

PROCEDURAL AND SUBSTANTIVE  
LAND MANAGEMENT TECHNIQUES  
OF POTENTIAL RELEVANCE FOR  
THE NEW JERSEY PINELANDS.

A REPORT TO THE PINELANDS COMMISSION

VOLUME 1

INTRODUCTION, SUMMARY AND ANALYSIS

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A REPORT TO THE PINELANDS COMMISSION

By

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VOLUME I

INTRODUCTION, SUMMARY AND ANALYSIS

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## INTRODUCTION

The contract between Ross, Hardies, O'Keefe, Babcock & Parsons and the Pinelands Commission requires Ross, Hardies, under Tasks I and V of the Scope of Services, to provide the Commission with an analysis of procedural and substantive land management techniques currently in use in the United States and other countries which may provide models or lessons for the development of a land planning and management program for the New Jersey pine barrens. This report is submitted in response to those contract requirements.

Pursuant to Task V of the work plan, we are to evaluate various intergovernmental strategies for the implementation of land use controls. In response to that requirement, Volume 2 of this report provides a detailed analysis of numerous existing programs in which various levels and departments of government coordinate their land planning and management responsibilities. The emphasis in Volume 2 is on the organizational and procedural framework for the intergovernmental control of such programs. Task I of the work plan requires us to provide a description and analysis of various substantive land management techniques which might be used within the context of the organizational and procedural arrangements described in Volume 2. Volume 3 of this report is a response to that task assignment.

## CHAPTER ONE

### PRIORITIES AND POLICIES

Every land use program has two basic elements: the first is a set of substantive regulations to govern use and development; the second is an organizational and procedural framework by which those substantive regulations are applied and enforced. There is, in theory and in practice, something of an inverse relationship between these two elements. The more one is able to define clear, specific and all-inclusive substantive regulations, the less one needs to worry about organizational and procedural devices for the implementation and enforcement of those regulations. Where, on the other hand, constraints of time and budget, lack of data or the complexity of the problem preclude the development of specific, self-executing substantive regulations, the need for a sophisticated, smooth-running and equitable organizational and procedural framework for the implementation of land use policies increases dramatically.

Seldom, if ever, has a regional agency been asked to address such a complex problem in such a short time as is the case now facing the Pinelands Commission. Furthermore, while enormous amounts of data have been, and are being, generated, the complexity of the political, social and ecological environment to be regulated tends to overwhelm the existing data base. For these reasons, it is our

itself to reasonably expeditious revision in light of that ongoing analysis.

It is our judgment that the social and scientific data base that can be generated within the time constraints facing the Commission are likely to be insufficient to allow the immediate implementation of many of the types of substantive regulatory programs discussed in Volume 3 of this report. Furthermore, it is our judgment that the first, most important task for the Commission should be the development of an organizational and procedural structure which allows the gradual development and implementation of substantive specificity, while in the meantime protecting the goals and objectives set out in the Pinelands Act. We have therefore concentrated more of the limited time available in the preparation of this report on the organizational and procedural programs discussed in Volume 2 than on the substantive regulatory programs discussed in Volume 3. In both cases, however, we are of course ready to provide the staff and the Commission with any additional analysis that they may desire concerning any of the types of programs discussed in Volumes 2, 3 and 4 of this report. We would, however, urge the Commission to recognize the immediate need to focus its attention and our efforts on those elements of these various programs which seem to have a reasonably realistic chance of being included in the regulations which must be

CHAPTER TWO

REGIONAL AND INTERGOVERNMENTAL PROGRAMS FOR  
LAND USE PLANNING AND MANAGEMENT

The Pinelands Protection Act provides that the resources of the Pinelands' Area require the:

establishment of a regional planning and management commission empowered to prepare and oversee the implementation of a comprehensive management plan for the Pinelands area.

The question is: How should the Pinelands Commission discharge its responsibility to "oversee the implementation" of the comprehensive management plan? A partial answer is found in the Act itself. After the comprehensive management plan has been prepared and adopted, counties and municipalities located within the Pinelands Area are required to submit revised master plans and land use regulations which implement the comprehensive management plan to the Pinelands Commission for review and approval. If a county or a municipality fails to adopt or enforce a master plan and implementing regulations, then the Pinelands Commission is required to "adopt and enforce" rules and regulations necessary to implement the comprehensive management plan. However, the Pinelands Act does not limit the Commission's oversight role to this management procedure; in fact, the Act empowers the Commission to take whatever steps are necessary to protect the Pinelands Area. There are a number of ways by which the Pinelands Commission can discharge its responsibility to oversee the

ness of the regional agency's comments. Other regional authorities possess direct regulatory authority that involves actual permitting of proposed developments. In between these two approaches are a variety of management roles that a regional authority like the Pinelands Commission could employ to oversee the implementation of the comprehensive management plan.

Despite the infinite variety of structural and procedural arrangements that can be devised to implement a regional land use program, based upon our analysis and experience, we believe it is possible to identify a relatively limited number of "building blocks" that appear and reappear in different combinations and permutations in the vast majority of these programs. In the following pages, we attempt to dissect the various regional land use planning and management programs upon which we report in Volume 2 into their structural components. It is our hope that, by focusing on these identifiable components, the Commission will be able to provide us, in a short time, with the policy direction necessary to enable us to begin outlining and drafting a specific implementation program. The variations on, and combinations of, the components we discuss are endless; the overlaps, inter-relations and intertwinings of the components that we here attempt to separate are such that no complete separation is possible. To think about any one element, all



II. DETERMINE POTENTIAL PLANNING AND PERMITTING AGENCIES TO BE UTILIZED

Having recognized that the regional program consists of both a planning and a regulatory function, it is next necessary to recognize that several agencies within the region are potential candidates to exercise some or all of each of those functions.

A. The Regional Agency

To begin with, of course, there is the regional agency itself, in this case the Pinelands Commission. As indicated in later paragraphs, the regional agency can assume a wide variety of roles, depending on the amount of authority delegated to other agencies. Frequently, the regional agency must recognize the practical impossibility of doing everything and must find ways to parcel out the work load to other entities.

B. Regional Agency Subcommittees

One option, which keeps decision making close to the regional agency, is simply to create subcommittees of the regional agency and to give those subcommittees some degree of autonomous authority. The development board of the Hackensack Meadowlands Development Commission is an example of this technique used in a permitting function. The Twin Cities Metropolitan Council has used a "task force" approach for specific components of its planning function and has also achieved a high degree of development control

the District Commissions have no planning function but have a significant role in the Act's permitting process. The Wisconsin Shoreland and Floodplain Protection program provides another example of the sub-regional agency concept. It, however, is different than the two examples just cited in that it employs an existing governmental unit, the county, as a sub-regional authority between the Department of Natural Resources and local municipalities.

E. Local Governments

The final potential actor in a regional land management program is, of course, the local municipal government. While some of the many energy facility siting acts which have been adopted in the last decade almost totally ignore local governments, nearly all other regional land use programs accord some role to them. The Pinelands Act, of course, anticipates a continuing role for local governments in the region and we have, accordingly, focused on those regional programs which involve a local component.

Under this heading, we believe the following policy issues should be addressed:

- (1) Does the Commission wish to divide its work load by creating a system of semi-autonomous subcommittees with authority in specified areas?
- (2) Should a hearing examiner mechanism be established?
- (3) Should the staff be given any final decision-making authority?
- (4) Should subregional agencies be established

comprehensive planning program for the entire Pinelands area. However, the Commission might consider whether its planning function should be severely curtailed in some parts of its jurisdictional area. For example, planning for some developed or developing areas might be left largely to the relevant local governments.

C. Board Policy Development

Another approach to the planning function limits the role of the regional agency to that of developing relatively broad policies and guidelines intended to guide local governments which, in turn, bear the primary responsibility for the planning function. The California Coastal Zone program, the Twin Cities Metro Council and Senate Bill 100 in Oregon provide examples of such a program, each with a somewhat different degree of policy detail and specificity.

D. End-state Planning

Finally, several regional programs require the regional agency to develop an end state land use plan, or something very close to it. The Tahoe, Hackensack and Adirondack programs fall into this category. Vermont's Act 250 represents something of a variation on this theme. It requires the development of a state land use plan in three phases which take the planning process gradually from the general policy stage to the end state planning stage. Vermont's experience suggests the difficulty of developing an end state plan which is satisfactory to all of the many interest groups

Commission must decide how to allocate the final authority for the permitting aspect of the program. Here, there are two basic alternatives, each with a number of variations. Many programs use more than one of the allocating devices discussed in this paragraph. The two basic types of allocating devices are, first, those which allocate the permitting function on the basis of pre-ordained rules and definitions and, second, those which allocate final responsibility for the permitting function on the basis of ad hoc decision-making.

A. Division of Permitting Authority Based on Pre-Ordained Standards

1. Type or Scale of Development

Among the most prominent devices included in this group are those which allocate final responsibility for the permitting function on the basis of the type or scale of development involved. The energy facility siting programs and the development of regional impact statutes are the clearest examples of this type of allocating device. Another variation of this device is represented in programs, such as the Adirondack Park Program, which divide final responsibility for permitting on the basis of a definition of "significance." For each land use area designated by the Adirondack Park plan, the plan defines "Class A" and "Class B" projects for purposes of dividing permitting responsibility. It should also be recognized that definitions such as the CAFRA definition of "facility" or the Vermont Act 250 definitions of "development"

developments within the area of some particular man-made feature, such as a travel corridor, are separated out for special treatment.

#### 4. Jurisdictional Location

A fourth example of this type of allocation device is found in programs which allocate the permitting function along jurisdictional lines. For example, land subject to the jurisdiction of the Hackensack Meadowlands Development Commission is specifically excluded from the wetlands permitting authority of the Department of Environmental Protection.

#### 5. Local Consistency

A final example of this type of permitting allocation device, which is found in many regional programs, is the allocation of authority based upon whether or not a local government has satisfied specified conditions -- usually involving the adoption of local plans or regulations in conformity with regional policies or programs.

It must, again, be emphasized that any number of these allocating devices can, and frequently do, appear in the same program. Thus, for example, a program might allocate final permitting authority for all developments involving less than ten acres to the local government but also provide an exception to that basic allocation scheme to the effect that all developments of whatever size located within specified critical areas require a permit from the regional agency. The program might

initiated." For example, the English development control process described in Volume 4 gives District Councils day-to-day authority over all development permit applications. However, the County Council monitors the activity of the District Councils and has the right to "call-in" any application for review. Similarly, the English Department of Environment retains the power to "call-in" and decide any application for a development of regional or national importance.

Under this heading, we see the following basic policy issues to be decided by the Commission:

- (1) Which allocation devices will the Commission use to determine final responsibility for development permitting.
- (2) For each device used, what dividing line will be established (e.g., "ten units," "areas containing the following environmental features...", and so forth.

It should be pointed out that at this stage, it is not necessary to reach any decision on this issue. We can begin drafting the procedural devices without knowing precisely where the substantive dividing lines will be.

V. DETERMINE THE RESPECTIVE ROLES OF EACH AGENCY

The discussion under the previous heading addresses the issue of which agency should have final authority over various permits. It does not, however, address the issue of what role each agency should play in the decision-making process as to various permits. Thus, for example, if it were decided

exercised in all cases, only in cases appealed by one of the parties or only in cases "called-in" by the regional agency. For example, the Oregon Land Conservation and Development Commission may, upon petition of any county, city, special district government body, state agency or individual or group of individuals whose interests are substantially affected, review any comprehensive plan, any implementation ordinance, or any land conservation or development action taken by a local governing body to determine whether or not the plan, ordinance or action is in violation of the Commission's state-wide planning goals. Regional appellate jurisdiction over many local decisions in a regional program is, of course, common to many programs.

C. Primary Regional Jurisdiction; Local Participation

In many state and regional planning programs, a regional agency is given final authority to issue or deny permits but is required to take account of local views. Energy facility siting statutes are frequently structured in this way. The extent to which the siting agency must take account of local views varies substantially from state to state. In some, the local government role is limited essentially to that of a witness having the right to offer testimony in support of or objection to the proposed regional project. At the other extreme, some statutes provide that the regional agency may not grant any permit which would violate a local ordinance

ordinances which are consistent with the regional program (and are given some permitting authority if they do), there is no requirement that they do so. So far as the Act is concerned, the local government may totally ignore the existence of the regional agency. However, obtaining a local permit does a developer no good unless he can also obtain a permit from the regional agency, which, of course, will issue it only if the proposed development is consistent with the regional program. Similarly, obtaining a permit from the Park Agency will get the developer nowhere unless he can also obtain a permit from the local government, which, again, will not issue it unless a proposed project meets its standards. It should, however, be pointed out that there may be a practical limit to the extent to which a local government can, in such a situation, ignore the regional plan. Litigation is currently pending in Hackensack challenging a local government denial of a project approved by the Commission. One may expect that a court will look rather closely at the local justification for denying a permit to a development which has been found acceptable to the regional agency.

While the foregoing discussion has concentrated on the permitting aspect of the regional agency's jurisdiction, it should be noted that similar issues of role definition are implicit in the discussion of the planning jurisdiction which appears earlier in this volume.



A. Independent, Seriatim Permitting.

One approach is to ignore the problem. The Pinelands would not be the first area of the country in which a developer was required to go from agency to agency to agency in quest of a multiplicity of permits. Indeed, given the massive tasks facing the Commission and its finite resources, one could make a legitimate policy argument to the effect that the Commission should not expend its limited time, staff and resources in an effort to rationalize a complex development permitting system, the creation of which was none of its doing. On the other hand, the political and legal acceptability of the Pinelands program might be enhanced by efforts to build as much speed, ease and fairness as possible into the development review process within the area.

B. Coordinated Permitting Programs

A second approach would be to attempt to establish a coordinated permitting process for all developments subject to the Commission's jurisdiction. Such a program might be structured along the lines suggested in the American Law Institute's Model Land Development Code. The Code provides for a permit register which would bring together a listing of all permits required by governmental agencies. Developers requiring more than one permit are authorized to institute a joint hearing procedure. Applications are filed for each permit required and then a single hearing, in which all

to consider the standards of all other agencies but is given authority to modify or overrule them under certain circumstances. While it is rare, under a few state siting acts (Maryland, Minnesota and North Dakota), a permit from the state siting agency totally pre-empts approvals and standards of local governments.

Among the policy decisions facing the Commission under this heading are the following:

- (1) Should the Commission make any attempt to coordinate development permits within the Pinelands area?
- (2) If so, to what extent, if any, should the Commission seek to pre-empt the authority of other permitting agencies?

VII. DETERMINE LEVEL OF REGIONAL DIRECTION

As to both its planning function and its permitting function, the Commission must make a decision concerning the level of detail it will provide in the regional program. This decision is clearly and closely related to the decisions to be made under Paragraphs III and IV above, concerning the allocation of planning and permitting jurisdiction.

As indicated early in this discussion, the degree to which the Commission is able to provide specificity in its substantive development regulations will, to a large extent, dictate the type of procedures which the Commission will have to establish in order to effectively assure compliance with the goals of the Pinelands Act. Here, again, it should be

It is interesting to note that both of these programs rely upon a case-by-case review process to determine consistency with the regional goals. In Oregon, the cases reviewed are selected by a system which we have previously described as "ad hoc party initiated." In other words, someone must be upset about something in order to bring the matter to the attention of the regional agency. In California, on the other hand, the statute relies on a very broad definition of "development" which has the effect of allocating final permitting responsibility for most proposals to the regional agency. As previously suggested, it is our judgment that the more a regional agency relies upon general substantive policies and the less it provides specific substantive regulations, the greater is the need for a review process that brings most cases before the regional agency.

C. General Regional Regulations or Performance Standards

Some programs, the Adirondack Park Agency is one example, attempt to go beyond broad general policy statements and yet do not go so far as to adopt very specific development regulations. Under the Adirondack Plan, six land use areas are identified and allowable uses and overall density requirements are specified for each area. The use lists are not, however, absolute. If a developer can satisfactorily demonstrate to the agency that a proposed use is compatible with the character of the land use area in which it is to be located,

As one proceeds from A through D in the above outline, moving from less to more specificity in regional regulation, one necessarily increases the reliance on agency-generated data and reduces one's ability to rely upon developer-generated data. In many regional programs, the requirement that the developer prepare and submit an environmental impact statement is nothing more than a device to shift the burden of data generation to the developer. The agency has insufficient data to move from general policies to site specific regulations, and thus it shifts the burden of proof to the developer to show that the proposed development will not violate any of the regional agency's general policies. Attempting to move toward a more specific regulatory program can also be expected to significantly increase the initial time and cost necessary to put the program in place. Furthermore, it must be recognized that the practical, scientific and political difficulties of putting such a program in place are enormous. The previously discussed Vermont experience (see Section IIID) is testimony to that. Finally, it is by no means clear that a very specific regulatory program will be either more successful or protecting a complex environment or more equitable in permitting development which the environment can accommodate.

In this regard, it is interesting to note that,

runs a permit denial rate of at least 5 to 10 percent is a strong indication of the perhaps intuitively obvious fact that, when dealing with sensitive environmental areas, there will invariably be some developments proposed for some locations which could do so much harm that they should not be allowed.

It may simply be asking too much of a regulatory system to believe that it is possible to devise a set of pre-ordained rules and regulations capable of accurately fixing the line between those developments which can be accommodated and those developments which cannot be accommodated in an environmentally sensitive region. Either the line will be drawn too conservatively and impose unnecessary burdens upon property owners and developers or it will be drawn too liberally and impose unwarranted damage upon the environment. The more a system is able to assess proposals on a case-by-case basis, the more it is capable of being fine tuned, and the greater is the probability that all legitimate interests will be optimized.

Unfortunately, despite the several advantages of a system that relies upon general policies and case-by-case review, there are many drawbacks to be noted. Perhaps most troublesome is that such systems impose an increased burden of uncertainty upon both development and environmental interest groups. No hard and fast rules govern

ever, that is not to say that we believe the Commission should simply accept as inevitable the disadvantages frequently associated with such programs. Several steps can be taken to minimize those problems.

First, the staff and the Commission should, with the aid of the consulting team, classify the Pine-lands area using the various techniques outlined in Section IV of this chapter and should then, for each classification, specifically address the issue of the degree to which detailed substantive regulations are possible. Where they are possible, they should be used.

Where they are not, and greater reliance upon general policies and a procedural system is necessary, careful attention should be devoted to developing a procedural system that is both expeditious and fair. The goal of providing such a system should be kept in mind as the Commission considers other policy issues concerning the basic structure of the regulatory system to be adopted. For example, the Commission might, as a matter of policy, prefer to concentrate decision-making authority in itself as much as possible. However, if, in light of the number of applications which would have to be reviewed, such a concentration would result in either long delays or inadequate attention to "more important" applications, the Commission might be forced to delegate more authority over

illustrates another evolutionary technique which we consider to be especially important. Under that Act, decisions of the state commission are to be treated as "precedent" to guide future actions of regional commissions and local governments. In our opinion, any administrative program involving case-by-case decision-making should commit itself to honor its own precedents in the same way the precedents are honored by courts in the common law system. In other words, the outcome of a case should be predictable from the outcome of previously decided, similar cases. In applying general policies to specific factual situations, the decision-making body should gradually refine and amplify the meaning of the general policies. In order for such a system to work, decisions in individual cases must be in writing, must be carefully prepared, and must provide a reasonable analysis of the policies and facts involved and of the logical steps followed to get from policies and facts to decisions.

We might add that, by including such evolutionary mechanisms in any program that relies upon relatively broad standards, the legal defensibility of the program can be increased. As reported in the detailed discussion of the California Coastal Zone program contained in Volume 2 of this report, at least two cases have relied upon the interim, evolutionary aspects of

and ordinance could very quickly swamp the Commission unless a careful approach to its implementation is taken in the management plan.

An illustration of what not to do is found in the California Coastal program which creates a system of interim, sub-regional agencies which, by statutory directive, go out of existence in 1981. The statute assumes that, by that time, all local governments will have complied with their statutory obligation to adopt conforming local plans and ordinances so that the state commission will be able to cope with the workload without the aid of the sub-regional agencies. As the table above illustrates, there is little hope that any significant number of local governments will have the required plans and ordinances in place at the time that the regional commissions go out of existence. At that point, the workload shifted to the state commission will be incredible. The Adirondack Park program provides a more thoughtful approach. While it encourages local consistency, it does not in any way depend for its success upon achieving that goal. The Park Agency began with the assumption that all permits would be issued by it and, presumably, it took that fact into account in developing its permitting requirements. Local agencies are under no requirement to bring their plans and ordinances into consistency with the Park's



C. Transfer of Permitting Authority

Under these programs, local compliance with the consistency requirement is encouraged by offering, as a reward, that, upon local compliance being achieved, the regional agency will surrender some or all of its review and permitting powers to the local agency.

D. Technical Assistance

Another way in which consistency can be encouraged is by providing technical assistance and data. The Wisconsin Shoreland program provides a good illustration. The State has adopted a series of model ordinances which local governments can adopt in order to meet state requirements. In addition, the state has developed much of the technical information necessary in order to implement the Shoreland and Floodplain program which it mandates local governments to adopt. Our investigation of that program suggests a high degree of correlation between the state's success in providing technical assistance and its success in getting local cooperation. The state developed a model shoreland ordinance which could easily be adopted by all counties in the state, and every county in the state is currently in compliance with the shoreland element of the program. The state has not, on the other hand, been as successful in developing the technical data which local governments must have in order to adopt

As a result, we now have, for every dollar we get, 13 suburbs applying for it. Now they're all fighting, trying to get it . . . . Now we've gone the other way: We have set out point systems to qualify . . . . It started to work so well, Minneapolis and St. Paul have been complaining. They aren't getting enough of it anymore . . . . After our housing allocation last year, Minneapolis and St. Paul complained bitterly. We said, sorry, that's all we're allocating to you because we want to disperse these out in other areas. They're complaining that the suburbs are getting too much money. That Minneapolis now wants more of it back. I know it sounds crazy, doesn't it?

Crazy, but effective:

In 1971, when the Council's housing plan was first adopted, 90 per cent of all the subsidized housing was located in the central cities. Only 1800 units were located in the suburbs, and these were primarily for the elderly. Six years later, nearly 11,000 units-- 35% of the subsidized housing units-- were located in the suburbs and 58% of the suburban units served families. The number of communities providing subsidized housing has increased in six years from 13 to 90.

(Weaver & Babcock, City Zoning: The Once and Future Frontier, p. 46, Planners Press, Chicago, 1980)

IX. DETERMINE THE SUBSTANTIVE PROGRAMS TO BE IMPLEMENTED BY THE STRUCTURAL AND PROCEDURAL FRAMEWORK

The final element to be considered in deciding how the Pinelands Commission should organize and structure its implementation program is, of course, the issue of

useful but whether or not the Commission intends to become involved in direct zoning-type regulatory programs at all. Whatever the answer to that policy question, the Commission might consider the advisability of including, as one of the "evolutionary" aspects of its program, a commitment to the development of various model ordinances that could be adopted by local governments within the Pinelands in furtherance of the Commission's general program goals.

C. Taxation

Here, again, this technique is thorough analyzed in the next chapter and in Volume 3. In addition, Volume 4 includes discussion of a number of land management taxation schemes such as England's betterment tax, Dutch tax incentive programs to encourage the preservation of private forests and the Australian scheme of land value taxation.

D. Public Education

Although not a land management technique within the traditional understanding of that concept, the Commission's program structure should not overlook the need for a continuing public education element. Current residents and would-be developers alike should be educated to the natural and cultural assets of the area and to the unwitting ways in which their activities might disrupt or destroy

which are relevant not only because they provide models but also because the Pinelands program must interface with them, are at the end.

A. Oregon Land Conservation and Development Commission

The Oregon Land Conservation and Development Commission (LCDC) is a statewide body established to prepare and adopt statewide planning goals and guidelines to designate particular types of development activity as being of statewide significance and to issue planning and siting permits for developments of statewide significance. Under this program, the responsibility for preparing and adopting local land use plans and regulations is reserved to local government; however, local plans are required to be in conformity with the adopted state plan. Each year local plans are submitted to the county in which the jurisdiction is located for a determination of conformity with the state plan. Each county is then required to prepare a report in LCDC describing the status of each of the local plans in the county. The LCDC can review a local plan if requested to do so. To date, 60 local plans out of 277 local planning jurisdictions have been approved by county authorities or the LCDC.

The legislation creating the LCDC designates several types of development activity that are deemed to be of statewide significance including transportation facil-

appealed to the state commission by interested persons. All regional commission decisions are appealable. The state commission conducts a de novo proceeding on appeal and decides whether to issue the permit based on the policies of the Act.

The Coastal Act provides that the regional commissions shall be terminated when all local jurisdictions have certified plans or in 1981. At that time, coastal development permits for non-certified jurisdictions will be issued by the state commission.

C. Vermont Act 250

The Vermont program is more accurately described as a statewide, rather than a regional, management program, but the approach is nevertheless pertinent to the Pinelands. The program is administered by a statewide Environmental Board, and nine District Environmental Commissions. The statewide Board is responsible for preparation of statewide resource management plans. The District Commissions are responsible for permitting of subdivision activity and identified types of development in their respective districts. Commercial and industrial uses on greater than one acre of land, all uses on more than 10 acres, and projects involving more than 10 dwelling units are subject to the Act. The District Environmental Commission permit, which is in addition to all required local permits,

Local comprehensive plans must be reviewed by the Metro Council for consistency with the Council's Guide. If a local government disagrees with the Council's assessment of its plan, an appeal process is provided which includes a hearing conducted by the state office of hearing examiners. Local units must act in compliance with approved plans. If a local government fails to adopt a plan, the Council may commence legal action to compel compliance.

The Metro Council is also empowered to review all proposed matters of "metropolitan significance" to determine consistency with the Council's Guide. The Council defines those matters and establishes the standards and guidelines which are to govern the review of these proposals. The Council may review other proposed matters upon request of an affected local government or metropolitan commission.

While there is substantial evidence that the Metro Council system is working, it may not be easily replicated elsewhere due to the demographic and economic characteristics of the Twin Cities area.

E. Adirondack Park Agency

The Adirondack Park Agency (APA) is a regional authority created by act of the New York legislature for a six million acre area in northern New York State.

resources previously designated as particularly sensitive. In areas without approved local plans, APA has authority over a broader range of development activities.

Despite the laudatory goals of the APA program, only 7 out of 107 local governments have plans which have been approved. The reasons for this lack of planning interest at the local level cannot be easily ascertained; however, given the fact that over 90% of all APA decisions have been in favor of development, it can be presumed that the management plan policies are being voluntarily met by developers and that the APA permitting process is not significantly disruptive of local government prerogatives.

F. Tahoe Regional Planning Agency

The Tahoe Regional Planning Agency (TRPA) is a multi-state regional planning authority established for the purpose of preparing and implementing a comprehensive land use plan for the Lake Tahoe drainage basin, a five hundred square mile area located astride the California-Nevada state line. In addition to the required planning efforts, TRPA has adopted ordinances which have established zoning districts for the entire basin; however, initial implementation of these TRPA development regulations is reserved to local authorities. All development which covers greater than 200 square feet of land area is subject to the TRPA plan. In addition, TRPA retains review

state land planning agency for approval. If a local jurisdiction's regulations are not approved or if the local authority refuses to prepare the required regulations, then the state agency is authorized to prepare the necessary regulations. All development decisions by local jurisdictions in designated critical areas are subject to an administrative appeal to the Florida Land and Water Adjudicatory Commission. However, standing to appeal is limited to the developer, the regional planning agency and the state land planning agency. The Adjudicatory Commission is authorized to grant, deny or modify the desired development permit.

The other technique involves what are known as developments of regional impact (DRIs). Developments, which because of their character, location or magnitude, are deemed to affect regional or statewide interests, are subjected to a rigorous impact analysis procedure. Initial decisionmaking authority remains vested in local government; however, before local government can act on an application for approval of a DRI, the application is forwarded to the appropriate regional planning agency for preparation of a report and recommendation on the application in terms of its impact on social, economic and environmental resources of the area. The local decision on a DRI is also subject to an appeal to the Adjudicatory Commission.



grant a development permit if the application is consistent with local ordinances, CPC regulations and local and regional plans, and if the probable regional benefit of the proposed development will exceed the probable detriment. A development which is inconsistent with a local development ordinance can be approved by the Commission if it is essential to further the housing, recreational or educational needs of the Vineyard.

Local governments retain permitting control over development which is neither a DRI nor in a CPC district.

H. Wisconsin Shoreland and Floodplain Protection Program

The Wisconsin Water Resources Act of 1966 treats shorelands as a special management unit. The Act requires all counties to enact regulations for the protection of all shorelands in unincorporated areas. If the counties fail to adopt effective shoreland protection regulations, the state Department of Natural Resources is authorized to impose such regulations. In addition to requiring county shoreland zoning ordinances, the Water Resources Act provides for the enactment of floodplain zoning ordinances by all counties, cities and villages in the state. Again, the Department of Natural Resources is authorized to impose such regulations in the event that local authorities fail to take appropriate action.

develop the Hackensack Meadowlands.

The Commission, a political subdivision of the State of New Jersey, was required to prepare and adopt a master plan of development standards for the Meadowlands. The master plan is implemented by direct development review and permitting by the Commission. All buildings, structures, subdivisions and land development activities must be approved by the HMDC.

Concomitant with HMDC's regulatory power is the Commission's authority to undertake land reclamation and redevelopment activities in support of the Commission's overall objectives and tasks. In addition, HMDC is responsible for managing solid waste disposal in the Meadowlands, one of the issues that initially led to the creation of the HMDC.

In addition to the HMDC, the Meadowlands Act creates a Hackensack Meadowlands Municipal Committee composed of the mayors of the 14 municipalities located in the Meadowlands. The Municipal Committee is an advisory body that reviews proposed plans and amendments prepared by the HMDC. An objection of the Municipal Committee triggers a super-majority requirement for adoption of the objected-to portions of the proposed amendment.

J. New Jersey Environmental Programs

There are a number of management programs in the State of New Jersey which may be of special relevance

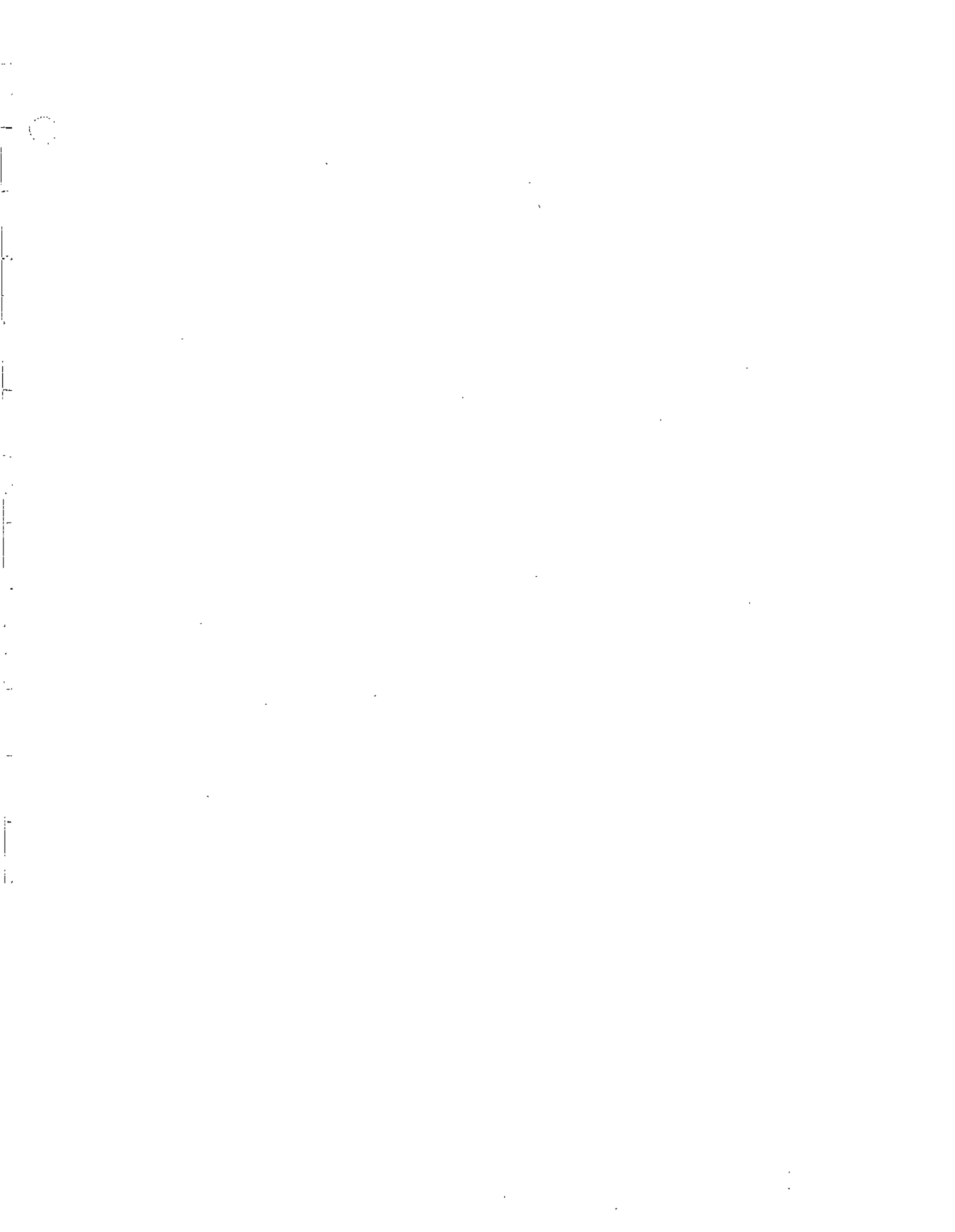
ecology of the state's wetlands. Several wetlands areas lie within the Pinelands. The Act includes coastal wetlands and pre-empts the authority of CAFRA in these areas. Almost any development in the wetlands requires a permit. Some minor activities are eligible for an expedited review; larger projects require a more intensive review, which includes an environmental impact statement. Optional public hearings are held by the DEP's Office of Wetlands Management. The proposed project must require water access or be water oriented, have no reasonable alteration or result in little alteration or impairment of natural tidal circulation and natural contour. The standards for large projects are even more specific. Denial of a permit by DEP can be appealed to New Jersey's Superior Court.

### 3. Waterfront Development (Riparian Permit)

Riparian lands, a few areas of which are in the Pinelands, are owned by the State of New Jersey. A developer of these lands must buy or lease the land from the state. All purchases and leases must be approved by the Natural Resource Council, an autonomous citizen body which is part of DEP. If the Council's decision is inconsistent with DEP coastal policies, the Commissioner may block the action. A Waterfront Development Permit must be obtained from DEP prior to beginning any project on these lands.

5. Green Acres Land Acquisition Program

The Green Acres Program is an open space land acquisition and recreational development program financed through the sale of bonds and under the direction of DEP. The New Jersey Comprehensive Outdoor Recreation Plan is used to measure open space adequacy and needs. Fee simple as well as conservation easements are acquired through this program.



CHAPTER THREE

SUBSTANTIVE LAND USE MANAGEMENT TECHNIQUES

In Volume 3 of this first set of reports we have described and commented upon a variety of land use management techniques. However, before the Commission becomes immersed in a study of the merits and drawbacks of various substantive land use control devices, there are key threshold questions to consider. By statute, the Commission is responsible for preparing a comprehensive management plan for the Pinelands. So it is in the planning business. As suggested in the previous chapter of this Volume, the Commission must, before proceeding much further, consider whether it wants to get into the regulation business as well, and if it does, the extent to which it will regulate. Not every land use decision affects areas of critical concern or the entire Pinelands region and the Commission must decide how to categorize and deal with the range of decisions that will have to be made.

As discussed in detail in the previous chapter, there are a number of options open to the Commission. It can seek to be the land use regulatory authority for the Pine Barrens, pre-empting the regulatory authority of existing local governments. Or the task can be divided, along any of several lines, with the Commission, in addition to providing a broad regulatory framework, providing specific

now and the articulation of a consensus on threshold issues, there is a substantial risk that fascination with the substantive regulatory techniques, especially the more exotic ones will produce the "kid in the candy store" phenomenon in which an order is placed for one carrying capacity ordinance, a population "cap," three performance controls, and a box of TDRs.

The analysis and description in Volume 3 of land use management techniques and legislation currently in use in the United States and other countries should be read with these more general considerations in mind. A representative number of such techniques have been selected. Obviously it was neither possible nor desirable to discuss all the possibilities. As the land use and environmental studies are completed, it may become necessary to consider additional techniques. It is important to remember, however, that each technique has strengths and weaknesses, both from a substantive and an administrative perspective, and that "innovative techniques" may not necessarily be the most effective. Each technique should be carefully measured against the goals of the Pinelands Act and the land use and environmental data which is produced during the planning process.

Finally, each technique should be examined against the concept of due process of law or "fundamental fairness," a topic of much recent judicial comment. To be constitutionally

management techniques discussed in Volume 3 in response to Task I.

I. ACQUISITION

The Pinelands Act contemplates the use of federal monies through the National Parks and Recreation Act of 1978 to acquire lands of particular public value in the area. Such acquisition can be accomplished through selective purchases of fee simple title, eminent domain, or through the more costly and ambitious land banking technique. Other acquisition techniques, such as purchase and leaseback or saleback, permit a governmental body to retain control over the use of land without the responsibilities of full ownership or management. While outright acquisition may provide the greatest potential control over the future use of the Pinelands, limitations on financial resources inhibit the usefulness of this technique. It is, of course, not necessary that in every instance full, fee-simple title be acquired to protect particularly valuable land. In many cases acquisition of a lesser interest, such as a conservation easement, will suffice to protect both private investment and public needs. Techniques such as installment purchase and bargain sale can further maximize available acquisition monies. "Compensable regulations" provide monetary compensation to landowners subject to restrictive regulation. Finally,



Rural zoning, sometimes called "large lot zoning," can be used to maintain low density residential development, requiring little capital investment for support facilities by governmental units. This technique must be used carefully to avoid legal pitfalls and to ensure that it is used compatibly in environmentally sensitive and agricultural areas.

Cluster zoning, whether mandatory or permissive, is yet another technique which can be utilized to preserve open space, to reduce the area occupied by impermeable surfaces, and to maximize sensitive and innovative site planning techniques. Variations on cluster zoning have been in use in this country for at least fifteen years and have resulted in a reduction of capital improvement costs for both the developer and the governmental unit. Lower development costs have the additional benefit of encouraging the provision of a diverse housing stock.

Regulation in the flood plains is a fact of life for most of this country due to federal mandate. Most flood plain regulations, however, are directed toward the protection of structures within the flood plain. In the Pinelands, regulations which prohibit or limit development in flood plain areas have the additional benefit of protecting many of the unique plant and animal species which are primarily located in the riverine and flood-prone areas.

development--erosion, storm water runoff, stream siltation, pollution of surface waters, destruction of natural vegetation, and alteration of the physical environment. Environmental performance standards attempt to remedy that deficiency. New attempts to base the zoning ordinance on a set of performance standards for all uses of land may offer an alternative to the specification standards that are a familiar part of traditional zoning ordinances.

V. MASTER PLANNING

The Pinelands Act mandates the development and implementation of a comprehensive management plan. The traditional questions of the necessity of planning prior to zoning and the relationship of land use decision-making to planning have in large measure been addressed by the legislature. Sections 9C and 12 of the Act require that all development within the Pinelands area conform to the comprehensive management plan and that all state, county and local decisions regarding capital facilities conform to the plan to the "maximum extent practicable and feasible." These statutory requirements necessitate specific and detailed planning principles and policies as well as an implementation of an ongoing planning and monitoring process.

VI. DEVELOPMENT TIMING AND GROWTH MANAGEMENT

There are numerous techniques in use throughout

All of these techniques have encountered legal challenges with varying successes. The discriminatory effect of some uses of the techniques has been pointed out by more than one court. Furthermore at least one court has pointed out that planning cannot be used to justify a pre-determined conclusion.

## VII. TAXATION

There are a number of taxing devices which can be designed to assist in achieving the goals of the Pinelands Act.

### A. Preferential Assessment

Various forms of preferential assessment statutes provide preferential treatment to farmland usually without application by the landowner and without the imposition of any restrictive covenants. The "pure" statute also does not penalize the landowner if the farmland is developed. Deferred taxation programs, on the other hand, include "roll back" provisions upon conversion to non-agricultural use to recapture previously enjoyed tax benefits. Other preferential assessment statutes require the landowner to enter into a contract with local authorities which restricts the use of his land. The incentives in preferential assessment programs have been insufficient to prevent conversion to non-agricultural uses. Strict recapture provisions have frequently resulted in farmland on the urban fringe not being enrolled in such

C. Urban and Rural Service Areas

Some communities have defined urban and rural service areas in order to contain urban development in areas where basic public services can be provided efficiently and economically and to preserve farmland and open space. Attempts to implement this technique through bifurcating applicable tax rates between urban and rural areas within a single jurisdiction may raise legal difficulties. The success of this concept hinges upon a high degree of intergovernmental cooperation in the service area or a reorganization of authority between relevant jurisdictions. Zoning and annexation policies can only have a cumulative effect if they are adhered to throughout a metropolitan area. The economics of scale afforded by the urban/rural service area dichotomy can only result in lowered tax bills if urban jurisdictions cooperate in extending their existing resources to fringe areas on a reasonable basis and if rural service areas can legally be taxed at lower effective rates.

D. Windfall Taxation

A number of techniques have been devised to tax "windfalls," any increase in the value of real estate not caused by the owner or inflation, and to compensate "wipeouts," any decrease in the value of real estate other than those caused by the owner or inflation. There have been some experiments with windfall recapture devices in England,

to speculative holding of unimproved land. This, they maintain, would discourage speculative acquisition of rural land in anticipation of future development and would encourage in-fill development on vacant urban land. Australia, more than any country in the world, has been captivated by this concept of a "single tax on land." The Australian experience, which grew from very different motivation than those driving the Pinelands program, is discussed in Volume 4.

#### VIII. PROJECT REVIEW AND ENVIRONMENTAL ASSESSMENT

Regulatory processes devised to review a particular project with predetermined characteristics can be grouped into four general categories: disclosure mechanisms, negotiated design, adjudicative proceedings, and coordination mechanisms. These may all properly be viewed more as "procedural" than "substantive" programs and, as such, have been treated to some extent in the previous chapter. However, in keeping with the format of our scope of services, we also address them at this point.

Disclosure mechanisms involve little regional or state intrusion into private and local government decision-making. A hearing is required at which information about a proposed project is presented and affected persons are given an opportunity to be heard. The impact statements required by some states and under the National Environmental Policy

The proliferation of permits at all levels of government and the accompanying multiplicity of reviewing bodies has led to the development of coordinated mechanisms for project review. Regional agencies, the coordination of permitting procedures at the state and local levels, the pre-emption of local decision-making authority by the state or the delegation to localities of state decisions, and the creation of specialized appellate review processes are some of the techniques which have been devised.

IX. INCENTIVES FOR LOW TECHNOLOGY LIFESTYLES

A true low technology lifestyle is a self-sufficient woodsman camped in a lean-to in front of a campfire. The technological level may be admirably low. The difficulty is in devising regulatory alternatives to encourage it. Programs which say they are encouraging low technology are frequently encouraging just the opposite. Energy conservation may be achieved as well by solar heat as by a wood burning stove. And solar heat, of course, will require sophisticated capital investments, at least at the front end, and equally sophisticated technology. The term used more frequently is "appropriate technology."

Any review of the literature in this field makes it clear that the heavy emphasis is upon energy conservation, which may not be the most important element of the Pinelands

CHAPTER FOUR

THE FOREIGN EXPERIENCE

Much of the foreign experience, which is reported in detail in Volume 4 of this study, has already been referred to in connection with the discussion of specific programs in the previous two chapters of this volume. At this point, however, it might be worth emphasizing that this country provides few home-grown examples of major public/private park planning efforts to draw upon for guidance in developing a program for the Pinelands. The Adirondack Park is certainly an excellent domestic model and we treat it fully elsewhere. However, the international experience is especially useful in this regard. For example, since the 1950's, England has created a series of world-renowned national parks containing more private land than public, which now cover 9 per cent of the country. By way, perhaps, of a negative lesson, the discussion of the English program in Volume 4 points out the difficulty, even in the context of England's strong development control system, of reconciling environmental interests with the promotion of farming and forestry. The Commission may also find particularly useful the discussion in Volume 4 of the proposed English "two-tier" system of parkland regulation. The English park authorities have, as a result of their efforts to exercise maximum control over park development, found themselves bogged down in reviewing minor developments

for many years, subsidized private, non-profit organizations, which are committed to carrying out land purchase and management programs consistent with the government's objectives. The Dutch government also enters into contracts with residents of sensitive areas under which, in return for an annual payment, the resident agrees to specified restrictions on the use he might otherwise make of his property. Such agreements, for example, might require a farmer or rural landowner to maintain defined natural landscape elements of his property or might require a farmer to refrain from using fertilizers or pesticides which might be inimicable the environment. Under yet a third program, the Dutch government provides not only tax benefits but also direct cash payments to private forest owners willing to provide public access to their land for recreational purposes.

These devices have one significant drawback. They provide no permanent protection. Unlike the ownership of an easement or other property interest which "runs with the land," these arrangements are merely contracts which begin and end, and which provide protection only so long as they continue or can be renewed. Nevertheless, if there is a substantial indigenous population in the Pinelands, as there appears to be in at least some of the more rural sections of the region, which is desirous of maintaining present lifestyles so long as those lifestyles remain economically attractive,



CHAPTER FIVE

THE "TAKING ISSUE" AND  
VESTED RIGHTS AS LIMITATIONS  
ON THE POWER OF THE PINELANDS  
COMMISSION

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In Volume 5 of this report we provide a detailed analysis of the constitutional limitations on the power of the Pinelands Commission to implement a regulatory program which will be effective in achieving the goals of the Pinelands Act. In this chapter, we provide a brief overview of that analysis.

The use of the police power regulations to protect and preserve natural resource values is now generally well-accepted in the United States, and the importance of environmental values and their relationship to the general public health, safety and welfare is now largely beyond the realm of serious dispute. For example, an appellate court in Florida recently noted:

We find the inclusion of ecological considerations as a legitimate objective of zoning ordinances and resolutions is long overdue and hold that preservation of ecological balance of a particular area is a vast exercise of the police power as it relates to the general welfare.

Moviematic Industries v. Bd. of County  
Com'rs of Metropolitan Dade County,  
349 So.2d 667, 669 (Fla. 3d DCA 1977).

The use of the police power, however, is not unlimited. Statutory, constitutional and judicial constraints restrain the unfettered exercise of this authority. For

The first clause is generally referred to as the "due process" clause and the second the "taking" clause. Although the Fifth Amendment is a limitation on federal powers, the clauses are applicable to the state's both because they are generally regarded as being incorporated by the Fourteenth Amendment which does limit state action and because similar provisions are found in all state constitutions.

The "due process" clause contemplates that exercises of the police power will be accomplished through procedures that are fair to the persons who will be affected, principally by ensuring that they are notified of pending governmental actions and given an opportunity to be heard.

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision-making when it acts to deprive a person of his possession. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment, to minimize substantively unfair or mistaken deprivations of property. Fuentes v. Shevin, 407 U.S. 67, 80 (1972).

The due process clause has also been interpreted to require that regulations be understandable to those governed by them:

[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. Connally v. General Construction Co., 269 U.S. 385, 391 (1925).

but is only a declaration by the state that its use by anyone, for certain forbidden purposes, is prejudicial to the public interests. 123 U.S. at 667-668.

However, in Pennsylvania Coal v. Mahon, 260 U.S. 393 (1922), the Supreme Court apparently changed course and eliminated the distinction between the power to regulate and the power of eminent domain, characterizing them as merely matters of degree on the same spectrum:

The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. 260 U.S. at 415.

There are significant implications which flow from this theorem. The Constitution unequivocally provides that just compensation must be paid for all private property that is "taken." Under the Pennsylvania Coal analysis, if a regulation goes too far and becomes a "taking" then, by definition, compensation is required, or at least that is what the taking clause seems to say. Such a result could have a far-reaching impact on the functional integrity of government. The better rule is that regulations which deny a landowner all use of his property are a violation of the due process clause and therefore invalid:

[W]hen there is only regulation of the uses of private property, no compensation need be paid. Of course, and this is often the beginning of confusion, a purported "regulation" may impose so onerous a burden on the property regulated that it has, in effect, deprived

and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon the individuals. 369 U.S. at 594-595. [citations omitted] [Emphasis added]

Under this test, the ordinance was upheld despite the resulting loss by appellants of the most beneficial use of their property. Thus, while Pennsylvania Coal seemed to say that such a degree of deprivation would constitute a taking, Goldblatt says that anything short of a total deprivation was permissible.

What constitutes a minimum beneficial use under the Constitution is not yet settled. In Just v. Marinette County, 56 Wis.2d 7, 201 N.W.2d 761 (1962), the Wisconsin Supreme Court upheld the constitutionality of an ordinance designed to protect water quality through a program of shoreland regulation adopted pursuant to the Wisconsin Shoreland and Floodplain Protection Act discussed in Chapter 2 of this volume. Under the Marinette County ordinance, use of the land was limited to those activities which did not alter the natural state of the shoreland (e.g., harvesting wild crops and wildlife preservation).

Plaintiff filled an area of his land without obtaining a permit. When the county sought an injunction, the plaintiff challenged the ordinance as an unconstitutional taking. The court held that a landowner has no

It is to be emphasized that we deal in this case only with the split-lot situation where there is a deprivation of all practical use of the smaller portion thereof. The approach to the taking problem, and the result, may be different where vital ecological and environmental considerations of recent cognizance have brought about rather drastic land use restriction in furtherance of a policy designed to protect important public interests wide in scope and territory, as for example, the Coastal Wetlands Act, N.J. S.A. 13:19A-1 et seq., and various kinds of flood plain use regulation. Cases arising in such a context may properly call for a reexamination of some of the statements 10 years ago in the largely locally limited Morris County Land case (citations omitted). The Taking Issue (Council on Environmental Quality, 1973). 319 A.2d at 711, n.4. See also, Sands Point Harbor, Inc. v. Sullivan, 136 N.J. Super. 436, 346 A.2d 612 (App. Div. 1975).

A recent, and very significant, retreat from Morris County Land is American Dredging Company v. State Dept. of Environmental Protection, 161 N.J. Super, 504, 391 A.2d 1265 (Ch. Div. 1978), a case involving the Coastal Wetlands Act. There the court virtually nullified the theory of Morris County Land, supra, at least for the regulation of land to prevent environmental harm:

[T]he thrust of the Wetlands Act is the prevention of harm to the public, not the enhancement or improvement of a governmental activity or purpose. I have concluded that the distinction is basic and distinguishes (Morris County Land) from this case. I respectfully find that the law of that case is not controlling in the case at bar. 391 A.2d at 1268.

The court then went on to say:

an excerpt from another opinion by Justice Hall, the author of Morris County Land:

Modern man has finally come to realize - I hope not too late - that the resources of nature are not inexhaustible. Water, land and air cannot be misused or abused without dire consequences to all mankind. Undue disturbance of the ecological chain has its devastating effect at far distant places and times. Increased density of population and continuing residential, commercial and industrial development are impressing these truths upon us. We trust solution of our problems in this vital area can be aided by modern technology and the expenditure of money, but it seems evident that we must also thoroughly respect the balance of nature. N.J. Sports and Exposition Auth. v. McCrane, 61 N.J. 1, 292 A.2d 545, 577 (1972).

Applying this respect to the fact situation in American Dredging, the court concluded that:

The uncontrolled use of land, if unchecked, is harmful to the public interest, and government may within the scope of the police power regulate that use. If ADC is permitted to fill in the approximately 80 acre tract, it is clear that no protected vegetation, fish, or other marine life will again exist in that area. The destruction will be permanent and irreversible. The natural environment as it existed in its original state will give way to a pile of dredge spoil. To the extent that is accomplished the public is damaged. That result cannot be deemed to be reasonable use of land exempt from the regulation promulgated under the police power of this State. 391 A.2d at 1270.

The most recent Appellate Division case which erodes Morris County Land is N.J. Builders v. Dept. of

this results the difference between the power of eminent domain and the police power, that the former recognises [sic] a right to compensation, while the latter on principle does not." Thus the necessity for monetary compensation for loss suffered to an owner by police power restriction arises when restrictions are placed on property in order to create a public benefit rather than to prevent a public harm. 404 A.2d at 331.

Under this analysis, the regulations sought to prevent harm to water quality and the environment and were therefore a valid exercise of police power and not a taking.

From these recent New Jersey cases, as well as from an analysis of similar cases which are becoming ever more common in other jurisdictions, it is reasonable to conclude that even severely restrictive police power regulations designed to protect and preserve environmentally sensitive lands are likely to be sustained if challenged in the New Jersey courts. Although New Jersey has, in the past, been considered an extremely conservative state in regard to the so-called "taking issue," recent case law indicates that restrictive regulations will be sustained unless they prohibit all private use of property in an effort to secure a public benefit. If a Pinelands regulation is intended to protect an identifiable, existing public value and does not deny all private economic uses, it is likely to be sustained. And, it seems likely, the question of whether the uses

as a valid exercise of the police power, courts are generally careful to be fair to landowners by balancing the threat to the public health, safety and welfare to which the new regulations are directed against the landowner's injury if he is not permitted to conclude a previously initiated project. The identification of those landowners who should be insulated from the application of new regulations is often referred to as a determination of "vested rights" or "zoning estoppel." See Heeter, "Zoning Estoppel: Application of the Principles of Equitable Estoppel and Vested Rights to Zoning Disputes," 1971 Urban Law Annual 63-66.

The invocation of estoppel against police power regulations is no more than an attempt by courts to provide fairness to landowners who have previously committed themselves to a particular course of action in reliance upon some act of government. Careful attention must be given to existing development expectation during the planning process. If not, support for the plan may be seriously eroded. Many comprehensive planning efforts which have failed to adequately catalog and provide for legitimate development expectations have resulted in debate, not about the substantive merits of the plan's objectives, but rancorous disputes over existing rights. There are undoubtedly developments in the Pinelands that a court would insulate from at least portions of the plan, and the overall integrity



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