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Approval
of the
Maryland Coastal Management Program

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I. Introduction

As Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), I have reviewed the record of the development of the Maryland Coastal Management Program (the Program) including various drafts circulated in December, 1976; March, 1977; and December, 1977; the Program/Draft Environmental Impact Statement (P/DEIS) circulated in June 1978 and the Program/Final Environmental Impact Statement (P/FEIS) issued in August, 1978, and all comments thereon. Based on the above, as well as on a review of the Coastal Zone Management Act of 1972, as amended (CZMA), and its implementing regulations pertaining to state program development and approval, I have concluded that the Maryland Coastal Management Program meets all the requirements of the Federal statute and regulations and should be approved. The essence of my review and conclusions is set forth below.

II. Summary of the Program

Maryland's coastal area can be divided into two distinct regions: the Atlantic Coast area which has a shoreline of 31 miles, and the Chesapeake Bay area which is characterized by over 3,000 miles of greatly indented shoreline.

The Maryland Coastal Program is based on a number of existing laws and authorities. The State has developed specific goals, objectives and policies for management of uses and activities which have a direct and significant impact on coastal waters. Management is to be achieved through the use of specified regulatory programs, a Governor's Executive Order, a Secretarial Order, Memoranda of Agreement between State agencies,

and two new administrative procedures entitled "Project Evaluation" and "Program Review".

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

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

Management in the First Tier - Areas of Focus

The Area of Focus includes coastal waters, bays, estuaries, tidal wetlands, Chesapeake Bay beaches to mean high tide, Atlantic Beaches to the

dune line, and upland areas to the boundary of the 100-year riverine and tidal flood plain. These areas encompass the State's most important coastal resources where direct and significant impacts are most likely to occur.

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

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| Coastal Waters, Bays & Estuaries: | Water Pollution Control Laws
Wetlands Act
State Boat Act
Fisheries Laws |
| Tidal Wetlands & Chesapeake Bay Beaches: | Wetlands Act |
| Atlantic Beaches: | Atlantic Coast Beach Erosion Control District Act |
| 100-year Flood Plains: | Laws governing construction in or obstruction of 100-year flood plain of freeflowing rivers and non-tidal waters.

State Watershed Permit Program |

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

The Project Evaluation procedure, which is described in Section V below, will insure that activities proposed for the Area of Focus, including all those with potential for direct and significant impact on coastal waters, receive a comprehensive review and evaluation prior to any state agency permit decision.

Management in the Second Tier

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

- Water Pollution Control Laws
- Water Appropriation Permits Act
- Sedimentation Control Act
- Surface Mining Act
- Power Plant Siting Program
- Coastal Facilities Review Act
- Laws governing Water Supply, Sewage, and Solid Waste Disposal Plans
- Air Quality Laws
- Transportation Planning Requirements
- Various public investment authorities which guide construction of public facilities, land acquisition and financial aid programs.

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

The Coastal Zone Unit, within DNR's Energy and Coastal Zone Administration, will manage and coordinate the administrative aspects of the Program.

III. History of the Maryland Program Development

Maryland received its first Federal CZM grant in July, 1974. The Department of Natural Resources (DNR) developed the Program working with other

state agencies, Federal agencies, regional agencies and local governments. The Program has taken four years to develop. In the first year, a thorough examination of past and present management efforts in coastal areas was undertaken. Inventories of coastal resources were initiated. Significant coastal issues were identified and studies and efforts were begun to establish the means of ongoing public participation in the Program. In the second year of development, a study of onshore development associated with Outer Continental Shelf activities was begun, and a comprehensive plan for disposal of dredge spoil was drafted. The inventory of coastal resources was completed, and an analysis of existing institutions and legal authorities relevant to management of coastal areas was undertaken. In the third year, the framework for public participation was completed, and through regional coordinators placed with local governments, local involvement in the determination of goals and objectives was obtained. Other technical studies, such as the Recreational Boating Study and the Upland Natural Areas Study, were also conducted to generate additional data needed for the development of the comprehensive Coastal Management Program. During the fourth year, emphasis was placed on public participation, addressing comments on Program drafts from the public and from Federal agencies and interest groups, and in developing an Executive Order from the Governor, Memoranda of Understanding between DNR and other agencies, and a secretarial order within DNR.

The result of this four-year process is a coastal zone management program which is comprehensive in scope, and which takes into account not only coastal resources and activities, but also the full range of state regulatory and financing authorities regarding the various aspects of these

diverse resources and activities in the coastal zone.

IV. The Federal Coastal Zone Management Program

The adequacy of the Program must be measured against the requirements of the CZMA. The CZMA was passed in recognition of the importance of the coastal zone of the United States and the potential adverse effects of intense pressures upon this natural resource. The Act authorizes a program of financial assistance to encourage the States to manage their coasts more effectively. The Program is administered by the Secretary of Commerce, who, in turn, has delegated this responsibility to NOAA.

The CZMA states at the outset that "there is a national interest in the effective management, beneficial use, protection and development of the coastal zone" [Section 302(a)]. The Congressional findings go on to describe how competition for utilization of coastal resources, brought on by the increased demands of population growth and economic development, has led to degradation of the coastal environment, including 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" [Section 302(c)]. The CZMA also provides that "(t)he key to more effective production and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states in cooperation with Federal and local governments and other vitally affected interests in the development of land and water use programs...for dealing with coastal land and water use decisions of more than local significance" [Section 302(h)].

These broadly stated goals of the CZMA recognize that each individual State should develop a management program appropriate to its unique needs and situation. Thus, the State level of government has prime responsibility for achieving effective management of the coastal zone. Under Section 305 of the CZMA, up to four years of grants are available to 35 coastal states and territories, including the Great Lakes States, to finance up to 80 percent of program development costs. The entire process is a collaborative one in which both State and Federal interests are accommodated.

After developing a management program, the State may submit it to the Assistant Administrator for Coastal Zone Management for approval. If the program is approved, the State is then eligible for annual grants under Section 306 to administer its management program. In considering a program for Federal approval, the Assistant Administrator reviews it in accordance with the following general requirements:

- 1) That the management program is comprehensive. The CZMA emphasizes that important ecological, cultural, historic and aesthetic values are being lost or adversely affected by population growth and economic development in the coastal zone. Comprehensive management and protection of these values is a vital part of an approvable program.

- 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 (a) a clear understanding of the content of the program, especially in identifying who will be affected by the program and how, and (b) 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 ensure the implementation of and adherence to the management program. OCZM has issued regulations providing additional guidance on State program development and approval pursuant to the CZMA requirements [15 CFR Part 932 (43 F. Reg. 8378 et seq., March 1, 1978)]. These regulations, which reflect the CZMA's Federal-State collaborative process and the need to respond to unique State coastal needs, form the basis of my decision to approve the Program.

V. What the Maryland Program Will Achieve

In furtherance of the national goals of the CZMA and the goals and policies of the State, the Program will accomplish the following basic objectives:

1) It will provide a predictability in State coastal resource decisionmaking not realized before through the enforcement of a comprehensive set of coastal objectives and policy guidelines. People proposing to undertake projects in the Coastal Zone will have a clearer understanding of what the State's position regarding their project will likely be. The Program's objectives and policies also provide the framework for cooperative action among governmental agencies to address coastal problems and resolve coastal policy questions.

2) It will ensure consistency of State actions with coastal policies. These specific policies will assume particular importance in Maryland as a result of Executive Order #01.01.1978.05 signed by the Governor on March 8, 1978, which explicitly states that the Coastal Zone Management Program constitutes official policy for coastal resources and that State agencies

must comply with these policies. Additionally, the Department of Natural Resources has signed Memoranda of Understanding with the Departments of State Planning, Health and Mental Hygiene, Transportation and Economic and Community Development to ensure conformance of their programs and activities with the objectives and policies of the Program. A Secretarial Order has also been signed by the DNR Secretary to ensure that all activities within DNR are conducted in accord with coastal goals and policies.

3) It will implement two important new procedures: project evaluation and program review.

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

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

In addition to evaluating the impacts of large projects on a case-by-case basis, the Program provides a means for reviewing existing programs and procedures dealing with coastal resources and activities for their consistency with the CZM Program. This program review process will be used to review such things as proposed legislation affecting coastal resources, issuance

of new or amended regulations and development and revision of state and regional plans and local comprehensive plans and zoning ordinances. The purpose of the review is to create a forum in which all program participants can define conflicts, potential conflicts, or inconsistencies between programs involving coastal resources, and make formal proposals for administrative or legislative remedies. The Coastal Zone Unit of DNR will be responsible for conducting these reviews.

4) It will provide financial assistance to State agencies, particularly the Department of Natural Resources, to assure adequate and specialized staffs to carry out those agencies permit responsibilities in a more expeditious manner consistent with the coastal policies. It will also provide financial and technical assistance to county governments in meeting their responsibilities under the Coastal Management Program and will make financial assistance available for the Coastal Zone Unit to conduct project evaluations and program reviews.

5) The Program will provide funding in its first year of implementation for the following: fisheries assistance, an urban waterfront project in Cambridge, assessment of the effects of dredging and the placement of dredge spoil, assessment of shoreline erosion problems, determination of where marinas should locate, development of better methods of mosquito control, evaluations for future critical area designations and public information and participation.

6) More generally, approval of Maryland's Coastal Management Program will have the effect of providing a more coordinated and more clearly articulated framework for governmental decisionmaking by establishing the objectives and policies of the Program as the guiding principles for

government decisions.

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

VI. Major Issues and Resolutions

A number of issues and problems were raised by reviewers of the Maryland Program, primarily during the EIS process. Most of these have been resolved, generally through revision and clarification of the FEIS. The three underlined statements to follow represent synopses of the most important perceived weaknesses which received major attention by reviewers and the following discussion indicates how they have been addressed.

1. Because Maryland relies solely on already established and operating laws to implement its management program, is the legal authority adequate to implement a comprehensive program without new legislation?

Maryland has developed a comprehensive program based on established laws which meets a broad range of coastal concerns. These regulatory statutes give the State management control over uses which have a direct and significant impact on coastal waters. The Coastal Program further interpreted these authorities by developing new and comprehensive coastal policies to guide decisions under them. These activities or uses of concern over which the Program has enforceable and specific policies are listed as follows: in coastal waters--recreational boating, commercial shipping, dredging and disposal of dredged material, activities associated with

living aquatic resources, ocean dumping and OCS oil and gas exploration, production and transportation; in intertidal areas--use of beach areas and activities in tidal wetlands; in shoreland areas--activities in areas undergoing significant shore erosion, activities in non-tidal wetlands and flood plains, channelization and sedimentation control. Certain major facilities are managed throughout the coastal zone--onshore OCS/oil/natural gas facilities, electric generating facilities, ports, industrial parks, mineral extraction facilities, sewage treatment facilities and transportation facilities. In addition, the Program provides for a variety of measures dealing with activities in tidal flood plains, the use of agricultural and forest lands, activities associated with the provision of sufficient recreational, open space, and natural areas, and activities affecting coastal, historical, cultural, and archeological resources. Finally, the Program provides for state concern and review over smaller scale development that may have cumulative impacts on coastal waters. State agencies are bound to abide by these policies by a Governor's Executive Order and by memoranda of understanding; units within DNR are required by a Secretarial Order to conduct their activities in accord with the Program. The MOU's and the Secretarial Order establish methods for resolving conflicts with the Governor as the final arbiter in cases of unresolvable disputes between agencies. Because of the comprehensive nature of the coastal policies and because these policies are enforceable under state statutes through the Executive Order, the MOU's, and the Secretarial Order, I have found that Maryland has adequate authority to implement the Program.

2. Does the Program adequately provide for the national interest facilities in the coastal area when local governments fail to certify the siting of national interest facilities? Is the definition of uses of regional benefit (URB's) too narrow because energy facilities, other than electric generating facilities, are not included?

Coastal activities and resources in which there may be a national interest are listed in Table VI-1 on pages 331-337 of the P/FEIS with a summary of provisions in the Maryland Program which address national interests. Project evaluation will be performed for all major project proposals in the coastal zone. As part of this process, the national interest is considered and this consideration becomes a part of the final evaluation results. The Energy and Coastal Zone Administration is the lead agency for project evaluation and Federal consistency review. Through the DNR Secretarial Order, the Administration is required to insure that national interest considerations are taken into account during project evaluation. NOAA regulations (Section 923.52) do not require an affirmative obligation to accommodate the siting of all facilities that are in the national interest, but rather adequate consideration in the Program of the siting of such facilities. In the event that a local government attempts to veto a facility that may be in the national interest, DNR can ask the Department of State Planning to intervene in the local decision; State Planning is bound to honor the request (Article 88c, Section 2q). State Planning can intervene in any administrative, judicial, or other proceeding in Maryland concerning land use, development or construction. Upon intervention, State Planning shall have standing and all rights of a party in interest or aggrieved party, including all rights to apply for judicial review and appeal. (See pages 395-400 of the P/FEIS.)

The State listing of uses of regional benefit includes electric generating facilities and transmission lines, wastewater treatment plants, and recreation and transportation facilities; this is adequate to comply with NOAA regulations (Section 923.13, 923.43). A particular question has arisen over why electric facilities are included and oil and gas facilities are excluded as uses of regional benefit. Through the establishment of the Power Plant Siting Program, the Maryland Legislature reflected that power plants were clearly uses which should not be arbitrarily excluded by local governments. Through passage of the Coastal Facilities Review Act (CFRA), the Legislature recognized the need for siting oil facilities in environmentally suitable areas but did not authorize a State override of local decisions in that statute. It should be noted, however, that the above mentioned intervention authority is available to the State in such circumstances, regardless of whether the facility may be a use of regional benefit. Other states have appropriately drawn the same distinction that Maryland has between electric facilities, which have a regional service area and an advanced public planning process; and oil and gas facilities, which can serve more selective or expansive markets and which are less subject to advanced planning at the State level. On this basis, and in compliance with NOAA regulations, Section 923.13, 923.43 and 923.52, I have found the State's approach to facilities in the national interest and uses of regional benefit is acceptable.

3. Are the "networking" arrangements satisfactory?

At the time of DEIS distribution, three of the four Memoranda of Understanding (MOU's) and the Secretarial Order were unsigned. Also, there was no direct link between the Program and the State Board of Public Works. These deficiencies have been remedied. The MOU's and the Secretarial Order were all signed prior to P/FEIS distribution and are attached to that document. In all cases, the final version of the MOU's and Secretarial Order is essentially the same as was proposed in the P/DEIS. With respect to the Board of Public Works, their authority is limited to (1) approval of proposals made for funding by agencies and (2) permitting in State-owned wetlands. As for other agencies' funding proposals, direct linkage of the Board to the Program would be redundant since such other agencies already must act consistent with coastal policies. In recognition that over time the failure of the Board to adopt the Program might create difficulty in carrying out related capital programs and state permit requirements under the Wetlands Act, OCZM has conditioned the first year implementation grant to the State to require the Board to adopt the program as guidance for its decisions by March 1, 1979. Permitting of State wetlands is not perceived to be a problem as the Board must comply with the Wetlands Law and associated policies.

VII. Detailed Findings on the Maryland Program

Having reviewed the general requirements of the CZMA and the basic structure of the Program, I now turn to the question of how the Program satisfies the specific requirements of the CZMA and its implementing regulations. These

findings follow the organizational scheme of the regulations. They begin by reviewing the uses subject to the Program (Subpart B), the special management areas involved (Subpart C), and the general area that encompasses these uses and special areas, i.e., the boundary (Subpart D), then turn to the authorities and organization necessary for management (Subpart E), and finally examine the public process by which the Program was developed (Subpart F).

Section I - Uses Subject to Management (15 CFR Part 923, Subpart B)

- (A) The Program includes "a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters." (Section 305(b)(2); 15 CFR 923.10-923.12)

The Maryland Program has developed the following criteria to determine those uses which should be subject to management: 1) the use must have an "impact" on coastal resources; 2) the impact must be "direct"; and 3) the impact must be "significant".

For the purposes of this determination, "impact" has been defined as a documentable change in any factor relevant to the maintenance of a coastal resource. The impact is considered "direct" when there is a documentable casual relationship between the use or activity generating the impact, and its effect on coastal resources. An impact is considered to be "significant" if (1) it is broad in geographical scope, (2) it affects a critical coastal resource of concern to the State, or (3) it is of sufficient magnitude to be potentially in conflict with State environmental standards or potentially in conflict with State or State-approved

local economic, fiscal, land use, transportation or water quality plans.

Consideration has also been given to the location of the use within the coastal zone. The Program's attention focuses on all activities occurring within coastal waters, intertidal areas and shoreline areas as well as major facilities throughout coastal counties where size and operation are likely to have an impact on coastal waters.

Permitted land and water uses will be determined by a review of development proposals which will be based on a set of comprehensive policies associated with the detailed treatment of activities/uses of concern in the coastal zone found on pages 93-293 of the P/FEIS.

- (B) The policies and procedures defining the permissibility of uses are sufficiently comprehensive to address the national findings and policy of Sections 302 and 303 of the CZMA (Section 305(c)(1); 15 CFR 923.3, 923.11, 923.12).

The Maryland Program has developed a comprehensive and specific set of policies for each of the activities of concern in the coastal zone. Specific Program policies have been developed for activities occurring in the following areas: coastal waters, intertidal areas, and shoreland areas. Policies have also been devised for major facilities in the coastal zone. These activities are listed on pages 11 and 12 of the findings.

In its discussion of each activity, the Program describes the existing situation, the important issues, specific policies which will be used to address these issues and the implementation framework which includes a discussion of the management procedures to be used and the authorities to be relied upon as well as the way in which each activity will be treated under project evaluation and program review.

The Maryland policies have been developed from State authorities and are contained either expressly in law or in rules or regulations, or have been interpreted by the Program as being within the scope of a particular law. In the case where policies are within the scope of a law but are not specifically in that law or rules and regulations, then the Governor's Executive Order and the Memoranda of Understanding (MOU's) between agencies confirm the binding effect of these interpretations of the law.

- (C) The Program includes "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." (Section 305(b)(8); 15 CFR 923.14)

The State of Maryland has an exemplary energy facility planning and siting process that has served in recent years as a model for other states. The Maryland Program has identified energy facilities as follows: OCS-related/Oil/Natural Gas facilities (pipelines, intermediate production terminals, LNG processing plants, refineries, storage facilities, operation bases, fabrication yards) and electric generating facilities (fossil-fuel plants, nuclear-fuel plants, transmission lines).

Procedures for assessing the site suitability of these energy facilities have been developed through the Power Plant Siting Program, through reviews associated with the Coastal Facility Review Act and through reliance on the Major Facilities Study described on pages 229-230 of the P/FEIS. The Major Facilities Study has identified those areas within the coastal counties which are suitable for major facilities including energy facilities, areas where expansion or increased use of existing sites can take place without

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significant adverse impacts, and methods for evaluating the potential impacts of proposed major facilities and alternative development strategies. This study will be used in making Coastal Facilities Review Act permit decisions in OCS-related/Oil/Natural Gas facilities and in evaluating potential power plant sites on the Eastern Shore. (Power plant sites have already been identified on the Western Shore.) The study will also be used by the local governments in evaluating proposed energy facilities.

Maryland has developed a comprehensive set of policies which anticipate and manage potential impacts on coastal resources from energy facilities. The policies for onshore OCS/oil/natural gas facilities can be found on page 236 of the P/FEIS and those for electric generating facilities are found on pages 242 and 243 of the P/FEIS. The principal authorities on which these policies are based are the Coastal Facilities Review Act (CFRA) and the Power Plant Siting Act. When a CFRA regulated facility is proposed, a detailed environmental, economic and fiscal statement must be prepared by the Department of Natural Resources which is used to determine whether to issue a permit. Advisory comments are also received from the State agencies. Before a CFRA permit can be processed, the county where the facility is to be located must certify that all appropriate local approvals will be granted or that it wishes to stay its decision. It should be noted that Baltimore City is presently exempted from CFRA. However, any CFRA-type facility proposed to be located in Baltimore must comply with the Program's other regulatory authorities, particularly those related to Shoreland Activities in General found on pages 216-226 of the P/FEIS. These authorities include laws for air and water quality, erosion and sedimentation, flood control and wetlands.

The Power Plant Siting Program predicts the impacts of proposed new generating facilities, assesses the impact of existing generating facilities and acquires alternate sites for needed generating facilities.

Under CFRA, interested and affected public and private parties participate in the planning process for these facilities by reviewing comments and/or attending public hearings associated with the environmental, economic and fiscal statement of DNR, which must be announced in the Maryland Register. The Power Plant Siting Program is an interdepartmental effort involving six State Departments. Local governments are represented on the Power Plant Siting Advisory Committee (PPSAC) and citizen groups have representation on the PPSAC and the Environmental Research Guidance Committee.

In considering CFRA permits, the Program will invite Federal agency representatives to participate in project evaluations and to present their national interest concerns. As noted in the Secretarial Order attached to the FEIS, DNR is bound to consider the national interest in its decisions. If necessary, DNR will request that the Department of State Planning intervene in local land use decisions in support of the findings and recommendation of project evaluations including those which involve national interest consideration. The Power Plant Siting Program involves Federal participation in specific licensing proceedings, general licensing considerations and technical information exchange. This Program is also bound by the Secretarial Order to consider national interest in its decision-making.

Section II - Special Management Areas (15 CFR, Part 223; Subpart C)

- (A) The Program includes an inventory and designation of areas of particular concern within the coastal zone as has established priority of use guidelines for these areas. (Section 305(b)(3); 15 CFR 923.21 and 923.22)

Maryland designates vegetated tidal wetlands as "areas of particular concern (APC's)." This generic designation is permitted by Section 923.22 of the program approval regulations. The management authority applied in this generic APC is the State Wetlands Act. This Act divides the wetlands into two types--State wetlands and private wetlands. State wetlands are defined as "all land under navigable water of the State below the mean high tide, which is affected by the regular rise and fall of the tide." Private wetlands are "all lands not considered State wetlands bordering on or lying beneath tidal waters, which are subject to regular or periodic tidal action and which support aquatic growth." Further details on the wetlands boundary can be found in Appendix G of the P/DEIS. In accord with Section 923.21 of the program approval regulations, the special management applicable to these areas includes a specialized permit program.

The Program has established priority of uses guidelines, including uses of lowest priority for its vegetated wetlands GAPC's in accord with Section 923.22 of the program approval regulations. These priority of use guidelines can be found on pages 304-306 of the P/FEIS.

- (B) The Program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or esthetic values. (Section 306(c)(9); 15 CFR 923.23, 923.24).

The State Critical Areas Program will be the principal mechanism to be used by the Coastal Program to designate future APC's (Section 923.23) as well as areas for preservation and restoration (APR's) (Section 923.24). Through this statewide program, areas of special significance within the coastal zone will be identified and designated State Critical Areas. The management of these areas must fall into one of the following categories: preservation, conservation or utilization (see pages 296 and 297 of the P/FEIS for detailed definitions). These areas will be locally nominated with a proposal of management techniques also generated by the locals. These nominations will be approved and designated by the Department of State Planning, with the initial set of designations expected during the Fall of 1978.

Three types of coastal areas will be considered for designation as APC's: resource protection areas, hazard prone areas, and developmental critical areas. Resource protection areas consist of vegetated wetlands which have already been designated, upland natural areas, prime recreation areas, productive agricultural land, areas of historical and archeological importance, and aquatic resource areas; hazard prone areas include high risk erosion areas and flood hazard areas; and developmental critical areas which are those suitable for various types of major facilities or those areas where there is potential for expanding existing facilities. (For a description of each and the Coastal Zone Unit's role in nomination, see

pages 299-303 of the P/FEIS.)

Areas suitable for preservation will be identified and designated State Critical Areas as part of the Critical Areas Program. If acquisition is deemed necessary, state or local acquisition funding will be available. Examples of such areas may include specific tidal wetland sites, upland natural areas, or important historic sites. Relative to areas for restoration, the major efforts are directed toward aquatic areas and water quality improvement. Areas will be identified in which water quality conditions should be maintained or improved to protect or restore important aquatic habitat.

- (D) The Program includes "a planning process for (a) assessing the effects of shoreline erosion (however caused), and (b) studying and evaluating ways to control or lessen the impact of such erosion, and to restore areas adversely affected by such erosion." The Program, however, does not adequately provide for "a definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, esthetic, ecologic or cultural value." (Section 305(b)(7); 15 CFR 923.25; Section 305(b)(9); 15 CFR 923.26)

The planning process for shoreline erosion can be found on pages 153-162 of the P/FEIS. Severe beach erosion is being experienced in the Ocean City area and approximately 140 miles of Maryland's Chesapeake Bay shoreline is experiencing extensive erosion. The State proposes to address erosion in the following ways: by providing technical assistance to shore-front property owners; by giving interest free loans to threatened property

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owners; by working with local officials and the Corps of Engineers to protect Ocean City and its beaches; by working with local governments to restrict development in undeveloped high risk erosion areas; by regulating shore erosion control measures through Wetlands Law so as to minimize adverse impacts and by undertaking research on shore erosion problems and by promoting the use of shore erosion control techniques, where necessary, in already developed areas. In policy #3 on page 155 of the P/FEIS, the State agrees not to provide funds for public services in undeveloped shorefront areas that have been identified as high risk erosion areas (except as it may meet a significant public benefit) and policy #4 states that a natural buffer be required in all high risk erosion areas. During the first year of implementation, the Program intends to begin an assessment which will include the identification of high risk erosion areas and the determination of the appropriate management techniques including setbacks and buffer areas for these identified areas.

After extensive review of the Maryland submission related to the shorefront access element of the program [305(b)(7)], as well as comments from the public and from Federal agencies on the P/DEIS and P/FEIS, I have concluded that the State's submission is deficient in a number of respects, and that a revised element should be developed and submitted to OCZM by February 1, 1979. This finding is consistent with the requirements of Section 306(g) and with OCZM regulations (15 CFR 923.25) because the state has submitted the element in a timely fashion after public hearings, prior to October 1, 1978, and has met the other requirements of the above regulations. Thus, the need for further

refinements to this planning element does not preclude approval of the Program at this time. The required submission date of February 1, 1979 will give the Program a reasonable amount of time to refine the shore-front access element. Failure to meet this date will require suspension of the 306 grant award.

Section III - Boundaries (15 CFR Part 923, Subpart D)

The Program includes "identification of the boundaries of the coastal zone subject to the management program." (Section 305(b)(1); 15 CFR 923.31-34)

The Program defines the management boundary as the inland boundary of the counties bordering the Atlantic Ocean, Chesapeake Bay and the Potomac River, as far as the municipal limits of Washington, D.C. This definition includes 16 coastal counties and Baltimore City. Seaward in the Atlantic Ocean, the coastal zone boundary extends to the limits of Maryland's three-mile jurisdiction.

In addition, an "Area of Focus", which is generally based on the 100-year floodplain bordering tidal waters, is identified in 16 of the 17 local jurisdictions. In Dorchester County, which includes a large percentage of Maryland's vegetated wetlands, the 100-year flood plain has not yet been identified and the entire county will be treated the same for management purposes; when designated, it is anticipated that the 100-year flood plain will cover the majority of the land area of the county. In Cecil County, the final area of focus will be designated within six months to reflect changes in the local plan. The area of focus will likely include the 100-year flood plain and a setback. This two-level boundary reflects the fact that activities taking place on the shorelands bordering

the State's coastal waters have a greater likelihood of having a direct and significant impact on these waters than activities taking place elsewhere.

The boundary includes all islands, transitional and inter-tidal areas, coastal waters beaches and wetlands.

The boundary excludes "all lands owned, leased, held in trust, or otherwise used solely by the Federal Government, its officers or agency."

Section IV - Authorities and Organization (15 CFR Part 923, Subpart E)

- (A) The State is organized to implement the program and has the authorities necessary to do so. (Sections 305(b)(4), 305(b)(6), 306(c)(6), 306(c)(7), 306(d), 306(e)(1); 15 CFR 923.40-923.42)

Organization

By Executive Order dated March 8, 1978, acting Governor Blair Lee designated the Maryland Department of Natural Resources (DNR) as the lead agency to receive and administer Program administration grants under Section 306 of the CZMA. DNR either directly administers or plays a formal role in the administration of all of the regulatory statutes which are incorporated into the Program.^{1/} It also administers a number of incentive/public investment programs which enable the provision of technical or financial assistance to coastal projects or activities.

Within DNR, the Coastal Zone Unit of the Energy and Coastal Zone Administration is responsible for coordinating the Program, monitoring the activities of other State agencies, holding project evaluations and program reviews,

^{1/} The organization and structure of this agency and other relevant agencies is described in full in Chapter I of the P/FEIS.

administering the State's functions under the Federal consistency provisions and administering coastal grant funds.

On August 18, 1978, the Secretary of DNR issued a Secretarial Order (attached to the P/FEIS), requiring the various units of the Department to adhere to the Coastal Program, to participate in the processes for project and program review established by the Program, and making the Energy and Coastal Zone Administration responsible for reporting conflicts to the Secretary for resolution in accordance with the Program.

In addition to DNR, the Departments of Health and Mental Hygiene, State Planning, Economic and Community Development and Transportation either have roles in implementing the Program or conduct activities which are significantly affected by the Program. The Department of Health and Mental Hygiene administers the State's Air Quality Program and assists DNR in the administration of the State's Water Quality Program. The Department of State Planning is responsible for preparing policy recommendations relating to land use in the State, reviewing local plans and land use decisions and intervening in these decisions where necessary to advocate the State's position. The Department of Economic and Community Development is responsible for various incentive programs for sustained economic growth and community development. The Transportation Department is responsible for highways and ports, both important uses subject to the Program.

An Executive Order from the Governor requires that State agencies conduct their activities in accord with the Coastal Program. In addition, Memoranda of Understanding (MOU's) between DNR and all of the above agencies establish detailed procedures for coordination in those aspects of their programs that relate to coastal management and for participation in program reviews and project evaluations. Ultimately, interagency conflicts will be submitted to the Governor for resolution.

The Board of Public Works (BPW) also has a limited role in implementing the Program, approving investment projects already approved by one or more of the above agencies and licensing any alteration of public wetlands with the advice of DNR. There is no formal arrangement tying the BPW to the Program, however, as no investment projects can be proposed for BPW approval until at least one agency subject to the Program has found it consistent with the Program, and because the permit decisions over State-owned wetlands must be consistent with the Wetlands Act which is part of the Program and establishes the relevant policies for this area.

Authorities

The statutory authority on which these agencies will rely to implement the Program is found in different State laws, all of which predate the Program. The most significant are the following:^{1/}

A. Authorities Applying to Specific Areas

The Wetlands Act

Article NR., Section 9-101 et seq., regulates essentially any activity involving the alteration of wetlands except mosquito control projects and certain agricultural practices. The Board of Public Works licenses such activities on State wetlands (below high tide) while the Water Resources Administration (WRA), within DNR, is the permitting authority for private wetlands, defined as those areas subject to regular or periodic tidal action and which support aquatic growth. Both agencies must consider the public policy of preserving wetlands while taking into account ecological, economic, developmental, recreational and aesthetic values on public wetlands and, on private wetlands, DNR must specifically consider the effects on various interests including fisheries, wildlife, and flood protection.

Beach Erosion Control District Act

Article NR, Section 8-1105.1(a), creates a beach erosion control district between the Atlantic Ocean, and approximately the west crest of the dunal line for Assateague Island and the State-Ocean City Building

^{1/} Authorities are described in detail in Appendices E & G of the P/DEIS and in Chapter III and VIII of the P/FEIS.

Limit Line for Ocean City. No land clearing, construction activity, or placement of permanent structures, except for storm, beach erosion or sediment control structures, is allowed. Approval by DNR and the appropriate soil conservation authority is required for shore erosion control structures.

State Watershed Permit Program

Article NR, Section 8-803, gives the Water Resources Administration broad authority to regulate, by permit, the construction or repair of dams and reservoirs or any obstructions of non-tidal rivers or their 100-year flood plains to ensure that such construction is not "detrimental to the public interest." The filling in or reduction of flood plains or cross sections of non-tidal rivers, streams and surface water is considered to be generally against the State's interest (WRA regulation .08.05.03.05).

Scenic and Wild Rivers Act

Article NR, Section 8-402(a), provides for the wise management of resources in designated areas and preservation of their scenic, agricultural, and wild qualities with development limited to activities such as fishing, hunting, hiking, horseback riding, natural and geological interpretation, scenic appreciation, and other programs enabling the general public to

appreciate and enjoy the value of the areas as scenic and wild rivers in a setting of natural solitude.^{1/}

B. Authorities Applying Throughout the Coastal Zone:

Sedimentation Control

The criteria and procedures which counties and local soil conservation districts use to implement soil and shore erosion and storm water runoff control programs and the local ordinances passed to implement the criteria must be approved by WRA. The Water Resources Administration is the permitting agency for any state or federal project, or any project on state-owned land. Article NR, Section 8-1102, 8-1104 requires a permit from the appropriate county after approval of sediment control plans by the soil conservation authority prior to any land clearing, construction, or development.

^{1/} The Flood Control Watershed Management Act of 1976 is a significant geographically oriented authority included in the Program but is not one on which the State can rely for Federal approval at this time because full implementation will not commence until 1980. It establishes a program of comprehensive management of 100-year tidal and non-tidal plains, for the purposes of "preventing and alleviating flood threats to life and health, reducing private and public economic losses, and to the extent possible, preserving of the biological values associated with their land and water resources." Areas of flood-hazard concern will be defined by the Department of Natural Resources. Rules and regulations on activities within such areas are to be adopted by local governments, based on the recommendation of the Department and subject to its approval in the case of interjurisdictional watersheds. In delineation of the 100-year flood plains, priority has been given to riverine flood plains where the danger from flooding is greater than in other areas. Increased attention is now being given to coastal flood plains and the development of management plans that address the concerns associated with such areas which may differ from those associated with riverine flood plains. Table III-3, page 167 of the P/FEIS, gives the completion dates for the detailed delineation of the boundaries.

Water Pollution Control

Section 8-1405 of the Natural Resources Article gives the DNR broad authority to control water pollution including authority to promulgate water quality standards and effluent limitations and to prescribe conditions to be set forth in discharge permits. This authority is exercised subject to Federal requirements which have been incorporated into the Program [Section IV(B)].

The Hazardous Substances Disposal Act

Article NR, Section 8-1413.2, gives DNR the responsibility for defining and designating hazardous substances. Anyone operating a facility for the disposal of a designated hazardous substance must receive a permit from DNR. Anyone who transfers hazardous substances to a disposal facility must receive a certification.

Surface Mining Act

Article NR, Section 7-6A02(a), authorizes the WRA to regulate surface mining of all minerals other than coal to minimize the effects of surface mining on the surrounding environment. Surface mining must not have "an unduly adverse effect on wildlife or freshwater, estuarine or marine fisheries." The Act established a fund for reclamation of surface mine land after mining has ceased (Article NR, Section 7-6A04(a)). The WRA is authorized to adopt regulations, although none have been issued to date as the Act did not take effect until January 1, 1977.

Power Plant Siting Program

The Energy and Coastal Zone Administration, in conjunction with the Department of Health and Mental Hygiene, and the Public Service Commission, studies potential power plant sites for possible environmental effects and formulates preliminary environmental statements on proposed sites. On the basis of these statements, a 10-year power plant site plan is formulated which serves as the basis for the Public Service Commission's licensing of power plants. Sites certified as suitable by DNR are exempted from local zoning regulations (Article NR, Section 3-306.1).

Coastal Facilities Review Act

The Energy and Coastal Zone Administration also has control over administering the Coastal Facilities Review Act (CFRA) (Article NR, Section 6-501 et seq.). Various types of oil or gas pipelines, intermediate production terminals or refineries, storage facilities, operations bases, or fabrication yards for offshore activities must receive a DNR permit before construction may begin. Before a CFRA permit is granted, the requirements of all other DNR permits must be satisfied since the CFRA permit is issued in lieu of those permits. The decision to grant a permit is based upon a number of factors including whether the applicant has shown that the facility conforms to the State's coastal zone management program (Article NR, Section 6-508(a)(8)).

Section 6-502, which sets forth the legislative findings with respect to the siting of coastal facilities, recognizes the importance of Maryland's coastal resources, the need to resolve competing demands upon

the coastal area, the need for adequate planning and the need to consider the national interests in siting facilities. These policy statements closely follow the Congressional findings contained in Section 302 of the Federal Coastal Zone Management Act.^{1/}

C. Acquisition Authorities

Acquisition of various interests for open space, resource protection and development sites (particularly for power plants) has and will continue to play a significant role in coastal management. Maryland has identified various authorities which enable the State to acquire interests in land, waters or other property as necessary to achieve Program objectives. A description of these authorities can be found on pages 412-418 of the P/FEIS. These include:

The Maryland Environmental Trust

The Maryland Environmental Trust, Article NR, Section 3-201, et seq., in DNR, was created for the purpose of conserving, improving, stimulating,

^{1/} Intervention Authority. Article 88C, Section 2, authorizes the Department of State Planning "to intervene in and become a party to any administrative, judicial, or other proceedings in this State concerning land use, development or construction." The Department has the same standing as a party in interest and, in addition, can express the views of the State.

Although this authority does not appear to fall within any of the techniques of control allowed under Section 306(e)(1) of the CZMA and the State relies upon it only to help assure that local restrictions of uses of regional benefit are not "unreasonable" and that "adequate consideration" will be given to facilities in the national interest, it should prove to be a significant tool to guide a wider range of local decisions than those specifically constrained by Program policies, and is included as an authority of the Program. Its operation and utility are described in full on pages 395-400 of the P/FEIS.

and perpetuating the aesthetic, natural, health and welfare, scenic, and cultural qualities of the environment. To carry out its duties, the Trust acquires and maintains properties of aesthetic, scenic, cultural, or public health and welfare value by gifts, purchase, or bequest. The Trust has acquired rights and conservation easements to approximately 5,730 acres of land.

The Maryland Historical Trust

The Maryland Historical Trust, Article 41, Section 181A, et seq., is authorized to acquire, preserve and maintain historic, aesthetic, and cultural properties and buildings "pertaining in any way to the province and State of Maryland from earliest times." The Trust may also accept gifts of property. It has been the policy of the Trust not to acquire fee simple, but rather to seek voluntary historic easements. Several forms of tax incentives are available for easement donation, and for maintaining the character of historic buildings and districts (Article 81, Section 12G).

Program Open Space

Program Open Space, Article NR, Section 5-901 et seq., is the State's land acquisition program for state parks, natural areas, forests and wildlife management areas. Funding for this program is derived from 0.5% State Title Transfer Tax and the sale of State Bonds. This program also utilizes funds made available by the Federal government through the Land and Water Conservation Fund Grant Program. To date, Maryland has received over \$30 million from this fund. The process of selection consists essentially of DNR review of potential sites recommended by other DNR agencies,

state legislators, local governments and the general public. Funds from Program Open Space may be used to acquire lands or property rights in cases where restrictions imposed under the Beach Erosion Control District and Wild and Scenic Rivers Acts are determined to be "takings".

Wildlands Preservation Program

The Wildlands Preservation System, Article NR. Section 5-1203 et seq., authorizes the acquisition of areas to be included within the wildlands preservation system, basically areas of land still in their natural condition and predominantly untouched by civilization. Any State wildlands area must be managed so as to preserve its wildland character. In order for an area to be designated a State wildland, the Secretary of DNR must recommend the designation to the General Assembly. The General Assembly must then enact a bill including the area within the State Wildlands Preservation System. The Secretary may designate and set aside areas in State forests and parks as Wildlands; accept gifts of purchase, or purchase scenic easements on lands or wetlands for inclusion in the State Wildlands system; and acquire privately owned land within the perimeter of a wildland with the consent of the owner (N.R. Section 516-517).

Power Plant Siting Program

Article NR, Sec. 3-305(b), authorizes DNR to acquire appropriate sites by agreement or condemnation based on existing research findings and a site suitability study which must be completed within two years of the time the site is identified. To date, the Department has acquired one site, is in the process of acquiring another, and is identifying

additional sites on Maryland's Eastern Shore. Sites may be used on an interim basis for public recreational facilities and fish and wildlife refuges.

Maryland Industrial Land Act

Article 49, Section 439(b), establishes a program of financial assistance to local governments for the purpose of acquiring land for industrial development use. Land acquired through the Industrial Land Loan Fund must be suitable for industrial use in a manner consistent with existing state and local law and regulations, and once acquired, it may not be used for purposes other than industrial growth. Actual acquisition is to be carried out by the local unit involved. A fund of \$6,000,000 has been made available for this program.

D. Adequacy of Authorities

The OCZM regulations [15 CFR 923.42(d)(1)] allow a State to base its program on existing laws and regulations provided that they are sufficiently broad to implement the Program's policies.

The coastal policies to be implemented by these authorities can be found in Chapter III of the P/FEIS. They have been derived from Maryland laws and regulations as evidenced by the references to the authority from which each policy is derived found in Chapter III. I find no evidence that any policy is not fully supported by these authorities.

All agencies exercising implementation responsibilities are required to do so in conformance with the Program's policies, pursuant to 15 CFR

923.40(b). Many of the policies derive directly from statutory or regulatory language and are therefore subject to enforcement by court challenge. When policies represent refinements or extensions of statutory or regulatory language, the Governor's Executive Order and the Secretarial Order require compliance. The Memoranda of Understanding further clarify and ensure compliance of agency decisionmaking with coastal policies. The legal analysis incorporated as a part of the Maryland Program indicates that these Orders are legally enforceable.

- (B) The State has incorporated into its Program requirements established pursuant to the Federal Clean Water Act, as amended, and the Clean Air Act, as amended.
(Section 307(f); 15 CFR 923.44)

The Program incorporates the State's existing regulatory programs under the Federal Clean Water Act and the Federal Clean Air Act. (See the Executive Summary, Chapter III, Section A; Chapter VI, page 336; Chapter VIII, pages 400-401; comment #2, page XLI of the P/FEIS; and Appendix F, pages F47 - F49 of the P/DEIS).

- (C) The Program provides "for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit."
(Section 306(e)(2); 15 CFR 923.13 and 923.43)

Table VI - 2 on page 338 of the P/FEIS lists the following uses which the State considered to be of regional benefit: electric generating facilities, transmission lines, wastewater treatment plants, recreation, and transportation facilities. The methods that can be used to assure that local land and water use regulations do not unreasonably restrict these uses are identified in this table and described in more detail on pages 431-435 of the P/FEIS.

Under the Power Plant Siting Program, sites certified by DNR as suitable are exempted from local zoning regulations. In addition, DNR can acquire sites by condemnation. Following acquisition, the Secretary of DNR, together with the appropriate officials of the localities through which associated transmission facilities will pass, must designate utility corridors for incorporation into local plans.

Counties are required to prepare water and sewer plans that provide for orderly expansion and adequate sewage treatment facilities; these plans are subject to State approval (Article 43, Section 387C). If necessary, the State can acquire, construct, and operate such facilities directly, not subject to local control. Both State recreational and transportation facilities are effectively exempt from local control.

Section V - Coordination, Public Involvement, and National Interests
(15 CFR 923, Subpart F)

- (A) During the process of Program development, the State has provided the opportunity for full participation by relevant government agencies having interests and responsibilities affecting the coastal zone, all interest groups, and the general public, and has held public hearings on the Program. (Sections 306(c)(1), 306(c)(3); 15 CFR 923.50-923.55, 923.58)

Maryland's Coastal Zone Unit has maintained open channels of communication with all interested Federal agencies for discussion and resolution of technical and policy matters. The results of this early communication are catalogued in the worksheets in Appendix F of the DEIS. These worksheets digest each Federal Agency's interests in the Program and present the Program's response to these interests. More formal contact has been initiated since early 1976. A contact timetable can be found on pages 324 and 325 of

the P/FEIS.

During Program development, Maryland coordinated the Program with other state agencies through the Coastal Resources Advisory Committee (CRAC). The extensive language of the MOU's negotiated by DNR with other important state agencies is an indication of the degree of coordination undertaken.

Local units of government participated in the development of the Program in a number of ways and will continue to be involved during Program implementation. The mayors of Baltimore and Ocean City, the executives and commissioners of the 16 coastal counties, or their designees, are members of the Coastal Resources Advisory Committee (CRAC) which advises the Secretary of DNR on policy aspects of the CZMP. Technical assistants have been established on a county basis to assist counties in participation in the Program. An example of the close cooperative relationship between local governments and the Program is the Baltimore Metropolitan Coastal Area Study which developed a wide range of policies to address coastal issues. Many of the results of this study, which includes Baltimore City and three adjacent counties, were incorporated into the Maryland CZMP. The study serves as a means to factor coastal management concerns into local comprehensive planning activities and the Regional General Development Plan and as a means to implement coastal zone management goals and objectives into the local governments' day to day activities such as planning, permitting, licensing, capital programming and budgeting. (See pages 308-321 of the P/FEIS for additional information on local government involvement.)

Citizens, agencies, and groups also participated in Program development by serving on CRAC, by reviewing Program documents and by participating in various public meetings and hearings.

Four public hearings were held in July 1977 on the Draft Coastal Zone Management Program with additional public hearings held on the Final Program in January 1978. Four public hearings were also held by OCZM on the P/DEIS. All comments received on the P/DEIS were considered by Maryland and OCZM. Specific responses are provided in the comments and responses section, Part I of the P/FEIS.

(B) The views of the Federal agencies principally affected by the Program have been adequately considered.
(Section 306(c)(1), 307(b); 15 CFR 923.51)

Pages 322-364 of the P/FEIS and Appendix F of the P/DEIS demonstrate that Maryland has contacted relevant Federal agencies concerning the Program, provided timely opportunities for relevant participation in and input to Program development by those agencies and advised those agencies of public hearings on the Program. Of the Federal agencies which commented on the P/DEIS [NRC, DOE, Army Corps of Engineers, DOI, FERC, EPA, DOT and DOC (NIEFS)], DOI, EPA, DOE and FERC had major comments. The following is a summary of major comments on the P/DEIS:

1. The Program should expand its definition of Uses of Regional Benefit to include the scope of consideration currently provided for siting and operation of energy facilities instead of only power plants. (See Response #1, DOE and Response #4, FERC) This comment was raised by both DOE and FERC. With the passage of the Power Plant Siting Act, the Maryland

Legislature established that power plants were clearly a use of regional benefit which should not be arbitrarily excluded by local governments. Through the passage of the Coastal Facilities Review Act (CFRA), the Legislature recognized the need for siting oil facilities in environmentally suitable areas, but did not recognize oil facilities as uses of regional benefit that would necessitate a state override of local decisions. Energy facilities other than power plants are defined as facilities which may be in the national interest and will receive adequate consideration under the Program. Upon analysis by OCZM, this approach to the Uses of Regional Benefit requirement was found to be adequate.

2. The Governor's Executive Order does not apply to the Board of Public Works, an independent agency comprised of the Governor, the Comptroller and the State Treasurer. This Board has two important responsibilities: (a) it approves all disposition of State lands including wetlands; and (b) it approves the expenditure of all sums appropriated through State loans and general funds for capital investment and expenditure. (DOI Response #1)

OCZM agreed with the assertion that the Board is not covered by the Executive Order. As a condition of approval, OCZM is requiring that the Board review and approve the Program by March 1, 1979. The Board's approval of the Program is not essential prior to OCZM approval since it must comply with the requirements of the Wetlands law for permits in State wetlands and since the relevant agencies, whose public investment proposals it must approve, are already bound to the Program policies.

3. The Program does not have an effective or legally enforceable system for resolving conflicts, and it may not have adequate legal authorities to control development in the coastal zone. (EPA Response #11)

Controls over tidal wetlands, beaches and dunes, air and water, public investment, major facility siting, sedimentation and flood areas combined with other State authorities give Maryland broad control over the use of coastal resources. Conflicts within DNR will be resolved by the Secretary of DNR, and conflicts between DNR and other agencies will be resolved by the Governor. (See Executive Order, Secretarial Order and MOU's).

In addition to the eight Federal agencies that commented on the P/DEIS, comments were received from three state and local entities, five interest groups, two industrial/economic development groups and one individual. Representing environmental issues, major comments were submitted by the Maryland Wetlands Committee, the Chesapeake Bay Foundation and the Natural Resources Defense Council. The Maryland Petroleum Council submitted the most detailed comments of the industrial groups and the County Commissioners of the four lower Eastern Shore counties submitted indepth comments. All of these comments were carefully considered by OCZM in close cooperation with Maryland's Coastal Zone Unit, and specific responses are provided in the comments and responses section, Part I. Comments on the FEIS from Federal agencies are included in Attachment A.

- (C) The 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, the coastal zone) which are necessary to meet requirements which are other than local in nature. The State has the means to give consideration to any applicable interstate energy plan or program. (Section 306(c)(8); 15 CFR 923.52)

On pages 327-338 of the P/FEIS, Maryland describes how facilities and resources of national interest were considered during Program development.

Pages 331-337 of the P/FEIS note in a table those coastal activities and resources in which there may be a national interest and provides a summary of how the Maryland Program will address these national interests. A full project evaluation will be done on any facilities in which there is a clear national interest. Project evaluation is the means of weighing the various interests and concerns, including national interest, in decisions involving coastal facilities. Federal agency representatives will be invited to participate in these evaluations. This process will be both the technical analysis and the issue analysis necessary for the State to develop a position on a given facility, specifically on whether the permits and approvals necessary will be granted, denied, or granted with conditions. These activities and resources are as follows: energy production and transmission, national defense and aerospace, interstate transportation, production of food and fiber, recreation, historic, cultural and archeological values, preservation of life and property, mineral resources, regional sewage treatment plants, air and water quality, wetlands, barrier islands, endangered species and wildlife refuges.

As noted on page 329 of the P/FEIS, "in all cases where there is an identifiable national interest in a State or local decision, the State will weigh carefully these concerns through the project evaluation process" (described on pages 60-66 of the P/FEIS).

The previously mentioned Major Facilities Study will be used in consideration of national interest facilities as a part of project evaluation and will be used to consider the proposed site in contrast to other sites. The Department of State Planning will consider the national interest in the exercise of its intervention authority, and is bound through the MOU with DNR to honor all requests for intervention by DNR. The Secretarial Order requires that the Energy and Coastal Zone Administration "ensure that national interest considerations are taken into account during project evaluation", and the Executive Order requires that State agencies participate in project evaluation.

- (D) The State has coordinated its Program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the Program was submitted for approval. (Section 306(c)(2); 15 CFR 923.56)

Maryland has coordinated its Program with the county comprehensive plans and with areawide plans applicable to its coastal area existing on January 1 of 1978 through review of local plans by the Program's local technical assistance staff and by wide circulation of the Program to advisory groups, regional planning and development agencies and to the local units of government.

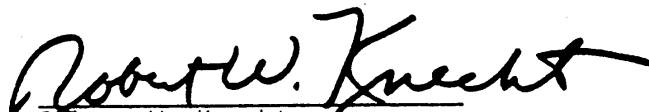
- (E) The State has established an effective mechanism for continuing consultation and coordination between the State and local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of the CZMA. (Section 306(c)(2)(B); 15 CFR 923.57)

Maryland will assure continued consultation and coordination with local governments by providing full time technical assistants to each of the local governments and by involving the locals in project evaluations and program review. Local involvement will continue in CRAC, thus ensuring consultation and coordination concerning any changes in the Program policies.

Interstate, regional and areawide agencies within the coastal zone receive notification of project evaluation and program reviews and any public hearings associated with the Program.

VIII. Conclusion

Having made the findings set forth above, and having determined that the Maryland Coastal Management Program meets the requirements of the Coastal Zone Management Act of 1972, as amended, and its implementing regulations, I have approved this Program on behalf of the Secretary of Commerce, effective SEP 28 1975.



Robert W. Knecht
Assistant Administrator for
Coastal Zone Management

Attachment A

Federal Agency Comments on the FEIS

Five Federal agencies commented on the P/FEIS: the Department of Interior (DOI), the Department of Energy (DOE), the Environmental Protection Agency (EPA), the National Marine Fisheries Service (NMFS) and the Department of the Army.

DOI expressed strong support for approval of the Program. They also indicated concern over the lack of State regulatory authority over private non-vegetated tidal wetlands and over freshwater wetlands located beyond the 100 year floodplain. We agree with DOI concerning the lack of control over non-vegetated tidal wetlands and will work with the State during the first year of Program implementation in considering the possible extension of State authority over these areas. While the freshwater wetlands beyond the 100 year floodplain are extremely important both biologically and hydrologically, we do not currently have the authority under the Federal law to require that they are managed under the Coastal Program.

DOI also recommended that criteria be developed during the first year of implementation for the restoration of wetlands. We also agree with this comment and will work with Maryland to develop them.

DOE also expressed support for Program approval noting that the FEIS had been substantially responsive to their comments. DOE requested that an additional provision for assessment of "unreasonable local restrictions" be included in the Program prior to approval. We have determined that this is not necessary given the extensive discussion in the P/FEIS on the State's intervention authority. OCZM will encourage Maryland to study the

need for such a provision during the first year of Program implementation.

Although EPA commented that the FEIS was not fully responsive to some of their comments, they recommended that OCZM, the State and EPA meet to resolve differences after Program approval rather than delay approval. OCZM will arrange such a meeting. EPA's comments are in fact minor; they relate to possible limitations in the Maryland Coastal Zone Unit's enforcement and monitoring ability, which I believe are met by the Secretarial Order.

NMFS commented that the Program failed to discuss offshore mining. We agree that this is an oversight which Maryland will consider during the first year of Program implementation.

The Department of the Army found the FEIS "to be generally adequate" but noted the following points which needed clarification: (1) there may be insufficient controls for implementation and inadequate mechanisms for conflict resolution, and (2) the boundaries are preliminary so that predictability in consistency decisions is uncertain.

In response to comment #1, I have found the Program to be comprehensive with adequate conflict resolution mechanisms contained in the Executive Order, the Secretarial Order and the Memoranda of Understanding. For comment #2, I have found that, for consistency purposes, the boundary includes the jurisdictions of the 16 coastal counties and Baltimore City. The Army's concern relates to the two counties which do not yet have designated areas of focus. During the first year of implementation, areas of focus designation will be required in these two counties. The area of focus is used primarily to determine when project evaluations will

occur. In both Dorchester and Cecil Counties, the need for a project evaluation will be considered by the CZU in all cases needing a variance from the local plan.

The remaining comments relate to certain language changes or procedural changes requested for inclusion in the Maryland Program. OCZM will forward these comments to the Coastal Zone Unit for action during the first year of implementation.