

chapter II
coastal planning process



A. THE SOUTH CAROLINA COASTAL MANAGEMENT ACT

“An Act To Establish The South Carolina Coastal Council And Provide For Its Powers And Duties For The Protection And Improvement Of Coastal Tidelands And Wetlands Under A Coastal Zone Management Plan; Provide For Enforcement Of Policies Of The Council And Penalties For Violations; And Authorize Legal Proceedings For The Determination Of Tidelands Properties.” (Act 123 of the 1977 South Carolina General Assembly.)

Introduction

This is the title to South Carolina’s coastal management law. The Coastal Management Act recognizes the value, variety and richness of South Carolina’s coastal resources and, at the same time, the diversity of uses and demands that may threaten these resources. The need for a State effort to manage the wise conservation and use of these valuable resources of the coastal zone is the major finding of the General Assembly and sets the stage for the management program outlined in the Act.

Specific policies and directives to guide implementation of the management program are based on one general policy, that being “to protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone and of all the people of the State.” (§ 2(A)) In general, the policies call for the development of coastal resources in a planned and environmentally-sensitive manner through implementation of a comprehensive tidelands protection program and through coordination of comprehensive programs of other levels of government (municipalities, counties, regional agencies, other State agencies, and Federal agencies).

In the following discussion, the basic provisions of the S.C. Coastal Management Act are explained.

S.C. Coastal Council

The S.C. legislature created the South Carolina Coastal Council to implement the Coastal Management Act and to initiate the coastal management effort for the people of the State. The Council is composed of eighteen members. Eight are chosen by the governing bodies of the eight counties which comprise the coastal zone, each county having one representative. Six members are chosen from the six congressional districts of the State by the members of the General Assembly who represent those districts, each district having one chosen by the Senate Fish, Game and Forestry Committee and one appointed by the President of the Senate, and two members of the House of Representatives, appointed by the Speaker of the House, are the ex-officio members. Council members serve four-year terms, except for the ex-officio or legislative members, whose terms are coterminous with their terms as members of the General Assembly.

The Coastal Council is granted a variety of powers and duties to enable formulation and implementation of a comprehensive coastal management program. The employment of a staff, including professionals in administration, biology, planning, civil and hydrological engineering, environmental law and environmental engineering, is the first basic power. The Council may apply for, accept and spend money from public and private sources to support activities undertaken to implement the Coastal Management Act and the Federal Coastal Zone Management Act of 1972. Rules and regulations may be promulgated by the Council to carry out the provisions of the State Act. The Council has the duty of administering and enforcing the provisions of the Act and its own rules and regulations through orders or by seeking enforcement through the courts. Other duties include serving as the coordinating State agency for any program of tidal surveying conducted by the Federal government and coordinating the efforts of all public and private agencies engaged in making tidal surveys of the coastal zone. The Council also is directed to encourage and promote the cooperation and assistance of State agencies, regional councils of government, local governments, Federal agencies and other interested persons. Additional specific powers and duties are granted to the Council to carry out the management program and permit program.

The Coastal Management Program

The Coastal Management Act outlines the essential elements of a coastal management program based on comprehensive planning and coordination of existing resource management and regulatory programs. The

State legislation requires that the Council hold public hearings or community forums and afford participation in the development of the management program to all interested citizens, local governments and relevant State and Federal agencies. The cooperation of State and local agencies in the administration and enforcement of the Act is also mandated.

The scope of the coastal management program and of the Coastal Council's authority is based on definitions of the geographic areas and specific resources which must be considered in development of this program. Two types of management authority are granted in two specific areas of the State. The Council has direct control through a permit program over critical areas, which are defined as coastal waters, tidelands, beaches and primary ocean-front sand dunes. Direct permitting authority is specifically limited to these critical areas. Indirect management authority of coastal resources is granted to the Council in counties containing one or more of the critical areas. This area is called the coastal zone and consists of the following counties along the South Carolina coast: Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry and Jasper. The coastal zone includes coastal waters and submerged bottoms seaward to the State's jurisdictional limits, as well as the lands and waters of the eight coastal counties.

Upon approval by the General Assembly and the Governor, the management program which is developed as outlined by the Act becomes the final management program for the State. The policies, rules and regulations, and other tools of the management program thus become official State policies which will manage the use of the State's coastal resources. Section 7 (A) of the Act requires State and local agencies to exercise their authority in accordance with these policies.

The mandate to the Coastal Council includes several specific elements which should be considered in program development. An inventory and designation of areas of critical State concern, including significant natural and environmental, industrial, port and recreational areas is mentioned. An identification of coastal resources and uses of land in the coastal zone and an evaluation of the quantity, quality and capability for use now and in the future is another element outlined in the Act. The Coastal Council must also consider the use of critical areas for nature-related activities such as aquaculture, mariculture, game and non-game habitat protection projects, endangered flora and fauna protection projects and waterfowl and wading bird management.

All of the lands and waters of the coastal zone are to be considered in developing this comprehensive management program. The Council is directed to gather necessary expertise and knowledge of the State's coastal resources, their use, and the effects of their use. The Council must then establish broad guidelines on priority of uses in critical areas and determine present and potential conflicts in the use of coastal resources. The Council must guide resolution of such conflicts through the development of coastal resource policies and criteria.

The management program as developed by the Council must provide for the consideration of the local, regional, State and national interest in the siting of energy, transportation and other public facilities. A review process of the management program that involves local, regional, State and Federal agencies and interested citizens must be developed, as well.

Specific management authority concerning several resources and activities is granted to the Council by the Coastal Management Act. The Council is directed to manage those estuarine and marine sanctuaries designated by the U.S. Secretary of Commerce. The Act mandates the establishment, control and administration of pipeline corridors by the Council, and control over the location in critical areas of such pipelines used for transporting fuel is also the responsibility of the Council. In coordination with the South Carolina Wildlife and Marine Resources Department, the Coastal Council must monitor the waters of the State for oil spills and report spills to the South Carolina Department of Health and Environmental Control, the United States Coast Guard and the Environmental Protection Agency. The Council must direct the State clean-up operations of oil spilled in the State's territorial waters in coordination with the Department of Health and Environmental Control. The Department of Health and Environmental Control and the Coastal Council must also work together in the planning and review of existing water quality standards and stream classifications in the coastal zone.

An important feature of the management program which is specifically outlined is the development of comprehensive beach erosion control policies. The Act mandates research on the effects of erosion control methods and the dynamic drift systems of sand and sand dunes and identification of critical erosion areas. The Council is granted permit authority for erosion control structures it deems adverse to the public interest. The Act makes the Coastal Council responsible for the management of the State's beach resources and the

activities which affect those resources.

The South Carolina States Ports Authority is directed to develop a management plan for port and harbor facilities and navigation channels. Upon approval of the plan by the Coastal Council, the management plan for the ports of the State will become part of the coastal management program. The plan must include a designation of areas appropriate for use by public and private port and harbor facilities as well as military and naval facilities.

In addition to the mandate for State and local agencies to cooperate in the development, administration and enforcement of the Coastal Management Act, the legislation provides a means for local governments to submit local plans and regulations for the critical areas for Council consideration of whether they are consistent with the management program. The Council may also offer technical assistance and support to local and regional governments in developing local plans and regulations which better manage coastal resources.

The Permit Program

A fundamental aspect of the coastal management program is the authority granted to the Coastal Council to issue or deny applications for permits for alterations of critical areas. This authority is exclusive to the Coastal Council which is directed to issue rules and regulations to administer the permit process and is mandated to seek public involvement in the development of these rules and regulations. The general policies declared in the Coastal Management Act serve to guide development of this permit program, and specific considerations serve to guide the Council's evaluation of each permit application.

The Act requires Council consideration of the effects of proposed alterations to the critical area of the production of fish, shrimp, oysters, crabs or any marine life or wildlife or other natural resources. The effects on endangered or rare species habitats must also be considered. The Council must weigh the extent of the effects of proposed alterations on public access to tidal and submerged lands, navigable waters, beaches and archeological sites in the coastal zone. The effects of proposed alterations on the flow of navigable waters and the extent to which erosion, shoaling of channels or areas of stagnant water would occur must be considered by the Council in decisions on permit applications. The extent to which the activity requires a waterfront location and the extent of the economic benefits as compared with benefits from preservation in a natural state are other factors to be weighed by the Council. Adverse environmental impacts which cannot be avoided through reasonable safeguards must be considered in deciding whether or not an alteration will be permitted in the critical areas.

The legislation provides applicants or affected parties with a permit appeal process. Direct appeals are made to the Coastal Council. Appeal to the circuit court of the county where the project would be developed is provided as a last resort.

The Council is granted authority to issue orders to seek court action to enforce the rules and regulations and any condition made part of a permit approval. The legislation has authorized the Council or any person adversely affected by any violation of the Act to bring suit in the circuit court of the county where the violation occurs. For such violations that destroy critical areas, the Council may complete restoration of the area and then sue in the appropriate circuit court. Violations of the Act are deemed misdemeanors and are punishable upon conviction of the violation, by imprisonment of not more than six months or by a fine of not more than five thousand dollars, or both, for the first offense. Imprisonment for one year or a fine of ten thousand dollars, or both, are applicable to each subsequent offense.

Determination of Ownership

The Coastal Management Act provides persons claiming an ownership interest in tidelands with a process to determine the validity of such claims. A person may institute a court action against the State of South Carolina for the purpose of determining such claims, and a jury trial may be demanded if desired. Nothing contained in the Act shall be construed as changing any rights or interests in any tidelands. The only responsibility of the Coastal Council under this provision is to publish the outcome of such suits in the State Register.

B. THE FEDERAL COASTAL MANAGEMENT PROGRAM

The Federal Coastal Zone Management Act (P.L. 92-583) was signed into law in October, 1972, in response to a growing recognition of the importance of and the growth pressure on the coastal zone of the United States. The results of a series of studies on coastal areas and their environment and resources alerted Congress to the need for legislation to promote a comprehensive approach to wise management of these resources. Amendments to the Act in 1976 (P.L. 94-370) substantially expanded and refined the coastal program.

The Congressional findings of this Act begin by stating that, "There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone." (Section 302(a)) The diversity of coastal zone resources and the increasing pressure from competing demands for their use are also emphasized. To achieve the national policy of preserving, protecting, developing, and where possible, restoring or enhancing coastal resources (§ 303), Congress selected the following approach:

The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land use decisions of more than local significance. (Section 302(h))

The Act authorizes Federal grants-in-aid, administered through the Secretary of Commerce. The National Oceanic and Atmospheric Administration (NOAA), Office of Coastal Zone Management (OCZM) has been delegated the responsibility to guide this program of grants to the coastal states.

The Governor of each eligible state (30 states bordering the Atlantic, Pacific, Gulf of Mexico and Great Lakes, and four U.S. territories) designates a state agency to take the lead role in developing a coastal program. Broad, general guidelines for the framework of these programs are expressed in Section 305 of the Act. Further guidance in development of a coastal program is offered in regulations from OCZM, dated March 28, 1979, (15 CFR Part 923, **Federal Register** 44(61):18590-18624) which explain the procedure for a state to qualify, the policies which must be followed in drafting the state program, and the requirements for a state program to receive approval.

During its planning process each state must address certain general items, specified in § 305 of the Act.

1. Identification of coastal zone boundaries.
2. Inventory and designation of areas of particular concern.
3. Guidelines on priority of uses in particular areas.
4. Permissible land and water uses that could have direct and significant impact on coastal waters.
5. Management proposals to control these uses.
6. Organizational structure to implement the program.

Cooperation and consultation with Federal, state and local units of government, and opportunity for public input are also required.

It is significant to note, that while guidelines and certain minimum requirements are provided, OCZM allows flexibility and encourages each state to develop its own approach to meet the needs and coastal resource problems of that particular state. Also, there are no regulatory powers or sanctions associated with the Federal Coastal Zone Management Act - it is a voluntary program providing financial assistance to states which choose to participate.

Once a state program is completed, it is submitted to OCZM for approval. Upon approval, the state becomes eligible for funding, authorized in Section 306 of the Act, to implement or administer the state coastal program.

The requirements which state programs must meet in order to receive program approval (in other words, the guidelines by which each state effort is reviewed by OCZM) have been revised and issued in final form in March, 1979 (15 CFR 923, **Federal Register** 44 (61): 18590-18624). In addition to program approval require-

ments, they include the procedures for submission of the state program, qualification to receive 306 administrative grants, and policy guidance for administration of the approved program.

The Federal Coastal Zone Management Act stipulates that Federal activities affecting the coastal zone shall be, to the maximum extent practicable, consistent with an approved state coastal management program. This provision of Section 307, is referred to as the "Federal consistency" requirement. Section 307 further provides for voluntary mediation guided by the Secretary of Commerce in the event of disagreements between a Federal agency and a state with respect to administration of the state's program.

Section 308 of the Act provides for a Coastal Energy Impact Program (CEIP) to provide funding for states and local governments to deal with the impacts resulting from development of energy resources in the coastal zone. There are several types of Federal funding available under this program:

- Formula grants based on specific impacts of Outer Continental Shelf (OCS) energy activity.
- Planning grants to study and plan for economic, social and environmental impacts associated with energy facilities.
- Loans and bond guarantees to States and local governments to improve public facilities and services needed as a result of energy activity (plus provision for grants if they are unable to meet the loan or bond obligations because the energy activity does not generate sufficient tax revenues).
- Grants for mitigating unavoidable loss of environmental or recreational resources.

Section 309 enables states to obtain grants, to coordinate, study, plan, and implement interstate coastal management programs. Section 310 deals with Federal research programs and grants to states for studies and training that will support coastal management. Finally, Section 315 of the Act authorizes grants for acquisition of lands for access to beaches and other public recreational, environmental or cultural resources; for preservation of islands; and for the estuarine sanctuary program.