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MODELS FOR IMPLEMENTING THE CZMA'S CONCEPT OF STATE-LOCAL RELATIONS

LEE E. KOPPELMAN*

Problems of coastal zone planning,¹ such as pollution control and land use regulation, are complicated by the number of discrete federal, state, and local governmental units possessing jurisdiction over the zone. The Coastal Zone Management Act² encourages development of a governmental structure to manage the coastal zone by requiring that participating states include within their comprehensive management plan a description of the governmental units administering the program and the methods chosen for controlling land and water uses within the coastal zone.³ The Act specifies the available forms of state control: direct regulation by the state, local regulation in accordance with state-established standards, and local regulation subject to state review.⁴ This Article will address the

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1. A majority of the nation's population, 53 percent, now reside in the coastal zone, defined as the 50-mile-wide belt of land adjacent to the oceans, the Gulf of Mexico, and the Great Lakes. Some population projections have estimated that approximately 80 percent will live in the coastal zone by the year 2000. S. Rep. No. 753, 92d Cong., 2d Sess. 2 (1972).

2. 16 U.S.C. §§ 1451-64 (Supp. II, 1972). General federal land use planning also has received congressional attention. See, e.g., Land Resources Planning Assistance Act, S. 984, 94th Cong., 1st Sess. (1975); Land Use and Resource Conservation Act, H.R. 3510, 94th Cong., 1st Sess. (1975); Land Use Policy and Planning Act, H.R. 634, 94th Cong., 1st Sess. (1975).

3. 16 U.S.C. § 1454(a)(4) (Supp. II, 1972).

4. Section 306(e) provides:

Prior to granting approval [of the state's coastal zone management program], the Secretary [of Commerce] shall also find that the program provides:

(1) for any one of a combination of the following general techniques for control of land and water uses within the coastal zone;

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

(B) Direct state land and water use planning and regulation; or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(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.

Id. § 1455(e).

latter two options for coastal zone management. It is submitted that, with modification to meet local needs, these two will best serve the states in their efforts to achieve a reasonable and consistent measure of control over developmental policies and actions in the coastal zone.

SELECTION OF A MANAGEMENT PLAN

Political Considerations

The Act does not specify that politics must be considered in choosing a form of control, but practically the choice will not be made until state legislators have weighed the political considerations of each course of action.⁵ For a coastal zone management plan to be effective, it must be politically acceptable as well as technically competent; any plan that cannot take the "political heat" is almost assured of defeat, decline, or impotency.

The factors that must be considered in selecting the appropriate form of coastal zone management are many, and they extend beyond simply the number of governmental agencies with authority over the coastal zone and activities within that area. Besides federal, state, and local governments with direct authority, there are regional and local planning boards which may exercise advisory or regulatory controls over land uses. If the coastal zone presents an environmentally cohesive area, such as Long Island Sound or the Chesapeake Bay, the political considerations are complicated by the need for coordination with contiguous states that share the coastal zone.

The home rule practice of the states also is relevant to the choice of a form of control and would appear to eliminate the first option specified by the Coastal Zone Management Act, direct state control, except where such control is limited to a certain function, such as nuclear plant siting or maintenance of wildlife preserves. Despite "Dillon's Rule" that municipalities are but "creatures of the state,"⁶

5. Secretary of State's Advisory Committee on Education, Social and Cultural Aspects of Environmental Problems, Staff Issue Paper (1972), *quoted in* Krueger, *Coastal Zone Management—The California Experience*, SHORE & BEACH, Oct. 1972, at 18.

6. "Dillon's Rule" holds that the general police powers of local governments to adopt ordinances for the prevention and abatement of nuisances and to regulate "all things detrimental to the public" usually are construed very narrowly with the result that local zoning and land use regulations may be emasculated by the courts. Thus, although local governments may refuse to relinquish their regulatory powers, they yet may be powerless to effect a

any attempt to curtail or abrogate local zoning and planning prerogatives would face vigorous, possibly overwhelming opposition. Most land use and development controls are vested in municipalities as the result of a long history of enabling legislation. Recent state statutes which have established comprehensive or regional land use plans have followed this pattern and rejected direct state control for one of the latter two options outlined in the Coastal Zone Management Act, state establishment of environmentally critical areas and developments followed by local implementation,⁷ or local initiation of plans, guidelines, and control with state review and approval required for specific classes of actions.⁸ Only Hawaii has established

coercive coastal zone management plan. See Heath, *Legal and Institutional Considerations*, in COASTAL ZONE RESOURCE MANAGEMENT 55 (J. Hite & J. Stepp eds. 1971).

Another aspect of "Dillon's Rule" concerns due process and just compensation in local government zoning and land use regulation. Any stringent limitation on land use pursuant to a local coastal zone management plan raises the possibility that courts will overturn it as a taking of property without due process and just compensation inasmuch as state courts traditionally have been inclined to give property owners a wide range of alternative uses. See *id.* at 65-66. A classic statement of this doctrine was given by the New York Court of Appeals in *Arverne Bay Constr. Co. v. Thatcher*, 278 N.Y. 222, 232, 15 N.E.2d 587, 592 (1938): "An ordinance which permanently so restricts the use of property that it cannot be used for any reasonable purpose goes, it is plain, beyond regulation, and must be recognized as a taking of the property."

A possible solution to this problem is that utilized by several states in their land use programs, the establishment of a state agency to issue permits for development within the coastal zone, with the burden of proof on the applicant to establish that the proposed development will have no adverse environmental effect and that it is in conformity with long-range plans for development of the state coastal zone. See, e.g., CAL. PUB. RES. CODE § 27402 (West Supp. 1975); N.Y. ENVIRONMENTAL CONSERVATION LAW § 25-0402 (McKinney Supp. 1974). This approach has been described as the best solution to due process and just compensation. Note, *State and Local Wetlands Regulation: The Problem of Taking Without Just Compensation*, 58 VA. L. REV. 876, 905 (1972). Courts have upheld exercise of permit authority under coastal zone management plans as a valid use of the police power. See, e.g., *Candlestick Properties, Inc. v. San Francisco Bay Conserv. & Dev. Comm'n*, 11 Cal. App. 3d 557, 89 Cal. Rptr. 897 (Ct. App. 1970); Horn, *Questions Concerning the Proposed Private Land Use and Development Plan for the Adirondack Park*, 24 SYR. L. REV. 989, 997 (1973). See also Note, *Coastal Wetlands in New England*, 52 B.U.L. REV. 724, 752-61 (1972). The *Candlestick Properties* case upheld the permit authority of one of the first coastal zone management plans, the San Francisco Bay Conservation and Development Commission. See CAL. GOV. CODE §§ 66600-53 (West Supp. 1975); Note, *Saving San Francisco Bay: A Case Study in Environmental Legislation*, 23 STAN. L. REV. 349 (1971).

7. See, e.g., Coastal Zone Conservation Act of 1972, CAL. PUB. RES. CODE §§ 27000-650 (West Supp. 1975); Site Location of Development Act of 1970, ME. REV. STAT. ANN. tit. 38, §§ 481-88 (Supp. 1973); Coastal Area Facility Review Act of 1973, N.J. STAT. ANN. §§ 13:19-1 to -29 (Supp. 1975); Tidal Wetlands Act of 1973, N.Y. ENVIRONMENTAL CONSERVATION LAW § 25-0101 to -0602 (McKinney Supp. 1974); VT. STAT. ANN. tit. 10, §§ 6001-91 (1973).

8. See, e.g., Environmental Land and Water Management Act of 1972, FLA. STAT. ANN.

state control of planning and zoning.⁹

The state's home rule practice is, of course, relevant to the choice between the more limited forms of state participation in coastal zone management. It can be expected that states with weak executives, strong home rule traditions, and relatively small bureaucracies would select local control in accord with state-established standards. Conversely, states with strong executives, weaker local governments, and powerful bureaucratic structures would opt for state review of local actions.

Guidelines for Coastal Zone Planning

Regardless of which form of control is chosen, planners may face obstacles to effective regulation of coastal zone areas in the form of controls based upon environmental standards. Given the embryonic state of environmental science, such standards necessarily are indefinite and thus may not be judicially acceptable reasonable standards for governmental action. Without specific environmental evidence, such standards may be difficult for public agencies to defend in litigation.¹⁰

§§ 380.012-.10 (1974). State-established standards are involved in two classes of land activity: development of state-designated areas of critical state concern and developments with regional impact which are identified by such variables as the size of the site, the unique qualities of the particular area, and the likelihood of additional development. In both classes of activities, local governments make the initial development decisions in compliance with state standards. It has been pointed out that these two categories will be inapplicable to the vast majority of land development decisions in Florida. Finnell, *Saving Paradise: The Florida Environmental Land and Water Management Act of 1972*, 1973 URBAN L. ANN. 103, 117.

9. Hawaii has enacted legislation establishing a State Land Use Commission with authority to place all lands into one of the following four classifications: urban, rural, agricultural, and conservation. The first three types are under local control for planning and zoning purposes; the fourth, under the control of the State Land Use Commission. HAWAII REV. STAT. §§ 205-1 to -15 (Supp. 1974).

10. Most of the coastal zone statutes are worded in a fashion similar to California's statute which provides that no permit for development within the coastal zone shall be issued unless the regional commission has found that the proposed development "will not have any substantial adverse environmental or ecological effect." CAL. PUB. RES. CODE § 27402(a) (West Supp. 1975). This wording requires courts reviewing decisions of the regional commissions to determine what constitutes a "substantial adverse environmental effect." The problem is even more acute with section 27402(b) which requires the development to be consistent with "the findings and declarations set forth in section 27001 and the objectives set forth in section 27302." *Id.* § 27402(b). These objectives are even more vague; they include maintaining the overall quality of the coastal zone, continuing all species of living organisms, avoiding any irreversible commitment of resources, and continuing the orderly and balanced preservation of the coastal zone. *Id.* § 27302. Giving substance to these vague statements to guide develop-

Two separate studies that attempt to deal with this problem are nearing completion. The Department of Housing and Urban Development (HUD) in a jointly funded project with the United States Geological Survey has produced a set of earth science maps with interpretive reports for the San Francisco Bay area.¹¹ The subjects of the study include coastal geomorphy, erosion, seismicity in the coastal zone, offshore geology, dune identification, sand supply data, groundwater and wastewater management, and general mapping. This material is designed to test the application of natural science information as a resource for the planning process and to enable planners and land use managers to develop guidelines and standards in a more rigorous fashion.¹²

The second project, conducted in the Long Island area, also is sponsored by HUD.¹³ It is aimed not at developing scientific data, but at translating such data into information that planners and policymakers can utilize effectively. These groups must determine the relevance and applicability of scientific data because of the reluctance of many natural scientists, either by training or personal philosophy, to present their findings in other than technical language or to discuss the normative and policy implications of their work.¹⁴ The essential objectives of the project include the following:

1. To determine the probable environmental impact of the Comprehensive Development Plan on the marine resources of Long Island and to determine the influence of the marine environment on the land uses and functional components of the Plan.

ment decisions presents a challenge to both coastal zone management planners and the courts, and effective management may be inhibited until definite environmental standards are established. "Until technically unassailable standards can be developed, the courts lack sufficient guidelines for decisions concerning what represents 'substantial damage' or 'serious problems.'" M. LEVIN, J. ROSE, & J. SLAVET, *NEW APPROACHES TO STATE LAND-USE POLICIES* 29 (1974).

A related problem concerns defining the coastal zone. See Heath, *supra* note 6, at 64. States have solved this problem differently. California defined its coastal zone as extending from the highest elevation of the nearest coastal mountain range to three miles out to sea; in some areas the zone extends five miles inland. CAL. PUB. RES. CODE § 27100 (West Supp. 1975). New Jersey defined its coastal area in great detail, N.J. STAT. ANN. § 13.19-4 (Supp. 1975).

11. HUD & United States Geological Survey, *San Francisco Bay Region Environment and Resources Planning Study*, Draft for Review and Comment (1973).

12. *Id.* at 1.

13. A METHODOLOGY TO ACHIEVE THE INTEGRATION OF COASTAL ZONE SCIENCE AND REGIONAL PLANNING (L. Koppelman, Project Director 1974).

14. *Id.* at 10.

2. To identify and recommend modifications to the Plan which can minimize its adverse effects on marine resources.

3. To recommend an institutional framework for implementing the modified Plan based on an assessment of political and economic feasibility.

4. To evaluate the transferability of the project's methodology and findings.

5. To prepare a set of guidelines for the integration of comprehensive planning and coastal zone management which can assist decision-makers in other areas.¹⁵

The last point was thought to be particularly important, since one of the major responsibilities of the states in coastal zone management is the development of criteria and guidelines to be used by local governments to ensure conformity with state objectives.

Management Considerations

Before evaluating specific models, the general components of management should be noted. Rational coastal land use control implies the existence of at least the following: a set of goals or purposes, a set of standards to gauge performance, a land use and conservation plan or statement of performance objectives, a set of definitions and designations of major critical areas, a fiscal and legal program to ensure administrative performance and continuity, designated limits for the coastal zone jurisdiction, and an administrative structure properly related by jurisdictional levels. In short, rational control implies knowledge of what is to be controlled, and how and why it is to be controlled. Since most participants in coastal zone management are just beginning their efforts, however, and still have more questions than answers, it is evident that some interim provisions must serve until all elements of a successful plan are available.

One such interim approach toward meeting the Coastal Zone Management Act's requirement of a management program would be to aggregate all current legislation, regulatory procedures, and administrative processes into a single measure. Presently scattered provisions pertaining to erosion control, wetlands regulation and maintenance, and dredging and filling permits, for example, could be drawn together into an interim plan. Another possibility is the

15. *Id.* at 10-11.

imposition of a short-term moratorium against development in the coastal zone until overall plans are approved, although this option should be pursued carefully to avoid infringement of private rights.¹⁶ The necessity is for state and local governments to have plans that indicate specific areas for specific uses consonant with the exercise of the police power normally associated with local zoning control.¹⁷ At the state level the regulatory function could be provided by a procedure of state review of local planning and control as has been done in California.

LOCAL REGULATION SUBJECT TO STATE REVIEW: CALIFORNIA

The California Advisory Commission on Marine and Coastal Resources, created under the Marine Resources and Conservation Act of 1967,¹⁸ produced a recommended list of principles to guide enactment of coastal zone legislation.¹⁹ It concluded that planning and management is and should be primarily the responsibility of local government.²⁰ The state should augment this role by establishing the various "use" criteria and designating areas of critical concern.²¹ Further, a state board, composed of both expert and lay members, should review and certify local conformity to the state guidelines.²² The Commission also recommended that the state board have power to require the periodic updating of local plans.²³

This early work set the tone for a citizens' effort through the referendum process to create a California Coastal Zone Conservation Commission.²⁴ The law created six regional commissions that

16. This approach was followed by the New York Tidal Wetlands Act of 1973, which placed a moratorium on alteration of the tidal wetlands of the state until the Commissioner of Environmental Conservation could develop an inventory of the tidal wetlands and, in cooperation with local governments, a program for their protection and regulations for their use. N.Y. ENVIRONMENTAL CONSERVATION LAW § 25-0202 (McKinney Supp. 1974). In 1970 Oregon Governor Tom McCall imposed a moratorium on state activities in the coastal zone while the planning process continued. Heath, *Descriptions of Illustrative State Programs of Estuarine Conservation*, in COASTAL ZONE RESOURCE MANAGEMENT 162 (J. Hite & J. Stepp eds. 1971).

17. Cf. note 6 *supra* & accompanying text.

18. Cal. Stats. 1967, ch. 1642, p. 3934, § 1.

19. Krueger, *Coastal Zone Management—The California Experience*, SHORE & BEACH, Oct. 1972, at 17-18.

20. *Id.* at 17.

21. *Id.* at 18.

22. *Id.* at 17-18.

23. *Id.* at 18.

24. The California Coastal Zone Conservation Act was passed as "Proposition 20" in the general election held November 7, 1972, with a more than 55-percent majority. Statutory

follow county lines and have twelve members, six locally elected officials and six members drawn from the general public.²⁵ A twelve-member state commission also was established with equal representation from the public and the regional commissions.²⁶ By December 1975, the state commission is to submit a comprehensive plan to the legislature for approval.²⁷ During the interim period the regional bodies are authorized to veto or modify all proposed development between the three-mile territorial limit in the ocean and a line 1000 yards inland from the mean high water mark.²⁸ Aggrieved parties can appeal regional actions to the state commission.²⁹ Part of the development plan will be an implementation segment with recommendations for needed legislation, funding, and government organization.³⁰ The statute also defined the coastal zone to include the area between the three-mile territorial limit at sea and inland to the highest elevation of the nearest coastal mountain range; in some

Comment, *Coastal Controls in California: Wave of the Future?*, HARV. J. LEGIS. 463, 464 (1974). For a participant's view of the campaign for its passage, see Adams, *Proposition 20-A Citizen's Campaign*, 24 SYR. L. REV. 1019 (1973).

25. CAL. PUB. RES. CODE § 27201 (West Supp. 1975).

26. *Id.* § 27200.

27. *Id.* § 27320.

28. *Id.* § 27400 (permit requirement); *id.* § 27403 (power to modify permits to ensure the following: access to public beaches; reservation of public recreation areas and wildlife preserves; mitigation of adverse effects from waste treatment and disposal; mitigation of adverse effects upon scenic resources; and avoidance of danger from floods, erosion, landslides, siltation, or earthquakes).

The six regional commissions received 6236 permit applications during 1973. The great majority, 5191, were granted, 146 were denied, and 899 remained to be processed at the end of the year. According to the state commission's annual report, such a high percentage of permits was granted because a large number of permits were for relatively small developments with minimal environmental consequences and many permits were modified to conform with the Act's requirements, either as a condition to their approval or before their formal submission to the regional commission. 1973 CAL. COASTAL ZONE CONSERV. COMM'NS ANN. REP. 7 [hereinafter cited as ANN. REP.].

29. CAL. PUB. RES. CODE § 27404 (West Supp. 1975). During 1973, 263 decisions of regional commissions were appealed to the state commission. The state commission declines appeals unless a substantial issue is presented according to the following criteria: there is substantial, undisputed evidence to support a decision contrary to that of the regional commission; a procedural question is involved; a matter of statewide import is involved with a consequent need for uniformity; or the regional commission decision would adversely affect the coastal zone plan. ANN. REP., *supra* note 28, at 8.

30. CAL. PUB. RES. CODE § 27304(e) (West Supp. 1975). Among the other issues which must be addressed in the plan are land use, transportation, conservation of scenic and natural resources, public access to recreation, public services and facilities, ocean mining and living resources utilization, population distribution, and educational and scientific uses of the coastal zone. *Id.* § 27304.

regions of the state the zone may be limited in its inland extension to five miles if there is no mountain range within that distance from the sea.³¹ Figure 1 depicts the California model.

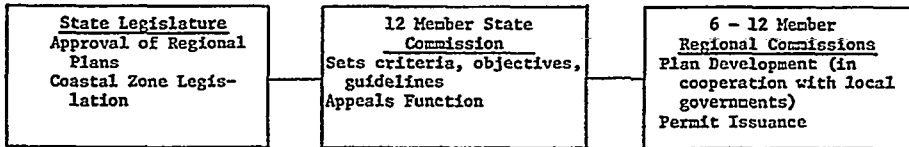


Figure 1 - LOCAL PLAN DEVELOPMENT & REGULATION SUBJECT TO STATE REVIEW

The California model is not easily transferrable to all other states, however. It is attractive because of its basic simplicity, state-wide application, and visible state participation. It also respects local needs through the regional agencies. The model has such appeal that a bill patterned on it has been introduced in the New York legislature.³² The New York proposal is sorely deficient in several respects, however. It attempts to shift zoning and development controls from the local government to the state,³³ while at the same time assuring local governments that local initiatives could continue if they were consistent with state requirements and were not of a "critical" nature.³⁴ In short, the New York bill attempts to achieve simultaneously two mutually incompatible objectives and becomes involved in very complex and lengthy drafting, running to 101 pages.

31. *Id.* § 27100.

The California Coastal Zone Conservation Act has attracted wide comment. *See, e.g.,* Statutory Comment, *Coastal Controls in California: Wave of the Future?*, 11 HARV. J. LEGIS. 463 (1974); Note, *Saving the Seashore: Management Planning for the Coastal Zone*, 25 HASTINGS L.J. 191 (1973); Note, *A Decision-Making Process for the California Coastal Zone*, 46 S. CAL. L. REV. 513 (1973).

32. New York State Coastal Zone Management Program Act, S. 9586 (1974).

33. *Id.* §§ 21, 24.

34. Local governments are given jurisdiction over permits for "Class C" projects, subject to review by the state commission and regional board. *Id.* § 24(9)(b). Class C developments are defined as alterations in existing structures not in excess of a 25-percent increase in size or value; maintenance of existing navigational channels; a public facility located within the jurisdiction of a local government primarily for the benefit of its residents; any educational institution primarily serving residents of a local government; and any segment of the transportation system not used primarily for regional or state transportation. *Id.* § 25(3).

Application of the California model to New York is clouded further by New York's strong and multiple enabling statutes, including provisions for charter county governments whose development control measures take precedence over the general municipal laws of the state. Undoubtedly, the functional and structural changes called for by the proposal would require omnibus action by the legislature and numerous referenda. In such a context there is a need for an approach that can overcome the defects of uncoordinated, fragmented, and often unexercised municipal authority, while according with the mythology of local planning and control.

LOCAL CONTROL PURSUANT TO STATE STANDARDS: SUFFOLK COUNTY

Since 1965 the Suffolk County (N.Y.) Planning Commission has participated in a bicounty planning effort to create a comprehensive land use development plan with specific attention addressed to coastal zone planning.³⁵ Incorporated within the overall plan were detailed guidelines for management of the coastal zone.³⁶ The effort recognized the need for an effective management mechanism to achieve control over coastal zone development and attainment of the plan's objectives, anticipating in a sense the Coastal Zone Management Act. The approaches developed provide a prototype of a county-municipal development plan, using various regulatory procedures to be enacted by local governments generally in accordance with locally designed criteria and applicable state standards. The local coastal zone plan has been coordinated with the overall state responsibilities for coastal zone planning and represents the Nassau-Suffolk portion of the state plan.

As an alternative to assumption of zoning powers by the state, the role assigned the county or region by this model nonetheless represents an incremental shift of development control to a level higher than the municipal government. Various public referenda between 1959 and 1972 have transferred from the municipalities to the

35. The Nassau-Suffolk Regional Comprehensive Plan was completed in 1970. Provisions dealing with land use, transportation, housing, and industry appear in *A METHODOLOGY TO ACHIEVE THE INTEGRATION OF COASTAL ZONE SCIENCE AND REGIONAL PLANNING* 41-59 (L. Koppelman, Project Director 1974).

36. See Regional Marine Resources Council, Nassau-Suffolk Regional Planning Board, *Guidelines for Long Island Coastal Management*, Sept. 1, 1973. The planning guidelines deal with four areas: coast stabilization and protection; dredging and dredge spoil disposal; integrated water supply and wastewater disposal; and wetlands management.

county planning agency zoning and subdivision powers including review of all such matters within 500 feet of the shoreline, all major highways, county and state facilities, and municipal boundaries.³⁷ Regarding municipal boundaries, the county's action is conclusive.³⁸ Projects within one mile of critical areas, such as airports and nuclear power plants, also are subject to county review.³⁹

The Suffolk County model was not the only available alternative. The State of New York currently exercises a variety of discrete operational and regulatory activities through three separate agencies, each independent of the others. These activities all funnel through the county planning agency. The initial needs of a management plan thus could be met by the promulgation of an executive order of the Governor or by statute which could merge the separate operations under the aegis of a state board, perhaps the state agency responsible for development of the statewide coastal zone plan. In practice, however, the local model used in conjunction with specific state functions offers a more workable alternative to centralized state planning review.⁴⁰ Figure 2 depicts the New York model.

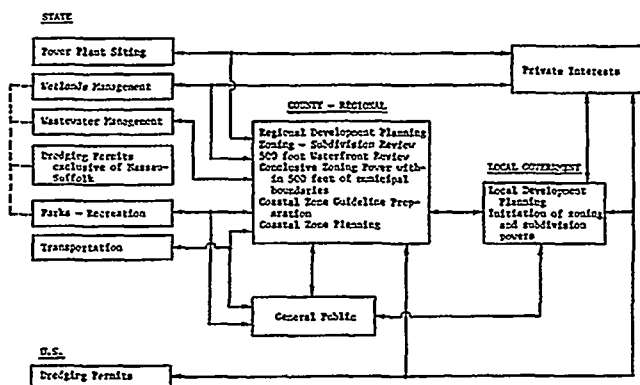


Figure 2 - LOCAL PLAN DEVELOPMENT & REGULATION STRATEGY
TO STATE STANDARDS AND COUNTY CRITERIA AND GUIDELINES

37. SUFFOLK Co. (N.Y.) CHARTER art. XIII, § 1323 (1970).

38. *Id.* § 1330.

39. *Id.* § 1323.

State agencies may object to a proposed zoning action referred to the county planning commission on the grounds that the proposed action is likely to produce water or air pollution or be destructive of estuarine values. In such a case the local government may not adopt the zoning action if the planning commission disapproves it, and, if the planning commission approves it, the local government must adopt any changes made by the planning commission. *Id.* § 1327.

40. The model for coastal zone management entailing local government regulation of land

INTERSTATE COOPERATION IN COASTAL ZONE MANAGEMENT

Each of the basic models representing the latter two management forms under the Coastal Zone Management Act is sufficiently flexible to meet the needs of any of the coastal states and territories, despite the fact that one or the other of the forms may accord better with the governmental structures or traditions of a certain state. The flexibility of the basic models is illustrated by their capacity for expansion to provide for interstate cooperation; the recommendations of a consultant's study of cooperative management forms for control of Long Island Sound by New York and Connecticut⁴¹ demonstrates this interstate application.

Just as totally centralized state control over land use decisions by municipalities generally would be unsatisfactory, a centralized bi-state compact was rejected as a model for development of Long Island Sound, despite the apparent simplicity of such unitary control.⁴² The geographic cohesiveness of the Sound area is less important from the standpoint of land use control than the existing fragmentation of political jurisdiction over the area, jurisdiction over the region now being distributed among several federal agencies, two states, the City of New York, and numerous units of local government. Adding to the complexities caused by multiplicity of jurisdictions are the ingrained traditions and laws of home rule, the legislatively mandated powers and interests of various state agencies regarding the Sound, and the existence of a variety of regional planning bodies exercising advisory and regulatory powers in the coastal zone. Pragmatic reasons militate against sweeping these competing sources of control under a centralized bistate compact. Such arrangements heretofore have been successful only when limited in function.⁴³ In addition to the fact that most of the land use problems affecting the Sound are internal to one state or the other,

use with state controls or state-established standards in areas of regional or statewide import has many advantages. By using existing governmental structures, it minimizes the need for new agencies, and involvement of state and local, as well as federal agencies, is increased. However, this "orthodox, marble-cake governmental venture" has its disadvantages: administrative and jurisdictional problems, as well as those of local insularity and attachment to local customs. See Heath, *supra* note 6, at 64-67.

41. Raymond, Parish & Pine, Inc., Legal and Institutional Framework for Long Island Sound Management (1974) [hereinafter cited as Long Island Sound Management].

42. *Id.* at 10.

43. "[T]here are believed to be in this country no successful examples of interstate agencies with comprehensive concerns and exclusively regulatory responsibilities." *Id.*

those that do require bistate action can be resolved by alternative means, such as making use of the existing Metropolitan Transportation Authority to link the states by bridge or ferry across the Sound, without creating another level of government.⁴⁴

Nor does the need for multistate cooperation necessarily require each state to assume all land use control for its own municipalities. The long history of enabling legislation that has placed zoning, subdivision control, and official mapping powers at the discretion of municipal governments cannot be reversed, except for certain limited purposes.⁴⁵ Although Connecticut utilizes only a two-tier (town-state) governmental structure while New York utilizes a third tier, the county, particularly in the downstate area including the Sound, the history of land use control in both states reflects the importance of the controlling authority delegated to the subunits.⁴⁶ Connecticut has so-called "regional planning agencies," but they are advisory only and are subject to local control.⁴⁷ Thus the political and governmental realities in both states militate against state assumption of all land use control and in favor of the flexibility of local regulation recommended by the Long Island Sound consultant study.

The study selected a model that provided for local regulation subject to state review with only a limited transfer of controls to the states. Seeking a new structure that could weld state and local participants into a regionwide body with broad scope and powers,

44. *Id.* at 10-11.

Among the other considerations leading to the rejection of a bistate compact was its potential lack of accountability to the public, lack of financing, and a lack of strong enforcement of existing laws which could not be remedied in a bistate compact. *See id.* at 10-12.

45. *Id.* at 13. Even more important to the rejection of direct state regulation was the conviction that the state cannot necessarily zone more effectively than local governments can. Indeed, the need for flexibility and local variations has led commentators to state that zoning functions should not be transferred to state governments. *See Heath, supra* note 6, at 59-60.

Past experiences have proven the ability of local governments to protect their fiefdoms. The law establishing the Urban Development Corporation (UDC) in New York provided that the corporation could override local zoning powers when the exercise of those powers prevented specific housing programs in a community. Opposition in Suffolk County to proposed UDC projects led to a repeal of the override clause in 1973. N.Y. UNCONSOL. LAWS § 6265(5) (McKinney Supp. 1974).

46. Connecticut's Inland Wetlands Program follows the model of state-suggested regulations and permitted uses for such areas, with implementation by municipal governments. *See Long Island Sound Management, supra* note 41, at 14. New York's Tidal Wetlands Act, in contrast, requires a state permit for certain development activities in tidal wetlands and provides for state-adopted land use regulations for these areas. N.Y. ENVIRONMENTAL CONSERVATION LAW §§ 25-0302, -0401 (McKinney Supp. 1974).

47. *Long Island Sound Management, supra* note 41, at 13-14.

the consultants recommended that each state establish a coastal zone management group (CZMG) and tailor its membership and functions to respect the state's particular political and administrative customs and laws.⁴⁸ Initially, the two state agencies would agree to a general statement of purposes and goals for the entire program. Each agency also would develop guidelines for local or regional implementation agencies. These standards would be tailored to the needs of each state with uniformity necessary only where an activity affects both states.⁴⁹

Discounting direct state exercise of any regulatory powers except those already in existence, the consultants proposed that delegate agencies coordinate local actions, thus ensuring the integrity of the state interests, while maintaining a closer relationship to local governments. In Connecticut this function could be assigned to five advisory regional planning boards by legislation. In New York the responsibilities could be assigned to the county planning commissions that already have sufficient enabling legislation. On Long Island the bicounty regional board would be suitable since it already is the designee for all comprehensive regional and water-related planning.⁵⁰

Land development and conservation plans would be mandatory for the local units of government. These plans, which could be updates of existing ones or be entirely new, should accord with established standards. To ensure proper management, such plans, which have been advisory only, should be accorded controlling weight, and all actions affecting the coastal zone should be subject to them. State financial aid would be made available to local agencies to overcome any lack of local resources. In addition, the state CZMG would be empowered to review the plans and require modifications to achieve conformity with state purposes.⁵¹

Until local plans can be adopted, the CZMG could impose a moratorium on any development not consistent with state purposes. These delegate agencies also would be empowered to prepare plans for local entities that default on plan preparation and to supplement any of the local plans with elements pertaining to the region generally.⁵² The delegate agencies also would be the permit issuers for all

48. *See id.* at 15.

49. *Id.* at 16.

50. *Id.*

51. *Id.* at 17-18.

52. *Id.* at 18.

developments beyond those of purely local concern and for specific actions reserved to the state by legislation such as wetlands control or power plant siting. The permit process would be conducted in conjunction with local review, and any development barred by local governments for nonconformity with local plans or regulations would not be issued a permit by the delegate agency.⁵³ Each state CZMG would act as the appellate agency for disputed matters, with suitable procedures built into the model for the protection of private rights.⁵⁴ Initially, quarterly meetings are recommended between the New York and Connecticut CZMG's to achieve overall coordination.⁵⁵ Figure 3 depicts the generalized bistate model which could be expanded for multistate applications.

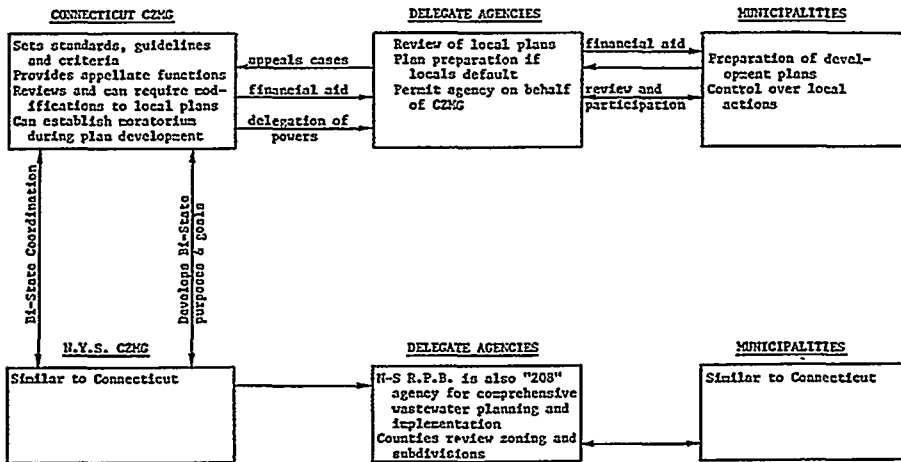


Figure 3 - BI-STATE MODEL

CONCLUSION

National concern for protection of the coastal zone does not require significant structural or functional changes in the federal system of intergovernmental relations. The validity of this proposition is supported by the Coastal Zone Land Management Act which suggests land use management forms that do not interject the federal government directly into the control of coastal development. Moreover, although direct state regulation is one of the alternatives

53. *Id.* at 19.

54. *Id.* at 20.

55. *Id.*

countenanced by the Act, the experience in California and Suffolk County suggests that regulation by localities, the traditional sources of land use control, may provide sufficiently flexible alternatives that direct state intervention may be unnecessary. Through imaginative structuring of state or regional review procedures and the promulgation by the state of intelligible standards for regulation by the localities, it is possible to achieve coordinated management of the coastal zones without incurring the political hazards inherent in state assumption of all land use controls. The flexible potential of local regulation under state auspices is quite clearly demonstrated in the proposals for Long Island Sound by the capacity of such a model to achieve multistate coordination of coastal zone development.