

AUGUST 78

LCL REPORT NO. 30

CONTENTS:

THE STATE AND LOCAL COASTAL  
RESOURCES MANAGEMENT ACT OF 1978

EDITORS: JOSEPH T. BOCKRATH & FRANK S. CRAIG III  
SEAGRANT LEGAL PROGRAM • LSU LAW CENTER • (504)388-5931

# LOUISIANA COASTAL LAW



## CZM IN LOUISIANA

The basis for a comprehensive coastal policy, planning and management program became law in Louisiana this summer when Governor Edwards signed Act 361, the State and Local Coastal Resources Management Act of 1978. Despite a tangled legislative battle in which some 400 amendments to the bill were proposed, the CZM package which finally emerged from the Legislature is one federal officials say they will approve, thus enabling Louisiana to continue receiving federal funds under the provisions of the Coastal Zone Management Act of 1972. More importantly, the Act provides the mechanism by which competing, conflicting coastal uses can be coordinated and balanced by state and local government.

### LEGISLATIVE HISTORY

The culmination of Louisiana's CZM struggle came almost one year after the federal Office of Coastal Zone Management (OCZM) had expressed complete disapproval of Act 705 of the 1977 Legislature. (See LCL No. 28). Governor Edwards then designated the Department of Transportation and Development (DOTD) as the lead agency for coastal zone management in Louisiana. Under DOTD's auspices, a proposed CZM bill was drafted and subjected to extensive in-house review and revision before Senator Claude Duval and Representative Billy Tauzin introduced the final draft as S.B. 302. Of the more than 300 amendments proposed by various interest groups during a special hearing of the Senate Natural Resources Committee, more than 100 were incorporated into the Duval-Tauzin bill. However, at a subsequent hearing of the Committee -- after approval of many of the proposed amendments -- a bill proposed by members of the Louisiana Coastal Commission and similar in most respects to federally unacceptable Act 705 was substituted for S.B. 302. But Duval's bill was resubstitu-

ted on the Senate floor by a 32-5 vote and passed unanimously after a few additional amendments.

The Senate passed bill was taken to Washington, D.C. for review by OCZM prior to action by the House of Representatives. Robert W. Knecht, assistant administrator of OCZM, in a six-page letter specified deficiencies in the bill that would have to be corrected to meet federal requirements. Twenty-two amendments to correct the deficiencies were later approved during a marathon session of the House Natural Resources Committee (the meeting lasted until 12:30 a.m.). When it later came up on the House floor, the bill passed 78-11 after only about an hour of debate. This short debate period was the result of the late hour (6 p.m. on the Friday before the July 4 holiday) and the obvious support for the bill. The Senate later concurred with the House version and sent the bill to the governor, who signed it on July 10, 1978.

### BOUNDARY

One of the major deficiencies found by federal officials in Act 705 concerned the exclusion of some coastal areas from the coastal zone, particularly Lakes Pontchartrain and Maurepas. Those areas were added to the coastal zone in the 1978 Act and, unlike last year, the boundary issue sparked little controversy. As finally adopted, the boundary runs along the Intracoastal Canal from the Louisiana-Texas border to the vicinity of Forked Island and then follows a series of highways to Morgan City, where it again follows the Intracoastal Canal to just south of Houma. Here, the boundary meanders along the outer edges of the various natural bayou ridges in that area and then follows the Intracoastal Canal to the vicinity of Lake Salvador. It then runs around Lake Salvador and the Lake Salvador Game Management Area, up the Mississippi River to Ascension Parish and then around Lake Maurepas. From there it runs up the Livingston-Tangipahoa Parish line to Interstate 12 and then

along Interstate 12 and Interstate 10 to the Mississippi border. The Act authorizes the Secretary of DOTD to amend the boundary should the corporate limits of any municipality be divided by the line, although it does not specify whether corporate limits so divided should be included or excluded from the coastal zone. (See Map, page 5).

## POLICY

Seven broad statements of public policy preface the substantive provisions of the Act and point to some of the divergent interests sought to be accommodated by the CZM legislation. While seeking to protect and, where feasible, restore or enhance coastal resources, the state also seeks to develop, support and encourage multiple use of the resources, with a view towards maintaining and enhancing renewable resources, providing adequate economic growth and minimizing adverse effects of one resource use upon another, "without imposing any undue restriction on any user." A balancing of interests is what is sought, and the guidelines developed under the Act will have to draw the fine lines. Besides continued eligibility for federal funds, one of the main political reasons for the CZM legislation is, as stated in the seventh policy provision, "to enable Louisiana to determine the future course of development and conservation of the coastal zone and to ensure that state and local governments have the primary authority for managing coastal resources."

## ADMINISTRATION

The administration of the program will be under the Secretary of DOTD with much of

the responsibility assigned to a coastal management section to be created within DOTD. (The administrative functions may be transferred to the Department of Natural Resources (DNR) or the Department of Wildlife and Fisheries (DWF) upon order of the governor.) DOTD is given primary responsibility for enforcement and monitoring of the program, drafting regulations, issuing permits on a state level, overseeing local programs and generally carrying out the overall program.

The Act also establishes a new Louisiana Coastal Commission composed of 23 members, 11 representing parishes in the coastal zone, 11 appointed by the governor from interest groups and the Secretary of DWF. The new Coastal Commission will serve primarily as an administrative appeals body for decisions regarding coastal use permits and also in a review role over the guidelines to be adopted for permitting and the approval of local programs.

## GUIDELINES

The guidelines to be developed under the Act will be the key to determining the parameters of the coastal management program. Guidelines must be followed in the development of state and local programs and will "serve as criteria for the granting, conditioning, denying, revoking or modifying of coastal use permits."

The Act lists 12 goals to be furthered by the guidelines. Like the policy statements mentioned earlier, the goals demonstrate the different interests sought to be accommodated by the coastal management program.

## CZM GOALS

- encourage full use of coastal resources with a view towards establishing a proper balance between development and conservation.
- recognize that development may be more suitable to some areas than others and provide differing guidelines accordingly.
- give careful consideration to adverse impacts on water quality generally and require that pollutant or toxic discharges into air or water be within local, state and federal standards.
- recognize the value of special features of the coastal zone (such as barrier islands and fishery nursery grounds) and attempt to enhance the value of areas especially suitable to industrial, commercial and residential development.
- attempt to minimize, when feasible and practical, adverse impacts on natural areas, wildlife habitat and fisheries by encouraging practical development techniques which result in the "minimum change of natural systems."

-- provide for adequate corridors within the coastal zone for transportation, industrialization or urbanization and encourage location of corridors in areas already developed or disturbed.

-- reduce governmental red tape and cost delays and ensure more predictable permit decisions.

-- encourage multiple uses of the coastal zone consistent with the purposes of this Act.

-- minimize adverse effects of cumulative impacts on coastal resources from proposed or authorized uses.

-- enhance recreational values and opportunities.

-- require that "available" scientific understanding of natural systems, "available" engineering technology and economics be considered in program development.

-- give appropriate consideration to uses of regional, state or national importance, energy facility siting and national interests in coastal resources.

The DOTD Secretary is required to develop the guidelines in conjunction with the Secretaries of DNR and DWF. Proposed guidelines must be distributed to the public and to relevant federal, state and local governments, and public hearings shall be conducted. After comments are received the guidelines must be submitted to the Coastal Commission for review and approval. If no action is taken within 60 days, the guidelines are considered approved. However, if the Commission disapproves any proposed guideline, the Secretaries have 30 days to submit revised proposals. The Commission is then given 30 days to approve or disapprove. If the Commission again rejects a guideline, the guideline must be submitted to the House and Senate Committees on Natural Resources and then to the governor for final determination. Guidelines approved by the Commission or the governor must be adopted by the DOTD Secretary.

### PERMITS

The Act establishes a system of permits, called coastal use permits, as a method of regulating uses and activities in the coastal zone. These permits are required only for those uses which have a direct and significant impact on coastal waters, which are defined as those waters which have measurable quantities of seawater under normal weather conditions over a period of years.

Uses requiring permits are divided into two types: uses of state concern and of

local concern. Uses of state concern are those which have impacts of greater than local significance or which significantly affect interests of regional, state or national concern. Included within uses of state concern are (a) any dredge or fill activity which intersects more than one water body, (b) projects involving uses of state-owned lands or water bottoms, (c) state publicly funded projects, (d) national interest projects, (e) projects occurring in more than one parish, (f) all mineral activities, (g) oil and gas pipelines and (h) energy facility siting and development. Uses of local concern include (a) privately funded projects which are not uses of state concern, (b) publicly funded projects which are not uses of state concern, (c) maintenance of uses of local concern, (d) jetties and breakwaters, (e) dredge and fill projects not intersecting more than one water body, (f) bulkheads, (g) piers, (h) camps and cattle walks, (i) maintenance dredging, (j) private water control structures of less than \$15,000 in cost, (k) uses of cheniers and salt domes and similar land forms.

Most coastal use permits will be issued by either DOTD or parish governments which have adopted a local coastal program meeting the standards of the Act. If a parish government has an approved program, it will issue permits for uses of local concern in that parish. Otherwise, DOTD will issue such permits in addition to its permitting authority over most uses of state concern.

DOTD's permitting authority, however, does not extend to some oil and gas operations nor to oyster fishing operations. In the latter cases, the Act retains the existing statutory authority of the Office of Conservation to permit the location, drilling, exploration and production of oil, gas, sulphur and other minerals; and the existing authority of DWF for the leasing, seeding, cultivation, planting, harvesting and marking of oyster bedding grounds. Activities conducted pursuant to such permits must be consistent with the state program, guidelines, and any affected local program. Additionally, decisions of the Office of Conservation and the DWF will be subject to review by the Secretaries of DOTD, DNR and DWF to ensure that the activities are consistent.

Deepwater port commissions and deepwater port, harbor and terminal districts as defined in the Louisiana Constitution of 1974 are not required to obtain coastal use permits, but their activities must be consistent to the maximum extent practicable with the coastal management program and are also sub-

ject to review by the Secretaries for consistency.

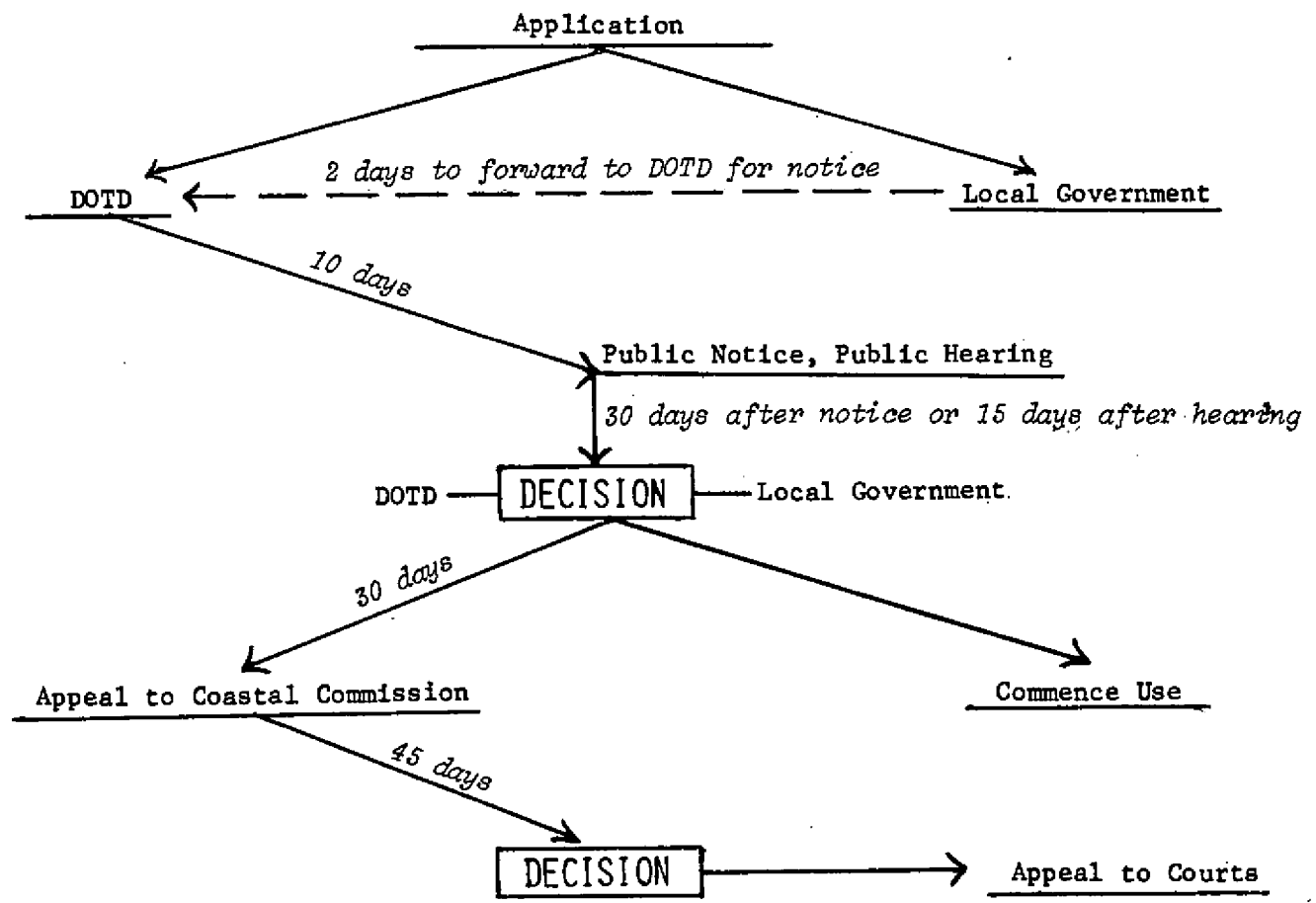
PERMIT TIMETABLE

One of the purposes and goals of the CZM Act is to expedite the permitting process by cutting red tape. Most applications should be processed and the decision upon them rendered within a 40-day period; those requiring a public hearing and those the decisions upon which are appealed will take a longer period. The Act establishes the following timetable for permit applications:

(1) Permit applications are submitted to DOTD or a local government with an approved program.

(2) Within 10 days of receipt of an application, DOTD must give public notice of the application and distribute copies to local governments in whose jurisdiction the use is to occur and to appropriate state and local agencies. The decision as to whether a public hearing shall be held will be made at this time.

THE PERMITTING PROCESS





grant variances from the normal coastal use permitting process. A general coastal use permit is defined as "an authorization to prospective users to perform specific uses within prescribed areas. . .without the necessity for a complete, independent review of each proposed use." Such a permit "allows the shortest time period of review possible." Neither general permits nor variances may be issued if they impair the fulfillment of the Act's objectives and policies. The secretary may also adopt regulations for conducting activities under certain emergency conditions which would not require obtaining a coastal use permit in advance.

### APPEALS

As previously mentioned, appeals of decisions regarding permits and other matters will be to the Coastal Commission. Such appeals must be in accordance with the adjudication procedures of Louisiana's Administrative Procedures Act. Stays of decisions on coastal use permits must be granted until the permit decision is rendered. A majority vote of the Commission will be required to modify or reverse an administrative decision and such modification or reversal can be based only on one or more specific criteria set forth in the Act: that the decision represents an unreasonable interpretation of the coastal zone management program; that it

places an onerous or inequitable burden on the applicant and only minimal, inconsequential variances from the objectives and policies of the Act will result; or that the decision is clearly contrary to the provisions of the Act or the evidence or it is otherwise unreasonable, arbitrary or capricious. All appeal matters will be handled at a public hearing.

### SANCTIONS

The DOTD Secretary and local governments with approved programs will have the authority to issue cease and desist orders, and to suspend, revoke or modify coastal use permits in the event of violations. The courts are authorized to impose civil liabilities, assess damages, order the payment of restoration costs or actual restoration of disturbed areas or otherwise impose sanctions for violations of the terms and conditions of permits or for carrying out uses without a permit where required. The courts are also authorized to award court costs and reasonable attorney fees to the prevailing party. In the event of an intentional violation of the Act or a permit, fines of not less than \$100 or more than \$500 or imprisonment for not more than 90 days or both are provided for. Once again trials are to be held in the parishes in which the use is situated.

LCL is an advisory service of the LSU Sea Grant Program (NOAA, U.S. Dept. of Comm.).  
Materials may be reproduced if credit is given. Distributed freely upon written request.  
Editors: Joseph T. Bockrath and Frank S. Craig, III; Managing Editor: Jerry Hermann  
Staff Assistant: Marianne Didier.



LOUISIANA STATE UNIVERSITY  
SEA GRANT LEGAL PROGRAM  
56 LAW CENTER, L. S. U.  
BATON ROUGE, LA. 70803

Non Profit Org.  
U. S. Postage  
PAID  
Permit No. 733  
Baton Rouge, La.