceable in order to constitute acceptable legal authorities. Interagency agreements will be considered enforceable if the management program and State authorities in support of the program provide grounds for bringing an action to ensure compliance of networked agencies with the program. It will be sufficient if any of the following can bring suit: the State agency designated pursuant to subsection 306(c)(5) of the Act, the State's Attorney General, another State agency, a local government, or a citizen." (emphasis added)

However, the MCZMP addresses the status of the Memoranda of Understanding which have been signed by 5 EOEA Commissioners and by the Energy Facilities Siting Council, on page 319, Volume 1:

> "While interagency Memoranda are tought to be generally unenforceable because the Attorney General has never brought suit by one agency against another on the basis of such an agreement, they do serve a significant role. They embody the spirit of cooperation and joint effort fundamental to the success of the CZM Program." (emphasis added).

The MCZMP appears to rely on the following mechanism to ensure compliance of networked agencies with the program, in accordance with the requirement of the proposed 306 Approval Regulations:

> "If citizens are not satisfied with any of the administrative avenues open to them for influencing State actions, any ten citizens can sue in the superior courts concerning any damage to the environment, pursuant to Chapter 214, Section 7A of the General Laws." (Page 366-7, Volume 1)

We are uncertain as to how this provision of the General Laws can be applied to the MOU's of the program, if the MOU's are unenforceable. It is recommended that these grounds for suit be clearly discussed in terms of the proposed Chapter 21A Regulation, the MOU's and governing statutes of EOEA agencies.

The confusion over the statutes of the MOU as an enforceable document is furthered by the statement:

> "It is anticipated that these Memos will be entered into, and dissolved, according to the needs of each agency and CZM to establish clear procedures and policies for the relevant aspects of each program." (Page 319, Volume 1; emphasis added)

It is clear that the MCZMP addresses changes in the MOU's, including dissolving the MOU's, as minor revisions to the program which would not require the amendment procedure as provided for in the CZMA. We find this inappropriate and not in compliance with the requirements of NOAA proposed regulations on amendments and refinements.

Chapter 21A Regulation

The second mechanism for implementing CZM policies is via the Chapter 21A regulation to be promulgated by the Secretary of the Executive Office of Environmental Affairs. The effect of this regulation once it is promulgated, is that: "all EOEA agencies are to carry out the CZM plan in full in granting permits, in disbursing funds, or in conducting any kind of activity in the coastal zone" (Page 317-18, Volume 1). However, the proposed NOAA Program Approval regulations are quite explicit as to the requirements which must be satisfied prior to program approval. These pertain to the enforceability of each agency's conformance to CZM policies in Section 923.42(d)(4):

> "Enforceability. Each State agency which exercises statutory authority that is to be incorporated into the management program must be legally bound to exercise its authority in conformance with the State's coastal policies. This can be achieved through an executive order or an interagency agreement (including memoranda of understanding or agreement) provided that such order or agreement binds the affected parties to conformance with relevant management program policies."

To meet this requirement, the Department believes that the Secretary's 21A regulation must be approved and be enforceable prior to Federal program approval.

Regulations of Affected Agencies

The third mechanism for implementation of the CZM policies is via changes, where necessary, in the regulations of affected agencies. The importance of these revised and new regulations in implementing the CZM policies is stressed throughout the Porgram. For example, the Waterways Program has no regulations for license and permit activities within DEQE's purview. Therefore, draft regulations are being prepared in order that the Waterways Program will be bound to conform to the provisions of the CZM program. The program recognizes the need for additional substantive regulations and states: "for cases like the Ocean Sanctuaries Program, the Scenic Rivers Program, or in integrating the Colonial Ordinance with the Waterways Program, major efforts by the agencies and CZM will be required." (page 319, Volume 1; emphasis added). The importance of these additional regulations is further indicated by the comment: "(these) regulations will discuss how agencies will conduct their activities in SRA's or APR's" (Page 319, Volume 1). We consider this aspect of conformance of agency regulations to CZM policies as the primary enforceable requirement of the network program. In addition to the previously cited requirements of the proposed 306 Approval Regulations, Section 923.42(d)(7) states:

> "If networked State agencies can enforce the management program policies at the time of Section 306 approval without first having to revise their operating rules and regulations, then any proposed revisions to such rules and regulations which would enhance or facilitate implementation need not be accomplished prior to program approval. However, where State agencies cannot enforce coastal policies without first revising their rules and regulations, then these revisions must be made prior to program approval." (emphasis added)

In light of the significance of the revised regulations to be promulgated by agencies in order to conform to CZM policies, and in light of the enforceable nature of the revised regulations on agencies, it is our position that these draft regulations should be incorporated into the MCZMP for Federal review and that OCZM consider predicating 306 approval on formal adoption of each agency's regulations.

In conclusion, the Department believes that without final approval by the EOEA Secretary of the 21A Regulation, and without review of draft substantive regulations by Federal agencies, in addition to the apparently unenforceable nature of the EOEA agency MOU's, the MCZMP is not enforceable in accordance with the NOAA's proposed Program Approval Regulations. Approval under Section 306 of the CZMA, before these requirements are met, may subject the MCZMP to criticism and legal challenges which could erode the viability and inhibit the long term effectiveness of CZM in Massachusetts.

IMPLEMENTATION

In addition to resolution of the general issue of enforceability, discussion in the MCZMP of how enforcement authorities are implemented is recommended. There is no discussion of enforcement capabilities of component programs of the MCZMP. Specific enforcement mechanisms and penalties should be explained for the Waterways Program, Wetlands Protection and Restriction Programs and the Ocean Sanctuaries Program.

There are also a number of other potential problems which may complicate the implementation of the MCZMP. These are briefly described in the following paragraphs.

The Waterways Program authorizes the Department of Environmental Quality Engineering (DEQE) to undertake construction of erosion control projects and dredging with State funds. This program also has regulatory jurisdiction over filling, construction of any new structure, dredging or removal of sand and vegetation in tidelands, harbors and certain rivers below the highwater mark. In addition, all land below mean low water is regulated by licensing in DEQE. In view of the program's emphasis on "encouraging" non-structural alternatives to erosion control and in minimizing dredging, we view the functions of DEQE as both a regulatory and construction agency as a potential serious conflict of interest. It is imperative that CZM's consistency review authority and the mediation process for conflicts arising between the CZM agency and DEQE be more clearly stated in the program and be enforceable. It is our position that the MOU with DEQE may not provide adequate inducement for compliance by DEQE to the policies of the program. Furthermore, as indicated above, the MOU may not be enforceable.

We view the apparent lack of biological expertise within DEQE as another serious problem with the regulatory tidelands process. We strongly urge that qualified biologists be included in the permit review process in both the Wetlands Protection and Waterways programs.

The authorities and responsible agencies involved in the regulatory functions of the coastal zone are varied and extremely complex. It is therefore recommended that a simplified flow-chart displaying the permit process and responsible agencies, be included in the MCZMP. Several examples for permits or licenses could be utilized to display this process. Refinements such as these may help expedite implementation.

The exemption of the Metropolitan District Commission (MDC) from the provisions of the Wetlands Restriction Act is not explained in the MCZMP, although the Commission exerts considerable influence in coastal areas. For example, we note the Commission's ownership of five islands in Boston Harbor as indicated in the Atlas; however, specific management authorities

over Commission properties are not addressed in the draft program. We recommend that the status of the MDC in addition to State review of and authorities over MDC activities, be elucidated in the final MCZMP.

Another issue relates to coordination during implementation. First we would like to indicate that the Department enthusiastically supports joint coordination in the review of proposed disposal projects (page 98, Volume 1). We further recommend that the Fish and Wildlife Service be represented on the Dredge Spoil Task Force in order to effect early coordination early in the review process in selecting new sites for upland or open ocean disposal of dredged material.

The overall program is weak, however, in its failure to fully address State and Federal coordination during and after program implementation. The Department would appreciate the opportunity to assist the State in the development of the 306 work program. Additionally, the Department recommends that a mechanism be incorporated into the program whereby Federal agencies having an interest in the coastal zone could work closely with the State and OCZM in the yearly evaluation of the effectiveness of the program.

CONFLICT RESOLUTION

Pages d-3 to d-5 of Appendix D of Volume I indicate three types of conflicts between existing municipal zoning and the CZM program. This section then goes on to indicate that "Under the CZM program, technical assistance will be provided to communities in bringing local zoning ordinances into conformance with the MCZMP policies. The document, however, fails to address how conflicts will be resolved if local governments prefere not to accept State technical assistance but prefer to keep their zoning ordinances as they are.

The section on Conflict Resolution on page 324 of Volume I further indicates that statements of issues may be developed and public hearings conducted but does not describe how conflicts will be resolved. Reference is made to formal proceedings according to the State Administrative Procedures Act, but these are not elucidated. Furthermore, the mechanism for appeal of EOEA decisions by local governments and interested or affected parties is not adequately described. We therefore recommend that the entire subject of conflict resolutions and mechanisms of appeal be described in sufficient detail to be understood.

A substantive example where the MCZMP is seriously deficient in omitting discussion of interagency conflict resolution procedures is in the area of transportation. The MCZMP states that "CZM will work with (the Executive Office of Transportation and Construction) and regional planning agencies funded by EOTC to ensure that CZM policies are carried out by this when their actions would affect the marine environment." (page 95, Volume 1). The program states further that the "coordination (by the Bureau of Transportation, Planning and Development) with local, regional and statewide growth policy and land use plans is required." (Page 287, Volume 1). The DEIS indicates that "CZM will coordinate with the Federal, State and regional agencies involved in transportation planning to ensure that investments in transportation improvements serve to guide growth in a manner consistent with CZM objectives," (Page 11-29, emphasis added). We are not sure how CZM will ensure compliance with the program's policies, or even whether consistency with program objectives will be required. In addition, a mediation process should be outlined for conflicts which may arise between EOEA and transportation agencies or other agencies outside of EOEA.

A serious discrepancy exists in the program in regard to anticipated impacts from future transportation development. On page 11-29, the DEIS states: "For the most part, the State's transportation network in the coastal zone is virtually complete". The DEIS further states that

"numerous adverse impacts will continue to be associated with the siting of major facilities for purposes of. . .transportation. . ." (page VI-1. We recognize that major transportation projects will be evaluated in compliance with NEPA and, as proposed in the draft program, will represent amendments to the MCZMP. However, we recommend that this inconsistency be clarified in the program, especially in light of the confusion over conflict resolution procedures with non-EOEA agencies.

FEDERAL CONSISTENCY

The Federal Consistency sections of the draft MCZMP and DEIS identify the requirements for Federal Consistency determinations. In order for the concept of Federal consistency to be successful, Federal agencies must know precisely with what they must be consistent. The draft program identifies the parts of the program with which Federal agencies must be consistent by indicating which of the CZM program policies are enforceable under Massachusetts law. However, we remain concerned about the lack of specific state procedures to implement Federal Consistency once the NOAA Consistency regulations are finalized.

For instance, the program fails to identify the procedure which will be followed by the State in reviewing consistency certifications for those activities in the coastal zone which will necessitate Federal licenses or permits. Although the MCZMP makes statements such as ". . .CZM will use Federal consistency to assure that Federal permits or licenses are issued in accordance with the CZM program" (page 351, Vol. 1) and "CZM review for consistency is to be based on this certification statement" (page 351, Vol. 1), it is not clear what process will be utilized by the State to insure coordination between the State CZM agency and the regulatory EOEA agency. The above statements tend to indicate that CZM is the State agency responsible for review of the consistency certifications. However, this responsibility is not specifically stated in either the DEIS or the MCZMP in the sections which address how CZM will become involved in the routine activities of other EOEA agencies (page 325, Vol. 1; page 11-42, DEIS). The exclusion of this responsibility from this section of the program leads us to questions we previously raised concerning the enforcement and implementation of the program. The department, therefore, recommends that the final EIS state what agency is responsible for the review of consistency certifications and identify the permit processing procedure which will be utilized by the State to insure the necessary coordination between the EOEA regulatory permitting agency and the State agency responsible for review of consistency certifications. The latter procedure should indicate how a permit or license application would be processed. A flow chart would be extremely beneficial.

We find the commentary in the introductory sections (pp a-52-53 of Vol. I) of the Federal Consistency Procedures especially candid and realistic. We commend Massachusetts for acknowledging the trial and error approach which will be necessary as implementation evolves. However, we have some specific concerns with the working of Federal Consistency sections of the EOEA draft CFM regulations (pp a 52-65 of Vol. I).

We believe that sections 7.31 and 7.32 must be changed to reflect the intent of the CZMA and NOAA regualtions. The first sentence of 7.31 should be changed to read "CZM believes that the following activities will always directly affect the coastal zone and thus require a Federal agency

consistency determination." The last sentence of section 7.32 (A) should also be changed to indicate that CZM will notify Federal agencies of other unlisted Federal activities which, "in the opinion of" CZM will require a Federal agency consistency determination. As written these sections are not allowable under NOAA regulations. The notification procedure and timeframe in Section 7.32 (b) would also be unallowable under NOAA regulations, and should therefore be changed.

It appears that Massachusetts is attempting to apply the section of the Federal Consistency regulations pertaining to applicants (15 CFR 930.50-69) to Federal agencies. These sections conflict with 15 CFR 930.30-45. They should be changed accordingly.

The section 7.31 list of Federal activities must be considered a proposal. A Federal/State agreement on the content of the list is recommended by the NOAA regulations. In light of a May 6, 1977 opinion of our Solicitor, we cannot agree that OCS lease sales are subject to the consistency requirements. Therefore, mention of lease sales on pp 358 and a-61 of Vol. I should be delected. We recommend that the MCZMP staff contact the National Park Service and the U.S. Fish and Wildlife Service to initiate discussion of their activities which may be listed as requiring consistency determination.

In addition a few other specific changes are recommended. Section 7.34 (A) of Vol. I must conform to the final language of NOAA Regulations (15 CFR 930.35). Also Section 7.34(D) cannot require, under NOAA regulations, the specified information. While this information seems for the most part to be reasonable, it must be in the form of a request. We therefore suggest the "shall" be replaced with "should". Lastly, Section 7.35 (A) must also conform to NOAA regulation. Presently the indicated time periods do not.

NATIONAL INTEREST

The Department of Interior recognizes its responsibility to provide further assistance to Massachusetts in identifying in greater detail the national interest for those projects, activities and resources over which we have jurisdictional authorities. We are presently assembling detailed information in a form useful for consideration during implementation of the MCZMP. Despite the diversity information available, the MCZMP makes a commendable attempt to recognize and identify Federal agencies' respective interests in the State's coastal zone. Table 1(pages 346-349, Vol. 1) is particularly well done.

Throughout the sections of Vol. I and the DEIS pertaining to the National Interest, reference is made to "balancing" national interests (p. 345 of the MCZMP and pp. 11-55, 56, 59, 61, 62 and 63 of the DEIS). The Department particularly questions the use of the term "balancing" in those discussions relating to resources, energy, and transportation needs (pages 11-55, 11-56, and 11-61. "Balancing" could be a misleading term because it could imply that definitive, quantifiable factors must be weighed. Although economic or development considerations can often be quantified, it is much more difficult to quantify environmental considerations. Historically, decision-makers have often favored economic development considerations, and in many cases, this has occurred at the expense of natural resources. Furthermore, the CZMA does not specify that "balancing" must be the method by which decisions are made. Section 306(c)(8) of the Act utilizes the phrase: "adequate considerations of the national interest." For these reasons, the Department recommends taht the term "balancing" be replaced with the phrase "consider and reconcile." Such a change in the MCZMP would represent an effort to resolve conflicting interests which would make them compatible, if not consistent, with each other.

Another concern is the failure of the draft program to address several Fish and Wildlife Service refuges which are located within the State's proposed coastal zone boundary. On Plate 6, Vol. 2, the Thacher Island National Wildlife Refuge is neither labeled on the map nor mentioned in the commentary other than as a "wildlife sanctuary." In addition the commentary should read "U. S. Fish and Wildlife Service" in lieu of "Federal Division of Fisheries and Wildlife." On page 8, Vol. 2, the commentary on Plum Island should reference the Parker River National Wildlife Refuge by name. On pages 182 and 184, Vol. 2, a description of the Monomoy National Wildlife Refuge would be appreciated. On Page 53, Vol. 2, portions of Morris Island are part of the Monomoy National Wildlife Refuge. Finally, the Nantucket National Wildlife Refuge is neither labeled on Plate 68, nor mentioned in the commentary on page 230, Vol. 2. We request that these corrections be made.

LOCAL GOVERNMENT INVOLVEMENT

Chapter 5 of the DEIS gives a description of financial assistance provided to local governments through the State CZM program. Also a few general statements concerning local governments appeal in the MCZMP (e.g. "CZM will not dictate to communities" - p. 14 of Vol. I). With the exception of these, the documents essentially leave the role of local governments unaddressed. We are particularly interested in what role is planned for local government involvement in Federal consistency determinations. We are also concerned how national and regional benefits will be considered in light of local authorities and programs in the coastal zone. We recommend that the appropriate section of these volumes be restructured to indicate the degree of local government involvement. Also as indicated in our section on Conflict Resolution, the rights and roles of local governments in conflict resolution and appeals should be elucidated.

CZM POLICIES

The policies in the proposed regulations to be approved by the Secretary of the Executive Office of Environmental Affairs appear to provide adequate specificity to ensure predictability of permissible uses. We support the specific attention in the policies provided to Significant Resource Areas (SRA's) and other environmental resources which fall within our purview.

The first seven policies address the "marine environment" in terms of resource areas to be conserved, preserved and protected in addition to protecting water quality, biological productivity and fisheries resources. The "marine environment" is further defined on page 35, Vol. I, to include 20 specific "significant resource areas," and the program states "the various marine environments comprising the Massachusetts coastal zone are. . .salt marshes, barrier beaches, estuaries, salt ponds/coastal embayments, open coastal waters and rocky shores." (Page 44, Vol. 1). The Department agrees that these marine environments are within the coastal zone and should be under strict management controls; however, the coastal zone comprises additional resource areas other than those designated, which we believe should be included in the program. Of major concern to the Department is that beds of submerged aquatic vegetation, non-vegetated tidal flats, finfish spawning areas, freshwater wetlands, and coastal open freshwater areas are not included in the list of coastal resources and therefore could be outside the purview of the proposed policies. Although the program adequately documents the significant value of mudflats and eelgrass beds (page 47, Vol. 1), it offers no specific management objectives or policies to protect these areas. Open freshwater areas within the coastal zone, especially on Cape Cod, provide valuable habitat to resident populations of waterfowl and anadromous fish species. These areas appear to be outside the jurisdiction of the Massachusetts Wetlands Protection and Restriction Acts, as well as the Inland Wetlands Restriction Act. The Department views this as a serious omission from the program and is concerned that inadequate management of these areas could lead to significant adverse impacts to these resources in which there is national interest. We view these areas as coastal resources which must be included in the management program.

The Department is also concerned with the exclusion of freshwater inland wetlands from the jurisdiction of MCZMP. Specifically, the program states that "any freshwater inland wetlands will also be restricted (within an APR)" and refers to Policy 2 (page 33, Vol. 1). However, Policy 2 protects "marine resource areas" and is designed to minimize adverse impacts on "marine productivity." The Inland Wetland Act is not included per se in the program; however, it is indicated that restrictions of the Act are designed to protect anadromous fish. The Department believes that the omission of freshwater wetlands from the authorities of the MCZMP could result in significant and direct impacts to coastal resources contained

within the coastal zone boundary. We note that Policy 34 addresses the requirement that development conform to statutes governing inland wetlands within the coastal zone. We recommend that a coordination procedure be established whereby proposed activities under the Inland Wetlands Restriction Program, which are located outside the coastal zone boundary and which would result in direct and significant impacts to "marine" resources, will be reviewed in accordance with MCZMP policies, objectives and regulations by the Commissioner of the Department of Environmental Management.

We recommend that the MCZMP define "marine resources" in the beginning of the program. We urge that "marine" be clarified to include palustrine and estuarine resources, and that freshwater lacustrine habitats be included in the definition.

Concerning the specific policies, the Department offers the following recommendations:

Policy 1

We are concerned that the restrictive use of the term "marine" limits those resources which should be addressed within any environmentally sound coastal management program. These concerns were previously addressed in this section.

We recommend this policy be expanded to specifically address endangered and threatened species and their associated critical habitats which may be designated within the states coastal zone in the future. Massachusetts should explain how the CZM program will be utilized not only to afford protection to endangered and threatened species but should also address what procedures will be followed by the State to insure that designated uses of determined critical habitat are, in fact, compatible with the species needs.

Policy 2

The use of the term "Areas for Preservation or Restoration" is inconsistent with the further permission of uses and activities within these areas. We view the use of "preservation" as inappropriate and suggest it be replaced with "conservation." There is confusion in the discussion of ecological significant Resource Areas and Areas for Preservation or Restoration as how protection will be afforded for areas outside of the purview of existing statutes (e.g., floodplains, erosion areas, coastal open freshwater).

Policy 5

This policy should be expanded to address adverse impacts to terrestrial resources in the case of upland disposal of dredged material.

Policy 7

The Department is concerned that the potential stresses which "extensive and intensive aquaculture" could place on complex ecological systems have not been adequately considered and evaluated in the MCZMP. In areas

restricted under the Wetlands Restriction Act, it is stated: "the excavation and construction of areas for the cultivation and harvesting of shellfish and other marine foods" (page 81, Vol. 1) is an allowable use. In addition, to our concern over the Act's blanket approval given to "excavation" of restricted wetlands for such purposes, we remain concerned about the impacts of aquaculture on coastal resources. Aquaculture can increase levels of organics in the water which could cause severe algal blooms resulting in a depletion of the available dissolved oxygen. This, in turn, could result in adverse impacts to coastal productivity. In view of these potential impacts, we feel it is imperative the program include controls over "intensive and extensive aqualculture" and that the policy make reference to such controls.

Policy 8(d)

This policy should be clarified as to whether or not this authority will extend to areas outside the coastal zone boundary.

Policy 12(b)

This policy should be expanded to include adverse effects at the project site proper.

Policy 18

The Department views the 4 criteria which will be used by the State in approving proposals for "deepening or expansion of channels and mooring or turn-around basins beyond authorized or existing depths or size" (page 179, Vol. 1) as being seriously deficient in not providing for protection of ecological resources. Although the program states: ". . .in both port areas and developed harbors, CZM will. . .work actively with concerned agencies to arrive at environmentally responsible dredge and dredge disposal solutions" (page 180, Vol. 1.), we believe it is imperative that ecological criteria also be incorporated into the existing criteria for determining which funding proposals to approve.

COASTAL ZONE BOUNDARY

The Department supports the inclusion of sensitive resource areas (SRA's), Cape Cod, and the Islands within the proposed coastal zone boundary. The use of major roads, railways and visible right-of-ways as a boundary line will facilitate determinations of actions which are subject to management authorities of the Massachusetts Coastal Zone Management Program (MCZMP). However, the Department believes the coastal zone is sufficiently narrow in several locations to preclude adequate control over stormwater runoff in urban areas, buffer areas adjacent to proposed Areas for Preservation or Restoration (APR's) and anadromous fish runs. In addition, we note that there are numerous boundary inconsistencies where tidal wetlands, tidally-influenced waters, scenic viewpoints, and the 100-year floodplain plus the 100-foot delineation, are outside of the designated boundary. In some areas, the boundary is so narrow that management controls necessary to alleviate existing erosion problems may be insufficient. We are also concerned that the program offers no rationale for the exclusion of the interior of Cape Ann from the coastal zone, whereas Cape Cod is included in its entirety.

The exclusion of major urban areas from the coastal zone is of particular concern to us since it is documented that upland stormwater runoff can adversely affect water quality and thereby indirectly adversely affect public fish and wildlife resources. Therefore, we recommend that the program provide the criteria used to delineate the coastal boundary in urban areas and that the boundary be realigned such that adverse effects of upland stormwater runoff may be minimized.

In situations where the proposed coastal zone boundary also acts as a boundary for an APR (e.g. refer to Plates 1, 3, 4, 24; Vol. 2), it is apparent that adequate buffer areas are not provided to ensure maximum protection of the resources within the APR. We recommend that the boundary be extended to adequately encompass a minimum buffer area adjacent to designated APR's in order to ensure protection of these resources.

There are also several locations where tidal wetlands (e.g., Plates 5 and 8; Vol. 2); scenic viewpoints (e.g., Plates 1 and 15; Vol. 2); an estuary (e.g., Plate 1; Vol. 2), and the 100-year floodplain plus 100-foot delineation (e.g., Plates 6, 8, 15; Vol. 2), are not included in the proposed coastal zone boundary delineation. A complete listing of these inconsistencies is included in Attachment 2. The draft MCZMP offers no rationale for these inconsistencies. In light of these examples, it appears that the boundary, as proposed, excludes sensitive resource areas from the coastal zone which should be managed in the same manner as similar resources found within the boundary. We recommend that the proposed coastal zone boundary be modified to incorporate these areas of concern.

In several erosion areas (e.g., Plates 7 and 27; Vol. 2), the boundary is immediately adjacent to the shoreline. The Department believes that this narrow coastal zone boundary in erosion areas significantly weakens the positive aspects and the effectiveness of the program. By endorsing a boundary immediately adjacent to the shoreline, the MCZMP excludes consideration of erosion due to factors other than wake or wave erosion. Erosion problems in coastal areas may be the result of inadequate upland stormwater runoff management or inadequate grading for bank stabilization. Thus, the proposed boundary in such areas could preclude implementation of non-structural alternatives to alleviate erosion problems. The Department, therefore, recommends that the proposed boundary be realigned inland in erosion prone areas such that applicable management authorities within the MCZMP will apply.

The Department is seriously concerned that activities occurring within the interior of Cape Ann will have direct and significant impacts on the designated coastal zone of the Cape. We note the existence of numerous freshwater wetlands (e.g. swamps and ponds) in addition to significant drainages on Cape Ann which are excluded from the proposed coastal zone boundary. Alterations to these inland habitat types or uses in and adjacent to these areas could result in direct and significant impacts to coastal resources. We support the inclusion of Cape Cod and the offshore Islands in the proposed boundary. Our rationale for this support is that inclusion insures that uses in and adjacent to freshwater wetlands, which could significantly impact the coastal zone, can be controlled by appropriate land use management and the Massachusetts Coastal Zone Management Program authorities. We therefore recommend the draft MCZMP similarly include all of Cape Ann within its coastal zone boundary.

Finally, the MCZMP does not adequately clarify the protection afforded anadromous fish runs. The MCZMP states: "anadromous fish runs are included in the coastal zone to the fresh water breeding area, if such area is within a coastal town" (page 26, Vol. 2). The Plates in Volume 2 graphically depict anadromous runs with a green arrow. References are made to protection of anadromous fish runs as Significant Resource Areas (SRA's) under the provisions of the Inland Wetlands Restriction Act (page 89, Vol. 1). However, the DEIS states: "the Massachusetts program document mentions a few Ecological SRA's that will not be managed through either the Restriction or the Protection Program, such as some anadromous fish runs . . ." (page 11-3, DEIS). We specifically request that the Office of Coastal Zone Management (OCZM) and Massachusetts explain this inconsistency between the draft EIS and the program.

The Fish and Wildlife Service is mandated by the Anadromous Fish Conservation Act to protect anadromous fish resources as a resource of national benefit and concern. The confusion regarding protection of or consideration for anadromous fish as addressed in the MCZMP is of serious concern since it is not clear whether the resources to be protected are limited to the fish,

waters, associated wetlands or any combinations thereof. We recommend the program clarify the applicable authorities and the geographical extent of management protection afforded anadromous fish and their habitat.

Another area of concern to the Department is the proposed narrow inland boundary delineation for the Merrimack River. Volume 2, Plate 1 indicates the use of this river by anadromous fish including American shad, striped bass, alewife and blueback-herring. Section 304(1) of the CZMA defines the term "coastal zone" accordingly: ". . . the coastal waters . . . and the adjacent shorelands, strongly influenced by each other . . . ." This section of the Act further states: "The zone extends inland from the shorelines only to the extent necessary to control shorelands, the use of which have a direct and significant impact on coastal waters" (emphasis added). The Department finds that the draft program actually provides reasons which justify the inclusion of the Merrimack River, inland at least to a point above the Artichoke River, within the State's proposed coastal zone boundary. Plate 1 of the Atlas (Volume 2 of the program) indicates the inland extent of the "estuary" portion of the river and the anadromous fish runs, yet the proposed boundary is located down river near Salisbury Point.

In addition, it is the position of the Department that coastal freshwater wetlands (i.e., bog, swamps, marshes) are significant coastal resources, and as such, should be included within the management authority of the MCZMP. A discussion of the need for specific policies and coordination procedures as regards major activities in and adjacent to freshwater wetlands within MCZMP is included in our comments on CZM Policies. The basis for the concern is that the Department views the proposed coastal zone boundary as being inadequate in affording consideration of uses in and adjacent to coastal freshwater wetlands, the alteration of which could have serious direct and significant impacts on water quality, "marine" productivity, and coastal wetlands.

SIGNIFICANT RESOURCE AREAS (SRA's)

The discussion of Significant Resource Areas (SRA's) and Areas for Preservation or Restoration (APR's) is clearly written and attempts to differentiate applicable authorities and permissible uses within these areas. However, we have several concerns regarding the limitation of authority in preserving areas in addition to the need for including additional areas of significant coastal resource value.

The Department recognizes the need for establishing areas of significant value to migratory waterfowl species as refuges for either preservation or conservation. The most restrictive authority governing wetland use in Massachusetts appears to be vested in the Wetlands Restriction Act. This Act provides for high priority uses including "conservation, shellfish harvesting, outdoor recreation and other non-intense uses;" in addition to allowing underground energy transmission lines, maintenance of existing roads and boat channels, and the construction of wharves, piers, boat shelters, floats and catwalks. Because APR's are comprised of various SRA's which are protected by existing authorities, it is apparent that areas which warrant preservation status are not provided for within the provisions of the Wetlands Restriction Act. Therefore, we recommend that additional regulations pursuant to the Wetlands Restriction Act be promulgated such that areas can be designated for preservation based on significant ecological values whereby no uses would be permitted which would in any way diminish the values for which the area was originally established.

Our second major concern with the discussion of SRA's is the need to include coastal freshwater marshes, coastal open freshwater, beds of submerged aquatic vegetation, non-vegetated tidal flats and critical habitat designated for endangered species (if applicable in future). The bases for inclusion are discussed under our Coastal Zone Boundary and Policies sections.

The Department requests that the criteria utilized by the Secretary of the Executive Office of Environmental Affairs (EOEA) in conducting the initial evaluation of nominations for APR's be included in the proposed regulations (page a-45). It is not clear on what basis the Secretary can reject a nomination for an APR. In addition, State guidelines which are utilized by local conservation commissions in conditioning construction pursuant to the Wetlands Protection Act (page 29, Vol. 1), should be included. It is difficult to determine the adequacy of protection afforded to wetlands under this Act without inclusion of either the State guidelines or the Wetlands Protection Act in the MCZMP.

The terms "maritime-dependent" and "waterfront-related uses" must be defined in the glossary. In addition, we request that "port areas" as defined on page 36, Vol. 1, be graphically displayed on a map.

An additional suggestion is to include reference to the water treatment capacities of saltmarshes in the discussion on pages 44-46, Vol. 1. This would strengthen the need to protect saltmarshes for water quality considerations.

The discussion of APR's and Areas of Critical Environmental Concern (ACEC) is not clearly developed so as to differentiate between the two designations. It is clear on page 11-40 of the DEIS that the designations refer to State regulations for ACEC's and Federal consistency implications in APR's. We recommend that this distination be clearly stated in the body of the MCZMP.

The Department finds that management for restoring areas in APR's is not addressed in the MCZMP. It is recommended that guidelines, criteria and/or regulations be developed which address restoration of SRA's which are within designated APR's. As a minimum, the program should include policies for mitigation or compensation in-kind of unavoidable losses of resources resulting from allowable activities within designated APR's.

As a final point of concern, we note that offshore shellfish beds, as indicated on page 54, Vol. 1, are entirely within designated ocean sanctuaries, as depicted on page 77, Vol. 1. In accordance with Massachusetts statutes regulating permissible uses within ocean sanctuaries, the program states: ". . . in general, such activities as removal of any sand, gravel or minerals, any dumping, or any waste discharge are prohibited... ." (page 86, Vol. 1). We note that 5 sites for disposal of clean dredged material have been recommended within the approved ocean sanctuary designations (page 73, Vol. 1). In addition, the recommended disposal site in Cape Cod Bay is located directly over a shellfish bed as indicated on page 54. The Department views this inconsistency as a serious problem and recommends that the disposal area in Cape Cod Bay be relocated and that regulations governing uses within ocean sanctuaries be modified to include the dumping of clean dredged material. We also recommend that the "Foul Area," a disposal site for polluted spoils, be indicated on Figure 5 (page 73, Vol. 1).

HISTORIC AND CULTURAL RESOURCES

The MCZMP has focused attention on historic and cultural resources. We commend the State for their efforts. We, however, have some concern about apparent limitations in the nature of this consideration. These may lead to weaknesses in the mechanisms for their protection.

1. Our Concern mainly relates to Policy (14).

a) Historic resources are treated only as part of the visual environment (although they are recognized, at least in one place, as being of value for more than simply their visual attractiveness). This treatment ignores most of the important roles that such properties play in the life of the community, State and Nation, including their potential for yielding important information about the history and prehistory of an area, and reduces them to visually attractive parts of the landscape. Such treatment is not in conformity with Federal laws, policies, and regulations in this area.

b) In the proposed plan, historic resources are limited to "designated" and "registered" sites and districts. This assumes that all significant properties have already been identified--an assumption that is not even true of above ground structures and is certainly not true in regard to archeological sites. In this way, the plan does not afford any protection to as yet unrecognized properties which may be as important to the locality, State and nation as any that are now officially listed.

2. The narrowness of the definition in Policy (14) may lead to weaknesses in implementation of the plan in regard to historic resources. To correct these weaknesses, the plan should provide for an ongoing process for identification and evaluation (inventory) in the coastal zone to discover and protect as yet unrecognized, but important, historic resources. This process should be developed in close cooperation with the State Historic Preservation Officer (SHPO) and should be coordinated with the State Historic Preservation Plan. (In passing, we note that the SHPO's office is mentioned in the section of the document which discusses implementation of Policy (14), but there is no indication of how the SHPO was involved in the preparation or review of the document.) Until comprehensive surveys have been completed, the plan should provide mechanisms to guarantee that care is taken to prevent unintentional adverse effects on as yet unrecognized historic resources.

Since the language of the plan is actually weaker in regard to historic resources than is the wording of either the Massachusetts Environmental Policy Act or pertinent Federal laws and regulations, it may mislead users to believe that they have fulfilled their historic preservation responsibilities when, in reality, they have not.

The Department of Interior has specific responsibilities with regard to the implementation of national policies for the identification and protection of historic resources. We would welcome the opportunity to discuss them with Massachusetts and members of the staff of the Office of Coastal Zone Management. The Office of Archeology and Historic Preservation of the National Park Service will contact you in the near future about arranging a meeting for this purpose.

MINING AND MINERALS

While we believe that the MCZMP is commendable in many of its substantive aspects, attention to mining and mineral processing industries is inappropriately light. Our specific concerns are as follows.

Pages 254-256 of Volume I address potential Narragansett Basin coal development. Onshore mining of other minerals should receive equal consideration since they are also important to the States economy.

The section on Mt. Hope Bay should include a discussion of Narragansett Basin coal in the area. (See Volume II, pp 111-114).

On page 155 of Volume II the second paragraph states that:

> "Representatives of the commercial fishing industry on Cape Cod stress that the fishery cannot tolerate removal of bottom material, ... These representatives further emphasized that onshore support facilities associated with sand and gravel mining should not be sited in the coastal zone." (emphasis added)

Because of their work-related experience, the commercial fishing industry representatives must have some basis for fearing removal of "bottom material." However, the second statement regarding onshore support facilities seems to lie outside the immediate and direct concern of the fisheries industry if such facilities are or can be used in conjunction with sand and gravel operations that are not in commercial fishing areas. We recommend, therefore, that the permissibility of onshore support facilities for mineral extraction be addressed in the MCZMP.

On page 199 of Volume II under "Policy Applications, Marine Environments," column 2, paragraph 3, the text reads:

> "island harbors often require maintenance dredging. Productive marine habitats are often located in and around the harbors. There has also been an increase in concern for diminished shellfish productivity as a result of gradual shallowing in some of the island's tidal and barrier beach ponds. Therefore, technical help for proper dredging and the handling of dredge spoil would be of important assistance. . . ."

This statement seems to contradict the concern (discussed above) of representatives of the commercial fishing industry. The text should reconcile these differences.

Except for mention of how the price of sand and gravel has risen in Boston, the MCZMP fails to evaluate what mining or mineral products mean to Massachusetts' economy. Additionally, the draft program fails to show how many acres of sea bottom a gravel dredge might disturb annually compared to the total coastal sea area.

The MCZMP should also consider how quickly signs of such mining heal, and the fact that fishing goes on adjacent to large offshore sand and gravel mining in such areas as the English Channel and North Sea.

In Chapter 2 of the DEIS, beginning on page 11-7 under "Coastal Policies," the draft statement whould specifically address onshore mining and the transportation, processing, and use of minerals and mineral products.

On page 11-39 of the DEIS, item 13 refers to the State Division of Mineral Resources, yet the organization chart on page 11-43 includes no such agency. This needs to be cleared up because those seeking mineral exploration licenses must know the State agency involved.

Beginning on page 11-53 of the DEIS, the draft statement discusses "national interests." We have two major concerns regarding this discussion. First, item 14 on page 11-63 states that ". . .federal agencies will be offered opportunities at public hearings on off-shore leases in Massachusetts waters to voice national interest concerns." The State has a moratorium on any new permits for sand and gravel extraction (item 13 on page 11-39). Therefore, public hearings for offshore leases will not take place until Massachusetts lifts the moratorium, a condition the draft statement fails to address. Second, "national interest" items must also include onshore minerals and associated processing, handling, and transportation facilities.

The section on probably impacts of the proposed action beginning on page III-1 of the DEIS fails to assess MCZMP impacts on mineral producers, processors, transporters, and consumers. Further, it fails to consider the possible environmental effects resulting from longer haulage of minerals due to MCZMP restrictions on mining.

The first sentence on page V-1 of the DEIS states that "approval of the Massachusetts Coastal Zone Management Program will not in itself lead to the loss of resources that a site specific project would." Neither Massachusetts nor the Department of Commerce has presented a satisfactory summation of those mineral resources lost to development because of MCZMP land entry restrictions. Only with such an inventory will we know what mineral resources the program has irreversibly or irretrievably committed.

We recommend that the above deficiencies be resolved prior to program approval. The Department would be pleased to work with the State to find an acceptable resolution.

RECREATION

Recreation has received program consideration equal to all other land uses. A summary of findings related to Recreation (p. 191-203) together with seven policy statements and program recommendations. Primary concern of the MCZMP is "to increase and enhance public use of the Massachusetts shoreline while improving existing facilities and minimizing future conflicts, overutilization and environmental impacts. The plan is to improve transportation and access; to acquire new sites in recreation poor areas; to expand suitable existing sites through small acquisitions or encouraging multiple uses; and to improve maintenance."

Massachusetts' Department of Environmental Management (DEM) is the agency responsible for preparation and maintenance of the Statewide Comprehensive Outdoor Recreation Plan (SCORP). DEM has reviewed previous drafts of the MCZM Program. The MCZM Program incorporates both the SCORP data base and demand methodologies and endorses the SCORP priorities by giving high priority for both public beach acquisition and open space/recreation development in urban areas.

We believe that the MCZMP is compatible and supportive of the outdoor recreational responsibilities of the Department. We commend the State on the recognition and attention given to recreational aspects of coastal zone management.

DRAFT ENVIRONMENTAL IMPACT STATEMENT

Since Department concerns and recommendations regarding the proposed action have been fully addressed previously in this attachment, we are limiting our comments in this section to the adequacy of the Draft EIS in complying with NEPA. Other suggested specific modifications which serve to strengthen the DEIS are included in Attachment 2.

After a thorough review, we find the subject document to be clearly written and that a full disclosure has been made of alternatives to the Management program and a description of the proposed action. We commend the staff of Office of Coastal Zone Management, especially William Matuszeski, on the candor of the DEIS. We believe it represents the best effort to date of the seven EIS's on CZM programs which we have reviewed. However, we find that the discussion of environmental impacts is inappropriately brief. In most instances, effects are described only in general types. No analysis is given of the potential or probable location, areal extent or magnitude of effects on resources in the ten coastal regions. While we acknowledge that the program, at this stage, doesn't lend itself to precision in discussing site specific impacts, it could quantify and be more specific on likely impacts.

ATTACHMENT 2

Additional Specific Page by Page Comments

and Recommended Changes

to the MCZMP and DEIS

ATTACHMENT 2

Additional Specific Comments
and Recommended Changes

The following are additional comments and recommendations listed by page number. Some relate to issues discussed in Attachment 1.

Volume I

Page 23: The "Visual Environment" heading should be changed to "Historic, Cultural, Visual, and Aesthetic Environment", since historic properties are important to State citizens for reasons other than and in addition to their visual attractiveness. Policy (14) should be expanded as follows, "Review developments proposed near designated or registered historic districts or sites, or districts or sites eligible for such designation . . .," and "Encourage use of resource inventories, local zoning, ..."

Page 26: The coastal zone definition itself has no reference to natural land forms or ecosystems for the landward boundary. Further discussion indicates that the "major road, rail, or other visible right-of-way" was/were chosen because they were inland of various biophysical areas. Such a vital facet of the determination of the zone should be included in the definition.

Page 27: In the "Overview of What Can Occur in the Coastal Zone," Section (c) listing the conditions under which development will be permitted should be revised to read as follows, "near recreation sites or designated historic sites or sites eligible for designation if the development would have a negative impact."

Pages 31-32: In "Remainder of the Coastal Zone," (2) Protection of Beach Recreation and Historic Sites," the second sentence should be revised as follows, "The Massachusetts Environmental Policy Act and Federal laws and procedures for the protection of historic sites or districts will be principal management measures used to minimize such conflicts," and the following should be added to the list of "relevant policies": "--conduct inventories to identify such resources in the Coastal Zone (Policy 14)."

Page 35: Whenever species are referred to, include both the scientific and common names.

The list should include mudflats and finfish spawning areas as separate resource areas.

Page 35.d: This section would more appropriately be shown as follows:

Tidal marshes

1. Saltmarsh - note that high marshes are not flooded seasonally but predictably at high tides during full moons which are also known as "spring" tides. Other species present in these marshes should be listed.

2. Brackish marshes.

3. Coastal fresh marshes - these are affected by tidal action but the water is not saline.

Page 36.h, Line 6: More emphasis should be given to other forms of life supported in coastal embayments, for example, juvenile finfish, migratory and non-migratory birds, and small animals.

Page 36.m: Wildlife can be a significant part of a view. The word "coast" itself brings to mind gulls, terns, migratory waterfowl, etc.

Page 36.r: This subsection should be revised to read as follows: "individual sites of historic, cultural, visual, or aesthetic importance: includes man-made sites of historic, archeological, architectural, or cultural value listed in or eligible for inclusion in the National Register . . ."

Page 37.t: Reference should be made to hunting and fishing in the coastal area.

Pages 58-60: Discussion of the effect of inland sewage treatment facilities on estuaries is needed.

Page 63: The role of land run off in introducing oil into the marine environment is understated. The appropriate sentences should be changed to include this major source.

Page 71, Paragraph 3: One of the areas of severe adverse effects from dredging would be in fish spawning sites.

Page 72, Paragraph 3: It appears that the "easiest way out" was used to choose spoil sites. The paragraph is not clear on the subject of the discussion: previous and current dump sites or sites proposed for use under CZM.

Page 84: Coastal Wetlands Restriction Program: The restrictions do not affect mosquito control and other State Reclamation Board projects.

Such projects can have profound effects on wetlands and their exemption should be adequately justified.

Pages 86-87: Permits for Filling in Navigable Waters: All phases of the Corps program are now in effect.

The involvement of the Fish and Wildlife Service via the Fish and Wildlife Coordination Act should also be discussed in this section.

Page 87: Permits for Obstructions or Alterations in Navigable Waters of the United States: See above comments.

Page 93: Department of Environmental Quality Engineering: Is there any biological expertise represented on the staff?

Page 96: Disposal Sites and Methods: Why should in-harbor sites be favored over open ocean sites?

Page 101: United States Fish and Wildlife Service: Change "Bureau" to "Service."

Page 119, Policy (8): If a house is destroyed in the coastal zone by flood, erosion, etc., will it be permitted to be rebuilt in the same location?

Page 131ff: The chapter heading should be revised to be "Historic, Cultural, Visual, and Aesthetic Environment," in order that archeological sites or above ground historic and cultural properties with minimal "visual" qualities be afforded requisite protection in the planning process.

Page 139: The heading "Man-Made Features" should include "Features of Historical, Archeological, Architectural, or Cultural Importance." Substantive discussion under this heading should include recognition of the fact that "There is a need to conduct ongoing surveys and inventories of above- and below-ground cultural resources whose significance or existence has not previously been recognized." Mention should be made that "Coordination with the State Historic Preservation Officer and the Advisory Council on Historic Preservation is mandatory for adequate recognition of such cultural properties and for mitigation of adverse impacts on such properties," and that, "Any development of a handbook of further guidelines for dealing with such resources should be undertaken in consultation with the State Historic Preservation Officer."

Page 148: The heading for subsection (2) dealing with implementation of the Coastal Zone Management (CZM) plan should be revised as follows.

"Effects on significant Historic, Cultural, Visual and Aesthetic Elements." Substantively, this section should address how this inventory is to be compiled and whether it is identical to the "CZM Inventory of Scenic Resources Inventory" mentioned below on the same page. The need for ongoing survey and inventory efforts and for coordination with the State Historic Preservation Officer should be mentioned here. If this is the Scenic Resources Inventory, it should be stated that it will include (1) properties included in the State Survey; (2) properties determined eligible for listing in the National Register of Historic Places and (3) properties designated by local groups such as historic district commissions.

Pages 149-151: The section on Policy (14) should be revised to provide for review of developments proposed near districts or sites eligible for designation or registration as historic as well as those already so designated. The need for adequate, on-going inventory efforts done in consultation with the State Historic Preservation Office could be reiterated here.

Page 152: In the "Implementation" section following discussion of Massachusetts Environmental Policy Act (MEPA) and Federal preservation laws and procedures it should be noted that, neither MEPA nor Federal laws and procedures can be maximally effective unless early and ongoing inventories of both above-and-below ground historic and cultural sites are conducted. Such inventories are required in areas of Federal agency project jurisdiction.

Page 228: The first sentence in the fourth paragraph on this page should be changed to reflect that "coastal areas may be affected by oil and gas exploration and production on the roughly one million acres of land in the North Atlantic Outer Continental Shelf (OCS) being considered by the Department of the Interior for lease sale in 1978."

Also in second sentence in fifth paragraph, change "possible" to "feasible."

Page 267: Omit item (1) at the top of the page. Insert the words "functionally dependent" before the word "on-shore" in line 25.

Page 275: In the second paragraph of "General Development and Public Investment: Summary of Findings," State management should be addressed "(c) when a proposed project would adversely impact a designated historic site, or a district or site eligible for such designation . . ."

Page 348: In "Table I, Summary of Most Applicable CZM Policy Conditions and Findings," State and Federal actions should be extended to "respect the preservation intent of lawfully designated historic districts or sites, and districts or sites eligible for such designation."

Page 350: Change item (1) to read Federal licenses and permits except as listed in (2) below. Add a new (2) which reads "Federal licenses and permits for activities described in detail in Outer Continental Shelf exploration and development plans."

Page 355: "Permit for approval of platform installations" is one of the items included in the immediately preceding part and therefore should not be duplicated.

Page 358: Omit the second line which pertains to lease sales.

Page 362: Under Part IV, section 3, "Staff Assistance," the category "i. historic properties (coordinated with the Massachusetts Historical Commission (State Historic Preservation Officer))" should be added.

Page a-3: The meaning of word "consistency" in the second line is unclear. Does this mean Federal Consistency? Are there two boundaries? Would the words "To be exact" be more accurate than "For Consistency"?

Page a-31: Under section 5.3 in number 14, review of developments should be extended to include those proposed near historic sites or districts eligible for designation or registration.

Page a-33: The section for DOI must be corrected. Please contact the Department for the correct wording.

Page a-43: Section 6.44(n) listing areas of critical environmental concern should be revised to refer to, "individual sites of historic, cultural, visual, and aesthetic importance," which are "eligible for inclusion in," as well as actually listed in, the National Register of Historic Places.

Page a-56: Section 7.15(g) is incomprehensible. Please clarify it.

Page c-13: Is the EFSC/CZM MOU legally binding?

Page d-6: The State Historic Preservation Plan should be included in the list of State Agency Plans with which the CZM program is to be coordinated.

VOLUME II

Page ii: Resource Maps. As mentioned previously, the Significant Resource Area list does not include mudflats, finfish spawning areas, and fresh and brackish wetland affecting saltwater wetlands. It should.

Page vi: The heading "Visual Environment" should be changed to "Historic, Cultural, Visual, and Aesthetic Environment" and Policy (14) thereunder should:
(1) extend review to development proposed near historic sites or districts eligible for designation or registration as such;
(2) include encouragement of the use of resource inventories:
(3) include notice of the need to protect archeological sites or above ground historic resources whose "visual" significance may be relatively minimal, but which are significant for other reasons.

Page 1: The CZ Boundary should include all of the Merrimack River estuary and related wetlands.

Include the scenic viewpoint in Newbury within the Boundary. The Boundary should include buffer areas for the proposed APR's indicated.

Plate 3: Provide buffer for APR's. Include the scenic viewpoint in Rowley.

Plate 4: Is all of the 100-year floodplain included? Provide buffer for proposed APR's.

Plate 5: Why is a marsh within the 100-year floodplain excluded?

Plate 6: See comments for Plate 5.

Plates 7 and 9:
Portions of the 100-year floodplain appear to be excluded.

There is concern that the Boundary comes very close to erosion areas. Such areas should have a good buffer area which the existing Boundary does not provide.

Plate 8: Portions of the 100-year floodplain are excluded.

Pages 49: Note that the Metropolitan District Commission is shown as owning five islands in Boston Harbor and yet is exempted from the Wetlands Restriction Act.

Plates 10 and 13:
Portions of the 100-year floodplain appear to be excluded.

Plate 15: Portions of the 100-year floodplain are excluded.

Plate 16: Portions of the 100-year floodplain are excluded.

Plate 18: Portions of the 100-year floodplain are excluded.

Plate 23: Portions of the 100-year floodplain are excluded. Provide buffer for proposed APR's.

Plates 24 and 25:
Portions of the 100-year floodplain appear to be excluded. Provide buffer for proposed APR's.

Plate 26: Portions of the 100-year floodplain are excluded.

Plate 27: Portions of the 100-year are excluded. Provide greater buffer for areas of erosion.

Plates 28 and 42:
Provide buffer for proposed APR's.

Plate 29: Portions of the 100-year floodplain appear to be excluded.

Plate 30: Portions of the 100-year floodplain appear to be excluded.

Plate 32: Portions of the 100-year floodplain appear to be excluded.

Plate 34: Provide buffer for proposed APR's. Portions of the 100-year floodplain are excluded.

Plate 35: Portions of the 100-year floodplain are excluded.

Plate 38: Portions of the 100-year folldplain are excluded.

Plate 41: Portions of the 100-year floodpalin are excluded.

DEIS

11-2: We recommend that the list of Significant Resource Areas include "Historic and Cultural Resources" as a fourth category. This category should then also be added to page 11-4, as subcategory "d," as follows:
"d. Significant Resource Areas (Historic and Cultural): These are districts, sites, buildings, structures, and objects significant on a local, State, or national level in American history, architecture, archeology, or culture."

11-4: Insert the word "substantially" before conflict in line 27.

11-5: Item 4.b should note that Federal legislation protects buildings, structures, and objects as well as sites and districts. We recommend that all of these types of historic resources be mentioned here.

11-11: Line eight should read ". . . off-shore sand and gravel . . . ."

11-13: We recommend that the commentary on Policy (14) recognize all types of historic resources, per the preceding comment, and that it include resources eligible for inclusion in the National Register as well as those formally listed. This section should also note that additional historic resources may be designated in the future.

11-20: Policy (27), Paragraph 1, Line 3: Is the correct word "litigation" or "mitigation"?

11-36: The percent of the coastline under Restriction is unclear. Please clarify.

11-36-41: We recommend that two columns be added to the charts: "Principal State Agency" and "Enforcement Penalities."

11-38.5: Include the legislation recodifying the five existing laws in the FEIS.

11-38.7: No principal State agency is stated; it should be.

11-41.20: The "framework. . .for coordinating DWPC, DAHM, DMF, CZM review. . ." should be included in the FEIS.

11-42-49: We are concerned that there is no mention of coordination with the Massachusetts State Historic Preservation Officer. Discussion of the need for such coordination is included in our comments on the management program.

11-44-46.B: There is no mention of the Metropolitan District Commission, its responsibilities, and its role in the CZM; there should be.

11-47.2: What kind of conflict resolution is available between one or more

agencies outside of the Executive Office of Environmental Affairs? For example, what if the Department of Public Works has a disagreement with CZM? Please clarify.

5a: CZM should be notified of all hearings involving the Coastal Zone, not just those conducted by EOEA agencies.

11-50: We recommend that "protection of historic and cultural resources" be included in the list of eligible categories for technical assistance.

11-55: Change the fourth line to read "has drawn the following conclusions." Change "Balancing" to "Considering and Reconciling" in line 35 and in line 4 on p. 11-56. Change "possible" to "practicable" in line 43.

11-63: Item II, Historic Sites and Districts, reflects lack of necessary coordination with the State Historic Preservation Officer. There is no mention of the State Historic Preservation Plan (although an analogous document, the State Comprehensive Outdoor Recreation Plan is mentioned under recreation), of the need to coordinate protection of historic resources with the State Historic Preservation Officer and with the Advisory Council on Historic Preservation, and of the need to establish a systematic process for identification of historic and cultural resources in the coastal zone as a part of the ongoing program and prior to issuance of permits for land-disturbing activities.

111-2: Consideration should be given to listing migratory waterfowl separately rather than possibly by implication under saltmarshes, beaches, dunes, and barrier beaches.

Paragraph 6, Line 6: The sentence should state that the spoil may destroy benthic organisms and fish eggs.

111-2-2: The summary of environmental impacts should, at the very least, mention potential impact on historic resources.

111-4, Paragraph 1, Lines 3-4: The environmental impacts may be negative as well as positive.

111-4: The section entitled "New Development Impacts" should recognize the potential for new development to affect as-yet unidentified historic resources, including archeological sites.

111-4, Paragraph 5: As stated in the DEIS, it appears that only three types of controls are on lands suitable for development. No mention is made of the Fish and Wildlife Coordination Act, Endangered Species Act, and Federal Water Pollution Control Act and Amendments.

IV-3, Paragraph 3: The drafts of all the regulations should be part of the FEIS.

IV-3, Paragraph 4, Line 18: How are the programs enforceable?

IV-6.4, Paragraph 1, Lines 9-10: We feel that the boundary does have problems. See our comments on the Atlas.

IV-10.4, Paragraph 3: The adoption of new regulations and procedures is significant and therefore the draft regulations should be in the FEIS.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR, FISH AND WILDLIFE SERVICE

In Reply Refer to:
FWS/EC

NOV 28 1977

Ms. Kathryn Cousins
Regional Manager, North Atlantic Region
Office of Coastal Zone Management, NOAA
3300 Whitehaven St., N. W.
Washington, DC 20235

Dear Ms. Cousins:

Please find a copy of our brochure entitled "National Wildlife Refuges-National Fish Hatcheries in Northeast Region 5" enclosed for your use. We found in reviewing the final draft Massachusetts Coastal Zone Management (CZM) Program that two National Wildlife Refuges had been omitted from the Resource Atlas.

We hope this information will be helpful to you in your efforts with other states in the Northeast.

Sincerely,

R. J. Olds, Jr.

Deputy Associate Director

Enclosure

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

NOV 17 1977

Mr. Robert W. Knecht
Associate Administrator for
Coastal Zone Management
National Oceanic and Atmospheric
Administration
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Knecht:

Transmitted herewith are the Federal Energy Regulatory Commission's (FERC's) staff comments on the Massachusetts Coastal Zone Management Program/Draft Environmental Impact Statement.

The FERC staff was greatly impressed with the quality of the program and the documents submitted for review. I believe you will find their review comments helpful in preparation of the final documents.

Sincerely,

Charles B. Curtis
Chairman

Enclosure

cc:
Honorable Charles Warren
Ms. Evelyn F. Murphy

Comments by
Federal Energy Regulatory Commission Staff
on the
Massachusetts Coastal Zone Management Program and
Draft Environmental Impact Statement

At the outset the staff was impressed with the quality and excellent balance in the consideration and evaluation given to energy and environmental interests in the coastal zone.

All references to the Federal Power Commission (FPC) should be deleted. On October 1, 1977, the Department of Energy (DOE) and the Federal Energy Regulatory Commission (FERC) succeeded the functions of FPC. At this time the functional responsibilities of DOE and FERC have not been finally formalized. In addition to its vested statutory functions, FERC will be delegated and assigned additional responsibilities at the discretion of the Secretary. However, the former FPC jurisdiction over exports and imports of natural gas has been transferred to the DOE under Section 402(f) of the Department of Energy Organization Act.

Gas Facilities:

The discussion in the second paragraph on page 239 indicates that siting a LNG facility inland is technically feasible. It also should be mentioned that the maximum feasible length of a cryogenic pipeline is approximately 2.5 miles, due to heat gain from friction and outside sources. Therefore technological and monetary constraints are limiting factors in siting LNG facilities inland.

Federal Licenses or Permits

The first paragraph in this section on page 350 indicates that applicants for Federal licenses or permits must first obtain a local or State permit. This is not always the case. At the FERC, applications may be processed simultaneously with the State.

On page 351, the procedures seem to indicate that approval of the CZMP will have some effect on the timing of Federal license or permit processing. In fact, however, the State cannot dictate when Federal processing will begin, whether a public notice will be issued, or whether joint

Federal and State public hearings will be held. It is recommended that if the Executive Office of Environmental Affairs wishes to promote these procedures, that it enter into a memorandum of understanding with any willing Federal agency. Otherwise, a blanket statement that the procedures described on page 351 will be put into effect is incorrect.

Implementation

During the November briefing held at NOAA a Massachusetts CZMP representative explained that after program approval, regulations will be formulated to tie 20 existing Commonwealth Statues into a working program. Those regulations will be reviewed by NOAA only, as to their consistency with the future approved CZMP. It is believed that NOAA's interpretation of the future approved plan will probably be acceptable to the FERC. However, if there happens to be any differences or problems with the implementation phase of this program, the FERC, as well as other Federal agencies, should be invited to provide comments during the annual performance review (Sec. 312 of the CZM Act).

As a general rule, perhaps, Federal agency participation in the annual performance review of all approved plans should be encouraged by NOAA to insure protection of the national interest. (This was also recommended in our comments on Section 923.91 Review of Performance, of the Program Approval Regulations.)

DEIS

Page 11-1 makes reference to a map which was apparently omitted.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203

December 13, 1977

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Room 3280
3300 Whitehaven Street, NW
Washington, D.C. 20235

ATTENTION: Ms. Kathryn Cousins

Dear Ms. Cousins:

We have reviewed the Massachusetts Coastal Zone Management Program and Draft Environmental Impact Statement to serve as an application for Federal management grants under Section 306 of the Coastal Zone Management Act (CZM).

We support approval of the application for a management grant under Section 306 and vigorous implementation of the program. The program provides the framework for drawing into focus the various State, local, and Federal tools to guide growth in an orderly manner and to protect Massachusetts' coastal environment.

We applaud the application of 35 specific policy statements to the coastline on the detailed maps in the Atlas. Notably, the policies were tailored to specific coastal regions through citizen advisory committees for ten subareas of the Massachusetts coast.

We strongly support full exercise of the Secretary of Environmental Affairs (OEA) authority to adopt Rules and Regulations to draw together her own powers and the planning, technical assistance, financial and regulatory authorities of the State agencies to implement the policy statements. The draft Rules and Regulations pull together the Secretary's powers to administer a statewide CZM program. They empower her to establish a coordinating Coastal Zone Management Office, to adopt the Coastal Zone Management Program, to draw upon constituent State agencies and to resolve conflicts. Memos of understanding outline relationships with the State Energy Facilities Siting Council and with the OEA line agencies. A memo of understanding with the State Secretary of Transportation and Construction would also be helpful.

The effectiveness of "networking" depends on how well the Secretary and the line agencies make it work. We urge the Secretary to assume active leadership to implement promptly this network of diverse agencies, powers and regulations. She can document priorities, augment funding and commit line agencies to schedules for implementing the policies in each subarea.

The Secretary can use her powers and CZM funds to initiate the program promptly: to designate the APR's, to accelerate the wetlands restriction program in APR's, to prohibit major public facilities and energy siting in APR's, and to apply the Massachusetts Environmental Policy Act more rigorously in the APR's. State public investment policy can, as proposed, become a creative tool to guide the location and timing of roads, wastewater treatment facilities and other community facilities to support land and water uses appropriate to the coastal zone. Port and other maritime development are encouraged at suitable coastal sites, while energy facilities that do not require coastal sites are encouraged to locate inland.

Incidentally, we would like to suggest that although Massachusetts may not have the authority to carry out certain policies, such as policies 30, 31, and 32, without an asterisk (*) in the EIS, Federal law can be used to implement them (e.g., NEPA and Clean Air Act).

Examples of how the "networking" will be used to handle a range of representative situations facing one or more of the ten coastal subareas would be helpful. This will tighten up the networking procedures. Examples would include: public beach acquisition, fish and wildlife habitat protection, a wastewater treatment plant, a resort or housing subdivision a highway, a port and a power plant or oil refinery.

Under Section 307 (f) of CZM, the CZM program must document the mechanism whereby decisions under the program will meet the air and water quality standards as a non-negotiable constraint. This documentation could be strengthened through a discussion of how these standards will be met in Part III, "Policies" and Part IV, "Managment" (especially Policies 3, 4, 28, 29, 30, 31, 32, 33 and 34). Then, summarize succinctly the key tools by which the program will incorporate air and water standards in the EIS section on "National Interest" (item 6, p.11-62).

First, the standards embrace all sources of air and water pollution, including nonpoint sources of water pollution and indirect or mobile sources of air pollution. The program addresses only point sources. Expand discussions of air and water quality to cover not only point or stationary sources, but also nonpoint or indirect sources. These can equally lead to standards violation. Specify how the CZM program will incorporate the plans, programs and measures to reduce or prevent pollution from these sources. (e.g. Transportation plans, future Indirect Source regulations (air), "Best Management Practices" (water) and State/local land use policies to prevent future pollution. Mention nonpoint sources of air and water pollution in development Policy 34 (page 293 and EIS poll-

28) and its implementation (p.294). Add sections on State Implementation Plans (SIP) and areawide 208 nonpoint source control programs on page 294 and in tabulation of authorities (p.354 and EIS,p.11-41).

Second, discuss the significance of increased hydrocarbon emissions and oxidant levels (pp.223,234 and 247). It is likely that the entire State of Massachusetts will be declared a non-attainment area for oxidants. Thus, any new source of hydrocarbons proposing to locate here may be required by the Clean Air Act Ammendments of 1977 to offset its emission by reducing emissions elsewhere in the area.

Third, and foremost, document the procedures to meet environmental standards at specific points, such as the following:

Conflict resolution - State categorically that the Secretary will use her conflict resolution powers to assure that decisions under the CZM program do, in fact, as a minimum, meet both the air and water standards. The statement about the use of conflict resolution powers to protect air quality (p.334, bottom) can be clarified to express this as a non-negotiable constraint. (Section 307 (f)).

Water quality - Outline how the program will incorporate and implement the recommendations of the State and areawide 208 water quality management programs. These will include "Best Management Practices", subsurface disposal regulations, and local land use policies. Add implementation of "Best Management Practices" and other proposed solutions under the Division of Water Pollution Control on page 335.

Air quality - Discuss specifically in the Implementation steps how provisions of the Clean Air Act, as recently amended, for reviewing SIP's and transportation plans will be built into the CZM decision-making process. These provisions include consistency with the State Implementation Plans (SIP) for air quality, especially the following requirements:

- "consistency" review of Transportation plans by metropolitan planning organizations (co-terminous with Regional Planning and 208 agencies in Massachusetts) (Section 174 and 176 of Clean Air Act Ammendments of 1977).
- prevention of significant deterioration (Section 127)
- non-attainment areas (Sections 103 and 129)
- visibility protection (Section 128)
- consistency of wastewater treatment construction grants with SIP's,

including secondary growth impact (Section 306)

- Federal facilities conformance with SIP's (now subject to State enforcement) (Section 116).

The enclosed comments by our air quality program elaborate on the relationships between air quality and CZM.

The CZM program has strong appeal in the mutually supporting proposals to protect overlapping critical resource areas, ecosystems, water and air quality. The program could well emphasize this. Prevention of significant deterioration of air quality and nondegradation of water quality complement and support Massachusetts' proposed Water Quality Standards nondegradation policy to protect National and State Resource Waters. This can be documented and expanded to cover additional waters in CZM Policy 3. Enclosed is a statement on National and State Resource Waters which we have prepared.

The accompanying EIS summarizes succinctly the policies, implementation tools and their impact on the environment. It discusses the Federal and State alternatives to approval and funding of the proposed State CZM program at this time. The underlying issue in the evaluation of the Federal alternatives is whether to defer approval: until the program is further developed; until APR's are designated and until proposed Rules and Regulations are officially adopted. Prompt action on these steps is, indeed, paramount to the program's effectiveness in protecting the coastal environment. Yet, the OCZM and the State make a strong case for adoption now to help muster the resources to do these things and to begin implementation.

We concur that adoption now would yield environmental benefits that outweigh the risks. At the same time, we recommend that OCZM approve and fund the program only after a firm schedule for completing these steps has been developed and agreed to. This would extend the provision already outlined that APR's will be designated within a year of program approval.

Based on our working with the Massachusetts CZM program and review of the program and EIS, we rate the EIS as LO - Lack of Objections and Category 1 - Adequate. An explanation of our rating system is enclosed. We request that the final program and EIS present a schedule for completing the implementing rules, regulations and APR designations, and further documentation requested on meeting air and water quality standards.

We appreciate the opportunity to participate in the development of the Massachusetts CZM program and to review the program and EIS.

Sincerely yours,

Rebecca Hanmer
Deputy Regional Administrator

cc: Evelyn Murphy, Secretary, Commonwealth of Massachusetts, Office of Environmental Affairs
Carol Dennis-Office of Federal Activities, Headquarters
enclosures

ENVIRONMENTAL PROTECTION AGENCY Dec. 6, 1977

Region I

Criteria For Selection Of
Waters Which Constitute An
Outstanding State or National Resource

The following listed criteria are drawn from those utilized by several different States and the federal government and is intended to be suggestive rather than all encompassing. Specific additional criteria should be considered for other States or regions as appropriate.

State and National Resource Waters could include the following:

1. Waters within National and State parks and wildlife refuges.
2. Waters that provide a unique habitat for identifiable threatened or endangered species.
3. Rivers designated under the National or State Wild and Scenic Rivers Act.
4. Waters flowing through designated State or National Wilderness areas.
5. Certain waters within State or National Forests, including roadless areas and management areas II, III and IV (respectively, intensive, extensive, and back-country recreation).
6. Class A (protected) water supplies.
7. Areas proposed for designation as "preservation or restoration" in the preliminary State Coastal Resources Management Program.
8. Other waters within the State that are of unique recreational or ecological significance.

EXPLANATION OF EPA RATING

Environmental Impact of the Action

LO -- Lack of Objections

EPA has no objections to the proposed action as described in the draft environmental impact statement; or suggests only minor changes in the proposed action.

ER -- Environmental Reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating federal agency to reassess these aspects.

EU -- Environmentally Unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

Adequacy of the Impact Statement

Category 1 -- Adequate

The draft environmental impact statement sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2 -- Insufficient Information

EPA believes that the draft environmental impact statement does not contain sufficient information to assess fully, the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft environmental impact statement.

Category 3 -- Inadequate

EPA believes that the draft environmental impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonably available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

If a draft environmental impact statement is assigned a Category 3, no rating will be made of the project or action; since a basis does not generally exist on which to make such a determination.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: December 12, 1977

SUBJECT: Massachusetts CZM

FROM: Donald C. White, Chief
Mobile Source Emissions Section

TO: Mr. Bartlett A. Hague, Jr., Chief
Environmental Studies

Since we commented on the Preliminary Massachusetts Coastal Zone Management Program last December, the Congress has passed amendments to the Clean Air Act which should be considered and incorporated in the final Program. Transportation plans and programs have been required by Section 109(j) of the Federal-Aid Highway Act for the past several years to be consistent with the state air implementation plan (SIP). Section 176(c) of the Amendments parallels this requirement and further makes it the affirmative responsibility of the head of the metropolitan planning organization designated for each urban area to assure compliance with this requirement. Additionally, areas not attaining national ambient air quality standards for automotive related air pollutants are to develop transportation measures which will achieve incremental reductions of emissions. The Act recommends that the MPO be designated as the lead agency for developing these emission reduction strategies. Because many of the policies established in the Coastal Zone Management program will have a direct impact on the transportation network and resulting changes made to the network will have to be developed and implemented consistently with the SIP, this interrelationship should be explained.

Apart from the regulatory requirement for consistency with federal regulations, we believe that the potential for the two programs to interact to promote their mutual objectives should not be overlooked. For instance, Policy 21 is stated as "Improve public access to coastal recreation facilities, and alleviate auto traffic and parking problems through improvements in public transportation." While meeting the goal of the CZM program to better accommodate recreational demand, the goals of the air quality planners are also met: localized violations of carbon monoxide will be improved and, to some extent, reduced travel by automobile will reduce hydrocarbon emissions. Similarly, Policies 36 and 37 are to encourage revitalization of existing development centers and to promote clustering of new growth. The result would be that better public transportation could be provided to meet the needs of the community, thus reducing travel and air pollution at the same time. We think the relationship among the CZM, transportation and air quality programs is far too important to ignore.

We would also like to note that the CZM program does not have a strong implementation mechanism for effecting these objectives. We have recommended to the Massachusetts Department of Environmental Quality Engineering that they adopt an "Indirect Source Review" regulation to prevent construction of trip generating facilities which would violate ambient air quality standards. We suggest that the Office of CZM work with DEQE and the transportation planning agencies to develop regulations to meet the common objectives of all three programs.

Additional comments are as follows:

1. Although the CZM program makes reference to meeting ambient air quality and emission standards, the text implies this is only applicable to stationery sources. Perhaps a small section summarizing both stationery and mobile source air pollution requirements could be added for clarification.

2. The listing of Federal Licenses and Permits does not include the annual certification by FHWA and UMTA of the transportation planning program. Although not a license, per se, without this federal certification no federal money can be used to implement any transportation project.

3. Also missing from the list are permits issued by the air programs under the "Prevention of Significant Deterioration Program."

4. Why was the Massachusetts Air Implementation Plan omitted from the list of state agency plans?

5. We also think it would be appropriate to include either a letter of support from, or a formal agreement with the Executive Office of Transportation and Construction.

UNITED STATES DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE, P.O. Box 2890
Washington, D. C. 20250X 20013

NOV 29 1977

Mr. Robert W. Knecht
Assistant Administrator
for Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, NW.
Washington, D.C. 20235

Dear Mr. Knecht:

The Massachusetts Coastal Zone Management (CZM) Program Report and accompanying Draft Environmental Impact Statement have been reviewed within the Department of Agriculture. The following comments represent the combined views of agencies in the Department.

The coastal zone, as defined by Massachusetts for the purposes of this management program, does not appear to include significant agricultural or forestry resources. Because it is built from existing authorities and legislation, the program does not appear to otherwise affect USDA programs.

It is important to note, however, that cranberry bogs are unique farmland, according to the Soil Conservation Service criteria for prime and unique farmland, and deserve special notice. Many of the bogs occur in the coastal zone. Massachusetts may want to mark these unique farmlands on the coastal zone map. These bogs should not be overlooked since Massachusetts is a major producer of cranberries.

According to Agricultural Statistics 1976, over the past few years Massachusetts has harvested about 40 percent of this country's cranberries. One other State produces about the same proportion, while three States grow the remaining one-fifth. Because Massachusetts accounts for a significant proportion of this crop, it may be in the commonwealth's interest to regard these unique areas as a special coastal resource and maintain the vitality of the cranberry industry. To the extent that these bogs are located within the coastal zone, it is in the national interest to give them special consideration.

Overall, the CZM program displays the people's concerns and recommendations for improving coastal resources for the benefit of the State as well as the Nation. The Department of Agriculture appreciates the opportunity to review these reports. We will support the Massachusetts CZM program through our services at both State and local levels.

Sincerely,

"Acting" R. M. Davis
Administrator

cc:
M. Rupert Cutler, Assistant Secretary for Conservation, Research and Education
John R. McGuire, Chief, Forest Service

DEPARTMENT OF THE NAVY
COMMANDANT, FOURTH NAVAL DISTRICT
PHILADELPHIA, PA. 19112

N45:RME:mms

2 DEC 1977

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Room 3280
3300 Whitehaven Street, N.W.
Washington, DC 20235

Attn: Ms. Kathryn Cousins:

Dear Ms. Cousins:

Thank you for forwarding a copy of the State of Massachusetts Coastal Management Draft Environmental Impact Statement for our review and consideration. Comments on the Massachusetts Coastal Zone Management Program consisting of volumes 1 and 2 have been previously provided directly to the state, however, if you desire, copies of such comments can be provided.

The Brief Description of Action on the first page of the summary should be modified to required that Federal actions be consistent to the maximum attempt practicable with the program.

Similarly, in paragraph A-5, which indicates the restriction of Federal developments, the words "if practicable" should be inserted between developments and near on the first line.

On page 11-1 the coastal zone is defined as the seaward limit of the State's territorial sea. The present territorial seaward limit (now three miles) does not create any problems. However, should the territorial limit be extended by some other independent action, it could create some problems in the Navy's offshore/ocean operating areas. Therefore, the term "territorial limit" should be avoided and specific limits set so any subsequent separate action on the boundary for the territorial sea limit does not affect the coastal zone management boundaries automatically.

High priority uses of open ocean waters are discussed on page 11-2. Other high priority uses of ocean waters should include marine transportation and National Defense activities.

Throughout Chapter Two there are various policy footnotes. We feel that it would be clarified if it were changed to read: "Federal Government activities will be expected to conform to this policy in accordance with NOAA's consistency regulations."

N45:RME:mms

In Chapter Six, page 11-54 covers National Defense and Aerospace. In the second paragraph instead of "...all feasible alternative sites and mitigation measures are..." we would like to see the sentence read: "...the reasonable investigation of feasible alternative sites...". Also, federal consistency mediation procedures will be "sought" and not "invoked", in that such procedures are voluntary for both parties.

Again, thank you for giving us the opportunity to comment on the State of Massachusetts Coastal Zone Management Draft Environmental Impact Statement and if there are any questions, please do not hestitate to contact us.

Sincerely,

R. M. ENGLE
CDR, CEC, USN
Deputy District Civil Engineer.

Copy to:
Executive Office of Environmental Affairs
Commonwealth of Massachusetts
100 Cambridge Street
Boston, Massachusetts 02202

CNO (OP-44) Washington, DC

DEPARTMENT OF TRANSPORTATION
REGIONAL REPRESENTATIVE OF THE SECRETARY
CAMBRIDGE, MASSACHUSETTS 02142

December 6, 1977

Mr. Robert Knecht
Associate Administrator
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Knecht:

In my capacity as Acting Secretarial Representative for the Department of Transportation in the First Federal Region, I am forwarding herewith my review of the Massachusetts Coastal Zone Management Plan and its Environmental Impact Statement.

The Plan was presented for review to each DOT agency conducting operations in the First Federal Region. Where the Plan and/or Environmental Impact Statement warranted comments, they are attached as enclosures under the appropriate agency heading.

The Plan is extensive and shows great imagination and foresight. I am sure Massachusetts' comprehensive treatment of her shoreline environment will help insure its continuation as a state resource.

Sincerely,

W. S. SCHWOB
Rear Admiral, U. S. Coast Guard
Acting Secretarial Representative, Region I

I. Federal Highway Administration.

A. On pages 11-29, in the section Transportation Projects, first paragraph, sewage treatment facility planning is referred to as an aspect of transportation planning. In the interest of logical organization, we believe this topic would be more appropriate in the section Wastewater Treatment Facilities and Collection Systems, on pages 11-31.

B. We suggest that the final environmental impact statement discuss the effect of noise on activities and compatible land users in the coastal zone. This important aspect apparently has been overlooked in the draft EIS.

II. Federal Aviation Administration.

A. Comments on the Draft EIS.

1. The term "port" should include airports as Significant Resource Areas (Economic). It is unclear whether this is the intent of the CZM Plan or DEIS.

2. Federal procedures for considering the environmental effect of airport-related coastal zone development are already sufficiently refined with regard to parklands, wetlands, and historical areas. Additionally, the A-95 process can serve as an effective means of identifying environmental issues relative to proposed airport development. We feel that the DEIS should consider the environmental protection which existing mechanisms such as these afford.

3. The CZM Plan and DEIS point out that development of existing transportation facilities, within existing bounds, is encouraged. We feel that this policy can lead to responsible development within the coastal zone and see no major conflict within existing federal airport plans for development planned under the Airport Development Aid Program.

III. U. S. Coast Guard.

A. In general, there do not exist present or long-term requirements that would hamper the Coast Guard's mission. However, there is concern that the State has not been specific as to whether it will accept the Coast Guard's position that the Coast Guard will make the final determination as to whether they are being consistent, "to the maximum extent practicable", with the State plan.

B. The Massachusetts plan does not make reference to the Coast Guard's issuance of site specific permits for private aids to navigation (14 USC 83). According to the language of the plan, Massachusetts does not intend to require any consistency determination prior to the issuance of such permits by the Coast Guard.

C. Massachusetts' CZM Program does define the Coastal Zone boundary and specifically excludes land owned by the Federal government (though the question remains as to whether future acquisitions are also exempt). Arguably, therefore, all Coast Guard land has been reflected as being excluded although not specifically identified by individual parcel. The seaward limit is defined as three miles in the Plan. Although no reference is made to a potential future change in the Massachusetts definition of its seaward boundary, the regulations (15 CFR 923) indicate that a ruling on new boundaries cannot be made in advance pending the specific terms of any statutory change in territorial sea limits.

D. Regarding permissible land and water uses, the plan has identified the permissible as well as restricted uses. There were no military uses noted that were specifically prohibited. Recognizing the national interests, the Massachusetts program excludes Federally-owned or leased lands and facilities. Regarding new facilities, the Massachusetts program will strive to insure that all feasible alternative sites and mitigation measures are explored by the Federal agency involved with the Plan so that conformance, to the maximum extent practicable, is reached.

E. There are areas of particular concern that should be reviewed on a continual basis to determine acceptability from an operations standpoint. Specifically, all Federal actions requiring a State permit that have an adverse impact on recreational facilities as listed in the plan will be deemed inconsistent with the CZM Program and conditioned or denied. Decisions about what can and cannot accur in the coastal zone will still be made by local governments. The CZM will deem inconsistent any Federally-funded or licensed project which, after review and consultation with the Massachusetts Historical Commission, is considered harmful to the historic qualities of designated historic districts or sites. A sampling of the historic districts and/or sites designated in the Plan in which there are Coast Guard properties and/or operating areas includes:

Nantucket: Nantucket Historic District (entire island); Sandwich: Sandwich Historic District and Falmouth: Falmouth Historic District (7 areas). Coast Guard activity should be acceptable and continue uninterrupted. While

there is a State procedure to insure Federal consistency, the Coast Guard is of the opinion that it should make the ultimate determination as to whether the Coast Guard is being consistent to the maximum extent practicable.

F. Although the plan does not specifically list contacts with the Coast Guard for plan coordination, D.O.T. is listed.

G. In summary, the Coast Guard concerns with CZM are twofold:

a. Exclusion of Federal lands.

b. Consistency provisions.

As to the exclusion of Federal lands, the Department of Justice opinion is that the exclusionary clause of the CZMA "excludes all lands owned by the United States from the definition of the Coastal Zone". In the area of consistency, the State plan must incorporate flexibility to allow for maintenance and expansion, if in the national interest of facilities within the Coastal Zone.

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO ATTENTION OF:
DAEN-CWP-P

12 DEC 1977

Mr. Robert W. Knecht
Assistant Administrator for
Coastal Zone Management
National Oceanic and Atmospheric
Administration
Department of Commerce
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Knecht:

We have reviewed the Massachusetts Coastal Zone Management Program and Draft Environmental Impact Statement. Overall, we find the program to be well-conceived and well-written, although serious concerns have been raised with respect to Boston Harbor development and dredging policies. In addition, we are increasingly disturbed by the exclusion from the CZM planning and review process being experienced by Corps field staff. This seems contrary to the intent of the Coastal Zone Management Act and inconsistent with open planning.

We suggest that OCZM impress upon all coastal states the importance of and requirements for Federal participation. Secondly, we recommend that the items specified in the inclosed comments be appropriately addressed with program modifications made as necessary.

Sincerely,

1 Incl
As stated

C. A. SELLECK, JR.
Colonel, Corps of Engineers
Executive Director of Civil Works

Corps of Engineers Comments
on Massachusetts Coastal Zone Management
Program and DEIS

Coordination and Review

1. Coordination and review opportunities have been inadequate and not in keeping with the law or applicable regulations.

2. Page II-68 of the DEIS states that Appendix C (to Volume 1) documents the opportunity of full participation by relevant Federal agencies in the development of the management program. Although page C-6 in Appendix C suggests extensive Corps-State coordination in the development of the MA-CZM management program, OCZM directives require that draft sections of the program be distributed for Federal agency review as the separate sections are being drafted. The Corps was not afforded such opportunity. Only one Corps-State meeting was held during this program formulation stage, a 1.5-hour meeting on 19 January 1977 in which only the November 1976 Program Preview was available for discussion. As none of the MA-CZM proposals in Volume II of the MA-CZM reports concerning possible Corps actions have been discussed with our NED staff, we are unable to endorse the proposed Corps participation recommendations as contained in Volume II. Our NED staff will, however, be glad to discuss individual proposals on a case-by-case basis when specific information is brought to our attention. An example of this lack of coordination is the MA-CZM proposal for Stony Point Dike along Cape Cod Canal on which we responded to Mr. Howard Whiteside, of Wareham, on 28 November 1977. Courtesy copies of this correspondence were forwarded to MA-CZM, OCZM and OCE.

3. The DEIS should mention the review coordination process for State review of Federal EIS's. We feel it is essential that comments to our EIS's regarding environmental concerns along the coast be the product of a single State coordinating office. Difficulties have arisen when different State agencies have submitted separate and conflicting responses. We express no preference for which office should be responsible for the coordinated response, but only that we be informed of the coordination process. For example, if a response is made to our Operations Division maintenance dredging staff, we would prefer that a carbon copy of the basic letter also be forwarded to our NED-CZM Coordinator, who then can alert our executive, planning, environmental, engineering, regulatory or legal offices as appropriate.

Dredging

4. The DEIS and the CZM reports should maintain flexibility for case-by case consideration for evaluating marsh creation and artificial island building as alternatives for dredged material disposal.

5. We would prefer that the word "spoil" as first used on page II-2 of the DEIS and throughout Volumes I and II of the MA-CZM reports not be used. We suggest that the term "dredged material" be used instead, as frequently such material can be used for beach nourishment, dune restoration or land enhancement measures. We prefer to limit the word "spoil" to inland construction jobs where the material does not serve any prospective benefit, such as stockpiling or land enhancement.

6. The last sentence in the fourth paragraph on page 72 of Volume I of the MA-CZM reports states that "due to the high costs of transporting dredge material from southern coastal communities, a second ocean disposal site in Rhode Island Sound is presently under study." Page 118 of Volume II (Chapter 5) states that "CZM strongly supports the deepening of the (Fall River Harbor) channel and the creation of a new turnaround basin..." We have tried for seven years to resolve the location of a dredged material disposal site with both Massachusetts and Rhode Island. We find it disturbing that both the Massachusetts and Rhode Island CZM Programs have accepted Federal planning assistance funds for three-plus years, but neither program has resolved this matter. We believe that resolution of this key item should have been a prime consideration of both management programs.

7. Our greatest concern with the MA-CZM documents is that we do not consider that the documents truly represent a management plan insofar as they relate to improvement dredging or maintenance dredging activities. They constitute a treatise on various aspects of, rather than solutions to, problems associated with dredging. Much of the dredging language is meaningless or talks around the subject. An example is the Dredging paragraph "c" on page 96 of Volume I of the MA-CZM reports which states that hydraulic dredging is preferred to mechanical dredging. However, the next sentence lists four factors that must be considered in determining the appropriateness of dredging method.

8. Another example is the first sentence in the middle paragraph on page 72 of Volume I which states that "there are seven open water disposal areas approved for the dumping of clean dredge spoil." The word "approved" should read "recommended" as noted in the title to Figure 5 on page 73 which reads "Recommended Disposal for Clean Dredge Material." We are more concerned with the excessive distances and exposed locations shown by the proposed seven sites in relation to most of the Massachusetts shallow-draft harbors (in this particular case, those less than 12 feet deep). In general, the shallow-draft scows needed for mechanical dredging in small-boat harbors must for safety reasons stay within a 6-mile range of a harbor. Only the site off Newburg and the site within Buzzards Bay provide the necessary safety factor. The Corps would be able to continue dredging deep-draft waterways such as Boston, Lynn,

Salem, Beverly and Gloucestor Harbors and the Cape Cod Canal. The Corps or the Division of Waterways could probably continue to dredge a few other harbors such as North Plymouth, Hyannis, Vineyard Haven, Edgartown and Nantucket Harbors by using sea-going scows. With the exception of special cases where hydraulic dredging, land disposal sites or sidecasting methods could be utilized, dredging costs could become prohibitive for both the Corps and Division of Waterways if the use of additional dredging equipment is required through the possible implementation of the Figure 5 proposal.

In view of the many ambiguities, misconceptions, and unresolved issues associated with the MA-CZM report and discussed in these comments, we are unable to endorse the dredging portion of the MA-CZM Program in its present form.

Permits

9. At page 351 of Volume I, the Plan implies that except for public notice and preliminary site inspections, the Corps is precluded from processing a permit application from a non-federal applicant until the Massachusetts CZM agency affirmatively issues a certification statement. This is incorrect and not in accordance with applicable law or Corps procedures. Pursuant to Corps regulations at 33 CFR 325.2, once the applicant supplies a consistency certification with his application, the District Engineer is not required to delay processing. The only restraint on the DE is that he may not issue a permit if a state affirmatively objects to the certification or requests further review of the activity. Moreover, the District Engineer may issue a federal permit even though the applicant has not yet received any required state permits, since nothing in the federal permit obviates the applicant's need for the state permit pursuant to applicable state law. This is stated in each permit in general condition (1). However, if the state affirmatively denies a required state permit, the District Engineer may not issue the Corps permit.

10. The program states in Table II - Summary of Federal Consistency (p. 352) that when state scope of jurisdiction is insufficient to implement CZM policy, federal consistency will be relied upon to ensure compliance with the CZM Program. This is incorrect. Federal permits will be used only to carry out Federal policy and law. They may not be relied on to implement state CZM policy.

11. The following specific considerations should also be noted:

a. Pages 86-87, Permits for Filling in Navigable Waters, and pages 177-178, Permits for Filling in Navigable Waters, and elsewhere where applicable: Please note the Corps began exercising its jurisdiction in all phases as of 1 July 1977.

b. Page 293, CZM Policy (34): Please note that development in the coastal zone and inland wetlands under CZM Policy 34 may fall under Corps' Section 10 and Section 404 authorities.

c. Page 350, Federal Licenses or Permits: See 33 CFR 320.4(j), 42 Federal Register 37138, dated 19 July 1977 for the Corps' procedures when local and state permits are required in conjunction with a Corps permit.

Boston Harbor

12. With respect to Policy (17) as discussed on page 11-14 of the DEIS, we believe that the third sentence in the basic policy statement should be deleted. We believe that any non-maritime dependent use of prime port frontage represents a substantial degree of irreversible commitment of the site, at least in financial terms. We are deeply concerned by the continuing preemption of prime waterfront areas along Boston Inner Harbor for non water-dependent uses. In light of the public infrastructure investment discussion on page III-18 of the DEIS and the present availability of rail access to the South Boston waterfront, we believe that sufficient waterfront and storage acreage should be allocated along the South Boston waterfront for containerport development. Although some control of waterfront development could be exercised by withholding EOEA licenses for bulkheading or filling, as discussed on page 176 of Volume 1 of the MA-CZM reports, construction of a high-rise apartment, motel or restaurant along the South Boston waterfront would likely only require a municipal permit. In the event that Massport is unable to resolve the containerport development issue at the former South Boston Naval Annex site at an early date with the Boston Economic and Industrial Corporation, we would encourage the MA-CZM office to consider execution of a Memorandum of Understanding with the City of Boston so that the remaining South Boston waterfront could be left undeveloped until the containerport site issue is resolved.

Consistency

13. The Program sets forth a set of permitted and prohibited uses for areas restricted under the Wetlands Restriction Act. It also states, "Local by-laws may provide for more stringent requirements and thus would supercede this policy." (P. 81). The Corps of Engineers will not be bound by Federal consistency requirements to local restrictions not a part of this program document.

14. Page II-7 of the DEIS begins to describe the proposed Coastal Policies and refers to those that "will be applied to Federal government activities ..." The Federal CZM Act, quoted at the top of page 350 in Volume I of the MA-CZM report, states that Federal agencies will support the State's management activities "to the maximum extent practicable." The following paragraph emphasizes how the Federal activities must react to CZM Program requirements. This is confusing because there is no clear understanding of what specific environmental criteria the State will use to evaluate coastal activities. It is not

understood whether the State intends to draft new environmental standards and criteria under present laws. It is uncertain what environmental criteria will be used to determine what is "clean dredge spoil" (p. 72, Vol. 1), "high water turbidity" (p. 96, Vol. II), "contaminated dredge material" (p. 97, Vol. I), "adverse effects on water quality" (p. 352, original text, Vol. I) and "adverse effects marine productivity" (p. 352, original text, Vol. I).

15. If the MA-CZM Program is implemented as described in Part III of Volume I (pp. 344-359, including page revisions), we hope it will eventually strengthen our understanding of environmental issues considered important by the State. Evaluations of coastal issues would be reviewed during our assessment and impact statement processes. We expect that this would lend consistency to our review and evaluation of State interests. Further explanation, however, should be presented to clarify some ambiguities between the Federal criteria and possible future State criteria for evaluating environmental impacts for Corps related activities. Page 344 of Volume I states that the MA-CZM Program fulfills the requirement of the Federal Water Pollution Control Act and as defined by the "permissible uses" cited in Chapter II. Review of Chapter II identified no reference directly relating "permissible uses" to the FWPCA. Unless these uses are generally contained within "CZM Policies", we could not find any direct reference. Some clarification should be presented because FWPCA is a key consideration in evaluating Corps activities in coastal waters.

Areas for Preservation and Restoration

16. We endorse the 10 areas recommended for preservation and restoration (APR's) as contained in Policy (2) and shown by the map on page II-9 of the DEIS. New Corps navigation work has been authorized or is under study at two of these APR areas. A 6-foot channel and anchorage project was authorized by the 1968 River and Harbor Act for the lower Ipswich River. A preliminary study of the need for entrance channel improvements at Eel Pond has been partially completed by our NED office. In keeping with the spirit of Federal coordination on State CZM Programs, we will defer further action on these and other possible studies in the 10 proposed APR areas until they can be discussed with the MA-CZM staff.

Ocean Sanctuaries

17. With respect to the implementation of Policy (3) as discussed on page II-10 of the DEIS, the "Ocean Sanctuaries" discussion contained in the Volume I Addendum prepared by MA-CZM (for insertion on page 95 of Volume I) needs clarification. Unless future State legislation is proposed, the wording "any dumping or any waste discharge are prohibited" in lines 5 and 6 of that entry, should read "or the discharge of commercial or industrial waters are prohibited." The language for all five established sanctuary areas states that the following activities shall be prohibited -- "the discharge of commercial or industrial wastes" -- and further states that "this section is not intended to prohibit --- channel and shore protection projects" ---.

General

18. With the two notable exceptions discussed earlier in these comments, we endorse the basic policies as discussed in Chapters II and III of Volume I of the CZM Report and Chapter 2 of the DEIS. The format used in Volume II is generally excellent, although an occasional extra sentence is needed in "CZM comments" to clarify the rationale. The concept of Special Assistance Development Areas seems particularly worthwhile.

19. We note that implementation of the MA-CZM Program would be done without legislating new laws. Their intent is apparently to strengthen existing laws by their enforcement and close management. This will represent an important first step in streamlining existing State operating procedures and hopefully create a clearinghouse for resolving State and municipal differences.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852

DATE : DEC 1 1977

TO : Robert W. Knecht
Acting Assistant Administrator for Coastal Zone Management

FROM : David H. Wallace David H. Wallace
Acting Assistant Administrator for Fisheries

SUBJECT: NOAA Review of Massachusetts CZM Program and DEIS

Our comments on subject documents are as follows:

DEIS

A. Specific Comments:

II-3a--To facilitate a better understanding of the Wetlands Restriction Act and the Wetland Protection Act, this section and similar sections of the program document should perhaps be divided between these two categories, as has been done in Section III of the DEIS. Areas not subject to either of the two Acts should be stated as such. It should also be clearly stated what protection is provided by inclusion of wetlands in an Area for Preservation or Restroration (APR), and how this compares with, differs from, or supplements protection under the two wetlands Acts.

II-10--Policy(4)--Consideration should be given to encouraging use of piers on pilings rather than solid fill piers, to maintain water flow and exchange.
II-11--Policy (6)--Draft regulation should be included in the FEIS.

II-11--Policy (7)--The word "commercial" should be deleted from this policy statement.

III-3--Para.3, 2nd Sentence--Anadromous fish runs in APRs will be protected if the areas are designated. However, what protection do anadromous fish runs have in non-Aprs? This should be discussed in the FEIS.

In addition to the above comments on the DEIS, we are appending our comments on the Massachusetts Coastal Zone Program document itself, since they are relevant to consideration of the DEIS.

PROGRAM DOCUMENT

A. General Comments

The document is long and complex, with many inter-related parts which necessitate the reader's referring back and forth among various sections and appendices. Perhaps this is inevitable, considering the complexity of the subjects covered, and the institutional problems involved in developing and implementing such a program. We believe, however, that some points need clarification.

Our major concerns are as follows:

A. The boundary chosen for the northern end of Massachusetts does not go far enough inland. The Merrimack River systems supports anadromous fish populations of alewives, Atlantic herring, American shad, striped bass and in the near future will support Atlantic salmon. These species now migrate up the Merrimack as far as the first barrier. A fish ladder is presently proposed for the hydro-electric facilities at Lawrence, Massachusetts. Once this fish passage facility is constructed, these species will have access up the river to southern New Hampshire. As such, use of these areas outside the designated Massachusetts coastal zone boundary could have a direct and significant impact upon living marine resources within the coastal zone. For these reasons, we suggest that the coastal zone boundary extend to an area of maximum salinity intrusion at low flow.

B. The organizational structure that would allow implementation of the management program is at least particlly lacking, as are many of the procedures by which the State proposes to enforce the policies expressed in the document. The FEIS should state clearly how the Massachusetts Coastal Zone Management Program intends to implement and enforce the policies expressed in the DEIS and program document. We suggest that enforceable policies be identified and discussed relative to the management program.

C. Endangered or threatened species and marine mammals are only briefly mentioned in the DEIS, or in the coastal zone management document. The Parker River estuary has been stated to contain a population of shortnose sturgeon. As this species is on the endangered list, the FEIS should provide a discussion for

the conservation and preservation of endangered species. The FEIS should also list and present a discussion on marine mammals.

D. Authority for environmental matters, particularly the issuance of permits, is discussed in a confusing manner. It appears that many agencies have the capacity to issue permits. In the case of permits for activities in wetlands and other inshore areas, for example, it seems to us that jurisdiction is shared among several agencies; both Department of Environmental Quality Engineering and Department of Environmental Management programs are applicable, and apparently most major estuaries would come under the Division of Land and Water Use Waterways Program. Since the Energy Facilities Siting Council may override terms of a Waterways license, it appears that the Council exercises veto power over wetlands protection in these cases. Other examples of confusing or divided authorities appear on pages 94, 121, 149, 176, 177, 216 and 259.

E. Networking appears to be the coordinating mechanism upon which the state will depend to assure cooperation among agencies and adequate consideration of conflicting values and uses. However, the discussion is vague as to how such networking will be carried out, and which is the lead agency in decision-making and issuance of permits. It is our opinion that networking, though of great value when information transfer is the purpose, is of limited value in decision-making and regulatory situations. The public will find it confusing if it is not made clear where authority and accountability lie.

F. The proposed management system is difficult to visualize. CZM has memoranda of understanding with some agencies, while such arrangements are pending with other agencies, and still others are proposed. It is difficult to discern from the program document the exact aims and purposes of such memoranda, and just what they are expected to accomplish, especially when entered into between subparts of one agency. Guidelines, criteria and regulations to carry out program management and implementation are either lacking, or in various stages of development. Without such specifics, it is difficult to predict what program decisions and priorities might be under the Massachusetts Coastal Zone Management Program.

G. The Program does not specify a method for prioritization or implementation of the various policies, or the mechanism whereby each agency will be responsible under the various applicable state laws. It is important to know what type of regulations will be employed to carry out the Program.

H. The Program lacks sufficient attention to policies that would encourage the wise management and utilization of fisheries stocks and associated living marine resources. The Program also fails to establish a mechanism for coordination with the New England Regional Fishery Management Council. On pages 161, 163, 172, the Massachusetts Coastal Zone Management Program does emphasize the importance of commercial fishing operations, yet does not go further to establish and promote a policy to encourage the industry to further this goal.

In view of our concerns listed above, and of the specific comments that follow, the Office of the Assistant Administrator for Fisheries questions the adequacy of the Massachusetts Coastal Zone Management Program for Section 306 funding. The Massachusetts Coastal Zone Management Program exhibits problems that should have been worked out with Section 305 granting funds. Such concerns as the permitting process, coordination among state agencies, as well as Federal agencies, designation of the boundaries, and establishing local agencies for implementing and enforcing the proposed Program are not fully developed.

The general approach presented in the DEIS and the Program document to effect responsible, coordinated, state-wide management within the coastal zone appear to us as the first step in implementing a viable zoning program. We suggest that in order to continue the efforts of the Massachusetts Coastal Zone Management Program, that Section 305 funding be extended for an additional year. However, if approval is imminent, we suggest that the Program be approved for one year, and at the end of that year another public and federal review follow. Further, provisions would have to be made to ensure that major irreversible decisions are not made during this period. Final approval would then be subject to the same criteria as are not applied.

B. Specific Comments

I. Introduction

A Management System that is Useful and Used

Page 15, 2nd Para.

We would be interested in a more detailed discussion of plans to streamline and unify the permitting process within the state. We note on page 351 the promising concept of joint processing among Federal and state agencies which would certainly help streamline the interagency process. NMFS already coordinates review of Corps of Engineers and Coast Guard public notices with the Massachusetts Division of Marine Fisheries. Coastal zone streamlining.coordinating and extending such processes to take in other state agencies would be most helpful.

The tracking system referred to in the same paragraph should be more thoroughly described. A central state system which would follow the status of any permit section on a real time basis would be most useful to the public and to all concerned agencies, but it is unclear in the document whether this is the type of system that is planned.

II. Massachusetts Coastal Zone Policies and Summary

Coastal Hazards

Page 22, Policy(8)c

Protection of marine resources and associated habitats should be included in this paragraph. It is important to recognize that the public can be protected against hazards without jeopardizing other important resources. This section should discuss and describe the standards the state will use in determining how certain types or degrees of impact will or will not be permitted. The reader will then have a clear understanding of the types or areas and uses the state will focus on, and how various policies will be balanced.

What is the Coastal Zone

Overview of What Can Occur in the Coastal Zone

Top of Page 27

Para. C should be clarified, for it appears to state that development will be allowed in all sensitive coastal areas.

Significant Resource Areas

Page 28: 1, 1a, 1b - Significant Resource Areas

(Ecological, Restricted, and Conditioned)

It is not clear what criteria are used to classify an area to be included in the Wetland Restrictions Act or the Wetland Protection Act. Further, it is unclear why significant resources areas are broken up into the three classifications and how these three classifications are protected under the Acts. For example, the Wetlands Restriction Program "restricts" coastal wetland areas from alteration; does "restricts" mean alteration is prohibited outright, or are there gradations of protection involved?

Further, at the top of page 29, it is stated that, "... in the interim, no uses are prohibited per se in these areas," rather they are conditioned to protect certain interests...". The document should describe the standards to be used in determining what conditions will be imposed on proposals.

Page 35: Table 1 - List of Significant Resource Areas

A. A tabulation of endangered species, and of fish species that spawn in coastal areas should be included in the document, if not in this list then at some appropriate place.

The Marine Environment

Objectives

Page 79

The conservation of fisheries and associated resources for this and future generations and to improve the quality of fisheries should become specific objectives of the Massachusetts Coastal Zone Management Program. Further, policy and implementation sections should be developed relative to these goals.

Permitted and Prohibited Uses

Page 81, 2nd para.

It is stated that regulations for the Wetlands Protection Act are being revised and will be promulgated before or shortly after Federal approval of the Massachusetts Coastal Zone

Management Program. Any revision of regulations should be presented to NMFS and others for review. Further, the permitted and prohibited uses described in this section are not well defined or specific enough for us to draw conclusions as to their adequacy. They should be more clearly defined and specific in the FEIS.

Coastal Wetlands Restrictions Program

Page 84

The intent and means by which the Wetland Restriction Program will be regulated or enforced is confusing; it appears that the Metropolitan District Commission (MDC) and the State Reclamation Board are exempt from provisions of this program. Further, it would be helpful to understand the extent of control the MDC and State Reclamation Board have over wetlands.

Permits for Obstructions or Alterations

Page 87, first para.

It is stated that under Corps of Engineers regulations and Federal Consistency regulations, the Corps may not issue a permit without a Coastal Zone Management certification of consistency. While we agree with this, the state should also address the converse, for there will be instances when the state would permit a project which a Federal agency might deny.

Energy Facilities Siting Council

Page 87

According to this paragraph, the Council has overriding powers over permits issued by the state and local agencies. If this is the case, then the Council must also be exempt from the Wetlands Restriction and Protection Act. This being the case, what checks and balances are available to assure protection to living aquatic resources?

Policy 2

Implementation

Massachusetts Environmental Policy Act (MEPA)

Page 89

The "smaller projects" referred to in this section as being exempt from MEPA regulations should be defined: What constitutes "smaller"?

Policy 4

Implementation

Division of Marine Fisheries

Page 95

According to this paragraph, Massachusetts Division of Marine Fisheries responsibilities are limited to coastal streams and anadromous fish runs. It is our understanding that their responsibilities go beyond this. In fact, the Department of Fisheries, Wildlife and Recreational Vehicles will be most affected by the Coastal Zone Management Program. This section should describe the Department's responsibilities and authorities. Further, because of the expertise in this department for assessing biological impacts of coastal activities, we recommend that this department review and respond to all activities which may significantly impact marine resources and habitat. The same problem appears on page 337, where Division of Marine Fisheries expertise is cited as applicable to discharge permits; they should also be counted on for expertise on permits for physical changes in habitat.

Page 7

National Marine Fisheries Service

Page 100

The responsibilities stated under this Section should be expanded upon.

To deal with environmental problems, NMFS recognizes habitat conservation as an essential part of resource management and utilization. Continuing process toward implementation of the National Plan for Marine Fisheries is evidence of this. The Secretary of Commerce recognizes conservation of fish habitat as an integral part of the goal to restore, maintain, enhance,

and utilize fisheries resources. Further, the Fishery Conservation and Management Act, in its definition of "fishery resources and conservation and management," recognizes that conservation and management must include rebuilding, restoring and maintaining fish habitats. Therefore, one of our agency's prime obligations is to protect and conserve living marine resources through maintenance of a responsible environmental ethic amidst continuing and intense pressure to eliminate or unnecessarily degrade remaining marine and estuarine habitats. To meet this obligation, we review permit applications for proposed construction activities in navigable waters, respond to pollutant discharge permit applications, review environmental impact statements, evaluate federal water development project plans, and develop recommendations to ensure that projects avoid, minimize, or mitigate damage to fish resources. To the list of legislative acts pertinent to federal consistency, please add the Fishery Conservation and Management Act of 1976. (P.L. 94-265)

Coastal Hazards

Objectives

CZM Policies and Program Recommendations

Policy 8c, page 119

Protection of fishery resources and associated habitat should be included in this section.

Visual Environment

Policy 14

Massachusetts Environmental Policy Act

Page 152

Refer to Policy 2, page 89 comment.

Ports and Harbors

The Fishing Industry

We believe that this section, and the Program in general, should carry a greater recognition of the value and importance of

fisheries. Fisheries, if properly conserved and utilized, will bring benefits to the state in perpetuity. Therefore, we feel that the Program should promote a policy that would encourage wise management and optimum utilization of commerical and recreational fisheries, and should put the importance of fisheries in better perspective compared to other uses, particularly conflicting uses.

It would be helpful to us in evaluating the final Coastal Zone Management Program if a discussion of goals to serve as guideposts to the future of marine fisheries were included. For instance, a detailed discussion of the Nation's goals for marine fisheries is presented in a document entitled, A Marine Fisheries Program for the Nation, (U.S. Dept. of Commerce, Washington, D. C., July 1976, 74 p.).

The Honorable Elliot L. Richardson, then Secretary of Commerce, stated in this document, "Our fisheries are one of the Nation's --indeed the world's-- greatest resources, and will become increasingly important as a source of food for man in the decades ahead. We cannot permit the depletion of our fish stocks and the destruction of fish habitats to continue. We must learn to manage this resource so that we may use it to the optimum now and so that future generations may be able to use it and draw even greater yields from it. And we can and must do it in ways which are compatible with the Nation's need to develop other valuable uses of the ocean."

The four broad goals of the Marine Fisheries Program for the Nation are based on the national interest in the conservation of marine fisheries resources, their use for food and recreation, and their contribution to the Nation's economy. They lead to five principle recommendations concerned with (a) managing and conserving marine fisheries; (b) conserving and enhancing fish habitats; (c) strengthening the commercial fishing industry; (d) improving marine recreational fishing opportunities; and (e) meeting projected consumer demands for fishery products.

The following is a statement concerning the Fishery Conservation and Management Act of 1976 (P.L. 94-265) and how it may conflict with some Coastal Zone Management actions.

This Act creates a 200-mile fishery conservation zone (FCZ) off the coasts of the U. S., and provides for the conservation and management of all fishery resources found off the

coasts of the U. S. The Act establishes a fishery management authority which will have management responsibility over all fish (except highly migratory species) within the FCZ, over all anadromous species that spawn in U. S. rivers and streams and migrate to ocean waters to the extent of their range (except when they are in another Nation's territorial sea or recognized FCZ), and over all living marine resources of the continental shelf beyond the FCZ. Further, it provides for the preparation and implementation of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery.

With passage of this Act, the U. S. Congress made it clear that the U. S. must manage its fishery resources so as to guarantee a continuing source of fishery products for this and succeeding generations. The Secretary of Commerce under the authority of the Act has established Regional Councils which are charged with the responsibility of developing management plans to carry out this goal. In order to manage fisheries, the supportive habitat of individual species must be conserved and managed for the national interest. In this connection, the Act (Sec. 304) specifically directs the Secretary of Commerce to conduct "...biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish."

The authority of individual states to manage fisheries within three miles of shore is preserved in the Act, if their management plans do not conflict with effective management for those resources in the entire 200-mile FCZ. All species that primarily inhabit and are harvested in the waters beyond the three-mile territorial sea will be managed by Regional Fishery Management Councils. The Act, with certain exceptions, sets a precedent by claiming exclusive U. S. management rights to all anadromous fish originating in our rivers throughout their migratory range. It also emphasizes (in Section 2) a national program for the development of fisheries which are underutilized or not utilized by United States fishermen.

Preliminary Fishery Management Plans have been prepared for several fisheries caught in areas under Federal jurisdiction that utilize inshore waters under state jurisdiction for spawning or rearing purposes. Conservation and management of these resources could be affected by land and water use

plans, policies and controls in the coastal zone. Conversely, if proposed actions under various Fishery Management Plans increase domestic catches of certain species, additional demands in coastal areas may be created for fishing vessels, seafood processing plants, labor, housing, harbor facilities, freshwater supplies and waste treatment facilities. Therefore, the coastal zone program should take cognizance of various developments and actions that the New England Fishery Management Council is undertaking.

Further, a basic intent of the Coastal Zone Management Act of 1972 is to encourage coordination of state/federal efforts in managing coastal resources. Aquatic life obviously knows no political boundaries; thus, the success of the Massachusetts Coastal Zone Management Program in protecting, restoring, or enhancing living coastal resources is dependent not only upon the wise and orderly use of its coastal zone, but also upon the actions of other coastal states. We believe that the Coastal Zone Management Act can be an extremely valuable tool for stimulating cooperation between states to improve the conservation and allocation of specific aquatic fisheries resources.

Recreation

Saltwater Fishing and Shellfishing

Page 198

A management scheme for recreational fishing is lacking. Questions of saltwater recreational fishing have many implications--economic, social, and institutional--which should be evaluated and addressed.

Conflicting Uses and Environmental Impacts

Page 201

Conflicts between commercial and recreational fishermen should be discussed in this section. Particular problems occur among the various fisheries, finfish vs. lobster, full-time lobstermen vs. part-time, etc. These problems should be discussed and solutions suggested.

Energy

We have a specific concern which relates to the Coastal Energy Impact Program (CEIP). We are concerned that because of the nature of the proposed action (i.e., a funding program), the CEIP could lead to stimulation of unnecessary coastal development. We foresee the potential for conflicts between certain elements of this program and our responsibilities under the Fish and Wildlife Coordination Act. It would appear that most of the projects supported by the CEIP would, by virtue of their siting, also require a Federal permit or license. Although these projects may be consistent with the Massachusetts Coastal Zone Management Program plan, it is possible that the NMFS would recommend denial of permits and licenses for such projects when located in coastal areas of high fish and wildlife value. Overall, however, serious conflicts should seldom arise since our mission is closely aligned to the concerns expressed in the Coastal Zone Management Act (Section 302 and 305) and those of your state.

General Developments and Public Investments

CZM Policies and Program Recommendations

Policy 34

Page 293

Coastal wetlands should be included in this policy.

Management

This section should present a discussion on how the Commonwealth of Massachusetts will coordinate fishery management programs with adjacent states. An essential element of fishery management is coordination between adjacent states and among concerned agencies (federal and state) working toward similar goals. Management programs or policies must include the protection of migratory species, because it is here that the effects of pollution and other disturbances can be damaging. Management of such species is somewhat complex because it requires the cooperation and coordination of programs between communities and between states. A species may breed in one bay, feed in another and winter in a third, making it difficult for any one state to act effectively. In addition, water moves from one locality to another bringing one town's waste to another's shore. Therefore, it becomes imperative for states to coordinate fishery management programs with adjacent states, and we encourage such thinking.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
ENVIRONMENTAL DATA SERVICE
Washington, D.C. 20235

22 NOV 1977

TO: Joellyn K. Murphy
Director, Federal Programs Office
Office of Coastal Zone Management

FROM: Kent H. Hughes
Special Assistant for Marine Sciences

SUBJECT: Comments: DEIS on the Massachussetts Coastal Zone Management Program

The Environmental Data Service has no comments on subject program.

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF FEDERAL - STATE RELATIONS
Hall of the States, Suite 307
444 North Capitol Street, N.W.
Washington, D.C. 20001
(202) 638-1065

Michael S. Dukakis
Governor

Thomas P. O'Neill, III
Lieutenant Governor

December 20, 1977

MEMORANDUM:

TO: ALL INTERESTED PARTIES
FR: LIEUTENANT GOVERNOR THOMAS P. O'NEILL, III

Enclosed for your information is a copy of the letter sent by the Massachusetts Congressional Delegation to Secretary Kreps expressing support for our Coastal Zone Management Program.

Thank you for your interest and please do not hesitate to call my office if we can be of any assistance.

M:122077
Attachment

D M. KENNEDY
SSACHUSETTS

United States Senate
WASHINGTON, D.C. 20510

December 12, 1977

Honorable Juanita M. Kreps
Secretary
Department of Commerce
Washington, D.C. 20230

Dear Madame Secretary:

We are writing to urge your favorable consideration of the proposed Coastal Zone Management Plan for Massachusetts which was recently submitted by the Commonwealth's Office of Environmental Affairs.

We believe that the proposed program is consistent with the policies, purposes and goals of the Coastal Zone Management Act, and we have confidence in the ability of the Office of Environmental Affairs to implement this program in an open and balanced manner.

A primary cause of our support for the program has been the willingness of the state office to consult with -- and to heed -- recommendations made by local public officials, and by individual citizens with valid environmental concerns or economic interests in the coastal zone. It is our understanding that this consultative process is still continuing, and it is our desire that it remain characteristic of the Massachusetts program in years to come.

We believe that the proposed coastal zone management program will aid Massachusetts, while also fulfilling the intent of Congress in creating the Coastal Zone Management Act. In particular, the Massachusetts program is designed to:

-- improve the management of environmental permitting activities in order to streamline processing and minimize delays;

-- develop consistent sets of regulations in order to increase predictability, eliminate inconsistencies, and minimize confusion in decision-making (this has long been sought by environmental and developmental interests alike);

-- identify those coastal areas which are -- due to their unique value and fragility -- in need of particular attention and protection;

-- encourage the balanced overall development and use of resources located in the coastal zone; and

-- put in place a mechanism for delivering planning grants and providing technical assistance to communities interested in addressing coastal problems.

Thank you for your consideration.

Sincerely,

Thomas P. O'Neill, Jr.
Speaker of the House

Edward M. Kennedy
United States Senator

Edward P. Boland
Member of Congress

Edward W. Brooke
United States Senator

James A. Burke
Member of Congress

Silvio O. Conte
Member of Congress

Margaret M. Heckler
Member of Congress

Michael Harrington
Member of Congress

Robert F. Drinan
Member of Congress

Joe Moakley
Member of Congress

Gerry E. Studds
Member of Congress

Joseph D. Early
Member of Congress

Paul E. Tsongas
Member of Congress

Edward J. Markey
Member of Congress

COMMENTS RECEIVED FROM STATE, REGIONAL AND LOCAL GOVERNMENTS

The Commonwealth of Massachusetts
Executive Office of Transportation & Construction
One Ashburton Place
Boston, Massachusetts 02108

FREDERICK P. SALVUCCI
SECRETARY

December 8, 1977

Ms. Kathryn Cousins
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

RE: State of Massachusetts Coastal Management
Draft Environmental Impact Statement

Dear Ms. Cousins:

I am writing on behalf of the Massachusetts Executive Office of Transportation and Construction, and its constituent agencies and authorities, regarding the Commonwealth's proposed Coastal Zone Management Program as evaluated in the above-mentioned Draft Environmental Impact Statement.

This Office has reviewed the proposed Program in detail, and generally supports the substance of the policies articulated in the Program. In particular, we fully support the promotion of major public infrastructure including transportation projects primarily to serve already-developed coastal areas, as provided for in Policy 35.

However, we are very much concerned about the mechanisms currently described in the DEIS for review of major transportation projects for consistency with Policy 35. The DEIS provides (page 11-31) that major transportation projects, other than four projects noted in the text, will require amendment to or revision of the CZM Program itself in order to be deemed consistent with the Program. This provision seems to us to seriously undermine both existing planning processes and the new coastal zone management process about to be put in place. Our understanding has been that the central purpose of the Coastal Zone Management Act is to enable states to develop and implement their

own programs for the management of coastal areas. To require continued Federal oversight of individual projects, as the DEIS does in effect for transportation though not for any other area, is directly contrary to this concept of a state Coastal Zone Management Program.

We believe that this proposed shift in responsibility from the state to the federal level, under the amendment/revision mechanism, will work against full integration of growth policy concerns in the earliest stages of project planning. Federal review of individual projects will necessarily be more difficult than state CZM review to coordinate with existing planning, to ensure that Policy 35 consistency decisions are made at a meaningful point in the development process. That point must be sufficiently early to prevent a basically inconsistent project from gathering momentum, but sufficiently late that adequate information is available. Participation by the state's Coastal Zone Management Office in the existing preliminary planning processes for major transportation projects appears to us to be the only way adequately to gauge when the Policy 35 consistency determination should be made. A related concern is that federal review of individual projects, added to an already attenuated planning process, will unnecessarily delay those projects found by the state CZM to fully serve the purposes of Policy 35.

Nor does it serve the interests of Policy 35 to accelerate the consistency review process by requiring that major projects be named in the Program. Clearly, the logic of the propose amendment/revision mechanism requires that all known transportation projects which will serve developed areas consistent with Policy 35, be included in the current management Program. But for the state CZM to make these decisions now, in a hasty and ad hoc manner, will most certainly defeat the orderly planning of future growth and development.

As an alternative to the Program's amendment/revision mechanism, therefore, we would propose that review of major transportation projects for consistency with Policy 35 be conduct by the state CZM office during the "systems planning" stage of project development, during which general alternatives for an area are considered prior to preliminary engineering and environmental studies on a particular proposed project. In the case of most highway projects, systems planning takes place during the Corridor Planning Study process administered by the Bureau of Transportation Planning and Development. In the case of other transportation modes, appropriate systems planning stages will be specifically identified. Our intent is to establish a

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
Department of Environmental Management
Division of Water Resources
Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston 02202

OFFICE OF THE DIRECTOR

November 8, 1977

Ms. Kathryn Cousins
Office of Coastal Zone Management
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

Dear Ms. Cousins:

We assume that typographical errors such as the reference to "grave mining" on page II-11 will be picked up by your own staff review. We will, therefore, comment only upon a few things which we feel are inaccurately portrayed.

On page III-8, paragraph 4, we feel that the reference should be to "tidal flats" and not "shellfish beds". Shellfish beds can be located far beyond the point of private ownership - beyond the need of restriction. The coastal restriction program as conducted prior to January 1, 1977, sought to restrict saltmarsh, barrier beaches, tidal flats and some contiguous freshwater marsh. The restriction of all beaches and dunes will represent an expansion of scope of the coastal restriction implementation program.

On page III-19, paragraph 5, the use of lands acquired pursuant to the provisions of the Massachusetts Self-help is not accurately characterized. The use of such land can only be for conservation, passive recreation and open space. It should state that: "The Program provides up to 50% reimbursement of the cost of acquiring such lands."

In the final paragraph, the figures should be changed as follows: 25,000 to 27,000; $11,250,000 to $15,000,000; 155 to 165; 44 percent to 47 percent. "Brewster" should be added to list of towns, following "Marshfield."

We realize that this material has been abstracted from the State report and, thus, may be dated. We have no problem with the statement, but felt you might like the opportunity to use the proper information concerning state programs.

Sincerely yours,

Emerson H. Chandler
Chief Planner

EHC/hrb

The Commonwealth of Massachusetts
Office of the Secretary
Massachusetts Historical Commission
294 Washington Street Boston, Massachusetts 02108
(617) 727-8470

COPY

November 2, 1977

Mr. Sidney R. Galler
Deputy Assistant Secretary for
Environmental Affairs
US Department of Commerce
Washington, D.C. 20230

Re: Massachusetts Coastal Management, Draft Environmental Impact Statement

Dear Mr. Galler:

The Massachusetts Historical Commission has reviewed the Draft Environmental Impact Statement for the above project and has several concerns regarding the program's policies for protection of cultural resources.

The section on Visual Policies (p. II-13) does not adequately cover all cultural resources; instead it limits importance to properties which can be recognized by their architectural character. This excludes from protection properties of outstanding historical importance and both prehistoric and historic archeological sites which most often are not visible above ground. Since the National Historic Preservation Act requires federal agencies to protect properties of outstanding significance in American history, architecture, archeology and culture, this section will need to be revised.

In addition, the National Historic Preservation Act criteria for significance includes all properties listed or eligible for listing in the National Register of Historic Places. Thus the document's reference to protection of properties listed in the Register or in local historic districts (p. II-63) does not include all of the resources for which protection is mandated. The CZM program should also include protection for properties not yet listed in the National Register but which meet the criteria for listing as outlined in 36 CFR 800.10. In the case of archeological properties, Executive Order 11593 mandates federal agencies to identify sites through professional archeological investigations in certain cases.

A mechanism should be developed to continue to identify properties eligible for the National Register and to identify new local historic districts that

are created as well. Any mechanism should involve close coordination with our office. As the State Historic Preservation Office for Massachusetts, we can provide information on properties identified in our statewide historic inventory and can assist CZM in applying the National Register criteria of eligibility. Since the collection of inventory information and the National Register listing process are ongoing programs, it cannot be assumed that the information available at the present time is complete.

The Draft EIS also makes no mention of compliance with Section 106 of the National Historic Preservation Act, which provides for review of proposed federal projects by the Advisory Council on Historic Preservation according to the Advisory Council Procedures (36 CFR 800). Insurances should be included in the document that will provide for this review whenever federal plans or programs are implemented in the CZM.

Policy 36 (p. II-43) stresses revitalization of existing developed areas as a component of the program. May we stress the importance of item 1), rehabilitation and adaptive reuse of older structures. Priorities for rehabilitation should be given to properties of historic and architectural importance, again using the criteria of listed or eligible for listing in the National Register of Historic Places.

The CZM plan can act as an important tool in preserving the cultural resources of the coastal zone. We urge that our recommendations be incorporated into the Final EIS so that the plan will have an effective means of implementing its policies regarding the cultural environment.

Sincerely yours,

Elizabeth Reed Amadon

Elizabeth Reed Amadon
Executive Director
Massachusetts Historical Commission
State Historic Preservation Officer

xc: Evelyn Murphy

ERA/MBW/etd

framework which ensures that all major transportation projects are reviewed for Policy 35 consistency before they proceed beyond the systems planning stage. We have suggested to the state CZM language implementing this commitment to be inserted into the final Coastal Zone Management Program; and this Office is further prepared to enter into a Memorandum of Understanding with the state CZM detailing exact procedures for carrying out Policy 35 reviews as well as consistency determinations regarding other policies. (We have also worked with CZM on language changes to clarify the definition of "major" transportation projects and to delineate criteria to be used in connection with evaluating transportation as opposed to sewer treatment projects)

In summary, we would urge OCZM to retain in the transportation area, as it has in other functional planning areas, the concept of the Coastal Zone Management Program as a set of general policy guidelines which are to be applied to individual projects by state CZM in accordance with procedures set forth in the Program. We believe strongly that such a framework, placing Policy 35 consistency review responsibility squarely with the state authorities most familiar with the unique problems of Massachusetts' coastal areas, will more than adequately foster responsible control of growth in those areas.

Sincerely yours,

Frederick P. Salvucci
Secretary of Transportation
and Construction

FPS:mxg

cc: Mr. Eric Van Loon, Director
Massachusetts Coastal Zone
Management Office

Mr. Norman Van Ness, Division Administrator
Federal Highway Administration

The Commonwealth of Massachusetts
Executive Office of Transportation & Construction
One Ashburton Place
Boston, Massachusetts 02108

FREDERICK P. SALVUCCI
SECRETARY

December 8, 1977

Ms. Kathryn Cousins
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

RE: State of Massachusetts Coastal Management
Draft Environmental Impact Statement

Dear Ms. Cousins:

I am writing on behalf of the Massachusetts Executive Office of Transportation and Construction, and its constituent agencies and authorities, regarding the Commonwealth's proposed Coastal Zone Management Program as evaluated in the above-mentioned Draft Environmental Impact Statement.

This Office has reviewed the proposed Program in detail, and generally supports the substance of the policies articulated in the Program. In particular, we fully support the promotion of major public infrastructure including transportation projects primarily to serve already-developed coastal areas, as provided for in Policy 35.

However, we are very much concerned about the mechanisms currently described in the DEIS for review of major transportation projects for consistency with Policy 35. The DEIS provides (page 11-31) that major transportation projects, other than four projects noted in the text, will require amendment to or revision of the CZM Program itself in order to be deemed consistent with the Program. This provision seems to us to seriously undermine both existing planning processes and the new coastal zone management process about to be put in place. Our understanding has been that the central purpose of the Coastal Zone Management Act is to enable states to develop and implement their

own programs for the management of coastal areas. To require continued Federal oversight of individual projects, as the DEIS does in effect for transportation though not for any other area, is directly contrary to this concept of a state Coastal Zone Management Program.

We believe that this proposed shift in responsibility from the state to the federal level, under the amendment/revision mechanism, will work against full integration of growth policy concerns in the earliest stages of project planning. Federal review of individual projects will necessarily be more difficult than state CZM review to coordinate with existing planning, to ensure that Policy 35 consistency decisions are made at a meaningful point in the development process. That point must be sufficiently early to prevent a basically inconsistent project from gathering momentum, but sufficiently late that adequate information is available. Participation by the state's Coastal Zone Management Office in the existing preliminary planning processes for major transportation projects appears to us to be the only way adequately to gauge when the Policy 35 consistency determination should be made. A related concern is that federal review of individual projects, added to an already attenuated planning process, will unnecessarily delay those projects found by the state CZM to fully serve the purposes of Policy 35.

Nor does it serve the interests of Policy 35 to accelerate the consistency review process by requiring that major projects be named in the Program. Clearly, the logic of the proposed amendment/revision mechanism requires that all known transportation projects which will serve developed areas consistent with Policy 35, be included in the current management Program. But for the state CZM to make these decisions now, in a hasty and ad hoc manner, will most certainly defeat the orderly planning of future growth and development.

As an alternative to the Program's amendment/revision mechanism, therefore, we would propose that review of major transportation projects for consistency with Policy 35 be conducted by the state CZM office during the "systems planning" stage of project development, during which general alternatives for an area are considered prior to preliminary engineering and environmental studies on a particular proposed project. In the case of most highway projects, systems planning takes place during the Corridor Planning Study process administered by the Bureau of Transportation Planning and Development. In the case of other transportation modes, appropriate systems planning stages will be specifically identified. Our intent is to establish a

framework which ensures that all major transportation projects are reviewed for Policy 35 consistency before they proceed beyond the systems planning stage. We have suggested to the state CZM language implementing this commitment to be inserted into the final Coastal Zone Management Program; and this Office is further prepared to enter into a Memorandum of Understanding with the state CZM detailing exact procedures for carrying out Policy 35 reviews as well as consistency determinations regarding other policies. (We have also worked with CZM on language changes to clarify the definition of "major" transportation projects and to delineate criteria to be used in connection with evaluating transportation as opposed to sewer treatment projects.)

In summary, we would urge OCZM to retain in the transportation area, as it has in other functional planning areas, the concept of the Coastal Zone Management Program as a set of general policy guidelines which are to be applied to individual projects by state CZM in accordance with procedures set forth in the Program. We believe strongly that such a framework, placing Policy 35 consistency review responsibility squarely with the state authorities most familiar with the unique problems of Massachusetts' coastal areas, will more than adequately foster responsible control of growth in those areas.

Sincerely yours,

Frederick P. Salvucci
Secretary of Transportation
and Construction

FPS:mxg

cc: Mr. Eric Van Loon, Director
Massachusetts Coastal Zone
Management Office

Mr. Norman Van Ness, Division Administrator
Federal Highway Administration

EVELYN F. MURPHY
SECRETARY

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

STATEMENT OF THE SECRETARY
ON
DRAFT ENVIRONMENTAL IMPACT REPORT

The Secretary of Environmental Affairs herein issues a statement that the Draft Environmental Impact Report submitted on the below referenced project does adequately and properly comply with Massachusetts General Laws, Chapter 30, Section 62 and the regulations governing the preparation of environmental impact reports. However, the comments set forth in the attached memorandum, as well as the comments received during the review period will need to be responded to in order to produce a satisfactory final report.

EOEA File No: 02796

Submitted By: Coastal Zone Management

Date Received: October 14, 1977

Project Identification: Proposed Massachusetts Coastal Zone Management Program

15 December 77
DATE

EVELYN F. MURPHY, SECRETARY

EFM/WFMH/arm
cc: Attorney General

EVELYN F. MURPHY
SECRETARY

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

MEMORANDUM

TO: Eric Van Loon, Director
Coastal Zone Management

FROM: Evelyn F. Murphy, Secretary
Executive Office of Environmental Affairs

DATE: December 15, 1977

RE: EOEA #02796, Draft Environmental Impact Report
Proposed Massachusetts Coastal Zone Management Program

It is my judgement that the draft environmental impact report submitted on the proposed Massachusetts Coastal Zone Management Program does adequately and properly comply with the requirements of Massachusetts General Laws, Chapter 30, Section 62, the Massachusetts Environmental Policy Act (MEPA), for the draft report. The review of the draft report engendered substantial public and agency comment during the review period. Nearly 500 persons attended the five hearings which were held and close to 100 agencies and persons submitted writter comments. This level of public participation is welcome and is one of the most important aspects of the draft impact report review process.

Appropriate responses should be included in the final report to all germain and timely received comments on the draft report.

In addition, I should advise that a bill currently in the Massachusetts legislature (S-1980) will, if enacted, significantly amend th Massachusetts Environmental Policy Act (MEPA), Massachusetts General Laws, Chapter 30, Section 62. Enactment this session should be anticipated and the final environmental report should include at least an Appendix indicating how the changes in MEPA will relate to the propose Coastal Zone Management Program. The MEPA staff will be available to advise CZM on this question.

Finally, the draft report inaccurately characterizes the current status of the proposed Route 25 extension around Buttermilk Bay in Plymouth, Wareham and Bourne. At page 11-29, it is stated that this project "has advanced beyond the environmental studies and design development phases...." This is not the case. As of this date, no final environmental impact report has been submitted for MEPA review and declared in compliance with the requirements of MEPA. I understand that NEPA compliance has not yet been finalized either. The final report should correct this statement.

I look forward to reviewing the final report when it is submitted.

EFM/WFMH/arm
cc: Attorney General

PAUL GUZZI
Secretary of the Commonwealth

The Commonwealth of Massachusetts
Office of the Secretary
Massachusetts Historical Commission
294 Washington Street Boston, Massachusetts 02108
(617) 727-8470

RECEIVED
NOV 4 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

November 2, 1977

Secretary Evelyn Murphy
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Re: Coastal Zone Management Plan

Dear Secretary Murphy:

The Massachusetts Historical Commission has reviewed the Massachusetts Coastal Zone Management Plan and the Federal Draft Environmental Impact Statement for the Coastal Management Plan.

Enclosed is a copy of our comments on the Draft EIS, which also pertain to the two volume state document. While we feel that the CZM plan can provide an important means of protecting and enhancing the state's cultural resources, the plan as outlined does not adequately provide for any coordination with our office during implementation. The plan should allow for updates and expansion of the National Register, local historic districts, and our statewide inventory of historic properties.

I hope that the attached comments will be helpful to you in developing this program. Thank you for the opportunity to comment.

Sincerely yours,

Elizabeth Reed Amadon

Elizabeth Reed Amadon
Executive Director
Massachusetts Historical Commission
State Historic Preservation Officer

ERA/MBW/etd

TOWN OF WAREHAM
BOARD OF HEALTH

BOARD — 295-0807
AGENT — 295-2366

WAREHAM, MASSACHUSETTS Nov. 21, 1977

Mr. Mark Kaufman
Mass. Coastal Zoning Management
Executive Office of Environmental Affairs
100 Cambridge St., Boston, Mass. 02202

Dear Sir:

The Wareham Board of Health, after due deliberation of the proposals contained in Volume II of the CZM Program, which would provide land access to Long Neck Beach and Stoney Point Dike and develop the latter as a public beach, herewith states that it is unanimously opposed to the entire project, not only because of the potential impact on the existing environment but also on the wildlife that inhabits these areas.

Due to the wetland areas and the high tides which overflow these areas any proper sewage installations would be remote or non-existant. Human wastes can carry typhoid bacteria and the pollution of the waters and nearby shellfish beds from this and hepatitis is a matter of concern to us as a Board of Health.

Therefore, we strongly urge you to seriously weigh the possible detrimental consequences of this project against any undertaking to satisfy economic development as such.

We are very much opposed to this proposal as outlined in your program for the above reasons stated and hope you will consider the overall impact this project could have on the Town of Wareham.

Yours very truly,
John A. Kelenosy
John A. Kelenosy, Chrm.
Board of Health

cc: various boards

form 2

Fred J. Kyrouz, City Clerk

City of Gloucester

CITY HALL • GLOUCESTER • MASSACHUSETTS

RECEIVED
SEP 27 1977
COASTAL ZONE MANAGEMENT
Office of Environmental Affairs

September 23, 1977

Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts

Attention: Russell Sylva, Assistant Secretary

Dear Sir:

The Gloucester City Council at its regular meeting held on September 13, 1977, voted to adopt the following resolution by Councillor John P. Bell:

> ORDERED, that the City Council adopt the following Resolution and forward same to the Executive Office of Environmental Affairs 100 Cambridge Street, Boston:
>
> That the Gloucester City Council, in conjunction with the Mayor, vigorously oppose the use of Gloucester's waterfront especially those properties within the jurisdiction of the City for development of commercial facilities for offshore oil drilling. Such development is in direct conflict with public and private programs to develop Gloucester's inner harbor for fresh fish docking, processing and vessel support facilities. Further that the Federal and State does not encourage oil development within Gloucester harbor.

This order was adopted with the following amendment:

Refer to following sentence in Coastal Zone Management Document page 14 under Citizens Concerns of Section 21 entitled Gloucester Inner Harbor.

> "Citizens are interested in developing water-dependent activities on the waterfront, in improving the condition of the fishing fleet and support facilities, and in developing commercial facilities for off-shore drilling."

Above Council comment is in direct reference to this sentence contained in the document.

Yours very truly,
Fred J. Kyrouz
FRED J. KYROUZ
CITY CLERK

FJK/h

TOWN OF IPSWICH

IPSWICH, MASSACHUSETTS 01938

BOARD OF SELECTMEN
356-2262

RECEIVED
NOV 21 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

November 17, 1977

Massachusetts Coastal Zone Management,
Executive Office of Environmental Affairs,
100 Cambridge Street,
Boston, Ma. 02202

Dear Sirs,

The Board of Selectmen of the Town of Ipswich wish to go on record as being in support, in general, of the Coastal Zone Management Plan, which will protect and preserve our natural resources along the coast.

Yours very truly,

Merle R. Pimentel

Merle R. Pimentel
Chairman

Dan
DEIS Comment

RECEIVED
DEC 14 1977
COASTAL ZONE MANAGEMENT
Office of Environmental Affairs

Town of Dennis

South Dennis, Mass. 02660

Office of
SELECTMEN 394-0901
EXECUTIVE SECRETARY 394-0901
ASSESSORS 394-0903
BOARD OF HEALTH 394-0908

December 12, 1977

Mr. Eric Van Loon, Director
Coastal Zone Management Program
Exec. Office of Environmental Affairs
100 Cambridge Street
Boston, Ma. 02202

Re: Policy 13 - Visual Enhancement

Dear Mr. Van Loon:

The Massachusetts business and legislative communities continue mysteriously loathe to admit that good appearance and prosperity have historically gone hand in hand. The historically oriented urban renewals in Newburyport and New Bedford attract both local and visiting money - by appearance. The Chatham Fish Pier does a thriving over-the-counter business - by appearance. Nantucket is perhaps the most affluent tourism enterprise in the Commonwealth - by appearance. New Orleans' #1 economic asset is the port, but its #2 is the Vieux Carré - by appearance. The examples are endless, and as local and specific as the banker who chooses his tailor to attract money to his bank or the Representative buying his 3-piece suit the day after election.

I am personally convinced that the long-time (100 year) economic resource of much of the Commonwealth and certainly of its coast is tourism - the continuing recreational appeal of historic shrines and glorious water within a day's drive of a third of the nation's population. Cape Ann will not move to the Sunbelt unexpectedly some Tuesday morning, nor will Lexington or Concord or Walden Pond. Accepting tourism as a major and non-eroding income source, the protection and expansion of visual assets along the coast becomes good, hard, tight-fisted Yankee common sense.

I believe it should prove feasible to allay industry's fears that they will be either banished or compelled to put cupolas on 500 ft. smokestacks. As the CZM text clearly states (pp 140-142), industrial installations can have an ambience of their own in the coastal scene. Canal Electric is in no wise integrated with the surrounding Great Marshes of Barnstable, but neither does its presence destroy or even impact very much on those marvelous marshscapes. On urban waterfronts, the whole fascinating complex of water in use can become a major visual attraction at very little cost, either public or private.

Coming home to Dennis on Cape Cod, much citizen energy was devoted in 1975-76 to inventorying the town's natural resources, under the direction of the U. S. Soil Conservation Service. One of our projects in that program was a Visual Preference Survey of more than 100 random people around town. General concern for natural landscape preservation and for fitting the built environment into its setting was clearly demonstrated in this exercise. As a result, the town's Design Review Panel has been revitalized to influence commercial design, its Historical District Commissions have been cautioned to continue their rigorous review of the "fit" of

structures into their surroundings, a citizens' committee is at work on visual problems of the Route 28 commercial strip, another citizens' committee is revising the sign code, and the Planning Board and Conservation Commission are actively discouraging blacktop parking. The departments look forward to receiving the CZM guideline handbook at the earliest possible moment.

To summarize, I believe I can speak not only for myself but unofficially for all the major regulatory agencies of the Town of Dennis in heartily endorsing Policy 13 and the CZM Program's concern for visual enhancement of the coast. To put it in the vernacular, that's where the bucks are and will continue to be.

Sincerely,

Mary Hood Hagler

Mary Hood Hagler

Remarks re CZM Plan Content
Mary Hood Hagler
November 17, 1977

In my personal opinion, CZM is going to harm the Cape just about as much as the National Seashore did.

Look at the content:

Policies 1 and 2 - Protect coastal marshes to keep the food chain working.

Policies 4 and 8 - minimize shore erosion

Policy 7 - Money for expanding the fishery.

Policies 5 and 18 - Money and more systematic approach for dredging.

Policies 28-33 - A variety of attempts to protect us from Big Oil and Big Electricity

Policy 36 - Money for urban redevelopment in coastal cities, like Hyannis.

Aren't these the very things that our towns invest days and weeks of time and energy in every year, trying to bring about?

Attacks I've heard are on Policies 13-16, Visual Environment, which are only "encouragement", anyway. Our Legislature hasn't noticed, apparently, that appearance has historically equated with and contributed specifically to prosperity.

And nebulous complaints from the Home Builders Association, in line with their stance that every regulation will fling them into bankruptcy.. Since I don't see any policies which seem to impact our single-family home builders, I'm forced to write it off to reflex.

And "Home Rule," of course. In my observation, this fine old phrase has been bolderized into something politicians shout to mask shenanigans catering to special interests. True home rule has been over-run by growth - of population and technology and big government. "Home control" is the phrase I prefer, and I believe it can be preserved for a good many years, by skilled and reasonable negotiations. Serious work was done on CZM in its development stages to assure that its actual processes - the points where the program meets our people and our places - remain in home control. I believe they do, to the best of the abilities of responsible local citizens and the cooperation of the state and federal authorities.

TOWN OF MARSHFIELD
COMMONWEALTH OF MASSACHUSETTS 02050

OFFICE OF THE
PLANNING BOARD

RECEIVED
SEP 19 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

September 12, 1977

Mr. S. Russell Sylva
Director
Coastal Zone Management
100 Cambridge Street
Boston, Massachusetts 02202

Subject: Massachusetts Coastal Zone Management Program

Dear Russell:

As a member of the South Shore Citizen Advisory Committee and the Marshfield Planning Board, I should like briefly to commend the CZM Staff on the final Coastal Zone Management Program. In particular, I do want to note the excellent work of Margaret Reynolds who worked very well for and with our group -- a group somewhat cynical and suspicious of this State effort.

The CZM Staff have managed, via the networking system, the Memoranda of Understanding, and the using of existing laws and agencies, to produce a comprehensive plan without creating another layer of bureaucracy. It fits into the State's efforts to streamline the permit process. The Plan recognizes the tradition of strong local government, but has also deftly balanced the local issue with regional and State concerns. It provides the beginnings of a rational approach to issues that cannot be isolated, or are confined, by town boundaries.

While I have personally been opposed to any new legislation or an expanded and/or additional layer of government, I do have some reservations about the workability of the MOU's, particularly with the E. F. S.C. It appears that federal consistency is mandated by the Federal CZM Act but within state government only the unenforceable MOU's provide the means for consistency with the CZM Plan. At this time, though, I am willing to support the concept of MOU's, but I would suggest that within two years after implementation begins that an evaluation be done on the actual effectiveness of the MOU method.

Very truly yours,

Marguerite M. Morris
Vice-chairman

mmm/jp

Copy to Margaret Reynolds

Return original to me for file

Massachusetts Coastal Zone Management ---- Public Hearing

Cape Cod Regional Technical High School

November 17, 1977

The following statement is entered into the record by the Brewster Conservation Commission:

The Brewster Conservation Commission wishes to express support for the Coastal Zone Management Plan, and to record its opposition to House Bill 6687, recognizing that this bill would paralyze the efforts of the Office of Environmental Affairs.

Brenda J. Boleyn
associate member
Brewster Conservation Commission

438 Freeman's Way
Brewster, Mass.

TOWN OF MARSHFIELD
COMMONWEALTH OF MASSACHUSETTS 02050

OFFICE OF THE
PLANNING BOARD

RECEIVED
SEP 19 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

September 14, 1977

Mr. S. Russell Sylva
Director
Coastal Zone Management
100 Cambridge Street
Boston, Massachusetts 02202

Dear Mr. Sylva:

I am writing this letter as the Chairman of the Marshfield Planning Board and as the Marshfield Board of Selectmen's representative on the Coastal Zone Management South Shore Citizens Advisory Committee.

I should like to begin by saying that I believe that the Massachusetts Coastal Zone Management Plan as presented is basically sound and reflects an overall understanding of the problems and conflicts, but more importantly, the enormous value of our coastal area.

After a three-year effort, I feel the CZM staff has produced a plan which is reflective of an honest attempt to be responsive to citizen input as well as input from a wide range of special interest groups.

Many of the concerns which were expressed by me and others during the development of the Plan have been addressed in an acceptable manner in the proposed Plan. Of major importance are the facts that:

1. The CZM Plan does not create a new and burdensome layer of bureaucracy with which citizens will have to deal. Instead it uses existing governmental agencies and existing laws as tools with which it will attempt to accomplish its management objectives.

2. The Plan is straight-forward in its recognition of the home rule concept, and it leaves the powers of zoning and other land-use controls to the cities and towns when dealing with issues of local significance.

3. The Plan also recognizes the value of providing a modern support function for other state agencies in that it will fund both personnel and projects for these other agencies as they deal with their own jurisdictional purviews in the coastal zone. This activity will create significant improvements

in the lines of communication between agencies as well as result in much needed implementation of presently existing laws and rules and regulations.

do, however, have some suggestions which I believe will improve lan as presently proposed:

1. I feel that the Plan does not take into account the very real potential of new technology in the field of wastewater management. It seems that many of the judgments about the impacts of sewage treatment plants have been based on our past experience with primary treatment. Many of our existing treatment plants are presently being upgraded to secondary treatment requirements in the coastal zone. Contrary to popular belief, secondary treatment, when compared to primary treatment, does provide for significant reductions in nutrients and toxic substances as well as reducing both biological oxygen demand and suspended solids. With the addition of multi-media filtration of effluent, the greater reduction of suspended solids can further contribute to reductions in bacterial and viral levels. There is in fact a debate presently being waged in both the scientific and engineering communities about the necessity for providing any more than primary treatment for ocean outfalls which are located in deep enough waters with adequate currents for dispersio of the effluent.

   While not commenting on the outcome of the debate, I would like to suggest that the CZM Plan fails to recognize the fact that current research indicates that there is a very real potential to beneficially impact the productive capacity of wetlands (inland and coastal) by the application of properly treated secondary wastewaters, while at the same time realizing significant energy savings. The Plan should take into account new technologies and research in this area and not provide a blanket exclusion of sewage treatment plans in AIR's or elsewhere. Provision should be made for accepting future facilities if research can positively demonstrate that they will have no adverse impacts on the ecosystems into which they discharge.

BOARD OF SELECTMEN
Town Hall
ESSEX, MASSACHUSETTS 01929

Mark.
RECEIVED
SEP 29 1977
COASTAL ZONE MANAGEMENT
Office of Environmental Affairs

September 27, 1977

Mr. S. Russell Sylva
Assistant Secretary of Environmental Affairs
Acting Director
Massachusetts Coastal Zone Management Program
100 Cambridge Street
Boston, MA. 02202

Dear Mr. Sylva:

I enjoyed hearing your presentation last Thursday (Sept. 22, 1977) night at Gloucester City Hall. The meeting was both informative and educational for me. The Coastal Zone Management Program will be of great impact and effect a better relationship between citizen and government.

At the Board of Selectmen meeting Monday (Sept. 26, 1977) the Board voted to request that the following lines be removed from paragraph 17 on page 12 of the Upper North Shore section of "Chapter 5, Mass. Coastal Regions and An Atlas of Resources:"

"In terms of recreational boating, citizens feel that the Essex River has reached its saturation point and they do not want to see more marinas or boat ramps built. Some people feel that the river needs dredging but many others feel this would only increase boating traffic and sedimentation."

Our reasons are several. First of all, as the Board of Selectmen we have asked the Army Corps of Engineers to investigate and study whether or not the Essex River does need dredging. We are concerned that the Essex River is filling up with sedimentation and run-offs from the surrounding mud flats. The river has reached the stage of impassability at minus low tides - and getting worse. The marinas and dock yards contribute much to the town and their continued existence is of importance to the town. Secondly, the Essex River has a great historical background as a shipbuilding and shipyard community and we would hate to see the old shipyards inaccessible. Thirdly, paragraph 17 also makes reference to improving the town ramp and parking area. These areas are dry at low tide because of the river's fill-up with mud and sediment.

We also ask you to promote maintenance dredging in the Essex River to help us achieve these goals.

Your cooperation in this matter will be greatly appreciated by us and ultimately by the citizens of Essex.

Very truly yours,

Augustus G. Means, Jr.
Augustus G. Means, Jr.
BOARD OF SELECTMEN

AGM:gs

2. The plan conveys an almost tacit acceptance of off-shore mining of sand and gravel. One of the areas identified by the Raytheon Study and explored by the State lies right off of the mouth of the North and South Rivers. These rivers are proposed for designation as an ACEC and the North River is presently the State's pilot project under the Scenic Rivers Act. These rivers have also just recently been designated as a National Natural Landmark by the U. S. Department of Interior and will be monitored each year to insure that they maintain the character appropriate for this highly desirable designation of national significance.

   Marshfield has had extensive experience with land-based sand and gravel mining and the problems associated with it. It is hardly conceivable that these operations when transfered to the marine environment will not have significant adverse impacts which would cause considerable controversy. I would suggest that this section of the CZM Plan be subject to a more rigorous review and that more stringent approval criteria be developed with regard to potential operations. The CZM decision to "accommodate" these operations at this point in time, given existing inadequate information regarding potential impacts, should be modified.

   Finally, I should like to encourage the CZM staff to investigate more thoroughly the potential to create wetlands using dredge spoil material. I only found a one sentence reference to this potential and in my judgment, it deserves far more consideration as a possible answer to some of our real problems associated with dredge spoil. The Dredged Material Research Program being conducted at the U. S. Army Engineer Waterway Experiment Station in Vicksburg, Mississippi has presented encouraging results in this area and I feel these should be given more exposure in the CZM document.

My comments in this letter are of a general nature and designed to present my overall feelings about major areas of consideration. I also have some minor points which I will raise at the South Shore Citizens Advisory Committee meeting on September 15, 1977.

In closing, I feel the CZM Plan as developed is responsive to the needs of the general public, both inland and coastal, as well as

recognizing the needs and desires of special interest groups who may find themselves in conflict in this vital area. I hope my suggestions on the Plan will be incorporated, and I would urge U. S. Secretary of Commerce Kreps to approve the Plan.

Very truly yours,

William C. Finn
Chairman

wcf/jr

RECEIVED

SEP 19 1977

COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

TOWN OF MARSHFIELD

COMMONWEALTH OF MASSACHUSETTS 02050

OFFICE OF THE
PLANNING BOARD

September 12, 1977

Mr. S. Russell Sylva
Director
Coastal Zone Management
100 Cambridge Street
Boston, Massachusetts 02202

Subject: Massachusetts Coastal Zone Management Program

Dear Russell:

As a member of the South Shore Citizen Advisory Committee and the Marshfield Planning Board, I should like briefly to commend the CZM Staff on the final Coastal Zone Management Program. In particular, I do want to note the excellent work of Margaret Reynolds who worked very well for and with our group -- a group somewhat cynical and suspicious of this State effort.

The CZM Staff have managed, via the networking system, the Memoranda of Understanding, and the using of existing laws and agencies, to produce a comprehensive plan without creating another layer of bureaucracy. It fits into the State's efforts to streamline the permit process. The Plan recognizes the tradition of strong local government, but has also deftly balanced the local issue with regional and State concerns. It provides the beginnings of a rational approach to issues that cannot be isolated, or are confined, by town boundaries.

While I have personally been opposed to any new legislation or an expanded and/or additional layer of government, I do have some reservations about the workability of the MOU's, particularly with the E. F. S.C. It appears that federal consistency is mandated by the Federal CZM Act but within state government only the unenforceable MOU's provide the means for consistency with the CZM Plan. At this time, though, I am willing to support the concept of MOU's, but I would suggest that within two years after implementation begins that an evaluation be done on the actual effectiveness of the MOU method.

Very truly yours,

Marguerite H. Morris
Vice-Chairman

mm/jp

Copy to Margaret Reynolds

68

TOWN OF MATTAPOISETT

MASSACHUSETTS 02739

OFFICE OF THE SELECTMEN

December 14, 1977

Office of Coastal Zone Management
NOAA
ATTN: Ms. Kathryn Cousins
Room 3280
33 Whitehaven Street N.W.
Washington, D.C.

Dear Ms. Cousins:

The Board of Selectmen feels that the draft Massachusetts Coastal Zone Management Plan and the Environmental Impact Statement present a significant step towards insuring effective management of coastal zone resources. Implementation of the plan, as proposed, could facilitate orderly economic growth, and prevent degradation of the fragile coastal environment.

While the board endorses the plan in principle, we do have reservations regarding implementation. To date, we see no clearly defined mechanism for implementing the plan's goals, nor do we see any indication of the various administrative procedures which will, no doubt, follow.

We view the plan as a blueprint for our local use. If the end result involves a loss of local initiative and control, we would be 100% opposed.

We feel that the proposed plan is one step toward effective management of the coastal zone. If local communities are permitted to manage the coastal zone aggressively on a local basis, we believe the end result will be beneficial to all.

Very truly yours,
for
BOARD OF SELECTMEN

Stephen D. Lombard
Executive Secretary

cjp
CC:
Senator Rogers
Representative MacLean
Office of Environmental Affairs

SRPEDD
SOUTHEASTERN REGIONAL PLANNING AND ECONOMIC DEVELOPMENT DISTRICT
7 BARNABAS ROAD, MARION, MASSACHUSETTS 02738, Tel. (617) 748-2100

RECEIVED
NOV 15 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

November 9, 1977

Director
Office of Coastal Zone
Management
Executive Office of
Environmental Affairs
100 Cambridge Street
Boston, MA 02202

Gentlemen:

Your application for S.306 management funding was received at this office on August 30, 1977, and reviewed and commented upon by the SRPEDD Commission under the provisions of OMB Circular A-95 at the Commission meeting on September 28, 1977. It was subsequently learned that your application was approved on September 28, 1977, and so there was no opportunity for you and the funding agency to consider our comments.

In the spirit of close cooperation which has existed between your office and this agency, as evidenced by SRPEDD's coordination of the Coastal Zone Advisory Groups effort during the planning phase and by your very thoughtful and well-taken comments and questions about SRPEDD's draft 208 plan, SRPEDD hereby offers its comments for your consideration, recognizing that they can no longer be submitted as formal A-95 comments due to the disappointingly early action of the funding agency.

It has been and continues to be the concern of SRPEDD, representing the views of local elected officials who are Commission and CZAG members, that your management plan does not adequately guarantee a meaningful role for local elected officials in the CZM decision-making process. It is our belief that participation of local officials in CZM decision-making is essential to the success of the program, since it is the local officials that have major responsibility for local land use and development controls. State authority extends primarily to coastal waters and certain special or critical areas or developments, and an effective coastal management program requires a partnership between the local and the Commonwealth officials. Advisory councils without authority do not provide adequate assurance of such partnership. SRPEDD believes that local officials can be made partners in your "networking" decision-making process without creating a new layer of government and that both sides and the program would gain from this.

It is recognized that the sharing of power is never easy, but the importance of protecting and managing our coastal environment warrants major effort to overcome these difficulties.

Sincerely,

Raymond Fleurent
Chairman
SRPEDD

cc: NOAA OCZM
OSP

AVZ:RF:spg

SRPEDD
SOUTHEASTERN REGIONAL PLANNING AND ECONOMIC DEVELOPMENT DISTRICT
7 BARNABAS ROAD, MARION, MASSACHUSETTS 02738, Tel. (617) 748-2100

RECEIVED
NOV 15 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

November 9, 1977

Director
Office of Coastal Zone
Management
Executive Office of
Environmental Affairs
100 Cambridge Street
Boston, MA 02202

Gentlemen:

Your application for S.306 management funding was received at this office on August 30, 1977, and reviewed and commented upon by the SRPEDD Commission under the provisions of OMB Circular A-95 at the Commission meeting on September 28, 1977. It was subsequently learned that your application was approved on September 28, 1977, and so there was no opportunity for you and the funding agency to consider our comments.

In the spirit of close cooperation which has existed between your office and this agency, as evidenced by SRPEDD's coordination of the Coastal Zone Advisory Groups effort during the planning phase and by your very thoughtful and well-taken comments and questions about SRPEDD's draft 208 plan, SRPEDD hereby offers its comments for your consideration, recognizing that they can no longer be submitted as formal A-95 comments due to the disappointingly early action of the funding agency.

It has been and continues to be the concern of SRPEDD, representing the views of local elected officials who are Commission and CZAG members, that your management plan does not adequately guarantee a meaningful role for local elected officials in the CZM decision-making process. It is our belief that participation of local officials in CZM decision-making is essential to the success of the program, since it is the local officials that have major responsibility for local land use and development controls. State authority extends primarily to coastal waters and certain special or critical areas or developments, and an effective coastal management program requires a partnership between the local and the Commonwealth officials. Advisory councils without authority do not provide adequate assurance of such partnership. SRPEDD believes that local officials can be made partners in your "networking" decision-making process without creating a new layer of government and that both sides and the program would gain from this.

It is recognized that the sharing of power is never easy, but the importance of protecting and managing our coastal environment warrants major effort to overcome these difficulties.

Sincerely,

Raymond Fleurent
Chairman
SRPEDD

cc: NOAA OCZM
OSP

AVZ:RF:spg

Boston Redevelopment Authority

Robert F. Walsh / Director

City Hall
1 City Hall Square
Boston, Massachusetts 02201
Telephone (617) 722-4300

Doc

NOV 21 1977

Ms. Kathryn Cousins
Regional Manager, North Atlantic Region
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, NW
Washington, D. C. 20235

RE: Massachusetts Coastal Zone Management Draft
Environmental Impact Statement

Dear Ms. Cousins:

In accordance with the provisions of Section 102(2)(c) of the National Environmental Policy Act of 1969, the Boston Redevelopment Authority herewith submits its comments respecting the Draft Environmental Impact Statement on the proposed Massachusetts Coastal Zone Management Program, which has been submitted to us for review.

In general, we support the Massachusetts Coastal Zone Management Plan and feel that implementation of the Plan should help to protect and preserve our valuable coastal resources. However, there are sections of the Plan which we feel need to be addressed in the context of their effect on Boston Harbor.

Policy #17 as presented in the Plan appears to preclude all other uses except industrial development in port areas. The Port of Boston, although it serves many regional needs of the State, is also a local resource; and development must meet the needs of the City and its residential and commercial communities. In addition, Policy #17 does not appear to meet number (2)(i) of the general requirements for review of the management program which states that the Plan must provide "a clear understanding of the content of the program, especially in identifying who will be affected by the program and how". The Plan does not specify how the residential waterfront communities will be affected by Policy #17.

Our second major concern is over the wetlands areas in the Boston Harbor region, in particular, Belle Isle Marsh, Wood Island Bay Marsh, Governor's Island Cove, Pattons Cove, Savin Hill Cove and Neponset River Marsh. The wetlands constitute a delicately balanced ecosystem which can easily be destroyed. We feel that protection of these valuable areas should be emphasized more strongly by including them under the Areas of Preservation and Restoration, particularly in view of the probable increase in industrial and fuel related activities that will occur in this area.

We also feel that a greater area of Boston should be designated as a Special Assistance Development Area. Boston Harbor not only needs to be preserved, but also needs to be restored. The problems are complex since both local and regional uses must be considered, and they place so much stress on the environment. Therefore, a strong financial commitment to the area is necessary in order to successfully manage the coastal area.

We hope that our concerns for the Boston Harbor region will be taken into consideration under the Plan and are looking forward to participating in formulating more specific goals and plans for this area.

Sincerely,

Robert F. Walsh
Director

cc: Office of Coastal Zone Management
Commonwealth of Massachusetts

Board of Selectmen
Town of Provincetown
Massachusetts 02657

November 8,1977

Ms. Evelyn P. Murphy, Secretary
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Mass. 02202

Dear Madam;

The Board of Selectmen is pleased to inform you that after due consideration, and by unanimous vote last night we endorsed your Coastal Zone Management proposal.

The vote respectfully requested special initiatives on your part to secure Federal funds for planning the growth of the commercial fisheries here.

As you know, Provincetown has the longest standing of any fishing port in our country. During the past several decades our once nationally important fisheries have been dormant, but we have the talent and a des're to bring about a return of the good times. We also have just about the most magnificent, normally ice-free harbor on the Western North Atlantic Ocean.

Very truly yours;

George D. Bryant

George D. Bryant, Clerk and Member

copies to: Hon. Gerry Studds
CCPEDC

First Landing Place of the Pilgrims

1620 1970

Town of Barnstable
Conservation Commission
TOWN OFFICES 397 MAIN STREET
HYANNIS, MASS. 02601
(617) 775-1129 EX. 128-129

RECEIVED
NOV 18 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

November 17, 1977

Mr. Eric Van Loon, Director
Massachusetts Coastal Zone Management
E.O.E.A.
100 Cambridge Street
Boston, Mass. 02203

Dear Mr. Van Loon;

The Barnstable Conservation Commission has reviewed the policies proposed in the Massachusetts Coastal Zone Management Plan. The Commission was generally supportive of all the policies.

The Marine Environment Section was of special interest to the Commission. It was felt that policies 1 through 5, and 8 through 12, would encourage consistency among all E.O.E.A. agencies, as well as with the existing wetlands regulations issued under G.L. Ch. 131 sec. 40. This will make the job of Conservation Commissioners easier. Policy number 11, which supports technical assistance in developing non-structural erosion control methods is especially important to areas like Barnstable which has extensive sandy coast lines. Support for these non-structural, non-traditional approaches should save significant amounts of both public and private investment, while allowing reasonable use and protection of areas subject to dynamic forces.

Policies 7, 17, and 20 are very important to our area. They should help to revitalize the local fishing industry, one of the few industries naturally suited to the Cape.

They did feel that policy 21, relative to increasing public access through increased public transportation, be implemented by encouragement of private enterprise. The taxpayers are already picking up too much of the costs for publicly operated ventures which drive private enterprise out of the market place while operating at a loss.

One of our members was concerned that the plan might discourage structural erosion control measures to a point where people would not be able to protect existing construction. The majority felt it

Barnstable Conservation Commission

was important to discourage structural erosion control except where absolutely necessary, however.

Dissenting opinion was expressed on policy number 3. The opposition centered around the term "clustered". In Barnstable, as in many communities, there has been a long term struggle to increase lot sizes in order to provide people with a sense of space and the certainty that their lot will self-sewer and self-water. The attempt to increase lot sizes has also been an attempt to maintain the character of various communities. Should we then force people to live closer together on smaller lots in conflict to what they really want?

The Commission had one last comment on the management plan itself. It is very difficult for lay people to assimilate and properly interpret documents which utilize technical jargon so new as not to be found in standard dictionaries. "Infrastructure" is the classic example for the C.Z.M. Plan. We would suggest that such verbiage be avoided whenever possible in documents with wide public distribution.

The Barnstable Conservation Commission also discussed the somewhat controversial Cape Cod boundary question. The Commission voted, 4 to 3, to endorse the boundaries as proposed; i.e. that the entire Cape should be included in the Coastal Zone. Those in favor of the boundaries quoted water quality issues and a need for regional planning with a consistent set of regulations. Those opposed to the proposed boundaries felt that it would unfairly regulate some areas away from the coast, itself, and that the program would set up another layer of bureaucracy. They suggested that Route 6A and Route 28 be used as boundaries.

Sincerely,

Arlene Wilson

Arlene M. Wilson
Co-Chairman

cc: Richard Loring
Rep. Tom Lynch
Sen. John Aylmer

AMW/dm

Old Colony Planning Co.

Regional Planning Agency

John J. DeMarco
President
Daniel M. Crane
Executive Director

232 Main Street,
Brockton, Massachusetts, 02401
Phone 617-583-1833

November 15, 1977

Ms. Evelyn F. Murphy
Secretary
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Dear Secretary Murphy:

I would like to express the strong support of the Old Colony Planning Council for the Massachusetts Coastal Zone Management Program Plan as proposed by the Executive Office of Environmental Affairs. We feel the management plan approaches the problem of how to best manage the use of our coastal resources very effectively and sensibly through policies, actions and initiatives which can be implemented at the local, regional and state levels.

There are three Old Colony Planning Council communities that are contained within the Coastal Zone, Kingston, Pembroke and Plymouth. We are extremely interested in working with the Executive Office of Environmental Affairs and these member communities in dealing with specific problems and opportunities identified as Special Assistance Development Areas in the Plan. The Council feels it can do much to insure the continued viability of the coastal resources within these areas with the cooperation of local officials, the Executive Office of Environmental Affairs and other state agencies.

We look forward to working with you in the implementation of this program.

Very truly yours,

Daniel M. Crane
Executive Director

cc: OOPC Delegates and
Alternates from
Kingston, Pembroke, Plymouth

mapc

Metropolitan Area Planning Council
44 School Street Boston, Massachusetts 02108

Carla B. Johnston
Executive Director

(617) 523-2454

November 3, 1977

Mr. S. Russell Sylva
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

RE: Review of an Environmental Assessment Form pertaining to the adoption of a coastal zone management program for Massachusetts. (Project description Mass CZM EOEA # MAPC #EAF-78-5, Received October 18, 1977)

Dear Mr. Sylva:

In accordance with Chapter 30, Section 62 of the Massachusetts General Law, Acts of 1972, the National Environmental Protection Act, the Metropolitan Area Planning Council has reviewed the above referenced environmental assessment form.

Two issues remain to be dealt with on Coastal Zone Management (CZM). One is that citizen and local official participation and public information must operate at an escalated level in the months ahead to insure that persons' concerns about their communities are responded to prior to any implementation of the plan. In some cases this may require modification to the program. Public confusion must be alleviated over the concern for individual case reviews and balance of economic recreational and environmental needs. People need to understand how and where their concerns on these items can be part of ongoing assessment on a case-by-case basis.

It is the Council's position that the proposed management plan is consistent with the goals and objectives of the region's 208 water quality plan. Also, the management plan as proposed would assist in the implementation of the Council's 208 water quality proposals.

Further, the Council in Volume I of its Regional Open Space Plan has clearly supported all state environmental regulations that the proposed CZM plan intends to utilize as the basis of its management program.

George B. Bailey, President
Richard D. Dimes, Vice President
Robert B. Chase, Secretary
Harry A. Kelleher, Treasurer

In reviewing the prepared Environmental Assessment Form the Council cannot agree with the preparing officer that the CZM proposal requires an environmental impact statement. The CZM proposal, if anything, would serve to protect and wisely utilize the state's coastal resources. CZM is the only proposal available on coastal management: granted it needs ongoing refining - but it would be short-sighted for those of Mass. who rely on our coast in many ways to opt for no plan at all. We must begin with this and continue to correct and refine it. To require further delay and cost to prepare an environmental impact statement would be a disservice to the State's residents and coastal environment.

Comments from MAPC Representatives in coastal communities will be forthcoming.

Very truly yours,

Carla B. Johnston

Carla B. Johnston
Executive Director

CBJ/cg

cc: Mr. John T. Beagan, MAPC Representative, Ipswich
Mr. Michael F. Davis, MAPC Representative, Essex
Mr. Clayton R. Carlisle, MAPC Representative, Gloucester
Mr. Nicola A. Barletta, MAPC Representative, Rockport
Mr. Condon McDonough, MAPC Representative, Manchester
Mr. Richard St. Laurent, MAPC Representative, Beverly
Mr. Wayne P. Marquis, MAPC Representative, Danvers
Mr. W. Gregory Senko, MAPC Representative, Salem
Mr. Richard Riess, MAPC Representative, Marblehead
Mr. George B. Thomson, MAPC Representative, Swampscott
Mr. Kevin R. Geaney, MAPC Representative, Lynn
Mrs. Polly L. Bradley, MAPC Representative, Nahant
Mayor William Reinstein, MAPC Representative, Revere
Mr. Richard D. Dimes, MAPC Representative, Winthrop
Mr. Paul van Hamm Wiers, MAPC Representative, Hull
Mr. Lars Norman Lundin, MAPC Representative, Quincy
Mr. Nathan W. Bates, MAPC Representative, Cohasset
Dr. Carl E. Pipes, MAPC Representative, Scituate
Mr. Joseph Beals, MAPC Representative, Marshfield
Mr. Edmund A. Dondero, MAPC Representative, Duxbury
Mrs. Ann Connor, MAPC Representative, Hingham
Mr. Robert S. Lang, MAPC Representative, Weymouth

Continue on page three

cc: Ms. Gail Rotegard, MAPC Representative, Boston
Mayor Joel M. Pressman, MAPC Representative, Chelsea
Mr. George B. Bailey, MAPC Representative, Sharon
Mr. Joel Lerner, Division of Conservation Service
Secretary Evelyn F. Murphy, Executive Office of Environmental Affairs
Ms. Maureen Hynes, Office of State Planning

Freetown
November 15, 1977

Would like to mention that everyone has worked very hard for several years in formulating the policies which we thought would be workable for Freetown and the Mount Hope Bay Area; but before the Town of Freetown can approve the CZM Program, we would like to have all the policies translated into the regulations that will have to be enforced by our Conservation and Planning Boards. It is impossible for our Town to track down and run all over to check on the development of these regulations since we have very few full time employees.

As Chairperson of the Mount Hope Bay Coastal Zone Advisory Group, I would like to mention that only 6 - 8 people participated in our area committee and I am not sure that policies are fully supported by the general public. Development of specific regulations would help others to decide whether or not they are in favor of the program in its present form.

The Town of Freetown would like to have an impact hearing on the regulations before the CZM Program is given final federal approval. The impact hearing should be widely publicized and open to the public. This would give us a better working knowledge of how our Town will be affected by these regulations.

Once the CZM Program is approved there should also be periodic impact hearings to keep everyone abreast of any future new regulations being enforced.

Cecile J. Montplasisir
Representative for the Selectmen
of the Town of Freetown

Town of Wareham

Office of Economic Development

WAREHAM, MASSACHUSETTS 02571

Telephone (617) 295-0800, Extension 26

"In touch with our past – –Investing in our future"

November 15, 1977

Massachusetts Coastal Zone Management
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Re: Stoney Point Dike

Gentlemen:

The Town of Wareham's office of Economic Development has been actively involved in economic planning for two (2) years. During this time, projects and proposals designed to impact the economic growth of the community have, from time to time, involved our coastal zone.

This office has recently reviewed the conclusions contained in the Coastal Zone Management study. We noted with particular concern your suggestion for development of Stoney Point Dike. The development of Stoney Point Dike is not a part of any town plans and should be discouraged.

Providing land access to Stoney Point Dike by purchase of an easement to the beach would create problems of sewerage disposal and maintenance of the beach and related facilities. It would cause a financial burden to the community.

This office would oppose any recommendations to develop Stoney Point Dike.

Very truly yours,

John F. Healey,

Economic Development Director

JFH/ayh

A BICENTENNIAL COMMUNITY

TOWN OF WAREHAM

PLANNING BOARD

WAREHAM, MASS. 02571

November 15, 1977

Office of Coastal Zone Management
National Oceanic and Atmospheric Adm.
Attention: Ms. Kathryn Cousins
Room 3280
3300 Whitehaven Street, N.W.
Washington, DC 20235

Dear Ms. Cousins:

We are writing in regard to the State of Massachusetts Coastal Management Draft Environmental Impact Statement as presented in Volume II for the Buzzards Bay area.

The Wareham Planning Board is not in accord with the CZM Policy Number 22 and Number 25 for the area in the Town of Wareham. The Wareham Planning Board, at a regular meeting, voted not to endorse or approve the development of the Stoney Point Dike (Item No. 31, page 146) and the development of Long Beach (Item No. 28, page 146) as major public or State beaches.

We especially feel that the development of the Stoney Point Dike as a major State beach would not be in the best interests of the Town as a whole. The area contains many acres set aside for wildlife and the dike itself is at the end of almost two miles of narrow dirt roads through private property; thus construction of cosiderable public ways would be required through this area of fragile woodlands.

Stoney Point Dike itself is actually a breakwater composed of large rocks and dredge sands which is not a particularly good beach nor does it lend itself to being developed into a beach because of its configuration. One side cannot be used since large rocks line it on the Canal side where currents are strong. The dike is used by boaters who go there to swim and picnic. However, Wareham has a total of approximately 56 miles of beach and shorefront so if public beach development is contemplated, much more easily developed land area could probably be found in Wareham.

(continued)

It should be pointed out that the Wareham Master Plan of 1964, which is still in use, set aside the Stoney Point Dike area plus all the marsh land in town as "Open Space." It is significant that the Stoney Point Dike is the only solid land not marsh in Town that was thought should be included with the fragile saltmarshes as Open Space.

We feel that the development of a major public beach on the Stoney Point Dike would be very poor planning indeed and not in the best interests of the townspeople.

Very truly yours,

Robert F. Packard

Robert F. Packard, Chairman
Wareham Planning Board

'ARD T. HARRINGTON THOMAS R. PENNYPACKER II THORNE W. CAMPBELL, JR.

OF CHATHAM INCORPORATED JUNE 11 1712 MASS.

ETH:mcm

Town of Chatham

office of the

Selectmen and Assessors

November 17, 1977

At a regular meeting held by the Board of Selectmen on Tuesday, November 15, 1977, the Board of Selectmen of the Town of Chatham voted unanimously to endorse and fully support the concept of the Coastal Zone Management Plan.

The Chatham Selectmen also strongly recommend that the boundaries of the Coastal Zone include the entire Town of Chatham.

Edward T. Harrington
Thomas R. Pennypacker II
Thorne W Campbell Jr

Board of Selectmen

BARRY H. JOHNSON, CHAIRMAN
ERNEST H. FORNI
ROBERT W. PARADY

TOWN OF BOURNE

BOARD OF SELECTMEN
24 Perry Avenue
BUZZARDS BAY, MASS. 02532
TEL. 759-4466 OR 759-4407

November 17, 1977

The town of Bourne has been actively involved in the CZM planning process for over two years. Through local and regional CZM meetings, strong representation on the regional CZM Advisory Committee, and direct involvement in the Cape Cod Planning and Economic Development Commission, we have had an opportunity to review the plan development and contribute to its final outcome. The open planning process has enabled the town of Bourne and the Massachusetts CZM Program to recognize and respond to individual problems and goals.

In addition to the planning and coordination goals of CZM, the program has offered valuable technical assistance to the town. This assistance has contributed to economic development, in the area of the proposed town marina, and to recreation and conservation planning in downtown Buzzards Bay, as well as to direct assistance to the Conservation Commission. Towns such as Bourne often need an expert opinion on a particular project. Frequently the advice is necessary to comply with state guidelines or regulations. Having direct access to a scientist, planner, or engineer helps to insure appropriate action early in the project. As awareness of the need for planned development grows, this technical assistance will become increasingly important.

Much discussion has taken place concerning the CZM boundary on Cape Cod. We agree with the concept that the Cape is essentially a "coastal zone" with strong ties between inland and coastal resources, and between our resources and our economy. Technical assistance and planned resource use is important everywhere in our town. For these reasons, we would like to see all of the town of Bourne included in the coastal zone at this point. We make this recommendation with two strong caveats:

1. That the CZM Advisory Committee to the Cape Cod Planning and Economic Development Commission and the Commission, itself, play a strong and recognized role in the implementation of the Coastal Zone Management Program.
2. That a mechansim for reduction of the boundary to that being used in other areas of the state be established in the event that communities find the larger boundary unnecessary or inappropriate.

The goals of Coastal Zone Management are important for Massachusetts and Cape Cod. Coordination of our numerous environmental regulatory agencies, planned use of both natural and developed areas, streamling of the state permitting process, and technical assistance to communities are appropriate and important. CZM has presented an opportunity to carry out these goals. Through active local and regional participation in the program, we on Cape Cod can make CZM a plan that will support and encourage much necessary and appropriate activity in our towns.

Respectfully submitted,
BOARD OF SELECTMEN

Barry H. Johnson, Chm.

TOWN OF HARWICH

Office of Selectmen • Assessors • Board of Health

Donn B. Griffin Barry A. Hemeon Haden G. Greenhalgh

HARWICH, MASSACHUSETTS

November 17, 1977

Ms. Kathryn Cousins
Office of Coastal Zone Management
3300 Whitehave Street
N.W., Washington, D.C. 20235

Dear Ms. Cousins:

The Harwich Board of Selectmen, after consultation with representatives of our Planning Board, Conservation Commission and Coastal Zone Management Advisory members, is of the opinion that the proposed coastal zone for Barnstable County should be greatly modified.

Our suggestions and reasons for modifications are outlined in the enclosed letter which will be sent to the other 14 towns in Barnstable County.

Selectmen of Harwich

BAH/ b
Enclosure

Board of Selectmen
Town of_____

Dear_____

As I am sure you are aware, the CZM Citizens Advisory Committee is scheduled to reconsider the question of the boundaries of the Coastal Zone at its next meeting on December 6, 1977. As matters now stand, the boundary was established by a previous vote of the Citizens Advisory Committee to include all of Barnstable County within the Coastal Zone.

We cannot too strongly emphasize the importance of the vote to reconsider the boundary of the Coastal Zone. Its effect upon the future of the Cape is potentially enormous. Arguments have been advanced indicating that the Coastal Zone Program will not adversely affect local control over the land within the boundary of the Coastal Zone because the Program does not involve any new or amendatory legislation. Such arguments ignore the fact that the Secretary of Environmental Affairs has regulation making powers under the Program. Furthermore, it fails to take into account the fact that through a series of Agreements (called Memoranda of Understanding) the boundaries formulated in the Coastal Zone Management Program are supposed to be binding upon all State Regulatory Permit Granting and Funding Agencies. As you may know, the Town of Harwich has already had occasion to run afoul of one of these policies which almost cost the Town a Federal Grant. Finally, it should be noted that the brochure for the formal hearings prepared by the Coastal Zone officials explicitly states that nothing in the Program precludes additional legislation in the future if necessary.

The Coastal Zone Management Program is very complex and difficult of understanding. We would suggest that few outside of the Program have a solid working knowledge of its intricacies. Therefore, it is difficult, if not impossible, to predict the precise effects of the Program on the land within its boundary. If the mechanics of the Program should prove to have a detrimental or adverse effect in the future, it will be most difficult to remove any portion of the Cape previously included within its boundary.

Our representative on the Citizens Advisory Committee intends to propose that a minimum boundary be established to include all land within the One Hundred (100) Year Flood Plain situated coastward of the Coastal Highways (Route 28 and Route 6A). The proposal would further give each town the option of including any additional land in that town which the town, itself, wished to include. As a result, while the Coastal Zone

boundary for the Town of Harwich would include only the areas within the One Hundred (100) Year Flood Plain situated coastward of the Coastal Roads, the Town of Barnstable, for example, would, if it so desired, be free to include the entire Town or any portion thereof within the Coastal Zone boundary, provided, only, that the boundary could not exclude the land in the One Hundred (100) Year Flood Plain situated coastward of the Coastal Roads.

We would, of course, be willing to entertain other proposals. Although we believe we have considered all possible proposals for the boundary of the Coastal Zone and we believe that the boundary which we have suggested is the most compatible with the intent of the Coastal Zone Management Program, as well as the one which is most consistent with the concept of Home Rule. For these reasons, we would request your support through your representative to the Citizens Advisory Committee for the proposal which our representative intends to submit.

Yours truly,

THE MARTHA'S VINEYARD COMMISSION

BOX 1447
OAK BLUFFS
MASSACHUSETTS
02557
617-693-3453

DATE: November 17, 1977

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

SUBJECT: STATE OF MASSACHUSETTS, COASTAL MANAGEMENT DRAFT ENVIRONMENTAL IMPACT STATEMENT: STATEMENT ENTERED INTO THE NOVEMBER 17, 1977 HEARING RECORD

REFERENCE: (a) Massachusetts Coastal Zone Management Program (two volumes, addendum, supplementary documents, and related news releases)

NOTE: Reference herein to page numbers is applicable to Volume 1 dated March 18, 1977 and released July 22, 1977

S T A T E M E N T

The Martha's Vineyard Commission supports the policies of the Massachusetts Coastal Zone Management Program. The Martha's Vineyard Commission as well as the Island's six towns have dealt in a concerned and systematic way with implementing state wetlands laws and have further formulated local and regional regulations and policies promoting effective coastal zone management. Since the formation of the Martha's Vineyard Commission in December 1974 the Massachusetts Coastal Zone Management Program has been supportive of our activities to consolidate a regional coastal district with special regulations. The program has also supported our efforts to incorporate economic concerns within our regulations and review of developments of regional impact. Fishery management programs have also been developed with the assistance of the Office of Coastal Zone Management.

Since Martha's Vineyard is an Island, the focus on coastal concerns is especially important to us. Local conditions are usually of a special nature and the specific actions to be derived from the general policies should, to be acceptable and effective, be initiated and managed locally. Indeed on page b-69, reference to the Coastal Zone Management Questionnaire, "...(whether)... a state agency should have the power to stop shipping/commercial development..." "72% said the state should not". We are a part of that "72%" and feel that the Coastal Zone Management policies should emphasize local control. Further, on page b-71, again

referencing the Questionnaire, the largest number of respondents (45%) "...choose improve water quality in the coastal zone first..." Also, on page c-8 & c-9 of Volume 1, several agencies expressed concern that "...water quality planning activities had not been sufficiently considered.". Although some additional address has been made we still find water quality considerations incomplete. The new policy (#3) emphasizes the relationship between Coastal Zone Management and the 208 Water Quality Program. While this is important, the policy fails to specifically include other water quality considerations. For example, the south coast of Massachusetts including the Cape and Islands are particularly subject to day-to-day pollution from off-shore exploration and production activities. Policy 33, therefore, should be revised or a specific policy formulated that addresses this source of pollution and the interagency coordination required for its solution. On page c-10A of Volume 1, "...concerns were expressed...with respect to the concept and viability of 'networking' as a management scheme." "...reliance on MOU's..." "...duplication of technical assistance and activities...". These seem to us to be valid questions and concerns requiring complete analysis.

In view of our concern about local control and implementation, the stated funding allocation which designates one-third of the federal funds for the Executive Office of Environmental Affairs needs review. First, if the proposed policies are implemented at the local level, as we think they should be, then this is where nearly all of the funds should go. Second, the determination of needs must be carried out locally to be meaningful. Third, there is no reason why local agencies (e.g. RPA's) can not provide or contract for any needed technical expertise. Unfortunately similar programs have seen too much of the federal funding allocation go into state level administration and too little reach the communities. For a program such as Coastal Zone Management, it would seem that the necessary administration and technical assistance at the state level would be amply supported with a small percentage of the funding.

In summary, the Martha's Vineyard Commission supports the ~~basic~~ policies of the Coastal Zone Management Program but believes that the concerns expressed above need to be dealt with and the policies modified accordingly. Locally developed and administered, the Coastal Zone Management Program adds importantly to the tools we can use to protect and preserve our coastal lands and waters.

George H. Mathiesen, Chairman

TOWN OF TISBURY

Office of

PLANNING BOARD

VINEYARD HAVEN, MASSACHUSETTS

DATE: November 17, 1977

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

SUBJECT: STATE OF MASSACHUSETTS, COASTAL MANAGEMENT DRAFT ENVIRONMENTAL IMPACT STATEMENT; STATEMENT ENTERED INTO THE NOVEMBER 17, 1977 HEARING RECORD

REFERENCE: (a) Massachusetts Coastal Zone Management Program (Two volumes, addendum, supplementary documents, and related news releases)

NOTE: Reference herein to page numbers, is applicable to Volume I dated March 18, 1977 and released July 22, 1977.

STATEMENT

The Tisbury Planning Board supports the Coastal Zone Management Program and the basic aims and objectives set forth by the proposed Massachusetts Policies.

Certain areas of the Massachusetts policy expression require further attention. We agree with the following issues and concerns raised in the statement from the Martha's Vineyard Commission:

page b-69 "...(whether)...a state agency should have the power to stop shipping/commercial development..." "72% said the state should not"

We are a part of that "72%" and feel that the CZM policies should emphasize local control.

page b-71 The largest number of respondents (45%) "...chose improve water quality in the coastal zone first..." Also, on page c-8 and c-9, several agencies expressed concern that "...water quality planning activities

had not been sufficiently considered..."

Although some additional address has been made, we still find water quality considerations incomplete. The new policy (#3) emphasizes the relationship between CZM and the 208 Water Quality Program. While this is important, the policy fails to specifically include other water quality considerations. For example, since the South coast, the Cape and the Islands are particularly subject to day to day pollution from off-shore exploration and production activities, policy 33 should be revised or a specific policy on meeting this source of pollution together with addressing interagency coordination problems is clearly indicated.

The success of the program will depend almost entirely on whether or not it is funded and administered locally. Any new regulations should be developed and applied at the local (town) level. State level staffing, funding and participation should be a bare minimum -- only that necessary to effect, when necessary, an interchange of information concerning local area activities. The local level is quite capable of doing its own research, planning, regulation development, administration and enforcement. Such specialized expertise as may from time to time be required is more efficiently contracted for on a need basis.

For a change, we would like to see nearly all of the Federal funding actually reach the towns.

By direction,

Carol E. Lashnits

Carol E. Lashnits
Clerk of the Board

BOARD OF SELECTMEN & ASSESSORS
TRURO, MASS. 02666
TEL. 349-3635

November 17, 1977

Eric E. Van Loon, Director
Coastal Zone Management
100 Cambridge Street
Boston, Massachusetts

Dear Mr. Van Loon:

In my capacity, representing those who share my philosophy, recognize the importance of our environment. Our history, reflecting our actions in the areas of zoning, conservation and planning, must prove to you that our major concern is the protection of our precious national resources, not only for ourselves, and our children, but also for all those who follow.

The rights of Home Rule, allowing citizens of small communities the privilege to govern and shape their destinies, are held very dear to us.

We have, therefore, looked upon the advent of CZM with both hope and fear. Hope, that it will afford the protection from disorderly development. Fear, that one more segment of Home Rule will be eroded.

We, on the Lower Cape, have been enveloped by the National Seashore Park; not always to our own benefit, but at least to the common good. The most important facet of the National Park Service, we believe, was the establishment of the National Park Advisory Commission, recognized by the Department of the Interior as having one of the most important functions and recently continued by special legislation.

The Advisory Commission is a two-way sounding board; accepting requests by us to the Park and returning to us their reactions and information. They are important, respected and they are heard.

(2.)

The inclusion of a strong local advisory board in the CZM program would reassure us that our thoughts will be received, reviewed and accepted or denied on their merits. Needless to say this would be of utmost importance to us.

We recognize that the program must be a changing and flexible one. Both new problems and new ways of addressing those problems will occur. Development must take place in Cape towns, and the most appropriate form of that development will require updated response on both local and state levels.

Continued regional participation in the implementation of the program and in its future direction must be recognized. An open exchange between state and local administrators will help to insure that the program will remain responsive to local needs and practical in addressing problems. As the program begins to function, changes will be inevitable. The CZM Advisory Committee to the Cape Cod Planning and Economic Development Commission must be our voice for monitoring of the management phase of CZM.

In Truro, we recognize the interrelatedness of inland and coastal resources. Water systems, recreation areas, and economic impacts are tied together in a narrow strip here and in other Cape towns. We, therefore, suggest that all of Cape Cod be included in the coastal zone boundary.

This program gives us an opportunity to work with surrounding towns and with state agencies to develop a coordinated and responsive planning process for our resources. We urge that all towns make use of this opportunity to use the CZM process to its greatest advantage on Cape Cod.

Very truly yours,

Bruce T. Tarvers

BTT:tm

Orleans Statement for CZM Formal Hearing

November 17, 1977

The Orleans CZM Advisory Committee is in favor of a coastal zone management plan. This committee voted to include all of Orleans as a critical area. One third of the total area is salt water and the remaining two thirds land area is protected by wetlands restrictions.

We agree with the original position of the Cape Cod Advisory Committee that all of the Cape be included in the Coastal Zone Management Act since the Cape is a single ecological unit. Rivers connect the inland with the sea and it would be impossible to define sections of the Cape which do not affect one another.

This committee recognizes the need for improvement of existing state regulations. To date the staff has assured us that this is their concern, not to add new regulations. However, if the Coastal Zone Management Act will, in the future, implement new laws which may further erode cooperation between state and towns, we ask for public participation before any action is taken.

We are concerned that some of our questions are still not answered. Will CZM protect all of the Cape when drilling off the Georges Bank begins. Can we be assured that each town will know in advance of any use which may be made to accomodate the oil industry, so that each town will be part of the decision making process. There is a memorandum of understanding between the Energy Facility Siting Council and CZM. Both agencies will be responsible for approving energy facilities. We look to CZM to protect the environment.

We appreciate the efforts made by both the Regional and the State professional staff to meet with us so many times. We trust they will continue to support local zoning restrictions which will preserve this valuable part of the coast.

WALTER E. MORGAN, JR.
CHAIRMAN ORLEANS CITIZENS ADVISORY COMMITTEE

HERBERT F. WILCOX

ROBERT R. PENO, JR.

ORLEANS BOARD OF SELECTMEN

Cyril J. Patrick
216 Bradford St.
Provincetown, Ma.02657

Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Mass.

Dear Sir,

On November 7, 1977 by unanimous vote of the Provincetown Board of Selectmen, Provincetown voted to support the entire concept of Coastal Management.

The Coastal Zone Management advisory committee on December 6, 1977 will be debating if the entire Cape Cod regional should be included in the proposed zone. I personally feel that the original zone should be established intact since primary studies imply that our ground water supplies are all inter-connected throughout Cape Cod.

Further, I generally endorse the policies and aims of the Massachusetts Coastal Zone Management concept with emphasis on the widely held principle of home rule. The Cape and Island residents best understand the resources and potential conflicts in their individual towns but regional problems should be handled through agreement between communities.

In the last two years the Massachusetts Coastal Zone Management assisted twelve out of fifteen Cape Cod Communities on local problems with no interference by the Massachusetts Department of Environmental Affairs. This procedure has been very effective and will continue when the Coastal Zone Management concept is promulgated.

Sincerely yours,

Cyril J. Patrick

TOWN OF CHATHAM INCORPORATED JUNE 11 1712 MASS.

Town of Chatham

Conservation Commission

17 November 1977

Coastal Zone Management
Washington, D.C.

The Chatham Conservation Commission wholeheartedly supports the concept and policies of the CZM program as prepared for Cape Cod. We have worked closely with other members of the Advisory Committee in the best interests of the Cape as a whole.

This is the first time that coordination of the many agencies concerned with coastal development and preservation will be possible. Sound management of the coastal areas may now be provided through improved administration of the EOEA agencies under existing Massachusetts laws.

Cape Cod towns have had a growing need for technical and legal assistance which neither the Commonwealth nor the Towns have been able or willing to fulfill. The rapid growth on the Cape makes it emperative that we have such assistance.

There are many coastal studies, such as the dangers at Chatham Bar and the impact and control of OCS oil and gas activities, which are needed for the economic well-being of Cape Cod communities.

The Cape is a small ecological unit which at last is being considered as a whole. The program must not be cut down nor divided in any way. Ecology knows no town boundaries. We urge approval of the CZM program as presented in Vols, I and II.

Alice C. Hiscock, chairman

Town of Mashpee
SELECTMEN'S OFFICE
MAIN STREET
MASHPEE, MA 02649
477-0222

KEVIN D. O'CONNELL
477-0222
GEORGE A. BENWAY, JR
477-1208
ROBERT A. MAXIM
477-0222
FRANK E. HICKS
EXECUTIVE SECRETARY

(18)

November 16, 1977

STATEMENT FROM TOWN OF MASHPEE BOARD OF SELECTMEN

To: Federal Sub-Committee on Hearings of The Coastal Zone Management Program

Gentlemen:

In recent years, the Cape has been on a steadily increasing growth rate. There has not been enough logistical control to provide a barrier for unwarranted growth. Coastal Zone Management can provide this balance. The Coastal Zone Management Advisory Committee can provide the guidelines to necessitate this type of control. These people, all of local communities, have put approximately two years into the development leading to acceptance by the Federal Government. It is this feeling that they convey to us that Coastal Zone Management will work.

We, as Selectmen of the Town of Mashpee, have a great concern for the maintenance of local control. Although it has been addressed, a reaffirmation of the home rule process should be completed. This control should not be negated in any way in order to provide citizen input.

We agree with the boundary lines that have been established for the good of all citizens of Cape Cod. After all, it was the citizens' committee who designated these same boundaries. To have a Coastal Zone Management Program without the fragmentation and inadequacies which now exist in our State policies, an over-all boundary is necessary.

The Citizens' Advisory Committee has found that many laws are contradictory from agency to agency relating to conservation, development, wetlands, hazardous materials, etc. Hopefully, Coastal Zone Management will rectify this problem.

It is difficult to accept this plan because of its over-ranging complexity, but if the Coastal Zone Management Citizens' Advisory Committee remains in existence to oversee the operation of the Coastal Zone Management Program, the problems of acceptance would be minimized.

.../2

We thank you for affording us the opportunity to speak before this Committee and make known the hopes, as well as the fears, on the local level.

Respectfully,

Kevin D. O'Connell, Chairman

George A. Benway, Jr.

Robert A. Maxim
BOARD OF SELECTMEN

BOS/mf

STATEMENT

November 17, 1977

My name is Burke Limeburner and I am submitting this statement on behalf of the Barnstable County Shellfish Advisory Committee. The Committee consist of the Shellfish Officers from the 15 Towns of Cape Cod. The main objective of this Committee is to improve and protect the shellfish resources throughout the County. One of our major concerns is the continuing pollution of our waterways and shellfish resources. It is our view that the CZM Plan of which we have had a voice in, will be a great asset towards improving the shellfish resources. We therefor wish to go on record as being in full support of the CZM Plan.

Burke R. Limeburner
Barnstable Shellfish Advisory Committee

MAILGRAM SERVICE CENTER
MIDDLETOWN, VA. 22645

western union Mailgram

2-015247E320 11/16/77 ICS IPMMTZZ CSP BSNB
6176274033 MGM TDMT EDGARTOWN MA 196 11-16 1021A EST

RECEIVED

MS EVELYN F MURPHY, SECRETARY
EXECUTIVE OFICE OF ENVIRONMENTAL AFFAIRS
COASTAL ZONE MANAGEMEN PROGRAM CARE CAPE COD
REGIONAL TECHNICAL HIGH SCHOOL
HARWICH MA 02645

87

THIS BOARD WISHES TO GO ON RECORD AS BEING VEHEMENTLY OPPOSED TO THE COASTAL ZONE MANAGEMENT PROGRAM. WE COMPLETELY ENDORSE THE COMMENTS OF THE GREATER BOSTON CHAMBER OF COMMERCE PARTICULARLY WITH ITEM NUMBER 2. THIS PROGRAM IS ANOTHER MEANS FOR THE STATE TO USURP LOCAL AUTHORITY AND LOCAL CONTROL OF THE DEVELOPMENT OF OUR COASTAL AREAS. WE FEEL THAT THE STATE IS ONCE AGAIN INFRINGING ON OUR RIGHT OF HOME RULE BY PERMITTING THE SECRETARY OF ENVIRONMENTAL AFFAIRS TO EXERCISE VETO POWER OVER MAJOR DEVELOPMENTS, FEDERAL GRANTS AND PUBLIC SERVICE INVESTMENTS. SINCE YOU HAVE PLACED THE ENTIRE ISLAND WITHIN THE PROGRAM, YOU HAVE GIVEN THE SECRETARY OF ENVIRONMENTAL AFFAIRS THE VETO POWER OVER ANY MAJOR DEVELOPMENT OR PUBLIC SERVICE WHICH MIGHT BE BENEFICIAL TO OUR ECONOMY. BY DOING THIS YOU WILL BE TAKING AWAY THE COMMUNITY'S RIGHT TO DETERMINE THEIR OWN ECONOMIC FUTURE. YOUR VERY CAREFUL CONSIDERATION OF OUR OBJECTION WILL BE APPRECIATED

BOARD OF SELECTMEN
TOWN OF EDGARTOWN
FRED B MORGAN JR, CHAIRMAN
LAURENCE A MERCIER
ROBERT R WALLER

10:21 EST

MGMCOMP MGM

Telephone 1-617-636-8822

TOWN OF WESTPORT
MASSACHUSETTS 02790

BOARD OF SELECTMEN

November 14, 1977

Mr. Richard O'Connor
Office of Coastal Zone Management
330 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. O'Connor:

This is in reference to the "State of Massachusetts Coastal Management Draft Environmental Impact Statement", and your request for comments thereon.

We who live in seacoast town which is growing much too rapidly are most concerned over possible growth affects of a coastal zone program managed by unfamiliar persons sixty miles away in Boston. We are situated exactly between two of the largest cities in Massachusetts and have watched our beautiful open spaces and farms become suburbanized and our natural resources rapidly deteriorate due to increased usage.

The state has repeatedly admitted, as in the case of fisheries and contamination, that it is incapable of exercising direct control, that necessary control cannot be exercised from Boston. Furthermore, we feel that state officials are not and cannot be as familiar or knowledgeable of our local conditions and problems as community officials.

Also, since local officials according to state law, currently exercise control over most of the major aspect of the coastal zone program, such as land use, sanitary conditions, water quality, zoning, flood control, shellfishing, oversee building permits, and conservation matters, it would appear that implementation of a coastal zone management plan must include local officials in the management phase, and not just in an advisory capacity as recommended in the draft plan.

It is, therefore, STRONGLY urged that this plan only be approved if local (town and city) officials are included in the management plan. Such participation could be established by the formation of Coastal Zone Management Councils or Districts, in lieu of Advisory Councils, consisting of memebers from several adjacent communities. Such Councils and Districts would approve and implement federal, state and community coastal programs on the local level.

Your cooperation in effecting this change in the Massachusetts plan would prove highly beneficial and help to insure success of the program.

Very truly yours,

Board of Selectmen

BS:hmm
cc: Governor M. Dukakis
Senator E. Brooke
Senator E. Kennedy
Rep. M. Heckler
Rep. J. Long (State)
Evelyn F. Murphy

TOWN OF WAREHAM

Board of Selectmen

EDGAR C. GADBOIS
Town Administrator

Wareham, Mass. 02571
TELEPHONE 295-0800 EXT. 10 & 11

CARLETON D. HAMMOND, JR.
Chairman
JANE BEATON
Clerk
CLAIRE J. MC WILLIAMS
DANIEL P. O'CONNELL, JR.
RICHARD W. POST, JR.

3 October 1977

The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
COASTAL ZONE MANAGEMENT
100 Cambridge Street
Boston, MA 02202

Attention: Mr. Mark Kaufman

Gentlemen:

The Board of Selectmen, as well as the Marine Resources Commission, have voted unanimously to recommend that a shift in emphasis for public access be directed away from the relatively inaccessible areas of Stony Point Dike and Long Beach to the public beaches in the Onset area.

Thank you for your interest.

Very truly yours,

JANE BEATON, Selectman, and
Representative to Marine Resources Commission

JB:clj

Cc: Charles N. Decas, Representative

TOWN OF WAREHAM
BOARD OF HEALTH

BOARD — 295-0807
AGENT — 295-2366

WAREHAM, MASSACHUSETTS Nov. 21, 1977

Mr. Mark Kaufman
Mass. Coastal Zoning Management
Executive Office of Environmental Affairs
100 Cambridge St., Boston, Mass. 02202

Dear Sir:

The Wareham Board of Health, after due deliberation of the proposals contained in Volume II of the CZM Program, which would provide land access to Long Neck Beach and Stoney Point Dike and develop the latter as a public beach, herewith states that it is unanimously opposed to the entire project, not only because of the potential impact on the existing environment but also on the wildlife that inhabits these areas.

Due to the wetland areas and the high tides which overflow these areas any proper sewage installations would be remote or non-existant. Human wastes can carry typhoid bacteria and the pollution of the waters and nearby shellfish beds from this and hepatitis is a matter of concern to us as a Board of Health.

Therefore, we strongly urge you to seriously weigh the possible detrimental consequences of this project against any undertaking to satisfy economic development as such.

We are very much opposed to this proposal as outlined in your program for the above reasons stated and hope you will consider the overall impact this project could have on the Town of Wareham.

Yours very truly,
John A. Kelenosy
John A. Kelenosy, Chrm.
Board of Health

cc: various boards

TOWN OF WAREHAM

Board of Selectmen

EDGAR C. GADBOIS
Town Administrator

Wareham, Mass. 02571
TELEPHONE 295-0800 EXT. 10 & 11

CARLETON D. HAMMOND, JR.
Chairman
JANE BEATON
Clerk
CLAIRE J. MC WILLIAMS
DANIEL P. O'CONNELL, JR.
RICHARD W. POST, JR.

November 17, 1977

Ms. Kathryn Cousins
Office of Coastal Zone Management
3300 Whitehaven Street N. W.
Washington, D. C., 20235

Dear Ms. Cousins:

From the meeting of November 16, 1977 of the Board of Selectmen of the Town of Wareham, Massachusetts, regarding Coastal Zone Management, the following Motions, as presented by Selectman Jane Beaton were unanimously voted.

MOTION I

"After much discussion and deliberation it appears that The Board of Selectmen are unanimous in accepting my motion that a letter from this Board be directed to The Massachusetts Coastal Zone Management, Executive Office of Environmental Affairs, 100 Cambridge Street, Boston, MA., 02201 stating that it is our request that Long Beach be deleted from Chapter 5 Vol. II of 2, Pg. 146, Item 28."

MOTION II

"I move that the Board inform the CZM that in the interest of the Town it would be unwise to consider opening up Stoney Point Dike as a public beach accessible by land.

The cost of acquiring land and the building of a road and parking places would be prohibitive in this high value real estate area.

We have a 90 acre Shellfish Grant beside this land which would be threatened. The land is a breeding ground for sea birds and this situation could not continue if the Dike were opened - further, the actual beach area of the Dike cannot be more than 25% of the whole, which is now enjoyed by the boating public to capacity. There are no facilities for the drainage of sewerage or other waste."

Your attention to these Motions are of the utmost interest to our TAX PAYERS.

Very truly yours,

Carleton D. Hammond, Jr.
Jane Beaton
Claire J. McWilliams
Daniel O'Connell
Richard W. Post

BOARD OF SELECTMEN

TOWN OF WAREHAM
MASSACHUSETTS

Statement of Clara M. Yeomans, Executive Secretary, Quincy Conservation Commission
Made at Public Hearing held by Massachusetts Coastal Zone Management on 11/22/77.

The program we have before us is the result of 3 years of work which has included coastal municipalities and citizens. In my own city of Quincy the planning department was involved in the formulation of the plan and in working with CZM the planning department paid due heed to all the interests of Quincy most certainly communicating with the Chamber of Commerce among others. We of the Conservation Commission intend to make sure that we retain our local regulatory powers which protect our most valuable natural resource, the salt marshes, and also help us to control our flooding problems which are considerable in Quincy. Concerning public involvement in the CZM program, we in Quincy would opt for a citizen's advisory council separate from Boston.

Page 16 of Volume I of the Massachusetts CZM program states: "Coastal Zone Management improvements will require a new era of cooperation and communication among local, state and federal government, and the many interests and users of the Massachusetts Coast."

I read in the Draft Environmental Impact Statement that: "Approval would permit implementation grants to be awarded to the state, and require that federal actions be consistent with the program." These are very important gains.

Also, "approval and implementation of the program will allow the state to better coordinate and more effectively implement existing state authorities for management of its coastal zone. The state will condition, restrict, or prohibit land and water uses in some parts of the Massachusetts coast while encouraging development in other parts. Each coastal municipality will retain primary responsibility for managing land use along its coast."

The plan designates Significant Resource Areas (SRA's) both economic and recreational.

C. M. Yeomans, Quincy
Re: CZM 11/22/77

The CZM program will follow the state's policies to guide activities on the coast among which:

Port and harbor development is protected.

Urban waterfront development is encouraged - residential, commercial, industrial.

Accommodation is made for exploration, development and production of off-shore oil.

Decisions now in local hands will remain there; decisions in state agency hands will remain there, with the Coastal Zone Program for guidance.

The key questions to approval of the Massachusetts CZM plan as stated in the Draft EIS are:

Whether the Massachusetts program is consistent with the objectives and policies of the national legislation;

Whether the award of federal funds under Section 306 of the Federal Act will help Massachusetts to meet those objectives;

Whether state management authorities are adequate to implement the state program, and

Whether there will be a net environmental gain as a result of the program and implementation.

I say yes, and concerning the last, "whether there will be a net environmental gain," I would add there will also be an economic gain to development, commerce, and industry.

I would think that we realize that all of the restrictions of our Massachusetts wetlands regulatory laws and federal flood insurance regulations are economically profitable. What about development that makes a costly seawall necessary. What about developments in areas prone to flooding. They don't just cost the developer and the home owner, they cost us all.

Some say we have regulations enough. So does CZM, but CZM coordinates these regulations. It is a coordinating program advocating cooperation and coordination of all interests in the use of the coastal zone.

C.M.Yeomans, Quincy
Re: CZM 11/22/77

We surely agree that cooperation in management is necessary. If development goes on indiscriminately, we will continue, all of us, to expend billions of dollars in flood control projects, we will lose millions in fisheries, we will be victims of uncontrolled growth which has made a shambles of a large portion of our coastline in the past. We will all benefit from coordination, the developer and industrialist included.

Those who believe the CZM program will mean more federal control are misinformed. The federal law states the opposite. It is stated that "Under the federal CZM Act of 1972, federal activities must be brought into compliance with state and local policies.

One main objection to acceptance of the plan is that one-step permitting has not been effected. I cannot see how work toward one-step permitting can be done until the plan is approved by the federal government. We certainly can agree that no regulations, laws, management programs, or any other activity in a democracy are inflexible. There will be opportunity for improvement after adoption of the plan. And we most certainly should all agree that there must be thoughtful and considered use of the coastal zone for the well-being of everyone concerned. Many a developer has rued the day he started work on a major project on a piece of questionable marginal land. Perhaps better knowledge of the condition of that land made possible through use of the CZM plan and expertize could have saved him money and stress.

The plan is intended to consider and coordinate all uses. It is not regulation, it is coordination and cooperation - it will serve us better than confrontation.

NEWBURY CONSERVATION COMMISSION
TOWN HALL
25 HIGH ROAD
NEWBURY, MASSACHUSETTS 01950

RECEIVED
NOV 29 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

November 28, 1977

Massachusetts Coastal Zone
Management
Executive Office of Environmental
Affairs
100 Cambridge Street
Boston, MA 02202

Re: Massachusetts Coastal Zone
Management - Draft Environmental
Impact Statement

Gentlemen:

The Conservation Commission of the Town of Newbury, Massachusetts desires to be recorded in favor of the draft environmental impact statement prepared by Massachusetts Coastal Zone Management Office.

We have reviewed the Statement and found it to be consistent with the environmental and conservation objectives of the Conservation Commission.

Very truly yours,

NEWBURY CONSERVATION COMMISSION

By: [signature]
Clerk

cc: Ms. Kathryn Cousins, Office of Coastal Zone Management, 3300 Whitehaven Street, NW, Washington, D.C. 20235

STATEMENT OF THE CITY OF BOSTON ON THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PLAN

Presented at the Public Hearing at the New England Aquarium on Tuesday, November 22, 1977.

For further information contact Lorraine M. Downey at 725-4416

CITY OF BOSTON CONSERVATION COMMISSION / ROOM 911 / CITY HALL / BOSTON, MASSACHUSETTS / 02201

My name is Lorraine Downey and I am the Executive Secretary to the Boston Conservation Commission and I would like to present the views of the City of Boston in regards to the Coastal Zone Management Plan for Massachusetts as it now stands.

The CZM Plan has many worthy goals and provides a useful vehicle for dealing with important land and water decisions. The City supports the goals of the CZM plan and the objectives and policies to protect and enhance the coastal resources of the Commonwealth. The encouragement given in the plan to the economic development and port and harbor revitalization is greatly needed in the City of Boston. It is essential to have adequate controls and safeguards to minimize environmental harm. We are encouraged by the State's efforts to evaluate coastal resources and to improve the States capability to protect those resources from uncontrolled private development and from uncoordinated public uses as well.

Attached to this statement is a letter which we received from the Director of CZM which addresses some of the concerns we have felt strongly about. We would like to see the rest of

our concerns addressed and we feel confident that they will be because they are in fact very logical as applied to this area. We have found the CZM staff very encouraging and supportive of our concerns at the present time. We admire the logic of putting together a plan which is based on existing Massachusetts law which has strong controls and safeguards to minimize environmental harm. The plan calls for using some of the money to upgrade the issuance of permits and make the whole process more expeditious and efficient. This will be a benefit to any development in the coastal zone.

We would request that the Federal Government approve the CZM Plan but with some added conditions as the plan applies to Boston Harbor.

(1) Approval should be conditional on a timetable for approval and acceptance of the regulations, in accordance with the CZM policies, which have existing legislation backing them.

(2) Approval should be conditional on designating the 6 critical salt marsh areas left in Boston as Areas for Preservation and Restoration. These areas are specifically:

(a) Belle Isle Marsh in East Boston
(b) Wood Island Bay Marsh in East Boston
(c) Governor's Island Cove in East Boston
(d) Patten's Cove in Dorchester
(e) Savin Hill Cove in Dorchester
(f) Neponset River Marsh in Dorchester

In requesting this I have been told that one of the conditions is that they are pristine areas. We admire the attempt to save "pristine areas" yet we see the "Restoration" of these six areas in Boston Harbor as very beneficial. I would further defend this designation by saying some of the 10 APR areas in other parts of the coast are not pristine. We feel we must protect the few areas in Boston with strong controls and this designation will help us.

(3) Approval should be conditional on redrafting the wording of Policy #17. The wording as it now stands, could be interpreted as excluding any uses other than industrial in a port designated area. In the City it is recognized that within some of the developed port areas there are neighborhoods with long histories; recreation and housing for these neighborhoods must be encouraged and not excluded subject to the requirements of marine related industry and commerce. We would request that the wording of this policy be changed to allow for local concerns.

(4) Approval should be conditional on expansion of Special Assistance Development Areas in Boston Harbor. Boston has a complex mixture of problems, jurisdictions, regional needs, economic needs, and local concerns, which all have to be addressed in one small area. We need all the help we can get in addressing the concerns of all parties involved. We feel that effective ways of approaching and solving these problems, and to ensure local citizen participation, could be accomplished by expanding the SADA designation in Boston to areas not designated Port or Harbor sections. Speci fically we would like to see the following SADA areas: (a) the North End Waterfront area (b) the section of Charlestown which is not

a port area and (c) the Dorchester waterfront from Columbia Point to the Quincy line.

We have one final suggestion on the plan as it now stands. The public does not seem to understand that all the policies set forth in the plan are not enforcable. We feel that the listing of policies in the plan should be changed to designate which policies have the force of existing laws and those which are discretionary.

COASTAL ZONE MANAGEMENT

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

November 21, 1977

Ms. Eugenie Beale, Chairperson
Boston Conservation Commission
City Hall - Room 959
Boston, Massachusetts 02201

Dear Ms. Beale:

Thanks very much for meeting with me to share your ideas on how the draft Coastal Zone Management Plan can be improved to better serve the needs of Boston citizens. The issues you raised are important to the entire program as well as Boston Harbor. In response to your concerns, let me outline some of the proposed changes for the final draft of the Coastal Zone Management Plan.

First, the Boston Harbor section of Volume II is being rewritten. My staff is now holding public meetings within every coastal neighborhood in the City of Boston and within each Boston Harbor city and town from Revere to Hingham. In Boston, Little City Hall managers and BRA district planners have been invited and encouraged to participate. From the comments and opinions expressed at these meetings, the Description of the Region, Policy Applications, and Map Commentary that are presented in Volume II will be revised to better document the specific problems and needs surrounding this region's coastal zone.

A second important change that has already been made within Volume II is the addition of a third Special Assistance Development Area (SADA) within the City of Boston. The Dorchester waterfront, because of both its recreation and development opportunity, has been designated an SADA. As such, this area will be given prime consideration when disbursing CZM grants as well as related state funding. As I explained during our lunch, these funds come from federal sources and will be available for distribution once full CZM implementation begins.

Third, in order to provide a comprehensive and more easily read description of the Program, Volume II of the Plan is being reorganized and shortened. The rewritten document will incorporate changes and clarifications recommended to us over the last six months of review. One such clarification that will be made is the rewording of Policy #17.

The goal of Policy #17 is to promote the redevelopment and/or expansion of marine related commerce and industry where the existing infrastructure will facilitate such development and where the environmental impact will be minimized. Specific sites within the Boston Harbor that meet this criteria will be designated "port areas." Within port areas, marine related industry will be given priority when projects involve state permits or funding, or federal funding. Other land uses such as housing and open space can occur on adjacent land parcels and will be permitted directly in port areas when no marine related industry is proposed for the site. To better reflect these ideas we propose to reword Policy #17 to read:

> Designate parts of urban waterfronts as port areas. Within these port areas, stimulate marine related commerce and industry through public investment and encourage such development through the permitting process. Grant permits for non-marine dependent projects in port areas where marine related facilities are not being actively sought and where construction of the project will not hinder the existing or proposed port activity.

The accompanying explanatory text will indicate that any activity can occur on plots where no Waterways permits are required, and that adjacent housing or parkland is appropriate.

I am pleased that these written statements addressing your concerns, combined with my luncheon explanations, will enable you to support the Plan. And I am looking forward to remaining in close contact with you and Lorraine as we continue to work out modifications and wording changes for further improvements in the final Plan. Thank you for your help and continuing close cooperation.

Sincerely,

Eric E. Van Loon
Director

EEVL:kc

November 16, 1977

From: The Scituate Board of Selectmen
Re: Coastal Zone Management Plan

I have represented the Scituate Board of Selectmen as liason to the local and state CZM Commissions for the past two years. I have tried to attend as many meetings as possible and keep the Board of Selectmen informed as the plan has progressed.

At this time the Scituate Board of Selectmen is in agreement with the concept of CZM and finds no problem with the policies outlined in the plan.

On a more personal note, I have been very impressed with the enthusiasm and cooperation of Evelyn Murphy's team. I am sure most of us have attended sessions with state and federal agencies where you felt like you were talking to a cement wall. This has not been the case with the CZM staff. They really listen to you. Not only do they listen, but they try to cooperate. So I am convinced that while this plan may not be perfect, it has been developed at the grass roots with plenty of local imput.

I have read the material distributed by the Greater Boston Chamber of Commerce and also a letter from Brockton Edison Company opposing this plan. The Brockton Edison letter indicates that passage of the CZM program would prevent them from placing utility lines in flood plains. I am really puzzled by that statement. Three years ago, while I was chairman of the Scituate Conservation Commission, Brockton Edison replaced their main power line into Scituate. This included removing all of the poles carrying this line, and replacing them with much larger poles. This work had to be carried out not only in the town's flood plain zone and areas covered by the state Wetlands Act, but the lines also went within 500 feet of our two largest and most important wells. I doubt if you could dream up a more fragile ecosystem to work in. Despite this the Commission and Brockton Edison worked so well together that we ended up sending each other complimentary letters when the job was finished.

Now if they can work that well with people on the local level, why will they have trouble working with a regional agency.

The Greater Boston Chamber of Commerce Fact Sheet says that CZM policies will restrict much of the coast from all but agricultural and conservation related issues. Apparently they feel this is bad. In February of 1972 a Northeaster hit the South Shore. In less than three days Scituate's coastal area suffered over two (2) million dollars worth of damages. With the help of a lot of federal money, we repaired the sea walls, houses were rebuilt and life went on. We haven't had any devastating storms since 1972, but just a month ago the Board of Selectmen made a tour of areas along our coast where sea walls need restoring and erosion is occuring. The total cost to complete all these projects if we had the money to do it comes to $4,319,000.00. There are two points that can be made from this:

1. You can fight the ocean but you sure as heck aren't gdng to beat it.
2. If the Greater Boston Chamber is so concerned about restricting development on the coast, they better go a step farther and tell us where we are going to get the money to pay the consequences.

In summary, I support the coastal zone plan because from an environmental and developmental perspective we can no longer afford the dubious luxury of operating in a vacuum.

Carl E. Pipes

Scituate Selectman

SCITUATE CONSERVATION COMMISSION

Town of Scituate CONSERVATION COMMISSION

SCITUATE MASSACHUSETTS

December 6, 1977

RECEIVED

DEC 9 1977

COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

Eric G. Van Loon, Director
Coastal Zone Management
Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Dear Mr. Van Loon:

The Scituate Conservation Commission supports the objectives of Coastal Zone Management and endorses the overall concept of balancing the conservation and development of our coastal resources. We applaud your conscientious program of full citizen participation.

We welcome the strengthening of home rule prerogatives through increased technical assistance, and professional back-up for local decision making under existing programs, such as wetland protection.

We look forward to working with CZM, DEQE, and other agency personnel in working out a mutually beneficial one-stop permit process.

However, we forsee a potential problem and look forward to a reasonable workable policy for the intertidal and storm flooding zone. A policy and a management process will be needed to resolve potential conflicts between waterways (M.G.L. Chapter 91, Section 11-14) and wetland regulations (M.G.L. Chapter 131, Section 40). Existing residential structures which have already been built in high hazard wave impact zones pose highly complicated regulatory problems. In one storm alone, a gale during the winter of 1972, Scituate sustained [illegible] million in damage to such structures, as was noted in a peak issue of the Conservation Foundation "Letter".

Up until now, the state and federal governments had covered practically the whole cost for coastal flood control structures: rip-rap/seawalls/jetties and the like. However, if a community were to say, "We would rather do a non-structural project, we would rather do some good zoning," we find out that there is not much of any kind of assistance available. The article goes on to note that federal officials (i.e. OMB) are "talking" of an endorsement of a [illegible] non-structural program due to fear of "massive federal land acquisition" and "federal involvement in local land use decisions". This may be valid if a federal agency is the sole

planning, purchasing, title-holding and management authority for individual parcels, but there are many existing state and local agencies through which acquisition funds can be channeled which allow local control and management for specific purposes.

Federal funding to sustain local acquisition through such measures as Section 1362 of the National Flood Insurance Program would help to reduce annual flood losses by enabling local acquisition of critically threatened coastal properties.

We would also like to see more attention to federal inter-agency coordination. An EPA sponsored sewer project was recently designed to service a coastal high hazard flood zone and barrier beach. The problem was eventually resolved at the local level, but lack of policy coordination between CZM, EPA, and HUD first precipitated a series of local confrontations and caused a good deal of expensive engineering time to be unnecessarily wasted.

We would suggest the enforcement of the so-called memo of understanding between federal agencies and the insistance that these be adhered to in the regions.

Review where beaches have been sewered. Find what costs are to sustain and repair sewers, and relate this to flood insurance losses paid out.

Locate areas where beach fronts are likely to be sewered due to development pressures. Evaluate the ration of total public investment in water, sewer, seawalls, insurance subsidies with tax return on properties, economic input to local jobs, etc. Adjust guidelines and programs accordingly.

It is our hope that some of the above suggestions may be of assistance to you, and we would reiterate our support of, and gratitude for your work on behalf of coastal zone management.

Very truly yours,

David A. Hellis

David A. Hellis,
Chairman
Scituate Conservation Commission

Town of Wareham
Office of the Shellfish Constable
Wareham, Massachusetts 02571

8 December 1977

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Attention: Ms. Kathryn Cousins
Room 3280
3300 Whitehaven St., NW
Washington, DC 20235

Dear Ms. Cousins,

As Shellfish Constable of the town of Wareham I would like to inform you of my strong opposition to certain recommendations made by the Massachusetts Coastal Zone Management Program.

I refer specifically to the proposed development of Wareham's Stony Point Dike and Long Beach as public beaches with unlimited road access.

You may not be aware that both these areas are vitally important to Wareham's half-million dollar annual shellfish harvest.

At a time when New England's shellfish industry is endangered by overfishing, destruction of habitat, and pollution by sewage, chemicals, and oil, it seems to me to be short-sighted environmental management to compromise two of the most productive and unpolluted natural shellfish areas in Buzzards Bay.

The reason that the Stony Point Dike and Long Beach have long been good producers is that both are, for most purposes, islands. However, as any local clammer or quahoger will tell you, this does not mean that the beaches are inaccessible to the public. These two locations are usually open year-round and on any given day family shellfish permit-holders may be seen harvesting their limit of clams and quahogs. A small skiff is all the transportation that is needed.

(continued)

There is no question that at the present time both Long Beach and the Stony Point Dike provide recreation and shellfish not only for the people of Wareham but for residents of towns from Boston to New Bedford, and for visitors from all over the state and the country.

But there is a limit. And the unfortunate fact is that unlimited access to anything as vulnerable as a shellfish bed leads invariably to the destruction of the very resources and qualities that made access desirable in the first place. The shellfish population of even the Stony Point Dike could not possibly survive the impact of thousands of carloads of people, many of whom would have little understanding of the fragile ecological balance of the inter-tidal zone.

My experience as Shellfish Constable for twenty-five years has been that despite the constant vigilance of shellfish officers, highly productive natural shellfish populations cannot be maintained on a heavily used public beach. The reasons for this are:

1) The beach between high and low water is continually dug-over by young children with the result that seed clams and quahogs are exposed and then eaten by predators or washed up on the beach to die.

2) Many children and adults will go to almost any lengths to take clams home with them as souvenirs. These clams generally end up in the garbage can.

3) The town is unable to bear the cost of increased patrolling by shellfish officers.

4) Inevitably, as public use increases, so does the risk of dangerous contamination by human wastes, especially in a fixed, filter-feeding shellfish population. This danger is particularly likely in areas as low-lying as Long Beach and the Stony Point Dike, where adequate and safe sanitary facilities cannot be provided due to tidal and storm flooding.

I believe that fragile coastal areas of great importance to a town's shellfish industry should not be considered for unlimited public recreational use. This is especially true in the town of Wareham which has had the foresight to develop four major public beaches which more than meet the needs of the area.

(continued)

In Volume I of the Massachusetts CZM Program the first stated policy of marine environmental management is to:

> Conserve ecologically significant resource areas (salt marshes, shellfish beds...) for their contributions to marine productivity and value as natural habitats. - page 79 -

Any development of the Stony Point Dike and Long Beach would be, in my opinion, entirely inconsistent with that policy and disastrous to Wareham's shellfish program.

Respectfully yours,

Edwin W. Studley

Edwin W. Studley
Shellfish Constable

copies to:

Evelyn Murphy, Secretary
Executive Office of Environmental Affairs
100 Cambridge St.
Boston, Massachusetts 02202

Director Eric Van Loon
Massachusetts Coastal Zone Management Program
100 Cambridge St.
Boston, Massachusetts 02202

Statement for Coastal Zone Management Hearing, November 14, 1977

Thank you for the opportunity to testify concerning the Massachusetts Coastal Zone Management Program. The coastal zone does need better management, and this seems to be a well-balanced program to accomplish that. As the plan states, the coastal zone should be used primarily for purposes which require a seashore, for shipping and commerce, for ocean-oriented businesses, for fishing and boating, for swimming and recreation. Ecologically fragile areas should be protected, but developments which do not harm the environment should not be bogged down in red tape. This plan appears to provide for quicker approval of environmentally sound projects.

Nahant is concerned, however, that our waters were not included in an ocean sanctuary area, since we would like to have the protection that this might give us. We are asking again that Nahant be included in the South Essex Ocean Sanctuary.

Nahant is also deeply concerned about proposals to dredge for sand and gravel off the shores of Nahant. We urge that this not be done without a complete study of its effect on Nahant. It could severely affect our recreational facilities, including our beaches, as well as fishing and lobstering near our shores.

At Nahant's 1977 Town Meeting, we voted to continue our Local Growth Policy Committee and to expand it to address Coastal Zone Management problems as well. Therefore Nahant is well prepared to implement the local aspect of Coastal Zone Management.

Carl Brooks
for the
Nahant Local Growth Policy/Coastal Zone Management Committee

DDC 77-70

City of Gloucester
Downtown Development Commission

CITY HALL • GLOUCESTER • MASSACHUSETTS • 01930

14 November 1977

Evelyn Murphy
Secretary of Environmental Affairs
Environmental Affairs Executive Office
100 Cambridge Street
Boston, Massachusetts

Dear Secretary Murphy:

The Gloucester Downtown Development Commission supports the Massachusetts Coastal Zone Management Program, and believes that its implementation will result in beneficial environmental and economic impacts for Gloucester's waterfront and the State as a whole.

The economy of Gloucester is heavily dependent on the local fishing industry and the tourist/recreation industry. The CZM program offers protection to the habitats and biological processes on which our fishing industry depends. The program also provides for protection to resource areas with recreational appeal and promotes public access to the waterfront environment.

We are impressed with the fact that the CZM program is enforceable through existing State laws and regulations, and that local government retains a strong enforcement and decision-making role in managing the coastal zone. We value the professional technical assistance which the program offers municipalities, and have already taken advantage of it. We support CZM policies promoting use of our limited waterfront resource for the fishing, recreation, and other water-related industries. Finally, we look forward to local financial assistance for program implementation to benefit and expand fishing and recreational use of the waterfront.

This Commission heartily endorses the Massachusetts Coastal Zone Management Program as an effective, balanced proposal for protecting our fragile marine environment while promoting suitable, sensitive development within the coastal zone.

Sincerely,

Wm. F. O'Connor, Jr.

William F. O'Connor
Chairman

WFO'C/sdb

City of Gloucester
Downtown Development Commission

CITY HALL • GLOUCESTER • MASSACHUSETTS • 01930

State of Massachusetts Coastal Management Draft Environmental Impact Statement -

ADDITION:

page 11-14: "Historic Districts Established by Coastal Communities";

add: "Gloucester: Gloucester Historic District, 1977".

just entered in Mass. Register

Coastal Zone Management Hearing at E. A. T. I., Wathorne - 11/14/77

I am in support of the over-all philosophy of the Massachusetts Coastal Zone Management Program. Our conservation Commission (Salisbury Con Com) has been given assistance on two matters recently: 1) Evaluation of a threat to our salt marsh 2) Assistance in the construction of sand dunes. We are pleased with the thought of the availability of assistance by experts in different areas of the management program.

One disappointment in our area (Salisbury Con Com and concerned citizens) to date has been in being unable to secure assistance on the environmental impact of the neighboring nuclear plant being constructed by Public Service Co. of New Hampshire. I am in the process of requesting information from the office of our attorney general on this matter. Unfortunately this report from Mr. Bellotti's office will be limited principally to the issue of safety.

Frank Kramer
Salisbury rep. to
Coastal Zone Management Advisory Group
and Salisbury Con Com member

CONSERVATION COMMISSION
TOWN OF MANCHESTER
TOWN HALL, MANCHESTER, MASS. 01944

RECEIVED
DEC 13 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

November 27, 1977

Mr. S. Russell Sylva
Assistant Secretary of Environmental Affairs
Acting Director, Mass. C. Z. M. Program
100 Cambridge Street
Boston, MA 02202

Dear Mr. Sylva:

The Manchester Conservation Commission wishes to be recorded as being in favor of the Coastal Zone Management Program.

Our Coastal Zone is an important natural resource. With mounting pressures from the many competing interests and needs, a sound resource management program such as outlined by the Coastal Zone Management is necessary in planning for the future, with consideration being given to protecting and preserving our natural environment.

Therefore, please accept this letter as our endorsement.

Sincerely,

John D. Goodall

John D. Goodall
Chairman

JDG:cck

cc: Board of Selectmen
Peter Harrington

Dan - A comment
Sed to [illegible]

The City of REVERE, MASSACHUSETTS
WILLIAM G. REINSTEIN, Mayor

OFFICE OF THE CONSERVATION COMMISSION
CITY HALL

21 November 1977

Mr. S. Russell Sylva
Director, Coastal Zone Management
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Dear Mr. Sylva:

At a joint meeting on 10 November 1977 the Revere Conservation Commission and the Revere Growth Policy Committee arrived at the following consensus which is submitted for your consideration.

1. That the interests of the residents of Revere would be better served by including Revere in the Lower North Shore Region rather than in the Boston Harbor Region. It is felt that the magnitude and complexities of Boston's problems are such as to necessitate a large complement in the Regional representation, thus dwarfing Revere's representation and those of its problems which are unrelated to Boston's. In the Lower North Shore Region, Revere would enjoy an equality of representation and mutuality of concerns past, present, and future such as: residential rather than industrialized communities, Saugus Marsh, East-West Connector Road, Blue Line Extension, vehicular transportation routes, Lynn Harbor Dredging Proposal, marine activity, DeMatteo Dump, Resco incinerator, recreational beaches, pollution (Lynn Harbor, Pines River), glide path approach to Logan Airport.

2. That the Saugus/Pines River Marsh in Revere and the Belle Isle Marsh in Revere, be designated as Areas for Preservation and Restoration. That recommendation be made to the Metropolitan Area Planning Council that it submit for consideration to the MDC the possibility of acquiring these marshes.

3. That "Public Involvement Citizen's Advisory Councils", page 11-48 of CZM Draft Environmental Impact Statement be established in each Coastal region to include a minimum of 2 representatives from each community. That these representatives be appointed by a continuing committee in each community, said committee to be appointed by the Mayor or appointing authority, and selected from appropriately oriented civic groups and including municipal representatives such as Planning Department, Conservation Commission, Growth Policy Committee, etc.

Salvatore V. Mucci,
Chairman, Revere Conservation Commission

REVERE GROWTH POLICY COMMITTEE

City of Fall River, Massachusetts
Conservation Commission

ONE GOVERNMENT CENTER

RECEIVED
DEC 1 ...
COASTAL ZONE ...
Exec. Office of ...

December 10, 1977

Eric E. Van Loon, Director
Coastal Zone Management
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Dear Mr. Van Loon:

Please be advised that the Fall River Conservation Commission has reviewed the proposals and management plans as drafted by the Massachusetts CZM office. Recognizing the complexity of the problems the CZM staff faced in preparation of this program, this Commission was impressed by the generally sensible and well balanced plan presented.

This Commission is in full accord with the Program recognition of the desired primacy of home rule in matters related to local land use. The program should, and we feel it does, recognize, however, that local decisions are at times inappropriate or conform to the desires of a narrow political constituency which is able to influence the local decisions to their advantage. Home rule is important, but so are the safeguards which prevent abuses on the local level. The CZM program as drafted would seem to buttress home rule by providing a more orderly and efficient review process. Local boards and agencies may well be better administrators if they are aware that review of their decisions will be speedily and impartially processed.

The Commission is also supportive of the programs continued emphasis on citizen input and participation through the State and Local Advisory Committees. Continued citizen participation and continued efforts to insure cross sectional

representation of competing interests in the Coastal Zone are important for proper implementation of any program, as no matter how well conceived and thought out the program is, implementation will surely uncover problems which the local citizens should directly confront.

The emphasis on technical assistance is certainly a strength of the program. In our own experience we have found that a local board when faced with limited financial resources and technical talent is at a decided disadvantage in making decisions regarding complex development proposals in the Coastal Zone. We would, however, request that technical assistance be adequately funded and staffed to answer questions and review plans for all levels of local permit granting, such as notice of intent hearings under Chapter 131, Section 40. Along with this, regional seminars for members of local boards instructing them in the technical aspects of their decision making function may also be a valuable supportive activity that the technical assistance aspect of the CZM program can render. Handbooks, on areas of concern as mentioned in the programs are also an excellent idea, but the CZM staff may find it beneficial to coordinate their efforts to the point of contracting for work with other groups traditionally involved with the specific areas of concern, such as the Audubon Society, and the Conservation Law Foundation.

In its efforts to streamline the permit process, the Commission would also like to see the CZM program move toward a one permit or at least one application with joint hearings procedure. We have seen individuals seeking permission for projects having a minimal impact on the area of our concern put to unnecessary hardship and expense because of a duplicative and time consuming permit process. As an older City with severe economic problems, we are also concerned with facilatating the entry of new enterprises by reducing their administrative burden while maintaining appropriate safeguards.

The program also contains some points of more specific interest to the City of Fall River which deserve comment.

Recognizing the importance of visual access to the Coastal Zone, we of the Conservation Commission feel that the definitive boundary of the Coastal Zone as set in Fall River does not fully take into account this aspect of Coastal Zone enjoyment. We fully realize the implicit problems in extending the Coastal Zone any further inland, but would suggest the possibility of designating some adjacent zones of special interest as being at least eligible for planning and technical services. The sharply rising topography of Fall River from the Taunton River-Mount Hope Bay presents views of those waters that should be a valuable community asset. An asset that was certainly disregarded in the construction of the so-called Western Expressway extension of Route 79. Assistance from CZM in planning orderly visual development in this area would seem to be in order.

The Commission was also impressed by the idea of integrated development of marine terminals with small parks and public viewing access points. As the most appropriate use of the majority of Fall River's Coastal Zone does appear to be for marine dependent industry, such a plan would be well suited for Fall River.

In summary, the Fall River Conservation Commission goes on record as fully endorsing the CZM program as written and hopes to work closely with the CZM staff on all matters relating to Coastal Zone development and planning in the City of Fall River. Should any further comments or information be requested of this Commission, please advise as it is our feeling that the program is a must for our City and our State.

Very truly yours,

FALL RIVER CONSERVATION COMMISSION

By: John F. Lucey
John F. Lucey, Chairman

JFL:jmb

TOWN OF DENNIS
CONSERVATION COMMISSION

RECEIVED
DEC 16 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

South Dennis, Mass.

December 13, 1977

Mr. Eric E. Van Loon, Director
Coastal Zone Management
Exec. Office of Environmental Affairs
100 Cambridge Street
Boston, Mass. 02202

Dear Mr. Van Loon:

We are indebted to a careful citizen reader for calling attention to the following error in the Draft Environmental Impact Statement.

Page 11-23 - Chapin Memorial Beach is listed as in the Town of Yarmouth. Since it is our westernmost and one of our most attractive beach assets, we'd very much appreciate the Dept. of Commerce returning it to the Town of Dennis.

Sincerely,

Mary Hood Hagler
Mary Hood Hagler
Clerk

mhh

cc: Mr. John E. Fletcher
26 Freydis Drive - RD #1
South Dennis, Ma. 02660

Dan
Dis Good

RECEIVED
DEC 14 1977
COASTAL ZONE MANAGEMENT

Town of Dennis
South Dennis, Mass. 02660

Office of
SELECTMEN
394-0901
EXECUTIVE SECRETARY
394-0901
ASSESSORS
394-0903
BOARD OF HEALTH
394-0908

December 12, 1977

Mr. Eric Van Loon, Director
Coastal Zone Management Program
Office of Environmental Affairs
100 Cambridge Street
Boston, Ma. 02202

Re: Policy 13 - Visual Enhancement

Dear Mr. Van Loon:

Massachusetts business and legislative communities continue mysteriously reluctant to admit that good appearance and prosperity have historically gone hand in hand. The historically oriented urban renewals in Newburyport and New Bedford attract both local and visiting money - by appearance. The Chatham Fish Pier does a thriving over-the-counter business - by appearance. Nantucket is perhaps the most affluent tourism enterprise in the Commonwealth - by appearance. New Orleans' #1 economic asset is the port, but its #2 is the Vieux Carré - by appearance. The examples are endless, and as local and specific as the banker who chooses his tailor to attract money to his bank or the Representative buying his 3-piece suit the day after election.

I am personally convinced that the long-time (100 year) economic resource of much of the Commonwealth and certainly of its coast is tourism - the continuing recreational appeal of historic shrines and glorious water within a day's drive of a third of the nation's population. Cape Ann will not move to the Sunbelt unexpectedly some Tuesday morning, nor will Lexington or Concord or Walden Pond. Accepting tourism as a major and non-eroding income source, the protection and expansion of visual assets along the coast becomes good, hard, tight-fisted Yankee common sense.

I believe it should prove feasible to allay industry's fears that they will be either banished or compelled to put cupolas on 500 ft. smokestacks. As the CZM text clearly states (pp 140-142), industrial installations can have an ambience of their own in the coastal scene. Canal Electric is in no wise integrated with the surrounding Great Marshes of Barnstable, but neither does its presence destroy or even impact very much on those marvelous marshscapes. On urban waterfronts, the whole fascinating complex of water in use can become a major visual attraction at very little cost, either public or private.

Coming home to Dennis on Cape Cod, much citizen energy was devoted in 1975-76 to inventorying the town's natural resources, under the direction of the U. S. Soil Conservation Service. One of our projects in that program was a Visual Preference Survey of more than 100 random people around town. General concern for natural landscape preservation and for fitting the built environment into its setting was clearly demonstrated in this exercise. As a result, the town's Design Review Panel has been revitalized to influence commercial design, its Historical District Commissions have been cautioned to continue their rigorous review of the "fit" of

structures into their surroundings, a citizens' committee is at work on visual problems of the Route 28 commercial strip, another citizens' committee is revising the sign code, and the Planning Board and Conservation Commission are actively discouraging blacktop parking. The departments look forward to receiving the CZM guideline handbook at the earliest possible moment.

To summarize, I believe I can speak not only for myself but unofficially for all the major regulatory agencies of the Town of Dennis in heartily endorsing Policy 13 and the CZM Program's concern for visual enhancement of the coast. To put it in the vernacular, that's where the bucks are and will continue to be.

Sincerely,

Mary Hood Hagler

Dan
DMS Comment

RECEIVED

DEC 14 1977

COASTAL ZONE MANAGEMENT

Town of Dennis

South Dennis, Mass. 02660

Office of
SELECTMEN
394-0901
EXECUTIVE SECRETARY
394-0901
ASSESSORS
394-0903
BOARD OF HEALTH
394-0908

December 12, 1977

Mr. Eric Van Loon, Director
Coastal Zone Management Program
[illegible] Office of Environmental Affairs
[illegible] Cambridge Street
[illegible], Ma. 02202

Re: Policy 13 - Visual Enhancement

Dear Mr. Van Loon:

[illegible] Massachusetts business and legislative communities continue mysteriously [illegible] to admit that good appearance and prosperity have historically gone hand in hand. The historically oriented urban renewals in Newburyport and New Bedford attract both local and visiting money - by appearance. The Chatham Fish Pier does a thriving over-the-counter business - by appearance. Nantucket is perhaps the most affluent tourism enterprise in the Commonwealth - by appearance. New Orleans' #1 economic asset is the port, but its #2 is the Vieux Carré - by appearance. The examples are endless, and as local and specific as the banker who chooses his tailor to attract money to his bank or the Representative buying his 3-piece suit the day after election.

I am personally convinced that the long-time (100 year) economic resource of much of the Commonwealth and certainly of its coast is tourism - the continuing recreational appeal of historic shrines and glorious water within a day's drive of a third of the nation's population. Cape Ann will not move to the Sunbelt unexpectedly some Tuesday morning, nor will Lexington or Concord or Walden Pond. Accepting tourism as a major and non-eroding income source, the protection and expansion of visual assets along the coast becomes good, hard, tight-fisted Yankee common sense.

I believe it should prove feasible to allay industry's fears that they will be either banished or compelled to put cupolas on 500 ft. smokestacks. As the CZM text clearly states (pp 140-142), industrial installations can have an ambience of their own in the coastal scene. Canal Electric is in no wise integrated with the surrounding Great Marshes of Barnstable, but neither does its presence destroy or even impact very much on those marvelous marshscapes. On urban waterfronts, the whole fascinating complex of water in use can become a major visual attraction at very little cost, either public or private.

Coming home to Dennis on Cape Cod, much citizen energy was devoted in 1975-76 to inventorying the town's natural resources, under the direction of the U. S. Soil Conservation Service. One of our projects in that program was a Visual Preference Survey of more than 100 random people around town. General concern for natural landscape preservation and for fitting the built environment into its setting was clearly demonstrated in this exercise. As a result, the town's Design Review Panel has been revitalized to influence commercial design, its Historical District Commissions have been cautioned to continue their rigorous review of the "fit" of

structures into their surroundings, a citizens' committee is at work on visual problems of the Route 28 commercial strip, another citizens' committee is revising the sign code, and the Planning Board and Conservation Commission are actively discouraging blacktop parking. The departments look forward to receiving the CZM guideline handbook at the earliest possible moment.

To summarize, I believe I can speak not only for myself but unofficially for all the major regulatory agencies of the Town of Dennis in heartily endorsing Policy 13 and the CZM Program's concern for visual enhancement of the coast. To put it in the vernacular, that's where the bucks are and will continue to be.

Sincerely,

Mary Hood Hagler

Mary Hood Hagler

12/22/77

TOWN OF HINGHAM
MASSACHUSETTS
U. S. A.

OFFICE OF
PLANNING BOARD

SELECTMEN'S OFFICE
RECEIVED
DEC 20 1977
H M M
HINGHAM, MASS.

December 20th, 1977

Board of Selectmen
Town of Hingham
Massachusetts

Gentlemen:

In response to your request that we comment on the Coastal Zone Management Program, we support the concept of coordinated management of the coastal areas in regard to competing uses, while insuring protection of environmentally fragile and significant areas. We agree with the thirty-eight policies outlined in the Program.

We understand the implementation of this program working through existing State statutes and agencies, will speed up and simplify the permit process. We support this.

We also understand that if this plan is accepted, the Federal government will be required to conform with this Massachusetts Coastal Zone Program. This program is designed to reinforce local zoning and that any project seeking a State permit could not come before an E.O.E.A. agency without having first been approved on the local level. We support this concept.

We agree that there has not been adequate public participation and there in lies our problem. We have reservations and concerns about the make up and procedures of the Citizen Advisory Committee for Boston Harbor of which we are supposed to be a member. Except for the fact we are inside the mouth of Boston Harbor, we have little or no common concerns with respect to the other Boston Harbor communities, because of the differences of the uses of our waterfront. We do not understand how priorities can be set and conflicts resolved fairly. We don't want to be lost in the shuffle.

We do not understand the full implications of Hingham's designation as a developed harbor.

We hope this communicates our support of the major concepts of the CZM program, however, there are still numerous unanswered questions. We hope that you will make your response in a positive manner in order to keep the concepts alive and press for satisfactory answers to our concerns.

We have had an opportunity to talk with a representative from CZM, Mr. Mark Kaufman, 'on the 11th hour', and he has been able to answer some of

our questions; however, because of the newness of this program we are still left with a number of unanswered questions. We trust that the resolutions to these problems will become clearer as the program unfolds.

Very truly yours,

Brian

Brian McSweeney,
Chairman

McS/ew

town of
Scituate
coastal zone management
commission. 02066

Richard O'Connor
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D. C. 20235

December 12, 1977

Dear Mr. O'Connor:

The members of the Commission have spent many months assisting in the formulation of and in later reviewing the Massachusetts Coastal Zone Management Plan. We are in agreement that Massachusetts does indeed need this tool to guide coastal planning. However, we would point out several changes in the Plan concerning our town.

1. Scituate's Coastal Zone Boundary. In 1974, the Town hired a consultant whose function it was to correlate and catalogue coastal resources from a planning viewpoint and to then set forth this information in a study package - Scituate's Coastal Zone Study. The coastal boundary in this study is as follows: from the 3A line in Cohasset following the old Railroad Bed and then westerly on the Driftway. We feel this adequately includes Scituate's coastal areas and propose the above as our coastal boundary in the CZM Plan. The State Office of Coastal Zone Management has tentatively agreed to this boundary change.

2. The Proposed Areas of Preservation and Restoration Concept, we feel, would impact the Town in a negative fashion, especially in the area of future growth. To categorically prohibit sewage treatment plants seems not to be in the best interests of our town, for the section designated as an APR is possibly the last piece of commercial property as yet undeveloped.

3. Purchase of Storm-Destroyed Property, the Commission feels, should be accomplished only with owner consent, for any other method appears suppressive.

The State Office of Coastal Zone Management has, on file, a copy of a letter dated 6-1-77 denoting Scituate's strong recommendations on the above mentioned concepts. If further clarification of our position is necessary, we would be very willing to elaborate on any or all elements of the Plan.

Sincerely,

Walter J. Liberty, Chairman

December 19, 1977

To: Board of Selectmen

From: Ann Connor

As the Hingham Representative to the MAPC, I am in receipt of copy of the letter sent to Chairman Bickford by George Bailey, President of MAPC in which he affirms my original statement that the MAPC has NOT endorsed the CZM program as a regional body because of the lack of understanding by its community members. I endorse Mr. Bailey's position that a recommendation for acceptance of CZM is of little value unless there is full local understanding and continuing cooperation between all levels of government.

I wish to reiterate my original objections to the CZM which have been altered in no way by comments and recommendations submitted at last week's meeting. The CZM plan is vague in its terms and greater clarification is needed. It is entirely unnecessary if local zoning powers are to remain under local control where they belong.

Congressman Studds has publicly stated that CZM will result in the delegation of complete authority for coastal zone control from local governments to the State Governments. If local communities lose their self-determination on land use zoning for coastal areas than all land use zoning will be under state control and local zoning will no longer exist.

Public participation in the CZM plan, a necessary criteria established by the federal government, has not been realized, and is evidenced by the fact that there exists a complete lack of public understanding of the plan.

No provision is made in the plan to include regional planning agencies on the statewide advisory board in spite of the fact that they represent local officials in regional planning.

At a crucial time when exploration for energy resources off our coast will require essential land areas for supplementary operation, we are being asked to approve a CZM program which will strip our community of all local land use control.

SELECTMEN'S OFFICE
RECEIVED
DEC 19 1977
H. M. M
HINGHAM, MASS.

BARE COVE PARK COMMITTEE

To the Board of Selectmen

The concept of the C.Z.M. is good. The waterfront is one of our most valuable assets. It is also valuable to every other town in the state. What happens in one waterfront community affects everyone through pollution, food supply, etc. A central organization would be useful if it could act as a mediatory and monitoring agency for an overall plan with regional input and specific regional controls.

However, I do not feel that the present plan is the answer. I agree with the reservations stated in the Selectmen's letter but I would like to leave the way open to some form of regional cooperation.

Aline Hoelzel, Co-Chairman
Bare Cove Park Committee

December 20, 1977

TOWN OF HINGHAM
MASSACHUSETTS
OFFICE OF SELECTMEN

EUGENE E. BICKFORD, CHAIRMAN
OSCAR P. BECK
JOSEPH F. DALEY, JR.

December 21, 1977

Ms. Kathryn Cousins
Office of Coastal Zone Management
3300 Whitehaven Street, NW
Washington, D.C. 20235

Subject: Massachusetts Coastal Zone Management Program

Dear Ms. Cousins:

Enclosed please find the opinions of the various town boards and agencies with whom we conferred before forwarding our letter to you on the Massachusetts Coastal Zone Management Program.

We welcome your study of all of these comments.

Very truly yours,

Eugene E. Bickford
Chairman

EEB/H
Enc.

HARBOR DEVELOPMENT COMMITTEE

December 21, 1977

Board of Selectmen
7 East Street
Hingham, Mass.

Gentlemen:

The Harbor Development Committee met on December 19th, 1977. Considerable discussion on the merits of the Massachusetts Coastal Zone Management Plan was involved. The major point on both sides was the effect on local option or home rule - as vigorously defended as denied.

The vote on the motion "that the Selectmen support the Massachusetts CZM Plan" resulted in a tie, therefore, a recorded 'nay' must be reported.

Very truly yours,

Edward Baumgartner
Chairman

EB:mj

Remarks re CZM Plan Content
Mary Hood Hagler
November 17, 1977

In my personal opinion, CZM is going to harm the Cape just about as much as the National Seashore did.

Look at the content:

Policies 1 and 2 - Protect coastal marshes to keep the food chain working.

Policies 4 and 8 - minimize shore erosion

Policy 7 - Money for expanding the fishery.

Policies 5 and 18 - Money and more systematic approach for dredging.

Policies 28-33 - A variety of attempts to protect us from Big Oil and Big Electricity

Policy 36 - Money for urban redevelopment in coastal cities, like Hyannis.

Aren't these the very things that our towns invest days and weeks of time and energy in every year, trying to bring about?

Attacks I've heard are on Policies 13-16, Visual Environment, which are only "encouragement", anyway. Our Legislature hasn't noticed, apparently, that appearance has historically equated with and contributed specifically to prosperity.

And nebulous complaints from the Home Builders Association, in line with their stance that every regulation will fling them into bankruptcy.. Since I don't see any policies which seem to impact our single-family home builders, I'm forced to write it off to reflex.

And "Home Rule," of course. In my observation, this fine old phrase has been bolderized into something politicians shout to mask shenanigans catering to special interests. True home rule has been over-run by growth - of population and technology and big government. "Home control" is the phrase I prefer, and I believe it can be preserved for a good many years, by skilled and reasonable negotiations. Serious work was done on CZM in its development stages to assure that its actual processes - the points where the program meets our people and our places - remain in home control. I believe they do, to the best of the abilities of responsible local citizens and the cooperation of the state and federal authorities.

Mary Hood Hagler

THE DUXBURY PLANNING BOARD

TOWN OF DUXBURY

RECEIVED
DEC 21 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

December 21, 1977

Eric Van Loon, Director CZM
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Dear Mr. Van Loon:

The Duxbury Planning Board believes the Coastal Zone Management Program will provide the state and coastal municipalities with a unified approach to evaluating and controlling the effects of development in fragile coastal areas, and will also help municipalities identify those areas which should be protected from development.

We do not share the concerns voiced at hearings that the program will result in another layer of bureaucracy, as the program is designed to operate under already existing statutes and agencies. We welcome the prospect of federal funds to aid municipalities in planning for, identifying, and managing valuable and irreplaceable coastal resources.

Sincerely yours,

Sara E. Wilson

Sara E. Wilson, Chairman

SEW:jw

cc: Duxbury Clipper

COMMENTS RECEIVED FROM INTERESTED PARTIES

Massachusetts Petroleum Council Comments on the Massachusetts Coastal Management Program and Draft Environmental Impact Statement

I

THE PROGRAM HAS NOT BEEN DULY ADOPTED

The Coastal Act defines a "management program" as "a comprehensive statement" which has been "adopted by the state . . . ." (CZMA §304(11).) Section 306(c), in turn, requires that, "Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that: (1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary. . . ." (CZMA †306(c)(1).)

Existing program approval regulations expressly require that, in order to be approved, a program must show that "[it] has been formally adopted in accordance with state law or, in its absence, administrative regulations." (15 C.F.R. §923.31(a)(1).) The comment to that regulation goes on to provide:

> "The management program must demonstrate that it represents the official policy and objectives of the State. In general, this will require documentation in the management program in accordance with either rules and procedures established by statute, or in the absence of such law, administrative regulations."
>
> 15 C.F.R. §923.31(b)(1).

Clearly, narratives outlining desirable, but unadopted, policies are insufficient, as are memoranda of understanding, and similar non-legislative materials. Similarly, attempts to fill in the gaps in existing State law by outlining approaches to coastal zone management which have no legal force and effect simply do not comply with these requirements.

Notwithstanding this unambiguous requirement, both the Massachusetts Program and the DEIS make quite clear that the bulk of the management policies which comprise the program have neither been duly adopted nor are they enforceable.1/ Indeed, the very regulations which purport to establish the Massachusetts coastal zone management program have yet to be adopted by the Executive Office of Environmental Affairs, the state's "lead" coastal management agency.2/ Further, since those proposed regulations have not yet been subjected to the public review process required by Massachusetts law, it is not at all clear that the provisions of §§306(c)(1), (c)(3) and 311 of the federal Act, and associated regulations, which require at least two public hearings on management programs "at least one of which will be on the total coastal management program . . . ," have been complied with either.

The Massachusetts program document asserts that the Massachusetts Secretary of Environmental Affairs has the power to adopt regulations to establish the program "as a statement of the state environmental policy for the coastal zone."3/ Aside from the fact that the regulations are merely proposed,

---

1/ DEIS, p. 11-7.

2/ Massachusetts Program, Volume 1, (hereafter "Program") Appendix A, p. a-21.

3/ Program, p. 317. See generally, discussions commencing at page 310 of the Program and in the draft document entitled "Legal Authorities for the Implementation of the Massachusetts Coastal Zone Management Program, December, 1976, p. 49, et seq.

and have not been adopted, neither the Secretary, nor the Executive Office of Environmental Affairs which the Secretary heads, is vested with the power to promulgate state policy regarding the coastal zone--environmental or otherwise. Yet the adoption of a coastal zone management program, by definition, entails the promulgation of state policy. For example: The draft document entitled "Legal Authorities for the Implementation of the Massachusetts Coastal Zone Management Program" (hereafter "Legal Authorities Draft") quite properly defines such a program as being " . . . by definition, a statement of policies, objectives and standards."4/ Further, it asserts that "Coastal zone management program adoption regulations . . . would serve as a means for adoption of a program embodying a state program of policies, objectives and standards related to how laws substantially affecting rights and procedures available to the public will be administered in matters involving coastal lands and waters."5/

The adoption of "policies, objectives and standards" is an act of legislation, not policy implementation. But the law of Massachusetts does not provide for legislation by executive agencies. Indeed, according to a unanimous opinion of the Justices of the Supreme Judicial Court of Massachusetts, it is "[a] fundamental principle of [the Massachusetts] system

4/ Legal Authorities Draft, p. 53. (This is a portion of the definition set forth in §304(11) of the CZMA.)

5/ Id., n. 35.

of government . . . that power to make laws for the general welfare is vested in the [legislature]. . . ." In Re Opinion of the Justices, 286 Mass. 611, 191 N.E. 33, 35 (Sup. Ct. 1934). That case further held that this power to legislate " . . . cannot be surrendered or delegated." (Id.)

It is true, as the Legal Authorities Draft asserts, that administrative agencies generally, and the Executive Office of Environmental Affairs specifically, may adopt those rules and regulations reasonably necessary to discharge their statutory responsibilities.6/ This, however, entails the administration of details respecting express grants of power, not the establishment of "policies, objectives and standards" which will significantly impact not only the citizens of Massachusetts itself, but neighboring New England states and the nation as well.

Further, even if the Massachusetts legislature could vest the power to promulgate a comprehensive coastal zone management program in an administrative body, it has not done so here. Indeed, there appears to be concern in the legislature that the submission by an executive agency of a program which was not adopted by the legislature constitutes an improper to usurption of legislative powers.7/

6/ Id. pp. 51-52.

7/ The Massachusetts House, in a formal resolution passed September 26, 1977, urged the federal government to postpone consideration of the State Coastal Zone Management Program until approval of the program has been voted by the Massachusett's legislature.

Of course, Massachusetts has existing, duly adopted legislation dealing in varying degrees of sufficiency with a number of the topics among the required constituents of an approvable program. There are other topics, however, with respect to which there is neither existing legislation sufficient to meet the requirements of the federal Act nor power in the Secretary or the Executive Office of Environmental Affairs to create enforceable provisions to meet those requirements. Providing for the nation's energy needs is one such topic.

The primary Congressional objective in amending the Act in 1976 was to facilitate pursuit of the "national objective of attaining a greater degree of energy self-sufficiency." (CZMA §302(i).) Yet not one of the energy policies discussed in the program relates to national energy needs.8/ Nor is the Secretary or the Executive Office of Environmental Affairs given the authority to promulgate such requirements. Indeed, the Office is empowered only to " . . . analyze and make recommendations, in cooperation with other state and regional agencies, concerning the development of energy policies and programs in the commonwealth."9/

8/ Introductory comments in Chapter 2 of the DEIS indicate that policy 33 is "enforceable." (p. 11-7.) However, policy 33 was totally replaced by an October 7, 1977, Addendum to the Program and the DEIS text relating thereto does not indicate that the new policy 33 is enforceable.

9/ Massachusetts General Laws Annotated, (hereafter MGLA) Chapter 21A, Section 2 (17).

Clearly, the power to analyze and made recommendations concerning the development of policies is a far cry from the power to legislate.

In short, Massachusetts has no duly adopted management policies regarding energy. The same is true with respect to a number of other substantive requirements of the Coastal Act.

Our point is this: It is the law of Massachusetts, as elsewhere, that administrative bodies such as the Executive Office of Environmental Affairs have only those powers, duties and obligations expressly conferred upon them by statute and those reasonably necessary for their proper functioning. Massachusetts Com'n. etc. v. Liberty Mut. Ins., 356 N.E.2d 236, 238 (Mass. Sup. Ct. 1976). Thus, to the extent the Executive Office of Environmental Affairs is not expressly vested by the Massachusetts legislation with power to deal comprehensively with topics such as the nation's energy needs, it may not do so.

II

THE BULK OF THE PROGRAM IS UNENFORCEABLE

Before a program may be approved, the Secretary of Commerce must find, inter alia, that the state has the authority to implement the program, including the power to:

(a) Administer land and water use regulations;

(b) Ensure compliance with the program; and

(c) Resolve conflicts among competing uses.[10]

In short, in addition to being duly adopted, a program must be legally enforceable in order to be approvable.

As previously mentioned, the DEIS itself reveals that possibly fifteen, and more likely only fourteen, of the programs 38 polices are "enforceable."[11] Nor does the program's attempt to rely on interagency memoranda suffice. Indeed, the program document itself concedes that "interagency Memoranda [sic] are thought to be generally unenforceable. . . ."[12]

Revised program approval regulations currently being promulgated[13] address the enforceability of programs such as the instant one in the following terms:

> "Enforceability. Each State agency which exercises statutory authority that is to be incorporated into the management program must be legally bound to exercise its authority in conformance with the State's coastal policies. This can be achieved through an executive order or an interagency agreement (including memoranda of understanding or agreement) provided that such order or agreement binds the affected parties to conformance with relevant management program policies. In States where affected agency heads report directly to the Governor and where the Governor has a legal policy making responsibility, an executive order will be an acceptable instrument to assure the coordination of networked activities."
>
> Proposed §923.42(d)(4), 42 F.R. 43567-68.

However, as we have already pointed out, interagency memoranda appear to be "generally unenforceable," as are defectively adopted regulations.[14]

Thus, as the program currently stands, critical portions of it simply do not satisfy either the requirement that programs be "adopted" or the equally important requirement that the state involved have " . . . the authorities necessary to implement [its] program."

10/ §§306(c)(6), 306(d)(1).

11/ As previously mentioned at n. 6, the new policy 33 does not appear to be "enforceable".

12/ Program, p. 319.

13/ Proposed 15 C.F.R. Part 923, 42 F.R. 43552, et seq., August 29, 1977.

14/ See also Article XXX of the Massachusetts Constitution, set forth in its entirety below:

> "Art. XXX. Separation of Executive, Judicial, and Legislative Departments.
>
> In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

III

THE NEED FOR DULY ADOPTED AND LEGALLY ENFORCEABLE PROGRAMS

We have elaborated on these two deficiencies because duly adopted and legally enforceable state programs are the essence of the Coastal Zone Management Act. Simply stated, the Coastal Act constitutes a commitment by the federal government to our coastal states that, if a coastal state duly adopts a comprehensive program to wisely manage its coastal resources, the federal government will conduct its activities in a manner which is, to the maximum extent possible, consistent with that program. (CZMA §307(c)(1).) The Act further provides that any person applying for a federal license or permit, or submitting a plan for Outer Continental Shelf exploration or development, affecting land or water uses in the coastal zone of such state must certify that such activity has been planned, and will be conducted, in a manner consistent with the state's program. (CZMA §307(c)(3)(A) and (B).) Further, the Act provides funding covering the bulk of the costs of developing and administering such programs (CZMA §§305 and 306) and funding to compensate the states for impacts from nationally required coastal energy development. (CZMA §308.)

In return for the federal government's commitment that its activities (to the maximum extent practicable) and the activities of its licensees and permittees will accommodate legitimate state interests, the Act expressly requires that state programs provide a planning process for coastal energy

facilities (§305(b)(8); a guarantee that adequate consideration be given the national interest involved in planning for, and siting, facilities (including energy facilities) necessary to meet requirements which are other than local in nature (§306(c)(8); and "a method of assuring" that local regulations do not "unreasonably restrict or exclude" land and water uses of greater than local benefit. (CZMA §306(e)(2)) Further, these provisions must be enforceable.

That Congress considered legally enforceable commitments by participating states to honor federal interests the quid pro quo for the federal promise to honor state coastal interests is obvious, if only because the requirement appears several places in the Act.[15]/ Why Congress insisted upon due adoption and enforceability is equally clear: The federal government, with its responsibilities to the nation as a whole, simply could not abdicate its Constitutional function of regulating nationally vital issues on the basis of a simple hope that state programs may, but well might not, give appropriate consideration to national interests.

Congress clearly recognized this and, hence, forbade the approval of any program which was neither appropriately adopted nor fully enforceable. Hence, the Massachusetts program is not approvable.

15/ CZMA §§306(c)(7), 306(d) and 306(e)(2).

Further, the program fails to satisfy a number of substantive requirements imposed by the Act. We turn now to a discussion of four such deficiencies.

III

THE PROGRAM IS SUBSTANTIVELY DEFICIENT

Because the existing legislation which Massachusetts seeks to mold into a coastal management program was adopted without a view toward compliance with the federal legislation, it is not surprising that it fails, in a number of respects, to satisfy the substantive requirements established by Congress in the Coastal Act.

For example the program fails to satisfy the closely interrelated requirements of subsections 305(b)(8), dealing with energy facility planning; 306(c)(8), requiring consideration of the national interest involved in planning for and siting facilities (including energy facilities); 306(e)(2) dealing with uses of regional benefit; and the national policy articulated in §302(i) regarding energy self-sufficiency.

Subsection 306(c)(8) imposes an affirmative, substantive requirement that state management programs provide for "adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities . . .) which are necessary to meet requirements which are other than local in nature." This requirement dovetails with the requirements of subsection 305(b)(8), which requires energy facility planning, and subsection 306(e)(2), which requires that programs provide

local regulations "do not unreasonably restrict or exclude land and water uses of regional benefit." Further, since an express purpose of the Act is pursuit of the "national objective of attaining a greater degree of energy self-sufficiency" (§302(i)) we believe the Act clearly mandates the useful consideration of this specific "national interest" in state programs.

Notwithstanding the clear dictates of the Coastal Act, the 38 policies which purportedly reflect the state's environmental policy[16/] make no mention of any national or regional interests or needs, let alone the "national objective of attaining a greater degree of energy self-sufficiency." Nor, since the October 7, 1977, Addendum to the program deleted the two paragraphs which originally dealt with the "national interest and uses of regional benefit," does the 370 page program description address these issues.[17/]

16/ It should be noted that the 37 subsections which comprise "the state environmental policy" for purposes of the regulation which the Executive Office of Environmental Affairs proposes to adopt of some undisclosed time in the future differ in number and content from the 38 policies discussed in the text of the program and the DEIS. (See Mass. Program, Appendix A, pp. a-30 thru 33.)

17/ Program, p. 345. Addendum, p. 10.

In an attempt to cure this deficiency the Addendum purports to incorporate in the state program a thirteen page discussion of the National Interest from the DEIS authored by the Office of Coastal Zone Management. OCZM, however, has no authority to promulgate policy for Massachusetts, nor so far as we can determine, has Part II, Chapter 6 of the DEIS been adopted by the Massachusetts legislature. This attempt to incorporate by reference a narrative authored by a federal agency is, in fact, a legal nullity.

Even ignoring this problem, however, the program simply does not satisfy the substantive requirements imposed by the Coastal Act regarding these topics, as the following discussion illustrates.

A.

The Energy Facility Planning Process

The 1976 Amendments to the Coastal Act, inter alia, added the requirement that management programs contain:

> "A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities."
>
> (§305(b)(8).)

These new statutory requirements, in turn, are interpreted in §923.14 of the program approval regulations currently being promulgated by NOAA at 42 F.R. 43552, et seq., August 29, 1977.

The memorandum which appears at pages 1 through 10 of the Appendix to the DEIS indicates that the Massachusetts submission is intended to comply with these requirements. Hence, this discussion.

While the "Energy" portion of the Massachusetts program[18/] contains a thoughtfulcomplete, outline of the present energy situation in the state, and proposed policies which do much to ensure that the energy needs of Massachusetts are met, there is nothing in the program which requires consideration of greater than state interests in the state's facilities planning process. Indeed, while the legislation establishing the Energy Facilities Siting Council would appear to provide Massachusetts with a duly constituted planning body and outlines a process for energy facilities, it also expressly limits the responsibilities of the Council to " . . . implementing policies contained in [the balance of the legislation] to provide a necessary energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost."[19/] No mention is made of accommodating the regional energy needs of either the commonwealth's New England neighbors, or the nation.

The absence of affirmative requirements that the energy needs of the Northeast and the nation be accommodated in

---

18/ Program, pp. 227-272.

19/ MGLA, C. 164, §69H.

the energy facilities planning process is flatly contrary to a major purpose of the 1976 Amendments to the Coastal Act and the express requirements of the proposed regulations, as the following excerpt from the regulations makes clear:

> "Whatever approach is taken, it is critical to tie the outcome of the planning process to what may sometimes be two conflicting considerations: resource preservation/conservation and the need for energy production and transportation. The latter consideration may involve being responsive to not only the needs of energy users in the coastal zone but also energy needs of the State, region and the Nation."

Proposed §923.14(c) (emphasis added).

On the positive side of the ledger, the authors of the Massachusetts program have demonstrated a good, basic understanding of the current energy situation in the state. Further, the policies proposed in the program commendably reflect a recognition that any such planning process must " . . . ensure a necessary energy supply with a minimum impact on the environment at the lowest possible cost."20/

B.

Consideration of the National

Interest in Facility Siting

Closely related to the energy facility planning process requirements of the Act is the requirement that:

> "Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

20/ Program, p. 259, as amended Oct. 7, 1977.

> (8) The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the state has given such consideration to any applicable interstate energy plan or program."
>
> (CZMA §306(c)(8) emphasis added.)

As the following passage makes clear, Congress intended that state programs contain affirmative, enforceable national interest provisions:

> "As to the national interest requirements referred to under item 8, your committee wishes to make it clear that the primary responsibility for developing the State program remains in the State. Nevertheless, if the program as developed is to be approved and thereby enable the State to receive funding assistance under this title, the State must take into account and must accomodate its program to the specific requirements of various Federal laws which are applicable to its coastal zone.
>
> "It must also recognize that there is no provision of this title which relinquishes any Federal rights in and powers of regulation of Federal lands, or of the paramount Federal interests in navigable waters, or of any of the constitutional powers of the Federal Government, including those relating to interstate and foreign commerce, navigation, national defense, and international affairs. To the extent that a State program does not recognize these overall national interests, as well as the specific national interest in the generation and distribution of electric services, or is construed as conflicting with any applicable statute, the Secretary may not approve the State program until it is

amended to recognize those Federal rights, powers, and interests."

(Legislative History of the Coastal Zone Management Act, December 1976, pp. 321-22.)

The statutory directive of §306(c)(8) is interpreted in §923.52(a) of the newly proposed regulations, which provides:

> "Requirement. The requirements of subsection 306(c)(8) to consider adequately the national interest involved in the planning for and siting of facilities which are necessary to meet other than local requirements must be met within the context of balancing a national interest in the planning for and siting of such facilities with other national interests related to coastal resource conservation and protection. This balancing is necessary to meet the national policy objectives of section 303 of the Act. Therefore, in meeting the requirements of this section, States must:
>
> (1) Describe national interests considered during program development and the sources thereof;
>
> (2) Indicate how competing national interests have been weighed and how this weighing is reflected in the substance of the management program;
>
> (3) Describe a process for continued consideration of national interests during program implementation."
>
> (Emphasis added.)

Due to the deletion from the program of the discussion entitled "National Interest and uses of Regional Benefit"[21/] by the October Addendum, the sole discussion of the

21/ Program, p. 345.

national interest appears in Part II, Chapter 6 of the DEIS.[22/] The Addendum purports to substitute Chapter 6 for the deleted discussion.[23/] We have already observed that the narrative prepared by OCZM is not a part of the program. Wholly aside from that deficiency, Chapter 6 is neither an accurate description of what is the program nor does it satisfy the requirements of the Coastal Act, or existing or proposed regulations relating to consideration of the national interest.

That Chapter 6 is not an accurate description of the Massachusetts program is well illustrated by its assertion that,

> " . . . the Massachusetts program looks to the following sources for policies and information that must be taken into account to adequately consider national interest in exercising both its planning and management responsibilities:
>
> a. Federal laws and regulations,
>
> b. Policy statements for the President of the United States (e.g., National Energy Plan),
>
> c. Special reports, studies, and comments from federal and state agencies,
>
> d. Testimony received at public hearings and meetings on the Massachusetts program,
>
> e. Certificates, policy statement, and solicited opinions issued on specific projects by federal regulatory agencies such as FPC, FRDA, FEA, etc.
>
> f. Statements of the national interest issued by federal agencies.

22/ DEIS, pp. 11-53 thru 11-66.

23/ Addendum, p. 10.

"For three of the national interests of salient to Massachusetts - energy production and transmission, recreation, and fisheries - NOAA has issued specific statements of national interest.

"These in addition to the sources above, are used for defining national interest in energy, recreation, and fisheries."

(DEIS, pp. 11-53, 54.)

Notwithstanding this assertion, the unfortunate fact is that the program imposes no such requirement! Nor, indeed, were we able to locate any support for the assertion that "The Massachusetts Coastal Zone Management Program has incorporated the following NOAA statement concerning the national interest in energy."

Chapter 6, at best, represents what the authors of the DEIS would <u>like</u> the Massachusetts program to be, not what it is.

Even assuming Chapter 6 were accurate, it makes no mention of how competing national interests were weighed and how the weighing is reflected in the program. Nor does it describe a process for continued consideration of national interests in the future. The simple fact is that neither the policies outlined in the program nor the standards established in relevant existing legislation include affirmative requirements that national interests be adequately considered. This is, in our judgment, a fatal defect.

C.

Assuring That Local Requirements Do

Not Unreasonably Restrict or Exclude

<u>Uses of Greater Than Local Benefit</u>

Recognizing that parochial local interests might well result in the unreasonable exclusion from the coastal zone of uses of greater than local benefit, Congress included in the Act an express requirement that

> "Prior to granting approval, the Secretary shall also find that the program provides:
>
> * * * *
>
> "(2) For a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit."
>
> (CZMA §306(e)(2).)

The instant case provides an excellent illustration of why such a guarantee is indispensable. Large portions of New England are dependent upon the ports of Massachusetts for general interstate and international commerce, as well as for the importation of energy resources. Were local regulations to unreasonably impinge upon these, or other uses of greater than local benefit, the welfare of the entire region would be imperilled and a very basic aspect of federalism would be violated. Indeed, the federal government was created for the very purpose of ensuring that the parochial interests of the states do not unreasonably restrict the greater national welfare.

The Act requires that state programs contain affirmative guarantees against such a result.

Surprisingly, the Massachusetts program makes no provision whatever for satisfying this requirement. In fact, the October 7 Addendum expressly deleted those portions of the program which discussed uses of regional benefit and sought to replace them with the DEIS Chapter on the national interest discussed supra.

Further, that portion of the DEIS identified as dealing with this statutory requirement[24/] makes no mention whatever of either the federal requirement or the program's attempt to meet it.

D.

Serving the National Objective

Of Greater Energy Self-Sufficiency

We have discussed in some detail the failure of the Massachusetts program to affirmatively require that the energy needs of the balance of the Northeast, and the nation as a whole, be appropriately accommodated in the preparation and implementation of the program because this failure, if none other, precludes approval of the program for the reason that it goes to the very heart of the federal Act.

Congress intended the 1976 Amendments to the CZMA to deal with two "national" concerns: The need to develop OCS resources and state opposition thereto.

The Conference Report on the 1976 Amendments described their purpose as follows:

24/ DEIS, pp. 11-50, 53.

> "The 1972 Act was enacted before the advent of the current and continuing energy crisis; i.e., before attainment of a greater degree of energy self-sufficiency became a recognized national objective of the highest importance and priority. The conference substitute follows both the Senate bill and the House amendment in amending the 1972 Act to encourage new or expanded oil and natural gas production in an orderly manner from the Nation's outer continental Shelf (OCS) by providing for financial assistance to meet state andlocal needs resulting from specified new or expanded energy activity in or affecting the coastal zone."
>
> Statement of the Committee of Conference, 1976 U.S. Cong. and Admin. News 1821.

The goal of the Congress was plainly stated--"to encourage new or expanded oil and natural gas production in an orderly manner from the Nation's outer Continental Shelf." Delay in reaching this goal was of foremost concern to the Congress.

> "The conferees believe . . . that there is a real possibility of delay or disruption in Federal plans for needed new and expanded OCS oil and gas production unless coastal states and coastal communities are assured of the means of coping with and ameliorating the impacts from such activities. . . ."
>
> Ibid.

Accordingly, to enlist the cooperation of the states in expediting OCS development Congress provided in the 1976 Amendments for an energy "impact" program to compensate coastal states should offshore development lead to any adverse impact. The significance of the impact program and the 1976 Amendments in general was well summarized by Representative Ruppe in the final House debates:

"When Congress passed the original act, we had not yet experienced an energy crisis. The 1973 oil embargo forced a recognition that an alteration in our national energy policy was mandatory. In an effort to implement a more valid energy policy, we could not but realize there should be an increased demand for the oil and gas resources which are available beneath our offshore areas. Individual coastal states are ill-equipped to cope with inherent impacts as we pursue offshore leasing programs, deepwater ports, and additional energy facilities. We cannot hope to secure a policy of energy self--sufficiency without these offshore deposits, and we surely cannot expect to retain them without smooth cooperation between the Federal Government, and State and local governments."

Cong. Record, July 30, 1976, at H 7076 (emphasis added).

In summary, then, it was the view of Congress that if financial help was provided coastal states in adjusting to increased development of energy resources, the cooperation of these states might be enlisted in meeting the national objective of increased OCS oil and gas production.

This purpose was echoed by Congressman DuPont, a manager of the amendments in the House, who observed:

"I believe that this bill represents a very significant, important action by this Congress. There has been much rhetoric during this past session concerning the best ways to deal with our nation's ongoing energy crisis, but nothing has been done to tackle the problems head-on. With the passage of this bill, this Congress will make a major commitment towards our national goal of energy self-sufficiency."

Legislative History of the CZMA, supra, at 1097-98 (emphasis added).

The record is replete with similar quotes noting the urgency of this Nation's energy problems and the Congressional intent that the CZMA provide a structure to lead to their resolution, particularly with respect to reducing the dependency of this Nation upon imported oil.

Congress was thus clearly concerned with expediting energy development, and it did not choose to enact toothless legislation which, although giving the States substantial funds and powers, demanded nothing from them in return. Consequently, as a condition for receipt of Federal funds to pay for their management programs, the States are required to include specific guarantees within those management programs that these Federal funds would not be used to thwart the purposes of the Federal law. Hence, the indispensibility of such provisions.

It is true, of course, that existing legislation provides a planning and permitting process especially for energy facility siting.[25/] It appears to us, however, that the process, as currently configured, will seriously impede, rather than enhance, the program's ability to serve the national interest in achieving greater energy self-sufficiency. We say this for the following reasons:

As the discussion beginning at amended page 259 of the program outlines, all activity in the Massachusetts coastal zone is directed by the Executive Office of Environmental

25/ MGLA, C. 64, §§69 G-S.

Affairs. In the case of energy facilities, that office must obtain approval from the Energy Facilities Siting Council (an autonomous agency created by the legislature).[26/] The Energy Facilities Siting Council is empowered to determine the state's need for and the siting of electric generating, gas, and oil facilities.

As previously observed, in the discharge of its responsibilities, the Council is bound by statute to insure a necessary energy supply for Massachusetts with a minimum impact on the environment at the lowest possible cost. Moreover, the Council, in its review, must determine whether the proposed facilities are consistent with current state health, environmental protection, and resource use and development policies. The Energy Facilities Siting Council may inquire into the need for the facility, the economics of the facility, and the alternative proposals and sites, but without Council approval, other state permitting agencies may not issue permits that may be required for the construction of an energy facility.

The only connection between the Executive Office of Environmental Affairs and the Energy Facilities Siting Council with regard to siting of energy facilities, is a two page memorandum of understanding which expressly states that it does not "expand or limit [either agency's] existing statutory powers in any way."[27/] The fact is that the memorandum changes

26/ Id.

27/ Program, Appendix A, p. 19.

nothing, and is probably not enforceable in any event.[28/] In short, there is nothing in the Massachusetts Coastal Zone Management Plan that will assure or guarantee that new energy facilities can be established in the coastal zone or that existing facilities can be expanded in connection with OCS activity or any other activities.

Nor does the process hold much hope for the expeditious processing of permits for petroleum facilities, as the following discussion of the rather lengthy and complex procedure to be followed in obtaining approval for the siting of oil facilities makes clear:

Not later than one year prior to commencement of construction of an oil facility, or not later than two years prior to commencement of construction of a facility for the refining of oil designed so that more than thirty five per cent of its output could be gasoline or refined oil products lighter than gasoline, an oil company must file with the council a notice of intention to construct an oil facility. Such notice must include, in such form and detail as prescribed by the Council, in addition to a detailed description of the proposed facility and site, the following information for the region expected to be served by the oil facility:

28/ See discussion supra, commencing at page 7.

(1) A description of the applicant's current activities involving the transshipment, transportation, storage, or refining of oil or refined oil products.

(2) A description of the applicant's qualification and capability in transshipment, transportation, storage, refining and marketing of oil or refined oil products.

(3) An analysis of the proposed facility including but not limited to a description of alternatives to the planned action, such as other site locations, other oil facilities, and no additional oil facilities; and a description of the environmental impact of the proposed facility, said description to include buffer zones and other measures to minimize damage to the environment.

(4) A description of the capital investment plan proposed for such facility, and the overall financial soundness of the company and economic viability of the facility, including insurance coverage during construction and operation.

Further, no oil company may commence construction of an oil facility unless a notice of intention to construct such oil facility filed in accordance with this section, has been approved by the council. Approval of such notice of intention to construct an oil facility may not be considered approval of construction permits by state agencies.

After the notice of intention to construct an oil facility is filed the council hold a public adjudicatory proceeding within six months of filing. In addition, a public hearing must be held in each locality wherein the proposed oil

facility is to be located. The Council is required to take action of the notice of intention to construct an oil facility within twelve months of the filing and twenty-four months from the filing in the case of a refinery.

The prime basis for approval of a notice of intention to construct an oil facility is that all information regarding sources of supply for such facility and financial information regarding the applicant and its proposed facility are substantially accurate and complete, that the Council is satisfied as to the adequacy of the applicant's capital investment plans to complete its facility, the long term economic viability of the facility, the overall financial soundness of the applicant, the qualification and capability of the applicant in the transshipment, transportation, storage, refining and marketing of oil or refined oil products, and that plans including buffer zones or alternatives thereto for the applicant's new facility are consistent with current state health, environmental protection and resource use and development policies.

The law does provide that oil companies, as well as electric and gas companies, may petition the council for a certificate of environmental impact and public need with respect to new facilities which, if issued, would allow construction notwithstanding state and local permit requirements but subject to federal air and water standards. Pursuant to these provisions the Council will consider a petition for the electric, gas or oil company prevented from

building a facility because it cannot meet standards imposed by a state or local agency with commercially available equipment or because the processing or granting by a state or local agency of any approval, consent, permit or certificate has been unduly delayed for any reason, including the preparation and publication of any environmental impact report or if the electric, gas or oil company believes that there are inconsistencies among resource use permits issued by such state or local agencies. Similarly, the Council will consider petitions which assert that the electric, gas or oil company believes that a nonregulatory issue or condition has been raised or imposed by such state or local agencies such as but not limited to aesthetics and recreation; or the facility cannot be constructed due to any disapprovals, conditions or denials by a state or local agency or body, except with respect to any lands or interests therein, excluding public ways, owned or managed by any state agency or local government.

This procedure, however, is of little practical utility to oil facilities due to the following statutory exception:

> "With respect to the siting of oil facilities, other than oil pipelines, this section shall not be construed to override those local zoning by-laws in effect on the date when a notice of intention required by section sixty-nine I is filed."

(MGLA, Ch. 164, §69K.)

Currently most, if not all, of the land in the coastal zone in Massachusetts is subject to local and state

laws (local ordinances and by-laws, Wetlands Protection Act, Waterway Program, Ocean Sanctuary Program, Land Conservation Restoration Program, etc.) that greatly restrict if not totally prohibit the siting of energy facilities, and therefore the industry is in effect excluded from the coastal zone.

Hence, the planning process does not appear to afford any effective guarantee that regional and national needs for petroleum related facilities will not be stymied by local regulations. This failure contravenes not only the planning process requirements of the Coastal Act, but also the national interest in achieving greater energy self-sufficiency and the Act's requirement that programs assure uses of greater than local benefit, both of which are discussed in greater detail below.

Further, while existing legislation provides that the council may cooperate with other state agencies and the federal government, but there is no provision that there must be any cooperation in terms of the national interest.

In summary, although the Massachusetts plan proposes to manage the coastal zone through the Executive Office of Environmental Affairs, the Energy Facilities Siting Council is the agency that will determine whether any energy facilities are sited or expanded in the coastal zone. It is further clear that under the existing laws of the Commonwealth of Massachusetts that there is little if any chance that energy facilities will be sited or expanded in the coastal zone.

This most serious deficiency must be remedied before the program may be approved.

IV

THE DEIS FAILS TO MEET NEPA REQUIREMENTS

Federal regulations designate the Environmental Impact Statement as the basic action document for evaluating coastal zone management programs submitted for §306 approval, and because action of any program proposal is clearly major federal action significantly affecting the quality of the human environment,[29] it also is necessary to assess the sufficiency of the DEIS in terms of the requirements of the National Environmental Policy Act (hereafter sometimes "NEPA").[30]

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

A.

Failure To Provide A

Balanced And Thorough Discussion

The Council on Environmental Quality's guidelines for the preparation of Impact Statements pursuant to NEPA quite[31]

29/ 15 C.F.R. §925.

30/ National Environmental Policy Act, 42 U.S.. 4321 et seq. (hereafter "NEPA").

31/ 40 C.F.R. Part 1500 (hereafter "EIS guidelines" or "guidelines").

expressly require the preparing agency "to assess the positive and negative effects of the proposed action as it affects both the national and international environment." (40 C.F.R. §1500.8(a)(3)(i).) The guidelines also direct that "[s]econdary or indirect, as well as primary or direct, consequences for the environment should be included . . .," giving as examples of such indirect consequences " . . . associated investments and changed patterns of social and economic activities." (Id. at §1500.8(a)(3)(ii).) Impact statements should also contain "an indication of what other interests and considerations of federal policy" might offset the proposed action and alternatives. (Id. at §1500.8(a)(8).)

The required discussion must be thorough and probing. Yet, the DEIS here represents only a superficial analysis which considers only one viewpoint--the benefits of regulating coastal uses. No serious attention is paid to the costs associated with a proposal such as that put forth by Massachusetts. It may very well be that if the general objectives of the Massachusetts program had legal force and could in fact be implemented, that a balancing of costs and benefits might result in an appreciable environmental gain. One cannot make this judgment from a review of the DEIS, however, for the necessary information is absent.

Rather the authors of the DEIS, by focusing exclusively on benefits, have developed a document which does much more to promote the approval of the Massachusetts program than it does to critically appraise that proposal's environmental

impact. Yet the latter is the only purpose of an EIS. "An EIS may not be used as a promotional document in favor of the proposal, at the expense of a thorough and rigorous analysis of environmental risks." Brooks v. Volpe, 380 F.Supp. 1287 (W.D. Wash. 1974). The case law is also quite clear that the required "thorough and rigorous analysis" is not achieved with the approach utilized here by OCZM, of examining only selected views on the benefits of the proposal while ignoring negative evidence.

> "[The Court's] function is . . . to assure that the statement sets forth the opposing scientific views, and does not take the arbitrary and impermissible approach of completely omitting from the statement, . . . any reference whatever to the existence of responsible scientific opinions concerning possible adverse environmental effects."
>
> Committee For Nuclear Responsibility, Inc. v. Seaborg, 463 F.2d 783, 787 (D.C. Cir. 1971).

See also Appalachian Mountain Club v. Brinegar, 394 F.Supp. 105 (D.N.H. 1975); Duck River Preservation Ass'n v. Tennessee Val. Auth., 410 F.Supp. 758 (D.D.Tenn. 1974).

B.

Failure To Consider

Alternatives To The Proposed Action

In enacting the National Environmental Policy Act, it was the objective of Congress to require that agencies considering a proposal subject that proposal to a rigorous analysis and, in the process, study and evaluate possible alternatives.

> "NEPA's requirements are specifically designed to counter the inevitable agency bias in favor of a proposal or project that it has recommended, Environmental Def. Fund v. Corps of Eng., supra, and to effectuate substantive changes in the agency decision making process." (Citation omitted.)
>
> McDowell v. Schlesinger, 404 F.Supp. 221, 241 (W.D.Mo. 1975).

An adequate discussion of alternatives is thus regarded by the cases as a prerequisite for an acceptable EIS. Calvert Cliffs Coord. Com. v. United States A.E. Comm'n, 449 F.2d 1109 (D.C. Cir. 1971). The First Circuit has articulated this requirement as follows:

> "Finally, and perhaps most substantively, the requirement of a detailed statement helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug. A conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues, but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.'" (Citations omitted.)
>
> Silva v. Lynn, 482 F.2d 1282, 1285 (1st Cir. 1973).

The subject DEIS clearly reveals that OCZM's decision-making process has not been affected at all by the NEPA requirements, for there is no meaningful discussion of any course of action other than that which the agency clearly seeks to promote--§306 approval. Yet, there are many other options available to the agency which should be just as thoroughly explored. Specifically, since the Massachusetts program is so clearly not

currently approvable, any adequate EIS must examine the alternative of continued program development funding pursuant to §305. And OCZM must do much more than simply mention this possibility. Further, the advantages and disadvantages of this alternative vis-a-vis §306 approval must be discussed. Particularly, since §306 approval would bring the §307 "consistency" provisions into effect, an adequate EIS must consider the impacts which may follow from such a decision in view of the present incomplete and indefinite nature of Massachusetts' proposal. Thus, in discussing alternative choices, the EIS must consider the possibility that §306 approval at this time might delay or disrupt beneficial coastal uses and weigh this against continuation of §305 funding which would have no such adverse impact. Only through such an analysis can alternatives be meaningfully assessed. The law is clear that such a comparative analysis is required. Thus, the court in Iowa Citizens For Environmental Quality, Inc. v. Volpe, 487 F.2d 849, 852 (8th Cir. 1973), make specific mention of " . . . the exhaustive analysis which would be required if significant differences in environmental impact among alternatives were present." (Emphasis supplied.) See also Minnesota Public Research Group v. Butz, 401 F.Supp. 1276 (D.Minn. 1975). Because OCZM in this case has apparently committed itself to §306 approval, analysis of alternatives is virtually non-existent in the DEIS. For this reason it fails to comply with both the letter and spirit of NEPA.

C.

Objectivity Is Essential To

The § 306 Approval Process.

Wholly aside from the requirements of NEPA, it is absolutely essential that OCZM retain its objectivity in reviewing programs submitted for §306 approval. Among comments submitted to the Office of Coastal Zone Management regarding proposed coastal zone management program approval regulations (15 C.F.R. Part 923) were the following paragraphs outlining the need for OCZM to remain objective throughout the program evaluation process:

> "D. Program Disapproval Must Remain A Viable Option Throughout The Review Process.
>
> "The job of OCZM is not an easy one. it is first required to work with states in developing management programs and then it must make a fresh review of those programs and objectively determine whether or not the requirements of the CZMA have been met. Such objective review is clearly very difficult where the same personnel charged with conducting the review and assembling and evaluating the evidence were responsible at a prior stage for encouraging development of that program which they are now called upon to critique.
>
> "It would be fairer to both the OCZM staff and the review process for the agency to internally separate the development and review functions. The natural consequence without such an arrangement--even with the very capable staff of OCZM--is that certain assumptions made at the development stage are never challenged and that limitations which should perhaps not be accepted are. The review process thus becomes more of a defense and promotion of the program proposed rather than the objective evaluation which Congress intended.

"To avoid this natural mutation of the approval process--from a critical function into one of advocacy--we suggest the regulations expressly separate the development and review functions within OCZM."

Comments of the Petroleum Industry on Proposed Coastal Zone Management Program Approval Regulations, October 28, 1977, p. 7.

The cause of our concern regarding maintaining the viable option of program disapproval throughout the review process is well illustrated by the failure of the DEIS in the instant case to critically analyze the Massachusetts program in terms of its statutory approvability and by the failure of the statement to objectively evaluate the alternatives to § 306 approval.

V

CONCLUSION

For all the reasons set forth above, it is submitted that the Massachusetts Coastal Zone Management Program falls short of the requirements for approval and that the DEIS does not satisfy the requirements of the National Environmental Policy Act. Approval of these documents in their present form should be denied. Rather, we hope that the foregoing comments and the evaluation of the program in accordance with § 305(d), preliminary approval regulations will prove to be of use in strengthening the Massachusetts program so as to meet all the objectives of the Coastal Zone Management Act.

Natural Resources Defense Council, Inc.

122 EAST 42ND STREET
NEW YORK, N.Y. 10017
212 949-0049

Washington Office
917 15TH STREET, N.W.
WASHINGTON, D.C. 20005
202 737-5000

Western Office
2345 YALE STREET
PALO ALTO, CALIF. 94306
415 327-1080

D OF TRUSTEES
n P. Duggan
rman
Marshall
Chairman
el McIntosh
Chairman
orge M. Woodwell
Chairman
on E. Abrahamson
Louis Auchincloss
. Bittker
t O. Blake
rick A. Collins, Jr.
ne J. Dubos
t W. Gilmore
Jackson, D.B.E.
M. Josephy, Jr.
on Kean
hua Lederberg
ny Mazzucchi
N. McCloskey, Jr.
Olpin
in E. Parker
ford B. Pinchot
s B. Rangel
t Redford
R. Robinson
nce Rockefeller
ard Roosevelt
C. Schwartz
ey North Seymour, Jr.
Sive
E. Train
s A. Troyer
ce Abbott Duggan
. Representative
H. Adams
cutive Director

December 15, 1977

Robert Knecht
Associate Administrator
Office of Coastal Zone Management
Page Bldg. 1
3300 Whitehaven Street, NW
Washington, D.C. 20235

Dear Bob,

Enlosed are NRDC's comments on the Massachusetts Coastal Zone Management Program and the State of Massachusetts Coastal Management Draft Environmental Imapct Statement. Also enclosed is a copy of NRDC's statement presented at the November 22 joint federal/state hearing on the Massachusetts Program and the DEIS.

Because of our concern about this program, we would like to meet with you to discuss the program and our comments as soon as possible.

Sincerely Yours,

Sarah Chasis

Enclosures

Recycled Paper

LAW OFFICES OF
GREGOR I. McGREGOR
33 MT. VERNON STREET
BEACON HILL, BOSTON 02108

Telephon
(617) 227-

. McGregor
T. Roex

December 19, 1977

Evelyn Murphy, Secretary
Executive Office of
Environmental Affairs
100 Cambridge Street -20th Floor
Boston, MA 02202

RE: Massachusetts CZM Program

Dear Secretary Murphy:

Thanks very much for so actively soliciting comments on the draft "Chapter 21A" regulations found in the appendix to the Massachusetts CZM Program, volume 1. They are very important to the Program.

We know that these regulations, and so-called "process regulations" which will be adopted for each agency, will be the subject of later public hearings under the state Administrative Procedure Act. Robin Lapore and Eric Van Loon have been very effective, however, in urging early submittal of comments on these draft regulations. We wanted to get the enclosed comments to you so you could have the results of the NRDC review of them at the same time you have the NRDC comments on the Program itself and the Draft EIS. We look forward to discussing the NRDC position, and your responses, at our meeting with you which Eric has scheduled for 11:30 A.M. this Thursday, December 22. Sarah Chnois, NRDC Staff Attorney, will be flying in from New York for that meeting. Thank you for your courtesy in arranging this time to get together.

Sincerely,

Gregor I. McGregor
GIMcG/dmr
Enc.

cc: William Matuszeski, Director of
State Programs/Office of CZM/Washington

F. BATTLES
ive Director

MASSACHUSETTS PETROLEUM COUNCIL
11 BEACON STREET, BOSTON, MASS. 02108
(617) 227-4227

HENRY H. CORRADO
Associate Director
FRANK H. TIVNAN
Associate Director

December 12, 1977

Mr. Richard O'Connor
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

RE: Comments on the State of Massachusetts Coastal Management Program and Draft Environmental Impact Statement (42 Fed. Reg. 55632-October 18, 1977)

Dear Mr. O'Connor:

As Executive Director of the Massachusetts Petroleum Council, a Division of the American Petroleum Institute, I welcome this opportunity to submit, on behalf of our member companies, the following comments on the Massachusetts Coastal Management Program initially submitted for federal approval on March 18, 1977, and the Draft Environmental Impact Statement (DEIS) prepared by the Office of Coastal Zone Management proposing approval of this program pursuant to § 306 of the Coastal Zone Management Act.

At the outset, we wish to acknowledge the time and effort which were obviously expended in preparing the Massachusetts Program. In our judgment, the program represents a thoughtful approach to coastal zone management. Indeed, some of the policies discussed in the program and the mechanisms proposed for the implementation of those policies go far toward fulfilling the procedural and substantive requirements imposed by the federal Coastal Act.

For the reasons discussed below, however, the Massachusetts Program does not yet fully meet the statutory requirements for § 306 approval. On the other hand, the program appears to warrant further developmental funding pursuant to § 305(d).

Due to the program's massiveness, we have not attempted to provide an exhaustive catalogue of its strengths and weaknesses. Rather, we have attempted only to address the program's more significant deficiencies and certain aspects of the program which we consider desirable.

Sincerely,

John F. Battles
Executive Director

COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL, INC.

ON THE MASSACHUSETTS DRAFT CZM REGULATIONS

December 19, 1977

Gregor I. McGregor, Esq.
33 Mt. Vernon Street
Boston, MA 02108
(617) 227-7289

For NRDC, Inc.

INTRODUCTION

This Commentary was prepared as part of the Atlantic Coast Project of the Natural Resources Defense Council, Inc. NRDC is a national organization, with more than 35,000 members, dedicated to the wide use of natural resources. Through its Atlantic Coast Project NRDC encourages state governments to use the maximum legal authority available to manage the coastal zone and encourages the federal government to use its maximum authority available under the Coastal Zone Management Act of 1972.

These comments are divided into two parts: the first devoted to the proposed regulations of the Executive Office of Environmental Affairs to implement the Massachusetts CZM Program, and the second to the so-called "process regulations" to be adopted by each EOEA agency and other agencies to implement certain special procedures under the CZM Program.

Some of the more important conclusions are:

1. The regulations may need reshaping to reflect what an Opinion of the Attorney General advises regarding legal authority for the Massachusetts Program;

2. Specific standards are needed for the Secretary to exclude any EOEA agency from the program;

3. What constitutes the CZM Plan and the CZM Program needs to be clarified;

4. The sources of environmental policy in Massachusetts should be better specified;

5. Some policies are good but most are too soft and need reworking;

6. To incorporate in these regulations the entire CZM Plan is unwieldy;

7. The weight to be given to the CZM Plan in adjudicatory proceedings must be identified, and what it means to be "dispositive";

8. The loopholes need to be closed for the Secretary to exempt agency decisions from the program;

9. Substantive agency regulations, to supplement these procedural regulations, still are needed to make the program workable and to provide the requisite legal authority;

10. Regional and other advisory boards should be given meaningful tasks;

11. The details of Secretary "conflict resolutions" should be added;

13. The standards for the Secretary's override on consistency need to be promulgated so that the process is not politicized;

14. Automatic "equivalency" certifications of consistency should be further discouraged;

15. Other program decisions, such as permits and funding decisions, ought to be added to the category of "management program decisions" circulated widely to the public;

16. And the "process regulations" should be revised to prevent over-reliance on a single person to trigger review of agency decisions for conformity with CZM policies and to isolate CZM coordinators from political and personal pressures. Any agency decision affecting the coastal zone ought to be accompanied by an affirmative, written finding of consistency with CZM policies.

NRDC COMMENTS ON THE CHAPTER 21A REGULATIONS OF THE MASSACHUSETTS CZM PROGRAM

These comments will address the format and purpose of the proposed regulations to be promulgated by the Secretary of Environmental Affairs to implement the Massachusetts CZM Program. We understand these draft regulations will be subject to further public review as part of a hearing under the Administrative Procedure Act prior to promulgation, and we will make comment at that time on the final form of these regulations.

Regulation 1.0 (Authority): This regulation points up that the Massachusetts CZM Program is based primarily on reorganization legislation that is coordinative in nature. It is only a small portion of the enabling legislation which authorizes the Secretary to resolve conflicts and administer programs jointly agreed to. The 1969 legislation authorized studies and recommendations with a view to improvements in organization, procedures, practices, economy, efficiency and unproductive work and funding. Added to this was some budgetary and other financial authority. The 1973 legislation added essentially budgetary authority together with some administrative powers regarding creation of positions and hiring of personnel, and general operating procedures. Other parts of the 1973 legislation called for recommendations from the Executive Office regarding duplicate and overlapping functions, administrative practices and facilities, information systems, coordinated and joint planning, lines of authority and allocation of responsibility, delivery of services, and career opportunities.

Finally, the 1974 legislation put into affect an enabling statute for the Executive Office. In view of the stress on coordination in this legislation and in the earlier legislation, the question is still open whether Massachusetts can interpret this legislation history to support using the "resolution of conflicts" and the "joint program" authority of the Secretary as a basis for a CZM Program. The 1975 legislation essentially reorganized the EOEA agencies and shifted functional responsibilities. An Opinion of the Attorney General is still badly needed. Such an Opinion must establish that the Secretary has legal authority to create the program as she proposes. The Opinion must also establish that the program as created confers the authority necessary to "manage" the coastal zone as required by the Coastal Zone Management Act of 1972.

Regulation 2.0 (Purpose): The final text of this regulation also will be dependent upon the results of an Opinion of the Attorney General. It states the purpose of these regulations as being to implement the CZM Plan and this may need reshaping if some other mechanism is necessary.

Incidentally, this regulation and Regulation 5.2 overlap somewhat and they might be combined so that all the purposes of these regulations are found in one place.

Regulation 3.0 (Definitions): The definition of "appropriate EOEA agency" gives the Secretary the authority to exclude EOEA agencies from coverage of these regulations. The regulation purports to list all the agencies which will automatically be included but apparently, upon consultation with the Secretary, individual agencies may be exempted. Yet there are no criteria for this judgment. It is possible there may be partial exemptions. This exemption process must be carried out only with good public scrutiny and with adequate standards. These exemption decisions must be included as "management program decisions" under Regulation 6.64 because they are critical to the program. There is no sense promulgating a CZM Program which appears to accomplish much but which in actual implementation is much diluted. No agency on which the CZM Plan relies should be excluded.

As to "areas of critical environmental concern" and "areas for preservation or restoration" there ought to be some central location of basic explanations to make these ACEC and APR acronyms less confusing.

Regarding the "coastal zone" boundary, it is not clear from the definition whether the natural resources inland of the boundary roads, rail lines or rights-of-way have been mapped. If so, the definition should reference the maps. If not, the definition should reference more detailed descriptions of these natural resources so that the public may know precisely where the boundary goes.

The definition of "CZM Plan" appears to be dated, referring to a continuing review of certain officials. Also, the reference to "other material" in addition to maps, regional chapters, implementation measures, policies, objectives and text is too vague. There ought to be some way the public can ask for a copy of the "CZM Plan" and be given a copy which is a manageable, understandable document with minimal ambiguity and cross-referencing.

Regulation 5.1 (State Environmental Policy): The definition of environmental policy for Massachusetts includes an amendment to the state Constitution plus the text of part of the Massachusetts Environmental Policy Act. The definition also includes certain unspecified Executive Orders "or other statements" yet to be issued by the Governor, plus statements of environmental policy yet to be promulgated by the Secretary of Environmental Affairs. And, even more vague, statements of policy promulgated by other Secretaries yet to be "adopted" by the EOEA Secretary. Again, the public is entitled to be able to ask for copies of state environmental policy and be given discrete documents which are complete and self-contained. This open ended policy declaration in Regulation 5.1 really does not contribute much to implementation of a CZM Program.

Regulation 5.3: Of these listed environmental policies for the coastal zone, some are good and some are weak. Most are too general to enforce and many are plainly unenforceable. Some call merely for "review", "consideration", "encouragement" or similar "soft" directives. Examples of good ones include conditioning construction in water and contiguous land areas to minimize interference with water circulation and sediment transport and to preserve water quality and marine productivity (4); restricting new development in

certain areas to permitted uses (8a); conditioning new development in contiguous upland areas, especially within APR's, to insure that existing hazards are not exacerbated and that the proposed uses or activities are appropriate in light of the risk of damage (8b); implementing structural solutions to protect property and lives only when there will be widespread public benefits and minimal adverse environmental effects (12a); approving permits for private flood or erosion control projects only when there will be no adverse effects on adjacent properties or downcoast areas (12b).

All policies which are invoked as part of this CZM Program ought to be this precise or more so. Any policies not meeting this standard of specificity ought not to be regarded as policies. They ought to be called goals or guidelines or recommendations. Also, they ought to be separated from the enforceable policies in the text of any program documents or regulations so that the public does not get the erroneous impression that they will have any firm effect as part of the management of the coastal zone.

It should be observed that policy 8b and 8c adopt language not now found in the agency programs which will be enlisted to accomplish these policies. This again points up the need for amendments to substantive agency regulations before the program can be effective.

Regulation 5.4: This regulation purports to incorporate "by reference" the entire CZM Plan. We understand that this regulation will be changed because of the size of the CZM Plan and because of the uncertainty of what it means in the regulation to incorporate the Plan "in order to clarify, support, implement and elaborate upon the policies."

Regulation 5.5: The reference to the evidentiary weight of the CZM Plan should be pulled out of this regulation and treated separately. It is a very important concern. It must be specified how in "any adjudicatory hearing" the Plan is to be treated as dispositive (incidentially, this should read "adjudicatory proceeding"). Also it should be specified in what respect the Plan is "dispositive". The language probably ought to say that the elements of the CZM Plan shall govern in the resolution of all disputed findings of fact and questions of law involving coastal matters. It is not clear what the regulation means by occasions "when the weight to be accorded to the CZM Plan is at issue" and that language should be eliminated. The point is that the CZM regulations govern agency affairs except as provided in Regulation 5.6.

Regulation 5.6: This regulation offers tremendous loopholes. It is an open invitation for agencies to avoid responsibilities under the coastal zone program since it invites agencies to claim that actions required of them under the CZM Program would be "impermissible at law" and to ask the Secretary to override the agencies' CZM responsibilities because of "more substantial and compelling public interests". The regulation provides no standards for making these judgments. The regulation allows the agency to make these judgments in the first instance and issue a permit or other decision in conflict with CZM policies, forcing the CZM coordinator or other agency personnel to appeal to the Secretary. Instead of this, the burden really ought to be on any agency

to make written findings as to why any particular action is "impermissible at law" or why the CZM responsibilities ought to be overridden by "more substantial and compelling public interests." Any such permit or other decision based on such reasoning ought to be postponed in its effectiveness until the Secretary affirmatively agrees in writing that these loopholes may be invoked. As it stands now too many things will just slide through.*

Incidentally, this regulation apparently should be redrafted to cover situations where what the CZM policy requires is impermissible under the agency "enabling legislation" not just "impermissible at law" which would include mere agency regulations.

Regulation 5.7: This regulation mandates amendments (and new regulations) where necessary to make the CZM Program work. The Commentary with this regulation emphasizes that:

> The extent to which the CZM Plan, as a statement of the state environmental policy, operates to affect the decisions of the EOEA agencies is determined by reference to the scope of authority under each EOEA law.

This again points up the need for substantive agency regulations before program approval plus a legal analysis of the authority conferred statute-by-statute to illustrate that authority is there to "manage" the coastal zone as required by federal law.

Regulation 5.8 and 5.9 (Advisory Councils): These regulations provide the central authority for the Advisory Councils. These boards will be given very limited roles, although this is typical in state CZM programs. Instead they ought to be given substantive program authority to make public participation meaningful. Unfortunately, without new legislation the Massachusetts Program cannot offer such innovative involvement of the public. Instead there is every danger that these Advisory Councils will become "advised councils". Massachusetts ought to decide what it wants to accomplish with these councils and they ought to be directed (by the word "shall") to do that. Otherwise, the program administrators may be tempted to regard the Councils as mere baggage.

Regulation 6.20 (Resolution of Conflicts): This regulation should flesh out the details of this conflict resolution procedure. Regulation 6.26 should specify that any ten citizens have the right to intervene in the entire conflict resolution "proceeding" not just some "hearing" which may or may not be held. This is what the Citizen Right of Intervention provides in Massachusetts, intervention in an "adjudicatory proceeding". The public ought to be informed of conflicts, not just the persons whose legal rights, duties or privileges may be involved. The Advisory Council for the area where the project is located ought to be formally involved in the conflict resolution procedure, not just a forum for discussion and a central point for data collection as specified in regulation 5.8 (B). A conflict resolution decision (not just a conflict resolution "hearing" as in Regulation 6.26 (d)) ought to be a "management program decision". If the Secretary finds contrary to the CZM Plan and a statement of findings is not prepared because there was no ajudicatory hearing, then the Secretary ought to make written

*"Regulation 6.28(a)(2) and "process regulations" 3.1 and 4.25 seem to indicate the agency can decide to issue or permit under the "impermissible at law" exemption but only the Secretary can invoke the other exemption. However, the MOU's seem to put the burden of invoking the entire "conflict reduction" process on the Secretary. Also, process regulation 5.1 fails to make clear no permit can issue until the conflict is resolved.

findings in any event. Regulation 6.28 (d) now would make that optional at the discretion of the Director of CZM. It is serious business for the Secretary to find that an action would be impermissible at law or that the CZM policies should be overridden for more substantial and compelling public interests or concerns. This is the ultimate escape from application of the program and the procedures ought to be appropriately rigorous.

Once again it is apparent that what is legally permissible under agency enabling acts is still undecided and very much unclear. We need a close examination of the EOEA agency statutes to determine what is the ultimate reach of their authority. To date this has not been done.

The test of whether there are more substantial and compelling public interests unforunately will politicize the CZM process. There are no guidelines or criteria for this judgment and what these critical terms mean is open to the imagination of those seeking to escape the program.

As to coordination with MEPA (see the alternative choices at Regulation 6.28 (c)), the conflict resolution process should be subject to MEPA insofar as the Secretary might resolve a conflict in a way that results in issuance of a different permit then the agency proposed when the early MEPA determinations were made.

Regulation 6.40 (Critical Environmental Areas): Not only should there be no "categorical exemption" under MEPA for any project in an area of critical environmental concern (see Regulation 6.50), but projects in such areas ought to be subject to "categorical inclusion" automatically triggering a requirement for an Environmental Impact Report. Amendments to MEPA now pending, and likely to be enacted, will authorize creation of such "categorical inclusions" and it is very logical to use them for work in critical areas.

Also, for areas of critical environmental concern there ought to be no automatic finding of federal consistency (based merely upon the issuance of appropriate state permits). This so-called "equivalency" approach to federal consistency ought not to apply when the work will be in such an area. Instead there ought to be case-by-case judgment by the CZM Office. Regulation 6.50 promises that the CZM Office will conduct such reviews and issue concurrence only when federal projects are consistent with the "purpose of preserving or restoring such areas for their conservation, recreational, ecological, æsthetic values". They should not be undermined by automated consistency findings.

There is no reason for Regulation 6.52 to leave unaffected by designation of a critical area any project for which an application already has been filed with an EOEA agency or for which a notice has been issued that an Environmental Assessment Form or EIR need not be prepared. If areas are so critical as to warrant case-by-case decisions on the environmental impact of projects, then projects caught in mid-stream ought to be so reviewed. There is no prejudice in doing so. No final decision has been made. No action has been taken in reliance upon a final decision of any agency. The way Regulation 6.52 is now drafted, it is likely that persons with projects affecting critical areas which have been nominated will dump applications with EOEA agencies just to take advantage of this overly broad grandfather clause.

Regulation 6.60 (Consultation): It is a good idea to publicize "management program decisions". One problem is that this coastal zone information will be mixed with other information in the so-called Monitor. It might be better to establish a separate section of the Monitor for coastal zone affairs. Another problem is that Regulation 6.64 does not include as management program decisions any individual permit or regulatory actions, issuance of grants or construction programs. This means Division of Water Pollution Control grants for municipal sewers, and even permits under the Wetlands Protection Act for large projects will not be circulated for consultation. A third problem is that an agency may select an alternative to publication in the Monitor for certain management program decisions. If this route is taken, the Monitor ought to publicize that this decision has been made, plus where alternative notice may be obtained.

The punishment in Regulation 6.67 for local government action which conflicts or interferes with a proposed management decision ought to be redrafted. There is no need for a municipality to forfeit its rights to comment and to request a public hearing (which has no analogue anyway). Instead it might just be provided that actions of local government conflicting or interfering with the proposed management decision shall not be given any weight. In the alternative, if this provision is designed to prevent municipalities from making decisions on zoning variances which would be inconsistent with Coastal Wetlands Restriction Orders, or site plan approvals at the local level of development within a nominated Area of Critical Environmental Concern, or locating a sewage treatment plant on a designated scenic river and so forth, then this provision ought to be very much expanded.

Regulation 7.00 (Federal Consistency): These regulations are critical to measure federal licenses or permits, financial assistance, Outer Continental Shelf activities, or activities or projects directly undertaken by the federal government, against the Massachusetts CZM Program.

Regulation 7.01 adopts the federal consistency regulations by reference, "including future amendments". Since the Massachusetts consistency regulations will be widely utilized by persons interested in single permits or funding decisions, a more full description of federal consistency and what that means might be included in the text of the regulations, or in commentary. For instance direct federal activities are subject to the consistency requirements only if they directly affect the coastal zone, but all other federal actions are subject if they merely affect land or water use in the coastal zone (funding decisions are covered if they "affect the coastal zone"). Some text might be included describing that for direct federal activities, the federal agency proposing the action submits the basic consitency notice. For licenses and permits, that is done by the applicant; for OCS activities, the person submitting the OCS Plan; for funding applications, the A-95 Clearinghouse. Direct federal activities must be consistent "to the maximum extent practicable" with the state CZM Program. Other federal activities must be "consistent", without that qualification, and the federal regulations indicate this difference is significant. Also, the nature of federal agency responsibility following a disagreement, and review by the Secretary of the Interior might be described in the text of the Massachusetts Consistency Regulations, or in commentary.

Regulation 7.10(b) should add Nuclear Regulatory Commission nuclear plant construction, and operating licenses to those federal permits subject to these consistency regulations.

The proposed Massachusetts consistency regulations are primarily procedural. The greatest failing of the federal regulations, and state consistency regulations in almost all CZM states, is the failure to set forth consistency criteria. Consistency is one of the most critical judgments to be made under the Coastal Zone Management Act and, even in the absence of adequate federal guidance on this subject, Massachusetts ought to make its best effort to set forth the standards for measuring federal actions against the state program. Otherwise consistency becomes a political process and the environment may suffer.

For instance, in a program utilizing "networking" the state should specify what constitutes the CZM Plan with which the federal activities must be consistent; where the plan may be obtained; what weight is to be given to Memos of Understanding; what weight is to be given the Regional Chapters; what weight is to be given guidelines as opposed to policies; which policies are enforceable and which are not, and what that means for consistency purposes; and what weight is to be given to actual practice in state implementation of its program where it differ from the text of the CZM Plan. Must the policies be read literally, or "as implemented"?

Regulation 7.16 is possibly the most important. Apparently it is the Massachusetts response to an invitation of the federal government to create "equivalency" approaches to consistency. That is, specifying that issuance of certain state permits may substitute for a case-by-case consistency determination by the CZM Office. It is good that Regulation 7.6 (C) provides that the CZM Office can participate in agency deliberations on a permit, although this paragraph needs to be expanded to explain what is the meaning of "circumstances which may require greater CZM involvement" and what is the meaning of the CZM Office "appropriately" participating in agency decision making. The language should be revised to make clear that the CZM Office may, in its discretion, override any explicit or implicit agency determination of consistency, and may proceed to conduct a case-by-case analysis and issuance of a CZM Office consistency certificate.

In view of the trial-and-error necessary to see how these consistency provisions will work, Regulation 7.16 (A) does seem to place too much faith in line agency implementation of CZM policies, at least initially. It calls for the CZM Office to concur on the federal consistency certificate as long as a line agency in EOEA is processing an application for a state license or permit. It is unclear what is meant by "circumstances requiring CZM coordination, which would trigger special CZM Office review. Perhaps some suggestions are found in the Commentary to Regulation 7.17, such as actions which have major policy implications, which are addressed by several possibly contradictory policies of the CZM Plan, or which are of a scale or magnitude that they require a thorough multi-agency review.

Regulation 9.3 (Amendments): As drafted, this regulation, read with Regulation 5.4 incorporating the entire CZM Plan by reference into these regulations, could result in implied amendments to these regulations without complying with the Administrative Procedure Act. This is so because "minor amendments" to the CZM Plan, including changes in maps, texts or policies, will be adopted automatically if not objected to. They would thereupon be legally effective without going through the regulation amending process until the Secretary decided to amend these regulations under Regulation 9.2 and 9.3 (A).

Hopefully, the Regulation 5.4 incorporation "by reference" will be eliminated, any substantive or procedural element of the CZM Plan which is to become legally effective will be incorporated in regulations, and any changes in regulations will go through the public hearing process of the Administrative Procedure Act.

NRDC COMMENTS
ON MASSACHUSETTS CZM "PROCESS REGULATIONS"

These comments address the sample regulations found at page a-69 of the Appendix to the Massachusetts CZM Program, Volume 1. The introduction on that page suggests that separate procedural regulations like these will be adopted for permit and non-permit functions of DEQE and for similar functions of other agencies involved in the CZM program.

This is critical. The proposed regulations cover only permit functions of DEQE. Other functions of DEQE, such as funding of sewer construction, must have specific procedural regulations. The same is true of agencies like the Department of Environmental Management (DEM) which must have new procedural regulations, for instance, to import CZM into the Wetlands Restriction Program. It is especially important to have the Energy Facilities Siting Council adopt "process regulations" to make CZM a functional part of that agency's business.

Beyond that, it should be recognized that these "process regulations" address only procedures. All the agencies involved in implementing the CZM Program must also amend their substantive regulations to incorporate the CZM policies and the promises made in the Massachusetts CZM documents. The Massachusetts Plan promises ambitious use of the Waterways Program, the Wetlands Protection Program, and the Wetlands Restriction Program. These promises, in many cases incorporating performance standards and specific conditions on coastal activities, must be translated to action by substantive regulations.

These "process regulations" are offered in the Massachusetts CZM Plan for illustration only. These comments will address the structure and intent of the regulations, therefore, with the understanding that there will be opportunity to comment on the fine points of drafting and the specific regulations for individual agencies at a later date. At some point all the "process regulations" for DEQE and other agencies must be proposed and subject to public hearing under the Administrative Procedure Act. For now, these comments will track these specific paragraphs in these regulations, preceded by a few general comments.

Generally, the idea is a sound one to have special procedural regulations for each agency, which can be become known as the coastal zone procedures for that agency. This suggests that when the substantive regulations of each agency also are amended, they be amended so as to add a special section for coastal zone purposes. That way, the public wishing to compile or use the "coastal zone regulations" of any agency may be referred to discrete CZM regulations rather than a much larger body of agency regulations which have CZM-related provisions scattered throughout.

A disadvantage of these "process regulations" is the overreliance on a person to trigger CZM review of agency decisions. Presumably the person will be an agency employee assigned to the physical office where the agency decisions are being made, with all the possibilities of personal friendships and physical proximity which make objective review difficult. Of course, it is an advantage to have the CZM coordinator physically present in the same office where the agency decisions are being made, in order to seek to personally influence those decisions and the day-to-day decision making processes. It would be preferrable, however, to at least specify that any "draft" or proposed agency decision requires an affirmative, written finding of consistency with the CZM program, issued by the CZM coordinator. In addition, the Commissioner should be precluded from issuing a permit or appeal decision without such a written consistency finding from the CZM coordinator.

Regarding the specific paragraphs of the sample regulations we offer the following comments. Regulation 4.0: It is not clear who shall designate the CZM coordinators. The regulation should provide that designation is by the Director of the CZM Program. Designation should not be by the chief official of the agency in which the CZM coordinator will be located. Moreover, the CZM coordinator should not be selected from among employees of the agency already working in the office and should not have his or her salary reviewed by the chief of the agency. The CZM coordinator should be, as much as possible, an independent person, subject to the supervision of the CZM office.

Regulation 4.22: This calls for the CZM coordinator to make important legal judgments regarding the statutory authority of the agency and technical judgments regarding consistency with CZM policies. As to the former, it should be noted that the coordinator will have very little discretion since Regulation 5.0 (B) provides that the coordinator must act in accordance with a prepared Memorandum jointly agreed to by attorneys for CZM and the agency. As to judgments by the coordinator regarding consistency with CZM policies, these may be very political in view of the generality of the CZM policies and the very broad override power of the Secretary of Environmental Affairs. The guts of the CZM Program are supposed to be these regulations adopted by the agencies. And yet the important criteria as to judging the statutory authority of each agency, and judging consistency with CZM policies, have yet to be formulated. It is very apparent that it is still important to have the statute-by-statute analysis of the scope of agency authority which NRDC recommended many months ago. The Rice Report, itemizing statutory programs which can be networked, does not suffice. As to the consistency issue, it is apparent that judging the conformity of specific permits and other decisions for CZM policies will be as difficult for the CZM coordinator as it will be for those judging the consistency of federal permits and projects. Very comprehensive and very specific "consistency" criteria are needed.

Regulation 4.23: It should be specified how the CZM coordinator must "communicate" the applicability of CZM policies to other staff persons.

Regulations 4.24 and 4.25: As discussed above, no agency decisions should be made without a written consistency finding by the coordinator, and the Commissioner should be prevented from acting without it.

Regulation 5.1: This requires a person to initiate an appeal to the Secretary under the conflict resolution procedures. It should be changed, reflecting a requirement that there be a written consistency finding, so that the burden of invoking the conflict resolution procedures is on the agency staff or the Commissioner who feel that a permit or other decision should be issued contrary to CZM policy. If the burden is on the CZM coordinator (or upon other agency staff, or upon a member of the CZM central staff) the interpersonal pressures or the lack of efficient communication may prevent using the conflict resolution procedures as often as they should be.

Regulation 6.1: This should be revised to indicate the CZM coordinator may "initiate or intervene in an adjudicatory proceeding. This will point up that it is the entire agency decision making process on a permit which is "adjudicatory" and not just the "hearing" which may or may not be a part thereof. It is a good idea to automatically confer upon the coordinator and the CZM office standing as parties in any such proceeding, not just those "in which they intervene".

NEW ENGLAND LEGAL FOUNDATION
SUITE 1032
STATLER OFFICE BUILDING
BOSTON, MASSACHUSETTS 02116
(617) 542-2580

December 15, 1977

Kathryn Cousins
Office of Coastal Zone
Management
330 Whitehaven Street, N.W.
Washington, DC 20023

RE: Proposed Massachusetts Coastal Zone Management Plan

Dear Ms. Cousins:

Please be advised that New England Legal Foundation joins in the comments submitted on the draft environmental impact statement by the Boston Chamber of Commerce, et al. pursuant to the letter dated December 13, 1975 from Robert Ruddock, Esq. to you.

Very truly yours,

Harrison A. Fitch

Harrison A. Fitch
Legal Director

HAF/mes

MASSACHUSETTS FEDERATION OF PLANNING BOARDS INC.
P. O. BOX 264 • BRAINTREE, MASS. 02184
(617) 843-5486

RECEIVED
DEC 22 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

OFFICERS

President
*MRS. MARCELLA DANIELS
Box 15, S. Chatham

Vice President
*CHARLES E. DOWNE
950 Watertown Street, W. Newton

Vice President
*RICHARD KESHIAN, ESQ.
1050 Mass. Ave., Arlington

Vice President
*CHARLES KUSIK
West Road, Richmond

Treasurer
*JAMES M. HATCH
179 Pond St., Holbrook

Secretary - Executive Director
Legislative Chairman
*JOSEPH M. MAGALDI, ESQ.
65 Wayne Ave., So. Braintree

Legislative Co-Chairperson
*MARGUERITE MORRIS
17 Long View Terrace, Marshfield

Directors
WILLIAM CHEPULIS, North Andover
*MRS. MADELYN A. McKIE, Wilmington
ADELE MORONY, ESQ., Grafton
EDWARD A. J. POSKUS, Foxboro
ALLAN PRAUGHT, ESQ., Dedham
*JOHN J. ROSARIO, Hyannis

District Supervisors

District No. 1
ROBERT B. KIMBALL
Richmond Swamp Rd., P.R. 49, Pittsfield

District No. 2
EDMUND SHEINOST
18½ Alvord St., So. Hadley

District No. 3
DONALD RISING
Treaty Elm Lane, Stow

District No. 4
*EDWARD A. FLANAGAN
278 Pine St., Tewksbury

District No. 5A
CONDON McDONOUGH
80 School St., Manchester

District No. 5B
JAMES BIRKETT
Oxbow Rd., Lincoln

District No. 5C
*STEWART M. McKAY
16 Weston Ave., Holbrook

District No. 6
HAROLD A. ASHLEY
87 Pleasant St., Raynham

District No. 7
MS. M.A. GRAFTON RODGERS
81 Blanid Rd., Osterville

District No. 8
DONALD T. VISCO
Fairgrounds Rd., Nantucket
WALTER S. BARRETT
Fair Street, Nantucket

Immediate Past President
*A. DANIEL GILLIS
Box 142, Wilmington

*Executive Committee

10/77

December 20, 1977

Evelyn F. Murphy, Secretary
Executive Office of Environmental Affairs
Leverett Saltonstall Building
100 Cambridge Street
Boston, Massachusetts 02202

Dear Secretary Murphy:

At a meeting of the Board of Directors of the Massachusetts Federation of Planning Boards held Saturday, December 10, 1977, it was unanimously voted to support the Coastal Zone Management Program.

Two of our officers are "Task" force members and they reported on what has transpired during the past three years in the development of the CZM program.

The Board's understanding is that the CZM program does not violate "Home Rule" or supersede "Local Zoning"; in fact, it calls upon Planning Boards and Boards of Appeal to act as responsible local agencies in the management process.

The program would help cut red tape on permit applications as well as provide assistance and funds for economic planning, conservation, preservation of historic sites, beaches and sand dunes.

Based on the foregoing, endorsement of the CZM program by the Board of Directors was given.

Sincerely,

Joseph M. Magaldi

Joseph M. Magaldi
Executive Director

JMM/mao

Natural Resources Defense Council, Inc.

122 EAST 42ND STREET
NEW YORK, N.Y. 10017
212 949-0049

Washington Office
917 15TH STREET, N.W.
WASHINGTON, D.C. 20005
202 737-5000

Western Office
2345 YALE STREET
PALO ALTO, CALIF. 94306
415 327-1080

BOARD OF TRUSTEES
Stephen P. Duggan
Chairman
James Marshall
Vice Chairman
Michael McIntosh
Vice Chairman
Dr. George M. Woodwell
Vice Chairman
Dr. Dean E. Abrahamson
Mrs. Louis Auchincloss
Boris I. Bittker
Robert O. Blake
Frederick A. Collins, Jr.
Dr. Rene J. Dubos
Robert W. Gilmore
Lady Jackson, D.B.E.
Alvin M. Josephy, Jr.
Hamilton Kean
Dr. Joshua Lederberg
Anthony Mazzocchi
Paul N. McCloskey, Jr.
Owen Olpin
Franklin E. Parker
Dr. Gifford B. Pinchot
Charles B. Rangel
Robert Redford
John R. Robinson
Laurance Rockefeller
J. Willard Roosevelt
Joan C. Schwartz
Whitney North Seymour, Jr.
David Sive
Russell E. Train
Thomas A. Troyer
Beatrice Abbott Duggan
U.N. Representative
John H. Adams
Executive Director

December 15, 1977

William Matuszeski
Kathy Cousins
John Milholland
Office of Coastal Zone Management
Page Bldg. 1
3300 Whitehaven Street, NW
Washington D.C. 20235

Dear Bill, Kathy and John,

Enclosed are NRDC's comments on the Massachusetts Coastal Zone Management Program and the State of Massachusetts Coastal Management Draft Environmental Impact Statement. Also enclosed is a copy of NRDC's statement presented at the November 22, 1977 joint federal/state hearing on the Massachusetts Program and DEIS. Gregor I. McGregor is sending to your office under separate cover NRDC's comments on the draft Chapter 21A regulations.

We would like to meet with you to discuss NRDC's comments as soon as possible.

Yours Sincerely,

Sarah Chasis

Sarah Chasis

Enclosures

.75
100% Recycled Paper

COMMENTS

OF THE

NATURAL RESOURCES DEFENSE COUNCIL

ATLANTIC COAST PROJECT

ON THE

MASSACHUSETTS COASTAL ZONE

MANAGEMENT PROGRAM

AND THE

STATE OF MASSACHUSETTS

DRAFT ENVIRONMENTAL IMPACT STATEMENT

December 15, 1977

Prepared by:

Sarah Chasis, Staff Attorney
Natural Resources Defense Council
122 East 42nd Street
New York, New York 10017

Gregor I. McGregor, Esq.
~~NRDC Cooperating Attorney~~
33 Mount Vernon Street
Beacon Hill
Boston, Massachusetts 02108

The Natural Resources Defense Council ("NRDC") is a national nonprofit organization, with a membership of over 35,000, dedicated to the wise use of this nation's natural resources and the protection of the human environment. Because of the accelerated destruction of the nation's coast by short-sighted development, elimination of wildlife habitat, marine and estuarine pollution, and loss of public access to beaches, NRDC has developed an Atlantic Coast Project dedicated to the protection and wise use of coastal resources. As part of this project, NRDC staff is undertaking a review of the coastal zone management programs developed by states pursuant to the Federal Coastal Zone Management Act ("CZMA"), the key national legislation for protection of coastal areas. Our goal is to assure that these state programs protect the coastal zone in the way envisioned by Congress.

NRDC has reviewed the Massachusetts Coastal Zone Management Program ("CZMP") and presented its views a number of times both in writing and at public meetings. On November 22, 1977 NRDC's representative in Massachusetts, Gregor I. McGregor, made a statement at the joint federal-state hearings which were held on the Massachusetts CZMP and the Draft Environmental Impact Statement ("DEIS") prepared on the program. These comments supplement NRDC's written statement submitted at the November 22 hearing. In these comments, NRDC addresses the question of whether

or not the Massachusetts program, as presently constituted, meets the requirements of the CZMA. Because Massachusetts is the Atlantic Coast state closest to approval by the Secretary of Commerce, NRDC considers the Massachusetts program to be of considerable significance. The program and its treatment by the Office of Coastal Zone Management will be of great interest to other coastal states now in the process of developing their own coastal programs.

NRDC is in league with the states in seeking strong and effective management programs. NRDC is sympathetic to the time and money invested in the state CZM programs it is critiquing. At the same time, NRDC believes if a state's program does not assure protection of the natural biological and physical resources of the coastal zone, if it does not eliminate the threat of destruction from unwise and unplanned development, then that program may not receive federal approval and funding.

NRDC believes that the Massachusetts program as proposed is unacceptable because of its failure to meet a number of significant requirements of the CZMA and because of its consequent failure to assure effective coastal resource protection.

I

SUMMARY OF CONCERNS

In order to satisfy the requirements of the CZMA, state programs must first and foremost protect and give high priority to natural systems in the coastal zone. To this end, state programs are required to establish comprehensive controls over land and water uses in the coastal zone, and to adopt specific and enforceable policies to govern the exercise of these controls.

Measured against these requirements, the Massachusetts program is not approvable at this time. Over half of the policies, which constitute the heart of the program, are not enforceable. Uses such as power plants and oil refineries, which will have major impacts on coastal resources, are not subject to enforceable coastal policies. Many of the policies are weak with respect to environmental protection and fail to satisfy the basic conservation thrust of the CZMA. There is serious question as to the legal basis and enforceability of the Chapter 21A regulations and the Memoranda of Understanding--the mechanisms the program relies on at present to translate the coastal policies into action. Finally, the very guts of the program--the regulations to be adopted by EOEA agencies and the Energy Facility Siting Council--have not even been drafted, let alone adopted. Yet without these regulations, there is no mechanism in place to assure that the coastal policies will in fact be implemented.

One of the most disturbing facts about the Massachusetts

program is that it effects very few changes in existing state and local programs. Yet the CZMA specifically found that:

> In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.
>
> Section 302(g)

Despite this fact, the Massachusetts program proposes to rely on existing institutions to implement existing state programs pursuant to policies which for the most part are neither new nor ambitious. The state even says that there will be no reduction in the rate of development in the coastal zone as a result of program implementation.*/ In view of these facts, the state is under a particularly heavy burden to establish that its program will further the goals of the federal act.

NRDC believes that the following actions must be taken by Massachusetts before its program may be found to comply with the CZMA:

1. The policies must place greater emphasis on environmental protection and there must be more policies of an enforceable nature to assure a sufficiently comprehensive program;

2. Land and water uses in the coastal zone which are of more than local concern (e.g., power

---

*/EOEA Response to the Utility Company/Home Builders/Boston Chamber Legal Memorandum Concerning Coastal Zone Management, p. 4 (October 25, 1977).

plants, oil refineries, transportation systems) must be subject to enforceable coastal policies;

3. An opinion must be obtained from the Attorney General of the State of Massachusetts upholding the effectiveness and enforceability of the Chapter 21A regulations;

4. Substantive regulations must be adopted by EOEA agencies and other state agencies (e.g., EFSC) for program implementation.

II

GENERAL REQUIREMENTS

The State of Massachusetts Coastal Management Draft Environmental Impact Statement ("DEIS") correctly states that the management program must meet the following general requirements (in addition to the specific requirements related to individual elements of a state's program):

> (1) That the management program is comprehensive. It must address and provide for the management of those significant resources, uses and areas that the State has determined, through its development process and in consultation with all relevant interests as required by the Act and these regulations, make its coastal zone a unique, vulnerable and/or valuable area requiring various forms of management;
>
> (2) That the policies, standards, objectives and criteria upon which decisions pursuant to the program will be based are articulated clearly and are sufficiently specific to provide (i) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (ii) a clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program; and
>
> (3) That there are sufficient policies of an enforceable nature to insure the implementation of and adherence to the management program.
>
> DEIS at 1-3*/

In addition, the program developed by the state must be adequate to carry out the purposes of the Act, and be consistent with the policy declared in Section 303. Subsection 306(c)(1).

---

*/These general requirements appear in NOAA's Proposed Revised Coastal Zone Management Program Approval Regulation, 42 Fed. Reg. 43552-43583, 43588 (August 29, 1977). These regulations have not yet been finally adopted.

The Massachusetts program fails to meet these general requirements; the management program is not sufficiently comprehensive; there are insufficient policies of an enforceable nature; the policies fall short of the purposes and policy of the CZMA.

A. Comprehensiveness

The program dramatically fails to assure that major decisions concerning the siting of energy facilities (such as electric power plants, oil tank farms, oil refineries and gas plants) in the coastal zone will be in keeping with the intent of the CZMA to preserve natural biological values and control adverse impacts on the coastal zone.

The Energy Facilities Siting Council ("EFSC"), which has ultimate authority over the siting of energy facilities, is not legally bound to adhere to any of the policies, including the energy policies, of the coastal program.*/ The Council may override an EOEA agency's denial of a permit even where issuance of the permit would violate coastal policies. The EFSC may even go so far as to locate an energy facility in an area designated under the coastal program as an Area for Protection and Preservation ("APR").**/

*/See DEIS at 11-21 et seq.

**/EOEA Response to the Utility Company/Home Builders/Boston Chamber Legal Memorandum Concerning Coastal Zone Management, pp. 2-3 (October 25, 1977).

A management program, at a minimum, must be comprehensive enough to control uses which may have a direct and significant impact on coastal waters (Section 305(b)(2) and (4)). The Massachusetts program's inability to control energy facilities in the coastal zone consistent with coastal policies represents a fatal flaw in the program.

The program is not comprehensive enough for another reason. The state has not delivered a meaningful transportation policy in the coastal zone. The addendum to the program (issued at the same time as the DEIS) provides that major transportation projects, not covered by the program, may not proceed without an amendment to the program. However, this provision is not contained in an enforceable policy. Since it is only policies, not the entire program, which are to be incorporated into the Chapter 21A regulations, this provision of the program appears not to be legally binding or enforceable. Except for MEPA review and federal consistency review, road construction in the coastal zone seems beyond the purview of the CZM program.

Other elements of infrastructure are beyond the meaningful reach of the program. The Department of Community Affairs is responsible for housing investments on behalf of the state, and indirect housing assistance, and yet it is apparent that CZM will act only as an advocate in such important decisionmaking as involves housing in the coastal zone.

As for sewers, there is control over sewerage treatment

plant investments by an agency of EOEA, plus federal consistency, but controls over strictly local decisions to fund sewer extensions or local Board of Health decisions to allow sewer tie-ins, which have significant growth implications, are minimal.

The program also leaves out controls on cumulative impacts of piecemeal permit decisions. With a program relying so heavily on coordinating a multitude of permit and license decisions throughout the state, control of cumulative impacts is a necessary component.

All this is deeply disturbing in view of the fact that 21% of the coastal zone is developable. The program acknowledges that the pattern and rate of development in this area will be determined largely by local zoning, local open space plans, and Section 208 community response. The CZMP, as proposed, will not direct growth, prohibit development (outside restricted wetlands) or resolve conflicts between competing uses. This is true not only for developable areas, but the entire coastal zone. (DEIS at 11-12). Fundamentally, the state is offering coordinated operation of sanitary regulations, the Wetlands Protection Act, the Wetlands Restriction Program, MEPA review of impacts in historic sites and critical areas, control of point sources of air and water pollution, and general incentives and disincentives through public investment to accomplish what those same controls have failed to accomplish in the many years they have been in place. In the face of heavy density in the Massachusetts coastal

zone and acknowledged pressures for many types of development which local government has evidenced no demonstrated ability to control, the Massachusetts program must be more comprehensive.

There is great pressure on fragile and nonrenewable resources, creating use conflicts that did not exist in the past. Wetlands are pressured by housing, parking lots, and marinas. Development of Georges Bank "will pose serious future conflicts" with demands for harbor space, impacts of oil spills, and damage to fishing grounds and vessels. Growth has been largely uncontrolled. Indeed, as the program acknowledges at page 6, "much of the growth and development in the Commonwealth since World War II has been unplanned and uncoordinated."

To be comprehensive enough for federal approval, the Massachusetts CZM program must offer more to control significant uses of the coastal zone, the impacts of which the program itself describes so well.

B. Enforceability of Policies

As the DEIS points out (at 11-7), only 17 of the 38 coastal policies are enforceable. This means that 21 of the coastal policies are advisory only and need not be followed by state agencies in reaching decisions affecting the coastal zone. Among the policies which are not enforceable are:

(1) Almost all the policies relating to recreation, including those designed to improve public access

(Policy 21), increase capacity of existing recreation areas (Policy 23), and expand existing facilities in regions with high need (Policy 25);

(2) All the energy policies, including those calling for:

a. Maximization of the use of existing oil terminals; ensuring that environmental impacts and effects on port operations of new terminals are appropriately considered (Policy 28);

b. Consideration of the siting of oil tank farms in areas outside the coastal zone (Policy 29);

c. Weighing of the environmental and safety impacts of locating proposed coastal gas facilities at alternative sites (Policy 30);

d. Consideration of alternative sites, including inland location, prior to siting electric generating facilities in the coastal zone (Policy 31);

e. Consideration of alternative sites, including inland locations, for refineries. For deepwater ports, consideration of alternative coastal sites to assure that harm to the marine environment is minimized (Policy 32);

f. Accomodation of exploration, development and production of oil and gas resources while minimizing impacts on the marine environment and conflicts with other maritime-dependent uses. Encouraging maritime-dependent facilities to locate in existing developed parts; encouraging development of alternative energy sources; evaluation of indigenous or alternative sources of energy and offshore mining to minimize adverse impacts on the marine environment and on recreational values of the coast.

(3) The transportation policy.

The fact that there are so many policies which are not legally binding and enforceable is devastating to the program. For example, there is no way to ensure that areas of the coast designated as geographic areas of particular concern (e.g., wetlands, salt marshes, barrier beaches, dunes, estuaries) or areas designated for protection and restoration will in fact be adequately protected, as the CZMA requires. Energy development may occur without regard to such designations.

Furthermore, recreational use of the coast, which is under increasing pressure from competing uses, is not adequately protected or promoted under the program.

Even some of the policies which the DEIS characterizes as "enforceable" are not hard policies. They merely "encourage" or "discourage" certain activities, or require "review" or "consideration" of certain factors. For example, they call for:

1. "Review" of development proposed near designated or registered historic districts or sites to ensure that federal and state actions and private actions requiring a state permit respect their preservation intent and minimize adverse impacts. (Policy 14). (Yet the state has no legal authority, once having reviewed a development, to ensure that state or private action does respect the preservation intent and minimizes adverse impacts).

2. "Support" for designation of scenic rivers in the coastal zone; "support" for the designation of Areas for Protection and Restoration as "Sign Free Areas;" "encouragement" of scenic highways and scenic road designation (Policy 16). (The state has the authority to designate, not just support the designation. This policy should require the exercise of that authority.)

3. Promotion of the widest possible public benefit from port and channel dredging and ensuring such proposals are consistent with marine environment policies. (Policy 18).

4. "Review" of development proposed near existing public recreation sites in order to minimize their potential adverse impacts. (Policy 27). (Again, authority to act once review is completed is limited.)

5. Upgrading public infrastructure in existing developed areas and assigning highest priority to infrastructure which meets the needs of urban and community development centers. (Policy 35).

Such policies are inadequate. They leave too much discretion in the hands of the agency enforcing them. They are not sufficiently specific nor is the manner of their application sufficiently predictable.

C. Policy and Purpose of the CZMA

NRDC supports wholeheartedly the marine environment, coastal hazard and visual policies of the program. (We do advocate a "hardening" of some of these policies, e.g., Policy 16). However, in other areas, the state, even though it has the authority, refuses to exercise it fully for the enhancement of coastal resource protection. For example, Policy (35) calls for the upgrading of public infrastructure in existing developed areas, assigning highest priority to infrastructure which meets the needs of urban and community development centers. However, there is no policy stating that

lowest priority will be given to public infrastructure in undeveloped areas, or that there will be no new public infrastructure in areas where development would be inconsistent with marine environment, coastal hazard or visual policies. The state clearly has the authority to make such a commitment, yet it has not done so.

Most of the energy policies, even if they were enforceable, are extremely weak in terms of furthering environmental protection. With one exception, all they do is call for a "weighing" or "consideration" or "encouragement." Even assuming the policies were enforceable, nothing in the policies restricts in any way the location of energy facilities in geographical areas of particular concern or APRs.

The program must be strengthened in these areas to comply with the policies and purpose of the CZMA.

The Coastal Zone Management Act is not a value-free use allocation or development act, Rather, it emphasizes planning and sound decisionmaking as a mechanism to protect the natural biological and physical resources of the coastal zone. The Act repeatedly emphasizes the "important ecological, cultural, historical and aesthetic values in the coastal zone" (Section 302(e)) and that population growth and economic development "have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline

erosion." §302 (c) and (e). See also §303 (a) and (b).

This basic conservation purpose is further reinforced by the legislative history of the Act. The Senate Report (S. 92-753) emphasizes that the Act was based on the following findings: that by 1964 one-quarter of the nation's salt marshes had been destroyed; that the commercial fishery of the United States depends on coastal and estuary waters and marshlands as fish nursery areas and spawning grounds; that increased commercial and recreational demand in the coastal zone endanger biologic organisms; and that the fragmentation of state and local government authority in the coastal zone has exacerbated pressure for economic development. (Report, p. 5)

The House Report (H.R. 92-1049) notes the "[l]arge metropolitan areas with their suburban sprawls...[h]eavy developments...and massive landfill operations" and concludes that "[e]ach of these activities has contributed to the pollution and attendant deterioration of the coastal waters" (Report, p. 11).

The House Report summarized the legislative need in this manner (p. 10):

> "The information developed during the course of the hearings on this legislation was remarkably consistent with the findings of all the predecessor groups that have considered the problem. Witnesses representing the National Governors' Conference, the National Legislative Conference, the Coastal States' Organization, individual state governments, and various conservation and public interest groups were uniformly concerned for the deteriorating condition of the coastal zone and were united in their support for early

> legislative action. Similar support was indicated in letters from various states and public organizations which were unable to furnish witnesses during the hearings."

The Congressional debate on the bill (Congressional Record--April 25, 1972) is further evidence that environmental concern was the bill's keynote. Senator Hollings, a major sponsor of the bill, put it this simply:

> "The bill I propose today is aimed at saving the waters of our coasts and the land whose use has a direct, significant, and adverse impact upon that water." (S. 6655)

Throughout the debate, the Senators who spoke expressed their understanding that the purpose of the bill was protection of the coastal environment.

> "Mr. Spong: [T]he objective of the proposed National Coastal Zone Management Act is to achieve a partnership between man and nature in which man's varied needs are in harmony with nature's processes and resources...its enactment would serve to protect the vast resources of the coastal zone, an objective that is deserving of the highest national priority. (S 6657)
>
> Mr. Tunney: This bill is an attempt by the Government to assist the States in correcting pollution and planning for the best use of limited land and water resources. (S 6672)
>
> Mr. Boggs: As stated in S. 3507 the purpose of the coastal zone management plan is primarily to regulate land and water uses in the interests of environmental quality." (S 6667)

In short, there was clear legislative intent that the CZMA was to be first and foremost a conservation act.

The final twist in the management program which threatens attainment of environmental goals is the provision in the program and in the draft NEPA regulations which permits the Secretary of EOEA to disregard coastal policies when such policies conflict with the "compelling public interest." (Program at 88, 318). Nowhere is this "compelling public interest" defined. The policies themselves are already too weak in terms of ensuring coastal resource protection. This provision in the program which permits complete disregard of even these policies, at the Secretary's discretion, is totally unacceptable.

III

SPECIFIC REQUIREMENTS

We turn now to a discussion of the specific elements which the program must contain to satisfy the CZMA. Because NRDC's greatest concerns in this regard relate to the inadequacies of the authorities the Commonwealth presently proposes relying on, the comments address this requirement first.

A. Authorities

Subsections 305(b)(4) and 306(c)(7) of the CZMA require that the program identify means of control over permissible land and water uses in the coastal zone and that the state have authority to implement the program. CZMA §306(d)(1) requires that the state have the power "to administer land and water use regulations, control development in order to ensure compliance with the management program and to resolve conflicts along competing uses."

NOAA Reg. 923.21 requires that the means for control must be "established and in place." The means must be capable of actually implementing program objectives, policies and individual components.

1. Authority of EOEA Agencies and the EFSC to Administer Land and Water Use Regulations and Control Development to Ensure Compliance with the Program

a. Chapter 21A

The Massachusetts CZM program makes a strained, but perhaps correct, interpretation of the EOEA enabling statute,

General Laws Chapter 21A. The program is built upon the authority of the Secretary to coordinate and evaluate programs of her agencies, resolve administrative and jurisdictional conflicts between them, and implement programs jointly agreed to with them.

There must be an adequate demonstration that this basis is legally adequate. The Rice Report (Appendix E of the program), while containing details on specific statutes relied upon for supplying authority, is not a definitive demonstration that the authority is there. What is needed is a statute-by-statute analysis of the ultimate reach of agency authority under existing programs. Massachusetts offers policies which it guarantees will be implemented up to but not beyond the existing scope of authority conferred on EOEA constituent agencies. Listing these separate programs, or even describing them in general terms in the program and the Draft EIS is not the same as identifying the ultimate reach of program authority.

The same could be accomplished by promulgation of the agency regulations, and amendments to existing regulations, which are necessary to put the management program in place. The adoption process, including circulation of drafts, reactions from networked agencies, and comments at public hearings would do much to demonstrate that the legal authority is there.

The state must secure the formal Opinion of the Attorney General recommended earlier by NRDC. Essentially, the question is whether Chapter 21A supports the program as proposed. In

addition, the Attorney General should be asked to conduct the statute-by-statute analysis that will disclose just how much the CZM policies will be implemented through networked programs.

Besides this statutory analysis, the question for the Attorney General regarding Chapter 21A is whether a kind of continuing request for joint implementation, adoption of state environmental policy and request for conflict resolution can serve as the basis for the CZM program. Massachusetts needs an unqualified Opinion of the Attorney General in this regard.

We understand that an Attorney General's Opinion has been requested on a number of these points (See attached letter). Until these questions are answered favorably, the present enforceability of the program remains in serious question and the program may not be approved.

b. Memoranda of Understanding

The Massachusetts CZM plan now acknowledges that the Memoranda of Understanding (MOU) are unenforceable, that they embody just the "spirit of cooperation" (Program, page 319). They serve principally as requests to jointly implement the coastal program and requests to the Secretary that she invoke the conflict resolution process where conflicts arise between the EOEA agencies as to the consistency of agency action with the coastal zone management plan.

Even if they were enforceable, these MOU's (Appendix A of the plan) are inadequate. By their language they support the CZM program only inasmuch as "coordination" with other EOEA agencies and the Office of the Secretary is required. This constitutes only a limited acquiescence to the CZM program. The MOU's promise the adoption and incorporation of regulations of the Secretary "to the extent permissible by law." This does not represent a judgment that the legal authority of any particular agency is now adequate to implement the CZM program. This promise is also neither legally binding nor enforceable. The MOU's also state that each commissioner will adopt "within my agencies" certain regulations. It is not stated how some commissioners, such as the Commissioner of the Department of Environmental Quality Engineering (DEQE) legally can bind independent agencies within his department, such as the Division of Water Pollution Control (DWPC) upon which the water pollution statute confers independent authority.

C. Need for Adoption of Substantive Regulations by EOEA Agencies and the EFSC

NOAA Reg. 921.21(b) requires that the means for controlling land and water uses must be "established and in place." In several places the Massachusetts plan acknowledges that regulation changes will be made to accomplish the policies of the program, but they will not be adopted prior to federal program approval. Until they are adopted, however, CZMA §305(b)(4), §306(c)(7) and §306(d)(1) cannot be met.

For most of the key regulations the Draft EIS acknowledges that only a four-month wait would be involved, because regulations for the Wetlands Protection Act will be amended by then, and for the Waterways Program (Draft EIS, pages 11-36 et seq.), and Ocean Sanctuaries legislation will be acted upon (page 11-39).

A look at what the program promises will illustrate the extensive amendment necessary to key program regulations, or creation of new regulations where there are none now. If the Massachusetts policies set forth what is necessary to accomplish in the coastal zone for an approvable program, then the operative regulations to carry out those policies are necessary if the state is to certify to the federal government, before approval, that it has the legal authority in place to manage the coastal zone.

The guts of the CZM Program will be supplied by the Wetlands Protection Act and the Waterways Program under Chapter 91. Use of these programs is very extensive. It is worthwhile quoting the Plan, page 332:

> "In conjunction with the Waterways Program (see below), through revised rules and regulations, the Wetlands Program shall be relied upon to condition construction on waterbodies so as to minimize interference with water circulation and sediment transport and to preserve water quality and maintain productivity (Policy 4); minimize significant adverse effects from public or private flood or erosion control projects on adjacent properties in downcoast areas (Policy 12); ensure that dredging and dumping of dredged material minimize adverse effects on marine productivity (Policy 5); and to encourage maritime dependent industrial development in port areas (Policy 17); for works, projects, or activities other than those affected by Policies 4, 5, 12 or 17, or which occur within the 100 year flood plain but outside of the areas identified in Policies 1 and 2, conservation commissions and the Commissioner of DEQE shall continue to protect, as before, the interests of the Wetlands Protection Act."

Use of the Waterways Program is equally ambitious;

> "[T]he program shall principally be relied upon to condition construction on waterbodies so as to minimize interference with water circulation and sediment transport and to preserve water quality and marine productivity (Policy 4); to minimize significant adverse effects from public and private flood or erosion control projects on adjacent properties or downcoast areas (Policy 12); ensure that dredging and disposal of dredged material minimizes adverse effects on marine productivity (Policy 5); to protect salt marshes, dunes, shellfish flats, anadromous fish runs, sandy beaches, salt ponds, barrier beaches, and Areas for Preservation or Restoration (Policies 1 and 2); to ensure offshore sand and gravel mining does not adversely affect marine resources and navigation (Policy 6); and to minimize adverse effects of offshore energy exploitation on fisheries, water quality, wildlife, and recreational values (Policy 33)."

Especially for the Waterways Program, this is ambitious in view of the lack of regulations. The program issues licenses for work in tidelands, harbors, and certain rivers below the high water mark. The agency is concerned, as described on page 85 of the Plan, mainly with physical alteration and obstructions to navigation. Regulations will be necessary to impose the detailed dredging limits such as no dredging between April 15 and June 1 where there are herring runs if it would cause high turbidity. Regulations must embody the preference for hydraulic dredging, required sediment analyses; the preference for onland disposal; mandated use of clean dredged material for beach nourishment; the favoring of in-harbor dredging sites; the restrictions on the type of transport vessels or barges; operational limitations such as requirements that the barges be dead in the water when discharging; requisite notices to fisherman; and the limits on the turbidity of the plume, all articulated on page 96 of the Plan. The need for Chapter 91 regulations is acknowledged at page 98. Through this program some of the only "hard" controls available in the CZM Program will be implemented. That doubles the importance of having the regulations,

The program at page 95 acknowledges, likewise, that regulations are being developed so that Chapter 91 may set detailed requirements for the design and construction of solid fill piers, bulkheads or other permanent structures, case-by-case. These will implement Policy 4, just as the detailed dredging limitations discussed above will implement Policy 5. Regulations are acknowledged at page 27 of the Plan as necessary to implement Policy 12 by requiring detailed demonstrations by applicants who propose private flood or erosion control projects, discussed at page 126. Under Policy 17 the Waterways Program permit or license authority for bulkheads, filling, dredging, bridges or piers in port areas will be used to prohibit preemption of maritime dependent uses, and to permit non-maritime uses which are not irreversible commitments of sites, discussed at page 176. Evidentially these requirements are not found in existing program regulations.

Counterpart regulations will be necessary under the Wetlands Protection Act program. They will be necessary to treat salt marshes, shellfish beds, dunes, beaches, barrier beaches, and salt ponds as the most critical wetland types "meriting the highest degree of protection: (Plan, page 81). Regulations will be necessary if local conservation commissions are to impose special conditions where landowners desire to establish common docking space, especially if (as described at page 85 of the Plan) these conditions will relate to the volume of dredging, to access, and to no additional construction in the future. Erosion control under Policy 12b will need both wetlands regulations and Chapter 91 regulations to make legally binding, as offered at page 166, that CZM will permit structural solutions for erosion control only where there will be no damage to adjacent property. New wetland regulations will be needed to prohibit the construction of solid fill structures in any salt marsh, shellfish flat, barrier beach or dune area.

Other substantive regulations are needed to accomplish program policies. Title 5 regulating septic systems will need a new section for critical areas to incorporate research and standards as necessary for more sensitive areas, pinpointed at pages 92 and 93 of the Plan.

Policy 6 will require regulations for sand and gravel mining, where there are no regulations now, in order to institute the guidelines outlined at page 99 regarding location (no mining above the 80 foot contour, none where there is contaminated material, none within certain distances from cables and pipelines, and none in productive sport or commercial fisheries). The same is true of the detailed operational guidelines. The discussion at page 100 makes clear that only the Division of Marine Resources offers the hard regulatory program needed to achieve these results. Yet that Division has no regulations at present.

Policy 9 will see detailed limits on sewer funding within the 100 year coastal flood plain, as for instance permitting structural solutions in high risk hazardous areas only if warranted by severe water pollution problems and if a non-structural solution is ineffective or cost prohibitive. The Division of Water Pollution Control Funding regulations will need amendment. Review processes and coordination with agencies, offered at page 123 of the Plan, will not be enough to accomplish such a guaranteed result.

Management of Significant Resource Areas cannot be assured without new regulations. Page ii of the Regional Chapter admits that not all SRA's are covered by present laws and programs. Others "will be managed" when Scenic Rivers or Wetland Restriction Program elements are implemented. The water pollution control funding regulations will need amendment if, as outlined at page 86, the Division of Water Pollution Control is not to issue permits or certificates for activities prohibited in SRA's.

Desired protections will not be afforded Areas for Preservation or Restoration without new regulations. The Secretary's regulations under Chapter 21A will be necessary to adopt the standards whereby APR's will be selected, because they include several significant natural resources and must meet standards of public health, quality, productivity, uniqueness, irreversibility of impact, threat and economic factors. Likewise, regulations will be needed to specify how agencies will conduct activities in APR's (page 319). According to page 88, upland areas contiguous to APR's will be protected, with the need to demonstrate that activities thereon will have no adverse effect upon APR characteristics. Categorical exemptions will be removed from MEPA regulations for work in APR's, as suggested at page 88. There will be certain categorical prohibitions of activities within APR's, such as energy facilities, new industrial discharges (including thermal) and discharges of hazardous substances, most new dredging, most spoil disposal and new sewage treatment facilities (page 88). Sign free districts will be designated for APR's (page 33). Sewering an APR will be discouraged except where it can be demonstrated that "no previously undevelopable land will be made developable" (page 34). All these things will require amendment to Outdoor Advertising Board Regulations, Division of Water Pollution Control Regulations and regulations of the Energy Facilities Siting Council.

Amendment of the Energy Facility Siting Council regulations is critical. Until such regulations implementing the coastal program are adopted, the EFSC is not legally bound to control energy development consistent with the coastal zone management program. The DEIS makes this very clear, as does the EOEA response

to the Utility Company et al. Legal Memorandum (October 25, 1977). The Council is the sole mechanism for implementing Policies 29-33. Under Policy 29, EFSC is to consider alternatives for oil tank farms outside the coastal zone (page 261). Under Policy 30 it is to weigh the impacts of gas facilities at alternative sites (page 262) and under Policy 31 it will consider alternative sites, including inland locations, prior to siting power plants in the coastal zone (page 263). Under Policy 32 (page 264) evaluation of all sites for refineries and deepwater ports will involve a detailed assessment of need, costs, harbor congestion, infrastructure, impact on port operations, and other social, economic and environmental impacts. Regulations are acknowledged as needed for all these (page 340) and the Memorandum of Understanding with the Siting Council calls for them (page a-19 of Appendix A). Additional guidelines are called for in the MOU (page a-20) to ensure that applicants supply information on two alternative sites, one inland.

Also on the subject of energy, Policy 33 will affect offshore energy development. The Division of Marine Resources will be relied upon for lease controls in mineral resource extraction. It is acknowledged on page 268 of the plan that there will be new regulations.

It is absolutely essential that these regulations be adopted prior to federal program approval. Otherwise, there is absolutely no assurance that development will be controlled so as to conform to the CZMP. The regulations are the action-forcing part of the

Massachusetts effort. Without them there is no assurance of program implementation.

d. Extent of Authorities of Constitutent EOEA Agencies

Because the Massachusetts program rests upon the existing regulatory programs administered by EOEA agencies, the scope of legal authority of these programs must be closely analyzed and assessed.

(1) Wetlands Protection Act

The review authority of DEQE under the Wetlands Protection Act will be an important vehicle for imparting CZM policies to land use decision making. Unfortunately, the Commissioner of DEQE, and the Rice Report at pages 159 and 162, take a narrow interpretation of a critical word in the statute. The applicable agency regulations, originally promulgated by the Department of Natural Resources, give the statute a broad scope by defining a large class of protectable resources and a large set of activities regulatable with respect to these resources. Essentially lands subject to flooding, lands under water and certain listed resources (banks, beaches, dunes, flats, marshes, meadows, swamps, fresh water wetlands and coastal wetlands) bordering bodies of water are protected. Dredging, filling, removing and altering are regulatable. The Commissioner interprets "alter" to require that the activity resulting in the alteration be within the bordering area. The key term "bordering" is defined in the regulations as reaching out as far as 100 feet beyond the 100 year

flood elevation or 100 feet beyond the protectable resource itself, whichever is greater. Essentially, the Commissioner takes the position that the construction activity must occur within this border to be regulatable. A more aggressive interpretation of the statute and regulations would be activities outside that area are regulatable if they cause alteration of resources within the area. Thus, upland shopping centers causing changes in surface water flowage into wetlands, or construction projects resulting in siltation, would not escape operation of the program as they do now.

The Commissioner and his staff in the Division of Land and Water Use do an admirable job with the resources they have. Nevertheless, they do come under challenge from some Conservation Commissions for not being aggressive enough. In particular, the perception of some Commissions is that the DEQE basically is unwilling to prohibit activity or, more important at times, take a strong stand in reviewing work already done in violation of the statute. The DEQE is in a difficult position, having to administer this controversial program of authorization for work affecting wetlands, and it might be advisable to take a good, hard look at the realities of what can be accomplished with the program over the long range.

Since an important trigger for CZM policies will be DEQE routine review of local Conservation Commisision Orders, another element of the program deserving scrutiny is how realistic it will

be to expect qualified staff to actually review all Commission Orders which are issued, as opposed to simply responding to appeals to such Orders that are lodged with DEQE.

The CZM program acknowledges that there are "categorical exemptions" from environmental review processes under the Massachusetts Environmental Policy Act. Matters under the Wetlands Protection Act are exempt for wetlands less than one acre in size. Since the CZM program proposes to establish an override of this exemption when CZM matters are involved, it will be doubly important to ascertain that routine DEQE review of Conservation Commission Orders is actually carried out.

(2) Wetlands Restriction Act

An important component of the CZM program will be the power of the state to restrict, by orders recorded in the registries of Deeds, the use of coastal wetlands. Massachusetts has an Inland Wetlands Restriction Act and a Coastal Wetlands Restriction Act. It is widely reported under the latter that a very high percentage of coastal wetlands have been restricted. As of January 1, 1977, the figure is given as 32,000 acres. That figure may be inflated by including large areas of tidal flats. A more accurate figure might be 25,000 acres of critical wetlands restricted. According to the DEQE staff responsible for the program, that would be approximately 50% of the total critical wetlands which must be rsstricted. In view of the length of time necessary to achieve even this level, it is important to scrutinize realistically what the program can

accomplish over the near future.

Left out of earlier coastal restrictions were dunes and barrier beaches. These will be added to restrictions issued hereafter but, as to restrictions already recorded, dunes and barrier beaches will be added only when the Inland Wetlands Restriction Act is implemented with respect to coastal communities. That may be years away.

(3) Subsurface Sewage Disposal

A comprehensive review of Title 5 of the Environmental Code, regulating disposal of sewage in unsewered areas, recently has been completed. The DEQE has proposed amendments to the applicable regulations. They would set important distances for disposal areas from wetlands, refine controls in the hands of local Boards of Health, and incorporate modern engineering standards. According to the Commissioner of DEQE, however, these amendments will not be made final in view of their political vulnerability to challenge from homebuilder and other construction interests.

These amendments are excellent in most respects and it will be important to ascertain how soon they can be implemented. In one respect, though, they are disturbing. Rather than state review of septic systems commencing at 2,00 gallons per day of discharge, the amendments would limit state jurisdiction to systems larger than 15,000 gallons per day. That runs counter to the assumptions stated in the Preview as to the extent of the DEQE Review of disposal

systems so important to residential and commercial development.

The controls on the disposal of septage (the contents of pumped septic tanks), discussed in the Rice Report at page 177, in fact are only guidelines and do not carry regulatory impact.

(4) Ocean Sanctuaries

"Care and control" of ocean sanctuaries by the Department of Environmental Management, identified in the Rice Report, page 128, is as yet unimplemented by any regulations setting up any license or permit system. As the Rice Report acknowledges, at pages 129, 130, there is a question as to whether where is any authority for regulations, even those that exist.

(5) Billboards

The Outdoor Advertising Board (now the Outdoor Advertising Division) of DEQE, does a good job at regulating billboards, especially those that are contrary to local bylaws, but it may not be the broadbased management program necessary to restore cultural and aesthetic values, and economic values, as discussed in the Rice Report at page 168. Nor is the "aesthetic zoning" authority, established by the case of Outdoor Advertising Board v. Donnelly, regarded as a broad new power reaching beyond billboard cases.

(6) Scenic and Recreational Rivers

The important program discussed in the Rice Report, page 200, has never been implemented. There are no scenic or recreational rivers identified and restricted in Massachusetts. Apparently there

is a definitional problem (Rice Report, footnote 270) but that problem should be surmountable. It should be possible to use the definition of "bank" from the Wetlands Protection Act regulations, and to issue regulations, if necessary, to implement the Scenic and Recreational Rivers program.

(7) Scenic Roads

At some time in the past the option of municipalities to designate as "scenic" certain of their roads was frustrated by policy of the state Department of Public Works against funding some or all of construction and maintenance. That opposition by the DPW to local designation of Scenic Roads may have been only rumor, and may have been cured, but that should be determined before the CZM program places reliance upon these protective measures.

(8) Water Pollution Control

To date there has been no practical resolution of overlapping authority of the Division of Water Pollution Control and the DEQE Division of Land and Water Use regarding regulation of subsurface sewage discharges. Apparently permits are necessary under both the sanitary regulations and the water pollution control statute. The relationship between the agencies should be clarified and a method of dealing with the overlap developed.

The water pollution control program is weak on protecting groundwaters, although such authority explicitly exists in the

statute. In view of the importance of groundwater on Cape Cod and in other areas of the coastal zone, this should be clarified.

The authority of the Division of Water Pollution Control to review and approve tie-ins to municipal sewerage systems apparently conflicts directly with the statutory right of a landowner to tie-in upon tendering the appropriate fee, a principle long established in municipal law.

In view of the jurisdiction of the Division to regulate the impacts of land development, rather than control the patterns of development, observations in the Rice Report at page 178 are overstated. The water pollution control program certainly does affact patterns of development, but does not control them. Division representatives have stated that control of growth is to be accomplished through zoning, not through decision making with regard to sewers.

(9) Division of Mineral Resources

Heavy reliance in the CZM program is placed upon regulation of offshore resource extraction. Rice Report, page 61. A key policy is control of dredging and disposal to minimize the effects on marine productivity and to accommodate offshore sand and gravel mining in ways not impairing marine resources or navigation. The Rice Report calls upon the Division of Mineral Resources to assure orderly extraction and exploration as part of a resource management policy. Rice Report, page 90.

Unfortunately, the Division of Mineral Resources, which formerly was in the Department of Natural Resources, has been dismantled with the reorganization of that agency. It should be determined whether regulatory authority still exists and, if so, by whom it can be exercised.

(10) Chapter 91 Program

Work in navigable water is the subject of a regulatory program administered by DEQE. Basically the program is limited to licensing work in the management of public resources rather than regulating private land use through permit conditions for purposes of protecting the public health, safety or welfare. Rice Report, page 76. Other authority is exercised over alteration of any beach, shore, bluff, headland, island or bar areas bordering on tidewaters, limited to removal of natural materials or vegetation likely to be injurious to a harbor or to navigation.

In view of the primarily navigational character of the program, the full authority of DEQE to set conditions on work should be explored. The CZM program, in addition, proposes to exert control over such projects, when CZM policies are not adhered to, by withholding support for legislation to make the licenses irreovcable. It is doubtful that this will work in practice.

Another point is that the staff of the DEQE Division of Land and Water Use is, in part, derived from the DPW former Division of Waterways, which administered the Chapter 91 program. The DEQE,

therefore, is called upon to perform construction programs regarding piers, waterfront, terminal facilities, "improvement" of tidal and nontidal rivers and streams, great ponds, harbors, tidewaters and foreshores as well as shores along public beaches. Rice Report, page 81. The conflicting interests in both licensing and sponsoring tide water projects is apparent.

On a related point, it is not clear how this program sponsorship role will be able to force local rezoning in conformity with CZM policies, objectives and guidelines, to encourage other compatible projects as pointed out in the Rice Report, page 83.

With respect to licensing tidewater projects in the metropolitan Boston area, it should be observed that the Chapter 91 authority ordinarily administered by DEQE is in a sense split off to the Department of the Metropolitan District Commission. The MDC in reality is much more an independent body than a department within DEQE by virtue of reorganization. Actually, the MDC does not exercise Chapter 91 authority, but rather its own authority under MDC statutes.

(11) Division of Water Supply

The drinking water quality regulations of Massachusetts date from earlier decades. While they are fairly effective, they do not reflect the sophisticated approaches of air pollution and water pollution programs that are more recent. The regulations are not entirely clear on to what extent they protect private supplies used

by a large number of persons. It is reported that they are interpreted to protect only water supplies designated and operated by public governmental agencies. The Commonwealth lacks a program targeting protection of aquifers and other resources important to quantity and quality of subsurface drunking water supplies, although potential drinking water supplies can be protected under the Wetlands Protection Act.

(12) Special Funds

According to the Rice Report, page 110, important use will be made of funds from license and permit fees which can be restricted to such things as developing, maintaining, managing, operating and administering CZM-related programs, as for instance those administered by the Division of Fish and Wildlife. Another example is the fund used for public recreation water access and trail facilities. Rice Report, page 113 (and other funds cited at page 116).

In fact only the Inland Fisheries and Wildlife Fund exists now. Through the efforts of the Governor and his Secretary of Administration and Finance, "dedicated funds" as they are known have almost all been eliminated. The fund just identified will be eliminated by the Legislature's Ways and Means Committee when the budget is reported to the floor this year, although fish and game interests are resolutely trying to restore it and the other funds that were eliminated last year. The prognosis is not good for dedicated funds.

e. MEPA

The program and the Rice Report, page 268, identify legal authority other than the EOEA enabling statute and the constituent EOEA authorizing statutes as providing a basis for the CZM program. A few observations are in order.

The most important such authority is that found in the Massachusetts Environmental Policy Act (MEPA). That statute mandates an environmental impact report for any state work, project or activity which may cause significant damage to the environment. Section 61 of the statute contains important mandates, among them that:

> "All agencies, departments boards, commissions and authorities of the Commonwealth shall review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment...Any determination made by an agency of the Commonwealth shall include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact."

These obligations look impressive and they look quite distinct from the Section 62 obligations for agencies to publish environmental impact reports for specific projects. However, it is far from clear that MEPA is an enabling act containing substantive obligations and responsibilities. In this connection it is important to note that the Supreme Judicial Court, in two cases involving MEPA, apparently regarded Section 61 as implemented primarily through the environmental impact reports under Section 62. City of Boston

v. Massachusetts Port Authority and Executive Office of Environmental Affairs v. Massachusetts Port Authority.

Section 26 requires the Secretaries of the Executive Offices, which constitute the cabinet of the Governor, each to promulgate rules and regulations to implement Section 62 environmental impact report requirements. MEPA regulations of EOEA in this respect govern only EOEA agencies. As to non-EOEA agencies they are guidelines only. Non-EOEA regulations are submitted to EOEA for approval by the Secretary. Of course the EOEA guidelines are given great evidentiary weight, EOEA v. Massachusetts Port Authority, and EOEA interpretations of its own and other agency MEPA regulations may be regarded as authoritative by the courts. Once non-EOEA regulations are approved, however, their implementation is beyond the control of EOEA. For example, the regulations of the Executive Office of Transportation and Construction (EOTC) give agencies such as the DPW broad discretion in deciding whether to issue an environmental impact report. EOEA is left to corresponding with the agency in question and pursuing the matter in court, as was the situation with Massport.

A further limitation on MEPA authority is that, by virtue of a 1974 amendment, an environmental impact report for an agency permit, order or other action with respect to private development "shall be limited in scope to the subject matter jurisdiction" of the agency by which the report is prepared. This apparently means that, regardless of the broadly stated obligations in Section

61, regardless of the many aspects of a project which may cause environmental impact, and regardless of the CZM concerns raised by a project, the environmental impact report nevertheless will address only those impacts raised by the portion of the project narrowly within the authority of the agency to approve or disapprove.

When environmental impact reports are prepared, the role of the Secretary of EOEA is limited to issuing

> "a written statement indicating whether or not in his judgment said reports adequately and properly comply with the provisions of this section."

Such is the scope of review and the nature of the decision when a state project is involved. By virtue of a 1974 amendment to MEPA, however, environmental impact reports for state review of private work, projects or activities are submitted to the Secretary only "for comment." Section 62 now expressly provides that "the approval or disapproval of said Secretary of any such report shall not be required." Therefore, it is not accurate to characterize the role of this Secretary as determining the "necessity" of an environmental impact report in all respects satisfactory to the Secretary, as suggested at page 272 of the Rice Report.

As a matter of practice under MEPA, "Categorical Exemptions" and "Negative Assessments" are very important. MEPA regulations of all agencies create categories of projects which do not require full environmental reports. In addition, it is open to any agency considering a project which could require such a report to explain

in a "Negative Assessment" why one will not be prepared. Administration of MEPA is characterized by a large number of projects exempt by either method, despite the low threshhold of what damage to the environment is "significant" enunciated by the Supreme Court in EOEA v. Massachusetts Port Authority.

Categorical Exemptions are widely invoked under MEPA, and Negative Assessments comprise the bulk of the paperwork generated under the statute. Even though Categorical Exemptions are bypassed according to MEPA regulations if a project or activity is to be conducted in an environmentally sensitive area, it is hard to see how agencies sponsoring projects, or preparing to permit or license them, will know about the environmental sensitivity of the area if they do not carry out an environmental analysis in the first place. CZM maps disclosing critical areas may assist in this regard. However, placement of a project in such an area means only that the Categorical Exemption will not apply. It will still be open to the agency to file a Negative Assessment seeking to do away with an environmental impact report. Again, EOEA will be left only with the authority to issue a decision as to the adequacy of the Negative Assessment or, as to private projects under state permit or order, a "comment." Since EOEA authority does not include vetoes over projects, the remedy is in court.

On this subject of exemptions from MEPA, it should be noted that a wholesale exemption from MEPA is found in the Clean Waters Act, the basic water pollution control statute for Massachusetts

administered by the Division of Water Pollution Control.

2. Authority Over Non-EOEA Agencies

The authority possessed by non-EOEA agencies is basically unaffected by the coastal zone management program. As the EOEA response of October 25, 1977 to the Utility Company/Home Builders/ Boston Chamber Legal Memorandum Concerning Coastal Zone Management makes clear, the Energy Facility Siting Council retains its full authority to determine the location of future energy facilities, even if it means siting such facilities in areas of particular concern in the coastal zone. With respect to other state agencies, the program relies on "[m]aintenance of working-level relationships, early consultation, membership on interagency committees and program-specific agreements," mostly through MEPA responsibilities. (p. 341). This is simply not enough. The Executive Office of Transportation and Construction, the Executive Office of Communities and Development, and the Office of State Planning are just too powerful and too greatly influence uses of the coastal zone.

3. Authority to Resolve Conflicts Among Competing Uses

The CZMA requires that the state possess the authority to resolve conflicts among competing uses. Section 306(d)(1). In contrast, the Massachusetts program offers only the program document itself as resolving conflicts between uses, adding a mechanism for resolution of conflicts between officials within the Executive Office of Environmental Affairs. Conflict

resolution is thus between agencies only, and there is no mechanism for resolving conflicts between competing uses for specific land and water areas. The program and DEIS freely permit this. (Program at 27, DEIS at 11-2).

The need for specific mechanisms is well demonstrated. For example, in the field of recreation, the plan acknowledges (at page 201) that resolution of recreational conflicts is "often possible only through prohibition of one or more activities." The need to prohibit or condition recreational uses will be more prevalent, the program observes, and yet the ability to do just that does not exist in the Massachusetts program.

Another example is found in Policy 27. Where private development proposed near an existing public recreational site will increase traffic congestion on access roads, obstruct or limit public access, pollute the water, change the site character, cause air pollution, or cause noise, the CZM role is one to "review" and "encourage" development to minimize its impact, and "consider" the purchase of easements, development rights and land swaps. In the face of such demonstrable conflicts, the Massachusetts CZM program must offer more to be approved.

B. Coastal Boundaries

The first requirement, under Section 305(b)(1) of the CZMA, is that the program establish specific boundaries for the coastal zone. The CZMA defines the coastal zone as "the coastal waters (including the land therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and [it] includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches." Section 304(a). On the seaward side the boundary is fixed at the outer limit of the United States territorial sea. On the inland side, the boundary extends "to the extent necessary to control shorelands, the uses of which have a direct and significant impact on coastal waters."

The Massachusetts program defines the state's coastal zone to include lands and waters within the area defined by:

> The seaward limit of the state's territorial sea (i.e., 3 miles), extending from the Massachusetts-New Hampshire border south to the Massachusetts-Rhode Island border, and landward to 100 feet inland of a major road, rail, or other visible right-of way.

The boundary also includes all islands in state jurisdiction (DEIS at 11-1). The Program states that the road boundary chosen approximates the inland edge of valuable natural coastal systems and includes land on which major activities could potentially impact coastal resources.

(p. 26). It should be made clear that this boundary encompasses all areas which lie inland 100' from the 100-year flood plain or the landward edge of wetlands (as defined under the Wetlands Protection Act). (See Program at 81).

An issue of concern is the statement that anadromous fish runs (to the freshwater breeding area) will be included in the coastal zone, if such area is within a coastal town. (Program at 26). Anadromous fish runs to the fresh water breeding area should be included wherever they may occur and the limitation to coastal towns should be deleted.

We also question the justification for excluding most of the inland portions of Cape Ann from the coastal zone. Adequate reasoning for this action must be provided.

C. Areas of Particular Concern; Areas for Preservation and Restoration; Priority of Uses

Under Section 305(b)(3), the states are instructed to include "an inventory and designation of areas of particular concern within the coastal zone" in their management program. A related provision, Section 306(c)(9), requires that the management program include a mechanism for setting aside specific areas for preservation or restoration. In order to fulfill the purposes of the Act, the state must not only designate apc's and apr's, but it must also demonstrate that it possesses enforceable policies and authorities which address the concerns and protect the resource values which were

the reasons for designation of such areas in the first place.

Massachusetts has designated gapc's to include barrier beach systems, dunes, beaches, salt marshes, shellfish beds, salt ponds estuaries, coastal embayments , and anadromous fish runs, erosion areas, flood plains, plus land 100 feet inland of the 100 year floodplain which is subject to or serves to buffer and dissipate the forces of flooding and/or erosion, and finally, port areas. (Program, 27-30; 35-37). The state has also established a procedure for designation of apr's.(Program, 32-34). What is has not done is establish enforceable policies and authorities to ensure that these designations will be meaningfully implemented. This is a major failure of the program which must be corrected.

There are three basic problems with respect to gapc's and apr's: developments such as energy facilities may be sited in such areas in disregard of the designation; the Secretary retains the power to disregard the policies with respect to such areas where a conflict arises with "compelling public interest"; no enforceable guidelines on priority of uses have been established with respect to gapc's and apr's (except for those areas already restricted under the Wetlands Restriction Program). As we have already pointed out a number of times in these comments, under the program as proposed, the EFSC retains the authority to site energy facilities anywhere, including gapc's and apr's.

The EOEA itself has stated:

> Under Massachusetts law (Chapter 164, Section 69), the EFSC is empowered to give initial approval for the location of a proposed energy facility based on the need for energy, the environmental impact of the facility, and the provision of energy at the lowest reasonable cost . . . If an agency [including an EOEA agency] denies or conditions a permit, the EFSC, on appeal, is empowered to override the denial if it finds the denial unreasonable.
>
> Although the CZM plan includes policy statements relating to energy facility siting, it cannot of course contradict present statutory provisions. The Plan does, however, effect this process in four respects.
>
> * * *
>
> 4) The EFSC agrees in its MOU to give "prime consideration" to CZM policies when it weighs environmental impact against energy needs and cost considerations for facilities proposed to be located in an APR (a fragile environmental area designated for special treatment after a lengthy formal hearing . . .) Once again, however, the EFSC retains final authority to determine siting decisions. (emphasis supplied).
>
> EOEA Response to the Utility Company et al. Memorandum, pp. 2-3.

Thus, with respect to gapc's and even apr's, there is no assurance that the policies designed to assure protection and preservation of these valuable ecological areas will be implemented.

The danger is further evidenced by the fact that [s]tate agencies outside of EOEA will be unaffected by the

the particular area where it is proposed to be located. For example, if a project proposed for a significant resource area (ecological) not yet restricted under the Wetlands Restriction Act, will not adversely affect the following interests--protection of shellfish or fisheries, prevention of pollution, storm damage prevention, flood control, groundwater supply and water supply--and whatever other standards are applicable, it may proceed.*/

Such a procedure is acceptable so long as the state is able to regulate all uses which may have a direct and significant impact on coastal waters. The problem with the Massachusetts program is that it does not, as presently constituted, contain the means to regulate all such uses under the program. The reasons for this are the same as those referred to earlier in the discussion of the lack of comprehensiveness and enforceability of the program. Rather than repeat the same points again, NRDC refers back to that discussion (under General Requirements).

E. Consideration of the National Interest

CZMA §306(c)(8) requires "adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect such state's coastal zone) which are necessary to meet requirements which are other than local in nature."

*/See e.g., Program at 80-1.

NOAA Reg. 923.15 mandates that national concerns be "expressed and dealt with" in the development and implementation of the CZM Program. There must be assurance that there will be no arbitrary exclusion or unreasonable restriction. On this score the regulation requires no separate evidence beyond that national interest facilities have been considered "in a manner similar to all other uses."

The Massachusetts CZM Program goes too far in accommodating energy facilities in the coastal zone. (See DEIS at 11-55). As a result, the national interest in the protection and maintenance of fishing, recreational and ecologically valuable resources (e.g., barrier islands, wetlands, floodplains) is given inadequate consideration in the face of energy facilities.*/ In discussing the national interest in energy facilities siting, the program should clearly state that accommodation of such facilities is contingent on their consistency, at a minimum, with the marine environmental and coastal hazard policies of the program.

NRDC recommends that Massachusetts' consideration of the national interest be reevaluated in light of the requirements in the proposed revised 306 regulations. These more fully reflect the broad range of national interests to be considered.

*/This national interest is spelled out clearly in NOAA's Proposed Revised Coastal Zone Management Program Approval Regulations, 42 Fed. Reg. at 43571-3 (August 29, 1977).

F. Federal Consistency Procedures

The procedures established for determinations respecting the consistency of federal activities, including development projects, and federal licenses or permits, with the coastal program are unclear. The program provides that CZM will undertake a review of consistency and if CZM objects to the certification statement of an applicant for a federal license or permit or to a federal agency's consistency determination, then the license or permit may not be issued or mediation procedures may be initiated. (Program at 357). The same procedure applies with respect to federal assistance programs. (Program at 358).*/

This description appears to conflict with the description contained in the EOEA Response to the Utility Company et al. Legal Memorandum Concerning Coastal Zone Management (p. 3). What is described there is an equivalency test: if the state issues all its licenses or permits, then CZM cannot determine that the federal license or permit is inconsistent with the state's program. To the extent this description of federal consistency procedures conflicts with the procedure described in the program, the procedure described in the program must prevail. This point should be clarified by the state.

*/It should be stated that such assistance must be consistent with the program, not merely coastal policies. (See Program at 358).

There is another disturbing factor concerning Massachusetts' federal consistency procedures. Massachusetts appears to have exempted licenses or permits issued by the United States Nuclear Regulatory Commission from the consistency requirements. (See a-54)(Procedures for Activities Requiring a Federal License or Permit). Licenses and permits issued by the Federal Highway Administration are not included either. It is critical that both these agencies be included under the consistency procedures.

G. Public Hearings

NRDC objects to the procedures followed by Massachusetts with respect to the public hearings on the program. The Massachusetts CZMP was formally submitted for federal approval before any public hearings were held in the state on the program being submitted. In fact, a public hearing on the entire program was not held until late November, 1977, when a series of joint federal-state hearings were held throughout the coastal zone.*/ What is disturbing about this procedure is that it deprived members of the public of full opportunity for participation in program development. The procedures followed also specifically

*/The DEIS states erroneously that a public hearing was held on the entire revised program in August prior to formal submittal. (p. 11-68). The August event was a public meeting, not a public hearing, and the state at the time made a big point of that. NRDC had specifically requested that a public hearing be held prior to program submission, but the state refused to hold one until November, well after program submission.

violate the requirements of the CZMA, which were designed to ensure public participation.

Section 306(c)(3) of the Act specifically requires that public hearings be held in the development of the State's management program. Since the management program is to be submitted for for Section 306 approval after completion of program development, (Section 305(h) says that the program is to be submitted "upon completion of the development of the state's management program...") and since public hearings are required prior to completion of program development, the management program cannot be complete for submission until these hearings are held.

The purpose for this requirement relates to the purposes and policy of the Act. Under Section 302(h) of the Coastal Zone Management Act of 1972, Congress found that:

> [T]he key to more effective protection...of the coastal zone is to encourage states to exercise their full authority...in cooperation with federal and local governments and other vitally effected interests..."

Section 303(d) declares that the policy of the Act is "to encourage the participation of the public...in the development of coastal zone management programs."

The federal regulations under the CZMA also require completion of public hearings prior to formal submission of the management program (16 C.F.R. §§920.30 and 920.31 Coastal Zone Management Program Development Grants, Fed. Reg., Vol. 42, No. 83, Friday, April 29, 1977). According to these regulations,

the purpose of public participation in the development of the program is to reflect public needs and aspirations in the use decisions for the coastal zone and to generate public support. Obviously, neither reflection of public need nor public support for the program is enhanced by submission of the program prior to full opportunity for public participation.

NRDC also objects to the procedures followed by the Office of Coastal Zone Management. OCZM's determination of whether a program meets the CZMA requirements and regulations should be based on as final a state program as possible, i.e., a fully developed program on which there has been full opportunity for public participation and public hearings. OCZM must assure that the program they are reviewing has already received maximum input from the public and that the development process has been complete. OCZM did not do that with respect to the Massachusetts' program.

IV

CONCLUSION

NRDC believes that the Massachusetts program must be revised if it is to comply with the CZMA and receive Section 306 approval and funding. This can be done without additional legislation. It can be done without inordinate delay. It must be done if this program is to further the goals of environmental protection and wise and effective coastal resource management.

COMMENTS OF NRDC
AT THE JOINT FEDERAL-STATE HEARING
ON THE MASSACHUSETTS CZM PROGRAM
AND THE DRAFT FEDERAL ENVIRONMENTAL IMPACT STATEMENT

NOVEMBER 22, 1977

The Natural Resources Defense Council (NRDC) is a national non-profit organization, with a membership of 35,000, dedicated to the wise use of natural resources. The Atlantic Coast Project of NRDC has focused on whether state coastal management programs comply with the Coastal Zone Management Act of 1972 (CZMA). This is the key national environmental statute for protection of coastal areas. Because Massachusetts is the Atlantic coast state furthest along in seeking approval by the Secretary of Commerce, the Massachusetts CZM Plan is of special significance. The Program and its treatment by the federal Office of Coastal Zone Management will be closely watched by other coastal states now developing their own programs.

Industry attacks on the Massachusetts Program are unwarranted. It will accomplish almost nothing of what industry fears. In fact, it will not do nearly enough to protect the coastal zone. The public should realize that this is not an ambitious program, but is designed only to do the bare minimum to qualify for federal money. To do even that, more work is needed. The program cannot be approved at this time. Approval should be postponed until after specific agency coastal zone regulations are adopted for the Waterways Program, the Wetlands Protection Act, the Energy Facilities Siting Council and others; after the ten critical areas, called APR's, are designated; and after an Opinion of the Attorney General affirms the Program is legally enforceable.

INDUSTRY OPPOSITION IS UNFOUNDED

Industry parades imagined horribles to try to kill this program. If only the industry critics were right. If only the Program did what they say it will do. In fact the Program is significant for what it does not do and the public ought to be aware of this.

Industry and the public may be under the impression that this Program will create new environmental policies applicable throughout the coastal zone to all state agencies, both environmental and non-environmental agencies, inside and outside of the Executive Office of Environmental Affairs (EOEA). It would be a good Program if new policies would overlay present decision making, adding to agency authority to protect the coastal zone. Unfortunately, the reality is that these policies will legally govern decision making only by EOEA agencies. Most of the policies are not enforceable. They are implemented not by all state agencies but only by specific agencies already given environmental protection responsibilities, and they protect primarily wetlands and related areas, and only to the extent allowed by present law.

It would be wonderful if, as industry fears, this Program for the first time would direct growth in the coastal zone, channeling desirable development to suitable areas and routing improper uses away from fragile areas. In reality this program essentially will only regulate impacts. This Program just "networks" or coordinates existing permit programs and review under the Massachusetts Environmental Policy Act (MEPA), and review of energy facilities.

The industry critics are wrong in thinking this Program will create a fresh relationship with local government, much as that may be desirable, giving the state authority to override zoning and subdivision control decisions. Of course it is absurd to leave out of a program control over use and density of development. Use and density influence the coastal zone almost more than anything else. In reality, under this Program, planning boards in the coastal zone will continue to allow huge subdivisions, apartment complexes, heavy use of groundwater, local road building and locally financed sewer construction. These things are beyond the Program.

Although industry would disagree, it would be a good idea to designate EOEA as a superagency, with a veto over all Wetlands Protection Act, Division of Water Pollution Control and Waterways Program permits, with a new day-to-day regulatory control of agency commissioners. In reality the agency commissioners under this Program will be held to doing only what existing law would allow them to do, and no more, and the Secretary of EOEA will not review their decisions unless failures to implement coastal zone policies are brought to her attention.

If only the industry critics were correct that Areas for Preservation or Restoration (APR) were going to be guarded by "keep out" signs, directed especially at energy facilities. In reality designation of an APR will basically just eliminate any categorical exemption under MEPA for work in the APR, meaning that an Environmental Assessment Form must be filled out. And contrary to the published CZM Plan, the Massachusetts CZM Office is now saying that energy facilities will not be prohibited in APR's and the Energy Facilities Siting Council, not EOEA, will have the final say.

If only this Program, as feared by industry, would measure against the new CZM policies all federal projects, federal grants, Outer Continental Shelf (OCS) development plans of industry, and federal licenses and permits, with an independent determination by the state that the work is consistent with the policies. In reality applicants for licenses and permits will write their own consistency statements or, worse, proposals will be automatically deemed consistent if a wetlands or other permit required under the Program is obtained. This is the so-called "equivalency" approach to determining consistency with the Program. The public should not feel confident with this automated approach.

If this Program is approved it will mean little change over the present situation. What little it does offer to protect the environment may be more than offset by benefits conferred on industry. Industry will get access to the Secretary of Commerce in Washington in order to override any determination by the state that a federal project, grant, license or permit, or any OCS work is inconsistent with the Program. Industry will get to take advantage of the prohibition in federal law against arbitrary exclusions from the coastal zone of any use of regional benefit and the obligation in federal law for the state to take account of the "national interest" in reviewing such facilities.

The Coastal Zone Management Act is an environmental statute emphasizing planning and sound decisions to protect natural biological and physical resources, and the important "ecological, cultural, historical and aesthetic values in the coastal zone". Congress found that population growth and economic development "have resulted in loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion".

The Massachusetts Program is designed to just qualify Massachusetts for federal approval and frankly it does not do enough.

AGENCY REGULATIONS ARE NEEDED BEFORE APPROVAL

The guts of the Massachusetts Program is not in place. Preliminary approval already has been given and the state is receiving federal funds for the good parts of the program, especially additional funding for the Wetlands Protection Act activities of the Department of Environmental Quality Engineering (DEQE) and the Wetlands Restriction Act program of the Department of Environmental Management (DEM). But the public needs more and deserves more and it is no hardship for the state to deliver more. The only solid part of the Program will be specific agency coastal zone management regulations. They must be in place before approval. What the public wants to know is that the program will change the present situation, that it will protect the coastal zone more than is now done.

Here is why the regulations are needed now. The agency regulations are the building blocks for the program. Without them we will not know how the program may address any specific project. Without them there is no predictability as the federal Coastal Zone Management Act requires.

With the regulations, present opposition to the Program, based upon imagined sweeping reforms, will be defused and the Program will be much less vulnerable to industry challenge and industry efforts to distort it in the regulation-writing process.

The regulations for the line agencies also are needed so the public knows what it is getting. Remember that the Draft Environmental Impact Statement (DEIS) is the first document available to make the Program understandable with a short, digestible discussion of what the Program will and will not do. The DEIS is the first document available to illustrate what policies are enforceable and what are not. The DEIS says 23 of 38 policies are not enforceable.

Of course, the entire Program must be enforceable. Massachusetts CZM is saying that after approval private citizens will be able to sue to force EOEA agencies to implement the policies, and agencies will be able to disapprove projects for noncompliance. Enough doubt on this has been raised to warrant a clear Opinion of the Attorney General on point before Program approval.

Legal niceties aside, only with agency regulations will the Program be workable. The so-called Chapter 21A regulations at the level of the Executive Office of Environmental Affairs (EOEA) will not be enough. In some respects the use of the Waterways Program, the Wetlands Protection Act, the Wetlands Restriction Act, Title 5, and the Energy Facilities Siting Council is ambitious. The public needs regulations now to be sure the program has not been oversold.

Imagine going on February 24, the day after Program approval, to the DEQE Waterways Program (which has no regulations now) in an effort to stop dredging between April 15 and June 1 where there are herring runs, or to force selection of hydraulic dredging as a preferred method, or to limit the type of vessels or barges used, or to give advance notice to fishermen, or to limit turbidity in the discharge plume, or to require extra justification for private flood or erosion control projects. These are all promised in the Massachusetts CZM Plan.

Imagine going on February 24 to a local Conservation Commission to force it to treat salt marshes, shellfish beds, dunes, beaches and salt ponds as extra critical wetland types "meriting the highest degree of protection", or to impose special conditions on work to create private docking space (including a mandate that it be shared with neighbors and that there be no work in the future), or to forbid structural solutions for erosion control except where no damage will occur to adjacent property. All these things are promised in the CZM Plan.

Imagine going on February 24 to the Division of Mineral Resources (which is non-existent) to employ its program (which has no regulations now) in order to prevent sand and gravel mining under the ocean above the 80-foot contour, or where there is a productive sport or commercial fishery. The CZM Plan promises these restrictions will apply.

Imagine going on February 24 to the Division of Water Pollution Control to push for promised limits on sewer funding within the 100-year flood plain in the coastal zone, including allowing structural solutions in high risk areas only if a non-structural solution would be ineffective or cost prohibitive. Regulations are needed to define these terms.

Imagine going to the Energy Facilities Siting Council (EFSC) on February 24 to push for the "prime consideration" which the CZM Plan says will be given to environmental factors when putting power plants in the coastal zone, or to push for consideration of an inland site for a power plant. The Siting Council will answer that there are no agency regulations implementing these promises and anyway the Siting Council retains full discretion to allow energy facilities anywhere and on any terms it sets.

Imagine going to the MEPA Review Office on February 24 and finding that categorical exemptions still apply for state projects and state licenses in Areas for Preservation or Restoration (APR) because, although we know where they are and why they should be protected, they have not been formally designated and will not be for about one year, although the CZM Plan says it could be even longer.

The APR's are the ten resource areas of unique productivity, mapped on page 11-9 of the Draft EIS. No new industrial or hazardous discharges will be allowed in APRs, no dredging except for maintenance or marine productivity, no dredge spoil disposal except for beach or dune protection, and no new sewage treatment facilities. Most APR's are already covered in part by Wetlands programs. The remaining areas are areas of accretion, coastal view points, individual sites of historic, archeological, architectural or cultural value, developed harbors, urban waterfronts and coastal recreation sites. APR protection is supposed to be for sites needing much further study. These sites should be protected now.

It is hard to see how people who want to protect the coastal zone can be effective when they must show up at these agencies with an 800 page CZM Plan, plus Memos of Understanding, generally worded policies, a Regional Chapter with maps and evaluations of how the Program should work, and Chapter 21A regulations of the Secretary which do not on their face amend the Wetlands Protection Act and other specific agency regulations.

What all this means is that the Program in its present shape will be a tremendous burden on citizens and interested groups to enforce. It means they will have to master a mass of material, explain to state agencies what it means, and push these agencies to implement the policies. It means that opponents of the Program will be able to argue not only that the Secretary of Environmental Affairs does not have legal authority to adopt the Program but also that regulations have not been adopted by the agencies to make the program stick. It means that the public, time and time again, will have to invoke the "conflict resolution" procedure set up in the Program to bring to the Secretary's attention failures to implement CZM policy. If regulations were in place, appeals of this nature would be minimized by making the Program work the first time around, when permits are issued and other decisions are made at lower levels.

There is nothing magic in the February 23 target date for federal approval. Preliminary approval monies already are coming to the state and will last at least until March 31. Final approval is not necessary at this time and it should be posponed until we have agency regulations in place and the Areas for Preservation or Restoration (APR) are protected. In the meantime the federal government will continue to fund the good parts of the program already in place. That is what preliminary approval is for.

The Draft Environmental Impact Statement (DEIS) already promises regulations for the Waterways Program and the Wetland Protection Act by June. The state has promised to circulate drafts of regulations for these programs plus the Energy Facilities Siting Council and other program elements by February 23. There is plenty of time for public notice under the state Administrative Procedure Act, a public hearing, and adoption prior to March 31. The ten APR's have all been geographically delineated, the justification for their designation already has been stated, and the procedure is now available in the EOEA for them to be designated for more protection.

If this program is to be even minimally comprehensive enough, predictable enough and enforceable enough then specific agency coastal zone regulations must be adopted first, along with designation and better protection of critical geographic areas.

Gregor I. McGregor, Esq.
33 Mt. Vernon Street, Beacon Hill
Boston, MA 02108

For Natural Resources Defense Council, Inc.

designation [of critical areas of environmental concern/apr's] except pursuant to a Memoranda of Understanding or pursuant to MEPA..." (Program at 324). As discussed above, however, neither MOU's nor MEPA constitute effective mechanisms for ensuring that uses inconsistent with the program will be prevented or appropriately conditioned. The program must demonstrate that through the exercise of authority by agencies bound by the program, the program will be adhered to and development which occurs will be consistent with the program.

Another concern relates to procedures established under the program for invocation of the conflict-resolution process whenever implementation of a coastal policy would conflict with the "compelling public interest" and for the eventual override of the coastal policy by the Secretary. For example, at page 88 of the program, there is a footnote which provides that in situations where prohibition of activities in apr's "would conflict with the compelling public interest" the conflict resolution process should be used. This process, detailed in the Management chapter and the Chapter 21A regulations, provides for the Secretary's override of coastal policies where there are more substantial or compelling public interests or concerns which would be jeopardized by the application of CZM policy. (Program at 324). Such a procedure is unacceptable, for it leaves virtually unbridled discretion in the hands of the Secretary. No definition of "substantial" or "compelling" public interests or concerns is provided. Nor is it stated that such an override

of the coastal policies will occur only in an extremely limited number of cases.

Finally, there are no enforceable guidelines on priority-of-uses for gapc's or apr's except for those already restricted under the Wetlands Restriction Program. Section 305(b)(5) of the Act requires states to set "broad guidelines on priority-of uses in particular areas, including specifically those uses of lowest priority." These guidelines, together with the definition of permissible uses, should be the basis for regulation of land and water uses in the coastal zone. Yet the Massachusetts program fails to carry out this mandate even for gapc's and apr's. Such guidelines exist only for areas restricted under the Wetlands Restriction Program.

D. Permissible Land and Water Uses

Section 305(b)(2) of the Act directs that each management program include "a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters." Section 305(b)(4) requires an identification of the means by which the state proposes to exert control over such uses.

Massachusetts' approach to use permissibility is primarily a performance standard approach. Under such performance standards, whatever particular development is proposed has to meet the specified performance standards and criteria for the project and

COMMENTS ON

DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR
PROPOSED MASSACHUSETTS COASTAL ZONE
MANAGEMENT PROGRAM

DECEMBER 13, 1977

SUBMITTED BY

GREATER BOSTON CHAMBER OF COMMERCE, et al.

Greater Boston
Chamber of Commerce
125 High Street
Boston, MA 02110
Tel: 426-1250

December 13, 1977

Dr. Evelyn F. Murphy, Secretary
Executive Office of Environmental Affairs
Leverett Saltonstall Building
100 Cambridge Street
Boston, Massachusetts 02202

Dear Secretary Murphy:

Enclosed are two copies of written comments on the Draft Environmental Impact Statement issued October 14, 1977, on the proposed Massachusetts Coastal Zone Management Program. These comments are submitted to your office under the provisions of the Massachusetts Environmental Policy Act, and are being submitted concurrently under the provisions of the National Environmental Policy Act to the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration. The comments question both the legal authority for the Massachusetts CZM Plan and its practical consequences for Massachusetts.

For the reasons stated in our comments, we respectfully request:

1. that the Commonwealth of Massachusetts withdraw the Coastal Zone Management Program as submitted for approval;

2. that the Massachusetts Secretary of Environmental Affairs find that the Draft Environmental Impact Statement does not adequately comply with the Massachusetts Environmental Policy Act, G.L. c.30, §§61 and 62;

3. that it be determined that this Draft Environmental Impact Statement is inadequate under the National Environmental Policy Act; and

4. that the Associate Administrator disapprove the Coastal Zone Management Program of the Commonwealth of Massachusetts under the Coastal Zone Management Act, 15 U.S.C. §1451 et seq.

These written comments have been prepared jointly by the following entities, and are submitted in their behalf:

Greater Boston Chamber of Commerce
125 High Street
Boston, Massachusetts 02110

Attn: Robert R. Ruddock, Esq.
Director of Metropolitan Affairs

Boston Edison Company
225 Franklin Street
Boston, Massachusetts 02110

Attn: Francis M. Lee, Esq.
Environmental Planner

Associated General Contractors of Massachusetts, Inc.
220 Boylston Street
Chestnut Hill, Massachusetts 02167

Attn: William D. Kane
Executive Assistant

Massachusetts Electric Company
New England Power Company
New England Power Service Company
20 Turnpike Road
Westboro, Massachusetts 01581

Attn: Patrick J. Kenny, Esq.
Attorney

Home Builders Association of Massachusetts, Inc.
93 Purchase Street
Boston, Massachuetts 02110

Attn: Garen Bresnick, Esq.
Executive Vice President

Construction Industries of Massachusetts, Inc.
20 Kilby Street
Boston, Massachusetts 02109

Attn: Paul Griffin
Legislative Director

Algonquin Gas Transmission Company
1284 Soldiers Field Road
Boston, Massachusetts 02135

Attn: Kevin J. Donahue
Environmental Engineer

New Bedford Gas and Edison Light Company
675 Massachusetts Avenue
Cambridge, Massachusetts 02139

and

Fall River Gas Company
155 North Main Street
Fall River, Massachusetts 02722

Attn: Michael T. Gengler, Esq.
Rich, May, Bilodeau & Flaherty
294 Washington Street
Boston, Massachusetts 02108

Massachusetts Construction Industry Council
20 Kilby Street
Boston, Massachusetts 02109

Attn: Donald M. Manzelli
Tri-Chairman

Utility Contractors Association of New England, Inc.
399 Neponset Street
Canton, Massachuetts 02021

Attn: Joseph J. Struzziery, Jr.
Executive Director

Building Trades Employers Association of Boston and Eastern Massachusetts, Inc.
147 Milk Street
Boston, Massachusetts 02109

Attn: Thomas S. Gunning
Executive Director

We wish to enumerate the documents on which these comments are submitted, since there have been a number of drafts of the Massachusetts CZM Program documents, and revisions have been made during the course of the general review process:

1. Draft Environmental Impact Statement issued by OCZM on October 14, 1977.

2. Massachusetts Coastal Zone Management Program dated March 18, 1977, (as revised and published in July, 1977) (two volumes, including all appendices).

3. Addendum dated October 7, 1977, to Massachusetts Coastal Zone Management Program.

You should note that our comments include the following enumerated documents for your consideration and response in evaluating the DEIS and the Massachusetts CZM Program:

A. Memorandum of Law by John J. Desmond, III, Esq. of Boston Edison Company, dated April 26, 1977, which relates to treatment of the Energy Facilities Siting Council under the Massachusetts CZM Plan.

B. Memorandum of Law by Michael T. Gengler, Esq., Rich, May Bilodeau & Flaherty, dated May 5, 1977, which relates to Coastal Zone boundaries and to treatment of general permitting statutes under the Plan.

C. Memorandum of Law dated May 6, 1977, by Patrick J. Kenny, Esq., of New England Power Service Company, which relates to the legal authority of the Secretary of Environmental Affairs to promulgate and administer the CZM Plan.

D. Draft Legal Commentary on the Massachusetts Coastal Zone Management Plan dated October 17, 1977, prepared by representatives of the Massachusetts Home Builders Association, the Greater Boston Chamber of Commerce, Boston Edison Company, New England Power Service Company, Algonquin Gas Transmission Company, New Bedford Gas and Edison Light Company and Fall River Gas Company.

E. Letter of John J. Kearny of Edison Electric Institute to Michael Shapiro, National Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, dated October 28, 1977, with attached commentary on federal consistency regulations.

F. Letter of Robert W. Knecht, Acting Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, to Hon. George Rogers, Chairman of the Joint Committee on Natural Resources, Massachusetts Legislature (undated).

Also referred to in our written comments on the Draft Environmental Impact Statement is a Report to the Massachusetts Office of Coastal Zone Management dated July 1, 1975, entitled "Existing Institutional Capacity for the Management of Resouces and Growth in the Massachusetts Coastal Zone", prepared by Alan H. Kaufman, Esq., of the Conservation Law Foundation of New England, Inc., which concludes generally that existing statutory authority in Massachusetts is not adequate or suitable for implementation of a Coastal Zone Management Program by the Executive Office of Environmental Affairs. A copy of this report is incorporated by reference into these comments, and your response thereto is also solicited.

Although some of the above referenced documents were prepared prior to release of the Draft Environmental Impact Statement, the concerns addressed thereon have not been adequately resolved in the Massachusetts CZM Program or in the DEIS, and require responses by OCZM and the Massachusetts Secretary of Environmental Affairs.

Please send copies of your responses to these comments to each of the individuals named above as joint submitters of the comments. You may also contact any of these individuals if you have any questions concerning our comments.

~~Very truly yours,~~

Robert R. Ruddock

Robert R. Ruddock, Director
Metropolitan Affairs

cc: Ms. Kathryn Cousins
Office of Coastal Zone Management
N.O.A.A. Washington, D. C. 20235

Greater Boston
Chamber of Commerce
125 High Street
Boston, MA 02110
Tel: 426-1250

December 13, 1977

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Room 3280
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

Attention: Ms. Kathryn Cousins

Gentlemen:

Enclosed are two copies of written comments on the Draft Environmental Impact Statement issued October 14, 1977, on the proposed Massachusetts Coastal Zone Management Program. These comments are submitted to your office under the provisions of the National Environmental Policy Act, and are being submitted concurrently under the Massachusetts Environmental Policy Act to the Massachusetts Secretary of Environmental Affairs. The comments question both the legal authority for the Massachusetts CZM Plan and its practical consequences for Massachusetts.

For the reasons stated in our comments, we respectfully request:

1. that the Commonwealth of Massachusetts withdraw the Coastal Zone Management Program as submitted for approval.

2. that the Massachusetts Secretary of Environmental Affairs find that the Draft Environmental Impact Statement does not adequately comply with the Massachusetts Environmental Policy Act, G.L. c.30, §§61 and 62;

3. that it be determined that this Draft Environmental Impact Statement is inadequate under the National Environmental Policy Act; and

4. that the Associate Administrator disapprove the Coastal Zone Management Program of the Commonwealth of Massachusetts under the Coastal Zone Management Act, 15 U.S.C. §1451 et seq.

These written comments have been prepared jointly by the following entities, and are submitted in their behalf:

Greater Boston Chamber of Commerce
125 High Street
Boston, Massachusetts 02110

Attn: Robert R. Ruddock, Esq.
Director of Metropolitan Affairs

Boston Edison Company
225 Franklin Street
Boston, Massachusetts 02110

Attn: Francis M. Lee, Esq.
Environmental Planner

Associated General Contractors of Massachusetts, Inc.
220 Boylston Street
Chestnut Hill, Massachusetts 02167

Attn: William D. Kane
Executive Assistant

Massachusetts Electric Company
New England Power Company
New England Power Service Company
20 Turnpike Road
Westboro, Massachusetts 01581

Attn: Patrick J. Kenny, Esq.
Attorney

Home Builders Association of Massachusetts, Inc.
93 Purchase Street
Boston, Massachusetts 02110

Attn: Garen Bresnick, Esq.
Executive Vice President

Construction Industries of Massachusetts, Inc.
20 Kilby Street
Boston, Massachusetts 02109

Attn: Paul Griffen
Legislative Director

Algonquin Gas Transmission Company
1284 Soldiers Field Road
Boston, Massachusetts 02135

Attn: Kevin J. Donahue
Environmental Engineer

New Bedford Gas and Edison Light Company
675 Massachusetts Avenue
Cambridge, Massachusetts 02139

and

Fall River Gas Company
155 North Main Street
Fall River, Massachusetts 02722

Attn: Michael T. Gengler, Esq.
Rich, May, Bilodeau & Flaherty
294 Washington Street
Boston, Massachusetts 02108

Massachusetts Construction Industry Council
20 Kilby Street
Boston, Massachusetts 02109

Attn: Donald M. Manzelli
Tri-Chairman

Utility Contractors Association of New England, Inc.
399 Neponset Street
Canton, Massachusetts 02021

Attn: Joseph J. Struzziery, Jr.
Executive Director

Building Trades Employers Association of Boston and Eastern Massachusetts, Inc.
147 Milk Street
Boston, Massachusetts 02109

Attn: Thomas S. Gunning
Executive Director

We wish to enumerate the documents on which these comments are submitted, since there have been a number of drafts of the Massachusetts CZM Program documents, and revisions have been made during the course of the general review process:

1. Draft Environmental Impact Statement issued by the OCZM on October 14, 1977.

2. Massachusetts Coastal Zone Management Program dated March 18, 1977, (as revised and published in July, 1977) (two volumes, including all appendices).

3. Addendum dated October 7, 1977, to Massachusetts Coastal Zone Management Program.

You should note that our comments include the following enumerated documents for your consideration and response in evaluating the DEIS and the Massachusetts CZM Program:

A. Memorandum of Law by John J. Desmond, III, Esq. of Boston Edison Company, dated April 26, 1977, which relates to treatment of the Energy Facilities Siting Council under the Massachusetts CZM Plan.

B. Memorandum by Law by Michael T. Gengler, Esq., Rich, May, Bilodeau & Flaherty, dated May 5, 1977, which relates to Coastal Zone boundaries and to treatment of general permitting statutes under the Plan.

C. Memorandum of Law dated May 6, 1977, by Patrick J. Kenny, Esq., of New England Power Service Company, which relates to the legal authority of the Secretary of Environmental Affairs to promulgate and administer the CZM Plan.

D. Draft Legal Commentary on the Massachusetts Coastal Zone Management Plan dated October 17, 1977, prepared by representatives of the Massachusetts Home Builders Association, the Greater Boston Chamber of Commerce, Boston Edison Company, New England Power Service Company, Algonquin Gas Transmission Company, New Bedford Gas and Edison Light Company and Fall River Gas Company.

E. Letter of John J. Kearny of Edison Electric Institute to Michael Shapiro, National Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, dated October 28, 1977, with attached commentary on federal consistency regulations.

F. Letter of Robert W. Knecht, Acting Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, to Hon. George Rogers, Chairman of the Joint Committee on Natural Resources, Massachusetts Legislature (undated).

Also referred to in our written comments on the Draft Environmental Impact Statement is a Report to the Massachusetts Office of Coastal Zone Management dated July 1, 1975, entitled "Existing Institutional Capacity for the Management of Resources and Growth in the Massachusetts Coastal Zone", prepared by Alan H. Kaufman, Esq., of the Conservation Law Foundation of New England, Inc., which concludes generally that existing statutory authority in Massachusetts is not adequate or suitable for implementation of a Coastal Zone Management Program by the Executive Office of Environmental Affairs. A copy of this report is incorporated by reference into these comments, and your response thereto is also solicited.

Although some of the above referenced documents were prepared prior to release of the Draft Environmental Impact Statement, the concerns addressed thereon have not been adequately resolved in the Massachusetts CZM Program or in the DEIS, and require responses by OCZM and the Massachusetts Secretary of Environmental Affairs.

Please send copies of your responses to these comments to each of the individuals named above as joint submitters of the comments. You may also contact any of these individuals if you have any questions concerning our comments.

Very truly yours,

Robert R. Ruddock

Robert R. Ruddock, Director
Metropolitan Affairs

cc: Dr. Evelyn F. Murphy, Secretary
Executive Office of Environmental Affairs
Commonwealth of Massachusetts, 100 Camb. St.

TABLE OF CONTENTS

SECTION		PAGE
I.	GENERAL COMMENTS ON THE DEIS	1
	A. INTRODUCTION TO COMMENTS	1
	B. FAILURE OF THE DEIS TO DESCRIBE ACCURATELY THE MASSACHUSETTS CZM PROGRAM	2
	C. FAILURE OF THE DEIS TO DESCRIBE ADEQUATELY THE ENVIRONMENTAL AND SOCIO-ECONOMIC IMPACT OF THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM AND TO DESCRIBE ALTERNATIVES	4
	D. FAILURE OF THE DEIS TO DESCRIBE ACCURATELY THE NATIONAL INTEREST AND CONSISTENCY REQUIREMENTS OF THE COASTAL ZONE MANAGEMENT ACT AS THEY RELATE TO THE MASSACHUSETTS CZM PROGRAM AND THE FAILURE OF THE MASSACHUSETTS CZM PROGRAM TO COMPLY WITH SUCH REQUIREMENTS	7
	E. THE FEDERAL OFFICE OF COASTAL ZONE MANAGEMENT ALREADY HAS DETERMINED THAT THE MASSACHUSETTS CZM PROGRAM IS CONSISTENT WITH THE POLICIES OF THE COASTAL ZONE MANAGEMENT ACT. THE FEDERAL OCZM AND THE MASSACHUSETTS EOEA DO NOT INTEND TO CONSIDER SERIOUSLY THE PUBLIC COMMENTS TO THE DEIS AS A TOOL IN THE DECISION-MAKING PROCESS. THE DEIS IS AN AFTER-THE-FACT RATIONALIZATION FOR A DECISION ALREADY MADE.	12
II.	COMMENTS ON INTRODUCTION, PART I, DEIS	15
III.	COMMENTS ON TABLE OF COASTAL ZONE MANAGEMENT ACT AUTHORITIES FOLLOWING PAGE I-4 OF DEIS: THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM FAILS TO CONFORM TO THE REQUIREMENTS OF SECTION 306 OF THE COASTAL ZONE MANAGEMENT ACT	19
IV.	COMMENTS ON PART II, CHAPTER 1, OF DEIS	25
	A. PART II, CHAPTER 1, OVERVIEW	25
	B. OVERVIEW A (p.II-1)	25
	C. OVERVIEW C (p.II-1)	26
V.	COMMENTS ON PART II, CHAPTER 2, OF DEIS	30
	A. MARINE ENVIRONMENT POLICIES	30
	B. COASTAL HAZARDS POLICIES	37
	C. VISUAL ENVIRONMENT	41
	D. PORTS AND HARBORS	48
	E. RECREATION	50

F. POLICIES 28-33 58

G. GENERAL DEVELOPMENT AND PUBLIC (AND PRIVATE) INVESTMENT POLICIES 64

VI. COMMENTS ON PART II, CHAPTER 3 OF DEIS 81

VII. COMMENTS ON PART II, CHAPTER 4 OF DEIS 82

A. PART II, CHAPTER 4, SECTION A OF THE DEIS FAILS TO DESCRIBE ACCURATELY THE FUNCTIONS OF THE STATE AGENCIES REFERRED TO THEREIN 82

B. PART II, CHAPTER 4, SECTION B 84

C. PART II, CHAPTER 4, SECTION C 84

D. PART II, CHAPTER 4, SECTION D 84

VIII. COMMENTS ON PART II, CHAPTER 5 OF DEIS: LOCAL COMMUNITIES 105

IX. COMMENTS ON PART II, CHAPTER 6 OF DEIS 109

X. COMMENTS ON PART II, CHAPTER 7 OF DEIS: HOW THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM WAS PREPARED 111

XI. COMMENTS ON PART III, CHAPTER 2 OF DEIS: PROBABLE IMPACTS ON THE ENVIRONMENT 113

XII. COMMENTS ON PART III, CHAPTER 2 OF DEIS: IMPACTS ON EXISTING AUTHORITY 118

A. PART III, CHAPTER 2, SECTION A 118

B. PART III, CHAPTER 2, SECTION B 119

C. PART III, CHAPTER 2, WATERWAYS 120

D. PART III, CHAPTER 2, SECTION E, THE ENERGY FACILITY SITING COUNCIL 121

E. PART III, CHAPTER 2, SECTION F, MEPA 121

F. PART III, CHAPTER 2, SECTION G, APR'S 121

G. PART III. CHAPTER 2, SECTION H, INFRASTRUCTURE 121

XIII. COMMENTS ON PART IV OF DEIS 123

A. THE FEDERAL ALTERNATIVE 123

B. STATE ALTERNATIVES 128

XIV. COMMENTS ON PART V OF DEIS: PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED 129

XV. COMMENTS ON PART VI OF DEIS: RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY 130

XVI. COMMENTS ON PART VII OF DEIS: IRREVERSIBLE OR IRRETRIEVABLE COMMITMENTS 131

XVII. COMMENTS ON PART VII OF DEIS: CONSULTATION AND COORDINATION 132

XVIII. COMMENTS ON CZM MAPS 133

XIX. COMMENTS ON THE DEIS APPENDIX 134

A. MEMORANDUM DATED AUGUST 23, 1977, RE - ENERGY FACILITIES 134

B. MEMORANDUM OF JULY 29, 1977, RE - SHORELINE EROSION/MITIGATION PLANNING 136

XX. CONCLUSION 138

APPENDIX

I. GENERAL COMMENTS ON THE DEIS

A. INTRODUCTION TO COMMENTS

The Draft Environmental Impact Statement (DEIS) prepared by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, notice of availability of which was published in the October 14, 1977 Federal Register, is incomplete and inadequate under both the National Environmental Policy Act and the Massachusetts Environmental Policy Act.

It fails to describe accurately the Massachusetts Coastal Zone Management Program submitted by the Governor of Massachusetts on March 18, 1977 and revised by an Addendum dated October 7, 1977 (the Massachusetts Coastal Zone Management Program).

The DEIS does not contain an adequate description of the environmental and socio-economic impact of the Massachusetts CZM Program, including the impact of the Federal consistency requirements of the Coastal Zone Management Act as they relate to the Massachusetts CZM Program. It fails to describe adequately alternatives to the Program as proposed.

As is explained elsewhere throughout these comments, the bulk of the Massachusetts CZM Program is illegal under Massachusetts law in that it contains assertions of regulatory and management authority on the part of certain State agencies beyond the powers granted to them by the Massachusetts Legislature and illegally restricts the discretion of other agencies. Most of the Massachusetts CZM Program is unenforceable under Massachusetts or Federal law, and fails to meet the enforceability requirements of the Coastal Zone Management Act. The procedures proposed for adoption of the Massachusetts CZM Program would violate the Massachusetts Administrative Procedure Act.

The Massachusetts CZM Program fails to take into account in an adequate manner the national interest in the siting of energy facilities and other facilities needed in the national interest.

The sheer bulk of the Massachusetts CZM Program, the vagueness and generality of its language, the numerous contradictions between the Massachusetts CZM Program, the DEIS, and the various statements of State officials concerning the Massachusetts CZM Program, all make it virtually impossible for meaningful public participation and public comment concerning the Program to take place. The status of the draft regulations of the EOEA contained in the Massachusetts CZM Program document is unclear. Indeed the Federal OCZM Regulations are undergoing continuous changes with major amendments proposed on August 29, 1977 unresolved. Five years after passage of the Coastal Zone Management Act, NOAA regulations on Federal consistency have yet to be issued in final form. Until such regulations are promulgated in final form, the public will not have adequate notice of which Federal actions must be consistent with the State Program, what elements of the program are involved, and the nature and timing of exemptions from consistency requirements, or the procedures for determining consistency, exemptions and appeals.

B. FAILURE OF THE DEIS TO DESCRIBE ACCURATELY THE MASSACHUSETTS CZM PROGRAM

The DEIS shows evidence of being a hastily slapped-together document with no serious attempt to carefully match the DEIS with the actual contents of the Massachusetts CZM Program. For example, the text

of Policy 26 on page 1 of the October 7, 1977 Massachusetts CZM Program Addendum differs from the text of Policy 26 contained on Page II-19 of the DEIS. Indeed the October 7 Addendum is dated the same day as the day the DEIS was submitted to the Council on Environmental Quality. Yet the DEIS attempts to treat intelligently the entire Massachusetts CZM Program.

Also there are obvious gaps and incomplete sentences in the text of the printed DEIS. The cover letter of Sidney R. Galler, Deputy Assistant Secretary of Commerce for Environmental Affairs is undated and the one-sentence second paragraph of that letter is incomplete.

Also, page 5 of the 10-page unsigned memorandum from the Massachusetts Executive Office of Environmental Affairs dated August 23, 1977 contained as an unnumbered Appendix to the DEIS states "The [Energy Facilities Siting] Council's regulations also call for it frequently to act consistently with current health, environmental protection and resource use and development policies of the Commonwealth. . . . Thus, once the Secretary promulgates the Chapter 21A regulations, the CZM Plan is such an environmental policy." [emphasis added]. Contrast this with the statement on page IV-4 of the DEIS that the Federal "OCZM has preliminarily determined that these policies [the energy policies in the Massachusetts CZM Program] are also enforceable as written [i.e. simply backed up by a memorandum of understanding between the Massachusetts Energy Facilities Siting Council and the Executive Office of Environmental Affairs], given the EFSC's statutory duty to ensure consistency with current State environmental policies. This obligation is further defined by the MOU [Memorandum of Understanding] between the EFSC [Massachusetts Energy Facilities Siting Council] and EOEA". [Emphasis added.]

Page 350 of the Massachusetts CZM Program document asserts "Covered by the [Federal] Act's federal consistency provision are: (1) Federal licenses and permits, including those issued in conjunction with Outer Continental Shelf exploration and development. . . ." This is a different assertion of jurisdiction than that contained in page I-4 of the DEIS: "The State must concur with any applicant's certification that a Federal license or permit affecting land and water uses within the coastal zone is consistent with the State's coastal zone management program. Section 307 of the Coastal Zone Management Act requires that any outer Continental Shelf oil and gas activity described in an exploration, development, or production plan be certified to the Secretary of the Interior that it is consistent with an approved State management program".

C. FAILURE OF THE DEIS TO DESCRIBE ADEQUATELY THE ENVIRONMENTAL AND SOCIO-ECONOMIC IMPACT OF THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM AND TO DESCRIBE ALTERNATIVES

The Massachusetts CZM Program evidences a strong bias toward restricting port areas and other coastal areas against "non-maritime dependent" industrial development. (See policy 17 and the energy policies.)

If the text of the Massachusetts CZM Program is followed faithfully by the implementing agencies one might expect a buildup of industrial activity in Massachusetts inland of the Coastal Zone, and in adjacent states to accommodate new industrial activity displaced from the Coast. The environmental impact of such a shift of industrial activity inland and out of State on the areas which are to experience growth is not addressed in the DEIS, and only a cursory fraction of a page is devoted to

the social and economic impacts of a shift inland (see p. III-4). No attempt is made to quantify the impact on property values, local tax revenues referred to on page III-4. Failure to consider inland environmental impacts is especially unfortunate given the priority under the CZM Program of completing the Wetlands and Coastal Wetlands Restriction Act programs in the Coastal Zone first and leaving inland areas unprotected until the Coastal Wetland areas are restricted.

Page III-6 of the DEIS refers to an "insurgence" of Federal and State money into local communities for projects and for new planning as an "immediate impact" of the Program's policies. This statement is misleading given the $20,000 maximum limit and maximum one-year funding period per project of Federal CZM grant money referred to on page II-5 of the DEIS.

The treatment of alternatives in Part IV of the DEIS is incomplete and inadequate. Specific alternatives to the 38 proposed policies are not discussed. Separate discussions of a "no-adoption" alternative for each policy is not presented. Selective approval of portions of the Program by the Federal Associate Administrator is not discussed. Much emphasis is placed in Part IV of the DEIS on the assertion that delay caused by a switch to an alternative would be a disadvantage to environmental values. (See p. IV-4.) No discussion is given to the delay that could be caused by court challenge to the Program as written. Grave doubts as to the authority of the EOEA to adopt and enforce a comprehensive CZM Program of the type submitted by EOEA have been raised by ourselves and by others. (See Kaufman report referred to below and the other memoranda attached to these comments.) Concern has also been raised over the adequacy and enforceability

of the Program absent implementing regulations by the agencies charged with responsibility under the Program. (See discussion below plus November 22, 1977 comments of the Natural Resources Defense Council on the DEIS.) The DEIS fails to discuss the more rapid implementation of a truly enforceable CZM Program that would result if the alternatives of either (1) obtaining specific authority for a CZM Program from the Legislature or (2) carefully limiting the scope of the CZM Program to the jurisdiction and authority already conferred by the Legislature to EOEA (without the attempted illegal assertions of extra authority referred to below in these comments) were adopted.

A necessary discussion of the impact of alternatives on inland and out-of-State areas is also missing in the DEIS.

Other State alternatives to the proposed Massachusetts CZM Program that should be discussed specifically include the designation, by legislation if necessary, of the Massachusetts Executive Office of Communities and Development or the Massachusetts Office of State Planning as the lead agency for CZM authority in Massachusetts. The July 1, 1975 Kaufman report supra at page 141 discusses the possible designation of either of these two agencies. One obvious advantage of designating Communities and Development as the CZM lead agency would be the ability of that agency to encourage its economic development policies by grants of funds rather than the largely prohibitory and negative powers of the EOEA agencies.

D. FAILURE OF THE DEIS TO DESCRIBE ACCURATELY THE NATIONAL INTEREST AND CONSISTENCY REQUIREMENTS OF THE COASTAL ZONE MANAGEMENT ACT AS THEY RELATE TO THE MASSACHUSETTS CZM PROGRAM AND THE FAILURE OF THE MASSACHUSETTS CZM PROGRAM TO COMPLY WITH SUCH REQUIREMENTS

The attached letter with appendix dated October 28, 1977 of Mr. John J. Kearney, Senior Vice President of EEI, the Edison Electric Institute, addressed to Mr. Michael Shapiro, National Programs Office [Federal] Office of Coastal Zone Management contains the comments of the electric utility industry to proposed Federal OCZM rulemakings contained in the August 29, 1977 Federal Register (15 C.F.R. 930; 42 Fed. Reg. 43585, et seq. "Federal Consistency with Approved Coastal Zone Management Programs . . . ."). The EEI comments addressed to Mr. Shapiro criticized the draft Federal OCZM regulations for failure to limit the certification of consistency requirement to "new activities" which "directly, significantly and adversely" affect "land or water uses in the coastal zone" as required by the Coastal Zone Management Act and its legislative history. The Massachusetts CZM Program and the DEIS likewise fail to observe this statutorily mandated limitation. The Massachusetts CZM Program and the DEIS should be amended to state clearly that consistency certification is not intended to be required of either existing facilities or facilities already in the licensing process or under construction, or applicable to the issuance of operating licenses to facilities already constructed, or indeed to renewals of license and permits already issued. The illegality under Federal law of the attempt by Massachusetts to apply Federal consistency review to the issuance of Nuclear Regulatory Commission operating permits is discussed in the October 28, 1977 EEI comments to Mr. Shapiro. Such power is asserted on pages 355 and 356 of the Massachusetts

CZM Program document. Also, the staggering environmental consequences of such an interpretation of the Coastal Zone Management Act surely deserve full treatment in the DEIS. For NOAA to assent to such an interpretation in the Massachusetts CZM Plan would create a dangerous NOAA precedent affecting more than 100 nuclear powerplants awaiting permit and licensing decisions in coastal states nationwide. (See p.4 of October 28, 1977 EEI comments to Shapiro.) The socio-economic and environmental consequences of such a precedent are ignored in the DEIS both by the Federal OCZM and the EOEA.

Also, as the EEI October 28, 1977 comments to Mr. Shapiro clearly demonstrate, imposition of Federal consistency requirements on applicants for Federal licenses and permits whose applications were submitted prior to the date of Federal approval of a State's CZM Program is not authorized by the Coastal Zone Management Act. Yet page III-14 of the DEIS wrongfully asserts "the coastal program will need to determine whether this [Pilgrim II nuclear powerplant for which Federal permits are pending] project is consistent with the program. . . .".

We strongly object to the inclusion in the Plan's coverage of Pilgrim Unit 2, the nuclear plant addition in Plymouth. See p. III-14 of DEIS. This Unit has been through thorough extensive Federal, State and local reviews, e.g., the State Environmental Impact Report has been approved, State and Federal water discharge permits have been issued, the State waterways permit has been granted, the local zoning approval has been received as well as Wetlands' orders of conditions. The Advisory Committee on Reactor Safeguards has given the project its approval and the hearings of the Atomic

Safety and Licensing Board are in progress. It is, we submit, inequitable to subject this project to CZM consistency review at this stage. In fact, we suggest that, in order to avoid a moratorium on economic development, there ought to be a broad "grandfather" clause included in the Plan to protect all ongoing or planned activities.

The DEIS is also defective and inadequate in that it fails to consider the Program's impact on Federal regulatory agencies and through them its impact on the environment. Even Chapter 6 of Part II, entitled "The National Interest and Consistency of Federal Actions", fails to contain any discussion of the relevant specific policies of the Plan as they relate to the national interest expressed in specific authorities of identified Federal agencies or specific Federal statutes.

The mechanism for Federal consistency review of Federal permit applicants is outlined at pages 351-357 of the Massachusetts CZM Program. At page 351 it is stated that "CZM will develop working arrangements with federal agencies so that" the outlined objectives can be achieved. Precisely what those "working arrangements" are or will be, however, is unknown especially in light of the uncertain status of the EOEA draft regulations contained in Appendix A of the Massachusetts CZM Program.

According to draft EOEA CZM regulation 7.23 the State may unilaterally amend the list of federally permitted activities subject to consistency review by merely giving 30 days' notice of its intention to do so. NOAA rules (proposed § 930.55), however, limit the State's ability to refine said list. Such limitations are not reflected in the Plan or in the above-mentioned regulations.

Draft EOEA CZM regulation 7.19 concerning federally permitted activities occurring outside the coastal zone is inconsistent with NOAA rules (proposed § 930.54(b)) and § 304.1 of the Coastal Zone Management Act. It would extend CZM consistency requirements beyond the Coastal Zone without the requirement of direct, significant and adverse effect on coastal waters. See S. Report No. 753, 92d Congress, 2d Session, 1972, U.S. Code Cong. & Ad. News 4776, 4793. Regulation 7.19 also asserts a State CZM power to require modifications and changes of actions which is beyond its ability to enforce.

CZM regulation 7.11, concerning information to be required of a party seeking approval of its consistency certification, fails to apprise applicants of their right under the Coastal Zone Management Act and under NOAA rules (proposed § 930.58) to withhold "confidential and proprietary material".

CZM regulation 7.16 declares in part: ". . .should the EOEA agency deny the [State] license or permit pursuant to CZM policies, then the EOEA agency shall likewise indicate disagreement with the consistency certificate". To the extent that a State agency may deny consistency approval by reason of an applicant's failure to meet State air or water quality requirements, which standards exceed relevant Federal air and water pollution control requirements, CZM regulation 7.16 is itself inconsistent with Coastal Zone Management Act §§ 307(e) and (f) which require incorporation of Federal Water Pollution Control Act and Clean Air Act requirements "as is" without alteration.

The criteria to be used to judge consistency certificates for energy related activities appears at page 355 ("CZM Policy Requirements").

The Plan here recognizes that EFSC has responsibility in the area but prescribes criteria too vague and uncertain to be effective. The criteria here established are defective also because as described elsewhere in these comments they would circuitously enforce policies otherwise and elsewhere unlawfully established by CZM rather than the policies properly recognizable by EFSC. The net result of this scheme would be an illegal subdelegation of authority and abdication of responsibility by EFSC.

At page 351 of the Massachusetts CZM Program it is stated that:

> "In cases where state and federal permit or licensing jurisdiction is not the same, CZM will use federal consistency to assure that federal permits or licenses are issued in accordance with the CZM program. CZM will work with federal agencies to define more precisely how CZM policies will apply to application for such federal licenses or permits."

See also Appendix A, regulation 7.13. The Plan is defective at this point because (1) the mechanics of this procedure for determining Federal consistency are as yet undefined, vague and uncertain, and (2) the CZM office within EOEA lacks authority to enforce the above scheme. In short, Federal permit activities not already regulated in parallel at the State level cannot now be subjected to State review and regulation, absent appropriate action by the State Legislature. Because CZM exists in an authority vacuum, it is incapable of providing such regulation and review. Examples of the lack of enforceability on the State level creating a lack of a parallel State agency to acquire Federal consistency review authority are (1) the exclusive jurisdiction of the Nuclear Regulatory Commission over radiological health and safety matters and (2) the exclusive jurisdiction

of the Federal Energy Regulatory Commission over interstate gas transmission and hydroelectric power contained in the generic statutes of those agencies.

E. THE FEDERAL OFFICE OF COASTAL ZONE MANAGEMENT ALREADY HAS DETERMINED THAT THE MASSACHUSETTS CZM PROGRAM IS CONSISTENT WITH THE POLICIES OF THE COASTAL ZONE MANAGEMENT ACT. THE FEDERAL OCZM AND THE MASSACHUSETTS EOEA DO NOT INTEND TO CONSIDER SERIOUSLY THE PUBLIC COMMENTS TO THE DEIS AS A TOOL IN THE DECISION-MAKING PROCESS. THE DEIS IS AN AFTER-THE-FACT RATIONALIZATION FOR A DECISION ALREADY MADE

Page II-1 of the DEIS contains the following statement: "The proposed Federal action is approval of the Massachusetts Coastal Zone Program. The [Federal] Office of Coastal Zone Management initially has determined that the program is consistent with the national policy to achieve wise use of the coastal zone and the achievement of the many national interests which Federal financial assistance was intended to promote." Also, the "Note to Readers" at the beginning of the DEIS states in part:

> "For purposes of reviewing this proposed action, the key questions are:
>
> - whether the Massachusetts program is consistent with the objectives and policies of the national legislation,
> - whether the award of Federal funds under Section 306 of the Federal Act will help Massachusetts to meet those objectives,
> - whether the State management authorities are adequate to implement the State program, and
> - whether there will be a net environmental gain as a result of program approval and implementation.
>
> "The Office of Coastal Zone Management believes the answers to these key questions are affirmative."

See also the attached October 27, 1977 letter of Robert W. Knecht, Acting Associate Administrator for [Federal] Coastal Zone Management which states that December 15, 1977 is a deadline for submittal of amendments to the present draft plan "without jeopardizing the present timetable for approval and full Federal funding under [section] 306 of the CZMA". Yet December 15, 1977 is also the deadline for submission of comments on the DEIS itself! Surely the EOEA will not respond to comments on the DEIS to make substantive changes in the text of the Massachusett CZM Management Program as already submitted if the penalty for such responsiveness is a threat of withholding Federal funds.

The second page of the NOTE TO READERS states "The Massachusetts Executive Office of Environmental Affairs assures that this environmental statement satisfies the requirements of the Massachusetts Environmental Policy Act". This is grossly incorrect. In certain circumstances a Federal EIS may be disseminated in lieu of a State DEIR. However, the Massachusetts Environmental Policy Act, Mass. General Laws, Chapter 30, at Section 62, requires the preparation and dissemination of an environmental impact report (EIR), similar to a Federal EIS, prior to commencement of state actions which may cause damage to the environment. The MEPA statute and EOEA implementing regulations make it clear that a final EIR must be prepared prior to commencement of the State Action or expenditure of state funds. The EIR, like an EIS, must be a decision making tool, not an after the fact rationalization of a decision already made.

The DEIS fails to meet these requirements. The Massachusetts CZM Program was submitted prior to the dissemination of the DEIS, thus the DEIS

was submitted well after the state decisions to adopt the CZM Program and submit it to the Federal OCZM were made.

Also, it is improper to confine the decision addressed in the DEIS to the issue of whether Federal approval should be given to the Massachusetts CZM Program. In order to fulfill the requirements of MEPA the DEIS should have discussed the environmental and socio-economic consequences of proposals for the Commonwealth of Massachusetts to adopt and submit the Massachusetts CZM Program and alternates to it, including alternative lead agencies, and specific alternatives to the 38 policies. The alternatives referred to in the DEIS focus on alternatives to the Federal action of approval of the Massachusetts submission. Only cursory reference is made to alternative state actions and these merely in the context of how they relate to the Federal responsibility.

II. COMMENTS ON INTRODUCTION, PART I, DEIS

The economic importance of the coastal zone to the residents and economic interests of Massachusetts is properly acknowledged in the introductory paragraph on page 1-1 of the DEIS. It is therefore of the utmost importance that the DEIS adequately describe the environmental and socio-economic impacts of the CZM Plan and also alternatives to the proposals set forth in the Plan so that informed judgments can be made by interested individuals. The relevant impacts should be identified, explained and justified so that judgments can be responsibly formed on the contents of the Plan in terms of its benefits and also its costs to the Commonwealth of Massachusetts in its totality.

To accomplish this the DEIS and the CZM Plan should contain clear, understandable policies, alternatives thereto, a full description of the effects of implementing such policies and alternatives and a reasoned justification for the selected alternative. Unfortunately, the DEIS fails to fulfill these important tasks, as is more fully explained in these comments. Furthermore, as is pointed out elsewhere, the DEIS and CZM Plan are in major respects unauthorized by Massachusetts law and fail to comply with Federal requirements for approval of the program.

Two inaccuracies on page 1-1 of the DEIS must be pointed out: a) Item #8 misstates the provisions of the Plan since the Plan does more than "consider" non-structural solutions for coastal erosion problems (the Plan indicates a decided preference for such solutions); and b) Item #9 is incorrect in that the Plan does more than identify areas of critical

environmental concern (it restricts, or assigns priorities to land use in such areas). In addition the Plan sets up a new office in EOEA with alleged powers to control some local decisions, to review permits, to rule on the acceptability of Federal grants, all of which have serious economic effects.

The CZM Plan fails to comply adequately with the "general requirements" stated on p. 1-3 of the DEIS. It is impossible, in view of the failure of the DEIS to discuss alternatives to specific policies, to determine whether the Plan is "comprehensive" and provides adequate management of important environmental and economic resources. "All relevant interests" have not been consulted, e.g., inland communities. In addition consultation should mean a reasoned consideration of relevant viewpoints, something which did not occur in the case of business interests. The absence of regulations (by EOEA and other agencies) also constitutes a lack of comprehensiveness and makes it impossible to analyze and comment adequately on Federal consistency requirements and the meaning of many policies.

The DEIS and the Plan fail almost entirely to meet the second requirement on p. 1-3; the policies, standards, objectives and criteria upon which decisions are to be based are not "articulated clearly" and are not "sufficiently specific" to provide a "clear understanding of the content of the program, especially in identifying who will be affected and how", nor does the program provide a "clear sense of direction and predictability for decision makers". This is especially so since EOEA and agency regulations have not even been officially proposed for adoption in the Plan.

The final requirement is not met since there are not in the Plan "sufficient policies of an enforceable nature". See our legal comments herein.

There is no clear understanding as to what is the content of the program. The CZM Director has stated that we are subject only to the regulations. But the present written regulations reference the entire two volumes. We are told this has been deleted, but there is nothing in writing to this effect. We have been told by the CZM staff that the regulation will be re-written; we do not know what the content of the new regulation will be. We have been told by the CZM Director that Massachusetts is re-writing the CZM document and cutting it down to half size; we do not know what is being deleted and/or changed. In a word, we do not have a clear idea of the content of the program.

In reference to the "Consistency" powers as discussed on p. 1-4, it should be acknowledged in the DEIS that if Massachusetts law does not confer actual licensing authority on an agency for specific issues under consideration, e.g., for land use controls as in Policy 17, then the mere approval of the CZM Plan by OCZM in Washington cannot confer such powers on the State agency. In other words it should be made clear that federal consistency does not apply to state agency actions which are not independently authorized by State Law.

There are inconsistencies between the Plan and other State programs. According to page 1-2 of the DEIS, it is stated that "The State level of government has prime responsibility for achieving 'effective management, beneficial use, protection, and development of the coastal zone'" (underlining added). However, p. 75 of the just-issued official state document, the Massachusetts Growth Policy Report, recognizes that implementation of land use is the prime responsibility of local officials: "Since the Coastal Zone

Management program is designed to rely exclusively on existing laws and on administrative arrangements to coordinate State level reviews and permits, it is vital to the success of the program that coastal communities revise local priorities, zoning by-laws, subdivision regulations, design controls, economic development efforts, etc., to conform to this re-combined process of the Coastal Zone Management Plan. The active leadership of local officials will determine the ultimate fate of the Plan" (underlining added). This same assertion of local primacy is also acknowledged at DEIS, p. VI-1: "Thus, under the Massachusetts CZM Program, local governments will continue to have sole responsibility for a very wide range of land use decisions and broad areas of the coastal zone." The CZM Plan and the DEIS fail to resolve this contradiction between the alleged "prime" responsibility of state government and the alleged "sole" responsibility of local governments.

III. COMMENTS ON TABLE OF COASTAL ZONE MANAGEMENT ACT AUTHORITIES FOLLOWING PAGE I-4 OF DEIS: THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM FAILS TO CONFORM TO THE REQUIREMENTS OF SECTION 306 OF THE COASTAL ZONE MANAGEMENT ACT.

Part I of the DEIS presents a gross oversimplification of the criteria contained in Section 306 of the Coastal Zone Management Act and in 15 CFR Part 923 for the approval of State Coastal Zone Management Programs. It wrongfully states that the Massachusetts Coastal Zone Management Program was prepared pursuant to the Statute (P. I-2) and meets the specific requirements of Section 306 of the Act and 15 CFR Part 923 of Federal OCZM Regulations. (Page I-5)

The Massachusetts Coastal Zone Management Program fails to meet the requirements of Section 306(c)(1) of the Act in that it has not been "adopted". The legislature has not adopted it or given the Secretary of EOEA authority to adopt it with the full assertion of powers and authorities contained within the Program. The opportunity for formal public input through notice and hearing procedures required by M.G.L. Ch. 30A for the adoption of generally applicable regulations with the force of law has not taken place for the implementing regulations of the EOEA agencies and other agencies. Even the draft EOEA regulations in the Appendix to the Massachusetts Coastal Zone Management Program are mere drafts, not formal proposals subject to the M.G.L. Ch. 30A, public notice and hearing

process. Before the public and Federal OCZM can have adequate information upon which to judge the true environmental and socioeconomic impact of the Massachusetts Coastal Zone Management Program, especially the full extent of the asserted authority and jurisdiction of EOEA, its agencies, and other agencies in the plan, full implementing regulations of EOEA and each agency tested by public participation in the M.G.L. Ch. 30A process, should be adopted and in place.

The State has not fulfilled the requirement of coordination of the CZM Program with other local, areawide and interstate plans as required by Section 306(c)(2) of the Act. Massachusetts Coastal Zone Management Program document at Appendix D, Pg. d-4, reveals conflicts with local zoning laws that are not adequately discussed in the DEIS. The same is true for conflicts with Water Quality basin plans discussed on Pg. d-6 of Appendix D. In Appendices B, C, and D of the Massachusetts Coastal Zone Management Program document references are made to meetings with members of various local government entities, local conservation commissions, selectmen, etc. However, it is not clear from the text how many of these contacts involved official actions by these local boards by vote of their members endorsing or otherwise evidencing their approval of the final CZM Program as submitted to Federal OCZM.

For reasons stated elsewhere in these comments and supporting memoranda, it is evident that the Massachusetts Coastal Zone Management

Programs fails to fulfill the requirements of Sections 306(c)(6), (7), (8), and (9), and 306 (d)(1). Authority to acquire interests in land by condemnation in Massachusetts is limited to the purposes established in the various eminent domain enabling acts applicable to the State agencies which have eminent domain or other property acquisition powers. Whether such eminent domain powers are satisfactory under Section 306(d)(2) of the statute is not adequately discussed in the DEIS, Pages II 35-41. The Massachusetts Coastal Zone Management Program fails to provide any of the alternative general techniques for control of land and water uses within the coastal zone required by Section 306(e) of the Coastal Zone Management Act. As stated in the detailed comments on each of the policies contained in the Massachusetts Coastal Zone Management Program and in the discussion in these comments and supporting memoranda concerning the legal authorities of EOEA, the Secretary of EOEA generally cannot establish "criteria and standards of local implementation, subject to administrative review and enforcement of compliance". (CZM Act Section 306(e)(1)(A).) In limited circumstances, certain EOEA agencies can intervene in local regulatory functions, such as under the Wetlands Protection Law. However, in Massachusetts, local land use zoning decisions are not reviewed or subjected to change except for very limited purposes by State agencies. The State CZM Program in asserting powers of direct state land use planning overreaches the statutory powers of EOEA, and its agencies, contained in their enabling statutes and the purely advisory nature of their involvement in land use planning in Ch. 21A Section 2. Thus, the Massachusetts Coastal Zoning Management Program does not comply with Section 306(e)(1)(B) of the CZM Act. Likewise, any attempt by EOEA to

assert powers referred to in Section 306(d)(1)(C) of the CZM Act would fail. The EOEA, in fact no State executive agency, has power to review all local land and water use regulations with power to disapprove for consistency with a Coastal Zone Management Program.

The Massachusetts Coastal Zone Management Program fails to contain an adequate method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit. (Section 306(e)(2) of the Coastal Zone Management Act.) A discussion of what areas of the coast are to be still left open specifically for energy uses, defense uses and other national and regional uses should be provided, taking into account the special siting requirements and impacts of each type use and relating them to sections of the coast where such requirements are met and such impacts are acceptable. Without such an analysis there is no assurance that the Program will leave enough area for each such use to be accommodated.

In light of the above discussion, it can be readily seen that the description in the table on Pg. I-5 of the DEIS (and Sections of the DEIS and Program document referenced therein) of compliance with Section 306 of the Act and 15 CFR Part 923 of the regulations is incorrect in that it depends upon assertions of authority and jurisdiction by EOEA on behalf of itself and its line agencies that go beyond that contained in Massachusetts law. The description of compliance with federal program requirements in the DEIS references the following portions of the Program which we assert lack adequate foundation in state law: the overall summary of the land use scheme on pages II-1 and 2 of the DEIS where problems concerning alleged basic land use planning powers are not asserted; the description of land and water uses to be

managed; the guidelines on priority of uses; the ability of EOEA to enforce its desires in Areas of Particular Concern and Areas of Preservation and Restoration; the means of exerting State control over land and water uses in Pages II-35-41 of the DEIS; organizational structure for implementation; and the authorities to administer land and water use and to control development and resolve conflicts all as discussed in the text of the Massachusetts Coastal Zone Management Program document and DEIS referral to same on Pg. I-5.

The deficiencies of the Massachusetts Coastal Zone Management Program Document and DEIS with respect to boundaries are discussed elsewhere in these comments and in the May 5, 1977 memorandum of Mr. Gengler. In general the boundaries are vague and include too much area. In many places they are not readily discernible from a map or description of streets and roads or other readily identifiable criteria.

The failures of the Massachusetts Coastal Zone Management Program Document and DEIS to adequately provide for and discuss the national interest in the siting of facilities, including energy facilities, is described elsewhere in these comments. The same is true for the impact of the Program and DEIS discussion on local regulations and uses of regional benefit, shorefront access planning, energy facility planning, shoreline erosion, and applicability of Air and Water Pollution Control Requests (this last in the discussion of Federal consistency).

Authoriities for property acquisition, techniques for control of land and water uses, and consultation and coordination with other planning activites have been discussed in this section of comments.

The discussion of public hearings on Pgs. 6-19 and Appendix B of the Massachusetts Coastal Zone Management Program Document and the discussion of participation by "relevant bodies" in Appendix B and on Pg. II-67 and 68 of the DEIS show an apparent proclivity for small informal meetings with preselected groups prior to the compilation of the Program Document for Submittal to Federal OCZM. Of course such meetings are invaluable in obtaining data but they do not substitute for the highly publicized and open nature of legislative hearings on the adoption of major statutes or the formal notice requirements of hearings on regulations under M.G.L. Ch. 30A.

Concerning the Governor's review and approval of the Massachusetts Coastal Zoning Management Program Document, the DEIS refers to the Governor's letter in the Program document. However, no reference is made to any letter or certification of the Governor concerning the October 7, 1977 Addendum.

IV. COMMENTS ON PART II, CHAPTER 1, OF DEIS

A. PART II, CHAPTER 1, OVERVIEW

In the introductory wording to Part II, Chapter 1, the DEIS fails to state if any alternatives to the Massachusetts CZM program were considered (or proposed by the Commonwealth). Although the CZM Plan is a state proposal for funding, it seeks to effectuate federal law and regulation. The federal office responsible for the DEIS has an affirmative duty to describe how the "Plan" was chosen for federal action, over other alternatives that might have been available.

B. OVERVIEW A (p. II-1)

The wording of "A" inaccurately and vaguely describes the zone. The question "what is the Coastal Zone?" is not answered. This question supposes a natural description, not a legal answer as presented. The question should be "Where is the Coastal Zone of Massachusetts"? In spite of this inaccurate title for the description, the wording does not tell the reader where the zone is.

The reader is not sure if the map controls the boundary of the zone, or if the written description of major roads controls. This is critical to the understanding of the scope of the Plan. The Plan in the draft regulations states that the zone includes certain natural features -- that the zone's boundary will in effect self-expand as the situation calls for (see Plan pp. a-3, ss 7.10 and 7.19). The DEIS fails to describe this expansion, or to realize the effects this expansion will have on ecological

concerns, economic issues, and the jeopardy created by the regulations to effectuate the Plan.

In addition to the vagueness and inaccurate description of the zone's boundaries, the DEIS fails to present or discuss alternatives to the zone boundary. The DEIS provides no guidance as to why this arbitrary line was drawn. The obvious example of this arbitrary design is the inclusion of Cape Cod and the exclusion of the internal portion of Cape Ann.

C. OVERVIEW, B (p. II-1)

The DEIS fails to describe accurately the scope of powers that affect coastal development. While it is true that no new laws were enacted respecting the coastal zone, the adoption of the CZM Plan as regulation (see, CZM Plan, Appendix A, p. a) presumes to create new standards for existing laws. Assuming the Secretary of Environmental Affairs has some statutory authority to adopt these regulations, there is no expression or citation of legislative intent to adopt policies directing growth. For example, general development is encouraged to locate in already developed areas. Isn't this the imposition of a new "standard" or "direction" for existing laws? Where are the references in legislative actions for directing development? The Massachusetts Legislature has rejected a number of proposals for land-use laws. Does the CZM Plan presume to implement a land-use scheme that disregards the Massachusetts Legislature?

In the discussion of "permitted" development, the DEIS inaccurately describes the options available to local governments. It appears that if state permits are obtained, all other restrictions are of local concern. The Plan, however, applies the federal consistency provisions of the CZM Act. Thus, the Plan can control federal funding and federal permits. It is inaccurate to state that local governments will continue to decide on issues of industry, commerce, and housing. In addition, this portion of the DEIS states that incentives will be utilized for control over loss of community character. What are these incentives? Where in the Plan are they presented? In the final analysis, control is exercised through federal consistency by the enforceable policies (only the enforceable ones). The Legislature has not granted the Secretary the power to interfere with funding applications to enforce the CZM Plan.

The DEIS on page II-3, (2) discusses the areas not subject to the Restriction Act. This paragraph presents a bias -- it suggests that the Wetlands of Massachusetts, along the Coast, will be viewed on the first level as protected by the Protection Act and then on a secondary level by the Wetlands Restriction Act. This view is not correct. The Legislature created two laws -- Protection and Restriction Acts. This scheme presupposes two systems of protection -- one is not a first level introduction to the second.

On page II-4 at (b) of the DEIS, there is a discussion of economic areas. Although the Plan advocates development in certain places, there is no discussion of incentives. In fact, this description of the DEIS really uses regulatory restrictions to achieve the goals of the Plan. It is misleading to suggest that directing sewer lines and using restrictions are incentives.

On page II-4 in (c) the DEIS incorrectly implies that the Massachusetts CZM Office under the Massachusetts Environmental Policy Act (MEPA) can legally condition actions that might adversely affect recreation areas. While Section 61 of MEPA exhorts state agencies to minimize environmental damage to parks, MEPA does not give CZM authority to establish new standards under existing laws.

This portion of the DEIS, describing specific areas in the remainder of the zone does not present any analysis of where development may go if restricted within the zone. There is no description or economic impacts on pages II-3, II-4, II-5, and ll-6. While MEPA exhorts state agencies to minimize change to the environment, the agency can only look to its specific regulatory powers and not beyond those specifically granted by the Legislature.

The DEIS on page II-5 states that the CZM Plan will use federal waste water treatment funds to encourage development into already developed areas. This runs counter to Section 208 of the Public Law 92-500. Within this program a public participation structure and planning process was created to develop policies. Section 208 and CZM may conflict. Who resolves these conflicts? Why continue 208 planning in coastal areas, if the decisions have already been made by CZM?

On page II-6, there is a statement (d) that a project regardless of its location may be reviewed against the CZM Plan. What is this scope? Is it the entire State? What types of development are controlled by air and water quality reviews?

The final paragraph on page II-6 grossly understates the potential power of the CZM Plan. Community character and land-uses are very definitely affected by the CZM Plan. The powers of federal consistency affect local character. The DEIS is silent on the possible conflicts and the interaction of priority marine-dependent uses and local zoning controls. They do not always coincide.

The overview section should be expanded to include a discussion of program funding. A discussion of how the grant application for CZM funding proposes to expend the federal funds will provide insight into the priorities established by the Massachusetts Office of Coastal Zone Management.

V. COMMENTS ON PART II, CHAPTER 2, OF DEIS

A. MARINE ENVIRONMENT POLICIES

The Marine Environment Chapter of the Plan recognizes the environmental importance of coastal resources. However, neither the DEIS nor the Plan adequately considers the economic and social effects of using or not using these resources. All too often the Plan and the policies are concerned with the allegedly negative impacts of the activities described in this section of the Plan, and do not attempt to analyze the benefits and the costs of various proposals and alternatives thereto which would permit the use of these resources. The absence of regulations by EOEA or the agencies make meaningful comment impossible.

On pages 60 and 61 of the Plan, the discussion of "Power Plant Siting", the following changes are suggested. The word "localized" should be inserted after the first word of the first paragraph. It should be made clear in the third paragraph that juvenile migration of fish is not dependent on temperature alone. The first full sentence on page 61 should be documented since it is believed to overstate the effect of temperature on fish migration. It should be noted that in almost every case other fish migration routes remain open.

On p. 69 the discussion of recreational boating should include a discussion of the impacts of the chronic deposition and leaching of toxic anti-fouling coatings from boat bottoms and a comparison should be made of the volume of these toxins with toxins from other sources such as industrial point sources or from residential sewage disposal systems.

On page 71 the discussion of dredging and dredge disposal should consider and discuss the benefits and importance of dredging and compare the economic and social effects to environmental impacts. It should be emphasized that the environmental effects of dredging are generally localized.

We offer the following comments on the policies and their accompanying text.

(1) POLICY 1.

The word "conserve" is unclear as a regulatory directive to agencies or as guidance to developers. There is no discussion of alternatives to this policy or the impacts of such alternatives, including the "no action" alternative and the effects of this policy on non-coastal areas if activities take place inland because of this and other policies in this section.

Even though it is asserted that no uses are prohibited a priori under the Wetlands Protection Act, it appears that the Commissioner of DEQE is bound by memorandum to carry out and implement the Plan. This would presumably mean that he is bound in advance to protect those parts of the coast listed under this policy (as well as under Policy 2) by means of the Commissioner's authority to issue Superseding Orders of Condition and that this will be done in a manner consistent with this policy. The intended use of CZM Coordinators in the agencies reinforce this interpretation of the Plan's meaning. This is not authorized by law.

The Wetlands Restriction Act does not authorize the establishment of a pre-determined system of permissible or priority land use controls

as set forth in the Plan. Such determinations must be made on a case-by-case basis and cannot be prescribed by prior regulation. Nor, legalities aside, is it wise to do so since it is not possible to decide in advance on suitable uses because of the variety and complexity of the issues in cases which will arise. This is one advantage of the present system employed by the Department of Environmental Management which has model orders of restriction but leaves final decisions open until the processes of consultation and hearings have been concluded.

The effects of the permitted and prohibited uses on page 80 to 83 of the Plan are not analyzed with alternatives thereto. The social and economic impacts are not set forth. In particular the effects of new paragraph N, inserted by the Addendum on page 83 of the Plan are not identified. What precisely is the amount and location of coastal land and waters removed from possible use by this provision?

The effect of paragraph "N" on page 83 is also nullified by the paragraph "C" on page 83 which would prevent discharges from industrial facilities or power plants. The Plan should not proscribe any discharges of any sort if such discharges are licenseable under federal or state water pollution control laws.

The imposition of the proposed restrictions on "all" beaches of the Commonwealth should be analyzed and justified.

The top paragraph on page 85 presupposes the outcome of the work of the Wetlands Program Review Board. Yet that Board is still involved in its studies; proposals for changes in the Wetlands laws and

regulations have not even been produced by the board, much less by the agency for public review. Is DEQE to have or not have discretion to prepare and eventually promulgate the contents of its regulations in these matters?

The proposal on page 86 of the Plan for a Memorandum of Understanding between DEQE and the Department of Fisheries, Wildlife and Recreational Vehicles is not a legally proper method of incorporating marine resource concerns in a manner which will bind parties in a permit proceeding. The terms of such understandings should also be available in the DEIS for review and comment.

The Division of Water Pollution Control cannot legally agree, as indicated on page 86, not to issue certificates or licenses for activities prohibited by this Policy in SRA's. DWPC must grant permits if its laws and regulations are complied with. Where is this MOU and what are its contents?

On page 86 the description of the Ocean Sanctuaries Act is not accurate since this Act affects only certain types of activities described in the Act.

(2) POLICY 2.

This policy is subject to the legal defects on land use control discussed in Policy 1 and elsewhere in these comments.

The word "protect" is unclear in its meaning and does not provide meaningful guidance as a directive. The word "impacting" is also unclear and is indeterminate as to the geographical extent of its application. This uncertainty is compounded by the bottom paragraph

on page 88 which is almost limitless in its scope. The authorities cited do not provide for the imposition of permit conditions on activities as indicated therein.

The meaning of "minimize adverse impact" is unclear; it is also unwise as a policy since it does not call for a balancing by the decision maker of all relevant factors.

Alternatives to this Policy should be presented and their social, economic and environmental impacts analyzed. The effects of transferring impacts to other coastal zone or inland areas should be discussed.

The CZM Plan does not explain the methodology used to determine which rivers or streams were designated anadromous fish runs.

The footnote on page 88 places the burden of proof on an applicant to seek a variance or exemption. There is no basis for such a requirement since the permit statutes regulate such matters.

The Energy Facilities Siting Council did not, as stated on p. 89 and elsewhere, agree in its Memorandum of Understanding not to site energy facilities in APR's. It agreed to give "prime consideration" to environmental impacts in critical areas of environmental concern (which is itself a legally invalid agreement).

Our comments regarding the role of DWPC under Policy 1 apply also to the bottom paragraph on p. 89.

(3) POLICY 3.

Policy 3 in requiring the "highest level" of water quality in certain areas infringes on the responsibilities of DWPC. It is also

an unwise policy since such standards should be the result of a balancing of all relevant factors and this can only be decided on a case-by-case basis as water bodies are studied.

The meaning of the word "ensure" is unclear.

The state CZM office has no authority to review NPDES permits and permit renewals (see p. 90 of Plan). These are the responsibility of DWPC and EPA. It is also unwise to require such a review since this would be another added layer of procedural review, i.e., another hurdle for business interests and an unwarranted and unjustified duplication of governmental activities.

It should be noted on page 90 of the Plan that the 1985 goal of elmininating discharges into navigable waters is not intended to be enforceable in the permit program which has its own requirements established by this same law.

Does the second paragraph from the bottom of page 93 of the Plan mean CZM is monitoring and coordinating the 208 program all over the state?

On page 92 there is no justification for recommending changes in the Title V code. It is not stated what standards or changes are being proposed, and this should be done in the DEIS with a set of regulations and as an analysis of alternatives with their impacts so that comments can be made.

(4) POLICY 4.

This policy is unclear in the meaning of the words "condition" and "minimize interference". The three criteria for solid fill piers, etc.

(listed on page 11-10 of the DEIS) are overly broad and stated in almost absolute terms. Alternatives, with a comparative analysis of benefits and costs, ought to be discussed. Such a discussion should include, among other relevant matters, an analysis of the effect of this policy on developers and also on local communities.

It is unclear how CZM can legally control (we believe that it cannot control) the design and construction of highways, roads, bridges, etc. as indicated on page 11-10 of the DEIS. The stated criteria are set forth in absolute terms without an analysis of social, economic or environmental impacts and alternatives thereto.

(5) POLICY 5.

This policy is unclear in the meaning of the words "ensure" and "minimize adverse effects". As mentioned earlier, the need for and benefits of dredging are not recognized and this policy should be presented with a discussion of alternatives and their impacts.

The minimization of adverse impacts is also an unwise policy since a balancing of relevant factors should be required for decision making.

It should be pointed out on pages 98-99 of the Plan that the state will not have authority under the Plan over dredging and the transportation and disposal of dredged materials unless state law itself confers jurisdiction over such matters.

(6) POLICY 6.

This policy is not justified by any discussion of impacts or alternatives. It is too absolute as a prohibition of activities which are of economic importance to Massachusetts.

(7) POLICY 7.

Are we correct in assuming that this policy does not create new standards for licensing activities?

B. COASTAL HAZARDS POLICIES, PAGE II - 11 OF DEIS

The basic assumption of much of the Chapter of Coastal Hazards that nonstructural solutions are to be preferred is not adequately justified in the DEIS or the Plan. It is not enough to say (as on p. 110 of the Plan) that structural solutions are "becoming increasingly recognized" as expensive short-term solutions which exacerbate problems elsewhere along the coast. Nor is the use of the word "significant" as in the second paragraph on p. 111 of the Plan by itself enough to describe the extent of the problem against which the effectiveness of proposed solutions can be measured. Nor is there any justification set forth to support the establishment by Massachusetts of programs stronger than those of the National Flood Insurance Program.

Neither the DEIS nor the Plan adequately identify the scope of the problem in Massachusetts. In fact footnote #7 on p. 129 of the Plan indicates a lack of scientific data on this subject in Massachusetts. Alternative solutions are not offered for erosion problems, nor are the environmental, social or economic impacts of the policies or alternatives set forth so that the reader can make an informed judgment regarding the feasibility or desirability of mitigating measures. It is not possible to measure the benefits and costs of the policies due to the lack of information on the problem and the offered solutions. Such a drastic change from past practices in Massachusetts deserves a more complete discussion and justification lest economic or residential development be needlessly

retarded or prevented. The risk that adverse economic impacts could take place if Massachusetts is more restrictive than other states should be discussed.

One alternative that should be fully analyzed and presented is the option of having no preference for or against structural solutions, but to allow the determinations to be made by the permit granting authority on a case-by-case basis in the light of evidence presented to it.

Another alternative that deserves examination is the option of establishing measures to improve the existing programs of the Corps of Engineers, the Waterways Division and the Metropolitan District Commission to avoid the alleged past problems discussed on p. 115 of the Plan. It may be possible to obtain economically desirable results and avoid or mitigate adverse environmental impacts by revising agency programs. Perhaps CZM should put money into such an effort.

Another option would be the implementation of the National Flood Insurance Protection Program (see p. 115 of the Plan) coupled with better funded agencies to review or implement proposed structural solutions.

Here again the absence of regulations by EOEA or the agencies makes adequate comment impossible. Nevertheless, the following comments are offered on the coastal hazard policies.

(1) POLICY 8.

The introductory sentence is vague and unclear as a directive to regulatory agencies or as guidance to a private party. The word "discourage" provides no meaningful standard for action; the word "hazardous" is unclear and undefined; and the words "preserve natural

buffer" are vague and uncertain. There is no "clear sense of direction and predictability" in this policy.

Sub-part (a) is illegal since it is meant to establish a predetermined system of permissible or priority land use controls. The indication on p. 120 of the Plan that DEQE will carry out this policy by superseding orders is also unauthorized by law. Economic impacts and alternative actions are not described in the DEIS. The impact of future designation of V and E Zones should be analyzed. See p. 121 of the October 7, 1977, Addendum to the Plan.

Sub-part (b) is illegal because it would wrongfully apply the Wetlands laws to contiguous upland areas and because it calls for an examination of the appropriateness of "proposed uses and activities". This is not a legally justifiable standard for agency action, and is void for vagueness if it is meant to guide agency decisions. The word "condition" is also unclear and its meaning should be spelled out.

Sub-part (c). The word "ensure" is unclear. Potential means of such ensurance and their impacts with alternatives should be delineated.

(2) POLICY 9.

It is unclear what the word "ensure" means and what this policy does to the relationship of the Executive Office of Environmental Affairs and other state and federal agencies. The accompanying text on p. 122 of the Plan indicates that at least one purpose of this policy is to prevent growth in certain areas; therefore the social and economic impacts with reasonable alternatives should be set forth and analyzed.

(3) POLICY 10.

Is it right to assume that land owners will be compensated on the basis of the fair market value of their land? How much will this cost and where are the funds to come from? Is there assurance such funds will be available?

(4) POLICY 11.

This is a clear instance of a policy in which at least one alternative should be presented, namely the use of funding and technical assistance to implement structural solutions. The public must have reasonable assurance that responsible cost effective measures are being undertaken or required by agencies.

(5) POLICY 12.

This policy, as indicated previously, is unduly biased against structural solutions and meaningful alternatives are not discussed.

In Sub-part (a), the meaning of "widespread public benefits and minimal adverse environmental effects" is unclear and should be clearly delineated. The policy of Massachusetts should not be to require "minimal" adverse environmental effects; it should be to make a reasoned decision after considering all relevant factors, including economic considerations. If read literally, this policy could constitute an outright prohibition against structural solutions. In Sub-part (b), the policy stated is legally unenforceable because the Wetlands Protection Act and other cited legal authorities do not prohibit, or require the prohibition of, structural solutions in every instance where there is an adverse effect on adjacent properties or down coast areas.

In sub-part (b) the terms "adjacent properties" and "down coast areas" are too vague and general to be used in measuring impacts of structural solutions.

The text on page 11-13 explaining when Policy 12 a will be implemented is unclear. For example, what is the meaning of words such as "cost prohibitive", "ineffective", "legally infeasible", "greater than local significance", "substantial public benefit", "seriously impair", "adversely affect", and "down coast areas"? These should be explained and alternatives to the stated criteria should also be discussed. The text of p. 127 of the Plan is also vague. What are "extreme circumstances"?

C. VISUAL ENVIRONMENT, PAGE II-13 OF DEIS

Visual concerns are a legitimate matter of public interest. However, one major concern we have with the Plan is that strict criteria and enforcement mechanisms are erected such that the aesthetic question carries a weight disproportionate to its real importance in siting and licensing decisions. The aesthetic factor is set forth as a matter so important in the site selection and licensing process that sites which have attractive environmental and economic characteristics could be rejected. If the state fully implements its CZM Plan with its lack of balance in this matter, this will have an adverse impact on site selection and licensing of new facilities, on the operation of all facilities, and on the expansion of existing facilities. Aesthetic consideration is merely one factor which should be weighed along with others in site selection,

design, operation and licensing decision making and only to the extent that the decision making agency has authority to do so. The aesthetic criterion alone cannot be allowed to kill any major development or expansion project.

The social and economic consequences of the Plan are not identified or discussed. For example, while page 140 of the Plan properly recognizes that energy facilities and marine terminals are part of the coastal "scene", there is no explanation of the costs or benefits of the subsequent recommendation (p. 141) for improving visual access. The Plan and DEIS should discuss the social and environmental and economic effects of the recommendations on pages 142 and 143 of the Plan. This is especially necessary in view of the admittedly intangible nature of the visual environment.

Although the absence of regulations by EOEA and other agencies again makes adequate comment impossible, the following comments are offered on the policies:

Policies 13 through 16 express the "visual concerns" of the CZM Program. Of this group only Policy 14 is listed as "enforceable" in the DEIS. However, the text of the implementation sections of Policy 13 and 16 and page 5 of the Massachusetts CZM Program Addendum as it relates to Policy 15, all refer to State regulatory and permitting programs which restrict private activities as being subject to these policies. The designation of these policies as "unenforceable" is grossly misleading. They are fully intended to restrict private development.

The confusion as to what is "enforceable", what is not "enforceable", and the impact of "unenforceable" policies on Federal consistency requirements

is treated elsewhere in this discussion. However the broad generality of language of the Massachusetts CZM Program, the mixing of functions appropriate to governmental proprietary land management with the separate regulatory functions of government, and the bootstrapping use of MEPA and the Federal consistency process are especially evident in Policies 13 through 16.

(1) POLICY 13.

This would "encourage" the incorporation of "visual concerns" for "all facilities" (not just government facilities) in the coastal zone. Page 146 of the Massachusetts CZM Program states that "major developments in APR's which require federal permits (e.g., a radio tower proposed for construction in a tidal water body or salt marsh)" will be reviewed under Policy 13 to "ensure" compliance. This requirement for Federal permit review (presumably under Federal consistency provisions) will be required even though most private projects not requiring Federal permits will be exempt (see p. 146, Massachusetts CZM Program). Massachusetts CZM Program cannot require Federal review when it cannot enforce State review.

Even for those few State-level permits that are brought under Policy 13 the EOEA contact will be merely through the MEPA process, a process which leaves the basic permit decision, and criteria for decision, up to the permit-granting agency, not EOEA. EOEA can ensure full discussion of environmental issues under MEPA, but MEPA grants no veto or approval power over any permit decisions to EOEA.

Policy 13 should be amended to elminate the word "ensure" from the text of the policy and the discussion and implementation language.

All references to private projects subject to State or Federal permits should be eliminated. In addition the meaning of the words "minimizes adverse impact" is vague and unclear. The words are also unwise state policy since there should be a balancing of other relevant factors in decision making.

The DEIS fails to recognize a major error in the Massachusetts Coastal Zone Plan which states on page 142 that lot sizes for residential construction are decreasing. Since this statement provides both a major basis and rationale for the aims and goals of this policy, this oversight is critical.

The DEIS fails to treat the subject of what the long and short term effects of highly subjective (personal taste) standards will be on activity in the coastal zone.

The alternative of excluding this clearly subjective, unenforceable policy from the Plan is not considered.

The DEIS fails to recognize that small projects may be determined to have a cumulative impact and hence environmental impact reports may be required for groups of unrelated small projects with different owners, time tables and degrees of effect. The social, economic and environmental effects of this should be analyzed.

No adequate authority is cited, nor is any adequate economic, legal, social or environmental justification provided, for the statement on page 147 of the Plan that "utility systems should be placed underground".

(2) POLICIES 14 & 15.

These are examples of the confusion as to what is enforceable in the Program. Agencies acting pursuant to Policy 14 would review the visual impact of proposed development near designated or registered historic sites. The text of Policy 14 specifically includes private actions which require State permits as within the scope of Policy 14. However the Implementation Section of the CZM Program document on pages 151 and 152 does not list any enforceable State law which gives any State agency control over visual aspects of private projects which are merely near, rather than in historic districts. Reference is made on page 150 to an asserted power of the Massachusetts Historical Commission and Massachusetts CZM to deny Federal consistency determinations to Federal or Federally permitted projects which would "harm. . .historic qualities" or be merely deemed "eligible" for the National Register of Historic Places. The Massachusetts Historic Commision does not have these broad powers on the State level, then how can it exercise them against Federal agencies?

Reference is made on page 152 to the Massachusetts Environmental Policy Act (MEPA), in M.G.L. c. 30 §§ 61 and 62, as involving some kind of visual review of projects. However the text is not clear whether MEPA visual impact concerns are to be applied to private projects or only to government projects. If MEPA visual concerns are to be applied to private projects then such concerns should not be enforced if they are outside the subject matter jurisdiction of the State agency which prepares the relevant MEPA environmental impact

report. MEPA does not confer jurisdiction over agencies to consider broad visual impacts of activities and uses permitted by them. M.G.L. c. 30 § 61 merely requires State agencies to "use all practicable means and measures to minimize damage to the environment". The term "damage to the environment" is defined in M.G.L. c. 30 § 61 as including "destruction of. . .open spaces, natural areas, parks, or historic districts or sites" not some sort of vague impact "near" such sites. Likewise, M.G.L. c. 30 § 62 confines the scope of environmental impact reports prepared by permit granting agencies to the subject matter jurisdiction of the agency.

Once again we point out that in Policy 14 the meaning of the words "ensure", "near", and "minimize potential adverse impacts" are vague and unclear. The latter term is also unwise since a balancing of relevant factors ought to be required in decision making. The application of this policy on p. 150 of the Plan to properties "deemed eligible" to be declared historic sites is a vague, unclear and open-ended assertion of governmental power, the implication of which should be identified and analyzed.

Policy 15, which refers to improving visual access in urban areas and providing visibility to coastal activities is not listed in the Draft Environmental Impact Statement (DEIS) as an "enforceable" policy. Yet on page 5 of the October 7, 1977 Addendum to the Massachusetts CZM Program document the statement is made that the Massachusetts Energy Facilities Siting Council will "use" Policy 15 and that Policy 15 will be "applicable" to the Massachusetts Energy Facilities Siting Council

in carrying out its statutory charge to provide a necessary energy supply with minimum environmental impact at the lowest cost. If this policy is not "enforceable" how can the Massachusetts Energy Facilities Siting Council "use" it in carrying out its statutory duty of approving or denying a facility proposed by an energy company? If they do deny an energy company the right to build a facility solely on the grounds that the facility would interfere with visible access to a beach or historic building such a denial would not be upheld in the courts. If the Massachusetts Energy Facilities Siting Council cannot deny approval to a facility on the basis of Policy 15 then why is Policy 15 contained in the list of policies on page 5 of the October 7, 1977 Addendum?

(3) POLICY 16.

Policy 16 would "encourage scenic river, scenic highway, and scenic road designation in the coastal zone and support designation of Areas for Preservation and Restoration as Sign Free Areas". This policy is carefully written in language which avoids the use of outright prohibitions. It is exhortatory in nature rather than mandatory. However, given the use of "memorandum of understanding" between the Secretary of EOEA and the Commissioner of DEM an incorrect inference can be drawn that DEM will be bound to Policy 16 in its deliberations under the Scenic and Recreational Rivers Act, G.L. c. 21, § 17A, thus ignoring the careful procedural protections given to affected land owners in G.L. c. 21, § 17A, who are entitled to notice and participation in specific orders relating to their interests, impartial decision by the Board of Environmental Management and ultimately court review and adjudication of the confiscatory taking and other issues.

Likewise the procedural steps required for implementation of the Scenic Roads Act and Outdoor Advertising Control Board activities and the independent powers of the implementing agencies are not adequately discussed on pages 155 and 156 of the Massachusetts CZM Program and corresponding sections of Chapter 2 of the DEIS.

The concern expressed on page 154 of the Plan against developments in exposed bedrock areas is not adequately discussed.

D. PORTS AND HARBORS, PAGE II - 14 OF DEIS

The CZM Plan rightfully acknowledges the importance of the ports and harbors of Massachusetts. Industries such as the fishing and maritime shipping industries are important to the State's economy. However, the DEIS and the Plan fail to identify and examine alternatives to the proposals made in the Plan. For example, the social, environmental and economic impacts of prohibitions on non-maritime dependent uses should be thoroughly discussed and examined. The restrictions (see page 179 of Plan) on new channels or mooring and turn-around basins of 20-foot depth or more should also be examined. The economic and social effects of these and other proposed restrictions must be presented. The absence of EOEA and agency regulations in this instance also makes meaningful, adequate comment impossible.

The following comments are, however, offered on specific policies:

(1) POLICY 17.

This policy is contrary to law insofar as it purports to require the denial of permits for non-marine dependent use under the conditions indicated on pages II-15 to 16 of the DEIS, since the authorities cited in

the Plan do not establish "marine dependency" as described in Policy 17 as a basis for the denial of permits. A property owner, for example a waterfront restaurant or an electric company, cannot be denied a permit because spokesmen for public agencies and/or fishing interests, etc. have expressed interest in the site for a waterfront dependent use of particular state or national economic importance. This coupled with the proposed restrictions regarding an "irreversible commitment" of a "best available" site for a maritime dependent use is unauthorized by law and an unconstitutional deprivation of the property rights of land owners.

The policy is also unwise. The definition of marine dependent use is unduly restrictive; for example, a facility is held to be not coastally dependent if it can physically be located inland. This is too narrow a definition and the economic and environmental effects of exclusion from ports and harbors or from other parts of the coast of non-maritime uses must be thoroughly explored. A more broad definition of coastal dependency, namely, one of economic dependency ought also to be studied. The word "encourage" is vauge and confusing in its implications to agencies and private individuals.

(2) POLICY 18.

This whole policy is vague and unclear in its use of the words, "promote", "widest possible public benefit", and "ensure". As indicated before the implications (social, economic, and environmental) of the criteria set forth on page 11-17 and alternatives thereto ought to be set forth. The DEIS should include a discussion of the impacts of local

coastal communities, as well as the impact on the State's economy if a business declines to locate in existing port areas because of this policy. In short, will this policy result in foregone economic development opportunities and, if so, to what extent and with what effect on the economy of the state and the livelihood of its citizens?

(3) POLICIES 19 & 20.

These policies are vague in that the meaning of the words "encourage" and "minimal" are unclear. The minimization of environmental effects ought not to be by itself a criterion for agency decisions; a more balanced approach is called for. Policy 19 also seems contrary to the stated objectives of encouraging water dependent uses in ports, since this policy indicates that this is to be done where the risk of damage to the marine environment is minimal. Because the requirement is not simply that a developer comply with applicable regulatory programs, this policy indicates, as do others in the plan, a bias against balanced economic development.

E. RECREATION

The subject of Recreation is discussed not only in the Chapter on "Recreation" but in various places throughout the Plan and DEIS. Accordingly the following comments are offered on this subject.

(1) Significant Resource Areas (pp. II-2, pp. II-4 of DEIS)

The DEIS and the Plan fail to adequately describe the economic impacts of designating certain geographic areas as:

a. SRA-Restricted

b. SRA-Conditioned

c. SRA-Economic

d. SRA-Recreation

The DEIS fails to adequately describe the effects of the CZM Plan on the amount of "developable" land as the result of designating certain geographic areas as:

a. SRA-Restricted

b. SRA-Conditioned

c. SRA-Economic

d. SRA-Recreation

The DEIS fails to adequately describe the impact on competing land uses of establishing recreational use as a priority use in each of the following geographic areas:

a. SRA-Restricted

b. SRA-Conditioned

c. SRA-Economic

d. SRA-Recreation

The DEIS fails to adequately describe the effects on property and tax values which will result from designating geographic areas as:

a. SRA-Restricted

b. SRA-Conditioned

c. SRA-Economic

d. SRA-Recreation

The DEIS fails to adequately describe the social, economic, and environmental impacts on inland communities of designating certain coastal geographic areas as:

a. SRA-Restricted

b. SRA-Conditioned

c. SRA-Economic

d. SRA-Recreation

The DEIS fails to adequately describe the locational impacts on potential development as the result of the SRA designations proposed.

THe DEIS fails to consider alternatives to the concept of SRA designations.

The DEIS fails to adequately describe the social, economic, and environmental impacts of alternatives to the SRA designations proposed.

The DEIS fails to consider alternatives to the particular SRA designations proposed.

The DEIS fails to adequately consider the social, economic, and environmental effects of each alternative so that a considered and reasoned choice can be made.

The DEIS fails to identify those geographic areas which will be designated SRA's.

(2) <u>Remainder of Coastal Zone (p. II-5)</u>

The DEIS fails to adequately describe the economic impacts resulting from state efforts to "minimize conflicts" between developments and adjacent recreational or historic sites.

The DEIS fails to clarify the meaning of "minimize conflict".

The DEIS fails to consider alternatives to "minimizing" such conflicts.

The DEIS fails to adequately describe and consider alternatives to the five "interests" proposed for the remainder of the coastal zone.

The DEIS fails to adequately describe the social, economic, and environmental effects of alternatives to the five "interests" proposed for the remainder of the coastal zone.

The DEIS fails to describe the locational impacts on development resulting from protecting the five "interests" proposed for the remainder of the coastal zone.

The DEIS fails to adequately describe what types of economic development will be prevented as the result of promoting the five "interests" for the remainder of the coastal zone.

The DEIS fails to adequately describe the effects on the amount of "developable" coastal lands of promoting the five "interests" proposed.

The DEIS fails to adequately describe the effects on property and tax values as the result of promoting the five "interests" for the remainder of the coastal zone.

The DEIS fails to adequately describe the social, economic, and environmental impacts on inland communities of promoting the proposed five "interests" for the remainder of the coastal zone.

The DEIS fails to adequately describe and consider the effects on inland communities of alternatives to the proposed five "interests" for the remainder of the coastal zone.

The DEIS fails to evidence a balanced approach in protecting certain "interests" along the remainder of the coast.

(3) <u>Recreation Policies, Page II - 17, of DEIS</u>

The DEIS fails to recognize the broader scope of Policy 26 as detailed in the Addendum to the Massachusetts CZM program.

The DEIS fails to adequately describe the social, economic, and environmental effects of Policy 26.

The DEIS does not adequately describe regions of high recreational need.

The DEIS does not adequately describe the effects of Policy 26 on competing land uses, particularly in urban areas.

The DEIS does not adequately describe the effects on competing land uses of expanding recreational boating facilities (CZM Plan pp. 196-197).

The DEIS does not adequately describe the effects on competing land uses of the public taking of an additional 50 miles on 10-10,000 acres of coastal lands (CZM Plan p. 198).

The DEIS does not adequately describe the environmental, social, and economic effects of Policies 10, 21, 22, 23, 25, and 26 on the amount of "developable" land along the Massachusetts Coastline.

The DEIS does not adequately describe the effects on non-coastal communities of Policies 10, 21, 22, 23, 25, and 26.

The DEIS does not adequately describe the effects on competing land uses of public taking of numerous, "small, well distributed sites" for recreational purposes in urban areas (CZM Plan p. 198).

The DEIS does not adequately describe the effects of state take-over of surplus federal lands on the amount of "developable" coastal lands, particularly in urban areas (CZM Plan p. 198).

The DEIS fails to adequately describe the effects on competing land uses and private property rights of state acquisition of lands and easements for recreational purposes (CZM Plan, p. 200).

The DEIS does not adequately describe the effects of Policies 10, 21, 22, 23, 25 and 26 on the amount of "developable" land in urban areas.

The DEIS does not adequately describe the locational impact of Policies 10, 21, 22, 23, 25 and 26 on industries competing for lands within the coastal zone.

The DEIS does not adequately describe the effect of Policies 10, 21, 22, 23, 25 and 26 on private property and tax values.

The DEIS does not adequately describe the effects of Policies 10, 21, 22, 23, 25 and 26 on inland private property values.

The DEIS does not adequately describe the mechanism, source of funds or standards for measurement for compensating private property owners as the result of implementing Policies 10, 21, 22, 23, 25 and 26.

The DEIS does not adequately describe the effects of Policy 26 on urban redevelopment and renewal efforts as encouraged in Policy 20 and Policy 17.

The DEIS does not adequately describe the effects of Policies 10, 21, 22, 23, 25 and 26 on the Massachusetts CZM goal of locating economic development in urban areas.

The DEIS does not adequately describe alternatives to expanded state acquisition of "developable" lands for recreational purposes.

The DEIS fails to consider increased use of existing recreational facilities as an alternative to further state acquisitions.

The DEIS fails to adequately describe "conflicting use" as stated in Policy 23.

The DEIS fails to adequately describe how and what type of uses will be excluded under Policy 23 where such conflicts exist.

The DEIS fails to adequately describe the social and economic effects of Policy 26 on competing land uses in regions "where site availability is now limited or could be precluded in the future".

The DEIS fails to consider the social, economic, and environmental impacts on inland communities of prioritizing new public recreational facilities in "regions of high need" (i.e., urban areas).

The DEIS fails to adequately describe the methodology for assuring that recreational facilities will be "compatible with social and environmental characteristics of the surrounding communities" (Policy 26).

The DEIS incorrectly states that state permits can be denied by use of the MEPA statute to prevent "adverse impacts" on existing public recreation areas from activities near public recreation sites. The words "minimize potential adverse impacts" are unclear,

and an unwise policy since a balancing of all relevant factors is called for in decision making (Policy 27).

The DEIS fails to recognize that Policy 27 does not consider the national interest in economic development or energy regarding developments near recreation sites.

The DEIS fails to define the term "near" in Policy 27.

The DEIS fails to adequately define "potential adverse impacts", as stated in Policy 27.

The DEIS does not adequately describe the economic, social, and environmental impacts, or alternatives, of siting sewage treatment plants and other outfalls so as to minimize adverse effects on recreational beaches (DEIS p. II-59).

The DEIS fails to recognize that decisions to protect recreational areas must be balanced within the national and state interests in economic development and adequacy of energy supply.

The DEIS fails to adequately describe how the national interest in economic development and energy is incorporated into siting decisions for recreational facilities.

The DEIS fails to adequately describe the social, economic, and environmental impacts of improving transportation facilities to coastal recreational sites.

The DEIS fails to adequately describe the economic impacts on inland communities of improving transportation facilities to coastal recreation sites.

The DEIS fails to adequately describe the impacts of increasing public access to coastal resources on private property owners within the coastal zone.

The DEIS fails to adequately describe the effects of public acquisition of easement rights on property owners right to use and enjoyment of private property, nor does it describe the mechanism, source of funds or standards for measuring compensation to private property owners resulting from such acquisitions.

The DEIS fails to discuss alternatives to public acquisitions of easement rights, surplus federal lands and "developable" lands for expanding recreational facilities and public access to coastal resources.

F. POLICIES 28 - 33, PAGE II - 21 OF DEIS

Policies 28 to 33 are not listed as "enforceable" in the DEIS. Yet when read together with the memorandum of understanding between the Secretary of EOEA and the Chairman of the Massachusetts Energy Facilities Siting Council (EFSC) it is the apparent intent that they be binding on the EFSC. Also page 5 of the October 7, 1977 Addendum to the Massachusetts CZM Program instructs EFSC to "weigh", "consider" etc., some 18 specified policies within the Program. How such policies can be "weighed" and somehow not "enforced" is a highly confusing matter.

As referred to above there is a contradiction in the text of the DEIS (p. IV-4) and the August 23, 1977 memorandum attached to the DEIS (p. 5) as to when and in what procedural framework the applicable policies of the Massachusetts CZM Program are to become binding on the EFSC. We

object to the entire notion that the mere announcement or promulgation of a "policy" by the Secretary of the EOEA or the Governor somehow binds the EFSC or the energy and utility industries. To have such binding effect such "policies" must conform to the requirements for promulgation of regulations contained in Chapter 30A of the Massachusetts General Laws, including the requirements for public notice and hearings. The EFSC in § 62.9(3) of its Regulations has recognized that the "policies" it must act consistently with are set forth in the Constitution, general laws, and duly promulgated rules and regulations of responsible state agencies having the force of law. This obviously does not include mere memoranda of understanding or CZM Program documents which do not meet this test.

Even an attempt of EOEA to bind the EFSC by the mechanism of issuing regulations must fail if the authority asserted in the regulations is beyond the scope of jurisdiction of the EOEA or other issuing agency and thus fails to have the force of law.

A more detailed discussion of the jurisdictional relationship between the Massachusetts CZM Program and the EFSC is contained in an April 26, 1977 memorandum of John J. Desmond, III, Counsel for Boston Edison Company which is attached to these comments, and infra, pp. 96-103. The lack of authority of the Secretary of EOEA to substantively regulate land use and energy facilities planning in the Coastal Zone is discussed in a May 6, 1977 memorandum of Patrick J. Kenny, Counsel for New England Power Service Company, also attached to these comments. Further discussion of the same issues and an analysis of Boundaries and Land Use Controls is contained in a May 5, 1977 memorandum of Attorney Michael T. Gengler of Rich, May, Bilodeau & Flaherty, which is also attached.

The EFSC has the following statutory obligations:

(1) to implement the energy policies contained in G.L. c. 164, §§ 69H-69R, "to provide a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost". G.L. c. 164, § 69H.

(2) To approve long-range forecasts of gas and electric companies, and plans for construction, if it determines, inter alia, that such forecasts and construction "are consistent with current health, environmental protection, and resource use and development policies as adopted by the Commonwealth. . ." G.L. c. 164, §69J.

The EFSC has stated in its regulations that it will consider only those health, environmental protection, and resource use and development policies of the Commonwealth which are set forth in the state constitution, general laws, and duly promulgated rules and regulations of responsible state, regional or local agencies having the force of law. EFSC Regulations, Rule 62.9 (3). The following aspects of the CZM Program are unlawful because they conflict with the statutory standards applicable to EFSC action, and are not authorized under the EOEA Reorganization Act, G.L. c.21A:

(1) EOEA cannot establish land-use and energy-siting policies which are binding on EFSC. See, e.g., Policies 1, 2, and 8; pp. IV-4 to IV-6 of DEIS; p. 4 of Addendum; p. 7 of Memo dated August 23, 1977, attached to DEIS.

(2) EOEA cannot bind EFSC to the principle of "coastal dependency" and dictate the scope of its review. See, e.g., pp. 4 and 5 of Addendum; MOU, p. a-19.

(3) EFSC cannot be required to disapprove the siting of energy facilities in APR's. See Policy 2; p. 4 of Addendum; and the various policies in the Energy Chapter.

(4) The Secretary of EOEA, as a member of EFSC, cannot be an advocate of environmental concerns, but must be an independent and objective adjudicatory officer. See p. 3 of Memo dated August 23, 1977, attached to DEIS.

(5) EOEA cannot in the manner proposed impose on the energy industry (and EFSC) eighteen new standards or policies. See p. 5 of Addendum; p. IV-6 of DEIS; and p. 7 of Memo attached to DEIS.

(6) EOEA cannot by MOU bind EFSC to issue regulations or an administrative bulletin to implement the CZM Program; to recognize the CZM Program, as approved by the Governor, as state environmental policy; to submit Company submissions to EOEA prior to hearing before EFSC: to recognize the standing of the CZM office in EFSC proceedngs; to give "prime consideration" to environmental impacts of facilities proposed for areas of critical environmental concern. See text of MOU at p. a-19 of Plan.

(7) Policy 33b, requiring the acceleration of solar and wind power and conservation measures as set forth in the Program Addendum dated October 7, 1977, cannot bind agencies charged with responsibility to review proposed energy facilities under existing statutory standards. This policy is a needlessly confusing complication to the licensing process. See p. 1-2 of Addendum.

(8) The text of Policy 31 refers to a function of the State CZM office of "providing for" electric energy development and to the existence of "CZM's approval procedures". No such function or procedure has been authorized by law. The function of providing for electric energy development belongs to the utility industry not to the State CZM office. The State CZM office has no approval authority over any energy facility.

The text of the energy chapter and policies of the Massachusetts Coastal Zone Management Program and the discussions of energy in the DEIS do not discuss adequately the economic and environmental cost of placing energy facilities inland even when they are not "coastally dependent". Mere physical

ability to locate a facility inland does not guarantee that a given inland location is preferable to a coastal alternative in light of increased costs, other socio-economic factors, and inland environmental impacts associated with the inland site.

Likewise the impact on other States of discouraging energy development in coastal areas of Massachusetts is not adequately addressed. Such an impact would be expected to be of importance with regard to powerplants and oil and gas facilities. For example, in light of the discussion of the New England Power Pool and the regional coordination of new power facilities in the six-state New England area, it should be possible to discuss in some detail the impact of inland and out-of-State siting in New England of new powerplants that may be displaced from the Massachusetts coast. Likewise the systematic exclusion of Outer Continental Shelf related on-shore activities from APR's and other large areas of the Coast and the bias against "non-coastally dependent" components of such activities would be expected to displace many future Outer Continental Shelf related activities from the Massachusetts coast to inland Massachusetts locations and other States, principally on the Atlantic Northeast Coast. No attempt is made to measure and quantify the socio-economic impacts of such displacement on Massachusetts or the socio-economic and environmental impacts of such activities in the inland or out-of-state locations where the activities would take place.

Alternatives to the proposed energy policies are not discussed. In light of the national interest in energy acknowledged by Sec. 306(c)(8) and Sec. 308 of the Coastal Zone Management Act, appropriate alternatives that should be discussed include policies of actively encouraging development

of electric power plants, gas facilities, oil facilities and OCS shore related facilities. Such facilities are of benefit to the entire New England region. Sec. 306(c)(2) of the Coastal Zone Management Act requires that each State's program contain "a method of assuring that local land and water use regulations within the Coastal Zone do not unreasonably restrict or exclude land and water uses of regional benefit". The Massachusetts Program does not meet this requirement for energy facilities. To the extent that the EFSC would be bound by the Program document as a binding expression of State environmental policy, the EFSC could not provide an override of the exclusionary Programs of the Massachusetts Coastal Zone Management Program.

Also, given the illegal attempt of the Massachusetts Coastal Zone Management Program to establish a system of encouraging "coastally dependent" uses at the expense of "non-coastally dependent" uses in Policy 17, an appropriate alternative policy, in light of the national interest in energy, would be a policy of discouraging uses which might interfere with future energy facilities. (Of course, adequate statutory provisions would have to be adopted by the Commonwealth of Massachusetts for such a policy to be enforced.)

The energy chapter in the Massachusetts Coastal Zone Management document, the text of the policies, and the DEIS fail to take into account or adequately discuss the effect on the Massachusetts Coastal Zone Management Program and on the jurisdiction of EOEA and EFSC of the exclusion of several energy activities from State jurisdiction, including Nuclear Regulatory Commission jurisdiction over nuclear power plant radiation safety, and Federal Energy Regulatory Commission jurisdiction over hydroelectric and interstate

gas transmission activities. The DEIS discussion of energy policies in Part II Ch. 2 does not discuss the exemption of smaller energy facilities from the jurisdiction of the EFSC. Such a discussion is necessary to measure the impact that construction of such facilities would have on the Massachusetts Coastal Zone Management Program and on the EFSC's role in implementing the Program.

Policy 33 as amended by the October 7, 1977 Addendum to the Massachusetts Coastal Zone Management Program document is simply repeated in the text of Page II-28 of the DEIS, unaccompanied by any discussion. A thorough discussion should be provided for the DEIS to provide meaningful guidance as to the intent and interpretation of Policy 33. Furthermore, this policy has no place in the Plan since conservation and alternate energy sources are the responsibility of state and federal agencies other than EOEA.

G. <u>GENERAL DEVELOPMENT AND PUBLIC (AND PRIVATE) INVESTMENT POLICIES p. II-33 OF DEIS</u>

It must be stated at the outset that this section of the DEIS inaccurately includes the phrase "Private Investment" in its title whereas the plan does not. One can only assume that this represents a most serious misunderstanding of the plan on the part of federal reviewing authorities, which can result in less than accurate comments on the part of the public on this section in the statement. On the other hand, if the DEIS title is accurate, then the corresponding title in the CZM Plan is misleading.

The entire section on General Development and Public Investment can only be viewed as an oversimplified and uninformed view of the policies dealing with vital economic activity in the coastal zone.

The section fails to deal with alternatives, such as deleting those policies which are in fact unenforceable.

A major criticism of both the DEIS and the CZM Plan, for that matter, is that the tenor of the entire section is not pointed in a positive direction. The DEIS fails to discuss this. Its discussion of vital economic activity, a requirement for consideration in the federal review process, is vague, uninformed, and naive. On the whole it is totally inadequate as a means by which to judge the actual impact of the CZM Plan on growth related activities in the areas covered by the plan.

(1) Comments on All Policies

The DEIS fails to consider the benefits of designating and funding alternative state agencies to implement the developmentally related policies and aspects of the CZM program. And, more specifically, what would be the effect of such policies if implemented by agencies that have the budgetary, administrative, and/or statutory powers to actually implement these goals?

The DEIS fails to adequately describe the legal, philosophical, and practical administrative problems inherent in having all economic policies implemented by the Executive Office of Environmental Affairs. Is there adequate expertise, experience, and sensitivity to business concerns? We think not, but at the very least this analysis must be made.

The DEIS is a negative commentary, and fails to adequately consider actively utilizing the full range of positive economic development incentives offered by the Commonwealth.

There should be a detailed discussion of the effects of the complexity of this plan on the average small businessman. The DEIS also fails to consider the effect of questionable statutory authority on the business community. Specifically, there is significant negative impact on business and investor security given the expected widespread use of the CZM Plan as a delaying tactic against development by overzealous environmental interests.

The DEIS fails to adequately consider whether existing regulations and laws do not already unreasonably or reasonably restrict or exclude land and water uses of regional benefit. In this regard, the DEIS also does not adequately consider the alternative of exempting some or all of these activities from the CZM review process.

It should be pointed out that the CZM Plan does not provide yardsticks with which to judge what shall constitute permissible land and water uses in the zone which have a direct impact on the coastal waters. Given the scope of the CZM Plan the DEIS must describe the effects of policies 10, 21, 22, 23, 25, 26, and 27 on the amount of land designated as developable in the zone. Without this, no accurate assessment of economic impact can be made.

In view of the rush to approve the Plan, no evidence exists in the DEIS as to the serious negative economic impact on project feasibility given increased costs which will be the result of the CZM process including legal exposure, collateral legal attack, and investor insecurity. Also, the relationship of policies 14 and 15 should be viewed in terms of policies 34-38. What is an example of a development of only local

concern? There is no analysis of what the parameters for such a designation are. The DEIS fails further to adequately describe whether such "local concern" projects are exempt from visual or recreational policies whether or not state permits are required, (e.g., Wetlands appeal-superseding order).

The DEIS fails to adequately consider the effects of the density constraints in the State Environmental Code on the amount of development possible in developable urban sites. No consideration is given in the DEIS of the conflict between transportation infrastructure investments for recreational access and the effects this will have on developable land in those areas. This seems to be a circular problem in that access brings people other than just tourists. What is the expected response of local communities in this situation? If, as expected, further local growth controls and restraints result, of what value is the plan where it encourages responsible development but in fact results in no-growth restrictions? In addition, no discussion or conclusion is made regarding further constraints placed on developable land by CZM policies 10, 21, 22, 23, 25, 26, and 27. In the final analysis is half of the 21% of the total coastal zone in fact economically usable? See CZM Plan, p. 291. What is left for such economic activity?

The DEIS fails to adequately describe the effects of policy 27 (Proximity to Recreation). Does this include potential as well as existing areas? If so, what is the limit and effects of a "potential" designation.

The DEIS also fails to consider the interaction of policies 34-38 with policies 10, 21, 22, 23, 25, and 27 and the effects on land values, development costs and local revenue and tax base.

The effects on inland communities has been totally ignored. What are the social, economic, and environmental impacts the CZM Plan will have on inland communities? Consider federal and state funding, growth pressures, etc. Will not the CZM plan result in increased no-growth restrictions? What does the plan propose to do in that event? What powers can EOEA use? In short what are the contingency plans to encourage legitimate growth in case of problems after implementation and how can they be implemented where local ordinances are already in place?

Surprisingly, there is no treatment of the impacts of the Clean Air Act Amendments of 1977 on the CZM Plan, and their location of development in urban (non-attainment) areas and prevention of significant deterioration areas.

In the area of infrastructure, what effect will CZM have on Federal Water Pollution Control Act, Sections 303, 201, 208, and 404 projects not yet listed. Is the Plan therefore precluding such activities or hampering future attempts to carry out these activities?

The DEIS completely fails to come to grips with the problems caused by policy 35 which will effectively constrain development to only urban areas.

(2) Policy 34

The DEIS fails to point out the existence of an insurmountable "catch 22" situation whereby land may be predetermined to be developable by the CZM map designation, then have placed upon it increased

restrictions making it unable to meet individual septic system requirements (e.g., distance set backs, percolation rates, depth to ground water level, etc.), and also be precluded from necessary sewering programs because it is not urban-centered infrastructure investment. In short, it is declared developable, but unsewered and unable to accept individual sewage disposal systems. What of increased local restrictions which totally defeat these positive developmental opportunities?

The DEIS fails to recognize throughout that the designation of developable areas does not enable development per se. The plan increases restricted areas, but does not free up other areas in return. The DEIS and the plan do not balance economic and environmental interests.

The DEIS and CZM explanation of Policy 34 both state that "Commercial, industrial and residential developments to which other CZM policies do not apply are considered to be of local concern....". However, policies 35-38 apply equally to all development, be it commercial, industrial or residential. Not only will the Massachusetts CZM authorities dictate to the Federal government through the federal consistency provisions the approval of federally-funded projects, but this same action threatens to dictate to the cities and towns where such federally-funded projects may go, regardless of the desires of the local municipality. This applies not only to large scale projects, such as mass transit systems, water and sewer treatment plants, etc.,

but also to sewer lines, to light-industrial parks or along residential streets and to federally-financed housing as well. The failure of the DEIS to discuss this problem and alternatives results in misleading the public who may feel the need to comment on this problem.

The plan at pg. 294 incorrectly states the anti-degradation policy of the Division of Water Pollution Control since not all discharges are prohibited in anti-degradation areas.

The conflicts above are illustrated by comparing and overlaying two of the maps from the CZM document: (a) the large map (back insert, Vol. 1, Massachusetts CZM Program) which shows in white the "Potentially developable areas"; and (b) the map of Sewer Service Areas, Existing and Potential (Massachusetts CZM, page 289). It is evident from the two maps that much of the land claimed to be "potentially developable" is excluded from development because that land is not within potential sewer service areas. The DEIS fails to address this conflict or offer any meaningful solutions.

Policy 34, both in the CZM text and in the DEIS is devoid of information on the effects of local prerogatives in the administration, enforcement, and re-regulation under the State Environmental Code-Title V. The relationship of local authorities in the health code field to the State Code must be included in the final statement. Fundamental decisions, such as which code controls, must be considered and clarified.

(3) Policy 35.

The Massachusetts CZM document requires (page 296) that the 208 plans being developed be consistent with the CZM program, and that 201 projects be consistent with the CZM program. To the contrary, Congress has mandated that planning authority for 201 projects be granted to 208 agencies, and once the 208 plans are approved by the state, that 201 projects be consistent with the 208 plans. By what authority does Massachusetts CZM change the express intent of Congress? Water planning authority has been given to the 208 agencies; yet CZM asserts the 208 agencies must conform to CZM, which is taking away from the 208 agencies the authority assigned by Congress. The DEIS does not address this conflict.

The DEIS states Policy 35 is "enforceable under current Massachusetts laws"; this is not correct. There is no legislative authority to assign highest priority to infrastructure which meets the needs of urban and community development interests. The CZM document speaks of CZM having "adequate opportunity for input" (page 296), "probable that CZM will have the opportunity for considerable input" (page 297), "CZM would participate in the review" (page 297), "CZM will act as an advocate before..." (page 297). This is not enforcement, but merely comment. Yet, through a distortion of the meaning of "federal consistency" (as explained elsewhere), it is

claimed that CZM can ensure conformity by the Federal government with the detailed specifics of the CZM program. There is no enforcement power. There is no control over federally-funded activities. There is no authority in CZM to regulate nor guide public infrastructure investments. The DEIS must address these conflicts as well. CZM obtains its legal basis only in existing state statutes.

According to the DEIS (11-29) further continuation of the EPA Water Clean Up Program will be impossible beyond 1977 without revision and amendment of the Massachusetts CZM Plan. What are the effects on the environment of delays such as this? What procedure will be used to change the Plan? Notice? Hearings? Time? Why initially approve this plan where such fundamental problems remain unresolved. In this connection, it should be noted that the bulk of 201 projects to be funded in 1978 would have involved coastal communities and their present discharges of raw sewerage into bay and ocean waters. A great deal of environmental impact has been disregarded in the DEIS.

Further, transportation projects will also require formal revision and amendment to the CZM Plan. It is astounding to read what "consistency" here means -- not consistency with legitimate environmental impact on coastal waters or on pristine environmental resource areas, -- but rather "Consistency will be judged on the basis of anticipated changes in land development patterns and rates that may result from changes in transportation access." (DEIS, 11-31). Under what Massachusetts law is this enforceable? Under what statutory authority does CZM have this power? Further, EOEA is not a transportation

or land use planning agency. What effect will this fact have on both economic and environmental activities? Again, no discussion is included.

What is the economic impact of policies which serve to limit infrastructure improvement strictly to urban or town centers? What are the effects of this policy on the general economic climate of the state? Is this tantamount to economic discrimination against citizens of smaller municipalities? What are the alternatives to these policies?

The DEIS on page II-29 glosses over the three criteria for public infrastructure consistency.

1. No mention is made of prevalant local no-growth attitude. This is evidently shown in the DEIS as acceptable where only areas wanting growth are considered. The economic implications of this are staggering, but unconsidered.
2. As to water supply, no standards are shown with which to judge this factor. Are we to assume a moratoria is justified on the basis of a non-scientific feeling that water is in short supply?
3. How is the subjective criteria of community or regional character judged and determined? Inclusion of this basis for decision making creates enforcement of a stated unenforceable aspect of this policy. By what authority?

Under Criteria 1 of policy 35 (page II-29) there must be "evidence that local regulatory measures will be adopted to direct further growth..." consistent with this policy. This is merely blackmail of

local authorities to adopt only policies consistent with CZM. Where is the local prerogative and autonomy which is claimed in the plan?

The DEIS on II-7 states the classification of policies as enforceable is by virtue of existing state law. Policy 2 is not listed as enforceable. However, on page II-32 the first criterion for approval (No. 1) states that policy 2 can be used as a criterion with which to deny a permit for certain activities. How can an unenforceable policy be used to enforce another policy? The Plan and the DEIS tend to show this result. The DEIS fails to both clarify this concern, or point out that here the plan cannot create in and of itself a self-contained enforcement power by virtue of any policy's inclusion in the plan. (See also policy 13 at page II-34).

(4) Policy 36

The DEIS does not address the meaning of "providing" as used in policy 36 (.... providing federal and state financial support...). A reading of the policy and its supporting paragraphs clearly shows the word is not "providing", but "permitting, not to obstruct, allowing federal financial assistance to go where it is planned by others".

Publicly financed housing developments must be "consistent" with the CZM Plan. In the case of state-financed projects, which are under the authority and statutory responsibility of a different executive office (e.g., Communities and Development), the DEIS does not address the issue of statutory authority whereby such a commitment may be made by CZM binding upon other state Executive Offices. In the case of HUD

grants which are directly between HUD and the municipality, it is only intimated (page 299, "Under the A-95 review process, CZM will champion applications consistent with the above policy") that CZM will use the federal consistency requirement to enforce its view of where housing should go. The DEIS is deficient in that it must answer questions like: (1) In what circumstances will federal consistency will be so invoked? (2) How does this coincide with the oft-repeated statements of "respecting local choices"? (3) What authority does CZM has over other state Executive Offices and by what statutes? (4) What are the alternatives thereto?

The DEIS says that Policy 36 is not enforceable. Given the above comments, it is not clear whether the policy is enforceable or not. Control of the pursestrings seems a quite strict control. Does this mean that CZM can withhold an approval although unrelated to the permit being sought?

(5) Policy 37

The DEIS parrots the CZM Plan in this and other policies regarding "encouraging". There is, however, no definition or parameters for how far EOEA can or will go to accomplish the "encourage" policies.

What is the effect on the CZM Plan if measures are not locally adopted?

The DEIS speaks of "compatibility with local character". How is this subjective standard arrived at? What is the process for changing local "character"? Does this local shift become constrained by the existence of the CZM Plan? How is this desire for change communicated to CZM? What is the expected CZM response?

The DEIS fails to hold any discussion of policy 37. What are the alternatives?

There is no treatment of the possible conflicts under policy 37 between character and the clustering of development. What of traffic, safety and other considerations in this regard?

The CZM Plan and the DEIS are quick to present restriction of activities, but short on the exposition of growth needs.

The DEIS fails to consider loss of value and tax base for land outside of the designated custered areas. What of fiscal impacts on the State where takings are judged to have occurred.

It is unclear in what way this policy -- essentially three narrative paragraphs expressing planning goals -- will be a criterion against which an application will be judged or in terms of which the CZM program will be implemented.

This policy states one of the weak links in the entire CZM program. It will "encourage" an entirely separate Executive Office. It will "encourage" local municipalities to change zoning and health codes. The authority to implement the program, the responsibility to make the program work lies not in CZM, but in other state or local agencies. What are the alternative agencies for responsibility and why are they not considered in the DEIS? See also Massachusetts Growth Policy Report (September, 1977, page 75).

This fundamental flaw in the CZM Program must be fully considered.

(6) Policy 38

This policy suffers the same ambiguities as the earlier "Development" policies. What is the meaning of "encourage"? What is the

meaning of "assist"? The DEIS is strangely silent, and offers no comment on this policy. The CZM text (page 301) repeats the words of policy 38: "conforming to CZM policies and assist developers to reach such conformance". What is required of developers is that the proposed development conform to CZM policies. Stated in the plural this appears to mean all 38 of them, and to the text accompanying each of these policies. This innocuous looking policy, which received no comment in the DEIS, sets the legal arena and legal requirements against which any development can be measured, namely any one paragraph from pages 39 to 305. See also Certification Statement on p. 366 of CZM Plan.

"Any ten citizens" (DEIS, 11-49) can challenge any development on the basis of any paragraph from pages 39 to 305, whether or not the CZM staff has granted approval. The potentials for legal delays are endless. Any projects, major or minor, public or private, is subject to the impossible task of meeting the requirements of every paragraph of the 277 pages of policies and accompanying text. A major environmental project such as the planned $800 million clean-up of Boston Harbor under P. L. 92-500, which is already the subject of considerable controversy in Quincy, Wellesley, Natick, etc., could never clear the legal barbs and hooks contained in the proposed CZM program. The DEIS must discuss the environmental, social, and economic consequences of this unlimited legal exposure which will result when and if the CZM Plan is approved.

The text accompanying policy 38 states that CZM will use the MEPA process to review "conformance with CZM policies" (not with MEPA policies).

This is likely unenforceable, as the DEIS states (DEIS 11-7), but any such declaration by CZM on "non-conformance" would raise grave legal difficulties for any developer. Impact here, must be discussed, including alternatives.

There must be included a definition for threshold standards by which to judge what is and what is not a "major development".

There are stated to be certain positive aspects of the CZM Plan which assist development. Absent discussion of such aspects one can only conclude those statements are of little if any substance.

The DEIS fails to add alternatives such as credits for positive economic impact which may or may not impact the environment, but which should transcend the provisions of the plan because of other overriding concerns.

(7) Conclusion to Comments on Policies 34-38

A fundamental flaw in this entire section which would regulate development and growth is that the Legislature has spoken in this area. The responsibility for encouraging development has been located by the Massachusetts Legislature within the Office of the Secretary of Economic and Manpower Affairs, and particularly within the Department of Commerce and Development. Secondly, growth planning has also been addressed by the Massachusetts Legislature in the Massachusetts Growth Policy Development Act (Chapter 807 of the Acts of 1975). Under that Act, which governs the state, local growth policy reports were developed in each community, including the coastal communities; these in turn have been

incorporated into regional growth policy reports, and the regional reports have recently been incorporated into a state-wide report, the Massachusetts Growth Policy Report. Issued under Governor Dukakis' signature in September, 1977, neither the Growth Policy Report, nor the enabling law shows CZM or the Executive Office of Environmental Affairs as having supremacy over the coastal zone as claimed in the CZM program. Thirdly, under the Growth Policy Act and Report, there are only policies which are defined as broad guidelines to aid in infrastructure location and development choices. In contrast, and contrary to the Growth Policy Act, the growth policies are distorted under CZM into fixed, rigid criteria which must be met both singularly and collectively. The DEIS fails to point this fact out.

For the above reasons, among others, the entire "Development" policy section violates a fundamental requirement of the federal DEIS: "a clear sense of direction and predictability for decision makers..." (DEIS, 1-3). Neither private developers nor local officials nor state or federal agency heads will have the slightest inkling whether any proposed project will clear the CZM process or the unlimited legal exposure which is contained in the almost 300-pages of text accompanying these policies.

The DEIS must address the following:

1. What has happened to the legislatively established procedures and responsibilities for zoning?
2. What has happened to the legislatively established procedures and responsibilities for economic development?

3. What has happened to the legislatively established procedures and responsibilities for Massachusetts Growth Policy development?

VI. COMMENTS ON PART II, CHAPTER 3 OF DEIS

Our comments on legal authorities for the individual policies of the CZM Plan are contained in our comments on Part II, Chapter 2, of the DEIS, and in the following documents which are appendices hereto:

(1) Legal Memorandum by John J. Desmond, Esquire, of Boston Edison Company dated April 26, 1977.

(2) Legal Memorandum by Michael T. Gengler, Esquire, of Rich, May, Bilodeau & Flaherty dated May 5, 1977.

(3) Legal Memorandum by Patrick J. Kenny, Esquire, of New England Power Service Company dated May 6, 1977.

(4) Draft Legal Commentary dated October 17, 1977, prepared by an Attorneys' Committee.

(5) Report to the Massachusetts Office of Coastal Zone Management dated July 1, 1975, by Alan H. Kaufman, Esquire, of the Conservation Land Foundation of New England, Inc.

VII. COMMENTS ON PART II, CHAPTER 4 OF DEIS

A. PART II, CHAPTER 4, SECTION A OF THE DEIS FAILS TO DESCRIBE ACCURATELY THE FUNCTIONS OF THE STATE AGENCIES REFERRED TO THEREIN.

As commented on in greater detail in the memoranda of Messrs. Kenny, Gengler, and Desmond, attached to these comments, dated May 6, 1977, May 5, 1977 and April 26, 1977 respectively, and the Draft Commentary on Certain Legal Issues Involved in the Proposed Massachusetts Coastal Zone Management Program prepared by Messrs. Bresnick, Gengler, Kenny, Lee, and Ruddock, dated October 17, 1977, also attached to these comments, the Massachusetts Coastal Zone Management Program cannot be legally adopted or implemented through memoranda of understanding, nor can such memoranda be deemed binding and enforceable against private parties.

As the same memoranda point out, EOEA does not have statutory authority to implement the Massachusetts Coastal Zone Management Programs in the form as written. EOEA does not have authority to issue regulations binding upon EOEA agencies in the substantive decision making entrusted to their care. EOEA and its agencies do not have statutory authority to establish a system of permitted and prohibited uses in the Coastal Zone. (In this regard the "model orders" under the Wetlands Restriction Act and Coastal Wetlands Restriction Act referred to in Policies 1 through 8 are just that, internal Agency "models" with no presumptive validity or binding effect.) EOEA does not have authority to establish an "environmental policy" controlling land use planning and energy policy decisions. Its roles in land use planning and energy policy are purely advisory as recognized by M.G.L. Chapter 21A, Section 2.

As the above referenced memoranda point out, the mere designation of "Critical Areas of Concern" does not give EOEA any substantive authority to impose restrictions on uses in such areas. The resolution of conflicts power of EOEA is devoid of substantive content that could establish regulatory requirements binding on private parties with the force of law. MEPA and NEPA procedures give EOEA no substantive regulatory powers over projects and licensing activity of EOEA agencies or other agencies.

EOEA has no automatic powers to review all Federal agency determinations of consistency with the State program. The Massachusetts Coastal Zone Management Program relies on the notion that State agencies with "parallel" jurisdiction similar to the jurisdiction of Federal agencies will somehow infuse EOEA with powers to review the consistency of the "parallel" Federal agencies with the Massachusetts Coastal Zone Management Program. This scheme fails to recognize the inability of EOEA agencies as well as agencies outside EOEA to transfer their substantive decision making powers to the State OCZM within EOEA. Without such transfer of power it is difficult to see how the OCZM within EOEA would have any permit granting powers parallel to the Federal agency involved. It also fails to recognize the failure of OCZM and other state entities to have enforceable powers upon which to have Federal consistency review in cases where Federal agency powers exist which have no parallel in State agencies.

The discussion of The Massachusetts Environmental Policy Act (MEPA) on P. II-44 of the DEIS fails to discuss in a clear and adequate manner the fact that under Massachusetts Law (M.G.L. Chapter 30 Section 62) the functions of EOEA and its Division of Environmental Impact Review do

not contain any substantive power to accept or reject environmental impact reports or the projects and permits to which the impact reports relate.

B. PART II, CHAPTER 4, SECTION B OF DEIS

See our comments below, Section VII (D), on relations between EOEA agencies and the Executive Office of Environmental Affairs.

C. PART II, CHAPTER 4, SECTION C OF DEIS

See our comments below, Section VII (D), on relations between the Energy Facilities Siting Council and the Executive Office of Environmental Affairs.

D. PART II, CHAPTER 4, SECTION D, OF DEIS, PAGE II-46

In the first paragraph of Part II, Chapter 4, Section D, on p. II-46, the DEIS reaches the unsupported conclusion that the CZM Plan will result in the more effective implementation of existing statutory authorities by State agencies.

The commentary on legal authorities for the policies of the CZM Plan and on the authority of the Secretary of Environmental Affairs to adopt the CZM Plan and to direct its implementation including the legal memoranda which are Appendices to these comments, raise substantial legal issues concerning the validity of the CZM Plan and its 38 policies. The DEIS admits that 21 of those 38 policies are unenforceable. In addition, there are conflicts between different sections of the CZM Plan (See, for example, Policies 1, 2, and 8, which establish a system of permitted and prohibited uses in large areas of the Coastal Zone, and Policies 28-33, which purport to acknowledge the power of the Energy Facilities Siting Council to override such restrictions.

The CZM Plan itself does not adequately delineate the scope of the authorities of individual agencies listed after each policy as having authority to implement the policy. The discussion of the line agencies charged with implementing Policy 1, which commences on page 84 of the CZM Plan, is an example of the Plan's inadequate analysis of legal authorities. This discussion merely re-states the geographical jurisdiction of each of the line agencies or regulatory programs, but makes no attempt to deal with the agency's ability to carry Policy 1 into effect (except in the case of the discussion of the Wetlands Restriction Act, G.L. c. 130, §105). Instead, the CZM Plan glosses over possible inadequacies of legal authority by providing in the Secretary's draft regulation, "No EOEA agency shall apply CZM policy...where to do so would require them [sic] to take an action impermissible at law." CZM Plan, draft regulation, §5.6, p. a-33. All legal issues related to authority of individual agencies under the CZM Plan are thus left open for resolution by litigation. Administrators permit applicants, and persons seeking to represent the public interest are left completely in the dark as to the manner in which these legal issues are to be resolved.

Apart from the question of whether so general a disclaimer as §5.6 of the draft regulations can cure illegal provisions of the CZM Plan (see p. 88 infra), it is not good management practice to leave the scope of each agency's authority to implement specific CZM policies for resolution on a case-by-case basis.

The DEIS should discuss possible negative impacts on existing permitting programs if the CZM Plan is adopted as proposed. The existence of substantial legal questions concerning the validity of the CZM Plan and

inconsistencies within the Plan can lead only to conflicts between agencies charged with implementation of the Plan, to delays in the granting of permits while conflicts are resolved, and to further delay for litigation of legal issues arising from implementation of a poorly drafted and overreaching CZM Plan. Under the existing forty or more Massachusetts statutes, referenced in the CZM Plan, admittedly, there are ample opportunities for delays and increased costs due to inconsistencies of regulatory action. However, by substituting the CZM Plan for existing regulations and standards under current law, these opportunities will be multiplied because of the difficulty of ascertaining the precise manner in which each line agency is to implement the CZM Plan under its own statutory authorities.

These problems will be further compounded if the CZM Plan is adopted at the Federal level and by the Secretary of Environmental Affairs prior to adoption under G.L. c. 30A of individual agency regulations showing the manner in which the line agencies will utilize the CZM Plan in taking actions. Implementation of the Massachusetts CZM Plan in its present form will lead to confusion, conflicts and delays in the permitting prodecure for Coastal Zone projects of all kinds, including energy facilities. Delays will cause increases in the cost of almost every project which must be approved under the CZM Plan. It is likely that some projects may be abandoned or moved to out-of-state locations due to delays and increased costs. A confusing CZM Plan of questionable legality will also interfere with the goal of §306 (c) (8) of the Coastal Zone Management Act, 16 U.S.C. §1455(c) (8), which requires CZM Plans to provide for adequate consideration of the national interest in planning for and siting of energy facilities in the Coastal Zone which are necessary to meet requirements which are other than local in nature. The DEIS is required to discuss these negative impacts of the CZM Plan.

(1) The Secretary's Regulation.

The DEIS accepts uncritically and at face value the proposed regulation of the Secretary of Environmental Affairs (CZM Plan, pp. a-21 to a-67) and assumes that the regulation will have no negative impacts.

Some legal inadequacies of the Secretary's regulation have already been noted in the preceding general discussion of negative impacts of adopting the CZM Plan in its present form. In addition, the following legal issues are raised with respect to the Secretary's regulation, all of which will cause the CZM Plan to have negative impacts which should be considered in the DEIS:

(a) New CZM Standards

The DEIS fails to describe or consider the impacts of the Secretary's regulation on existing regulatory programs within EOEA. The CZM regulation to be adopted by the Secretary incorporates the entire CZM Plan by reference, and directs all EOEA agencies and the Secretary to implement the Plan and enforce their law, process regulatory reviews, conduct program activities, disburse funds, construct works, supervise the construction of works, or otherwise administer their programs in the coastal zone consistently with the CZM Plan. CZM Plan, P. a-33. Each commissioner within EOEA has agreed in "Memoranda of Understanding" to adopt as his own regulation this regulation of the Secretary, including the entire CZM Plan. CZM Plan, pp. a-9 through a-18. The Secretary's regulation requires all EOEA agencies "to apply CZM criteria when they take a lawful action in the coastal zone." CZM Plan, p. a-34. The CZM regulations will make the 800-page Plan itself, rather than existing statutes or

regulations, the operative authority for reviewing applications for permits. Exceptions to the CZM Plan will be permitted only if the Plan requires an action to be taken which is "impermissible at law," or the Secretary determines that more substantial and compelling public interests require that the Plan be overridden. CZM Plan, draft regulation, §5.6, p. a-33. The general fallout of illegal regulatory requirements caused by adopting as a regulation an 800-page document cutting across approximately forty individual regulatory programs cannot be safely buried by the type of "saving clause" used in the Secretary's draft regulation. The provisions of the CZM Plan are too complex and interrelated to be capable of isolated determinations of validity or invalidity under a saving clause. As for the Secretary's override, this procedure is not authorized by G.L. c. 21A or by any of the individual EOEA permit statutes. The individual permitting statutes provide that decisions thereunder are to be made by the commissioners or other authorities having jurisdiction, not by the Secretary. Review of final decisions of such agencies is obtained exclusively under G.L. c. 30A, §14, in the courts.

(b) The CZM Plan Cannot Be Adopted by the Secretary as an Enforceable Regulation.

The alleged power of the Secretary of Environmental Affairs to promulgate the CZM Plan as a binding regulation is principally based on the provisions of G.L. c. 21A, §§3 and 4. The Secretary is authorized by G.L. c. 21A, §3, to conduct comprehensive planning with respect to the functions of the EOEA and to coordinate the

activities of the departments and divisions within the EOEA. The Secretary is further authorized by G.L. c. 21A, §4, to "resolve administrative and jurisdictional conflicts between any such (EOEA) agencies or officer; . . .to implement, upon request of any such (EOEA) agency or officer, programs jointly agreed to by the Secretary and such an agency or officer; . . .to coordinate and improve program activities involving two or more (EOEA) agencies or officers . . ." The power of "comprehensive planning" is clearly confined to the functions of the office of the Secretary itself. These functions do not include the issuance of substantive regulations concerning land-use planning or energy policy. The "coordination" of activities does not imply any power of the office of the Secretary to issue substantive regulations binding private parties as to energy and land-use planning. Likewise, the power to resolve "administrative" and "jurisdictional" conflicts refers to matters such as manpower and budget priorities, inter-agency geographical boundaries and other such ministerial "administrative" and "jurisdictional" matters.

The power of the office of the Secretary to implement programs jointly agreed to by the Secretary and a line agency upon the request of the line agency is limited to programs that are within the jurisdiction of the line agency to begin with. Neither the office of the Secretary nor any agency within the EOEA has the power to establish land-use or energy-siting controls through a system of permissible or priority uses. The CZM Plan contains several examples of such systems. See Policies 1, 2, 8 and 17 of the CZM Plan.

To the extent that the CZM land-use and energy policies are advisory and unenforceable under Massachusetts law, these policies are not binding on federal agencies in issuing federal permits or grants. Despite these serious defects, the DEIS assumes the enforceability of many of the land-use prohibitions contained in the CZM Plan without the adoption of any additional Massachusetts legislation. DEIS, p. 11-7.

(c) Considered as a Regulation, the CZM Plan is Unconstitutionally Vague.

The entire CZM Plan will be incorporated by reference as a regulation of EOEA. Included in this incorporation by references are "technical statements . . . descriptive material, analyses of problem areas or conflicts, regional chapters and other textual discussion." CZM Plan, p. a-33. In addition, the proposed EOEA regulation declares that the "State Environmental Policy" (to be enforced as part of the CZM Plan) shall include not only certain constitutional and statutory provisions, but also "Executive Orders or other statements by the Governor..." and statements of environmental policy promulgated by the Secretary of EOEA by "Secretarial Order." CZM Plan, p. a-29.

If the CZM Plan is to be considered as a regulation, it must comply with the constitutional standards for clarity and precision applicable to regulations so that due process is afforded to parties to adjudicatory or other proceedings. A statement such as "The Implementation of alternatives such as solar, wind and solid-waste energy recovery systems would reduce our dependence on the more

traditional fossil fuel and nuclear forms of energy" (CZM Plan, p. 229) is not the type of material which may be used in a regulation. The CZM Plan contains a multitude of such provisions with an equal number of unresolved contradictions.

Items such as "statements by the Governor" or "statements of environmental policy promulgated by the Secretary of Environmental Affairs by Secretarial Order" cannot be incorporated into regulations without specific references to the statements or orders being incorporated, nor without a rule-making proceeding under G.L. c. 30A providing for notice to the public of what is being adopted. The CZM Plan here attempts to make an end run around legal procedures which are designed to protect the public from arbitrary or dictatorial administrative actions based on standards which have not been formally incorporated into an agency's published regulations. Governmental officers cannot make up the rules as they go along. "Regulation" is defined in G.L. c. 30A, §1(5), as "the whole or part of every rule, regulation, standard or other requirement of general application and future effect . . . adopted by an agency to implement or enforce the law enforced or administered by it." Every such regulation must be adopted by an agency only after notice to the public under G.L. c. 30A, §§2 and 3.

(d) The Secretary's Regulation Has Not Been Proposed under G.L. c. 30A.

The DEIS assumes that the Secretary's regulation will be promulgated prior to program approval. To date, no formal action has been taken by the Secretary to propose any CZM regulation for

adoption under G.L. c. 30A. The adequacy of the DEIS must be questioned if no regulation, or some significantly different regulation, is in place at the time of program approval. It is not possible to address comments to significant aspects of the CZM Plan if implementing regulations are not formally proposed.

(2) Conflict Resolution.

The conflict resolution procedure is described in Chapter 4 of the CZM Plan and in Section 6.20 of the draft regulation of the Secretary of Environmental Affairs, pp. a-37 to a-40 of the Plan. We agree that the Secretary has the power to resolve jurisdictional or administrative conflicts between EOEA agencies under G.L. c. 21A, §§2 and 3. We do not agree, as the DEIS and CZM Plan suggest, that the Secretary has authority under the conflict resolution procedure to interfere in or direct the result to be reached in a permit proceeding before a line agency on the ground that the line agency purports to act inconsistently with the CZM Plan. See CZM Plan, draft regulation, §5.6, p. a-33, and Commentary, p. a-37. Such a result would be contrary to the enabling legislation of the line agencies, and to the state Administrative Procedure Act, G.L. c. 30A, which governs review of administrative decisions. For a more detailed discussion of this problem, see the Memorandum dated May 6, 1977, by Patrick J. Kenny, pp. 6-8. The DEIS does not adequately consider the extent of the proposed conflict resolution or its legal basis

(3) Performance Evaluation.

No comments on this subsection.

(4) Memoranda of Understanding Within EOEA.

The DEIS fails to reflect that Memoranda of Understanding, unless they are publicly promulgated as regulations under G.L. c. 30A, §4, are unenforceable. As discussed supra, p. 91, "Regulation" is defined in G.L. c. 30A, §1(5) as "the whole or part of every rule, regulation, standard or other requirement of general application and future effect... adopted by an agency to implement or enforce the law enforced or implemented by it." Every such rule, regulation, standard or other requirement must be subjected to G.L. c. 30A procedures prior to use by an agency in an adjudicatory proceeding. Lewis-Mota v. Secretary of Labor, 469 F.2d 478, 482 (2d Cir. 1972); City of New York v. Diamond, 379 F. Supp. 503, 518 (S.D.N.Y. 1974) ("The fact that it is entitled 'Memorandum to Heads of All Agencies' does not make it any the less an exercise of the administrative rule-making power...").

(5) Coordinative Functions of Coastal Zone Management.

(a) State CZM May Not Intervene as a Party, Appear as an Expert Witness, or Comment on the Merits of EOEA Actions.

According to the DEIS, p. 11-47, and the CZM Plan, the Massachusetts CZM office will have the power to appear as an expert witness, to intervene as a party, or to submit its comments on any EOEA action affecting the Coastal Zone. The Massachusetts CZM Office has no statutory authorization. As it is currently organized, it is merely a separate function of the Executive Office of Environmental Affairs. From an organizational standpoint, the Massachusetts CZM Office speaks for the Secretary. We do not believe the Secretary of Environmental Affairs has authority to intervene as

a party, appear as an expert witness, or comment upon adjudicatory proceedings which are before the commissioners of EOEA agencies. Although G.L. c. 21A, §§2 and 4, gave the Secretary many powers, no one of these powers encompass intervention or other type of appearance on the merits of an adjudicatory proceeding before one of her departments. The Secretary has the power to appoint and discharge her commissioners (G.L. c. 21 A, §7). An appearance by the Secretary on the merits in an adjudicatory proceeding before the EOEA commissioners or departments could only be interpreted as a direction of the outcome of the case. Appearances by the Secretary on the merits are particularly inappropriate in the case of energy facilities. If the EOEA agency were to deny the permit for an energy facility, the company proposing the project could appeal to the Energy Facilities Siting Council, of which the Secretary is a voting member. The Secretary's position on the Siting Council is judicial in nature, and it is inconsistent with that position for the Secretary to take a position on the merits of a proceeding which could come before her as a judge. A judge in a court of law would have to disqualify himself as to any proceeding in which he participated as an advocate. American Bar Association, Code of Judicial Conduct, Canon 3 (C) (1972).

(b) The DEIS fails to Recognize and Discuss the fact that The Secretary and the Office of Coastal Zone Management lack power to appeal decisions of EOEA agencies to the courts.

The Secretary's regulation, in Section 6.31, p. a-41, purports to grant the Massachusetts Office of Coastal Zone Management the

power to appeal decisions of other EOEA agencies to the courts. According to G.L. c. 12, §3, the Attorney General is the sole official empowered to take appeals from administrative decisions, or otherwise to represent the Commonwealth or its agencies in litigation. Cf. G.L. c. 12, §11D, specifically relating to environmental protection. In Secretary of Administration and Finance v. Attorney General, Mass. Adv. Sch. (1975) 665, the Supreme Judicial Court held that individual agencies could not represent themselves before the courts in obtaining judicial review of actions of other agencies nor could the Attorney General be forced to take an appeal by an agency. The court stated:

> "In consolidating all the legal business of the Commonwealth in one office, the Legislature empowered, and perhaps required, the Attorney General to set a unified and consistent legal policy for the Commonwealth. It would defeat this apparent purpose to allow an agency head, representing narrow interests and with a limited scope, to dictate a course of conduct to the Attorney General, and in effect to destroy any chance of uniformity and consistency." Id., p. 677.

The Secretary's regulation in §6.31 proposes the ultimate administrative absurdity: permitting one agency to sue another agency within the same Executive Office. Conflicts between EOEA agencies are political or governmental questions to be resolved under G.L. c. 21A and the CZM Plan, not by the courts.

(c) Appointment of CZM Coordinators.

To the extent that CZM Coordinators of individual agencies involve themselves in the types of activities discussed above in paragraphs 5(a) and (b), the use of CZM coordinators would also be unauthorized.

(6) Memorandum of Understanding with the Energy Facilities Siting Council.

The DEIS accepts uncritically and without commentary as to possible negative impacts the proposed Memorandum of Understanding with the Energy Facilities Siting Council.

Some aspects of the Siting Council Memorandum of Understanding are not authorized, either because no statutory authority exits upon which to base the provisions, or because of conflict with existing statutory authorities. In addition, the DEIS and the CZM Plan contain contradictory statements about the role of the Siting Council in implementing the CZM Plan which should be clarified.

(a) Memorandum of Understanding, Responsibilities Section, Para. 2.

In paragraph 2 of the "Responsibilities" section of the Memorandum of Understanding between the Siting Council and EOEA, the Council has agreed to recognize the final coastal zone management plan, as promulgated by the Governor, as a "statement of the health, environmental, and resource use and development policies of the Commonwealth." CZM Plan, p. a-19; this statement is echoed by para. 6 of the DEIS on p. 11-47. Because no G.L. c. 30A proceedings have been commenced to adopt the CZM Plan as a regulation, even at the level of the Secretary, and because the CZM Plan cannot, in any event, meet the legal standards applicable to regulations, the CZM Plan itself will not constitute a regulation adopted by a state agency at the time of federal approval. The Siting Council's regulations require that the Council recognize

under G.L. c. 164, §69J, only those policies as have been stated in the state constitution, statutes, and duly promulgated rules and regulations of agencies. EFSC Regulations, Chapter G, Rule 62.9(3). Unless the CZM Plan constitutes one of the above authorities for policies, the Siting Council will be unable to use the Plan as a source of policy in rendering decisions.

There is an even more basic flaw in paragraph 2 of the "Responsibilities" portion of the MOU. The statement is made that the CZM Plan is agreed to be a statement not just of environmental protection policies, but also of health and resource use and development policies. Under G.L. c. 21A, §2, the Secretary of Environmental Affairs is not empowered to establish substantive policies. Even if the Secretary has the power to adopt a policy which must be considered according to G.L. c. 164, §69J, by the Siting Council, such policies must by virtue of the Secretary's office and the preamble to G.L. c. 21A, §2, be limited to environmental protection policies. Other agencies of the state are charged with responsibility for health and resource use and development policies. See, for example, Acts of 1975, Ch. 807, the Massachusetts Growth Policy Development Act, charging a special legislative commission with developing, in conjunction with local growth policy committees and the Office of State Planning, a report on growth and development for Massachusetts, including recommendations for possible legislation. The Secretary of Environmental Affairs cannot presume (particularly in the absence of legislative

authority) that she has the authority under G.L. c. 21A, §2, to set policies for matters unrelated to environmental protection. Nor can the Governor's approval of the CZM Plan elevate the Plan to the level of a statement of health and resource use and development policies. The Governor's approval does not add to the legal status of the CZM Plan according to the Siting Council's published regulations; his approval does not make the CZM Plan a constitution, statute or duly adopted rule or regulation as required by Rule 62.9(3) of the Council's regulations.

(b) Memorandum of Understanding, Responsibilities Section, Paragraph 3.

As stated in Paragraph 3 of the Responsibilities section of the MOU, and on p. 11-47 of the DEIS, the Siting Council has agreed to act consistently with the policies of the CZM Plan. This statement of the DEIS and the MOU neglects to take into account the Siting Council's statutory obligations not only to determine that proposed electric and gas facilities are consistent with current health, environmental protection and resource use and development policies as adopted by the Commonwealth, but also to determine that such facilities "are consistent with the policies stated in section sixty-nine H [of G.L. c. 164] to provide a necessary power supply for the Commonwealth with a minimum impact on the environment at the lowest cost". G.L. c. 164, §69J. The act does not direct that primary consideration be given to any particular policies in derogation of the other statutory factors, i.e., power needs and cost impact.

The requirement placed on the Council to act consistently with the CZM Plan is beyond the Council's authority in another important respect. The Council must be free within its general mandate to balance power needs, cost and environmental impacts to determine which among many conflicting specific "policies" most nearly reflects the over-all policy of the Commonwealth. The CZM Plan may conflict with some other health or resource use and development policy. The Council cannot bind itself in advance to follow the CZM Plan to the derogation of any and all other conflicting state policies. To do so would mean that the Council was circumscribing its statutory discretion. An administrative agency may not alter by regulation or agreement the statutory standard under which it decides cases. Shea v. Vialpando, 416 U.S. 251 (1974).

The MOU in Para. 3 of the Responsibilities section and the DEIS on P. 11-48 state that the Council will adopt regulations requiring the consideration of at least one inland site for coastal energy facilities in accordance with the CZM Plan. The DEIS on p. 11-48 garbles the statement of MOU (Cf. p. a-20 of the Plan, which omits any mention of coastal dependency).

Evaluation of inland alternatives will make the entire state subject to review under the CZM Plan, and the CZM Plan will definitely have impacts on inland areas. These impacts are not discussed by the DEIS.

A further requirement of Para. 3 of the Responsibilities Section of the MOU is that the Council recognize the standing of the State Office of Coastal Zone Management in its adjudicatory proceedings. As noted above, the state CZM office is organized without any statutory authority as a branch of the office of the Secretary of Environmental Affairs. The CZM office has no powers or identity apart from those of the Secretary. It would violate ethical principles applicable to judicial officials (see p. 94 supra) to permit personnel within the Secretary's office to intervene as parties or otherwise appear as advocates before the body on which she sits as a voting member deciding cases.

(c) Memorandum of Understanding, Responsibilities Section, Paragraph 4.

According to Paragraph 4 of the MOU's Responsibilities section, the Siting Council has agreed to give prime consideration to environmental impacts in "areas of critical concern." These areas may include almost any part of the Massachusetts coast. See Secretary's draft regulation, CZM Plan, pp. a-42 and a-43.

The MOU makes a distinction as to such areas which have been restricted under the Wetlands Restriction Act, G.L. c. 130 §105, and those which have been designated but not restricted. Designation without restriction does not constitute a constitution, law or regulation which the Council must recognize. Moreover, the Siting Council is empowered to grant certificates of environmental impact and public need under G.L. c. 164, §69K, to any gas or electric company which is prevented from building a facility because of "disapprovals, conditions or denials by a state or local agency or body"; restrictions imposed on a Wetland by the Department of Environmental Management would constitute "conditions" which may be overridden by the Council.

Finally, as noted above in connection with the discussion of para. 3 of the Responsibilities section of the MOU, the Council must evaluate planned facilities according to each of the statutory standards provided by law. Just as the Council cannot give overriding precedence to one statement of policy, it cannot give prime consideration to environmental impacts in a particular area at the expense of consideration of the need for power and cost impacts.

(d) Interference with Siting Council's Power to Override EOEA Permit Denials

Those portions of the Memorandum of Understanding by which the Siting Council agrees to recognize the CZM Plan as a statement of health, environmental, resource use and development policies of the Commonwealth, to act consistently with the policies of the CZM Plan, and to give prime consideration to environmental impact if an energy facility is to be sited in a critical area of environmental concern, all could be used by opponents of energy facilities to attempt to block a Siting Council override of an energy facility which had been denied a permit by EOEA agencies on the ground that construction of the facility was inconsistent with the CZM Plan. The Council has been granted authority to issue certificates of environmental impact and public need under G.L. c. 164, §69K, to any gas or electric company which is prevented from constructing a facility because of "disapprovals, conditions or denials by a state or local agency or body". There is no statutory exception to the Siting Council's power to override in the case of electric or gas facilities. The Siting Council is thus able to override provisions of the CZM Plan, as well as decisions of EOEA agencies made on the basis of EOEA interpretation of the CZM Plan. The CZM Plan and the DEIS should clearly state the full extent of the Siting Council's powers under Massachusetts law.

(e) Failure to Consider Alternatives

The DEIS should consider alternatives to the Memorandum of Understanding with the Siting Council. The Siting Council has full authority under Massachusetts law to grant or deny permission to construct major energy facilities everywhere in the state, including the Coastal Zone. One alternative to the MOU would be for the Secretary of Environmental Affairs to make a finding, as part of the CZM Plan, that the Siting Council has adequate authority to perform for energy facilities the regulatory functions required of state government under the federal Coastal Zone Management Act, and that general authority to implement and enforce the CZM Plan with respect to energy facilities is accordingly delegated to the Siting Council. The CZM Plan takes a similar approach with respect to the Martha's Vineyard Commission (DEIS, p. II-48, Item 7). The proposed Rhode Island Coastal Zone Management Plan uses this approach to regulation in a number of instances. Wording the CZM Plan in this manner would not unlawfully restrict the Siting Council's jurisdiction over energy facilities, and would eliminate the unclear and ill-considered language of the MOU.

A second alternative which should be considered is a clear statement that the CZM Plan and its policies are to be considered to be only advisory in nature by the Siting Council. This approach would also eliminate the needless restrictions on the Council which are imposed by the MOU.

(7) Martha's Vineyard Commission

The proposed Memorandum of Understanding with the Martha's Vineyard Commission should be available for comment.

(8) Public Participation (Part II, Chapter 4, Section D(8), (9) and (10))

Existing public participation mechanisms have proven inadequate to address the legal and economic concerns raised by significant segments of the business community in Massachusetts with respect to the CZM Plan. In fact, the type of "public participation" used to date in preparing the CZM Plan has not provided adequate opportunities for participation not only to the business community but also to the Massachusetts legislature. Advisory groups which purport to represent the public at large, including business or environmental groups, do not provide adequate substitutes for direct participation by individual citizens or interest groups. Such advisory groups are even less suitable forums for legislative participation. The public participation process utilized to date by the Massachusetts Office of Coastal Zone Management should be thoroughly revised prior to plan approval to insure that no important segment of Massachusetts opinion is denied a voice in decision-making because it is submerged in general advisory groups.

(9) Federal Government Annual Review (DEIS, p.II-49)

The Federal annual review procedure should include specific detailed mechanisms for all interested Massachusetts citizens to participate.

VIII. COMMENTS ON PART II, CHAPTER 5, OF DEIS: LOCAL COMMUNITIES

The Massachusetts CZM Plan contains new standards, which are created in the policies contained in the Plan. These new standards, priorities and biases are proposed to be enforced through existing laws and funding. The DEIS fails to analyze the effects of these new standards both ecologically and economically.

This Chapter misstates the power which this Plan will have over local development decisions. With state funding, state permitting, federal permitting and federal funding all affected by the Plan's policies, there is a serious misrepresentation of the local powers remaining after the Plan is approved (Chapter 5, page II-50).

The Coastal Zone Management Act purports to be a balanced statute for both ecological and economic interests. It is interesting to note in the Massachusetts CZM Plan that of the nine eligible categories for technical assistance only one is within the concerns of a non-EOEA agency. Clearly this testifies to the environmental bias of the CZM Plan. The DEIS fails to address this defect. It fails to describe alternate agency responsibility for the CZM Plan. Of the projects available for funding under the Plan, the bias in the policies toward environmental concerns predispose how financial assistance will be allocated. Why, if this is a State Plan, is the Secretary of Community Affairs not allowed to receive federal CZM funds and use them to help local communities?

How can the DEIS suggest on page II-51 that local communities know the extent of state activities? The DEIS fails to describe or analyze the federal/state relationship, the possible conflicts or how these may be resolved. The citizen advisory councils are not described. It is unclear how these are constituted and how they will make their funding decisions. The DEIS is very brief on how this is accomplished. So called "statewide interests" are not identified or discussed, nor are alternative methods of decision-making considered. Environmental and economic impacts of each suggested alternative should be included in the DEIS.

In the discussion of effects on local communities, there is no mention of economic effects. For example, later in the DEIS there is a reference to revenue loss due to land restrictions. Why doesn't the DEIS discuss this fact in this section? The DEIS here ignores its responsibility to describe and analyze. It is purely a sales tool to dangle the carrot of assistance funds but fails to adequately address the negative aspects of the plan including the loss of local controls and effects on the tax base.

The overview section must include a discussion of program funding. Providing a general accounting of where the money is coming from and where it is going would provide a sense of the priorities which will be placed on various activities. Local funding criteria and priorities should be set forth for discussion and public comment.

Specifically the introductory sentence of this section of the DEIS is both inaccurate and misleading. The plan, in fact, includes new law and permitting. New or specialized regulations are to be promulgated

over and above presently existing regulations. For example Chapter 111, Section 127, of the Massachusetts General Laws enables the State Sanitary/ Environmental Code. No mention is made there of any power to promulgate a specialized code for areas proximate to critical areas under the CZM plan. However, the plan acknowledges the intent to have DEQE promulgate such a specialized code under the umbrella of Title V (see page 92 of the CZM plan). By definition the promulgation process will lend to these new regulations the force and effect of law even where they are not specifically enabled by statute.

As to new or increased permitting, the CZM plan (at page 366) includes an offhand comment concerning a process of issuing a Certification Statement of Consistency. No mention is made in the DEIS of how this is to be accomplished. Who is to make such a determination and what are the parameters of such a certificate? What is to be the treatment of developments of local concern? Will they require certification as well? This seems to indicate that even the unenforceable policies will be at least partially enforceable via this certification process. (See page 366 of the CZM Plan, "other citizen action"). This reference should reflect the fact that section 7.11 of the draft regulation (a-55 of the plan) requires a consistency certificate only for federal actions, or is it the intent to certify all projects?

In addition, no discussion is included in the DEIS concerning the practical effects of the contemplated level of technical assistance to be made available to local municipalities.

During the most critical first year implementation phase "at least three persons will be available" (DEIS page II-50) "on a rotating basis". This means that each of the approximately 75 municipalities can look forward to sharing such aid with 24 other towns and cities. What of the town's legal exposure where such cursory technical aid is taken and serious local decisions are based on that aid? This point must be treated in the DEIS.

The DEIS also fails to take cognizance of the inherent delays in the Massachusetts permitting process by limiting the maximum time period for funded projects to one year. (See DEIS II-51). This is funding based on a hollow promise, with little chance for meaningful local aid. This point must be more fully examined in the DEIS.

IX. COMMENTS ON PART II, CHAPTER 6, OF DEIS

The DEIS on page II-56 incorrectly states that interstate gas facilities are reviewed by the Energy Facility Siting Council. The failure of the Plan and E.F.S.C. to control interstate gas facilities is mirrored in the areas of oil pipeline review. Additionally, the Siting Council does not have total control of the siting of oil refineries vis-a-vis local zoning. Since the Plan relies on the Council for addressing the National need for energy, its failure to discuss the cumulative impact of all the applicable restrictions in the Plan on energy facility siting renders the Plan and the DEIS inadequate.

On pages II-60 and II-61, the DEIS fails to give page numbers for reference in the Plan.

On page II-61, the DEIS discusses Transportation. The DEIS fails to describe how maritime shipping is given high priority. Indeed, the Plan gives a bias to marine-dependent uses, but this can only be achieved by restrictive and negative procedures. For example, the Plan does not provide a mechanism for low interest loans for such development.

On page II-61 (5) the DEIS attempts to describe the National Interest regarding coastal waste treatment plants. Except for a list of "approved" plants already funded in 1977, all future treatment plants proposals must both respond to CZM Policies and will require amendments to the Plan. The Plan has policies which restrict sewer extensions. The problem arises where these CZM policies may conflict with planning determinations under P.L. 92-500, §208. The DEIS fails to present this aspect

of the Plan. It fails to present the questions raised by the conflict of §208 planning and CZM. Finally, the Draft Statement does not present options and alternatives to resolve this conflict. For example, §208 is not biased, as CZM is, against structural solutions.

X. COMMENT ON PART II, CHAPTER 7 OF DEIS: HOW THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM WAS PREPARED

Citizen participation in the preparation of the Massachusetts CZM Plan was inadequate. The Plan is of statewide importance, but there was no attempt to include citizens or interested groups from non-coastal communities; in other words the views of "inland" interests were not solicited even though they would be seriously impacted by the Plan. A significant portion of the Massachusetts citizenry was excluded from the process.

In addition non-resident owners of land in the coastal zone were not invited or had little opportunity to participate in the process.

The DEIS and the Plan should specifically acknowledge that citizen participation and citizen desires are no substitute for decision making by public officials and agencies within their statutory mandates. Citizen participation is only a factor to be considered and public officials and agencies are free to disregard citizens' advice if to do so is required in light of their public responsibilities and obligations.

It is also our understanding that local citizen groups did not generally concern themselves with formulating the basic policies, but rather involved themselves with identifying specific problems in local areas. The DEIS should explain the degree to which such groups were consulted on the basic policies and any changes caused thereby in the development of the Plan.

It should also be acknowledged that the public hearing process is of prime importance because it is only in such a process that problems can be identified in their totality. Even now adequate comment is impossible because of the absence of regulations by EOEA and agencies.

XI. COMMENTS ON PART III, CHAPTER 1, OF DEIS: PROBABLE IMPACTS ON THE ENVIRONMENT

The preamble to Part III on page III-1 correctly states that significant environmental, social and ecomomic impacts will result from Federal approval. This is absolutely true. One wonders, however, how serious the drafters of the DEIS are when only a small fraction of the document considers these impacts. The brevity of this area in the DEIS, as contrasted to the description of the Plan and the "sell" job presented in all the other sections, challenge the National Environmental Policy Act. Clearly, the DEIS is meant to sell the Massachusetts CZM Plan, not to analyze its impact and present alternatives to federal action.

The DEIS on page II-1 in the last paragraph states "...the State's management authorities will be administered differently..." (Emphasis added). This is particularly awkward given the statements on pages II-50 and II-7 to the effect that no new laws or regulations are created. The DEIS does not resolve this conflict. Which is it -- are there new laws, standards and regulations that are "administered differently" or is the CZM Plan a mere restatement of existing laws, standards and regulations?

The DEIS fails to adequately identify the statutory reference for much of the program. In discussing the areas of preservation, it fails to present alternatives and their impacts.

On page III-3, second paragraph, the last sentence is nonsense. There is, however, an indication that some developments will not be addressed. What are these developments? If developments that are not addressed are unknown, what is their range? Are there any examples?

On page III-4, first paragraph on the page, the DEIS attempts to summarize the environmental impacts. However, it fails to accomplish this goal. This paragraph merely re-states the Plan and how it will be phased into effect. What and where are the impacts? Will critical ecological areas suffer as a result of this delay? Why is there a delay when the federal government spent so much money in Massachusetts for three years to effectuate the Federal Coastal Zone Management Act? Finally, where are the alternatives to avoid the delay? These questions remain unanswered because the DEIS fails to assume its responsibilities under NEPA. The DEIS constantly re-states the Plan in order to justify its existence, not to describe the Plan's impacts. The failures of the DEIS testify to OCZM's pre-disposition to approve the Mass. Plan.

In Part II, Chapter 1 (B) the DEIS fails to state what types of development will be shifted inland. Assessments should be made on the effects this inland development will have on transportation systems, water systems, sewer systems, and ecological areas. Might not this effect run counter to the State's desire to direct development into urban centers? How does inland development and loss of tax revenues affect coastal cities and towns? Won't some development move elsewhere, out of the state? Where? How much? Will this affect unemployment? Welfare?

In the "New Development Impacts" section beginning on page III-4, how is it possible to say development will continue when it is being restricted by the Plan? Isn't this a contradiction on its face? In the first paragraph of this sub-chapter, it says, "and permitted subject to certain conditions...near designated recreation or historical sites." What state permit law allows or prohibits actions near historic sites? What is the economic and environmental impact of such a requirement?

The last paragraph on p. III-4 does not accurately describe the other side of the coin. For example, 79% of the coast is restricted, and even the 21% that is remaining has conditions that restrict. Why doesn't the DEIS list and analyze the restrictions that affect the 21%? In previous sections of the DEIS (see, II-6, last sentence and II-50, first paragraph) it was stated that local government retained all its land-use powers. On page III-4, the last sentence states "Many decisions...will be made at the local level..." The word "many" implies not all. The DEIS here admits a loss of local controls. This loss of local control should be precisely described with alternatives.

The first paragraph of page III-5 suggests a coercive method of directing growth. Why doesn't the DEIS refer to this attitude in the earlier section on local impacts? There all the DEIS speaks about is financial assistance. Here the DEIS reports that localities will be encouraged by foreclosing options. The direction of development into already developed areas raises questions concerning the Clean Air Act, areas of non-attainment and non-deterioration. What is this relationship? What effect will it have? Ecologically? Economically? Socially?

In the Ports and Harbors sub-section on page II-5, the DEIS fails to describe how redevelopment funds will be directed into these areas when EOEA has no funding mechanism to accomplish this goal? In the same sub-section, the DEIS admits that "certain projects" can be permitted without state review. What "certain projects"? Is there a gap in the State Plan and how it complies with the Federal law and regulations?

In the sub-section, "Impacts on Coastal Owners" page III-5, the DEIS is inaccurate. Are owner's rights redistributed? The Plan has a

policy to give highest priority to marine-dependent uses. The effect of this priority is to zone ports and harbors. The priority is supposedly enforced with state permits. The owner is burdened -- solely by the CZM Plan. The maritime dependent use is established through industry spokesmen. The coastal owner in this situation sustains a burden (not created by the Legislature) and his rights are redistributed in favor of shipping and fishing interests. The effects of this bias should be precisely described.

In the last paragraph of "Coastal Owner's" page III-6, the DEIS is hopelessly vague. How long is the short run? What justification is there to say the short term burdens are balanced by promoting a quality environment?

In the Section on "Local Government Budgets" page III-6, why doesn't the DEIS list the amounts of CZM monies that will be available for each city and town and the criteria for disbursement? Why doesn't the DEIS admit that some Coastal Zone Management Act monies are loans that must be repaid? What are a community's liabilities? How long is the "long term" for recovery of public investments? The DEIS should state in this section how local development will be constrained. Reading earlier sections, the DEIS suggests that local development choices are unaffected (see p. II-6, last sections and p. II-50 first paragraph). The splitting of these effects confuses the DEIS and clouds the real picture as to the effects of the CZM Plan. This should be clarified.

In the section "State Institutions" on page III-6, the DEIS fails to adequately describe the economic effects of "new review steps". The DEIS does not discuss private sector effects either short or long term.

What impact will this have on firms that are considering Massachusetts for future locations? (Incidentally, how can waterways have "expanded responsibilities" when no new laws are created?)

In the overall area of Environmental and Economic Impacts, the DEIS fails to present alternatives -- alternatives to the overall CZM Plan as Massachusetts filed it, and alternative viewpoints of specific policies or effects of the Plan. In addition, the DEIS fails to analyze alternatives. These failures are so consistent as to give the DEIS the appearance of being one-sided and merely justifying the Plan. Thus the DEIS fails to satisfy the disclosure portion of the NEPA.

XII. COMMENTS ON PART III, CHAPTER 2, OF DEIS: IMPACTS ON EXISTING AUTHORITY

The preamble paragraphs on p. III-8 suggest that existing laws will be intensified and under CZM they will be implemented "differently". How is this in concert with statements earlier in the document (see, pages II-50 and II-6) that no new laws or regulations will be created?

A. PART III, CHAPTER 2, SECTION A

The DEIS on page III-9 inaccurately describes the relationship between the Restriction Act and the Protection Act. The Legislature did not intend two levels of protection for the same ecological area, as the DEIS would have the reader believe. In fact, the Legislature enacted two laws for two degrees of areas. The Protection Act is not a first level attempt at restriction.

The DEIS improperly suggests that the Protection Act should be utilized as a Restriction Act. This view would prejudice the local commission's review, because there would be an avoidance of project analysis and a bias favoring the natural ecological system. The Legislature did not intend such a process. If they did, only one law would have been enacted.

The rate of restriction described by the DEIS on page II-9, first paragraph, is overly optimistic. It took twelve years to restrict 45% of such areas along the coast. The federal monies proposed for the CZM Plan do not seem sufficient to restrict the remaining 55% in three years. The DEIS fails to present funding levels so that the reader is

assured as to the accuracy of the rate of restriction. In view of the requirement for matching state funds, the DEIS does not describe any effect on inland programs resulting from a priority use of state funds for coastal communities. This includes both coastal wetlands and wetlands within the 100 year flood area.

The DEIS on page III-9 makes only a passing reference to property owners who have their land restricted. The DEIS is deficient in this area. Is the loss by an owner in "profits" or is it in "value" of the land? What are the effects on value losses for tax revenue purposes? This area is very deficient in its analysis of the effects of the restriction programs. In particular, it does not indicate that approximately forty suits are pending in Superior Court concerning Wetlands Restrictions. What are these costs? What happens to the CZM Plan if these suits are successful? What happens to the restrictions? Will CZM pay for the takings?

B. PART III, CHAPTER 2, SECTION B

The first sentence of this section improperly states the law. Where in the Wetland Protection Act did the Legislature give local Commissions authority over areas 100 feet from a 100 year flood plain? The statute is only triggered by work on a wetland which "borders...the ocean,...or river, stream, etc." (M.G.L. c.131, Section 40. Emphasis added). At the top of page III-10, the first paragraph, the Plan fails to adequately describe the relationship between the Restriction Acts and the Protections Act (see, Comments to DEIS, Part III, Chapter 2, A).

On page III-11, second paragraph, the DEIS overstates the power of the Wetland Protection Review Board, its mandate and its time table for action. No proposed regulations have come from this Board as of November, 1977. In addition, the DEIS in this paragraph wrongly asserts that regulation will determine in some fashions the "permissibility of particular uses". The Wetland Protection Act is project specific, not site specific, and does not permit regulations to be promulgated that effectively create permitted and prohibited uses. In the same paragraph, the DEIS fails to list the policies that are presumed to be implemented by the Wetland Protection Act. What are they? Are any outside the parameters of the statute? The reader is unable to tell from the DEIS. There is no analysis of the social or ecomomic impacts of this law, particularly in regard to private land owners if the CZM Plan is approved.

C. PART III, CHAPTER 2, SECTION ON WATERWAYS

There is no discussion in the DEIS of irrevocable permits issued by the Legislature. How does the CZM Plan affect these permits and licenses? Is the Legislature bound by the CZM Policies? What are the economic affects of restrictions on granting irrevocable licenses?

The DEIS on page III-11 and III-12 should describe the effects of priority funding for dredge operations on local communities. Are there local costs incurred if the state funding is constricted? Will this policy and ranking affect recreational boating? Where in the statutes concerning Waterways has the Legislature told the Administrator to give priority to non-structural measures? Finally, the DEIS does not state socio-economic effects of the CZM Program on waterways decision making.

D. PART III, CHAPTER 2, SECTION E. ENERGY FACILITY SITING COUNCIL.

See our comments elsewhere on the Energy Facility Siting Council.

E. PART III, CHAPTER 2, SECTION F, MEPA

The first paragraph here fails to alert the reader that the Massachusetts General Laws, Chapter 30, Section 62, MEPA impact report procedure is not a regulatory permit process. It is a disclosure law.

The description of Coastal Program Impacts on p. III-15 fails to present the socio-economic impacts, or the effects on the private landowner and local municipality.

Finally, on p. III-16, the first paragraph, the DEIS admits there are gaps in the protection of historic sites. Why isn't this discussed in the sections and policy on historic sites? The DEIS should adequately describe the effects of this gap on protecting historic sites.

F. PART III, CHAPTER 2, SECTION G, APR'S

After three years of planning and thousands of federal dollars, APR's have not been designated. Without these designations the DEIS cannot adequately describe the Plan. Impacts cannot be assessed unless APR's are known. This section of the DEIS fails to present or analyze socio-economic effects of APR designation or non-designation. In addition, the legal status of APR designation is in doubt. Serious questions have been raised as to the authority for such designation and the scope of its effects.

G. PART III, CHAPTER 2, SECTION H. INFRASTRUCTURE

This section of the plan purports to be the most comprehensive method to effect the Plan. It has no statutory references and has not been approved in any fashion by the Massachusetts Legislature. The DEIS

should assess this lack of authority. Has the Secretary of Transportation approved such statements as the state's "transportation network is virtually complete" (DEIS, II-29). The DEIS does not assess the status of the Secretary of Transportation and the Massachusetts DPW under the CZM Plan. Is EOEA in control of the Transportation Department in the Coastal Zone?

The DEIS states that transportation projects require amendments to the Plan. How is this to be accomplished? What are the impacts on state highways funds of this delay? How often will the Plan be amended? Are all transportation projects listed? Where is the Northern Avenue Bridge Project for the City of Boston? What are the effects of CZM on whether this bridge is moveable or fixed? Finally, is the CZM officer in Massachusetts the only party who can amend the Plan? The DEIS fails to present a description of how and who can amend the Plan.

On page III-19 there is only a brief statement concerning air quality. The DEIS should have an analysis of whether the Plan's policy of concentrating development runs counter to the Clean Air Act, and its restrictions on development in non-attainment areas and prevention of significant deterioration. The DEIS must address this very serious problem and the land-use conflicts that it raises. The DEIS is inadequate in its discussion of the socio-economic aspects of this impact.

XIII. COMMENTS ON PART IV OF DEIS

A. THE FEDERAL ALTERNATIVE

(1) The Coastal Zone Management Program is not adequately comprehensive to achieve the goals and objectives of the Coastal Zone Management Act

The shortcomings of the Massachusetts Coastal Zone Management Program have been addressed in detail in the preceding sections of these comments. The Associate Administrator should withdraw his initial determination that the Massachusetts CZM Plan is adequately comprehensive in scope to achieve the goals of §§302 and 303 of the Coastal Zone Management Act.

We agree that the Massachusetts CZM Plan relies for implementation on a set of strong environmental protection statutes and regulatory programs already on the books. However, as stated on p. IV-2 of the DEIS, "the Massachusetts Program makes changes to its present State and local institutional arrangements..." The main thrust of these comments is that these "changes to State and local institutional arrangements" have been opportunistically concocted for the purpose of implementing a CZM Program without adequate regard to limitations of the statutory authorities for the Program. Although every effort is made in the CZM Plan and in the DEIS to downplay the "changes to State and local intitutional arrangements", in fact these changes have been necessary because the separate regulatory programs by themselves do not consitute a CZM Program. The CZM Plan changes the standards according to which decisions will be made under existing regulatory programs, substituting the Plan for currently effective regulations.

These comments contain many examples of instances in which changes made to existing standards for agency action by the CZM Plan exceed or conflict with the statutory authorities for such actions. The discussion of the Siting Council's relationship to the CZM Plan is one such example. It is significant that the concept of coastal dependency, extolled in this section of the DEIS (p. IV-2) is stated in these comments to be without basis in many existing regulatory programs, including the EFSC, the Wetlands Protection Act program, and others.

In connection with preparation of the final DEIS, the legal sufficiency of the authorities relied upon for the comprehensiveness of the CZM Plan should be reexamined. Because the "changes to State and local institutional arrangements" made by the CZM Plan to achieve comprehensiveness are for the most part without foundation, the CZM Plan should be disapproved.

(2) Massachusetts Lacks Adequate Legal Authorities to Implement the Proposed CZM Plan.

The federal Office of Coastal Zone Management has made an initial determination that the Massachusetts CZM Plan will be supported by adequate legal authorities at the time of implementation. On p. IV-3 of the DEIS, it is assumed that "process regulations and 21A regulations will be in place prior to federal approval." This statement continues,"...the State will have drafts of all the [key substantive program] regulations prior to Federal approval of the Massachusetts Program". To date, there has been no formal proceeding to adopt any regulations under the CZM Plan. The legal inadequacies of the draft

Secretary's regulation have been discussed in detail in our comments on Part II, Chapter 4, Section D of the DEIS. No other regulations have even been distributed informally in draft form. It is totally unrealistic to expect such regulations to be drafted, reviewed, and promulgated within the two months remaining prior to projected federal approval of the CZM program.

We wish to repeat our position that all regulations to be used to implement the CZM Plan should be finally promulgated after completion of public adoption proceedings prior to federal approval of the Plan. Any other course of action can lead only to chaos in the administration of existing state programs in the interim period, and will also result in delays and increased costs for applicants for projects in the Coastal Zone. The CZM Plan by itself, without supporting regulations, is a legal nullity. Again, see the discussion in these comments of Part II, Chapter 4, Section D of the DEIS.

The DEIS on page IV-3 asserts, "...the authority to implement the Program rests not with the regulations but with the authorities given the Secretary under Chapter 21A of the Massachusetts General Laws..." Without regulations adopted under G.L. c. 30A, §§2 and 3, the CZM Plan may not be used to govern actions or procedures within EOEA or the Siting Council. Moreover, the Secretary's powers under G.L. c. 21A, §§2 and 4, do not embody independent authority to create substantive regulatory programs.

The Memoranda of Understanding referred to on p. IV-3 of the DEIS cannot be used to govern agency actions unless the regulation adoption

procedures of G.L. c. 30A are first used to make the MOU's effective. There is no shortcut to implementing a regulatory program which dispenses with the state Administrative Procedure Act.

Similarly, at the top of p. IV-4 of the DEIS, the DEIS states that the Associate Administrator has determined that the energy policies of the CZM Plan are enforceable because the EFSC must abide by state environmental policies. However, unless the CZM Plan is adopted as a regulation, the EFSC will not recognize the CZM Plan as an environmental policy under its own Rule 62.9(3). See our comments on Part II, Chapter 4, Section D of the DEIS. Similarly, to be enforceable, the Siting Council MOU must be subjected to G.L. c. 30A procedures applicable to regulations.

The DEIS recites various disadvantages, chiefly delay, if program approval is postponed to adopt implementing regulations. The DEIS inadequately considers the negative impacts of program approval prior to adoption of all state substantive and procedural regulations. Program approval without regulations in place will not only result in a plan which lacks adequate authority under the federal CZM Act, but also will create chaos in the administration of state regulatory programs. The existence of an unenforceable CZM Plan will complicate approval proceedings under existing regulatory programs because regulatory authorities and intervenors may attempt to use the unenforceable CZM Plan as a guide for actions or approvals.

(3) Consideration by the CZM Plan of the National Interest in Siting Energy Facilities is Inadequate.

These comments have already considered the energy facility siting aspects of the CZM Plan in connection with its discussion of Policies 28-33, and in its discussion of the Siting Council MOU and Part II, Chapter 4, Section D. We point out here that Rule 62.9(3) of the Siting Council's regulations requires the Council to consider only those health, environmental protection and resource use and development policies of the Commonwealth as are adopted in the state constitution, statutes or regulations. As proposed to be implemented, the CZM Plan will not be such a policy (see item (c), p. IV-5 of DEIS). We also note that the Council has no authority to enforce unenforceable policies of the Plan, as suggested on p. IV-6 of the DEIS. The Council does not make policy; it merely looks at existing policies adopted by other responsible state agencies. The Siting Council has no authority to bootstrap the CZM Plan into effect if other state agencies would lack independent authority to implement the Plan's unenforceable policies.

(4) The CZM Plan Does Not Meet All of the Specific Requirements of the Coastal Zone Management Act.

The adequacy of the Massachusetts CZM Program with respect to the requirements of the Coastal Zone Management Act has been discussed in these comments in connection with our review of the Table following page I-4 of the DEIS. The reader should refer to this discussion for our comments on this subject.

B. STATE ALTERNATIVES

This section of the DEIS inadequately explores state alternatives which would be less restrictive than the proposed Massachusetts CZM Plan. For example, the Secretary of Environmental Affairs could find that the Siting Council possesses adequate authority under its enabling legislation to safeguard the interests sought to be protected by the CZM Plan, and could delegate complete implementation authority with respect to energy facilities to the Council. The system of permitted and prohibited land uses Policies 1, 2 and 8 could be modified to a system of conditions. Structural solutions to erosion from flooding could be permitted subject to conditions. We favor Alternative No. 4 (adoption of regulations prior to program approval), Alternative No. 5 (redesign of the boundaries), and Alternative No. 6 (State withdrawal of application for program approval and securing of alternate funding). We oppose the remaining alternatives because inadequate statutory authority exists for these more restrictive policies. With respect to boundaries, the discussion of Wetland areas or anadromous fish runs outside the road boundary (p. a-3 of the CZM Plan) must be clarified geographically. There is no geographical description of these areas. Moreover, the large upland areas (e.g. Manchester, Cape Cod) proposed for inclusion in the Coastal Zone should be narrowed to the areas minimally necessary to carry out the purposes of the Plan. See Memorandum dated May 5, 1977, by Michael T. Gengler, which is an appendix to these comments.

XIV. COMMENTS ON PART V OF DEIS: PROBABLE ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED

This part of the DEIS properly acknowledges that there will continue to be unavoidable adverse environmental impacts.

It should be explained in the DEIS in detail why it is asserted that the effects of the Plan's implementation will, on the whole, be environmentally beneficial. The environmental impacts of activities which would because of the Plan be conducted inland or in other states should be analyzed and compared to the impacts of such activities in coastal areas.

The "very wide range of land use decisions" by local governments should be identified and the environmental impacts thereof discussed in the DEIS.

XV. COMMENTS ON PART VI OF DEIS: RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

This part of the DEIS does not serve its stated purpose. It does not explain the indicated relationship or explain why or how the CZM Plan will have the indicated effects. The bottom paragraph on p. VII-1 states certain conclusions, the basis for which have not been explained in the DEIS or the Plan.

The enhancement of long-term productivity, i.e., of economic improvement and opportunity, is not adequately provided for in the Plan, nor has it been shown that the Plan minimizes "social costs" which accompany development. These "social costs" may only be transferred elsewhere without any benefit and perhaps at a detriment to the overall social, economic and environmental interests of the Commonwealth.

It has not been demonstrated that the Plan "allows growth to continue at present rates" since there is no basis in the Plan or DEIS for concluding that such growth will occur in Massachusetts if growth is excluded from the Coastal Zone.

XVI. COMMENTS ON PART VII OF DEIS: IRREVERSIBLE OR IRRETRIEVABLE COMMITMENTS

This section of the DEIS is almost incomprehensible. In view of the failure to discuss alternatives in many sections of the DEIS and the lack of information on social, economic and environmental effects, it is understandable why this part of the DEIS is so vague. The CZM Plan will, however, have effects on resource utilization and the consumption of resources. It is important that these effects be anticipated and described in the DEIS so that the implications of the program can be adequately assessed.

XVII. COMMENTS ON PART VIII OF DEIS: CONSULTATION AND COORDINATION

See our comments on Public Participation.

XVIII. COMMENTS ON CZM MAPS

Two sets of maps have been included in the CZM Plan. The map which is a foldout enclosure to Volume I shows areas of various hues which will be subjected to restrictions of varying degrees under the CZM Plan. The second set is interspersed throughout Volume II of the Plan.

The DEIS does not adequately consider the maps, their accuracy, or their legal status as part of the CZM Plan. For example, what are the precise boundaries of the variously colored areas on the Volume I map, and how will the restrictions on development delineated by the different colors be implemented? Particular attention should be given to the brown-colored upland areas with septic restrictions. What criteria were used to delineate these areas from areas suitable for development? All assumptions and determinations should be enumerated and explained, and the economic and social impacts of the delineations explained. Finally, is the Volume I map a binding part of the CZM Plan, or is it for informational use only?

The same questions must be asked for the Volume II maps. What is their legal status? How was the extent of shellfish beds, areas subject to erosion, and other critical areas determined? What are the impacts on the Massachusetts economic and social environment of the designations? Were any alternative procedures for designation considered?

XIX. COMMENTS ON THE DEIS APPENDIX

A. MEMORANDUM DATED AUGUST 23, 1977, RE-ENERGY FACILITIES.

Our comments on Policies 28-33 of the CZM Plan, and DEIS, Part II, Chapter 2, Section F and Part II, Chapter 4, Section D cover our principal objections to the CZM Plan's treatment of energy facilities, and these comments should also be considered applicable to the August 23, 1977, Memorandum re-Energy Facilities which appears in the Appendix to the DEIS.

We point out that the August 23, 1977, Memorandum, being an unsigned "position paper" of the Secretary's office, has no legal status as part of the CZM Plan, and does not constitute a regulation. The Memorandum as a whole fails to take into account adequately the necessity for substantive regulations implementing the CZM Plan to be adopted by EOEA and the EFSC prior to the Plan's assumption of the status of a binding statement of environmental policy which the EFSC must consider. Without such regulations, the EFSC cannot act to implement the CZM Plan.

On page 1, the Memorandum states that the CZM Program will evaluate energy facilities "as it would any facilities", with consideration of opportunities for visual enchancement, impacts on recreational opportunities, water-dependency, etc. This statement fails to take into account the prime role of the Energy Facilities Siting Council with respect to energy facilities. Moreover, it does not answer the question, "Are Policies 1-27 binding on the EFSC"? The DEIS and the Plan do not adequately and clearly answer this question.

With respect to items (1) through (4) on pages 3-4 of the Appendix, the Memorandum assumes that many substantive and procedural regulations are already in place. In fact, none of these regulations have even been formally proposed under G.L. c. 30A. The Memorandum cannot serve as a substitute for regulations in assessing the environmental impact of the Massachusetts CZM Plan, or its compliance with federal OCZM regulations for program approval. There is no guarantee the regulations will be issued as outlined in the Memorandum.

We disagree particularly with the first unnumbered paragraph on page 4 of the Memorandum, since the EFSC may under its enabling legislation override <u>any</u> denial, condition or disapproval by a state agency, including Wetlands restriction orders.

Again, the Memorandum on p. 5 assumes, just as do so many portions of the DEIS, that a secretarial regulation under G.L. c. 21A will be in place prior to program approval. No such regulation has been formally proposed. Such a regulation, formally available for public comment, should be part of the DEIS review procedure in order to provide for meaningful public participation. The portions of the CZM Plan most likely to generate comments should not be withheld from the public until after DEIS review has been completed.

On p. 6, the Memorandum fails to take into consideration the fact that the concept of coastal dependency is absent from the Siting Council's enabling legislation, and also from the enabling legislation of the EOEA permitting agencies. Such a concept cannot be made binding upon these

agencies by Secretarial regulations if they are not already a part of the agencies' authorized criteria for decision-making.

Much of the August 23, 1977, Memorandum repeats what has been said elsewhere in the DEIS, and commented upon in connection with such statements in the DEIS. Failure to address these issues again in connection with the Memorandum should not be interpreted as agreement with the Memorandum.

Because the procedural and substantive CZM regulations are not in place, and because many portions of the CZM Plan are beyond the authority of the State agencies mentioned in the Plan, the federal Office of Coastal Zone Management should find that the Massachusetts CZM Program fails to meet the requirements of federal CZM regulations on energy facilities.

B. <u>MEMORANDUM OF JULY 29, 1977 RE-SHORELINE EROSION/MITIGATION PLANNING</u>

Reference is made to our comments on the Coastal Hazards policies.

The Commonwealth has a choice of a variety of options to solve coastal erosion problems. The Plan's preference for a non-structural solution has not been demonstrated to be the best overall choice since alternatives were not adequately offered or discussed with proper consideration of their environmental, economic or social effects. The benefits and costs of alternatives are not examined.

The references to the Wetlands Restriction, Wetlands Protection and Waterways programs on pages 3 and 4 indicate that it is the intention of the Memorandum's author to bind the administering agencies to the implementation of these policies. If so, this is an illegal interference with the actions of administrative agencies since these agencies have not conducted hearings or adopted implementing regulations, and in fact are

unauthorized by law to adopt regulations for many of these policies, as is explained elsewhere in these comments.

The amount of funds available for implementation of Policies 10, 11, and 12 should be estimated and their planned use discussed in greater detail on page 4 of the Memorandum so that the public can comment on the proposed use of such funds.

XX. CONCLUSION

These comments in their entirety discuss our objections to the substance of the Massachusetts Coastal Zone Management Program, as well as the procedural defects under the National Environmental Policy Act and the Massachusetts Environmental Policy Act of the Program approval action. We request that the Commonwealth of Massachusetts withdraw the CZM Plan, and in the alternative, that the Assistant Administrator of the federal Office of Coastal Zone Management disapprove the CZM Plan.

MEMORANDUM

TO: Persons Interested in the Massachusetts Coastal Zone Management Plan

FROM: John J. Desmond, III

SUBJECT: Jurisdictional Relationship between the Massachusetts Coastal Zone Management Program and the Energy Facilities Siting Council

DATE: April 26, 1977

APPENDIX

A. Memorandum of Law by John J. Desmond, III, Esq. of Boston Edison Company, dated April 26, 1977, which relates to treatment of the Energy Facilities Siting Council under the Massachusetts CZM Plan.

B. Memorandum of Law by Michael T. Gengler, Esq., Rich, May, Bilodeau & Flaherty, dated May 5, 1977; which relates to Coastal Zone boundaries and to treatment of general permitting statutes under the Plan.

C. Memorandum of Law dated May 6, 1977, by Patrick J. Kenny, Esq., of New England Power Service Company, which relates to the legal authority of the Secretary of Environmental Affairs to promulgate and administer the CZM Plan.

D. Draft Legal Commentary on the Massachusetts Coastal Zone Management Plan dated October 17, 1977, prepared by representatives of the Massachusetts Home Builders Association, the Greater Boston Chamber of Commerce, Boston Edison Company, New England Power Service Company, Algonquin Gas Transmission Company, New Bedford Gas and Edison Light Company and Fall River Gas Company.

E. Letter of John J. Kearny of Edison Electric Institute to Michael Shapiro, National Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, dated October 28, 1977, with attached commentary on federal consistency regulations.

F. Letter of Robert W. Knecht, Acting Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, to Hon. George Rogers, Chairman of the Joint Committee on Natural Resources, Massachusetts Legislature (undated).

G. Report to the Massachusetts Office of Coastal Zone Management dated July 1 1975, by Alan H. Kaufman, Esq. of the Conservation Law Foundation of New England, Inc. (Note - copies of Appendix G were included in the copies of these comments filed with the Department of Commerce and the Massachusetts Secretary of Environmental Affairs, and are also on file with the submitters of these comments).

APPENDIX A

MEMORANDUM

Jurisdictional Relationship
between the Massachusetts Coastal Zone Management Program
and the Energy Facilities Siting Council

Question Presented:

Are the understandings and commitments evidenced by the Memorandum of Understanding between the Executive Office of Environmental Affairs and the Energy Facilities Siting Council valid, enforceable or appropriate as they purport to regulate the siting of energy (gas or electric) facilities in the Commonwealth?

Background:

The Energy Facilities Siting Council (the "Council") was established in 1974 (Acts 1973, Chapter 1232) and charged with the responsibility of "implementing the energy policies ... to provide a necessary energy supply for the commonwealth with a minimum impact on the environment at the lowest possible cost." The major functions of the Council are to (a) review the long-range forecasts of electric power together with the particular need and location for facilities and (b) issue a certificate of environmental impact and public need for such facility if a local or state agency otherwise inhibits the construction. With reference to the review of long-range forecasts and their related facilities, the Act specifies the type and scope of information to be supplied to the Council, namely, "... expansion, reduction, or removal of existing facilities; construction or acquisition of additional facilities; a description of alternatives to planned action such as other methods of generating, manufacturing or storing, other site locations, other sources of electrical power ..., and no additional electric power ...; a description of the environmental impact of each proposed facility ...." The Council is also to issue a list of guidelines. "A minimum of data shall be required by these guidelines from the applicant for review concerning land use impact, water resource impact, air quality impact, solid waste impact, radiation impact and noise impact." After notice and public hearing, the Council will approve or disapprove the forecast. Thus, the Massachusetts Legislature has delegated or committed the authority to approve long-range forecasts and their related facilities to a specific state agency.

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) declares its policy to be the preservation, protection, development, and where possible, the restoration or enhancement of the resources of the Nation's coastal zone. In addition, the Act is to encourage and assist the states to exercise effectively their

responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zoning giving full consideration to ecological, cultural, historic, and aesthetic values as well as the needs for economic development. The federal government is to make grants for the purpose of assisting the states in the development of a management program for the land and water resources of their coastal zones. Among the listed requirements of such state program is the following:

> (8) A plan process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts for such facilities.

On or about March 10, 1977 the Executive Office of Environmental Affairs ("EOEA") and the Council executed a so-called Memorandum of Understanding setting forth their respective areas of responsibility and operating procedures to be followed under the Coastal Zone Management Plan ("CZM Plan"). Both the statement of existing agency powers and the listed responsibilities under the CZM Plan contain inaccurate descriptions of purpose and scope.

Memorandum of Understanding:

The Memorandum's Statement of Existing Powers contains four paragraphs which characterized the purposes of the EOEA and the Council. The fourth paragraph describes the functions of the Council as follows:

> 4. Pursuant to its statutory scheme, the EFSC reviews proposals for major energy facilities submitted to it by utilities and other energy companies. In its review process the EFSC must determine whether the proposed facilities are consistent with current health, environmental protection, and resource use and development policies as adopted by the Commonwealth. The EFSC may inquire into the need for the facility, the economics of the facility and alternative proposals and sites. An approval from the EFSC is required before an applicant commences construction on any energy facility subject to the act.

The paragraph implies that the Council determination of a facility as consistent with current health, environmental protection and resource use and development policies is mandatory (... the EFSC must determine....). While the Council's inquiry into the need for the facilities, the economics at the facility and alternative proposals and sites is permissive or discretionary (... EFSC may inquire into ....). Such phrasing misstates the plain statutory language which requires the Council to determine that the proposed facilities "are consistent with the current health, environmental protection, and resource use and development policies as adopted by the commonwealth; and are consistent with the policies stated in section sixty-nine H to provide a necessary power supply for the commonwealth with a minimum impact on the environment at the lowest cost." The Act does not direct that primary consideration be given to environmental factors with a secondary or discretionary review of power needs and cost impact. All three factors, i.e., power needs, environmental concerns and cost impact, are of equal importance and weight.

The Memorandum's listed Responsibilities under the Coastal Zone Management Program again contain several points of misstated jurisdiction and purpose. The second paragraph of such section provides:

> 2. The EFSC hereby agrees to recognize the final Coastal Zone Management Plan, as approved by the Governor, as a statement of health, environmental and resource use and development policies of the Commonwealth in the coastal area.

By purporting to embrace the CZM Plan as a comprehensive policy plan of the Commonwealth, the Council bestows policy stature on a document not entitled to such recognition. The current health, environmental protection, resource use and development policies of the Commonwealth are set forth in the constitution, general laws and duly promulgated rules and regulations of agencies. For that matter the Council has shown a specific awareness of policy sources in Chapter G - Long-Range Forecasts and Supplements of its Regulations. (See, Rule 62.9[3]).

The third and fourth paragraphs of such section provide:

> 3. The EFSC hereby agrees to act consistently with the policies of the plan and to amend or adopt such regulations and procedures as may be necessary to implement those parts of the plan which fall under its jurisdiction, including, but not limited to:
>
> a) a regulation or administrative bulletin

> providing for cooperation between the EFSC and the EOEA on the review of any Long-Range Forecast, Supplement, Notice of Intention to Build an Oil Refinery, or Certificate of Environmental Impact and Public Need in which an energy facility is proposed for the coastal zone. Such regulation or bulletin will include provisions
>
> i) that all such submissions will be forwarded to the EOEA for comment and review prior to any hearing before the EFSC;
> ii) that the EOEA and the EFSC will cooperate on developing guidelines for data for initial review pursuant to M.G.L.c.164, §69I(3); and
> iii) that such guidelines will contain a requirement that for any proposed coastal facility, an applicant provide information for at least two alternative sites, one of which shall be an inland site.
>
> b) a regulation or administrative bulletin that recognizes that the administration of the Coastal Zone Management plan by the EOEA or any subdivision thereof may be substantially and specifically affected by a proceeding before the EFSC in which the proposed site or alternatives are located in the Coastal Zone and will therefore recognize the standing of the Coastal Zone management office in any such proceeding.
>
> 4. In conducting its review of facilities proposed for critical areas of environmental concern, the EFSC will give prime consideration to the environmental impact in these areas. While thus insuring a minimum impact on the environment in such critical areas, the EFSC will continue to consider the need for a necessary energy supply at the lowest possible cost and will retain its final power under Massachusetts Law over the siting of energy facilities.

With reference to the promulgation of regulations, the Act specifically empowers the Council to adopt and publish rules and regulations consistent with the purpose of the Act. (§69H[2]). Moreover, the Council in Chapter C - Rules for Adopting Administrative Regulations of its filed and published Regulations, describes the procedure for the adoption, amendment or repeal of such regulations. If the regulations and procedures referenced in this paragraph of the Memorandum are intended to establish a rule, standard, guideline or other re-

quirement of general application it must be promulgated consistent with the requirements of the State Administrative Procedure Law. (G.L.c.30A). An administrative bulletin is limited to matters of the internal management of the Council and should not substantively affect the rights of or the procedures available to the public or parties affected by the Council's activities.

The required provisions of (i) through (iii) of Paragraph 3(a) affect the substantive rights of the applicant electric company or gas company. Subparagraph 3(a)(i) requires review and comment by the EOEA prior to any hearing before the Council. The Act contains no such requirement. In fact, it specifically excludes Council action from the application of G.L.c.30, §§61 and 62 (determination of environmental impact and publication of environmental impact report). The latter section (§62) calls for the submittal of an environmental impact report to the secretary of environmental affairs for comment. Thus, any attempt here to give EOEA preference over the other cabinet secretaries on the Council or afford the EOEA an opportunity for prehearing review and comment is contrary to the language of the Act. Subparagraph 3(a)(ii) calls for cooperation between EOEA and the Council for developing guidelines for data for initial review. (§69I[3]). The 1976 amendment (St. 1976, c.468) to the Act has revised and expanded the application of such guidelines by deleting the reference to initial review. As now amended the applicable provisions of §69I(3), reads:

> The council shall after public notice and a period for comment be empowered to issue and revise its own list of guidelines. A minimum of data shall be required by these guidelines from the applicant for review concerning land use impact, water resource impact, air quality impact, solid waste impact, radiation impact and noise impact.

The emphasis is on minimum of data and does not call for a comprehensive analysis which may be required at the licensing agency level.

Consequently, the EOEA and Council cooperation would extend beyond an initial review and call for a continuing cooperation. Subparagraph 3(a)(iii) purports to establish a requirement that for any proposed coastal facility information must also be furnished on a minimum of two alternative sites, one of which must be an inland site. The Act merely requires a description of alternatives to the planned action and lists other site locations as one of several types of alternatives (i.e., other methods of generating, other power sources, no additional power, etc.). To establish a set number of alternate

site locations will result in duplication and the development of information on sites of remote consideration. Both the reasonableness and relevancy of such requirement is subject to question.

Subparagraph 3(b) of the Memorandum contains a commitment to promulgate a regulation or issue an administrative bulletin which will confer standing of the Coastal Zone management office to participate in any proceeding where a proposed site or alternatives are located in the Coastal Zone. The determination of parties in interest in proceedings before the Council is specifically treated by the Act. (§69N). The status of an entity described as "the Coastal Zone management office" to participate in any such proceeding is unclear. Particularly, where, as here, intervention and participation are treated by the statute and existing Council regulations. (Rules 15.2 & 15.3). Furthermore, the Coastal Zone management office is for all intent and purposes the EOEA, which now would appear at the hearing before the Council in an advocate capacity and also participate in the adjudicatory decision process as a Council member.

Subparagraph 4 of the Memorandum states that where facilities are proposed for "critical areas of environmental concern", prime consideration will be given to the environmental impact. This requirement is defective for two reasons. First, the Memorandum contains no definition of "critical areas of environmental concern", nor for that matter any indication how one would determine what or where they were. Second, the Act defines the Council's responsibility as having three aspects, namely, to implement the Commonwealth's energy policies to provide (1) a necessary energy supply, (2) with a minimum impact on the environment and (3) at the lowest possible cost. Nowhere is the Council empowered to select one factor for primary consideration while relegating the remaining factors to secondary roles.

As appealing as the Memorandum of Understanding might appear to some on first reading, its impact becomes ominous when the other documents of the CZM Plan are reviewed. For example, the Energy Chapter shows plainly the subordinate role in store for the Council. Throughout Policy statements (28) through (33) the Implementation scheme, the marching orders of the Council are explicit:

> "... The EFSC shall promulgate rules and regulations through which it will consider alternatives in the manner described under this Policy...." [Policy (29) - pg. 34]
>
> "... Specifically, the Council shall:
> - weight the air and water quality, noise, and

> visual impacts associated with siting the facility at the alternative and proposed sites, ...
>
> In addition, electric facilities should not be sited in areas designated by the Secretary of Environmental Affairs as Areas for Preservation or Restoration/ Areas of Critical Environmental Concern." [Policy (31) - pg. 36]

Finally, the draft CZM Plan regulations governing Procedures for Actions in the Coastal Zone (7.10) indicate that state agencies in dealing with matters affecting the Coastal Zone are to follow their standard procedures, "... including any modification in these procedures to incorporate CZM policies". The source of control and direction are clear. The Coastal Zone management office will decide what, if any, energy facilities are sited in the Commonwealth.

Comment and Conclusion:

As presently structured the proposed Coastal Zone Management Plan, as it relates to the responsibilities and jurisdiction of the Energy Facilities Siting Council, is deficient in several respects, some of which are highlighted by the Memorandum of Understanding entered into between the Council and the Executive Office of Environmental Affairs. First, the CZM Plan is to include a "planning process for energy facilities" which will anticipate and manage the impacts from such facilities. The CZM Plan cannot preempt the delegated responsibilities of other state agencies, e.g., Energy Facilities Siting Council. Second, the mandated consideration of proposed energy facilities by the Council is threefold - necessary energy supply - minimum impact on the environment - lowest possible cost. Any attempt to have the Council commit itself to ignore one or more of such considerations or grant precedence of one over the others, must fail. Finally, the approvals and orders issued by the Council are adjudicatory in nature and determine the legal rights, duties and privileges of the applicant and other parties. Its decisions must be supported by substantial evidence and contain appropriate subsidiary findings. In sum, the siting of energy facilities in the Commonwealth is presently subject to a balanced and comprehensive review. The proposed CZM Plan and its implementation through the Memorandum of Understanding instead of destroying this balance must give it appropriate recognition and support.

APPENDIX B

April 26, 1977 John J. Desmond, III

MEMORANDUM

SUBJECT: Legal Authorities for Coastal Zone Management Program (Analysis of Boundaries and Land Use Controls)

DATE: May 5, 1977

I. INTRODUCTION

Attorneys representing various public utility companies in Massachusetts have requested the opportunity to present comments concerning the draft Massachusetts Coastal Zone Management Plan dated March 18, 1977. Different aspects of the Plan will be coverd by each attorney submitting written comments. This Memorandum will consider the boundaries of the Massachusetts Coastal Zone as described in the draft Plan, and the authority of the various line agencies (not including the Executive Secretary of Environmental Affairs, whose implementing authority is treated in a Memorandum submitted by New England Power Company, nor the Energy Facilities Siting Council, which is discussed in a Memorandum prepared by Boston Edison Company) to make effective the system of land use controls contained in the draft Plan.

We recognize the value to the citizens of Massachusetts of a Coastal Zone Management Plan, properly adopted and placed into effect, the aim of which is to satisfy the conditions of the Coastal Zone Management Act, 16 U.S.C. §1451 et seq. (the "Act"). We also recognize the hard work and dedication of the

staff of the Secretary of Environmental Affairs, the Governor's Task Force on Coastal Resources, and the Citizen Advisory Committees which are evident in every phase of the draft Massachusetts Plan. However, we are opposed to certain substantive and procedural aspects of the Plan which, in our opinion, represent an attempt to exploit the Plan adoption process to achieve a blanket system of rigid environmental restrictions which will be harmful to the state's economy and to the development of energy facilities and resources, and for which there is no legal authority.

This firm represents a number of public utility companies with interests in the future use of the coastal zone, including Algonquin Gas Transmission Company, New Bedford Gas and Edison Light Company, and Fall River Gas Company. These companies and their facilities are franchised, licensed or certificated by regulatory agencies to serve the public. The existing laws under which they operate, such as the Natural Gas Act, 15 U.S.C. §717 et seq., and the Massachusetts provisions of G.L. c. 164, especially G.L. c. 164, §§69G-69S, establishing the Energy Facilities Siting Council, recognize the interest of the public in the construction of public utility facilities, and provide that in almost every instance (the only exception being construction on state lands by an intrastate utility operating under G.L. c. 164), upon a finding that a proposed facility will serve the public convenience and necessity, such facilities may be constructed notwithstanding other conflicting restrictions. Such a finding by a regulatory agency involves

balancing possible harm to the environment as a result of the construction of a facility against the benefits to the public which the facility will provide in operation. The Coastal Zone Management Act, especially in §§306(c) (8) (16 U.S.C. §1455(c) (8)), 306 (e) (2) (16 U.S.C. §1455(e) (2)) and 305 (b) (8) (16 U.S.C. §1454(b) (8)), provides that this balancing procedure is to continue under the Act, and that the environmental protection goals and energy development goals of the Act are to be considered in relation to one another. The same spirit is evident in the Congressional findings and declaration of policy in the Act. See 16 U.S.C. §§1451 and 1452. The Act does not constitute a mandate for giving overriding precedence to environmental protection.

The gist of these comments on boundaries and land use controls under the draft Massachusetts Plan is that the Plan, as applied to specific geographical areas, goes far beyond any reasonable environmental protection program contemplated by the Act, and ignores in many instances the historic balancing of interests which has governed the construction of energy facilities, and which is expressly preserved by the Coastal Zone Management Act. These comments also assert that there is no legal authority to implement substantive land use controls contained in the Plan by means of the permit statutes upon which the Plan relies.

II. THE BOUNDARIES OF THE COASTAL ZONE

The Coastal Zone is the area which will be regulated

pursuant to the Act. The draft Massachusetts Plan has adopted a system of major roads or other rights of way generallly paralleling the coast as the boundary. Plan, Boundary Chapter, p.3. The actual boundary is 100' inland of the designated roads. All islands are included, in accordance with the 1976 amendments to the Act. Areas such as tidal wetlands and other similar areas inland of the road boundary are also included. In addition, the entire Cape Cod area is included from the Bourne-Plymouth town line eastward.

Although the general principle of using roads or other rights of way as the boundary is as acceptable as any other principle for designing the boundary, in actual application there are a number of specific areas in which the roads or rights of way chosen take in much more land than is necessary or appropriate to comply with the definition of the Coastal Zone in the Act. In addition, in some instances, the Plan includes within the Coastal Zone areas which are not within the permissible area as defined in the Act and in regulations of the National Oceanic and Atmospheric Administration ("NOAA").

The Act provides standards for designating the limits of the Coastal Zone. In 16 U.S.C. §1453(a), the Act states that the zone may extend inland "only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters." Regulations adopted by NOAA further provide that the boundaries of the area to be controlled by a state pursuant to a Plan adopted under the Act may not be more extensive than those called for

by the Act. 15 C.F.R. §923.11(b)(1).

A review of maps prepared by the Coastal Zone Management Program, and as yet unpublished, reveals the following specific areas in which the boundary includes land which the use of which cannot be deemed to have a "direct and significant" impact on the coastal waters:

(1) The Magnolia region of Gloucester and Manchester. The boundary follows Route 127, rather than other streets closer to the coast, and extends as much as one mile inland at elevations of over 150' above sea level.

(2) The Marblehead-Swampscott area. The boundary covers all of Marblehead, a sizeable town, and most of Swampscott, and extends more than one mile inland and to elevations in excess of 100'.

(3) The Cohasset-Scituate-Marshfield area. The boundary follows Route 3A through these towns. This highway is well inland for almost all of its length in these three towns, touching the coastal waters only at a few points such as the North River. There are many streets closer to the coast which could be used as the boundary, and no need to subject large areas in these towns to CZM restrictions.

(4) The Manomet-White Horse Beach area of Plymouth. Again, Route 3A is used as the boundary, despite the fact that in the Manomet area the land is at its highest elevation along the Massachusetts coast, and despite the fact that the boundary is a long distance inland. There are numerous other roads closer to the coast in this area which could have been chosen as the boundary without subjecting wide areas of land to unnecessary restrictions.

(5) Cape Cod. The entire Cape Cod area is included. The inner Cape area varies in width from five to ten miles, and the Falmouth area is even wider than that. Elevations frequently exceed 200' above sea level. Considering the multitude of laws already in effect in Massachusetts affecting wetlands and water quality, the imposition of coastal zone jurisdiction over so broad an area is not only inconsistent with the Act and regulations adopted thereunder, but serves no useful purpose.

(6) Westport Point. Westport Point is a broad peninsula with high elevations along the central spine. There are well-defined roadways near the shore on all sides of the peninsula. The extension of the boundary to cover this peninsula in its entirety is arbitrary and inconsistent with the treatment of similar land areas elsewhere in the state (e.g., Cape Ann).

Because final maps have not yet been published or included as part of the draft Plan, we reserve the opportunity to make additional and more detailed comments concerning the when maps are published.

III. LAND USE RESTRICTIONS

According to the Act, 16 U.S.C. §1454(b)(2), a coastal zone management plan must include " a definition of what shall constitute permissible land and water uses within the Coastal Zone which have a direct and significant impact on the coastal waters." In 16 U.S.C. §1454(b)(5), the Act requires that a plan must also contain "broad guidelines on the priority of

uses in particular areas. . ." Regulations of NOAA further provide, consistently with 16 U.S.C §1451(c) that in determining permissible uses, states should give consideration to the requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal and harvesting of fish, shellfish and other living marine resources. The regulations emphasize and repeat the need to strike a balance between competing needs for land and water uses in the coastal zone. The regulations provide that the determination of permissible and nonpermissible uses must be based upon careful analysis of the impacts of competing uses, rather than on arbitrary exclusions of types of uses, regardless of their environmental impact. See 15 C.F.R. §920.12 and 923.12. There is no requirement in either the law or the regulations that the coastal zone must be protected from any further environmental change through development. Similarly, the requirement in 16 U.S.C. §1454(b)(3) that a plan contain an inventory of areas of particular concern does not direct the preservation of every area designated as an area of high natural productivity or essential habitat for living resources pursuant to 15 C.F.R. §§920.13 and 923.13, nor must the plan enable the commercial development of every site identified as an area where developments and facilities are or may be constructed which are dependent upon coastal waters.

Under the Act and the NOAA regulations, the plan is a procedural tool for classifying and establishing priorities of use in the coastal zone. The plan itself is not required

to establish the land uses to be permitted or excluded in any particular area, or to carry such restrictions on land use into effect. The regulations of NOAA require only that the ability to control land use be demonstrated by the plan, not that the plan itself adopt such restrictions. See especially 15 C.F.R. §§920.14 and 923.14. Although the plan must contain "State policies or guidelines on land and water use in the coastal zone," such policies or guidelines need not take the form of blanket prohibitions, but could appropriately consist of priorities or factors to be considered by regulating agencies having jurisdiction in permitting or not permitting a particular use in a particular area. The requirements of the National Flood Insurance Program, used as a justification for the draft Plan's flood hazard policies, are similarly flexible, and permit exceptions to local flood control regulations, especially for public utility uses. See 24 C.F.R. §§1910.3, 1910.6 and 1910.22(a)(2). Such regulations, even in flood-prone areas, need prohibit only "nonessential or improper" installation of public utility facilities. 24 C.F.R. §1910.22(a)(2). The land use policies adopted under Policy 8 of the draft Massachusetts Plan are much more rigid and restrictive than necessary to conform to federal regulations for flood hazard insurance eligibility.

The draft Massachusetts plan goes far beyond the minimum requirements of the federal law and regulations, in that it contains in several of its enumerated "policies" specific permitted and prohibited uses in designated areas. The per-

mitted and prohibited uses, when viewed in relation to the extent of the areas covered, amount in their practical effect to a freezing in their natural state of all undeveloped areas immediately adjacent to the shoreline. Finally, there are contradictions between the policies establishing permitted and prohibited uses in Significant Resource Areas (SRA's), Areas for Preservation and Restoration (APR's) and flood zones and the policies with respect to ports and harbors and energy facilities. If the policies with respect to SRA's, APR's and flood zones control the policies on ports and harbors and energy facilities, as appears to be the case, the latter policies are meaningless. The opportunity to balance the relative importance to the public welfare of competing land uses in the coastal zone, which is one of the policies of the coastal zone legislation which Congress thought important enough to write into the Act, has been omitted from the draft Massachusetts Plan.

A. THE DESIGNATED RESTRICTED AREAS AND USES PERMITTED AND FORBIDDEN

The major land use restrictions contained in the draft Massachusetts Plan are found in policies 1, 2 and 8. In sum, the areas restricted by these policies include the following:

(1) Saltmarshes.

(2) Shellfish flats.

(3) Dune areas.

(4) Sandy beaches.

(5) Barrier beaches.

(6) Salt ponds.

(7) Designated APR's, which may include, but are not limited to, areas (1) through (6) above, plus areas which are known spawning grounds for fish, commercially valuable plants, anadromous fish runs, feeding and breeding areas for waterfowl or birds dependent on coastal resources, and areas of high water quality or potential to meet highest water quality standards.

(8) Areas of special flood hazards, with velocity, that are inundated by tidal floods, (the coastal high hazard area) designated as zone V1-30 under the National Flood Insurance Program.

(9) Areas of special flood hazards having water depths and/or unpredictable flow paths between (1) and (3) feet and with velocity, designated as zone VO under the National Flood Insurance Program.

(10) Areas of special flood-related erosion hazards, designated as zone E under the National Flood Insurance Program.

The "permitted uses" in areas numbered (1) through (6) and (8) through (10) above are as follows according to the draft Massachusetts Plan (see pp. 2-B/34 - 2-B/36 and Coastal Hazards chapter, p.10):

a. the construction and maintenance of cat walks, observation decks, wharves, piers, boathouses, boat shelters, fences, wildlife management shelters, and above ground electric

and communication lines providing these structures are constructed on pilings or posts to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the area,

b. the cultivation and harvesting of shellfish and worms for bait, and the excavation and construction of areas for the cultivation of shellfish and other marine foods,

c. outdoor recreation activities,

d. salt march haying, dune and marsh grass planting, Irish moss harvesting,

e. the installation of floats, construction of duck-blinds,

f. the construction and maintanence of a minimum legal and practical width driveway providing an alternative means of access from a public way without building upon ecologically significant resource areas is unavailable. Such driveway shall be constructed in a matter which does not restrict the flow of the tide and shall be constructed of permeable material, and shall not be treated with any petroleum product or salt,

g. the enlargement to minimum legal and practical width and the maintenance of existing raised roadways,

h. the installation and maintenance of underground electric, communication, sewer, potable water, and residential gas lines, providing the surface vegetation is restored substantially to its original condition, i.e. revegetation as necessary for restoration,

i. dredging, excavation, filling, and other construction for a boat channel limited to single family use (subject to specified conditions); maintenance dredging of existing channels and mooring basins; the construction, expansion, and maintenance of beaches, including beach nourishment <u>except</u> on salt marshes and shallfish flats; the construction and maintenance of boat launching ramps (subject to specified conditions); ship channels in port areas (see Policy 18); and bank stabilization and shoreline protection works which meet the policy criteria set forth in <u>Coastal Hazards</u> Policies 11 and 12.

In addition, in salt ponds only, dredging for the enhancement of shellfish and other marine food productivity is permitted.

The prohibited uses in the areas described above in paragraphs (1) through (6) and (8) through (10) are as follows:

All activities, except those needed to accomplish the above permitted uses, shall be prohibited. Such prohibited uses shall include, but not be limited to:

a. the filling, placing, or dumping of any soil, loam, peat, sand, gravel, rock or other mineral substance, refuse, trash, rubbish, debris, or dredge spoil,

b. the draining, excavating, dredging, or removal of loam, peat, sand, gravel, soil, or other mineral substances,

c. the discharge of hazardous substances, the discharge from a sewage treatment facility, and the discharge of thermal effluent from a power plant or other industrial source.

The use policies in designated Areas for Preservation and Restoration are more restrictive than those listed above. We note that with respect to the APR's, the plan provides in a footnote that "in situations where compliance with this policy would conflict with the compelling public interest, the conflict resolution process should be used." Plan, p.2-B/40. No such provision is provided for areas restricted by Policies 1 or 8. Although a discussion of the adequacy of such a provision as a means to reestablish the balancing of interests underlying the permitting of public utility facilities is beyond the scope of this memorandum, we note that the Massachusetts legislature has already established the Energy Facilities Siting Council and the Department of Public Utilities to oversee the granting of permits which override other local or state land use restrictions. Neither the Executive Secretary of Environmental Affairs nor these two state agencies may repeal or amend these statutes to deprive these two agencies of jurisdiction to act on permit applications under their basic legislation. The imposition of a "conflict resolution procedure" giving the Executive Secretary power to override the Council or the Department is absolutely contrary to existing statutory provisions. See G.L. c. 164, §§69G-69S; G.L. c. 40A, §3; G.L. c. 164, §§71-75G; G.L. c. 166, §§21-32. Neither the Management Chapter's discussion of the conflict resolution procedure nor the draft EOEA regulation (§7.20) makes any mention of applying the procedure outside the EOEA agencies. See Plan, p.4-16.

The areas restricted or to be restricted under paragraphs

(1) through (10) above constitute the entire Massachusetts shoreline. There is no type of coastal area which is not included, either as a saltmarsh, beach, flood-prone area, or other specified area. The restrictions on uses in these areas unconditionally bar the construction of any type of public utility facility within or through these areas except transmission lines.

Policies 1, 2 and 8, because of these blanket land use restrictions, render the construction and land use policies adopted in the Ports and Harbors and Energy chapters meaningless.

Although the Energy chapter provides that energy facilities not subject to the jurisdiction of the Energy Facilities Siting Council are subject to Policies 1-27, the Energy chapter nowhere states that facilities subject to the Council's jurisidiction are not subject to such policies. In fact, the Memorandum of Understanding with the Energy Facilities Siting Council requires the Council to give "prime consideration" to environmental impacts in the areas of critical environmental concern.

In summary, the Plan purports to adopt a comprehensive and highly restrictive system of permitted and prohibited land uses within areas of varying dimensions along and adjacent to the shoreline, but nevertheless constituting a continuous strip extending for the entire length of the Massachusetts coast. Such a system of land use regulations is not a requirement of the Act or of the NOAA regulations, and the absolute exclusion

from this strip of public utility uses (except for transmission lines) is contrary to the Act. The legal authority of line agencies to implement such a system (excepting the discussion of the Executive Office of Environmental Affairs and the Siting Council, as previously noted) will be discussed in the next section of this Memorandum.

B. THE LACK OF LEGAL AUTHORITY IN MASSACHUSETTS FOR STATE AGENCIES TO ADOPT A SYSTEM OF PERMITTED AND PROHIBITED USES IN THE COASTAL ZONE.

We have three principal legal objections to Policies 1, 2 and 8 as they appear in the draft Massachusetts Plan:

(1) Public utility uses, except for transmission lines, are automatically excluded from the designated areas, contrary to provisions of the Act (see discussion in Part A above).

(2) The system of predetermined permitted and prohibited uses of the draft Plan permits no consideration of whether a particular prohibited use will have "a direct and significant impact on the coastal waters" (see 16 U.S.C. §1454(b) (2)).

(3) The permit and license statutes relied upon by the draft Plan as legal authority for implementation of the permitted and prohibited use system do not provide legal authority for adoption of such a system.

Issues No. (2) and (3) will be considered in this section of this Memorandum.

1. "DIRECT AND SUBSTANTIAL IMPACT ON THE COASTAL WATERS"

The Plan must demonstrate that Massachusetts has the ability

to control land use in a manner which will exclude uses which have a "direct and significant impact on the coastal waters." See 16 U.S.C. §§1454(b) (2), 1455(c) (7), 1455(d) and 1455(e). The state may choose the means by which such control is achieved. 16 U.S.C. §1455(e) (i); see also the draft study by David A. Rice, "Legal and Institutional Resources for Implementation of the Massachusetts Coastal Zone Management Program", pp.3, 11-12, and 30-31.

The blanket use restrictions contained in Policies 1, 2 and 8 may exclude uses which would not have "direct and substantial" impacts. Not only are such use restrictions inconsistent with 16 U.S.C. §1454(b) (2), but they exceed the permissible limits of police power restrictions, since such restrictions must have a reasonable relationship to the public health, safety or welfare. The Massachusetts Supreme Judicial Court has stated, "The preservation of privately owned land in its natural, unspoiled state for the enjoyment of the public by preventing the owner from using it for any practical purpose is not within the scope and limits of any power or authority delegated to municipalities under the Zoning Enabling Act." MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 640-1 (1970). Because the restriction imposed by the Duxbury Board of Appeals in MacGibbon operated to exclude a use which the court found would not interfere with the ocean food chain or pose a flood hazard, the court overturned the Board's refusal to grant a special permit. The court instead ordered the Board to resolve any problems by means of conditions and safeguards. MacGibbon v. Board of Appeals of Duxbury, Mass. Adv. Sh. (1976), 143, 149-55.

The land use controls in Policies 1, 2 and 8 would eliminate the possibility for such a resolution, since the Plan fails to provide for any solution of a proposal for a non-permitted use other than prohibition. In addition, as will be noted in the next section, Policies 1, 2 and 8 would, if adopted as regulations by the permittings agencies referred to in the draft Plan, unlawfully deprive these agencies of a significant measure of discretion which has been vested in these agencies by the legislature.

2. UNLAWFUL UTILIZATION OF PERMIT AND LICENSE STATUTES AS AUTHORITY FOR A PREDETERMINED SYSTEM OF PERMITTED AND PROHIBITED USES

Apart from the two wetlands restrictions acts (G.L. c. 131, §105, and c. 131, §40A), the statutes relied upon as authority for the land use restrictions of Policies 1, 2 and 8 are permit or licensing statutes.

The wetlands restriction statutes provide authority for imposing direct restrictions on the use of specified types of significant areas. However, the restrictions imposed under such statutes must be reasonably related to the interests sought to be protected. Cf. MacGibbon v. Board of Appeals of Duxbury, supra, 356 Mass. 635. Under the wetlands restriction statutes, the state must pay for the privilege of restricting use of property in such a

manner that the property is taken for public use. We also wish to state our disagreement with assertions by counsel for the Coastal Zone Management Office that the Energy Facilities Siting Council may not override wetlands restrictions. According to G.L. c. 164, §69K, the certificate procedure is available to override "any disapprovals, conditions or denials" by state agencies (emphasis added).

The permit and license statutes furnish no authority for imposing, by means of regulations or otherwise, a predetermined set of permitted and prohibited land uses. The essence of a permitting statute is that an applicant for a permit must have an opportunity to present his case and to prove that he meets the standards established by the statute for issuance of the permit. The permitting agency cannot adopt rules and regulations that deprive applicants of the opportunity to make such proof, nor may such regulations deprive the agency of a portion of its statutory subject matter jurisdiction, or change the statutory standards on the basis of which the agency decides cases before it.

The power of administrative agencies to adopt rules and regulations has been outlined as follows by the Supreme Court:

> "The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law -- for no such power can be delegated by Congress -- but the power to adopt regulations to carry into the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity." Manhattan General Equipment Co. v. Commissioner of Internal Revenue, 297 U.S. 129, 134 (1936).

The Massachusetts Supreme Judicial Court follows the same standard in reviewing administrative regulations: "But an administrative board or officer has no authority to promulgate rules and regulations which are in conflict with the statutes or exceed the authority conferred by the statutes by which such board or office was created." Bureau of Old Age Assistance of Natick v. Commissioner of Public Welfare, 326 Mass. 121, 124 (1950).

Time does not permit an exhaustive analysis of each of the permitting statutes relied upon as authority for the system of permitted and prohibited land uses described in Policies 1, 2 and 8. Instead, this Memorandum will focus on G.L. c. 131, §40, the wetlands protection statute, as possible authority for the Commissioner of the Department of Environmental Quality Engineering to adopt regulations applying the restrictions in Policies 1, 2 and 8 to the granting of permits under that statute. Much of what is true of the Commissioner's authority under that statute is equally applicable to other permit or license statutes cited in the draft Plan.

According to G.L. c. 131, §40, any person seeking to conduct any work in the areas covered by the statute must file his plans with the conservation commission and DEQE. The conservation commission (or DEQE, on an appeal from the conservation commission) must hold a hearing, and issue an order of conditions regulating the construction.

The statute does not confer unlimited discretion on the conservation commissions and DEQE to regulate the use of the areas under their jurisdiction pursuant to the statute. The legislature has provided a standard according to which all administrative actions carried out under the statute must be measured. This standard provides as follows:

> "If after said hearing the conservation commission, selectmen or mayor, as the case may be, determine that the area on which the proposed work is to be done is significant to public or private water supply, to the ground water supply, to flood control, to storm damage prevention to prevention of pollution, to protection of land containing shellfish, or to the protection of fisheries, such conservation commission, board of selectmen or mayor shall by written order within twenty-one days of such hearing impose such conditions as will contribute to the protection of the interests described herein, and all work shall be done in accordance therewith." G.L. c. 131, §40.

In order to regulate a project, the body holding the hearing must first find that the area in which the work is to be performed is significant to one of the enumerated interests. Second, any conditions which are imposed must contribute to the protection of the enumerated interests. Although DEQE is required to make regulations by the statute, such regulations are limited to those which "effectuate the purposes of this section." G.L. c. 131, §40.

An examination of the statute itself fails to reveal any express power delegated by the legislature to DEQE to establish predetermined land or water use restrictions. A comparison of G.L. c. 131, §40, with statutes which do expressly enable the adoption of such restriction, serves to distinguish the legislature's intent in G.L. c. 131, §40, from the very different intent manifested by the land use restriction statutes. See, for example, the definition of "zoning" in the zoning enabling act, G.L. c. 40A, §1:

> "'Zoning', as used in this chapter, shall mean ordinances and by-laws, adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of

their present and future inhabitants.:

Also see Mass. Const., Amend. Art. LX:

> "The general court shall have power to limit buildings according to their use or construction to specified districts of cities and towns."

Other similar provisions are contained in G.L. c. 40C, applicable to historic districts.

If the predecessor agency of DEQE did not already have sufficient power to apply predetermined land use restrictions to wetlands and other covered areas under the predecessor of G.L. c. 131, §40, which was enacted in 1963, there would have been no need to enact the wetlands restriction laws, G.L. c. 130, §105, and G.L. c. 131, §40A, which were added in 1965 and 1968, respectively.

Under a permit statute, the permitting agency is bound to utilize the procedures provided for in the statute, and may not rewrite the statute to establish new prerequisites for a permit which have no basis in the existing statutory framework. For example, the New York State Liquor Authority adopted a rule which stated that the number of certain types of liquor licenses was to be limited to the number of such licenses as of a certain date. The Authority further provided that waivers to that policy could be granted upon certain conditions. The State Liquor Authority regulation prohibited local licensing authorities established by the statute from accepting or acting on applications for licenses unless the applicant had previously obtained a waiver from the Authority. The statute regulating the granting of liquor licenses provided that the applicant would apply in the first instance to the

city or town licensing board. The statute permitted the Authority to adopt fixed numerical limitations on the number of licenses issued, but did not provide for any procedure for pre-application waiver by the Authority of such limitations.

The court stated, "The change which rule 45 seeks to impose on the statutory scheme by requiring a pre-application waiver is no mere matter of detail; it goes to the very heart of the procedure prescribed by the legislature . . ." The court noted that an unsuccessful applicant who failed to obtain a waiver was denied a hearing, a written statement of the grounds for denial, and judicial review under applicable statutes. Gross v. New York City Alcoholic Beverage Control Board, 7 N.Y. 2d 531, 166 N.E. 2d 818, 821 (N.Y. 1960). The opinion concluded, "More specifically, to state the matter briefly, the Authority is without power to adopt a scheme of its own to deal with applications for licenses and employ it as a substitute for that provided by the legislature." Id. at 822.

A regulation of DEQE which stated preconditions for the granting of permits under G.L. c. 131, §40, either as land use restrictions or as grounds for automatic, mandatory denial of permits, would be similarly outside the authority of DEQE as established under G.L. c. 131, §40. Such regulations would deprive applicants of their right to a hearing before the conservation commission and to a decision of the local body exercising the discretion allowed to it under the statute. If a decision of the local body is not appealed, DEQE has no authority to interfere. Depending on the form taken by

the restriction imposed by DEQE, applicants could also be deprived of their right to judicial review under G.L. c. 30A, §14, applicable to adjudicatory hearings, and limited instead to review of regulations pursuant to G.L. c. 30A, §7, and c. 231A. The standards and procedures of review under these statutes differ materially. Predetermined land use restrictions would also deprive the conservation commissions and DEQE of their discretion to control potentially harmful development by imposing conditions, thereby leading to situations similar to that discussed by the Supreme Judicial Court in MacGibbon decisions.

Adoption of predetermined land use policies applicable to the granting of orders of conditions under G.L. c. 131, §40 would change the standard under which the conservation commissions and DEQE would act under the statute. Regulations which modify the standard pursuant to which an administrative body makes its statutory determinations are not permitted. For example, when a statute provided that liquor license applications should be granted upon a showing by the applicant that the license would serve the "public convenience and advantage", there was no power in the licensing authority to deny an application on the basis that there was no need for a liquor store in the location applied for in view of the type of neighborhood there. Barry v. O'Connell, 303 N.Y. 46, 100 N.E. 2d 127 (N.Y. 1951). See also Ernst & Ernst v. Hochfelder, ____ U.S. ____, 47 L. Ed. 2d 668, 688-9 (1976) (Securities and Exchange Commission, in adopting Rule 10b-5, had no power to modify standard of conduct provided by §10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b), to cover conduct not involving scienter, since scienter

was a requirement established in §10(b) of the Act); Shea v. Vialpando, 416 U.S. 251 (1974) (Colorado Aid to Dependent Children regulation restricting employment expense exclusion from gross family income to no more than $30 per week was not authorized by statute which mandated that gross income test "take into consideration. . . any expenses reasonably attributable to the earning of any such income"); and Farrell Lines, Inc. v. United States, 499 F. 2d 587 (Ct. Cls. 1974) (Federal Maritime Agency could not exclude certain payments to seamen falling within statutory description of included items in determining operating-differential subsidy).

Through the adoption of regulations, an agency may not place into effect a regulatory scheme which differs from that contemplated by its enabling legislation. A system of permitted and forbidden land uses is substantially different in nature from the permitting system contemplated by G.L. c. 131, §40. Thus, a statute administered by the Pennsylvania Department of Agriculture made it unlawful to offer for sale any adulterated food. "Adulterated" was defined as "mixed, colored or changed in color. . . whereby damage or inferiority is concealed, or so as to deceive or mislead the purchaser; or if, by any means, it is made to appear better or of greater value than it is." The Department of Agriculture was given the authority to adopt rules and regulations "for the proper enforcement thereof, including rules and regulations setting up definitions and standards of articles of food. . ." Bakery products, under the Department's regulations, were required to be free from added color, either of synthetic or natural origin. Defendant was arrested and charged with selling adulter-

ated food when he served a representative of the Department two pieces of lemon pie containing "Jell-O Lemon Flavor Pie Filling and Pudding" which were colored with artificial coal tar dye. The Supreme Court of Pennsylvania held that the Department's regulation represented an unlawful expansion of the Department's rule-making authority, since the addition of an artificial color did not conceal defects in the pie or make it to appear better than it was or to have a greater nutritional value than it actually possessed. Commonwealth v. DiMeglio, 385 Pa. 119, 122 A. 2d 77, 80 (Pa. 1956). See also Volunteer Firemen's Relief Association of the City of Reading v. Minehart, 425 Pa. 82, 227 A.2d 632 (Pa. 1967) (Auditor General had no power to disallow payments to Firemen's Relief Association on the ground that Association required membership and payment of dues and initiation fee as prerequisite for death benefit paid out of state tax reimbursements, since statute requires payments to be made to the relief association recognized by the city for such purpose, and the plaintiff Firemen's Relief Association was so recognized); Lewis v. Florida State Board of Health, 143 So. 2d 867 (Fla. App. 1962) (Enabling statute containing authorization to adopt regulations furthering specific enumerated powers, together with "Execution of any other purpose or intent of the laws enacted for the protection of the public health of Florida" did not authorize adoption of substantive rules governing pest control companies, since such a purpose was not one of the specifically enumerated powers, nor was it granted by any other statute enacted to protect the public health) and Sentner v.

Colarelli, 145 F. Supp. 569 (E.D. Mo. 1956); aff'd sub nom. Barton v. Sentner, 353 U.S. 2 (1957) (per curiam) (Statute authorizing Attorney General to impose restrictions on freedom of movement of alien subject to deportation did not authorize restrictions on alien's opportunity to associate with other persons, since such restrictions were for the purpose of regulating subversive activities, a subject not covered by the deportation statute).

An administrative agency has no authority to narrow the scope of its statutory jurisdiction, or to disclaim any of its powers granted by the legislature. If an agency is directed by its enabling legislation to consider certain factors in reaching a decision, it cannot adopt regulations which would cause a particular factor to be ignored. For example, the California indeterminate sentencing law had been construed by the state supreme court to require consideration of all relevant factors, including post-conviction factors, in determining sentences under the act. The California Adult Authority adopted regulations fixing sentences for offenders primarily in relation to the nature of the principal commitment offense, with extensions of the sentence for post-conviction offenses. Other augumenting factors included the offender's prior record and prior, concurrent or consecutive prison sentences. Because the regulation did not require the Authority to take into account mitigating post-conviction behavior, the regulation was found to be invalid. The California appellate court stated:

> "The directive leaves mandatory criteria in the corners of the field, awaiting an occasional gleaner. Administrators, like other humans, tend to obey visible directions signs and ignore invisible ones. Left to stand, the directive would permit disregard of indispensable standards." In re Stanley, 54 Cal. App. 3d 1030, 126 Cal. Rptr. 524, 531 (Ct. App. 1976).

Similarly, in Knowles v. Butz, 358 F. Supp. 228 (N. D. Cal. 1973) the applicable statute required for the purpose of the household income test for eligibility for food stamps that a household constituted a group of individuals living as one economic unit, sharing common cooking facilities and for whom food is customarily purchased in common. The Department of Agriculture adopted a regulation defining household as a group of persons who share common living quarters and share expenses for such quarters. The regulations had the effect of excluding from the food stamp program individuals who shared living quarters, but did not share cooking facilities or purchase food in common. The District Court held that the regulation unlawfully narrowed the scope of the statutory food stamp program.

Regulations which categorically prohibited the granting of permits for certain types of uses in the areas covered by G.L. c. 131, §40, would unlawfully narrow the jurisdiction of the regulatory bodies under the law to grant permits for such uses upon proper findings, and would also deprive these bodies of jurisdiction to consider the full range of factors mandated by the statute in acting on an application.

What has been said in this Memorandum concerning the powers of DEQE and the conservation commissions under G.L. c. 131, §40, can be applied equally well to other similar agencies and statutes, including the Energy Facilities Siting Council and its enabling legislation.

If these agencies may not adopt regulations adopting a predetermined system of permitted and prohibited land and water uses, they may not accomplish the same result indirectly through so-called Memoranda of Understanding. According to G.L. c. 30A, §1(5), "regulation" is defined as "the whole or part of every rule, regulation, standard or other requirement of general application and future effect...adopted by an agency to implement or enforce the law enforced or administered by it." A Memorundum of Understanding in which an agency agreed to issue permits only for specified permitted uses would constitute a regulation, and if not adopted pursuant to the procedures of G.L. c. 30A, the Memorandum would be unenforceable. Lewis-Mota v. Secretary of Labor, 469 F. 2d 478, 482 (2d Cir. 1972); City of New York v. Diamond, 379 F. Supp. 503, 518 (S.D.N. Y. 1974) ("The fact that it is entitled 'Memorandum to Heads of All Agencies' does not make it any the less an exercise of the administrative rule making power...").

This section of this Memorandum has considered the legality of the adoption of regulations under permit and licensing statutes to establish a predetermined system of permitted and prohibited land uses. The wetlands protection statute, G.L. c. 131, §40, has been considered as a typical example of the permit statutes upon which the

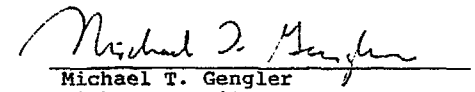
draft Massachusetts Plan relies for authority to adopt such a system. We have concluded that adoption of such regulations is beyond the authority of the persons charged with administration of these statutes.

The propriety of administrative regulations must be measured by a single standard: the administrative agency's enabling legislation. The validity of regulations is not determined by examining their purpose, and deciding whether they are "bad" regulations or "good" regulations. The authority of an administrative agency is circumscribed by the statutes applicable to it, whether the agency is devoted to environmental protection, the licensing of businesses to serve alcoholic beverages, the regulation of welfare programs, or the control of aliens. The system of constitutional checks and balances is undermined equally whether an ultra vires regulation is promulgated to restrict the use of land or to deprive persons of civil liberties.

IV. CONCLUSION

These legal comments on the draft Massachusetts Coastal Zone Management Plan have been offered for the purpose of calling certain aspects of the Plan which we believe to be improper or unauthorized by appropriate statutes to the attention of the Coastal Zone Management Program at an early stage of the adoption proceedings. We

believe that an appropriate Coastal Zone Management Plan can be achieved for Massachusetts by following closely the legislative mandates of the agencies which will participate in carrying the Plan into effect.



Michael T. Gengler
Rich, May, Bilodeau & Flaherty
294 Washington Street
Boston, Massachusetts 02108
Tel.: 617-482-1360

May 6, 1977

MEMORANDUM FOR: PERSONS INTERESTED IN THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM

FROM: PATRICK J. KENNY, ATTORNEY, NEW ENGLAND POWER SERVICE COMPANY

Attached is a memorandum challenging the authority of the Massachusetts Secretary of Environmental Affairs to substantively regulate land use and energy facilities planning in the Coastal Zone and questioning the procedural adequacy of the use of Memoranda of Understanding to control agency rulemaking.

APPENDIX C

Enclosure

THE AUTHORITY OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS TO SUBSTANTIVELY REGULATE LAND-USE AND ENERGY FACILITIES PLANNING IN THE COASTAL ZONE BY MEANS OF THE "POLICIES" FOUND IN THE STATE CZM PLAN (Particularly Nos. 28-33), AS INCORPORATED BY DRAFT REGULATIONS 6.1, 6.2 and 6.3, LACKS A SUFFICIENT FOUNDATION IN LAW.

A. Chapter 704 of the Mass. Acts of 1969 does not provide the Secretary of Environmental Affairs with any authority to issue substantive regulations of any kind.

A fundamental reorganization of state government was effected by 1969 c. 704. According to the CZM Plan, at p. 4-2, this reorganization combined 43 different agencies and programs into one secretariat. According to the Plan, "the legislature also recognized that this marriage of diverse programs would require central direction and thus gave to the Office of The Secretary powers to plan and coordinate the operations of the individual programs, to have central budgetary responsibility, and to resolve conflicts." (at p. 4-2).

This interpretation of 1969 c. 704, as it relates to EOEA, is generally accurate but contains one misleading implication: 1969 c. 704 did not give the Secretary power to plan the operations of the individual departments and program under her roof. As codified in MGL. c 6A, §4, "Duties of the Secretaries", the 1969 Act reads as follows:

> "Each secretary shall act as the executive officer of the governor for accomplishing the purposes of his executive office. He shall conduct comprehensive planning with respect to the functions of said office and coordinate the activities and programs of the state agencies therein. He shall conduct studies of the operation of said agencies with a view to effecting improvements.... He shall from time to time recommend to the governor such changes as he shall deem desirable in the laws relating to the organization, structure, efficiency or administrative functions, services, procedures and practices of any such agency or agencies. He shall review and act upon budgetary and other financial matters concerning said agencies, in accordance with sections 2C, 3, 3A, 4, 9B and 29 of ch. 29."

By virtue of this legislation, the Secretary obtained only budgetary and ministerial coordinating powers over the departments newly reorganized within her office. The general purpose of the 1969 reorganization was not to change the substantive functions or services provided by the various departments and programs affected, but to provide a more rational scheme for their administration. The above language reflects this goal, precisely. The executive functions there enumerated authorize the Secretary to act upon budgetary matters, conduct efficiency studies, and recommend such changes in administrative organization and internal procedure as those studies may suggest. These are the Secretary's rock-bottom responsibilities. The directive to conduct "comprehensive

planning...and coordinate" means little more than this. Read in context, as it must be, this directive does not grant the Secretary broad power to "comprehensively plan" the substantive programs implemented by the various state agencies within the executive office. The power to "comprehensively plan" is limited to the functions of the executive office proper; and the power to "coordinate" activities of the various line agencies refers, as the ensuing sentences make clear, only to organizational, procedural and budgetary matters.

The "comprehensive planning" power literally refers only to the executive office proper, which arguably includes the Secretary herself and her four immediate "divisions". By contrast, the five "departments" under EOEA are semi-independent agencies having their own enabling legislation, duties and powers; and are tied to EOEA only by reason of the 1969 government reorganization act, for the purposes intended thereby - namely, the rationalization of service delivery systems.[1] If it extends at all to activities of the line agencies, the "comprehensive planning" power too must be limited to matters of administrative coordination and the budget, as the ensuing descriptive sentences suggest. (These sentences, indeed, are descriptive of the above two powers of the Secretary, and not additive thereto. Note the absence of such words as "and" or "also"). Section 4, read as a whole, can sensibly yield no other conclusion.

The nature of the power to "coordinate" activities of the line agencies, similarly, is substantively sterile. As already noted, the purpose behind 1969 c. 704 (now MGL c. 6A) was non-substantive. That Act was an indiscriminate general reorganization effort to rationalize the operation of related or overlapping departments and programs. 1969 c. 704, §50 clearly illustrates this point:

> Such recommendations [for further governmental reorganization to be made by the newly created Executive Secretaries] shall be made with a view to the eliminating of duplication and overlapping in the functions, administrative practices and facilities of said agencies, the combination and coordination of information systems, the creation of administrative structures which will assure coordinated and joint planning, the establishment of clear and identifiable lines of authority and allocations of responsibility, the coordination and consolidation of the delivery of state services at state and regional levels and the enlargement of career opportunities.

The language here is consistent with that in MGL c.6A, §4, above, and with the spirit of the initial reorganization effected by the legislature. The focus in each instance is on the coordination of service delivery systems - not on the substance of the services delivered. The Secretary's "planning" and "coordinating" powers, under 1969 c. 704, therefore, are clearly limited to budgetary or other ministerial concerns.

Consequently, although the governmental reorganization act of 1969 does place the following five "departments" - DEOE, DEM, MDC, F&A and WF&RV - under EOEA; it does not provide any authority by which the Secretary might mandatorily regulate the substantive programs of these line agencies. Neither does it provide the Executive Office with any authority by which the Secretary might directly and substantively regulate activities in the coastal zone.

B. M.G.L. c. 21A, §§ 2,3,4, contrary to the claims made at pages 4-2 to 4-8 of the CZM Plan, do not provide the Secretary of Environmental Affairs with any authority to issue substantive regulations affecting energy facility siting and operation in the coastal zone.

1. The powers granted to EOEA by c. 21A, §2 regarding land-use planning and energy-related activities are purely advisory, and therefore do not provide a statutory basis for substantive regulation of these subjects by the Secretary.

EOEA was created as a cabinet level office within the executive branch of the state government by M.G.L. c. 21A, added by Acts of 1974 c. 806. Section 2 of c. 21A details the powers and responsibilities of this office. Together with §§ 3 and 4, section 2 allegedly provides statutory authority for the substantive regulation of coastal zone activities. Relying on this section, the Secretary has attempted to regulate, among other things, energy-related activities in the coastal zone by means of the policies found in the state's CZM Plan, which in time are soon to be made effective by regulation (see current draft reg's 6.1-6.3).[2] In fact, the only EOEA regulations permissible under c. 21A, §2(28) authority (the power to promulgate "regulations necessary to carry out their statutory responsibilities") are those relating to (a) matters of administrative procedure and coordination (pursuant to c. 6A, §4 and c. 21A, §§3,4), (b) matters of the budget (c. 6A, §4), (c) the implementation of joint programs voluntarily entered into by the Secretary and a line agency (c. 21A, §4(2)), (d) planning for the functions of the Executive Office proper (c. 6A, §4 and c. 21A, §3), and (e) the implementation of the substantive functions of the Office proper (as defined by relevant portions of c. 21A, §2). Regulations promulgated by the Secretary, such as the CZM Plan policies in question (in particular #'s 28-33), cannot exceed and must conform to one of the above categories or be judged ultra vires.

Of all the alleged sources for EOEA authority, only c. 21A, §2(17) specifically addresses energy-related activities. Section 2(17) provides: in the process of carrying out the state environmental policy, the EOEA shall "analyze and make recommendations, in cooperation with other state and regional agencies, concerning the development of energy policies and programs in the commonwealth." This power is purely advisory. As such it cannot possibly serve as a foundation for the promulgation of substantive regulations having the force of law.

EOEA's power to influence land use planning and regulation, as granted by §2(16), is likewise advisory only: to "assist other state and regional agencies in developing appropriate programs and policies relating to land use planning and regulation in the commonwealth." Section 2(16) also fails to provide legal authority for the issuance of substantive regulations with the force of law purporting to affect, albeit less directly than regulations under §2(17), the siting and operation of energy facilities.

More serious sources of potential authority for influencing energy-related activities are §§2(9) and 2(10). The Secretary is thereby authorized to ...

> promote the best usage of land, water, and air to optimize and preserve environmental quality by encouraging and providing for, in cooperation with other appropriate state agencies, planned industrial, commercial, recreational and community development. [§2(9)]

> [and to] provide for the preservation and abatement of water, land, air, noise, and other pollution or environmental degradation. [§2(10)]

These and similar subparts (notably §§2(2)-2(7) and 2(11) might conceivably provide a basis for substantive regulation of the coastal zone having restrictive external impacts on energy planning and programs. The general directive of §2, to "carry out the state environmental policy"; and the provisions of §2(1), to "develop policies, plans and programs for carrying out ...[that] assigned duty;" might also be read to authorize substantive regulations that in turn tangentially affect energy programs.

However, §§ 2(16) and 2(17) do not provide for direct imposition of land use and energy planning regulations by the Secretary of Environmental Affairs or by the Departments and Divisions within the Secretariat. In the case of a conflict or controversy involving land use or energy planning, one would expect these specific subparts to preempt the less specific. Such a conflict or controversy might arise, moreover, whenever a rule pursuant to another subpart effectively does more than "analyze and recommend" on the subject of energy. The list of 28 enumerated § 2 responsibilities, after all, certainly appears to be definitive (all inclusive) and not merely illustrative of the concerns to be faced when "carrying out the state environmental policy". The list of (28) specific duties, furthermore, covers at length a great breadth of subjects, thoroughly, one by one, in carefully chosen language. In some instances the Secretary is directed to "develop", "encourage", "manage" or "provide" (subparts 1-3, 5-15, 19); and in others to "assist", "advise", "analyze", "aid" or "recommend" (subparts 4, 16-18, 23, 27). In still others the duties of the Secretary are clearly academic or educational, oriented towards research and the maintenance of data banks (subparts 20-24). Finally, there are provisions calling for the keeping of records and accounts (26), for the promulgation of necessary regulations (28), and a specific authorization to receive federal grant money in the name of the Commonwealth (25). The nature of this carefully articulated scheme argues strongly that the treatment of a specific subject, such as energy, in a manner so as to severely restrict the powers of the Secretary

thereon, was deliberate. It further suggests that the scheme was intended to be complete and exhaustive. There is, in fact, no language present that suggests a contrary intent. Note also in this regard, that other, independent agencies, such as EFSC, are vested by the legislature with primary State jurisdiction over energy planning matters; and the rational scheme of governmental reorganization begun in 1969 certainly would not allow proliferation, at the cabinet level, of substantive and binding energy regulatory powers.

For all of the above reasons, M.G.L. c. 21A, § 2 fails to provide EOEA with any authority to substantively regulate energy-related activities in the coastal zone by means of any regulation purporting to have the force of law - such as CZM polices #28-33. Note in this regard, the claim made at page 4-9 of the CZM Plan:

> The effect of the Secretary's regulation is that all EOEA agencies are to carry out the CZM Plan in full in granting permits, in disbursing funds, or in conducting any kind of activity in the coastal zone. In other words, should an issue arise as to the weight to be given to CZM policies, they are to be dispositive.

This statement is clearly erroneous insofar as it concerns CZM policies 28-33. The statutory responsibities of the Secretary are outlined in M.G.L. c. 6A, §4 and c. 21A, §§2,3, and 4. None of these sections direct the Secretary to "develop", "encourage", "manage", "provide" or otherwise substantively affect either "land use planning" or "energy policies and programming in the Commonwealth." Its enumerated powers in these areas are purely advisory. The power to issue regulations, as granted in § 2(28), is limited to the promulgation of rules "necessary to carry out. . .statutory responsibilities". Consequently, the only permissible substantive EOEA regulation of energy programming will be purely advisory.[3] They will neither carry the force of law, nor bind third parties. Both independent State agencies and EOEA's own line agencies, therefore, will be free to disregard CZM policies 28-33. Their promulgation and incorporation into formal executive regulations of the Secretary (6.1-6.3), carrying the appearance and claim of being legally binding, therefore, should be voided as an action ultra vires.

2. The powers granted to EOEA by c. 21A, § 3 are largely ministerial, or otherwise concerned with matters of internal procedure, and wholly unrelated to substantive issues affecting land use planning and energy facility siting in the coastal zone.

In M.G.L. c. 21A, § 3 the legislature has provided that "the Secretary shall conduct comprehensive planning with respect to the functions of the office and shall coordinate the activities and programs of the departments and divisions within the office. He shall continually review the operation of the office with a view toward improving administrative organization,

procedures and practices, (and) promoting economy and efficiency". The duties and powers here established are two: comprehensive planning for the Office of the Secretary, proper; and coordination of all divisions and departments within the office including the five departments or line agencies which have their own enabling legislation, authority and responsibilities, and which stand generally independent of the Secretary except in matters budgetary or procedural. (Recall M.G.L. c. 6A, §4, discussed above, at pages 1-2.)[4] The first of these two powers clearly applies only to the functions of the Executive Office proper, and does not extend to the five semi-independent "departments" of EOEA. The language used here carefully distinguishes the "functions" subject to "comprehensive planning" - those of "the office"; and the "activities" subject to "coordination"- those of all "divisions and departments within the office." The fact that the Executive Office is composed both of four "divisions" directly within the Office of the Secretary, and five "departments" (each containing many subdivisions and programs) that are more loosely attached to EOEA by virtue of c. 6A reorganization; supports the distinction drawn here, as in c. 6A, § 4, between the proper subjects of comprehensive secretarial "planning" and the proper subjects of secretarial "coordination".

The activities of DEQE, DEM, MDC, F&A and WF&RV (the five semi-independent "departments"), according to this view, are subject only to the secretarial coordinating power. Read as a whole, c. 21A, §3, suggests, as did the parallel language of c. 6A, § 4 (see pages 1-3, supra), that the "coordination" of line agency activities (and possibly the office-function planning power as well) is a non-substantive ministerial duty defined by the ensuing sentence as a continuing review of "operations ...with a view toward improving administrative organization, procedures ...economy and efficiency." Nothing herein suggests that the coordinating power was intended to effect Secretarial control over the substance of the programs coordinated. Rather, as in the case of c. 6A, §4, this Secretarial power appears to be intended for the purpose of rationalizing service delivery systems; not for the purpose of affecting, in any way, the content of the substantive services so delivered. Moreover, the words "and" or "also" do not appear, so as to suggest not that the "review" of operations was intended to be additive to, but descriptive of the coordinating (and planning) responsibilities enumerated.

Upon statutory powers of this nature the authority to substantively regulate energy programming cannot be based. Furthermore, because land use planning and energy program regulation are not among the "functions of the office", according to c. 21A, §2 (EOEA power in these areas, recall, is not substantive but only advisory): the "comprehensive planning" power established by §3 cannot sustain CZM policies 28-33.

3. The powers granted to EOEA by c. 21A, §4 do not provide any authority by which the Secretary might substantively regulate energy-regulated activities in the coastal zone.

M.G.L. c. 21A, § 4 adds to the Secretary's powers in the following language:

> In order to enable him to coordinate and improve the operations of all departments, divisions and other administrative units within the office, the Secretary shall have the following powers and duties ...
>
> (1) the power and duty to resolve administrative and jurisdicitonal conflicts between any such agencies or officers;
>
> (2) the power and duty to implement, upon request of any such agency or officer, programs jointly agreed to by the Secretary and such an agency or officer;
>
> (3) the power and duty to coordinate and improve program activities involving two or more agencies or officers.

The conflict resolution power granted in §4(1) is restricted to "administrative and jurisdictional conflicts" between line agencies. This is perfectly consistent with the preceding interpretations of secretarial "coordinating" power under c.6A, §4 and c. 21A, §3. As in the case of such ministerial coordinating power, §4(1), here, cannot be reasonably construed to provide legal authority for the substantive regulation of energy programs by the Secretary. The powers granted pursuant to §4(3), moreover, present an identical case. Their subject, "coordination and improvement" of line agency activities where two or more such agencies are involved, was the essence of the § 3 directive. Generally speaking, § 4 appears to be a footnote to § 3, illuminating specific aspects of the Secretary's general "coordinating" powers. Section 4, after all, is introduced with the words: "In order to enable him [the Secretary] to coordinate and improve the operations of all departments ...with the office...." For comparison's sake, recall that the §3 directive was to "coordinate the activities and programs of the departments...within the office...[and] review the operation of the office with a view towards improving administrative organization...." Given this relationship between §§ 3 and 4 it is difficult to imagine how §4 might succeed in supporting substantive energy regulations where §3 failed to provide legal authority for the same ends.

This same infirmity also affects §4(2), which, in addition, is self-limited to the secretarial implementation of joint programs voluntarily entered into by the Secretary and her line agencies. Such implementation proceeds only upon request of the latter and presupposes that the latter have the statutory authority to conduct such programs. Note, of the five EOEA departments, not one has authority to regulate such energy-related

activities as facility siting. The energy policies of the CZM Plan, soon to be Secretarial regulations; therefore, cannot be premised on the legal authority of c. 21A, §4(2). None of the possible parties to the type of voluntary agreement (MOU) contemplated by §4(2), neither the Secretary nor any of the five departments, have the authority to conduct substantive regulation of energy facility siting. Voluntary agreements between the Secretary and independent (non-line) agencies such as EFSC, an authority that can regulate facility siting, do not provide a basis, under §4(2), for Secretarial implementation of such extra-jurisdictional programs as the regulation of energy facility siting.[5]

Consequently, neither §§2,3 or 4 of c. 21A of the General Laws provide any authority by which the Secretary of Environmental Affairs might substantively regulate energy-related activities in the coastal zone.

C. Assuming, arguendo, that the Secretary has some authority to issue substantive regulations affecting the coastal zone; she has nevertheless exceeded the limits of her delegated authority to carry out the state enviornmental policy because substantive energy regulations (CZM policies 28-33) have been issued without legal foundation.

As already detailed, the Secretary has no legal authority to promulgate and implement substantive energy regulations such as those found in CZM policies 28-33. Even assuming, arguendo, that the Secretary has some authority under relevant subparts of c. 21A, §2 to issue substantive regulations affecting the coastal zone, the promulgation of policies 28-33 constitutes an ultra vires action.

EOEA's delegated authority may be found in c. 6A, § 4 and c. 21A, §§2,3 and 4 of the General Laws. It has already been shown that none of these statutory sections authorize substantive energy regulation or land use planning. Neither can this defect be cured by reliance on c. 21A, §2's general authorization to "carry out the state environmental policy." The language used is clear. Its directive is to "carry out", not "create" that policy. EOEA may not claim the power to substitute for the legislature in this respect. The legislature has not granted such power, and could not legally do so without first providing standards (either express or implied) by which EOEA would determine that policy.

In c. 21A, § 2(1) EOEA is further authorized to "develop policies, plans, and programs for carrying out their assigned duties;" to wit, the carrying out of the state environmental policy, and the ministerial coordination of the office and its departments (as per §§ 3 and 4). CZM policies 28-33 developed presumably under c. 21A, § 2(1) authority; however, advance neither the coordination of the office and its departments nor the carrying out of the state environmental policy as found and elucidated in various acts of the legislature. Under the constitutional doctrine of non-delegation followed in this state, such a defect is fatal. Clearly stated in Commonwealth v. Diaz, 326 Mass. 525 (1950);[6] this doctrine prohibits the legislature

from delegating purely legislative authority such as power to make or create policy. Only the power to fill in details or further develop a policy already legislatively established may be delegated - and only if the legislature provides the agency so authorized with sufficient guidelines for the task. The enumerated subparts 2(2) to 2(28) appear to satisfy this condition. Legislature statements of the state's basic environmental policy, and guidelines for its further development by EOEA, may be found here and in other statutes; notably M.G.L. c. 30, §61 (M.E.P.A.), and article 49/97 of the state constitution. The §2(1) authorization, therefore, generally appears to be valid in form. Nevertheless, the various CZM policies actually promulgated, and the purposes promoted thereby, may still lack sufficiently identifiable legislative sources. Any given "determination" of the state environmental policy made by EOEA may, upon proper scrutiny, fail to meet the tests established by the Diaz line of cases. In the present case, CZM policies 28-33 should (but do not) have an established basis in law, and should be (but are not) designed to promote an end enumerated by the legislature in one of the above mentioned legislative statements of the state environmental policy.

CZM policies 28-33, soon to be formal regulations of the Secretary when incorporated into regulations 6.1-6.3, do substantively affect the development and planning (and therefore the substantive regulation) of energy-related activities in the coastal zone:[7]

28) Maximize the use of existing oil terminals. For new oil terminals, ensure that enviornmental impacts and effects on port operations are appropriately considered.

29) Consider the siting of oil tank farms in areas outside the coastal zone.

30) Weigh the environmental and safety impacts of locating proposed coastal gas facilities at alternative sites.

31) Consider alternative sites, including inland locations, prior to siting electric generating facilities in the coastal zone.

32) Consider alternative sites, including inland locations, for refineries. For deepwater ports consider alternative coastal sites to ensure that harm to the marine environment is minimized.

33) In exploiting indigenous or alternative sources of energy (off-shore oil and gas, coal, solar, wind, and tidal power) minimize, to the extent practicable, adverse impacts on the marine enviornment, especially with respect to fisheries, water quality, and wildlife, and on the recreational values of the coast.

Because the above regulations are not justifiable under c. 21A, §§ 2, 3 or 4, as demonstrated supra, they have already failed to satisfy the Diaz requirements as regards one of the three identifiable legislative statements of the state environmental policy.

In addition, the Massachusetts Environmental Policy Act, M.G.L. c. 30, § 61, which directs:

> All agencies, departments, boards, commissions, and authorities [to]. . .determine the impact on the natural environment of all works, projects or activities conducted by them and. . .use all practicable means and measures to minimize damage to the environment. . . .[emphasis added].

provides no authority for EOEA to promulgate policies 28-33.

Substantive energy regulation is not an "activity conducted by them," where EOEA divisions and departments are concerned. Similarly, article 49/97 of the Constitution:

> The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose

fails to provide such authority. This definition of public purposes and environmental rights might well be construed to include appropriate regulation of energy-related activities. EOEA, however, is the wrong office to exercise substantive energy regulation powers, because such powers are beyond the jurisdiction of the Secretary and her several line agencies. Any EOEA regulation, pursuant to § 2(28), or policy pursuant to § 2(1), regardless of its relationship to some legislative statement of the state environmental policy (such as Article 49/97) would nevertheless be invalid if designed to carry out something other than the Secretary's "assigned duties" or "statutory responsibilities". Precisely because EOEA § 2 powers are carefully defined and the subject of energy-related activities specifically, and restrictively, treated in § 2(17), CZM policies 28-33 are not proper exercises of a valid delegation superficially justifiable under Article 49/97, or any other proper statement of the state environmental policy.[8]

D. Assuming, arguendo, that the Secretary has some authority to issue substantive regulations affecting the coastal zone; any energy-related regulations so issued are not binding on or enforceable against third parties.

1. CZM policies 28-33, in particular, are not mandatorily binding upon the office's five departments under c. 21A, § 2; neither are they capable of being voluntarily assented to by those departments (by MOU) under c. 21A, § 4(2).

The power of the Secretary to bind her line agencies by regulation on matters affecting the substance of energy programs is minimal. As already seen, the "comprehensive planning" and general "coordinating" powers (see c. 6A, § 4 and c. 21A, § 3) of the Secretary are severely limited. Similarly, c. 21A, § 2 fails to grant the Secretary any substantive program control over the services delivered by the five departments. Every power granted the Secretary by § 2 is also granted to each of the line agencies. The effect of this grant to both "the office and its appropriate departments" is, as stated at pages 4-4 and 4-5 of the CZM Plan, to superimpose upon the enabling legislation of each department the duty to "carry out the state environmental policy in the manner directed by Section Two". (Emphasis added.) The effect of this direct mandate is to suggest that EOEA line agencies are substantively independent of the Secretary.[10] Identical and equal powers are granted by § 2 to the Secretary and to the five departments. It follows logically from this, and from earlier discussions of the "planning" and "coordinating" powers of the Secretary, that in most cases and under normal circumstances (i.e., absent specific legislative direction to the contrary) substantive environmental regulations of the Secretary are not mandatory upon the several line agencies. CZM policies 28-33, when finally incorporated into executive regulations 6.1 - 6.3, will be such substantive environmental regulations.

Of course, line agencies may voluntarily bind themselves to substantive regulations of the Secretary. M.G.L. c. 21A, § 4 (2) appears to authorize this, moreover, even if the Secretary has no authority of her own for issuing substantive regulations on the subject - as long as the line agency involved has such authority. The problem with CZM policies 28-33 is that neither the Secretary nor any of the five line agencies have authority to regulate such matters as energy facility siting and planning. An MOU, authorized by § 4 (2), between the Secretary and any of her line agencies, pledging the various departments to follow policies 28-33, therefore, would be a nullity, because the subject agreed to is outside the lawful jurisdiction of the parties.[11] Note - the only energy-related authority held under c. 21A, § 2 by the Secretary or her departments is an advisory power, the power to "analyze and recommend", granted by § 2 (17). CZM policies 28-33, if directed to the five departments, even if assumed valid as advisory regulations, would be meaningless because, at most, they would only constitute direction on how to advise others on the subject.

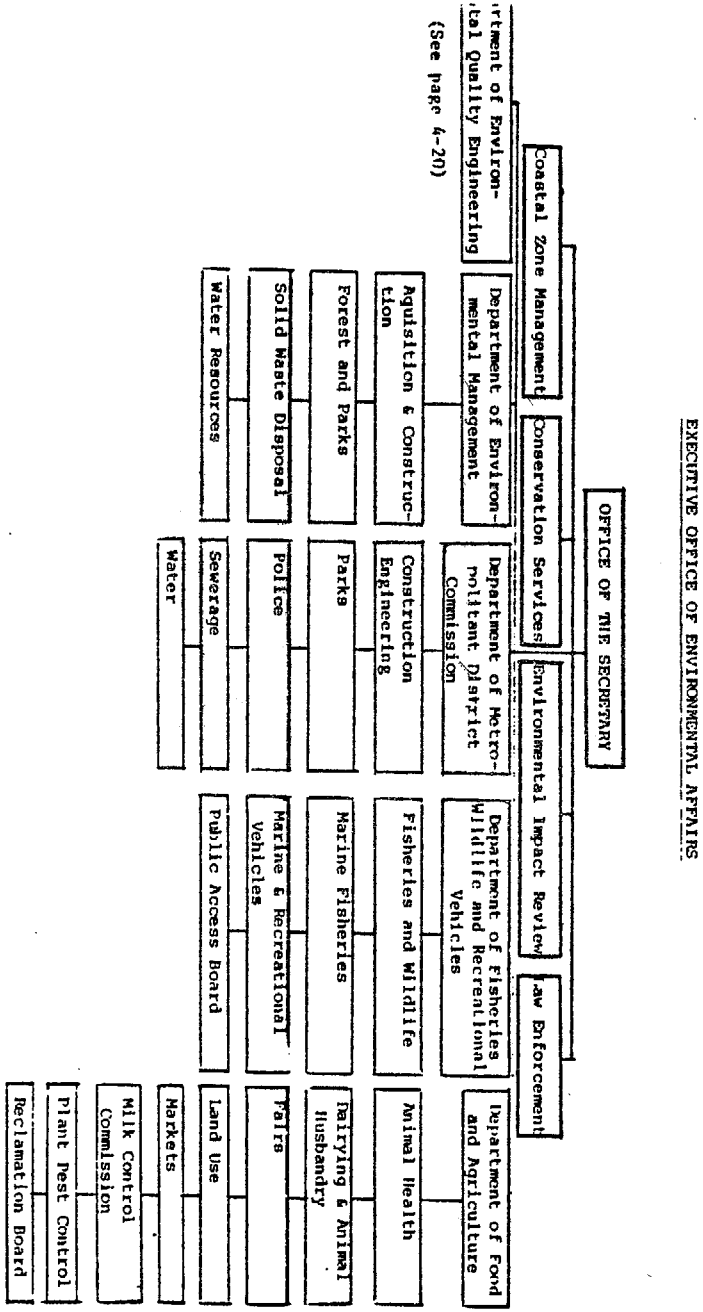
2. CZM policies 28-33, in particular, are not mandatorily binding upon, nor are they capable of being made voluntarily binding (via MOU) upon, independent agencies.

As already seen, c. 21A, § 2 (17) provides that EOEA power to substantively regulate energy-related activities is at most advisory, only. As a result, such regulations as CZM policies 28-33

do not have the force of law and cannot be enforced against independent third parties.

It is not inconceivable, however, that independent third parties, such as the EFSC, might voluntarily accept EOEA "advice" promulgated in CZM policies 28-33. An independent energy-activity regulator like EFSC, though, cannot voluntarily bind itself to follow policies 28-33. EOEA's own substantive energy-regulating authority is still limited to advisory policies; and because the EFSC is not an agency "within the office", it is not "such an agency" contemplated by § 4 (2), and cannot transfer by request, under the auspices of § 4 (2), its authority to implement substantive and legally binding energy regulations.

The legality of any MOU between the Secretary and an independent agency like EFSC, in fact, cannot be found on § 4 (2); but must rest, if at all, on § 2 (26), the Secretary's power to contract. Even so, CZM policies 28-33 may be void because, as already seen, the Secretary has no independent authority by which to issue them - except in an advisory capacity. The power to contract with EFSC on a given subject presupposes that both parties wield authority relevant to that subject. An MOU with EFSC cannot create in EOEA the power to regulate energy facility sitings - a power not granted to it by the legislature. The extent of the Secretary's energy-related powers being advisory only, therefore, an EOEA-EFSC MOU might properly appraise the latter of CZM policies 28-33. Such an MOU, however, could not bind the EFSC to follow Secretarial energy "advise", because to do so would change the character of EOEA powers regarding energy activity regulation in contradiction of expressed legislative direction. It follows, therefore, that any EOEA-EFSC MOU respecting CZM policies 28-33 is not legally binding, and might be followed or disregarded at the pleasure of the EFSC.



Footnotes

1. See argument I B (3), infra; and Appendix and Footnote 12. See also argument I D (1), infra.

2. Draft regulations 6.1, 6.2 and 6.3 may be found at "Appendix A" of the State CZM Plan, as submitted to the U.S. Secretary of Commerce.

3. Note - nonsubstantive regulations affecting the administrative procedures of any EOEA line agency that regulates energy-related activities are, of course, permissible under the Secretary's c. 6A, § 4 and c. 21A, § 3 ministerial "coordinating" and budgetary powers. The regulations (CZM policies 28-33) complained of, however, are not of this type. EOEA line agencies, furthermore, have no energy-regulating authority, such as would be even potentially subject to CZM policies 28-33. If it were decided that these policies are nonsubstantive, they would still not be mandatorily enforceable under c. 21A, § 3; because that section applies only to EOEA line agencies, none of which have substantive energy-regulating powers of the type considered in policies 28-33.

4. See also footnote 1, supra.

5. See argument I D 2, at pages 20 ff, infra; where it is explained in more detail that voluntary contracts or MOU's with independent third parties cannot grant to EOEA powers that the legislature has chosen to invest in those third parties and not in EOEA. Thus an MOU with EFSC, because it cannot be justified under § 4 (2) but only under § 2 (26), if at all; cannot provide EOEA with any authority to promulgate CZM policies 28-33 as formal and binding regulations of the Secretary. Such regulations cannot have the force of law and must be void.

6. Commonwealth v. Diaz, has not been overruled since it came down in 1950. It has, in fact, been impliedly reaffirmed, most recently, in Town of Arlington v. Board of Conciliation and Arbitration, 76 Mass. Adv. Sheets 2035, at 2043 (1976).

7. Energy policies 28-33 are discussed in detail, along with their expected impact and intended implementation measures, at pages 3-F/32 to 3-F/41 of the State's CZM Plan.

8. In this connection, note the CZM Plan interpretation of the § 2 authorization, at page 4-5 of that document: "Section Two does not expand basic agency jurisdiction or authority, but it does serve to define or focus the direction of such authority. It does not require agencies to undertake new

programs which are beyond the scope of their authorizing legislation." This is consistent with our view of § 2. It defines EOEA authority, and does not compel or authorize programs in excess of the authority so defined.

9. See arguments I A and I B (2), supra.

10. This supports the arguments made earlier (I A and I B (1)) that Secretarial "planning" and "coordination" are limited to the office proper and to nonsubstantive, ministerial matters, respectively.

11. Compare sample MOU's provided in CZM Plan "Appendix A". In this regard, please note that it is also questionable whether an MOU, agreeing to support the CZM Plan, en masse, constitutes a "program" for purposes of c. 21A, § 4 (2). It is unlikely that any given department (party to such an MOU) has the legal authority to conduct a "program" encompassing all of the policies contained in the Plan. The MOU's appearing in "Appendix A" of the CZM Plan, therefore, may be infirm in this respect.

12. As described by the state CZM Plan at page 4-13, "The Office of the Secretary within the Executive Office of Environmental Affairs is the overall fiscal, policy, planning, and legal decision-making entity for environmental matters. Besides the Secretary and his/her immediate staff, there are four units within the Office of the Secretary: the Coastal Zone Management Program; the Division of Conservation Services; the Massachusetts Environmental Impact Review Program; and the Division of Law Enforcement."

In addition, the Executive Office, but not the Office of the Secretary, includes the following five departments: the Department of Environmental Quality Engineering; the Department of Environmental Management; the Department of Metropolitan District Commission; the Department of Fisheries, Wildlife & Recreational Vehicles; and the Department of Food & Agriculture.

II. USE OF MEMORANDA OF UNDERSTANDING.

I refer to the memorandum of Michael T. Gengler submitted with this memorandum for a discussion of the impermissibility of the Coastal Zone Management Program using specific licensing statutes in Massachusetts as the basis for promulgating a system of regulations establishing a predetermined system of permitted and prohibited land uses. Mr. Gengler's memorandum also discusses the impermissibility of limiting by regulation the factors required by statute to be considered in permit and licensing proceedings.

As Mr. Gengler's memorandum points out, a Memorandum of Understanding in which an agency agrees to issue permits only for specified permitted uses would constitute a "requirement of general application and future effect. . .adopted by an agency to implement or interpret the law enforced or administered by it. . ." and thus fall within the definition of "regulation" in M.G.L. c. 30A, § 1 (5). Such a Memorandum of Understanding would be subject to the limitations referred to in the preceding paragraph.

Also, such a Memorandum of Understanding as an M.G.L. c. 30A, § 1 (5) "regulation" would not be effective or enforceable unless adopted pursuant to the public notice requirements of M.G.L. c. 30A, § 2 or § 3, whichever were applicable. Failure to comply with the applicable notice requirements renders agency rulemaking actions invalid except for certain limited emergency regulations; M.G.L. c. 30A, § 3A. M.G.L. c. 30A, §§ 5 and 6 require submission of copies of regulations adopted by an agency to the State Secretary for publication in the State Register. Compliance with the rules adopted by the State Secretary for submission of regulations and the publication of regulations in the State Register are preconditions to the effectiveness of all but emergency regulations.

We are not aware that any formal rulemaking proceedings have been completed concerning the Memoranda of Understanding of the Secretary of Environmental Affairs and the agencies within her secretariat. We are not aware that any such Memoranda have been submitted to the State Secretary or been published in the State Register. Thus we must conclude that such Memoranda do not yet have general application and effect and that they cannot bind the actions of the agencies as they relate to the enforcement and interpretation of the statutes under their care in a manner that affects the rights of and procedures available to the public.

The requirements in M.G.L. c. 30A, §§ 2 and 3 for proper notice and for public hearings and/or opportunity for presentation of views are no mere empty formalities. It is the clear policy of M.G.L. c. 30A to encourage meaningful public participation in agency rulemaking. If a Memorandum of Understanding signed prior to a formal rulemaking proceeding is intended to dictate the results of the proceeding in

advance, then meaningful participation and comment by the public in the rulemaking process would be prevented. This would run counter to the policy of M.G.L. c. 30A, §§ 2 and 3 and the public participation requirements of § 306 (c) (1) of the Coastal Zone Management Act.

If it were argued that Memoranda of Understanding are not intended to be construed as effective regulations with the force of law but merely as internal agency guidelines then there would be no obligation that private parties conform their conduct to such Memoranda, that other agencies respect the Memoranda as having the force of law, or that future heads of agencies or Secretaries of Environmental Affairs be bound by the contents of any such Memoranda. Given such infirmities it is difficult to see how a Memoranda of Understanding could be used to demonstrate that a Coastal Zone Management Program contained powers sufficiently "enforceable" for Federal Approval of the Coastal Zone Management Program under §§ 306 (c) (7), 306 (d), and 306 (e) of the Coastal Zone Management Act.

Perhaps it is intended that the Memoranda of Understanding be binding with the force of law on independent agencies, i.e. that such agencies with discretionary powers would be bound by the CZM policies to the same extent that they would be bound by statute.

the force of law certain criteria must be met. A regulation has the force of law if the issuing agency has the power to issue it; if it is a "regulation" as defined by c. 30A, § 1 (5), if it is properly promulgated pursuant to c. 30A, §§ 2 and 3, and if it is consistent with the governing statute of the agency. (See Mt. Vernon Co-operative Bank v. Gleason, 250 F.Supp. 952 (D. Mass. 1966).) (See also DaLomba's Case, 352 Mass. 598 (1967).) For the reasons stated above several of the CZM policies (especially policies 28-33) and all of the Memoranda of Understanding devised to implement them fail to meet these tests. Thus they cannot have the force of law.

APPENDIX D

DRAFT COMMENTARY ON CERTAIN LEGAL ISSUES INVOLVED IN THE PROPOSED MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM

PREPARED BY:

Garen D. Bresnick - Home Builders Association of Massachusetts

Michael T. Gengler - Rich, May, Bilodeau & Flaherty

Patrick J. Kenny - New England Power Service Company

Francis M. Lee - Boston Edison Company

Robert R. Ruddock - Greater Boston Chamber of Commerce

October 17, 1977

DRAFT COMMENTARY ON CERTAIN LEGAL ISSUES INVOLVED IN THE PROPOSED MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM

Date: October 17, 1977

The following draft commentary explores in summary fashion selected legal aspects of the proposed Massachusetts Coastal Zone Management Program (the "CZM Plan"). The topics covered in the commentary are not intended to be an all-inclusive survey of our disagreements with the CZM Plan. This commentary does not address serious problems which have been raised concerning the merits of the proposed CZM policies.

Citations to the CZM Plan refer to the two-volume document entitled "Massachusetts Coastal Zone Management Program" dated March 18, 1977. Also referenced in the legal analysis is the Draft Environmental Impact Statement issued as of October 14, 1977 (the "DEIS"), by the National Oceanic and Atmospheric Administration, which contains the preliminary federal approval of the CZM Plan, and an Addendum to the CZM Plan issued October 7, 1977.

We have concluded that the CZM Plan will have a significant unfavorable impact on existing legal procedures for administering state and federal permit and grant programs, and that major portions of the CZM Plan are contrary to existing Massachusetts statutes.

I. THE CZM PLAN IMPOSES NEW STANDARDS ON ACTIONS BY REGULATORY AGENCIES, IMPOSES A NEW LAYER OF BUREAUCRACY ON THE PERMITTING PROCESS, AND ADDS NEW REVIEW PROCEDURES.

The Massachusetts and federal offices of Coastal Zone Management have repeatedly asserted that "the Massachusetts Coastal Zone Management Program does not include new laws or increase the present number of state or local permits required for development activities." CZM Program, p. 26; DEIS, p. II-1. This statement implies that the Plan does not add anything new to existing state regulatory programs for managing private and governmental activities. The Plan does, in fact, embody drastic alterations in the standards currently used by regulatory agencies within the Executive Office of Environmental Affairs (EOEA) and the Energy Facilities Siting Council under existing statutes to decide applications for permits.

(a) New CZM Standards

The CZM regulation to be adopted by the Secretary of Environmental Affairs incorporates the entire CZM Plan by reference, and directs all EOEA agencies and the Secretary to implement the Plan and enforce their laws, process regulatory reviews, conduct program activities, disburse funds, construct works, supervise the construction of works, or otherwise administer their programs in the coastal zone consistently

with the CZM Plan. CZM Plan, p. a-33. Each commissioner within EOEA has agreed in "Memoranda of Understanding" to adopt as his own regulation this regulation of the Secretary, including the entire CZM Plan. CZM Plan, pp. a-9 through a-18. The Secretary's regulation requires all EOEA agencies "to apply CZM criteria when they take a lawful action in the coastal zone." CZM Plan, p. a-34. The CZM regulations will make the 800-page Plan itself, rather than existing statutes or regulations, the operative authority for reviewing applications for permits.

(b) New CZM Bureaucracy

In addition to creating new and unauthorized legal procedures, the Plan will create a new layer of bureaucracy. The new Massachusetts office of coastal zone management, which has been created in EOEA without any legislative authorization, is asserted to have the following powers:

(1) To receive notice of, and to review, any state or federal project or permit application within the coastal zone. CZM Plan, pp. a-49 and a-54.

(2) To determine whether applications for federal grants, projects or permits in the coastal zone are consistent with the CZM Plan, and to veto any such federal grant, project or permit which is determined to be inconsistent with the CZM Plan. CZM Plan pp. a-54 and a-60.

(3) To intervene as a party in adjudicatory proceedings before EOEA agencies which may affect the coastal zone. CZM Plan, p. a-40.

(4) To intervene as a party in adjudicatory proceedings before the Energy Facilities Siting Council which may affect the coastal zone. CZM Plan, p. a-20.

(5) To obtain administrative review by the Secretary of Environmental Affairs of decisions by EOEA agencies which may affect the coastal zone. CZM Plan, p. a-37.

(6) To appeal to the courts from any decision rendered by an EOEA agency in an adjudicatory proceeding involving the coastal zone. CZM Plan, p. a-40. This power is absolutely contrary to law. G.L. c.12, §3; Secretary of Administration and Finance v. Attorney General, Mass. Adv. Sh. (1975) 665.

These asserted powers of the Coastal zone management office will add to the confusion, delays, and red tape presently existing within the EOEA and at the Energy Facilities Council.

(c) New CZM Procedures

All administrative actions taken by EOEA agencies in adjudicatory hearings will be reviewable on the merits by the Secretary on the petition of any EOEA agency, including the new Massachusetts office of coastal zone management. CZM Plan, pp. a-37 through a-40. Under the CZM Plan, the Secretary may hold a hearing to determine (1) whether the action complained of is inconsistent with the CZM Plan; (2) whether the CZM Plan calls for an action beyond that permissible at law; and (3) whether exception to the plan should be granted for "substantial and compelling public interests or concerns." Actions of EOEA agencies must be consistent with the decision on appeal by the Secretary. However, review of adjudicatory proceedings is governed exclusively by the permit statutes and the state Administrative Procedure Act, G.L. c.30A.

II. FEDERAL ADOPTION OF THE STATE CZM PLAN, EVEN WITHOUT FULL STATE IMPLEMENTATION BY MEANS OF LAWS AND REGULATIONS, WILL, ACCORDING TO THE DEIS, MAKE THE PLAN EFFECTIVE FOR CZM REVIEW OF FEDERAL ACTIONS AND PERMITS, INCLUDING DEVELOPMENT OF GEORGES BANK OIL AND GAS.

Federal approval of the CZM Plan gives the state coastal zone management office a veto power over all federal projects and federal permit applications within the coastal zone. 16 U.S.C. §1457(c)(1). Included in federal actions subject to veto by the state coastal zone management office are all NPDES water discharge permits, federal licenses to construct energy facilities, and all activities connected with the development of Georges Bank oil and gas production, including exploration plans, mineral leases, and licenses for drilling and for construction of pipelines. CZM Plan, p. a-54.

In addition, the Plan will, through the federal approval process, acquire new stature as a statement of governmental policy even if implementing regulations have not been developed at the state level. See DEIS, p. IV-3. The CZM Plan may be cited as an authority by opponents of coastal zone development, and its mere existence as an approved federal document will influence state and local actions within the coastal zone. State agencies and local authorities such as conservation commissions may be encouraged to use the CZM Plan even though final state approval and implementation have not been completed.

III. THE CZM PLAN EXPANDS STATE ROLE IN DETERMINING PERMISSIBLE LOCAL DEVELOPMENT.

Under the CZM Plan, cities and towns retain local zoning authority. However, the DEIS asserts that most types of major developments will be regulated by the state, or by local conservation commissions subject to state review. DEIS, p. III-3. The DEIS recognizes that the CZM Plan will shift some development activity inland, affect property values, property tax revenues and resource extraction or exploration. DEIS, p. III-4. The CZM Plan leaves only 21% of the coastal zone immediately suitable for new development. DEIS, p. III-4; CZM Plan, p. 292. The CZM Plan will also interfere with the power of local communities to obtain federal funds for development projects, such as Economic Development Administration grants. The Executive Office of Environmental Affairs, by means of the CZM Plan, will obtain a veto power over public service investments in coastal communities, such as transportation and sewage treatment grants. CZM Plan, pp. a-60 and a-61.

IV. EOEA AND ITS AGENCIES LACK AUTHORITY TO ESTABLISH AND ENFORCE THE CZM LAND USE AND ENERGY POLICIES.

The proposed Massachusetts CZM Plan illegally attempts to vest land-use control and energy-siting powers in the Executive Office of Environmental Affairs. For example, CZM policies 1, 2, 8, 28, 29, 30, 31 and 32 would flatly probibit the siting of most energy facilities and deep-water port facilities in areas designated as "areas for preservation or restoration" (APR's). The functions of EOEA are set forth in G.L. c.21A, §2. Of the 28 enumerated functions, only #16 expressly refers to land-use planning, and only #17 expressly refers to energy policy. These two functions are advisory only and are not intended to vest in EOEA any power to prohibit specific land uses in advance of permit application, or to require the Massachusetts Energy Facilities Council or any other agency to adopt specific energy policies or land-use prohibitions.

There is no statutory power in EOEA to establish or enforce land-use controls over a tract of land based upon the mere fact of designation of the tract as a critical area of concern or as an APR. Thus, a policy of EOEA to encourage other agencies to ban activities in APR's has no binding effect, nor does it confer on other agencies any independent power to establish such a ban. Similarly, neither EOEA nor its agencies are authorized under the Wetlands Protection Act, G.L. c.131, §40, nor the Wetlands Restriction Act, G.L. c.130, §105, and c.131, §40A, to adopt and enforce a predetermined system of prohibited or priority uses of land.

V. THE SECRETARY OF EOEA LACKS AUTHORITY TO ADOPT THE CZM PLAN AS AN ENFORCEABLE REGULATION.

The CZM Plan contains a proposed regulation to be adopted by the Secretary of Environmental Affairs which will have the effect of promulgating the entire CZM Plan as a binding regulation. CZM Plan, pp. a-22, a-30 and a-33. The alleged power of the Secretary of Environmental Affairs to promulgate the CZM Plan as a binding regulation is principally based on the provisions of G.L. c.21A, §§3 and 4. The Secretary is authorized by G.L. c.21A, §3, to conduct comprehensive planning with respect to the functions of the EOEA and to coordinate

the activities of the departments and divisions within the EOEA. The Secretary is further authorized by G.L. c.21A, §4, to "resolve administrative and jurisdictional conflicts between any such [EOEA] agencies or officers; . . . to implement, upon request of any such [EOEA] agency or officer, programs jointly agreed to by the Secretary and such an agency or officer; . . . to coordinate and improve program activities involving two or more [EOEA] agencies or officers . . ." The power of "comprehensive planning" is clearly confined to the functions of the office of the Secretary itself. These functions do not include the issuance of substantive regulations concerning land-use planning or energy policy. The "coordination" of activities does not imply any power of the office of the Secretary to issue substantive regulations binding private parties as to energy and land-use planning. Likewise, the power to resolve "administrative" and "jurisdictional" conflicts refers to matters such as manpower and budget priorities, inter-agency geographical boundaries and other such ministerial "administrative" and "jurisdictional" matters.

The power of the office of the Secretary to implement programs jointly agreed to by the Secretary and a line agency upon the request of the line agency is limited to programs that are within the jurisdiction of the line agency to begin

with. Neither the office of the Secretary nor any agency within the EOEA has the power to establish land-use or energy-siting controls through a system of permissible or priority uses. The CZM Plan contains several examples of such systems. See Policies 1, 2, 8 and 17 of the CZM Plan.

To the extent that the CZM land-use and energy policies are advisory and unenforceable under Massachusetts law, these policies are not binding on federal agencies in issuing federal permits or grants. Despite these serious defects, the DEIS assumes the enforceability of many of the land-use prohibitions contained in the CZM Plan without the adoption of any additional Massachusetts legislation. DEIS, p.II-7.

VI. THE CZM PLAN ATTEMPTS TO INTERFERE WITH THE STATUTORY DISCRETION AND AUTHORITY OF THE ENERGY FACILITIES SITING COUNCIL.

The Energy Facilities Siting Council has the following statutory obligations:

(1) To implement the energy policies contained in G.L. c.164, §§69H-69R, "to provide a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost." G.L. c.164, §69H.

(2) To approve long-range forecasts of gas and electric companies, and plans for construction, if it determines, inter alia, that such forecasts and construction "are consistent

with current health, environmental protection, and resource use and development policies as adopted by the commonwealth . . . G.L. c.164, §69J.

The Siting Council has stated in its regulations that it will consider only those health, environmental protection, and resource use and development policies of the Commonwealth which are set forth in the state constitution, general laws, and duly promulgated rules and regulations of responsible state, regional or local agencies having the force of law. EFSC Regulations, Rule 62.9(3). The following aspects of the CZM Plan are unlawful because they conflict with the statutory standards applicable to Siting Council action, and are not authorized under the EOEA Reorganization Act, G.L. c.21A:

(1) EOEA cannot establish land-use and energy-siting policies which are binding on EFSC. See, e.g., Policies 1, 2, and 8; pp. IV-4 to IV-6 of DEIS; p. 4 of Addendum; p. 7 of Memo dated August 23, 1977, attached to DEIS.

(2) EOEA cannot bind EFSC to the principle of "coastal dependency" and dictate the scope of its review. See, e.g., pp. 4 and 5 of Addendum; MOU, p. a-19.

(3) EFSC cannot be required to disapprove the siting of energy facilities in APR's. See Policy 2; p. 4 of Addendum; and the various policies in the Energy Chapter.

(4) The Secretary of EOEA, as a member of EFSC, cannot be an advocate of environmental concerns, but must be an independent and objective adjudicatory officer. See p. 3 of Memo dated August 23, 1977, attached to DEIS.

(5) EOEA cannot in the manner proposed impose on the energy industry (and EFSC) eighteen new standards or policies. See p. 5 of Addendum; p. IV-6 of DEIS; and p. 7 of Memo attached to DEIS.

(6) EOEA cannot by MOU bind EFSC to issue regulations or an administrative bulletin to implement the CZM Plan; to recognize the CZM Plan, as approved by the Governor, as state environmental policy; to submit Company submissions to EOEA prior to hearing before EFSC: to recognize the standing of the CZM office in EFSC proceedings; to give "prime consideration" to environmental impacts of facilities proposed for areas of critical environmental concern. See text of MOU at p. a-19 of Plan.

(7) Policy 33b, requiring the acceleration of solar and wind power and conservation measures, as set forth in the CZM Plan Addendum dated October 7, 1977, cannot bind agencies charged with the responsibility to review proposed energy facilities under existing statutory standards. This policy is a needlessly confusing complication to the licensing process. See p. 1-2 of Addendum.

VII. THE CZM PLAN UNLAWFULLY ATTEMPTS TO EXTEND CZM CONTROLS OUTSIDE THE GEOGRAPHICAL AREAS COVERED BY EXISTING PERMIT STATUTES.

The CZM Plan attempts to establish CZM restrictions on land use not only in certain areas in which permits for activities are required under existing statutes, but also in adjacent or upland areas. For example, Policy 2 prohibits any land or water uses in areas related by natural processes, such as littoral currents, which could adversely affect an APR. CZM

Plan, p. 88. Policy 27 prohibits the granting of permits for private actions if there would be an adverse effect on a recreation site. CZM Plan, pp. 215-16. Policy 13 would be implemented to control the visual impact of private activities in the coastal zone. CZM Plan, pp. 145-46 and 148. Policy 14 is vaguely worded, and purports to require the minimization of adverse impacts from private projects near existing or potential historic districts. CZM Plan, pp. 149-152.

The statutes to be used by EOEA to carry out these restrictions apply to carefully defined geographical limits. See, for example, G.L. c.131, §40 (Wetlands Protection Act); G.L. c.130, §105 (Wetlands Restriction Act); and G.L. c.91, §14 (Waterways Program). These laws do not contain authority for the state to control land use in adjacent or upland areas.

The Massachusetts Environmental Policy Act (MEPA), in G.L. c.30, §61, requires state agencies to use all practicable means and measures to minimize damage to the environment. However, agencies may refuse to grant permits on the basis of MEPA only if the environmental interest being protected is within the scope of the agency's statutory jurisdiction.

In addition, under G.L. c.30, §62, the second section of MEPA, the Secretary of Environmental Affairs may not dictate the manner in which projects are to be completed, but may only comment upon environmental impact reports.

VIII. THE CZM PLAN, CONSIDERED AS A REGULATION, IS UNCONSTITUTIONALLY VAGUE.

The entire CZM Plan will be incorporated by reference as a regulation of EOEA. Included in this incorporation by reference are "technical statements . . . descriptive material, analyses of problem areas or conflicts, regional chapters and other textual discussion." CZM Plan, p. a-33. In addition, the proposed EOEA regulation declares that the "State Environmental Policy" (to be enforced as part of the CZM Plan) shall include not only certain constitutional and statutory provisions, but also "Executive Orders or other statements by the Governor and statements of environmental policy promulgated by the Secretary of EOEA by "Secretarial Order." CZM Plan, p. a-29.

If the CZM Plan is to be considered as a regulation, it must comply with the constitutional standards for clarity and precision applicable to regulations so that due process is afforded to parties to adjudicatory or other proceedings. A statement such as "The implementation of alternatives such as solar, wind and solid-waste energy recovery systems would reduce our dependence on the more traditional fossil fuel and nuclear forms of energy" (CZM Plan, p. 229) is not the type of material which may be used in a regulation. The CZM Plan contains a multitude of such provisions with an equal number of unresolved contradictions.

The "policy" portions of the CZM Plan are at the present time indistinguishable from the "regulation" provisions. However, EOEA may legally adopt and enforce only those portions of the CZM Plan which meet the legal tests for regulations, and which are also within the statutory jurisdiction of EOEA. In order to adopt and enforce those portions of the CZM Plan, the Secretary must follow statutory procedures calling for notice and a hearing or public comment. See G.L. c.30A, the state Administrative Procedure Act. The "policy" portions of the CZM Plan, including the technical and descriptive material, Memoranda of Understanding, the statements of the Governor, and the "Secretarial Orders," may not be used to govern administrative actions because they may not be adopted as regulations under the Administrative Procedure Act. This law requires that its procedures must be followed to adopt "the whole or part of every rule, regulation, standard or other requirement of general application and future effect . . . adopted by an agency to implement or enforce the law enforced or administered by it." G.L. c.30A, §1(5).

IX. THE CZM PLAN WRONGFULLY ESTABLISHES THE PRINCIPLE OF COASTAL DEPENDENCY AS A STANDARD FOR AUTHORIZING ACTIVITIES IN THE COASTAL ZONE.

The proposed CZM Plan takes the position that development will be encouraged only for coastally dependent uses. See Policy 17, governing land use in ports and harbors. Activities

which are not coastally dependent will be denied permits if such activities conflict with future potential maritime-dependent uses. DEIS, pp. II-15 and 16. This policy was not approved by the legislature, yet the CZM Plan calls for agencies to use their powers to effectuate this policy. This bias would be imposed on local conservation commissions by state guidelines. CZM Plan, p. 85.

X. APPROVAL OF THE CZM PLAN SHOULD BE DELAYED UNTIL THE STATUS OF THE "UNENFORCEABLE" CZM POLICIES IS CLARIFIED.

According to the DEIS, only 17 of the 38 "policies" of the CZM Plan are enforceable. The remaining 21 "policies" were found to be unenforceable under federal and state law. DEIS, p.II-7. This commentary has asserted that many of the policies considered by NOAA to be enforceable are unenforceable. The legal status of the CZM Plan is so unclear that NOAA and EOEA should delay the currently pending administrative proceedings to approve the CAM Plan until these uncertainties are resolved in some acceptable manner. The federal government should not compel Massachusetts to accept a CZM Plan if the majority of the "policies" contained therein are not enforceable. Federal approval of the CZM Plan under these circumstances is certain to create chaos in the administration of all state and federal programs affected by the CZM Plan.

APPENDIX E

EDISON ELECTRIC INSTITUTE
90 PARK AVENUE • NEW YORK 10016 • (212) 573-8700

October 28, 1977

Mr. Michael Shapiro
National Programs Office
Office of Coastal Zone Management
National Oceanic and Atmospheric
Administration
U.S. Department of Commerce
Page Building 1
3300 Whitehaven Street, N.W.
Washington, D. C. 20235

Re: Federal Consistency with Approved Coastal Management Programs, Proposed Policies and Procedures [15 CFR 930; 42 Fed. Reg. 43585, et seq., August 29, 1977]

Dear Mr. Shapiro:

On August 29, 1977, the Office of Coastal Zone Management (OCZM) proposed, pursuant to authority of the Coastal Zone Management Act of 1972 (CZMA or Act), as amended,[1] the above regulations. The notice provided that comments thereon be submitted in writing by October 28, 1977. The Edison Electric Institute (EEI),[2] on behalf of its members, hereby respectfully

1/ 16 U.S.C. 1451, et seq.

2/ The Edison Electric Institute is the principal national association of investor-owned electric utility companies in the United States. Its member companies serve about 99 percent of all customers of the investor-owned segment of the electric industry and 77 percent of the nation's electricity users.

submits this letter and its attached Appendix.[3]

EEI asks that it be granted the opportunity to orally present its comments to the OCZM.

For all the reasons set forth herein, EEI finds that the proposed regulations fail to properly implement the Act and the National Environmental Policy Act (NEPA).[4] Accordingly, EEI asks that they be revised in accordance with our comments.

Respectfully submitted,

John J. Kearney
Sr. Vice President

3/ The instant proposed regulations are a reproposal of earlier proposed regulations (41 Fed. Reg. 42877 (1976)). EEI commented on those proposed regulations as well as proposed regulations on development grants (41 Fed. Reg. 53417 (1976)), administrative grants (41 Fed. Reg. 57003 (1976)) and the coastal energy impact program (42 Fed. Reg. 1163 (1977)). EEI asks that those comments, to the extent they are not inconsistent with those herein, be incorporated as a part of these comments. EEI is also submitting this date comments on proposed "Coastal Zone Management Program Approval Regulations" (42 Fed. Reg. 53441 (1977)).

42 U.S.C. §4321, et seq.

APPENDIX

Subpart D - Consistency for Activities Requiring a Federal License or Permit

Unfortunately, we find that certain of the comments filed by EEI on the federal consistency regulations proposed on September 28, 1976 [42 Fed. Reg. 42877 (1977)] remain applicable to these proposed regulations. In particular, the proposed regulations continue to fail to limit the consistency certification requirements, as directed by the Congress, to "new" activities "directly, significantly and adversely" affecting "land or water uses in the coastal zone."

The Act, as set forth below, expressly limits the applicability of consistency review to the application for a Federal license or permit to conduct an activity affecting land or water uses in the coastal zone.

> "After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program (emphasis supplied)." 1/

The Act's legislative history clearly establishes that consistency certification was only intended to be required of

1/ Act, §307(c)(3)(A).

a "new activity in the coastal zone, directly, significantly and adversely affecting the coastal waters (emphasis added)." 2/ In its discussion of the legislative intent of the Act's federal consistency certification, the Senate Report further states:

> ". . . [A]fter final approval by the Secretary of a State's management program, any applicant for a Federal license or permit to conduct any new activity in the coastal zone shall provide in the license or permit application a certification that the proposed activities comply with the State's approved management program. Additionally, the applicant must give reasonable assurance that the activity will be conducted in a manner consistent with that program. Thus, [Section 307(c)(3)(A) assures that before a federal license or permit is issued to conduct any new activity in the coastal zone, directly, significantly and adversely affecting the coastal waters, it will be reviewed by an appropriate State agency and a certification of compliance supplied. . . . Emphasis is placed upon 'new' activity. This activity is after the date of enactment of the legislation. It will thus be appropriate to distinguish between new activities, such as the building of a new marina, or the dredging of a new channel, as opposed to the maintenance of existing facilities or activities begun prior to the enactment of the bill. (emphasis supplied)." 3/

Consistency certification was not intended to be required of existing facilities or the issuance of an operating license to a

2/ S.Rep. No. 753, 92nd Cong., 2nd Sess., reprinted in [1972] U.S. Code Cong. and Admin. News 4776, 4793.

3/ Id.

facility already constructed. Likewise, amendment or renewal of an existing license or permit does not trigger the certification requirement unless the intended modification or expansion so significantly changes the character or magnitude of the activity as to make it a new activity. Rather, Congress expressly limited the applicability of consistency certification to the application for a Federal license or permit to conduct a new activity directly affecting land or water uses in the coastal zone.

The proposed regulations, however, improperly define the term "applicant" as one "who has applied for but has not yet received a Federal license or permit to conduct an activity affecting the coastal zone." Additionally, the proposed regulations improperly define the term "affecting the coastal zone" to include "changes in the quality of coastal zone resources" and to indicate that States "have the option of using a more expansive definition of 'significant effect.'" (§930.53) Both of these definitions violate the spirit and the letter of the Act. Moreover, the Department of Commerce is without authority to expand or authorize the States to expand the definition of "affecting the coastal zone" beyond that authorized by the Act. As such, the proposed regulations require consistency certification for a much broader group of activities than those for which certification is authorized by the Act. Most importantly, consistency certification was intended to be applicable only to the initial authorization for the conduct of an activity

affecting land or water uses in coastal zone. It was not intended to be required for the issuance of licenses to operate facilities already constructed nor for the renewal of licenses granted to existing facilities.

EEI is concerned that the States are already attempting to apply consistency review to the issuance of operating licenses by the Nuclear Regulatory Commission.[4/] The nationwide effects of this requirement, should it pervade every state CZM program, is devastating. Presently, in coastal states nationwide, some 64 nuclear generating facilities await the issuance of operating licenses while 54 others with docketed applications await the issuance of construction permits. Notwithstanding the patent adverse effect the delaying of the construction or operation of these facilities through unauthorized consistency review will have on our nation's energy supply, neither the proposed regulations nor the state CZM plans even address this significant impact on the quality of the human environment. Likewise, the Negative Determination of environmental impact prepared by OCZM regarding these regulations also fails to address this matter. EEI finds the failure to prepare an environmental impact statement which identifies and analyzes this adverse impact to be a

---

4/ The Proposed State CZM Plans in California, Massachusetts, Oregon and Wisconsin proport to require consistency review of the issuance by the NRC of operating licenses to nuclear generating stations.

violation of NEPA. EEI asks that OCZM identify and analyze this significant adverse impact on the quality of the human environment.

The proposed regulations require each State to "develop a list of Federal license and permit activities affecting the coastal zone which the State wishes to review for consistency with the management program." (§930.54) The list is to be included "as a part of the management program" and no federal license or permit on the list can be issued without consistency certification. The proposed regulations also indicate that States may make "refinements" to the list; however, they fail to require amendment of the program and approval by the Secretary of Commerce of such refinements.

APPENDIX F

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852

Honorable George Rogers
Chairman Joint Committee on Natural Resources
State House
Boston, Massachusetts 02133

Dear Senator Rogers:

I am pleased to have been informed of your interests in the Massachusetts CZM Program and of your willingness to use the auspices of the Joint Committee on Natural Resources as an additional forum for citizen comment of the plan and proposal for amending it. Please be advised that amendments to the present draft plan may be submitted by the State until December 15, 1977, and changes may be made on the draft 21A regulations contained in Appendix A to the plan until January 15, 1978, without jeopardizing the present timetable for approval and full Federal funding under 306 of CZMA. Any amendments to the regulations will be reviewed to assure that the approval requirements of the CZMA of 1972 are met.

Thank you again for your interest in this matter.

Sincerely,

Robert W. Knecht
Acting Associate Administrator
for Coastal Zone Management

Transmitted by telecopier and hand delivered October 27, 1977.

NEW ENGLAND REGIONAL COMMISSION
53 STATE STREET
BOSTON, MASSACHUSETTS 02109

RECEIVED
NOV 14 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

November 4, 1977

Mr. Eric VanLoon, Director
Office of Coastal Zone Management
[illegible] Cambridge Street
[illegible], Massachusetts 02022

Dear Sir:

[illegible] please find comments upon the Energy Section of Chapter III [illegible] Management Section in Chapter IV of the Massachusetts Coastal Zone Management Plan prepared by Arnold Wallenstein.

The Commission's Energy Program stands ready to work with you as you implement this plan, particularly concerning interstate/regional issues that we feel the Plan does not adequately address.

Cordially,

W. Robert Keating
Energy Program Director

Enclosure

Evelyn Murphy
Henry Lee
J. Joseph Grandmaison
Charles McCollam, Jr.

NEW ENGLAND REGIONAL COMMISSION
53 STATE STREET
BOSTON, MASSACHUSETTS 02109

MEMORANDUM

November 2, 1977

TO: W. Robert Keating
Energy Program Director

FROM: Arnold Wallenstein

SUBJECT: Comments on Massachusetts Coastal Zone Management Plan

These comments on the Massachusetts Coastal Zone Management Program will focus on the Energy Section of Chapter III, and the Management Proposals contained in Chapter IV. However, the other chapters were reviewed and were found to be well done, and we, consequently, offer no detailed comments on them. Overall the CZM plan appears to be a competent first effort in developing a workable management system for the heavily utilized and fragile resources of the coastal zone. The comments offered may be used to refine the present version of the Plan or incorporated into subsequent amendments to the Plan.

It should also be noted that this version of the CZM Plan cures many, but not all, of the comments and objections raised by my memo of February 15, 1977 reviewing the Massachusetts Coastal Zone Management Preview.

The observations contained within this memo are to provide constructive recommendations for improving the Coastal Zone Management Plan, but do not necessarily represent the official policy of the New England Regional Commission.

COMMENTS ON MASSACHUSETTS COASTAL ZONE MANAGEMENT PLAN

1. The first observation is that the Plan has a rather negative outlook towards encouraging economic growth within the Massachusetts coastal zone. The Plan is oriented towards discouraging developments that use coastal land in order to protect the coastal environment, instead of concentrating on giving positive incentives towards encouraging properly managed and controlled economic development, which is greatly needed by this State, and is an acknowledged goal of the State's Administration.

   Consequently, it is recommended that the Coastal Zone Management Plan provide for more incentives and a more positive outlook towards inducing economic development into the coastal zone, to the greater overall benefit of the state and its citizens, while protecting and preserving the fragile and scarce resources of the coastal environment.

2. The Coastal Zone Management Plan makes no attempt to coordinate its plans and policies with the coastal zone management plans and policies of other states in the Region.* The Plan evinces no realization that many of the problems of the Massachusetts Coastal Zone are interrelated with tho: of the contiguous coastal zones of neighboring states, and that many aspects of coastal zone management can be more effectively accomplished by regional coordination with the coastal zone management offices of other states. It is recommended that the Plan state which coastal zone management issues are interstate in nature, and by what process Massachusett: Office of Coastal Zone Management intends to join with its neighboring states in [illegible] nal problems. It should be noted that the Federal Coastal Zone Management Act, 16 USC 1454b(6) 1455c 2A and [illegible]

   The discussion on Page 315 is inadequate for this purpose.

requires that coastal zone management offices coordinate their CZM plans on a interstate basis, and provide for a process of regional coordination and consultation with its neighboring states. The New England Regional Commission's Energy Program may be able to assist the Coastal Zone Management Office in considering issues of an interstate nature that affect the Massachusetts Coastal Zone as the Plan is further developed and implemented. Discussions to this effect should commence soon.

3. The Plan may overestimate the amount of authority that the Massachusetts Office of Coastal Zone Management has to induce other agencies of the State to comply with all aspects of the Coastal Zone Management Plan. It is explicitly stated on p.319 of the Plan that primary interagency implementation and coordination mechanism, i.e. memoranda of understanding, are thought to be "generally unenforceable" because the Attorney General has never brought suit by one agency against another.

   If these interagency memoranda of understanding are not enforceable, then it should be considered whether the mandates of 16 USC 1455 (e) (1-2 would be met. That section requires state guidelines: direct regulation or administrative review for consistency with the CZM program of all coastal development plans and projects proposed by any state or local authority, and requires the State to retain some type of review or approval to ensure that the State's CZM plan is complied with. If the State EOEA or OCZM can not require such consistency with the State CZM plan by other state agencies not within EOEA, or by municipalities because of extensive reliance on unenforceable memoranda of understanding, then section 1455(e)(1-2) of the Federal Coastal Zone Management Act may not be complied with by the Massachusetts CZM plan.

It is of course hoped that other state agencies will voluntarily comply with the management process established within the Massachusetts Plan, but the realities and inflexibilities of bureaucratic organizations which respond to different goals, constituencies and political pressures make it unlikely that complete success and cooperation will be obtained by the OCZM with other state agencies on the essentially voluntary basis set forth in the plan. Consequently, we would suggest that the Massachusetts OCZM consider strengthening its management process to ensure that the Massachusetts Plan is followed by other state agencies, and to avert delaying legal challenges, by seeking state enabling legislation to give the Massachusetts OCZM more definite legal and regulatory authority to effectively implement the Plan.

4. The Plan does not present any detailed or site specific recommendations to increase the energy supply of the state or the region either on a regular or project basis. Perhaps some specific recommendations could be developed later as the Plan is implemented, but the state level Plan itself should set up a process to attract to the region sufficient energy supply facilities to ensure the continued economic capability of the state and the region. Selection of preferred sites for coastal power plants and other energy facilities would channel this type of development to where it is desired in the first instance, and a preselected site could reduce much criticized state regulatory delay.

5. The Plan indicates on p.268 and 336 in Volume I, and on p.160 in Volume II, that five Ocean Sanctuaries have been created by State legislation to protect all State waters, except those from Swampscott to Marshfield (the broad entrance to Boston Harbor), and in Mt. Hope Bay (along Mass.-R.I.boundary). Incorporation of these Ocean Sanctuaries into the State Coastal Zone Management Plan means that no OCS oil or gas pipeline could pass through State waters and landfall anywhere on the State's coast, except through Boston Harbor or Mt. Hope Bay. Due to the location of likely OCS lease tracts on Georges Bank (southeast of Cape Cod), this could eliminate the possibility of any straight-line OCS pipeline from Georges Bank to the closest landfall on Cape Cod, thereby making underwater pipeline transportation of oil and gas uneconomical (c.f. p.252.) This would force the use of tankers for the transportation of oil, which the Plan itself states would have greater environmental consequences (p.252). In addition, prohibiton of a natural gas pipeline would completely rule out transportation of natural gas to Massachusetts from Georges Bank, as the Plan notes (p.252) that offshore liquefaction of gas and tanker-transportation would be too costly.

Consequently, the inflexible incorporation of the State's Ocean Sanctuaries into the Massachusetts CZM Plan could severely handicap OCS development in Georges Bank, or alternatively, could force the offshore developers to use environmentally more dangerous tankers to transport oil to either the New England coast, or directly to the New Jersey refineries. It would make natural gas transportation much more costly, and the increased costs would be passed through in higher rates to natural gas consumers.

We therefore recommend that this section of the Plan be reconsidered and amended.

COMMERCE DEPT

December 9, 1977

Eric Van Loon
C.Z.M.
100 Cambridge Street
Boston, Massachusetts

FROM: Gilbert S. Tower
35 N. MAIN
Chassett, MASS. 02015
383-0588 (617 Area Code)

Dear Sir:

Why should the Federal Government refuse to approve the Coastal Zone Management Program in its' present form? As the writer sees it, the Program as submitted by Governor Dukakis is not based on a special Act of the legislature. The area of State Government which the Program covers will be so extensive that it will deserve special legislation to set up a commission to be composed of commissioners to be elected by popular vote who will have specified powers and duties possibly somewhat similar to county commissioners and metropolitan district commissioners.

The Program submitted is similar to a nice looking apple that is rotten at the core. It begins with salt marshes. Arthur W. Brownell, Jr., former Massachusetts Commissioner of Natural Resources, undertook to prevent the dredging and filling of all salt marshes in Massachusetts, without exception and without discrimination and without permission of the Town. No exception is taken to his intention to protect the interests of wildlife and marine life but the complaint is made that he went too far. The program put over by Brownell violates the principle of home rule for towns which is included in the Constitution of the Commonwealth. That is the fundamental fault of the Coastal Zone Management Program. It violates home rule which is a local concern. The Act of Congress dated '1972 mentions that something about local ordinances must be respected.

The initial mistake was made by Commissioner Brownell in his selection of the method to be employed for regulating the dredgine and filling of salt marshes. He chose a method by which restrictions are attached to deeds of land. Those restrictions prohibit but they fail to regulate. They do not recognize that there is a battle royal going on between wildlife and human life. It is a conflict that cannot be reconciled but can be compromised.

By restricting all salt marshes, Brownell's method was one-sided, unfair and unreasonable. By preventing the possible dredging of all salt marshes, it denies that there may be one or two individual ones which would be more useful to humanity if permitted to be used for purposes beneficial to people instead of being reserved in the interests of wildlife. Lovers of nature can be given all they want without taking away everything from promoters of projects beneficial to people. Please do not fail to note that the dredging and filling of almost all salt marshes should be prohibited and prevented, but that there should be some flexibility so that the practice will be regulated instead of 100% prohibited.

If Mr. Brownell had chosen to use the zoning by-law method for regulating he would not have violated home rule.

Brownell induced the legislature to enact legislation which was so bold and presumptuous that apparently the legislature was unable to cope with it and it became a law which is still in effect. That law, The Wetlands Restrictive Act, G.L. Chap. 130 - Sec. 105 is positively unconstitutional because it violates home rule. It is not known who has succeeded Brownell as Commissioner, but whatever department has inherited his principle should now repudiate it by declaring the Act illegal. The Governor's recommendation to other states to copy that law should be retracted.

Please take a look at the law, G.L. Chap. 130 - Sec. 105. It says the Commissioner may adopt orders providing for restrictions to be attached to deeds. That is misleading because at the end of the Act it lists certain limitations so that the Act should properly have said "may <u>within limitations</u> adopt" etc.

The Act should also have included the words "the Commissioner may adopt orders with the purpose of preventing the possible dredging and filling of salt marshes, without the approval of towns or approval by the selectmen". That was clearly the intention and it violates home rule which is enough to cause the law to be renounced.

However, the law runs aground in another way. It fails to recognize that the dredging and filling of salt marshes is a matter of land use because it determines whether a marsh should be reserved for wildlife or is to permit a project beneficial to human life. Land uses are controlled by the Town's zoning by-law as described by the Subdivision Control Law. In the case of Cohasset the legislature authorized thw Town to divide it's entire area into districts for various uses such as residences, businesses, etc. The entire area of the Town is controlled by town votes at town meetings. There is no vacant area on the map for a district of salt marshes. Mr. John Daniel representing Commissioner Brownell prepared two sketches which would naturally be incorporated on the zoning map if there were space, but there is no space. Therefore, an act of the legislature is necessary to divide the town into two parts; one part to be controlled by the town and the other part to be controlled by C.Z.M. In that way, home rule will be observed and the State will get the control that it wants.

That is the legal provision that is needed and which surely is not included in the six laws cited as being sufficient. The new law as contemplated will go on to say that C.Z.M. may instruct the town to amend it's zoning by-law in any way desired by the State in respect to uses permitted for salt marshes. Ordinarily the town will comply. If it refuses then the legislature will decide. By that simple process, each individual salt marsh can be studied and pros ane cons weighed to make fair decisions. The "battle royal" between wildlife and human life was discussed in an article dated July 12, 1976 in the U.S. News and World Report, entitled "Saving U. S. Wetlands - A Battle Royal!!! The new law proposed for Massachusetts will provide a method for compromising which will be better than controversy. Brownell's method of attaching restrictions to deeds was wrong because it was an irregular procedure. It was like holding a cat by the tail. By that procedure the cat is partially controlled but partially not controlled. The zoning by-law method as proposed for the new law will be a regular approved way of compromising instead of an irregular, partial method.

By obtaining the enactment of G.L.Chap. 130-Sec. 105, Brownell took the matter of dredging and filling of salt marshes into his own hands instead of providing for a Judicial type of decision. It was a high-handed method. In a letter dated May 10, 1972, Mr. Thomas Atkins, Secretary of Communities and Development, explained it by saying "The Coastal Wetlands Act was enacted because the state and other interested persons were of the opinion that the local governments on the whole were not able to cope with the protection of the Coastal Wetlands and indiscriminate development was causing many problems". In other words, home rule was violated. A new C.Z.M. act of the legislature is needed because the program proposed includes the illegal Brownell doctrine which tramples on home rule. There is also another principle involved which should be eliminated.

In the Fisheries Laws, Chapters 130 and 131 there is a principle employed similar to handbag snatching. That principle is to grab at something belonging to someone else and then telling the owner he can get it back by appealing to a Court. That principle can be observed by reading Brownell's order dated February 12, 1974 and there are other examples scattered through the laws.

It has been recommended to the C.Z.M. that a chapter be included on the subject of salt marshes. The salt marshes of Cohasset should be included as a special district on the town's zoning map. The chapter as contemplated will be a very complete discussion and will make clear the connection they have with the commercial fish like cod and haddock at George's Bank. As now understood there are two food chains. Much more could be said about plankton. The complete chapter on salt marshes will provide criteria for making decisions on how best to use salt marshes, whether an individual marsh should be reserved for wildlife or whether it's to be used for a project, beneficial to people.

Another chapter is suggested about State Parks in coastal towns. On the Cohasset zoning map the area to be reserved will include Wompatuck State Park. A large area of Cohasset was acquired by the State for the Park. The State owns the fee to the land but its use by the State was not voted by the Town, although the area remains within the Town's boundaries,

Some Cohasset streets are owned by the State and possibly some town streets are maintained by the State and are known as State Roads.

It is understood that the Federal Government is expected to make payment of money to the State for projects which will benefit towns. Therefore, it is important that the C.Z.M. Program have a sound legal foundation by complying with the Constitution and being truthful. It seems inconceivable that the six laws mentioned will be sufficient. They are not named or quoted. Some new legislation is necessary.

Yours very truly,

G. S. Power Gilbert S. Tower

GST/fo

Cohasset, Mass.

[illegible] BEACH STREET
COHASSET, MASSACHUSETTS 02025

November 26, 1977

Jacob Wilhelland, Esquire
Office of the General Counsel
NOAA - 3300 Whitehaven Avenue
Washington, D.C. 20235

Dear Mr. Wilhelland:

Thank you for your courteous attention at the joint public hearing (Massachusetts Coastal Zone Management and U.S. Department of Commerce, NOAA at the Marshfield Town Hall on November 16, 1977.

I have today received a helpful letter dated November 17, 1977, from Joseph D. Murphy, Secretary, Executive Office of Environmental Affairs for the Commonwealth of Massachusetts regarding conservation restrictions. I should like you to read that letter as well as my reply to it, a copy of which I enclose. (I just happened to reread MGLA c.130 §105 [MARINE FISH AND FISHERIES] recently, because my land is restricted under it, and the order is my favorite conservation restriction.)

I know that you won't mind my putting you to this trouble.

Sincerely yours,
Anne L. Formley
(MRS. JEANNE T. FORMLEY)

Enclosures

HOUSE . . . . . No. 3596

By Mr. Dwinell of Millbury, petition of Richard J. Dwinell for legislation to further define certain conservation restrictions. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Seven.

AN ACT FURTHER DEFINING CONSERVATION RESTRICTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 31 of chapter 184 of the General Laws, as most recently amended by section 11 of chapter 1155 of the acts of 1973 is hereby further amended by striking out the first sentence and inserting in place thereof the following: —

A conservation restriction means a right whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural farming or forest use, to permit public recreational use, or to forbid or limit any or all (a) construction or placing of buildings, roads, signs billboards or other advertising, utilities or other structures on or above the ground, (b) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (c) removal or destruction of trees, shrubs or other vegetation, (d) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (e) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (f) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (g) other acts or uses detrimental to such retention of land or water areas.

This Document Has Been Printed On 100% Recycled Paper.

§ 105. Protection of coastal wetlands

The commissioner of environmental management, with the approval of the board of environmental management, may from time to time, for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting, coastal wetlands. In this section the term "coastal wetlands" shall mean any bank, marsh, swamp, meadow, flat or other low land subject to tidal action or coastal storm flowage and such contiguous land as the commissioner of environmental management reasonably deems necessary to affect by any such order in carrying out the purposes of this section.

The commissioner of environmental management shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the municipality in which the coastal wetlands to be affected are located, giving notice thereof to the state reclamation board, the department of public works and the department of environmental quality engineering and each assessed owner of such wetlands by mail at least twenty-one days prior thereto.

Upon the adoption of any such order or any order amending, modifying or repealing the same, the commissioner of environmental management shall cause a copy thereof, together with a plan of the lands affected and a list of the assessed owners of such lands, to be recorded in the proper registry of deeds or, if such lands are registered, in the registry district of the land court, and shall mail a copy of such order and plan to each assessed owner of such lands affected thereby. Such orders shall not be subject to the provisions of chapter one hundred and eighty-four. Any person who violates any such order shall be punished by a fine of not less than ten nor more than fifty dollars, or by imprisonment for not more than one month, or by both such fine and imprisonment.

The superior court shall have jurisdiction in equity to restrain violations of such orders.

Any person having a recorded interest in land affected by any such order, may, within ninety days after receiving notice thereof, petition the superior court to determine whether such order so restricts the use of his property as to deprive him of the practical uses thereof and is therefor an unreasonable exercise of the police power because the order constitutes the equivalent of a taking without compensation. If the court finds the order to be an unreasonable exercise of the police power, as aforesaid, the court shall enter a finding that such order shall not apply to the land of the petitioner; provided, however, that such finding shall not affect any other land than that of the petitioner. The commissioner of environmental management shall cause a copy of such finding to be recorded forthwith in the proper registry of deeds or, if the land is registered, in the registry district of the land court. The method provided in this paragraph for the determination of the issue of whether any such order constitutes a taking without compensation shall be exclusive, and such issue shall not be determined in any other proceeding, nor shall any person have a right to petition for the assessment of damages under chapter seventy-nine by reason of the adoption of any such order.

The department of environmental management may, after a finding has been entered that such order shall not apply to certain land as provided in the preceding paragraph, take the fee or any lesser interest in such land in the name of the commonwealth by eminent domain under the provisions of chapter seventy-nine and hold the same for the purposes set forth in this section.

No action by the commissioner of environmental management or the department of environmental management under this section shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the department of public works, the department of environmental quality engineering, the state reclamation board or any mosquito control or other project operating under or authorized by chapter two hundred and fifty-two.

No order adopted hereunder shall apply to any area under the control of the metropolitan district commission. No order adopted hereunder shall permit the construction in coastal wetlands of access driveways to unrestricted land except in a manner which allows the flow of the tide.

Amended by St.1975, c. 351; St.1975, c. 706, § 220.

1975 Amendments. St.1975, c. 351, approved June 16, 1975, added the second sentence of the last paragraph.

St.1975, c. 706, § 220, an emergency act, approved Nov. 25, 1975, and by section 312 made effective as of July 1, 1975, inserted "the department of environmental quality engineering" in the second and seventh paragraphs, and also inserted "of environmental management" wherever appearing throughout the section.

CHAPTER 131. INLAND FISHERIES AND GAME AND OTHER NATURAL RESOURCES

§ 1. Definitions; rules of construction

In this chapter, unless the context otherwise requires, the following words shall have the following meanings and the following rules of construction shall apply:—

[*See main volume for text of definitions of "Angling" to "Closed season"*]

"Coastal waters", all waters of the commonwealth within the rise and fall of the tide and the marine limits of the jurisdiction of the commonwealth, but not waters within or above any fishway or dam nor waters above any tidal bound established by the department of environmental quality engineering in streams flowing into the sea.

"Commissioner", the commissioner of fisheries, wildlife and recreational vehicles.

[*See main volume for text of definition of "Dealer"*]

"Department", the department of fisheries, wildlife and recreational vehicles.

[*See main volume for text of definition of "Deputy"*]

"Director", the director of fisheries and wildlife.

"Division", the division of fisheries and wildlife.

[*See main volume for text of definitions of "Falcon" to "Inland waters"*]

"Loaded shotgun or rifle", any shotgun or rifle having a shell or cartridge in either the magazine or chamber thereof, or, in the case of a muzzle loading shotgun or rifle, containing powder in the flash pan, a percussion cap and shot or ball.

[*See main volume for text of definitions of "Mammals" to "Woodlands", and of second to sixth paragraphs*]

Amended by St.1975, c. 162; St.1975, c. 706, § 221.

1975 Amendments. St.1975, c. 162, approved April 30, 1975, inserted "in the flash pan, a percussion cap" in the definition of "Loaded shotgun or rifle".

St.1975, c. 706, § 221, an emergency act, approved Nov. 25, 1975, and by section 312 made effective as of July 1, 1975, substituted "environmental quality engineering" for "public works" in the definition of "Coastal waters"; substituted "fisheries, wildlife and recreational vehicles" for "natural resources" in the definitions of "Commissioner" and "Department"; substituted "wildlife" for "game" in the definitions of "Director" and "Division".

§ 4. Powers of director

The director may:

[*See main volume for text of (1) to (9)*]

(10) at any time in any inland waters where the loss of fish from any cause is apparent, salvage fish for distribution, and, with the approval in each in-

Edward O. Sanchez, Jr.
MARINE SERVICES, SALES, REPAIRS, DESIGN

Capt. E. O. Sanchez, Jr.
32 BEECHWOOD DR.
SO. DARTMOUTH, MASS. 02748
TEL. 617-997-9505

FISH ISLAND
NEW BEDFORD, MASS. 02740
TEL. 617-994-8018

November 15, 1977

Mass. Office of Coastal Zone Management
Mr. Eric VanLoon, Planner
Executive Office of Enviornmental Affairs
100 Cambridge St.
Boston, MA 02202

Dear Mr. VanLoon,

This is a letter to introduce myself and to inform you as to my feelings involving the CZMA-72. I am a member of the:

Buzzards Bay Advisory Group-CZM

Chairman of the New Bedford-Fairhaven Harbor Commission

Vice Chairman of the New Bedford Harbor Development Commission

A member of the Mayor's task force on Offshore Oil Development

A member of the Harbor Master Planning Committee

A member of the New Bedford Chamber of Commerce; Board of Directors

A member of The Propeller Club of the United States;Board of Governors, port of Narragansett Bay.

As you can see, I have taken a direct interest in the development or potential development of our coastal areas. This interest has taken me to many parts of the world. I have observed development of many forms; some very well planned and others with a total lack of concern. Of particular interest to me for the last two years, has been the pending implementation of the CZM Act of 72.

It was at a public meeting the CZM plan was first introduced to me. Listening to the presentation by the people of the Southeast Regional Planning and Economic Development District, I found it told me nothing except that there was the CZM A of 72 and that it was going to be implemented. Questions as to the direction and the intentions of the plan could not be answered as the information was not available. The only certain item was that an area of the coastline was to be appropriated to be governed by the CZM and the Task Force on Coastal Resources was to be appointed by the Governor. These meetings were not productive since the public was not well informed as to the direction of the CZM. Not much pro or con could be discussed nor important issues raised when there was little information available. Attendence at these meetings was insignificant. The public was not aware of the powerful position assumed by a politically appointed group in the regulations of privately owned coastal properties.

At a later date I was asked if I would participate on an advisory board which would help to develop a CZM program based upon local input.. I accepted willingly. This would not only give me a chance to contribute but also would enable me to inform the commissions of which I am a member as to the progress of the CZM.

The first item was to establish an area that would be governed by the CZM irregardless as to how it was to be governed and by whom. It was suggested that one of several alternatives be considered. After much consideration was given by individual towns and their submittal of what they considered would be suitable, the CZM's choice was given to us: This being an area back to the first major highway running somewhat

parallel to the coast encompassing a very large area including a majority of the population and their privately owned property. This shows me that although it is recognized that it be advisable to develop a CZM built upon the Commonwealth's strong tradition of local government, the final decisions involving any far reaching impact will be made by the state.

Consider the defined means by which the CZM will govern this designated area. Who will have the responsibility for delegation of the laws to be implemented? The three alternatives specified under the CZM draft all leave final decisions to be made by what is called the state. Is this the Secretary of Enviro mental Affairs or the Board of Coastal Resources? The only hope for input according to this would be on the legislative level and then one can see the need for some kind of oversight legislation. You have to consider that it is extremely important that your locale sits very strongly in the legislature and has the power to push through your areas wishes. You also have to consider that this power at times shifts from election to election. This is a good opportunity to say that home rule government, can only give you a constant to work with in the development of your own area.

I have constantly heard the remarks that this plan will be funded by the United States Government when actually the act calls for funding on a 80% federal and 20% state share with some 1.2 million dollars already appropriated and no estimation as to how much will be required in the future.

One question is why, when we have state regulartory commissions, including the Environmental Affairs Office, that deal directly with coastal developments do we need another piece of unnecessary bureaucracy. Certainly not to implement a draft of 800 pages that most likely contains overlapping juristrictions as proposed by the Department of Enviornmental Affairs. Certainly not to have to provide funds for the setting up of a new area of state bureacracy.

This statement reflects a portion of questions and objections to the impending implementation by Massachusetts of CZMA-72. After much deliberation and research, the New Bedford-Fairhaven Harbor Commission wishes to go on record as being against the draft as projected but realizes that there is a definite need for some guidance of our coastal areas.

I can not help but feel that was entered secondary legislation to help in the guidance of onshore development in regards to offshore oil research.

Respectfully submitted,

Capt. Edward O. Sanchez, Jr.

Wing and Wave

On The Coles River

CHARLES L. SOARES

2 PLEASANT VIEW AVE. SWANSEA, MASS. 02777

COASTAL ZONE PROGRAM

The town of Swansea has expressed INTEREST IN and been one of the most active participants of the Coastal Zone Management Program since its inception by virtue of our input and concern. A great deal of time and work by many citizens has made it possible for our community to assure itself of a voi in this most important program. In order to insure that all the time and energy that has been put into the program become a reality, I urge all citizens to give is their full support towards REASONABLE implementation.

Almost without exception the critics of the program have been special interest groups who stand to gain much for few. We have worked to insure th maximum benefits is insured for the majority and most important future generations. I am only too well aware of my owns needs for electricty and gas and other necessities, and have always been willing to compromise in order for the best possible solution to be arrived at.

Competition in the coastal zone will continue to mount, and with the threa of a slumping economy, unemployment, the PARTIES IN opposition of the necessary safeguards to our coastal zone are again employing scare tactics. Employment and energy should be two of the prime considersations of any decisions regarding the coastal zone, but not in the form of scare tactics and threats of impending disaster. Just imagine full employment and unlimited energy, and a populace with no place to enjoy these things which many now take for granted. Beaches, marshes, vistas, acess to the coastal zone for urban citizens are all important considerations. We are talking and deali with factors which cannot be duplicated or replaced.

To date a good working relationship between business and environmental interests have been one of the realities of the program. Working together the Coastal Zone Program has been doing makes this possible.

RESPECTFULLY SUBMITTED
Charles L. Soares 11/15
CHARLES L. SOARES
CZM- SWANSEA, MASS

The enactment of a Massachusetts Coastal Zone Management Plan will create additional Government bureaucracy and give control of our Coastal Zones to the Office of Environmental Affairs.

This plan would be another cut in home rule.

We hereby oppose the implementation of CZM.

Robert J Levesque	579 Wilbur Ave Somerset
Donald F Waring	132 Jackson Ave Somerset
William J. Wilding	57 Rice Ave Somerset
Frances M Mercier	49 Owen Ave Somerset
George L Cabral	1043 Read St Somerset
Paul W Folzgraf	24 William St. Somerset
[illegible]	377 [illegible] St [illegible]
[illegible]	[illegible]
[illegible]	[illegible]
Charles M. Schofield	69 Rice Ave. Somerset
Louis E [illegible]	60 John St. Somerset
Robert Borges	159 Franklin Rd. Somerset
Donald R. Mercier	48 Cusick Ave, Somerset, Ma.
Antone Silvia J.	16 Gray st Somerset Mass.
George Raposa	417 Lafayette St. Somerset.
John K Rodrigues	300 Read St Somerset, Mass
Horace Oliveira	122 Crawford St Fall River, Ma.

Richard P. King 125 Briggs Ave Somerset
Robert [illegible] 211 [illegible] Somerset.
William [illegible] 935 No Main St. Fall River, Mass.
[illegible] Somerset Mass
[illegible]
[illegible] Somerset Mass
[illegible]
[illegible] 11 [illegible] St [illegible]
[illegible] 606 Market St Swansea, Mass
[illegible] 32 [illegible] Somerset [illegible]
[illegible] 131 Valley St Somerset Mass
[illegible] Swansea, Mass.
[illegible] Somerset Mass
[illegible] Swansea [illegible]
[illegible] 751 [illegible] Swansea [illegible]
[illegible] 49 [illegible] Ave Somerset, Mass
[illegible] B. [illegible] 5115 Dillon [illegible] Swansea [illegible]

The enactment of a Massachusetts Coastal Zone Management Plan will create additional Government bureaucracy and give control of our Coastal Zones to the Office of Environmental Affairs.

This plan would be another cut in home rule.

We hereby oppose the implementation of CZM.

24 Columbia Rd Swansea Rita Silva
24 Columbia Rd Swansea [illegible] Silva

It is our opinion that implementation of a Massachusetts Coastal Zone Management Program will add to the already dwindling control of local government and further multiply the bureaucratic process.

There are a number of policies unclear regarding enforcement of same.

The plan would not be adequately covered by existing laws and Town officials would lose the right to decide their own future.

Therefore, we would like to be recorded as opposed to the CZM plan.

Robert A Mello 340 Cummings Rd Swansea Mass. Member of the Swansea School Building Com-

Elvin H. Baldwin 165 Dillon Lane Swansea Mass

Raymond W. Howard Jr 25 Meadow Rd - Swansea, Mass.

Arthur E Schmidt 560 Marvel St Swansea

Chairman of Swansea Water District

Jayne C. Hancock - 122 Shawomet Ave Swansea

November 15, 1977

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

ATTN: Marc Kaufman

Dear Mr. Kaufman:

As a citizen and taxpayer of the Coastal Town of Wareham and as Wareham's representative to the Buzzards Bay Coastal Zone Advisory Group, I would like the following statement recorded.

It is my opinion that the Coastal Zone Management Plan as presently drafted fails to accomplish its primary goal of streamlining the management and development of our coast. The process of "networking" simply adds another tier of bureaucratic machinery.

In addition, the plan wrests control of coastal lands from the communities in which they exist, thereby overturning the concept of "home rule". In its present planning form, the citizen advisory council has no real power to effect the decisions of CZM.

Finally, the Coastal Zone Management Plan as presently drafted does not strike a balance between economic and environmental needs and concerns. The Plan is heavily weighted to conservation at the expense of economic necessities. If a true and valid plan is developed for the coastal zone, it should be formulated and managed with input and control by the Department of Commerce and Development as well as the Environmental Protection Agency.

One cannot help feeling after reading the PLAN that 1984 has arrived, or at least the handbook for implementing "big brother" as cautioned in Aldus Huxley's book.

Frankly, the prospect is frightening. Just a brief look at the management chapter itself indicates the all-encompassing and irrefutable control that Coastal Zone Management intends to set for itself.

For instance, the paragraph sites 28 line items which will be the purview of CZM. If any activity possible to conduct in the coastal zone has been left out, I can only feel it is an oversight. The "most unkindest cut of all", and to me the most unnerving, is item #28 in which CZM sets itself up as a non-assailable and self-perpetuating agency which "promulgates rules and regulations necessary to carry out its statutory responsibilities." What is this but the insullation of an agency from whomever would disagree with it?

Another indication of the insidiousness of CZM may be found in the notion that CZM will provide and offer incentives to local communities. However, the incentives will be available only for projects approved by CZM.

There is another area in which CZM misleads the reader of the PLAN: it states that people desire a system in which local decisions will be made at the local level. But according to the PLAN, local townspeople agree to submit to CZM, or state, decision on issues which involve more than one town, or city. My experience at these meetings with local citizen attendance indicates something somewhat contradictory to this statement. In fact, I believe people want a system in which decisions will be made exclusively at the local level if that decision effects only their town and at a regional level, not a state level, where such decisions might affect adjacent or neighboring towns.

CZM, as it has been presented in the PLAN and for the last couple of years, may very well find acceptance today, since it has a very strong conservationist flavor, and since on that basis, the local conservationists will see CZM as an agency to assist and further develop their interests. However, should the pendulum of CZM at some time in the future swing towards a stronger interest in commercial development, I suspect that the conservationists who presently support the notion of a CZM agency will "scream". May I suggest, therefore, that these supporters of the system as presently proposed give some very strong consideration to their support.

Finally, if we the citizens, members of the local towns on the coastline of Massachusetts, are to accept such an agency as Coastal Zone Management, we must insist that CZM be made up of elected officials, and further that such representation include members from every special interest group now or in the future active in the coastal zone. Without this kind of representation, we will ultimately have no control over "big brother".

Respectfully,

M. Gregg Robinson

M. GREGG ROBINSON

MGR:jhb

The Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133

THOMAS K. LYNCH
1ST BARNSTABLE DISTRICT
123 PHINNEYS LANE
CENTERVILLE, MA 02632
TEL. 775-6399

Committee on
Natural Resources and Agriculture
ROOM 473F, STATE HOUSE
TEL. 727-2023

November 17, 1977

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

RE: POSITION ON OCASTAL ZONE MANAGEMENT PLAN

FROM: TOM LYNCH, STATE REPRESENTATIVE, FIRST BARNSTABLE DISTRICT

The past few weeks have brought much attention to the proposed Coastal Zone Management Plan. I believe the CZM advisory committee would have attempted to focus the same degree of attention on their proposals however perhaps in a more positive and constructive manner than has been the rule thus far.

I wish to indicate to you my support for the CZM plan. I believe we need to uniformly enforce existing legislation and direct resources along our coastal area.

There are positive functions the CZM program could accomplish, including funding where needed in erosion control, playing a role in strengthening our fishing industry, and keeping the area in touch with and involved in off-shore oil activities. The overall streamlining of the permit process will go a long way to making development a little easier for the builder while eliminating a fragmented state permit process.

I recognize that these remarks may be a reiteration of policies you are all familiar with. However, I would like to outline some of the areas and questions which I believe have caused

concern thus far.

LEGISLATIVE AUTHORITY:

Most of the changes in the ussuance of licenses and permits and the authority that the office of E.O.E.A. is assuming is based on Chapter 806 of the Acts of 1974, which is now Massachusetts General Law, Chapter 21A. This chapter is the reorganization chapter for the Department of Natural Resources which created some new powers and clarified the roles of the Executive Office of Environmental Affairs and its constituent agencies.

In reviewing, Sections 2,3, and 4 of Chapter 21A of the General Laws, one will notice that broad powers and responsibilities are given to the Departments and Divisions of Environmental Affairs in addition to the Office of the Secretary itself. Moreover, according to the State Environmental Policy under Article 49/97 of the Constitution, it is declared: "The people should all have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose."

This, going on the assumption that Section 2 of Chapter 21A focuses and defines agency jurisdiction and authority, it is assumed that such agencies will assume an affiemative duty to implement the state environmental policy when they act within their existing jurisdiction, whether reviewing a permit or initiating a project.

Much of the discussion is settling around the phrase "Acting within their existing jurisdiction." The scope of discretion granted to agencies by the legislative what? varies from statute to statute. This implementation of the CZM plan, requiring an integrated approach towards critical areas, toward the balanced and best usage of all resources, and towards conflicting uses of land-natural and commercial, urban and rural or historical and industrial, may be more encompassing than the legislature intended when it enacted the law creating Chapter 806.

I believe that such discrepancies in scope and application of the law can be cleared up through a joint legislative/executive/public review committee. Secretary Murphy has indicated from the outset that such a review process is anticipated. With such a public review I believe we will not see a scope of power beyond the Secretary's Mandate of Chapter 806 or the disruption of the intent of laws the legislature has passed.

HOME RULE

Rules and Regulations which are adopted in the above procedure will strengthen the input coastal Representatives and Senators have in the overall development of the plan. Opening the approval of the CZM plan to the entire legislative body may well be infringing on our own ability to set priorities unique to our area.

Although the initial impetus for this plan came from the Federal Government, I think we quickly reversed that order by forming grass roots advisory committees to formulate the plan.

Conversations with Russ Silva of CZM lead me to believe that our plan has retained local control much to the chargrin of the Federal Authorities.

CZM is not a replacement for local zoning. Instead it assures that local zoning is meeting state regulations that are important. The plan has no effect on local zoning or building permits beyond what the Conservation Commission would now review. It should be clear that it establishes no state zoning.

The planning decisions, concepts and actions were all public activities. CZM has produced two large volumes that we all need to study. Less talk should be directed at the size of the volumes and more at the content contained therein.

We would be kidding ourselves if we did not anticipate conflicts, oversights or redrafts of the existing 38 policies. Our own accounts and interpretation of the policies has shown that we have begun that revision process. I expect this stage will bring further clarification of the policies.

In conclusion I believe that after the public hearing process is complete and a final draft is submitted we will have a Coastal Zone Management Plan which reflects a positive balance between our environment and our need for growth.

The Commonwealth of Massachusetts

House of Representatives

State House, Boston

DAVID J. LANE
2ND ESSEX DISTRICT
2 NORTH MAIN ST.
IPSWICH 01938
TEL: 768-6802

Committees on
Taxation and Health Care
STATE HOUSE OFFICE
ROOM 236
TEL: 727-4346

October 28, 1977

Ms. Margaret Reynolds
Coastal Zone Management
Saltonstall Building
100 Cambridge St.
Boston, Mass.

Margaret, this will confirm our conversation of yesterday wherein I requested a change in the Coastal Zone map on Plate 4.

The area marked in red on the attached copy of Plate 4, should be deleted from the proposed area for preservation or restoration. It is an operating gravel pit, in operation for 100 years, which used to be upland and was excavated below sea level in the early 1950's. In 1953 a permit was obtained (D.P.W. permit #5176) to excavate a channel to a tidal creek to allow salt water to enter the gravel excavation. Gravel continues to be excavated by means of a drag line.

In 1969 when the coastal wetlands in this particular area were restricted in accordance with Section 105 of Chapter 130 of the General Laws, this gravel pit was specifically excluded from the restriction after a public hearing (see attached plan of land showing areas to be finally restricted).

Since it is the intent of Coastal Zone Management to restrict "coastal wetlands" not already restricted, Coastal Zone Management would impose an additional incumbrance on this commercial activity that was specifically excluded in 1969 after all the facts and local opinions were aired in a public hearing held by the Department of Natural Resources.

DAVID J. LANE
State Representative
DJL:c

The Commonwealth of Massachusetts

House of Representatives

State House, Boston

DAVID J. LANE
2ND ESSEX DISTRICT
2 NORTH MAIN ST.
IPSWICH 01938
TEL. 768-6602

Committees on
Taxation and Health Care
STATE HOUSE OFFICE
ROOM 236
TEL: 727-4646

November 21, 1977

Ms. Margaret Reynolds
Coastal Zone Management
Saltonstall Building
100 Cambridge St.
Boston, Mass.
02202

Margaret, I thought I should elaborate on our telephone conversation concerning my letter of October 28, 1977 regarding a change in the Coastal Zone map on plate 4.

As I said in my letter, the area marked in red on the copy of Plate 4 attached to that letter should be deleted from the proposed area for preservation or restoration. It is an operating gravel pit, in operation for 100 years, which used to be upland and was excavated below sea level in the early 1950's. In 1953 a permit was obtained (D.P.W. permit #5176) to excavate a channel to Soginese Creek to allow tidal salt water to enter the gravel excavation. Gravel continues to be excavated by means of a drag line.

You mentioned that it appeared to be in the 100 year flood plain. Even though salt water is in the excavation at all times it could not possibly be a flood problem because the gravel pit was dug in a hill and slopes of 30 feet or more in height above mean low tide surround the excavation. Flood waters could never rise above the excavation or do any damage.

Since it is the policy of Coastal Zone Management with respect to conditioned significant resource areas, "to place many of these areas under the Restriction Act in the future" (Volume I, page 28), it appears that continued operation of this gravel pit would conflict with such State policy. Yet in 1969 when the Coastal Wetlands in this particular area were restricted in accordance with Section 105, Chapter 130 of the General Laws, this gravel pit was specifically excluded from the rest after a public hearing at which all facts and local opinions were aired before the then Department of Natural Resources (see plan of land showing areas to be finally restricted, attached to the letter of October 28.)

It appears that unless the area in question is deleted from the map it will be proposed as part of an area of preservation or restoration. Such a designation not only requires priority application of the Coastal Wetlands Restriction Program (Policy 1) but would also categorically prohibit new dredging (Policy 2). Not even the North Shore Ocean Sanctuary Law prohibits continued operation of the gravel pit since " the operation of existing....commercial...facilities", are exempt from the prohibitions in the law.

I'm familiar with this particular area because it is owned by family members. I don't believe that it is the intent of Coastal Zone Management to restrict operating businesses that do not further encroach on the Wetlands.

I hope that the area in question can be deleted from the map. Otherwise Coastal Zone Management would impose an additional encumbrance on this commercial activity that was specifically excluded from restriction in 1969 under Section 105 of Chapter 30.

David Lane

DAVID J. LANE
State Representative

DJL:c

cc: Russell Sylva
Evelyn Murphy

The Commonwealth of Massachusetts
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133

PETER L. McDOWELL
REPRESENTATIVE
4TH BARNSTABLE DISTRICT
BUSINESS OFFICE
585 MAIN ST. (RTE. 6A)
DENNIS 02638
BUS. TEL. 385-9114

Committees on
Local Affairs
Public Service
Urban Affairs
ROOM 166 STATE HOUSE
TEL. 727-7378

[illegible] 17, 1977

Office of Coastal Zone Management
National Oceanic & Atmospheric Administration
Rm. 32[illegible]
[illegible] Whitehaven St., N.W.
Washington, D.C. 20235
Attn: Ms. Kathryn Cousins

Re: November 17, 1977
Massachusetts Coastal Management Draft Environmental Impact Statement

Dear Ms. Cousins:

For the following reasons I respectfully request that the Associate Administrator delay approval of this Massachusetts Program as I believe the Massachusetts Secretary of Environmental Affairs does not have the statutory authority to implement the program as presented.

It would seem to me to be prudent to delay the program a few months to allow the Massachusetts Legislature early [illegible] opportunity to pass an act specifically [illegible] the Secretary to implement such a program.

I am absolutely confident that if this action does not occur, litigation will ensue in the courts which could [illegible] the office of Coastal Zone Management in Washington would [illegible] litigation that already involves [illegible] Hampshire and the Virgin Islands have been vetoed and Pennsylvania has withdrawn altogether.

My concern regarding the Secretary's legal authority include the following:

(1) The CZM plan contains a proposed regulation to be adopted by the Secretary of Environmental Affairs which will have the effect of promulgating the entire CZM plan as a binding regulation. CZM Plan, pp. a-22, a-30, and a-33. The alleged power of the Secretary of Environmental Affairs to promulgate the CZM Plan as a binding regulation is principally based on the provisions by G.L. c.21A, section 3, to conduct comprehensive planning with respect to the functions of the EOEA and to coordinate the activities of the departments and divisions within the EOEA. The Secretary is further authorized by G.L. c21A, section 4, to "resolve administrative and jurisdictional conflicts between any such (EOEA) agencies or officers; ... to implement, upon request of any such (EOEA) agency or officer, programs jointly agreed to by the Secretary and such an agency or officer; ... to coordinate and improve program activities involving two or more (EOEA) agencies officers ..." The power of "comprehensive planning" is clearly confined to the functions of the office of the Secretary itself. These functions do not include the issuance of substantive regulations concerning land-use planning or energy policy. The "coordination" of activities does not imply any power of the office of the Secretary to issue substantive regulations binding private parties as to energy and land-use planning. Likewise, the power to resolve "administrative" and "jurisdictional" conflicts refers to matters such as manpower and budget priorities, inter-agency geographical boudaries and other such ministerial "administrative" and "jurisdictional" matters.

The regulations in CZM Plan, Vol. 1, Section 4, the Management Section, empower the Secretary to require that all E.O.E.A. agencies are to carry out the CZM plan in full in granting permits, in disbursing funds or in conducting any kind of activity in the coastal zone. In other words, should an issue arise as to the weight to be given to CZM policies, they are to be dispositive, i.e., final. The constitutionality of this set of priorties should be seriously questioned. (See Page 318)

(2) The CZM Plan as proposed rule # 5-0, Pg. a-29, states, "There shall be in the Office of the Secretary a Coastal Zone Management Office to be adminstered by a Director of Coastal Zone Management."

This is one of the most serious matters to be considered. Does the Secretary or any office have the authority to legislate the creation of a new state agency? This should be done by legislative action:-especially when the office will be funded at least one-third (1/3) by the state budget.

(3) The CZM plan as proposed Rule 6-64, page a-59 entitled, [illegible] laws relative to the powers of eminent domain as in (d), and the powers of acquisition as outlined in (e). A review of the general laws appear to grant such authority presently on a very limited basis at the commissioner level.

(4) The CZM Plan, p. a-40, gives the office of CZM the right to appeal to the courts from any decision rendered by an EOEA agency in an adjudicatory proceeding involving the coastal zone. [illegible] and Finance v. Attorney General, Mass. Adv. [illegible]

The questioning of the secretary's authority is not new and it has not soley come from the business community as supporters of the "CZM Plan As Is" would have you believe.

In a report to the Office of Coastal Zone Management Executive Office of Environmental Affairs, Mr. Alan H. Kaufman for the Conservation Law Foundation of New England, on July 1, 1975, forwarned the secretary of thin ice.

He stated, "Most significantly, it must be emphasized that the Act, by itself, does little to alter the management of the array of activities which take place within the area which is understood as constituting the "coastal zone." In the absence of unusual and unprecedented action by the governor (through executive order) and/or the General Court (through the adoption of a management program), the Act does little more than allow the state to assess its posture with respect to planning problems and possibilities within the zone. Without such major executive or legislative action, private development interests, individual citizens, and local state and federal agencies will essentially conduct their business in the same manner as before the passage of the Act."

If Massachusetts is to have a Coastal Zone Management Plan, I suggest that it be done so on a solid legal foundation. I submit that the Office of Coastal Zone Management and the National Oceanic and Atmospheric Administration be determined that a solid legal foundation does exist and lets keep Massachusetts out of court.

Very truly yours,

Peter L. McDowell
State Representative

THE GENERAL COURT OF MASSACHUSETTS
State Senate
STATE HOUSE, BOSTON 02133

5

HON. JOHN F. AYLMER
CAPE, AND ISLANDS DISTRICT
ASSISTANT MINORITY LEADER

COMMITTEES:
BILLS IN THIRD READING
COUNTIES
FEDERAL FINANCIAL ASSISTANCE
GOVERNMENT REGULATIONS
HUMAN SERVICES AND ELDERLY AFFAIRS

November 17, 1977

TO: The Hearings Officer
Office of Coastal Zone Management
NOAAA

FROM: Senator John F. Aylmer, Cape, Plymouth & Islands District

Please be advised that an earlier appointment in Boston prevents my joining the many citizens of Southeastern Massachusetts for critique and commentary on the Coastal Zone Plan recently submitted for consideration.

I commend the local CZM Advisory Board for their hard work and diligence in preparing this plan, in addition to the many area residents who contributed their views and knowledge towards the plan.

The fragile area in question presents significant environmental concerns along with economic considerations that are unique to Barnstable County.

I would like to be placed on record as supporting the plan-Absent the inclusion of the Mid-Cape area bounded on the south, east and west by Route 28 and on the north by Route 6 (the Mid-Cape Highway.) A goodly amount of this land mass has been zoned over the year at acre or better lot sizes to preserve water quality in view of the soils content here. I believe the Advisory Board has recently addressed this issue with dialogue with local residents and officials.

It is my view that a successful plan can only be represented by meeting the desires of area people both in the drafting and implementation of the CZM plan. Local officials are most capable of enforcement and I trust the Advisory Board concurs with this view.

I feel, additionally, that the CZM plan had ought not be fashioned at the legislative forum, but as has been suggested, by the administrative route.

State officials must not lose sight of the fact that success of CZM plans depend directly on the involvement of local townspeople and officials who should rightly determine their future, and that of generations of residents who will occupy the penisula in years to come.

Very sincerely yours,

John F. Aylmer, Senator

Massachusetts Coastal Zone Management ---- Public Hearing

Cape Cod Regional Technical High School

November 17, 1977

The following statement is entered into the record by the Brewster Conservation Commission:

The Brewster Conservation Commission wishes to express support for the Coastal Zone Management Plan, and to record its opposition to House Bill 6687, recognizing that this bill would paralyze the efforts of the Office of Environmental Affairs.

Brenda J. Boleyn

Brenda J. Boleyn

associate member
Brewster Conservation Commission

438 Freeman's Way
Brewster, Mass.

Massachusetts Coastal Zone Management ---- Public Hearing

Cape Cod Regional Technical High School

November 17, 1977

The following statement is entered into the record by Brenda Boleyn:

I did not work on this project, but I think that this document (Mass. Coastal Zone Management Program) represents a tremendous achievement, and that this kind of planning can only serve to build and strengthen the economy of the Cape, not weaken it. It will provide the coordinated effort we have long needed, and I'm pleased to see that our barrier beaches and dunes will receive some attention. I believe that the entire Cape should be included in the Coastal Zone, and I am opposed to House bill 6687.

Brenda J. Boleyn
Brenda Boleyn
438 Freeman's Way
Brewster, Mass.

RECEIVED
NOV 22 1977
COASTAL ZONE MANAGEMENT

QUINCY HISTORICAL SOCIETY
ADAMS ACADEMY BUILDING
8 ADAMS STREET
QUINCY, MASSACHUSETTS, 02169

November 21, 1977

Massachusetts Coastal Zone Management
100 Cambridge St.
Boston, Mass. 02202

Gentlemen:

I personally favor the principles of Coastal Zoning.

Quincy enjoys approximately 27 miles of shoreline, and it is critically important that this natural environment be recognized, carefully evaluated, and properly managed.

In some manner the local community should have an input towards a coordinated effort to protect this waterfront; but, actually, the problem is too big and too critical for each local community to handle.

If the Pilgrim fathers had landed in California instead of Massachusetts, the whole of Massachusetts, if not New England, would now be a national park.

In my opinion, the Coastal Zoning Act should be accepted immediately, and then every effort should be extended to make it work.

I respect the opposition's fears of "just another layer of regulation," and unquestionably the multiplicity of layers must be overcome. That, too, is a legislative challenge that must be overcome by a specific political unit with the support of the public.

Sincerely,
William A. O'Connell
William A. O'Connell
President

O'C:w

COMMENTS FROM - RALPH H. GOODNO for COASTAL ZONE MANAGEMENT PUBLIC HEARING -

NOVEMBER 22, 1977

Please forgive my absence from such an important hearing. This afternoon I am involved in conducting a teacher training program in Coastal Resources - a seminar we've been doing since 1971 - and thus cannot attend today.

My name is Ralph H. Goodno from Danvers. My interest in Coastal Zone Management has evolved through 10 years of Cooperative Extension Service work as a community Resource Development Specialist in coastal communities, and in the last year and a half as an Extension Sea Grant Marine Specialist, a program cosponsored by University of Massachusetts and the MIT Sea Grant program.

My work has involved providing educational programs and services to community officials, business interests, concerned citizens, consultants, and special interest groups, which have focused on zoning, land use planning, wetland protection, coastal recreation, waterfront development, and marine education.

I feel that the Coastal Zone Management plan fills an urgent need to provide a balanced and scientific rationale for officials at all levels of government, and citizens living in our coastal zone as a basis for making intelligent and comprehensive decisions for growth. One of the serious shortcomings of community efforts to direct growth is the difficulty in obtaining the kind of information that is needed to support the environmental conscience of people who care about their city or town and its resources, but who, in the past, have lacked the time and funds to obtain supportive data. How frustrating it has been in the past to match wits against old fashioned ideas about growth, and development interests with well-heeled proposals.

Now we have a vehicle to evaluate growth issues, to understand the trade-offs, to create an awareness of long range impacts, to take a comprehensive look at things.

The concept that resource protection for survival is not a pipe-dream, but is fast approaching, and must be weighed carefully against poorly conceived development proposals is surely an important aspects of this work. Yet, issues and recommendations have been carefully made without further restrictions and regulations, but with guidelines and a sense of direction to provide the kinds of growth that are essential and desirable, and protect critical areas.

In addition, the staff at Coastal Zone Management have been especially helpful in cooperating with Extension Service programs; programs which have an important multiplier effect in aiding teachers to develop sensible attitudes among their students, and for officials and their boards whose role in decision making is becoming more and more complicated with little time to absorb the multiplicity of technical information for the benefit of their town.

I enthusiastically support the Coastal Zone Management plan and hope that an enlightened citizenry follows suit.

Ralph H. Goodno

Ralph H. Goodno
Regional Extension Sea Grant Marine Specialist

11-22-77
RHG:fc

My name is grace saphir, East Sandwich

I am the founder of SOS, Save Our Shores which was founded in 1968. Its sole purpose was to protect the foreshores basically of Boston Harbor. But times change. What affects Boston Harbor affects the whole coast.

I attend these meetings to learn what the public is thinking and today I speak as an individual.

I realize it is a necessary formality to hold these meetings and I thank you for doing so. I ~~hope that you will answer~~ would like to ask a few questions.

1/ Congress, as I understand it, passed the CZM Act (PL 92-583) and according to your literature Coast Lines Vol. 3, every coastal state has a CZM program.
These hearings precede the acceptance of this state's report. Why then, at this time, do I understand that this report has already been given the go ahead from Washington? Isn't this placing the cart before the horse?

2/ A common citizen's complaint seems to be how will management take place, since no new agency will be created to administer. Yet, in the Addendum, Vol. 1 pg. 4, a siting council (EFSC) has been set up for this purpose. Can you explain why the local existing authorities are not capable of planning and implementing their own plans?

3/ More citizens and representatives of towns seem vitally concerned about the loss of home rule. Although in every piece of literature and vocally you have stressed "not so", don't you think that giving the state the power to manipulate permits and plans of local authorities is taking away home rule?

4/ The protection, recreation, and restoration of the shores from the waters edge to ½ mile inland has been so stressed by the public that one would believe that this is all that CZM is interested in. Yet, isn't it true that what we are talking about is the fact that offshore sand and gravel removal, siting for power plants and oil refineries are the chief interests of those who are so vitally interested in ~~pushing~~ CZM? No one stresses this angle.

In no way do I disapprove of the merits of having funds available for common sense and wise use of the foreshores or coast, ~~as you call it~~. I readily concede that all foreshores or coastal zones have some areas that could be even enhanced by creating water dependent development. If you are sincere about protecting the coast or foreshores, why ~~do you have~~ is it necessary to go inland for ½ mile? Why not let the cities and towns decide whether it is fitting for a development in the area?

Therefore, I suggest:

1/ That the Coastal zone managers in this state be the experts who advise the local existing powers to carry out their plans for protection and development of the foreshores and the state supply the funds for doing so.

2/ That the state through the Environmental Department insist that plans be presented by local boards and updated as needs and changes arise.

3/ That the state stop this unnecessary disguise of protecting the public from itself. It should make public in simply understood language that the CZM would have jurisdiction over all water areas and all STATE owned islands.

STATEMENT BY

LIEUTENANT GOVERNOR THOMAS P. O'NEILL, III

AT THE

COASTAL ZONE MANAGEMENT

DRAFT ENVIRONMENTAL IMPACT STATEMENT HEARING

NOVEMBER 22, 1977

GOOD AFTERNOON. I APPRECIATE THIS OPPORTUNITY TO ADDRESS THE ASPECTS OF THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM WITH WHICH I AM MOST FAMILIAR. I HAVE BEEN INVOLVED WITH CZM THROUGH MY OFFICE'S WORK ON FEDERAL-STATE RELATIONS, ON IMPROVING AND REVITALIZING MASSACHUSETTS FISHERIES AND ON OFFSHORE OIL AND GAS EXPLORATION AND DEVELOPMENT. IN EACH OF THESE ENDEAVORS, I HAVE WORKED CLOSELY WITH THE GOVERNOR, THE DEVELOPMENT CABINET AND WITH ENVIRONMENTAL AFFAIRS SECRETARY EVELYN MURPHY. I FULLY SUPPORT THE CZM PROGRAM AND URGE ITS SPEEDY APPROVAL BY THE DEPARTMENT OF COMMERCE, FOR I BELIEVE IT OFFERS THE SINGLE MOST SIGNIFICANT AND BENEFICIAL IMPACT ON OUR COASTAL COMMUNITIES.

MY INTERESTS AND ACTIVITIES OFTEN TAKE ME TO THE COAST OF MASSACHUSETTS, AND I IMAGINE THIS IS TRUE FOR MANY RESIDENTS OF THE COMMONWEALTH. THE COAST IS THE CENTER OF COMMERCE, INDUSTRY, ENERGY FACILITIES, TOURISM AND MANY OTHER ACTIVITIES IMPORTANT TO THE ECONOMY AND TO THE QUALITY OF LIFE OF THE COMMONWEALTH. WE MUST ALLOCATE OUR COASTAL RESOURCES CAREFULLY IF WE ARE TO HAVE THOSE RESOURCES MEET FUTURE NEEDS AND OPPORTUNITIES. THE CZM PROGRAM PROVIDES US WITH THE ONLY RATIONAL MECHANISM TO BALANCE THE COMPETING USES AND INTERESTS ALONG OUR FINITE SHORE, AND TO GUARANTEE A WEALTH OF

COASTAL RESOURCES FOR THE FUTURE. THE ECONOMY OF THE STATE DEMANDS NOTHING LESS. FUTURE GENERATIONS OF MASSACHUSETTS CITIZENS WOULD WANT NOTHING LESS.

ONE OF MY PRIMARY RESPONSIBILITIES HAS BEEN TO ESTABLISH AN OFFICE OF FEDERAL-STATE RELATIONS THAT BRINGS FEDERAL TAX DOLLARS BACK TO THE BAY STATE. THE CZM PROGRAM REPRESENTS A FEDERAL PROGRAM THAT WILL HELP BOTH LOCAL AND STATE GOVERNMENT THROUGH AN INFUSION OF NEW FEDERAL MONIES. THE COMMONWEALTH WILL BE ELIGIBLE FOR 1.2 MILLION DOLLARS ANNUALLY TO IMPLEMENT THE CZM PLAN. A THIRD OF THIS MONEY WILL GO DIRECTLY TO OUR CITIES AND TOWNS. AS A RESULT OF CZM, CONGRESS HAS APPROPRIATED ADDITIONAL FUNDS TO COASTAL STATES FOR RECREATION LAND ACQUISITION. THE COMMONWEALTH MAY BE ELIGIBLE FOR UP TO A MILLION DOLLARS A YEAR IN ADDITIONAL RECREATION FUNDS. FINALLY, THE FEDERAL CZM OFFICE HAS A COASTAL ENERGY IMPACT PROGRAM, OR CEIP. MASSACHUSETTS CITIES AND TOWNS WILL BE ELIGIBLE FOR UP TO $26 MILLION DOLLARS OVER THE NEXT EIGHT (8) YEARS TO AMELIORATE THE IMPACTS OF ENERGY DEVELOPMENT. FOR EXAMPLE, OCS RELATED ACTIVITIES IN NEW BEDFORD OR FALL RIVER MIGHT PLACE ADDITIONAL FINANCIAL STRAINS ON THESE COASTAL COMMUNITIES. CEIP FUNDS WILL HELP MASSACHUSETTS COMMUNITIES TO OFFSET THE COSTS OF ROADS, SEWERS OR OTHER TOWN SERVICES. ALL OF THE CZM MONIES

REPRESENT MASSACHUSETTS TAX DOLLARS RETURNING TO THE COMMONWEALTH. THESE FUNDS ARE IMPORTANT IF WE ARE TO HOLD DOWN OUR PROPERTY TAXES WHILE IMPROVING OUR ECONOMY.

THE CZM PROGRAM ALSO REPRESENTS A UNIQUE OPPORTUNITY FOR THE COMMONWEALTH TO REGAIN CONTROL OVER FEDERAL ACTIVITIES IN OUR COASTAL AREAS. THE FEDERAL CZM ACT MANDATES "FEDERAL CONSISTENCY." THIS MEANS THAT ONCE THE MASSACHUSETTS CZM PLAN IS APPROVED BY THE SECRETARY OF THE U. S. DEPARTMENT OF COMMERCE, FEDERAL PROGRAMS AND THE SPENDING OF FEDERAL FUNDS MUST BE CONSISTENT WITH THE CZM PLAN. THIS IS AN IMPORTANT PART OF OUR FEDERAL-STATE RELATIONS WORK. IT GIVES US AN OPPORTUNITY TO SET PRIORITIES AND CHANNEL FEDERAL FUNDS BASED ON THE NEEDS OF OUR CITIES AND TOWNS.

THIS LEADS ME TO MY THIRD POINT. THIS ADMINISTRATION IS COMMITTED TO REVITALIZING OUR EXISTING CENTERS -- WHETHER THEY BE URBAN, SUBURBAN, OR RURAL. THE CZM PROGRAM REFLECTS THIS COMMITMENT THROUGH THE ALLOCATION OF FEDERAL AND STATE FUNDS FOR TRANSPORTATION AND SEWAGE TREATMENT PROJECTS. OF EQUAL IMPORTANCE, THE CZM PROGRAM SEEKS TO DIRECT COMMERCIAL AND INDUSTRIAL DEVELOPMENT TO OUR PORTS AND HARBORS. THESE AREAS NEED AND WANT ADDITIONAL COMMERCE. THE CZM PROGRAM

WILL HELP THE COMMONWEALTH'S COMMERCIAL FISHING INDUSTRY TO GROW AND TO TAKE FULL ADVANTAGE OF THE 200 MILE FISHERIES CONSERVATION ZONE. IT WILL HELP CROWDED HARBORS TO SOLVE THEIR PROBLEMS AND TO IMPROVE ACCESS AND FACILITIES FOR BOATERS AND SPORT FISHERMEN. HAVING A CZM PROGRAM IN PLACE WILL HELP OUR PORTS AND HARBORS TO TAKE ADVANTAGE OF THE POTENTIAL ONSHORE SUPPORT INDUSTRIES FOR OFFSHORE OIL AND GAS EXPLORATION AND DEVELOPMENT.

THE MASSACHUSETTS CZM PROGRAM WAS DEVELOPED THROUGH AN EXTENSIVE PUBLIC PARTICIPATION EFFORT. MORE THAN A THOUSAND PUBLIC MEETINGS WERE HELD OVER THE PAST THREE YEARS TO PREPARE THE PLAN. THE PLAN IS BALANCED AND TAKES INTO CONSIDERATION THE MANY NEEDS OF COASTAL COMMUNITIES AND THE MILLIONS OF USERS OF OUR VALUABLE COAST. I FULLY SUPPORT THIS PLAN AND THE DRAFT ENVIRONMENTAL IMPACT STATEMENT.

THANK YOU.

November 22, 1977

To: Evelyn Murphy, Secretary
Office of Environmental Affairs
Coastal Zone Management Program
100 Cambridge Street
Boston, Massachusetts 02202

As a member of the South Shore Citizen's Advisory Committee of the Coastal Zone Management Programs, a member of the North River Advisory Executive Committee for Scenic Rivers, and the citizen representative for the Town of Pembroke on the Old Colony "208" Water Quality Study, I endorse the policies of the CZM Management Program.

In view of the needs for the siting of energy plants, oil refineries, and waste-water treatment facilities on the coast of Massachusetts, it is imperative that fragile resources such as the marine environment and critical wetlands be protected. By designating the estuarine salt marshes at the mouth of the North and South Rivers as "Areas of Preservation and Restoration" CZM takes a positive step toward this protection. By giving the same priority to the North and South Rivers, the program will protect the present visual, environmental and recreational value of these resources.

Pembroke residents are mindfull that by CZM's sponsoring preservation of the North River's tributary, Robinson Creek, the annual herring spawning will continue.

The Citizen's Advisory Committee of Pembroke looks forward to continuing relationship with your staff.

Sincerely,

Jean Foley

Jean Foley
Pembroke Member of
Citizen's Advisory Committee

69 Brick Kiln Lane
Pembroke, Massachusetts 02359

11 Atlantic Road Dr
Swampscott, Ma 01907
Nov 24, 1977

Mr Eric E Van Loon, Director
Coastal Zone Management
100 Cambridge Street
Boston Ma 02202

RECEIVED
NOV 28 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

Dear Mr Van Loon

After attending the public hearing on November 14 in Hawthorn, I wish to give my wholehearted support to the plan as submitted. I was a member of the Swampscott Citizens Advisory Committee and feel that we all endorsed the suggestions for Swampscott. We of course have problems that differ from Lynn and Salem who have specific commercial interests.

Many of us are concerned that the plan will be watered down considerably before enactment but if we continue to abuse the coastal resources as we have in the past, we will have no asset to protect.

We realize that certain commercial interests must be served. They should be carefully weighed however, so that the entire public be served and protected.

Very truly yours,
William H McCarty Jr

Statement of Dr. Thomas M. Leschine on the Massachusetts Coastal Zone Management Program

November 17, 1977
Harwich, Massachusetts

My name is Thomas Leschine. I am a mathematician and have been a Fellow in the Marine Policy Program at Woods Hole Oceanographic Institution for the past year. I have an academic interest in the policy applications of decision theory and I am particularly interested in the degree to which government coordination and direction of decision making toward the achievement of policy goals is amenable to mathematical analysis. Coastal zone management is especially interesting to me in this regard, because of both the scale of its application and the diversity of the interests it attempts to accomodate.

I of course cannot predict what the outcome of enactment of the Coastal Zone Management Program in Massachusetts might be, but I do believe that the Program should be approved. Certainly it has both strengths and weaknesses as presently construed, and I believe that the specific issues to be addressed in either approving the Program now or in evaluating its effectiveness in the future should reflect awareness of the following general concerns.

First, it is not surprising that the many generally stated objectives which appear in the Coastal Policies chapter on the CZM Program document conflict to some degree. Though it seems inevitable that this conflict will manifest itself at the policy and program implementation level in specific cases,

this possibility is masked somewhat by the way the Program addresses its issues of concern separately in the Coastal Policies chapter. It seems to me that CZM's response to criticism of its handling of specific issues has been to supply increasingly more detail and refinement of each issue, rather than to attempt a more integrative approach to planning: The form of the present Program is substantially the same as that of the previous CZM Preview, but the size of the document has increased considerably.

I do not mean to criticize the planning approach CZM has taken, but only to point out that it may not, for example, always be possible both to "...minimize the adverse impact of man's activities upon the marine environment," an objective state on page 79, and "...maximize the economic return and public benefit for publicly supported port and harbor works," an objective stated on page 174. Some day an important marine environment area may stand square in the way of a needed harbor improvement. The use of regional committees to set the priorities for specific areas found in Chapter 5 should help minimize such conflict, but the Program may always be open to attack because of the way it seems to speak on different levels with different voices.

Secondly, some policies in the Program which potentially conflict are stated with considerably different degrees of firmness. For example, the charges to "conserve" and "protect" are prominent in the statements of marine environment Policies (1) and (2), while energy policies state only that inland sites

for energy facilities will be "considered." This kind of difference no doubt reflects what may be a politically realistic degree of decentralization among authorities whose decisions affect the state's coastal areas. In this case, for example, EOEA seems to have clear lines of authority for directing those aspects of its marine environment policies which fall under the Wetlands Restrictions Program, administered by its Department of Environmental Management, and a more tenuous connection to the local Conservation Commissions which administer the Wetlands Protection Program through a permit system. On the other hand, the Energy Facility Siting Council is essentially independent of EOEA.

This particular contrast is especially striking when one compares the energy policy statements of the present CZM Program with the much stronger language found in the statements of these policies in the CZM Preview issued only a few months earlier. Does CZM have the authority to assure that future energy development does not preclude its fulfilling some of its other stated goals?

My final comment concerns the landward boundaries Massachusetts has used to define its coastal zone. The overriding intent of the Coastal Zone Management Act of 1972 seems to be to provide for orderly and rational use and development of coastal resources so that the coastal environment, and the physical environment in particular, will be protected. Biologists and other scientists often complain that the pursuit of such protective goals is complicated by the fact that the

boundaries of the relevant administrative units do not match those of natural systems. It seems to me that Massachusetts can offer an interesting test of the value of having administrative boundaries match natural ones in that the Cape and Islands boundaries are of this type while those along the rest of the coast are not. Will such diffuse goals as protecting ground water quality be easier to achieve when administrative boundaries match natural ones and will more orderly development actually occur on a regional basis under this regime? Will technical assistance to local governments be spread over too large an area to have significant impact, or will its use for whole-region problems result in greater benefits to the region than would have been attained otherwise? Thank you.

Dr. Thomas Leschine
Marine Policy Program
Woods Hole Oceanographic Institution
Woods Hole, MA. 02543

Testimony - CZM - Harwich - Nov. 17, 1977 Dr. Judith Spiller
W.H.O.I.
Woods Hole, Ma.

Based on physical properties, I argue that Coastal Zone Management boundary should remain where it is, including the entire Cape. A single event, the Pleistocene glaciation which occurred approximately 10,000 years ago, formed the geology of the Cape, and it played a dominant role in the subsurface geology, the distribution of soils and the occurrence of vegetation on the entire Cape. Further, presence of all our physiographic features such as hills, ponds, marshes and harbors is largely attributable to this event.

A specific example of the connectedness of the entire Cape deals with our water supply. Glaciation resulted in the deposition of a series of sandy layers which filter, sanitize and store our water. These layers are called aquifers. Aquifers are recharged at the land surface and discharged at sea level along the edge of the aquifer. Excessive usage results in the landward migration of the freshwater - saltwater interface and hence, salt water contamination of the water supply. An additional problem arises when contaminated water, for example water containing detergents, is returned to the ground. A combination of overuse and contamination has occurred on Long Island in New York State, an area with the same geological setting as that of the Cape. There, poor planning in the form of lack of recognition of the regional aspect of water supply has resulted in regional water contamination. Thus, because of the geology of the Cape, what happens in the center effects the edges and so the entire water supply.

A further example deals with the problems encountered in construction. Due to the similarity of the subsurface of the Cape, the same problems will be encountered in Truro as in Harwich. A unified approach to development of the Cape should simplify future development. Thus, the entire Cape should remain within the boundaries as defined.

Comments on the Massachusetts Coastal Zone Management Program

I would like to express my views on some of the policies and provisions contained in the Massachusetts Coastal Zone Management Program concerning the designation and protection of coastal natural areas (i.e., areas supporting rare or unique biological or geological features, or areas representative of relatively pristine habitats located within Massachusetts' coastal zone).

The Program's provisions regarding Areas for Preservation or Restoration as established in Policy 2, protect only areas of high natural productivity or water quality potential. This focus should be expanded to include other types of habitats which do not meet the five criteria for "high natural productivity" but which are worthy of protection because they are relatively unmodified by human activity. For example, a rocky intertidal shore which might be valuable for studying the processes involved in intertidal zonation would not qualify for APR designation under the present wording in the Program. I would suggest that the criteria used to define APRs be expanded to include some means for designating as APRs those natural features which cannot be described by any SRA type or which do not meet any of the qualifying criteria which define APRs.

The Program also fails to recognize several issues which should be discussed in terms of APR policy. One important issue concerns the relationship between out-of-state actions and their impacts on APRs. For example, the Parker River Refuge and Westport Harbor have been nominated as APRs by the

Massachusetts Office of Coastal Zone Management. The former borders New Hampshire and the latter Rhode Island. While activities categorically prohibited within an APR will also be prohibited outside of the designated area, with the burden of proof on the proponent to demonstrate that the proposed action would not adversely affect the APR, this policy would not apply to actions which originate outside of Massachusetts. Thus if an energy generating facility which discharged thermal effluent were to be sighted in New Hampshire, there would be no means for requiring consideration of the potential impact of the facility on APRs. Interstate coordination of coastal zone management under Section 309 of the Coastal Zone Management Act is clearly a broad issue which affects many aspects of coastal zone management, and not just APR planning. Policy 2 should nonetheless address this issue, and should establish as one of its goals the implementation of interstate coordination plans for preservation of natural features.

Another issue which is not covered in the Program is the relationship of the federal Estuarine Sanctuaries Program to APR planning in Massachusetts. The Program should recognize those estuarine areas in Massachusetts which fit the biogeographic classification criteria set out in the federal regulations on Estuarine Sanctuary nominations. For example, the North River (at one time a tentative nominee) and Barnstable Harbor could qualify as sanctuaries under the Act. A policy supporting the nomination of these areas should be adopted. If the State does not, at this time, wish to adopt a policy encouraging the nomination of APRs as Estuarine

Sanctuaries, the Estuarine Sanctuaries Program should at least be mentioned in the Program, if for no other reason than public disclosure.

Finally, the Program does not mention the federal Marine Sanctuaries Program and its potential role in coastal zone management in Massachusetts. Does the State have a policy regarding the establishment of Marine Sanctuaries within State waters? What would the impact of Sanctuary designation be if Sanctuaries were established within or outside of State waters? These issues should be addressed in the Program. The Program should at least note that the Marine Sanctuaries Program can have a significant impact on coastal activities, a point which was made evident by the proposed George's Bank nomination this summer.

Thank you for allowing me to comment on the Program.

Arnold L. Lum
3 F.R. Lillie Road
Woods Hole, MA. 02543

BLESS YOU

RECEIVED

NOV 29 1977

COASTAL ZONE MANAGEMENT

memo
from

George E. Lane
4 Trinity Cove
West Harwich 02671

Mrs.Evelyn Murphy,Secretary
Environmental Affairs Committee
State House
Boston,Mass.

Dear Madam Secretary:

Having read the complete text of your Coastal Zone Management Program-all 600 pages of Volume 1,please accept my congratulations for a superb job of research and planning.
The proposal to include all of Cape Cod within the boundary of the plan is absolutely correct.Any attempt to nit-pick the areas of the Cape District is just so much political jargon particularly that of Selectman Haden Greenhalgh who is already a candidate for the House in this district.
As far as the Town of Harwich is concerned the economic problem is local and not one which can be solved by your Department nor by the Cape Cod Planning grpup now reorganizing for the third time without any significant contribution to the economic future of the Cape towns.
Let's go forward with your CZM Program.
Best wishes.

Sincerely,

George E.Lane Sr

RECEIVED

DEC 7 1977

COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

December 6, 1977

Mr. Eric Van Loon
Director of Coastal Zone Management Program
100 Cambridge Street
20th Floor
Boston, MA 02202

Dear Mr. Van Loon:

I was unable to present the attached statement at your November 22 meeting due to the backlog of speakers and an un-alterable schedule conflict.

Good luck with the remaining approval processes.

Sincerely yours,

A. Dix Leeson Jr

A. Dix Leeson, Jr.

ADL/jgk

STATEMENT OF A. DIX LEESON, JR.

AT THE JOINT FEDERAL-STATE HEARING

ON THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM

AND THE DRAFT FEDERAL ENVIRONMENTAL IMPACT STATEMENT

November 22, 1977

I am A. Dix Leeson, Jr. and present the statement below with the following perspective. For 3½ Years I served as a Recreation Planner for the Metropolitan District Commission. In this position I was concerned with recreational use of important Metropolitan beaches, I reviewed adjacent, private development proposals, explored the acquisition of additional public lands in the proposed coastal zone, and worked with users, town officials, prospective developers, and other M.D.C. staff in establishing and implementing land-use policies for recreation facilities in the coastal zone. At the end of this period, my particular focus was on improving the conservation and recreation use of the Boston Harbor Island State Park.

I feel that Boston Harbor is an excellent example of the diverse mix of coastal zone uses. Some of these competing uses were represented on a citizens advisory commission which advised the Executive Office of Environmental Affairs on the management of the Harbor Islands State Park. I served as chairman of this commission.

As a result, I was invited to sit on the Coastal Zone Management Program's Ad Hoc Committee for the Boston Harbor region reviewing the Coastal Zone Management policies. I am a Director of the Boston Harbor Associates and am currently employed by a private, non-profit land conservation group which acquires and otherwise preserves ecologically significant land.

The duties and responsibilities connected with the functions I have just mentioned have given me first-hand experience with the coastal problems and opportunities addressed by the policies in this Massachusetts Coastal Zone Program, particularly the following: Policy 1 - conserving ecologically significant resource areas, Policy 5 - minimizing adverse effects of dredging and disposal of dredged material on marine productivity, Policy 10 - acquiring undeveloped hazard prone areas, Policy 13 - encouraging incorporation of visual concerns into planning and design of coastal facilities, Policy 15 - expanding visual access to the coast in urban areas, Policy 21 - improving public access to recreation facilities, Policy 22 - Linking existing coastal recreation sites to each other, Policy 25 - expanding the physical size of existing state or local recreational facilities and Policy 27 - minimizing proposed developments near existing public recreation sites.

I endorse the incorporation of these policies into this intergrated coastal zone plan for the purposes of protecting and sensitively developing the Massachusetts coastal zone. I thank you for this opportunity to express my support for this plan.

Concrete Construction
Of All Types

CONSTRUCTION · ENGINEERING
20 Years of Experience on Cape Cod

LOWER CAPE FOUNDATION CO.
CONCRETE CONSTRUCTION
ORLEANS MASS

Call 255-4600

Route 6A
P.O. Box 398
Orleans, Mass. 02653

November 28, 1977

Hearings Officer
National Oceanic & Atmospheric Administration
Attention: Ms. Kathryn Cousins
Room 3280
3300 Whitehaven Street, NW
Washington, DC 20235

Re: Proposed CZM Plan
Commonwealth of Massachusetts

To whom it may concern:

Attached please find a copy of the comments I made at a public hearing on November 17, 1977 at the Cape Cod Regional Technical High School in Harwich, Mass. regarding the impact of CZM on the small businnessman and his economic surroundings. I request that considerable weight be given to the economic impact of the boundries in our area beofre any Federal approval of this program is approved.

Very truly yours,

Thomas W. Joy
President, Lower Cape Foundation Co., Inc.

Enclosure

cc: Evelyn Murphy, EOEA, Mass.
Sen. Edward M. Kennedy
Sen. Edward Brooke
Rep. Gerry Studds

Thomas W. Joy
P.O. Box 477
Orleans, Mass. 02653
(617) 255-4600

(Copy of Address made November 17, 1977 to Hearings Officer, NOAA regarding public reaction to proposed Mass. CZM Program)

Secretary Murphy and others: Thank you:

I speak tonight on behalf on myself and the Cape Cod Contractors & Builders Association. Until recently I thought that we, the construction industry, were represented in the CZM Citizen Advisory Group, but it doesn't appear so. In November of 1975 we met with the Regional CZM coordinator and told them we wanted to be involved in the decision making process. They assured us that we would be.

We do not feel that they have made an effort to keep in contact with us and just lately have they begun to hear us.

Why are we concerned? Because next to Tourism, we represent Cape Cod's largest industry. The construction business has been here since 1620.

We do not feel economic considerations have been adequately addressed since it was decided to include all of the Cape in the zone, instead of a coastal strip.

We feel that CZM has no business on inland Cape Cod. In defference to those who request specific objections: Here they are: 1) We object to Policy 12 which denies protection of private property unless there are public benefits; we object to Policy 22 which will be interpreted to mean any development anywhere on Cape Cod; we object to Policy 35 which is only written for a PhD to understand and addresses the issue of water and sewage which are covered under other Federal programs. 2) We strenuously object to the boundries of the Coastal Zone - we feel it should be restricted to coastal roads, we therefore have drawn our own coastal zone map as prepared by builders, developers and realtors from throughout the area and familiar with realistic boundries. We do not accept the idea of inconsistent boundries on a town by town basis.

I'd like to point out that inland of our line, we understand there are coastal environs which must be added. We feel the CZM Program addresses them, but if not, we suggest the Coastal 100 year Flood elevation which is now a definable boundry, be used.

A peripheral road boundry is certainly attainable and we submit this map as our input toward that end.

CZM says there will be no new laws, but it will set forth regulations and Memoranda of Understandings which will further complicate and confuse the local home builder, the remodler, their customer, and the people who own property and try to improve it. They will soon be wondering if its future value will appreciate or depreciate. If segments of private industry had all the interlocking agreements or MOU's which EOEA indicates they want, we would be accused of collusion!

With respect to keeping all the Cape in this zone in order to protect the aquifer and ground water quality, there is no question in my mind that the Federal 208 Wastewater program, currently in formulation, will adequately handle that (I do serve on the 208 Citizens Advisory Board and feel sure of this). So inclusion of all Cape Cod for this reason, by CZM, is not really necessary and will be adequately addressed under 208 Wastewater Management Program.

In the Federal EIS, approximately 1½ pages are devoted to economic impact. Nowhere does it address the plight of the small businessman (the backbone of our economy), and how the continued, ever increasing load of state and federal bureaucracy are breaking his back.

I served as chairman of a Cape-Wide Joint Committee on Economic Development to look into our sagging economy and increasing unemployment problems of the past few years. During the same time, CZM was doing their homework. Our group was never approached for our input or ideas and how it might affect the economic life of the whole area.

I suggest if you must have a CZM boundry which includes inland areas, you owe your working community another review of how it will really affect good economic growth.

Our group is not against the ideas of CZM, we are against:

1. Boundries which are unrealistic; Policies which are not enforceable.
2. The continued layering of regulation on regulation, and
3. Trend to wrest local zoning away from local communities in the name of "good land use". Good for who? By who?

Our group and others of the business community are ready and willing to talk with CZM people about these things I have mentioned, if we are asked, and if they will listen!

But I believe the nut of this whole issue is best stated in Section IV-II of the EIS which says, "the area must not be so extensive that a fair application of the management program becomes difficult or capricious."

I personally would join with other true environmentalists and say let us protect our environment our way at our local level to preserve our economic life as well as our physical and natural assets.

Thank you.

Thomas W. Joy, Orleans, Mass.

Presentation of map of Cape Cod marked in color with proposed coastal zone base on coastal road boundries.

November 15, 1977

STATEMENT SUPPORTING THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM.

Susan Nystedt, 21 Corant Rd., Marblehead, Mass. 01945
(617) 631-1736

I wish to attest to the degree to which the Mass. Office of Coastal Zone Management has tried to involve the general public in the evolvement of the present plan -- from the original task force which represented many diverse groups [redacted] -- to the regional Citizens' Advisory Councils.

I was appointed Selectmen's representative from Marblehead to the Lower North Shore Advisory Council in February 1976, and have helped identify boundaries and permissible land and water uses in our region and inventory critical areas. The plan has had plenty of "grass roots" input.

Fred Bauer 8 FOUNTAIN INN LANE, MARBLEHEAD, MA 01945 (617) 631-7254

November 14, 1977

STATEMENT IN SUPPORT OF THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM:

"I support the Massachusetts Coastal Zone Management Program without reservation. As Chairman of the Marblehead Citizens Advisory Committee on Harbor use, I have first hand knowledge of the real and present dangers of waterfront urbanization, an overused harbor, and a serious Harbor and Waters Management deficiency. In Marblehead, I believe that this Plan would not only supplement home rule, but also help to establish efficient Harbor Management - presently missing from our local scene - through the work of geological, biological and legal advisors available under the program of community assistance."

Frederic M. Bauer

Chairman, Marblehead Citizen's Advisory Committee on Harbor Use.

TESTIMONY BY REPRESENTATIVE JAMES E. SMITH, November 14, 1977 Public Hearing on Massachusetts Coastal Zone Management

MY NAME IS JAMES E. SMITH; I REPRESENT LYNN IN THE GENERAL COURT. I WOULD LIKE TO GO ON RECORD AS SUPPORTING THE MASSACHUSETTS COASTAL MANAGEMENT PROGRAM. THE PROGRAM IS A BALANCED ONE, LOOKING OUT FOR BOTH ENVIRONMENTAL AND ECONOMIC INTERESTS ALONG THE COAST. IT ENSURES THAT GENERATIONS TO COME CAN ENJOY OUR COAST'S NATURAL RESOURCES. IT ALSO ASSURES THAT THE POTENTIAL OF OUR COAST FOR ECONOMIC DEVELOPMENT CAN BE REALIZED. THE PROGRAM WILL RATIONALIZE AND PUT ORDER TO STATE PERMITTING PROCESSES WITHIN THE COASTAL ZONE AND GEAR EXISTING STATE PROGRAMS TO COMMON, MUTUALLY SUPPORTIVE ENDS.

I BELIEVE THE PRINCIPLES AND POLICIES ESPOUSED BY THE MASSACHUSETTS CZM PROGRAM ARE ONES THAT WILL BENEFIT THE DISTRICT I REPRESENT. FOR EXAMPLE, LYNN HARBOR HAS BEEN TARGETED BY THE CZM PROGRAM AS AN AREA MERITING SPECIAL DEVELOPMENT ASSISTANCE, AND I LOOK FORWARD TO WORKING WITH THE CZM PROGRAM ON THE REVITALIZATION OF LYNN HARBOR.

James E Smith

RECEIVED
DEC 19 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

December, 1977

Mr. Eric Van Loon
Coastal Zone Management Office

As a private citizen, a lifeguard, and a volunteer for the Sierra Club, I am urging you to approve the Massachusetts Coastal Zone Management Program.

It is my job as a lifeguard to work in the coastal zone. There I observe the changes taking place summer after summer, quite often accelerated or intiated by man's presence. Our dependence on the coastal zone has already been recognized. By neglecting to establish adequate safeguards, damage may be done that is costly or even irreversible. If we protect these areas now, less effort will be spent compromising for our mistakes later.

This program consists of logical guidelines for the management of coastal areas. In fact, the limits suggested impose no threat to business, industry, or the economy. I personally feel the program is much too lenient in most areas, yet I acknowledge is as a good starting point. I hope the approval of the Coastal Zone Management Program will be the beginning of many such programs in the state of Massachusetts.

Sincerely, Helen Sayers

Helen Sayers
16 Glenville Ave. Apt. 3
Allston Mass 02134

UNIVERSITY OF MASSACHUSETTS
AMHERST · BOSTON · WORCESTER

MARINE STATION
HODGKINS COVE
BOX 128, LANESVILLE STATION
GLOUCESTER, MASSACHUSETTS 01930
(617) 281-1930

December 14, 1977

Ms. Kathryn Cousins, Regional Manager
North Atlantic Region
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Room 3280
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Ms. Cousins:

I would like to take this opportunity to comment upon the Massachusetts Coastal Zone Management Program as presented in Volumes I, II and the accompanying Draft Environmental Impact Statement. My view of the program derives from my membership in the Upper North Shore Advisory Committee and from my professional activities as a marine scientist.

As a member of the Upper North Shore Advisory Committee representing the City of Gloucester it has been my privilege to attend and participate in numerous regional meeting with staff members of the Massachusetts CZM office. These sessions were, to my mind, highly successful and have convinced me of the viability of the concept of citizen participation in planning efforts of this sort. At these meetings, matters of local importance were balanced intelligently with those of regional and state-wide significance. This resulted in local endorsement of general policy statements and planning concepts as well as a reasoned evaluation of special local problems whose solution was seen to be critical to individual communities. The Massachusetts CZM Program, as submitted, eloquently reflects the concerns of diverse groups in coastal communities of the North Shore.

In my second capacity, that of marine research scientist (biologist) at the University of Massachusetts, I am, naturally involved with many problems of coastal resource utilization. The CZM program has, I believe, effectively documented significantly large numbers of scientific and technical areas which demand rigorous attention. This should result in a new and promising awareness of the critical nature of most coastal resources whose neglect in the past has led to serious degradation of some of the regions most attractive natural features.

The program statement addresses these issues in clear and log-

ical fashion pointing the way toward more enlightened understanding of the limits of certain resource bases (ie., beaches, marshes, estuaries and coastal islands) and emphasizing the need to examine alternative choices in their utilization so as to promote maximum benefits both for the present and the future.

While accomplishing these ends, the program has not lost sight of the economic and social impact of the policies it espouses and provides a rational approach to the solution of problems arising from conflicting interests.

From the perspective of the marine research enterprise of which I am a part, the CZM plan appears to provide, for the first time, an opportunity for scientists and engineers to focus their collective attention upon some of the crucial problems facing those who must plot the course of community efforts in the coastal zone. Thus, I feel, it will assist concerned scientists and engineers in identifying the problems of highest priority in the minds of coastal planners. Their response can have the dual effect of providing impetus for research directed toward solving problems of immediate concern to society while promoting professional and scholarly activity in the scientists' own fields of interest. Such an interaction can be nothing but beneficial and is certainlylong overdue. Marine scientists, in general, will welcome this opportunity to contribute to the CZM program.

I conclude by stating my enthusiastic support for the Massachusetts Coastal Zone Management Program and my hope that its approval and implementation are close at hand.

Respectfully,

Christopher Martin, Ph.D
Research Scientist and
Coordinator
Member, North Shore CAC

cc. E.E. Van Loon
M. Reynolds

December 2, 1977

My name is Ken Robinson. I am a resident of Jamaica Plain. Presently I am also a law student at Northeastern University School of Law.

Having grown up near the Atlantic Ocean all my life, I am very concerned for the coastal areas that provide me and many others with a variety of recereational, aesthetic and cultural opportunities. I have reviewed the Massachusetts Coastal Zone Management (CZM) Plan and the draft environmental impact statement (DEIS) to understand what actions are being undertaken that would have tremendous impact upon these coastal areas.

After careful reading, I believe the present CZM plan is an excellent beginning. And it should be adopted by Massachusetts. The 38 policies stated in the Plan have carefully balanced environmental and economic goals. If the Plan does tip the scales ever so slightly toward environmental/natural values, it does so only out of the profound recognition that the Massachusetts coast has undergone such intense and unguided development in the past, that future uses must proceed at a more orderly and wiser pace.

The most prudent policy is thus represented by a careful planning approach. It should not be designed to prevent all growth, nor to allow as much development as current plans would entail. Rather, it must understand that there is only so much coastline, that there are and will be competing and incompatible demands for its usage, and the CZM Plan must determine within a given set of criteria what the best uses of our coastal areas are. Such a policy is the one espoused by the present Massachusetts CZM program.

Although the entire Plan deserves careful attention by all of us. there are several aspects of it that I would like to comment upon. As a future lawyer I am quite impressed by a program for our entire coast line that requires no new legislation for implementation. This says much about the foresight of our legislators and those who have worked with them to create the laws which will become the backbone of the CZM Plan.

However, I do foresee a few sources of difficulty. One is the Program's enforcability. Although I understand and agree with the rationale for delaying implementation of the CZM regulations until the Plan is adopted, I do urge Secretary Murphy to maintain strict adherence to the proposed schedule for adoption of the 21A regulations. I also wish to encourage the various EOEA agencies, particularly those with cognizance over Ocean Sanctuaries, Coastal Wetlands and Energy Development, to expeditiously adopt the necessary regulations. Delay will assuredly be hazardous to the health of both the Plan and the coast.

A related problem is the binding nature of the Memoranda of Understanding between the Executive Office of Environmental Affairs and the Energy Facilities Siting Council and other state bodies. I agree with their content. I am concerned of their future in light of certain in court and out of court challenges.

Also, how will the Plan operate where no State permit is required? The Plan wisely leaves many of the choices concerning usage of the coastal zone to the individual coastal communities. Many impacts upon the coast will be very localized in nature--a retaurant, a parking lot, community real estate development that discourages public access. However, it is one thing to have a state-wide plan. It is quite another to ensure the acceptance

of its guidelines and policies by the many coastal cities and towns. This will be especially true when local economic needs conflit with statewide requirements or desires. This problem will become particularly acute if the resources are not available to assure that competent personnel and reliable information are available at both the state and local level to assure compliance with the CZM policies, purposes and many statutues desgined to carry forth the program. I thus urge the state and federal government to ensure that adequate funding and personnel will be available for these purposes.

In the area of Energy Development several points need to be raised. I am very happy to see the addition of Policy 33 encouraging energy conservation and the utilization of alternative energy sources. Policy 33 will both enhance the value of coastal areas as a major source of alternative energy forms while concurrently reducing the dependence of the Commonwealth upon coastally destructive energy technologies.

The CZM Plan also speaks of locating electric generating facilities in non-czm sites. However, nuclear power plants LNG facilities, oil tanker ports all reuire deep and plentiful waters. I question what real alternatives are available and how they will developed. Also, what methods will be adopted to encourage utilization of these sites once they are developed.

A word about LNG facilities. Apparently the federal government though the FPC, the Coast Guard and OPSO have the final approval over the siting of LNG facilities. However, since such facilities are usually within the coastal zone, the federal authorities must abide by the CZM Plan policies. If Massachusetts does formally delineate particular locales as sutiable for LNG operations where will the final decision actually lie? and What factors will really be considered in formulating that decision?

Finally, there is a proposal afoot to give the head of the Department of Energy a veto power over all energy decisions involving the costal zone. I find this proposal distasteful and hope that it remains only the germ of an idea. Such a concept runs counter to the purpose of carefully creating a comprehensive coastal zone management. At present, the veto power lies within the Department of Commerce. I personally would much rather trust the Secretary of Commerce, who has responsibility over the state CZM policies, with decision-making in the area of the coastal zone and energy development. In stark contrast, the Department of Energy's responsibility is geared more toward energy development than toward responsible coastal management.

My last topic of discussion is that of public access. I wish to commend Secretary Murphy for the July 29th Memorandum Concerning Shorefront Access Planning. As one person without a car, I am strongly supportive of most policies and plans that encourage, develop and enhance increased access to coastal areas by non-automotive menas.

Policies 21 and 22 establishing a procedure to support the planning and funding of non-automotive transportation alternatives should receive wide applause. Particularly important to me and other Jamaica Plain residents are both the ability to travel to such areas as Cape Cod, Marthas Vineyard, Plum Island and lesser known and used beach areas and the opportunity to travel within these areas.

Related to the public access question are policies 13 through 16 encouraging visual access. The few times I have

been to the coast in Massachusetts I found it a very beutiful sight. Together with the many light houses, whaling homes, well-designed sea side "shanties" the sea shore in the Commonwealth is qutie unique. Several months ago I visited Montreal-- a very beautiful city with one common problem. Large segments of a spectaculr shoreline are obliterated from view by huge structures of many shapes and sizes. While some undoubtedly require a seaside location, certainly others do not. According to the law, the waters and large segments of the coast belong to all of use as citizens of the Commonwealth. This "ownership" should inclusde visual as well as physical title.

I thank The Executive Office of Environmental Affairs and the State and Federal CZM Offices for the opportunity to present one resident's viewpoint here today. I look forward to working with the many governmental and private parties involved in the effort to adopt and implement this CZM Plan.

November 22, 1977

December 2, 1977
70 Jamaicaway
Boston, MA 02130

Office of Coastal Zone Management
State Programs
National Oceanic and Atmospheric
Administration
Main Commerce Building
14th and Constitution
Room 5807
Washington, D. C.

re: Massachusetts Coastal Zone Management Plan and Draft EIS

Dear Sir/Madam:

Enclosed please find one copy of my written comments on the Massachusetts Coastal Zone Management Plan and the Draft Environmental Impact Statement. On November 22 of this year I presented these views orally at the Boston public hearing. I believe the Plan is an excellent start and should be immediately adopted andimplemented. I look forward to working with state, federal and private parties in furtherance of these goals.

Thank you again for the opportunity to present my views on the Massachusetts Plan and the Draft EIS. I look forward also to revie wing the Final EIS.

Very truly yours,

Kenneth L. Robinson

14 December 1977

P O Box 185
North Stonington, Conn. 06359

C ice of Coastal Zone Management
National Oceanic and Atmospheric Administration
Att: Ms Kathryn Cousins
Rm 3280
330 Whitehaven Street N W
Washington D C 20235

Dear Ms Cousins,

Having read the "State of Mass. Coastal Management Draft Environmental Impact Statement", We have come to some definite conclusions as concerned property owners on Gurnet Point, Plymouth, Mass.

Among the 38 policies adopted by the Mass. C Z M we are concerned specifically with # 25, # 27 and # 26.

25 the area is much too fragile to allow expansion of the existing local recreation facilities on Duxbury Beach.

27 Any new development on Duxbury Beach, Plum Hills Beach or Saquish Beach is completely unrealistic because of the limited, almost non-existant back area for these beaches.

26 Proposes local acquisition of Saquish Beach which is the #18 area in policy 26. thout reservation we feel that this would be a complete disaster. The Town of Plymouth now cannot afford police protection for its year around and summer residents. They only promise us help in the event of "rape, murder or riot".

If the area is to be preserved at all it will have to be under the protection and control of something more responsible, the Federal Government? Perhaps as a separate area of the Cape Cod National Seashore? We believe this may be the only way to really protect all of Plymouth Bay and the three towns of Duxbury, Kingston and Plymouth and the area for controlled public use.

We do not wish to belittle the work of the Duxbury Conservation Commission and the Duxbury Beach Reservation in their furtherance of conservation and protection of the area. But the money is apparently simply not available to supply sufficient daily supervision. It must be protected throughout the year, if this protection is to accomplish anything. There is no longer a "summer season and an off season". The area is vulnerable and accessible twelve months of the year to everyone with 4-wheel drive vehicles; only a small proportion of these people respect or understand the fragility of this or any other barrier beach.

In passing it should be pointed out that in the four and a half miles of beach and dunes (these latter not respected now even tho they are fenced and posted as Conservation Areas) there is not one sanitary facility beyond the north end of the beach. Draw your own conclusions.

We certainly are not eager to lose our property, especially since we built hoping to retire to the area. But we do not wish to be engulfed in hordes of people, or subject to m vandalism and break-ins such as are now a common occurance. There must be some compromise that might safeguard public and private interests as well as preserve in perpetuity the unique and fragile barrier beach and adjacent marsh areas.

Sincerely

Nancy F Jackson
George A Jackson
P O Box 185
North Stonington, Conn. 06359

AIDC EDUCATIONAL FOUNDATION

66 RAILROAD AVENUE, BOX 474, SOUTH HAMILTON, MASSACHUSETTS - 01982
TELEPHONE: (617) 468-7361

RECEIVED
NOV 9 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

November 4, 1977

Mr. Eric E. Van Loon, Director
Coastal Zone Management
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, MA 02202

Dear Mr. Van Loon:

I shall be away during all of the scheduled five hearings on the D.E.I.S. and would like to go on the record in favor of the CZM plan for Massachusetts generally and against that spiteful piece of so-called legislation, HR 6687. I do not formally mention that in my enclosed statement.

I would appreciate your submitting it "in support" at the November 22nd Public Hearing or at any of the prior hearings as you may see fit.

Keep up the good work and my regards to Madame Secretary.

Sincerely,

Richard Preston

RP:lmd

cc: Mr. Kaufman
Mrs. Fegan

Testimony of RICHARD PRESTON

November 4, 1977

Testimony of Richard Preston, Member of The Governor's Coastal Zone Task Force and of its Public Participation Sub-Committee presented to the Public Hearing on November 22, 1977 held in Boston, Massachusetts under the aegis of the United States Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management.

Mr. Chairman, I am pleased to have this opportunity to present my personal view upon both the Massachusetts Coastal Zone Management Plan (Draft) and the Coastal Management Draft Environmental Impact Statement.

My name is Richard Preston, a legal resident of Massachusetts (Hamilton) who was appointed to the Coastal Zone Task Force (so-called) in 1973 by the then Governor Francis Sargent and re-appointed by Governor Michael Dukakis in 1976. I am a Certified Industrial Developer and my curriculum vitae includes five years as Commissioner of Commerce, Massachusetts Department of Commerce, two years as Executive Director, New Hampshire State Planning and Development Commission, Economic Development advisor to the Government of the Belgians, thirteen years as Executive Vice President of the American Industrial Development Council (The International Society of Practitioners), author, editor and lecturer on industrial development and, presently, the President of the AIDC Educational Foundation.

I am, therefore, deeply concerned with the impact of the proposed Coastal Zone Management Plan upon the economic development of this Commonwealth.

I am in favor of the plan and believe that it will enhance economic development generally and the sphere of industrial development particularly.

In the first place, the plan defends with logic and rectitude the limited coastal areas of the state. It endeavors to meet the socio-economic and the environmental demands upon our coastal resources. Clearly something must be done to protect and delimit. The plan is that something. Furthermore, it is not an imposed something. It represents input from concerned public leaders and citizenry gleaned from many lengthy and often heated meetings in the various coastal regions.

I realize, of course, that such meetings were often sparcely attended. Such is the character of our people that they want their voices to be heard, but satisfied with the opportunity, they all too often simply do not put in an appearance. Fortunately, as the first draft policies become known, public participation increased as the many policy changes and modifications attest. The net result is a "good plan" which can and will be modified through the input of the local, affected citizenry.

The plan contains two remarkable characteristics which should well appeal to those who argue against more laws and regulatory bodies.

The plan does not call for new legislation. It simply endeavor to give new life to existing laws. By the same token, it endeavors to systematize issuance of permits by coming closer to the ideal of a "one stop permit agency".

In both approaches, it is obviously a boon to the industrial developer who sees his role in today's society as achieving growth with environmental quality.

The plan advocates industrial development in the context of manufacturing and process industries in those areas already developed. With a limited coast line, it is logical to locate new industrial facilities inland unless pressing circumstances require a coastal location in which case there is 21% of the coastal zone immediately suitable for development (D.E.I.S. III-4).

The plan leaves much to local initiative. It is neither a federal nor state monolithic plan imposing land use regulations willy-nilly upon our coastal communities. Naturally, once adopted there will be a rigity in certain provisions, but it may be observed that this condition now pertains. The CZM plan but emphasizes them.

There is much more to be said for the proposed plan and for the D.E.I.S. suffice it to note that developers are, today and for the future, oriented to the requirements of both environments, the natural and the socio-economic. It is axiomatic that they must be developed together. Wherein a space has natural limits as does our coastline, there must be certain controls to assure that capital invested in development will yield a competitive profit to the economy and a commenserate profit to the environment.

I, therefore, urge Federal approval of the Massachusetts Coastal Zone Management Plan as submitted in the proposal with such modifications as are desirable, but will not alter the substance of the policies and conditions set forth therein (Chapter II of the Coastal Management Draft Environmental Impact Statement).

November 15, 1977

TESTIMONY OF R. F. DINNIE OF MONTAUP ELECTRIC COMPANY
PROPOSED COASTAL ZONE MANAGEMENT PROGRAM

My name is Robert F. Dinnie and my home address is 687 Buffinton Street, Somerset, Massachusetts. I am employed as Vice President and General Manager by the Montaup Electric Company, an electric generating and transmitting company which furnishes electricity to the Fall River Electric Light Company, Brockton Edison Company, Taunton Municipal Lighting Plant and Middleborough Electric Department in Massachusetts and to the Blackstone Valley Electric Company, the Pascoag Fire District Electric Department, the Tiverton Division of the Narragansett Electric Company and the Newport Electric Corporation in nearby Rhode Island. These distribution companies serve over 600,000 people. I am also a Registered Professional Engineer and a Registered Land Surveyor in the Commonwealth of Massachusetts.

The Montaup Electric Company and its owner companies - the Brockton Edison Company and the Fall River Electric Light Company - believe that some parts of the plan have merit, but that the presently proposed Coastal Zone Management Program is a land use control program adopted without legislative approval which will adversely affect every person in Massachusetts.

The land areas to be controlled extend far over the boundaries that affect the Coastal zone. For example, over 95% of the industrial and commercially zoned land and over a third of the residential property in Somerset are included in the Coastal Zone. The boundaries also include the Somerset Town Office and grounds of the Police Station and the High School, some of which land is 80 feet above mean sea level. Have the people of Somerset, the town officials or the Massachusetts legislators in this area been apprised of these facts? Have they also been told that the Secretary

of Environmental Affairs will have veto power over all major developments or public service investments in the Zone? We know that they haven't. This is a gross invasion by the Commonwealth into local jurisdiction that the public should not accept.

Our companies are vitally concerned with this program as we have a responsibility to meet the growing demand for electric energy for industrial, commercial and residential purposes. Policies 1,2,8,17 and 31 should be redrawn to permit an orderly development of power plants with reasonable and economical environmental standards within the Coastal zone. The Coastal Zone Management Program interferes with the functions of the Energy Facilities Siting Council, which was established to minimize agency overlaps and to expedite the approval of generation and transmission construction to meet the needs of the area. Failure to revise this proposed program - to recognize the need for and to allow new generating plants to be built will be catastrophic for the economy of Massachusetts. We know that New England and the nation will be facing power curtailments and rationing in the 1980's. The energy required for business expansions will not be available and there will be greater unemployment. This plan will accentuate these impacts.

The Montaup Electric Company requests that the proposed program contained in over 600 pages of repetitious, confiscatory, controversial and confusing ideas which have not been economically justified and which are not in the public interest be withdrawn. A new simplified program affecting only the truly coastal zones, with input from the businesses, municipalities and property owners in the controlled areas should be prepared by qualified planners. This has to be the final conclusion of these hearings or "God Save The Commonwealth Of Massachusetts"!

DEPARTMENT OF THE ARMY
NEW ENGLAND DIVISION, CORPS OF ENGINEERS
424 TRAPELO ROAD
WALTHAM, MASSACHUSETTS 02154

REPLY TO
ATTENTION OF:
NEDPL-L

29 November 1977

Mr. Howard S. Whiteside
Putnam, Bell & Russell
53 State Street
Boston, Massachusetts 02109

Dear Mr. Whiteside:

This is in reply to your letter of 14 November 1977 regarding the Massachusetts Coastal Zone Management Program proposal on page 146 of Volume 2 of their June 1977 report. This proposal would entail possible purchase of an easement by the Massachusetts Department of Environmental Management through your property and that of adjacent landowners for public land access to Stony Point Dike at the southwestern end of Cape Cod Canal.

In response to your specific inquiry concerning Federal-State coordination on the Stony Point Dike proposal, our office has not been consulted regarding any of the Volume 2 proposals that could entail possible Corps participation.

The two very spotty beaches, one on each side of the dike, are not specifically authorized as public recreational beaches. We are aware that approximately 50 boats may visit these beach areas on a good summer day. To date, these visitors have not abused their use of the area, and our canal staff has not seen any need for posting the area.

During the early 1970's, provision of public land access to the dike was reviewed by our Waltham staff during the preparation of our October 1975 Master Plan for the development of the recreational resources of the Cape Cod Canal project area. This plan was coordinated with the Massachusetts Division of Forests and Parks, Massachusetts Division of Fisheries and Game, Bureau of Outdoor Recreation, and Fish and Wildlife Service. Public land access to

NEDPL-L
Mr. Howard S. Whiteside

29 November 1977

the dike was deemed inappropriate because of the long access through private property and more particularly because of the lack of parking and waste treatment opportunities. The southern end of the dike is under water at high tide conditions and is completely awash during coastal storm conditions. In view of the limited recreational potential of the dike area beyond its existing boater-access uses, we believe that no Federal funds should be expended for expansion of recreational use of the dike. The prime purpose of the dike is to protect the southern navigational approach to the canal.

Inclosed are two maps from the 1975 Cape Cod Canal Master Plan design memorandum. There is no discussion of the Stony Point Dike area in that report as the area was eliminated for possible inclusion in the plan. Discussion is limited to the 10 areas noted in the inclosed Schematic Recreation Plan. As a matter of interest, Mr. Frank (Francis) Ciccone of our Waltham office is transferring on 5 December to become Engineer-in-Charge, Cape Cod Canal.

Sincerely yours,

Incl
as stated

JOSEPH L. IGNAZIO
Chief, Planning Division

CF:
Ms. Kathryn Cousins
Office of Coastal Zone Mgmt.
3300 Whitehaven St., N.W.
Washington, D.C. 20235

Mr. Eric Van Loon, Director
Mass. Coastal Zone Mgmt.
100 Cambridge Street
Boston, Massachusetts 02202

2.

RICHARD BANCROFT
WILLIAM B. STEIGH, JR.
HOWARD S. WHITESIDE
ALLAN R. ROSENBERG
JOHN G. VAN DUSEN
JOHN G. SERINO
ALEXANDER WHITESIDE, II
JOSHUA J. VERNAGLIA, JR.
ROBERT M. SCHWARTZ
RONALD E. HARDING

Putnam, Bell & Russell

Attorneys at Law
53 State Street
Boston, Massachusetts 02109
(617) 723-3131
Cable: Puttenham

November 14, 1977

Colonel John Chandler
Division Engineer
New England Division, Corps of Engineers
424 Trapelo Road
Waltham, Massachusetts 02154

Re: Stoney Point Dike/Stony Point Dike
Wareham, Massachusetts

Dear Colonel Chandler:

I am writing to you at the suggestion of Mr. Frank Cicconi with respect to the proposal in the Massachusetts Coastal Zone Management Program that an unlimited access be provided to the Stoney Point Dike, which is a part of the Cape Cod Canal shoreline managed and maintained by the Corps of Engineers.

I am the owner of land on Cedar Point and, together with all other landowners at the locus of the proposed access, am strongly opposed to the proposal, which I consider poorly conceived and, if effectuated, likely to have severe and irreparable adverse consequences to the environment of the locus and the health and safety of those who would use the dike.

The Massachusetts Coastal Zone Management Program was prepared under a federal grant by the state; it is contained in two volumes which present the proposals of the program's staff, which are now undergoing review at both the state and federal level to insure that the particular projects are conceptually sound. It is my understanding that the Corps of Engineers has been provided with these two volumes together with a Draft Environmental Impact Statement (issued during October of 1977) but was not consulted during the planning process which resulted in the recommendation that the state acquire a vehicular access in order for the dike to undergo unlimited recreational use.

Presently the dike has no land access open to the public but is reached by a private dirt road, which the Corps has permission to use for necessary maintenance and protection activities.

This arrangement between the Corps and the landowners has been in effect since the dike was built and is, I believe, satisfactory to all the parties concerned. During this period the Corps has permitted the dike to be used by recreational boaters who arrive by sea from the numerous nearby harbors and launching sites to picnic on the beach below the stone rip-rap constructed by the Corps to prevent the dike from washing away. This use on a good summer day uses almost all the beach available at high tide, and the boaters in general have been responsible and have not abused the privilege of this use as well as have been aware of the dangers of the nearby canal channel.

Since the dike is under the control and management of the Corps, any change in the use of the dike, especially one which might funnel hundreds of automobiles, motorcycles, and campers per day onto it, should be subject to approval of the Corps, and I am surprised that the current proposal apparently has not been so cleared by the state authorities, who do not seem to have given adequate attention to the many problems involved, such as:

1) The lack of any water and of waste and garbage disposal facilities.
2) The traffic hazards increased traffic on Great Neck Road would cause.
3) The damage to bird nesting areas and shellfish areas on the dike.
4) The lack of parking space on the dike and the damage that vehicles and large numbers of people would cause the vegetation which currently slows erosion and permits bird nesting.
5) The lack of a plan to provide lifeguards or a life-saving program in an area of considerable danger to those unacquainted with the sea.
6) The lack of a plan to control traffic and to prevent disturbances and unauthorized dumping on the dike.
7) The lack of adequate sand area at high tide and the hazards of crossing the rip-rap to reach the beach which is available.

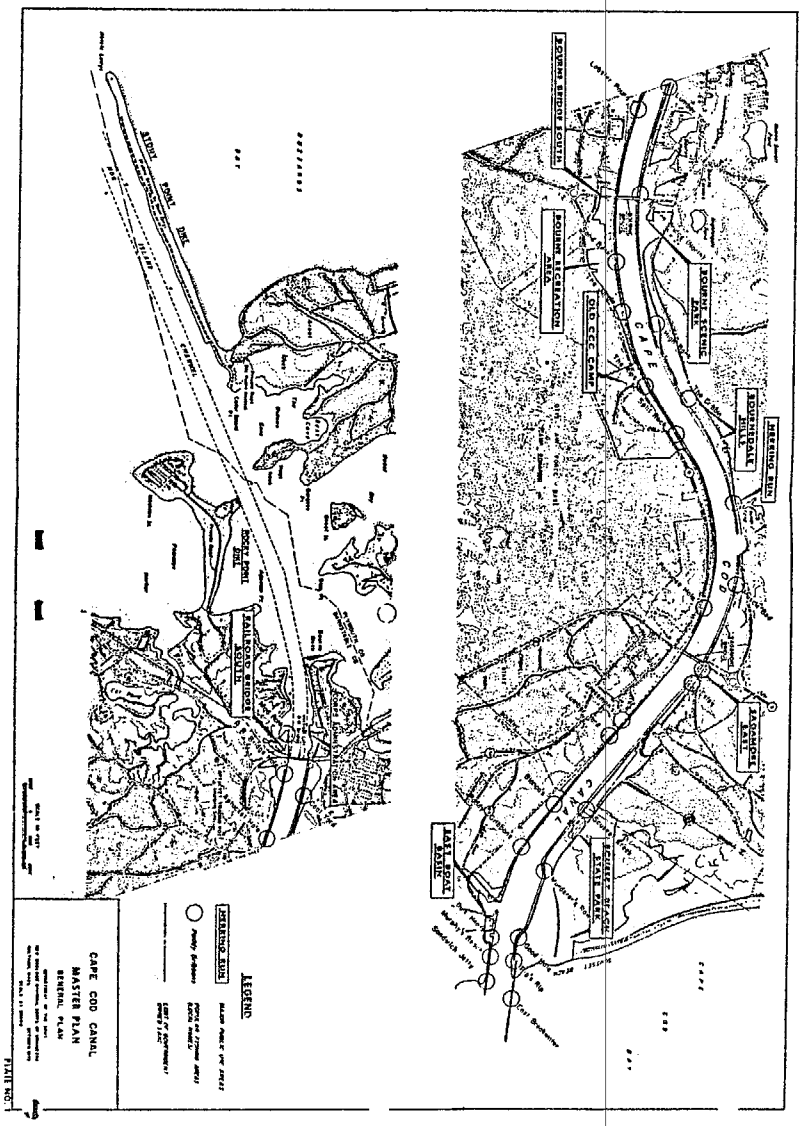
I should appreciate your advice regarding whether the state has addressed these concerns with the Corps and, if my information that it has failed to do so is correct, I urge that you or the appropriate federal authority review the matter. I believe that careful analysis of this particular proposal would prove it to be unsound and inadvisable and that this conclusion should be made clear to the reviewers of the proposal in order to prevent the ruination of a valuable natural resource, which currently is being soundly used and managed.

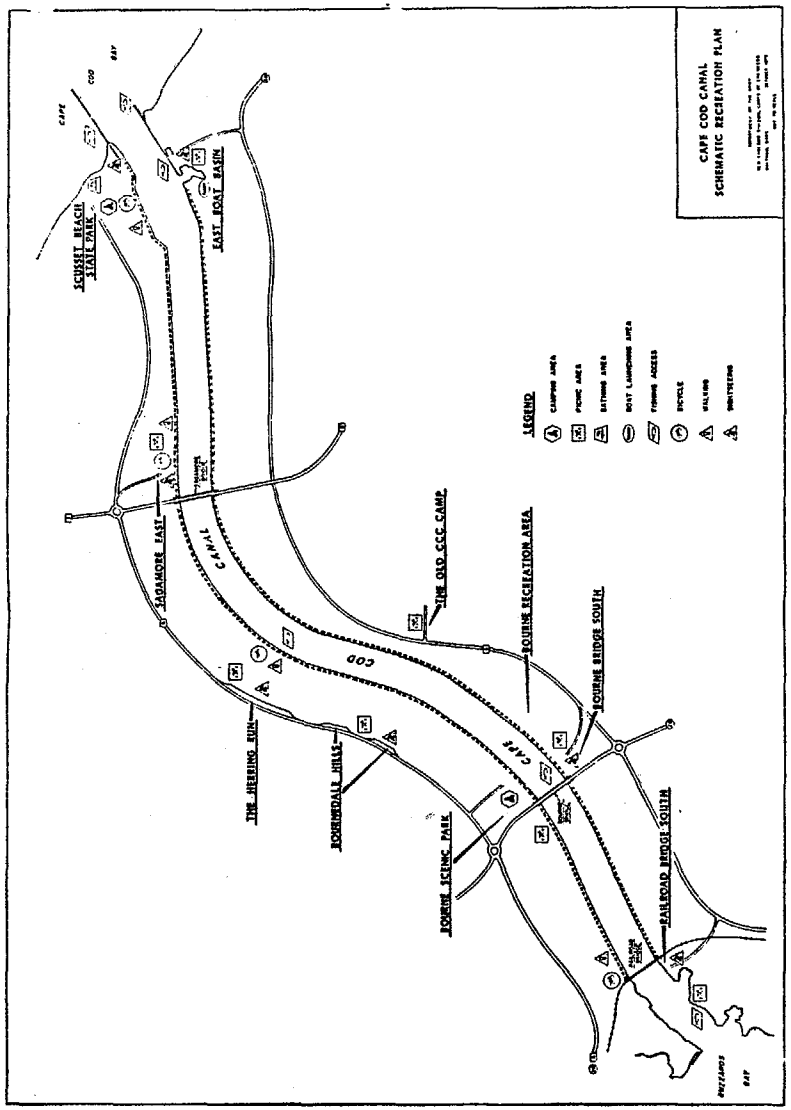
Very truly yours,

Howard S. Whiteside

Howard S. Whiteside

HSW/r
cc: Office of Coastal Zone Management
Mass. Office of Environmental Affairs





AN ENVIRONMENTAL REVIEW OF THE

CZM PROPOSAL FOR LONG BEACH, WAREHAM

		Page
I.	Origin of the Long Beach Proposal	1
II.	Who Owns Long Beach?	3
III.	Is There a Need for Additional Public Beaches in Wareham?	5
IV.	The Limited Possibilities of Long Beach	6
V.	Long Beach and its Environs - a Fragile Area	7
VI.	Shellfish Grants and Aquaculture	8
VII.	Costs of the Long Beach Project	9

I. Origin of the Long Beach Proposal

CZM made a public distribution of a questionnaire in which reference was made to a possible project at Long Beach and asked for comments. In spite of the large mailing only 6 comments on the Long Beach project were made. We understand that several of these answers commented that there was adequate access to the beach by water and that there was no need for public access by land. Public use of the beach by the small boats using the Wareham River is already extensive. Adding the users who would come by public land access would seriously overload the very small area which remains above high tide.

The very small response to the CZM request for comments shows that there is no groundswell of support either in Wareham or in the surrounding towns.

The Long Beach locus may have been included in the questionnaire, because of a different problem which can be solved without establishing permanent public access by land.

In the 1890's, Long Beach was a flat peninsula used for farming purposes and contained a barn. This peninsula provided breakwater protection for the extensive and important anchorage at the mouth of the Wareham River. By 1920, erosion had reduced this peninsula to a beach which was largely above normal high tide and still provided protection to the anchorage. Beginning with the 1938 hurricane and continued by more recent storms, further erosion has reduced the beach so that today there is only one small section at the eastern end which is above normal high tide.

In 1963, the owners of the beach together with several abuttors restored the high level of the east end of the beach. Throughout these negotiations, the Town clearly recognized the Ayer estate as the owners of this eastern end of Long Beach, the only portion now above mean high tide.

During the 1940's, 1950's and 1960's erosion continued until today the beach except at low water provides no protection to the Wareham River anchorage. The unmarked flats and the unmarked pile of rocks at the west end of the beach constitute navigational hazards except at low water when they are visible.

Some years ago, there was a proposal to place riprap to stabilize the beach. Nothing was done, however, and erosion has continued. What is needed today is probably more on the order of a low breakwater rather than simple riprap.

The Landowners Association would favor a revival of

this project which certainly deserves a feasibility study. The Association might be able to assist in clarification of the title to the beach and in negotiation to provide a limited access over private land for construction equipment and personnel.

II. Who Owns Long Beach?

Item 28, page 146 of Vol. II of the CZM report is in error in stating that Long Beach is town-owned land. Plate 40 compounds this error by also designating as public beach the Wareham River shore of Goat Island the Indian Neck shore east of Long Beach for almost 3/4's of a mile. This indication would have been approximately correct in 1939. However, in the early 1940's nature reopened a small channel at the base of Goat Island connecting the lagoon with the Wareham River north of the beach.

The New England River Basins Commission Map Atlas 1977 (CZM staff might have checked this source material) contains a sheet entitled "Coastal Beaches and Ownership and Coastal Uses". This sheet identifies most of the beaches on the west shore of Buzzards Bay and classifies each area as to ownership. The entire shore front from Crooked River to Warren's Point including the spit of Long Beach is all designated private.

Since colonial days, shore titles in Wareham have run to mean low water. Intertidal areas are private land subject, however, to navigation when the tide is in and to "Fishing and Fowling" at any time.

Long Beach in the 1890's was a peninsula of flat farmed land. Erosion has wholly changed the area, so that very little of it is now above mean high water. Where erosion has lowered the area below mean low water, nature's action has made that part public, but the intertidal area remains private. While the entire beach in 1920 was appurtenant to what is now Ayer estate land, the private titles may have been changed by nature's action. What now remains of Long Beach has been moved up river a significant number of feet. In the process the move may have added to the intertidal land of David Hawkins.

In 1963, work was done by the Ayer family, owners of the beach assisted by several abuttors to restore the high level of the east end of the beach lying between the saltwater lagoon and the bay shore. The Conservation Commission and other Wareham authorities reviewed the project. An order of conditions was issued and the planned work modified to conform. Throughout the negotiations and in the issuance of the order of conditions the Town clearly recognized the Ayer estate title to the eastern end of the beach, the only section now above mean high water.

We have attempted to learn what basis the proponents

the Long Beach proposal have for assertives that the beach is in public ownership. Apparently they made a presumption that the beach was public, then checked the assessors maps. Since these maps show no property lines below the foot of the upland they assumed their presumption proven in spite of the note carried on the assessors plans "These plans are for assessment purposes only - Do not use for writing deeds."

A presumption may have developed over the years that Long Beach is public, meaning that area which lies westerly of the saltwater lagoon, because while the owners have done what they could to prohibit public use of the private road and trespass on their upland, they have permitted free use of the westerly part of the beach by those who come by water. We know, however, of no action ever taken to make Long Beach public, no public taking, no gift or sale of it to public authority. Title, therefore must still reside in the owners of the adjoining upland.

III. Is There a Need for Additional Public Beaches in Wareham

The Town of Wareham is today well-endowed with public beaches which appear to meet the needs of the local area. The Town has more miles of public beach and more public beach sites than any town on the west shore of Buzzards Bay.

New England River Basins Commission
Map Atlas 1977
Water and Land Resources of Southeastern New England

This atlas identifies the beaches in the 7 towns on the west shore of Buzzards Bay classifying them by ownership. Wareham has more sites and more miles of town-owned beach open to the public than any of the seven towns exceeding even Westport which has 1.4 miles of state-owned beach. There appears to be little need or demand for additional public beach.

The following information is tabulated from information given on the map entitled "Coastal Beaches and Ownership and Coastal Uses".

Owned by	Town City		State		U.S.Gov't.		Private		Totals	
	miles	sites	miles	sites	miles	sites	miles	sites	miles	sites
Wareham	3.1*	7	4.0	1			4.1	8	11.2	16
Westport	2.8	3					.4	1	3.2	4
Dartmouth	1.5	2					2.1	2	3.6	4
Mattapoisett	.6	2					1.1	4	1.7	6
New Bedford	.6	2					0	0	.6	2
Fairhaven	.3	1					1.6	3	1.9	4
Marion	0	0					.7	4	.7	4

*The atlas figure for Wareham town-owned beach is 2.8 miles which has been increased by .3 miles through the gift of an addition to the Little Harbor Beach.

IV. The Limited Possibilities of Long Beach

Ignoring the problems of public land access, assume for the moment that Long Beach has been taken for recreation purposes. What are its possibilities?

This spit of land is 700 yards long. At low water, it offers 700 yards of coarse loose sand on the riverside with a slope attractive for swimming. On the bay side, however, the surface is exposed hardpan, moist clay with many small rocks. The surface is unattractive for beaching and the flats extend entirely too far out for swimmers.

At high tide, the beach is reduced to a narrow tongue of stoney sand between the bay flats and the tidal lagoon. Swimming tho possible is not attractive on either side.

Could the beach be improved? It would be a simple matter to dredge sand from the river to raise the beach. The sand might stay through the next major storm but certainly not through two storms,-or the next hurricane.

Could RipRap be placed on both sides with sand pumped between? This seems a possibility and might last for many years. However, the riprap would narrow the beach available at low water and would not provide any beach at high water.

A quick look at a map would lead one to assume that 700 yards of spit would provide 1400 yards of swimmable beach. This however is a spit which can be judged only after a series of field trips made at differing levels of tide. The view from a planner's drafting room can be totally misleading.

V. Long Beach and its Environs - a Fragile Area

This small section is one of the most important wildlife areas left in the entire Town of Wareham. It remains important because the land is generally held in acreage parcels, the houses are few and well-separated, the woodland and marshes are managed more by nature than by man. Even the shore is relatively natural with little impact from human artifacts.

1/4 mile east of Long Beach are two small fresh water ponds heavily used by waterfowl. The likely route for the proposed access road would require filling of important wetland appurtenant to these ponds.

Between Long Beach and Crooked River, the Wareham River shore is indented with several shallow inlets leading to sizeable stretches of brackish and saltwater marsh. The importance of these marshes to resident and migratory birds is obvious. For several years Hudsonian curlews have been noted. Other species include the semipalmated plover, yellow legs and the black-bellied plover.

Substitution of a paved highway in a 50 ft. cleared right of way for the narrow twisting gravel road serving several houses will lead to severe impaction on the ecologrie value of this now very private area.

Long Beach today receives considerable beach use when the tide is below mid point. The users come by small power and sailboats and delight in this beach. To provide land access will overcrowd the beach and destroy its present important function.

Control of illegal shellfishing in the scalloping season has recently been very difficult and inadequate. Provision of public land access will make control impractical. Long Beach will be quickly fished out and of no further use as a propagation ground.

VI. Shellfish Grants and Aquaculture

For the last few years, Long Beach has been the most productive area in Wareham for scallops. Scallopers have come legally by water and illegally by trespass over the private road and house lots adjoining the beach. The problems for the Wareham shellfish officer, the Wareham police and the landowners have been intolerable. The flats have been over-fished. Provision of legal access by land would quickly lead to such severe overfishing that the productivity of the area would be wiped out.

Shellfish grants were established shortly after 1900. The justification of leasing public flats to private individuals was based on conservation of shellfish. Lessees are required to "farm" the grants in return for which work they get the exclusive right to reap the harvest. However, the spat of all shellfish float with the tide before settling to the bottom. A considerable portion of the spat propagated on a grant migrates to other areas open to the public. The public therefore is also the gainer. This was the justification for leasing private rights in public waters.

Consideration should be given to establishing shellfish or aquaculture grants at Long Beach as a conservation measure to prevent overfishing and correct the present situation.

VII. Costs of the Project

1. Acquisition of title to the intertidal lands. Presumably acres of low value.

2. Acquisition of that area of the beach which is above mean high tide and of the adjacent upland necessary for parking and sanitary facilities. The taking would have to include at least two houses, maybe four. Adjoining property taken would receive heavy damages resulting from the adverse affects of development of an adjoining public beach which would totally destroy their current privacy. This is very high-value waterfront property.

3. Access will require a 50' wide taking of private land for 8/10s of a mile. Opposition of the landowners will be strong.

4. Road Construction for 8/10s mile including installation of town water to service the sanitary facilities.

5. Widening and "improvements" to Indian Neck and Great Neck roads to meet the needs of greatly-increased traffic 1 1/2 miles.

6. Construction of parking and sanitary facilities.

7. Beach development to expand a very small high tide beach to make the full-length of the spit useable at other than low tide. Apart from the cost, the ability to design this work so that it will resist the storms and not need constant maintenance and repair is very dubious.

If realistically estimated, the total of the above costs will prove astronomical, a ridiculously high price to pay for 700 yards of useable but not exceptional beach.

OPPOSITION TO A CZM PROPOSAL TO PROVIDE A PUBLIC ROAD AND PUBLIC ACCESS BY LAND TO LONG BEACH — A PETITION OF CONCERNED MEMBERS OF THE LANDOWNERS ASSO. of INDIAN NECK

Mr. & Mrs. John H Wylde
Mr. & Mrs. Dwyerall Cunningham
George W Nelson Jr.
Laura G Chauncey
John R Nelson
Edwin McNary
Dana C. Keyes
James B. Ames
Ernest Blanchard
Lee Z. Dyer
John W. Peirce
John P. Dyer
S. Newell Hurd
William Muir
Elorse W Choate
Sylvia W. Bigelow
Nancy C. Watson
Robert M. Morse
Betty G. Nelson
Nicholas Benton
John P Ross
Carol P Herring
Susanne K Potts
Mary E. Fay
Grace M Peirce
Albert Bigelow
Colvin H. Wadsworth
Diane Cirrens d'Almeida
Henry Moehlman
Ron Baldwin

James H. Chauvey
Colin McNay
James B. Ames
Lee Z. Dyer
John P. Ayer
G. Newell Hurd
William Trivot
Elorse W. Choate
Sylvia W. Bigelow
Nancy C. Watson
Robert M. Morse
Betty G. Nelson
Nicholas Benton
John P. Pass
Carol P. Herring
Susanne K. Potts
Mary E. Fay
Grace M. Pierce
Albert Bigelow
Colvin H. Woodworth
Diane Cuneo d'Almeida
Henry Muehlman
Rose Baldwin
Charles G. Watson
H. JAMES HERRING
William Elkins

Jos. R. Mello
Dana C. Keyes
Ernest Blanchard
John W. Pierce

35 names

BATTLESHIP MASSACHUSETTS

U. S. S. Massachusetts Memorial Committee, Inc.

BATTLESHIP COVE 02721 FALL RIVER, MASSACHUSETTS

9

November 15, 1977

Federal Office of Coastal
Zone Management
Boston, Massachusetts

Gentlemen:

I have reviewed the documents outlining the Coastal Zone Management plan for the State of Massachusetts. I think the study of the coastal zone areas of the state is extremely well done.

I support the goals and objectives of the coastal zone management study without reservation.

Sincerely,

PAUL S. VAITSES, JR.
Executive Director

PSV,JR./er

~~IN OPPOSITION TO H 6687~~

Presented by Michele Perrault before the Natural Resources and Agriculture Committee, October 27, 1977.

The League of Women Voters of United States worked for the passage of the Coastal Zone Management Act of 1972. During the past three years the League of Women Voters in Massachusetts has taken part in the Coastal Zone Management planning process. The League has been actively represented on the Governor's Coastal Resource Task Force as well as on citizen advisory committees throughout the state. The League is thus in a position to judge the openness of the process by which the Office of Coastal Zone Management developed a plan designed to reflect the needs and concerns of the citizens of Massachusetts.

The League supports the following goals of the Massachusetts Coastal plan:

1) Developing policies and standards for conserving our coastal land resources
2) Assuring consideration for human needs, social, environmental and economic
3) Building a role for continuing effective citizen participation
4) Incorporating conservation and the wise use of energy
5) Relating transportation planning and construction in the coast to social and environmental costs
6) Designating areas of unique and fragile habitats
7) Identifying and regulating areas impacted by public investment where siting might result in secondary impacts on the coast
8) Identifying and regulating areas of critical concern including fragile and historic lands, where development could result in irreversible damage; renewable resource lands, where development could result in the loss of productivity; and, natural hazard lands, where development could endanger life and property.

9) Enhancing local and state capabilities for planning and management of coastal land resources
10) Stressing improvements to the quality of the existing urban communities, particularly in the ports and harbor areas
11) Providing public access to unique recreational areas

~~The League is opposed to H 6687 because we are concerned~~ that its passage will prevent the timely approval of a coastal zone program in Massachusetts. Once a plan is approved, the state will gain new funds which will be available to improve both the quality of the environment and the state of the economy along the coast. There has already been too much delay in protecting our varied and valuable ecosystems from inappropriate and conflicting uses. It is time that Massachusetts made a firm commitment to manage its coastal resources wisely through an appropriately funded management program. The legislature has passed many good laws in this area, but their implementation has been delayed for lack of adequate funding and coordination.

The League is also concerned that there be an approved Coastal Zone Management Program in place prior to the development of offshore oil. This is particularly urgent since the lease sale for Georges Bank is scheduled for January 1978.

A process has already been established to provide further comment on the content of the proposed Coastal Plan for Massachusetts. Hearings on the Draft Environmental Impact Statement have been scheduled for November to be held along the coast. As stated in the Draft, the purposes of the hearings include determining if there are sufficient enforceable policies to ensure adherence to the management program once it is adopted. It is at this time that legislators, interest groups, or interested citizens will have the opportunity to suggest additions or deletions to the proposed plan.

The League recognizes that creating good working relations among the local, state, and federal levels of government will be one of the most difficult and important aspects of the coastal program. We recommend that interested parties scrutinize the plan carefully, and, where necessary, provide constructive suggestions to make the process more open and more manageable for all concerned.

The League of Women Voters of Massachusetts urges legislative support to help move Massachusetts forward with securing approval for a tool which can help protect Massachusetts' fragile coastline. Under the proposed Coastal Zone Management Program we have a chance to make our existing laws work more effectively without adopting additional land use control powers at this time, and with the use of Federal dollars to ease the state's budget problems. There has never been a better opportunity to develop and implement sound environmental and economic plans for beach development and access, for port and harbor development and for protection of fragile areas.

STATEMENT OF PATRICK J. KENNY

MASS. COASTAL ZONE MANAGEMENT PROGRAM

NOVEMBER 14, 1977

My name is Patrick J. Kenny. I am an attorney for New England Power Service Company and am also speaking on behalf of its affiliated companies, New England Power Company and Massachusetts Electric Company.

We are against the adoption of the proposed Massachusetts Coastal Zone Management Program in the form proposed by the Massachusetts Secretary of Environmental Affairs on March 18, 1977 and as amended on October 7, 1977. We urge that adoption of the CZM Program be delayed until specific authorization has been received from the State Legislature for the Program and the Program has received more input from the public and the business community.

We support the concept of land use planning, but only if it is balanced to accommodate the legitimate interests of business in general and energy facilities industry in particular. Business input into the development of the 800-page Massachusetts Coastal Zone Management plan was limited and additional involvement is vitally needed. We have been attempting to resolve a number of specific points with representatives of the CZM office, but much remains to be done.

An underlying, apparently unresolvable, problem with the plan is the legal basis upon which it was developed. The Plan relies on the concept of "networking" existing agencies and statutes through "Memoranda

of Understanding" such that existing agencies agree to abide by the plan, its policies and regulations in advance of its adoption and without specific statutory authority. Such a practice is contrary to the Massachusetts Administrative Procedures Act and to the legal principles governing delegation of legislative authority to administrative agencies.

The Federal Office of Coastal Zone Management has declared that only 17 of the 38 policies contained in the plan are enforceable under Federal or State statutes. We believe that less than 17 are enforceable. There are indications in the Plan that more than 17 will be enforced. (See discussion of Policy 15 on page 5 of October 7, 1977 addendum.) This leaves us with the obvious question, "If 21 or more of the policies are considered to be unenforceable, why should the plan be adopted before these uncertainties are resolved in some acceptable manner?" In our opinion, chaos and conflicts would result in the administration of the plan, particularly with regard to projects of regional or national interest such as energy-related facilities.

We recommend that the Plan be revised to make specific accommodations for legitimate economic growth.

We believe that the legislature should take the lead in resolving these issues, working with the Executive Office of Environmental Affairs and the business community, in order to:

1. examine the basic underlying authorities for the Plan. (We believe the existing statutes do not confer jurisdiction upon

the Executive Office of Environmental Affairs to adopt the plan as proposed.)

2. conduct a comprehensive review of the issues and requirements to be contained in a Coastal Zone Management Plan. Once it is determined what is needed in a plan, it will be clear what streamlining of existing statutes, permitting procedures and jurisdictions is necessary.

We understand that there is adequate time for additional study money to come to the State CZM Office from the Federal government so that this review and revision can be accomplished.

until such.

For these reasons, we urge that the proposed Massachusetts Coastal Zone Management Program not be approved in its present form.

STATEMENT

of

NEW ENGLAND POWER SERVICE COMPANY

MASS. COASTAL ZONE MANAGEMENT PROGRAM

November 22, 1977

My name is Patrick J. Kenny. I am an attorney for New England Power Service Company. I am speaking today on behalf of Mr. Edward A. Brown, President of New England Power Service Company and also for our affiliated companies, New England Power Company and Massachusetts Electric Company.

In earlier hearings on this subject we have testified against the adoption of the proposed Massachusetts Coastal Zone Management Program in the form proposed by the Massachusetts Secretary of Environmental Affairs on March 18, 1977 and as amended on October 7, 1977. We have urged that adoption of the CZM Program be delayed until specific authorization has been received from the State Legislature for the Program and the Program has received more input from the public and the business community.

We have had particular concern with the legal basis upon which the Program was developed. The Program relies on the concept of "networking", i.e. coordinating the activities of existing agencies and statutes through "Memoranda of Understanding" such that existing agencies

agree to abide by the Program, its policies and regulations in advance of its adoption and without specific statutory authority. Such a practice is contrary to the Massachusetts Administrative Procedures Act (M.G.L. c. 30A) and to the legal principles governing delegation of legislative authority to administrative agencies. (See Commonwealth v. Diaz, 326 Mass. 525.) An example of a policy with no statutory basis is the prohibitory language in the Implementation section of Policy 17 on page 175 of the CZM Program document. The intent of Policy 17 is to "encourage" maritime commerce and related development in port areas. We agree that this is a worthy goal. However the CZM Program will implement this goal in a predominantly negative manner. This would be accomplished by the CZM Program in large part by prohibiting so-called "non maritime dependent uses" in port areas if such uses conflict with a foreseeable future maritime dependent use. In other words a new warehouse, apartment complex, industrial factory, restaurant or powerplant could not be allowed in a port area if spokesmen for public agencies, fishing groups, maritime shipping groups, or maritime industry have merely expressed an interest in the site for some vague future project of their own, this despite the fact that they may have no ownership interest in the site or any real prospect of ever obtaining ownership to it. Quite apart from the problems we have with the sweeping generality and vagueness of Policy 17 we simply cannot find anywhere in the Massachusetts General Laws an expression of intent by the Legislature that would give the Secretary of Environmental Affairs power to enforce such a policy to deny permits for private projects.

Another major problem with the Program is its lack of enforceability under State and Federal law. The Federal Office of Coastal Zone Management has declared that only 17 of the 38 policies contained in the Program are enforceable under Federal or State statutes. We believe that less than 17 are enforceable. However, there are indications in the Program document that more than 17 will be enforced, to the extent that they will be considered by regulatory agencies in approving or denying permits and licenses for private projects.

Policies 14 and 15 are examples of the confusion as to what is enforceable in the Program. Agencies acting pursuant to Policy 14 would review proposed developments near designated or registered historic sites. The text of Policy 14 specifically includes private actions which require State permits as within the scope of Policy 14. However the Implementation Section of the CZM Program document on pages 151 and 152 does not list any enforceable State law which gives any State agency control over visual aspects of private projects which are merely near, rather than in historic districts. Reference is made on page 152 to the Massachusetts Environmental Policy Act (MEPA), in M.G.L. c. 30 §§ 61 and 62, as involving some kind of visual review of projects. However the text is not clear whether MEPA visual impact concerns are to be applied to private projects or only to government projects. If MEPA visual concerns are to be applied to private

projects then such concerns should not be enforced if they are outside the subject matter jurisdiction of the State agency which prepares the relevant MEPA environmental impact report.

Policy 15, which refers to improving visual access in urban areas and providing visibility to coastal activities is not listed in the Draft Environmental Impact Statement (DEIS) as an "enforceable" policy. Yet on page 5 of the October 7, 1977 Addendum to the Massachusetts CZM Program document the statement is made that the Massachusetts Energy Facilities Siting Council will "use" Policy 15 and that Policy 15 will be "applicable" to the Massachusetts Energy Facilities Siting Council in carrying out its statutory charge to provide a necessary energy supply with minimum environmental impact at the lowest cost. If this policy is not "enforceable" how can the Massachusetts Energy Facilities Siting Council "use" it in carrying out its statutory duty of approving or denying a facility proposed by an energy company? If they do deny an energy company the right to build a facility solely on the grounds that the facility would interfere with visible access to a beach or historic building would such a denial be upheld in the courts? If the Massachusetts Energy Facility Siting Council cannot deny approval to a facility on the basis of Policy 15 then why is Policy 15 contained in the list of policies on page 5 of the October 7, 1977 Addendum?

The Draft Environmental Impact Statement is based on the CZM Program document and contains many of the same infirmities. Thus we urge that further consideration of the Draft Environmental Impact Statement be deferred until the CZM Program itself has been extensively revised.

We understand that there is adequate time for additional study money to come to the State CZM Office from the Federal government so that review and revision of the proposed CZM Program and supporting documents can be accomplished.

We understand that the deadline for written comments on the Draft Environmental Impact Statement has been extended to December 15, 1977. We will submit further written comments by that date.

STATEMENT OF
DAVID J. BEATTIE
H.6687

MY NAME IS DAVID J. BEATTIE. I AM MANAGER OF COMMUNITY RELATIONS FOR THE NEW ENGLAND POWER COMPANY. I AM ALSO REPRESENTING NEW ENGLAND POWER'S AFFILIATE, MASSACHUSETTS ELECTRIC COMPANY.

I AM TESTIFYING IN FAVOR OF H.6687, A BILL WHICH WOULD POSTPONE ADOPTION OF THE PROPOSED COASTAL ZONE MANAGEMENT PLAN FOR MASSACHUSETTS UNTIL AUTHORIZATION AND FURTHER INPUT COULD BE OBTAINED FROM THE LEGISLATURE.

WE SUPPORT THE CONCEPT OF LAND USE PLANNING, BUT ONLY IF IT IS BALANCED TO ACCOMMODATE THE LEGITIMATE INTERESTS OF BUSINESS IN GENERAL AND ENERGY FACILITIES IN PARTICULAR. BUSINESS INPUT INTO THE DEVELOPMENT OF THE 800 PAGE MASSACHUSETTS COASTAL ZONE MANAGEMENT PLAN WAS LIMITED, AND ADDITIONAL INVOLVEMENT IS VITALLY NEEDED. WE HAVE BEEN ATTEMPTING TO RESOLVE A NUMBER OF SPECIFIC POINTS WITH REPRESENTATIVES OF THE CZM OFFICE, BUT MUCH REMAINS TO BE DONE.

AN UNDERLYING, APPARENTLY UNRESOLVABLE PROBLEM WITH THE PLAN IS THE LEGAL BASIS UPON WHICH IT WAS DEVELOPED. THE PLAN RELIES ON "NETWORKING" EXISTING AGENCIES AND STATUTES THROUGH "MEMORANDA OF UNDERSTANDING" SUCH THAT EXISTING AGENCIES AGREE TO ABIDE BY THE PLAN, ITS POLICIES AND REGULATIONS IN ADVANCE OF ITS ADOPTION AND WITHOUT SPECIFIC STATUTORY AUTHORITY. THE FEDERAL OFFICE OF COASTAL ZONE MANAGEMENT HAS DECLARED THAT ONLY 17 OF THE 38 POLICIES CONTAINED IN THE PLAN ARE ENFORCEABLE UNDER FEDERAL OR STATE STATUTES. WE BELIEVE THAT LESS THAN 17 ARE ENFORCEABLE. THIS LEAVES US WITH THE OBVIOUS QUESTION, "IF 21 OR MORE OF THE POLICIES ARE CONSIDERED TO BE UNENFORCEABLE,

WHY SHOULD THE PLAN BE ADOPTED BEFORE THESE UNCERTAINTIES ARE RESOLVED IN SOME ACCEPTABLE MANNER?" IN OUR OPINION, CHAOS AND CONFLICTS WOULD RESULT IN THE ADMINISTRATION OF THE PLAN, PARTICULARLY WITH REGARD TO PROJECTS OF REGIONAL OR NATIONAL INTEREST, SUCH AS ENERGY-RELATED FACILITIES.

WE RECOMMEND THAT THE PLAN BE REVISED TO MAKE SPECIFIC ACCOMMODATIONS FOR LEGITIMATE GROWTH.

WE BELIEVE THAT THE LEGISLATURE SHOULD TAKE THE LEAD IN RESOLVING THESE ISSUES, WORKING WITH THE EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS AND THE BUSINESS COMMUNITY, IN ORDER TO:

1. EXAMINE THE BASIC UNDERLYING AUTHORITIES FOR THE PLAN. (WE BELIEVE THE EXISTING STATUTES DO NOT CONFER JURISDICTION UPON THE EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS TO ADOPT THE PLAN AS PROPOSED.)

2. CONDUCT A COMPREHENSIVE REVIEW OF THE ISSUES AND REQUIREMENTS TO BE CONTAINED IN A COASTAL ZONE MANAGEMENT PLAN. ONCE IT IS DETERMINED WHAT IS NEEDED IN A PLAN, IT WILL BE CLEAR WHAT STREAMLINING OF EXISTING STATUTES, PERMITTING PROCEDURES AND JURSIDICTIONS IS NECESSARY.

WE UNDERSTAND THAT THERE IS ADEQUATE TIME FOR ADDITIONAL STUDY MONEY TO COME TO THE STATE CZM OFFICE FROM THE FEDERAL GOVERNMENT SO THAT THIS REVIEW AND REVISION CAN BE ACCOMPLISHED.

FOR THESE REASONS, I URGE THE PASSAGE OF H.6687.

David J. Beattie

Testimony at Public Hearing--November 17, 1977
Cape Cod Vocational Technical High School--7:30 P.M.

Coastal Zone Management Plan of Massachusetts

Juliet R. Bernstein, President, LWVoters of Lower Cape Cod

The League of Women Voters of Lower Cape Cod supports the Massachusetts Coastal Zone Management Plan. This plan, almost three years in the making, had public participation in every step of the development process. The League can attest to the openness because League members have served on the Governor's 41-member Task Force on Coastal Resources, an advisory group with diverse representation, including also members of our legislature, from both the House and Senate, and businesses. On Cape Cod League members have served on the Citizen's Advisory Committee, which has met on a regular basis over the past three years.

The Coastal Zone Management Act of 1972 is the first piece of comprehensive land and water use management legislation passed by Congress. The League of Women Voters of the United States worked towards its passage and supports it goals. Its purpose to "preserve, protect, develop and where possible to restore or enhance the resources of the Nation's coastal zone for this and future generations" is consistent with the Land Use and Water Resource positions of the League of Women Voters of the United States. The Coastal Management Act directly benefits Massachusetts with its 1200 miles of coastline, more than the state of California, for the legislation helps states to develop and implement planned programs to achieve wise use of land

and water resources of the coastal zone giving full consideration to the ecological, cultural, historic and esthetic values as well as to needs for economic development."

There has been opportunity for citizen input in the entire planning process. Public meetings were announced and held in each town and on a regional level. Interested individuals and/or groups were given many opportunities to voice their opinions. Questions were constantly elicited. Informational meetings were held at intervals. The CZM Coastlines kept the citizens informed throughout.

The League of Women Voters of Lower Cape Cod agrees that activities in the coastal zone--commercial, residential, industrial and recreational--"must take into account the capacity and fragility of natural coastal systems as well as their aesthetic aspects." The inclusion of all of Cape Cod in the Coastal Zone was not done lightly by the Advisory Committee. It considered the alternatives very carefully before reaching it conclusion. Here, too, information was provided and opportunity was given for participation in policy decisions.

The League of Women Voters of Lower Cape Cod would like to see early Federal approval of the Massachusetts Coastal Zone Program. It believes that it is urgent that this approval be before the oil sale leases for Georges Bank, scheduled for January 1978, take place. That is why the League is opposed to H6687, the bill that would prevent implementation of the

~~of this~~ plan and would mean a loss of $1.2 million to the State.

The League of Women Voters of Falmouth joins with the League of Women Voters of Lower Cape Cod in support of this statement.

The League of Women Voters of Martha's Vineyard also supports this testimony and feels that all of Martha's Vineyard should be included in the Coastal Zone.

Association for the Preservation of Cape Cod

P.O. Box 636

617-255-[illegible]

STATEMENT FOR PUBLIC HEARING
ON THE STATE OF MASSACHUSETTS COASTAL MANAGEMENT
DRAFT ENVIRONMENTAL IMPACT STATEMENT
November 17, 1977 - Harwich, Massachusetts

The Association for the Preservation of Cape Cod strongly supports the Massachusetts Coastal Zone Management Plan.

We will direct our comments this evening specifically to the Draft Environmental Impact Statement.

1. APCC approves the emphasis in the DEIS on the potential conflict of interest between OCS operations and the invaluable fishing and recreational resources of the Massachusetts coast. APCC ESPECIALLY APPRECIATES THE FEDERAL SUPPORT THEREIN EXPRESSED FOR THE WITHDRAWAL OF PARTICULARLY VULNERABLE TRACTS FROM THE LEASING PROCESS, pp. 11-55/6.

2. APCC shares the caution expressed on p. III-3 regarding development that will not be addressed by the management program because such development remains under the jurisdiction of localities. That provision, basic to the plan, raises serious problems about local planning and regulatory capacity. Vigorous enforcement and/or encouragement of CZM policies and regulations will be critical. Ongoing citizen advisory councils and the State Advisory body will need to be wary of efforts to overturn the spirit as well as the letter of the CZM plan by special interests.

3. APCC appreciates the concern expressed on p. III-4 that incomplete environmental protection will result from program elements not being in effect at the time of program approval. It is our feeling that regulations and designations should be afforded highest priority, not only by the Secretary of Environmental Affairs but by other agencies and by the Legislature through the budget process.

4. APCC concurs that something less than ideal conditions exist for maritime sectors of the economy such as fisheries and shipping in that "certain projects" can be permitted in port areas without opportunity for state review for maritime dependency. It would be useful if the EIS specified what projects are in mind. (See p. III-5.)

5. APCC agrees with the position that long term benefits will accrue to most coastal landowners as a result of regulating dredging, pollution, filling, bulk-heading, etc. (p. III-6).

6. APCC supports the inclusion of the Massachusetts Audubon Society Wetlands Project indicating that the Wetlands Protection Program has suffered from uneven enforcement, due largely to the shortage of staff in the Department of Environmental Affairs. That unevenness in itself argues for approval of the CZM plan and the funds it promises. The same can be said for the Waterways discussion, p. III-11.

7. APCC shares the concern expressed regarding exemptions to MEPA review. We would suggest that permit determinations for wastewater treatment construction grants by the Division of Water Pollution Control are the most critical and should be removed from the exemption list. (p. III-14.)

8. APCC concurs with the fair and realistic consideration of alternatives (pp. IV-1/2) except for that devoted to the sixth option: withdrawal. The description of doing nothing to control coastal land use should be supplied in much more graphic terms, including energy facilities destroying the fish resource, recreational uses of harbors crowding out commercial fishing, beaches continuing to erode from construction of erosion-control structures, dunes flattened by private residential development, and an angry inland public increasingly pressuring coastal communities with random, private traffic as access to recreation diminishes.

9. With regard to National Interest, National Defense and Aerospace, p. II-54, APCC questions the assertion that the CZM program will not seek to question National Security justification

of new or expanded defense facilities. That assertion could be construed as an effort to silence citizen review, and it appears to misread the CZM plan. The federal consistency chapter, p. 358, states that CZM will review, for consistency with its policies, the "location and design of new or enlarged defense installations within the coastal zone." That review, it seems to us, could touch on the national security designation, a particularly sensitive, emotional matter capable of much mischief. (Compare the U. S. Navy's efforts to locate an incoming missile sensing grid in Texas, Wisconsin and Michigan.)

10. Conservation is discussed on pp. 229, 230, 256, 257, 258 and 259 of the MCZM plan, not on only two pages as suggested on p. II-57, DEIS.

11. Regarding energy facilities, it would be desirable if the DEIS added to its discussion of national interest (p. II-57/8) and impacts (p. III-13) reference to the detailed cautions embedded in the Summary of Findings. Reference in the DEIS is superficial. By contrast, the development in the plan is thorough. Examples: CZM plan's discussion of LNG flammability, p. 238, thermal effluent, p. 242, or nuclear safety, p. 243. Furthermore, the DEIS might specifically commend CZM's method of achieving such detail: contracting with the University of Massachusetts Institute of Man and Environment.

12. Concerning public participation: regional CACs have been meeting almost monthly since July, 1975, not just "over the past year". (p. II-67)

It may seem unusual when "comments" tend to be critical that this testimony has concentrated on items approved by APCC. We have chosen to mention these specific matters precisely to preclude their dilution or removal in the final EIS. Ultimately it is the hope of APCC, as it undoubtedly is of other interests in the Commonwealth, that the balanced rationality of the CZM

plan will prevail, and that decisions will not degenerate into secret or even closed political processes. The APCC urges federal approval of the MCZM plan with that expectation.

Judith Barnet
APCC Board Member

Association for the Preservation of Cape Cod

P. O. Box 6[illegible]

The Association for the Preservation of Cape Cod strongly believes that none of Cape Cod should be excluded from the coastal zone for the purposes of the Coastal Zone Management Plan. To eliminate a portion of the center of the Cape from the program would defy logic and not be in the best interests of the Cape's citizens.

The state chose the planning area to include all the coastal towns -- that is, one town deep. That designation by the CZM would include all the Cape. Although some areas have now chosen the coastal road definition, there are valid reasons why this is not acceptable for Cape Cod.

The Massachusetts CZM program is not -- repeat, is not -- a new set of laws restricting development in the coastal zone. It is a program that will provide 1.2 million federal dollars to the states and towns to enable them to better manage and preserve their coastal zones and protect critical areas.

The Cape is a single ecological unit. What affects the spine of the Cape affects the coastal areas. What affects our coastal areas affects our tourist industry, which is our life blood. If the Cape is to continue as a tourist attraction, we must preserve its natural coastal resources. We must also consider the entire Cape in our efforts to preserve the quality of our drinking water. It is simply not rational to eliminate any portion of Cape Cod from the designated coastal zone.

The Coastal Zone Management program is also the conduit for federal funds under the Coastal Energy Impact Program (CEIP), a program designed to help states minimize the social, economic and environmental disruptions that result from new or expanded coastal energy activity -- especially offshore oil. CEIP attempts to deflect the consequences of energy development away from the coastal zone itself. Energy facilities are encouraged not to locate in the coastal area unless technical requirements force them to do so. Thus, if all the Cape is designated the coastal zone, it might well be an aid in the fight against locating gas processing plants on the Cape, in the event natural gas is found on Georges Bank in commercial quantities.

In essence, the Coastal Zone Management Program will give the citizens of Cape Cod a framework within which to work to protect the natural heritage of the region. Without some structural concept in place, the Cape, as we know it, will not survive.

CZM Meeting, Harwich
November 8, 1977

Association for the Preservation of Cape Cod

BOARD OF DIRECTORS

We, and our 2000 members, are concerned with the welfare of Cape Cod which, with its unique and extensive coastal areas, is one of the great resources of the state. We have, therefore, made a study of the Massachusetts Coastal Zone Management (CZM) Program and of H6687, the bill relating to that program which was introduced on October 5. Our conclusions are as follows:

No. 1

The participation in the CZM Program will not and cannot result in the exercise by the Executive Office of Environmental Affairs or its departments or divisions of any powers, duties or functions that they do not already have.

That Office, along with its departments and divisions, has only the powers, duties and functions that have been given to it by Chapter 21A of the Mass. General Laws. Since that Office is a state one, no federal program or laws can add to its powers. That can be done only by amendments to Chapter 21A in accordance with the laws of the Commonwealth.

No. 2

Thus, the only purpose of H6687 can be to deprive that state office and its departments and divisions of powers, duties and functions they already possess. Moreover, it would do so in a way that violates the Massachusetts Constitution and is repugnant to elementary principles of good government.

Article XXX of the state constitution provides that "In the government of this Commonwealth, the legislative department shall never exercise the executive . . powers." Under the doctrine of separation of powers, the legislature is restricted to enacting laws, as distinguished from executing or administering them.

H6687 seeks to put the legislature in the business of carrying on executive and administrative functions. Thus, it seeks to have the legislature take over, to a certain extent, the approval of "policies, plans, programs, rules and regulations" which may be adopted by the subject office and its departments and divisions in the performance of their executive and administrative powers under Chapter 21A.

For the legislature to take on any such functions would

be to paralyze the functioning of executive and administrative agencies. The legislature has enough problems in trying to consider and enact laws, without trying to consider and approve the executive and administrative functions which it has delegated to the executive and administrative agencies of the state.

No. 3

H6687 is apparently designed to prevent, or in any event if enacted will result in preventing, any participation by the state in the CZM Program. It is part and parcel of the efforts of some interests to kill that program.

In essence, that opposition seeks to block an adequate implementation of the existing environmental protection laws which, after the most careful consideration, were enacted into the statutes of the Commonwealth; and to do so by preventing the receipt of federal funds which, in no event, could be used for any other purpose than helping to finance such an implementation.

Since the state seems to be fiscally unable to finance such an implementation, those who do not want to see such an implementation do not want funds to be supplied by the federal government under the CZM Program to help do the job.

No. 4

We believe that the legislators and other state officials who examine the above points in the public interest will use their votes and influence to see that H6687 is defeated and that the state participates in the CZM Program.

October 22, 1977

NICKERSON COMPANIES
LANDSCAPE CENTER
RECEIVED
FEB 1977
COASTAL ZONE MANAGEMENT

November 21, 1977

Ms. Evelyn Murphy, Secretary of Environmental Affairs
100 Cambridge Street
Boston, MA 02108

Dear Ms. Murphy:

Enclosed is a copy of the testimony which I did not read at the hearing last Thursday night at the Cape Cod Technical High School but which I said I would mail to you.

Also enclosed you will find The Nickerson Companies' brochure which might serve to help you understand that we, like a lot of other business concerns on Cape Cod, are committed to a program of a good mixture of preserving our heritage and our economic base.

Very sincerely yours,

Joshua A. Nickerson, Jr.
President

JANJr/rlp
Enclosures

November 21, 1977

Evelyn Murphy, Secretary of Environmental Affairs
100 Cambridge Street
Boston, MA 02108

Dear Ms. Murphy:

Approximately three years ago the Federal Government passed legislation instructing Massachusetts (and all coastal States) through its Executive Office of Environmental Affairs (EOEA) to propose a Coastal Zone Management Plan (CZM).

The Plan proposes to establish total control over economic development of those designated areas (all of Cape Cod and the Islands) using the State's Envionmental Agency. The implementation of this control is to be accomplished by a technique called "networking." Unlike all other environmental management systems now in place in Massachusetts, the CZM Plan does not seek additional legislative action. The mechanism will be created by a series of "memoranda of understanding (M.O.U.)" between the agencies overseeing the thirty currently-existing regulatory laws and the EOEA.

This scheme of regulations by-passes the elected representatives of the areas subject to control. By the use of M.O.U.'s it creates what amounts to new executive power and prerogative without benefit of the passage of enabling law. It removes certain local powers granted to local municipalities and provides incentives enabling tighter controls by EOEA personnel at the State level. This will result in further delays and costs for projects in the CZM area while other less-encumbered areas will be able to move projects faster and cheaper, resulting in unfavorable economic conditions within CZM. The substance and policy of the plan will create serious situations which will serve to block good development. There is already a substantial number of laws covering all local concerns for sensible land use.

I seriously question the feasibility and legality in using "networking" as a tool to set up statewide land-use control outside of the legislative process. The implications are far reaching and could be a disastrous blow to an already fragile economy. Please be assured that I am not against the principle of protecting our Coastal areas, but rather the implementation by the Environmental Affairs Office of what is primarily a land-use control plan, specifying permissible economic and recreational uses, and governing one of the primary resource areas of

Massachusetts, independent of legislative authority and elected officers. Further, the CZM Plan totally ignores its economic impact on the areas affected.

I firmly believe that CZM will have a far reaching and serious effect on housing production on Cape Cod. I am not opposed to reasonable environmental protection; but, on the basis of my research, the plan as a whole fails to accomplish any meaningful simplification of the permit and review process as has been suggested by the proponents of this master plan. Perhaps more important, CZM sets a precedent which, if unchecked by legislative process, will result in transfer of continued economic development to the Office of Environmental Affairs. To presume that CZM will serve to simplify or expedite the approval process is at best a mistake.

CZM procedures are detrimental to the free enterprise system. Local zoning determines density and general character of development. To allow the Executive Office of Environmental Affairs a veto power over development without clear and simple standards will thrust the entire housing market into turmoil.

I have been accused by some as being a member of a special interest group. My special interest is preserving the environment as well as the economic stability of Cape Cod.

I suggest that this particular CZM plan be postponed and that the thirty existing laws adequately cover our Coastal Zone, until the economic interest and the environmental interest can come to a mutual understanding tailored to the needs of Cape Cod and the Islands.

Thank you for your time.

Sincerely yours,

Joshua A. Nickerson, Jr.

ASSOCIATED GENERAL CONTRACTORS OF MASSACHUSETTS, INC.
220 BOYLSTON STREET, CHESTNUT HILL, MASS. 02167 617/964-1800

November 28, 1978

Ms. Kathryn Cousins
Office of Coastal Zone Management
Room 3280
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Ms. Evelyn Murphy, Secretary
Executive Office of Environmental Affairs
Saltonstall State Office Building
100 Cambridge Street
Boston, Massachusetts 02202

Dear Ms. Cousins and Secretary Murphy:

Re: Comments prepared for submittal to federal and state hearing officers on the State of Massachusetts Coastal Management Draft Environmental Impact Statement at the public hearing November 22, 1977 at the New England Aquarium, Boston

The Associated General Contractors of Massachusetts is a Trade Association of nearly 200 general contractors and those supportive firms which supply and service the construction industry. Its membership ranges from those general contractors whose gross volume annually is less than half-a-million dollars, to those with an annual volume in excess of $25 million. Combined, the general contractor member firms of the Associated General Contractors of Massachusetts annually put into place some $750 million in construction - commercial, industrial, and public - in the Commonwealth.

AGC believes the draft environmental impact statement meets neither the federal nor state requirements.

Conflicts with the federal requirements

1. Prime responsibility re use

According to page 1-2 of the DEIS, it is required that "The State level of government has prime responsibility for achieving 'effective management, beneficial use, protection, and development of the coastal zone'" (underlining added). However, according to the just-issued Massachusetts Growth Policy Report (page 75; title page attached) implementation re land use issues is the prime responsibility of local officials:

Since the Coastal Zone Management program is designed to rely exclusively on existing laws and on administrative arrangements to coordinate state level reviews and permits, it is vital to the success of the program that coastal communities revise local priorities, zoning by-laws, subdivision regulations, design controls, economic development efforts, ect., to conform to this re-combined process of the Coastal Zone Management Plan. The active leadership of local officials will determine the ultimate fate of the plan.

2. The Massachusetts program fails to meet general requirements stipulated (DEIS, page 1-3) as the criteria for review by the Associate Administrator:

(1) "That the management program is comprehensive." The American Heritage Dictionary defines comprehensive as "(1) including or comprehending much; large in scope or content; (2) Capable of understanding or perceiving easily or well." The Massachusetts program is comprehensive in the first meaning, certainly not in the second meeting.

(2) "That the policies, standards, objectives and criteria upon which decisions pursuant to the program will be based are articulated clearly and are sufficiently specific to provide (i) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (ii) a clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program. . . ."

There is no clear understanding as to what is the content of the program. We are told by the CZM Director Mr. Van Loon that we are subject only to the regulations. But the present written regulations reference the entire two volumes. We are told this has been deleted, but there is nothing in writing to this effect. We have been told by the CZM staff that the regulation will be re-written; we do not know what the content of the new regulation will be. We have been told by the CZM Director Mr. Van loon that Massachusetts is re-writing the CZM document and cutting it down to half size; we do not know what is being deleted and/or changed. In a word, we do not have a clear idea of the content of the program nor of the subject of today's hearing.

But, given that the subject today is the printed word, it violates the second part of the second general requirement. There is not a "clear sense of direction and predictability for decision-makers . . ." Developers who read the two volumes would not know what direction to take -- except perhaps to go far away from Massachusetts -- and would be totally unable to predict whether their proposed project would have a chance of approval.

(3) "That there are sufficient policies of an enforceable nature to insure the implementation of and adherence to the management program." since only 17 of the 38 policies are enforceable according to the federal government (DEIS, Page 2-7), it is clear this criterion is not met. With only 44.7% of the policies enforceable, there can be neither "implementation of" nor "adherence to the management program" which consists of 38 policies.

Conflicts with state requirements

It is Massachusetts environmental policy that environmental regulations must be rational, clear, expeditious, and predictable. They must address major issues early on, to ennable developers to make a timely decision whether or not to proceed. This policy has been clearly enunciated by the Secretary, and by the broad-based MEPA group engaged over the past two years in developing the amendment to MEPA presently before the Massachusetts Legislature. Unfortunately, the proposed Massachusetts Coastal Zone Management Program as presently written meets none of the above-stated criteria of Massachusetts environmental policy.

In conclusion, AGC wishes to stress that we concur with the statements being made in these hearings on the importance of protecting the environmental values in the coastal zone, on protecting the fisheries, the beaches, and so on. Secondly, with half of the development in Massachusetts occuring in the coastal communities -- not the coastal zone -- the proposed program can potentially impact half the development in the state. We are concerned, indeed we are responsible, that valid development occur. We forsee the proposed program stopping, stymying, delaying, and thwarting much development -- development that is needed and that is environmentally sound.

Respectfully submitted,

William D. Kane

WILLIAM D. KANE
Executive Assistant

wdk:jtd
Enclosure

City and Town Centers

A Program for Growth

The Massachusetts Growth Policy Report

Prepared by
The Massachusetts Office of State Planning

Michael S. Dukakis, Governor
Thomas P. O'Neill III, Lt. Governor
Frank T. Keefe, Director

September 1977

Submitted to the
Special Commission on
the Effects of Growth Patterns on
the Quality of Life in the Commonwealth

In accordance with
The Massachusetts Growth Policy Development Act
Chapter 807 of the Acts of 1975

Publication of this document approved by Alfred C. Holland, State Purchasing Agent
Estimated cost per copy: $103. 9000.9.77.142471

Ms. Kathryn Cousins
Office of Coastal Zone Management
Room 3280
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Statement

Presented by Michele Perrault at a public hearing on the Massachusetts Coastal Zone Management Program/Draft Environmental Impact Statement, on November 22, 1977.

The League of Women Voters of Massachusetts welcomes this opportunity to testify in support of the Massachusetts Coastal Zone Program, having been involved over the last three years through member participation on the Governor's Coastal Resource Task Force and on various Advisory Committees.

The League supports the Massachusetts Coastal Plan whose policies respect the integrity of our coastal biological systems upon which human lives, - our lives - and the lives of our children, depend. It is a plan which can bring a halt to the severe disruption of our ecological systems and to conditions detrimental to human health and welfare. It is a plan which states sound land resource goals and provides policies for conserving our land resoruces. It fosters coordinated planning and management of land resources among agencies and the various levels of government by establishing mechanisms to ensure consideration of both public and private rights and interests affected by land use decisions in the coast. It offers a process for minimizing conflict of interest on the part of those who will make decisions about the use of coastal resources, including the establishment of a process for ongoing citizen involvement during the program's implementation.

In testimony before the Massachusetts Natural Resources and Agriculture Committee on October 25, 1977, the League indicated its support of goals and policies in the Massachusetts Plan, which are appended to this testimony. The following should be added:

1) Relating the use of land to its inherent characteristics

2) Protecting private property rights and values in accordance with overall consideration of public health, safety, and welfare

3) Developing processes for comprehensive land use planning

4) Encouraging regional planning and decision making

5) Fostering innovative community design

6) Acquiring land for public use.

In regard to specific parts of the Massachusetts Program, the League welcomes the addition to policy 33 of consideration for energy conservation measures. This addition recognizes that the wise use of energy resources will provide time to decide on long-range energy-related policies and programs and that the wise use of energy should be a goal of all planning and management of land.

We cannot overstate the importance of this part of policy 33, particularly as stated in the program, "the success of energy conservation has a direct bearing on the need for energy facilities and that vigorous energy conservation measures can lessen the impacts of new facilities on the coastal zone by not requiring as many."

The League urges the coastal zone staff, citizen advisory committees, the statewide task force and other state agencies and the legislature, will find ways to strengthen the implementation of this policy.

There is a need to encourage those who wish to build facilities to examine strategies for promoting energy conservation when submitting forecasts to the Energy Facility Siting Council. In addition, it is essential for the state to pursue more actively strategies for energy conservation that go beyond the goal of reducing energy consumption by five to seven percent.

The League supports the idea of a Coastal Zone program based on existing legislation at this time, but also recognizes, as does the CZM program on page 370 of the Program Document, that "the CZM program is intended to be an evolving program." In order

to assure this process, and in line with the League position that citizen participation must be built into the planning for and management of land resources at every step, the League supports the idea of the Citizen Advisory Councils and the statewide advisory group. In order for the CACs to carry out the role of preparing and presenting proposals for alternative management systems for public and legislative discussion(as indicated on page 370) we recommend that Management be added to the CAC Tasks, as has already been done for the statewide advisory group.

In addition, to ensure more effective citizen participation, we encourage the Office of Coastal Zone Management to assure that adequate funding will be provided for citizen information and review. The quality of the monitoring of implementation of the program will be crucial.

We suggest that an additional task for the statewide advisory group be to devise a process for involving those inland communities which might absorb the impact of energy facilities, (and who are eligible under the Coastal Energy Impact Program, to receive such assistance) in the decision making about allocation of such funds. This might also ease the burden on the coastal resources by considering when such development can best occur inland.

The ability to seek amendments or modifications to the CZM program will be particularly important since many citizens are concerned that the CZM program leaves the vast majority of decisions about the coastal zone to local government discretion. For example, the Office of State Planning in its document, Cities and Town Centers - A Program for Growth stated that, "Since the Coastal Zone Management program is designed to rely exclusively on existing laws and on administrative arrangements to coordinate state level reviews and permits, it is vital to the success of the program that coastal communities revise local priorities, zoning bylaws, subdivision regulations, design controls, economic development efforts, etc., to conform to this recombined process of the CZM program. The active leadership of local officials will determine the ultimate fate of the plan."

The League sees the CAC's as one place where such encouragement to coastal communities can be made. The League is encouraged by the inclusion in the CZM program, of the CAC's, which can foster better cooperation between state and local levels of government.

In recognition of certain promises made to citizens in the Coastal Zone Program Document, the League requests that the federal government set conditions on the first year of funding following federal approval. Such conditions might include provisions that the state adopt new or revised regulations for the Ocean Sanctuary and Waterways Programs, Wetlands Protection Program, Division of Water Pollution Control, and the Energy Facilities Siting Council, and that the Secretary of Environmental Affairs designate areas for preservation or restoration as described in the Regional Chapters based on citizen input in each region.

IN OPPOSITION TO H 6687

Presented by Michele Perrault before the Natural Resources and Agriculture Committee, October 27, 1977.

The League of Women Voters of United States worked for the passage of the Coastal Zone Management Act of 1972. During the past three years the League of Women Voters in Massachusetts has taken part in the Coastal Zone Management planning process. The League has been actively represented on the Governor's Coastal Resource Task Force as well as on citizen advisory committees throughout the state. The League is thus in a position to judge the openness of the process by which the Office of Coastal Zone Management developed a plan designed to reflect the needs and concerns of the citizens of Massachusetts.

The League supports the following goals of the Massachusetts Coastal plan:

1) Developing policies and standards for conserving our coastal land resources
2) Assuring consideration for human needs, social, environmental and economic
3) Building a role for continuing effective citizen participation
4) Incorporating conservation and the wise use of energy
5) Relating transportation planning and construction in the coast to social and environmental costs
6) Designating areas of unique and fragile habitats
7) Identifying and regulating areas impacted by public investment where siting might result in secondary impacts on the coast
8) Identifying and regulating areas of critical concern including fragile and historic lands, where development could result in irreversible damage; renewable resource lands, where development could result in the loss of productivity; and, natural hazard lands, where development could endanger life and property.

9) Enhancing local and state capabilities for planning and management of coastal land resources

10) Stressing improvements to the quality of the existing urban communities, particularly in the ports and harbor areas

11) Providing public access to unique recreational areas

The League is opposed to H 6687 because we are concerned that its passage will prevent the timely approval of a coastal zone program in Massachusetts. Once a plan is approved, the state will gain new funds which will be available to improve both the quality of the environment and the state of the economy along the coast. There has already been too much delay in protecting our varied and valuable ecosystems from inappropriate and conflicting uses. It is time that Massachusetts made a firm commitment to manage its coastal resources wisely through an appropriately funded management program. The legislature has passed many good laws in this area, but their implementation has been delayed for lack of adequate funding and coordination.

The League is also concerned that there be an approved Coastal Zone Management Program in place prior to the development of offshore oil. This is particularly urgent since the lease sale for Georges Bank is scheduled for January 1978.

A process has already been established to provide further comment on the content of the proposed Coastal Plan for Massachusetts. Hearings on the Draft Environmental Impact Statement have been scheduled for November to be held along the coast. As stated in the Draft, the purposes of the hearings include determining if there are sufficient enforceable policies to ensure adherence to the management program once it is adopted. It is at this time that legislators, interest groups, or interested citizens will have the opportunity to suggest additions or deletions to the proposed plan.

The League recognizes that creating good working relations among the local, state, and federal levels of government will be one of the most difficult and important aspects of the coastal program. We recommend that interested parties scrutinize the plan carefully, and, where necessary, provide constructive suggestions to make the process more open and more manageable for all concerned.

The League of Women Voters of Massachusetts urges legislative support to help move Massachusetts forward with securing approval for a tool which can help protect Massachusetts' fragile coastline. Under the proposed Coastal Zone Management Program we have a chance to make our existing laws work more effectively without adopting additional land use control powers at this time, and with the use of Federal dollars to ease the state's budget problems. There has never been a better opportunity to develop and implement sound environmental and economic plans for beach development and access, for port and harbor development and for protection of fragile areas.

Massachusetts Forest and Park Association

Three Joy Street Boston Massachusetts 02108 Tel. 617-742-2553

TO: Office of Coastal Zone Management, NOAA
FROM: Nancy C. Anderson, Executive Director
Massachusetts Forest and Park Association
DATE: November 22, 1977
RE: Massachusetts Coastal Zone Management Plan

The Massachusetts Forest and Park Association, a statewide environmental advocacy organization, supports coordinated environmental management along the Massachusetts Coast and urges prompt federal approval of the Massachusetts Coastal Zone Plan to maintain the momentum toward environmental protection engendered by the Plan's preparation.

As to the form of the Plan, we would have preferred that "Policies" enforceable through existing laws be highlighted to distinguish them from "Policies" which are statements of goals and objectives. However, the mild confusion engendered by this blending of policies has not fatally flawed the public participation process.

As to the content of the Plan, the Massachusetts Forest and Park Association would have preferred that the Program address the need for permanent protection of floodplains, visual viewpoints and sites, and other significant ecological resource areas along the coast, not managed under the existing Wetlands Protection (c. 131 s. 40) and Wetlands Restriction (c. 131 s. 40A) Acts. However, local zoning and home rule authorities are supported strongly by the Massachusetts citizenry. Changes in the direction of increased state control over land use are not accepted readily.

Massachusetts already has some of the most progressive environmental and land use laws of any state in the country. Our existing state laws concerning wetland protection and energy facility siting are strong tools. Our local enabling acts provide sufficient mechanisms, if utilized, to protect significant coastal resources. Better administration and coordination of existing authorities as provided under the CZM plan would vastly improve the management of our coastal zone and its finite natural resources.

Approval of the proposed Massachusetts Coastal Zone Management Plan will enable the state to promulgate long-needed regulations for issuing permits, coordinating the permitting processes, and designating critical areas. Approval should not be withheld until the regulations proposed by the plan are drafted or revised, and promulgated. Program approval will produce the necessary manpower and incentive to complete the revision process. A clear timetable for completion, tied to the renewal of the grant in 1979, will engender the needed pressure and support to assure promulgation of required regulations.

Although we urge prompt program approval, the Massachusetts Forest and Park Association does support a strict timetable for regulation promulgation. The Coastal Zone Management Plan, based as it is upon existing statutes, depends upon the clarification and coordination of programs through new regulations. In particular, the implementation of the Plan depends upon new regulations for the Waterways Program (c 91 ss 1-59) and the Wetlands Protection Act (c 131 s 40). The new regulations under the Wetland Protection Act are needed "to provide clearer guidance as to the permissibility of uses in or adjacent to salt marshes, salt ponds, dunes, beaches, barrier beaches and shellfish beds," (Policy #1) and assistance to local conservation commissions in their determinations of a project's impact on such things as flood control and storm damage protection (Policy 8).

Under the Waterways Program, regulations are needed to set forth criteria for determining under what circumstances marine construction, dredging, and offshore sand and gravel mining below the high water mark shall be permitted (Policies 4, 5, 6, 17, 18, and 19). New Waterways regulations are needed to specify that construction of solid fill structures will be permitted only if water quality, marine productivity, and anadromous fish runs are not adversely affected, and that public funding for dredging shall go to port areas and developed harbors and projects with widespread public benefit for shipping, recreation, or environmental values. Because these new regulations are key to the implementation of the CZM program, the June 1978 deadline stated in the DEIS for promulgation of these regulations must be adhered to strictly.

Two other statutes upon which the CZM Program depends for implementation are the Scenic Rivers Program (c 21 s 17b) and the Ocean Sanctuaries Act (c 132A ss 13-17). At present there are no promulgated regulations under the Scenic Rivers Program and the DEIS indicated that none will be forthcoming in the near future. However, under Policy 16 (pp 154-155) the Plan states that "CZM is assisting DEM in drafting regulations for scenic river implementation." As suggested in the Plan, criteria for selection and protection mechanisms need to be developed. The Scenic Rivers Program is of particular importance for protection of rivers and estuaries in Areas for Preservation or Restoration. We suggest that in order to proceed expeditiously with the designation and protection of APR's, Scenic River Program regulations should be in place prior to the June 1978 deadline.

The recodification of the Ocean Sanctuaries law was engrossed in the Massachusetts Senate yesterday. Therefore, if enactment and signing by the Governor proceed without unusual delay, the Coastal Zone Management Plan provides for promulgation of regulations in late January. We urge that regulations necessary to control ocean dumping, dredging, removal of dredged materials, and other ocean activities be effective on the date of Plan approval.

CONSERVATION LEGISLATION

After program approval the process of designating APR's and restricting coastal wetlands under the Wetlands Restriction Act should proceed without delay. We suggest that program renewal be tied to designation of APR's and vigorous implementation of the Wetlands Restriction Act. With the federal assistance which comes from program approval, the rest of the State's coastal wetlands should be restricted in three to five years. We urge that this be done.

The basic concept of the CZM program is to make our existing laws work better for everyone. We support that concept and request approval of the Plan.

Thank you.

My name is Arthur Lane: President of the Boston Shipping Association which represents some 32 management companies of steamship agents, steamshiplines and stevedores. Our prime function is labor negotiations with the International Longshore Association. The BSA therefore represents those of us in Boston whose immediate interest is the commercial use of the port of Boston for it is on the port that our livelihood depends.

The future of Boston as a competitive port requires a new container terminal of at least 100 acres - and this is a relatively small crowded land/shore space. In practice this can be accomplished only by the overall planning as represented by the Coastal Zone Management program. To date the thorough and careful, prepared studies of the Harbor by the personnel of CZM have been excellent.

This seaport is not an isolated end of the world area. It is part of the city of Boston. We can not repeat the time lost by the East Boston fiasco where a container terminal was to have been built which disregarded the people of the East Boston community. We do not have the unused open space. Flying into the Newark Airport you fly over Bostons competition - the huge container terminals of Elizabeth and Port Newark - built on the Jersey flat lands 30 years ago.

Needing and supporting the essential central planning of CZM - we do not however give to this gov't bureau - or any other gov't bureau - a blank check. We share with the General Court the demand that the CZM proposal define, as it does not now, who is to run it and how will it work. 10 years down the road the planning idealism will have faded.

THE CZM PROGRAM HAS BEEN BUILT ON ACTIVE COMMUNITY PLANNING IN COMMITTEES SUCH AS the Ad Hoc Committee for Boston Harbor WHICH REVIEWED the proposals of CZM.

BOB GOLDEN, the EXECUTIVE DIRECTOR of the B - S - A - WAS A MEMBER OF THAT COMMITTEE. He REPRESENTED A MARITIME BUSINESS INTEREST — SHARING THE BROAD AND VARIED INTERESTS OF other groups ON THAT Committee such as the SIERRA CLUB, MASSPORT, EDIC, the Boston Harbor Pollution Committee, the South State CHAMBER OF COMMERCE, the BRA, LEAGUE OF WOMEN VOTERS, AND the Boston Harbor Associates

ACKNOWLING the NEED for CZM, the BSA URGES other BUSINESS ~~ASSOC~~ ASSOCIATIONS to be AN ACTIVE PARTICIPANT IN the JOINT COMMUNITY effort

MASSACHUSETTS ASSOCIATION
of CONSERVATION COMMISSIONS

LINCOLN FILENE CENTER TUFTS UNIVERSITY MEDFORD, MASSACHUSETTS 02155
General Information: (617) 628-5000 Ext. 352 Legal Information (617) 542-1354

Testimony on the Massachusetts Coastal Zone Management Plan and its Federal Environmental Impact Statement, November 22, 1977, by the Massachusetts Association of Conservation Commissions.

My name is Norton H. Nickerson. I am Legislative Liaison Director for the MACC, an independent association of the 2200 volunteer citizens who serve on our 332 conservation commissions. I am a member of the Board of Environmental Management of the Commonwealth, a member of the original CZ Task Force, and vice-chairman of the Dennis Conservation Commission. I have a deep and abiding interest in the Coastal zone from my ecological research perspective as an Associate Professor of Biology at Tufts University in Medford.

The CZM program is unique in not seeking new legislation and in depending for most land use decisions on the local municipalities, using existing laws. The state wetlands restriction programs will strengthen the local determination to keep our coastal wetlands, barrier beaches and sand dune areas intact, for it is the local conservation commissions which decide whether or not permitted uses will indeed be allowed.

The policy of designating sanctuaries and areas of critical environmental concern will allow us to develop baselines against which inadvertent changes may be measured. It will also allow expansion of seashore-dependent coastal recreation facilities, where an astronomically increased demand is clearly coming.

The policy of seeking development for already-developed areas is one which should help those who want to expand our sea-dependent, commercial activities to choose early those locations where they will be welcomed.

The most exciting facet of this whole undertaking is the coordination between state and local laws, permitting processes, location decisions and uses which the CZM program promises. We need to use our present laws fully. We need to expedite our permitting processes without compromising the authorities and responsibilities designated in these present laws.

It is the considered position of this Association that the CZM program, developed largely through citizen input, is a viable and necessary tool. While a case can be developed that it should be even stronger, we feel it should be tried as it is here presented. We feel the Federal DEIS examines the facets of the program fairly, and consequently we urge Federal approval of the Impact Statement and of the Massachusetts Coastal Zone Plan.

Thank you.

Norton H. Nickerson

Norton H. Nickerson

NOTES

REMARKS AT HEARING ON
DRAFT ENVIRONMENTAL IMPACT STATEMENT
MASSACHUSETTS COASTAL ZONE MANAGEMENT PLAN
NOVEMBER 22, 1977

1. My name is Frank Lee. I am Environmental Planner in the Environmental Affairs Department at Boston Edison Company. Boston Edison is a major energy supplier in eastern Massachusetts and owns and operates facilities in the Coastal Zone. The CZM Plan would affect the location of electric generating facilities, the cost of energy to the consumer and the overall economy of the Commonwealth.

2. Our Company is opposed to the adoption of the proposed CZM Plan. We are opposed to the Plan for various reasons, including its lack of legal foundation in various important aspects, its imposition on coastal activities of improper and unauthorized procedures, its failure to treat properly various energy and economic issues, and its lack of balance between economic and environmental interests. These problems have previously been communicated to and discussed with the Federal OCZM office and the State Executive Office of Environmental Affairs. It is our intention to submit written comments to you on our problems with the DEIS. (Check State filing date for comments). Today I would like to cite briefly some examples of the problems we have with the proposed Plan.

3. The Plan in our judgment treats wrongfully the role of the Energy Facilities Siting Council and improperly imposes policies which would adversely affect the electric power industry.

   a. Power plants are held to be not "coastally dependent". While we question the legal validity of the principle of coastal dependency, we also point out that the principle is applied in the Plan in a very narrow sense, namely one of physical feasibility. A more

realistic interpretation would be one of economic feasibility in order to avoid unduly penalizing consumers through the added costs of inland construction and operation of our facilities.

   b. Policy 17 highlights the problems with the principle of coastal dependency. This Policy would prevent uses of land in ports and harbors which may conflict with actual or potential maritime dependent uses. Most power plants in Massachusetts are located in such areas and this Policy could prevent the uses of these sites for new or expanded power plants if certain groups should ever express an interest in the site for a potential maritime dependent use.

   c. While the Plan leaves the Siting Council with some discretion in the policies contained in the Energy Chapter, the Plan imposes at least 18 new standards or policies on the Siting Council and the energy industry. See p. IV-6 of DEIS and p. 3 of Addendum. This is in many respects illegal, e.g., the Secretary of EOEA's powers in land use and energy siting are advisory only, and in general the Secretary's rule-making power does not apply to such matters. Perhaps as significantly, the Memorandum of Understanding with the Siting Council and the imposition of such standards upset the carefully created balancing of interests by the Siting Council.

4. We strongly object to the inclusion in the Plan's coverage of Pilgrim Unit 2, our nuclear plant addition in Plymouth. See p. III-14 of DEIS. This Unit has been through thorough extensive Federal, State and local reviews, e.g., the State Environmental Impact Report has been approved, State and Federal water discharge permits have been issued, the State waterways permit has been granted, the local zoning approval has been received as well as wetlands' orders of conditions. The Advisory Committee on Reactor Safeguards has given the project its approval and the hearings of the Atomic Safety and

Licensing Board are near completion. It is, we submit, wrong to subject this project to CZM consistency review at this stage. In fact we suggest that, in order to avoid a moratorium on economic development, there ought to be a broad "grandfather" clause included in the Plan to protect ongoing or planned activities.

5. Renewals of water discharge permits for facilities in the coastal zone (such permits expire every five years) should not be subject to CZM review. Water discharges by industrial sources are already thoroughly regulated by the Division of Water Pollution Control and EPA, and CZM should not as indicated on p. 91 review the work of these agencies. The involvement of CZM in such matters would constitute an unnecessary overlapping of bureaucratic functions.

6. The provisions of the Chapter on the Visual Environment are uncertain and vague. To say (in Policy 13) that one must minimize adverse impacts on the visual environment provides little guidance to a developer and leaves CZM with virtually unlimited discretion. Policy #14, p. 149-150, is another example of uncertainty since it require developments "near" historic districts to have minimum visual impacts; the accompanying text would apply this policy to properties "deemed eligible" to be designated historic districts.

7. The Recreation policies (e.g., Policy #27, p. 215) call for minimization of adverse impacts for developments "near" recreation areas. Again this is uncertain and vague and leaves a developer without guidance.

8. The DEIS acknowleges that about twenty-one of the policies in the Plan are unenforceable for consistency purposes. (We question the legality and enforceability of some of the seventeen other policies). Even if the enabling regulation is limited to enforceable policies, we strongly object to the inclusion in the Plan of unenforceable policies or standards. To

include such policies would be legally meaningless and confusing to the licensing process, would leave agencies and public officals unclear about their duties and obligations, and would unnecessarily and unfairly provide grounds for interventions and delay in the permit reviews and approvals.

9. By way of conclusion to these brief remarks I would like to quote some observations made by some consultant engineers who had the opportunity to review the CZM Plan and the DEIS. We offer these conclusions for your consideration: "The most obvious comment is the inability to comment. In our opinion, the majority of the document is so vague that no comment can be offered. No one would stand up and say no management of resources is needed, but the document fails to demonstrate much beyond the total preservationist point of view. Licensing a power plant under these conditions could be difficult, since the CZM policies have little guidance as to what is an acceptable impact. Decisions of acceptability are left to CZM staff interpretation of general policies, rather than comparison to concise legislation.

In summary, the NOAA impact statement has not, in our opinion, adequately considered the impact of CZM policies on the siting of new industrial facilities such as power plants. Such issues as the implementation of the policies, the impact on non-maritime facilities of prohibiting pre-emption of maritime-dependent facilities, and the possibility of mitigating potential impacts by way of engineering solutions are not addressed".

10. In our judgment the CZM Plan thus fails in one of the state requirements of the DEIS, as stated on page 1-3. The policies, standards, objectives and criteria are not articulated clearly and are not sufficiently specific to identify who will be affected and how, nor do they provide a clear sense of direction and predictability to decision makers.

Plymouth Rod & Gun Club, Inc.

INCORPORATED 1934

PLYMOUTH MASSACHUSETTS

02360

RECEIVED

NOV 30 1977

November 29, 1977

TO:
Director Eric E. VanLoon
Coastal Zone Management
100 Cambridge Street
Boston, Massachusetts 02202

FROM:
Donald O. Tracy, 4 Spooner St., Plymouth
C.Z.M. Citizen Advisory Member
Plymouth Bay Region
Representing Plymouth Sportsmen

SUBJECT: C.Z.M. Comments

We feel the proposed Massachusetts Coastal Zone Management Program should receive approval and be scheduled to receive Federal implementation funding beginning April 1, 1978.

I have attended many meetings over the past three years and the dedicated efforts in planning the program by the various committees, along with public participation and involvement, makes this program a very acceptable issue.

The program is long overdue and needed in many areas. The Plymouth Bay Area is a prime place where help is needed at once.

The natural resources in the Plymouth Bay Area have been depleted over the years where there is no longer a healthy economy. Polution and contamination has taken over where once there was a healthy economy in the commercial and recreational fisheries. There are many projects within the program that need immediate help and priority funding may be a problem when the program is implemented.

The C.Z.M. program as outlined in Volume I covers seven policy areas and community officials will find most all problem areas have been included in the program.

TIME - is the most important factor in the acceptance of the C.Z.M. program. It may be compared to the D.D.T. crisis and if action is not taken at this time, instead of awakening to a "Silent Spring", we will find ourselves surrounded by "Silent Waters."

We urge the approval and acceptance of the program at the earliest possible date.

Copy to: Mr. M. Reynolds
Plymouth Rod and Gun Club
Plymouth Board of Selectmen
Representative Alfred Almeida

Joseph Almeida
Shellfish Constable

Office of
Shellfish Constable
Town of Dartmouth
South Dartmouth, Mass. 02748

Telephone
617-997-0789
MSOA office 997-3013

November 15, 1977

COASTAL ZONE MANAGEMENT

The members of the Massachusetts Shellfish Officers' Association, who manage and enforce all marine laws in the coastal zone areas of each coastal city and town throughout the Commonwealth, are very concerned over the possible loss of management of our bays and coastal zones within the three mile limit.

As 100% of our shellfish industry is derived from the coastal zone areas, we insist on preserving the authority to contribute to decisions affecting them. We are not aware of any other department that is knowledgeable of the amount of marine life existing in our coastal zones and what areas need protection. Also, we are almost solely responsible for the management of these areas as far as marine life industry is concerned.

We feel strongly that we should be able to contribute our knowledge and background to any persons or agency proposing laws or plans that will affect our coastal zones before they are established and cause us to lose most of our fishing industry. We should also be allowed to participate in matters pertaining to the approval or disapproval of all permit activities, etc.

We are, therefore, definitely in favor of local control in cooperation with Coastal Zone Management.

Joseph Almeida
Joseph Almeida
Shellfish Constable
Sec.-Treasurer, M.S.O.A.

JA:sg

CONSERVATION
EDUCATION
RESEARCH

LINCOLN, MASSACHUSETTS 01773 · TEL. 617-259-9500

November 22, 1977

Testimony of Deborah V. Howard, Director of Environmental Affairs, Massachusetts Audubon Society, in support of the Massachusetts Coastal Zone Management Program.

My name is Deborah V. Howard, and I am the Director of Environmental Affairs for the Massachusetts Audubon Society, a non-profit environmental and conservation organization founded in 1896 for the purposes of conservation, education, and research. Today the Society has 25,000 members--about 22,000 of them residing in Massachusetts--and holds 9,000 acres of open space in sanctuaries which are open to the general public.

We appear today to support Massachusetts' Costal Zone Management Program as a vehicle for rational land use planning.

Massachusetts coastal zone is finite. It is important to Massachusetts for the historic, economic, aesthetic, and recreational amenities it provides. Our approximately 1,200 miles of tidal shoreline, including islands, bays, and the estuarine areas of rivers, support an awesome array of interests, activities, and resources. Consider the following: Massachusetts total land area is slightly more than 5 million acres; the coastal zone, consisting of land (much of it inter-tidal) and water comprising estuaries and their associated lands, makes up less than 10 percent of that land area--about 580,000 acres. Forty percent of our people live in the coastal zone--Cape Cod alone has accumulated 6,000 new residents annually since 1970--and about half our tourist revenue is generated there.

The natural systems which make up the coastal zone are fragile--they need protection. They serve several important functions in their undisturbed state. Gosselink, Odum, and Pope[1] estimate that the work done by the marshlands and estuaries of the South Atlantic and Gulf coasts is worth as much as $82,000 per acre. This high value represents an estimate of what man would have to pay in terms of the value of the useful work of an acre of estuary should it not be available to do this work. Similar values can be developed for Massachusetts estuaries. Filled for development, Massachusetts marshes are probably worth, on average, a couple thousand dollars an acre.

The Coastal Zone Management Program responds to the need to protect the coastal zone and to make rational allocations of its resources with 38 policies, developed over many months of consultation with the U. S. Department of Commerce, local officials, tradespeople, concerned citizens, and a myrid of special interest groups focused on the coastal zone. These policies reflect the need to allocate the resources along our coastline, to protect certain critical and particularly fragile areas, and to respond to the concerns of coastal communities for the needs of their citizens. Fifteen of these policies are directly enforceable through existing laws; some are advisory in nature, setting out desirable directions, issues to be considered and resources to be given special treatment. Together, these 38 policies provide a minimum framework of law with which to protect our coastline and a number of goals for the future.

I would like to comment on specific criticisms which have been leveled at the Massachusetts Coastal Zone Management (CZM) Program.

---

[1]Gosselink, J. G., E. P. Odum, and R. M. Pope. The Value of the Tidal Marsh. Publication No. LSU-SG-74-03, Center for Wetland Resources, Louisiana State University, Baton Rouge, LA. 1974.

The first is that it will create a super secretariat, could give the Secretary vast powers, and will create a new bureaucracy.

One of our concerns, originally, was that, using only existing statutes and the coordinating regulations of the Secretary under Chapter 21A, the Program would not provide strong enough protection for Massachusetts coastal zone. The plan involves no override of local zoning; the plan does not give the Secretary of Environmental Affairs any power other than that now available to her to resolve conflict, to implement programs, and to coordinate the activities of her agencies to the extent now permitted by law; the plan leaves to the Energy Facilities Siting Council the ultimate authority to determine the location of future energy facilities; the plan provides as the major protective mechanisms for Areas for Protection and Restoration 1) that they be declared (after due process) areas of critical environmental concern under the Massachusetts Environmental Policy Act (MEPA), which simply removes the categorial exemption provision under MEPA and requires an Environmental Impact Report (EIR) if the impact of a proposed action is deemed significant, and 2) that the restrictions imposed under the Wetlands Protection Act and/or Wetlands Restriction Act or other applicable statutes be implemented.

In short, this plan is no super dreadnought, designed to lay waste to developers dreams in our coastal zone, but rather a carefully wrought network of existing authorities bound together in the framework of the Secretary's powers under Chapter 21A. Some environmentalists have argued that it does not do enough. I make a strong case that it will provide better for coherent decisions in the coastal zone and that it will do so with a minimum of additional red tape and state interference.

What the plan does is to set out in one place, in an integrated fashion, desirable policies for the management of the coastal zone. It provides the administrative mechanism for coordinating activities in this fragile area, and it provides money and therefore people to assist local communities to make intellegent decisions about what shall and what shall not occur in the Massachusetts coastal zone.

A second critisim of the CZM plan is that it will interfere with the constitutional right of Massachusetts coastal communities to make decisions about their future: home rule. Massachusetts has about 30,000 acres of salt marsh, dunes, shellfish flats, etc., already protected by existing legislation (the Coastal Wetlands Restriction Act); this Act, while administered at the state level, has been conducted in close coordination with citizens and officials at the local level for several years. Its constitutionality has not been an issue. It is this law which CZM will use to continue to protect fragile coastal areas; another 40,000 acres are subject to the Wetlands Protection Act, administered at the local level by Conservation Commissions. The CZM plan proposes to further protect by designation as Areas for Protection and Restoration (APR's) approximately 50,000 acres of very special fragile, unspoiled, and/or productive land and water. This is less than 1 percent of Massachusetts land. Much of this land and water is already subject to the protection of both the Wetlands Protection and the Wetlands Restriction Acts; some of it is already publically owned and protected through federal, state, and local ownership. For example, Sandy Neck, Barnstable, (a proposed APR) has long been recognized by residents of that area as a unique area worthy of special consideration. Much of the area has already been purchased by the towns of Sandwich and Barnstable so that they would be able to use it, enjoy it, and yet retain it in its unspoiled condition.

An additional opportunity for input at the local level will be provided by the Advisory Councils to be established in each coastal region and on which will sit representatives from every community in that region.

A third criticism is that the Program document is not balanced.

The federal CZM Act was not intended as a "balanced" statute. It was passed in response to the nationwide concern that the United States was rapidly degrading the coastal zone and eliminating those values for which it is so important. The emphasis of the Program is cooperative and consultative. It is to allocate rationally demands for the coastal resource, while protecting those portions of it which are fragile, unique, or specially valuable in their natural state. I quote from the Sixth Annual Report of the Council on Environmental Quality:

> /The Coastal Zone Management Act provides money to/ help the states to inventory their valuable features--fragile natural areas, essential fish and wildlife habitats, historic places, prime beaches and other open spaces, and settled communities; to establish priorities for land and water uses; and to plan for natural resource protection and orderly development, keeping in mind national as well as local and regional needs.

Finally I would like to say something about the CZM plan and the imminent OCS development off our coast.

When we contemplated development of the OCS off our coastline some months ago, we were assured that by the time the leases were sold we would have in place a

package of protective legislation, regulations, and studies which would go a long way to protect Massachusetts coastline from the adverse effects of OCS energy development. Some of the parts of this package were the OCS Lands Act Amendments (successfully scuttled last month by oil industry pressure), oil liability legislation (in Massachusetts and Washington, still tied up in the respective legislatures), revised tanker safety standards (still on the drawing board), new DOI regulations for lease sales (the authority for one of which is being challenged by the oil industry), and a Coastal Zone Management Plan which would require consistency by OCS developers. This is an important part of our total program for dealing with OCS development. The 1976 amendments to the Coastal Zone Management Act affirm an important condition for approval of exploration, development, and production plans. They explicitly apply the law's consistency requirements to OCS plans, which means that a state must first certify that the plans are consistent with its coastal zone management program before any federal permits may be issued to carry them out. The Secretary of Commerce can override a state's disapproval, but only if he finds the OCS plan consistent with the objectives of the law or otherwise necessary in the interest of national security. The CZM plan will also provide technical assistance and planning money so that coastal communities will have a better chance to direct OCS shore-based facilities toward existing developed areas and away from unsuitable ones.

For this and the other reasons already stated, we look forward to the timely approval of Massachusetts' CZM Plan in early winter 1978.

Thank you.

MASSACHUSETTS PORT AUTHORITY

MASSPORT STATEMENT TO BE DELIVERED AT PUBLIC HEARING
ON DRAFT ENVIRONMENTAL IMPACT STATEMENT
ON THE CZM PLAN, NOVEMBER 22, 1977

Massport welcomes the opportunity to comment on some aspects of the Coastal Zone Management Plan for Boston Harbor at this public hearing. The plan is compatible with our plans for the future of the airport, seaport and Boston Fish Pier, and with our policy regarding the re-use of the East Boston Piers for recreational, residential or other purposes related to the East Boston community.

I would like, in particular, to comment on the plan's Port and Harbors Policies as they affect developed port areas of the Commonwealth such as Boston Harbor.

As a public authority charged with encouraging the development and growth of maritime commerce at the Port of Boston, Massport is, of course, concerned that the importance of the port to the state's economy be recognized and that its ability to grow with the economy be assured. We welcome the CZM plan's recognition of the unique relationship between maritime shipping and waterfront property uses and its recognition that expansion of maritime shipping operations and related maritime development is desirable and will be encouraged and given development priority in existing port areas. A strength of the CZM plan is that it recognizes the importance of such growth and strikes a balance between economic development needs and environmental quality concerns.

Massport has proposed the construction of a consolidated container terminal at the site of the former Naval Annex in South Boston. This proposal is consistent with the CZM plan. If the CZM plan is implemented, it should simplify what is now an extremely complex multi-step environmental permitting process and expedite development projects such as this proposed port facility.

We also hope that the CZM plan and process will encourage more coordinated and comprehensive planning of the Boston Harbor area. There are, of course, issues of implementation which will arise as the process progresses; however, we feel on balance that the plan is entirely compatible with the continued growth of the Port of Boston which is so important to the City and the Commonwealth and, in this respect, will contribute to both the economic as well as environmental well-being of the region.

SPEECH BY DEAN HORN AT THE ENVIRONMENTAL IMPACT STATEMENT HEARING FOR THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PLAN, NOVEMBER 22, 1977

SECRETARY MURPHY, DIRECTOR VAN LOON, LADIES AND GENTLEMEN --

AS DIRECTOR OF THE MIT SEA GRANT PROGRAM, I AM HONORED TO HAVE THIS OPPORTUNITY TO SPEAK AT TODAY'S HEARING ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT IN SUPPORT OF THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PLAN.

SINCE ITS FOUNDING BY CONGRESS IN 1966, THE NATIONAL SEA GRANT PROGRAM HAS ENCOURAGED AND DEVELOPED APPLIED RESEARCH AND EDUCATION PROJECTS TOWARD THE WISE USE OF OUR VALUABLE MARINE RESOURCES. AND THE UNIVERSITIES IN THE SEA GRANT NETWORK WORK TO TRANSMIT THE RESULTS OF THEIR MARINE RELATED RESEARCH, SPONSORED BOTH BY SEA GRANT AND OTHER INTERESTS, TO THE PEOPLE WHO NEED AND CAN APPLY THE RESULTS.

FROM VERY EARLY IN THE NATIONAL SEA GRANT UNIVERSITY PROGRAM, RIGHT UP TO THE PRESENT, COASTAL ZONE MANAGEMENT HAS BEEN AN IMPORTANT RESEARCH AND ADVISORY INTEREST. COASTAL ZONE MANAGEMENT IS VIEWED BY SEA GRANT AS A MANAGEMENT SYSTEM. THIS SYSTEM SEEKS TO BALANCE THE MUCH NEEDED ECONOMIC DEVELOPMENT OF COASTAL RESOURCES WITH THE SOCIAL AND ENVIRONMENTAL VALUES OF LIFE AND WITH CONSERVATION NEEDS FOR THE FUTURE. I RE-EMPHASIZE THE WORD BALANCE AS THE KEY TO SUCCESS.

THE MIT SEA GRANT PROGRAM SHARES MANY OF THE CONCERNS ADDRESSED BY THE COASTAL ZONE MANAGEMENT PLAN, AND INDEED, WE HAVE WORKED WITH THE MASSACHUSETTS OFFICE OF CZM SINCE ITS INCEPTION. A FACULTY REPRESENTATIVE OF THE MIT SEA GRANT PROGRAM HAS BEEN AN APPOINTEE TO THE GOVERNOR'S TASK FORCE ON COASTAL RESOURCES SINCE IT WAS ORGANIZED. THE MIT SEA GRANT COMMUNICATIONS OFFICER WAS A MEMBER OF THE TASK FORCE'S PUBLIC PARTICIPATION COMMITTEE THROUGHOUT ITS TENURE. WE WORKED WITH THE CZM STAFF TO PREPARE CZM'S FIRST PUBLIC INFORMATION BROCHURE.

MIT SEA GRANT HAS NOT ONLY BEEN PLEASED TO HELP DEVELOP THE PLAN BUT HAS BENEFITED FROM THE ASSOCIATION AS WELL. IN THE COURSE OF RESEARCH AND ADVISORY PROJECTS RELATED TO THE DEVELOPMENT AND MANAGEMENT OF THE COASTAL ZONE AND ITS RESOURCES, FREQUENTLY, WE HAVE CALLED UPON THE CZM STAFF FOR INFORMATION AND BACKGROUND. THE CZM STAFF'S WILLINGNESS TO HELP AND TO LISTEN TO THE CONCERNS OF COASTAL COMMUNITIES HAS SHOWN US THAT CZM IS SENSITIVE TO BOTH THE ECONOMIC ENVIRONMENTAL NEEDS OF MASSACHUSETTS CITIZENS AND INDUSTRY.

SEA GRANT HAS SPONSORED A GROWING SERIES OF COASTAL PLANNING STUDIES, SEVERAL OF WHICH SPECIFICALLY ADDRESS ISSUES OF COASTAL ZONE RESOURCE DEVELOPMENT (A TERM WE PREFER TO USE). RECENTLY, WE PUBLISHED STUDIES OF THE BOSTON SOUTH SHORE AND OF GLOUCESTER, AND A PLANNING PRIMER, PARABLE BEACH. A FOLLOW-UP REPORT ON UTILIZING GLOUCESTER'S COAST, AN ADDITION TO THE EARLIER PROJECT, IS ON THE PRESSES. AND AN MIT STUDY OF REDEVELOPMENT PROSPECTS FOR LYNN HARBOR LEAD TO CLOSE COOPERATION BETWEEN

LYNN AND THE CZM TEAM. THE SECTION OF THE STATE CZM PLAN THAT CONSIDERS LYNN SPECIFICALLY, REPORTEDLY REFLECTS MANY HOURS OF DISCUSSION THAT GREW FROM THIS SEA GRANT PROJECT.

THESE AND OTHER STUDIES, SUCH AS OUR GEORGE'S BANK PETROLEUM STUDY; PROJECTS ON OFFSHORE STRUCTURE DEVELOPMENTS; OF SEDIMENT TRANSPORT AND COASTAL EROSION; AND OF OIL SLICK CONTAINMENT AND CLEAN-UP ARE ALL KEYED TO CRUCIAL ELEMENTS OF COASTAL RESOURCE DEVELOPMENT AND MANAGEMENT. SEA GRANT RESEARCH STRIVES TOWARD WISE DEVELOPMENT OF COASTAL RESOURCES THAT WILL MAKE NEW ENGLAND'S COASTAL INDUSTRIES STRONG AND PROFITABLE.

I BELIEVE THE CZM PLAN REFLECTS A SOLID UNDERSTANDING OF OUR COMPLEX FRAGILE AND PRODUCTIVE COASTAL ZONE. IT IS NOT A PANACEA FOR ALL PROBLEMS, BUT NEITHER IS IT A FINAL PRODUCT. NO, THIS PLAN MUST EVOLVE AND IMPROVE OVER TIME, BECOMING THE MANAGEMENT SYSTEM IT IS INTENDED TO BE AND CAN BE FOR MASSACHUSETTS,

THROUGH OPEN COMMUNICATION AND UNIFORM APPLICATION OF EXISTING LAWS AND REGULATIONS, I BELIEVE ALL COASTAL ZONE INTERESTS CAN BUILD ON THE PLAN'S STRENGTHS AND COMPENSATE FOR ITS LIMITATIONS.

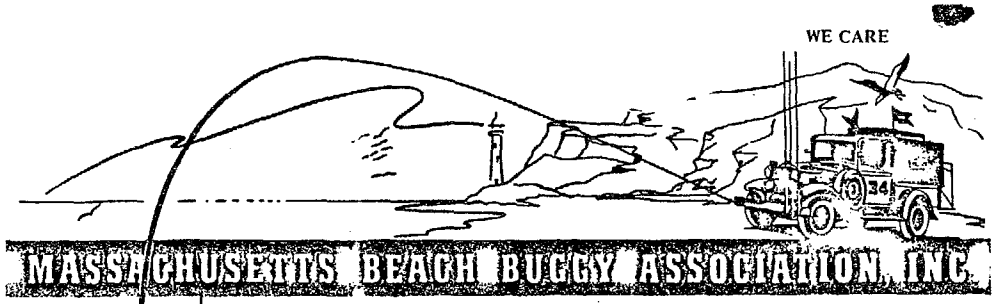
THE PLAN ENCOURAGES US TO REDEVELOP HARBORS AND PORTS. IT PROMOTES WATER-DEPENDENT INDUSTRIAL ACTIVITY; AND IT SETS A STANDARD FOR IMPROVING WATER QUALITY. BUT ABOVE ALL, IT GIVES THE CITIZENS OF MASSACHUSETTS A PLANNED SET OF CRITERIA AGAINST WHICH TO MEASURE A PROJECT OR ACTION.

WHEN APPROVED BY THE UNITED STATES SECRETARY OF COMMERCE, FEDERAL PROGRAMS WHICH AFFECT THE STATE COASTAL AREAS, MUST COMPLY WITH THE PROVISIONS OF THE STATE PLAN. THIS CAN BE A POWERFUL VOICE FOR MASSACHUSETTS IN FUTURE OFFSHORE DEVELOPMENTS.

THROUGH THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM, THE RESOURCES THAT SERVE BUSINESS AND COMMERCE, RECREATION, HOUSING AND TOURISM CAN BE FULLY USED WHILE ALSO BEING CONSERVED FOR THE FUTURE. WE REALLY CAN ASK NO MORE THAN THAT. THE MIT SEA GRANT PROGRAM LOOKS FORWARD TO CONTINUED INTERACTION WITH THE STATE OFFICE OF COASTAL ZONE MANAGEMENT AND OTHER STATE OFFICES, WITH COASTAL COMMUNITIES, AND WITH COASTAL BUSINESS AND INDUSTRIES. AND I COMMEND THE CZM STAFF AND ALL SUPPORTING PARTICIPANTS FROM INDUSTRY, ACADEMIA AND THE PUBLIC FOR THE PLAN'S DEVELOPMENT.

AS A CITIZEN OF THE COMMONWEALTH, I RECOMMEND ITS APPROVAL AND IMPLEMENTATION.

THANK YOU.



OFFICERS

PRESIDENT
CLIFFORD H. WHITE
265 Berry Street
Wrentham, MA 02093

VICE PRESIDENT
LLOYD E. HEBB, Jr.
8 Lyndon Lane
Ashland, MA 01721

CORRESPONDENCE SECRETARY
GEORGE LARSON
Box 511
Mendon, MA 01756

RECORDING SECRETARY
WENDY C. HOUGHTON
1175 E. Washington Street
Hanson, MA 02341

TREASURER
JEAN TREMBLAY
9 Margaret Road
Burlington, MA 01803

EXECUTIVE SECRETARY
CONRAD F. SMITH
15 Bow Street
Woburn, MA 01801

AFFILIATIONS
United Mobile Sportsfishermen
Massachusetts Wildlife Federation
Council of Sportsmen's Clubs of Massachusetts
Massachusetts Alliance of Salt water Sportsmen

New England Aquarium
November 22, 1977

Speaking for the Massachusetts Beach Buggy Association, I wholeheartedly endorse the Draft Environmental Impact Statement for the draft Coastal Zone Management Program.

As a frequent visitor to the coast, over a period of several years, I have noted the lack of a uniform plan relative to use and preservation of our coastal resources.

Supporting a C.Z.M. Program could perhaps impose future regulations and rules on our form of recreation. We are, however, cognizant of the fact that equitable controls--within the guidelines of legitimate man and vehicle impact studies--are desperately needed if we are to preserve our coastal resource ecosystem for tomorrow.

I am sympathetic to the various interests opposing a C.Z.M. Program. However, overriding this sympathy is my concern that citizens throughout the Commonwealth should have an equal voice in formulating a needed coastal use plan, along with equitable use privileges. The recreating public is entitled to this voice.

Speaking as an Advisor to the New England Region Fishery Management Council, I note the lack of communication between the various agencies involved in making the Fisheries Conservation Act of 1976 totally workable.

I feel that the C.Z.M. Program involvement in this project will enhance its success.

Summing up my comments, I wish to state that we all may have reservations relative to any federally mandated program, but for the sake of preserving our God-given coastal resources for today, tomorrow and forever, immediate positive action is necessary.

I urge prompt acceptance of a C.Z.M. Program.

Sincerely yours for beach
conservation and recreation,

Conrad F. Smith

Conrad F. Smith
15 Bow St.
Woburn, MA 01801

BOSTON
HARBOR
ASSOCIATES
223 Lewis Wharf
Boston
Massachusetts 02110
(617) 227-6738

RECEIVED
NOV 29 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

Arthur Lane
President
Marian B. Ullman
First Vice President
John W. Sears
Second Vice President
Oliver F. Ames
Treasurer
Helen B. Spaulding
Secretary

oard of Directors
liver F. Ames
Lisle Baker
ugenie Beal
rthur Blackett
ohn F. Bok
ohn E. Bowker
eorge K. Briggs, Jr.
liver Brooks
ouis W. Cabot
obert M. Calder
dith G. DeAngelis
atherine Donaher
arold L. Emerson
Lansing Fair
ames A. Fay
eorge Gatz
arlo L. Golino
dia R. Goodhue
uriel Kasdon
lan H. Kaufman
arl Koch
lexander Kovel
rthur Lane
Dix Leeson, Jr.
ames C. Mullen
ren C. McCleary
illiam R. McNamara
ohn A. S. McGlennon
ames A. Miller
illiam Mitchell
illiam T. Morrissey
eremiah Murphy
ohn E. Murphy
homas Murska
ichard N. Nakashian
are Older
illiam H. Pear
uido R. Perera, Jr.
ichele Perrault
usan W. Pile
ohn H. Prescott
ndrew P. Quigley
ouise Randall
artha Reardon
ichard M. Ryan
ohn L. Saltonstall, Jr.
ohn W. Sears
illiam W. Seifert
ndre R. Sigourney
elen B. Spaulding
usan A. Taylor
m. Davis Taylor
ella M. Trafford
atian B. Ullman
hilip Zeigler

STATEMENT OF THE BOSTON HARBOR ASSOCIATES
AT THE PUBLIC HEARING
ON THE MASSACHUSETTS COASTAL ZONE PROGRAM
NOVEMBER 22, 1977

I am John S. Ames, executive director of the Boston Harbor Associates, an organization formed in 1973 because people saw a great potential in the Harbor and were distressed about the complexity of issues and the array of over 100 jurisdictions dealing with them. We had over 380 acres of surplus federal property, 30 islands in need of special attention, and a sick port. We looked to the Federal enactment of the Coastal Zone Management Act of 1972 as a strong ray of hope.

For our part, TBHA has:

- participated in the Governor's Task Force and the Ad Hoc Citizen Advisory efforts to review CZM policies in reference to Boston Harbor
- requested broader public participation in the process of interpreting and gaining acceptance for the program
- designed a blueprint for regulating and promoting Boston Harbor development and conservation patterned after the San Francisco experience
- and frankly, been skeptical of the strength of the memoranda of understanding and existing legislation to accomplish the goals of CZM.

For example, it has recently become obvious to us that the haphazard method by which pier and bulkhead lines are established, as well as the fragmented tideland filling permit system, are areas where the existing mechanisms for managing the coast are not adequate.

In view of this we seek ways to promote and support your efforts and to build confidence in the state's ability and right to help regions and localities protect and enhance the precious resource which we call coast, an incredibly complex interface of land and water.

We urge federal acceptance of the Massachusetts program, once state legislative support has been received. And we add this caution: Though federal approval may be a real milestone in the state's effort, the job of making it work, of getting the parts in gear, has only begun. Coastal Zone Management is an on-going process capable of amendment. We should not shy away from change.

What are our expectations for the first year? I'd like to look at them as five C's:

1. Coherency - Let's find out together what the words "encourage," "promote," "maximize," "consider," and "ensure" can mean. These are only words until an actual situation is encountered.

2. Communication - Even with all your public hearings and citizen advisory efforts, we need to open up the process further. How best can we have truly representative citizen advisory councils and how can they be most effective? Land use decisions will nearly always arouse adversary positions. The CZM process should not shy away from differences of opinion. They should be welcomed and structured into the membership of the CAC's. Who represents? Elected officials, community leaders, users of the harbor, bankers, developers, environmentalists--there are many voices, as we have discovered in the Boston Harbor Associates. We may disagree but once we have consensus, it is founded on a base where everyone has had their say.

We urge broader outreach of The Monitor and included in it listings of decisions in the coastal zone in which CZM has participated with the rationale for the decision. We would like to know what we, the public, are doing or can do to aid in energy conservation, a state and national

objective which can have real impact on the future of our coast.

3. Consistency - You will be developing a data base which will be critical to future decisions. We will be looking at your track record as the Massachusetts Audubon Society looked at the Wetlands decisions in 1975 for consistency.

4. Coordination - We recognize the value of memoranda of understanding, but these are only pieces of paper unless the signatories sit down periodically as a council to jointly address cases and work out a consensus approach. It is essential, we are convinced, that you make time for the face to face council format. It is our experience, for example, with the layers of federal, state and local agencies who are charged with water pollution control in Boston Harbor that coordination is as much a people problem as a technilogical one. Memos are not enough.

5. Centralization - Our suggestion to you is that you should bring those agencies and arms committed to implementing the CZM program physically closer together. One that comes to mind is the Division of Waterways, now at 100 Nashua Street, which appears to be headed for a critical role and should, we feel, be located at 100 Cambridge Street.

We are pleased to learn that the Legislature is involving itself responsibly in the program. Once the significance of the Coastal Zone Management program is understood, the Legislature can be a vitally constructive force and could serve to strengthen existing laws for the benefit of the program. The promise of a Blue Ribbon Commission which will review and comment on CZM regulations offers hope of another commitment, new to the program.

We congratulate the Federal Office of Coastal Zone Management for their Draft EIS which puts the program in focus and points the way for finer tuning. We reiterate our hope that there will be federal approval at this juncture so that we can continue the process.

-1-

My name is (Leo L. Beranek,) I am President of Boston Broadcasters, Inc. and for 16 years before 1971 I was President of Bolt Beranek and Newman, Inc., a consulting firm in Cambridge employing over 700 persons, ~~or~~ a large segment of whose business is the ocean and the shoreline.

A We have two accept two things today: The Population of our country will increase and we must adapt to this growth by more careful controls over

-2-

A how we utilize our coastline to preserve its economic value and yet keep it clean and pleasant.

I am a business man. I have also served on Governor Volpe's Ocean Resources Commission, the State Senator Moakley's Marine Boundaries Commission and on Governor Sargent's Mass. Commission on Ocean Management all designed to preserve the economic values of our coastal and ocean resources.

I am here today in two capacities, as a Member of the present Governor's Task Force on Coastal Resources that prepared

the Mass. Coastal Zone Management Program which is under discussion and as a Vice President of the Greater Boston Chamber of Commerce,

A Here

The purpose of the plan before us, in two large volumes, is simply to establish values and priorities for coastal areas and to provide a mechanism for resolving conflicts in the future. It attempts to provide a regional or statewide perspective on issues and problems that transcend town boundaries.

It hopes to enhance economic uses and values, and not to inhibit economic growth. It is an answer to the typical coastal zone resident's statement "There ought to be a law". Yet, it can be implemented without adding

new laws.

Most business opposition to the CZM Program is based on their negative view of two futures:

1) future coastal zone growth and development could be accommodated only with careful planning and forethought. I submit that the buying of a 10-acre plot on the coast and plunking down a belching, water-polluting factory are gone. Business, of course, doesn't want restrictions, but those days are just coming to an end everywhere, in these United States.

2) The control of the plan is under the Secretary of Environmental Affairs instead of the Secretary of Commerce and Development. It is said that too much power is vested in this one office. I submit that the Office of Environmental Affairs is the only office that can do the job of coordination because a policing job is

absolutely necessary. Business, unpolicied, will not voluntarily consider ~~to~~ the effect of a commercial operation on its surroundings.

The 38 policies of the Program give full consideration to the economic development and preservation in the area.

Policy 1: Preserve shellfish beds, an economic necessity.

Policy 2: Conserve marine productivity and water value, as well as protect against storm buffeting.

Policy 3: Preserve the quality of water -- a necessity for a compact economic activity.

Policy 4: Condition offshore construction to minimize sediment transport and to preserve marine productivity.

Policy 5: Preserve marine productivity.

Policy 6: Accommodate offshore sand and gravel activities

to avoid impinging marine resources and navigation.

Policy 7: Assist fisheries development, aquaculture, fish breeding sites.

Policy 9: Not promote development in damage prone areas.

Policy 14: Encourage use of local zoning, land use controls, and tax incentives to improve compatability of proposed development with existing community character. Pittsburgh learned a long time ago that a smoke-smog filled city is no way to encourage economic growth. We in Mass. must recognize the same about our coastal zone.

Policy 17: Encourage development in Port areas; Do not permit irreversible commitment of sites that preempt maritime-dependent industrial uses.

Policy 19: Encourage the expansion of water-dependent uses in port areas.

Policy 20: Encourage waterfront development to link downtown commercial area with access to the waterfront.

Policy 28: Energy. Maximize the use of existing oil terminals.

Policy 29: Site oil tank farms outside the coastal zone -- but permit pipel lines to the coast for use by tankers.

Policy 31: Consider alternate sites prior to siting electric generating facilities. ~~[illegible]~~ Planning now will save the electric utilities a lot of grief later. The same is true for alternate sources of energy.

Policy 36: Encourage the revitalization of existing development centers by providing support for commercial and industrial redevelopment.

Policy 37: Encourage the adoption of local zoning that clusters new development.

Policy 38: Assist developers to reach conformance with major developments.

I don't see the justification for the opponents' statement that the major issue is not protecting the coastal zone. Protection means weighing alternatives and encouraging development in suitable areas, not just putting a scrubber on a smokestack.

I don't see how the Program avoids the control of the Governor's Office and prevents effective functioning of the Office of Planning and Development, both of which are dedicated to more than a [illegible]

We must also remember the the Office of Environmental Affairs ~~[illegible]~~ encompasses the

a) Dept. of Fisheries and the
b) Dept of Food and Agriculture
~~c) MDC~~
~~d) Dept. of Environmental Management~~

It is not isolated from the economic of the Commonwealth.

~~[illegible] Plan~~

As a businessman concerned with the long-range viability of the Commonwealth, I endorse the plan. Perhaps a chapter should be added to the book that explicitly deals with the concerns of business, so that the ~~[illegible]~~ emphasis on environmental control is placed in juxtaposition with jobs, commerce and productivity. ~~as well as quality of life~~. The worries of business, I believe, are not with what is in the plan, but what

is not there and with what kind of ~~who~~ persons the next Secretary of Environmental Affairs and the next Governor might be. This Administration should put ~~the~~ future Administrations on the record as promoting business ~~and~~ and adequate power and water supplies to compete successfully with other states for manufacturing and commerce, as well as to preserve our quality of life.

in writing only

East Boston Chamber of Commerce

BOX 189 — EAST BOSTON, MASSACHUSETTS 02128

you may want to read it into the record:

President
ARMANDO ALFANO
HAROLD LADD
2nd Vice President
LOUIS ARSENZIO
Treasurer
ANGELO MUSTO
Secretary

Board of Directors:
ROBERT BUCKLEY
SAL LOMBARDO
JOSEPH SANCHEZ
PAT ROSA
NED CARUSO

November 22, 1977

COASTAL ZONE MANAGEMENT
Evelyn F. Murphy, Secretary

Dear Madame;

re: Deliberations on the subject of Coastal Zones.

My name is Richard Dell Orfano, I represent myself as Vice President of the East Boston Chamber of Commerce and Chairman of the Industrial and Commercial Planning Committee, a segment of the Chamber.

My mission here is to request that in your deliberations relative to streamlining and unifying existing environmental regulations, that your thoughts and deliberations not be cluttered by special interest groups. I believe as do most people who are concerned about the future development of our coastal areas', that the highest and best use for the zones under consideration should have first priority during the deliberations which will take place in the not too distant future. More specifically, sites that are or were water related industry, should in the opinion of the Chamber, remain as such. These areas' should remain within the tax rolls of the communities of which they are an integral part for obvious reasons.

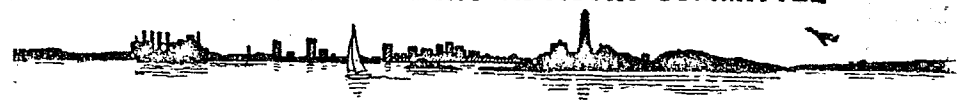
Industrial and commercial enterprises as you know, create many needed jobs from which much needed taxes are generated. We call upon you to perform your task in a manner most deliberate and fair to all concerned.

Your promise of no new layers of state bureaucracy is refreshing. The business man is even now inundated with an inordinate amount of regulation at this moment which is couterproductive and creates a loss of incentive to remain or expand the business in which he or she is now engaged and precludes the start up of additional industrial or commercial entities.

You are urged to call upon us should you desire imput from time to time when your queries relate to any part of the Coastal Zone and more specifically when ~~the shore~~ line of East Boston forms a part of your agenda.

R. Dell Orfano, Vice President

BOSTON HARBOR CITIZENS' ADVISORY COMMITTEE



ADVISE THE U.S. ENVIRONMENTAL PROTECTION AGENCY (REGION I) ON BOSTON HARBOR RELATED PROJECTS

Lydia R. Goodhue, Chairperson
Shirley Brown, Vice Chairperson
Edward F. Phelan, Secretary

c/o Bernard R. Sacks, Committee Coordinator
U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Boston, MA 02203

46

STATEMENT TO THE MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM PUBLIC HEARING, NEW ENGLAND AQUARIUM, BOSTON, November 22, 1977.

I am Lydia R. Goodhue, Chairman of the EPA's Boston Harbor Citizens' Advisory Committee. We have had a sustained liaison with the CZM and we have appreciated having a member of your staff on our committee. We hope it continues. Much of what is in this statement has already been said during committee discussions, and you may already know of our concerns.

1. We are glad that Boston Harbor is to be given highest priority in funding as a special SADA. It deserves all the priority it can get as the Commonwealth's principal port and Greater Boston's valuable source of recreation and open space. As such, priority should be given to activities which need access to the Harbor. We agree that federally-funded projects of the future should be consistent with the State CZM Plan.

2. We also feel that there is great need for more data and information. There is much that is not known about Boston Harbor and anything that can be done to get hard facts about the condition of the harbor, what causes it and what will cure it whould be given funding.

3. Regarding public participation in the Plan, we were disappointed that the Boston Harbor area was not one which had a CAC, although it had originally been planned. The Ad Hoc Committee's decision-making was not public enough, although the various public meetings late in the process were, we could see, an attempt to rectify that situation. Can we be assured that Boston Harbor will, indeed, have one of the ten Coastal Region CACs and that it will have a representative on the Statewide Advisory Board?

4. I want to mention two specific concerns about the harbor:

a. To further the harbor's recreational opportunities, you have advocated more boat ramps and launching sites. Fine. But these should be coupled with several sanitary stations for the handling of toilet waste - at several scattered sites.

b. Finally, Deer Island is one of the treasures of Boston Harbor - with good beaches, a superb view of the city and the islands, and access to the land. It has been proposed for three functions: an expanded prison; reclamation of the outer portion for recreation as part of the MAPC Boston Harbor Islands Plan; an expanded sewage treatment facility as called for under PL92-500. The island does not have space for all three, nor are all three appropriate for the location. The three functions, furthermore, are not compatible with each other. However, the island could support two of these functions and we believe that the two most compatible with the island and with each other are recreation and sewage treatment. These two are dependent upon being near the harbor. We think that Deer Island would be an ideal model for such coordination.

SIERRA CLUB · New England Chapter
3 JOY STREET, ROOM 12, BOSTON, MASSACHUSETTS, 02108 · 617-227-5339

STATEMENT OF BIRGE ALBRIGHT, CHAIRMAN, MASSACHUSETTS STATE COUNCIL, SIERRA CLUB

RE DRAFT ENVIRONMENTAL IMPACT STATEMENT, MASSACHUSETTS COASTAL ZONE MANAGEMENT PROGRAM (NOVEMBER 22, 1977)

The Sierra Club supports the 38 policies of the Coastal Zone Management Program and the priorities they represent. They reflect the fact that the Coastal Zone is a unique area, containing resources which must be protected and enhanced for this and succeeding generations. Indeed, the rights of the public in the intertidal area of the coastline, commonly known as the "foreshore", are deeply rooted in the past, and public rights in unhindered navigation and fishing were protected by Roman law. Free access to navigable waters and the foreshore was a right guaranteed to every Roman citizen.

These public rights in the seashore are known generally as the "Public Trust Doctrine." In Massachusetts, this doctrine is reflected in the Colonial Ordinance of 1647 which gives the public the rights of fishing, fowling and navigation in the area between high and low tide and also gives them the right of access to Great Ponds.

In recent years, it has been recognized that the rights of the public extend beyond the foreshore. For example, it is now accepted that wetlands have a value which precludes their being entirely at the disposal of their individual owners. See Note, "Coastal Wetlands in New England," 52 Boston U.L. Rev. 724 (1972). This recognition led to the passage, in Massachusetts, of the Wetlands Restriction Acts, which form the basis of Policy 1 of the CZM Program.

The Coastal Zone Management Act of 1972 recognizes that the public has rights in the coastal zone in its call for "wise use of the land and water resources" therein. 16 USC s. 1452. To encourage this wise use, the federal government has provided funding to the coastal states for the preparation of plans or "management programs" for the coastal zone. The question before us now is whether the Massachusetts CZM Program fulfills the criteria of the federal Act.

Although the Program is not as strong as we would like, we support its approval, because we feel that is has the potential to become more effective in the future. First, I will state our reservations about the Program:

1. The Program deals only with projects which fall within the scope of existing laws such as the wetlands statutes and projects which are either undertaken by the state or require state funding or a state permit. This leaves many developments to be regulated only by local zoning by-laws, which are often more responsive to property tax pressures than environmental consederations. We note that the Commonwealth's recent Growth Policy Report recommends that coastal communities be encouraged "to revise local policies, zoning by-laws, subdivision controls, etc. to conform to the (CZM) program... The active leadership of local officials will determine the ultimate fate of the plan." We hope that this leadership will be forthcoming.

2. Our second reservation concerns the regulations. As it stands now, the Program consists only of 38 policies and several memoranda of understanding which are unenforceable by themselves. The only things that are enforceable are the existing statutes on which the policies are based and the existing regulations under these statutes. The only things that are both new and enforceable in the Program are the new or revised regulations which must be adopted to implement the policies. Specifically, what are needed are regulations applicable to the whole program to be issued by the Secretary of Environmental Affairs under G.L.c. 21A and regulations implementing the Wetlands Protection Act (G.L.c. 131 s.40), the Waterways Program (G.L.c. 91, ss. 1-59), and the Ocean Sanctuaries Acts (G.L.c. 132 A, ss. 13-17). Also, regulations are needed to implement the memorandum of understanding between the Energy Facilities Siting Council and the Executive Office of Environmental Affairs.

We feel that these regulations are an integral part of the Program and that, ideally, they should have been part of the Program as submitted to Washington. We recognize, however, that there may have been practical reasons preventing this. In any event, we understand that the 21A regulations will be promulgated on or about February 23, 1978 and that the other regulations will be forthcoming before the end of the first year of the Program's operation. We urge that this schedule be strictly adhered to.

As stated above, we support the CZM Program, because we like the policies and we feel it has the potential to become more effective. As stated in the Program document, it is intended to be an "evolving program" (p. 370). The Program can evolve in several ways. First, it can evolve through the adoption of strong regulations to implement it. Second, it can evolve through strong leadership on the part of officials in coastal zone municipalities. Third, it can evolve through the activities of the proposed Statewide Advisory Group and the Citizen Advisory Councils. These bodies will have a number of functions, but perhaps the most important is the educational function. No Program will work, unless it is accepted by a majority of the citizens. We hope, therefore, that a major activity of those connected with the Program will be the fostering of a "coastal ethic" among not only residents of the coastal zone but all our citizens.

SYSTEM COMPANY

EUA Service Corporation

99 High Street, Suite 2830, Boston, Massachusetts 02110 Telephone (617) 357-9590
Address all correspondence to P.O. Box 2333, Boston, Massachusetts 02107

(2)

November 10, 1977

Evelyn F. Murphy, Secretary
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, MA 02202

Dear Ms. Murphy:

Eastern Utilities Associates (EUA) is an electric utility holding company operating in the Commonwealth and the State of Rhode Island and has Montaup Electric Company, Fall River Electric Light Company and Brockton Edison Company as operating subsidiaries in Massachusetts. (Blackstone Valley Electric in Rhode Island).

We, at EUA, are apprehensive concerning the Coastal Zone Management Program as proposed for the Commonwealth. Our concern focuses primarily on the new roadblocks which would be thrown in the path of constructing new electric generating facilities. Our three Massachusetts companies all have service areas located in the coastal zone. We have one older plant in the zone and own another site, presently undeveloped but under investigation for development, also located in the coastal zone.

The CZM Program as presently constituted would virtually prevent construction of new electric power generating facilities and their associated transmission lines in the coastal zone. This constraint is of vital concern to the Commonwealth and the present administration which has designed the CZM Program.

New England and the Commonwealth faces power curtailments and rationing in the 1980's. Because of long-lead times and other reasons, this crunch is irreversible. Power rationing will hit at industrial and commercial customers as well as the residential ones. Curtailment means no industrial expansions and cuts on existing businesses. The result - widespread unemployment. New England has enough of that now. Do we want more?

The public refuses to believe these forecasts. Our public officials brush them under the table to hide them as they are several years away, but I assure you they are real. I can testify to the stultifying effect as I

personally have either lived or worked in many countries where there was an insufficient power supply. Business stagnated. New concerns and ideas could not be implemented. I cringe at even the thought of it happening here.

What does this have to do with CZM? Everything. The Massachusetts Program reads well and smoothly but it is loaded with roadblocks which would prevent development of new power plants in the coastal zone - where many of the future sites lie. I direct your attention particularly to Policies 1, 2, 8 and 17. You cannot construct a power plant with these policies. Policy 31 requires examination of an alternate inland site. Why transfer admittedly difficult problems elsewhere, at an extra delay of 3 years, at an additional cost of several million dollars, to try and make the required environmental tests on land you don't own and then after declaring interest in an alternate site, try and buy it at a reasonable price. Who pays? The consumer. Do you want to be charged with increasing electric rates? That is just one black mark.

We are not against CZM - only the way this Program is slanted. The consumer and producer must learn to live alongside each other. Each party will have to make accommodations if we are going to continue to live comfortable and reasonable lives - which can be done.

What do we suggest? We propose that the CZM program be redrawn in policies 1, 2, 8, 17 and 31 and elsewhere as required so that those policies permit an orderly development of power plants within reasonable and economical environmental standards within the coastal zone. None of the standards should exceed federal guidelines which are already narrowly drawn. The CZM Program should be <u>positive</u> and proclaim that expanded energy is necessary to the well-being of New England and Massachusetts in particular. New power plants are necessary. Where sites may be available within the coastal zone which are economic and environmentally sound, every effort will be made to accommodate their construction within the regulating guidelines of the Commonwealth. The utilities are not pirates to be defended against. They are organizations which are social instruments carrying out a specific function within the infrastructure of the nation. For God's sake, let's give them a hand.

We propose that a positive statement concerning energy be inserted in the Summary, possibly after the first paragraph on page 31. Such a paragraph might read:

<u>ENERGY</u>

The Commonwealth of Massachusetts recognizes the continue need for development of energy production on all fronts. There is a strong correlation between the economic well-being of a society and its efficient use of energy in all forms to turn the wheels of industry and commerce.

The Coastal Zone Management recognizes this exigency and fully supports the need to accommodate new power plants; refineries: sharfs; unloading facilities for oil, synthetic natural gas, liquified natural gas, coal and all fuels as those requirements arise. CZM will study the coastal zone and provide for energy development within the zone in a manner that will cause minimum disturbance to these resources and the people dwelling therein.

Honorable Secretary, the points outlined in my letter are our major concerns. We do have reservations about the legal points which have been raised, lack of legislative approval, the setting of precedents for similar actions by the Executive branch in the future and other points which have not been entirely resolved yet. We do wish to be on record specifically requesting the inclusion in the Summary of a very positive statement as proposed above that provision will be made for energy development.

Very truly yours,

John B. Gmeiner

John B. Gmeiner
Vice President

JBG:aa

bcc: WRBisson
AKHamer
RFDinnie
PRPinkham
CECurtis
DMcConaghy
FKnippenberg
FLee

"Preserve Our Shoreline"

BEVERLY SHORELINE RIGHTS ASSOCIATION

Beverly, Massachusetts 01915

RECEIVED DEC 6 1977 COASTAL ZONE MANAGEMENT

December, 1, 1977

Mr. Eric E. Van Loon, Director
Coastal Zone Management
100 Cambridge Street,
Boston, Mass.

Dear Sir,

As members of the Advisory Committee of the Lower North Shore area (and more specifically, Beverly,) my husband, John and I wish to commend you, Mr. Matthew Connelly, Ms. Rachael Cox, Ms. Margaret Reynolds and all who have helped to establish guidelines and policies for the coastline of Massachusetts. Your efforts have been remarkably accomplished in every single detail and aspect.

We, as a state are long overdue in evaluating and utilizing one of our most precious natural resources -- our shoreline. Now, after many meetings, reams of information, paperwork, ideas and requests, the Coastal Zone Management is establishing a way and means to contribute to the input and follow through with a plan to better improve industry and commerce as well as recreation and conservation. Each area, in itself, so important to us today as well as in the future.

We congratulate Governor Dukakis and his capable secretary, Ms. Evelyn Murphy and each of you. We compliment you for including citizens of each town and city to participate in the program. (Personally, John and I feel privileged to have participated in the basic discussions of problems, dicisions of boundaries etc. and to have watched the whole concept develop to its fullness.)

Coastal Zone Management can only succeed; for it must be our legacy to all future generations.

Sincerely,

(Mrs.) Alice J. Burns

SAUGUS ACTION VOLUNTEERS FOR THE ENVIRONMENT

Saugus, Massachusetts 01906

November 14, 1977

TO: Executive Office of Environmental Affairs
Commonwealth of Massachusetts

FROM: Saugus Action Volunteers for the Environment (SAVE)
Saugus, Mass. 01906

RE: November 14, 1977, Hearing on Coastal Zone Management Plan

The Saugus Action Volunteers for the Environment (SAVE) are in full support of the implementation of the Coastal Zone Management Plan for Massachusetts, released late in the summer after two and one-half years of careful work.

We believe that over one thousand public planning sessions held during this time throughout the entire coastal area of Massachusetts made it possible for all interests to take part in the formulation of the plan, so that it does represent a wise allocation of our coastal resources, balancing ports and harbors, marine environment, visual environment, coastal hazards, recreation, commercial development and energy needs.

We are particularly pleased at the specific recommendations made for the Saugus Marshes, since our organization was formed nearly five years ago with the "protection and preservation" of the marshes as our first priority. We fully endorse the implementation of all these recommendations and those made for the Saugus River, and believe most of the citizens of Saugus would be in agreement.

We look forward to the time when the entire Massachusetts Coastal Zone Management Plan is a reality.

Sincerely yours,

Wallace McKenzie, President
9 Hull Drive, Saugus 01906

WMcK/eb

Dec. 10, 1977

The League of Women Voters of Greater Newburyport, Massachusetts, has studied the Environmental Impact Statement and Volumes 1 and 2 of the plan for Massachusetts Coastal Zone Management.

We are unanimously in favor of the program as presented there.

RECEIVED
DEC 15 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

Susan Sexton
Natural Resources
chairman, LWV

December 8, 1977

Ms. Evelyn Murphy, Secretary
Department of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Dear Ms. Murphy:

The Essex County Greenbelt Association would like to register wholehearted support for the Coastal plan set forth by your office of Massachusetts Coastal Zone Management.

The two and one-half years of study and planning have resulted in the first comprehensive inventory of coastal resources and a land use plan for the coast. It provides for the highest and best use of this fragile and limited coastline. The plan is realistic and fair to all competing coastal uses. It balances environmental concerns with development and energy siting, according to the nature and definition of the specific coastal environment. Implementation will require no new laws and no additional bureaucracy, but rather it will streamline the existing permitting process, so that developers and environmentalists alike should welcome the plan. We applaud the Coastal Zone Management staff for actively involving the broad public in the preparation of the program through monthly meetings with area citizens groups, public officials, and a representative task force of all interest groups.

Greenbelt feels that the plan should be administered by the Department of Environmental Affairs, which is the body most able to provide technical assistance necessary for the evaluation and resolving of coastal problems in Essex County.

Sincerely,

John W. Peirce
President

CC: Kathryn Cousins

IPSWICH RIVER
WATERSHED
ASSOCIATION

124 High Street, Ipswich, MA. 01938

RECEIVED
DEC 19 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

December 14, 1977

Evelyn Murphy
Secretary of Environmental
Affairs
100 Cambridge Street
Boston, Massachusetts Attn:MEPA UNIT

Re: Coastal Zone Management Program

Dear Secretary Murphy:

The Board of Directors of IRWA voted at its meeting on December 10, 1977 to express the support of the organization for the Coastal Zone Management Program. The IRWA Directors feel strongly that the comprehensive program to protect the fragile natural resources of the coastal zone is vitally necessary.

We support the full range of protective measures proposed. In particular we urge prompt action to protect the Ipswich River under the Scenic Rivers Act. With the economic and recreational value of shellfish beds and other coastal life in the tidal portion of the Ipswich River Basin, we believe that designation of the Ipswich River, perhaps at the same time as for the Parker River, should be of a very high priority under the implementation of the Scenic Rivers Act.

Very Truly Yours
Lawrence B. Morse
Lawrence B. Morse
President

cc: Richard Kendall
Commissioner of the
Department of Environmental
Management

SOUTH SHORE
CHAMBER OF COMMERCE, INC.

RECEIVED
DEC
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

December 14, 1977

Mr. Eric E. Van Loon, Director
Massachusetts Coastal Zone Management
100 Cambridge Street
Boston, MA 02202

Dear Mr. Van Loon:

The South Shore Chamber of Commerce has adopted a policy position on the proposed Massachusetts' Coastal Zone Management Program, which we forward as comment at this time.

This position reflects the concerns of our 1000 corporate members who do business and live on the South Shore.

We intend to continue to work with legislators and environmental agencies to achieve the goals we have set, and to resolve the conflicts identified during the next year.

Sincerely,

Ronald Courville

Ronald Courville
Chairman, Coastal Zone Management Committee

Enclosure

SUBJECT: Policy on Massachusetts Coastal Zone Management Plan

TO: Board of Directors

FROM: Coastal Zone Management Review Task Force

DATE: September 21, 1977

The South Shore Chamber of Commerce, reflecting the concerns of its members from Boston to Cape Cod, endorses policies that improve the economic health and quality of life in the region. We seek administrative structures in state government which respond efficiently and effectively to needs of business - large and small - and of the citizens of the Commonwealth. Particularly, with regard to environmental statutes and regulations, we have sought permit consolidation, to eliminate expensive and confusing duplicate and overlapping permit procedures, concurrent review of permits by environmental engineers, computer tracking of permit procedures, and, in sum, a sound management structure built on the foundation on current statutes and equitably managed.

We are opposed to the current Coastal Zone Management proposal for Massachusetts, since it does not accomplish these goals. In fact, we find that current requests for permission to do routine maintenance asked of the Army Coprs of Engineers has been denied because of their uncertainty about the new requirements of the Massachusetts Coastal Zone Management plan. Procedure is worse now.

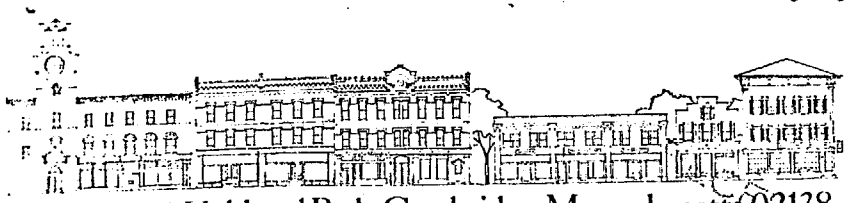
We have not seen management flow charts or specific budgets that demonstrate that the Coastal Zone Management plan is not just another layer of red-tape and bureaucracy. We are concerned that draft regulations now in process are being designed by federally funded environmental advocates and that there is no representative of business or industry funded to participate in the draft regulations procedure.

Our members continue to be concerned about the "value-laden language" such as "significant visual impacts", which can be interpreted subjectively. Our members continue to be concerned about the fact that most attendees at regional meetings were paid staff members of city and state agencies and environmentalists.

However, we support those aspects of Coastal Zone Management structure which will accomplish the goals we seek. We note that the Coastal Zone Management plan recognizes the need for a new Fore River Bridge, the designation of the Quincy-Weymouth area as one of the six state ports, and the prodding that a lead agency be named for water transportation.

We ask the federal government to return the proposal to Massachusetts and require that the Coastal Zone Management planners actively involve the Commonwealth's Development Cabinet, legislative leadership and private economic interests in resolving the procedural conflicts which exist so that we can be assured that the desirable objective of the development of a consolidated permit procedure will, in fact, be achieved and that the environmental statutes relating to coastal issues will be fairly administered to reflect the quality of life and the economic well-being of the Commonwealth.

36 Miller Stile Road, Box 488, Quincy, Massachusetts 02169, (617) 479-1111 - An Accredited Chamber



Vision, Inc. 2 Hubbard Park, Cambridge, Massachusetts 02138

RECEIVED
DEC 16 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

15 December 1977

Mr. Eric Van Loon
Coastal Zone Management Office
100 Cambridge Street
Room 2006
Boston MA 02114

Dear Mr. Van Loon:

I am enclosing Ron Fleming's testimony on the Coastal Zone Management Plan. I'm sorry we couldn't get it to you by 5 pm today.

I hope you find this helpful. Thank you.

Sincerely,

Steve Wolf

Steven Wolf
Administrative Assistant

encl

SJW:TRW

Vision, Inc. is a nonprofit, tax-exempt, planning organization concerned with corporate and governmental policy change to conserve and enhance the visual environment. Project areas include: Townscape Conservation, Historic Interpretation, Environmental Advocacy and Education.
Ronald Lee Fleming, Executive Director
617/491-8952/491-3763

The Massachusetts Roadside Council

74 NORTH STREET, LEXINGTON, MASSACHUSETTS 02173
Tel: 862-2859

MEMBER ORGANIZATIONS
Berkshire Hills Conference, Inc.
Berkshire Natural Resources Council
Boston Society of Landscape Architects
Cape Cod Chamber of Commerce
Essex County Green Belt Association
Garden Club Federation of Mass., Inc.
Golf Course Superintendents Assn. of N. E.
Mass. Arborists Association
Mass. Federation of Planning Boards
Mass. Forest and Park Association
Mass. Horticultural Society
Mass. Nurserymen's Association
Mass. State Association of Architects
Mass. State Federation of Women's Clubs
Mass. State Grange
Mass. Tree Wardens & Foresters Assn.
N. E. Farm and Garden Association, Inc.
N. E. Wildflower Preservation Society

SPONSORS
American Automobile Association, Mass. Branch
Blue Star Memorial Highway Committee of the Garden Club Federation of Mass., Inc.
Conservation Council for Route 495
Lower Pioneer Valley Regional Planning Commission
Mass. Association of Conservation Commissions
Mass. Audubon Society
Mass. League of Cities and Towns
Mass. Selectmen's Association
Museum of Science, Boston
Southeastern Regional Planning and Economic Development District
Sudbury Valley Trustees
Trustees of Public Reservations

OFFICERS
Chairman, Mrs. Ralph H. Davis
74 North Street, Lexington
Vice Chairman, Miss Elizabeth O'Doherty
68 Crystal Lake Road, Otterville
Treasurer, Mrs. Jeffrey R. Power
71 Beach Street, Cohasset
Anti-Litter Chairman, Mrs. Robert E. Pickup
4 Carmel Road, Andover
Legislative Chairman, Ronald L. Fleming
2 Hubbard Park, Cambridge
Asst. Legislative Chairman, Mrs. E. Sohier Welch
20 Louisburg Square, Boston
Arbor Day Chairman, Mrs. Cyrus Brewer
19 Reservoir Avenue, Chestnut Hill
Conservation Chairman, Mrs. Frank M. Lewis
Boston Post Road, Weston
Landscape Consultant, Mrs. E. Olsen Field
38 Hilltop Road, Weston
Legal Counsel, Robert J. Muldoon, Jr.
Publicity Chairman, Mrs. Edward F. Logan
562 Main Street, Hingham

ADVISORY BOARD
Mr. Norman H. Cook
R.F.D., Centerville
Mr. Daniel Coolidge
Boston Society of Architects
50 West Cedar Street, Boston
Mr. Joseph L. Eldridge
A. I. A., 380 Marlborough Street, Boston
Mrs. T. Q. Guptill
Mass. Tree Wardens & Foresters Assn.
Concord Road, Sudbury
Mrs. A. Stoddard Johnson
N. E. Farm and Garden Association
Gleasondale
Miss Frances McGrew
Garden Club Federation of Mass., Inc.
27c Elm Street, Gloucester
Mr. Benjamin Nason
Environmental Citizen Participation
52 South Street, Wrentham
Mr. Burton C. Parker
Mass. Federation of Planning Boards
821 Pearse Road, Swansea
Mrs. Chester W. Perkins
Mass. State Federation of Women's Clubs
159 Walnut Street, Marshfield
Mrs. Sherman R. Thayer
Garden Club of America
48 Cedar Road, Chestnut Hill

THE COASTAL ZONE MANAGEMENT PLAN: A MANDATE FOR VISUAL QUALITY

I am writing in support of the visual environment section of the Coastal Zone Management Plan for Massachusetts. I do this in behalf of two organizations: the Massachusetts Roadside Council, a coalition of citizens and organizations concerned with the state's visual environment; and VISION, Inc., a not-for-profit advisory organization that deals with issues of the built environment in cities and towns throughout New England and across the country.

We think the plan as presented is a competent beginning for setting visual quality standards. The visual environment has been neglected in Massachusetts, as it has been practically everywhere else. Outise signs, glaring lights garish buildings, overhead wires, barren parking lots--the litany of visual woes threatens to overwhelm us all, destroying the visual narrative which tells us where we are, and what we have experienced--architecturally, culturally, historically--as a state. No part of our environment suffers from more pressure than the coastal zone, and it is here that visual standards are most urgently needed. After reviewing the statement, we feel that certain points must be imbedded in the policy:

The Massachusetts Roadside Council

74 NORTH STREET, LEXINGTON, MASSACHUSETTS 02173

Tel: 862-2859

MEMBER ORGANIZATIONS

Berkshire Hills Conference, Inc.
Berkshire Natural Resources Council
Boston Society of Landscape Architects
Cape Cod Chamber of Commerce
Essex County Green Belt Association
Garden Club Federation of Mass., Inc.
Golf Course Superintendents Assn. of N. E.
Mass. Arborists Association
Mass. Federation of Planning Boards
Mass. Forest and Park Association
Mass. Horticultural Society
Mass. Nurserymen's Association
Mass. State Association of Architects
Mass. State Federation of Women's Clubs
Mass. State Grange
Mass. Tree Wardens & Foresters Assn.
N. E. Farm and Garden Association, Inc.
N. E. Wildflower Preservation Society

SPONSORS

American Automobile Association, Mass. Branch
Blue Star Memorial Highway Committee of the Garden Club Federation of Mass., Inc.
Conservation Council for Route 495
Lower Pioneer Valley Regional Planning Commission
Mass. Association of Conservation Commissions
Mass. Audubon Society
Mass. League of Cities and Towns
Mass. Selectmen's Association
Museum of Science, Boston
Southeastern Regional Planning and Economic Development District
Sudbury Valley Trustees
Trustees of Public Reservations

OFFICERS

Chairman, Mrs. Ralph H. Davis
74 North Street, Lexington
Vice Chairman, Miss Elizabeth O'Doherty
85 Crystal Lake Road, Ipswich
Treasurer, Mr. Jeffrey R. Power
71 Beach Street, Cohasset
Anti-Litter Chairman, Mrs. Robert E. Pickup
4 Carmel Road, Andover
Legislative Chairman, Ronald L. Fleming
2 Hubbard Park, Cambridge
Legislative Chairman, Mrs. E. Sohier Welch
20 Louisburg Square, Boston
Arbor Day Chairman, Mrs. Cyrus Brewer
19 Reservoir Avenue, Chestnut Hill
Conservation Chairman, Mrs. Frank M. Lewis
Boston Post Road, Weston
Landscape Consultant, Mrs. E. Olsen Field
38 Hilltop Road, Weston
Legal Counsel, Robert J. Muldoon, Jr.
Publicity Chairman, Mrs. Edward F. Logan
562 Main Street, Hingham

ADVISORY BOARD

Mr. Norman H. Cook
R.F.D., Centerville
Mr. Daniel Coolidge
Boston Society of Architects
50 West Cedar Street, Boston
Mr. Joseph L. Eldredge
A. I. A., 390 Marlborough Street, Boston
Mrs. T. O. Guptill
Mass. Tree Wardens & Foresters Assn.
Concord Road, Sudbury
Mrs. A. Stoddard Johnson
N. E. Farm and Garden Association
Glencoe
Miss Frances McGrew
Garden Club Federation of Mass., Inc.
27c Elm Street, Gloucester
Mr. Benjamin Nissen
Environmental Citizen Participation
52 South Street, Wrentham
Mr. Burton C. Parker
Mass. Federation of Planning Boards
821 Pearse Road, Swansea
Mrs. Chester W. Perkins
Mass. State Federation of Women's Clubs
159 Walnut Street, Mansfield
Mrs. Sherman R. Thayer
Garden Club of America
48 Cedar Road, Chestnut Hill

JOINT STATEMENT: MASS ROADSIDE COUNCIL/VISION, INC.

- Actions should not be advisory. Phrases like "insure that signing and design of major facilities will be compatible with the inherent visual qualities of the coast zone" are important. They should not be diluted by the substitution of "enocurage" for "insure."
- The suggested review and regulatory powers very rightly should include both public and private projects.
- The Executive Office of Environmental Affairs must be in a position to serve as a "visual ombudsman" to determine whether the cumulative environmental impact of private projects necessitates preparation of a full environmental impact report. CZM must be in a position to evaluate potential visual impact and to recommend mitigating measures. Visual impacts must be considered early in the planning and design process in order to insure ameliorative action.
- General guidelines for different coastal environmental types are useful, but they should be combined with specific requirements such as mandatory design review for National Register historic districts (Newburyport's High Street, long a National Register site, has no local design review protection); landscaping requirements for parking lots (because of the visual abuse of certain shopping centers);

The Massachusetts Roadside Council

74 NORTH STREET, LEXINGTON, MASSACHUSETTS 02173

Tel: 862-2859

MEMBER ORGANIZATIONS

rkshire Hills Conference, Inc.
rkshire Natural Resources Council
ston Society of Landscape Architects
pe Cod Chamber of Commerce
sex County Green Belt Association
rden Club Federation of Mass., Inc.
lf Course Superintendents Assn. of N. E.
ass. Arborists Association
ass. Federation of Planning Boards
ass. Forest and Park Association
ass. Horticultural Society
ass. Nurserymen's Association
ass. State Association of Architects
ass. State Federation of Women's Clubs
ass. State Grange
ass. Tree Wardens & Foresters Assn.
. E. Farm and Garden Association, Inc.
. E. Wildflower Preservation Society

SPONSORS

merican Automobile Association, Mass. Branch
lue Star Memorial Highway Committee
f the Garden Club Federation of Mass., Inc.
onservation Council for Route 495
ower Pioneer Valley Regional Planning Commission
ass. Association of Conservation Commissions
ass. Audubon Society
ass. League of Cities and Towns
ass. Selectmen's Association
useum of Science, Boston
outheastern Regional Planning and Economic Development District
udbury Valley Trustees
rustees of Public Reservations

OFFICERS

hairman, Mrs. Ralph H. Davis
74 North Street, Lexington
ice Chairman, Miss Elizabeth O'Doherty
85 Crystal Lake Road, Ipswich
reasurer, Mrs. Jeffrey R. Power
71 Beach Street, Cohasset
nti-Litter Chairman, Mrs. Robert E. Pickup
4 Carmel Road, Andover
egislative Chairman, Ronald L. Fleming
2 Hubbard Park, Cambridge
st. Legislative Chairman, Mrs. E. Sohier Welch
20 Louisburg Square, Boston
bor Day Chairman, Mrs. Cyrus Brewer
19 Reservoir Avenue, Chestnut Hill
onservation Chairman, Mrs. Frank M. Lewis
Boston Post Road, Weston
andscape Consultant, Mrs. E. Olsen Field
38 Hilltop Road, Weston
egal Counsel, Robert J. Muldoon, Jr.
ublicity Chairman, Mrs. Edward F. Logan
562 Main Street, Hingham

ADVISORY BOARD

r. Norman H. Cook
R.F.D., Centerville
r. Daniel Coolidge
Boston Society of Architects
50 West Cedar Street, Boston
r. Joseph L. Eldredge
A. I. A., 390 Marlborough Street, Boston
rs. T. O. Guptill
Mass. Tree Wardens & Foresters Assn.
Concord Road, Sudbury
rs. A. Stoddard Johnson
N. E. Farm and Garden Association
Glencoe
iss Frances McGrew
Garden Club Federation of Mass., Inc.
27c Elm Street, Gloucester
r. Benjamin Nissen
Environmental Citizen Participation
52 South Street, Wrentham
r. Burton C. Parker
Mass. Federation of Planning Boards
821 Pearse Road, Swansea
rs. Chester W. Perkins
Mass. State Federation of Women's Clubs
159 Walnut Street, Mansfield
rs. Sherman R. Thayer
Garden Club of America
48 Cedar Road, Chestnut Hill

JOINT STATEMENT: MASS ROADSIDE COUNCIL/VISION, INC.

and the madatory undergrounding of new utility systems (standard policy in many European countries).

- Implementation should stress compatibility of new built environment elements with existing visual character. The policy statement should expand on this point (see examples of visual guidelines for different built-up areas prepared for York, Maine). We need general guidelines for treatment of design review in different types of built environments--roadside commercial areas should have different criteria, for example, than village commercial or historic residential areas.
- The policy must take a broad approach to visual impacts. Review of new development, for example, should not be bound to narrow definitions of "abutting or adjacent to an historic district." A proposed highway might skirt the boundaries of a waterfront historic district, but completely alter the environment. Obviously, review power must include the right to minimize potential adverse impact.
- Design review power within the coastal zone must be considered a key legal tool. It must not be restricted merely to historic districts. Increasingly, historic districting is being seen as a planning tool, a means of achieving design review, but this concept should be broadened so that the

Keep America — and Massachusetts — Beautiful

The Massachusetts Roadside Council

74 NORTH STREET, LEXINGTON, MASSACHUSETTS 02173

Tel: 862-2859

MEMBER ORGANIZATIONS

Berkshire Hills Conference, Inc.
Berkshire Natural Resources Council
Boston Society of Landscape Architects
Cape Cod Chamber of Commerce
Essex County Green Belt Association
Garden Club Federation of Mass., Inc.
Golf Course Superintendents Assn. of N. E.
Mass. Arborist Association
Mass. Federation of Planning Boards
Mass. Forest and Park Association
Mass. Horticultural Society
Mass. Nurseymen's Association
Mass. State Association of Architects
Mass. State Federation of Women's Clubs
Mass. State Grange
Mass. Tree Wardens & Foresters Assn.
N. E. Farm and Garden Association, Inc.
N. E. Wildflower Preservation Society

SPONSORS

American Automobile Association, Mass. Branch
Blue Star Memorial Highway Committee of the Garden Club Federation of Mass., Inc.
Conservation Council for Route 495
Lower Pioneer Valley Regional Planning Commission
Mass. Association of Conservation Commissions
Mass. Audubon Society
Mass League of Cities and Towns
Mass. Selectmen's Association
Museum of Science, Boston
Southeastern Regional Planning and Economic Development District
Sudbury Valley Trustees
Trustees of Public Reservations

OFFICERS

Chairman, Mrs. Ralph H. Davis
71 North Street, Lexington
Vice Chairman, Miss Elizabeth O'Doherty
65 Crystal Lake Road, Osterville
Treasurer, Mrs. Jeffrey R. Power
73 Beach Street, Cohasset
Sub-Letter Chairman, Mrs. Robert E. Pickup
Canoe Road, Andover
Legislative Chairman, Ronald L. Fleming
2 Hubbard Park, Cambridge
Asst. Legislative Chairman, Mrs. E. Sohier Welch
29 Louisburg Square, Boston
Arbor Day Chairman, Mrs. Cyrus Brewer
18 Beacon Avenue, Chestnut Hill
Conservation Chairman, Mrs. Frank M. Lewis
Boston Post Road, Weston
Landscape Consultant, Mrs. E. Olsen Field
38 Hilltop Road, Weston
Legal Counsel, Robert J. Muldoon, Jr.
Publicity Chairman, Mrs. Edward F. Logan
562 Main Street, Hingham

ADVISORY BOARD

Mr. Norman H. Cook
R.F.D., Centerville
Mr. Daniel Coolidge
Boston Society of Architects
39 West Cedar Street, Boston
Mr. Joseph L. Eldridge
A. I. A., 30 Marlborough Street, Boston
Mrs. T. O. Gugiell
Mass. Tree Wardens & Foresters Assn.
Concord Road, Sudbury
Mrs. A. Stoddard Johnson
N. E. Farm and Garden Association
Glen Ridge
Mrs. Frances McGrew
Garden Club Federation of Mass., Inc.
27 Elm Street, Gloucester
Mr. Benjamin Nason
Environmental Citizen Participation
52 South Street, Wrentham
Mr. Burton C. Parker
Mass. Federation of Planning Boards
621 Pearse Road, Seaman
Mrs. Chester W. Perkins
Mass. State Federation of Women's Clubs
139 Walnut Street, Marshfield
Mrs. Sherman R. Thayer
Garden Club of America
18 Cedar Road, Chestnut Hill

the benefits of some review can be applied to commercial districts within the coastal zone. Criteria for design review might include: landscape preservation, relation of structures to their environment, preservation of open space, circulation, surface water drainage, utility services, advertising features, structural safety, and protection of area heritage. Brookline uses these criteria in its design review capacity, which covers the city's commercial districts and is unrelated to historic districting.

- Performance zoning, a useful planning tool mentioned in the report, should be explicitly related to the types of activities which should be regulated.
- It is imperative that the Massachusetts Historical Commission have authority to review federal developments or federally-funded or -licensed projects considered harmful to the character of historic districts, sites, or properties eligible for the National Register. The Coastal Zone Management program must sustain this review action and expand it to state development projects and private activity requiring a state permit. If, after review, they are considered harmful to the historic

The Massachusetts Roadside Council

74 NORTH STREET, LEXINGTON, MASSACHUSETTS 02173

Tel: 862-2859

MEMBER ORGANIZATIONS

Berkshire Hills Conference, Inc.
Berkshire Natural Resources Council
Boston Society of Landscape Architects
Cape Cod Chamber of Commerce
Essex County Green Belt Association
Garden Club Federation of Mass., Inc.
Golf Course Superintendents Assn. of N. E.
Mass. Arborist Association
Mass. Federation of Planning Boards
Mass. Forest and Park Association
Mass. Horticultural Society
Mass. Nurseymen's Association
Mass. State Association of Architects
Mass. State Federation of Women's Clubs
Mass. State Grange
Mass. Tree Wardens & Foresters Assn.
N. E. Farm and Garden Association, Inc.
N. E. Wildflower Preservation Society

SPONSORS

American Automobile Association, Mass. Branch
Blue Star Memorial Highway Committee of the Garden Club Federation of Mass., Inc.
Conservation Council for Route 495
Lower Pioneer Valley Regional Planning Commission
Mass. Association of Conservation Commissions
Mass. Audubon Society
Mass League of Cities and Towns
Mass. Selectmen's Association
Museum of Science, Boston
Southeastern Regional Planning and Economic Development District
Sudbury Valley Trustees
Trustees of Public Reservations

OFFICERS

Chairman, Mrs. Ralph H. Davis
71 North Street, Lexington
Vice Chairman, Miss Elizabeth O'Doherty
65 Crystal Lake Road, Osterville
Treasurer, Mrs. Jeffrey R. Power
73 Beach Street, Cohasset
Sub-Letter Chairman, Mrs. Robert E. Pickup
Canoe Road, Andover
Legislative Chairman, Ronald L. Fleming
2 Hubbard Park, Cambridge
Asst. Legislative Chairman, Mrs. E. Sohier Welch
29 Louisburg Square, Boston
Arbor Day Chairman, Mrs. Cyrus Brewer
18 Beacon Avenue, Chestnut Hill
Conservation Chairman, Mrs. Frank M. Lewis
Boston Post Road, Weston
Landscape Consultant, Mrs. E. Olsen Field
38 Hilltop Road, Weston
Legal Counsel, Robert J. Muldoon, Jr.
Publicity Chairman, Mrs. Edward F. Logan
562 Main Street, Hingham

ADVISORY BOARD

Mr. Norman H. Cook
R.F.D., Centerville
Mr. Daniel Coolidge
Boston Society of Architects
39 West Cedar Street, Boston
Mr. Joseph L. Eldridge
A. I. A., 30 Marlborough Street, Boston
Mrs. T. O. Gugiell
Mass. Tree Wardens & Foresters Assn.
Concord Road, Sudbury
Mrs. A. Stoddard Johnson
N. E. Farm and Garden Association
Glen Ridge
Mrs. Frances McGrew
Garden Club Federation of Mass., Inc.
27 Elm Street, Gloucester
Mr. Benjamin Nason
Environmental Citizen Participation
52 South Street, Wrentham
Mr. Burton C. Parker
Mass. Federation of Planning Boards
621 Pearse Road, Seaman
Mrs. Chester W. Perkins
Mass. State Federation of Women's Clubs
139 Walnut Street, Marshfield
Mrs. Sherman R. Thayer
Garden Club of America
18 Cedar Road, Chestnut Hill

qualities of a nearby site, the proposer must be empowered to disallow such actions or to attach mitigating conditions to the development, where this can be achieved.

- It is particularly important to develop corridors in the coastal zone which are free of roadside signs which have visually pre-empted so many strategic sites in the state. Since, under state statutes, such signs must be licensed on an annual basis, and since they have no non-conforming use protection under state zoning enabling law, they can easily be removed.
- Representing a constituency concerned with highways, we are particularly pleased to endorse the establishment of scenic roadways and highways within the coastal zone, and we feel that it is important to [illegible] money from the Federal Highway Fund specifically for their enhancement.

The protection and enhancement of the [illegible] environment which is a part of the Coastal Zone Management Plan has been a long time in coming. Perhaps, had been more mature as a culture, we would have developed this type of program in the years before our economy development

The Massachusetts Roadside Council

74 NORTH STREET, LEXINGTON, MASSACHUSETTS 02173
Tel: 862-2859

MEMBER ORGANIZATIONS
Berkshire Hills Conference, Inc.
Berkshire Natural Resources Council
Boston Society of Landscape Architects
Cape Cod Chamber of Commerce
Essex County Green Belt Association
Garden Club Federation of Mass., Inc.
Golf Course Superintendents Assn. of N. E.
Greater Boston Council of American Youth Hostels, Inc.
Mass. Arborist Association
Mass. Federation of Planning Boards
Mass. Forest and Park Association
Mass. Horticultural Society
Mass. Nurserymen's Association
Mass. State Association of Architects
Mass. State Federation of Women's Clubs
Mass. State Grange
Mass. Tree Wardens & Foresters Assn.
N. E. Farm and Garden Association, Inc.
N. E. Wildflower Preservation Society

SPONSORS
Governor Francis W. Sargent
Richard E. McLaughlin
Mass. Secretary for Public Safety
Arthur W. Brownell, Commissioner
Mass. Department of Natural Resources
American Automobile Association, Mass. Branch
Blue Star Memorial Highway Committee
of the Garden Club Federation of Mass., Inc.
Conservation Council for Route 495
Lower Pioneer Valley Regional Planning Commission
Mass. Association of Conservation Commissions
Mass. Audubon Society
Mass. League of Cities and Towns
Mass. Selectmen's Association
Museum of Science, Boston
Southeastern Regional Planning
and Economic Development District
Sudbury Valley Trustees
Trustees of Public Reservations

OFFICERS
Chairman, Mrs. Ralph H. Davis
4 North Street, Lexington
Vice Chairman, Miss Elizabeth O'Doherty
354 Main Street, Centerville
Treasurer, Mrs. James B. Tiffany
10 Elm Road, West Peabody
Anti-Litter Chairman, Mrs. James A. L. Conner
73 Murray Street, Peabody
Legislative Chairman, Ronald L. Fleming
19 Hilliard Street, Cambridge
Asst. Legislative Chairman, Mrs. E. Sohier Welch
20 Louisburg Square, Boston
Arbor Day Chairman, Mrs. Cyrus Brewer
19 Rockwood Avenue, Chestnut Hill
Conservation Chairman, Mrs. Frank M. Lewis
Boston Post Road, Weston
Landscape Consultant, Mrs. E. Olsen Field
38 Hilltop Road, Weston
Legal Counsel, Robert J. Muldoon, Jr.
Publicity Chairman, Mrs. Edward F. Logan
30 Jerusalem Road, Cohasset

ADVISORY BOARD
Mr. Norman H. Cook
Cape Cod Planning and
Economic Development Commission
Hyannis, Mass.
Mr. Daniel Coolidge
Boston Society of Architects
50 West Cedar Street, Boston
Mr. Joseph L. Eldridge
A. I. A., 3-9 Marlborough Street, Boston
Mr. John V. Geary
Berkshire Hills Conference, Inc.
100 North Street, Pittsfield
Mrs. T. O. Guptill
Mass. Tree Wardens & Foresters Assn.
Concord Road, Sudbury
Mr. A. Stoddard Johnson
N. E. Farm and Garden Association
Glenwoodale
Mrs. Frances McGrew
Garden Club Federation of Mass., Inc.
210 Elm Street, Gloucester
Mr. Benjamin Nason
Environmental Citizen Participation
14 Beacon Street, Boston
Mr. Burton C. Parker
Mass. Federation of Planning Boards
[illegible] Road, Lincoln
Mr. Charles L. Shepard
Mass. State Federation of Women's Clubs
[illegible] Road, Weston
Mr. Terence G. Shepard
Garden Club Federation of Mass., Inc.
Stony Brook Road, Weston
Mr. Theodore R. Tilton
Garden Club of America
18 Cedar Road, Chestnut Hill

JOINT STATEMENT: MASS ROADSIDE COUNCIL/VISION, INC.

boom pre-empted so many opportunities for regulating growth. This type of planning should be welcomed by the major private interestes involved, as, in the long run, it will make the planning process more predictable and will enhance the value of many investments in coastal real estate. Even in hindsight, though, the visual damage which so much of our coastline has suffered is disturbing. It is perhaps the most poignant testimony to the need for a strong visual component in this Coastal Zoning Management Plan. It has our strong support.

Ronald Lee Fleming
Executive Director,
VISION, Inc.

Legislative Chairman,
Massachusetts Roadside Council

SLA BOSTON SOCIETY OF LANDSCAPE ARCHITECTS

MAINE · MASSACHUSETTS · NEW HAMPSHIRE & VERMONT CHAPTER
THE AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS, INC.

24 ASH STREET, CAMBRIDGE, MASSACHUSETTS 02138 TELEPHONE (617) 876-6771

Office of Coastal Zone Management
State Office Building
100 Cambridge Street
Boston, Massachusetts

14 December 1977

STATEMENT: Draft EIS Coastal Zone Management Program

The Boston Society of Landscape Architects is a chapter of the American Society of Landscape Architects, Inc. The Society is a non-profit professional organization having a membership of some 5,000 persons.

A basic premise of the Society is responsible stewardship of land and water resources: resources on which our national social fabric is based, and from which we, as a nation, shall always continue to draw both sustenance and inspiration. Therefore we support approval and implementation of the Coastal Zone Management (CZM) program.

However, there are several items which need to be strengthened, others need definition and others need promulgation. The program needs to be strengthened so that the Executive Office of Environmental Affairs (EOEA) actually can guide development in the Coastal Zone. At present a large part of this function lies with the local jurisdiction. The prime complaint against perpetuation of the inviolability of home rule is its past history. We foresee only a continuation of despoilation if the actions of local planning boards regarding land use and density, and local water and sewage capital improvements programs are not interfaced and made responsive to the CZM regulations and policies. Program approval at the Federal level should be predicated on the greater need of the total society to protect the common natural resource base.

We are of the opinion that additional regulations must be adopted and incorporated into an enforceable CZM program as regards the Ocean Sanctuaries and Waterways Program, the Wetlands Protection Act and the interrelationship of the EOEA and the Energy Facilities Siting Council. Chapter 21a regulations related to EOEA are inadequate tools to protect the efficacy of the program.

We are of the opinion that all Areas for Preservation and Restoration (APR) must be designated before the plan is promulgated to assure protection.

We are cognizant that mere designation of APR's will not preclude energy facilities from affecting these areas. Therefore we also recommend redefinition of agreements regarding the Energy Facilities Siting Council

President: Curtiss Pollari
Vice President: Edward R. Clemons
Secretary: Bruce E. Tyson
Treasurer: Gary L. Larson
Trustee: John L. Wacker
Member-At-Large: Robert W. Pollock, Jr.

to mandate adherence to the CZM policies and regulations. This point is particularly significant in light of the pending leasing of offshore tracts for oil and gas production.

We appreciate the enormity of your planning process and applaud the efforts of your staff and the citizenry. However, because the Massachusetts CZM Program is one of the first regional programs to be eligible for Federal approval it is paramount that the total program be enforceable through regulations which protect the Coastal Zone more than just adequately. Therefore we urge that the foregoing items be promulgated prior to the 23 February 1978 target date for Federal approval.

Very truly yours,

A. Curtiss Pollari

A. Curtiss Pollari
President

MARQUIS B. GRAHAM
INSURANCE
31 EDWARD ROAD
WEST NEWTON, MASSACHUSETTS 02165
TELEPHONE 617-332-5325

12/5/77

Office of Coastal Zone Management
National Oceanic and Atmospheric Adm.
Attention: Ms Kathryn Cousins
Room 3280
3300 Whitehaven Street NW
Washington, D C 20235

Dear Ms Cousins:

I own a summer cottage at Gurnet Point Plymouth, Mass. and am therefore greatly interested in the effect if any to Duxbury Beach, Gurnet Point and Saquish beach of the 38 policies regarding activities on the coast adopted by Massachusetts, particularly Policies 25, 26 and 27.

Access to these properties is by four wheel drive vehicles only. Since there is now quite heavy travel this way measures have had to be taken to preserve the dunes and prevent the ocean from comeing across to Duxbury Bay and making the entire place an island. Any added crowds to this area could be very distrctive because of the fragility of the land. Prpbably large expenditure of monies would be needed and heavy policing.

Also the problem of sanitation and sewerage would be a major project. In the light of these facts, although I would prefer to maintain the status quo, it is my opinion that if there is to be an acquisition of any of thid land it should be funded with Federal funds to assure there will be sufficient monies to handle the problems created.

Yours very truly,

Marquis B. Graham

Marquis B. Graham

Orleans, Mass.
March 17, 1977

Honorable Juanita Krepps
U.S. Secretary of Commerce
Washington, D.C. 20510

Dear Secretary Krepps:

Enclosed is a letter from our CZM Committee of March 11, 1977 to the Director of the Mass. Office of Coastal Zone Management with a map of the Town of Orleans attached indicating the various conservation and wetland areas.

We are concerned over the many unanswered questions relating to the administration and implementation of the CZM Program especially as it relates to our own existing self government.

We feel you might want to be kept informed and you might be interested in our concern over this important program.

Sincerely,

Thomas Walsh, Co-Chairman
Orleans Coastal Zone Management
Committee

Encl:

106 Shawmut St.
Chelsea, MA 02150
Dec. 1, 1977

Ms. Kathryn Cousins
Office of Coastal Zone Management
3300 Whitehaven St., NW
Washington, DC 20235

Dear Ms. Cousins:

I am in favor of the Massachusetts Coastal Zone Management Program and am therefore opposed to H.6687, which would in effect halt all state action in the coastal zone.

Please include this letter as part of the hearing record. Thank you.

Sincerely yours,

Elliott Krefetz

December 7, 1977

Kathryn Cousins
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D. C. 20235

Dear Mrs. Cousins:

In keeping with request to submit comments relating to the Massachusetts CZM program, I am submitting two recommendations, as follows:

I. Citizens Advisory Committees -

The contribution of the CAC's has been acknowledged in the Program Report. Their continuation in the management phase has been indicated, but without formal structuring. Appointment of the membership should be by a defined process, including some input by the legislature representing the regional citizen interests. To bring about a sounder partnership, representatives or senators should be committee members - or have the authority to appoint a representative. This would eliminate future objections by some in the legislature that (1) they did not have representation (2) were kept "in the dark" -

II. Cooperate with Department of Labor and Industry

Since CZM on the Federal level is administered by an agency of the Department of Commerce, it would seem reasonable that a closer liaison between MCZM and Labor and Industry should be sought. An environmentally oriented land use program sponsored by the Commerce Department at the Federal level should include participation at the State Level by Labor and Industry. Perhaps a memo of understanding might suffice - but acknowledgement should be given that the two concerns - environment and Labor & Industry (i.e.Business) are partners in the Coastal Zone.

William S. Webber
4 Knob Hill
Great Barrington, Mass. 01230

GREATER LAWRENCE CHAMBER OF COMMERCE

SERVING LAWRENCE, ANDOVER, NORTH ANDOVER, METHUEN; & SALEM, N.H.

THREE HUNDRED ESSEX ST.
LAWRENCE, MASS. 01840
(617) 686-9404

December 16, 1977

Kathryn Cousins
Richard O'Connor
Office of Coastal Zone Management
3300 Whitehaven St., N.W.
Washington, D.C. 20235

Dear Ms. Cousins & Mr. O'Connor:

On December 13th, the Board of Directors of the Greater Lawrence Chamber of Commerce, voted to support any efforts to delay the implementation of the Coastal Zone Management proposal.

It is the feeling of the Board that one of the greatest failings of the CZM effort in Massachusetts to date, is the Executive Office of Environmental Affair's refusal to untangle the Commonwealth's current regulatory and permitting problems through remedial legislations and simplification.

The Board favors support for a delay of 6-12 months, in the implementation until legalities can be determined and to allow economic and environmental concerns the necessary time to cooperate in reforming the program.

I hope that you find it reasonable to support our intentions and thereby provide sufficient time for the plan to be revised adequately.

Sincerely yours,

John F. Bassett
President

6 years
ACCREDITED
CHAMBER OF COMMERCE
CHAMBERS OF COMMERCE OF THE UNITED STATES

Mobil Oil Corporation

150 EAST 42ND STREET
NEW YORK, NEW YORK 10017

December 9, 1977

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

Attention: Kathryn Cousins or
Richard O'Connor

7.06 MID ATLANTIC
DRAFT ENVIRONMENTAL IMPACT
STATEMENT - MASSACHUSETTS
COASTAL ZONE MANAGEMENT PROGRAM

Gentlemen:

A foremost concern of Mobil with respect to state CZM programs in connection with siting of energy facilities is that any approved plan should include provisions which:

(1) Identify areas within which the siting of energy facilities should be restricted.

(2) Establish proper performance criteria for installations.

(3) Provide a reasonable permitting process for applicants to employ in receiving due consideration and approval to site energy facilities at a beneficial and preferred location.

On the surface at least, the program for Massachusetts comes close to meeting the above. It is evident that the plan being considered by NOAA is the product of broad input and much careful thought. However, we are concerned that the approval process for oil related facilities is so complex as to unduly frustrate siting.

For example, a minimum of one year notice is required (two years for a refinery) prior to commencement of construction of an oil facility. In addition, there must be a public hearing for each oil facility within 6 months of the notice and a decision given within 12 months of filing (24 months for a refinery). Mobil submits this procedure constitutes unnecessary delay.

Otherwise, we see serious legal problems that would prevent the Program from being effective toward allowing the siting of needed oil facilities. For example, the Massachusetts law establishing the Energy Facilities Siting Council (EFSC) and giving it authority to approve siting, is strongly directed toward the Commonwealth. This is contrary to the Federal CZMA which provides regional and national priorities are required to be considered. Neither is there clear provision for overriding local zoning by-laws. As most, if not all, the coastal zone is subject to local or state laws or ordinances that would greatly restrict or prohibit oil related facilities siting, we cannot be assured of access even under circumstances that would serve broad regional or national interests. Any plan approved by NOAA is required to provide for override in the regional or national interest. Accordingly, it would appear that defects of the nature described here will have to be cured before approval is given.

Representatives of Mobil have participated in preparation of comments on the Massachusetts Plan being submitted by the American Petroleum Institute. These comments treat in detail several substantial legal obstacles to NOAA approval in the current situation. Your serious consideration of those points is recommended.

Very truly yours,

K.W. Wiseman

KWW/at

Dan-DEIS

COLONIAL COASTAL CORPORATION
68 HICKORY DRIVE
WALTHAM, MASSACHUSETTS 02154
617-890-4015

RECEIVED
DEC 28 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

December 13, 1977

S. Russell Sylva
Assistant Secretary
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, MA 02202

Re: Regarding comment on Coastal Zone Management

Dear Mr. Sylva:

I enjoyed meeting you at the South Shore Commerce meeting regarding Coastal Zone Management. Per your request at the meeting, I am including herein my comments on areas in the Coastal Zone Management Plan wherein I see ambiguities or potential problems.

Although I am the representative of the Massachusetts Marine Trade Association Board of Directors to Coastal Zone Management, the comments included herein do not necessarily represent the position of the Marine Trade Association, but essentially reflects my personal position as both the operator of a marina and manager of the 100 acre Hingham Shipyard property on the Weymouth Back River.

As the Marine Trade Association representative to Coastal Zone Management, I served on the Coastal Review Center Committee. During approximately two years that I have had contact with the Coastal Zone personnel, I have been favorably impressed with the attitudes of the CZM staff and their willingness to listen to all points of view. However, it has become increasingly obvious that many businessmen do not share this favorable opinon, either through lack of contact with the CZM team or through unfortunate experiences at public hearings.

As you are undoubtedly aware, there is also a deep-rooted fear of increased bureaucratic involvement/government control in private business within the commonwealth. On Page [illegible] of Volume [illegible] of the of the Coastal Zone Management Plan, you mention [illegible]

for cooperation and communication among all the many interests concerned with the coast. I indicated to Marc Kaufman on a number of occasions that I felt more "selling" was needed, because a very large number of fears and complaints I have heard expressed were based largely upon ignorance rather than fact. I still do not believe CZM has done an adequate job of educating the private business sector in so far as the Coastal Zone Management Plan is concerned.

In addition to my complaints about the communication aspect of Coastal Zone Management, I have the following comments:

1. Visual Environment -- all businessmen I have spoken to are very concerned with the subjective element in this area. While your expressed intent is laudable, most businessmen fear that the visual environment policies lend themselves to being used as a tool to prevent development for arbitrary reasons.

2. Ports and Harbors -- there is a fear that your "promoting" and "encouraging" of various appropriate types of use in these areas, when considered in conjunction with M.O.U.'s and networking, almost amounts to either re-zoning, or the ability to possibly force a town to re-zone.

3. Recreation -- Boating -- the marine industry is very concerned that your activities might act to increase the number of state owned boat ramps in competition with private marina facilities. One has only to look at the situation with the M.D.C. vs. private hockey rinks to understand the marine industry's concern.

4. The marine industry is also concerned with your policy concerning the requirement, through Water Pollution Control, for sewage pump-out and disposal facilities in each marina. Many marinas are situated in areas without public sewer systems, thus disposal facilities could create a serious problem. This concern is aggravated by the fact that the particular types and sizes of facilities have not been spelled out. In many instances, requiring every marina to have these facilities is probably unnecessary, since many marinas

are too small to justify the installation and there may be a nearby facility that can adequately service all the customers in an area. I believe this provision deserves more homework before being implemented.

5. CZM's credibility has been severely damaged due to your recent admission that "one stop permits" is not feasible under the present laws. For a long time CZM spokesmen were indicating that the single permit procedure was one of the benefits which would result from the approval and implementation of the program.

6. Many businessmen are very skeptical of your stated policies. Their feeling is that the CZM program will effectively increase the power of Environmental Affairs through more effective networking and utilizatic of the various legislative authorities in the many departments concerned. In turn they feel that this increased power could result in economic disaster if the present favorable policies were reversed by some succeeding administration.

7. In connection with No. 6 above, there is a definite fear that small business will have no voice in future policy formulation. We recognize that large corporation and institutions can afford the expensive legal and lobbying talent to insure that their voice is heard. Small business is unable to afford such an expense. I do not believe you have adequately guaranteed a voice for small business in future policy formulation, nor do I believe you have adequately provided for aiding small business to develop and expand where appropriate. One of the most potentially attractive elements of the Massacusetts Coastal Zone Management Plan is your stated policy of encouraging development in the Coastal Zone where appropriate. I believe you missed the boat in not emphasizing and educating the business community to the fact that your encouragement would include advice and help in connection with desirable projects.

The small business community probably needs this help

more than the cities and towns do. I believe you have failed to realize that state government, including, most especially, permitting agencies, is viewed by most small businessmen as a monolithic wall of indifference. From my own experience, I have found your people to be most helpful -- I believe the CZM policies intend that this will continue; however, you have not adequately informed the business community of this intent. I suggest that you make a strong effort (and Chambers of Commerce might be a good place to start) to get the word out. I further suggest that you make a definite commitment to include appropriate small business interests in both the regional advisory boards and the state wide commission--especially representatives from the South Shore Chamber of Commerce and Mass Marine Trade Association as well as others.

Very truly yours,

Paul R. Neelon
Vice President

PRN:der

cc: Martha Reardon
Richard Egan
Eric VanLoon

CROCKER SNOW
BOSTON-LOGAN AIRPORT
EAST BOSTON, MASSACHUSETTS 02128

Eric
Jan ?
'US

RECEIVED
DEC 30 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

December 5, 1977

MEMORANDUM

I have looked over the voluminous material on the Massachusetts Coastal Zone Management Program to see what it means, primarily to Ipswich and also to West Gloucester and Muskeget.

All of Ipswich seaward of I-A from Rowley to the Cable Hospital and thence along Route 133 to Essex, with a jog along Candlewood and Chebacco Roads, would be in the zone. Actually, the line would run 100 ft. west of the highway boundaries.

All of the affected area has been nominated as an APR, which stands for "Areas for Preservation and Restoration". Such areas are subject to policies 1, 2, 3, 8, 18 and 26, which, very briefly, say that no use should be made of the rivers, salt marshes, and adjacent 100 year flood plains which would hurt them, and every effort, including public ownership, should be made to preserve them and restore them if necessary to their pristine state. Those policies can be found in Volume I.

In addition, it appears that the Ipswich sewerage system and its dump are inconsistent with the CZM objectives, and that the tidal portion of the Ipswich River would be eligible for dredging.

As an ordinary citizen I'm all for the plan as it affects Ipswich, but I'm in no position to evaluate it from the standpoint of the Town as a whole. December 15 is the deadline for comments to the Secretary of Environmental Affairs.

CS

Crocker Snow

CS/ep

DAVID E. HARRISON
Attorney and Counsellor at Law
111 MAIN STREET
GLOUCESTER, MASSACHUSETTS 01930
(617) 283-7432

Jnr

RECEIVED
DEC 30 1977
COASTAL ZONE MANAGEMENT
Exec. Office of Environmental Affairs

December 28, 1977

Erik Van Loon, Director
Coastal Zone Management
Saltonstall Office Building
Boston, MA

Dear Mr. Loon:

I have been requested to make a further statement in regard to the application of the Miles River Sand & Gravel Co., Inc. in its request to be "grandfathered" as to its activities as a gravel pit and sand digging business off Paradise Road in Ipswich.

I was under the impression that my remarks were recorded at the night of the hearing in Danvers, but if they were the translation will not take place in time for your decision.

The Miles River Sand & Gravel Co., Inc. has been owned by the Vitale family for over fifty years and has operated in the area as shown by the map which I presented on the night of the hearing as a sand and gravel operation. There has been no question as to its existence as both the Board of Selectman and the Conservation Commission have given the operation its necessary permits each and every year since permits have been necessary.

I hope that this Board will grant a "grandfather's" clause to the Miles River Sand & Gravel Co., Inc.

Yours truly,

David E. Harrison

David E. Harrison
Attorney

DEH/jnr

REVIEW AND COMMENT

ON THE

RECOMMENDATION FOR PUBLIC LAND ACCESS
TO STONY POINT DIKE,
WAREHAM, MASSACHUSETTS

CONTAINED IN

THE MASSACHUSETTS COASTAL ZONE
MANAGEMENT PROGRAM

AS EVALUATED BY

THE STATE OF MASSACHUSETTS COASTAL MANAGEMENT
DRAFT ENVIRONMENTAL IMPACT STATEMENT

Prepared by

Environmental Collaborative
Cambridge, Massachusetts

for

Residents of the Great Neck
Neighborhood of Wareham,
Massachusetts

Putnam, Bell & Russell

Attorneys at Law
53 State Street
Boston, Massachusetts 02109
(617) 723-3131
Cable: Puttenham

December 13, 1977

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Attention: Ms. Kathryn Cousins
Room 3280
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

Evelyn F. Murphy, Secretary
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

Eric VanLoon, Director
Massachusetts Coastal Zone Management Program
100 Cambridge Street
Boston, Massachusetts 02202

Dear Mesdames and Sir:

On behalf of Mr. and Mrs. Colin A. Canham, Jr., Mr. and Mrs. C. Ezekiel Cheever, Mr. and Mrs. John Coburn, Mr. and Mrs. G. Lamar Crittenden, Mr. and Mrs. Charles P. Lyman, Mr. and Mrs. Frederick Mittendorf, Mr. and Mrs. Raymond J. Montminy, Mrs. George L. Sargent, Mr. and Mrs. Samuel P. Shaw, and myself, as landowners affected by the Coastal Zone Management proposal for land access to Stony Point Dike, Wareham, Massachusetts, I enclose for your review an environmental impact statement prepared by Environmental Collaborative, 12 Arrow St., Cambridge, Massachusetts 02138, on that proposal. The material in the statement is directed to you as written comment on the Draft Environmental Impact Statement currently undergoing your review.

Sincerely,

Howard S. Whiteside

Howard S. Whiteside

HSW/r
enc.

TABLE OF CONTENTS

	Page
Background/Introduction	1
Analysis of Major Issues	5
Review and Comment on the State of Massachusetts Coastal Management Draft Environmental Impact Statement	9
1. Description of the Action	10
1.1 Nature of the action to be taken	10
1.2 Recreational facilities	10
1.3 Access road locations	11
1.4 Objectives to be accomplished by the project	11
1.5 Who the project will serve	11
2. Description of the Environment	12
2.1 Land use of the environment	12
2.2 Area vegetation	13
2.3 Area fauna	13
2.4 Local socio-economic conditions	14
2.5 Persons or businesses relocated because of the project	14
2.6 Probable future environment if project not initiated	14
3. Environmental Impact of the Proposed Action	16
3.1 Effect of the project on land use	16
3.2 Description of the socio-economic effects of the project	16
3.3 Project impact on marine navigation	19
3.4 Description of project impact on shellfish beds	20
3.5 Description of the project impact on users of the proposed recreational development	25
3.6 Description of the impact of the project on planning objectives of federal, state, and local agencies	36
3.7 Description of project impact on site vegetation	39
3.8 Description of project impact on wildlife	39
3.9 Description of the project impact on coastal hazardous areas	40
3.10 Description of the project impact on transportation routes	43
4. Alternatives to the Proposed Action	45
5. Probable Adverse Environmental Effects Which Cannot be Avoided	46
6. The Relationship Between Local Short-Term Uses of the Environment and the Maintenance and Enhancement of Long-Term Productivity	47
7. Any Irreversible or Irretreivable Commitment of Resources that Would be Involved in the Proposed Action Should it be Implemented	48
8. Consultation and Coordination	49

Exhibits:

A. U.S. Army Corps of Engineers' letter in opposition to the dike proposal

B. Letter from the Wareham Board of Selectmen

C. Letter from the Wareham Planning Board

D. Letter from the Wareham Shellfish Constable

E. Letter from the Wareham Office of Economic Development

F. Letter from the Wareham Board of Health.

G. Letters of Concern from Stony Point residents

H. Reply to resident letter from the State Office of Coastal Zone Management

I. Wareham Growth Policy Committee report

Page

J. U.S. Corps of Engineers' Master Plan maps for the development of recreational resources of the Cape Cod Canal project area.

K. Flood plain maps of the Stony Point Dike area.

L. List of wildlife that frequent the dike environment.

M. "Farming the Sea" Article in New England Magazine in the Boston Sunday Globe, November 27, 1977.

N. Recommendations of the EOEA Shellfish Task Force

O. Senate bill to provide for the establishment of the Cape Cod Canal National Park.

P. Council on Environmental Quality guidelines for the preparation of environmental impact statements.

Q. U.S. Department of Commerce Administrative Orders governing preparation of impact statements.

R. Rules and Regulations governing the preparation of environmental impact statements under MEPA.

400

Background and Introduction

This Review and Comment of the Massachusetts Coastal Management Draft Environmental Impact Statement was prepared in response to one of the proposals of the Massachusetts Coastal Zone Management plan. That proposal (on page 224 of Volume 1 and page 146 of Volume 2 of the CZM plan and on page 11-20 of the Draft EIS) recommends that the State Department of Environmental Management acquire an easement to provide general public access to the Stony Point Dike in Wareham, Massachusetts.

The citizen review procedures required under section 102 (2) (c) of the National Environmental Policy Act of 1969 has provided an opportunity for comment on this proposal by elected officials and town boards of the town of Wareham, and by local residents who will be most impacted by the project if it is realized. Residents of the Stony Point area have retained the environmental planning firm of Environmental Collaborative of Cambridge, Massachusetts to assist them in the review of the Draft Environmental Impact Statement.

The major conclusions of this Review and Comment, which includes an analysis of the environmental impact of the proposal, are:

(1) That the Draft EIS has failed to evaluate the environmental impact of the Stony Point Dike proposal,

(2) That the proposal does not conform to the Massachusetts Coastal Zone Management Plan or to federal, state and local plans for the area,

(3) That public access to Stony Point Dike would have an adverse environmental impact, and

(4) That the recommendation for public land access to Stony Point Dike has such functional shortcomings as to require its elimination from the Massachusetts Coastal Zone Management Program.

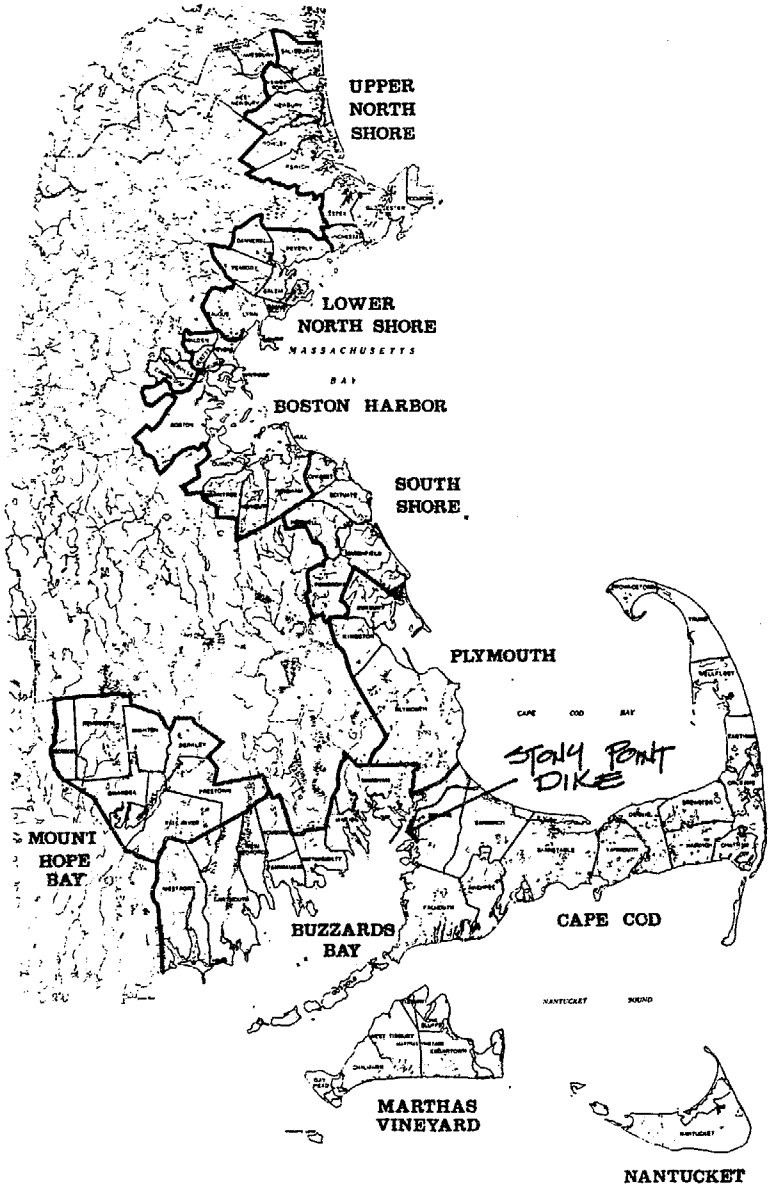
This Review and Comment is presented in two sections:

(1) Outline of the deficiencies of the Draft EIS (p.5)

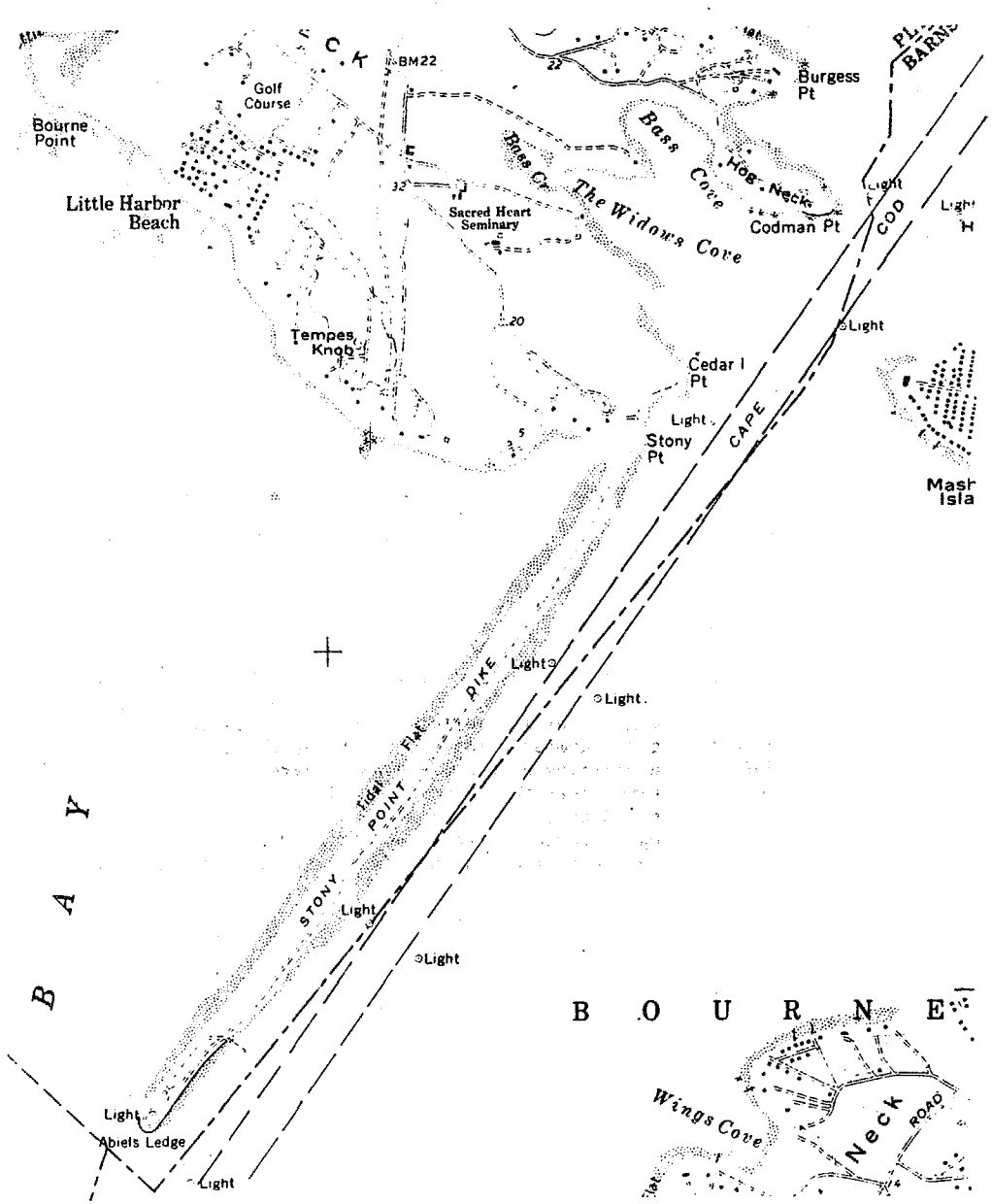
(2) Specifics of the deficiencies of the Draft EIS and an environmental impact statement of the proposal for an easement to the Stony Point Dike with the conclusion that the proposal should be eliminated from the CZM Program (p.9).

The purpose of this Review and Comment is not intended to criticize the general goals and policies of the Massachusetts CZM Program, which are constructive and deserve the full support of the public to assure that our coastal resources not be abused. However, the Draft EIS, with respect to the Stony Point Dike recommendation, has failed to evaluate it environmental impact. The environmental impact statement, made part

of this Review and Comment, shows that implementation of this recommendation would cause an unacceptable level of environmental degradation and hazard, and accordingly, the recommendation should be deleted from the CZM Program.



REGIONAL LOCATION
STONY POINT DIKE
Wareham, Massachusetts
environmental collaborative ENVIRONMENTAL PLANNING LANDSCAPE ARCHITECTURE COMMUNITY PLANNING SOCIAL RESEARCH



SITE LOCATION
STONY POINT DIKE
Wareham, Massachusetts
environmental collaborative

402

Analysis of Major Issues

There are several factors that deserve consideration in evaluating both the inadequacy of the Draft EIS and the inadvisability of the Stony Point Dike proposal. These include:

1. The Draft Environmental Impact Statement is of insufficient detail to evaluate the extent of the impact on the physical and social environment of the Stony Point Dike project.

   In its introduction, the Draft EIS states that the key questions to be addressed in reviewing the document are:

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

   In reference to the Stony Point Dike proposal, however, the Draft EIS in no way proves that

   (1) there will be a net environmental gain from implementation of the project, and

   (2) the proposal is consistent with the objectives and policies of the national legislation

   This is so primarily because of the inadequate information and analysis provided in the Draft EIS. Indeed, the section of the EIS that analyzes the impacts of the total Massachusetts CZM program on the natural, social and economic environment is presented in only seven pages! Attempting to evaluate the impact on the environment of any one proposal of the CZM plan -- let alone the whole CZM program -- can only make the EIS process a meaningless exercise, if it is attempted in such an abbreviated manner. Accepting this Draft EIS as an adequate evaluation document is surely not in conformance with the intent of the National Environmental Policy Act of 1969. It is also not in conformance with guidelines for the preparation of environmental impact statements published by the Council on Environmental Quality (Federal Register, Volume 38, Number 147, Part II, August 1, 1973, see Exhibit P.) and the U.S. Department of Commerce Administrative Order on preparing EIS documents (see Exhibit Q.).

As the CEQ guidelines state, the purpose of the EIS process is to:

> provide agencies and other decisionmakers as well as members of the public with an understanding of the potential environmental effects of proposed actions, to avoid or minimize adverse effects whenever possible, and to restore or enhance environmental quality to the fullest extent practicable. In particular, agencies should use the environmental impact statement process to explore alternative actions that will avoid or minimize adverse impacts and to evaluate both the long- and short-range implications of proposed actions to man, his physical and social surroundings, and to nature.

It is difficult to conceive that this Draft EIS meets these requirements in only seven pages of rather cursory analysis.

The cover letter and text of the Draft EIS states that the document is to evaluate the environmental impact of the "...proposed Massachusetts Coastal Zone Management Program... pursuant to P.L. 92-583. Approval would permit implement grants to be awarded to the State, and require that Federal actions be consistent with the program." It must be assumed that all of the recommendations of the CZM program as expressed in the volumes of the CZM plan and the Draft EIS are also evaluated in the EIS, since no qualifications are added. If such is the case, this Draft EIS does not meet the criteria of detailed analysis of environmental impact stated in NEPA and the CEQ Guidelines.

Such a broad and general analysis of potential environmental impacts can only render the EIS process meaningless. It certainly is not a healthy precedent for agencies whose aim it is to protect the coastal environment to prepare such an inadequate analysis of potential environmental impact. It can serve as an example for other interests whose primary aim is not the protection of coastal natural resources.

In any event, this Draft EIS cannot be construed to be an evaluation of the potential environmental impact of the Stony Point Dike project -- and in effect a legitimation of that proposal. On Federal actions of such wide-ranging scope, the CEQ Guidelines states the "...subsequent statements on major individual actions will be necessary where such actions have significant environmental impacts not adequately evaluated in the program statement."

Therefore, regardless of the action taken on the Draft EIS by the U.S. Department of Commerce, the potential impact on the environment from the Stony Point Dike proposal is of sufficient magnitude to require a separate environmental impact statement.

2. The Draft Environmental Impact Statement is insufficient to satisfy the requirements of the Massachusetts Environmental Policy Act.

   In its "Note to Readers," the Draft EIS states the "the Massachusetts Executive Office of Environmental Affairs assures that this environmental impact statement satisfies the requirements of the Massachusetts Environmental Policy Act."

   However, the Rules and Regulations published for the preparation of MEPA EIS reports state that "...all agency decisions shall include findings which describe environmental impact and state that all feasible measures have been taken to avoid or minimize adverse impact..." and the "...an environmental impact report should not be used to justify or support a decision which was already been made." (see Exhibit R.). for Rules and Regulations.

   Since the MEPA legislation generally parallels the NEPA legislation, the criticism of the Draft EIS mentioned above also applies to MEPA, and that the EIS does not satisfy the requirements of the Massachusetts Environmental Policy Act.

3. The recommendation of the Stony Point Dike is in opposition to the stated policies of the CZM plan.

   As previously mentioned, this review report of the Draft EIS does not intend to question the validity of the Coastal Zone Management Program or the goals of its policies. Rather, this review intends to show that the recommendation for the Stony Point Dike does not conform to the policies of the CZM plan. Therefore, one of the state alternatives that the Associate Administrator of the Federal CZM Program should consider is to revise the Massachusetts Coastal Management Program to delete the Stony Point Dike proposal (see 4. Alternatives Considered, in the Summary section of the Draft EIS).

   The specific policies that the Stony Point Dike proposal is not in conformance with include the following:

   Marine Environment: Policies 1, 2 and 7.

   Coastal Hazards: Policies 8, and 9.

   Recreation: Policies 21, 23, 25, and 26.

   General Development and Public Investment: Policies 34, 35, 36, 37, and 38.

How the Stony Point Dike proposal is in opposition to these policies is described in the next chapter of this review.

4. The recommendation for public access and a major recreational beach on Stony Point Dike is unadvisable because of its poor recreational potential and hazard to its users and the environment.

   This is so for the following reasons:

   - The major part of the sandy beach at the dike disappears during high tide conditions, leaving only a boulder edge.

   - The Cape Cod Canal southern channel approach is in close proximity to the dike., and the danger exists that swimmers will be able to swim into the channel, exposing themselves to danger from passing ships and swift currents. At points along the dike, it is possible to walk out to the edge of the channel at low tide.

   - There is a danger that pollution from the sewage disposal system on the dike will contaminate existing shellfish beds adjoining the dike.

   - The development of the dike as a recreational area will detract from the efforts by the town of Wareham to revitalize commercial/ recreation centers in other sections of the town.

   These and other factors are explored more fully in the next chapter.

5. The Stony Point Dike recommendation is not in conformance with the recreational and economic planning objectives of federal, state and local planning agencies.

   The nature and extent of this planning inconsistency is detailed in section 3.6 of the next chapter of this review report.

6. The dike is now serving an important -- and suitable -- recreational, economic, ecological, and navigation protection function, and that the proposal for the Stony Point Dike will detract from these existing functions.

   These functions are also fully detailed in the next chapter.

7. The dike proposal represents a costly approach to providing increased public recreational beach area, and that this represents a poor cost/benefit ratio when compared to the potential of expanding existing recreational beach areas within the region.

Review and Comment on:
State of Massachusetts Coastal Management Draft
Environmental Impact Statement

The primary objective of this review is to demonstrate that the Draft Environmental Impact Statement, prepared as part of the approval of the Massachusetts Coastal Management Program under Section 306 of the Federal CZM act of 1972, does not adequately assess the environmental impacts resulting from the proposal to construct an access road to, and to develop the Stony Point Dike in Wareham as a major public recreational facility.

Rather than give a random criticism of the Draft EIS, the approach here has been to critique this document in the format of an Environmental Impact Statement. In this way, all of the negative environmental impacts of the Stony Point Dike proposal can be adequately assessed, and the omissions of the Draft EIS put in the context of what an adequate environmental assessment of this project should include.

Draft Environmental Impact Statement

1. Description of the Action

1.1 Nature of the action to be taken:

The Massachusetts Coastal Zone Management plan has recommended that the State Department of Environmental Management purchase an easement on Great Neck in the town of Wareham, Massachusetts to provide public access to the Stony Point Dike, and its beach. The dike is owned by the Federal Government and maintained by the U.S. Army Corps of Engineers. The function of the dike is to protect the southern channel approaches to the Cape Cod Canal.

The Associate Administrator of the U.S. Department of Commerce has been asked to approve the Coastal Management Program of the Commonwealth of Massachusetts, pursuant to P.L. 92-583. Approval would permit implementation grants to be awarded to the State, and require that Federal actions be consistent with the program. Implementation grants would allow realization of proposals contained in the CZM plan, including projects such as the access road to the Stony Point Dike.

1.2 Recreational facilities:

Among the many criticisms that can be made concerning the Stony Point Dike proposal is that the project is inadequately described. Is only public access to the dike proposed, or is it to be assumed that the project will include the construction of major support facilities, including bathhouses and parking areas? The construction of these facilities must be assumed, since it is unlikely that a major access road to this area would be constructed without providing for sanitary and vehicular needs of its users. State sanitary codes would require bathhouse facilities and logic would dictate sufficient parking spaces to accommodate a potentially large number of users.

In addition to knowing whether there will be such facilities, an adequate analysis of environmental impact requires where such facilities will be placed. Will they be on the dike itself or on land yet to be acquired on the approaches to the dike? How large would these facilities need to be to accommodate what volumes of projected users?

Without such important basic information, it is difficult to evaluate the impact on the environment from such a project. However, it must be assumed that such facilities will need to be provided and that they will have a very tangible environmental impact.

405

1.3 Access road location:

In the description of the proposal in the CZM plan, no indication is given as to where the access road will be placed. In providing public access to the dike through Great Neck, various alternatives are possible:

- Will the increased volumes of traffic require the widening of Neck Road back to Route 6?
- Or will a new access road from Route 6 or 25 be more advisable and feasible?
- Alternatively, if Neck Road (Neck Road as described in this report refers to Great Neck Road in the town of Wareham) is not proposed for widening, what effect will this have on traffic congestion and on residents who now live along the road?

These alternative impacts are not discussed in the Draft EIS.

1.4 Objectives to be accomplished by the project:

The Draft EIS does not describe what recreational objectives are to be accomplished by the project, or why this project can satisfy these objectives more effectively than other alternatives. This is especially relevant as it refers to the cost/benefit of developing this site as opposed to the development of other sites within the region.

1.5 Who the project will serve:

No indication is given in the Draft EIS or the CZM plan as to who the recreational facility on the dike will serve, and which public agencies will manage and maintain the facilities.

2. Description of the Environment

An adequate analysis of the impact on the environment of a proposed action requires that the existing environment be described in sufficient detail. Assessing the impact on the environment from the Stony Point Dike development project would require the following analysis:

2.1 Land use of the environment:

The Stony Point Dike now serves as an important protective barrier for the southern approach channel to the Cape Cod Canal. In so doing, it helps to assure the free flow and safety of the heavy maritime traffic that uses the canal.

The dike was originally formed by dredge fill during the construction of the Canal. Wind and current action gradually eroded the dike and caused sedimentation of the adjoining channel. During the last several years, the U.S. Army Corps of Engineers has reinforced the dike on either side with large granite boulders. Existing access to the dike is through a mile-long unpaved road at the end of Neck Road. This road is private but the owners have given the Corps permission to use it for maintaining the dike.

The dike also has some beach exposure below the stone rip-rapping, and recreational users now approach the dike by boat to swim, picnic, fish, or dig for clams. Many persons from Buzzards Bay communities now use the dike on any one day for these recreational uses. On a pleasant summer day, these visitors use almost all of the available beach at high tide. These users have been generally responsible, and the Corps has not seen any reason to post the dike.

At the western side of the dike adjoining the neck, the town of Wareham has leased a commercial shellfish grant of 92 acres. This grant, now used for quahog aquaculture, is described in more detail in section 3.4 of this impact statement.

The Great Neck neighborhood of Wareham, through which the proposed access road would be placed, is, as the town's Master Plan states, "...one of the most attractive and unspoiled areas in Wareham..." Land use is primarily seasonal and year-round residential use, with development ranging in density from intensive clustering at Little Harbor to more open development. Little Harbor Beach, one of Wareham's

four public beaches, is located here, as are a golf course, Sacred Heart Seminary, an Audubon Society sanctuary, cranberry bogs, and farm land.

2.2 Area vegetation:

Vegatative cover on the dike is in the process of succession from grasses to woody perennial cover, which has advanced to the stage where redcedar (Juniperis virginiana) are making a prominent appearance. Other woody perennials on the dike include wild rose, bayberry, inkberry, and beach plum, among others. Much of the dike is covered with various wild grasses. All of these perenniais and grasses are important food sources for the great variety of wildlife and wildfowl that frequent the area. In addition, such cover also serves an important function in stabilizing the soil of the dike from erosion by wind and wave action.

2.3 Area fauna:

The Stony Point Dike and its adjoining marsh approaches at Great Neck is an enormously productive environment for wildlife. This is so for a variety of reasons, including:

- the dike environment provides an extensive "ecotonal edge" for wildlife. An ecotonal edge is that boundary that exists between various landscape types, e.g. between water and marsh, or between woodland and field. A productive ecotonal area is one which provides all of the needs of the life cycle, particularly food, water, and shelter. The dike and its upland approaches has all of these in abundance, both for year round wildlife residents and for migrating wildfowl. The enormous variety of wildlife that use the dike are listed in Exhibit L.

  The dike, because of its relative isolation, in fact serves as a wildlife refuge. Local residents observed a herd of 6 deer grazing on the dike this spring, and during bird nesting season, the dike has been described as "thick" with nesting shorebirds. The relatively undeveloped upland area of Great Neck in the vicinity of the dike also complements this role of the dike as wildlife sanctuary, as does the nearby marshes and Audubon Society Sanctuary.

- The extensive mudflats adjoining the dike harbor a wide range of marine life on which the extensive variety of shorebirds listed in Exhibit L feed. A favorite feeding spot for many of these birds is the town's 92 acre shellfish aquaculture grant site, where shorebirds take their share of seed clams.

Some of the uncommon (for this location) species of shorebirds sighted at the dike include willets, purple sandpipers, western sandpiper, Hudsonian godwit, whimbrel, and black skimmer.

2.4 Local socio-economic conditions:

The Draft EIS does not describe the local socio-economic conditions in Wareham from which an evaluation of impact can be made. There is little doubt that the creation of a major public beach on the dike will have a major socio-economic impact not only on the Great Neck neighborhood of Wareham but on other population centers and recreation areas in the town as well. Without a thorough explanation of the socio-economic trends in Wareham, a description of the impact on the town in meaningless.

2.5 Persons or businesses relocated because of the project:

Because of potential pollution problems and use conflicts, there is a probability that the commercial shellfish beds will need to be deactivated or relocated. In addition, the development of the dike area as a major swimming and recreation area will result in the erosion of day use of other beach areas in town that are contiguous to established commercial and residential areas in Wareham. This reduction in day clientele who now support commercial establishments in these areas may result in a loss in economic viability of some of these establishments, and their forced closing.

While the Massachusetts Coastal Plan policies seek to encourage economic development in established centers, the Draft EIS does not explain the impact of the dike proposal on Wareham's existing seasonal and non-seasonal business enterprises.

2.6 Probable future environment if project not initiated:

The Draft EIS does not explain the future environment of the dike area should the project not be completed. An objective evaluation of the probable future environment of the dike area without the beach project would reveal the following analysis:

The natural econogy of the dike would continue to evolve into a progressively complex and rich habitat for wildlife, including waterfowl, land mammals, and others. As vegetation on the dike continues to the process of succession from marsh grasses to sea-tolerant woodland, it will become a more hospitable habitat for a greater variety of wildlife.

In addition to this greater environmental complexity, the present substantial yield of the existing shellfish beds can be increased considerably by an expansion of the area of the beds far in excess of their present size. The environmental conditions of this section of Buzzards Bay (nutrients, bottom

topography, protection from seas and from oil spills) make it an excellent site for the expansion of commercial shellfish operations. Without the dike CZM proposal, there is a possibility that the existing shellfish aquaculture beds will be expanded, thereby strengthening the marine-related economic base of the town of Wareham and of the Commonwealth.

If the access road/swimming beach project is not initiated, the dike area will continue to be used for non-intensive recreational uses such as swimming and picnicking (access by boat), nature study, and for relaxation in a pleasant, serene environment. It has been estimated that upwards of 200 people use the dike for recreational purposes on a pleasant day. This number of visitors is unlikely to disrupt the fragile ecology of the dike or to cause pollution of the area. The dike will remain one of the few areas on Buzzards Bay where boaters are allowed to beach, rest, swim, or picnic.

Not least of the continued uses of the dike environment is its passive function as navagational aid to maritime shipping and recreational boaters using the Cape Cod Canal and the various harbors in Wareham and Falmouth.

3. Environmental Impact of the Proposed Action

3.1 Effect of the project on land use:

The Draft Environmental Impact Statement provides no discussion of the impact on the land use patterns of Wareham and the Great Neck area from the proposed development.

Instead, the proposal for the development of the Stony Point Dike contradicts several of the coastal policies set forth in the CZM plan and in the Draft EIS. In its highly perfunctory analysis of social and economic impacts, the Draft EIS says that "new development... (on the Coast)... will be encouraged to occur in existing developed areas...," and that "...since the plan seeks to concentrate development in/and adjacent to developed areas through public investment policies, development may occur at higher densities and in fewer places." (III-4,5).

This is an environmentally sound land use policy for a state as heavily developed as Massachusetts, which has few remaining unspoiled coastal resource areas. It is also the state land use policy as promulgated by the Office of State Planning (see "City and Town Centers: A Program for Growth", prepared by the Massachusetts Office of State Planning) and the land use and development policy of the Wareham Planning Board and the Wareham Office of Economic Development (see letters from these agencies in the exhibits section).

The major impact of a new access road and development of a major recreation site at the dike will be to (1) encourage more intensive development of the Great Neck area of Wareham, against the expressed intent of town and state planning policy, and (2) in so doing, the project will tend to undermine the economic revitalization, physical renovation, and expansion of recreational resources in Wareham's older and more densely developed areas.

3.2 Description of the socio-economic effects of the project:

Section 1500.8 (ii) of the CEQ Guidelines states that "Secondary or indirect, as well as primary or direct, consequences for the environment should be included in the analysis. Many major Federal actions...stimulate or induce secondary effects in the form of associated investments and changed patterns of social and economic activities. Such secondary effects, through their impacts on existing community facilities and activities, through inducing new facilities and activities, or through changes in natural conditions, may often be more substantial than the primary effect ofthe original action itself."

Constructing a new access road to the Stony Point Dike -- whether by widening Neck Road, or by constructing a new road on a new alignment -- and developing a major recreational facility on the dike will have wide-ranging and serious negative secondary impacts on the economic and social environment of the town of Wareham.

Wareham presents a special opportunity for the Commonwealth to encourage the revitalization of older developed areas by improving water-based recreational resources. Since many of the town's existing public swimming beaches abut older developed residential/commercial centers (including Onset beach, Swift's Beach, and Minot Forest Beach), expansion of the recreational potential of these areas would have a positive secondary effect of encouraging economic development in adjoining commercial centers and therefore also increase job opportunities and income generation for Wareham residents.

The Executive Office of Environmental Affairs and the State Office of Planning are now strongly emphasizing the use of federal recreational development funds (Land and Water Conservation Fund monies, administered by the Bureau of Outdoor Recreation, U.S. Department of the Interior) in devoloped areas. The stated purpose of this policy is to not only provide greater recreational resources for residents in densely developed areas, but also to place these recreational development projects where they will have a pronounced, positive secondary impact on the local economy.

The proposal for the Stony Point Dike would contradict this policy by placing new major recreational development away from existing built-up areas in town (which now have parking and service facilities for users), while at the same time bypassing an opportunity to integrate recreational resource expansion and economic/income development at these existing sites.

In addition, a new major access road (or widened Neck Road) on Great Neck will seriously disrupt the land use pattern on

for posing conflicts with the dike's navigational purposes.

Another source of potential conflict would be the maintenance and administrative functions of the dike as a recreational resource/navigational aid. Would the dike be maintained as a recreation area by the Massachusetts Division of Forests and Parks, the U.S. Department of the Interior, or the Corps of Engineers? These management impacts of the recreational proposal are not analyzed in the Draft EIS.

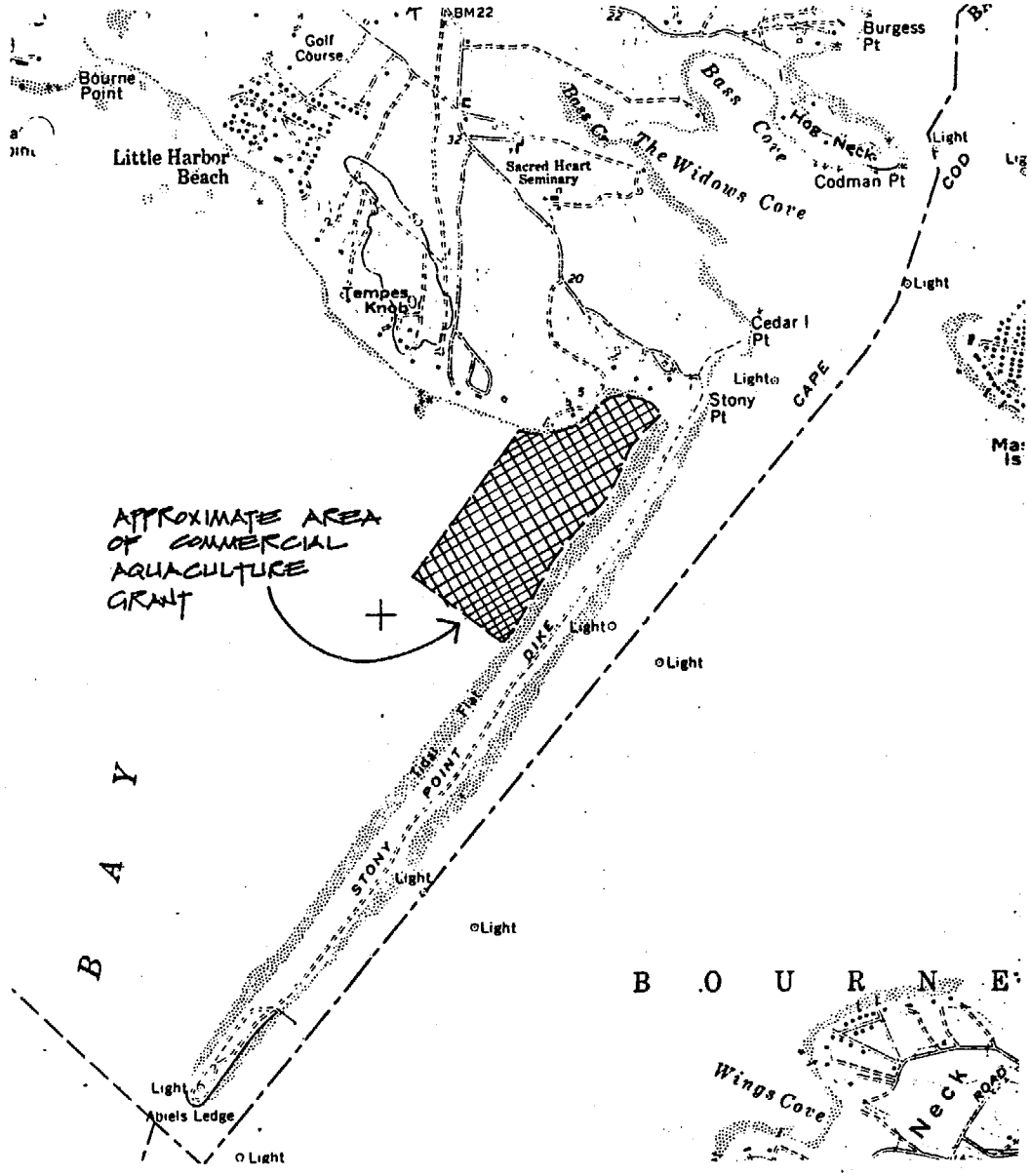
3.4 Description of project impact on shellfish beds:

The description of the probable impacts of the Stony Point Dike proposals on shellfish beds in this section of Buzzards Bay is also not included in the Draft EIS. Not only does the document not describe the impact, but the existence of these beds are not shown on Plate 40 of Volume II, Massachusetts Coastal Zone Management Program. This is not a minor omission, in view of the fact that these beds constitute the largest shellfish aquaculture farm in the state.

Although the EIS states that the CZM program is designed to preserve and protect shellfish beds and fishery resources in the Commonwealth, the recommendation for the Stony Point Dike does not support this goal. Specifically, the dike proposal will have a negative environmental impact on shellfish resources and tend to contradict policy #1 of the Coastal Zone Management Plan that states:

> Conserve ecologically significant resource areas (salt marshes, shellfish beds, dunes, beaches, barrier beaches, and salt ponds) for their contributions to marine productivity and value as natural habitats.

The negative impact of the dike project on shellfish beds adjoining the dike will result from potential poaching from the many users of the proposed swimming beach, from pollution originating from the bathhouse septic system (there are no town sewer lines in the area), and from general use conflicts between intensive recreational activities and maintenance of the shellfish aquaculture grant at this location. As the largest farm of its kind practicing aquaculture in the state, the success of this commercial grant is extremely important not only on its own merits, but especially for its symbolic value in demonstrating the potential of aquaculture in strengthening the economic viability of the shellfishing industry in Massachusetts.



SHELLFISH GRANT LOCATION
STONY POINT DIKE
Wareham, Massachusetts
environmental collaborative

409

Great Neck, bringing with it much greater development pressure, higher densities, and inevitable new town services such as sewerage lines. The town's comprehensive plan specifically recommended that town planning policy should be directed towards preserving Great Neck in low density development, a primary reason being to prevent an unnecessary and costly expansion of town services in this area.

The Massachusetts Growth Policy Report prepared by the Office of State Planning sums up the logic of this development approach very well. This document, compiled from the recommendations of 330 Local Growth Policy Committees in the Commonwealth's cities and towns, states that:

> "Massachusetts communities want to preserve their special character and, overall, the character of the state. Villages don't want to be suburbs, suburbs don't want to be cities, and cities don't want to be wastelands. In each community, there is a growing awareness that its identity is tied inextricably to its center. As the center loses its vitality and its place in the life of the community, the community loses its special character and becomes part of an endless stretch of shopping centers, car dealerships, and fast food chains... We get a sense of place -- we sum it up -- not from a community's outlying neighborhoods, but from its center.
>
> That is why the stabilization and revitalization of community and regional centers is so important to the preservation of the unique character of our communities and of the Commonwealth as a whole.
>
> Instead of perpetuating separate and distinct programs in response to narrowly defined needs, state government is attempting to make all public investment funds part of a center revitalization program..." The plan recommends that "... state and federal grant programs give maximum priority to the revitalization of community centers..." (pages 63-64).

The Draft EIS gives no recognition to the adverse social, economic, and town financial impact of the Stony Point Dike project, nor does it recognize its conflict with state and town planning goals.

410

3.3 Project impact on marine navigation:

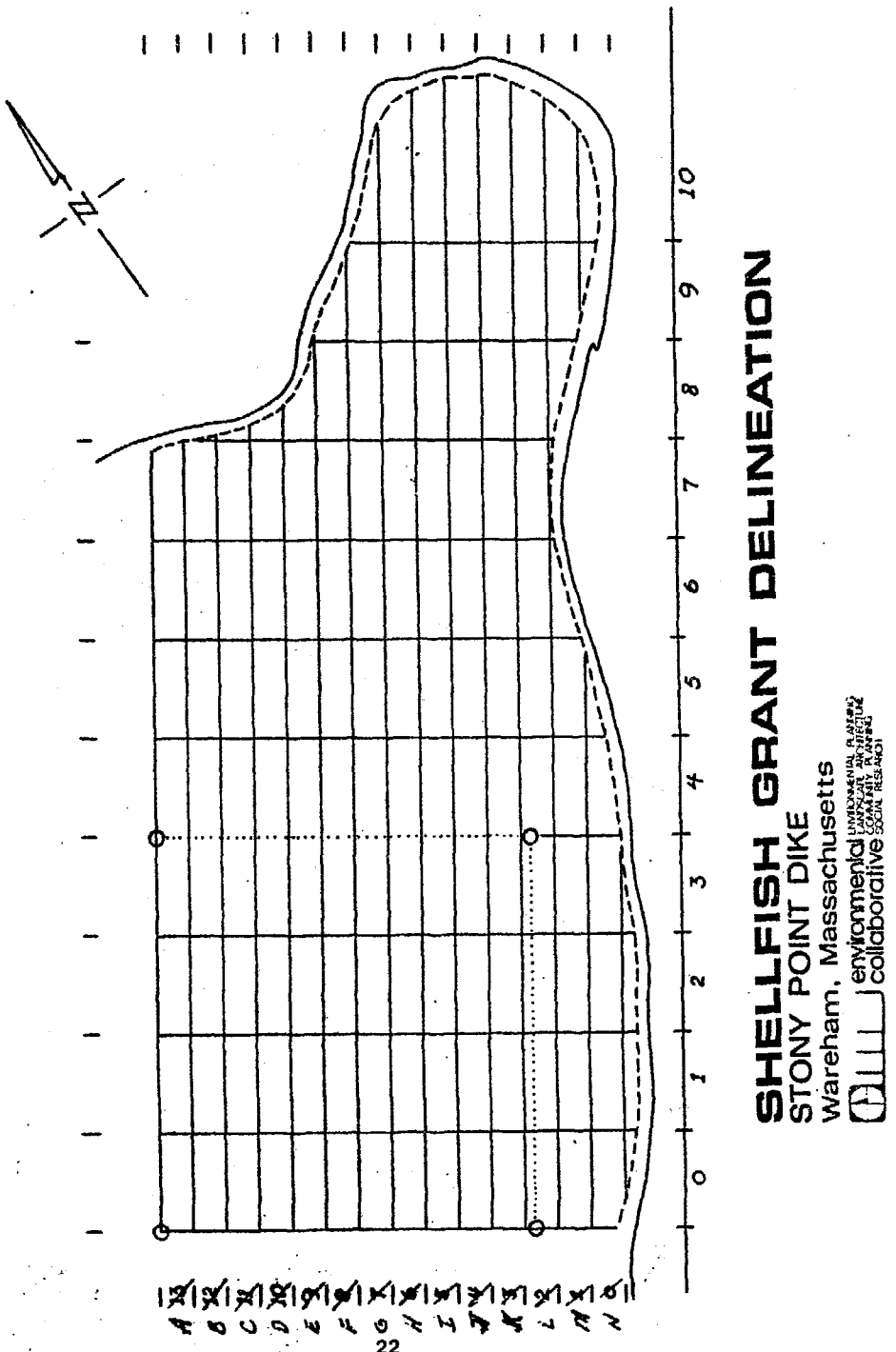
No mention is made in the Draft EIS of possible impact on marine navigation of the Stony Point Dike proposal.

Development of the dike as a major swimming beach will, however, result in serious conflicts between the function of the dike as a swimming beach and the present use of the dike as a maritime navigational guide. In response to the CZM recommendation of the use of the dike as a major recreational swimming area, the U.S. Corps of Engineers has expressed strong opposition to the proposal (see letter, dated November 29, 1977, by Joseph L. Ignazio, Chief, Planning Division, U.S. Army Coprs of Engineers which is incorporated in this report as Exhibit A.).

The Corp's position is based on the marginal recreational benefit that will be gained from opening the dike to full-scale recreational use. In fact, consideration of public land access was reviewed by the Corps during preparation of a 1975 Master Plan for the development of recreational resources within the Cape Cod Canal project area. Such planning was coordinated with the Massachusetts Division of Forests and Parks, Massachusetts Division of Fisheries and Game, the U.S. Bureau of Outdoor Recreation, and the U.S. Fish and Wildlife Service. The Corp's master plan study found that:

> Public land access to the dike was deemed inappropriate because of the long access through private property and more particularly because of the lack of parking and waste treatment opportunities. The southern end of the dike is under water at high tide conditions and is completely awash during coastal storm conditions. In view of the limited recreational potential of the dike area beyond its existing boater access uses, we believe that no federal funds should be expended for expansion of recreational use of the dike. The prime purpose of the dike is to protect the southern navigational approach to the canal. (See Exhibit A.).

The letter by Mr. Ignazio further states that existing informal recreational use of the dike (with access by boat) is not so extensive as to impair the navigational purpose of the dike and that, "...to date, these visitors have not abused their use of the area, and our canal staff has not seen any need for posting the area." Developing the dike into a recreation facility that would attract thousands of visitors daily would, however, have the potential



411

Because of the inevitable use conflicts between intensive recreational use of the dike and the management of this shellfish aquaculture grant, the president of Cultured Clam, Inc., operators of the farm, is strongly opposed to the proposal for a major beach at this site. Wareham's shellfish warden, Edwin W. Studley, also is in strong opposition to the beach proposal because of the natural productivity of these beds that would be threatened by the increased number of users of the dike (see Exhibit D).

Opposition to the proposal has been forwarded to the Massachusetts Coastal Zone Management office by the Wareham Board of Health becuase of the danger to the public health that would exist from sewage seepage into the bay and because "...human wastes can carry typhoid bacteria and the pollution of the waters and nearby shellfish beds from this and hepatitis is a matter of concern to us as a Board of Health." (see Exhibit F). The potential use conflict and public health danger are also cited by the Wareham Board of Selectmen in their November 16, 1977 motion opposing the beach development project (see Exhibit B).

In addition to the concerns of local boards, the state CZM plan (volume 1) emphasizes the pollution danger from septic systems to shellfish beds:

> The conservation of these resource areas (shellfish beds and other marine sources) can be undermined by activities taking place in adjacent or contiguous uplands. These impacts include...the leaching of pollutants from septic tanks or the introduction of contaminants from storm water runoff on paved surfaces...(p. 80-81). The Commonwealth of Massachusetts cannot afford the continued degradation of biological communities in its coastal waters due to poor citing of sewage treatment facilities...p.60).

The shellfish grant at the Stony Point Dike is also an important element in the preservation and rejuvenation of the shellfish harvesting industry as part of the Commonwealth's coastal economic base. This industry is most prominent in the coastal waters north and south of Cape Cod and environs. A November 27, 1977 news story on shellfish aquaculture in the New England Magazine section of the Boston Sunday Globe states that:

> Cape Cod's shellfish have been sadly and recklessly overfished. As a result, each year the shellfish crop decreases, and prices stagger ever upward. Indeed, experts have begun to wonder whether there will be a shellfishing industry at all on Cape Cod by the year 2000.

> But in the past few years, science, private industry, and municipal management have joined forces to confront the shellfish shortage and have come up with a radical solution to their seemingly inevitable crisis...It is called shellfish aquaculture. (p. 35 of Exhibit M).

As the Massachusetts CZM plan states, "...unlike oil or coal, marine resources are renewable, provided stocks are well managed and habitats are not destroyed...Positive, more active steps must be taken to enhance the production of finfish, shellfish, crustaceans, and algae. Resotration of anadromous fish runs, promotion of extensive and intensive aquaculture, and improved shellfish management can increase the benefits accrued by man from the marine environment." (p.43-44)

As the largest shellfish aquaculture farm in Massachusetts, the 92 acre grant at the dike site is an important part of this effort. Aquaculture techniques halve the growing time of shellfish from three years to eighteen months. In addition, aquaculture increases the survival rate of shellfish eggs from .001 percent to 95 percent.

One of the more serious obstacles to expansion of the commercial shellfishing industry in the Commonwealth is the scarcity of acreage of commercial beds and the difficulty in opening up new commercial grants. This is due to the conflicts that develop between the reservation of beds for commerical use and the demand for use of these beds by resident "family" or recreational users in coastal municipalities. Most of the existing grants date back to the early 1900's, and new grants are generally hard to come by because of resident opposition. As coastal communities on Cape Cod and the southeastern region of the state become more heavily populated, this conflict will become more acute.

The shellfish area at the Stony Point Dike is not only the most productive site for shellfish in Wareham but also represents an opportunity to expand the existing bed of 92 acres into a larger aquaculture site that will not compete with existing shellfish beds in Wareham that are now harvested by residents for home consumption. Opening up the dike to general public access may result in pre-empting this site for commercial development.

Reserving the Stony Point Dike environment for development of shellfish aquaculture is also in concert with the stated goals of Wareham's Growth Policy Committee. The Committee, in its July 15, 1976 statement, has as one of its areas of concern that:

> There should be a concerted effort to aid and improve the business climate in the community in order to foster its development and sound growth. In this regard, it was felt that every effort should be made to capitalize upon the marine resources of Wareham which, it was felt, have not been utilized to their fullest economic potential. (see Exhibit I).

Nowhere in the Draft EIS are the negative impacts to this shellfish resource described.

3.5 Description of the project impact on users of the proposed recreational development:

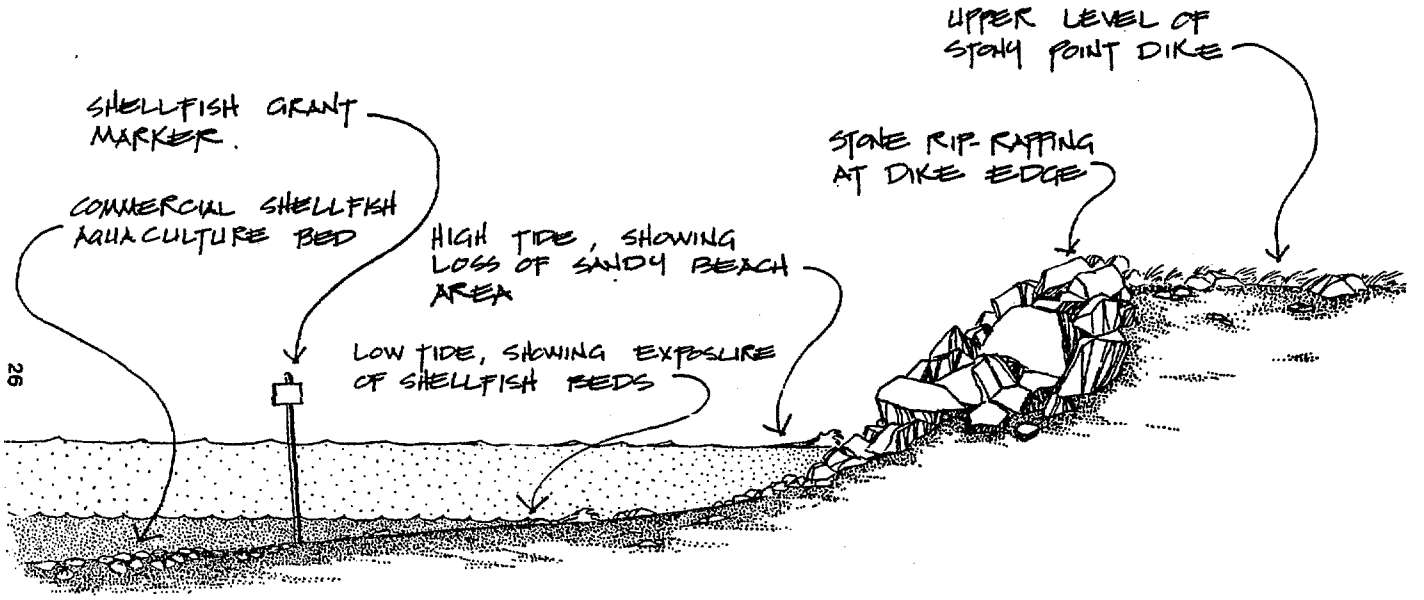
The potential adverse impact on users of the proposed beach area are also not explored in the Draft EIS. Such adverse impacts should be evaluated in determining the suitability of this site for a swimming beach.

Foremost among these adverse factors is the attenuation if not the disappearance of the beach area during high tide (see photograph of the dike at normal hight tide on following page and schematic cross-section of dike). The limited area of the existing sandy beach are cited by the Crops of Engineers in excluding the dike area from development as a recreational site in planning for their 1975 Master Plan for the development of the recreational resources of the Cape Cod Canal project area (see Exhibit A).

In addition to the unusability of the beach area, other factors limiting the site for general public use are the inadequate area for parking available on the dike and contiguous upland, and the potential contamination of the swimming area by septic systems that would be required to serve the comfort stations and bathhouse showers at the site (there is no town sewer service nearby). The large volumes of water that these septic systems would be required to disperse in the very limited area of the dike would be a source of potential pollution at the beach area, posing not only a direct threat to public health but an indirect threat through possible contamination of adjoining shellfish beds. These concerns have been expressed by the Corps of Engineers, the Wareham Board of Selectmen, and the Wareham Board of Health (see Exhibits A, B, and F).

Another source of danger to potential recreational users of this area is the wave action of wakes from ships passing through the channel approach to the canal. At one point along the dike, the edge of the channel is only approximately 600 feet from the stone rip-rap that shores up the upper

412



SCHEMATIC CROSS-SECTION SHOWING LOSS OF BEACH AREA AT HIGH TIDE

STONY POINT DIKE

Wareham, Massachusetts

environmental collaborative

Photograph of the western (inland) beach of the Stony Point Dike taken on December 8, 1977 at approximately 4:30 P.M. (estimated high tide at 5:30 P.M. on 12/8/77).

Photograph of the western (inland) beach of the Stony Point Dike taken on December 8, 1977 at approximately 4:40 P.M. (estimated high tide at 5:30 P.M. on 12/8/77).

Photograph of the western (inland) beach of the Stony Point Dike taken on December 8, 1977 at approximately 4:50 P.M. (estimated high tide at 5:30 P.M. on 12/8/77).

level of the dike. At low tide, the channel would be even closer to the edge of the exposed beach.

During high tide, there is a danger that ship wakes approaching the dike would throw swimmers against the jagged stone rip-rapping, and endangering the life of the swimmer. An even greater danger exists from receding waves from ship wakes, creating an undertow that would occur as a complete surprise to the swimmer. This could pose a special danger to children and poor swimmers.

What should be of special concern to public safety officials and navigation interests, however, is the inevitable problem of thrill-seeking youths who will swim out into the channel to "greet" passing ships and pleasure boats. Needless to say, this can easily become a source of fatal danger to the swimmer.

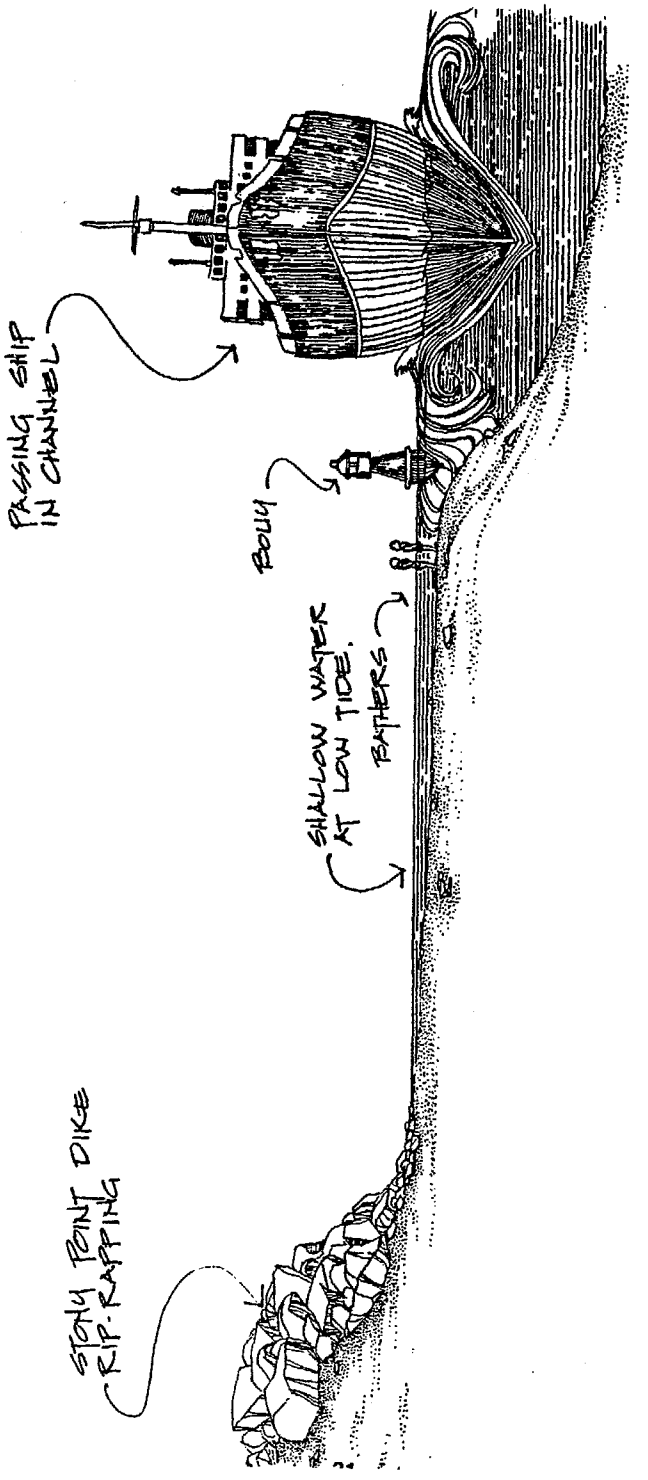
This danger cannot be overemphasized, since at certain points along the dike, it is possible at low tide to walk from the dike to the edge of the channel. From that point, it is only a short swim into the path of passing ships. The extreme danger that this opportunity presents should be reason enough to delete the recommendation of a beach at the Stony Point Dike from the CZM plan.

The following pages show a schematic cross-section of how easily the channel edge can be approached from the dike, plus photographs which show the closeness with which ships pass by the structure.

Another source of hazard to swimmers are the dangerously swift currents on the canal side of the dike, particularly since these currents approach very close to the dike. This can result in swimmers being overcome and swept away by the enormous force of the "funneling" effect of wind and current that results form the narrowing of Buzzards Bay at this point. The swift and unpredictable currents in this area of Buzzards Bay are well known to mariners, and this reality is another factor in the Corps of Engineers opposition to a swimming beach in such close proximity to the Channel.

While it can be maintained that swimming could be restricted to the western side of the dike, in reality it would be difficult to enforce such a prohibition, not only during supervised periods but especially when no lifeguards would be at the site during off-season periods or during the seasonal period after 6:00 P.M., when supervision ceases at state beaches. Children, as well as adults, would be constantly

415

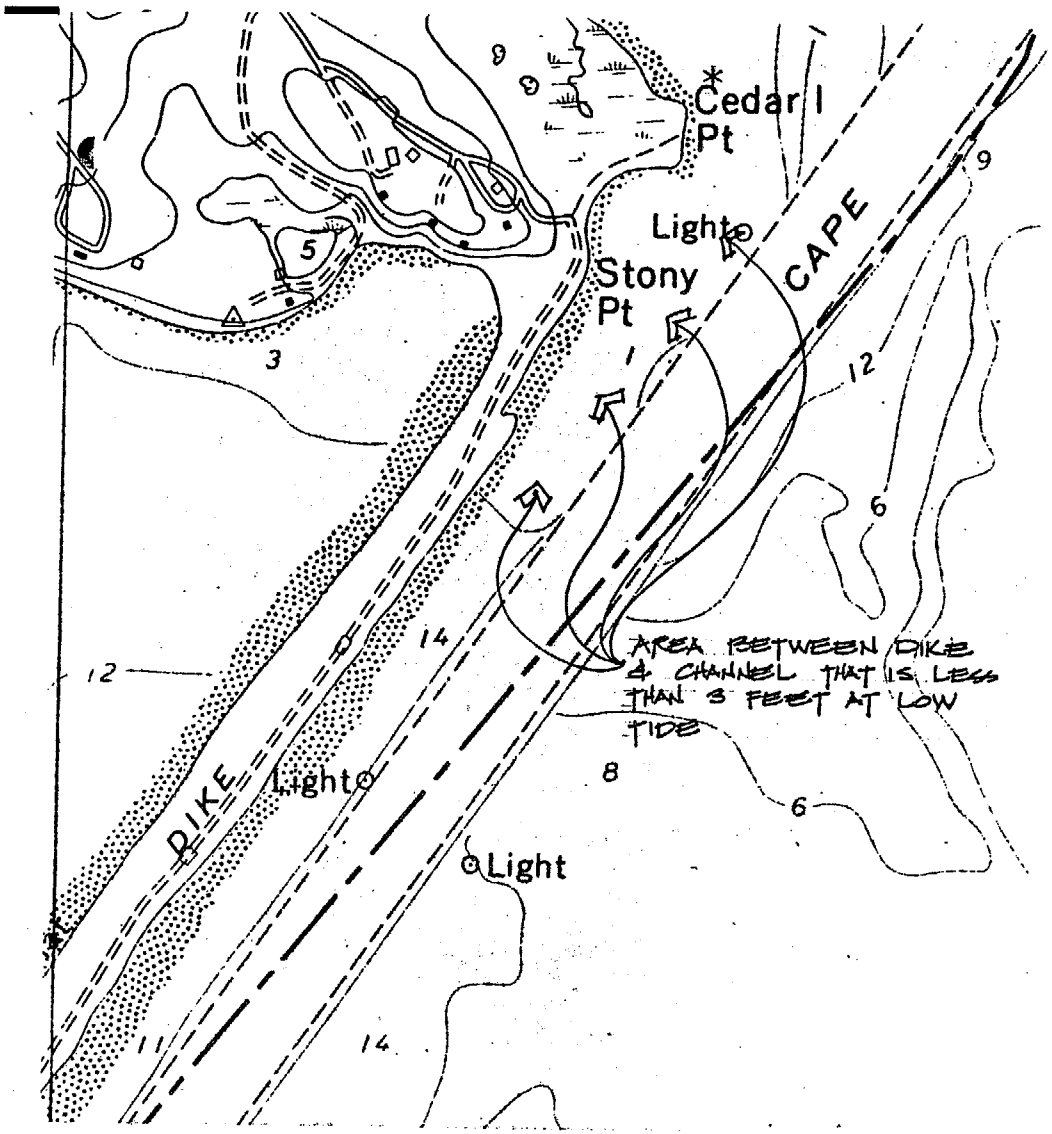


SCHEMATIC CROSS-SECTION OF SHALLOW AREA BETWEEN DIKE AND CHANNEL

STONY POINT DIKE

Wareham, Massachusetts

environmental collaborative



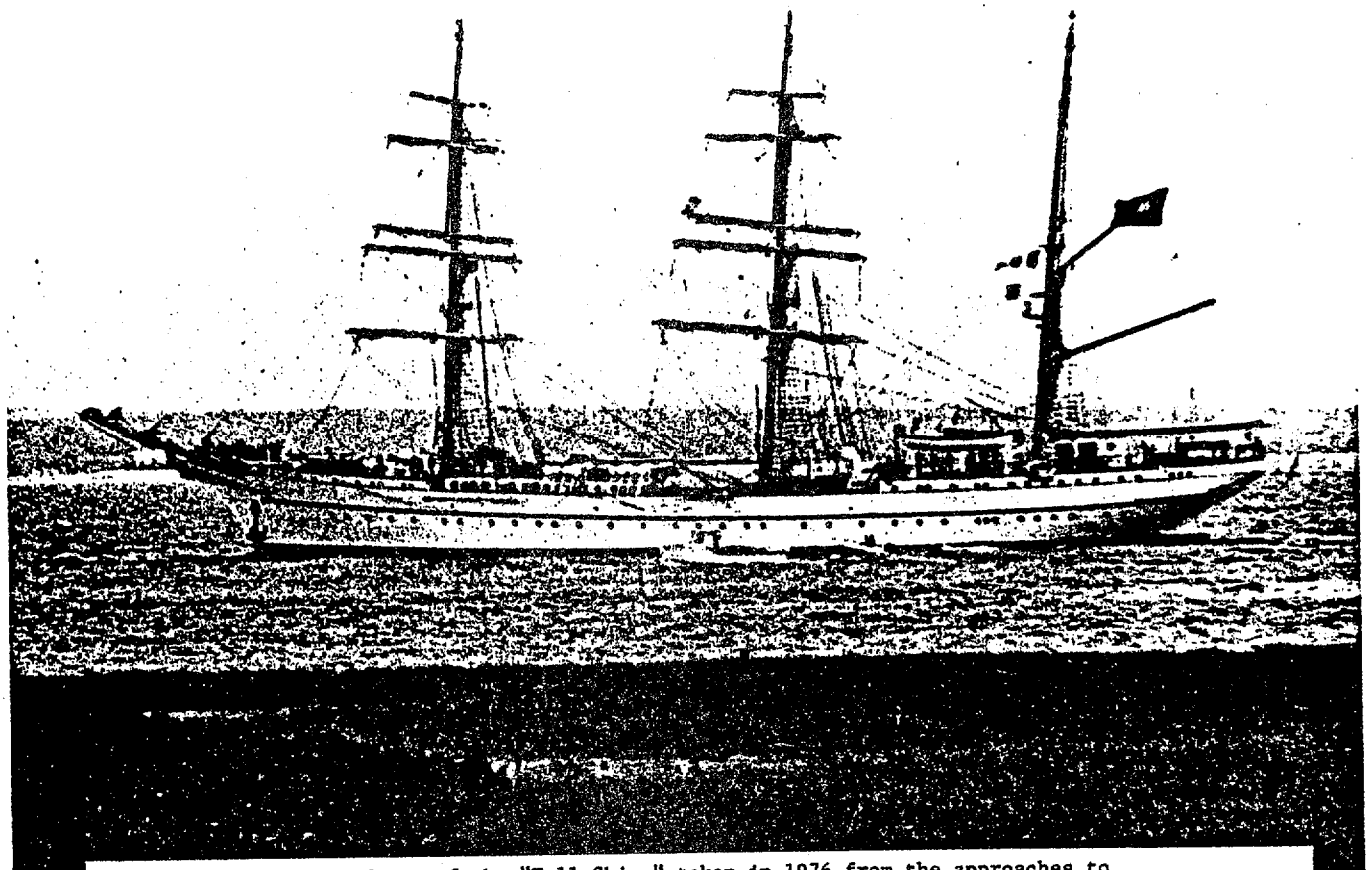
SHALLOW AREA BETWEEN DIKE AND CHANNEL

STONY POINT DIKE

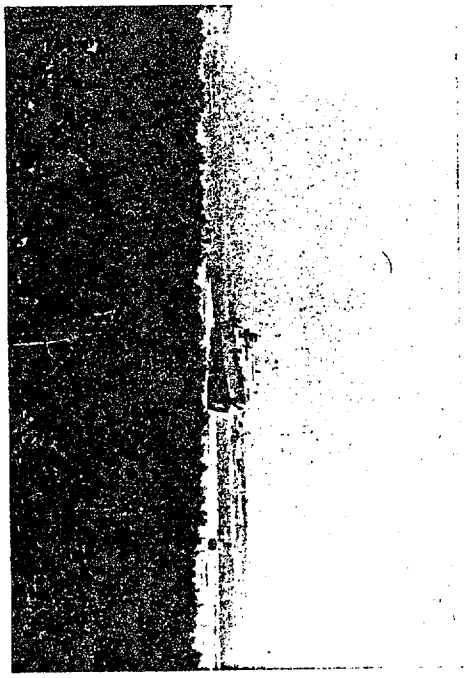
Wareham, Massachusetts

environmental collaborative — ENVIRONMENTAL PLANNING, LANDSCAPE ARCHITECTURE, COMMUNITY PLANNING, SOCIAL RESEARCH

Photograph from the eastern edge of the Stony Point Dike taken on December 8, 1977 at approximately 4:20 P.M. (estimated high tide at 5:30 P.M. on 12/8/77). Photo shows the accessibility of passing ships to swimmers at the dike.



Photograph of one of the "Tall Ships" taken in 1976 from the approaches to dike. This is the section of the dike where, at low tide, it is possible to walk out to the edge of the channel.



Tanker recently grounded off the approaches to the Stony Point Dike.

attracted to the channel side of the dike because of its greater visual interest due to passing ships and boats.

The Draft EIS does not discuss any of these potential hazards that will arise from developing the Stony Point Dike as a major swimming beach.

3.6 Description of the impact of the project on planning objectives of federal, state, and local agencies:

The recommendation of the Coastal Zone Plan for the Stony Point Dike does not conform to the recreational planning objectives of several federal, state, and local agencies:

U.S. Corps of Engineers:

The Corps prepared in 1975 a Master Plan for the development of the recreational resources of the Cape Cod Canal project area (see Exhibit J). Preparation of this master plan was coordinated with the Massachusetts Division of Forests and Parks, the Massachusetts Division of Fisheries and Wildlife, the U.S. Bureau of Outdoor Recreation, and the U.S. Fish and Wildlife Service. This planning activity included an analysis of the recreational potential of the Stony Point Dike. However, major recreational development at the site was discouraged because

> ...public land access to the dike was deemed inappropriate because of the long land access through private property and more particularly because of the lack of parking and waste treatment opportunities. The southern end of the dike is under water at high tide conditions and is completely awash during coastal storm conditions. In view of the limited recreational potential of the dike area beyond its present boater-access uses, we believe that no Federal funds should be expended for expansion of recreational use of the dike. The prime purpose of the dike is to protect the southern navigational approaches to the Canal. (See Exhibit A).

Executive Office Of Environmental Affiars,
Office of Coastal Zone Management:

Volume I of the Massachusetts Coastal Zone Management Program states the following policies that tend to contradict the recommendation for the Stony Point Dike:

- Policy 26: This policy states that new coastal recreational facilities should "assure that both transportation access and the recreational facility is compatible with social and environmental characteristics of the surrounding community (ies)." (addenda, p.1)

- The dike recommendation is in opposition to the protection and development of shellfish resources, as described in section 3.4 of this review.

- The dike proposal is also in conflict with CZM's stated objectives of developing small dispersed sites in regions with a high recreational deficit (pages 192, 197, 198, 214).

- The proposal is in opposition with CZM's goals of avoiding the development of new beaches where there is "...inappropriate intensity and mixing of incompatible uses..." such as "...physical competition for space, psychological incompatibility, and destruction of resource-related values." Such conflicts may result in "...reduced health and safety and in deterioration of environmental and recreational qualities (p. 201)."

- Preferred characteristics of swimming beaches expressed in the CZM plan include "...undeveloped sandy shoreline, safe surf and currents, and parking and service facilities (p. 197)." At the dike site, however, the sandy beach is minimal and almost disappears twice a day, the currents are well-known by mariners for their treachery, and where parking would be inadequate and service facilities (bathhouses) a hazard to public health. The dike recommendation, then, obviously does not meet CZM's own criteria for preferred characteristics for swimming beaches.

Massachusetts Statewide Comprehensive Outdoor Recreation Plan:

The SCORP plan states that statewide project selection criteria should respond to recreation demand in high-density deficiency areas: "It is particularly urgent that demands of an urban-oriented population be addressed... High priorities should be placed on management improvements on existing sites within metropolitan areas and aggressive measures should be taken to preserve all remaining open space within metropolitan centers and fringe areas (p. 113)."

The SCORP plan also has as its only major swimming beach acquisition and development project the South Cape Beach area in the town of Mashpee, which will add 7.5 miles of beachfront to full public access in the Cape area. No other beach development project is mentioned in SCORP.

Massachusetts Office of State Planning:

The incompability of the public investment strategy represented by the dike project andpolicies of the Massachusetts Office of State Planning have been previously outlined here in section 3.2.

U.S. Senate bill:

On January 25, 1957, a bill was filed in the U.S. Senate by senators Saltonstall and Kennedy providing for the establishment of the Cade Cod Canal National Park in theCommonwealth of Massachusetts. The area of the proposed park was to include "...lands in the vicinity of the Cape Cod Canal." However, the bill states that "land bordering on Stony Point Dike, land in the area known as Stony Point, and lands adjacent to such area shall not be included in such park." (See Exhibit O.)

Wareham Planning Board:

The Planning Board of the town of Wareham has expressed strong opposition to the Stony Point Dike proposal during a public hearing on the Draft EIS held in Fall River on November 15, 1977, and in correspondence to the Federal Office of Coastal Zone Management (see Exhibit C). In this correspondence, the Board also mentions that the town's Master Plan recommends that the dike remain as public open space and conservation land only, not as an active recreational beach. The board's letter states that the dike proposal is not in the best interests of the town and that it would not conform to other planning objectives of the town.

At a recent regular meeting, the Wareham Planning Board voted not to endorse or approve the CZM plan recommendation for the dike.

Wareham Board of Selectmen:

At a regular meeting on November 16, 1977, the Board of Selectmen voted affirmatively on a motion to "...inform the CZM that in the interest of the town, it would be unwise to consider opening up the Stony Point Dike as a public beach accessible by land." The motion states several reasons for this opposition (see Exhibit B).

Wareham Office of Economic Development:

The Wareham Office of Economic Development has informed the state CZM office of its opposition to the Stony Point Dike proposal, citing the projects incompability with the economic development plans for Wareham (see Exhibit E).

3.7 Description of the impact of the project on site vegetation:

Vegetative cover on the dike and its environs is in a process of succession from grasses to woody perennials and upright juniper growth. As vegetative cover has become more varied on the dike, its value to wildlife has increased. The ecotonal edges of vegetation here include woodland to marsh grass and low shrubbery, and salt marsh grass to brackish water. The dike approaches also include mixed softwood/hardwood woodland, open marsh, and wetland areas.

The vegetative succession process occuring on the dike is an excellent example of how nature, when left to its own resources, tends to evolve towards stability with the overall environment. In this instance, vegetative cover has evolved, through a process of selection, towards establishing itself over the existing unstable soil cover and in so doing makes that soil far less vulnerable to the erosion forces of wave, precipitation, and wind. As this process of evolutionary successions continues, it tends towards a greater complexity and richness in vegetative types. Among the consequences of this variety are more abundant food and cover habitats for wildlife and a more visually interesting landscape.

The CZM proposal for the Stony Point Dike will require the clearing of this vegetative cover and replacing it with an expansive paved parking areas. Nowhere in the Draft EIS is this vegetative environmental impact described or evaluated.

3.8 Description of the project impact on wildlife:

Replacing the existing vegetative cover with a paved parking surface will, in one stroke, destroy a viable, productive wildlife habitat. Grass cover on the dike will no longer be available for grazing by deer herds that live in the area, nor will it be available as food and cover for small mammals and birds such as pheasant, partridge, and songbirds, among others, that are natives or that migrate through the area.

Development of the site as an intensive recreational area will also disrupt existing nesting and feeding areas of the wide variety of waterfowl that now make use of the dike and its environs. As mentioned in section 2.3 of this analysis, there is an extensive range of waterfowl that are native nesters or migrants that commonly use the dike environment. Changes in the landscape that will be required as part of the CZM beach development proposal will cause extensive disruption to this waterfowl habitat.

This impact on the area's wildlife is not described or analyzed in the Draft EIS.

3.9 Description of the project impact on coastal hazardous areas:

One of the primary objectives of the federal Coastal Zone Management program is to discourage further development in coastal landscape areas which are subject to destructive action of the sea. This is reflected in Policy 8 of the Massachusetts CZM plan which states:

> Discourage further growth and development in hazardous areas and preserve natural buffers throughout the coastal zone.

Subparagraphs of Policy 8 further state that coastal hazard policies should:

> Restrict new development in barrier beach, dune, and salt marsh significant resource areas to the permitted uses defined under Policy 1, Marine Environment Section.

Policy 1 states that such ecologically significant resource areas should be conserved "for their contributions to marine productivity and value as natural habitats."

Policy 8 subparagraph b. further states that new development should be conditioned in contiguous upland areas within a zone extending landward to 100 feet inland of the limit of the 100 year flood "...to ensure that existing hazards are not exacerbated and that the proposed uses or activities are appropriate in light of the risks of damage."

The CZM plan recognizes that both the Federal government and the Commonwealth now have substantial statutory authority to regulate development in the coastal areas, and that development activities of federal and state agencies, as well as those of private interests, will conform to these policies (see footnote to Policy 8 on page II-11 of the Draft EIS).

In addition, Policy 8 aims to "encourage and support local floodplain zoning and other management of hazardous areas in all coastal towns."

Policy 9 of the CZM plan also states that it will:

> Ensure that state and federally funded public works projects proposed for location within the 100 year coastal floodplain will, (a) not exacerbate existing hazards or damage natural buffers, (b) be reasonably safe from flood and erosion related damage, and (c) not promote growth and development in damage prone or buffer areas...

420

These goals of the Coastal Zone Management plan are to be commended for their emphasis on protecting fragile coastal landscapes from inappropriate development and on prohibiting development in those areas that are vulnerable to destructive coastal storms. The CZM policies on coastal hazardous areas, as with the other policies of the plan, are unassailable and should be supported.

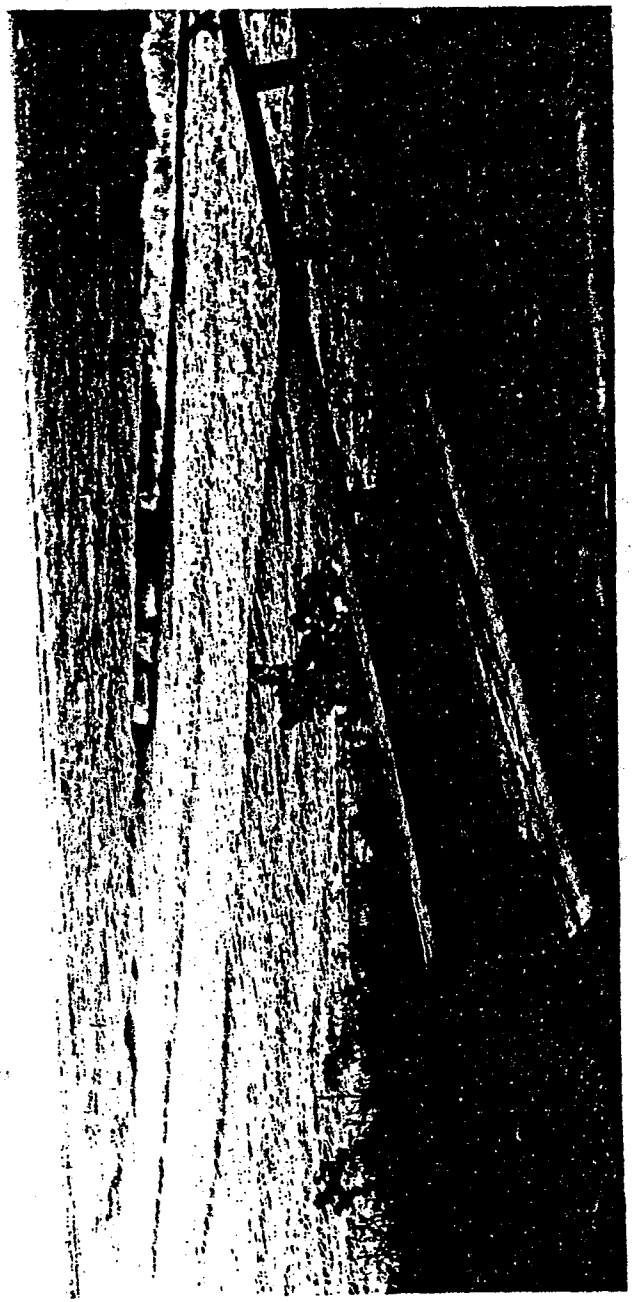
The CZM plan recommendation for the development of the Stony Point Dike, however, contradicts the CZM policy recommendations on hazardous areas. This is because the dike is itself a barrier reef that was constructed to minimize the drift of bottom material into the southern approach channel of the Cape Cod Canal. The dike represents a hazardous area for several reasons:

1. During coastal storms, the dike is subject to the battering of wave action that completely overtops the dike. Because of this vulnerability to flooding storms, the dike is subject to the strong erosive force of storm wave action. This is true even of those storms which are unexceptional in nature. The photo on the next page shows the dike almost completely inundated by flood and wave actions in a photograph taken on February 22, 1976, yet a storm of this intensity is not unfrequent and was not even classified as a storm of any great severity by NOAA, the U.S. Weather Bureau, or the U.S. Coast and Geodedic Survey.

Existing vegetation on the dike and on the approaches to the dike now stabilizes the surface soil here and therefore serves to prevent erosion and shifting of the dike.

Because of the strong storm wave action that pounds against the dike, it has been subject to shifting in the past, with the result that the dike soil material has filled in the channel that abuts the dike on its eastern boundary. During the past several years, the Corps of Engineers has reinforced the dike edges with large stone rip-rapping to prevent further shifting and erosion of the structure. This reinforcing work by the Corps is still in progress.

2. The second major reason that development of the dike represents a hazard is that any structures built on the dike will themselves be subject to damage by storm wave action. Because of the length of the dike, developing it as a recreational beach would require siting both bathhouse structures and parking surfaces on the dike itself. Given the exposure of the dike and the severity of the storms that occur here, such structures and surfaces would incur extensive damage during these periods.



Photograph of the Stony Point Dike inundated by flood waters from an unexceptional storm on February 22, 1976.

In addition, such storms would tend to make more vulnerable the septic disposal systems that would be required on the dike to dispose of sewage effluent. Under such conditions, the opportunity for polluting the adjoining shellfish beds will increase.

In addition to these hazardous factors, the dike and its approaches are completely within the boundaries of the Intermediate Project Flood and Standard Project Flood areas (see Exhibit K). By recommending development within these projected flood boundaries that would be vulnerable to damage from these floods, the CZM recommendation for the Stony Point Dike is in conflict with CZM Policies 8 and 9, which aim to restrict development along coastal floodplain areas.

Again, these important environmental impacts on the dike were not described in the Draft EIS.

3.10 Description of the project impact on transportation routes:

Policy 35 of the Massachusetts CZM plan, as explained in the Draft EIS, states that major transportation projects "...will require amendment to, or revision of the CZM plan to be considered consistent withthe growth clustering intent of Policy 35..."

Such major transportation projects are defined in the Draft EIS as:

(1) projects involving the introduction of new transportation modes,

(2) projects involving development of new transportation corridors or alignments, or

(3) projects which involve increases in existing designed capacity of greater than 30% (II-31).

Since the new access road to the Stony Point Dike proposed as part of recreational development of the area will qualify as a major transportation project under definitions 2 and 3 above, the access road project will, under these definitions, require an amendment to or revision of the CZM plan.

By this definition, the Stony Point Dike project is described as having a major impact on the environment, and therefore should receive a separate evaluation as to its soundness and require its own environmental impact statement.

In its transportation implications, the CZM proposal for the Stony Point Dike once again contradicts the stated policies of the CZM plan. Specifically, the often-repeated

421

objective of the CZM plan is to encourage clustering new coastal development in existing developed areas, rather than scatter new construction across existing unspoiled coastal landscapes. These objectives are made clear in Policies 35-37 of the CZM plan, among others.

In addition, the CZM policies on recreation repeatedly emphasize improving transportation access, user capacity, and physical size of existing State and local recreational facilities, and those existing facilities in regions with a high need (Policies 21, 22, 23, and 25). In this way, capital improvements to public recreational areas will have an increased benefit in relation to cost. This emphasis on improved transportation access to existing recreation areas will have an impact on the CZM plan's clustering goals, "...since the plan seeks to concentrate development in/and adjacent to developed areas through public investment policies...(Draft EIS, page III-5)."

The town of Wareham presents a special opportunity to implement the policies of the CZM plan which emphasize improving vehicular and mass transportation access to existing recreational areas in town, while increasing the viability of these areas for recreational use. The recommendation for a new access road to the Stony Point Dike area will only open up the relatively unspoiled Great Neck area of Wareham to new development pressures, while undermining local efforts to revitalize older commercial/recreation centers in Wareham. These concerns have been expressed by the Wareham Board of Selectmen (Exhibit B), the Wareham Planning Board (Exhibit C), the Wareham Office of Economic Development (Exhibit E), and residents of the Great Neck neighborhood (Exhibit G).

Again, no mention of these adverse environmental impacts are made in the Draft EIS, nor is there any discussion of how the Stony Point Dike recommendation contradicts the transportation policies of the CZM plan.

4. Alternatives to the Proposed Action

Part IV of the Draft EIS describes the four most likely reasons the Associate Administrator might deny or delay program approval and the six most likely alternatives the State has to submitting the proposed program. However, the Draft EIS states that "...the essential alternative to be considered by the Associate Administrator is not to approve the program as submitted (page IV-1)."

The objective of this review and comment is not to obstruct implementation of the Massachusetts CZM Program, but rather to have the State revise its CZM plan to delete the Stony Point Dike proposal, for the many sound reasons previously stated.

What concerns officials of the town of Wareham and residents of the Great Neck neighborhood is that approval of the Draft EIS and the Coastal Management Plan will preclude amendment of the plan to delete the dike proposal. This is not an idle concern since the Draft EIS states that "if the program is approved, the State is unlikely to consider alternatives to program implementation (page IV-1)."

If the only alternatives available are delay or denial of the program vs. approval of the program incorporating the Stony Point Dike proposal, then it is preferred that the CZM Program be delayed or denied until such time as an amendment is made to delete the proposal. However, a more preferable course recommended here is to amend the CZM plan without delaying adoption of the full CZM program, should such an alternative action be available.

5. Probable Adverse Environmental Effects Which Cannot be Avoided

The Draft EIS devotes one-half of a page to a discussion of what project are likely to have unavoidable adverse environmental impacts, primarily "...major facilities for purposes of defense, transportation, energy requirements and others in which both the state and Federal governments have interest." It is also stated that "...under the CZM Program and related Federal acts (e.g., NEPA), each such project will be evaluated as to the impacts on the natural Coastal environment. That is, investigations will be made, alternatives considered, etc."

No such evaluation of unavoidable adverse environmental effects are made for proposals set forth in the CZM plan. Indeed, as previously mentioned, the Draft EIS states that "...if the program is approved, the State is unlikely to consider alternatives to program implementation (page IV-1)." The evidence suggested in this review report is that the adverse environmental effects of the Stony Point Dike proposal are avoidable. They can be avoided by deleting the recommendation from the Massachusetts CZM plan.

6. The Relationship Between Local Short Term Uses of the Environment and the Maintenance and Enhancement of Long-Term Productivity

This section of the Draft EIS provides a cursory overview of how the CZM program will assist in husbanding the state's coastal resources to assure their short-and long-term productivity. Once again, however, the proposal for the Stony Point Dike does not conform to this description.

7. Any Irreversible or Irretreivable Commitments of Resources that Would be Involved in the Proposed Action Should it be Implemented

This section of the Draft EIS is also of too general a nature to give a meaningful evaluation of resource commitments not only for the CZM program but for the Stony Point Dike proposal in particular.

8. Consultation and Coordination

Various letters in opposition to the Stony Point Dike proposal are included in the exhibits section of this review report. These adverse comments are from elected officials, town boards, and residents of the town of Wareham, as well as the U.S. Army Corps of Engineers.

It is unlikely that this unanimous adverse comment would have occurred if sufficient consultation and coordination had existed between the CZM staff and local officials. Indeed, the chief of the Planning Division for the New England Division of the U.S. Corps of Engineers states in his letter on the dike proposal that "...our office has not been consulted regarding any of the Volume 2 proposals that could entail possible Corps participation." (see Exhibit A).

This is not to discount the attempt at citizen input that did occur as part of the CZM planning process, but it is clear from the amount of adverse comment on the Stony Point Dike project that, had sufficient opportunity been given to the public to advise on the dike recommendation, the recommendation would not have been incorporated into the CZM plan.

However, the opportunity now exists to redress this lack of coordination by responding to the clear opinion of local representatives, residents, and the Corps of Engineers, and amend the CZM plan to delete the Stony Point Dike proposal.

Indeed, correspondence from Eric C. Van Loon, director of the State Office of Coastal Zone Management, suggests that such an amendment can occur at this stage in the review process. In a letter to Howard Whiteside, a resident of the Stony Point area, Mr. Van Loon states that:

> "...all comments will be evaluated and a determination of what changes should occur will be made. Changes will then be incorporated into the Final Environmental Impact Statement (FEIS) and the plan accordingly revised." (see Exhibit H).

14 December 1977

P O Box 185
North Stonington, Conn. 06359

Office of Coastal Zone Management
.tional Oceanic and Atmospheric Administration
Att: Ms Kathryn Cousins
Rm 3280
330 Whitehaven Street N W
Washington D C 20235

Dear Ms Cousins,

Having read the "State of Mass. Coastal Management Draft Environmental Impact Statement", We have come to some definite conclusions as concerned property owners on Gurnet Point, Plymouth, Mass.

Among the 38 policies adopted by the Mass. C Z M we are concerned specifically with # 25, # 27 and # 26.

25 the area is much too fragile to allow expansion of the existing local recreation facilities on Duxbury Beach.

#27 Any new development on Duxbury Beach, Plum Hills Beach or Saquish Beach is completely unrealistic because of the limited, almost non-existant back area for these beaches.

26 Proposes local acquisition of Saquish Beach which is the #18 area in policy 26. Without reservation we feel that this would be a complete disaster. The Town of Plymouth cannot afford police protection for its year around and summer residents. They only promise us help in the event of "rape, murder or riot".

If the area is to be preserved at all it will have to be under the protection and control of something more responsible, the Federal Government? Perhaps as a separate area of the Cape Cod National Seashore? We believe this may be the only way to really protect all of Plymouth Bay and the three towns of Duxbury, Kingston and Plymouth and the area for controlled public use.

We do not wish to belittle the work of the Duxbury Conservation Commission and the Duxbury Beach Reservation in their furtherance of conservation and protection of the area. But the money is apparently simply not available to supply sufficient daily supervision. It must be protected throughout the year, if this protection is to accomplish anything. There is no longer a "summer season and an off season". The area is vulnerable and accessible twelve months of the year to everyone with 4-wheel drive vehicles; only a small proportion of these people respect or understand the fragility of this or any other barrier beach.

In passing it should be pointed out that in the four and a half miles of beach and dunes (these latter not respected now even tho they are fenced and posted as Conservation areas) there is not one sanitary facility beyond the north end of the beach. Draw your own conclusions.

We certainly are not eager to lose our property, especially since we built hoping to retire to the area. But we do not wish to be engulfed in hordes of people, or subject to more vandalism and break-ins such as are now a common occurance. There must be some compromise that might safeguard public and private interests as well as preserve in perpetuity the unique and fragile barrier beach and adjacent marsh areas.

Sincerely

Nancy F Jackson

George A Jackson

Nancy F Jackson
George A Jackson
P O Box 185
North Stonington, Conn. 06359

State Mutual Life Assurance Company of America

Charles H. Sibley, II

The Ayres Agency
303 Main Street
Worcester, Massachusetts 01608
Telephone: 754-3215

12/pr

Dear Mr. Kottsyn Cousins

I am writing to strongly oppose further public encroachment into the private areas on Stephens Beach, Gurnet Point and Saquish Beach in Massachusetts.

My opposition, first, though purely personal is directly due to my feeling that many of our so-called "social" programs are very ill advised and do more harm to private ownership in proportion to the purported public good they are supposed to do! Many of the homes on Gurnet and Saquish have been owned for generations by one family. Can the government justify eminent domain proceedings at Saquish, Stephens Beach or Gurnet? I think not.

Why not turn over some of the public lands on Cape Cod to more public use? Why take more private land and buildings? What is the government going to gain for the millions that would have to be spent to make the areas in question more accessible? Is it not time that we really took stock of our public encroachment in this country? What is left; for whom? After all the natural areas are made public versus private.

I shall write further to the appropriate Congressional personell.

Sincerely

Charles H. Sibley, II
Property owner
Gurnet Point

APPALACHIAN MOUNTAIN CLUB
FIVE JOY STREET BOSTON, MASSACHUSETTS 02108 617-523-0636

November 26, 1977

Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
Room 3280
3300 Whitehaven Street, NW
Washington, D.D.

Dear Ms. Kathryn Cousins,

Upon reviewing the draft environmental impact statement pertaining to the Coastal Zone Management master plan for Massachusetts, our committee and chapter have come to the following conclusions. The great majority of policies are not only beneficial to conservation and ecological orientated groups, but such areas as harbour priorities, will give our major port areas the industrial and fishing incentives we need as well.

There is, however, one major area that troubled our group. Several areas that are presently in their "wild" state will be acquired by the state and local ruling bodies to be turned into public, unlimited access recreational facilities. Our major difficulties are first that these are in their "wild" state and are breeding areas for shellfish, birds, and small animals. Secondly, many are in towns already having several public recreational facilities that could easily be made larger without the long term ecological damage done by initiating road ways, septage areas and beach areas for already fragile resources. One example of this type of problem is the Horseneck Beach area in Westport where the ecological status of the dunes and off shore areas are already rapidly deteriorating. Another example of longer duration is that of Wingershiek Beach in Gloucester.

I hope our response and opinions will be of some assistance in the final formulation of the impact statement.

Respectfully submitted,

Stephen E. Driscoll

Stephen E. Driscoll, Chairman
AMC/SEMass. Conservation Committee
867 Drift Road
Westport, Mass.

SED/jat

Box 31
E. Sandwich, Mass. 02537

December 12, 1977

Office of Coastal Zone Management
National Oceanic and Atmospheric Adm.
Att: Ms. Kathryn Cousins
Rooms 3280
3300 Whitehaven Street NW
Washington, D.C. 20235

Dear Miss Cousins:

Regarding the policies of activities proposed on the coast, e.i. 25, 26, 27, as property owners at Saquish Beach we both strongly object. There are several reasons of which you are probably not aware of.

1. Vandalism will be on the increase if this area is open to the public. Already approximately 100 plus cottage owners have had their homes invaded during the off season with destruction and stealing. Do you realize how this would increase especially without policing except on occasion?

2. As tax payers, the expense of roads and the maintenance of same would not be feasible because of the erosion by frequent storms. Therefore, our tax dollars would be spent foolishly for this purpose.

3. We now maintain the cleanliness of the beaches and non-property owners would add to this burden because of known carelessness of the general public.

4. There is such a delicate balance now between having sand dunes as protection that the public would not be as sympathetic of our needs regarding conservation of property.

PLEASE consider the needs of Gurnet-Saquish residents.

Thank you for any consideration you may be able to give us.

Sincerely,

Stephen & Barbara Brune

Stephen and Barbara Brune
of Western Point, Saquish

Sudbury Mass.
Dec. 4, 1977

Ms. Kathryn Cousins
Room 3280
3300 Whitehaven St. NW
Washington D.C. 20235

Dear Madam,-

I wish to state that I am distinctly opposed to any acquisition by local, State or Federal governments of Jaquis or the Grunt in Plymouth, Massachusetts.

Sincerely,
Mrs. Harvey D. Fairbank

☆U.S. GOVERNMENT PRINTING OFFICE: 1978-261-238/7