REPORT OF THE

VIRGINIA COASTAL STUDY COMMISSION

TO

THE GOVERNOR

AND

THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 30

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PURCHASES AND SUPPLY
RICHMOND

1978

TABLE OF CONTENTS

Membership of the Commission, p.4

I. Introduction and Legislative History, p.5

II. Justification for a Coastal Resources Management Program in Virginia, p.10

A. Protection of Fragile Shorelands, p.10
B. Effects of Non-Point Source Water Pollution, p.12
C. Protection of Non-Vegetated Wetlands, p.19

III. Evolution of the CRM Program, p.20

IV. Role of the Federal Government: Pros and Cons, p.22

V. State/Local Statutory Relationship, p.24

VI. Recommendations, p.25

VII. Other Observations, p.28

A. Location of Permitting Authority, p.28
B. Proposed Legislation, p.29

Signatures, p.30

Footnotes, p.31

Appendix I.–Coastal Resources Management Act (Senate Bill No. 403), p.32

Appendix II.–Key Facility Siting (Senate Bill No. 402), p.48

Appendix III.–Non-Vegetated Wetlands (Senate Bill No. 401), p.52

Appendix IV.–Senate Joint Resolution No. 62 expressing support for greater consistency in federal/State permitting activities in tidal waters and wetlands, p.61

Appendix V.–Senate Joint Resolution No. 63 establishing a joint subcommittee to study the Coastal Resources Management Act, p.63

Appendix VI.–Statement of Delegate Calvin G. Sanford, p.65

Appendix VII.–Statement of Senator Joseph V. Gartlan, Jr. and Delegate Evelyn M. Hailey, p.66

Appendix VIII.–Statement of Delegate Glenn B. McClanan, p.71

Appendix IX.–Statement of Senator Herbert H. Bateman and Mr. A. G. Clark, p.73

MEMBERS OF COMMISSION

JOSEPH V. GARTLAN, JR., CHAIRMAN
GLENN B. MCCLANAN, VICE-CHAIRMAN
HERBERT H. BATEMAN
A. G. CLARK, JR.
EVELYN M. HAILEY
IVAN D. MAPP
GEORGE N. MCMATH
CALVIN G. SANFORD
ALSON H. SMITH, JR.
HARRY E. TULL, JR.

STAFF

JOHN A. BANKS, JR., DIRECTOR
BRAGDON R. BOWLING, JR.
SUSAN T. GILL

Report of the

Virginia Coastal Study Commission

To

The Governor and the General Assembly of Virginia

Richmond, Virginia

December, 1977

To: Honorable Mills E. Godwin, Jr., Governor of Virginia

and

The General Assembly of Virginia

I. INTRODUCTION AND LEGISLATIVE HISTORY

The need to study the effects on the Commonwealth of Virginia of possible exploration and development of the Outer Continental Shelf (OCS) was acknowledged by the 1975 General Assembly in the passage of S.J.R. No. 137. This resolution, introduced by Senator Joseph V. Gartlan, Jr. established the Virginia Coastal Study Commission which was directed to study the offshore, interface and onshore effects of possible future exploration and development of the Outer Continental Shelf, adjacent to the coast of Virginia. This legislation was to become effective only if the Supreme Court ruled in favor of the federal government in the case of U. S. v. Maine. The case involved the question of whether the federal or State government would have sovereign rights over the seabed underlying the Atlantic Ocean more than three geographical miles seaward from the mean low watermark and from the outer limits of inland waters on the coast extending to the seaward edge of the Outer Continental Shelf for the purpose of exploration and exploitation of natural resources. In the Submerged Lands Act of 1953, Congress had already transferred to the States rights to the seabed within the three mile limit or marginal sea. When the case was decided in favor of the federal government in March, 1975, the Virginia Coastal Study Commission began its endeavors pursuant to the following resolution:

S.J.R. No. 137

Creating a commission to study the effects upon Virginia of possible

exploration and development of the Outer Continental Shelf and to allocate funds therefor.

WHEREAS, the environmental, energy, cultural and economic impact upon Virginia of possible offshore drilling for oil and related activities must be assessed before exploration and development takes place on the Outer Continental Shelf, hereinafter referred to a O.C.S., adjacent to Virginia's coast; and

WHEREAS, these assessments involve policy decisions that the executive and legislative branches of State government must make before the start of any exploration of Virginia's O.C.S.; and

WHEREAS, these policy decisions must be made with the benefit of public opinion and in light of the experiences of other states and in light of possible effects on commercial fishing, the tourist industry, the need for new industry in Virginia, the energy crisis and other matters; and

WHEREAS, the Commonwealth is participating in the coastal zone management program to develop a planning and management program for the coastal zone of the State; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That there is hereby created the Virginia Coastal Study Commission. The Commission shall study the offshore, interface and onshore effects of possible exploration and development of the O.C.S. adjacent to Virginia's coast. The Commission shall make recommendations on the alternatives available to the State with information on the probable economic, cultural and environmental costs of such exploration and development.

The Commission shall also take into consideration the probable impact O.C.S. exploration will have on local government and include recommendations on what the State might do to assist these localities. An effort should be made to receive public comment.

The Commission shall consist of eleven members, five to be appointed by the Speaker of the House of Delegates from the membership thereof, two to be appointed by the Committee on Privileges and Elections of the Senate from the membership of the Senate and four to be appointed by the Governor to include one from established Virginia environmental groups, one from Virginia industry, and two from local government. If a vacancy occurs for any reason, the appropriate above named person or persons shall appoint a successor.

The legislative members of the Commission shall receive such compensation as set forth in § 14.1-18 and all members shall be reimbursed for necessary expenses incurred in the performance of their duties in work of the Commission. The Division of Legislative Services shall serve as staff to the Commission. The Secretary of Administration and the Secretary of Commerce and Resources and the agencies within their responsibility shall provide staff and otherwise assist the Commission in its work. There is hereby allocated from the general appropriation to

the General Assembly the sum of five thousand dollars for the purposes of this study.

All agencies of the State and all governing bodies and agencies of all political subdivisions of the State shall assist the Commission in its work.

The Commission shall make an interim report to the Governor and the General Assembly no later than December one, ninteen hundred seventy-five and a final report with recommendations no later than December one, nineteen hundred seventy-six. This resolution shall become effective only in the event the disposition of the U.S. vs. Maine case is unfavorable to the Commonwealth of Virginia.

*****

During the following Session of the General Assembly additional legislation was enacted giving more direction to the work of the Commission. S.J.R. No. 122 directed the Virginia Coastal Study Commisson to include the development of the Coastal Resources Management plan as part of its study. The plan at this point in its early stages was being developed by the Division of State Planning and Community Affairs (DSPCA) with assistance from a number of State agencies including the Virginia Institute of Marine Science and the Virginia Marine Resources Commission who were receiving a per centage of the federal grant from the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, in order to develop specific portions of the program. The DSPCA was responsible for the program from August, 1974 through November, 1976. When the DSPCA was dissolved and staff transferred, the grant became and is presently the responsibility of the Secretary of Commerce and Resources.

S.J.R. No. 122

Continuing the Virginia Coastal Study Commission.

WHEREAS, the Coastal Zone Management Act was enacted to maximize State participation in the coastal zone management and planning progress; and

WHEREAS, the Commonwealth is participating in the Coastal Zone Management Program to develop a planning and management program for the coastal zone of the State; and

WHEREAS, Senate Joint Resoluton No. 137 of the 1975 General Assembly created the Virginia Coastal Study Commission to study and assess the offshore, interface and onshore effects on the development of the Atlantic Outer Continental Shelf and to make recommendations which would serve to assist affected localities; and

WHEREAS, Senate Joint Resolution No. 39 of the 1976 General Assembly directed the Virginia Coastal Study Commission to include in its

study a consideration of Virginia's role in working with affected localities and to provide liason with communities to be affected by future changes; and

WHEREAS, cooperation among the executive and legislative branches is a necessity in order to develop a workable management program; and

WHEREAS, offshore oil and gas leases adjacent to the Virginia coast will be sold within the next two years by the Federal government, thus intensifying the need to develop a planning program; and

WHEREAS, although significant progress has been made in the overall development of a coastal zone management program for the Commonwealth, much work remains to be done; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia Coastal Study Commission is hereby continued. The Commission shall continue to study all problems incident to the exploration and developments of the Atlantic Outer Continental Shelf, including the location and impact of related support facilities, with the goal of advising affected local governments and the executive branch in matters of policy.

The Commission shall review the progress of the coastal resources management planning program and review alternative management proposals which the executive study may develop and shall report on the impact which any coastal management plan devised and recommended by the Office of the Secretary of Commerce and Resources would have on the Commonwealth.

The present eleven members shall continue to serve on the Commission. If a vacancy occurs for any reason, successors shall be appointed by the appropriate person or persons pursuant to the method of appointment specified in Senate Joint Resolution No. 137 of the 1975 General Assembly.

Members of the Commission shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of Commission duties.

The Division of Legislative Services shall serve as staff to the Commission. The Secretary of Commerce and Resources and the agencies within his responsibility shall also provide staff and otherwise assist the Commission in its work. There is hereby allocated from the general appropriation to the General Assembly the sum of five thousand dollars, which sum shall in part include the balance of all prior allocations made for the continuation of this study which exist on the date this resolution takes effect.

All agencies of the State and all governing bodies and agencies of all political subdivisions of the State shall assist the Commission in its work.

The Commisson shall report and make recommendations to the

Governor and the General Assembly no later than October one nineteen hundred seventy-seven.

*****

The Commission is composed of the following ten members: Senator Joseph V. Gartlan, Jr., Chairman, Fairfax; Delegate Glenn B. McClanan, Virginia Beach; Senator Herbert H. Bateman, Newport News; A. G. Clark, Jr., Yorktown; Delegate Evelyn M. Hailey, Norfolk; Ivan D. Mapp, Virginia Beach; Delegate George N. McMath, Accomac; Delegate Calvin G. Sanford, Hague; Delegate Alson H. Smith, Winchester; and Harry E. Tull, Jr., Saxis. However, Mr. David Favre resigned from the Commission after his move to Detroit, Michigan.

The staff to the Commission from the Division of Legislative Services was Susan T. Gill. Representatives from the Office of Commerce and Resources (OCR), Virginia Marine Resources Commission(VMRC), Virginia Institute of Marine Science (VIMS) and Office of Outer Continental Shelf Activity regularly attended meetings of the Commission to explain developments in the Coastal Resources Management plan, participate in question and answer sessions and receive feedback from the legislative Commission to assist in the development of the plan. At the November 22, 1977, Commission meeting at Gwynn's Island during which key decisions were made as to recommendations for land use planning, Geographic Areas of Particular Concern and State responsibility for the implementation of the plan, the Commission received excellent counsel from Keith Buttleman from OCR and Ken Dierks from VMRC. Their assistance proved to be invaluable to the Commission in the final stages of its work.

It became increasingly evident in the Commission's early deliberations that the problems presented by the onshore impacts of OCS development could not be addressed other than in the context of an overall Coastal Resources Management (CRM) Program. Issues such as land use, non-point source water pollution, shoreline permitting and the location of industrial developments, e.g. refineries and tank farms, were several of the many areas which the Commission found needed attention. During the first year of its work the Commission decided that these issues were only a few components of a complicated scenario in the coastal area which should best be addressed in a comprehensive management scheme for Virginia's coastal resources. The CRM Plan in the DSPCA was at this point in its initial stages. The Commission then turned its attention to the development of the plan.

The Commission met once every month to six weeks to review working papers explaining various components of the plan which evolved into an initial draft, Alternatives for Coastal Resources Management in Virginia, in the Spring of 1977 followed by a Public Hearing Draf (October, 1977). The Office of the Secretary sponsored public hearings on the draft late in 1977 and will circulate a third draft for public review and comment in April or May of 1978.

While the development of the CRM Plan was a function of the executive branch, specifically the result of a grant from the NOAA Office of Coastal Zone Management to the Office of the Secretary of Commerce and Resources, it was agreed upon by the Secretary's Office and the Commission that interaction between the two groups would be beneficial to the development of the program. This was not a usurpation of any part of the executive role in the formulation of the State plan. It was evident that the bulk of the work to be done in the program from its inception through the first two to three years of planning involved extensive research by VIMS and VMRC, the identification of problems and assimilation of evidence to support them, and formulation of alternatives for a comprehensive CRM Plan. At the end of the planning phase of the program, careful and extensive legislative consideration would be needed in order to implement the plan. The members of the Coastal Study Commission are in a good position to provide this input in terms of discerning what legislative approach would be most acceptable to the General Assembly. The composition of the Commission provided an excellent opportunity for discussion among the seven representatives from the General Assembly, and four from the environmental movement, industry and local government. Familiarity with the numerous issues involved in a plan of this nature and assistance in terms of its development would enable the Commission's legislative members to have an important role when the legislation comes before the entire General Assembly for consideration.

II. JUSTIFICATION FOR A COASTAL RESOURCES MANAGEMENT PROGRAM IN VIRGINIA

A. Protection of the Fragile Shorelands.–Another prime objective of a CRM Plan is to encourage and initiate the establishment of comprehensive management programs for controlling shoreline erosion and the use of sandy beaches and dunes. Neither type of program is at present operational at either the State or local level in Virginia. Technical advisory services to assist in curtailing shoreline erosion are currently provided by VIMS and the Soil Conservation Service, U.S. Department of Agriculture. The Institute also provides technical assistance on beach and dune preservation and the effects of development thereon. However, in order to assure the protection of the Commonwealth's fragile shorelands, comprehensive management programs should be adopted at both the State and local level.

Estimates indicate that approximately 20 percent of the total sediment load delivered from upland watersheds and trapped in estuaries is eroded from shorelines. This material contributes to the shoaling of oyster rocks as well as to the sedimentation of navigable waterways which must be dredged periodically.

Studies addressing the magnitude of erosion along Virginia's shoreline conclude that over 30,000 acres of land were lost due to shoreline erosion

during the past century (1850-1950). Of this total amount, it is estimated that the Atlantic coast of the Eastern Shore lost 7,228 acres; the southeastern Virginia Atlantic coast, 1,950 acres; and the Virginia portion of the Chesapeake Bay and her tributaries, 21,079 acres. This amounts to a gross average of 12 acres lost per mile per century for the eastern and western shores of the Chesapeake Bay. Tributaries of the Bay lost between 9 and 5 acres per mile per century.

The length of "critical" shoreline erosion, estimated from published or "in preparation" Shoreline Situation Reports of VIMS, totals approximately 12 miles of Chesapeake Bay shoreline which exhibits historical (1850-1950) erosion rates greater than 2 feet per year.

The relatively low length of "critical" shoreline erosion does not indicate, however, the gravity of the erosion problem. The figures stated above do not give a complete picture of potential losses of improvements to property. In the case, for example, of only 12 miles of critical shoreline, the protection of that length at $40.00 per foot is over $2.5 million.

No detailed studies have been conducted to estimate the value of eroded property or the loss of tax base for the various Tidewater localities. However, a limited economic study was done for 951 miles of shoreline which included the north and south shores of the Rappahannock and 292 miles of the Potomac. This study considered erosion during the 47 year period, 1909-1956, and used estimated property values for 1960. For the study area considered, approximately 1,335 acres were lost during the 47 year period with a value of about $117,000. While these losses do not appear large-scale (about $90.00 per acre or $123.00 per mile), the total loss per site was significant.

Shoreline erosion in Virginia has generally been dealt with on a piece-meal basis. There is ample evidence along the coast of cases where "shoreline defense" structures have actually worsened the erosion problem. Only one locality in the State having tidal shoreline has a management mechanism to deal specificallly with the problem of shoreline stability, the Virginia Beach Erosion Commission.

In addition to an often dramatic loss of shorefront acreage, shoreline erosion also creates another significant impact by contributing a substantial portion of the total sediment load trapped in Chesapeake Bay. During the period 1850 to 1950 approximately 270 million cubic yards of sediment including sand, silt and clay were eroded from the shoreline of the Bay and its tributary rivers. It is estimated that this volume of material, derived from one century of shoreline erosion, would fill over one-third of the York River estuary.

Of the 2,951 statute miles of shoreline in the Virginia Chesapeake Bay System, 2,365 statute miles have been surveyed and measured for erosion characteristics by the Virginia Institute of Marine Science. Of this measured distance, marsh shoreline totals 793 miles and beach shoreline totals 1,572 miles. Sand dunes stretch along approximately 196 miles of the beach shoreline with significant dunes bordering the barrier islands off the

Eastern Shore and the Chesapeake Bay, and Atlantic Ocean shores of Virginia Beach. Sandy beaches are also prominent in the above mentioned areas as well as along particular shoreline of the James and Rappahannock Rivers and the Northern Neck and Middle Peninsula.

While extremely unstable and subject to the high-energy forces of wind and waves, the slope and width of sandy beaches change from season to season. Dunes migrate and shift position frequently through continuous wind redistribution with storms often radically altering dunes and beaches in their character and extent. The migration and erosion of these dunes may be accelerated if the fragile plant communities which anchor the dunes are destroyed.

As is particularly evidenced in some of the more densely populated areas of Tidewater Virginia, the natural, aesthetic attributes of the sandy beaches and dunes are often exploited in terms of development. These two coastal resources are especially susceptible to damage from man-made alterations such as construction which can destroy the dunes and vegetation growing thereon. The unfortunate long-term results of development on beaches and dunes often include erosion, flooding, structural damage, increased local expenditure and loss of public and/or private open space and wildlife habitat. If development is allowed on the undeveloped sandy beaches and dunes, it must co-exist with the natural processes so as not to alter their natural state in such a way that they are damaged or lost entirely.

In areas already developed, the issue is defined in terms of controlling erosion and new construction so as not to upset the balance in the natural environment to such a degree that the dunes and sandy beaches cannot be enjoyed by the citizens of the Commonwealth. Coastal resources management must be implemented to the greatest degree practicable at the local level in order to ensure the best possible usage of the fragile sandy beaches and dunes throughout Tidewater Virginia. The impacts of erosion vary due to natural circumstances as well as existing uses of shoreland and nearshore resources. Consideration of deterrants to shoreline erosion must also be given in relation to a Coastal Resources Management Program.

B. Effects of Non-Point Source Water Pollution.–Tidewater Virginia is marked by numerous features of value as coastal resources to the citizens of the Commonwealth. These include productive shellfish grounds, fish spawning and nursery grounds, tidal wetlands, dunes and beaches, and natural harbors vital to Virginia's waterborne commerce.

These resources that make Tidewater Virginia so attractive, however, have been subject to competing and frequently conflicting uses. Although some resources are renewable, over-use and improper use can and have resulted in their depletion or destruction. To jeopardize the protection and wise use of these resources would forfeit a significant element of the Commonwealth's economic base and the rightful enjoyment of these resources by all citizens. The Commonwealth can claim over 5,000 miles of shoreline, 300,000 acres of wetlands, tidal streams navigable nearly 100 miles inland, the greatest seed oyster grounds in the United States and

20,000 miles of marine waters.

Of special significance to Virginians is the biological productivity of the coastal waters which depends on the maintenance of a healthy marine environment. This biological productivity supports the living marine resources which take a variety of edible forms rich in protein and a highly desirable food source . Commercially in Virginia, this productivity resulted in a total landed quantity of seafood of 631 million pounds in 1975, with a processed value of over $41 million. In addition, the personal incomes of over 6,000 persons employed in harvesting and 5,500 persons employed in processing result in a total estimated impact on Virginia's economy of over $65 million. In addition, total expenditures for saltwater sportfishing in Virginia were estimated at over $148 million in 1974 and hunting in the wetlands at almost $14 million in 1970. Tourism employs approximately 97,000 persons in Tidewater Virginia and is a major factor in the area's economy.[1]

A most critical area for resource management in Tidewater is the fastland which drains directly into tidal waters, the wetlands and the nearshore waters. The physical characteristics and uses of the upland areas have a direct bearing on the ecological vitality of the living marine resources. Residential, commercial, industrial and agricultural uses as well as soil types, slope, and vegetative cover determine the effect of land use on coastal waters as the result of contamination associated with surface runoff known as non-point source water pollution.

Non-point source water pollution enters the water largely as a result of rainfall impact and resulting run-off from paved surfaces, agricultural areas, construction sites, surface mining sites, and woodlands affected by improper forestry practices.[2] Fertilizers, pesticides, dispersed animal wastes, and sedimentation are the water-pollution sources associated with agricultural areas. The chemical/biological impact these pollutants have on receiving waters can destroy fish and other aquatic life, increase algal growth, and deplete dissolved oxygen.

A series of U. S. Environmental Protection Agency studies conducted in 1973 generally concluded that the principal contaminant responsible for water pollution from nonpoint sources is sediment from erosion transported to surface water by runoff.[3] Other contaminants include plant nutrients, solid waste in the form of toxic substances and paved land with stormwater runoff, minerals and heavy metals.[4]

Cause-and-effect relationships between human activities and environmental changes in coastal areas are difficult to quantify. Over the years, however, even slow and subtle water-related changes have been linked to several general types of land-associated activities. It may be appropriate to group these uses or activities into three categories: 1) wastes generated by land development including urbanization and non-intensive uses; 2) demands for water associated with land development; and 3) physical changes to the land. These activities may, in turn, cause any one or a combination of three significant water-related impacts: 1) water pollution; 2) flooding; and 3) water consumption. Of these land-related

impacts, water pollution is often labeled the most prominent issue.

The types of pollutants generated by various urban and rural land uses and their adverse effects on receiving water are shown below.

The following illustrates the relationship between a specific LAND USE, *Pollutant Type*, and Adverse Effects on Receiving Waters:

1. AGRICULTURE

a. *Inorganic sediment* - turbidity bottom and habitat destruction.

b. *Plant residues* - Oxygen depletion, color, turbidity, suspended solids.

c. *Animal Wastes* - oxygen depletion, bacterial pollution, nitrogen for algae growth.

d. *Plant nutrients* - nitrogen and phosphorus for algae growth

e. *Insecticides, fungicides and herbicides* - toxic to fish and plant life.

2. CONSTRUCTION

a. *Inorganic sediment* - turbidity, bottom habitat destruction, litter.

3. RESIDENTIAL AND COMMERCIAL

a. *Sanitary Wastes* - bacterial pollution, oxygen depletion, nitrogen and phosphorus for algae growth.

b. *Road salt* - toxic to plant and animal life.

c. *Yard Wastes* - oxygen depletion, turbidity, suspended solids, litter.

4. INDUSTRIAL

a. *Sanitary Wastes* - bacterial pollution, oxygen depletion, nitrogen and phosphorus for algae growth.

b. *Process Wastes* - toxic to fish and plant life, bottom habitat destruction, oxygen depletion, turbidity.

5. ENERGY PRODUCTION

a. *Heat* - reduced capacity for dissolved oxygen.

6. SOLID WASTE DISPOSAL AND DREDGING

a. *Leachates* - toxic to fish and plant life, oxygen depletion, nitrogen and phosphorus for algae growth, turbidity.

7. BOATING AND SHIPPING

a. *Sanitary Wastes* - bacterial pollution oxygen depletion, nitrogen and phosphorus for algae growth.

b. *Oil and Gasoline* - floating oil film, depletion of oxygen.

8. WASTEWATER TREATMENT PLANTS

a. *Sanitary wastes* - Bacterial pollution oxygen depletion, nitrogen and phosphorus for algae growth.

b. *Sludge from Landfills* - Similar to solid waste leachates.

9. URBAN RUN-OFF

a. *Litter* (debris, dust and dirt, animal droppings, household refuse, vegetation wastes) - Peak flush shock effect, oxygen depletion, bacteria pollution, suspended solids, visual quality.

b. *Chemicals* (salt, pesticides, street oil, fertilizers) - Peak flush shock effect, toxic to plant and animal life, oxygen depletion, nitrogen and phosphorus for algae growth, floating oil film.

Source: Roy F. Weston & Associates, RADCO "208: Areawide Waste Treatment Management Plan, August, 1977, p. 43-5.

As evidenced in the Table above, urban land use, through surface runoff, contributes a variety of potential pollutants, such as trace metals, petroleum products, particulates from industrial processes, nutrients, and sediment. The preliminary results of the Northern Virginia Planning District Commission's Occoquan/Four Mile Run Non-Point Source Correlation Study indicates that :

> "Urban drainage is characterized by unit area loading rates for plant nutrients, total suspended solids, chemical oxygen demand, and heavy metals which are significantly higher than the loadings that characterize runoff from rural agricultural land uses; and the majority of the urban runoff pollution loadings originate in stabilized urban areas.[5]

This study further concludes that "if runoff pollution control measures are not provided for projected urban develoment, waste quality benefits which will be achieved by the conversion from secondary to tertiary treatment levels in many areas may be offset by increases in nonpoint pollution loadings."[6]

Preliminary results of this study indicate more specifically that there exists a causal relationship between impervious ground cover and runoff pollution loadings from shopping centers and multi-family residential areas. In other words, the higher the percent of impervious ground cover, the greater the concentration of pollutant loadings in runoff.[7]

Agricultural uses contribute sediment which may also contain organics,

pathogens and toxic substances. The increased application of chemical fertilizers, pesticides, and herbicides creates a major potential source of non-point pollution. Animal husbandry is also a contributor to the problem. Excessive nutrient loadings from these sources can cause algal and other plant growth reduces the penetration of sunlight and depresses dissolved oxygen levels. Sediment may cover fish eggs, seed oysters, or the bottom plant life upon which juvenile fish feed. According the RADCO "208" Areawide Waste Treatment Management Plan, Suspended Solids from agricultural land uses contributed 80 percent (estimated) of the total suspended solids in RADCO district in 1975.[8]

Erosion caused by cumulative land development in some watersheds has directly contributed to degradation of marine resources. As development increases, removing vegetative cover and creating areas impervious to water, runoff and flooding increases, causing scouring and alteration of stream channels. Storm sewers discharging into these streams add to the problem. Increased peak flow in these streams change their ecology. During dry weather the diminished water depths are less able to support aquatic life as algae and other aquatic plants increase, altering the food chain essential to marine animals.

A recent study of the nonpoint pollution in the Lynnhaven Bay area of Virginia Beach in 1975 concluded that the headwaters of the eastern and western branch were contributing the most significant pollution to the Lynnhaven Bay. The presence of high fecal coliform and total coliform counts in the Lynnhaven Bay area had resulted in the closing of the entire Lynnhaven Bay for direct shellfish marketing purposes on March 29, 1975. This represented the closure of 1,390 acres of shellfish growing areas.

Another study of actual non-point pollution affecting Virginia waters disclosed that while known point sources contributed most of the organic, nitrogen, ammonia and phosphorus during the study period, agricultural and non-point discharges were responsible for most of the nitrate and 98 % of the sediment. This study concluded that "urban runoff controls are necessary."[9]

Current research holds promise for further correlating land uses with non-point source pollution. The State Water Control Board's "208" Best Management Practices Handbooks should be completed by November, 1978, with more definitive recommendations for control of these pollutants. The U. S. Environmental Protection Agency's Chesapeake Bay Program will be addressing both urban and rural causes of non-point pollution. The Virginia Institute of Marine Science is now completing a series of water quality models which separate non-point source from point source pollution in some estuaries. The predictive capabilities developed in these studies will enhance the ability of local governments to plan land uses in a manner which reasonably protects the marine environment from non-point sources of pollution.

The problems resulting from non-point water pollution remain, with effects on the shellfish industry illustrative of the severity and extent. Shoreline sanitation surveys conducted by the State Health Department

have identified individual sources and types of pollutant discharges. While no precise correlations between the intensity of land use and the closure of oyster grounds have been statistically proven, the evidence strongly suggests that the cumulation of individual discharge deficiencies and the increased intensity of use adjacent to shellfish water have led directly to shellfish ground closures in some areas.

As of January 1, 1972, shellfish growing areas amounting to 66,591 acres in Virginia were condemned. By January 1, 1976, this figure had reached 170,835. Some condemnations were caused by buffer zone requirements for sewage outfalls at marinas. In the four-year period, closures amounted to 251,009 acres, while 80,174 acres were reopened. The Health Department's Bureau of Shellfish Sanitation deficency survey summary of December 31, 1975, counted 2,644 individual sites as real and potential pollution sources near or discharging into shellfish waters. The deficiencies came from failing septic drain-fields, domestic wastes, farm animal wastes, marinas, and minor and major industrial plants.

The State Water Control Board, in its *Water Quality Inventory* (305 (b) Report), April, 1976, specifies some of these problem areas.

The following illustrates areas with serious water quality problems attributed in whole or in part to non-point water pollution.

1. Cockrell Creek

a. Bacterial Contamination from inadequate or non-existant sanitary waste treatment facilities of individual dwellings or businesses.

2. Put-In Creek

a. High fecal coliform bacteria counts and occasional oil films from failing septic drainfields in the Mathews Courthouse area; leachate from area auto service stations; suspected motor oil dumpage, accidental spillage from construction equipment, runoff from roads and parking lots.

3. Back River (Northwest and Southwest Branches)

a. High fecal, coliform and low dissolved oxygen from Trailer courts septic tank failures; surface runoff from NASA and Langley AFB.

4. New Market Creek

a. High fecal coliform and low dissolved oxygen from faulty septic tank systems; urban runoff.

5. Lynnhaven Complex

a. Sedimentation and high bacterial counts from urban and agricultural runoff; failing septic systems.

6. Chincoteague and Assoteaque Bays

a. Bacterial contamination from malfunctioning septic tanks due to a high water table.

7. Chesapeake Bay side of the Eastern Shore

a. High bacterial counts and low dissolved oxygen from septic tank leachate.

8. Nassawadox Creek

a. Fecal coliform contamination from urban runoff; faulty septic tank systems; laundromat discharges; septic tank malfunction.

9. Tangier Island

a. High bacterial counts and almost continuous oil film from septic tank leachate; general surface runoff; surface privies; solid waste; heavy boating activity.

*The "known or suspected source(s)" listed were named as contributing in whole or in part to the problems listed. In many of these cases, sources of pollution other than those listed here are also thought to contribute.

Although the listing above of areas in which serious water quality problems have been attributed in whole or in part to non-point sources of pollution by the State Water Control Board shows only problem areas from the small coastal and Chesapeake Bay watershed, there are numerous other such areas in the major river basins as well. The Bi-State Conference on the Chesapeake Bay (April 1977) concluded that the significant number of shellfish ground closures within small tributaries where no point sources exist is strong evidence that non-point pollution is the cause of degraded water quality.

Some authoritative sources make predictions of severe consequences if remedial action is not taken in the immediate future. Again, the health and vitality of the Commonwealth's shellfish resources and the industry they support are good indicators of the water quality situation in general.

Dr. Mack Shanholtz, State Health Commissioner for twenty-five years, in a presentation to the Governor's Council on the Environment, September, 1974, summed up the situation:

"The effects on non-point pollution sources on shellfish growing areas are receiving more and more attention from State and Federal control agencies. Runoff from streets, storm sewers, drainage ditches and lawns, containing bacteria, viruses, heavy metals, PCB's, pesticides, and oils is extremely hazardous to shellfish even when found in small quantities. Also, the effect of persons using the waterfront areas in boating and other recreational activities have a significant detrimental effect on water quality. Presently there is no reliable method of controlling such pollution to shellfish growing areas.

As Dr. Shanholtz concluded: "Everywhere man goes he generally affects the environment in an adverse manner. For this reason, the forces of development and the shellfish industry which is dependent on a high quality, unpolluted environment are on a collision course. Since we are not going to stop progress, something must be done if the shellfish industry is to survive...

"There is no reason the shellfish industry and development can't continue under highly controlled conditions which must be instigated at the State level. Without such controls, the shellfish industry will gradually be eroded to the point where it will become an insignificant factor in the Virginia economy. It should always be kept in mind that protection of the shellfish industry is also protection of the other invaluable assets of our State that provide the recreational and social values that lure people to Tidewater in the first place."

Dr. Shanholtz's conclusions are especially relevent at this time when the problems cited have not disappeared, only worsened in most cases. He listed the establishment of "a Statewide coastal zoning/land use policy which could provide the necessary authority to protect the most important shellfish growing areas" as one of his recommendations.

He further specified " recommendations to the General Assembly for the passage of a comprehensive coastal zoning law that will designate shellfish "sanctuaries". Also, he requested the General Assembly to designate the State's position in exercising control over development in shellfish growing areas and require localities to make a decision regarding the desirability of specific development as opposed to the shellfish industry."

A CRM Plan must reasonably ensure protection of the living marine resources from pollution associated with land uses in those fastland areas which drain directly into tidal streams, estuaries, bays, and coastal waters. The legislation included with this report has as one of its primary goals the establishment of deterrants to non-point pollution.

C. Protection of Non-Vegetated Wetlands.–Appendix III. of this report consists of proposed legislation amending the Wetlands Act of 1972 to include non-vegetated wetlands. The present definition of wetlands in § 62.1-13.2 includes "all that land lying between and contiguous to mean low wter (MLW) and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project..." and upon which is growing certain vegetation as defined in the section.

The non-vegetated wetlands which were not included in the Act consist of the intertidal flats located on the immediate foreshore between MLW and Mean High Water (MHW). These nearly level expanses which appear for the most part barren are predominant in Tidewater areas with a greater tidal range that are protected from the eroding effects of wave action. Sand flats and mud flats, the two types of non-vegetated wetlands, are biologically productive with the major inhabitants of these areas, the tube dwellers and small burrowers, residing beneath the surface. Only the

larger and more conspicuous species are visible on the surface. In some areas, particularly along the seaside bays of Virginia's Eastern Shore, non-vegetated wetlands are at least as extensive as vegetated wetlands, storing and cycling nutrients and maintaining water quality. The algal mats which form on many flats rival marsh plants in the amount of plant matter produced and passed through the estuarine and marine food web. Because they are the habitat of an abundance of small plants and animals essential to the food web, these flats are the feeding ground at high tide of the adult and juvenile fish and crabs. Large populations of polycheate and nematode worms, molluscs and crustaceans live in the sediments with snails and small crabs on the surface. At low tide, feeding waterfowl and wading birds inhabit these expanses upon which the pressures of development are being felt. Destruction of non-vegetated wetlands interrupts the estuarine food web by reducing the biological productivity. These areas are not presently included in any system of management for protection at the State level. The amendments to the Wetlands Act to include mud flats and sand flats are important in a thorough approach to the concept of coastal resources management.

III. EVOLUTION OF THE CRM PROGRAM

As mentioned earlier, the Office of the Secretary of Commerce and Resources has had the primary responsibility for the development of the CRM Plan. It has made funds available to VIMS and VMRC for assistance in such areas as fisheries management, Geographic Areas of Particular Concern (GAPC), shoreline permitting, shoreline erosion, and shorefront public access, and received input from numerous state agencies which make up the Coastal Resources Management Advisory Committee including: Department of Intergovernmental Affairs, Commission of Outdoor Recreation, Council on the Environment, Divison of Industrial Development, Soil and Water Conservation Commission, State Water Control Board, Virginia Port Authority and Department of Agriculture and Commerce. The OCR is in its last months of its third year planning grant (305) to expire March 31, 1978 and hopes after completing its fourth year of planning in 1979 to begin receiving implementation monies (306) from Congress.

The following table breaks down the federal/state grants for the planning of a Coastal Resources Management Program:

FIRST YEAR	Federal	$251,044.00
	State match	125,522.00
	Total	$376,566.00
SECOND YEAR	Federal	$403,520.00
	State match	201,706.00
	Total	$605,226.00

THIRD YEAR	Federal	$754,200.00
	State match	188,550.00
	Total	$942,750.00

Total for three years—$1,924,542.00

Total federal monies—$1,408,764.00

Total State monies——$ 515,778.00

The NOAA Office of Coastal Zone Management will review the legislative package introduced in the 1978 General Assembly and components of the plan in order to provide comment and possible preliminary approval at some point in 1978.

These monies were made available as the result of passage of the Coastal Zone Management Act of 1972. It should also be noted that additional funding is possible if, after the 4th year of planning money is exhausted (the sum of which is not yet determined), some elements of the plan have not been adequately addressed. This funding ("305.5") is available through a special section of the Act and will enable States to begin carrying out certain portions of Coastal Resources Management programs before final approval from the NOAA Office of Coastal Zone Management. However, the implementation monies granted to other states have been, as a general rule, approximately two to three times the size of the planning monies. Therefore, the Commonwealth could expect a substantial amount of federal money for implementation and distribution to localities if Virginia's CRM Plan meets the federal requirements.

In reference to the substantive element of the documents prepared by the OCR, the drafters of the most current Proposals for CRM in Virginia have done valuable work in the compilation of vast amounts of material from a number of sources and in organizing and defining the issues and considerations pertinent to their charges. However, the Virginia Coastal Study Commission was not a party to developing the policy recommendations in that document and has in fact concluded that the recommendations, for example, of location of State responsibility and authority and the land use management scheme in the draft were not appropriate answers to the acknowledged problems. It was decided that, apart from failure to meet requirements of the CZMA, the policy judgments made in the draft report were not acceptable and did not provide a workable solution given the current legislative framework in existence in Virginia today. Therefore, the Commission has addressed the problems identified in the preliminary drafts in terms of the legislative package introduced in the 1978 General Assembly pursuant to Commission recommendations contained herein.

IV. ROLE OF THE FEDERAL

GOVERNMENT: PROS AND CONS

It should be clearly understood that the Commission's recommendations for components of a State CRM Plan are being based upon their own intrinsic merit and are not made merely to obtain federal approval of a CRM Plan for Virginia. The federal CRM Program is one of voluntary participation on the part of the State with federal money available as long as the State meets certain criteria in planning and implementation. However, the Commission believes that the CRM Plan should be designed to serve Virginia's best interests and, if it also earns federal approval, so much the better. If Virginia's plan is acceptable to NOAA, then the State will be in a better position in terms of finances, especially regarding local government implementation of State law.

Another consideration in terms of possible federal assistance relates to the Coastal Energy Impact Program (CEIP) available in addition to CZMA Section 305 and 306 monies. To be eligible for these Section 308 monies, states must either be participating in the federal Coastal Zone Management program or be independently developing one that is consistent with the federal Coastal Zone Management Act. The Coastal Energy Impact Program is designed to help States minimize the social, economic or environmental disruptions that result from new or expanded coastal energy activity such as Outer Continental Shelf development or oil and gas exploration. The program is intended to balance the need for more energy resources with the need to preserve coastal areas.

The CEIP gives four kinds of financial aid to coastal states and local communities affected by new energy activity:

1. " Grants to plan" for the new public facilities and services required as a result of new energy activity;

2. " Loans and bond guarantees" to provide the needed public facilities and services;

3. "Loan and bond repayment assistance" to help communities with fiscal obligations that they are unable to meet because anticipated revenues did not materialize;

4. "Grants to prevent, reduce or repair unavoidable loss" of environmental or recreational resources.

The CEIP attempts to deflect the consequences of energy development away from the coast itself. Energy facilities are not encouraged in the coastal area unless technical requirements force them to locate there. CEIP assistance can be used for new public facilities located outside the coastal zone, if they will serve the increased population and traffic drawn to the area by new coastal energy activity. "Energy activity" as defined in the regulations includes Outer Continental Shelf and liquefied natural gas energy activity, as well as the transportation, transfer or storage of coal, oil or gas.

There is no way at present to estimate what might be made available to a State such as Virginia. It may be pertinent to mention figures which have been authorized by Congress. The total Coastal Energy Impact Program (CEIP) authorizaton (Sec. 308, FCZMA) is $800 million through October 1, 1986. Fiscal Year (FY) 1977 appropriation was $125 million; FY 1978 is $132.7 million.

It is also of importance to note in respect to federal benefits the currently rather limited nature of the federal monies available and number of requirements which have to be met in order to receive this funding. Again, it is of importance to note the Commission's view that Virginia should not participate in this federal program solely to receive federal dollars, rather to instigate a plan that has the interests of Virginia's so easily perishable marine resources at heart.

The uncertainty of the continuation of federal benefits over an extended period of time on any significant scale will remain a question, but the most crucial factor remains the implementation of a workable and effective tool to manage the coastal resources of the Commonwealth. This is of primary importance, although no doubt federal monies would be of assistance in implementing the plan if they are available.

Another undefined area regarding the role of the federal government is in relation to the so-called "federal consistency" requirement. The significance of this provision and its benefits to the State are unknown at this point and most likely will be determined only through court cases testing the federal position as articulated in the Code of Federal Regulations. The consistency provision of the FCZMA is believed by OCZM to be a significant Congressional product, giving the States an opportunity to participate in decisions regarding federal activities and federal regulatory processes from which they were once excluded.

The FCZMA federal consistency provisions provide that:

1) Federal conducted activities, including development projects, significantly affecting the coastal zone shall be conducted in a consistent manner with approved management programs to the extent practicable,

2) no license or permit (including those described in detail in OCS plans) shall be granted by a Federal agency for an activity unless it is consistent with the approved management program, or if the Secretary of Commerce finds the activity to be consistent with the objectives of the FCZMA, or necessary in the interest of national security, 3) no federal assistance shall be granted by a federal agency to governmental agencies for projects significantly affecting the coastal zone until the State finds that the activity is consistent with the approved management program or the Secretary of Commerce makes the finding described above.

The State of Washington has been using the consistency authority since it received § 306 approval over a year ago. As of December 1977 there

have been no major court decisions testing its strengths and weaknesses, but OCZM has interpreted the provisions as strongly as possible and feels confident with its position.

V. STATE/LOCAL STATUTORY RELATIONSHIP

The establishment of a CRM Plan in Tidewater Virginia involves the sensitive subject of State/local relationships. A workable solution to coastal resource management problems in an area containing 61% of the State's population, 29% of its land area and 50% of its industrial manufacturing facilities is of enormous importance to the State. This Commission encourages the localities to manage their coastal resources to the greatest extent possible, but realizes that there are occasions when interaction is necessary at the State level.

It is essential to encourage a sense of mutual trust and cooperation between State and local government in the decision-making process. This would be facilitated by an articulation of state policy on issues involving the coastal area, particularly in reference to a desired balance between management of coastal resources and commercial and economic interests.

To appreciate the nature of the State/local relationship established by the Virginia Constitution is important to an understanding of how a coastal resources management plan may be implemented in the Commonwealth. When the State chooses to provide itself with final authority in any situation, it may do so with clearly stated support in the Constitution. Article VII, Section 2 of Virginia's Constitution states that "The General Assembly shall provide by general law for the organization, government, process, change of boundaries, consolidation, and dissolution of counties, cities, towns and regional governments...." All powers of local government are delegated. The phrase "local autonomy" means that measure of self-government which the State permits a locality to exercise.

It would appear that there are two reasons for this situation. One is that the State's interest in the viability and integrity of local governments requires the constitutional power on occasion to say "no" to local decisions. The second reason, and more pertinent to this report, relates to situations where the clearly perceived interests of all Virginians in air, land and water resources cannot be left purely to local regulation or abandoned for lack of regulation. The coastal area has resources which, once destroyed or severely damaged, are irreplaceable. These resources, in the context of management as discussed in this report, are the public freehold of all Virginians.

This is not to assert or imply that total State control is needed to guarantee a balanced environmental/economic consideration of the coastal area, but rather that the State needs to implement an effective, cooperative mechanism for CRM in Virginia while working closely with localities. This is not a totally new concept in the State. The Wetlands legislation which has been regarded for the past five years as a fair and effective tool has provided Virginia with the opportunity for state/local interaction, with final

and decisive authority vested in the State to implement State policy, standards and guidelines. State usurpation of local authority has not been charged with regard to the Wetlands Law and is not proposed for a CRM Plan in Virginia.

VI. RECOMMENDATIONS

That the General Assembly of Virginia enact the Coastal Resources Management Act, comprising the following features:

A. Intent

1. To preserve and protect from incompatible activities the following Fragile Shorelands Areas:

a. Highly erodible areas for the protection of the public health, safety and private property.

b. Sandy beaches.

c. Primary row of dunes.

d. Unvegetated wetlands (See Appendix III).

2. To ensure the protection of marine resources from the adverse impacts of land activities generating significant non-point source water pollution.

B. Procedure

1. Each locality is directed to revise its comprehensive plan, existing ordinances and practices to best achieve the intent of the Act with technical assistance when requested from the State.

2. The State Water Control Board and Office of Commerce and Resources are directed to prepare handbooks for the purpose of assisting local governments in making land use decisions that include consideration of marine resource protection.

3. Each local governing body is directed to adopt a Shorelands Protection Ordinance following the model as set forth in the Coastal Resource Management Act.

a. The Shorelands Area is to include, at a minimum, areas of direct surface run-off into tidal waters defined under guidelines determined as explained below .

b. The Fragile Shorelands Area is to include:

1. Highly erodible areas

2. Sandy beaches

3. Primary row of dunes

c. The boundaries of the Shorelands Area and Fragile Shorelands Area shall be delineated by the Shorelands Protection Board under guidelines determined as explained below.

d. The VMRC and VIMS are directed to develop guidelines to be used in the delineation of the boundaries of the Shorelands Areas and Fragile Shorelands Areas and as a basis for decisions made on conditions of use in these areas.

e. The guidelines must be submitted to the General Assembly sixty days before the 1980 session for review for acceptance or rejection either in whole or in part. The guidelines will then have the force and effect of law. Any future change in the guidelines can only be made by repeating the system of submission to the General Assembly for review and approval or disapproval in whole or in part.

4. The local governing body is directed to establish a Shorelands Protection Board, either as a new entity or by reconstituting and superceding an existing Wetlands Board established pursuant to § 62.1-13.6, to administer the Shorelands Ordinance within the designated Shorelands Area.

a. The Shorelands Protection Board is to act as a representative of public interest in each locality in keeping with the intent of the Act.

b. The Shorelands Protection Board is directed to review all proposals for land activities in the Fragile Shorelands Area with the authority to grant, with or without conditions, or deny permits therefor.

c. The Shorelands Board shall approve any permit for lands designated as Shorelands Areas unless otherwise prohibited by law, but shall condition the use upon compliance with such requirements deemed necessary in order to comply with the intent of the Act.

d. Once a permit so conditioned has been accepted, such conditions shall continue in full force and effect on the property and usage covered by such conditions unless amended by the Shorelands Board.

e. The following standards shall apply to use and development in the Fragile Shorelands Areas as defined in this Act:

(1) Fragile Shorelands Areas shall not be altered so that the ecological and geological systems in the Fragile Shorelands Areas are irreparably disturbed.

(2) Development in Tidewater Virginia, to the maximum extent possible, shall be concentrated in areas of Tidewater Virginia apart from the Fragile Shorelands Areas, in Fragile Shorelands Areas which have been

irreversibly disturbed, and in Fragile Shorelands Areas of lesser ecological and geological significance.

(3) In order to implement the policy as set forth in this Act and to assist counties, cities or towns in the regulation of Fragile Shoreland Areas, the VMRC, with advice and assistance from VIMS who will evaluate these Fragile Shorelands Area by type and maintain an inventory, shall periodically promulgate guidelines which scientifically evaluate the Fragile Shoreland Areas and Shorelands Areas and which set forth consequences of the use of these areas. In developing guidelines, the VMRC is empowered to consult with any governmental agency.

f. The Shorelands Protection Boards are directed to examine and apply applicable State and local statutes, ordinances, rules and regulations for the purpose of controlling non-point sources of water pollution.

g. The Shorelands Protection Boards are also directed to use the handbooks cited in number 2 under *Procedure* and developed by the State Water Control Board (Best Management Practices in draft form at present) and the Office of Commerce and Resources (Land Planning, Design and Management Guide for Shoreland Areas in Virginia's Tidewater Localities) in determining any additional conditions to be imposed, if any, upon any proposal for land activity in keeping with the intent of the Act.

h. Where a locality chooses not to establish a Shorelands Protection Board or a Shorelands Ordinance, the State shall be empowered to enforce the provisions of the act in that locality.

C. Public Notice

1. The Shoreland Protection Board shall review any permit application in the Shorelands Areas or Fragile Shorelands Areas while making public notice:

a. In a newspaper having general circulation in the political jurisdiction in which proposed land use activity would take place for a period of two weeks.

b. In the newspapers of adjacent political jurisdictions to the locality in which proposed land use activity would take place for a period of two weeks.

D. Appeal Procedure

1. Appeals to VMRC from decisions of the Shorelands Protection Board may be taken by the applicant and other parties listed in paragraph 5, below.

2. The Shorelands Protection Board is directed to cite in each case the provisions of current State or local laws, ordinances, rules or regulations which it deems applicable in carrying out the intent of the Act and must further specify those additional conditions it has deemed necessary to

impose, if any, upon the proposed land use activity.

3. Such explanation for the certification or denial of the permit will constitute the sole basis for appeal to the State on substantive grounds.

4. Appeals to the State may also be based on procedural deficiencies, e.g. absence of specified public notice, etc.

5. Appeals to the State may be made by the following:

(a) The locality in which the affected shorelands are located.

(b) Twenty-five property holders within the political jurisdiction where the proposed land activity in the Shorelands Area is to take place if they have valid substantive or procedural reason for believing the decision reached between the Shorelands Board and person(s) proposing the activity to be inadequate in upholding the intent of the Act.

(c) The local governing body from an adjacent political jurisdiction may have the right to appeal a decision made between the Shorelands Board and person(s) proposing a land activity if they deem it to be of negative regional impact.

6. Upon publication of project certification by the Shorelands Protection Board there shall be a period of ten days in which an appeal may be filed with the State. If no appeal is raised within that period, the permit will be granted and development may proceed.

7. Should any appeal be made within that period the person(s) proposing the land activity would be enjoined from proceeding until the appeal is resolved.

8. The State authority is to hear and decide the case within forty-five days from the filing of the appeal and is to approve, approve with conditions, or deny.

VII. ADDITIONAL OBSERVATIONS

A. Location of permitting authority.–The Commission voted to place the authority for permitting activities within the Shorelands Areas with the Virginia Marine Resources Commission as opposed to other suggested State agencies. The decision was based on VMRC's existing structure and staffing which enables it to handle a review process both in terms of general activities and review jurisdiction under the Wetlands Act. However, the Council on the Environment as the agency with review authority received support from several Commission members based on the Council's legislative mandate as set forth in §' 10-177 through 10-186 and 10-17.107 through 10-17.112 of the Code of Virginia. This issue may be subject to discussion by the proposed joint subcommittee during the course of its deliberations regarding the Coastal Resources Management Act. The Commission anticipates a change in the size of the VMRC Board in terms

of the decision made regarding the proposed review authority.

B. Proposed legislation.–The legislation included with this report resulting from Commission recommendations has been approved by the Commission only in general principle and not in terms of specific detail in some instances. The complexity of the many issues involved and the necessity for extensive public review and comment on the draft legislation make approval in detail inappropriate at this time. The Commission understands that the standing committees of the General Assembly will conduct further study of these bills for action in the 1979 General Assembly. (See Appendices I through V.)

The Commission recognizes the necessity of dealing with the protection of non-vegetated wetlands and could have chosen to include the vegetated and non-vegetated wetlands, as well as shoreland areas, in its legislative approach. However, in view of the necessity of receiving public comment on legislation dealing solely with the proposed Shorelands Protection Act, the Commission has chosen to address the protection of non-vegetated wetlands through an amendment to the existing Wetlands Act, and deal with the proposed Coastal Resources Management Act through a joint subcommittee for review as part of a "coastal package" of carry-over legislation. This should give the joint subcommittee a clearer focus in its work during the next year.

Respectfully submitted.

Joseph V. Gartlan, Jr., Chairman

Glenn B. McClanan, Vice-Chairman

Herbert H. Bateman

A. G. Clark, Jr.

Evelyn M. Hailey

Ivan D. Mapp

George N. McMath

Calvin G. Sanford

Alson H. Smith, Jr.

Harry E. Tull, Jr.

FOOTNOTES

1. Ronald Schmied, Some Aspects of the Economic Impact of Coastal and Marine Resource Uses Upon Virginia's Economy, Virginia Institute of Marine Science, Gloucester Point, Va., January, 1977, p. 4; and, Virginia State Travel Service, Travel in Virginia—An Economic Analysis, 1976, p. 8.
2. The Effects and Control of Non-Point Pollution of Water Resources as Applied in Va. , Edward B. Hale and Juanita F. Parry, Agricultural Engineering Dept., VPI & SV, Blacksburg, Va., January 1977, p. 4.
3. Roy F. Weston & Associates, "RADCO "208" Areawide Waste Treatment Management Plan," August, 1977, p. 5-6.
4. Hale & Perry, pp. 8, 13, 14.
5. Northern Virginia Planning District Commission, Interim Report, "Occoquan/Four mile Run Nonpoint Source Correlation Study," June, 1977, p. 35.
6. Hartigan, J. P., Grizzard, T. J., et al., "Assessment of Urban Nonpoint Pollution Impacts: Guidelines for 208 and Post-208 Planning Programs," paper presented at the annual Conference of the American Institute of Planners, Kansas City, Mo., October 8-12, 1977, p. 2.
7. Ibid., p. 20.
8. Roy F. Weston, op cit p. 43-9.
9. L. L. Harms and Elizabeth V. Sutherland, A Case Study of Non-Point Pollution in Virginia, Va. Water Resources Research Center, Bulletin #88, October, 1975, p 38.

APPENDIX I

Senate Bill No. 403

A BILL to amend the Code of Virginia by adding in Title 62.1 a chapter numbered 2.2, consisting of sections numbered 62.1-13.20:1 through 62.1-13.20:27, relating to coastal resources; shoreland protection; establishment of local ordinances and boards; creates procedures and establishes penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 62.1 a chapter numbered 2.2, consisting of sections numbered 62.1-13.20:1 through 62.1-13.20:27, as follows:

CHAPTER 2.2.

COASTAL RESOURCES.

Article 1.

State Policy as to Coastal Resources.

§ 62.1-13.20:1. Title.–This chapter shall be known and may be cited as the Coastal Resources Management Act.

§ 62.1-13.20:2. Declaration of policy.–The Commonwealth of Virginia hereby recognizes the unique character of its irreplaceable coastal resources. The preservation and wise use of these resources are essential to the public health and safety as well as economic and general welfare of the Commonwealth.

Therefore, in furtherance of Article XI of the Constitution of Virginia and in order to protect the public interest, promote the public health, safety and the economic and general welfare of the Commonwealth, and to protect public and private property, wildlife, marine fisheries and the natural environment of Tidewater Virginia, it is declared to be the public policy of this Commonwealth to preserve the coastal resources of the Commonwealth and to prevent their despoliation and destruction while accommodating necessary economic development in a manner consistent with coastal resource preservation.

It shall be the continuing policy of the Commonwealth to cooperate with the federal government, the State of Maryland, and the State of North Carolina in the management of coastal resources.

It shall further be the policy of the Commonwealth:

A. To protect, preserve and propagate its living marine resources;

B. To rely to the greatest extent possible and appropriate upon the authority, responsibility and accountability of local government for the management of coastal resources;

C. To encourage and assist local governments in Tidewater Virginia in implementing the purpose and policies of this act;

D. To ensure that full consideration is given to the needs for the location of energy related facilities and to their potential economic, social, and environmental impacts;

E. To ensure that all State agencies planning, permitting, regulating, or managing the use of coastal resources do so in full cooperation with the political subdivisons of the State;

F. To encourage the participation of private sector interests and organizations, citizens interest groups, and individual citizens in the preparation, improvement and implementation of an on-going Coastal Resources Management Plan in Virginia·

G. To inform citizens of the economic, social, recreational, aesthetic and ecological value of Virginia's coastal resources;

H. To make methods by which uses of coastal resources are determined more efficient and responsive to the needs of all citizens of the Commonwealth.

§ 62.1-13.20:3. Policy implementation.—The General Assembly directs that all agencies of the Commonwealth and its political subdivisions involved in the planning, permitting, regulating, or managing the use of coastal resources shall do so in a manner consistent with the purpose and policies of this act, and, further, that they shall be guided in their deliberation by Article XI, Section 1 of the Constitution of Virginia.

§ 62.1-13.20:4. Findings.—The General Assembly finds that:

A. The coastal zone of Virginia is rich in a variety of natural, agricultural, commercial, recreational, industrial and aesthetic resources of immediate and potential value to the well-being of the Commonwealth;

B. There are increasing and competing demands upon coastal resources arising from population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources;

C. The coastal resources of this Commonwealth are ecologically fragile

and consequently vulnerable to destruction by human action;

D. The location of water-access dependent development in the coastal zone of Virginia, including that related to energy resource exploration, recovery, production, and transportation, must be carefully planned;

E. In light of competing demands for the use of coastal resources, the need for protecting the natural systems of the coastal environment, and the need for balanced development, the key to more effective protection and wise use of coastal resources is the implementation of plans, policies, permitting procedures, regulations, performance standards, and management practices by both the Commonwealth and its political subdivisions, jointly as well as separately;

F. There is a State interest in the effective implementation of plans, policies, permitting procedures, regulations, performance standards, and management practices with respect to the use of coastal resources by the Commonwealth and its political subdivisions;

G. The Coastal Zone Management Act of 1972, as amended, and the preparation of proposals for a Coastal Resources Management Program by the Commonwealth has stimulated a continuing interest in the ways whereby the Commonwealth and its political subdivisions, acting together, can improve the methods by which the uses of coastal resources are determined, permitted, and managed; and

H. It is in the best interest of the Commonwealth and its political subdivisions to exercise as fully as possible their authorities over the use and management of coastal resources, particularly in light of the extensive federal responsibilities for planning, permitting regulating and managing already in existence.

§ 62.1-13.20:5. Definitions.—For the purposes of this chapter:

A. "Coastal Resources" shall include the following:

1. Marine resources including:

a. Saline and fresh water tidal wetlands, both vegetated and non-vegetated;

b. Tidal streams, estuaries, bays, ocean waters, and all spawning, nursery, and harvesting areas therein;

c. Subaqueous lands; and

d. All aquatic biota indigenous to tidal waters, including finfish, crabs, shellfish and other marine animals and vegetation.

2. Natural landforms, as described herein, common to the shorelands of tidal waters; their associated vegetation; and avian and terrestial wildlife dependent thereon including but not limited to:

a. Barrier islands

b. Spits

c. Bluffs

3. Historic, cultural and aesthetic sites, areas, landmarks and vistas associated with the coastal environment.

B. "Shorelands area" means all areas of direct surface run-off into tidal waters delineated as herein provided.

C. "Fragile shoreland area" shall mean highly erodible shoreland areas, sandy beaches, and primary rows of dunes.

D. "Commission" means the Marine Resources Commission.

E. "Tidewater Virginia" means the following counties: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Westmoreland, and York; and the cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

F. "Person" means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

G. "Sandy beach" means all that zone of unvegetated and unconsolidated material that extends landward from mean low water to where there is a marked change in material or physiographic form, or to the line of permanent vegetation. In the absence of vegetation, the inland limit of a sandy beach may be identified by a sharp rise in elevation, such as a bluff or unvegetated dune, or by existing structures.

H. "Primary row of dunes" means dynamic coastal features proximate to the shore, generally in the form of hills, ridges or mounds of sand, formed by the interaction between sand, wind, waves, vegetation and other factors, which generally extend from the backshore of the beach landward to a line which marks a significant change in local topography, vegetation, or soil characteristics, and upon which are often found one or more of the species of dune vegetation.

I. "Highly erodible areas" means those area within the shorelands area, in which erosion has occurred at a rate of over three feet or more per year in any of the last five years.

Article 2.

Responsible Agent.

§ 62.1-13.20:6. Responsibility assigned to Secretary of Commerce and Resources.—The Secretary of Commerce and Resources, in order to fulfill the requirements of subsection 306 (c)(5) of the federal Coastal Zone Management Act of 1972, (Public Law 92-583), shall be the single State agency designated to receive and administer federal grant monies. Pursuant to this responsibility, the Secretary is authorized to:

A. Accept and administer grant funds, to enter into contracts or similar arrangements with participating State agencies for the purpose of carrying out specific management tasks and to account for the expenditure of implementation monies by any recipient of such monies;

B. Monitor and evaluate the management of the Commonwealth's coastal resources by the various agencies of the State and local governments with specified responsibilities under the management program;

C. Make periodic reports to the federal Office of Coastal Zone Management, the Governor, the General Assembly, as appropriate, regarding the performance of all agencies involved in the program;

D. Present evidence of adherence to the management program or justification for deviation from the program as part of the federally required review of State performance;

E. Request approval from the federal Office of Coastal Zone Management for amendments and refinements to the Coastal Resources Management Program if and when appropriate.

All other agencies and officers of the Commonwealth shall assist the Secretary of Commerce and Resources in carrying out the purposes and policies of this act and the responsibilities assigned to them herein.

Article 3.

Shorelands Protection.

§ 62.1-13.20:7. Title.—This article shall be known and may be cited as Shorelands Protection pursuant to polic . findings and definitions in Article 1 of this act.

§ 62.1-13.20:8. State agencies to provide assistance and develop guidelines.—A. In order to implement the policy set forth in § 62.1-13.20:2 and to assist counties, cities or towns in regulation of shorelands, the Commission shall, with the advice and assistance of the Virginia Institute of Marine Science, which will evaluate shorelands by type and maintain a continuing inventory of those areas, from time to time promulgate guidelines which scientifically evaluate shoreland areas and fragile

shoreland areas by type and which set forth the consequences of use in these areas. In developing guidelines, the Commission is empowered to consult with any governmental agency.

B. The guidelines referred to in paragraph A. hereof shall be used to determine boundary delineation of shoreland areas and fragile shoreland areas and as a basis for decisions made on conditions of use in such areas.

C. The Commission shall transmit the guidelines developed by it pursuant to paragraph A. of this section to each House of the General Assembly at least sixty days prior to the commencement of the regular session of the General Assembly convening in nineteen hundred eighty. Guidelines so transmitted by the Commission under this section or portions thereof shall become effective on a date designated by the Commission following the adjournment of the General Assembly and thereafter shall have the force of law unless either the Senate or the House of Delegates, by resolution of a majority of the members elected thereto, prior to the adjournment of such session of the General Assembly, shall have disapproved guidelines or any portion thereof so submitted by the Commission. The guidelines, or portions of the guidelines which are effective shall be printed in the Acts of Assembly. No changes in such guidelines shall become effective unless the aforesaid process for effectiveness of the original guidelines shall have been observed with respect to such changes, mutatis mutandis.

D. The Marine Resources Commission and the Virginia Institute of Marine Science shall provide such technical assistance as is requested by shorelands protection boards in implementing the provisions of this chapter.

E. The State Water Control Board and the Office of the Secretary of Commerce and Resources are directed to prepare such materials as they should deem necessary in order to assist localities in the making of land use decisions which provide adequate consideration of marine resource protection, consistent with the policies and objectives of this chapter.

§ 62.1-13.20:9. Actions by localities and boards generally.—A. Every locality in this Commonwealth is hereby directed to review and revise, if necessary, its comprehensive plan for the physical development of territory within its jurisdiction and existing ordinances and practices, in order to best achieve the purposes of this chapter.

B. It shall be the duty of each shoreland protection board established pursuant to this chapter to delineate the boundaries of each shoreland and fragile shoreland area within its jurisdiction. The Commission and the Virginia Institute of Marine Science shall provide technical assistance upon request in order for each board to fulfill the purposes of this subsection.

C. The shorelands protection boards are directed to examine and apply applicable State and local statutes, ordinances, rules and regulations for the purposes of controlling non-point sources of water pollution in those

areas subject to their control.

§ 62.1-13.20:10. Standards for development in fragile shoreland areas generally.—The following standards shall apply to development in fragile shoreland areas:

A. Fragile shoreland areas shall not be altered so that the ecological and geological systems in such areas are irreparably disturbed.

B. Development in Tidewater Virginia, to the maximum extent possible, shall be concentrated in areas apart from the delineated fragile shoreland areas.

§ 62.1-13.20:11. Counties, cities and towns authorized to adopt shorelands protection ordinance; terms of ordinance.—Any county, city or town may adopt the following ordinance:

Shorelands Protection Ordinance

§ 1. The governing body of ...., acting pursuant to Article 3 of Chapter 2.2 of Title 62.1 of the Code of Virginia, for purposes of fulfilling the policy standards set forth in such chapter, adopts this ordinance regulating the use and development of shorelands.

§ 2. Definitions. For the purposes of this ordinance:

A. "Commission" means the Virginia Marine Resources Commission.

B. "Commissioner" means the Commissioner of Marine Resources.

C. "Person" means any corporation, association or partnership, one or more individuals, or any unit of government or agency thereof.

D. "Governmental services" means any or all of the services provided by this .... (county, city or town) to its citizens for the purpose of maintaining this .... (county, city or town) and shall include but shall not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and construction of public buildings.

E. "Shorelands area" means those areas as are defined in § 62.1-13.20:5 B. of the Code of Virginia.

F. "Fragile shoreland area" shall mean those areas as are defined in § 62.1-13.20:5 C. of the Code of Virginia.

§ 3. The following uses of and activities on shorelands are permitted, if otherwise permitted by law:

A. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management

shelters, footbridges, observation decks and shelters and other similar structures; provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide;

B. The cultivation and harvesting of shellfish;

C. Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting preserves; provided that no structure shall be constructed except as permitted in subsection A. of this section;

D. The cultivation and harvesting of agricultural or horticultural products; grazing and haying;

E. Conservation, repletion and research activities of the Virginia Marine Resources Commission, the Virginia Institute of Marine Science and other related conservation agencies;

F. The construction or maintenance of aids to navigation which are authorized by governmental authority;

G. Emergency decrees of any duly appointed health officer of a governmental subdivision acting to protect the public health;

H. The normal maintenance, repair or addition to presently existing roads, highways, railroad beds, or the facilities of any person, firm, corporation, utility, federal, State, county, city or town abutting on or crossing shorelands, provided that no waterway is altered and no additional shorelands are covered;

I. Governmental activity on shorelands owned or leased by the Commonwealth of Virginia, or a political subdivision thereof.

J. The normal maintenance of man-made drainage ditches, provided that no additional shorelands are covered; and provided further, that this paragraph shall not be deemed to authorize construction of any drainage ditch.

§ 4. A. Any person who desires to use or develop any shoreland within this .... (county, city or town), other than for those activities specified in § 3 above, shall first file an application for a permit with the shorelands board and shall send copies to the Commission and the Virginia Institute of Marine Science.

B. An application shall include the following: the name and address of the applicant; a detailed description of the proposed activity and a map, drawn to an appropriate and uniform scale, showing the area of shoreland directly affected, with the location of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth and length of any proposed channel and the disposal area, all existing and proposed structures; sewage collection and

treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands, and the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land; and estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure and such additional materials and documentation as the shorelands board may deem necessary.

C. A nonrefundable processing fee to cover the cost of processing the application, set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense involved, shall accompany each application.

§ 5. All applications and maps and documents relating thereto shall be open for public inspection at the office of the recording officer of this .... (county, city or town).

§ 6. Not later than sixty days after receipt of such application, the shorelands board shall hold a public hearing on such application. The applicant, the local governing body, the Commissioner, the owner of record of any land adjacent to the shorelands in question, known claimants of water rights in or adjacent to the shorelands in question, the Virginia Institute of Marine Science, the Department of Intergovernmental Affairs, the Department of Game and Inland Fisheries, Water Control Board, the Department of Highways and Transportation and governmental agencies expressing an interest therein shall be notified of the hearing by mail not less than twenty days prior to the date set for the hearing. The shorelands board shall also cause notice of such hearing to be published at least once a week for two weeks prior to such hearing in the newspaper having a general circulation in this .... (county, city or town) and in such adjacent jurisdiction as the board may direct. The costs of such publication shall be paid by the applicant.

§ 7. The Board shall, as to any application for a permit involving the shoreland area other than a fragile shoreland area, and unless the use contemplated by the application is otherwise prohibited by law, grant a permit for the use applied for, but shall condition such use upon compliance with such requirements as may be necessary to adequately achieve the policy and standards of this ordinance or to reasonably accommodate any guidelines promulgated hereunder.

§ 8. In acting on any application for a permit, the board shall grant the application upon the concurring vote of three members. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written

statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision. The board shall make its determination within thirty days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of such determination and if the board has not made a determination, it shall notify the applicant and the Commission that thirty days has passed and that the application is deemed approved.

The board shall transmit a copy of the permit to the Commissioner. If the application is reviewed or appealed, then the board shall transmit the record of its hearing to the Commissioner.

The board is directed to cite in each case the provisions of current State or local laws, ordinances, rules or regulations which it deems applicable in carrying out the intent of the Act and must further specify those additional conditions it has deemed necessary to impose, if any, upon the proposed land activity. Such explanation for the certification of the permit will constitute the sole basis for appeal to the Virginia Marine Resources Commission on substantive grounds. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the recording officer of this ....(county, city or town).

§ 9. The board may require a reasonable bond in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after hearing as provided herein, suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The board after hearing may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 10. A. In making its decision whether to grant, or grant with conditions an application for a permit the board shall base its decision on these factors:

1. Such matters raised through the testimony of any person in support of or in rebuttal to the permit application.

2. Impact of the development on the public health and welfare as expressed by the policy and standards of Chapter 2.2 of Title 62.1 of the Code of Virginia and any guidelines which may have been promulgated thereunder by the Commission.

B. If the board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity would not violate or tend to violate the purposes and intent of Chapter 2.2 of Title 62.1 of the Code of Virginia and of this ordinance, the board

shall grant the permit, subject to any reasonable condition or modification designed to minimize the impact of the activity on the ability of this .... (county, city or town), to provide governmental services and on the rights of any other person and to carry out the public policy set forth in Chapter 2.2 of Title 62.1 of the Code of Virginia and in this ordinance. Nothing in this section shall be construed as affecting the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. If the board finds that the anticipated public and private benefit from the proposed activity is exceeded by the anticipated public and private detriment or that the proposed activity would violate or tend to violate the purposes and intent of Chapter 2.2 of Title 62.1 of the Code of Virginia and of this ordinance, the board shall deny the permit application with leave to the applicant to resubmit the application in modified form.

§ 11. The permit shall be in writing, signed by the chairman of the board and notarized.

§ 12. No permit shall be granted without an expiration date, and the board, in the exercise of its discretion, shall designate an expiration date for completion of such work specified in the permit from the date the board granted such permit. The board, however, may, upon proper application therefor, grant extensions.

§ 13. Any permit granted by the board shall be subject to modification if the board finds that modification would best serve the public interest and comply with the purposes and objectives set forth in this chapter.

§ 62.1-13.20:12. Appointment, terms, etc., of local shorelands protection boards; jurisdiction of county shorelands protection board over shorelands in town.—A. In and for any county, city or town which has enacted or enacts a shorelands protection ordinance pursuant to this chapter, there shall be created a shorelands protection board, which shall consist of five residents of the county, city or town appointed by the governing body of the county, city or town. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The chairman of the board shall notify the governing body at least thirty days in advance of the expiration of any term of office, and shall also notify the governing body promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may serve successive terms. Members of the board shall hold no other public office in the county or city except that they may be members of the local planning or zoning commission, directors of soil and water conservation boards, or of the local board of zoning appeals. A member whose term expires shall continue to serve until his successor is appointed and qualified.

B. If a town does not enact a shorelands protection ordinance within one year from the time the county in which such town is located enacts a shorelands protection ordinance, permit applications for the use and development of shorelands located in such town shall be made to the county shorelands board.

§ 62.1-13.20:13. Officers, meetings, rules, etc., of shorelands boards; records and reports.—The board shall elect from its membership a chairman and such other officers as it deems necessary who shall serve one-year terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than three members of the board. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the county, city or town and general laws of the Commonwealth, including this chapter. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body at least once each year, and a copy of its report to the Commission.

§ 62.1-13.20:14. Local governing body to supply meeting space and services for shorelands board; removal of board member.—The governing body of the county, city or town creating a shorelands board shall supply reasonable meeting space for the use of the board and such reasonable secretarial, clerical, legal and consulting services as may be needed by the board. The local governing body is authorized to expend the necessary public funds. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the governing body which appointed him, after hearing held after at least fifteen days' notice.

§ 62.1-13.20:15. Permits required for certain activities; issuance of permits by Commission.—No person shall conduct any activity which would require a permit under a shorelands protection ordinance unless he has a permit therefor. Until such time as the county, city or town in which a person proposes to conduct an activity which would require a permit under a shorelands ordinance adopts the shorelands ordinance, such person shall apply for a permit directly to the Commission except as provided in § 62.1-13.20:12 B. If an applicant desires to use or develop shorelands owned by the Commonwealth, he shall apply for a permit directly to the Commission and in addition to the application fee required by the shorelands ordinance, he shall pay such fees and royalties as provided in § 62.1-3.

The Commission shall process such application in accordance with the provisions of the shorelands ordinance and the Commissioner shall sign such permit; provided, however, that the Commission shall have the authority to designate one or more hearing officers who may, in lieu of the Commission, conduct public hearings as required in § 62.1-13.20:11, and thereafter report such findings and recommendations to the Commission.

§ 62.1-13.20:16. Commissioner of Marine Resources to review all decisions of shorelands boards.—The Commissioner shall review all decisions of the shorelands board and notify the Commission of any decision which in his opinion should be reviewed by the Commission.

§ 62.1-13.20:17. When Commission to review decision of shorelands board.—The Commission shall review a decision of a shorelands board made under a shorelands ordinance when:

A. An appeal is taken from such decision by the applicant for a permit or by the county, city or town where the shorelands are located; or

B. The Commissioner requests such review. The Commissioner shall request such review only when he reasonably believes that the policy and standards of this chapter have not been adequately achieved or that any guidelines which may have been promulgated by the Commission have not been reasonably accommodated. In order to make such a request, the Commissioner must notify the board and the applicant and the county. city or town where the shorelands are located within ten days of receipt of notice to the Commissioner of the decision of the board.

C. Twenty-five or more freeholders of property within the county, city or town in which the proposed project is located sign and submit a petition to the Commission, provided, such petition must include a statement of particulars setting forth those specific instances wherein the petitioners do allege that the board did fail to follow the policy, standards or guidelines of this chapter.

D. Where not otherwise provided, the foregoing requests for review or appeal shall be made within ten days from date of initial determination by the board; and provided that the Commission shall hear and decide such review or appeal within forty-five days after notice of such review or appeal is received a continuance may be granted by the Commission on a motion of the applicant or the freeholders as specified in subsection C. hereof or the county, city or town where the shorelands are located.

E. The local governing body of any adjacent county, city or town seeks a review based on the adverse effect of the decision regionally.

§ 62.1-13.20:18. Procedure for review.—A. The Commissioner shall cause notice of the review or appeal to be given to the board, to the applicant, to the freeholders specified in § 62.1-13.17 C. and to the county, city or town where the shorelands are located.

B. The Commission shall hear the appeal or conduct the review on the record transmitted by the board to the Commissioner and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. And the Commission, in its discretion, may receive such other evidence as the ends of justice require.

§ 62.1-13.20:19. When Commission to modify, remand or reverse decision of shorelands board.—The Commission shall modify, remand or reverse the decision of the shorelands board:

A. If the decision of the shorelands board will not adequately achieve the policy and standards of this chapter or will not reasonably accommodate any guidelines which may have been promulgated by the Commission hereunder; or

B. If the substantial rights of the appellant or the applicant have been prejudiced because the findings, conclusions or decisions are

1. In violation of constitutional provisions; or

2. In excess of statutory authority or jurisdiction of the shorelands board; or

3. Made upon unlawful procedure; or

4. Affected by other error of law; or

5. Unsupported by the evidence on the record considered as a whole; or

6. Arbitrary, capricious, or an abuse of discretion.

§ 62.1-13.20:20. Notice of Commission's decision.—The Commission shall notify the parties of its determination within forty-eight hours after the appeal or review.

§ 62.1-13.20:21. Time for issuance of permit.—No permit shall be issued until the time within which a request for review or an appeal to the Commission may be made has expired; and, if any such request for review or appeal is made, no activity for which such permit is required shall be commenced until the Commission has notified the parties of its determination.

§ 62.1-13.20:22. Appeals to courts.—A. An appeal from any decision of the Commission concerning an application for a permit granted or denied directly by the Commission, or from any decision of the Commission on review of or appeal from a decision of the board may be taken by the applicant, any of the freeholders as set forth in § 62.1-13.20:17 C., by the county, city or town where the shorelands are located, within thirty days after the rendering of such decision of the Commission, to the circuit court having jurisdiction in the governmental subdivision in which the shorelands involved in the decision are located.

B. Judicial review shall be in accord with the provisions of § 9-6.13, except that the circuit court shall modify or reverse the decision of the Commission or remand the case for further proceedings:

1. If the decision of the Commission will not adequately achieve the policy and standards of this chapter or will not reasonably accommodate any guidelines which may have been promulgated by the Commission; or

2. If the substantial rights of the appellant have been prejudiced because of findings, conclusions or decisions are

a. In violation of constitutional provisions; or

b. In excess of statutory authority or jurisdiction of the Commission; or

c. Made upon unlawful procedure; or

d. Affected by other error of law; or

e. Unsupported by the evidence on the record considered as a whole; or

f. Arbitrary, capricious, or an abuse of discretion.

C. From the final decision of the circuit court an appeal shall lie to the Supreme Court in the manner provided by law for appeals in civil cases.

§ 62.1-13.20:23. Investigations and prosecutions.—The Commission shall have the authority to investigate all projects whether proposed or ongoing which alter shorelands. The Commission shall have the power to prosecute all violations of any order, rule, or regulation of the Commission or of a shorelands board, or violation of any provision of this chapter. Shorelands boards shall have the authority to investigate all projects whether proposed or ongoing which alter shorelands located within the city, town or county establishing such shorelands board. Shorelands boards shall have the power to prosecute all violations of any order of such boards, or any violation of any provision of the shorelands ordinance contained in § 62.1-13.5.

§ 62.1-13.20:24. Violation of orders, rules and regulations.—A. Any person who knowingly, intentionally, negligently or continually violates any order, rule or regulation of the Commission or of a shorelands board established pursuant to this chapter or violates any provision of this chapter or of a shorelands ordinance enacted pursuant to this chapter or any provision of a permit granted by a shorelands board or the Commission pursuant to this chapter shall be guilty of a misdemeanor. Following a conviction, every day the violation continues shall be deemed a separate offense.

§ 62.1-13.20:25. Injunctions.—In addition to and notwithstanding the provisions of § 62.1-13.20:19, upon petition of the Commission or a shorelands board to the court of record having jurisdiction in the city or county wherein any act is done or is threatened to be done which is unlawful under the provisions of this chapter, the court may enjoin such unlawful act and may order the person so acting unlawfully to take such steps as are necessary to restore, protect and preserve the shorelands involved.

§ 62.1-13.20:26. Jurisdiction of Commission not affected.—Nothing in this chapter shall affect the Commission's sole jurisdiction over areas and activities as defined by Title 28.1 or § 62.1-3 of this Code.

§ 62.1-13.20:27. Exemptions.—Nothing in this chapter shall affect (1) any project commenced prior to July one, nineteen hundred seventy-nine; provided, however, that this section shall not be deemed to exclude from regulation under this chapter any activity which expands or enlarges upon a project already in existence or under construction at the time of such date, except for those activities exempted under § 62.1-13.20:11 § 3 H.; (2)

any project or development as to which, prior to July one, nineteen hundred seventy-nine; a plan or plan of development thereof has been filed pursuant to ordinance or other lawful enactment with either an agency of the federal or State government, or with either the planning commission, board of supervisors, or city council of the jurisdiction in which the project or development is located; and (3) any project or development, whether or not commenced prior to July one, nineteen hundred seventy-nine; if located or to be located in whole or in part on ground or in an area an interest in which was authorized by the General Assembly to be conveyed prior to July one, nineteen hundred seventy-nine.

APPENDIX II

Senate Bill No. 402

A BILL to amend the Code of Virginia by adding in Chapter 17 of Title 10 an article numbered 3, consisting of sections numbered 10-186.1 through 10-186.3, relating to key facility siting and the Council on the Environment.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 17 of Title 10 an article numbered 3, consisting of sections numbered 10-186.1 through 10-186.3, as follows:

Article 3.

Key Facilities.

§ 10-186.1. Declaration of Purpose.—The purpose of this article is to provide for a coordinated process whereby the interests of the citizens of the Commonwealth can be expressed in State-level siting decisions involving key facilities. Such a process will serve the public interest by:

A. Ensuring that siting decisions involving key facilities receive priority consideration through the expeditious and coordinated processing of the various regulatory permits, certificates or licenses each may require;

B. Ensuring that these major facilities receive a comprehensive review of their overall effects on the Commonwealth; and

C. Providing for a uniform and accessible procedure for the review and comment on all key facilities.

§ 10-186.2. Key facilities defined; duties of Council with respect to key facility siting.—A. A key facility means: (i) developments vital to the furtherance of the national or State interest; (ii) developments required to support or service a facility vital to the national or State interest; or (iii) a public facility which represents a major investment of public funds, whose effectiveness may be seriously affected by its location. For the purposes of this article, key facilities shall be limited to:

1. Power generating plants and associated facilities, designed for, or capable of operation at a capacity of ten megawatts or more and power transmission lines and associated facilities with a designed capacity of two hundred kilovolts or more.

2. Interstate and intrastate pipelines and their associated compressor stations and storage facilities used in the transmission of natural and

synthetic gas, unrefined petroleum, refined petroleum products, and other liquid, liquefied solids, or gaseous material. Such facilities do not include those facilities carrying water for domestic supply purposes or collecting and transporting domestic sewage or those facilities used in the distribution of any of the above commodities to the ultimate consumer such as private dwellings, public and private buildings and businesses where the commodity is consumed or sold for consumption in the ordinary course of business.

3. Any airport listed in the Virginia Air Transportation System Plan.

4. Major port and docking facilities engaged in the commerical interface of waterborne cargo or passengers with any other mode of transportation.

5. Facilities and sites for the disposal of dredge spoil from two or more dredge operations and facilities and sites for the disposal of hazardous waste materials.

6. Major State governmental projects that involve the acquisition of land for the construction of a key facility, the construction of a facility or the expansion of an existing facility valued at one hundred thousand dollars or more by any agency, authority or branch of government, provided, however, that highways and extensions thereof are not included. For the purpose of this article, authority shall not include any industrial development authority created pursuant to the provisions of Chapter 33 of Title 15.1 of this Code or Chapter 643 of the Acts of Assembly of 1964. Nor shall authority include any housing development or redevelopment authority established pursuant to State law.

7. Interstate and State arterial system highways and their associated bridges, tunnels, intersections and interchanges with other highways.

8. Plants, storage and docking facilities devoted to:

a. Organic chemical processes such as refining, gasification, liquefication or polymerization using petroleum natural gas or coal as their raw material; and

b. Processes using radioactive or nuclear fuel as their raw material; and

c. The manufacture of offshore resource exploration and recovery equipment.

9. Facilities for the withdrawal of more than fifty thousand gallons of groundwater per day for any purpose.

B. The Council shall have the following duties regarding the coordination of planning for key facility siting:

1. To provide advice and assistance to any developer of a proposed

key facility regarding the environmental considerations that may be relevant to that facility;

2. To monitor developments in the planning processes of each key facility category and to maintain a current inventory on maps and documents of the status of the plans for all key facilities;

3. To furnish information to any interested party on the status of any key facility plans by category or geographic area;

4. To conduct analyses of any potential siting conflicts among key facilities and to advise all agencies involved of the conflict and suggest a remedy;

5. To conduct analyses of any potential siting combinations among key facilities and to advise all agencies involved and include recommendations;

6. To negotiate in voluntary arbitration between the agencies involved regarding both siting conflicts and combinations; and

7. To encourage each agency responsible for functional planning for any key facility to provide information on projected needs and development plans for these facilities on a continuing basis, to the maximum extent practical. Nothing in this section shall be construed as a requirement of private industry or an industrial developer to divulge any information wherein the confidentiality is necessary to such developer in regard to site acquisition on the open market.

C. The Council shall have the following duties regarding the impact, review and permitting of key facilities whenever a key facility requires a State permit or certificate from more than one State environmental regulatory agency:

1. To conduct a coordinated impact review of the environmental, land use, economic, social and other effects that the proposed key facility may cause;

2. To consult all appropriate State agencies in conducting such review; and

3. To make the impact review available to all State boards and commissions that must make decisions on the issuance of permits or certificates for such facility.

D. All State agencies shall cooperate with the Council on the coordinated planning impact review for the siting of key facilities.

E. For purposes of this article any branch of government shall not be construed to include any county, city or town of the Commonwealth.

§ 10-186.3. Key facility siting permit process; powers and duties of the Council and administrator; rules and regulations.—A. If a key facility, as

defined in § 10-186.2, requires a State permit or certificate from more than one State environmental regulatory agency, the applicant shall make a single, unified application to the administrator according to procedures specified in § 10-184.2 of the Code of Virginia.

B. When any proposed key facility shall require the preparation and review of an environmental impact statement pursuant to federal statute, rule or regulation, a State-coordinated impact review based upon information contained in such environmental impact statement shall be conducted prior to the issuance of any State environmental regulatory permit or certificate.

C. Notwithstanding any other provision of law, the administrator shall receive and review the application within twenty-one days and at his discretion may consolidate, coordinate and expedite the permit review process including but not limited to the elimination of redundant or overlapping procedures; consolidation of any formal hearings that may be required into one hearing; and coordination of the processing of permits where both federal and State requirements are involved.

D. For the purposes of this section the State environmental regulatory agencies shall include: the State Air Pollution Control Board; the Board of Conservation and Economic Development; the State Health Department; the Marine Resources Commission; the Soil and Water Conservation Commission and the State Water Control Board.

E. Notwithstanding any other provision of law, the acceptance of an application for multiple permits by the administrator, after the administrator has ascertained that the application is complete and otherwise acceptable, shall commence the processing period as to each board or commission involved. The hearing for a multiple State permit shall be held within sixty days after the application to the administrator is complete; and each board or commission decision on a multiple permit shall be made within ninety days after the application to the administrator is complete. In exceptional circumstances or in light of new information presented during a public hearing, a board or commission may extend the time period for consideration of the multiple permit by a board or commission; provided that the extension shall be for a period not to exceed thirty days.

F. Judgment of the merits of each permit that is required shall remain the responsibility of each respective board or commission. Each board or commission shall make every effort to coordinate its permit review process with the administrator.

G. The Council on the Environment shall have the authority to issue necessary rules and regulations to carry out the provisions of this section.

APPENDIX III

Senate Bill No. 401

A BILL to amend and reenact §§ 62.1-13.2, 62.1-13.3, 62.1-13.5 and 62.1-13.20 of the Code of Virginia, relating to nonvegetated wetlands.

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-13.2, 62.1-13.3, 62.1-13.5 and 62.1-13.20 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-13.2. Definitions.–For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them:

(a) "Commission" means the Virginia Marine Resources Commission.

(b) "Commissioner" means the Commissioner of Marine Resources.

(c) "Person" means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

(d) "Tidewater Virginia" means the following counties: Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Southampton, Spotsylvania, Stafford, Surry, Sussex, Westmoreland, and York; and the cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Portsmouth, Richmond, Suffolk, Virginia Beach and Williamsburg.

(e) "Governmental services" means any or all of the services provided by a county, city or town to its citizens for the purpose of maintaining such county, city or town and shall include but shall not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights, and construction of public buildings.

(f) "Wetlands" means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in the county, city or town in question; and upon which is growing on July one, nineteen hundred seventy-two or grows thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), saltgrass (Distichlis spicata), black needlerush (Juncus roemerianus), saltwort (Salicornia spp.), sea lavender (Limonium spp.), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), sea oxeye (Borrichia frutescens), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia

oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), sea rocket (Cakile ecentula), southern wildrice (Zizaniopsis miliacea), cattails (Typha spp.), three-squares (Scirpus spp.), button bush (Cephalanthus occidentalis), bald cypress (Taxodium distichum), black gum (Nyssa sylvatica), tupelo (Nyssa aquatica), dock (Rumex spp.), yellow pond lily (Nuphar spp.), marsh fleabane (Pluchea purpurascens), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's ticks (Bidens sp.), smartweeds (Polygonum sp.), arrowhead (Sagittaria spp.), sweet flag (Acorus calamus), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis) and switch grass (Panicum virgatum).

The wetlands of Back Bay and its tributaries and the wetlands of the North Landing river and its tributaries shall mean all marshes subject to regular or occasional flooding by tides, including wind tides, provided this shall not include hurricane or tropical storm tides and upon which one or more of the following vegetation species are growing or grows thereon subsequent to the passage of this amendment: ~~saltwater~~ *saltmarsh* cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), black needlerush (Juncus roemerianus), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), cattails (Typha spp.), three-squares (Scirpus spp.), dock (Rumex sp.), smartweeds (Polygonum sp.), yellow pond lily (Nuphar spp.), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's ticks (Bidens sp.), arrowhead (Sagittaria spp.), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis) and switch grass (Panicum virgatum). *As of July one, nineteen hundred seventy-eight, wetlands shall also mean all that land lying between mean low water and an elevation above mean low water equal to the mean tide range at the site of any proposed project.*

(g) "Wetlands board" or "board" means a board created as provided in § 62.1-13.6.

(h) "Wetlands zoning ordinance" means that ordinance set forth in § 62.1-13.5.

(i) "County, city or town" shall mean the governing body of such county, city or town.

(j) "Back Bay and its tributaries" means the following as shown on the U.S. Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina State Line; Capsies creek north of the Virginia-North Carolina State Line; Deal creek; Devil creek; Nawney creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge creek; Muddy creek; Ashville Bridge creek; Hells Point creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

(k) "North Landing river and its tributaries" means the following as

based on United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentries: The North Landing river from the Virginia-North Carolina line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; all named and unnamed streams, creeks and rivers flowing into the North Landing river and the Chesapeake and Albemarle canal except the following: West Neck creek north of Indian River Road; Pocaty river west of Blackwater Road; Blackwater river west of its forks located at a point approximately 6400 feet due west of the point where the Blackwater Road crosses the Blackwater river at the village of Blackwater; Millbank creek west of Blackwater Road.

§ 62.1-13.3. Standards for use and development of wetlands.–The following standards shall apply to the use and development of wetlands:

(1) Wetlands of primary ecological significance shall not be altered so that the ecological systems in the wetlands are unreasonably disturbed;

(2) Development in Tidewater Virginia, to the maximum extent possible, shall be concentrated in wetlands of lesser ecological significance, in wetlands which have been irreversibly disturbed before July one, nineteen hundred seventy-two, *in wetlands described by § 62.1-13.2 (f) which lie between mean low water and an elevation above mean low water equal to the mean tide range at the site of any proposed project before June one, nineteen hundred seventy-eight,* and in *those* areas of Tidewater Virginia apart from the wetlands.

§ 62.1-13.5. Counties, cities and towns authorized to adopt wetlands zoning ordinance; terms of ordinance. Any county, city or town may adopt the following ordinance:

Wetlands Zoning Ordinance

§ 1. The governing body of ...., acting pursuant to chapter 2.1 of Title 62.1 of the Code of Virginia, for purposes of fulfilling the policy standards set forth in such chapter, adopts this ordinance regulating the use and development of wetlands.

§ 2. Definitions. For the purposes of this ordinance:

(a) "Commission" means the Virginia Marine Resources Commission.

(b) "Commissioner" means the Commissioner of Marine Resources.

(c) "Person" means any corporation, association or partnership, one or more individuals, or any unit of government or agency thereof.

(d) "Governmental services" means any or all of the services provided by this .... to its citizens for the purpose of maintaining this .... and shall include but shall not be limited to such services as constructing, repairing and maintaining roads, sewage facilities, supplying and treating water, street lights and construction of public

buildings.

(e) "Wetlands" means all that land lying between and contiguous to mean low water and an elevation above mean low water equal to the factor 1.5 times the mean tide range at the site of the proposed project in this ....; and upon which is growing on the effective date of this act or grown thereon subsequent thereto, any one or more of the following: saltmarsh cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), saltgrass (Distichlis spicata), black needlerush (Juncus roemerianus), saltwort (Salicornia spp.), sea lavender (Limonium spp.), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), sea oxeye (Borrichia frutescens), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), sea rocket (Cakile ecentula), southern wildrice (Zizaniopsis miliacea), cattails (Typha spp.), three-squares (Scirpus spp.), buttonbush (Cephalanthus occidentalis), bald cypress (Taxodium distichum), black gum (Nyssa sylvatica), tupelo (Nyssa aquatica), dock (Rumex spp.), yellow pond lily (Nuphar spp.), marsh fleabane (Pluchea purpurascens), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's ticks (Bidens sp.), smartweeds (Polygonum sp.), arrowhead (Sagittaria spp.), sweet flag (Acorus calamus), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), and switch grass (Panicum virgatum).

The wetlands of Back Bay and its tributaries and the wetlands of the North Landing river and its tributaries shall mean all marshes subject to regular or occasional flooding by tides, including wind tides, provided this shall not include hurricane or tropical storm tides, and upon which one or more of the following vegetation species are growing or grows thereon subsequent to the passage of this amendment: ~~saltwater~~ *saltmarsh* cordgrass (Spartina alterniflora), saltmeadow hay (Spartina patens), black needlerush (Juncus reomerianus), marsh elder (Iva frutescens), groundsel bush (Baccharis halimifolia), wax myrtle (Myrica sp.), arrow arum (Peltandra virginica), pickerelweed (Pontederia cordata), big cordgrass (Spartina cynosuroides), rice cutgrass (Leersia oryzoides), wildrice (Zizania aquatica), bulrush (Scirpus validus), spikerush (Eleocharis sp.), cattails (Typha spp.), three-squares (Scirpus spp.), dock (Rumex sp.), smartweeds (Polygonum sp.), yellow pond lily (Nuphar spp.), royal fern (Osmunda regalis), marsh hibiscus (Hibiscus moscheutos), beggar's ticks (Bidens sp.), arrowhead (Sagittaria spp.), water hemp (Amaranthus cannabinus), reed grass (Phragmites communis), and switch grass (Panicum virgatum). *As of July one, nineteen hundred seventy-eight, wetlands shall also mean all that land lying between mean low water and on an elevation above mean low water equal to the mean tide range at the site of any proposed project.*

(f) "Wetlands board" or "board" means a board created as provided in § 62.1-13.6 of the Code of Virginia.

(g) "Back Bay and its tributaries" means the following as shown on the U.S. Geological Survey Quadrangle Sheets for Virginia Beach, North Bay, and Knotts Island: Back Bay north of the Virginia-North Carolina State

Line; Capsies creek north of the Virginia-North Carolina State Line; Deal creek; Devil creek; Nawney creek; Redhead Bay, Sand Bay, Shipps Bay, North Bay, and the waters connecting them; Beggars Bridge creek; Muddy creek; Ashville Bridge creek; Hells Point creek; Black Gut; and all coves, ponds and natural waterways adjacent to or connecting with the above-named bodies of water.

(h) "North Landing river and its tributaries" means the following as based on the United States Geological Survey Quadrangle Sheets for Pleasant Ridge, Creeds, and Fentres: the North Landing river from the Virginia-North Carolina Line to Virginia Highway 165 at North Landing Bridge; the Chesapeake and Albemarle canal from Virginia Highway 165 at North Landing Bridge to the locks at Great Bridge; all named and unnamed streams, creeks, and rivers flowing into the North Landing river and the Chesapeake and Albemarle canal except the following: West Neck creek north of Indian River Road; Pocaty river west of Blackwater Road; Blackwater river west of its forks located at a point approximately 6400 feet due west of the point where the Blackwater Road crosses the Blackwater river at the village of Blackwater; Millbank creek west of Blackwater Road.

§ 3. The following uses of and activities on wetlands are permitted, if otherwise permitted by law:

(a) The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures; provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the marsh;

(b) The cultivation and harvesting of shellfish, and worms for bait;

(c) Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shellfishing, horseback riding, swimming, skeet and trap shooting, and shooting preserves; provided that no structure shall be constructed except as permitted in subsection (a) of this section;

(d) The cultivation and harvesting of agricultural or horticultural products; grazing and haying;

(e) Conservation, repletion and research activities of the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, Commission of Game and Inland Fisheries and other related conservation agencies;

(f) The construction or maintenance of aids to navigation which are authorized by governmental authority;

(g) Emergency decrees of any duly appointed health officer of a governmental subdivision acting to protect the public health;

(h) The normal maintenance, repair or addition to presently existing roads, highways, railroad beds, or the facilities of any person, firm, corporation, utility, federal, State, county, city or town abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;

(i) Governmental activity on wetlands owned or leased by the Commonwealth of Virginia, or a political subdivision thereof.

(j) The normal maintenance of man-made drainage ditches, provided that no additional wetlands are covered; and provided further, that this paragraph shall not be deemed to authorize construction of any drainage ditch.

§ 4. (a) Any person who desires to use or develop any wetland within this (county, city or town), other than for those activities specified in § 3 above, shall first file an application for a permit with the wetlands board and shall send copies to the Commission and the Virginia Institute of Marine Science.

(b) An application shall include the following: the name and address of the applicant; a detailed description of the proposed activity and a map, drawn to an appropriate and uniform scale, showing the area of wetland directly affected, with the location of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth and length of any proposed channel and the disposal area, all existing and proposed structures; sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands, and the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; and estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental offsite effects; the completion date of the proposed work, project, or structure and such additional materials and documentation as the wetlands board may deem necessary.

(c) A nonrefundable processing fee to cover the cost of processing the application, set by the applicable governing body with due regard for the services to be rendered, including the time, skill, and administrator's expense involved, shall accompany each application.

§ 5. All applications and maps and documents relating thereto shall be open for public inspection at the office of the recording officer of this .... (county, city or town).

§ 6. Not later than sixty days after receipt of such application, the wetlands board shall hold a public hearing on such application. The applicant, the local governing body, the Commissioner, the owner of record

of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the Division of State Planning and Community Affairs, the Department of Game and Inland Fisheries, Water Control Board, the Department of Highways and governmental agencies expressing an interest therein shall be notified of the hearing by mail not less than twenty days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two weeks prior to such hearing in the newspaper having a general circulation in this .... (county, city or town). The costs of such publication shall be paid by the applicant.

§ 7. In acting on any application for a permit, the board shall grant the application upon the concurring vote of three members. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision. The board shall make its determination within thirty days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty-eight hours of its determination, the board shall notify the applicant and the Commissioner of such determination and if the board has not made a determination, it shall notify the applicant and the Commission that thirty days has passed and that the application is deemed approved.

The board shall transmit a copy of the permit to the Commissioner. If the application is reviewed or appealed, then the board shall transmit the record of its hearing to the Commissioner. Upon a final determination by the Commission, the record shall be returned to the board. The record shall be open for public inspection at the office of the recording officer of this ....(county, city or town).

§ 8. The board may require a reasonable bond in an amount and with surety and conditions satisfactory to it securing to the Commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after hearing as provided herein, suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of the work as set forth in the application. The board after hearing may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 9. (a) In making its decision whether to grant, to grant in modified form, or to deny an application for a permit the board shall base its decision on these factors:

(1) Such matters raised through the testimony of any person in support of or in rebuttal to the permit application.

(2) Impact of the development on the public health and welfare as expressed by the policy and standards of chapter 2.1 of Title 62.1 of the Code of Virginia and any guidelines which may have been promulgated thereunder by the Commission.

(b) If the board, in applying the standards above, finds that the anticipated public and private benefit of the proposed activity exceeds the anticipated public and private detriment and that the proposed activity would not violate or tend to violate the purposes and intent of chapter 2.1 of Title 62.1 of the Code of Virginia and of this ordinance, the board shall grant the permit, subject to any reasonable condition or modification designed to minimize the impact of the activity on the ability of this .... (county, city or town), to provide governmental services and on the rights of any other person and to carry out the public policy set forth in chapter 2.1 of Title 62.1 of the Code of Virginia and in this ordinance. Nothing in this section shall be construed as affecting the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity. If the board finds that the anticipated public and private benefit from the proposed activity is exceeded by the anticipated public and private detriment or that the proposed activity would violate or tend to violate the purposes and intent of chapter 2.1 of Title 62.1 of the Code of Virginia and of this ordinance, the board shall deny the permit application with leave to the applicant to resubmit the application in modified form.

§ 10. The permit shall be in writing, signed by the chairman of the board and notarized.

§ 11. No permit shall be granted without an expiration date, and the board, in the exercise of its discretion, shall designate an expiration date for completion of such work specified in the permit from the date the board granted such permit. The board, however, may, upon proper application therefor, grant extensions.

§ 62.1-13.20. Exemptions.–Nothing in this chapter shall affect (1) any project commenced prior to July one, nineteen hundred seventy-two; provided, however, that this section shall not be deemed to exclude from regulation under this chapter any activity which expands or enlarges upon a project already in existence or under construction at the time of such date, except for those activities exempted under § 62.1-13.5 § 3 (h); (2) any project or development as to which, prior to July one, nineteen hundred seventy-two; a plan or plan of development thereof has been filed pursuant to ordinance or other lawful enactment with either an agency of the federal or State government, or with either the planning commission, board of supervisors, or city council of the jurisdiction in which the project or development is located; *provided that, in order for this exception to be effective, the project or development must be filed for certification with the Commission or a local wetlands board prior to January one, nineteen hundred seventy-eight. The certification shall be issued if a plan or plan of development had been filed for the project or development prior to July one, nineteen hundred seventy-two as provided by this exemption or if a plan or plan of development has been filed for a project or development*

located on the North Landing River or its tributaries prior to July one, nineteen hundred seventy-five, otherwise the certification shall be denied. Projects or developments which have been determined by the Commission or local wetlands board prior to July one, nineteen hundred seventy-seven to be exempt from the provisions of this chapter shall be considered to be certified. If the request for certification is not granted or denied within one hundred eighty days from receipt of request by the Commission or a local wetlands board, the certification will be considered to be granted. The time limitations and public hearing requirements imposed by § 62.1-13.5 shall not apply to the certification process. Upon request of any person holding a certification issued by the Commission or a local wetlands board, the clerk of the circuit court having jurisdiction over the property on which the certified project is located shall record such certification in the deed book of the circuit court; ~~and~~ (3) any project or development, whether or not commenced prior to July one, nineteen hundred seventy-two; if located or to be located in whole or in part on ground or in an area an interest in which was authorized by the General Assembly to be conveyed prior to July one, nineteen hundred seventy-two ; (4) for the North Landing river and its tributaries exemptions (1) and (2) above shall take effect July one, nineteen hundred seventy-five *; and (5) any project brought under a permit requirement as a result of the amendments effective July one, nineteen hundred seventy-eight to §§ 62.1-13.2 (f) and 62.1-13.5 (2) (e) for which an acceptable application for a permit pursuant to the Rivers and Harbors Act of 1899 or the Federal Water Pollution Control Act Amendments of 1972 has been filed with the appropriate district offices of the United States Army Corps of Engineers prior to July one, nineteen hundred seventy-eight .*

APPENDIX IV

SENATE JOINT RESOLUTION NO. 62

Expressing the support of the General Assembly for the efforts of the Secretary of Commerce and Resources to bring greater consistency to federal and State permitting activities in tidal waters and wetlands through negotiations with the United States Army Corps of Engineers; and requesting the Secretary to study certain permit programs for shoreline activities.

WHEREAS, during public hearings held on the proposed Coastal Resources Management Program concern was repeatedly expressed as to the problems inherent in the present system of obtaining local, State and federal permits for minor projects in tidal waters and wetlands; and

WHEREAS, the Secretary of Commerce and Resources has identified the duplication and overlapping of State and federal permit programs to be the reason for much of the delay and confusion in the present system; and

WHEREAS, certain administrative procedures have been initiated by the Virginia Marine Resources Commission to improve the coordination of federal, State and local permits in addition to negotiations in progress between the Secretary of Commerce and Resources and the Corps of Engineers to expedite the decision-making process for smaller projects of minimum cumulative environmental impact in hopes of greater State and local involvement; and

WHEREAS, due to the rapid growth in the coastal area there has been a proliferation of structures upon State-owned bottoms in tidal waters which is an issue of concern to the Commonwealth; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Secretary of Commerce and Resources is requested to continue to pursue the administrative expedition of permits for smaller shoreline activities with minimal, cumulative environmental impacts in keeping with the Commonwealth's concern with respect to the increasing number of shoreline structures and continue negotiations with the Corps of Engineers and its advisory agencies concerning the issuance of federal General Permits for certain classes of activities in tidal waters and wetlands to increase State and local involvement in the process; and, be it

RESOLVED FURTHER, That the Secretary of Commerce and Resources is further requested to identify substantive and procedural differences between State and federal permit programs and make recommendations for bringing greater consistency between such programs; to examine the current permit exemptions under Title 62.1 of the Code of Virginia as relating to the proliferation of structures on State-owned bottoms and tidal wetlands; and to examine the feasibility of authorizing local governments to administer State permit programs for controlling the use of State-owned bottoms, assessing the advantages and disadvantages of such a system and

the possible effects upon local governments in Tidewater Virginia; and to report its findings to the Governor and General Assembly no later than November one, nineteen hundred seventy-eight.

All agencies of the Commonwealth and its political subdivisions shall assist the Secretary upon request.

APPENDIX V

SENATE JOINT RESOLUTION NO. 63

Establishing a joint subcommittee of the Senate and House of Delegates to study the proposed Coastal Resources Management Act and certain related matters.

WHEREAS, the Virginia Coastal Study Commission was enacted in nineteen hundred seventy-five by Senate Joint Resolution No. 137 to study and assess the offshore, interface and onshore effects of development in the Outer Continental Shelf adjacent to Virginia's coast; and

WHEREAS, Senate Joint Resolution No. 34 of the nineteen hundred seventy-six General Assembly directed the Virginia Coastal Study Commission to include in its study a consideration of Virginia's role in working with affected localities and to serve as a liaison with communities in the coastal area which may be affected by future changes; and

WHEREAS, the Virginia Coastal Study Commission has worked closely with the Office of the Secretary of Commerce and Resources, the Virginia Institute of Marine Science and the federal National Oceanic and Atmospheric Administration Office of Coastal Zone Management in the formulation of a Coastal Resources Management Plan in Virginia; and

WHEREAS, the Virginia Coastal Study Commission has concluded its work with the submission of its final report to the Governor and nineteen hundred seventy-eight General Assembly; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee of the Senate Committee on Agriculture, Conservation and Natural Resources, the House Committee on Conservation and Natural Resources, the Senate Committee on Local Government and House Committee on Counties, Cities and Towns be established to study the final report of the Virginia Coastal Study Commission with legislation introduced in the nineteen hundred seventy-eight General Assembly pursuant to such report. The joint subcommittee shall report to the Senate Committee on Agriculture, Conservation and Natural Resources, the House Committee on Conservation and Natural Resources, the Senate Committee on Local Government and the House Committee on Counties, Cities and Towns for consideration by the nineteen hundred seventy-nine General Assembly.

The Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources is requested to appoint three members to the joint subcommittee from the membership thereof. The Chairman of the House Committee on Conservation and Natural Resources is requested to appoint five members from the membership thereof to the joint subcommittee. The Chairman of the Senate Committee on Local Government is requested to appoint three members from the membership thereof and the Chairman of the House Committee on Counties, Cities and Towns is requested to appoint five members from the membership thereof to the joint subcommittee. The

offices of the Secretary of Commerce and Resources, the Virginia Institute of Marine Science, the Virginia Marine Resources Commission and any other appropriate agency of the Commonwealth shall assist the joint subcommittee in its work.

APPENDIX VI

STATEMENT OF CALVIN G. SANFORD.

At the final meeting of the Virginia Coastal Study Commission a proposed bill which will be entitled the Coastal Resources Management Act was endorsed by a majority of the Commisson members. It was made clear that the bill was to be introduced during the 1978 Session and carried over for a year of study by appropriate standing committees of the General Assembly for legislative action during the 1979 Session.

I support the proposed legislation in principle and feel that our fragile dunes and sandy beaches of the Commonwealth need to be protected and preserved from encroachment and that action is required to stop the ruinous effects of non-point source pollution on our waters and fishery resources. The legislation which was endorsed should provide a sound basis for review not only by the General Assembly but also the general public in Tidewater Virginia.

However, I do take issue with one aspect of the proposed legislation which I cannot support. This involves the creation at the local level of a new entity entitled the Shorelands Protection Board in the proposed legislation. I would recommend an alternative in the merger of the existing Wetlands Boards with the proposed duties and authorities of the Shorelands Protection Boards. This would seem to be more expedient at the local level where initial decisions will be made.

I am hopeful that the joint subcommittee created to study this legislation will give this alternative due consideration.

APPENDIX VII

STATEMENT OF SENATOR JOSEPH V. GARTLAN, JR. AND DELEGATE EVELYN M. HAILEY

During the last month of the work of the Virginia Coastal Study Commission the issue of coordinated permit review processing for key facilities was brought to the attention of the Commission by the Office of the Secretary of Commerce and Resources. There are two reasons why this subject was considered for support and the introduction of legislation in the 1978 General Assembly. One relates to federal requirements for funding from the NOAA Office of Coastal Zone Management which contemplates that a State plan address the question of the location of energy-related facilities in the coastal area. The second reason relates to the concept supported by the undersigned Commission members that the permitting process for the location of facilities having greater than local significance needs to be addressed, particularly in the Tidewater area of Virginia with 60% of the State's population and 50% of its industrial manufacturing facilities, but also in regard to the location of those facilities throughout the Commonwealth.

In an area experiencing such rapid growth it is inevitable that projects such as airports, port and docking facilities, hazardous waste disposal facilities, highways, bridges and tunnels will be proposed in Tidewater Virginia and must be dealt with as fairly and expeditiously as possible. By including key facility permit review legislation as part of Virginia's Coastal Resources Management Plan, a process is established providing an opportunity for the expression of citizen interest and interaction between affected agencies in a coordinated and coherent manner. A CRM Plan should not overlook this issue and should provide all citizens the best opportunity for input in major decisions involving the siting of what is defined in the proposed legislation as "key facilities".

The concept of coordinated permit review for key facilities originated in the December, 1975, report of the Land Use Council and was contained in a bill introduced by Delegate Robert Washington in the 1976 General Assembly, carried over for study by the standing committees of the General Assembly and narrowly missed passage in 1977. A majority of the members of the Virginia Coastal Study Commission voted not to reintroduce the legislation as part of the Commission's "coastal package", but the undersigned feel it important enough to be addressed by the proposed joint subcommittee which will review the Coastal Resources Management Act and related matters. Therefore, legislation in the form attached as Appendix II of the report will be jointly introduced in the 1978 Session by the undersigned and we will request that it be carried over for review with the "coastal package". This proposed legislation would create a process which would serve the public interest by:

1. Ensuring that siting decisions involving key facilities will receive consideration through the expeditious and coordinated processing of the various regulatory permits, certificates and licenses required;

2. Ensuring that these major facilities receive a comprehensive review of their overall effects on the Commonwealth; and,

3. Providing for a uniform and accessible procedure for review and comment on all key facilities.

Our concerns are echoed in the attached letter from Commissioner James Douglas of the Marine Resources Commission to Mr. Frank Alspaugh of the Division of Industrial Development.

Joseph Gartlan, Jr.

Evelyn M. Hailey

January 17, 1978

Mr. J. Frank Alspaugh
Director
Division of Industrial Development
1010 State Office Building
Richmond, Virginia 23219

RE: Key Facility Siting

Dear Frank:

Thank you for your thoughtful letter of December 20th. I especially want to commend your efforts to update the Division's inventory of water sites for prospective industry. This is an excellent and timely idea. Please be assured that you have the support of my staff as you work with their counterparts at VIMS and OCR.

I have discussed your concerns with Don Budlong and members of my own staff. I remain of the opinion that the Commonwealth does need a joint procedure for the planning and permitting of major facilities, and that energy resource recovery facilities should be included. Our Coastal Resources Management Program would be remiss if it excluded these facilities which have such potential for directly impacting coastal resources and which are of such state and national interest. I am convinced that a state-level planning and permitting procedure would have considerably reduced the time and cost for the state and private interests in the case of the Hampton Roads Energy Company.

Although I am not as intimately familiar with the market uncertainties as you or your staff, I do appreciate the difficulties the private sector faces in making a "go" or "no-go" decision. I also respect and understand the need for confidentiality. Your agency has unquestionably done an outstanding job in helping to meet the Commonwealth's economic needs, and I do not suggest any diminution of the Division's role in assisting industrial prospects. I do foresee the need for location and site plan decisions on energy facilities to be made in the context of the Commonwealth's Coastal Resources Managment Program and full consideration of federal, state, and local as well as private interests.

It seems more apparent than ever that the federal intent is to see that the public needs and private interests are joined as early in the planning of energy facilities as is possible. The Coastal Zone Management Act of 1972, as amended, requires that a state's coastal management program include "a planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including...a process for anticipating and managing (their) impacts....." Specifically, the accompanying regulations require that the process must

1. identify the facilities,

2. set out a procedure for assessing site suitability,

3. articulate state policies for managing the facilities and their impacts,

4. establish a means for "cooperative working arrangements.....between the State coastal...agency and other relevant state, federal, (and) local...agencies involved in energy facility planning.....

In addition to these basic requirements, lease sale stipulations published pursuant to the Outer Continental Shelf Lands Act by the Department of the Interior require the lessee to provide certain information to states. For example, Lease Sale No. 42 (set for January 31st) stipulates that lessees must "provide information...to assist (states) in planning for the impact of activities during exploration..." While the lessee is not required to divulge privileged information, the lessee must describe

1. the facilities which might be procured,

2. the location and amount of acreage required,

3. probable employment, and

4. probable population increases and housing demands.

The Bureau of Land Management has also instituted a program for coordinating the planning processes for the leasing and transportation of OCS oil and gas. The Bureau intends to carry this program out through "Regional Working Groups." These groups are to consist of representatives from the Bureau, states, industry, the Fish and Wildlife Service, and USGS. In addition, these groups will include representatives of local governments and special and private interest groups. They are to "identify information needs, design and conduct studies, and prepare transportation managment plans in anticipation of decision(s)...in the OCS leasing and development program." The planning program is begun by BLM and the states, includes an inventory and analysis of information about the affected part of the coastal zone, a determination of potential corridors and facilities, and continues through site management planning.

By copy of this letter, I am asking Don to forward you these regulations and BLM's planning program if you do not already have them.

This federal activity alone makes it necessary for Virginia to establish a state level procedure for the planning and permitting of energy resource facilities. However, there are other reasons for including such facilities which stem from the Commonwealth's own needs as well.

The current method of making major state decisions is sequential, which means delays are inherent. Information which should be evaluated early comes to the fore in the environmental review process. All the criteria to which a major project must conform should be spelled out at the outset of a planning process, which in turn would speed the permitting process. Virginia may also be able to turn such a procedure to its advantage with respect to federal action. A strong state planning and permitting program would enable us to induce federal agencies to spell out

their concerns in a timely manner, not after a project sponsor has sunk substantial money into location and design only to find that federal criteria have changed.

Frank, I hope this conveys some of our views on the matter. I know that Don and his staff will be getting with you to discuss this in much greater detail. We all look forward to the continuing and responsible participation of your agency in the preparation of the final version of our Coastal Resources Management Program.

Sincerely,

James E. Douglas, Jr.

JED:NEL/jj
cc:
The Honorable Joseph V. Gartlan, Jr.
Mr. M. V. Craft, Jr.
Mr. D. W. Budlong
Mr. Ed Wilson

APPENDIX VIII

STATEMENT OF DELEGATE GLENN B. MCCLANAN

I. I concur with the majority that the intent of any Virginia Shorelands Protection Act should include, but not be limited to, the following:

(1) To insure the protection of Marine Resources from the adverse impacts of land activities, with particular emphasis on non-point sources of pollution.

(2) To preserve and protect from incompatible activities the following fragile shorelands areas:

(a) Highly erodible areas for the protection of the public health, safety and private property.

(b) Sandy beaches

(c) Primary road dunes.

II. I respectfully dissent from the report of the majority in certain specific regards, which include the following:

The Virginia Shorelands Protection Act, as proposed by the majority, requires the establishment of a separate Shorelands Protection Board in every affected county or city, which would include most localities east of Interstate 95. This separate new Shorelands Protection Board in each locality would have to grant a permit for virtually all "land activities" that occur in these counties and cities. In addition to having frequently to obtain Planning Commission and City Council or Board of Supervisors approval, and the numerous different inspections and approvals necessary to obtain a building permit, a property owner would have yet another permit to obtain from an additional and new regulatory body.

Instead, I respectfully propose that shorelands protection, as vital as I agree that it is, be accomplished through existing processes and institutions. Local planning legislation in Virginia, should be amended to mandate Marine Resource Protection considerations. If the county, city or town fails to protect its coastal resources from erosion, pollution, and irreversible degradation, the State of Virginia should have the power to protect the public interest.

It must be strongly remembered that Virginia has increasingly protected its Coastal Resources pursuant to the activities of the Virginia Marine Resources Commission, the Institute of Marine Science, the State Water Control Board, the Air Pollution Control Board, the many activities of the Virginia Health Department, the local Wetlands Boards, the existing zoning ordinances of our localities, and in a variety of other ways. I would agree that the areas in which the coastal resources protection is deficient should be determined, and as I have repeatedly requested these areas should be promptly addressed. Virginia does not need a new and expensive

program and procedure to do those things that are already being adequately accomplished. Virginia, however, does need to act immediately in those areas where inadequacies do exist.

Respectfully submitted,

Glenn B. McClanan, Vice Chairman
Virginia Coastal Study Commission

APPENDIX IX

STATEMENT OF SENATOR HERBERT H. BATEMAN AND MR. A. G. CLARK

I am compelled to register my opposition to the Coastal Study Commi sion draft legislation amending Title 62.1. The proposed legislation as presented to the Commission would create a Chapter 2.2, establishing a new bureaucratic structure for the administration of additional permit requirements for use of shorelands areas in Tidewater Virginia. The local shorelands boards mandated thereunder would perform in tandem with the local wetlands boards currently existing under the Wetlands Act (Title 62.1, Chapter 2.1). The duplication of function and purpose as exists with the two permitting procedures operating in tandem and the excessive nature of the geographic area sought to be regulated thereunder makes the draft bill inapposite to the best interests of the people of Tidewater and the Commonwealth. Even if the functions of the proposed shorelands boards were merged with the existing wetlands boards, the territorial and regulatory sweep of the proposed bill is overboard.

My position with regard to a state coastal zone management plan has been and continues to be that there is an existing fabric of pertinent law which, upon review, could be modified and applied toward the goal of a comprehensive coastal zone management plan. This fabric is indeed an impressive one; to wit: the Wetlands Act (Title 62.1, Chapter 2.1); comprehensive land planning, zoning and subdivision ordinance legislation (Title 15.1, Chapter 11); Erosion and Sediment Control Law (§§ 21.89:1-21.89:15 Virginia Code ann.); State Water Control Law (Title 62.1, Chapter 3.1); Air Pollution Control Law (Title 10, Chapter 1.2); the Council on the Environment (§ 10-177); Marine Resources Commission jurisdiction over subaqueous beds (§ 28.1-3); and the State Building Code (§§ 36-97 to 36-119). The purpose in reviewing these laws would be to determine how, if at all, the aforementioned existing regulatory structure should be changed to meet the requirements of sound public policy. The existing regulatory fabric probably can be modified so as to enable its articulation to federal authorities as an approvable Coastal Zone Management Plan. It is my belief that had this been done at the outset, and if necessary modifications to the existing regulatory system had been proposed, the public interest of Virginia would have been better served. In addition, it could in my view have been articulated as a comprehensive coastal land management plan entitled to receive federal approval.

The area which shall be managed, i.e. regulated, under the proposed bill is extensive and overlaps with areas currently under the purview of the Wetlands Boards. Shorelands areas are defined (proposed §§ 62.1-13.20:5) as "all areas of direct surface run-off into tidal waters..." and, as such, would include the vegetated wetlands currently managed under the Wetlands Act. As there is no provision in the draft bill merging the respective Wetlands Board and the proposed Shorelands Board in each locality, jurisdictional disputes between the two may arise. While the Commission's draft report recommends consolidated Wetlands and Shorelands Boards, the draft bill submitted contains no provision to that

effect. Even if all the new regulations were placed under one board, that board's jurisdiction over permit requirements would be greatly enlarged by comparison with permitting requirements as they currently exist. These regulations would bring within their sweep a drastically enlarged territory, numerous land uses not currently regulated, and would require permits not now required.

The area sought to be controlled under the proposed Coastal Resources Managment Act (CRMA) is excessive. The Tidewater area as encompassed in the proposed bill would include the City of Richmond and Henrico, Chesterfield and Fairfax counties; and, since the area to be controlled includes all areas of direct run-off, areas far inland of any of the rivers emptying into the Chesapeake Bay or the Atlantic Ocean would fall under the proposed regulations. Why should be new regulatory scheme address the run-off of non-point source pollutants in the Tidewater "shorelands" areas when it is possible that more deleterious waste may be emptied into the rivers of Virginia from sources above the Fall Line? Similarly, why is it necessary to address the problem of non-point source pollution within the framework of a new regulatory scheme applicable to a segment of Virginia when both the State Water Control Board and the Erosion and Sedimentation Control Law are authorized and designed to address the problem of non-point source pollution *on a state-wide level* ? Again, I content that the proposed regulatory scheme of the CRMA is overbroad, excessive and, to a certain extent, unnecessary.

Due to this broad definition of the area brought under the control of the proposed CRMA, the administrative costs borne by local governments of Tidewater will be considerable. The administrative provisions therein are substantially identical to those included in the Wetlands Act. Consequently, the cost for meeting space is readily ascertainable for the public hearings required for each permit application (§ 62.1-13.20:11, § 6 of the proposed bill). However, unlike the Wetlands Act, the proposed bill requires the board to cite state or local laws, ordinances, rules or regulations germane to each application for a permit (§ 62.1-13.20:11, § 3 of the proposed bill). This requirement necesitates the use of counsel and the increased costs attendant therewith. The requirement of a public hearing on every application for a permit anywhere within the area defined in the proposed bill is burdensome and excessive.

Local governments can avoid the fiscal burden of administering the CRMA by failing to adopt the model ordinance set out in § 62.1-13.20:10 of the proposed bill. However, if this route is taken, the local governing body will surrender the right to develop a comprehensive land use plan to the Marine Resources Commission (MRC). Furthermore, the state agency (MRC) overseeing the CRMA is not accountable to the localities for the decisions made at the state level.

Suppose that the representatives of a scientific research concern came to Northampton County and Newport News and expressed their desire to build a facility in each locality for the testing and evaluation of tidal waters. Such facilities would attract highly paid engineers, technicians and scientists from outside the areas and would provide employment

opportunities for several hundred residents in each locale. The tax base would be enlarged and the revenues generated would be considerable, thereby gaining the interest and support of the respective local governing bodies. However, following discussions of real estate prices, utility costs and property taxes, the representatives inquire as to regulations concerning land use and construction. The local government representative must then outline the requirements of its coastal land management plan, local zoning ordinances, Wetlands Act requirements, erosion and sedimentation controls, building codes, subaqueous bed use permits, Corps of Engineers permits, State Water Control Board permits, shellfish sanitation requirements, and any other requirements.

Since the location of the tidal reseach facilities must by their nature be close the the water's edge, the proposed new restrictions and regulations controlling or barring development in fragile shorelands areas must be considered. These areas are defined as highly erodible shoreland areas, sandy beaches and primary row of dunes (§ 62.1-13.20:5 (c) of the proposed bill). The draft bill prohibits *any* alteration in fragile shorelands areas which would irreparably disturb the "ecological and geological systems"; terms the draft bill does not define. It further declares that all development in Tidewater, to the maximum extent possible, shall be concentrated in areas other than fragile one (§ 62.1-13.20:10 (B) of the proposed bill). If the local shorelands board follows the mandate of the proposed bill, any construction of anything in any of these areas would be doubtful at best. If any potential developer did not determine that it was impossible to proceed, he would most certainly be discouraged by the inevitability of the high cost of delays in negotiating the regulatory maze with a doubtful chance of ultimate success.

Even if the application for a permit, after the public hearing, is approved by the local board, the MRC has the power to review all permit applications and may override the determination made at the local level (§§ 62.1-13.20:17 and 62.1-13.20:18 of the proposed bill). This represents a dramatic change in the relationship between state and local governments and a serious intrusion by the state into areas of traditionally local concern. Should the MRC decide to approve the granting of the permit by the local board, twenty-five freeholders in the locality may instigate the review procedure at the MRC on their behalf. Judicial review is provided for in the proposed bill and, while time limitations have been put on the agency review procedure, should an appeal be taken to the circuit court, the delays resulting would be substantial.

Moving farther inland, suppose that a developer wishes to build a subdivision containing single family dwellings in Chesterfield or Henrico counties. The location sought is far inland from the James River but will initiate surface run-off. The area chosen for the subdivision is properly zoned therefor, a subdivision plat has been approved and filed, and the plan fits into the comprehensive plan of the county. After satisfying all of the requirements including the building code and the aforementioned ordinances, surface run-off is discovered so the shorelands board procedure must be negotiated. Twenty-five freeholders can stymie development for a long time and it is possible that a competing developer could muster the

necessary local residents to keep a competitor from building.

In any event, the public hearing, review and appeal procedures copied from the Wetlands Act must be followed (see proposed § 62.1-13.20:11 - Model Ordinance). However, unlike the Wetlands Act, full guidelines have not yet been promulgated by the MRC and the Virignia Institute of Marine Science (VIMS). The effective administration of the proposed Act cannot be achieved without them. Provision is made for the future promulgation of guidelines and their incorporation into the Act by the General Assembly (§ 62.1-13.20:3 (c) of the proposed bill). A delayed effective date has been suggested as a means of avoiding the future guideline promulgation problem. This suggestion, though, seems to negate the reason for proposing this legislation at this time.

If this proposed bill is implemented, permits granted thereunder, if granted, could be subject to whatever conditions the premit granting authority imposes. Incredible as it may seem, the recommended bill would allow the regulatory agency to modify the terms and conditions of the permit *after* it had been granted. They are unrestricted in this ex post facto power to modify. Exercise of this power would be flagrantly and unconscionably unconstitutional.

Ostensibly, the reason for introducting this legislation in the present session is to persuade National Oceanographic and Atmospheric Agency (NOAA) that Virginia is making progress towards a Coastal Zone Land Management Program and to thereby justify receipt of planning grants for a fourth year. Should a plan be approved by NOAA, federal funds for implementation would be made available to the agency responsible for overseeing the program. The Coastal Zone Management Act (CZMA) allows the sharing of these funds with local government bodies (§306(f)), but how much and for how long federal funds would be available are unknowns. Nor is there any plan or formula provided which would assure localities how federal funds would be shared, if at all.

I feel that the proposed bill is inadequate in some respect and overly broad in others. It is inadequate in its duplicative nature. The broad area sought to be regulated negates the prospects of future development throughout the Tidewater region. The proposed bill also places an undue burden upon the local governing bodies charged with administering program. It deprives the localities of their traditional control over zoning and land management planning. It is disheartening that, after the expenditure of three-quarters of a million dollars, neither the Coastal Study Commission nor the General Assembly have been furnished with an inventory of the federal requirements and an evaluation of the existing laws as to whether they satisfy the requirements or could be modified to do so. It is my express hope that the General Assembly will not enact this or any other legislation which would encumber the future development and economic viability of Tidewater. I do not dissent from the proposition that our marine resources and coastal zone are assets of inestimable value. Such well-conceived regulation or control essential to their conservation, I am disposed to support. However, on the basis of the views expressed herein, I strongly dissent from the Coastal Study Commission's

recommendation to the Governor and General Assembly recommending the proposed Coastal Resources Management Act.