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Report on the California Coastal Commission

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CALIFORNIA STATE SENATE

ADVISORY COMMISSION ON COST CONTROL
IN STATE GOVERNMENT

MILTON G. GORDON, CHAIRMAN

Report on

**THE CALIFORNIA
COASTAL COMMISSION**



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California State Senate

ADVISORY COMMISSION ON COST CONTROL IN STATE GOVERNMENT

MILTON G. GORDON
CHAIRMAN

April, 1989

Honorable David Roberti
Chairman
Senate Rules Committee
State Capitol, Room 400

Dear Senator Roberti:

The Senate Advisory Commission on Cost Control in State Government herewith transmits its fourth report to the Senate Rules Committee -- a report on The California Coastal Commission.

This study was undertaken by a subcommittee of the Commission chaired by John M. Basler. The work of the Subcommittee was reviewed and approved by the Commission at its last meeting.

Members of the Subcommittee were Jerry A. Aspland, Jerry Ayers, Anne Charles, Robert L. Fox, A. Alan Post, and Manning J. Post. The Commission wishes to thank Jason C. Warburg, Executive Director of the Commission, for his contributions in the research and preparation of this report. The Commission also wishes to thank Jeremy Olsan, Mary Shallenberger, Arnie Sowell, Buzz Breedlove and Elisabeth Kersten for their contributions to the report.

Very truly yours,

A handwritten signature in cursive script that reads "Milton G. Gordon".

MILTON G. GORDON, Chair
Senate Advisory Commission on
Cost Control in State Government

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REPORT ON THE CALIFORNIA COASTAL COMMISSION

of

The Senate Advisory Commission on Cost Control
in State Government

Subcommittee on the California Coastal Commission

Chair: John M. Basler

Members: Jerry A. Aspland
Jerry Ayers
Anne Charles
Robert L. Fox
A. Alan Post
Manning J. Post

Senate Advisory Commission on Cost Control in State Government

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Executive Director: Jason C. Warburg, Senate Office of Research

" The Legislature hereby finds and declares:

(a) That the California Coastal Zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.

(b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and the nation.

(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction. "

-- from the Coastal Act of 1976, now Chapter 20 of California's Public Resources Code, at S. 30001.

TABLE OF CONTENTS

EXECUTIVE SUMMARY..... 1

PREFACE..... 5

INTRODUCTION: OVERVIEW OF COASTAL MANAGEMENT

 Introduction..... 6

 The California Coastal Commission..... 6

 Role of Local Government..... 8

 Other State and Federal Agencies Involved
 In Coastal Management..... 8

 Chart: Relative Sizes of Resource Agencies.....11

 Objectives and Scope of Study.....13

ORIGINS OF THE COASTAL COMMISSION

 Historical Background.....16

 Coastal Protection Initiative of 1972.....16

 Coastal Act of 1976.....17

 Provisions of the Act.....17

 The Act As Public Policy and As Law.....20

ISSUES REGARDING THE COASTAL ACT

 Role of Local Government - Local Coastal
 Programs (LCPS).....23

 State and Federal Jurisdiction.....26

 Enforcement.....28

 Guidelines and Regulations.....31

 Amendment Process.....32

 Coastal Resource Information Center.....32

 Public Information and Education.....33

 Long-Term Coastal Research and Planning.....35

 Five-Year Review of LCPS.....36

 Other Commission Functions.....37

ISSUES REGARDING THE COASTAL COMMISSION

 Commission Organization.....39

 Commission Size and Structure.....39

 Term of Commissioners.....40

 Qualifications Criteria and Appointments Process...40

 Conduct and Ethics.....41

 Compensation.....42

 Commission Procedures.....43

 Commission Staff and Budget Resources.....44

 Size and Organizational Structure.....44

Budget Resources.....	44
Charts: State Funding 1977-1989.....	45, 46
Technical Resources.....	47
Workload.....	47
Personnel Issues.....	48

FINDINGS AND RECOMMENDATIONS

The Coastal Act: Goals and Functions of the Coastal Commission.....	50
Commission Organization.....	58
Commission Staff and Budget Resources.....	61

APPENDICES

A. Notes on Methodology.....	63
B. Permanent Responsibilities of the Coastal Commission.....	65
C. Organizational Chart of Commission Staff.....	67
D. Map of California's Coastal Districts.....	68
E. Excerpts from "A Report to the California Coastal Commission on Incentives for Completion of Local Coastal Programs," prepared by Blayney-Dyett, Urban and Regional Planners.....	69

EXECUTIVE SUMMARY

Background

The California Coastal Commission is entrusted with the responsibility for reviewing and approving land use planning for the entire 1100-mile California coastline, acting as the State's liaison to both local and federal government on all planning and development issues affecting the coastal region, and conducting long-term planning and research to ensure the preservation and careful development of coastal resources.

Created by a public ballot initiative in 1972, and made permanent by the Legislature's passage of the Coastal Act of 1976, the Commission has as its chief goals the preservation of the coast's unique natural resources, and the promotion of public access to and recreational use of the coast. These goals and the Commission's role in implementing them have retained broad public support throughout its seventeen year history.

During this period, the Commission has processed well over 65,000 permits authorizing billions of dollars in development along the coastline, frequently modifying proposed development to protect coastal resources and mitigate adverse environmental side effects, but ultimately approving approximately 95% of the permits submitted. In sum, the Commission, faced with enormously broad, complex, and often controversial responsibilities, has for the most part performed well.

However, the Commission has come under fire in recent years from a variety of sources. Some believe it has not fulfilled its duties under the law adequately, while others complain that it has overstepped the boundaries of its mandate. A fundamental problem affecting the Commission's operations has been continuous pressure from the Governor to reduce the agency's budget, which has led to a 56.6% reduction in real dollar funding since 1977. These budget cuts have exacerbated the Commission's backlog of enforcement cases and prevented them from carrying out their critical long-term planning responsibility.

We have pursued this study in hopes of producing recommendations designed to address the problems faced by the Coastal Commission, with the overall goal of enabling the Commission to fulfill the public mandate it carries both as efficiently and as effectively as possible. The coastline is one of our most valuable resources. Uncontrolled development would result in extensive damage to this resource, incurring tremendous costs for mitigation measures, where mitigation is even possible.

Current Issues

We found a number of issues which must be addressed if the Commission is to live up to its mandate. These include:

- the much-delayed completion of the Commission's certification of the 126 Local Coastal Programs (or LCPs) which make up the local planning component of the Commission's mandate;
- the lack of an effective program of enforcement of permit and planning restrictions by the Commission, including an understaffed and haphazard monitoring program, and an inability to provide sufficient follow-up on violations cases in support of efforts at prosecution;
- the inability of the Commission to put fully into place a number of statutorily mandated program elements, including establishing a Coastal Resource Information Center for the use of the Commission and its clients, and conducting five-year LCP reviews;
- the inability of the Commission to engage in long-term research and planning to address the wide range of issues which will affect the future of the coast (e.g. offshore oil development, flood and earthquake hazards, shoreline erosion);
- the perception among much of the public that the Commission has increasingly often been influenced by political considerations, rather than functioning in the independent manner that was intended by its creators; and
- the very large reductions in the Commission's budget over the past twelve years without any significant reduction in its statutory responsibilities.

Recommendations

We offer a set of recommendations designed to address these and other problems, including the following major elements:

- a package of incentives should be put into place to encourage local governments to complete their LCPs by January 1, 1991, including
 - increasing permitting fees,
 - increasing Commission technical assistance to local governments preparing LCPs,
 - extending the deadlines for Commission action on amendments to local plans which have not yet been certified,

and, after the January 1991 deadline,

- withholding Commission staff and financial assistance from governments which have not prepared LCPs;

- the Legislature should appropriate new funding for a fully-staffed Commission enforcement program, and provide the Commission with the ability to

- issue cease and desist orders, and
- fine violators

in order to present a greater deterrent to violations;

- after exploring funding alternatives, the Legislature should be prepared to appropriate new funding for the establishment and permanent support of the Coastal Resource Information Center, so that both the Commission and its clients may have an informational database to use in formulating plans for the future of the coast;

- the Commission's staff workload must be structured to allow it to engage in vital long-term research and planning in areas affecting coastal planning, such as: the greenhouse effect, offshore oil and gas development, toxic waste and sewage spills and cleanup, flood and earthquake hazards, shoreline erosion, etc.;

- the Commission's present size and structure should be substantially reorganized to focus the agency on its mission, including

- reducing the Commission to nine members serving staggered four year terms,
- eliminating alternates and making the Commission a full-time, fully-compensated board,
- establishing qualifications criteria for appointments to the Commission,
- changing appointments to the Commission from pleasure to term appointments,
- drawing up and enforcing a code of conduct for Commissioners,
- limiting Commissioner's political fundraising activities, and
- revising Commission procedures to be more responsive to the public; and

- the Commission's budget should, at an absolute minimum, be maintained at 1988-89 levels, adjusted annually for inflation, until all LCPs are complete and certified; more realistically, we recommend that increases in funding be granted to the Commission earmarked for specific functions required of it by law. The budget cuts imposed on the Commission have not been cost-efficient; to the contrary, over the long run, redressing the adverse effects of poor planning and oversight of coastal development will cost the State much more than the few million dollars saved through drastic cuts in the Commission's budget.

These and our other recommendations constitute a comprehensive program of reform aimed at restoring the Coastal Commission to its intended status under the law. We believe that if this package of recommendations is only partially enacted, it will be only partially successful in addressing the problems facing the Commission. Each and every one of these measures addresses a significant impediment to the Commission's effectiveness in meeting its mandate. We urge the Executive Branch, the Legislature and the Coastal Commission to implement these recommendations in full, in order that the Commission's mandate from the citizens of California may be carried out as efficiently and effectively as possible.

PREFACE

The Senate Advisory Commission on Cost Control in State Government was created by Senate Resolution 40 (Roberti, 1984) to study, analyze, and make recommendations on cost control in state government. SR 40 directed the Commission to look for ways to increase efficiency, reduce costs, enhance administrative accountability and control, and apply improved program management techniques and systems to state operations.

The mission statement adopted by the Commission further defines project selection criteria: the study "should potentially effect improvements in multiple agencies..." and "improve services and / or programs permitting them to operate more effectively within existing resource levels."

In addition, the Commission seeks to evaluate whether the resources currently being expended for an agency's operations are providing results that meet the objectives established for the agency when it was created. Once an agency has been given a mandate, we seek to ensure maximum effectiveness in meeting the agency's goals at minimum cost to the State. In this study, we have paid particular attention to the impact present budgetary restraints on a regulatory agency may have on the future costs of redressing problems caused by insufficient oversight.

With these goals in mind, the Commission selected for its fourth topic of analysis the California Coastal Commission.

INTRODUCTION: OVERVIEW OF COASTAL MANAGEMENT

The coastal region constitutes California's single greatest natural resource. Our coastline stretches 1100 miles from the craggy Oregon border in the north to idyllic Cabrillo Bay in the south. It also includes nearly 400 miles of shoreline on its offshore islands. The coast is an incomparable storehouse of natural resources, both developed and undeveloped. The variety and plenitude of terrain, climate, scenic beauty and development potential harbored by the coast is awesome. And the people of California appreciate this gift -- fully 80% of the State's 26 million people live within 30 miles of the shoreline.

The coast has been put to a variety of uses equal to its own natural variety. Industry values the easy access to seagoing transport offered by California's many excellent ports and harbors. Lured by the combination of climate and scenic beauty, businesses and workers have clustered in the two huge coastal population enclaves of San Francisco and Los Angeles. Millions of Californians, as well as visitors from throughout the nation and around the world, enjoy the beaches and parks the coast offers. At the same time, millions of wildlife enjoy the benefits of wilderness land and natural preserves set aside in coastal areas. Finally, at the individual level, thousands of citizens have built their dream homes on the cliffs, shores, and coastal mountains of California. In summary, as a resource the California coast is unique both in the variety of things it has to offer people, and in the intensity of its use.

The California Coastal Commission

For the past seventeen years, the California Coastal Commission has been charged with the responsibility of protecting this tremendous resource from uncontrolled development. First created through the initiative process in 1972, the Commission carries a mandate from the people of California to oversee and approve all plans for development affecting the California coast. The Commission's chief goals, set in statute both in the 1972 initiative and in the subsequent California Coastal Act of 1976, are the protection of coastal resources and the preservation of public access to those resources. While some have seen the Commission's role as balancing the interests of coastal development and coastal protection, the language of both the original initiative and the Coastal Act clearly direct the Commission to maintain coastal protection and preservation as its primary goal and mission¹.

¹ The Coastal Plan states its priorities thusly: "to protect the unique qualities of the coast, both in cities and in rural
(Footnote Continued)

The Commission has the additional responsibility of acting as the state's coordinator of coastal management activity. Interacting on a regular basis with both federal and local agencies, the Commission sometimes creates friction with both by exercising its authority to supersede both federal and local prerogatives regarding coastal issues. Nevertheless, both the Commission and the state benefit from this structure, which provides a single body to represent the interests of the state as a unit when dealing with any other body on coastal matters.

One of the Commission's most important roles is as the long-term planning agency for the coast. The Commission is uniquely equipped to bring the kind of long-term, statewide perspective to coastal planning that is necessary if the coast is to be protected for future generations of Californians.

A neglected role of the Commission is its educating function. The Commission's legislative mandate also directs it to promote public awareness of coastal resources, coastal access, and the role of the Commission itself in managing these resources and access. The Commission's failings in carrying out this aspect of its duties, discussed in detail below, have contributed to the confusion and frustration experienced by members of the public in dealing with the Commission. Misunderstanding of the Commission's mandate and a lack of guidance from the Commission for citizens trying to work with the process have generated a high level of frustration with the Commission.

The Governor's budget for 1989-90 allocates \$6,276,000 for the Commission. This represents a reduction of approximately 5% in real terms from the Commission's 1988-89 funding level. This proposed reduction reflects the recent historical trend for the agency, which has seen its support from the State cut by more than 56% since Fiscal Year 1977-78².

It is difficult to compare the Commission's budget against those of other agencies because its responsibilities are both very broad and geographically specific to the coast, while others generally have more narrowly defined responsibilities spread over a larger geographical region. The fact remains that the Commission, with a comparatively small budget, carries a very large regulatory workload and also acts as a coordinating agency for coastal policy.

(Footnote Continued)

areas, and to guide coastal conservation and development accordingly." The Coastal Act quote which serves as the frontispiece to this report offers very similar priorities.

² See budget tables on pp. 45-46 for an explanation of the derivation of this figure.

Role of Local Government

Historically, the primary responsibility for the oversight and regulation of land use has been with local government. However, some lands have been determined at various times to be of exceptional significance to the state as a whole and have therefore been supervised at the state level. Implicit in these arrangements has been a kind of partnership between state and local entities, with local government surrendering some of its prerogatives for the greater good of the state, even as the state offers local government a role in shaping and implementing state policy.

The 1972 coastal initiative and 1976 Coastal Act both embrace these principles of shared responsibility for land use in significant areas. While establishing a strong oversight role for the state coastal agency, the Coastal Act respects the tradition of local control over land use by returning permitting and permit enforcement powers to local governments once their land use plans have gained the State's approval. It envisions a true state-local partnership in managing the coastal region, an idealistic, but nonetheless achievable, goal.

Other State and Federal Agencies Involved in Coastal Management

There are in fact a large number of other agencies both at the state and at the federal level whose actions at times have an impact on California's coastal region. All are required to submit their proposed actions to the Commission, which reviews and coordinates all activities affecting California's coastal resources, examining their possible impacts on the coast over both the short and the long term. This oversight and coordination role is a vital aspect of the Commission's long-term planning function. The affected agencies are identified briefly here in part as evidence of the enormous responsibility the Commission has in acting as the coordinating body for coastal planning for the state.

State agencies with a stake in coastal management include the following³:

The State Coastal Conservancy was created by the Legislature in 1976 as a companion agency to the Coastal Commission. The Conservancy is empowered to buy land, restore, subdivide, consolidate, improve or develop it, own and manage it indefinitely, or sell or otherwise transfer it to anyone else under its own terms. The Conservancy's projects, which must conform to the California Coastal Act policies, sometimes allow the Coastal Commission flexibility in regulating development.

³ Budget figures shown include all agency activities.

Through its powers the Conservancy is able to facilitate the restoration of areas where previous development has damaged coastal resources, and mitigate problems with proposed development through land swaps and the like. By law, the Chairman of the Coastal Commission serves on the Conservancy's Board of Directors. The Governor has requested a total budget of \$3,970,000 for the Conservancy in FY 1989-90⁴.

The San Francisco Bay Conservation and Development Commission carries regulatory and planning powers similar to those of the Coastal Commission over the specific region of the San Francisco Bay. It was created by the Legislature between 1965 and 1969 and served as a model for the Coastal Commission. The area in which the BCDC regulates development activities is the only coastal region in California not under the authority of the Coastal Commission. The Governor's budget for FY 1989-90 allocates \$1,657,000 to the BCDC⁵.

The State Lands Commission is a three-member body composed of the Lieutenant Governor, the State Controller, and the Director of Finance. The Commission is responsible for the management of more than 4,000,000 acres of land received from the federal government, including tide and submerged lands, swamp and overflow lands, the beds of navigable waterways, and other lands. Although the Lands Commission is responsible for the disposition of these lands, carrying the authority to lease or sell parcels, all authority to regulate development on coastal lands remains with the Coastal Commission. The Governor's total budget request for the Commission for FY 1989-90 is \$18,835,000.

The Department of Parks and Recreation acquires, develops, preserves, interprets and manages the natural, cultural, and recreational resources within the state park system. The park system contains approximately 1.4 million acres of land, including 292 miles of ocean and bay frontage. The Governor's budget allocates the Department's total funding for FY 1989-90 of \$221,426,000.

The Department of Boating and Waterways conducts a variety of licensing and promotion activities relating to the state's harbors and waterways, including coordinating the work of state, federal, and local agencies in implementing the state's beach erosion control program. The Governor's total budget request for the Department for FY 1989-90 is \$40,307,000.

⁴ "California's Coastal Program," article by Michael L. Fischer, APA Journal, Summer 1985, pp. 312-321; Legislative Analyst; Governor's Budget 1989-90.

⁵ All budget figures for state agencies are per Legislative Analyst and the Governor's Budget for 1989-90.

The Department of Fish and Game administers programs and enforces laws pertaining to the fish and wildlife resources of the state, including regulating all non-commercial hunting and fishing activities. The Department currently manages approximately 160 ecological reserves, wildlife management areas, habitat conservation areas, and wetlands throughout the state, including substantial areas within the coastal region. The Governor's budget for FY 1989-90 allocates \$136,248,000 for the support of the Department.

The State Water Resources Control Board is a five-member body responsible for regulating water quality and administering water rights. Nine regional water quality boards establish wastewater discharge requirements and carry out water pollution control programs in accordance with the policies of, and under the supervision of, the state board. Much of this work affects the coastal region both directly, through the regulation of ocean discharge, and indirectly, through similar regulation of upstream waterways. The Governor's total budget request for the Board for FY 1989-90 is \$354,509,000.

The state Air Resources Board is a nine-member body charged with the responsibility of achieving and maintaining satisfactory air quality in California. Acting through a variety of regulatory means, the Board seeks to improve air quality and meet federal air quality standards throughout the state. Carefully planned development is a key part of these efforts. The Governor's budget request for the Board for FY 1989-90 is \$79,614,000.

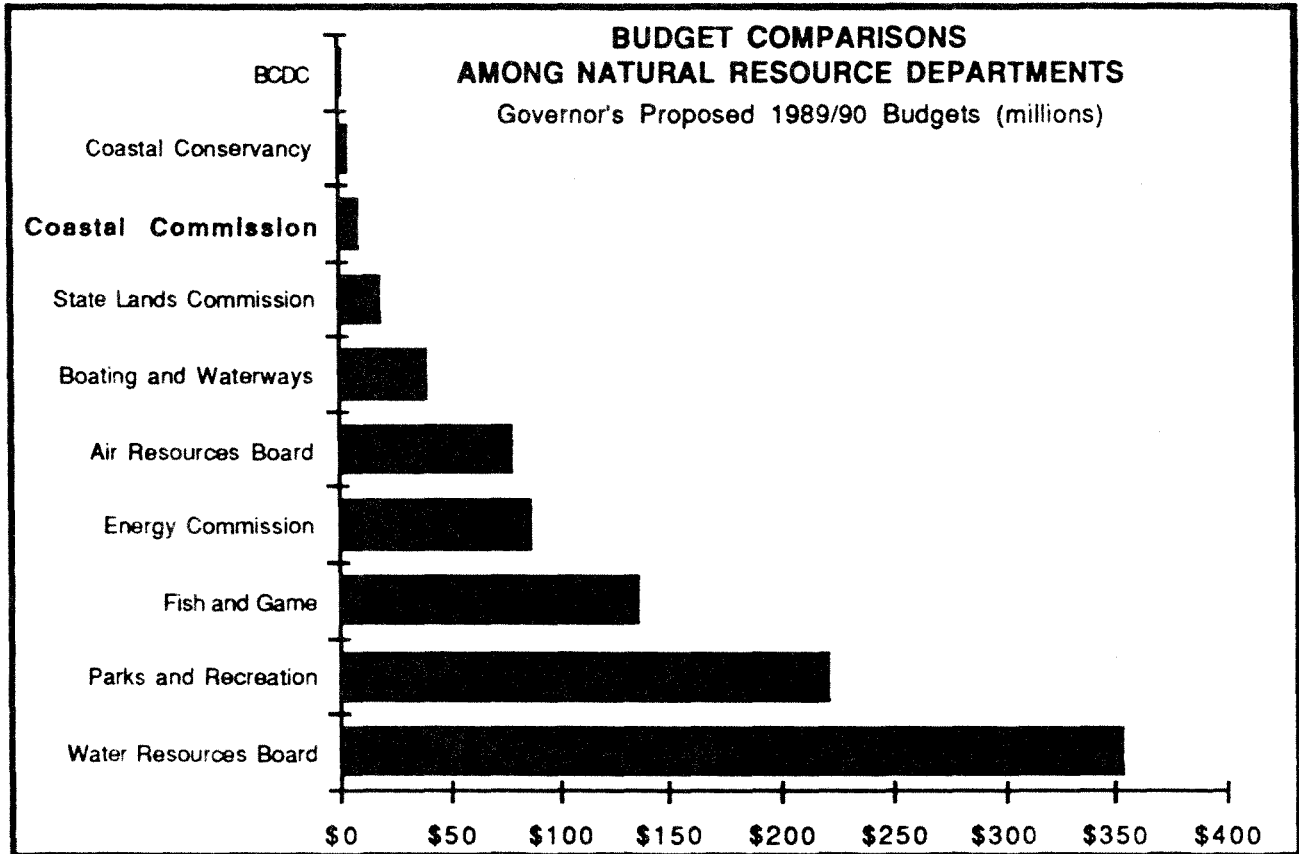
The state Energy Resources Conservation and Development Commission is a five-member, full-time board responsible for siting major electric power plants, forecasting energy supplies and demands, monitoring alternative methods of conserving, generating and supplying energy, and generally working to ensure the continuance of a reliable supply of energy at a level consistent with the State's needs, while complying with environmental, safety and land use goals. The Governor's budget allocates \$88,169,000 to the Commission for FY 1989-90.

The relative funding levels of these state agencies, each of which plays some role in the management of California's coastal resources, is presented graphically on the following page.

There are also a large number of federal agencies which may propose actions affecting California's coastal resources, actions which must be reviewed and approved by the Commission.

The Office of Ocean and Coastal Resource Management (OCRM) is the federal office in charge of certifying state coastal management programs under the federal Coastal Zone Management Act, and thus the Coastal Commission's chief counterpart and sometime antagonist at the federal level. The certification by OCRM of California's Coastal Management Program authorizes the Coastal Commission to oversee all federal activities which directly affect California's coastal resources, and, significantly, to

prevent any federal activity which it determines would violate the policies established under its coastal plan (this is discussed more fully in the section titled "State and Federal Jurisdiction"). The OCRM is part of the National Oceanic and Atmospheric Administration, which is in turn a subsidiary agency of the U.S. Department of Commerce.



The Commission's authority to review federal activities for consistency with California's coastal program allows it to oversee the activities of a number of federal agencies, including the following:

Department of Defense - U.S. Army Corps of Engineers

- activities, permits and licenses for projects affecting the coastal zone

Department of Defense - U.S. Navy, Air Force, Army and Marine Corps

- projects affecting the coastal zone

Nuclear Regulatory Commission

- permits and licenses required for nuclear plant siting and operations

Department of the Interior - Bureau of Land Management, U.S. Geological Survey, Bureau of Reclamation, U.S. Forest Service, National Park Service

- permits and licenses required for drilling and mining on public lands
- permits for pipeline rights-of-way for developing offshore energy resources
- permits and licenses for rights-of-way on public lands
- projects and other activities affecting coastal resources

Environmental Protection Agency

- permits and other matters relating to wetlands, federal water pollution and air quality standards

Department of Transportation - U.S. Coast Guard

- projects such as construction of bridges and deepwater ports and other coastal facilities

Department of Transportation - Federal Aviation Administration

- certificates for operation of new airports

Interstate Commerce Commission

- approval of railroad abandonments affecting coastal resources

Federal Power Commission

- permits, licenses and certifications relating to construction of hydroelectric plants, interstate gas pipelines, and facilities to import, export or transship natural gas or electrical energy.

The Coastal Zone Management Act requires that all federal license and permit activities that affect land or water uses in the coastal zone be reviewed for consistency with state coastal management programs. A recent proposal would have added additional activities of the EPA, the Interstate Commerce Commission, and the Departments of the Interior and Transportation, as well as actions affecting the coastal zone taken by the U.S. Forest Service and several other agencies, to the list of those federal activities subject to Commission review. Although the list was never formally amended, this

proposal illustrates the very broad nature of the Commission's jurisdiction over activity affecting California's coastal zone.

Each of the agencies mentioned in this section, both state and federal, either has an effect on or is affected by California's coastal management policies. In every case, when taking actions affecting the California coast, they must deal with the Coastal Commission, which is the spokesperson, coordinator, and final arbiter of the state's coastal management program.

Objectives and Scope of Study

The Coastal Commission carries a huge responsibility because of the authority granted it by law. The passage of the 1972 coastal initiative by a 55% majority and the subsequent passage of the Coastal Act by the Legislature are testament to the importance the people of California place on the wise use of coastal resources. For seventeen years the Coastal Commission has carried out that difficult and often controversial mandate, compiling an impressive record of coastal preservation.

The Commission has assured that conservation of coastal resources and opportunities for public access and recreational use of the coast have taken priority in coastal land use planning. The Commission has made considerable, if not optimum, progress in completing the implementation of local land use plans for the coast.

At the same time, the Commission:

- has processed well over 65,000 permits authorizing billions of dollars in development along the coastline;
- has reviewed and acted on over 900 federal consistency matters;
- has, after frequently modifying proposed development to protect coastal resources and mitigate adverse environmental side effects, approved approximately 95% of the permit applications it has received;
- has, despite having certified only about 56% of Local Coastal Programs in their entirety, acted on 91% of the land use plans and zoning ordinances which are the subcomponents of each LCP; and
- has approved the required port master plans for the four industrial ports in Southern California and long-range development plans for several campuses of the University of California.

In short, the Commission, faced with enormously broad, complex, and often controversial responsibilities, has for the most part performed well given their budget constraints. While we will go

on in the course of this report to recommend changes on the Commission's operational structure, we take this opportunity to acknowledge the dedication to duty and perseverance toward its goals which has brought the Commission this far.

Having said this, we also acknowledge the fact that the Commission has numerous critics. Some observers feel that the Commission has not lived up to its responsibilities in key areas of its mandate. Others feel it has overstepped the boundaries of that mandate. These and other criticisms of which this Commission has become aware in the course of conducting this study have emanated from a variety of sources. They have been taken with due caution given that many observers have an ax to grind with the Coastal Commission for one reason or another.

Our goal in this report is to point out ways for the Coastal Commission to function with maximum effectiveness at a minimum of expense to the state. More specifically, our objective is to provide the blueprint for a return to a Commission which meets the public's mandate represented by the coastal protection initiative of 1972 and the Coastal Act of 1976 with maximum efficiency and cost-effectiveness.

Several aspects of the Commission's functioning have been brought to our attention as needing study and perhaps reform. They are noted below for informational purposes and will be discussed in depth in the body of this report:

- the Commission has not met deadlines for certifying Local Coastal Programs (LCPs);
- the Commission's enforcement program is ineffective;
- the Commission often fails to act in a timely manner, delaying decisions on permits and missing court deadlines in enforcement cases;
- the Commission has not fulfilled statutory requirements such as creating a Coastal Resource Information Center;
- the Commission has not provided sufficient information and assistance to the public regarding its functions and processes;
- the Commission has failed to engage in the long-term coastal research and planning which is vital to the future of the coast;
- the Commission has become too political; and
- the Commission's decisions lack consistency and at times appear arbitrary.

In addition, the Governor has taken the position that the Commission's failure to complete LCP certification in a timely manner justifies its budget being reduced⁶. As a result of continuous pressure from the Executive Branch, the Commission's budget, when adjusted for inflation, has been reduced by over 56% since 1977 (See budget tables on pp. 45-46).

To these we would add that the Commission has become so mired in the relatively trivial details of permitting that it has ceased to carry out its chief function as a long-term coastal planning agency. The Commission today looks only toward the next meeting's agenda of permits and LCP amendments.

These very serious criticisms require a comprehensive review and response from the Commission, the Legislature, and the Executive Branch. We hope here to offer constructive recommendations aimed at getting the Coastal Commission back on track toward meeting the mandate it was given by the people of California sixteen years ago. Before addressing these problems of today, however, we will look back at the thinking that went into the creation of the Coastal Commission, and the shape of the mandate which it carries from the people of California.

⁶ "Governor won't increase coastal commission funds," Daniel C. Carson and James P. Sweeney, San Diego Union, April 13, 1988.

ORIGINS OF THE CALIFORNIA COASTAL COMMISSION

Historical Background

Development along the California coast began in earnest early in the 20th century. By 1931, the pace of development was sufficient to inspire concern about preserving the coast for future generations. The first attempt to protect the California coast came in that year, when the Legislature expressed its concern by passing a resolution calling for a study of the coast. Nothing came of it, however, as there was no follow-through from this initial call to attention.

Coastal protection did not take on an air of urgency again until the 1960s. As coastal development accelerated, so did the concerns of those who saw permanent damage resulting from unplanned and uncontrolled growth along the coast. An initial focus for this growing awareness of coastal protection was San Francisco Bay, where massive filling projects were damaging the Bay's ecosystem. Public attention and concern contributed to the Legislature's establishment between 1965 and 1969 of the San Francisco Bay Conservation and Development Commission (BCDC). This precursor and model for the Coastal Commission is charged with protecting the Bay from indiscriminate filling and dredging, and is made up of 27 local elected officials.

With the BCDC in place, public concern about coastal protection turned to the larger picture, and efforts began to establish an agency to regulate development and protect natural resources along the entire coast.

The Coastal Protection Initiative of 1972

In the interim following the creation of the BCDC, several attempts to pass state-wide coastal protection legislation failed. Frustrated by what they saw as the Legislature's inability to enact coastal protection legislation and local government's failure to preserve coastal resources, proponents of coastal protection qualified an initiative for the November 1972 ballot. This initiative, the Coastal Zone Conservation Act, became ballot Proposition 20.

After a vigorous and expensive public campaign, Proposition 20 was approved by the people of California by a 55% majority, and created, in the Coastal Commission's own words, "the strictest coastal development control program in the country."⁷

⁷ "Presentation Outline: The California Coastal Act", California Coastal Commission, October 1983.

To start out, the initiative established a temporary Coastal Commission and six regional commissions to administer a detailed coastal protection program. Key elements of the program included: regulating all new development from 3 miles at sea extending inland 1,000 yards; the preparation of a Coastal Plan to be submitted to the Legislature in 1975 for implementation (completed on time); Commission control over all new development -- private projects as well as those of local governments, port districts, state agencies, etc.; Commission power to override the development decisions of local government and other state agencies; and a jurisdiction covering the entire coast except for the San Francisco Bay. The program was designed to produce a written coastal plan to establish policies to guide the State's management of coastal resources, to be submitted to the State by December 1, 1975. The program created by the coastal initiative expired on December 31, 1976.

The Coastal Zone Conservation Commission submitted a Coastal Plan to the Legislature on schedule on December 1, 1975. The Plan contains 162 policies affecting coastal development and covers the entire coastal region. However, the Legislature was not obligated by the initiative to enact every aspect of the Coastal Plan. Believing that the Plan took too much control away from local government, the Legislature chose to use the Plan as the model for a similar but not identical coastal management program, enacted in 1976 as the Coastal Act.

The Coastal Act of 1976

The Coastal Act was passed in the closing days of the 1976 session, after a long battle over its terms in the Legislature. In the end the Act gave local government a greater role in the process than it was given in either the 1972 coastal initiative or the Coastal Plan drawn up subsequent to the initiative.

Nevertheless, the Act established the Coastal Commission as a strong, permanent regulatory and policy coordination body, affiliated by function with the Resources Agency but completely independent in its operations. The Coastal Act is the backbone of California's coastal policy as it exists today, and the Coastal Commission's chief role since 1976 has been to carry out the law as embodied in the Coastal Act.

Provisions of the Act

The Act is a complex piece of legislation, but its fundamental principle is a simple one: the Coastal Commission is to act as a partner to local government in coastal planning, representing the interests of the entire state on coastal policy, coordinating and overseeing the implementation of that policy at the local level, but allowing local government as much flexibility as possible in carrying out its own plans for development.

The centerpiece of this concept is the Local Coastal Program, or LCP. The Act requires the 70 coastal cities and counties to prepare their own plans for development within their jurisdictions, in the form of an LCP. The Coastal Commission is then charged with reviewing the LCPs for consistency with the Coastal Act and approving them if they are acceptable. Until a region has a certified LCP, the Commission functions as the permitting authority for that region, hearing all requests for development permits.

Under the Act, the permitting and enforcement functions return to the local jurisdiction once the LCP is approved and zoning ordinances implementing its provisions are in place. The Commission then acts as a board of appeal for some local permit decisions and reviews LCPs every five years.

The Act establishes policies to guide coastal planning and development similar to those found in the 1972 coastal initiative. Under the Act, priorities for coastal usage are as follows:

- public access
- public recreation
- marine environments
- land resources, including sensitive habitats and agricultural lands
- development, with attention to concentration of new development, scenic resources, and development in hazard areas
- industrial development

Special provisions and policies are also provided for the four major Southern California ports at Los Angeles, Long Beach, San Diego, and Port Hueneme. The Commission retains on a permanent basis permitting and enforcement authority over tidelands and other public trust lands along the shoreline.

Like its previous incarnation, today's Coastal Commission oversees a huge area, but a more defined one than under the 1972 coastal initiative. Under the Coastal Act, the coastal zone border extends from 3 miles at sea inland to a mapped boundary ranging from 100 feet in some urban areas to 16 miles in some rural regions. While generally adhering to the principle of extending the boundary of the Coastal Zone to the first ridge in rural areas and somewhere between 100 and 1,000 feet in urban areas, in some areas the Legislature drew boundaries more in accordance with local wishes than with the geography of the region. The total land area of the coastal zone exceeds 1.6 million acres.

Under the Act, six regional coastal commissions were retained from the 1972 plan. Until 1981, they absorbed much of the State Commission's permitting function, allowing it to spend more time on LCP coordination. However, the Legislature allowed the

authorization for the regional commissions to expire on July 1, 1981.

The Coastal Commission also has some regulatory control over federal activities affecting the coast. Legal authority for this arrangement flows from the federal Coastal Zone Management Act of 1972, which authorizes state review and approval of federal activities affecting the coastline if the state has a federally-certified Coastal Management Plan such as the Coastal Act.

The table below summarizes the Coastal Commission's responsibilities and overall structure throughout its existence.

Table 1. Summary of the history of the organization of the California coastal management program

Implementation phase	Organizational structure	Definition of coastal zone	State commission's responsibilities	Relationship to local government
Coastal Zone Conservation Act of 1972, Proposition 20 (1973-1977)	Statewide commission, six regional commissions	Planning area: out to sea 3 miles, "inland to the highest elevation of the nearest coastal mountain range"; Permit area: 1,000 yards from mean high tide line	Regulate all development in permit area; Prepare coastal plan for 1976 legislative session	Independent
Coastal Act of 1976 (1977-1981)	Same as 1973-1977	Out to sea 3 miles ^a ; inland to boundaries set by state legislature ^b	Assist 52 cities and 15 counties in preparing local coastal programs; regulate development within entire coastal zone ^c	Close, collaborative
Coastal Act of 1976 (1981-present)	One statewide commission	Same as 1977-1981	As each local coastal program is certified, local government assumes authority to issue coastal permits consistent with its LCP; commission takes secondary role of hearing appeals from local permit decisions, approving proposed amendments to LCPs, providing technical assistance and advice, monitoring local permits to assure compliance, performing 5-year evaluations of LCPs; commission retains original permit jurisdiction over state tidelands and performs all consistency reviews under federal CZMA	Advisory, appellate

a. For federal consistency purposes, activities in federal waters are reviewed if they have a "direct effect" on the coastal zone

b. The maps were posted on the walls of the Senate chamber in 1976, and each member suggested boundaries using flow pens; special-interest bills attempt to change the boundaries, usually unsuccessfully, each session.

c. While the definition of "development" is the same as under Proposition 20, there are a number of categorical exclusions, such as repair, maintenance, minor expansions of existing structures, construction of new single-family houses in defined, already urbanized neighborhoods, certain agricultural buildings, and the replacement of structures destroyed by natural disasters.

(Source: "California's Coastal Program," Michael L. Fischer, APA Journal, Summer 1985, pp. 313-320)

The Commission itself is made up of twelve voting members, twelve alternates selected by Commissioners with the concurrence of their appointing authority, and three non-voting members. Six of the twelve regular members are representatives of local government and six are private citizens. The Governor, the Speaker of the Assembly, and the Senate Rules Committee each appoint two local government representatives and two private citizens.

The Commission currently works out of four district offices and one main office. District offices are located in Santa Cruz, Santa Barbara, Long Beach, and San Diego. The Commission's staff is headquartered together with the North and North Central District Offices in San Francisco. A separate North Coast District Office was located in Eureka until budget cuts forced its closure in 1985.

During the 1988-89 fiscal year, the Commission has a staff allocation of 110 personnel-years, a little more than half the 210 it had during FY 1980-81. As noted previously, the Governor has budgeted \$6,276,000 for the Commission for FY 1989-90, continuing a trend which has seen the Commission's budget reduced by more than 56% since FY 1977-78.

The Act As Public Policy and As Law

The Coastal Act retains remarkably strong public support. Public opinion regarding the Coastal Act and the policies it enacts into law is unequivocally favorable. A 1985 Field Poll regarding coastal protection produced the following data:

Asked to rate the importance of each of the basic provisions of the Coastal Act, large majorities of the public responded that each was "extremely important" --

<u>Provision</u>	<u>Percent Answering "Extremely Important"</u>
Controlling ocean toxic wastes and sewage disposal	93%
Preserving the coast's scenic beauty	81%
Preserving coastal wetlands and wildlife habitat	77%
Protecting sensitive offshore areas from oil and gas drilling	72%
Guaranteeing public access to beaches and coastal recreational opportunities	66%
Controlling coastal residential and commercial development	57%

(Source: "Public Feels that California Coastal Act is a Good Law," Field Poll Release #1317, December 19, 1985.)

In each of the above categories, most of the differences between the percentages listed and 100% was made up of people who thought each provision was "somewhat important". Fewer than 10% of the respondents said that any of these coastal preservation objectives was unimportant.

Of the 59% who said they knew something about the Coastal Act, more than three out of four felt it was a good law. In addition, 64% of those polled favored some increase in funding for the Coastal Commission, identified as the agency responsible for carrying out the policies of the Coastal Act.

Clearly, the people of California feel there is a need for careful coastal planning and the protection of coastal resources and access. It does not take much extrapolation from the above data to detect a fear of a world without a strong coastal preservation agency, a world where development goes on without guidance and planning from a statewide agency immune to the growth pressures faced by local government and able to bring a broader viewpoint to individual projects.

The significance of the Commission's work in this regard cannot be overestimated. Despite private ownership of specific plots, the coast as a resource belongs to the entire state. Under the California Constitution, the State, while delegating some land use power to local government, retains the ability to plan, protect resources, and even control land use in areas or on subjects of greater than local concern. As one court said in an early case involving the first incarnation of the Coastal Commission, "Where the ecological or environmental impact of land use affect the people of the entire state, they can no longer remain matters of purely local concern...where the activity, whether municipal or private, is one that can affect persons outside the city, the state is empowered to prohibit or regulate the externalities..."⁸

California's coastal resources constitute a legacy that can potentially be allowed to slip away. The coast is a non-renewable resource; once development on a site is permitted the scenic and natural resources present at that site are modified and often irrevocably lost to future generations. The trust the public has chosen to invest in the Commission through its support for coastal protection is a heavy responsibility.

Our concern in this study is to examine the implementation of the Coastal Act with the aim of developing findings and recommendations as to how it might most efficiently and

⁸ CEED v. California Coastal Zone Conservation Commission, 118 Cal Rptr., 315 (1975), cited in California Coastal Plan, California Coastal Zone Conservation Commission, December 1975, p. 13.

effectively be implemented and enforced. In the next section, we will examine in further detail how the Coastal Act has been implemented in practice, and what some of the problems with that implementation have been.

ISSUES REGARDING THE COASTAL ACT

Role of Local Government - Local Coastal Plans (LCPs)

The Local Coastal Program is the backbone of the coastal protection program established by the Coastal Act. The Act requires coastal localities to prepare their own plans for development within their jurisdictions, in the form of a Local Coastal Program, or LCP. The two components of a Local Coastal Program (LCP) are (1) a Land Use Plan (LUP) showing the types, location, and intensity of land use planned for the area, and (2) implementing ordinances which carry out the Land Use Plan.

The original deadline for the submittal of all LCPs to the Commission was 1981. This deadline was extended several times due to delays in localities completing their plans and bringing them into compliance with Coastal Act policies. The last deadline expired in 1984, but more than 50 localities still do not have certified LCPs.

The Act requires the Coastal Commission to review all Local Coastal Programs and approve them if they are found consistent with the coastal protection policies outlined in the Coastal Act. Until a region has a certified LCP, all development permits must be requested from and issued by the Commission. Under the design of the Act, once the Commission certifies the LCP, the permitting function for all but tidelands and other public trust lands is returned to the local jurisdiction. The Commission is then to act as a board of appeal for specific categories of local permit decisions, review LCPs every five years, and carry out a number of other permanent functions.

There are 70 cities and counties within the area covered by the Coastal Act. Many of these localities have broken up into smaller planning units for the purpose of preparing an LCP. As a result, there are anticipated to be a total of 126 LCPs when the process is completed. But despite several extensions of the LCP completion deadline, 55 out of 126 affected localities, or 44%, still do not have certified LCPs in place today. As recently as the end of 1987, closer to 60 percent of LCPs remained unapproved. Although progress is being made, the inability up to this point of some local governments to complete the process take over permitting and other administrative responsibilities from the Commission has left it with an enormous burden of overseeing and permitting for local jurisdictions without LCPs.

In addition, many portions of LCPs have been approved with land use issues in specific small areas unresolved. These regions, officially designated as Areas of Deferred Certification, but more commonly known as "white holes" because of their appearance on Commission planning maps, remain under the Commission's permitting and enforcement jurisdiction until agreement is reached between the Commission and local government on the land use issues in question. As the number of fully certified LCPs

has grown, the number of white holes "left behind" at certification has also grown. The 45 existing white holes and any new ones created in the future will have to be resolved before the LCP certification process can be considered complete.

The LCP certification process was designed, as former Executive Director of the Coastal Commission Michael L. Fischer put it, to "protect the long-term, larger-than-local interests of the coastal zone" without permanently removing control over development from local hands⁹. Instead, these "larger-than-local" interests are built into the local plan under the supervision of the Coastal Commission.

Unfortunately, the process envisioned in the Act of state control over development gradually being returned to local government has yet to fully materialize in practice. A series of delays and conflicts over LCP provisions has left much of the coastal region under the Commission's direct oversight. In the extreme case, the City of Carlsbad for a time refused to prepare an LCP. The Legislature subsequently directed the Commission to prepare one for Carlsbad, and the City has since reversed itself and begun to participate in the planning process. Notwithstanding this example, however, the Commission today often finds itself mired in permitting details that under the Act were supposed to be handled by local government by this time.

The Governor has expressed the opinion that the current situation is the fault of the Commission for falling behind in its work and that further budget cuts are warranted since the Commission "should have gone out of business a long time ago under the law."¹⁰ This represents a basic misunderstanding of the Coastal Act. The review and approval of LCPs, while one of the most important Commission functions, is far from being its sole reason for existence, as the Governor's statement implies. Under the Coastal Act the Commission is given a whole host of permanent coastal management responsibilities, outlined in the course of this report and also compiled at Appendix B. Far from "going out of business" when LCP certification is complete, the Coastal Commission will then be free to direct greater effort toward engaging in long-term coastal planning and research, providing coordination for all state and federal agencies involved in coastal management, reviewing LCP amendments, overseeing local enforcement, and the many other permanent tasks it has been given under the law.

⁹ "California's Coastal Program," Michael L. Fischer, APA Journal, Summer 1985.

¹⁰ "Governor won't increase coastal commission funds," Daniel C. Carson and James P. Sweeney, San Diego Union, April 13, 1988.

More to the present point, it is the responsibility of local government, not the Coastal Commission, to prepare LCPs (although there has been discussion of solving the current logjam by simply having the Coastal Commission draw up LCPs for local government which fail to do so themselves). The fact is that there is blame enough to go around for the lag in LCP certification.

The reasons for this situation developing are several. Key among them is the fact that, much as they would like to have local control over local development, many local jurisdictions are relieved to have the Coastal Commission present to play the role of "bad guy" by taking the responsibility for denying development permits. Growth pressures from developers can at times be overwhelming for local government, and pushing the responsibility for tough decisions off on the state regulatory agency frees local government from the burden of weighing decisions potentially adverse to powerful local interests.

This problem has led to frequent discussion of the idea of incentives or sanctions aimed at persuading local governments to complete their LCPs. Indeed, the state-local partnership envisioned by the Coastal Act seems to need such a boost, though it needs to be carefully crafted for that partnership to remain healthy.

An additional contributor to the delay is the fact that many local jurisdictions lack the expertise and staff to formulate an LCP without substantial guidance from the Coastal Commission. In an era of restricted revenues for local government, it is difficult to ask them to devote more of their already-extended resources to LCP development. The Commission needs to provide greater assistance to localities in developing their LCPs.

For its part, the Commission has been increasingly caught in a catch-22 -- declining budget resources pulling staff resources away from LCP assistance at the same time that the permitting burden from jurisdictions without LCPs overwhelms the Commission. Both local government and the Commission have suffered as a result.

Another problem we noted in reviewing this area is the fact that the Coastal Act allows the Commission only one opportunity to change elements of an LCP -- during the initial approval process. Local governments, on the other hand, can petition for amendments to their plans virtually at will. The Act does direct the Commission to review existing LCPs every five years to ensure compliance with Coastal Act policies under changing circumstances, and to recommend changes to bring the LCPs into compliance with the Act. However, the Act does not empower the Commission to compel such changes. One can surmise that the knowledge on both sides that the Commission has only the one initial opportunity to actively influence the content of LCPs might tend to harden the positions taken by both the Commission and the local planners in the preparation of LCPs and delay LCP

completion and certification by making effective compromises more difficult to achieve.

An additional cause for delay was suggested by an individual familiar with the Coastal Commission's work who spoke to this Commission in the course of its study. This person offered the opinion that local government sees time working in their favor as the certification process drags on, because the budget pressure continually exerted against the Coastal Commission by the Governor tends to force the Commission into greater compromises than it might otherwise make, in order to demonstrate progress on the completion of LCP certification.

Finally, there is the problem of litigation by permit applicants. Commission staff at the Long Beach office told us that applicants routinely threaten litigation both before and subsequent to Commission decisions. From our investigations, this problem appears to be much worse in the South than in the North. Regardless, the threat of litigation ties up staff time that could be spent on LCPs or enforcement issues.

The enforcement function is also returned to the local government at the time of LCP certification. Here again local government at times lacks both expertise and resources to carry out this function. This aspect of the role of local government in the coastal management program will be discussed further in the section titled "Enforcement" on page 25.

State and Federal Jurisdiction

The Coastal Zone Management Act, signed by President Nixon in 1972 just prior to the approval of California's coastal initiative, authorizes state control over federal activities affecting the coastline if the state in question has a federally-certified Coastal Management Plan. State Coastal Management Plans are submitted to the Secretary of Commerce and reviewed by the Office of Ocean and Coastal Resource Management. California's plan, consisting of the enabling statutes of the Coastal Commission, Coastal Conservancy, and BCDC, was certified in 1977.

Certification of California's Coastal Management Plan also entitles the state's agency for coastal policy administration (the Coastal Commission) to receive federal grant funds in support of its coastal management activities. The Commission currently receives about \$2.5 million per year in federal funding, with about half of this federal money being passed through to other state agencies involved in coastal management, such as the Coastal Conservancy and the BCDC.

The CZMA and Coastal Act programs are intentionally similar. A federal-state partnership is envisioned under the CZMA similar to the state-local partnership envisioned in the Coastal Act, with the Coastal Commission again acting as a strong advocate for the

interests of the state as a whole. However, the desire of the federal government under the Reagan Administration to pursue coastal policies perceived by the Coastal Commission to be in conflict with Coastal Act policies led to an adversarial relationship between the Commission and the federal government.

The key bone of contention has been the development of the Outer Continental Shelf region, or OCS, a region outside the three-mile boundary of state waters but within U.S. waters. Under the Reagan Administration, the federal government strongly advocated development of the suspected large oil and gas reserves in the OCS region, frequently with the concurrence of the Governor¹¹.

However, because the Coastal Commission has the power to review any federal activity which directly affects California's coastal resources for consistency with the Coastal Act, it has been able to block some federal OCS leasing, exploration and development proposals which it believed ran counter to the policies of the Coastal Act. President Bush's recent proclamation extending the territorial sea to 12 miles may further strengthen the Commission's role in regulating federal activities on the Outer Continental Shelf.

The rocky relationship between the Coastal Commission and its federal counterparts last year led the Office of Ocean and Coastal Resource Management to threaten to recommend decertification of California's coastal program to the Secretary of Commerce. This confrontation placed the Commission's OCS authority and federal funding in jeopardy.

The Coastal Commission, joined by the State Attorney General, subsequently filed a lawsuit in the U.S. District Court of Northern California against OCRM, alleging that OCRM had exceeded its authority under the Coastal Zone Management Act and was illegally conditioning federal CZMA funding on the Commission making changes in California's Coastal Management Plan.

In a preliminary injunction, the Court ruled in favor of the Coastal Commission. Subsequent public pressure from both state and federal legislators and a series of meetings between Commission and OCRM staff temporarily resolved this dispute and produced a new agreement to cooperate.

¹¹ Source materials discussing this conflict are numerous: See for example "US attacks policies of coastal panel," Sacramento Bee, August 21, 1987, p. 1; "Deukmejian defied by coastal panel," Bee, September 2, 1987, p. 1; "Administration escalates attack on coastal panel;," Bee, November 25, 1987, p. 1; and "Slicks, Spills, and Vetoes," San Jose Mercury-News, January 8, 1988, p. 6B.

The new federal administration's recent announcement that it will postpone indefinitely two of the most controversial lease sales affecting the California coast appears to have done a great deal to reduce tensions between the federal government and the Commission. It is too early to tell, however, if this change in the relationship will be a lasting one.

Enforcement

The Commission is responsible for enforcing the terms of every permit it issues. This includes permits issued for areas without a certified LCP, and permits issued for wetlands and submerged tidelands under the management of the State Lands Commission. Once an LCP is completed and certified, enforcement duties for areas subject to an LCP are returned to the local jurisdiction along with the permitting function. In practice, however, since a large number of LCPs remain incomplete, the Commission continues to carry a huge enforcement responsibility covering thousands of square miles of coastal zone territory and over 65,000 permits¹².

When the Coastal Commission determines that a violation has occurred, and that the issue requires corrective action, Commission staff must file a report with the Attorney General's office in order to correct the infraction. In the case of a present and ongoing violation, Commission staff may request a cease and desist order be issued to halt activity at the site. In cases where the suspected violation has already occurred, Commission staff may request the Attorney General to take legal action against the violator, including assessing punitive fines as well as recovering the cost of restoration of the land affected by the violation. The Attorney General's office reports spending a substantial amount of time processing and following up these violation reports.

The nature and source of violations varies. Commission staff indicated to us that unpermitted violations, where the builder simply never applied for a permit, are more common than violations of existing permits. This indicates a lack of awareness among portions of the public of the necessity of gaining Commission approval for building activity in the coastal zone, or a propensity to ignore such approval authority. Violation reports come from a variety of sources, mainly from public citizens' reports, and also from Commission staff site visits, local government, other state agencies, and reviews of evidence by Commission offices.

Fines for violations may be applied anywhere in the range between \$50 and \$5,000 per day. According to Commission staff, however,

¹² Coastal Commission news release, November 12, 1987.

the largest fine ever assessed against a violator totaled only \$15,000. Given that multi-million dollar projects come before the Commission at virtually every monthly meeting, the size of these fines is insufficient to provide any kind of meaningful deterrent to violations.

Enforcement was originally handled out of the regional Coastal Commission offices prior to the expiration of the regional Commissions in 1981. In 1983 the entire enforcement program was shut down for several months because of budget cuts imposed by the Governor. The program was re-established the following year with one full-time position in the San Francisco office and several part-time student interns stationed in the district offices as the enforcement staff for the entire state. No other resources were then or are now available for the program due to the lack of budget support.

The problems inherent in this situation are myriad. With travel expenses as restricted as staff resources, very few site visits by Commission staff are possible. Relying on occasional visits and citizen reporting has meant missing altogether an unknown number of violations, and discovering others too late to halt serious damage to coastal resources. Even so, the tiny enforcement staff has fallen behind in processing reported violations. The following table represents the Commission's backlog of enforcement cases from 1985 through 1987.

	Year-End Number of:	
	<u>New Cases</u> <u>Reported</u>	<u>Pending Cases</u>
1985.....	390	477
1986.....	331	628
1987.....	384	762

(Source: Legislative Analyst)

In addition, Coastal Commission staff supplied us with the following figures for the second quarter of 1988 (May through July):

<u>Pre-existing</u> <u>Open Cases</u>	<u>New Cases</u> <u>Reported</u>	<u>Cases</u> <u>Closed</u>	<u>Pending</u> <u>Open</u>
688	45	70	663

It is evident that some small progress has been made. Open cases have been reduced from a high of 762 in 1987 to 663 as of July,

1988. Nevertheless, this is an unacceptably large number of open cases.

The truly alarming aspect of these figures is the fact that they represent only those suspected violations that the Coastal Commission has been able to discover through its extremely limited means. This Commission was told that in the district office with the largest backlog of enforcement cases, Long Beach, active investigation for violations is "non-existent" except in cases where immediate and obvious harm to coastal resources may be done. Virtually all enforcement cases filed by that office in recent months are the result of citizen reports. Thus the number of actual violations is unmeasurable but likely to be much higher than these figures indicate.

A large part of enforcing compliance with the Coastal Act, as with any other law, must be to create the perception that effective enforcement exists and that penalties will be assessed for violating the law. A backlog of enforcement cases this large, a backlog built up primarily through the efforts of public-minded citizens reporting violations rather than through the Commission's own efforts, undermines that perception seriously and invites further violations.

Relying on student interns has caused additional problems with the enforcement process in the area of litigation. The Commission reports that it currently has a total of 186 cases in litigation, 54 simple enforcement cases, and 132 others involving appeals of Commission rulings and other conflicts. The use of interns to staff the Commission's litigation efforts has meant a severe loss of continuity caused by students rotating in and out of these positions with the school year. This loss of continuity has seriously damaged the Commission's ability to pursue the prosecution of violations. Missed court deadlines and other mistakes caused by inexperience and oversized workload have led to the dismissal of numerous violation complaints filed by the Commission. This further undermines perceptions of the Commission's ability to enforce permit terms.

Finally, the absence of an effective enforcement program at the state Commission calls into question the ability and willingness of localities to provide effective enforcement when their LCPs are in place. Local revenue sources have been restricted in recent years, and a strong supportive role by the state Commission will be necessary in order to have effective enforcement at the local level in the future. A weak and heavily backlogged enforcement program at the state Commission does not bode well for that future.

The enforcement program should be a key element of the Commission's activities. Without effective enforcement, actions taken by the Commission to implement Coastal Act policies in a sense become meaningless, because there is little incentive to obey them. One Commissioner offered us the very disturbing opinion that some applicants have been agreeing to conditions

imposed by the Coastal Commission on their permits only because they know they can go out and violate them with impunity later on without fear of being caught or prosecuted. An effective enforcement program is vital to ensure that the mandate of the Coastal Act is indeed carried out.

We have identified two ideas for improving the Commission's enforcement capability, beyond simply increasing the number of personnel devoted to it -- (1) empowering the Commission to issue cease and desist orders, and (2) authorizing it to impose fines for permit violations.

The Commission currently must file suspected violation reports with the Attorney General's Office and request action on its part in order to get a cease and desist order placed on a site or fines imposed on a violator. Other state agencies such as the Bay Conservation and Development Commission and the State Water Resources Control Board are authorized to issue their own cease and desist orders. State agencies such as the BCDC and the Department of Fish and Game are also able to impose fines on their own against violators of regulations under their jurisdiction.

The addition of these two powers to the Commission's enforcement authority could significantly reduce both the staff time required for paperwork in connection with pursuing violations and the disrespect for the law engendered by long delays and even outright failure in taking punitive action against violators.

Guidelines and Regulations

The Coastal Act directs the Commission to provide guidelines for submissions to the Commission, including both LCP submissions by local governments and regular permit submissions from the general public.

The Commission has published a number of documents providing such guidelines, including regular updates of its "Statewide Interpretive Guidelines" for permit submissions, its "Local Coastal Program Manual" to assist local governments in preparing their LCPs, and its "Post-Certification Manual" outlining procedures for appeals of local decisions to the State Commission and other post-certification activities.

Nevertheless, confusion continues to exist about requirements for submissions to the Commission, in part because of the inability of the staff to provide individual personal assistance to those seeking information about the process. Useful guidelines are a key part of the Commission's public outreach function, and absolutely vital to better relations with public users of the Commission.

In addition, the Commission has been caught up in a dispute with the Office of Administrative Law (OAL) over its issuing of

guidelines. The OAL was established to review all existing and future regulations for necessity, clarity, and several other factors, and make recommendations regarding their implementation. The Commission has been accused by OAL of promulgating "underground" regulations in the form of guidelines and thereby circumventing its review process. However, the San Francisco Superior Court, in a 1987 ruling on a lawsuit filed between the Commission and the OAL regarding this matter, upheld the Commission's authority to adopt policies and guidelines without OAL review. That decision is currently on appeal.

Amendment Process

The Coastal Act provides that localities may propose up to three amendments to their LCPs per year once certified. The Coastal Commission must hear and approve all LCP amendments before they can become effective.

In practice, many separate and distinct amendments have been grouped together into each of the three LCP amendments permitted by law to be presented to the Commission each year. Large amendment packages can thus sometimes approach the complexity of an LCP by themselves, and take up a comparable amount of staff time in preparation for their hearing by the Commission.

Some observers of the Commission believe that the absence of a limit on the packaging of amendments permits individual developers to bring projects before the Commission repeatedly until successful. We feel, however, that an amendment process without limits is important to maintaining the openness of the process and to ensuring that each LCP represents the most current planning.

A larger problem is the inability of localities to consult with Commission staff on a regular basis while preparing LCPs. This leads to conflict in the certification process, and contributes to the proliferation of amendments after certification has been achieved. A similar problem occurs when Commission staff are prevented by their workload from discussing siting decisions with developers in advance of their applying for a permit, leading to situations where denial of a permit application may kill a project which could have been approved with potential economic benefits in a different location.

Coastal Resource Information Center

The Coastal Act mandates the creation of a center to collect information on coastal policy on an ongoing basis, to be known as the Coastal Resource Information Center. Such a center would act as a clearinghouse for information on coastal resource management issues. Information provided by the CRIC could range from past Coastal Commission decisions on a certain type of permit to scientific studies and technical data relevant to specific

portions of the coastal zone. Unfortunately, the Center has never been put into operation, due to a lack of available funding.

The purpose of the Center is to provide valuable, reliable information in a timely manner to support the activities of the Coastal Commission, local governments in the coastal region, state agencies, and others involved in coastal management. Components of an operating CRIC would include a library and computerized bibliographic system, as well as a mapped and geographic data storage system.

The Center is designed to be the centerpiece of the Commission's educational function under the Coastal Act. Beyond simply fulfilling the requirements of the law, its establishment would provide a great service to both the Commission and all those concerned with its work by establishing a central storage and clearinghouse facility for information relevant to coastal planning and management. Both government agencies and the public would benefit from having reference information to use in developing LCPs and permit applications. Such a database would also contribute to general understanding of the Commission's work implementing Coastal Act policies. The Commission would benefit by gaining a better institutional memory and a database to which to refer when accused, as it increasingly has been, of making "arbitrary" decisions.

The Commission has in the past attempted to move forward with the establishment of the CRIC. In FY 1983-84 the Commission requested 5.0 PY and \$198,000 to begin the work of assembling a CRIC (later, an August 1987 Budget Change Proposal drafted by Commission staff estimated a minimum workable staff level of 4.1 personnel-years). However, less than half of the requested funding was approved for 1983-84, and the Commission's planning and research funding was simultaneously cut by 45%, eliminating the possibility of getting the project off the ground. The Commission has in fact been forced to close its small private library facility due to these and other budget reductions.

The absence of a Commission reference center, or any library facility whatsoever, for that matter, has contributed to a number of the failings attributed to the Commission today -- a lack of responsiveness to users of its regulatory system, a tendency toward decisions that appear arbitrary to some Commission observers, and a failure to conduct sufficient long-term coastal planning. The Coastal Resource Information Center must be established if the Coastal Commission is to perform on its mandate effectively.

Public Information and Education

The Commission is also obligated under the Coastal Act to actively promote public awareness of coastal access and recreational uses. Beyond these statutory requirements, the

Commission carries an inherent responsibility to communicate freely and actively with other government agencies and the public regarding coastal resource management policies.

The Commission has been limited in its ability to fulfill this mandate by budget restrictions. Nevertheless, it has engaged in a number of constructive outreach efforts.

Commissioners and Commission staff have in the past participated in a number of public forums discussing issues relevant to coastal management. One recent and outstanding example of this nature was the "Coastal Forum" jointly sponsored by the California League of Cities and the County Supervisors' Association of California, held in Burlingame on September 22, 1988. The Forum was well-attended by both local government representatives and Coastal Commission staff, and participants we spoke to felt that the Forum had been extremely helpful both as an exchange of views about coastal management issues and as an important step in forging the state-local partnership envisioned in the Coastal Act.

The Commission has also both sponsored and participated in a number of workshops with local planning groups and state and federal agency personnel concerned with coastal management. These workshops have again been helpful in providing an informal opportunity to share ideas and forge lasting relationships between staff personnel engaged in coordinating coastal policy.

Before budget reductions restricted the Commission staff's flexibility, it was also able to conduct an informal pre-approval review process on large projects and LCP segments. This early consultation facilitated compromise on significant issues prior to formal Commission review of such items. The Commission staff's increasing inability to provide such consultative services has contributed significantly to the contentiousness and resulting delays that currently plague the Commission and its public users.

Commission efforts at outreach continue, albeit on a limited scale. The Commission has produced and disseminated a substantial amount of informational material on a variety of coastal management and access issues, including both its guidelines and manuals, as well as a "Coastal Access Guide" and a "Coastal Resource Guide." But by and large the Commission has been too caught up in the day-to-day scramble of permitting to provide a sustained, effective public outreach program. This has contributed substantially to the misperceptions held by some about the nature and duration of the Commission's mandate.

Commission staff candidly admitted to us that one of the first things to go when the budget ax fell was public outreach. The attitude of staff was that an active public information program was a luxury they could not afford with the permitting workload so high. This attitude is understandable when the 57% reduction in the agency's budget since 1977 is taken into account.

Nevertheless, methods must be found to give the Commission's public outreach function the support, both external and internal, that it deserves.

Long-Term Coastal Research and Planning

In making the Commission the coordinator for the state's coastal policy and regulator of all coastal development, the Coastal Act bestows on the Commission a role which it has yet to assume -- that of long-term planner for the future of the coast. The Coastal Act clearly intended that over time the Commission would move from focusing on permitting and LCP certification into longer-term land-use planning and in-depth research on the coast, its resources, and the consequences of its development. The very concept of mapping and overseeing future coastal development requires a studied, long-range perspective if intelligent and fair decisions are to be made.

Many would argue that the Commission's inability to pursue a longer-range perspective on the issues it has been grappling with has undermined its ability to effectively implement Coastal Act policies, by fostering the perception that Commission decisions are arbitrarily made and/or unduly influenced by affected parties. A sense that the Commission is operating under a long-term plan for the coast, supported by substantive research, would likely do much to erase this perception and answer calls for more predictability in the Commission's decision-making.

In reviewing the scope of the Commission's coastal management responsibilities, we noted a number of very significant issues requiring considered, in-depth research because of their strong potential effects on coastal land use planning. These include the following:

- the consequences of the greenhouse effect and rising sea levels for the coast;
- the long-term prospects for and implications of offshore energy resource development;
- toxic and hazardous materials handling and spill cleanup in the coastal region;
- long-term land use possibilities and dangers for flood and geologic hazard areas;
- power plant development and siting;
- shoreline erosion, especially in developed areas;
- scientific studies of existing coastal resources and the impact of planned development;
- etc.

Perhaps the most significant area requiring ongoing study and reevaluation is population and development density; as development of the coast continues, an ongoing cumulative impact assessment will be necessary in making decisions about future development.

A recent congressional report on pollution of the nation's coastal waters cited research on coastal environments as a key element in the strategy to reverse this problem. The report called specifically for greater efforts by federal and state governments in support of marine and coastal research, monitoring and regulation, coastal zone management and water quality programs¹³.

These and other issues should play an important part in future land use decisions by the Commission, yet the Commission is today unable to conduct sustained long-term research in any of these areas. While other state agencies and outside contractors have at times taken up some of this slack, the Commission is the obvious logical choice to coordinate and conduct this type of research as part of its coastal management function.

The Commission's inability to establish the Coastal Resource Information Center has been a key factor in its failure to take on longer-term planning issues. Without a well-organized database as a starting-off point, thoughtful and effective future-oriented research and planning are problematic.

Without the benefit of advance planning and supporting research, the Commission could in the future find itself increasingly unable to sustain its implementation of Coastal Act policies when it encounters resistance. Unless this problem is addressed, the Commission could find itself spiraling into the kind of haphazard development process that the Coastal Act is designed to cure. If the Commission is to be effective in meeting its goals as an agency, it must be able to plan intelligently for the future.

Five-Year Review of LCPs

One of the most significant of the Commission's permanent responsibilities is to review all certified LCPs every five years. Local Coastal Programs are to be examined at least once every five years "to determine whether such program is being effectively implemented in conformity with the policies of (the Coastal Act)."¹⁴ The five-year review is a vital component of the Commission's long-term planning function, as well as an important oversight tool for ensuring proper implementation and enforcement of Coastal Act policies at the local level. To date, no five-year LCP reviews have been completed by the Commission. This function has also fallen victim to the ongoing crunch of permitting for areas without LCPs.

¹³ "Dire Report on U.S. Coastal Waters," San Francisco Chronicle, January 24, 1989, p. 2.

¹⁴ Section 30519.5 California Public Resources Code.

The five-year review as enacted in the Coastal Act is a purely advisory function for the Commission. The Act directs the Commission, after conducting a review, to recommend to local government any amendments or other corrective actions it believes are necessary to bring the region's program into compliance with Coastal Act policies. The local government is then required, within one year, to either take the recommended actions, or report to the Commission on why it has not done so. We view this arrangement positively, inasmuch as it encourages an exchange of views and a cooperative resolution of any issues that arise between the Commission and local government.

However, we note that the Coastal Act on this issue diverges significantly from the Coastal Plan prepared subsequent to the 1972 initiative. The Plan drawn up by the citizen-mandated Coastal Zone Conservation Commission called for the state coastal agency (the Commission) to be able to review and amend LCPs:

" Local plans will need amendment from time to time. In an era of rapid change, the coastal agency should be able to amend both statewide and local policies, upon showing that such changes are dictated by new circumstances. "15

The Plan also calls for the state coastal agency to be authorized to revoke its certification of any LCP if it finds after a public hearing that the terms of that LCP are being violated. We believe it is worth reevaluating these key points of difference between the Coastal Act and the Coastal Plan and considering which options offer the most effective means of ensuring that the policies embodied in these two documents are fully implemented, both today and in the future.

Other Commission Functions

The Coastal Commission has numerous other permanent responsibilities under the Coastal Act and subsequent statutes. Some, like enforcement of permits issued by the Commission, review of federal activities affecting the coast, and promoting public access and awareness of coastal resources, are outlined in some detail above. Others are given more detailed treatment in the list of permanent Commission responsibilities included as Appendix B.

Nonetheless, in view of the Executive Branch's apparent fundamental misunderstanding of the permanent nature of the Commission's mandate, we find it necessary to a summary of the Commission's permanent responsibilities:

15 Coastal Plan, California Coastal Zone Conservation Commission, December 1, 1975, p. 185.

- review and approve amendments to LCPs, Port Master Plan, University Long-Range Development Plan, and Public Works Plan, including reviewing siting and development plans for power plants, wastewater treatment works, etc.;
- enforce terms of the more than 65,000 permits issued by the Commission to date;
- decide appeals of local permitting decisions;
- review and approve permits for all tidal, submerged and other public trust lands;
- review all federal activities affecting the coastal region for consistency with California's coastal policies, including all proposals for development of offshore energy reserves;
- review LCPs every five years;
- ongoing responsibility to update and provide public with access information;
- maintain Coastal Resource Information Center;
- promote wetlands restoration;
- review and approve all local government reimbursement claims filed in connection with the State's coastal program.

This summary should make it clear that, far from going out of existence when LCP certification is complete, the Coastal Commission will still have a very large permanent, statutory mandate to live up to, including beginning in earnest the most important phase of its work -- long-term planning for the preservation and careful development of coastal resources.

ISSUES REGARDING THE COASTAL COMMISSION

1. COMMISSION ORGANIZATION

Commission Size and Structure

The Commission is made up of twelve voting members and three non-voting members (the Secretaries of the Resources and Business and Transportation Agencies and the Chairman of the State Lands Commission). Each of the twelve voting members selects one alternate with the concurrence of their appointing authority. The alternate may sit and vote in the place of the regular member. Six of the twelve regular voting members are representatives of local government and six are private citizens. The Governor, Speaker of the Assembly, and Senate Rules Committee each appoint two local government representatives and two private citizens. All Commissioners are part-time and have other full-time career activities in addition to their Commission responsibilities.

With twelve regular members and twelve alternates with full voting rights, the Commission has twenty-four voting members, where most other major state boards and commissions function with five to nine voting members. Alternates have been a necessity in part because positions on the Commission are part-time and minimally compensated. Commissioners are frequently unable to set aside their principal professional duties for the entirety of the four consecutive days per month that the Commission meets.

The extensive use of voting alternates has contributed to the perception of inconsistency in the decisions of the Commission. The makeup of the Commission can vary from meeting to meeting and even from hour to hour during the day of a meeting. This leads to similar cases sometimes getting different treatment from the Commission depending on which members of the Commission or their alternates are present. The abundance of voting Commissioners also lengthens meetings by extending the Commission's deliberations.

The part-time nature of the Commission interferes with both informed decision-making by Commissioners and their pursuit of their private interests. In the course of our study one Commissioner reported spending approximately 50% of her work-time on Commission business, and still feeling like she was unable to sufficiently prepare for meetings. Others reported receiving foot-thick piles of briefing materials for an upcoming Commission meeting less than five days before the meeting. The complexity of coastal management issues and their tremendous significance for the future of California would appear to require a greater time commitment than most Commissioners are now able to give.

Term of Commissioners

Commissioners are appointed to concurrent two-year terms, and serve at the pleasure of their appointing authority. There has been criticism that the short and non-guaranteed term of members of the Commission hinders their ability to make independent judgements on issues before the Commission¹⁶.

We note that a number of other state boards and commissions have staggered terms, providing a measure of both institutional continuity and fresh perspectives. We also stress that members of the Commission must feel free to exercise their independent judgement if the Commission is to be an effective and respected regulatory body.

Qualifications Criteria and Appointments Process

As noted above, appointments to the Commission are split evenly among the Governor, Speaker, and Senate Rules Committee. There are no qualifications criteria for these positions in the Coastal Act. Some other State Boards and Commissions require professional experience in the area they regulate, although most do not.

There has been criticism that the appointing powers have used appointments to the Commission for political advantage, rewarding friends and providing opportunities for leveraging fundraising efforts. In the process, many believe that members have been appointed to the Commission who are not motivated toward seeing the law as represented in the Coastal Act carried out¹⁷.

The Commission's responsibilities are much too important for there to be even the appearance that positions on it are being used as political rewards. To avoid this appearance, we believe that appointees to the Commission should come to the Commission with an apparent capacity to perform their duties effectively and without significant conflicting or competing past or present affiliations or activities. More specifically, we believe that appointees should have demonstrated their willingness to vigorously carry out the spirit and intent of the Coastal Act.

¹⁶ See especially, "Coastal Commission - An Ideal Gone Astray," Robert W. Stewart and Ronald B. Taylor, Los Angeles Times, September 7, 1987, p.1.

¹⁷ Ibid.

Conduct and Ethics

Commissioners' only guidance in the realm of conduct and ethics is the state's generalized conflict-of-interest rules, under which public officials are obligated to recuse themselves from decisions materially affecting their personal financial position. Public accusations against the Commission have again been leveled in this area¹⁸.

One key element of these accusations has involved the practice of private, or ex parte communication between Commissioners, permit applicants, and other officials of the state. Because of its status as a quasi-judicial body, all Commission proceedings are expected to be fully accessible to the public, including all communication between the Commission and those attempting to influence matters before it. While many Commissioners, applicants and public officials have made an honest effort to keep proceedings strictly before the public, resorting to exchanging open letters when communicating outside of public meetings, others have engaged in private communications.

All parties we talked to about this issue admit that ex parte communication has on occasion been instrumental in resolving difficult issues before the Commission. While many expressed suspicion of what goes on in these conversations, few expressed a desire to ban them altogether, presumably because of their utility in resolving some difficult situations in the past. Rather, the concerns we heard were that ex parte communication not become regular practice for dealing with agenda items that raise important issues, and that it not be used as a tool for undermining Coastal Act policies.

Nonetheless, we are deeply concerned by the public perception that results from the practice of ex parte communication. If the public ceases to believe in the openness and fairness of the Commission's decision-making process, the Commission's problems will only multiply.

An additional element falling under this heading is the question of campaign fundraising by Commissioners. As noted previously, the appointing powers have been accused of appointing members of the Commission based on the appointees' political activism rather than their expertise in implementing coastal management policies. This has led to further accusations of Commissioners tying their decisions on particular matters before the Commission to their fundraising activities. While developers appearing before the Coastal Commission have been reluctant to comment at all on its operations, one developer did tell the Los Angeles Times that a

¹⁸ Ibid.

Commissioner once encouraged him to donate to "a number" of political candidates¹⁹.

A draft report produced by the U.S. Department of Commerce in connection with its recent evaluation of California's coastal management program made an excellent statement on this subject:

" (The Department) believes that as long as the public perception exists that the Commission's actions are motivated by improper influences, the Commission lacks the complete confidence of the public and is unable to play an effective leadership role in coastal issues. The Commission should take immediate steps to regain the respect of the public for the integrity of its decision-making process."²⁰

In sum, the Commission will be unable to carry out its mandate under the Coastal Act unless the process by which it carries the Act's policies out is free from suspicion. The existence of allegations like those reported above requires a thorough consideration of restrictions on the outside activities of sitting Commissioners. If the Coastal Act is to endure, decisions of the Commission must be based solely on its policies, free from any tinge or suspicion of political influence.

Compensation

At present Commissioners are compensated at a rate of \$100 per meeting day. In addition, they are eligible for up to \$100 of preparation time per meeting day, and travel expenses are reimbursed.

These positions carry very significant responsibilities, which require a great deal of preparation time and involve complex and technical issues. Many other boards with arguably less far-reaching mandates and powers have full-time members who are compensated in accordance with their responsibilities.

In addition, it is worth considering whether the lack of significant compensation for positions on the Commission has discouraged some qualified individuals from accepting

¹⁹ Ibid.

²⁰ "Draft Evaluation of the California Coastal Management Program (CCMP) Covering the Period From August 1984 Through August 1987," Office of Ocean and Coastal Resource Management, United States Department of Commerce, August 19, 1987, p. 26. The final evaluation report, issued in November of 1987, adopted a condensed version of this paragraph.

appointments and made the power of the position a major motivation for serving on the Commission.

Commission Procedures

The Commission meets once a month for four consecutive days of hearings, alternating between sites in the North area of the state and in the South. In the past, the Commission met twice a month in a greater variety of locations, but budget reductions have limited their flexibility on this point. The rigidity of the current schedule has caused problems for both the Commission and the public.

Regular monthly meetings have meant an uneven workload for meetings. Although all generally have a full agenda, on some occasions the agenda is so large as to be beyond all reasonable expectation of finishing it in only four meeting days. The possibility of more frequent meetings when workload requires it could help resolve some of the stresses experienced by both the Commission and the public at marathon sessions.

In addition, the set pattern of alternating between north and south often puts a burden of travel cost on applicants who must appear before the Commission. It should be possible within existing statutory deadlines for the Commission to do a better job of sorting its workload so that generally the applications originating in one region of the state are heard at a meeting conducted in that same area.

Members of the Subcommittee noted other somewhat minor but needlessly irritating problems at the Commission meeting they attended: a seemingly purposefully difficult setup for public presentations to the Commission, agendas that had not been updated and were confusing to both the public audience and the Commissioners, and an extreme scarcity of public parking at one meeting site.

The Commission can improve its relations with the public if the convenience of the public is given more consideration in the meeting arrangements.

2. COMMISSION STAFF AND BUDGET RESOURCES

Size and Organizational Structure

The Commission had a staff of 110 personnel-years in FY 1987-88. Of these positions, 54 were professional and the remainder support staff.

All Commission staff are civil service employees except for the Executive Director, who serves at the pleasure of the Commission. The professional staff is split by geographical and policy functions. The Commission's former six districts have been consolidated into two -- North Coast (Ventura to Del Norte Counties) and South Coast (Los Angeles, Orange and San Diego Counties), each having a District Director. These two districts are further divided into six area offices, each supervised by an Assistant District Director. The Commission's headquarters office in San Francisco is divided under the policy categories of Energy and Ocean Resources, Geologic Review, and Land Use - San Francisco.

The Commission's four remaining area offices are located in Santa Cruz, Santa Barbara, Long Beach and San Diego. The organizational chart of Commission staff included as Appendix C and the geographical breakdown of the original six coastal districts included as Appendix D provide a full view of the structure of the Commission staff and the breakdown of its responsibilities.

Budget Resources

The Governor's total budget request from the State for the Commission for FY 1989-90 is \$6,276,000, a 5% reduction from FY 1988-89 and less than the Commission received in FY 1986-87, even without adjustment for inflation. The charts reproduced on the following pages reveal the magnitude of the budget reductions experienced by the Commission since 1977. Between 1977 and 1989, the Commission's budget was cut by over 56% in real dollars.

CALIFORNIA COASTAL COMMISSION
State Funding, FY 1977-78 to FY 1989-90

		<u>Budget</u> <u>(current dollars)</u>	<u>Budget</u> <u>(constant dollars)</u>
GOVERNOR'S			
REQUEST	1989-90	6,276,000	3,115,920
ESTIMATED	1988-89	6,604,000	3,409,917
ACTUAL	1987-88	6,327,000	3,423,701
ACTUAL	1986-87	6,290,000	3,535,694
ACTUAL	1985-86	6,253,000	3,654,588
ACTUAL	1984-85	6,268,000	3,817,296
ACTUAL	1983-84	5,669,000	3,624,680
ACTUAL	1982-83	6,564,000	4,399,464
ACTUAL	1981-82	6,707,000	4,756,738
ACTUAL	1980-81	7,182,000	5,486,631
ACTUAL	1979-80	6,191,898	5,181,505
ACTUAL	1978-79	5,932,729	5,467,953
ACTUAL	1977-78	7,186,892	7,186,892

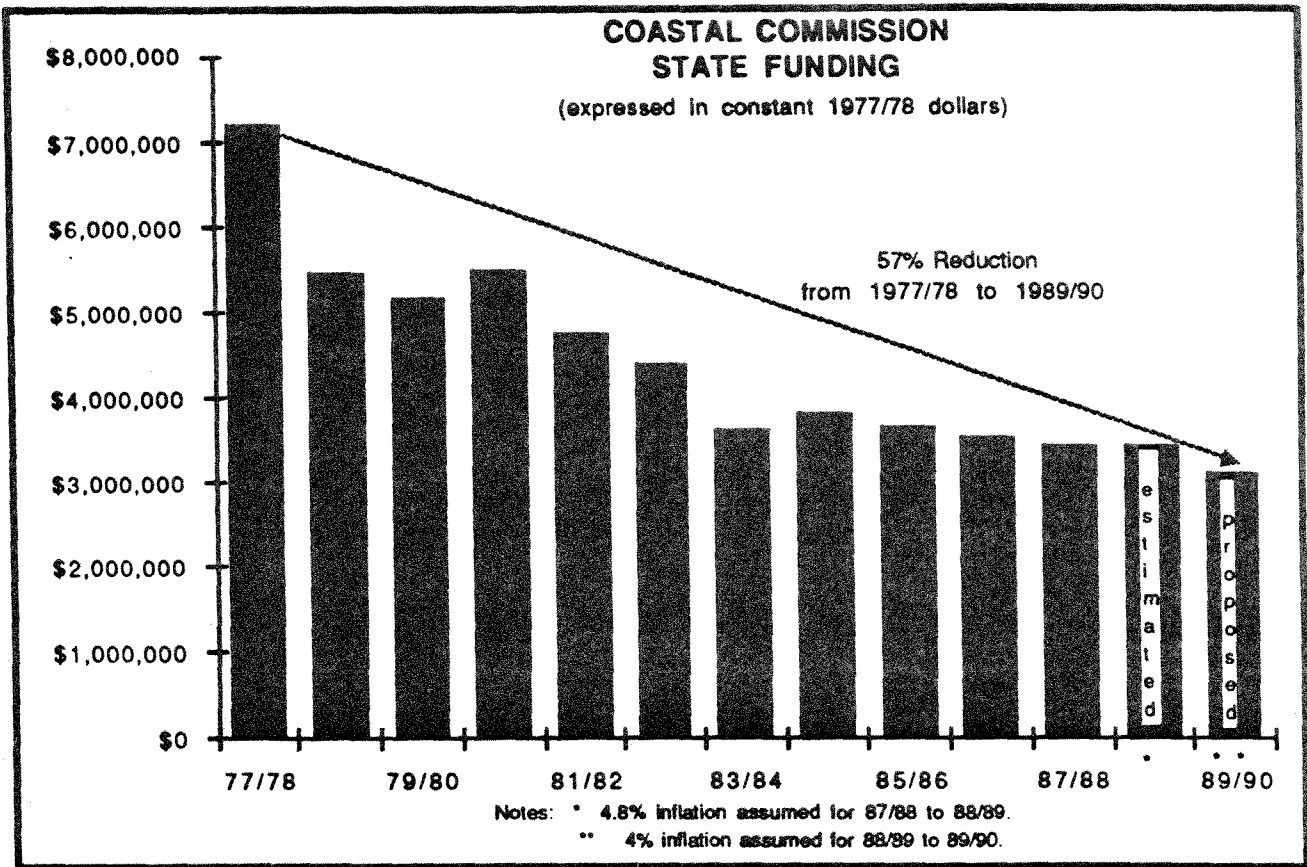
DOLLAR BUDGET GROWTH
 1977-89 (unadjusted) = \$ - 910,892

PERCENTAGE BUDGET GROWTH
 1977-89 (unadjusted) = - 12.7 %

DOLLAR BUDGET GROWTH 1977-89
 (in constant 1977-78 dollars) = \$ - 4,070,972

PERCENTAGE BUDGET GROWTH 1977-89
 (in constant 1977-78 dollars) = - 56.6 %

(Sources: Legislative Analyst, U.S. Department of Commerce, Bureau of Economic Analysis. Fiscal year deflator for 1977-1988 = Implicit Price Deflator for State and Local Government Purchases of Goods and Services, calculated on fiscal year basis as average of two adjoining calendar years and indexed to 1977-78 base year. Estimates of inflation used for subsequent fiscal years were 4.8% for 1988-89 and 4.0% for 1989-90.)



These cuts have had a major effect on the Commission's ability to carry out its duties under the Coastal Act. Commission staff has been cut from 210 in FY 1980-81 to the current 110 personnel-years. Its North Coast Office in Eureka was closed in 1985 due to budget reductions.

The Governor appears to believe that he can speed up the LCP certification process by applying pressure to the Coastal Commission's budget. In fact, all evidence suggests that the opposite is true. To quote the Legislative Analyst,

" Over the last five years, contrary to the Governor's assumption, there has been no decrease in the Commission's workload. In fact, because of staff reductions, the Commission's permit and LCP amendment workload per staff member has increased (and) the backlog of enforcement cases has grown²¹."

²¹ Legislative Analyst, Analysis of the 1988-89 Budget Bill, February 1988, p. 384.

The lack of Commission staff availability to consult with local government on LCP development and the lack of incentives for localities to complete their LCPs in a timely manner are also key culprits in this delay. In our opinion, these budget reductions, rather than speeding up the LCP certification process as the Governor says he intended, have contributed to the long delay in meeting this requirement of the Coastal Act.

Technical Resources

Coastal Management requires access to a wide diversity of technical resources in considering the impact of various developmental projects and creating Land Use and Local Coastal Plans. The expertise required includes oceanography, geology, environmental protection and ecology, watershed management, transportation, fish and wildlife, agriculture, forestry, archaeology, water quality, hazardous and toxic materials, etc.

In addition, knowledge of design and construction is vital to any planning organization. For example, development of the coastal zone includes such projects as highways, ports, marinas, airports, seawalls, breakwaters, power plants, oil drilling platforms, refineries, natural gas terminals, mining facilities, sewage outfalls, as well as all industrial and residential projects.

It is difficult if not impossible to have all of the expertise required to deal with coastal development issues within the current professional staff of 54 employees.

Workload

Because of delays in the LCP certification process, staff cutbacks have meant a steadily increasing workload measured in agenda-items per personnel year:

	<u>Professional Staff (PYs)</u>	<u>Number of Agenda Items</u>	<u>Agenda Items Per Personnel-Year</u>
1982-83	71	2,884	40.6
1988-89	54	2,784	51.6

(Note: The 1988-89 figure for agenda items is based on half-year data from July-December 1988 extrapolated to a full year. As permit activity, which currently constitutes the bulk of agenda items, usually increases between March and June, the 1988-89 figures for both agenda items and agenda items per personnel-year may be understated)

(Source: Legislative Analyst)

The increase from 40.6 to 51.6 agenda-items per professional staff member represents a 27% increase in workload for these individuals. An additional factor which needs to be taken into account is that these figures include only items appearing on meeting agendas during the year. Much of the Commission staff's work never appears on any meeting agenda, for example, enforcement activities, technical assistance to local governments developing LCPs, and interaction with the federal government on coastal issues.

The accelerating per-person workload outlined in the above data has contributed to an ongoing crisis-like atmosphere among the staff. The staff has ceased all long-term work planning and instead simply concentrates on trying not to fall further behind in its enormous permitting and amendment workload. This prevents the staff from conducting a number of Commission duties laid out in the Coastal Act, such as LCP reviews, public outreach and education, and long-term coastal research and planning. In general it creates an atmosphere of constant pressure in which quantity is valued more than quality due to the overwhelming workload. According to one member of the Commission's managerial staff, this in itself is a big contributor to the stress experienced by staff, who believe "that we don't have the time to do the job with the quality and excellence we know we can."²²

Personnel Issues

The Commission staff has experienced significant personnel turnover in recent years. A number of factors, including uncertainties about continued employment, instability making it difficult to meet all of the goals of the Coastal Act, and stress imposed by the increasing workload on the remaining staff, have caused many experienced employees to leave. The staff dropped 42%, from 188 to 110, over the past six years. Stability in future staffing resources is needed if efficiency and the quality of the work output is to be optimized.

As the staff level at the Commission has dropped, receiving the optimal level of performance from every employee has become increasingly critical. Every manager knows that a small staff cannot afford to carry any subpar performers. The loss of some of the better performers, coupled with the fact that day-to-day workload has prevented managerial staff from carrying out

²² Susan Hansch, Manager, Energy and Ocean Resources Unit, quoted by Larry Bauman in Today's Supervisor, December/January 1988, p. 10.

performance appraisals and staff development plans, has only exacerbated this problem.

FINDINGS AND RECOMMENDATIONS

Our findings and recommendations are presented in the same format as is used in previous sections of the report, with each heading in this section reflecting a heading from the body of the report. Specific findings and recommendations are underlined for emphasis, and recommendations have additionally been numbered for clarity.

These findings and recommendations are presented as a comprehensive package for the consideration of the Executive Branch, the Legislature and the Coastal Commission. The interrelationship of the recommendations makes it vital that the recommendations be implemented as a package in order to eliminate the deficiencies in the Commission's functioning. If the Coastal Commission is to fulfill its duties under the law, we believe that these steps must be taken as soon as possible.

THE COASTAL ACT: GOALS AND FUNCTIONS OF THE COMMISSION

Role of Local Government - Local Coastal Programs

Local Coastal Programs are the backbone of the coastal management structure set up by the Coastal Act. If that structure is to function effectively, steady progress must be made toward LCP completion. This has been attempted up until now without the aid of any incentives for local government to prepare LCPs other than the simple requirement of the law that they do so. We believe that it is time to recognize that this approach has failed, and that the localities who still have not completed LCPs need to be motivated to do so.

The Coastal Commission recently commissioned a study of possible LCP completion incentives from the consulting firm of Blayney-Dyett. Excerpts from their study are included as Appendix E. We concur substantially with their findings and include what we consider to be the most useful elements in our recommendations below.

(1) We recommend that the Legislature establish a new target date of January 1, 1991 for the completion of all LCPs by local government. (2) We recommend that the Legislature and the Commission implement a package of incentives to motivate local governments which have not completed their LCPs to do so promptly.

In the near term, these measures should include the following:

- (2a) ● increase Commission permitting fees based on a policy of full cost recovery, with additional revenue reflected in an increase in the Commission budget to be

allocated to technical assistance to local governments preparing LCPs, and to enforcement;

- (2b) ● increase technical assistance provided by Commission staff to local governments preparing LCPs, including responding to specific inquiries and requests for pre-submittal review and consultation;
- (2c) ● extend from six months to one year the time within which a local government may accept modifications to its draft LCP suggested by the Commission without a re-hearing by the Commission;
- (2d) ● revoke entirely, or, in the alternative, extend from 90 to 180 days the deadline for Commission action on LUP amendments proposed by jurisdictions without certified LCPs;
- (2e) ● eliminate the Commission's current obligation under the law to prepare any portion of an LCP at the request of a locality if the request is not made by June 30, 1990; eliminate the Commission's obligation to prepare zoning ordinances on request if such request is not forthcoming by June 30, 1990; and, allow newly incorporated cities in the Coastal Zone to request Commission assistance for 24 months after incorporation.

After the January 1, 1991 deadline the following measures should be implemented:

- (2f) ● shift staff priorities to assist localities with start-up of permitting procedures and other aspects of LCP implementation, as well as processing of LCP amendments;
- (2g) ● redirect Commission grant assistance to local governments to give priority to work on LCP implementation and enforcement;
- (2h) ● eliminate Commission cost reimbursements to localities for LCP planning, and require that localities submit LCPs by the deadline in order to qualify for reimbursement of permitting and other post-certification costs.

A combination of incentives like this is vital if the Coastal Commission is to escape from the permitting treadmill on which it is currently trapped. While it is unfortunate that such measures are necessary to motivate certain local governments to carry out their duties under the law, it is apparent after twelve years of waiting for some areas to show a commitment to the completion of their LCPs that there is no alternative.

(3) We also recommend that Coastal Commission and local government staff continue their cooperative efforts through means such as the Coastal Forum described earlier in the text. Bringing together all the parties engaged in the process of coastal management is vital to developing and maintaining the state-local partnership envisioned by the Coastal Act.

State and Federal Jurisdiction

The Commission does not have any recommendation for changes in the legal framework governing state-federal relations in the area of coastal management. However, we do take this opportunity to admonish both the Commission and its federal counterparts to recognize that the law binds their fates together in a symbiotic relationship. The Coastal Zone Management Act provides very specific parameters for this relationship and those parameters should be respected and held to by both parties. The Commission commends both parties for the recent progress made in establishing a more harmonious state-federal relationship, and urges both parties to continue their cooperative efforts.

Enforcement

If LCPs are the backbone of the Coastal Act's coastal management program, then enforcement is the armor which protects this body of law. Enforcement of the Coastal Act is haphazard at best today. The lack of Coastal Commission staff resources dedicated to this purpose has contributed to the huge backlog of violations cases. The backlog itself is most likely the tip of an iceberg of violations which could be uncovered if the Commission had investigative personnel.

An effective enforcement program at both the state Commission and local government levels is absolutely essential to carrying out the mandate of the Coastal Act. If permits and LCPs are not enforced, they might as well not exist.

This Commission believes that changes are necessary in this respect in two key areas: the Coastal Commission's enforcement budget, and its enforcement authority.

(4) With regard to the Commission's enforcement budget, we recommend that the Legislature appropriate additional funds for a fully-staffed Commission enforcement program, including an expanded enforcement unit at the Commission's head office in San Francisco and at least one full-time enforcement staff person at each district office. Funding for enforcement staff should come from two sources, increased permitting fees under the LCP completion incentives program outlined above, and new General Fund monies appropriated specifically for this purpose. Fulfilling the requirements of the law in the most efficient manner possible requires added funding for enforcement.

(5) Once all LCPs have been completed, these new enforcement positions should change to part-time enforcement of Commission permits and part-time liaison with local government, in order to provide technical assistance and supervision to local enforcement programs. State assistance to and oversight of local enforcement programs will be an important element of follow-through to immediate efforts to create an effective Coastal Act enforcement regimen.

The Commission should also be granted new enforcement authority in two key areas. (6) We recommend that the Coastal Commission be empowered both to issue cease and desist orders against suspected violations, and to impose fines and penalties against violators. The current system of filing complaints with the Attorney General allows too much time to go by between the discovery of a violation and legal action to halt it. During such delays entire hillsides can be graded away and whole wetlands filled. Time is of the essence where natural resources are threatened. In addition, allowing the Commission to take these actions by itself will reduce costs currently incurred by the Attorney General's staff and the courts in following up on violation reports from the Commission.

(7) Finally, we recommend that fines for Coastal Act violations be increased from the current range of \$50 to \$5,000 a day to \$500 to \$50,000 a day. Current fines are totally inadequate to the job of deterring most violators. Added funding resulting from increased fines should be dedicated to restoring coastal areas damaged by violations and any excess should be provided to the Coastal Conservancy to aid in its restoration and mitigation projects.

Guidelines and Regulations

(8) The Commission should provide guidelines which minimize public frustrations in dealing with it. Guidelines should be clear, uniform and easily available to the public, and Commission staff should be available for consultation to clarify questions about them.

With regard to the dispute between the Commission and the Office of Administrative law regarding guidelines, we make no recommendation with the expectation that this issue will be resolved by the courts.

Amendment Process

The volume of LCP amendments has been of concern both for the added workload it creates and for the deterioration of Coastal Act policies some feel it invites. (9) We recommend that Coastal Commission staff meet as frequently as practicable with representatives of local government to consult on and review possible LCP amendments before they are formally proposed and

appear on an agenda. A greater emphasis on early interface regarding proposed amendments can reduce both the volume of amendments and the friction and frustration created by the parade of new amendments that bog down the Commission's agenda at virtually every meeting.

In addition, as part of the package of LCP completion incentives discussed previously, (10) we recommend that the current 90-day deadline for Commission action on amendments to Land Use Plans in jurisdictions which do not have certified total LCPs be revoked entirely, or, in the alternative, extended from 90 to at least 180 days. The first order of business for local government and the Commission should be the prompt completion, submission and certification of all outstanding LCPs. We believe it is inappropriate for the Commission to be reviewing amendments to portions of incomplete LCPs with so much work yet to be done completing them.

While sympathetic to concerns we have heard that some repeatedly proposed amendments compromise Coastal Act policies, we believe that an effective, independent-minded Coastal Commission will deny amendments it would have denied as segments of an original LCP regardless of how many times the amendments are proposed. This concern implies a weakness to outside influence on the Commission's part which we seek to address through our recommendations regarding the Commission's size, structure and membership qualifications.

Coastal Resource Information Center

The creation of a Coastal Resource Information Center, besides its many potential benefits as a clearinghouse for information on the coast and as a means of documenting coastal policy, is a legal requirement of the Coastal Act. (11) We recommend that the Legislature and the Executive Branch consult with the Coastal Commission regarding start-up and operational costs for the CRIC, and fund it in the FY 1989-90 and subsequent budgets. After the necessary materials and data have been assembled, we recommend that a minimum of 4.0 PY per year above and beyond existing Commission staff levels be allocated to the CRIC on a permanent basis.

Funding for this project should come from the General Fund if other sources of funding cannot be found. (12) However, we recommend that the Commission and the Legislature explore the following possible alternative sources of support for the CRIC:

- the State Library in Sacramento may have services and/or storage capacity available that could assist the Commission in assembling and maintaining a computer-accessible database of coastal management information;

- the recently-passed library bond initiative could provide financial assistance for the establishment of the CRIC if the Commission can find a city or county to "adopt" the CRIC as a part of its plans for library construction and expansion;
- once the CRIC is operating, library use fees for private parties using the CRIC can help to defray costs.

Each of these options should be explored. Nevertheless, regardless of the source of funding, specific monies should be allocated by the Legislature for the purpose of establishing and operating a Coastal Resource Information Center.

Public Information and Education

The Coastal Commission must recognize the significance of this function in avoiding the frictions it sometimes encounters in dealing with the public. An agency with responsibilities as complex and fraught with controversy as the Coastal Commission's must make a truly exceptional effort at communicating with both the public and other elements of government. (13) We urge the Commission and its staff to redouble its efforts at outreach to its constituents. (13a) Specifically, in keeping with the LCP completion incentives recommended above, we recommend that increased technical assistance to local government be made available, and that every effort be made to respond to specific inquiries and consult in advance of LCP submissions. (13b) We also urge the Commission to continue and/or increase its participation in public forums and workshops, and to provide more assistance to the general public, including providing pre-approval consultation for complicated permitting issues. (13c) Finally, we recommend that the Commission consider the possibility of establishing a small advisory board of public information and education experts to provide advice and assistance in this area. The Commission must implement these kinds of changes if it hopes to reduce existing tensions with the public.

Long-Term Coastal Research and Planning

We find long-term coastal research and planning to be the Commission function of the greatest long-term significance to carrying out its mandate under the Coastal Act. If individual Commission decisions are to make sense to the public, and to make good policy as well, they must be drawn from a long-term planning context, and be well-supported by documented research. Research into the effects of such phenomena as the greenhouse effect, geological instability, and offshore energy extraction is necessary if the State is to make intelligent plans for the future of the coast.

Current circumstances make it very difficult for the Commission to engage in this kind of long-range thinking. The press of permitting requests, the absence of an informational database, and the overextension of staff resources due to budget reductions all drive the Commission toward simply coping with the crises of today rather than exploring the implications of changing conditions for the coast of tomorrow. (14) The other measures we outline in this report must be implemented and the LCP certification process moved ahead if the Commission is to be able to carry out this vital function. We urge their adoption and urge the Commission to dedicate staff resources to long-term research and planning as they become available.

If the other measures recommended herein are not implemented, then we recommend that the Legislature appropriate additional funds for the Commission for the specific purpose of supporting this vital aspect of its mandate.

Five-Year Review of LCPs

We find that the current five-year LCP review and subsequent consultations between the Commission and local government are a useful method of pursuing the changes that will become necessary in existing LCPs over time. The current review process reflects a healthy reliance on the good will of both parties to listen to each other and agree on how to continue LCPs in compliance with Coastal Act policies.

However, this process has never been put to the test because no five-year reviews have been conducted to date. (15) Assuming that the other measures recommended in this report are implemented, as staff resources become available the Commission should direct them to resolving the backlog of five-year reviews.

If the other measures recommended herein are not implemented, then we recommend that the Legislature appropriate additional funds for the Commission for the specific purpose of supporting this vital aspect of its mandate.

We also believe that the lack of a stronger five-year review power for the Commission endangers its ability to ensure that LCPs remain consistent with Coastal Act policies as time moves on and new circumstances arise. We note by way of reference that the original Coastal Plan called for a five-year review that was more of a recertification than a simple review, in that the Commission could mandate changes in LCPs to bring them into consistency with the Coastal Act and decertify plans which were not being enforced consistent with the Act.

Recognizing the undesirability of rescinding prerogatives now residing with local government, as well as the positive aspects of the current cooperative review scheme, we do not at this time recommend adopting a recertification review. However, (16) we do recommend that, subsequent to any five year review, all deadlines

for Commission consideration of amendments to the reviewed LCP be waived until such time as the Commission finds that any issues of consistency with Coastal Act policies raised by the five-year review have been resolved. This approach puts the Commission a step closer to being on equal footing with local government in terms of effecting changes in existing LCPs, without any threat of decertification being present.

Other Functions

The Commission's numerous permanent responsibilities, including hearing appeals from local decisions, reviewing federal activities for consistency with the Coastal Act, enforcing the more than 65,000 permits issued by the Commission, and many others listed at Appendix B, require a long-term commitment of support from the State. The Commission has been unable to fulfill a number of its statutory mandates due to steadily declining budget resources. We urge all concerned, both in the Executive Branch and in the Legislature, to recognize the permanent nature of the Commission's statutory responsibilities, and to work together to develop a plan for the agency's future that will allow it to carry out all of its many duties under the law and carry them out effectively.

COMMISSION ORGANIZATION

Commission Size and Structure

We believe that the size and structure of the Coastal Commission hinders thoughtful and consistent decision-making. In addition, we note that other state boards and commissions involved in resources issues are significantly smaller, for example, the Air Resources Board with nine members and the Water Resources Control Board with five members.

While we believe that the uniquely broad responsibilities of the Coastal Commission require that it have broad representation, we feel that the Commission's size, with 12 part-time members and 12 voting alternates, is too unwieldy and invites inconsistency and poor decisions. In addition, we feel that the duties of commissioners are both too demanding and too important to be undertaken on a part-time basis.

Therefore, (17) we recommend that the Commission's size be reduced to nine members, that members serve on a full-time basis, and that alternates be eliminated. Having concluded that the Commission's size needs to be reduced, our reasons for selecting the number nine are primarily the preservation of the current equal distribution of appointments among the three appointing powers, and the establishment of an odd-numbered membership which will help avoid tie votes. More important than the number nine, however, is the principle of a lean, thoughtful, policy-oriented Commission, an objective we pursue through this and our other recommendations regarding the Commission's organization.

Term of Commissioners

The Commission finds that the concurrent two-year terms presently served by commissioners inhibits the vitality and independence of the Commission. (18) We recommend the adoption of the model suggested in the 1975 Coastal Plan: "Members of the (Commission) shall be appointed for terms of four years...the terms for the (Commission) shall be staggered to provide continuity in the decision-making process."²³

Qualifications Criteria and Appointments Process

We do not recommend changing in the current equal distribution of appointments between the Governor, the Assembly Speaker, and the Senate Rules Committee. However, (19) we strongly recommend adopting the qualifications criteria for appointment to the

²³ Coastal Plan, op. cit., p. 186.

Commission suggested by the 1975 Coastal Plan: "persons with a demonstrated ability and commitment to carry out the Coastal Plan (or Act)." Stringent adherence to this standard should go a long way toward preventing situations where the motives of Commissioners are questioned.

While we do not believe that status as a local elected official should be a prerequisite for appointment to the Commission, particularly in view of the full-time nature of the Commission subsequent to our other recommendations, we do encourage the consideration of individuals with experience in local government and city and county land use planning for appointment to the Commission.

(20) We also recommend the adoption of the provisions of the 1975 Coastal Plan which call for Commissioners to be removable only "for cause." We believe that Commissioners' current status as "pleasure" appointments significantly hinders the independence of a body whose responsibilities make independent judgement vital.

Taken together, these recommendations would help to distance the Commission from the political arena into which it has too often stumbled, and enact the framework for the Commission recommended by the original Commission established under the public's mandate for coastal protection.

Conduct and Ethics

Action must be taken to restore public respect for and confidence in the Commission in the wake of recent controversies over fundraising by Commission members, conflicts of interest, and ex parte communications.

To address the general issue of conduct and ethics, (21) we recommend that the Commission draw up and adopt a code of conduct for Commissioners, and that existing law barring Commissioners from participating in decisions materially affecting their personal financial position, or decisions where there is any type of conflict of interest involved, be strictly enforced.

With regard to fundraising, (22) we recommend that the Legislature enact express limitations on the ability of Commissioners to raise money for political purposes. Coupled with the other recommendations in this section, we hope that this will help to insulate the Commission from any political distractions and influences which might have an affect on the Commission's implementation and enforcement of the Coastal Act.

With regard to ex parte communication, (23) we recommend that the Commission incorporate in its code of conduct language requiring disclosure of all communications between Commissioners and individuals with an interest in business before the Commission. While recognizing that ex parte communication has on occasion been helpful to achieving results consistent with the legal

requirements of the Coastal Act, we believe that the practice promotes a public perception of wrongdoing.

Compensation

(24) We recommend that Commissioners, as full-time public servants, be compensated at a rate comparable to full-time members of other state boards and commissions. The breadth and significance of the Commission's responsibilities justify and indeed demand that they be compensated commensurate with their duties.

Commission Procedures

Notwithstanding the budget pressures which have restricted the Commission's flexibility, many of the Commission's practices have undermined the Commission's relations with its public users.

(25) We urge the Commission to make every attempt within available resources to meet as required to complete business on a timely basis, with adequate public notice, and with consideration given in scheduling agenda items to the location of applicants to be heard at the meeting. In general, we urge the Commission to review its procedures and pay greater attention to the needs of its public audience in its operational decisions.

COMMISSION STAFF AND BUDGET RESOURCES

Size and Structure

We defer on recommendations regarding the organization of Commission staff to the Executive Director of the Commission, to act as he will within the resources provided him by the State.

Budget Resources

We have above recommended increased funding for certain specific aspects of the Commission's duties. The reasons for this should be clear when viewing the drastic shrinkage of the agency's budget -- a 56.6% real reduction since 1977 -- and the broad responsibilities it carries under the Coastal Act. While we enumerate above and below a number of steps that the Commission should take to improve its efficiency, the bottom line is that at current resource levels, the Commission is unable to fully perform its duties under the law. Aside from defying the will of the public as expressed by its continued strong support for the Commission's goals, such budget restraints on this type of regulatory agency are not cost-effective. Over the long run, redressing the adverse effects of poor planning and oversight of coastal development will cost the State much more than the few million dollars saved by cutting the Commission's budget in half.

We believe that if the Coastal Commission is to carry out its duties under the law in the most efficient and effective manner possible, some additional funding in support of its operations will be required. (26) At an absolute minimum, we recommend that the Commission's funding be maintained at its 1988-89 level, with increases for inflation, until such time as all LCPs are completed and certified. More realistically, we recommend that supplemental funding, some of it from user fees as described elsewhere and some of it from the General Fund, be provided to the Commission earmarked for specific programs like technical assistance to local governments, enforcement, the Coastal Resource Information Center, five-year LCP reviews, and long-term coastal research and planning. It is our belief that the measure of efficiency in meeting statutory mandates that these additional resources will provide for the Commission will over time offset any initial outlays.

Technical Resources

(27) We recommend that the Executive Director of the Coastal Commission fully utilize expertise already available in other state and federal agencies to provide advice and counsel in technical areas. Universities and private research institutions can provide further technical resources. The development of the Coastal Resource Information Center can provide source information to help locate all kinds of technical resources to

support the Commission staff in meeting its responsibilities for long-range coastal research and planning. Finally, (28) we recommend that the Commission explore the possibility of establishing an advisory board of experts to provide technical expertise and backup.

(29) We also urge the Commission staff to place greater emphasis on developing in-house technical expertise. While acknowledging the difficulty of this undertaking at a time when staff resources are stretched to their limit, we urge the Commission to encourage development of in-house technical resources through training, information exchange among peers, and inter-agency staff loans.

There is much we do not know about the ocean and our coastal lands and we need to expand our knowledge and share what we are able to learn with others.

Workload

We make three recommendations regarding enhancing the Commission's ability to deal with its workload. First, (30) we recommend that the Executive Director make greater efforts to prioritize the Commission's workload, concentrating more resources on LCP development to aid in reducing the Commission's permitting workload. Second, (31) we recommend that the Commission devote staff resources to developing a thoroughly-documented staff augmentation proposal for the consideration of the Governor and the Legislature. Finally, the indications are that statutory requirements are dictating much of the Commission's workload today. While acknowledging that the Governor has thus far demonstrated little sympathy for the Commission's budget requirements, (32) we urge the Commission to make an all-out effort to make its case regarding the inadequacy of the Commission's budget to its statutory duties to all concerned -- the Governor, the Legislature, and the public.

Personnel Issues

The Commission is fortunate to have a large number of hardworking and dedicated employees. The majority of its staff are a credit to the institution. Nevertheless, as in any organization, questions arise about the performance of individual employees. To deal with questions regarding performance by individual Commission employees, (33) we recommend that the Executive Director carry out a comprehensive performance evaluation of every Commission employee. A program of personnel development and training should be designed for all employees. Recognition should be given to employees for good performance, and disciplinary action should be taken when an employee does not achieve acceptable levels of performance. This will provide the personal job satisfaction for each employee necessary to motivate and retain good people.

APPENDIX A

NOTES ON METHODOLOGY

To the greatest extent possible this report was assembled from primary source materials. The Subcommittee spoke to numerous individuals involved in the Coastal Commission's work, both inside and outside the organization, with both past and present involvement. A wide variety of viewpoints about the Commission emerged from these discussions, and we have attempted to incorporate and respond to each of them.

At its first meeting in Sacramento in March of 1988, the Subcommittee was briefed by legislative staff on the history of the body of law which makes up our coastal management program, including discussion of the enactment and implementation of the coastal initiative and the Coastal Act.

In May the Subcommittee met in San Francisco with the Chair and other members of the Coastal Commission, and the Executive Director of the Coastal Commission and his deputy. Topics of discussion included the mechanics and status of the LCP certification process, Commissioners' feelings about how the Commission's work is conducted, and prospects for the future of the Commission.

The Subcommittee met again in July in Los Angeles to personally observe a meeting of the Coastal Commission. After observing the morning session, the Subcommittee met with former and present Commissioners, and attorneys representing clients before the Commission. Each was encouraged to offer their perceptions of the problems they face dealing with the Commission from the inside and outside, and recommendations for changes in any aspect of the Commission's functioning.

Meeting in San Francisco in September, the Subcommittee heard comments and recommendations regarding Commission reforms from former members of the Commission staff, representatives of environmental and citizens' groups appearing before the Commission, and the Commission's enforcement staff. The Subcommittee was also able to meet at that time with a representative of the federal Office of Ocean and Coastal Resource Management to discuss the Commission's relations with the federal government.

Members of the Subcommittee and staff spoke with numerous other individuals involved in the Commission's activities, and received extensive documentation from the Commission regarding its history, functioning and organizational structure. In addition, members of the Subcommittee attended the Coastal Forum held in September 1988 and visited Commission district offices in Santa Cruz and Long Beach.

Finally, extensive secondary source research was done for media coverage of Commission activities, legal background on the

Commission's statutory mandate, and the makeup and duties of other state boards and commissions.

APPENDIX B

PERMANENT RESPONSIBILITIES OF THE COASTAL COMMISSION

The California Coastal Commission was created to administer the state's coastal management program, pursuant to the 1976 Coastal Act. Proposition 20 (the 1972 Coastal Initiative) and the 1975 California Coastal Plan both envisioned the need for a permanent state coastal management agency which would continue after all local coastal programs (LCPs) have been fully certified and local governments have assumed coastal permit issuing responsibilities. The following are brief descriptions of the major permanent functions, including those mandated by law and those delegated to the Commission.

1) **REVIEW OF AMENDMENTS TO LCPs, PORT MASTER PLAN, UNIVERSITY LONG-RANGE DEVELOPMENT PLAN, AND PUBLIC WORKS PLANS:** All amendments to any of these plans must be reviewed and approved by the Commission before they can take effect (Public Resources Code Sections 30514, 30716, and 30605).

2) **PERMIT APPEALS:** Certain local government and port district coastal permit actions may be appealed to and must be acted upon by the Commission (PRC Sec. 30519(a) and (b), 30603, and 30715).

3) **COASTAL PERMITS:** All new development proposed on tidal and submerged lands, and other public trust lands, must receive a permit from the Commission (PRC Sec. 30519(b), 30416(d)).

4) **FEDERAL ACTIVITIES:** All federal activities, including permits, that affect coastal resources must be reviewed by the Commission for consistency with the Coastal Act (PRC Sec. 30330, 30400).

5) **OFFSHORE OIL AND GAS:** The Commission is responsible for reviewing oil and gas exploration and development on the outer continental shelf, for consistency with the California Coastal Management Program (CCMP). The Commission is empowered with this responsibility by the Federal Coastal Zone Management Act (CZMA). The Commission has permit review authority over oil and gas development on state lands and is required to work with the Governor and other agencies on offshore oil transportation and refining issues (PRC Sec. 30008, 30330, 30265, 30265.5). Tanker terminals, refineries, oil and gas proposals and other energy development are also regulated by the Commission (PRC Sec. 30260, 30263).

6) **PUBLIC ACCESS:** The Commission retains responsibility for the implementation of the public coastal access program, including keeping records of easements and dedications, maintaining an access inventory, and assisting with opening new accessways for public use (PRC Sec. 30530, 30534). The Commission must also publish and periodically update a Coastal Access Guide for public use (Ch. 868, Stats. 1979).

7) **ENFORCEMENT:** The Commission must continue to enforce the conditions of its permits and other provisions of the Coastal Act. (PRC Sec. 30802, 30803, 30822).

8) **LCP REVIEWS:** The Commission must review the implementation of each LCP at lease every five years (PRC Sec. 30519.5).

9) **COASTAL RESOURCES INFORMATION CENTER:** The Commission is required to establish and maintain a centralized data center on coastal resources for public and private use (PRC Sec. 30343).

10) **GUIDE TO COASTAL RESOURCES:** The Commission must prepare and publish a Guide to Coastal Resources for public use (PRC Sec. 30344).

11) **WASTEWATER TREATMENT WORKS:** The Commission must review coastal wastewater treatment plants (PRC Sec. 30412(c)).

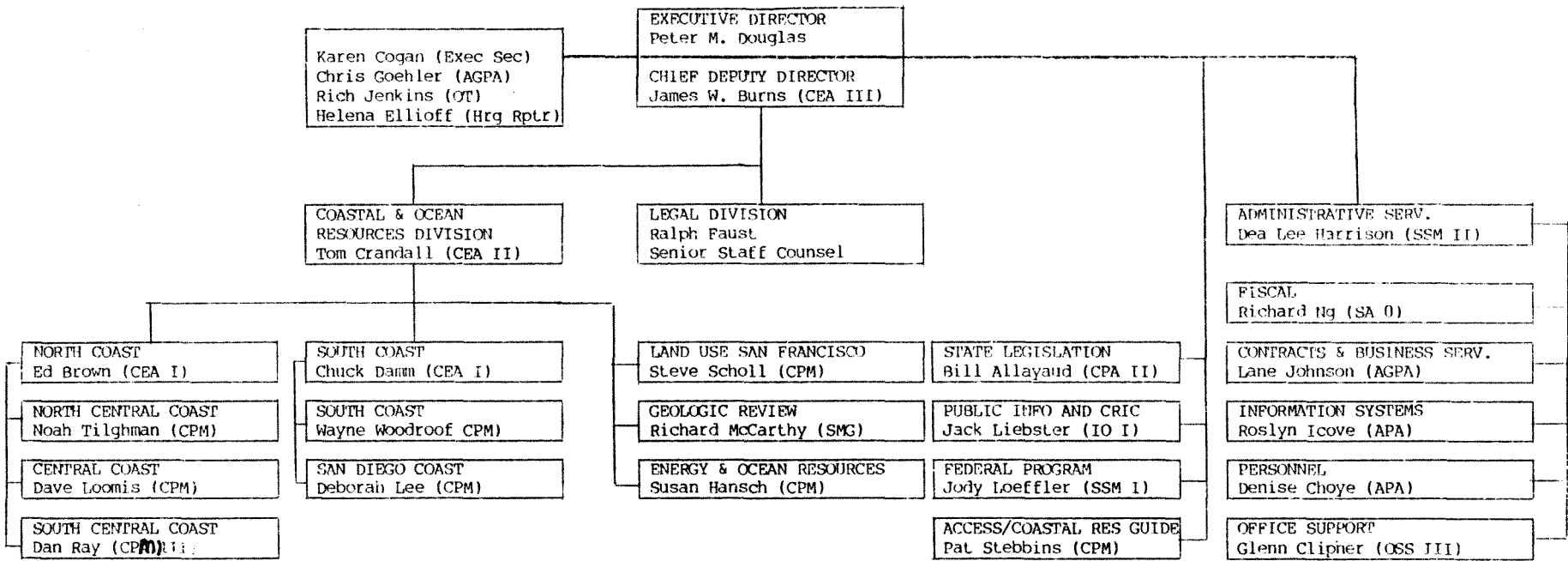
12) **RESTORATION OF WETLANDS:** The Commission must work on and promote wetland restoration (PRC Sec. 30231, 30233, 30411(b), and 30607.1).

13) **LOCAL GOVERNMENT COSTS:** The Commission must review all local government cost claims against the State resulting from Coastal Act duties and must make grant to locals (PRC Sec. 30350, 30555, 30340.5).

14) **MISCELLANEOUS OTHER DUTIES**

APPENDIX C

CALIFORNIA COASTAL COMMISSION



Peter M. Douglas
 PETER M. DOUGLAS
 Executive Director
 California Coastal Commission
 November 1987

APPENDIX D

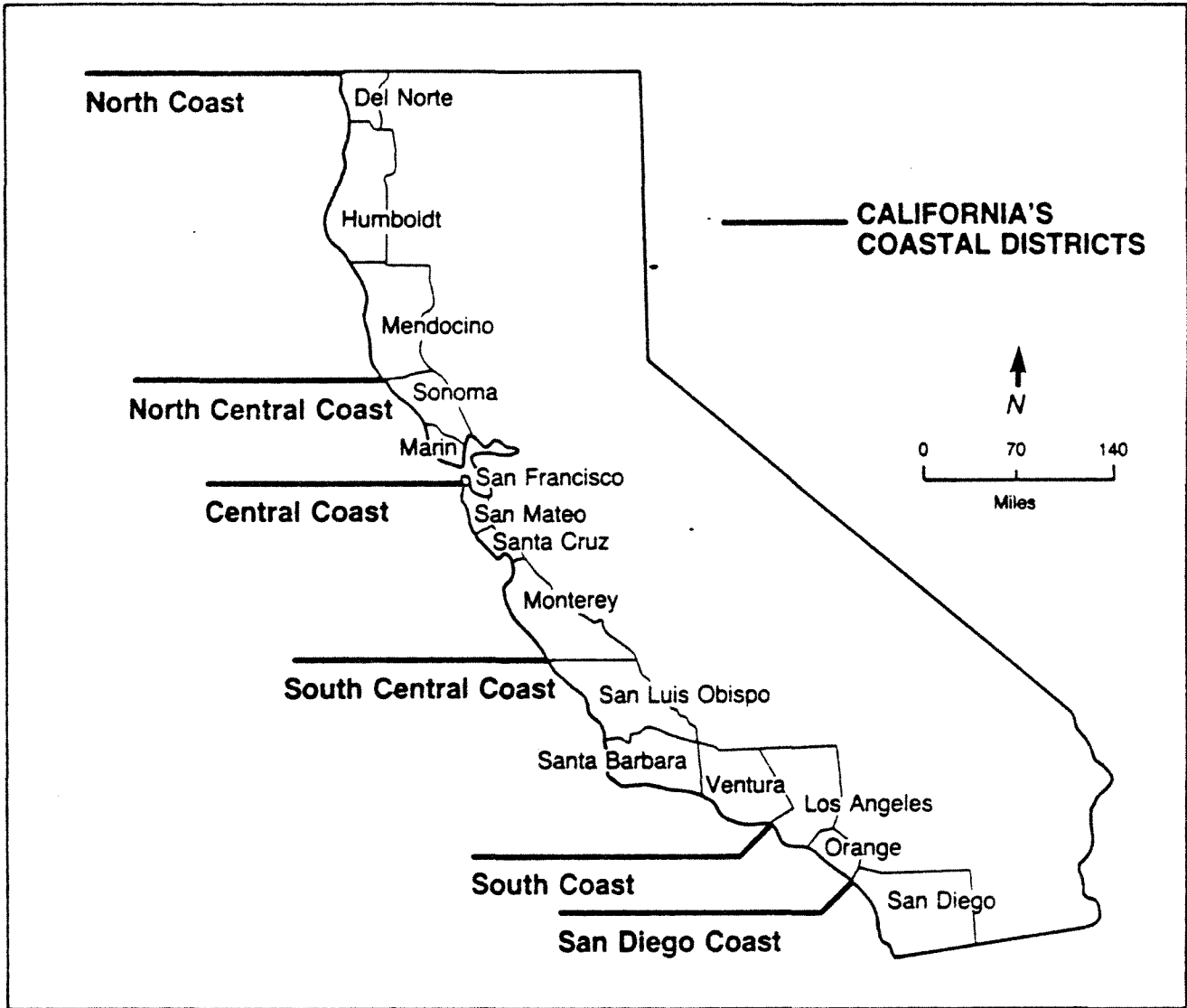


Figure 1. California's coastal districts

APPENDIX E

**A REPORT TO THE CALIFORNIA COASTAL COMMISSION ON
INCENTIVES FOR COMPLETION OF LOCAL COASTAL PROGRAMS**

Prepared by

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September 30, 1988

This publication was prepared with financial assistance from the U.S. Office of Ocean and Coastal Management, National Oceanic and Atmospheric Administration, under the provisions of the Federal Coastal Management Act of 1972, as amended, and from the California Coastal Commission under the provisions of the California Coastal Act of 1976.

EXECUTIVE SUMMARY

Seven years after the LCP submittal deadline established by the Coastal Act, only 57 percent of California's 70 coastal cities and counties have assumed coastal development permit-issuing authority. The remainder, 29 cities and counties, are in varying stages of LCP preparation. It has become painfully obvious that the original requirements of the Act were insufficient to impel LCP completion.

The accompanying volume is the final report of a three-month study of incentives for completion of Local Coastal Planning. The objectives of the project are to recommend incentive programs including a revised schedule for completion, and to present draft legislation to implement the recommendations. Our recommendations are based on case studies in 13 coastal jurisdictions, a review of programs in seven other coastal states, interviews with Commission staff and members of the Commission, and our understanding of the history of local coastal planning in California. A memorandum discussing our recommendations was reviewed by the Commission at its September meeting. The body of the report incorporates responses from the Commission as well as other reviewers, including staff of the state legislative committees, the League of California Cities, and the County Supervisors Association of California.

We hope that interested readers will refer to the body of this report for details on the case-study results, a thorough discussion of recommendations, and draft legislation for the implementation of the recommendations.

OVERVIEW OF THE CASE STUDIES

National Experience. Blayney-Dyett's survey of other states' experiences with local coastal planning shows that program requirements, compliance and incentives vary widely. In Connecticut and New York, local plans are entirely voluntary. In Maine, only a zoning ordinance is required. In Oregon and Florida, however, coastal planning is required as part of mandatory comprehensive plans. North Carolina mandates plans for counties, but not for cities. Maryland and New Jersey require plans and implementing regulations for the Chesapeake Bay and Pinelands areas.

The types of incentives and disincentives used differ as dramatically as the programs. Maine, North Carolina, Florida, Washington, and Maryland will all impose required plans and regulations on jurisdictions that fail to put their own programs into place. Oregon and Florida will place a moratorium on development permits and withhold revenues from noncomplying jurisdictions. Several states, although interested in using incentives, have not yet developed any.

Our research suggests a common set of three approaches to incentives: (1) technical assistance; (2) funding; and (3) local control. Most states contacted rely heavily on the provision of technical assistance. In this respect, California appears to offer assistance at a level comparable to, if not exceeding, other states. Lack of funding is a universal complaint. Generally, using the desire for local control as an incentive -- through the transfer of permit-

issuing authority and consistency requirements -- has proven far more complicated than apparently was anticipated originally. In some cases, as in Maine, state planners believe that any state program regardless of purpose is viewed as suspect. In others, state "interference" is welcomed because it allows the local authority to abdicate its responsibility and let a state body take the blame for a difficult and, perhaps unpopular, decision or plan.

The most common sanctions for noncompliance with coastal planning requirements are to impose state-initiated regulations and plans, to impose moratoria on development, and to withhold funds. In most states that withhold funds, only planning funds are denied. In Florida and Oregon, however, a range of state revenue-sharing funds may be withheld. In three instances, Oregon has not only banned permits, but has actually withheld revenues as well. New York would rather not deny planning funds, but is considering tying funding for waterfront revitalization and park acquisition to participation in its voluntary program.

The case studies examined the coastal programs of other states and also the federal clean air and water programs, which also employ collaborative, intergovernmental planning efforts. Success is generally predicated on (1) having clear goals and time limits, preferably with funding availability tied to achievement of these; (2) an open, flexible, and lengthy process in which no formal rejection of a program becomes necessary; and (3) good rapport among the involved parties, so that polarization and confrontation are avoided.¹

Discussion of each of the state programs is in Section 2 of the *Final Report*. This report includes a list of people who were contacted, and an annotated bibliography. Appendix B contains a compendium of legislation and guidelines.

California Case Studies. The case-study jurisdictions are varied in terms of location, size, major coastal planning issues, and LCP status. Of the localities studied, five (Arcata, Sonoma County, Long Beach, San Diego, and Oceanside) have complete or near-complete LCPs. The jurisdictions studied are:

- Arcata
- Sonoma County
- Half Moon Bay
- City of Monterey
- Seaside
- Redondo Beach
- Santa Monica
- Long Beach
- Newport Beach
- Laguna Beach
- San Clemente
- Oceanside
- San Diego

¹ William Matuszeski, "Managing the Federal Coastal Program: The Planning Years," *Journal of the American Planning Association*, 51,3 (Summer 1985): 273.

We interviewed staff in local jurisdictions and met with staff in the Commission's District offices to learn about their experiences in coastal planning, major coastal issues, and reasons for completion or non-completion of the LCPs. As might be expected, many reasons for non-completion were reported. Most people interviewed pointed to a number of issues that have slowed the process rather than one overriding reason for delay. The four categories of causes for delay which appear most significant are:

Staffing and Funding. Problems cited include turnover in staff responsible for coastal planning (San Clemente, Arcata, Half Moon Bay), and insufficient funding for completion of coastal planning (Monterey). The problem of staff turnover argues in favor of expediting LCP completion; the more drawn-out planning programs become, the more likely staff changes are. While staffing was often pointed to as a problem, opinions regarding funding were more irregular, with some staff people noting that funding has definitely not been the cause for delay.

Conflicts with Commission or Commission Staff/Disagreement with Requirements of the Coastal Act. Many cities that point to prior delay because of substantive disagreements have gotten past early stumbling blocks. Several cities, including San Clemente and Newport Beach, had objections to the Coastal Act's affordable-housing requirements, which are now deleted. Conflicts have caused extended delays following certification with suggested modifications in Redondo Beach, Monterey and Santa Monica. In several instances, local staff indicated dissatisfaction with the inflexibility of suggested modifications, as well as insufficient communication with Commission staff.

Lack of Incentive to Make Coastal Planning a Local Priority. In numerous jurisdictions, the LCP has not been sufficiently important to make it to the top of the agenda of a busy planning department. Some, such as Laguna Beach, report that the LCP process was slowed because of other controversial issues in the city. Others are satisfied with the job done by the Commission (Redondo Beach and Newport Beach). Still others, with relatively little development in the Coastal Zone, see the LCP process as a tremendous effort for relatively little payoff (Arcata). Several individuals mentioned that the lack of a constituency which advocates coastal planning results in its low priority. In many cases, changes in the composition of the City Council has set back the LCP process. On the other hand, a positive development in terms of the general climate for coastal planning is illustrated by the City of San Diego, which will assume permit-issuing authority this October. City staff and Commission staff agree that the primary impetus for completion in San Diego emerged from a political atmosphere that is generally more favorable to planning. If interest in other planning controls, such as growth-management programs, is an indicator, other southern California localities can be expected to place greater emphasis on coastal planning in the near-term.

Delay in Commission Response/Lack of Technical Assistance from Commission Staff. Delay in action by the Commission is cited by San Clemente and Santa Monica as among the factors that slowed the overall process. Seaside apparently anticipates an extended period of time before Commission review is completed, and has not submitted its implementation program for certification, although the ordinances have been adopted by the City and are in effect.

Still other cities emphasized that the original LCP deadline was unrealistic, especially for large jurisdictions, such as San Diego, or for cities accustomed to particularly high levels of public participation, such as Santa Monica and Laguna Beach.

SUMMARY OF RECOMMENDATIONS

Our recommendations integrate four approaches:

1. Provision of targeted funding and technical assistance until the scheduled deadline for completion;
2. Establishment of a deadline for completion that is challenging yet realistic -- December 31, 1991 for proper Phase III submittals;
3. Following the deadline, a change in priorities for funding and technical assistance to focus on post-certification activities; and
4. Institution of punitive measures that will be activated following the deadline.

These approaches were selected from a variety considered during the study. They best fit the current picture of local coastal planning presented by the case studies. Table A shows the progress of LCP preparation in the 29 jurisdictions that do not have certified total LCPs. This illustrates our belief that the greatest need is to facilitate submittal and certification of LCPs for jurisdictions that are actively engaged in coastal planning, which represent 80 percent of the localities with incomplete LCPs.

We are optimistic about the potential success of the proposed package of incentives. Of the various problems cited in our interviews with local staff, many have been overcome. Resolution of areas of disagreement with the Commission have led to submittal of LUPs for all but five segments. Based on prior experience, we believe the factors most likely to cause further delay are: significant turnover in local Council and staff turnover; certification with suggested modifications that are unacceptable as stated; delay in Commission action; and lack of substantiated reasons for making LCP completion a high priority. Our recommendations, summarized in Table B, respond to these specific concerns.

I. INTRODUCTION

The Coastal Act, as written, presumes that the desire for local control over coastal planning and development approvals is sufficiently strong to impel compliance with LCP requirements. However, experience has proven otherwise: more than seven years after the original 1981 deadline for submittal of LCPs, six jurisdictions have no land-use plans; and another 23 have certified land-use plans, but only for part of their territory, leaving segments or areas for later preparation and certification. Phase III of the LCP process remains incomplete in 33 jurisdictions (as of March 1, 1988).

This volume is the final report of an intensive, three-month study of the status of Local Coastal Plans in California's coastal jurisdictions. The study's primary objectives are to propose (1) an incentives package for LCP completion, and (2) a revised schedule that will serve as a realistic framework for the program. Draft legislation accompanies incentive proposals. The incentive programs that were considered have included: legislative initiatives; changes to the Commission's administrative regulations; and alterations in the priorities for funding and allocation of Commission staff time. We believe no single incentive is appropriate for all coastal jurisdictions because of their wide-ranging characteristics, circumstances, political perspectives and planning histories. Therefore, we propose a package that offers a variety of incentives which, we believe, will be effective when combined with a new deadline for completion.

Prior to publication of this *Final Report*, our recommendations were reviewed by the Coastal Commission, as well as staff members of several legislative committees and organizations, including the League of California Cities and the County Supervisor's Association of California. Their comments are included, as appropriate, in the body of this report.

SURVEY OF ALL COASTAL JURISDICTIONS

The project began with a survey of all coastal jurisdictions. We surveyed the cities and counties to identify the status of LCPs and to identify factors that appeared to be correlated with success or failure of LCP completion. First, all jurisdictions were grouped into four categories, based on LCP status, as follows:

1. Full or Near-Full Completion;
2. Significant Completion of Phase II but not Phase III;
3. Partial Completion of Phase II and/or Phase III;
4. Significantly Incomplete.

Category 1, "Full or Near-Full Completion," includes jurisdictions that have certified land-use plans and implementation programs even if they have one or more Areas of Deferred Certification (ADCs). Because ADCs do not influence the granting of permit-issuing authority or the acceptance of completed plans by the federal government, this project considered LCPs complete even if ADCs remain in

IV. CONSULTANT RECOMMENDATIONS

This section of the report presents nine recommendations that we believe will encourage completion of LCPs in a timely fashion. This will call for an orderly transfer of authority over coastal development permits to local governments.³ Some other possible incentives proposed by our reviewers are described following the discussion of the principal recommendations.

Recommendation No. 1. Increase coastal permit fees charged by the Commission to a level of full cost recovery. Exempt permits for single-family dwellings (both new construction, and alterations and additions) from fee increases.

These measures would require amending Article 4, Section 13055 of the Commission's Administrative Regulations, and revising existing law concerning the funding of the Commission.

Discussion. Article 2, Section 30620(c) of the Coastal Act specifies that "the Commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the regional commission or the commission of any application for a coastal development permit."

We believe that a "reasonable filing fee" is one which meets the full costs of processing that filing. The current fee schedule sets fixed amounts, ranging from \$25 to \$2,500, which fail to pay the full cost. The Commission's 1987-88 budget included \$2.1 million (32.7 person years). The number of permits processed was 2,529, resulting in an average cost of \$830. By contrast, permit revenue during the year was \$150,000 -- an average of \$59 per permit.

Increasing the cost of permitting by the Commission would act as an indirect incentive to LCP completion. If charges were based on actual costs and comparable to those imposed by localities, local developers would be more likely to pressure governments to complete their LCPs and assume permit-issuing authority. An obvious additional benefit would be the ability of the Commission's permitting activity to become self-supporting. The Legislative Analyst recognized this and wrote: "coastal permit fees charged by the Commission should be increased to make this program self-financing and to provide adequate staffing" (*Analysis of the 1988-1989 Budget Bill*, p. 385).

Currently, the Commission does not receive permit fees directly; the fees contribute to the State General Fund. Increasing permit fees could be viewed as a way of making the Commission's activities increasingly self-supporting. Alternatively, funds now used to subsidize permitting services could be applied to other incentive programs or to implementation programs.

³ Draft legislation to implement recommendations that require a change in the Coastal Act is included in Appendix A.

Comments and Case-Study Experience. Staff from numerous jurisdictions report that their fees are based on full cost recovery (Newport Beach, Redondo Beach, Santa Monica, San Clemente). Others have indicated that fees generally reflect more than half, but not all, the processing costs (Sonoma County, City of San Diego).⁴ While several interviewees indicated that higher coastal permit fees would not significantly affect local citizens or developers, at least one thought a significant increase in fees for state-mandated services would be unreasonable. Consultants to the state legislative committees, whom we interviewed, generally supported this recommendation. Participants at September's "Coastal Forum" sponsored by the League of California Cities (LCC) and the County Supervisors' Association of California (CSAC) supported this recommendation but suggested inclusion of a cap on fees, to be established by formula.

Recommendation No. 2. Through December 31, 1991, technical assistance provided by Commission staff at the district and statewide levels should place increased emphasis on:

- *Responses to specific inquiries and requests for assistance, for example, regarding required components of the LCP, models of implementation programs;*
- *Pre-submittal staff review of Phase III documents, followed by work with local staff, emphasizing, to the extent possible, flexibility in making needed revisions;*
- *Personal contact with local staff prior to release of staff reports on submittals;*
- *Timely follow-up in those cases where plans are certified with suggested modifications; and*
- *Personal contact with staff and monitoring of LCP progress in newly incorporated cities.*

After December 31, 1991 (the recommended deadline for LCP submittal), staff priorities should shift to assisting localities with start-up of permitting procedures and other aspects of LCP implementation, as well as processing LCP amendments.

This recommendation would not require legislative amendments or amendments to the Commission's Administrative Regulations.

Discussion. The level and type of assistance offered to localities by Commission staff has, in numerous cases, been a major factor in the completion or delay of LCPs. All the measures recommended above have been the practice of some staff members. However, technical assistance has not been systematic and consistent from location to location within or between district offices.

⁴ Some sample fee schedules are included in Appendix E.

We recommend Commission staff activities focus on assisting in the completion of LCPs. We believe the availability of Commission staff assistance for a limited period of time only will assist local staff and City Council members in advocating to make LCP completion a priority.

Pre-submittal review is especially important because of the very poor completion record of jurisdictions which have had submittals certified with suggested modifications.

While our recommendations relating to technical assistance do not directly require any legislative initiatives, they may demand the commitment of additional staff resources. Recommendation No. 4 is designed to make available some additional staff time. It is currently unclear whether reallocation of staff efforts would be sufficient to provide the level of technical assistance we believe is needed.

Comments and Case-Study Experience. While representatives of some jurisdictions (San Clemente, Half Moon Bay) identified, in our interviews, needs for specific technical assistance, others had general comments that led us to make these recommendations. Several individuals emphasized that collaboration with Commission staff came too late in the process. A frequently heard comment was that more flexibility and early consultation would be preferable to lengthy staff reports and detailed suggested modifications. "Coastal Forum" participants strongly supported increased technical assistance, emphasizing early collaboration between localities and commission staff. One specific area of assistance identified by reviewers was the development of maps to aid implementation.

Recommendation No. 3. Extend from six months to one year the time within which a locality may accept suggested modifications without a re-hearing by the Commission.

This recommendation would require amendment to Section 13542(b) of the Commission's Administrative Regulations.

Discussion. In many jurisdictions, suggested modifications to LUPs and/or implementing programs have included policies which were the focus of considerable controversy. The choice of local governments to resubmit altered documents rather than accept the suggested modifications has resulted in years of delay in some cases. Our recommendations for technical assistance are designed to help avoid this problem. However, we suggest granting a time extension for acceptance of the modifications to provide sufficient opportunity for consideration of the modifications, and local action when it is necessary. We understand that in two recent cases, resubmittals required a full Commission re-hearing when a longer time period for acceptance could have prevented the need for a resubmittal. This recommendation could free staff time for other work because a Commission report for the re-hearing would not have to be prepared. Our reviewers generally supported this recommendation.

Recommendation No. 4. Extend the deadline for Commission action on amendments to Land Use Plans of jurisdictions without certified total LCPs to 180 days unless the amendments are submitted concurrently with a Phase III Implementation Program.

This recommendation would require amendment to Section 13555(b) of the Commission's Administrative Regulations.

Discussion. Currently, amendment processing is subject to the same 90-day limit as LUPs and 60-day limit for LCPs that is in force for Commission action on submittals. Our recommendation has two primary objectives. First, it will free staff time for priorities identified in Recommendation No. 2. Second, it will demonstrate the Commission's commitment to assisting those localities that wish to complete their LCPs rather than spend additional time on LUP amendments.

Section 13555(b) of the regulations would have to be amended in order to implement this recommendation. The revision would retain the Commission's obligation to act within the current statutory time limits in cases where amendments are proposed by jurisdictions with certified total LCPs and by jurisdictions requesting certification of an implementation program, but extend the deadline for jurisdictions without a certified LCP.

Comments and Case-Study Experience. This recommendation is based largely on comments by Commission staff. Consultants to the state legislative committees, whom we interviewed, stressed the need to allow for timely action on LUP amendments that may be needed to complete an implementation program. In its comments on the consultant recommendations, the City of Los Angeles suggested that revocation of the deadline should only apply to "the coastal community" (segment) where a certified LCP does not exist. We believe this restriction may be reasonable.

Reviewers were generally wary of increasing Commission review time, especially as slow responses are perceived as having been impediments to completion in the past. Further, it is felt that LUP amendments are often necessary if implementation programs are to accurately reflect current city policies.

Recommendation No. 5. Eliminate the Commission's obligations to prepare any portion of an LCP at the request of a locality under Section 30500 if that request is not made by July 1, 1990. Eliminate the obligation to prepare LCP-implementing ordinances under Section 30600.5(g) if not requested by June 30, 1990. Allow newly incorporated cities in the Coastal Zone to request Commission assistance within 24 months of incorporation.

This recommendation would require amendment to the Coastal Act as noted above.

Discussion. Current law allows jurisdictions to request the Commission to write LUPs and LCP ordinances for them. To date, only the County of Mendocino and the cities of Eureka, Fort Bragg, Marina, Pacific Grove, and Capitola have done

so. This recommendation would require localities to determine well in advance of the submittal deadline how the LCP preparation is to be completed. The December 1989, and June 1990 deadlines for requests would stagger the flow of incoming work and allow the Commission adequate time to perform its mandated duties.

A variation on this recommendation, suggested by the Consultant to the Assembly Local Government Committee, would be to allow local jurisdictions to continue to request Commission assistance after July 1, 1990, as long as they paid for Commission staff time. The consultants to the state legislative committees, as well as League and CSAC representatives, generally supported this recommendation.

Recommendation No. 6. Require all jurisdictions to properly submit Phase II and Phase III documents to the Commission by December 31, 1991. Require newly incorporated cities in the Coastal Zone to properly submit total LCPs within 30 months from the date of incorporation.

This recommendation would require amendments to Sections 30517.5 and 30517.6 of the Coastal Act.

Discussion. The original submittal schedule required land-use plans to be submitted by September 1, 1983; a 1983 amendment to Section 30517.3 extended the deadline to January 1, 1983. The deadline for submittal of zoning ordinances and other implementing actions is January 1, 1984 (Section 30517.6). While the original deadline appears unrealistic in retrospect, the magnitude of the delay experienced could not have been anticipated. We believe establishing a new deadline will be effective only in concert with the other implementation measures proposed. Experience has demonstrated that the deadline alone is insufficient in encouraging compliance.

Implementation of this recommendation would require amendment to Section 30517.5, Schedule for Submission of Land Use Plans, and to Section 30517.6, Date to Submit Zoning Ordinances and Other Implementing Actions. In order to simplify the schedule, we recommend one deadline for proper submittal of the total LCP (this recommendation also reflects the fact that only five jurisdictions have not yet submitted an LUP.) "Proper submittal" would be described as in Section 13520 of the Commission's Administrative Regulations.

Comments and Case-Study Experience. While Santa Monica, San Diego and Laguna Beach cite lengthy public-participation processes as a factor in delay, in far more jurisdictions it appears there was simply an absence of incentives to completion, as discussed in the Overview of Case Studies.

Consultants to state legislative committees support this recommendation. Support was also indicated at the Coastal Forum, with an emphasis on the Commission's obligation to define a "minimum acceptable plan", perhaps through use of a model LCP. The City of Los Angeles has commented that LCPs for five of the seven remaining segments are not expected to be completed before the deadline. The City indicates that advance funding for coastal planning activities might expedite completion.

Recommendation No. 7. Change the availability of funds after December 31, 1991, as follows:

- *Give priority to allocation of grant funds for Phase IV and Phase V projects;*
- *Eliminate mandated cost reimbursements for LCP planning; and*
- *Require that localities submit their LCPs by the statutory deadline in order to be eligible for the mandated cost reimbursement for permitting activities following certification.*

The second and third measures would require the amendment of Sections 30340.5 and 30340.6 of the Coastal Act.

Discussion. The intention of this recommendation is to institute a funding system that reinforces the Commission's policies on LCP completion. It is two-sided, making funds available for planning prior to the submittal deadline, and removing funds after the deadline.

To date, the Commission has adopted funding priorities that resulted in allocating grant funds principally to planning and permitting projects. The first measure proposed would change the emphasis to implementation projects. This change would (1) reflect the progress of the coastal program as a whole; (2) reward those jurisdictions that have completed; and (3) concentrate limited financial resources where the chance of success has been proven greatest.

The second measure recognizes that it is unreasonable to reimburse jurisdictions for state-mandated actions if, after a reasonable period, the jurisdictions have not performed those mandated duties. The 1991 sunset date ensures that there will be reasonable time to act, even for those jurisdictions which have so far failed to do so. For our case-study jurisdictions, during the period 1976-87, the total amount reimbursed ranges from \$904 for Seaside to \$182,568 for Ocean-side.

Comments and Case-Study Experience. Reviewers from legislative committees were divided as to the acceptability of establishing a cut-off point for the reimbursement of mandated costs. Some felt the state has an ongoing obligation; others believed it can be successfully argued that, after a specified time period and with ample advance notice, that obligation can be terminated. The chief consultant to the Senate Local Government Committee is willing to ask the Legislative Counsel for an opinion if the Commission would like this issue clarified.

Generally, national experience indicates relating funding availability to performance, as measured by meeting a deadline, can be an important component to a program's success. Oregon and Florida have the authority to withhold various funds beyond those specifically related to coastal planning. In New York, planning funds are tied to completion of the plans, which are wholly voluntary. As an incentive, subsequent grants for implementation projects are available only to those jurisdictions with a completed plan.

Recommendation No. 8. *Following July 1, 1992, enable interested persons to petition the superior court of the applicable local jurisdiction for an injunction to issue against a local government without a certified LCP to prevent any amendments to zoning regulations, approvals of any tentative subdivision maps, and issuance of any conditional use permits until the local government has a certified LCP.*

This recommendation would require an amendment to Chapter 4 of the Coastal Act to add Section 30517.7.

Discussion. This recommendation is modeled on Public Utilities Code Section 21679, which relates to airport land-use planning. That section, added by Stats. 1987, Ch. 1018, states that in cases where an airport land-use commission has not adopted an airport land-use plan, "an interested party may initiate proceedings in a court of competent jurisdiction to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, which directly affects the use of land within one mile of the boundary of a public airport within the county." (Public Resources Code Sec. 21679[a]). In such cases, the court may issue an injunction postponing the effective date of the action until certain conditions are met. We recommend that, in the case of incomplete LCPs, the locality be required to complete and have certified the total LCP before the action (within the coastal zone) may take effect.

This recommendation seeks to provide a direct recourse for individuals and organizations who would like to encourage the locality to complete its LCP if it has not done so prior to the established deadline. Ideally, the knowledge of legal vulnerability will provide an added incentive for completion within the statutory deadline. The provision would not take effect until six months following the deadline for submittals, in order to allow time for certification of LCPs submitted near the deadline.

Comments and Case-Study Experience. While reviewers commented that the airport land-use planning model would likely facilitate the institution of a parallel policy that is related to coastal planning, some have been displeased with the results of the legislation. In our interviews with Caltrans staff and consultants to state legislative committees, we discovered no instances of legal action brought under the legislation. Nonetheless, reviewers generally believe that this is a good idea. Some concern was voiced about the creation of a valid basis for taking claim against the locality. Another consideration is the potential that a plan developed in response to litigation would favor the interests of the party bringing suit.

The City of Los Angeles suggests that the protests be limited to actions within LCP segments without complete LCPs. The City further suggests that in lieu of the recommended injunction, the jurisdiction be required to enact a temporary ordinance within the Coastal Zone which would prohibit issuance of a building permit for any development that does not conform to the Coastal Commission's statewide and regional interpretive guidelines.

Recommendation No. 9. Following July 1, 1992, empower the Commission, upon its own initiative, to prepare and, with public input, adopt an LCP for jurisdictions without a certified LCP. Certification of any such LCP shall be in accordance with the provisions of Sections 30512 and 30513 of the Coastal Act. Upon certification of the LCP, the local government shall be delegated permit-issuing authority and shall be obligated to implement the certified LCP. Additionally, the local government shall be bound by the all provisions of the certified Phase III program.

This recommendation would require amendment to Coastal Act Section 30517.5(b)(2).

Discussion. The Coastal Act currently allows for the Commission to prepare and adopt an LUP for jurisdictions which have failed to meet the statutory deadline of January 1, 1984 (Section 30517.5[b][2]). The locality then may choose to adopt, in whole or in part, the Commission's prepared and adopted land-use plan. The part which is adopted by the City will be certified by the Commission.

Although statutory authority now exists for the Commission to prepare LUPs, the only case where the Commission has prepared a plan not at the request of the jurisdiction was in response to special legislation relating to the City of Carlsbad. Plans for two segments of the City of Carlsbad were prepared by the Commission, but several years passed before agreement could be reached and the plans were accepted by the City. This recommendation proposes expanding the Commission's authority to not only prepare and adopt an LCP, but also to certify the LCP as prepared and require the jurisdiction to implement it.

Comments and Case-Study Experience. Nationally, five of the 10 states studied reserved the right to impose state-authored plans and regulations on any jurisdiction that fails to comply with the state program. Maine will impose a "Shorelands Zoning Ordinance". Washington will impose an entire coastal program, although it has not yet had to do so. North Carolina will impose a coastal land-use plan on a county, and did so once. Florida will impose a comprehensive plan and charge the locality for the full direct costs. In Maryland, the Chesapeake Bay Critical Areas Commission has notified six jurisdictions that it will begin to write plans for them.

Consultants to the state legislative committees supported this recommendation as long as all decisions made by the city are appealable to the Commission, not just those projects in the "appealable area." The assumption is that hostile jurisdictions may jeopardize projects being reviewed.

The City of Los Angeles, in its review, stated opposition to the recommendation that this program take effect prior to its anticipated date of completion for all LCP segments.

This recommendation was strongly opposed by participants at the Coastal Forum, who felt that it would give the Commission excessive authority over localities.

Other Possible Incentives

Three other incentives were suggested by consultants to the state legislative committees.

- Impose civil fines (\$100 per day per 10,000 population) on jurisdictions that do not submit LCPs for certification within the new deadlines. Although there is no precedent for this type of penalty in California, it might be worth proposing to the Legislature.
- After July 1, 1992, allow the Commission to impose a moratorium on development in the appealable area of the Coastal Zone of jurisdiction without a certified LCP. No specific findings or determination would be required; the moratorium would be mandatory.
- Grant the Commission permanent authority over coastal development permits for projects in the appealable area if an LCP is not certified by 1995. This last suggestion recognizes the additional time that the City of Los Angeles has requested to complete LCPs for all its coastal communities.

Additional incentive ideas that emerged from discussion at the Coastal Forum included:

- Increased grant money for localities completing their LCPs;
- Increased reimbursement for permitting following LCP certification; and
- State assumption of the coastal access program, especially in rural counties.

The discussion also revealed a general feeling that CSAC and the League should support additional technical and enforcement staff as well as a higher level of general funding for the Commission. The two organizations were also seen as having the ability to educate council members and supervisors of the importance of making LCP completion a priority in their jurisdictions.

V. CONCLUSION

The proposed incentive programs and revised schedule included in this report are designed to function as a package that will result in LCP submittals, certification and local assumption of permit-issuing authority. Hopefully, the incentives proposed to assist localities in submitting by the deadline will be effective. We believe, however, that the negative measures that are proposed to go into effect after the submittal deadline are necessary complements to the technical assistance and funding efforts provided prior to the deadline.

Completion of coastal planning by the cities and counties in the Coastal Zone appears to be in the best interest of all involved. Residents, developers and landowners in coastal communities should all have easy and direct access to decision-making about coastal development. The Commission and its staff should be able to focus on LCP monitoring and enforcement, and to carry out ongoing responsibilities such as the five-year review. The purposes of the Coastal Act should be embodied in local government planning and permitting, as was originally envisioned.

The proposed program of incentives is a departure from past practice, and as such it requires a strong commitment on the part of the State. We believe that such a commitment will only come about following efforts by the Commission to gain support for the proposals. Reviewers from within the state legislature emphasized, and we concur, that early substantive discussion with staff from legislative committees and the Governor's Office, as well as with key legislators, will be critical to the implementation of the ipackage of incentives for LCP completion. We urge the Commission to seek support from local government as well. Enthusiasm and support for implementing the incentive programs will not only assist in the passage of legislative initiatives, but will foster the success of the LCP process.