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CZM in California, Oregon, and Washington

Richard G. Hildreth

Ralph W. Johnson
University of Washington School of Law

RICHARD G. HILDRETH* and RALPH W. JOHNSON**

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INTRODUCTION

Twenty years ago coastal zone protection was merely a gleam in the eyes of a few west coast visionaries. A flurry of state and federal laws in the late 1960s and into the 1970s changed this.[1] Today, broad coastal management programs are in place in all three west coast states, with a special one for San Francisco Bay. Each program is unique, and at the same time shares significant qualities with the others. This article identifies the major attributes of these four programs and offers insights into the strengths and weaknesses of each.

In comparing and contrasting the four programs, this article focuses on five topics. Four topics emphasize the *process* of coastal zone management: public participation, state and local government relationships, enforcement of program requirements, and federal consistency with approved state programs. The remaining topic stresses *substantive changes* in patterns of coastal resource use.[2] These five topics were selected in

*Professor of Law, the University of Oregon.

**Professor of Law, the University of Washington.

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1. Pub. L. No. 92-583, 86 Stat. 1280 (1972) (codified as amended at 16 U.S.C. §§ 1451-64 (1982).

2. For a discussion on improving public access through coastal zone management, see D. BROWER, ACCESS TO THE NATION'S LEGAL AND PLANNING PERSPECTIVES (1978). California's program has increased public access greatly, despite some problems with locating entities to maintain and accept liability for access created, and a recent adverse court decision. *See* Pacific Legal Found. v. California Coastal Comm'n, 128 Cal. App. 3d 695. 180 Cal. Rptr. 858 (1982). Prior to the advent of coastal zone management, Oregon had secured public access to the large publicly-owned portions of its relatively undeveloped coast. Washington has less public ownership of shoreline than Oregon and less general accessibility for the public. However, Washington has not engaged in an aggressive program to increase public access like California.

All three states are participating in the estuarine sanctuaries program authorized by section 315 of the federal Coastal Zone Management Act, 16 U.S.C. 1461 (1982) which emphasizes preservation for education and research. To date sanctuaries have been established at South Slough, Oregon, Padilla Bay, Washington, and Elkhorn Slough and Tijuana River, California.

Washington and Oregon are jointly planning comprehensively for future development in the lower Columbia River estuary through the Columbia River Estuary Study Taskforce (CREST). Unlike BCDC, however, CREST has no regulatory powers. Relevant portions of the CREST plan have been incorporated into the plans and zoning laws of local governments along both shores of the Columbia. The CREST effort has been supported in part by federal funds granted under section 306 of the federal Coastal Zone Management Act, 16 U.S.C. § 1454 (1982).

order to distinguish broad aspects of coastal zone management from regulatory programs.

These topics also were chosen because of the opportunities they offer for interstate comparison. All three states, for example, have delegated substantial planning and implementation to coastal local governments. Such delegation has created significant program monitoring and enforcement problems. Similarly, all four evaluated programs utilize water dependency as a principal shoreline allocation criterion. The inclusion of water dependency also allows some preliminary attempts to link program processes with concrete program outcomes.

For all five topics, the legal framework governing each program is outlined and the experiences of administering the program assessed. Statutes, agency regulations, and court decisions combine to form the relevant legal framework and provide the essentials for how coastal zone management was designed to operate. Of course, the legal framework has been modified as experience in administration dictated. Thus, the article also considers how particular problems actually have been dealt with in the regulatory and planning process. Such an experiential view is, by its very nature, difficult to portray because opinion and anecdote are, by necessity, key elements.[3]

PUBLIC PARTICIPATION

The degree to which the public initiated, created, implemented, and controlled the coastal zone management programs in all three West Coast states is extraordinary.[4]

BCDC

The Bay program was initiated in 1960 by three Berkeley women. By 1965, the "Save-the-Bay Association" had attracted 18,000 members and had mounted one of the largest letter writing and lobbying campaigns ever launched in California's political history.[5] This public support persuaded the legislature in 1965 to enact the McAteer-Petris Act,[6] establishing the BCDC as a temporary state agency with a mandate to prepare

3. Testimony of Leonard Grote, Chairman, California Coastal Commission, presented before the Assembly Committee on Energy and Natural Resources in Sacramento, California (Feb. 10, 1981).

4. The federal Coastal Zone Management Act requires public participation in state programs as a condition of federal approval. 16 U.S.C. § 1455(c)(3) (1982). The guidelines under the Act state that this is "an essential element in the development and administration of a CZM Program." Coastal Zone Management Grants, 38 Fed. Reg. 33,043, 33,048 (1973). For an analysis of the problem of determining who constitutes the "public" and how they are identified, see Ashbaugh & Sorensen, *Identifying the "Public" for Participation in CZM*, 2 COASTAL ZONE MGMT. J. 383 (1976).

5. *See generally* Baum, *San Francisco Bay Conservation and Development Commission*, 5 LINCOLN L. REV. 98 (1970).

6. 1965 Cal. Stat. ch. 1162.

a longterm Bay plan by 1969, protecting the Bay in the interim against all but the most essential fills and dredging. In 1969, active public participation was again crucial in persuading the legislature to enact the McAteer-Petris Act (retaining the name), making the BCDC permanent and adopting the programs recommended in the Bay Plan.[7] The Bay program has continued to receive wide public support through its implementation period. The Save-the-Bay Association continues to play a dynamic watchdog role over the BCDC, providing that agency with protection against legislative attacks and generating public support for BCDC operations when necessary.[8]

The California Program

Public participation was also critical in the creation and implementation of the California program. Between 1968 and 1972 several bills were introduced in the California Legislature to establish both a statewide coastal management agency and a number of regional management agencies. Three of these passed in the Assembly, but were defeated in the Senate.[9] In 1971, conservationist and other organizations supporting coastal zone management joined forces to form the California Coastal Alliance in order to support more effective legislation to manage the coastal zone.[10] Finding itself thwarted in the legislation, the Alliance turned to the voters and prepared Proposition 20. During the campaign in support of Proposition 20, some 700 organizations, representing widely diverse interests, became members of the Alliance. The persuasive power of these groups eventually overwhelmed the opposition of oil, utility, and land development interests. Proposition 20 was approved by 55 percent of the voters in November 1972.[11]

Proposition 20 created an interim state commission and six regional commissions as the mechanism for California's coastal planning and regulation.[12] The state commission was given two primary responsibilities: 1) regulate development within the coastal zone, and 2) develop a coastal

7. Baum, *supra* note 5, at 109.

8. Interview with Michael B. Wilmar, Executive Director, San Francisco Bay Conservation and Development Commission, and Russell A. Abramson, Associate Executive Director, San Francisco Bay Conservation and Development Commission, in San Francisco (May 31, 1982).

9. *See* Duddleson, *How the Citizens of California Secured Their Coastal Management Program,* in PROTECTING THE GOLDEN SHORE: LESSONS FROM THE CALIFORNIA COASTAL COMMISSIONS 7-64 (R.G. Healy ed. 1978) [hereinafter cited as Duddleson]; F. POPPER, THE POLITICS OF LAND USE REFORM 84-86, 99-101 (1981).

10. S. SCOTT, GOVERNING CALIFORNIA'S COAST 13-14 (1975).

11. *Id.* at 2.

12. For a discussion of Proposition 20, see generally M. MOGULOF, SAVING THE COAST (1975). *See also* Scott, *Coastal Planning in California: A Progress Report,* 19 PUB. AFF. REP. 1 (1978); C. Warren & N. Dall, The California Coastal Program: A Practical Evaluation (May 1980) (unpublished paper).

plan for submission to the legislature. All development within the area extending 1,000 yards inland from the shoreline to the seaward limit of state jurisdiction three miles offshore was made subject to the permit power of the commissions.[13]

Active citizen participation continued unabated during the hectic three years of interim regulation and preparation of the California Coastal Plan. Citizen supporters worked hard and effectively to assure that the members of the Coastal Commission and the regional Commission would support the goals of the Act. Between 1972 and 1976 the public persisted in its self-appointed role by seeking the election of legislators sympathetic to the coastal management program, trying to get sympathetic legislators appointed to key committees, and organizing to assure passage of a permanent coastal zone law when the temporary law expired in 1976.[14]

The Coastal plan was completed within the time limit established by Proposition 20[15] and was submitted to the legislature in December 1975. The plan included 162 policies covering virtually every aspect of coastal resource management, as well as recommendations for implementation. The resulting legislative battle proved so fierce that passage of the 1976 California Coastal Act occurred only after the most intense, widely-based lobbying by numerous citizen groups. Once again, as in the case of the BCDC, this public support continued through the implementation period of the Act and still persists. Literally hundreds of public hearings and thousands of workshops were held during the preparation and certification of the local coastal programs (LCPs) required by the Act.[16]

When the regional commissions were terminated on June 30, 1981, the ability of the public to participate effectively in the permit process was structurally diminished. The decisionmaking forum, the state commission, is now geographically more distant from the location at issue than were the regional commissions. Also influential in removing the public from the commission's decisionmaking process is the change in the manner in which state commissioners are appointed. Until the termination of the regional commissions, six of the 12 voting state commissioners were appointed by each of the regional commissions from among their membership.[17] Now the governor, the Senate Rules Committee, and the speaker of the assembly each appoints two of the six state commissioners.[18] All of the commissioners are thus directly connected

13. California Coastal Zone Conservation Act of 1972, CAL. PUB. RES. CODE §§ 27000-27650 (West 1983).

14. SCOTT, *supra* note 10, at 345-52.

15. CAL. PUB. RES. CODE § 27230 (West 1983).

16. The city of Long Beach, for example, had an advisory committee which held 115 meetings while formulating that city's LCP. 1979-80 CAL. COASTAL COMM'N. BIENNIAL REPORT, at 15.

17. SCOTT, *supra* note 10, at 294; CAL. PUB. RES. CODE § 27200 (West 1983).

18. CAL. PUB. RES. CODE § 30301 (West 1983).

and then accountable to a state appointing authority. No state commissioner is insulated from the influence of a state appointing authority, as had been the case for state commission delegates appointed by the regional commissions.

The California Coastal Alliance has been the principal public interest group monitoring statewide implementation of coastal zone management in California. The smaller Save-the-Bay Association is a more cohesive group with the single concern of protecting the Bay from filling and dredging.[19] Its members see the Bay daily, and can easily observe any fills or dredging that occur. They have only one organization, the BCDC, to monitor. By contrast, the California Coastal Alliance is composed of several hundred less homogeneous organizations; its concerns are more diffuse, ranging from saving farmland and providing low-income housing to protecting against fills and providing beach access.[20] Alliance members have 1,100 miles of coastline and over 2,000 square miles of adjacent uplands to watch over, as well as the state commission, several regional commissions (now district offices), and numerous local governments to monitor.

The Washington Program

The creation of the Washington Coastal Zone Management Program (WCZMP)[21] parallels California in some respects and differs in others. The original development and public participation in that process show many parallels with California. Bills to protect various segments of Washington's shorelines were introduced in several legislative sessions prior to 1971.[22] None of these bills passed.

Frustrated with continued legislative inaction, the Washington Environmental Council, an environmentally-oriented citizen's group, drafted a "Shoreline Protection Act"[23] and obtained enough petition signatures to submit the draft as Initiative Measure 43 (later 43A) to the 1971 legislature.[24] The legislature, having the option of allowing Initiative 43 to become law automatically or enacting an alternative and submitting both laws to the voters, chose the latter course. Two major differences

19. R. ODELL, THE SAVING OF SAN FRANCISCO BAY 5-12 (1972).

20. *See* Adams, *Proposition 20—a Citizens' Campaign*, 24 SYRACUSE L. REV. 1019 (1973).

21. WASHINGTON STATE DEP'T. OF ECOLOGY, WASHINGTON STATE COASTAL ZONE MANAGEMENT PROGRAM (1976) [hereinafter cited as WASHINGTON COASTAL MANAGEMENT].

22. For insight into early attempts to pass shorelines legislation in Washington, see Shorelines Management: The Washington Experience (June 24, 1971) (a compilation of papers presented at a symposium in Seattle; of special relevance are the papers prepared by James M. Dolliver, then Admin. Asst. to Gov. Evans, and Dorothy Morrell, Chairman, Saltwater Shorelines Committee, Wash. Envtl. Council).

23. WASHINGTON SECRETARY OF STATE, OFFICIAL VOTER'S PAMPHLET 88-93 (1972).

24. For a summary of this history, see Crooks, *The Washington Shoreline Management Act of 1971*, 49 WASH. L. REV. 423 (1974).

between these proposals were: 1) initiative 43A gave more power to the State Department of Ecology (DOE) and less to local governments, and 2) the permit jurisdiction of Initiative 43A extended 500 feet inland from mean high tide whereas under the legislature's version it extended inland only 200 feet.[25] At the November 1971 general election, the two measures were submitted to the people. The ballot procedure allowed the electorate first to vote for or against either system of statutory shoreline regulation, then to express preference between them.

In urban areas, the combination of activist organizations, a preexisting structure for land use regulation and the value of urban real estate, all ensured that public participation in the development of the local shoreline master programs, called for by the Act, would be intense.[26] The Seattle experience illustrated how this process worked. Five years elapsed between the initiation of work on the master program and DOE approval.[27]

25. *Id.* at 424.

26. An important difference between the California, BCDC, and Washington programs involves the intervention of the Washington Supreme Court. In 1969, the court decided *Wilbour v. Gallagher,* 77 Wash. 2d 306, 462 P.2d 232 (1969), ruling that a fill in navigable Lake Chelan must be abated because it interfered with the public right of navigation and had never been explicitly "permitted" by any state or local agency. The court suggested in the now-famous footnote 13 that such filling would be allowed only if an appropriate state or local governmental agency existed at the time with authority to issue permits for fills on Lake Chelan or for most other Washington waters.

While the applicability of this ruling to other navigable waters, especially to navigable salt waters, was hotly debated (*see* Corker, *Thou Shalt Not Fill Public Waters Without Public Permission—Washington's Lake Chelan Decision,* 45 WASH L. REV. 65 (1970), and Rauscher, *The Lake Chelan Case—Another View,* 45 WASH L. REV. 523 (1970)), the result of the doubt cast by the court was that developers (more importantly, their banker-lenders and title insurers) stopped further filling and development on all navigable shorelines of Washington, both salt and fresh, until some sort of permit program could be enacted by the state legislature. Thus, both the developers and the conservationists sought a shoreline management bill, although their ideas differed slightly about what the bill should contain. The goals of developers, utilities, and others seeking pro-development policies for the shorelines differed from the goals of those groups in California where they sought simply to stop passage of any coastal management legislation. In Washington everyone agreed legislation was necessary. The only issue was the shape of the law to be enacted.

27. *Chronology of the Shoreline Master Program—City of Seattle*

1. Passage of Shoreline Management Act of 1971	June 1971
2. Letter of Intent from City of DOE	1971
3. Staff set up	Sept. 1971
4. First Permit application received	Oct. 1971
5. First Permit granted	Nov. 1971
6. Work on SMP began	Oct. 1971
7. Citizens' Advisory Committee appointed	Mar. 1973
8. First meeting Citizens' Advisory Committee	Apr. 1973
9. Inventory of Shorelines completed	Apr. 1973
10. First Draft of SMP published	Jan. 1974
11. Planning Commission hearing, draft review	Mar. 1974
12. Draft 2 published	June 1974
13. Citizens' Advisory Committee review	July 1974
14. Draft 3 published	July 1974
15. Citizen review meetings	July–Aug. 1974
16. Draft 4 published	Sept. 1974

In the course of those five years, program development required the city to spend approximately $200,000, hold more than 100 public meetings, and prepare five separate drafts.[28] Widespread citizen opposition to various provisions in these drafts caused formation of the Seattle Shorelines Coalition which is made up of members of eight Community Councils with shoreline frontage.

Metropolitan areas also received serious efforts and extensive participation by the citizen committees. In Whatcom County, south of the Canadian border, a citizens' advisory committee which drew up the local master program met over a period of two years.[29] The committee held about 50 meetings in full committee and approximately 55 subcommittee meetings, as well as 20 to 25 group presentations. In addition, planning commission hearings, work sessions, and county commissioners' hearings and work sessions were held.[30]

The Oregon Program

Citizen participation in Oregon's coastal management program has perhaps been less dramatic than in neighboring states where, in some cases, a citizen's crusade was mounted against the opposition of special interests and the recalcitrance or neglect of public officials. The development of Oregon's program has been quieter and less confrontational because the impetus came primarily from the partnership of a farsighted governor, a few conscientious legislators, and management specialists, all of whom were often in advance of local environmentalists. The pro-

17. Planning Commission review approval	Sept. 1974
18. Transmittal to City Council	Sept. 1974
19. First Council hearing on SMP	Nov. 1974
20. Council meetings	Dec. 1974–Sept. 1975
21. Central Waterfront Task Force established	Aug. 1975
22. Central Waterfront Task Force meets	Sept.–Oct. 1975
23. Draft 5 published	Oct. 1975
24. Council considers Draft 5	Nov. 1975–Mar. 1976
25. Council adopts SMP by resolution	Mar. 1976
26. Transmittal of SMP to DOE	1 Apr. 1976
27. DOE partial approval	30 June 1976
28. DOE partial approval	8 Oct. 1976
29. Joint Planning Commission/Council hearing	12 Dec. 1976
30. Planning Commission approves SMP	16 Jan. 1977
31. Council approves SMP	10 Feb. 1977
32. Mayor signs ordinance	14 Feb. 1977
33. Ordinance takes effect	16 Mar. 1977

28. Interview with John Miller, Seattle City Councilman, in Seattle, Washington (Jan. 17, 1978).

29. *See* testimony of Phyllis Graham, former chairperson, Citizens Advisory Committee, at Department of Ecology, public hearing on amendments to Whatcom County Shoreline Master Program (Oct. 7, 1981).

30. *Id.*

gram may, in fact, be sturdier because of its reliance on quiet negotiation and compromise.

Encouraged by the success and far reaching effects of Oregon's Beach Bill of 1967, which preserved public access to all ocean beaches in the state,[31] together with the national publicity generated by the successful cleanup of polluted portions of the Willamette River in the late 1960s, Oregon's legislators and its governor took the initiative in promoting a coastal management program.[32] In 1969, the legislature enacted Senate Bill 10 which required all cities and counties in the state to develop comprehensive plans in compliance with statewide standards.[33] Major portions of Senate Bill 10 were referred to the voters in 1970, and by a margin of three to two Oregon citizens affirmed the desirability of planned development.

Senate Bill 10 provided for the formation of a study commission, the Oregon Coastal Conservation and Development Commission (OCCDC),[34] which convened in 1971 to make an inventory of the coast's resources and to develop a model management plan. The 30-member commission, consisting of public officials and private citizens appointed by the governor, was charged with the duty of submitting by January 17, 1975, a "proposed comprehensive plan for the preservation and development of natural resources of the coastal zone."[35]

An important feature of OCCDC's agenda, as announced in 1973, was its "public involvement program." Planning to encourage a "wide variety of public and private interests to participate in reviewing, responding, and selecting alternative management policies and standards for coastal resources," the commission announced its intention to carry out its tasks by planning with people, rather than planning for people."[36]

Accordingly, the commission organized over 20 workshops to which all interested parties were invited. More than 1,000 persons ultimately attended. At each workshop care was taken to solicit comments and proposals, and to have every participant's contribution taken down.[37] The

31. OR. REV. STAT. §§ 390.605-.690 (1983).

32. In 1970, Governor McCall issued Executive Order 07-070-07 which stopped all state involvement in development projects which would alter the coastal environment. The Governor said that the moratorium was motivated by his belief that CZM legislation would soon exist at both state and federal levels. *See* Levison & Hess, *Conservation and Development in Oregon's Coastal Zone*, 4 COASTAL ZONE MGMT. J. 97, 115 n.24 (1978).

33. OR. REV. STAT. §§ 215.505-.535 (1971) (repealed 1977).

34. *See* 1971 Or. Laws 6.

35. OR. REV. STAT. § 191.140 (1971) (repealed 1977).

36. OREGON COASTAL CONSERVATION AND DEV. COMM'N. INTERIM REP. 14-15 (1973).

37. After all workshops had been completed, the OCCDC staff published a 43-page compilation, Synopsis of Public Workshops and Main Concerns of Valley Workshops. Included were hundreds of ideas about how to manage coastal resources. Attempting to present faithfully the concerns and recommendations expressed at each workshop, the staff organized the contributions into categories: estuaries and wetlands, beaches and dunes, shorelands and uplands, historical and archaeological resources, and so on.

commission then appointed resource specialist teams to recommend appropriate policies for each category. Nine teams were established; members were chosen from governmental agencies, universities, and business and industry. No one was paid for his or her contribution, and the commissioners themselves served without salary.

In the meantime, several years after Oregon began to consider comprehensive planning for the management of coastal resources, the federal CZMA was enacted. Fortunately, federal funds became available under the CZMA[38] just as Oregon was preparing its own management program for the coast because by 1973 the flaws in Oregon's Senate Bill 10 were apparent. Lacking provisions for coordination, financial and technical assistance, or enforcement, the Bill was, in effect, toothless. The state legislature, as a result, enacted Senate Bill 100, a far more complete land use bill which corrected the shortcomings of its predecessor and was designed for compliance with the federal CZMA of the previous year.[39] More formally called the Oregon Land Use Act,[40] Senate Bill 100 created the Land Conservation and Development Commission (LCDC), together with its administrative arm, the Department of Land Conservation and Development.[41]

In 1974, LCDC conducted more than 88 workshops and public hearings throughout the state in order to enlist citizen participation for policy formation. In December of that same year, the Commission formally adopted 14 "Goals"[42] and the following year a further Goal concerning the Willamette River Greenway was added.[43] Consideration of the coastal zone was purposely delayed to await completion of the Oregon Coastal Conservation and Development Commission (OCCDC) report.[44]

In 1975, OCCDC published its recommendations, presented its findings

38. 16 U.S.C. § 1454 (1982).

39. OR. REV. STAT. §§ 197.005-.795 (1983).

40. *Id.*

41. The Act charged LCDC with performing the following functions:
—identifying geographical areas of particular concern;
—formulating a list of statewide standards (called "Goals") which would serve as a legally binding model for the development of local comprehensive plans;
—in general, establishing state policy for resource management;
—coordinating local planning efforts;
—ensuring opportunity for citizen involvement;
—providing financial and technical assistance and administering federal funds;
—resolving appeals, conflicts, and inconsistencies as an alternative to seeking redress from the courts; and
—reviewing the comprehensive plans of local jurisdictions and approving them if they are found to conform with statewide Goals and statutes.

42. OREGON LAND CONSERVATION AND DEV. COMM'N. STATE-WIDE PLANNING GOALS AND GUIDELINES FOR THE COASTAL ZONE (1976) [hereinafter cited as STATE-WIDE PLANNING GOALS].

43. *E.g.*, OFFICE OF COASTAL ZONE MANAGEMENT, EVALUATION FINDINGS FOR THE OREGON COASTAL ZONE MANAGEMENT PROGRAM FOR THE PERIOD FROM FEBRUARY 1981 TO FEBRUARY 1982 2 (1982) [hereinafter cited as 1982 EVALUATION FINDINGS]; *see also* OR. REV. STAT. §§ 390.310-.368 (1983).

44. *See generally* Levinson & Hess, *supra* note 32.

to the legislature and to LCDC, and then disbanded.[45] The legislature took no action, but LCDC scheduled further hearings on OCCDC's recommendations and established technical advisory committees to make further recommendations. In February 1976, LCDC published the revision of OCCDC's policies for public review.[46] The following month, staff members conducted 20 public hearings on the revised policies. An estimated 1,400 persons attended. In June, a further revision was issued, and in September and October of 1976 the LCDC staff conducted more than 100 meetings in coastal communities. After 12 additional public hearings in November and December the policies took final form and were adopted on December 18, 1976 as the coastal goals.[47] The adoption of Oregon's coastal goals was, thus, the result of innumerable man-hours spent in public meetings. To an unprecedented degree, in Oregon, the public was involved in the formulation of the coastal goals. The following year Oregon's Coastal Management Program was approved as fulfilling all the CZMA's requirements by the Office of Coastal Zone Management of the United States Department of Commerce.[48]

The 15 statewide land use planning goals and the four coastal goals together represent a consensus of what participating Oregonians think should be included in local comprehensive plans. The goals reflect the values which a majority of Oregon voters have reconfirmed three times. Three times since its adoption, essential portions of Oregon's land use program have been challenged by initiative petition. In 1976, Oregon voters reaffirmed their support of the state's planning program by a margin of 57 to 43 percent, and in 1978 the voters approved the program by an even greater margin, 60 to 39 percent. Yet another challenge appeared on the November 1982 ballot and was defeated 53 to 47 percent.

Conclusion

Almost inevitably, the high levels of public participation in the enactment and initial implementation of all four programs diminished as the programs matured and became more decentralized. Especially in California, the termination of the regional commissions greatly increased the costs of public participation in the coastal commission process.

45. The functions of OCCDC have in part been taken over by the Oregon Coastal Zone Management Association, Inc. (OCZMA), a voluntary association of local governments and special districts which now operates independently of any state or federal charter.

46. OREGON LAND CONSERVATION AND DEV. COMM'N. DRAFT LAND USE PLANNING GOALS AND GUIDELINES FOR THE COASTAL ZONE (1976).

47. OREGON LAND CONSERVATION AND DEV. COMM'N. STATEWIDE PLANNING GOALS AND GUIDELINES 16, 17, 18, AND 19 FOR COASTAL RESOURCES (1977). After several months of extensive review and comment, the first amendments to the four coastal goals were approved by LCDC in October 1984. All were relatively minor in nature.

48. 1982 EVALUATION FINDINGS, *supra* note 43, at 1.

STATE AND LOCAL GOVERNMENT RELATIONSHIPS

Introduction

All four programs—BCDC, California, Washington, and Oregon—were spurred by strong feelings of distrust of local government and dissatisfaction with past performance on land use control in the coastal zone.[49] Proponents of coastal zone programs leveled sharp criticisms at local governments. Local governments, for example, were seen as push-overs for developers.[50] Often these governments provided no special protection to beaches, views, access ways, or other valuable coastal resources. Instead, local officials seemed overly interested in enhancing tax bases. These governments had no institutional responsibility to consider regional, statewide, or national public interests. Their limited jurisdictional base created disincentives for coordinated planning and zoning programs with neighboring jurisdictions.

Cumulative impacts of fills, dredging, and other modifications of the shoreline were frequently ignored. Local governments were often themselves at fault because of the adverse impact of government projects such as jetties, bulkheads, sewage control, and energy facilities.[51] Around San Francisco Bay, for example, ports and airports competed with each other. Each sought to expand with still more filling of the Bay, even though many thought that the region needed no new port or airport.

In all three states, local governments actively opposed legislation creating coastal zone programs—a predictable reaction because each was designed to invade the traditional turf of local governments. Local governments correctly viewed such programs as attacks on their past performance and as undisguised attempts to force change in the way coastal resources were managed.[52] Local officials who wanted to protect their

49. *See,e.g.*, S. SCOTT, *supra* note 10, at 6-7; *The California Coastal Commission: At the Crossroads*, series of articles reprinted from the Los Angeles Times, from issues published Sunday, May 10, 1981 to Monday, May 19, 1981.

50. *See, e.g.*, Zile, *A Legislative-Political History of the Coastal Zone Management Act of 1972*, 1 COASTAL ZONE MGMT. J. 235, 236 (1974).

51. *See generally* ODELL, *supra* note 19; MEL SCOTT, THE FUTURE OF SAN FRANCISCO BAY (1963); S. SCOTT, *supra* note 10; Baum, *supra* note 5; Crooks, *supra* note 24; *The California Coastal Commission: At the Crossroads*, *supra* note 49; *Shorelines Management: The Washington Experience*, Proceedings of a Symposium in Seattle, Washington (June 24, 1972); Interview with Michael B. Wilmar, Executive Director, San Francisco Bay Conservation and Development Commission, and Russell A. Abramson, Associate Director, San Francisco Bay Conservation and Development Commission, in San Francisco, California (May 31, 1982); and Interviews with Charles Roe, Assistant Attorney General for Department of Ecology, in Olympia, Washington (Sept. 9, 1973, Jan. 6, 1975 & Oct. 12, 1978).

52. *See generally* S. SCOTT, *supra* note 10; *The California Coastal Commission at the Crossroads*, supra note 49; Personal experience of co-author, R. Johnson, as a member of a special legislative Task Force to draft compromise Washington Shoreline Management Act (Feb. 1971) (for a description of the Task Force, see *Shoreline Management: The Washington Experience*, Proceedings of a Symposium in Seattle, Washington 37 (June 24, 1972).

power base provided some of the most intense lobbying against the coastal programs during the legislative process. In addition, they wanted to assure (and were reasonably successful in doing so) that any loss of local governmental power would be temporary.[53]

BCDC

BCDC was created to operate entirely outside the existing local government structure. Some 32 cities and nine counties were located on the water around San Francisco Bay. Under their "Balkanized" management, the Bay was filled to an extent that it was reduced in surface area from 680 square miles in the 1850s to about 430 square miles in 1960.[54] A 1959 Corps of Engineers report entitled *Future Development of the S.F. Bay Area 1960–2020* concluded that by 1990 much of the Bay's remaining marshland would probably be "reclaimed." The report forecasted that by the year 2020 there would be almost continuous development throughout the nine bay counties and that some 325 square miles of the Bay were "susceptible of reclamation." If the rate of reclamation[55] were allowed to continue, the Bay "would be reduced to a channel in less than 100 years."[56]

Thus, BCDC was a natural outgrowth of the need to create and implement a comprehensive Baywide plan. It might have been possible, once the Plan was adopted, to turn implementation over to the existing local governments, either with or without the supervision of BCDC. That option, however, was never seriously considered. Few were convinced that the local governments could successfully resist pressures to fill the Bay further.[57] Such action would have forced the Save-the-Bay Association to play a watchdog role over some 41 different city and county governments, and would have rendered future attempts to update the Bay plan more difficult.

The 1969 conversion from a temporary to a permanent Bay commission strengthened the representation of local governments.[58] These changes altered neither the basic purposes nor the effective implementation of the Bay plan. Apparently the simplicity of BCDC's goals and the broad,

53. *See* CAL. PUB. RES. CODE §§ 30500, 30519(a) (West 1983) (providing for the return of authority to local governments).

54. *See* ODELL, *supra* note 19, at 8; Baum, *supra* note 5, at 102.

55. The rate of reclamation was 3.6 square miles per year in the period 1940-1958.

56. ODELL, *supra* note 19, at 11.

57. *See* ODELL, *supra* note 19, at 8; Baum, *supra* note 5, at 99.

58. The total number of commissioners remained the same, at twenty-seven. However, one change required that each of the nine county representatives be a supervisor elected from a district including Bay lands, instead of someone appointed by the Board Supervisors, who might or might not be a supervisor himself. Also, each of the four Association of Bay Area Governments' appointees must be an elected city representative. *See San Francisco Bay Plan* July 1979, BCDC 33.

continuing consensus that exists in the Bay Area for the achievement of those goals assured their passage.

The California Program

Distrust of local government was also apparent in the drive to enact a California coastal zone management program. Prior to Proposition 20, the coast was under the fragmented management of 15 counties, 45 cities, 42 state units, and 70 federal agencies.[59] Attempts had been made since the 1930s to bring rational, comprehensive planning to the California coast. The long list of environmental evils which had befallen the coast included wetlands filling, loss of beachs and beach access, loss of views, excessive development, improper zoning, and unnecessary duplication of facilities. Local governments on the coast suffered from the same institutional and jurisdictional limitations which impaired the sound management of San Francisco Bay.[60] No single plan or statement of management policies existed for the state's costal zone.

Under Proposition 20, substantial authority was taken away from local governments and state agencies and was given, instead, to the new Coastal Commission and six regional commissions.[61] The regional commissions were empowered to grant, modify, or deny applications for development permits, and to aid in preparing the coastal plan. The state commission was given authority to decide appeals from permit decisions of the regional commissions and to make the final decisions on statewide policies in the plan. Local governments played no direct role in the management scheme at this point, except through the selection of some regional commissioners.[62]

Had the interim system established by Proposition 20 terminated on January 1, 1977, as the proposition provided, local governments would

59. Douglas, *Coastal Zone Management—A New Approach in California*, 1 COASTAL ZONE MGMT. J. 1 (1973); *see also* SCOTT, *supra* note 10, at 7.

60. Adams, *supra* note 20, at 1022-23.

61. *See generally* Sabatier, *State Review of Local Land Use Decisions: The California Coastal Commissions*, 3 COASTAL ZONE MGMT. J. 255 (1977).

62. Of the 12 state commission members, 6 were appointed by the governor and leaders of the state Senate and Assembly to represent the public at large (each could choose 2 commissioners). The other 6 were selected by each of the 6 regional commissions from its membership. The regional commissions ranged from 12 to 16 members evenly divided between elected local officials (city council members or county supervisors selected by the local governments of each region) and public members (again appointed by the governor and leaders of the Assembly and Senate). Throughout the "Proposition 20" years, most regional commissioners chose one of their public members, rather than one of their local government members, to represent them on the state commission. Thus, policy and decisionmaking for the entire process was directed by private citizens and elected representatives of local governments, all serving part time, rather than by salaried state employees.
Duddleson, *supra* note 9, at 16.

have regained management authority over coastal development. Alternatively, the legislature could have formally adopted the 1975 Coastal Plan as the state's coastal policy and mandated that local governments proceed with implementation. The California Coastal Act of 1976, however, established a more elaborate process.[63] Instead, the Act delegated general coastal management responsibility to local government and ports.[64] The 1976 Coastal Act also narrowed the coastal commissions' permit authority, immediately giving local governmental bodies the power to approve certain types of development. Improvements to single-family residences, maintenance dredging, repair of maintenance activities, development in built-up areas, and replacement of structures destroyed by natural disaster were exempt from the coastal commission permit process.[65]

As part of the legislative plan to return power to local governments, the regional commissions terminated on June 30, 1981.[66] Since that date, regions have been represented on the state commission by local officials, nominated by local governments and appointed by the governor, the Senate Rules Committee, and assembly speaker.[67] This selection process is intended to assure that commission members have a statewide perspective on coastal zone management.

The 1976 Coastal Act prescribed in detail the method by which local governments and ports would resume mangement responsibility. Chapter 6 of the Act mandates that each local government within the coastal zone prepare a "Local Coastal Program (LCP)."[68] The LCP consists of the local government's land use plans, zoning ordinances and maps, and other implementing measures which combine to form the local expression of Coastal Act policies and implementation strategies.[69] Once an LCP is certified by the commission,[70] permit authority for new development is delegated to the local government.[71] LCP certification is the final step in California's delegation of ultimate coastal management responsibility to local government.

63. Also enacted in 1976 were the Nejedly-Hart State, Urban, and Coastal Bond Act, CAL. PUB. RES. CODE §§ 5096.111-.139 (West 1983), and the California Coastal Conservancy Act, CAL. PUB. RES. CODE §§ 31000-31406 (West 1983).

64. CAL. PUB. RES. CODE § 30519 (West 1983).

65. *Id.* § 30610(a)-(g).

66. Originally the regional commissions were to terminate in 1979 but were extended until 1981 when local planning proceeded more slowly than expected.

67. CAL. PUB. RES. CODE § 30301 (West 1983)

68. *Id.* § 30500(a).

69. *Id.* § 30108.6.

70. Until the termination of the regional commissions on July 1, 1981, the LCP certification process included review by the appropriate regional commission prior to the LCP going to the state commission for certification. For a brief descriptiion of LCP submittal and certification procedure, see CAL. PUB. RES. CODE §§ 30510-30522 (West 1983).

71. *Id.* § 30519(a).

Chapter 8 of the 1976 Coastal Act treated port districts in essentially the same manner as it did coastal cities and counties.[72] The four established port districts, Hueneme, Long Beach, Los Angeles, and San Diego, were required to prepare master plans. The four port districts have completed their master plans and are issuing development permits. Before the master plans were certified, developments within the port districts were reviewed by the coastal commissions in the same manner as developments within coastal cities and counties.[73]

On the other hand, as of October 1983, only 30 LCPs had been certified and another 72 local governments had completed the land use portion of the LCP.[74] Thus, in the seven years since the 1976 Coastal Act became effective, approximately one-quarter of the coastal local governments had completed the process. The Coastal Act originally called for submittal of LCPs by January 1, 1981. During the 1978–79 session of the legislature this date was extended to January 1, 1983.[75] Thus, the delegation process appears to be far behind schedule. Local governments played no direct role in the creation of the 1975 California Coastal Plan. Under the 1976 Act local governments were required to develop LCPs under the close supervision of the regional and state commissions and in accordance with policies imposed upon them.[76] The only sanction for failure to prepare an LCP was possible state commission staff intervention in the planning process. Furthermore, as local governments received approval of their LCPs, they assumed responsibility for permit granting. Power was thus returned to the local level, but new administrative burdens and new costs were imposed at a time of diminishing revenues. Finally, local governments with approved LCPs are exposed directly to the hostility of local developers whose permit requests have been denied based on state-decreed coastal zone policies.

Reviewing the progress of California coastal planning in 1979, the California Assembly Office of Research cited a lack of clear direction from commission staffs to local planners, a lack of coordination between the state and regional staffs, and funding problems as important causes of delay.[77] This assessment noted that "the initiative for preparation of the LCPs rests with local governments in the coastal zone, and the com-

72. *Id.* §§ 30700-30721.

73. *Id.* §§ 30700, 30714.

74. Telephone Interview with Paul Thayer, Legislative Coordinator, California Coastal Commission (Oct. 25, 1984).

75. *See* CAL. PUB. RES. CODE § 30501(b) (West 1977) *repealed by* 1981 Cal. Stat. ch. 1173. Section 30517.5 now specified January 1, 1983, as the final date for LCP submittal.

76. CAL. PUB. RES. CODE § 30500(c) (West 1983).

77. CAL. ASSEMBLY OFFICE OF RESEARCH, AN ASSESSMENT OF THE CALIFORNIA COASTAL PLANNING PROCESS 27 (Feb. 1979) {hereinafter cited as ASSESSMENT]

mission has no authority to compel them to accelerate their planning programs."[78]

In some cases, members of local government have been unwilling participants either because they do not like the coastal Act[79] or because they view state agencies as adversaries.[80] Some jurisdictions, in addition, lack sufficiently competent staff to handle the complex and innovative planning effort.[81]

Funding has also been a significant problem. Local planners and officials frequently complain of inadequate funds to meet the tasks of LCP developments.[82] The LCP process requires background information to which local governments have not had ready access. The state commission, through its staff and LCP manual, has required the undertaking of special studies and has imposed formidable new data gathering and analysis requirements. Some conscientious and competent local planners have found the funding inadequate to pay for the work that should be done.[83] On occasion, however, recalcitrant or incompetent planners have used the shortfall between state LCP grants and local expenditures either as a bargaining chip in program approval or as an excuse for delay or inadequate LCP preparation.[84]

Communication between regional and state commission staffs and between commission and local staffs has been problematic at times. Frequently, in the early years of LCP development, communication difficulties caused long delays.[85] Local government staffs are familiar with such difficulties. It was not unusual in the early years for locals to get caught in the "crossfire."[86] One outcome was that many chores had to be duplicated—once to satisfy regional demands, and a second time to please state personnel. Indeed, such discrepancies between regional and state commissions have been a nagging problem during review of local land use plans.[87]

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78. *Id.* at 30.

79. *E.g.* Southern California Ass'n. of Gov'ts, A Background and Status Report on the State/Local Coastal Programs 4 (Aug. 1980).

80. Sorensen, *Definitions and Development in the Collaborative Planning*, in COASTAL MANAGEMENT: READINGS AND NOTES 247 (M. Hershman 2d ed. 1981). *See also* Meridith A. Getches, The LCP: Saving the Baby, Discarding the Bathwater 1 (1979) (a paper prepared for the Conference of Coastal Commissioners at Asilomar, California, March 15 & 16, 1979).

81. Getches. *supra* note 80, at 1.

82. ASSESSMENT, *supra* note 77, at 32. *See also Coastal Planning Issues: A Consensus Report*, in COASTAL CONSERVATION: ESSAYS ON EXPERIMENTS IN GOVERNANCE 6 (S. Scott ed. 1981).

83. Comment reflects the authors' experience.

84. *Id.*

85. Scott, *Notes on California's Coastal Governance: A Reply to Peter Douglas*, in COASTAL CONSERVATION: ESSAYS ON EXPERIMENTS IN GOVERNANCE 6 (S. Scott ed. 1981).

86. According to a former LCP planner, all too frequently those policies/plans which regional staff assessed as adequate were found totally wanting by state commission personnel.

87. The County of Santa Barbara, after many months of negotiations and revision, produced a land use plan that the regional staff deemed generally satisfactory and likely to get approval by the regional commission. As the plan was about to enter the hearing process, state staff issued a lengthy

Communication between commission and local staffs has also been less than ideal.[88] Permit processing had been a major commission function under Proposition 20.[89] The degree of detail and specificity required for that process often was not available, or was felt by many to be inappropriate for the LCP process.[90]

Previously, state-mandated general plan documents had routinely been purposefully vague in order to provide flexibility for local governments to approve a broad range of developments without actually violating their planning goals.[91] The LCP demanded a great deal more specificity than previous planning documents. Local planners feared that the flexibility of the planning process would be lost if too much detail were required.[92] Also, there was fear that too much specificity in the LCP about the nature and intensity of desired future development would prevent local government from taking advantage of lucrative, unforeseen, and non-conforming development proposals.[93]

Prior local planning efforts had not required as much information or had been firmly rooted in policies based upon environmental constraints.[94] Some planners have outright disrespect for data and no experience or appreciation for policy-planning.[95] The technical information necessary to form the bases for the LCP has been available to few, if any, local planning departments. In most cases, the costs of gathering information, expertise, and analysis have been too great for the available funding.[96] Local planners have, instead, looked to the commission for technical information. In each of its annual evaluations of California's management program, the federal Office of Coastal Zone Management (OCZM) has urged the commission to improve local technical assistance.[97]

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critique which pointed to dozens of areas they considered inadequate. Had these problems been worked out during the regional negotiations, much time and effort could have been conserved.

88. Scott, *Coastal Planning in California: A Progress Report,* 19 PUB. AFF. REP. 1, 3 (1978).

89. *Id.*

90. *See supra* note 81. For a discussion of the problems with specificity, see *supra* notes 76 and 79.

91. *See generally* Sorensen, *supra* note 80, at 247-56.

92. *Id.*

93. *Id.*

94. One experienced planner said that, previously, the Coastal Act planners were used to doing sloppy planning and the LCP process was getting local planning "out of the dark ages." Scott, *supra note* 12, at 7.

95. Comment reflects a former LCP planner's experience with local planners.

96. *See supra* notes 76, 79, and 81.

97. U.S. DEP'T. OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, OFFICE OF COASTAL ZONE MANAGEMENT, EVALUATION FINDINGS FOR THE PERIOD FROM SEPTEMBER TO NOVEMBER 1981 (Mar. 14, 1981); U.S. DEP'T. OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, OFFICE OF COASTAL ZONE MANAGEMENT, EVALUATION FINDINGS FOR THE CALIFORNIA COASTAL ZONE MANAGEMENT PROGRAM FOR THE PERIOD JANUARY TO SEPTEMBER 1980 (Dec. 12, 1980); NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, OFFICE OF COASTAL ZONE MANAGEMENT, U.S. DEPT. OF COMMERCE, SECTION 312 EVALUATION FINDINGS, THE CALIFORNIA COASTAL ZONE MANAGEMENT PROGRAM FOR 1976-1979.

The Coastal Act requires that the commission and the local governments act as partners in coastal planning.[98] The LCP process goes beyond any previous planning endeavor in California in requiring such cooperation. Local reactions regarding the issue of "home rule v. state mandate" have greatly undermined the cooperative ideal of the LCP "collaborative planning" process. For collaborative planning to work well, or even to work at all, those sharing authority and responsibility must participate, be willing to negotiate, and be willing to make tradeoffs.[99] Many local governments have been unwilling to deal with the LCP with a cooperative attitude because LCP is a state-mandated program.[100]

All these elements could influence the effectiveness of LCPs after they are certified, and local governments are delegated management responsibility.[101] It is too soon to evaluate the impact of certified LCPs or the importance of any or all of these elements in implementation of the LCPs. The following prediction may be a realistic one:

> [A] city or county pursuing an opposition (or benign neglect) strategy will simply have to take care not to appear too flagrant in its use of various means available to circumvent its certified program—means such as variances, conditional uses, planned unit development, perfunctory review of permit applications and post construction conditions, and ignoring violations.[102]

The Washington Program

Initiative 43 was evidence of strong public hostility toward local government's stewardship of the coastal zone. The proposed Shoreline Protection Act would have turned over virtually complete control of the state's shorelines to the new Department of Ecology (DOE). Local governments understandably opposed this approach when it was considered by the legislature. Their opposition was emboldened by doubts—even by some of the more ardent critics of local governments—about whether an untried and, as yet, unstaffed state agency would ultimately do a better job managing the coastal zone. Local governments, at least, had existing staffs and a long history of involvement with land use planning, zoning, and permit processing.

The general dissatisfaction with local government's performance was reflected in the wide support given Initiative 43, the strong voter approval of Alternative 43B, the Shoreline Mangement Act (SMA), and the SMA

98. CAL. PUB. RES. CODE § 30500(c) (West 1983).

99. Sorensen, *supra* note 80, at 253.

100. Zanic, *California Coastal Planning: A Look at an Experiment in Process,* in COASTAL CONSERVATION: ESSAYS ON EXPERIMENTS IN GOVERNANCE 47 (S. Scott ed. 1981); Getches, *supra* note 80 at 1.

101. Zanic, *supra* note 100, at 47.

102. Sorensen, *supra* note 80, at 263.

requirement that local governments prepare shoreline master programs under the supervision and guidance of the state Department of Ecology. In addition, local coastal zone governments gave a new state agency, the Shorelines Hearing Board (SHB), appellate jurisdiction over permit processing.[103]

The Washington Shoreline Management Act did not, as in California, create a new state coastal commission. Instead, it bestowed implementing authority on an established agency of state government, the Department of Ecology, which was created in 1970.[104]

The Washington State coastal plan was devised through a process entirely different from California's. In Washington, the SMA made a roughzoning of the state's shorelines, classifying some as "shorelines of statewide significance," over which the state DOE has strong supervisory authority. The balance was classed as "shorelines" over which local governments were given greater control.[105]

The more detailed zoning of Washington's shorelines was left to the local shoreline master programs, created over the five years between 1974–1979 under SMA policies and DOE guidelines.[106] By June 1981, all 15 coastal counties and 36 of 38 coastal municipalities had DOE-approved master programs. With these local programs in place, the Washington State coastal management plan came into existence.

The Washington process apparently paid greater deference to the regular state and local government structure than did the California plan.[107] At the same time, the Washington approach produced a greater risk of lack

103. WASH, REV. CODE § 90.58.170 (1983).

104. *Id.* § 90.58.050.

105. *Id.* §§ 90.59.030, 90.58.090.

106. *Id.* § 90.58.030(2)(f). The master programs were essentially comprehensive land use plans for the shoreline area. When master programs were submitted for approval, the DOE could require the local governments to redraft sections not conforming to the policies of the SMA. If the local effort regarding SSWS was unsatisfctory the DOE could prepare the master program.

Whenever possible a master program was to contain seven elements: economic development, public access, recreation, transportation, use, conservation, and cultural values. In order to facilitate the proper location of the above elements, each jurisdiction's shorelines were to be classified within four broad categories of shoreline environment. The objective was to encourage uses within each type of environment that were compatible with its characteristics. The four "umbrella" environments were: natural, conservancy, rural, and urban. The shoreline needs of Washington's ports are supposed to be accounted for in the relevant local shoreline master programs, but there is some question whether this has in fact occurred.

107. For an exceptionally thoughtful and carefully researched evaluation of the Washington shoreline management program up to 1977, see McCrea & Feldman, *Interim Assessment of Washington State Shoreline Management*, 3 COASTAL ZONE MGMT. J. 119 (1977). These authors concluded that since passage of the 1971 Shoreline Management Act, the State had carried on a vigorous shoreline program, but that there were persistent problems of inadequate information bases for local master programs. They also noted that public access had increased only minimally, that the water dependency requirement for overwater construction had not been implemented as strongly as many had hoped, and that exemptions from the Act (especially for single family residences) detracted from the overall effectiveness of the program.

of coordination among the different local programs because of their seriatum approval without a preexisting overall plan, such as the plan which existed in California.[108]

Some early commentators were skeptical of Washington local governments' ability to manage shorelines adequately through the master program process. In some ways, environmentalists' fears of local government appeasement of developers have been realized. An example is the CBI case.

In Whatcom County, the Chicago Bridge and Iron Company (CBI) proposed development of a construction site for oil drilling rigs. The plans called for a 28-acre landfill. The selected site was classified "conservancy," and was, therefore, incompatible with the project. The county supervisors approved 15 amendments to the county master program. One amendment would have reclassified the "conservancy" environment to "urban," thus accommodating the project. Without the supervisory role of the DOE, the project would have been approved.

The DOE played an active role by rejecting the amendments. The county did not challenge the DOE's decision, but CBI tried another strategy. A CBI-sponsored bill, which would have created a new shoreline zone, passed the legislature. This zone would have been entitled "shorelines of statewide economic significance,"[109] and the bill would have effectively approved the CBI site for development.[110] Within such a shoreline zone, economic considerations would have been given priority over environmental concerns.[111] The legislation would have left classification of such zones entirely to local governments and eliminated all review by the DOE and SHB.[112]

Passage of the legislation would have dealt a severe blow both to the SMA and the Washington Coastal Management Program. Governor Spellman, however, vetoed it.[113] Nevertheless, the ease with which the bill

108. Recognition of this problem has inspired at least four regional studies in recent years, designed to provide a coordinated approach to several larger coastal areas. *See* Sorensen, *supra* note 80, at 5-75.

109. S.B. 4832, § 2f, 1982 Washington State Legislative Session.

110. *Id.* § 6.

111. *Id.*

112. *Id.* §§ 4, 6.

113. One of the grounds for Governor Spellman's veto was:

> [T]his law . . . would seriously jeopardize the state's status under the Federal CZMA Act. It would . . . likely result in the loss of federal dollars for the act, and more importantly of authority of the state to proceed in a couple of areas. One area being that of federal consistency with state shoreline management plans. As this [Washington] Shoreline management plan becomes discredited, in effect becomes inoperable, then there is no longer any federal necessity for consistency.

Gov. John Spellman, statement at Press Conference on Veto of SB 4831 of the 1982 Washington State Legislative Session (Apr. 3, 1982).

passed the legislature provides still another illustration of how economic development is once again beginning to take priority over environmental concerns.

The Oregon Program

The cornerstone of Oregon's coastal mangement program is the local comprehensive plan.[114] Every coastal city and county is required to adopt a plan consistent with four coastal "Goals" promulgated by the LCDC. The LCDC is also charged with oversight and administration of Oregon's coastal program until the local plans are "acknowledged." The four coastal goals, adopted in December 1976, relate to the management of estuaries, shorelands, beaches and dunes, and ocean resources. Every coastal jurisdiction must incorporate and implement its provisions in its local comprehensive plan.[115] A further requirement mandates that ports and special districts be incorporated into the relevant county or city plan, but local governments, ports and special districts have been dilatory in coordination with each other.

LCDC is charged with reviewing local comprehensive plans and deciding whether the plan is consistent or inconsistent with the goals. When LCDC approves a plan, that plan takes on the force of law and supersedes the goals. Prior to LCDC approval, every local jurisdiction's land use actions are subject to LCDC review for compliance with the goals.

The preparation of local comprehensive plans has been fraught with difficulties and controversy in Oregon. When the four coastal goals were adopted and promulgated, virtually no one suspected that the development and approval of coastal management plans would take the better part of a decade. Although coastal plans in Oregon are part of a more general land use plan which must meet the standards of 14 or 15 additional goals,[116] the coastal goals are generally much more detailed than the other goals and harder to implement fully. At least one coastal county[117] had the land use portion of its comprehensive plan ready for years. Approval has been delayed only by the difficulty of meeting and implementing the coastal goals.

As of October 1984, only 29 of the comprehensive plans for Oregon's 41 coastal jurisdictions have been approved.[118] While all of the coastal county plans have now been approved, several local plans have not been

114. *See* Levinston & Hess, *supra* note 32.

115. OR. REV. STAT. § 197.255 (1983).

116. *See* Fussner & Wiley, *Oregon's New State Land Use Planning Act—Two Views*, 54 OR. L. REV. 203 (1975); MacPherson & Paulus, *Senate Bill 100: The Oregon Land Conservation and Development Act*, 10 WILLAMETTE L.J. 414 (1974).

117. Lane County's comprehensive plan has been acknowledged.

118. Telephone interview with Don Oswalt, Plan Review Specialist, LCDC (Oct. 25, 1984).

submitted.[119] Deadlines have been set and extended several times.[120] In 1983, the Oregon legislature required that all comprehensive plans be acknowledged in their entirety no later than July 1, 1984.[121] This date has now passed. LCDC officials are now projecting substantial completion by January 1985, although they recognize that several smaller jurisdictions will still not have approved plans.[122]

Neither the great expense of plan development nor the vigorousness of coastal planning debate was fully anticipated. Both local officials and local private interests were active in their opposition to the development and adoption of the coastal goals. Of all the coastal states using the state-local collaborative planning process, Oregon is reputed to host the most persistent opposition.[123] Proponents of home-rule relented only in the face of widespread public sentiment in favor of protecting the coast through planning and the promise of the legislature to turn coastal management back over to the local jurisdictions once local plans were securely in place. Even then, some local governments indulged in flagrant footdragging which prompted LCDC, though often reluctant to exercise the full extent of its authority, to impose an "enforcement order" on one coastal county. The order included a moratorium on all development outside of city limits until the county "brings its comprehensive plan and implementing ordinances into compliance with statewide Planning Goals."[124]

Conclusion

Two of the three states which delegated substantial coastal planning responsibilities to local governments experienced significant delays in

119. *Id.*

120. These delays prompted harsh criticism and threats of funding reductions in OCANM's 1980 Oregon evaluation. OFFICE OF COASTAL ZONE MANAGEMENT, EVALUATION OF THE OREGON COASTAL MANAGEMENT PROGRAM FOR THE PERIOD FROM MARCH THROUGH MARCH 1980 (June 24, 1980). Other commentators view the delays as reasonable and predictable, given the exacting and detailed requirements of the coastal goals together with the requirement that they be tied to more general land use planning in an integrated comprehensive plan. *See, e.g.*, Berg, *Comparative Costal Zone Management—Oregon and Washington*, 4 OR. COAST 5 (1981).

121. 1983 Or. Laws ch. 827, 12.

122. Interview with Don Oswlt, *supra* note 118.

123. Land use planning in Oregon has survived two attempted repeals by initiative petition. In 1976 Oregon voters affirmed their support by a margin of 57 to 43 percent, and in 1978 by 61 to 39 percent. Yet another challenge appeared on the November 1982 ballot, and was defeated 53 to 47 percent.

124. *See Living Under an Enforcement Order: An Interview with Kelly Ross, Curry County Commissioner*, 4 Oregon Coast No. 3 at 3 (1981); Fitzpatrick, *LCDC: What the Future Holds*, 3 Oregon Coast No. 1 at 1, 1-2 (1980). *See also* Mayea v. Land Conservation and Dev. Comm'n, 54 Or. App. 510, 635 P.2d 400 (1981), *petition for reh'g dismissed as moot*, 293 Or. 372, 647 P.2d 920 (1982). In May, 1982 this enforcement order against Curry County was lifted, but Coos and Columbia counties both were facing possible enforcement orders in August 1982. *See* Columbia County v. Land Conservation and Dev. Comm'n, 44 Or. App. 749, 606 P.2d 1184 (1980). *See also* Oregon Business Planning Council v. Department of Land Conservation and Dev., 290 Or. 741, 626 P.2d 350 (1981).

completing the process. Only in Washington, where the upland subject to local planning was very narrow (200 feet), have local governments completed the process. In contrast, the comprehensive and detailed 1975 California Coastal Plan was completed on schedule under the direction of California state coastal commission staff. Similarly, the San Francisco Bay Plan covering only 100 feet of upland was completed on time by BCDC staff without delegation of significant planning responsibilities to Bay Area local governments. The experience suggests that many coastal local governments cannot or will not meet the technical requirements of comprehensive coastal planning, even with significant federal and state financial support. With respect to major facilities and regional issues, planning apparently should be carried out by state rather than local staff. As the program enforcement discussion in the next section suggests, a significant state role in implementation of the coastal plan is also necessary.

ENFORCEMENT OF PROGRAM REQUIREMENTS

Introduction

The 1972 Coastal Zone Management Act (CZMA) and related regulations repeatedly refer to the need for effective enforcement. The Act mandates that where local governments take the leading role in implementing federally-supported coastal programs, the state must reserve oversight power in order to enforce compliance.[125] States must demonstrate "sufficient authority to assure compliance with the management program's enforceable policies" during "the period while local programs are being developed."[126] State agencies which administer Section 306 funds[127] must have the administrative capability to monitor and evaluate the management of the state's coastal resources by the various agencies and local governments.[128]

Jurisdiction

The jurisdictional reach of the four West Coast programs varies widely. It can be divided roughly into two classes based on the zoning and permit authority of the coastal management agencies:

Narrow-shoreline control

The BCDC has zoning and permit jurisdiction over the bed of San Francisco Bay and 100 feet inland. Washington exercises zoning and

125. 16 U.S.C. § 1455(e)(1)(A) (1982).
126. 15 C.F.R. § 923.42(b)(2) (1984).
127. Section 306 grants are administrative grants to the coastal states under the CZMA. 16 U.S.C. § 1455 (1982).
128. 15 C.F.R. § 923.47(b)(3) (1984).

permit control over the seabed and 200 feet inland, and also makes an attempt to influence development beyond 200 feet by "persuasion" and by "networking" other planning and environmental laws.

Broad coastal zone control

California exercises zoning and permit authority over beds and shoreline.[129] Its jurisdiction extends 1,000 yards inland in most areas, and as much as five miles or as little as 200 feet in others. Oregon's coastal program covers the entire watershed of the west side of the Coast Range, averaging 30 to 50 miles inland.[130] These differences in jurisdiction are significant because of their impact on the monitoring and enforcement capabilities of the various coastal zone authorities.

BCDC, the first developed coastal zone management program, has the most limited goals and jurisdiction. BCDC has permit jurisdiction over San Francisco Bay, the associated tidelands and wetlands, and 100 feet inland.[131] The restricted reach is consistent with the limited aspirations of the agency: i.e., to stop filling of the Bay and to provide more public access to the beaches and water areas. The legislature did not intend, and supporters of the Save-the-Bay movement did not advocate giving the BCDC zoning and permit jurisdiction over the broad upland areas which might also affect the use of San Francisco Bay.[132] Hence, BCDC has no jurisdiction over water pollution, air pollution, or solid waste disposal, unless these activities collaterally produce filling, dredging, or loss of access to the Bay.

The limited scope of BCDC's zoning and permit jurisdiction renders it impossible for the agency to control activities beyond 100 feet inland. This constraint might in the long-run prove detrimental to the control of filling and dredging in the Bay because activities beyond the 100 foot strip could conceivably overwhelm the management program for the Bay itself.

In Washington, Initiative 43, the alternative Shoreline Protection Act—rejected in favor of the Shorelines Management Act—proposed zoning and permit jurisdiction 500 feet inland from ordinary high water. As finally enacted, however, the SMA provided only for 200 feet of upland jurisdiction.[133]

The influence of the BCDC program is clearly visible in the Washington approach. Although Washington opted for 200 feet of upland, it none-

129. CAL. PUB. RES. CODE § 30103(a) (West 1983).
130. Levinson & Hess, *supra* note 32, at 97.
131. CAL. GOV'T. CODE § 66610(b) (West 1983).
132. SAN FRANCISCO BAY CONSERVATION AND DEV. COMM'N. SAN FRANCISCO BAY PLAN 37 (1969).
133. WASH. REV. CODE § 90.58.030(2)(d),(f) (1983).

theless followed BCDC in adopting an arbitrary, near shoreline zone without considering the particular terrain or relationship of adjacent upland and water areas.[134] The restrictive nature of Washington's jurisdictional limits poses obvious problems for management of the coastal zone. As noted above regarding BCDC, activities occurring on adjacent uplands can become so important that they overwhelm the management regime for the narrow 200 foot strip next to the water.[135]

In the past few years, Washington has attempted to implement its coastal zone policies in the uplands adjacent to the 200 foot shoreline strip,[136] but only after pressure from the federal OCZM. These adjacent lands are called the "second tier"[137] and are classed as a "planning and administrative" area. This second tier includes the 15 counties adjoining marine waters.[138] In 1976, the Washington CZM program document submitted to OCZM for federal approval provided that the state would control activities in the second tier that "have a direct and significant impact on coastal waters or directly affect the coastal zone." The state would exercise such power through enforcement of its "planning and administrative" controls under the State Environmental Policy Act,[139] the Environmental

134. *Id.* § 90.58.030(2)(f). In Washington, "shorelines" are all of the waters and beds of the state, including reservoirs, and their associated wetlands except for shorelines of statewide significance, and except for streams with a mean annual flow of less than 20 cfs and lakes under 20 acres. "Shorelines of statewide significance" were thought to be of sufficient importance to the state as a whole to give the Department of Ecology greater authority over them. Those shorelines include all the bed of Puget Sound and the Straits of Juan de Fuca below extreme low tide, all the ocean coastline below ordinary high water mark, certain specific named bays and the larger lakes and streams of the state, plus associated wetlands. As mentioned in the text, a strip of land 200 feet inland from ordinary high water mark is included as well.

135. *Shorelines Management '77: Performance and Prospects,* Proceedings, Sept. 22-23 (1977) University of Washington, Seattle, 1-2 (chapter by Jens Sorensen). According to Sorensen, "If the SMA has an achilles heel, it is the 200 foot inland limit." *Id.* at 5. This limits the state's ability to persuade local governments to manage beyond-the-boundary land use activities that have a direct and significant effect on coastal resources (or access to coastal resources).

136. *See generally,* OFFICE OF COASTAL ZONE MANAGEMENT, EVALUATION FINDINGS FOR THE WASHINGTON COASTAL ZONE MANAGEMENT PROGRAM FOR THE PERIOD FROM JANUARY THROUGH JANUARY 1981 (1981) [hereinafter cited as 1981 EVALUATION FINDINGS].

137. The first comprising the bed of the water and the 200 foot upland strip.

138. WASHINGTON COASTAL MANAGEMENT, *supra* note 21, at 119.

139. Environmental impact statements prepared under Washington's State Environmental Policy Act (SEPA) often have played an important role in decisionmaking under the SMA. *See, e.g.,* State v. Lake Lawrence Pub. Lands Protection Ass'n, 92 Wash. 2d 656, 601 P.2d 494 (1979); Merkel v. Port of Brownsville, 8 Wash. App. 844, 509 P.2d 390 (1973).

On the other hand, environmental impact reports prepared under the California Environmental Quality Act (CEQA) generally have not been used as effectively by BCDC, the California Coastal commissions, and the California coastal local governments. *See, e.g.,* City of Coronado v. California Coastal Zone Conservation Comm'n, 69 Cal. 3d 570, 138 Cal. Rptr. 241 (1977). *But cf.* Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Comm'n, 55 Cal. App. 3d 525, 127 Cal. Rptr. 775 (1976). *See also* CAL. PUB. RES. CODE. § 21080.5 (West 1983); 1978 Cal. Stat. ch. 1075.

Both CEQA and SEPA are patterned after the National Environmental Policy Act (NEPA). Unfortunately, Oregon does not have a "little" NEPA, like SEPA or CEQA.

Coordination Procedures Act, water and air pollution control laws and other "networked" controls.

OCZM has been consistently critical of Washington's sluggish implementation of coastal management policies in the second tier. In 1978, the federal agency reported:

> A major basis of the approval of Washington's program [in 1976] was the extension of the state's control and CZM activities beyond the limited 200 feet of the SMA. In negotiations with environmental groups and federal agencies, the network of control beyond 200 feet was a major response to their concerns.[140]

The review further noted that the Washington program had failed to live up to the hopes and expectations in this second tier area, observing that the DOE's "principal focus is on the first tier." Also, "inadequate attention" was being given to management of uses throughout the coastal counties which were intended, under the network concept, to be subject to CZM policies.[141]

Continuing questions were asked by OCZM about the state's intentions in implementing its coastal zone policies in second tier lands.[142] In June 1981, a meeting was held in which further questions were directed by OCZM personnel to state officials.[143] On July 14, 1981, a Washington state assistant attorney general responded by pointing out the limited nature of the powers of the state Department of Ecology to enforce policies in the adjacent land areas under existing laws.[144] OCZM expressed dissatisfaction with this response in its 1981 evaluation of the Washington program:

> [I]n order for the WCZMP to be sufficiently pervasive in managing the coastal resources of the state, the adjacent lands must be managed in a manner consistent with the SMA. [OCZM assumed] as a condition of approving the SCZMP that such management would take place. The DOE has not provided the OCZM with adequate information concerning DOE's management activities of adjacent lands as related to CZMP . . .
>
> Also, State [*sic*] agencies and local governments are uncertain of the relationship of the various authorities (SMA, SEPA, Forest Practices Act) to the WCZP along with selected activities and responsibilities of other state agencies, notably the DNR. . . . Over the past

140. Office of Coastsal Zone Management, 1978 Annual Review and Action Memo at 14.

141. *Id.*

142. 1981 EVALUATION FINDINGS, *supra* note 135, at 6.

143. Interview with Charles Roe, Assistant Attorney General, Washington State Department of Ecology, in Olympia, Washington (July 8, 1981).

144. Washington State Dep't of Ecology, Adjacent Lands Guidance (Apr. 1982) [hereinafter cited as Adjacent Lands Guidance].

> five years, the relationship of these authorities and state agencies to the WCZMP has become muddled.[145]

OCZM recommended that DOE "produce a document setting out its management scheme for adjacent lands."[146]

In 1982, DOE attempted to meet this criticism by publishing *Adjacent Lands Guidance*.[147] This document confirms DOE's lack of authority to regulate individuals in the adjacent lands area through zoning or permit procedures. DOE has the authority only over governmental entities, and then only in certain aspects of planning. The SMA requires that state agencies and local governments make their plans, policies, and regulations consistent with the SMA, the guidelines, and relevant master programs.[148] DOE speculated that it might have to seek a mandamus against local governments if they failed to comply with this requirement.[149]

Adjacent Lands Guidance also noted that other remedies were available to DOE, such as promulgation of regulations, requiring adoption of adjacent land policy in local master programs, persuasion, and use of Section 306 grants.[150] In effect, however, this document does not provide any effective means of enforcing the state's coastal policies in the second tier area. The first, second, and last of the implementation suggestions above are, at most, mere possibilities, with little likelihood of implementation, and the third seems more an idle hope than an implementation strategy. As might be expected, the 1982 OCZM evaluation noted little progress on implementation of *Adjacent Lands Guidance*.[151]

The Washington legislature is unlikely to expand DOE's zoning and permit jurisdiction into the adjacent lands or otherwise provide a sound legal basis for adjacent lands management. No serious proposals for such expansion have been considered. DOE's past lack of assertiveness in implementing coastal management policies in the second tier does not bode well for effective implementation. Without sharp prodding and grant-withholding threats from OCZM, it seems unlikely that DOE would have produced *Adjacent Lands Guidance*. A concerted effort by the Department of Ecology to obtain greater coordination with local governments with regard to the adjacent lands has reduced OCZM criticism. In the 1983 and 1984 evaluations this aspect of the state program was no longer raised.

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145. 1981 EVALUATION FINDINGS, *supra* note 135, at 8.

146. *Id.* at 9.

147. Adjacent Lands Guidance, *supra* note 144.

148. WASH. REV. CODE § 90.58.340 (1983).

149. *Adjacent Lands Guidance Available*, 6 Washington Coastal Currents No. 9, 1 (June 1982); Adjacent Lands Guidance, *supra* note 144, at 27.

150. Adjacent Lands Guidance, *supra* note 144, at 27.

151. OFFICE OF COASTAL ZONE MANAGEMENT, EVALUATION FINDINGS FOR THE WASHINGTON COASTAL ZONE MANAGEMENT PROGRAM FOR THE PERIOD FROM JANUARY THROUGH JANUARY 11 (1982).

In contrast to Washington and BCDC, the California and Oregon programs cover broad upland areas along the coast. In California, the planning, zoning, and permit jurisdiction extends 1,000 yards inland from mean high tide. In 18 locations the boundary extends inland up to five miles where necessary to encompass significant coastal estuaries, habitats, and recreation areas. The boundary shrinks to a minimum of about 200 feet inland to exclude certain urban areas. California has approximately 1,100 miles of coastline. The coastal zone jurisdiction area covers approximately 5,813 square miles or four percent of the state's total area. This includes 4,263 square miles of ocean and 2,550 square miles of shorelands.[152]

Consistent with the broad extent of California's and Oregon's coastal zones is the breadth of their planning goals. Both California and Oregon maintain control of the principal uses of the upland that will impact the coastal zone.[153] Illustrative of this breadth of scope are the attempts by the California Coastal Commission and the Oregon LCDC to preserve open space, scenic beauty, and agricultural productivity by requiring agricultural lands to be retained for that use, and to control other elements normally included in comprehensive land-use planning.[154]

BCDC, on the other hand, is primarily concerned with prohibiting further filling of San Francisco Bay and enhancing public access to the Bay.[155] Washington is similarly concerned with stopping filling, providing public access, and some additional matters such as view preservation.[156] BCDC and Washington are not and, because of limited geographical jurisdiction, cannot be concerned, as in California and Oregon, with comprehensive land-use planning for the coastal region.

BCDC

BCDC has a small (three person) enforcement staff charged with ensuring that both construction and operating conditions imposed in BCDC permits are met. For violations, BCDC has the authority to order that construction or operations cease. The enforcement section also watches for unpermitted activity and, if such activity is discovered, the staff may convince those pursuing this activity to seek a BCDC permit.[157]

152. 1 SORENSEN & DICKERT, COLLABORATIVE LAND USE PLANNING IN THE COASTAL ZONE 7-9 (1976).

153. *See* STATE-WIDE PLANNING GOALS, *supra* note 42; CAL. PUB. RES. CODE § 30103 (West 1983).

154. *See* STATE-WIDE PLANNING GOALS, *supra* note 42; CAL. PUB. RES. CODE § 30103 (West 1983).

155. CAL. GOV'T CODE §§ 66601, 66602, 66605, 66605.1 (West 1983).

156. WASH. REV. CODE § 90.58.020 (1983).

157. Interview with Michael B. Wilmar, Executive Director, San Francisco Bay Conservation and Development Commission, and Russell A. Abramson, Associate Executive Director, San Francisco Bay Conservation and Development Commission (May 31, 1982).

Citizen participation is an effective supplement to the staff's monitoring and enforcement efforts. Recently the "Save San Francisco Bay" group established an "Adopt a Shoreline" program to monitor and report suspect activities around the Bay. In addition to "Save the Bay" a number of groups and individuals have made significant contributions to BCDC's monitoring and enforcement program. It is unlikely that the staff could monitor activities within BCDC's jurisdiction effectively without such grassroots support.[158]

The California Program

The California State Coastal Commission is required,[159] at five-year intervals, to review certified local programs for conformity with the Act's policies and to suggest corrective actions to local government. If local government should be unresponsive, however, the commission has no ability to decertify or apply sanctions. The statute provides only that the commission can report inaction to the legislature.[160]

The Coastal Act also provides a permit appeals procedure and an LCP amendment process which maintain the involvement of the State Coastal Commission.[161] In addition, the 1976 Coastal Act specified that permit authority for any development "proposed or undertaken on any tidelands, submerged lands or on public trust lands. . ., within ports . . . or within any state university or college within the coastal zone" shall not be delegated to local government even after LCP certification.[162] For any development between the nearest public road and the sea, the issuing agency must find the development in conformity with the Act's public access and public recreation policies.[163] Any aggrieved person has the right to seek judicial review of commission decisions[164] and of local government actions made after certification of the LCP.[165]

The commission also has appellate jurisdiction over a limited number of situations. Appeal from local decisions can be made to the commission only for approvals granted to developments which lie: 1) between the sea and the first public road paralleling the sea; 2) on tidelands, submerged lands, or public trust lands; 3) within 100 feet of any wetland or stream, or within 30 feet of the top of the seaward face of any coastal bluff; 4) within a sensitive coastal resource area; 5) on land not designated as the

158. Telephone interview with Russell A. Abramson, Associate Executive Director, San Francisco Bay Conservation and Development Commission (Sept. 10, 1982).
159. *See* CAL. PUB. RES. CODE § 30519(a) (West 1983).
160. *Id.* § 30517.5(3).
161. *Id.* §§ 30514, 10602.
162. *Id.* § 30519(b).
163. *Id.* § 30604(c).
164. *Id.* § 30801.
165. *Id.* § 30802.

principal permitted use; or 6) on land to be used for major public works projects or energy facilities.[166] Furthermore, the grounds for appealing such developments are limited to the following: 1) failure to provide for or interference with access; 2) failure to protect public view; 3) incompatibility with established physical scale; 4) significant alteration of natural landforms; 5) failure to comply with shoreline erosion or geological setback requirements;[167] or 6) lack of conformity with the certified LCP.[168]

The LCP amendment process provides still another means for commission control after LCP certification. The local government may amend its program, but such an amendment does not become effective until certified by the commission.[169] No more than three amendments can be proposed in any one year.[170]

The Washington Program

The state Department of Ecology (DOE), which originally reviewed and approved local governments' shoreline master programs, maintains supervisory authority and monitors permits issued by local governments. As an agency for implementing and enforcing state CZM policies, DOE seems to have an organizational advantage over California's Coastal Commission. In addition to its coastal management responsibilities, the DOE is charged with water and air pollution control, supervision of toxic waste disposal, and implementation of the state's Environmental Policy Act.[171] The existence of all these interrelated enforcement powers in the same agency would appear to facilitate coordinated implementation. Other factors, however, have hindered effective implementation. The fact that coastal management responsibilities are reposed in a "line agency" rather than in an independent or semi-independent commission means that the agency is more vulnerable to the winds of political change. The director of the DOE is appointed by the governor, serves at the governor's pleasure,[172] and, thus, must reflect the governor's priorities.

In 1976, Washington elected Dixie Lee Ray as governor. She gave lower priority to environmental and coastal zone matters than did her three-term predecessor, Daniel Evans. In 1980, Governor Ray lost to John Spellman, who maintained a low profile on environmental and coastal zone matters, albeit not to the degree exhibited by Governor Ray. Di-

166. *Id.* § 30603(a).
167. *Id.* § 30603(b).
168. *Id.* § 30603(c).
169. *Id.* § 30514(a).
170. *Id.* § 30514(b).
171. WASH REV. CODE §§ 43.21A.020, 43.21A.060 (1983); WASHINGTON COASTAL MANAGEMENT, *supra* note 21, at 51.
172. WASH. REV. CODE § 43.21A.050 (1983); WASHINGTON COASTAL MANAGEMENT, *supra* note 21, at 51.

minished gubernatorial enthusiasm for coastal zone management helps to explain DOE's recent lack of assertiveness in implementing and enforcing Washington's coastal management plan. Lessened gubernatorial priority also may help to explain why the DOE has failed to enforce its "networked" management plan for the second tier lands described earlier.

In its 1980 annual review of the Washington plan, the OCZM urged more leadership by DOE in key program management areas, including the need to investigate reports of local program violations, to enforce SMA policies for adjacent or second tier lands, and to identify important issues raised by major development proposals. Also needed is protection of coastal dunes in excess of 200 feet from the shoreline, development of coastal management plans for Indian tribes, updating and expanding the coastal Atlas, and providing technical assistance to local governments.

Similar criticism was voiced in 1981 when OCZM urged that "[T]he DOE should be a source of leadership and direction for resolving . . . coastal management."[173] The OCZM especially called attention to the adjacent lands question and the need for providing more effective enforcement of the state and local programs. Prodded by this and other criticism of its lack of aggressiveness, the DOE took a strong and, as it turned out, effective stand on the large Chicago Bridge and Iron Company project.[174]

In 1983 and 1984, the DOE endeavored to assert greater leadership. In 1983, DOE contracted for two independent studies, one concerning the effectiveness of local shoreline management programs,[175] and another concerning public perception of the Shoreline Management Act and its implementation.[176] In addition, the Department conducted an in-house evaluation of public access to Washington's shorelines.[177] These studies provide the foundation for administrative changes designed to enhance the effectiveness of the state's coastal zone management program.

Another active agency in enforcement of the Washington coastal management plan is the Shorelines Hearing Board (SHB). This quasi-judicial board serves an important role in providing a sense of fairness, credibility, and legality to the program. During the period prior to the approval of local master programs, development permits issued by local governments have been measured directly against the policies of the SMA and the DOE's guidelines and regulations. The DOE has monitored local permit

173. *See generally* 1981 EVALUATION FINDINGS, *supra* note 135.

174. *See* discussion *supra* at notes 27-28.

175. Nancy Fox & Susan Heikkala, Shoreline Master Program Study: Analysis Report (Sept. 1983) (prepared for the Washington State Department of Ecology).

176. League of Women Voters of Washington, Public Perception of the Washington Shoreline Management Act (July 1983) (prepared for the Washington State Department of Ecology).

177. James W. Scott, An Evaluation of Public Access to Washington's Shorelines (Sept. 1983) (available from the Shorelands Division, Washington State Department of Ecology).

issuance, and either the DOE or the attorney general may seek review by the SHB. After approval, appeals may be taken to the SHB as a quasi-judicial body,[178] by DOE, the state attorney general, or "any person aggrieved" by the granting or denying of a permit on shorelines of the state.[179] The party seeking review has the burden of proof. SHB decisions can be appealed to superior court and from there to the Washington Supreme Court.

In *Department of Ecology v. Ballard Elks Club,*[180] a 1974 case decided by the Washington Supreme Court, DOE argued that appeals to the courts from permit decisions should be taken from the local government decision rather than from the decision of the SHB, especially when the reviewed local action has the concurrence of the DOE.[181] The court rejected this argument, firmly establishing that the SHB was the administrative agency from which appeals to the courts were to be taken.[182] The supreme court decision also established that the Board is to play a "quasi-judicial" rather than a "policy-making" role. Under Washington administrative law, decisions of the SHB are not to be overturned unless they are "clearly erroneous."[183] The Board's stature has been enhanced by its membership, three of whom are members of the State Pollution Control Board: one appointed by the Association of Washington Cities; one appointed by the Association of County Commissioners; and the last by the state land commissioner or his designee.[184] The Board has rendered decisions contrary to those of local governments and the DOE.[185] Both its ready availability and its independence have helped to create an atmosphere of objectivity in the implementation of the SMA.

The Oregon Program

Given the past antipathy of many coastal local governments to the planning process, a reasonable prediction is that many will be less than enthusiastic about enforcing the provisions of their own approved comprehensive plans. No coastal management program may be counted an unqualified success without provisions for close monitoring of local government land and water use action. Many will agree that monitoring in some form is necesssary to protect both the resources of the coastal zone

178. WASH. REV. CODE § 90.58.170 (1981).
179. *Id.* § 90.58.180.
180. 84 Wash. 2d 551, 527 P.2d 1121 (1974). 181. *Id.* at 553-54, 527 P.2d 1123.
181. *Id.* at 553-54, 527 P.2d 1123.
182. *Id.* at 559, 527 P.2d at 1126.
183. *See* Comment, *Judicial Review of Shorelines Hearings Board Decisions: Department of Ecology v. Ballard Elks Lodge No. 827,* 51 WASH. L. REV. 405, 415-21 (1976).
184. WASH. REV. CODE § 90.58.170 (1981).
185. STATE OF WASHINGTON SHORELINES HEARING BOARD, DIGEST OF DECISIONS (2d ed. 1983) (a compilation of SHB decisions from June 1971 to Sept. 1983).

and the state's large monetary investment in coastal planning. Indeed, Oregon's land use legislation provided for state monitoring of local land use decisions, but the provisions remain largely unimplemented.[186]

Local jurisdictions have violated both the letter and spirit of the Statewide Planning Goals, usually because of the lack of commitment to standards not of their own making or because of indequate familiarity with state and federal guidelines. Other violations have occurred as a result of economic and political pressures from local interests.[187]

A 1981 study, undertaken by an Oregon public interest law firm devoted to land-use issues, documents widespread goal violations by local jurisdictions with both approved and unapproved comprehensive plans.[188] While no similar study has been conducted for those jurisdictions which lie within Oregon's coastal zone, presumably illegal land and water use decisions which affect the coastal zone are being made at a comparable rate.

The OCZM has been highly critical of Oregon's monitoring of its coastal management program, singling monitoring out as perhaps the most significant deficiency of the state's program.[189] Every OCZM evaluation issued to date has encouraged the Department of Land Conservation and Development to take the lead in monitoring local government land and water use decisions. Such surveillance would include not only interim monitoring while a comprehensive plan is under development but also monitoring following approval of the plan. Indeed, the OCZM has made it clear that it expects the DLCD to be chiefly responsible.[190] LCDC and its administrative staff are thus caught between opposing and insistent forces: OCZM urging closer day-to-day monitoring of the implementation

186. OR. REV. STAT. § 197.260, .640 (1983).

187. Comment reflects the authors' experience.

188. Benner, *EFU Study Exposes County Subversion of Farm Zoning*, 1000 FRIENDS OF OREGON NEWSLETTER 2-3 (1981). "Of the 1,064 decisions reviewed, counties approve the overwhelming majority of applications for residences in farm zones (90 percent). Of these, the overwhelming majority are improper (81 percent). County officials are either disregarding or misapplying the farm and nonfarm standards developed by the Legislature and LCDC." Comments of the Natural Resource Defense Council, Inc. on the Office of Coastal Zone Management's 1980 Section 312 Evaluation of the Oregon Coastal Management Program 5 (Mar. 31, 1980). Regarding coastal jurisdictions' misapplication of the coastal goals, informal interviews with local officials of Oregon's coastside counties conducted by representatives of the Natural Resources Defense Council reveal "a wide range in the extent to which permits and land use changes subject to local control are handled with an eye to compliance with the Goals." *Id.* Where permits are granted, follow-up inspections to insure compliance are rarely conducted, and where they are it is usually in response to a citizen complaint. Where violations are turned up and reported to a state agency, that agency sometimes merely ignores the violation. The report cites many incidents which "dramatize the necessity of periodic inspections and cast in question the purported readiness of state and local authorities to respond vigorously to violations unearthed by private citizens." *Id.* at 9.

189. 1982 EVALUATION FINDINGS, *supra* note 43, at 12.

190. *See, e.g.*, OFFICE OF COASTAL ZONE MANAGEMENT, PERFORMANCE REVIEW OF THE OREGON COASTAL MANAGEMENT PROGRAM FOR THE PERIOD FROM APRIL THROUGH FEBRUARY 10 (1981).

of local comprehensive plans, and local governments insisting on greater freedom to make and carry out their own decisions.

Except for those activities which specifically require a permit from a state or federal agency, nearly all routine land or water use decisions made by a local government are unmonitored by any agency of the State of Oregon. By default, the burden has fallen on private citizens and public interest groups. This, of course, was not the intention of the drafters of the CZMA. Yet, contrary to the expectations of the OCZM, the political climate makes it presently unrealistic to hope otherwise. The diminishing financial resources and increasing demands on the staff at most state agencies, and on the DLCD in particular, preclude agency response to all but the most flagrant violations. The situation is not likely to improve with depressed economy and dwindling federal support.

The Oregon legislature's response to these problems was mixed. When statewide land-use planning was first enacted in 1973, the legislature did not intend that the DLCD should watch over the routine implementation of comprehensive plans.[191] The Department's review power was intended to be broader and more general.[192] The federal CZMA requirements for monitoring and enforcement were either ignored or dismissed because, at the time, development of Oregon's coastal program still lay in the future. The 1981 legislature clarified DLCD's powers somewhat. Under the 1981 amendments to the state land use law, DLCD may review amendments to approved comprehensive plans and land use regulations as they arise. DLCD must conduct general reviews for continued compliance not less than once every five years.[193] Periodic review is made to determine:

1) Whether the circumstances or assumptions on which the plan and regulations were based have changed to such a degree that the latter no longer comply with the Statewide Planning Goals;
2) Whether subsequently adopted goals or administrative rules render the plan obsolete; or
3) Whether the plan or regulations are inconsistent with subsequently adopted state or federal law, where compliance can not be achieved through the existing plan or regulations.[194]

Enforcement powers also are assigned to the Department. Upon finding that an approved local plan is deficient or that a local government has

191. *See generally* OR. REV. STAT. §§ 197.005-.795 (1983).
192. *See id.* §§ 197.090, 197.285, 197.300 (1983).
193. *Id.* § 197.640 (1983). OCZM considered these changes significant enough to constitute amendments to the Oregon coastal management program requiring federal approval. 1982 EVALUATION FINDINGS, *supra* note 43, at 9. *See generally* Schell, 1981 *Legislative Changes in Oregon's Land Use System—the Sound and the Fury of a Small Tragedy,* 18 WILLAMETT L.J. 49 (1982).
194. OR. REV. STAT. § 197.640(3)(a),(b),(c) (1983).

engaged in a "pattern or practice of decisionmaking" which violated either an approved plan or land use regulation, LCDC may impose an "enforcement order" upon the local government, prohibiting further development. Grant funds also may be withheld.[195] Standing to appeal land use decisions has long been a subject of uncertainty in Oregon.[196] The 1981 legislature decided to clarify the issue. The result was to erect a new barrier against citizen lawsuits and appeals: no party (including DLCD) has standing to appeal, either to LCDC or to the court of appeals, unless he or she first participated in the local proceedings.[197] Unless a land use decision is first protested on the local level, an individual or organization effectively waives its right to appeal.[198] The new law contains a provision whereby an interested party may request notification of impending land-use decisions at the local level by paying the appropriate fee to the director of DLCD. The law evidently now places a heavy burden on "watchdog" organizations. Such organizations lack the resources to place a representative at every public meeting where a land use decision is likely to be made or to comment by mail.

The 1981 legislature's restriction on standing took effect about the same time the Oregon Court of Appeals stripped the DLCD of its presumed power to appeal land use decisions of local governments.[199] As a result of these independent events, the process for monitoring local land use decisions was weakened.

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195. OR. REV. STAT. § 197.320 (1983). The 1981 legislature also complicated the program enforcement process by enacting the "Lots of Record" legislation, 1981 Or. Laws., ch. 884, 9-12, which for lots of records in unincorporated areas prohibits counties from denying building permits based on changes in zoning or plans subsequent to the lots' creation.

196. *See* Brown, *A Further Analysis of Judicial Review of Land Use Controls in Oregon,* 12 WILLAMETTE L.J. 45 (1975); Sullivan, *From Kroner to Fasano—An Analysis of Judicial Review of Land Use Regulation in Oregon,* 10 WILLAMETTE L.J. 358 (1974). *See generally* OREGON CONTINUING LEGAL EDUCATION, LAND USE (1982).

197. OR. REV. STAT. § 197.830 (1983).

198. Since codified as OR. REV. STAT. § 197.620(1)(a) (1983) which provides:

> Persons who participated either orally or in writing in the local government proceedings leading to the adoption of an amendment to an acknowledged comprehensive plan or a new land use regulation may mail or otherwise submit written objections to the director and the local government not later than 30 days after the date of the final decision by the local government.

199. Ochoco Constr., Inc., v. Land Conservation and Dev. Comm'n, 56 Or. App. 32, 43, 641 P.2d 49, 55 (1982), *petition for review granted,* 293 Or. 103, 648 P.2d 850 (1982).

> The roles to be played by the Department, its Director, and LCDC are clearly and concisely stated in the statutes. Those statutes do not expressly authorize the Department to contest land use decisions made by local governments *after* LCDC has acknowledged those governments' comprehensive plans. Neither do we think the authority may be implied. In light of the legislature's expressed preference for local management of land use planning and its circumscribed grants of authority to the Department and LCDC, we think that if the legislature had intended to convey such a significant power to the Department, it would have specifically expressed its intent to do so.

Id. at 42, 641 P.2d at 54-55.

The OCZM, in its February 1982 evaluation of the Oregon program,[200] observed the above developments with concern.[201] In addition, OCZM noted potential enforcement problems created by the expiration of the statute providing for the state Land Use Board of Appeals (LUBA) in July, 1983, and the fact that no limit is placed on local government amendments to their comprehensive plans.[202] Unless either LCDC or third parties comment on a proposed amendment, the amendment becomes effective automatically. Thus LCDC could easily be overwhelmed by the plan amendment process. Other state agencies, moreover, have expressed concern about their abilities to participate meaningfully in the local plan amendment process.[203] In addition to widespread local government goal violations, OCZM noted problems of state agency compliance with the goals in their permitting decisions as required by the state land use planning law,[204] and urged greater LCDC enforcement of that mandate. Similar problems may be expected as more local plans are acknowledged.[205]

Conclusion

Inadequate enforcement of program requirements has been the most common criticism of coastal zone management in all three states. Enforcement often has been initiated by citizen groups rather than by the agencies assigned with enforcement responsibilities. While some past enforcement problems may have been typical of most resource management and pollution control programs, several reductions in coastal management funding, recent amendments to key coastal regulatory laws, and changing political priorities generally suggest that these enforcement difficulties have the potential for undoing a decade of effort in all three states.

One possible solution to enforcement difficulties in California and Oregon would be to reduce the programs' comprehensiveness. Both the issues addressed and the geographic coverage may need to be narrowed, so that they are similar to the more restricted BCDC and Washington programs. Unfortunately, to sacrifice comprehensiveness for enforceability may be the most realistic way to ensure meaningful program survival and continued federal support. If federal approval were withdrawn owing to lack of enforcement, as OCZM on occasion has threatened, then, along with any remaining federal funds, the West Coast States would lose the benefits of the CZMA's consistency provision discussed below.

200. 1982 EVALUATION FINDINGS, *supra* note 43.
201. *Id.*
202. *Id.*
203. *Id.*
204. OR. REV. STAT. § 197.180(1)(a) (1983).
205. 1982 EVALUATION FINDINGS, *supra* note 43, at 12.

FEDERAL CONSISTENCY WITH APPROVED STATE PROGRAMS

Introduction

When Congress enacted the CZMA in 1972, the Act was widely praised as an important step toward realigning regulatory power from federal to state and local levels. Under the "federal consistency" provisions of the CZMA, private activities permitted by a federal agency and activities undertaken or funded by that agency must conform to a state's federally approved coastal management program wherever those activities directly affect that state's coastal zone.[206]

Section 307 of the CZMA contains the federal consistency provisions. Activities, including development projects, directly affecting the coastal zone and which are conducted or supported by federal agencies shall be consistent with approved state programs to the "maximum extent practicable."[207] Perhaps the most important federal consistency provision[208] provides that federal licenses and permits for activities directly affecting land and water uses in the coastal zone may be granted only when the state certifies that the activity complies with and will be conducted in a manner consistent with its coastal management program. Any activity for which a federal license, permit, or grant is required is thus subject to the consistency provision—even though it may be located outside a state's coastal zone—provided that the activity significantly affects the coastal zone.[209]

Citizen enforcement of the federal consistency requirements received a significant boost in the August 1982 decision of the Ninth Circuit Court of appeals in *California v. Watt*.[210] The court held that groups, such as the Natural Resources Defense Council, Sierra Club, Friends of the Earth, Friends of the Sea Otter, and the Environmental Coalition on Lease Sale 53 had standing to enforce compliance by the Department of the Interior with the federal consistency requirements in connection with Interior's outer continental shelf lease sale 53 off California.[211] Although the Supreme Court reversed on the merits as discussed below, it left intact the Ninth Circuit's standing ruling.

States must include in their coastal management plans the procedures to implement the federal consistency requirements. The following items

206. 16 U.S.C. § 1456(c) (1982).

207. *Id.* § 1456(c)(1).

208. *Id.* § 1456(c)(3)(A).

209. Contrary to the misunderstanding of many, the Act does not compel a federal agency to issue a permit for any activity which does not violate the provisions of an approved coastal management plan. Where federal criteria are more exacting than local, they will take precedence.

210. 683 F.2d 1253 (9th Cir. 1982), *aff'g. in part and rev'g in part*, 520 F. Supp. 1359 (C.D. Cal. 1981), *rev'd on other grounds sub nom.* Secretary of Interior v. California, ___ U.S. ___, 104 S. Ct. 656 (1984).

211. 683 F.2d at 1258, 1269-70.

at a minimum must be included: which state agency will handle consistency review,[212] a listing of federal activities subject to review,[213] outer continental shelf plans which detail federal license and permit activities, and public notice procedures.[214] Federal regulations also provide for a mediation process in cases of serious disagreement between any federal agency and a coastal state.[215] This mediation process may be unilaterally terminated.[216] Judicial review may be sought by either of the disagreeing parties *after* exhaustion of the mediation process.[217] Neither the National Oceanic and Atmospheric Administration (NOAA) nor the states are authorized to enforce compliance with consistency determinations.[218]

Even with these qualifications, the operation of the consistency provisions, combined with the financial support which the Act provides for developing and administering coastal management programs, offers powerful incentives for coastal states to participate in the federal program. Without the prospect of "federal consistency" virtually all federal projects and actions affecting a state's coastal zone fall outside the states' regulatory powers.

Amendments to the CZMA in 1976 were intended to clarify the applicability of consistency requirements to federal outer continental shelf (OCS) oil and gas leasing activities.[219] The word "lease" was added to clarify that federal leases as well as licenses and permits must be consistent with approved state programs.[220]

There are, however, important qualifications to the Act's consistency provisions. The U.S. Secretary of Commerce may override a state's finding that a federal license, permit, or grant is inconsistent with its program. The secretary must determine that the project is "necessary in the interest of national security" or that the activity is otherwise consistent with the objectives of the Act.[221] Apparently, the legislative intent was to confine the commerce secretary's veto power to situations where national interest or security outweighs coastal management objectives. The language of the Act and its implementing regulations, however, are suf-

212. 15 C.F.R. § 923.53(a)(1) (1984).
213. *Id.* § 923.53(a)(2).
214. *Id.* § 923.53(a)(4).
215. *Id.* § 923.54.
216. *Id.* § 923.54(j).
217. *Id.* § 923.54(k).
218. Demase, Spradley & Cusano, *Legal Issues Involved in Enforcement of Coastal Zone Management Provisions,* in 4 COASTAL ZONE '80 2992 (B. Edge ed. 1982).
219. Yudes, *Coastal Zone Impacts of Offshore Oil & Gas Development An Accommodation Through the California Coastal Act of 1976,* 8 PAC. L.J. 783, 798 (1977).
220. S. REP. NO. 277, 94th Cong., 2d Sess. 3, *reprinted in,* 1976 U.S. CODE CONG. & AD. NEWS 1769, 1770.
221. 16 U.S.C. § 1456(c)(3)(A)(iii) (1982).

ficiently ambiguous that uncertainties about the extent of the secretary's discretion will no doubt persist for years.

BCDC

BCDC's San Francisco Bay Plan has been certified as part of California's federally-approved coastal management program. BCDC also administers the federal consistency process for federal actions affecting its jurisdiction. For the balance of the California coastal zone, the California Coastal Commission administers the consistency process.

BCDC has used the consistency process to affect federal decisionmaking on several occasions. In 1980, for example, the federal General Services Administration began to dispose of portions of Hamilton Air Force Base in Marin County. The actions by GSA would have effectively foreclosed future use of Hamilton for aviation purposes. Hamilton is within BCDC's jurisdiction, and the Bay Plan designated the base for "airport priority use" pending completion of BCDC's regional airport system study.[222] BCDC informed GSA that a consistency determination was required for the actions contemplated by GSA.[223] When GSA did not respond, the state's attorney general filed suit on behalf of BCDC.[224] The suit was not pursued because GSA halted the Hamilton disposal process. BCDC then completed its system study.[225] In a similar manner, BCDC influenced the disposition of U.S. Army lands within the Port of Oakland.

The California Program

The California Coastal Act of 1976 includes the declaration that: "All public agencies and all federal agencies, to the extent possible under federal law or regulations or the limited State Constitution" must comply with the Act's provisions.[226] The State Coastal Commission is authorized to exercise federal consistency reviews.[227] The Commission has promul-

222. Greenberg, *Federal Consistency Under the Coastal Zone Management Act: An Emerging Focus of Environmental Controversy in the 1980s*, 11 ENVTL. L. REP. (ENVTL. L. INST.) 50001, 50007 (1981).

223. *Id.*

224. California *ex rel* San Francisco Bay Conservation and Dev. Comm'n. v. United States, Civil No. C-80-3132 RPA (N.D. Cal., filed July 30, 1980).

225. *See* Greenberg, *supra* note 222, at 50001. *City and County of San Francisco v. United States*, 615 F.2d 498 (9th Cir. 1980), *aff'd* 443 F. Supp. 1116 (N.D. Cal. 1977), mentioned the need for BCDC to make a consistency determination relative to a Navy lease of land within BCDC's jurisdictional area. The court held that the BCDC plan had not been approved by the Secretary of Commerce at the time of the effective date of the lease and consequently BCDC did not have the power to make a consistency determination in the matter. *But cf.* People's Counsel for Baltimore County v. Alexander, 17 ENVTL. L. REP. (ENVTL. L. INST.) 1963 (D. Md. 1980).

226. CAL. PUB. RES. CODE § 30003 (West 1983).

227. *Id.* § 30330.

gated regulations on OCS federal consistency determinations[228] which specify the federal activities subject to consistency review.[229] The procedural and hearing requirements for the commission's consistency determinations are also covered by the regulations.[230]

Although California's coastal management program was approved by NOAA in November 1977,[231] the federal consistency obligation did not apply until the court upheld federal approval of California's program in *American Petroleum Institute v. Knecht*.[232] The court found that NOAA's actions (i.e., approving California's program) had not been arbitrary and capricious as the plaintiff claimed.[233] The court also rejected plaintiff's argument that California's program did not adequately consider national interests as required by the federal CZMA.[234]

The United States Supreme Court reversed the Ninth Circuit's *California v. Watt* decision on the merits and ruled that the consistency provisions do not apply at the lease sale stage of OCS oil and gas development. The Court stated, however, that the states can veto subsequent steps, such as exploration and development plans, which they find to be inconsistent with their coastal programs,[235] and nearly all of California's use of the federal consistency requirement has been in connection with offshore oil and gas operations. Subsequent to the *American Petroleum Institute v. Knecht* ruling,[236] the process has accelerated substantially; by October 1984 the commission had processed 55 consistency reviews in that year alone.[237] Furthermore, the commission has concurred in virtually all consistency certifications.[238]

The consistency obligation gives California a key role in important federal agency decisions. Prior to implementation of the consistency obligation, coordination and communication between federal agencies and the state were often inadequate, sometimes nonexistent.[239] In its 1980–

228. CAL. PUB. RES. CODE § 13660 (West 1983).
229. *Id.* § 13660.1(a).
230. *Id.* § 13660.8(a).
231. Karp, *Consistency Review of OCS Activities off California*, in 3 COASTAL ZONE '80 2103 (B. Edge ed. 1982).
232. 456 F. Supp. 889 (C.D. Cal. 1978), *aff'd*, 609 F.2d 1306 (9th Cir. 1979).
233. 456 F. Supp. at 921.
234. *Id.* at 925-26.
235. Secretary of the Interior v. California, ___ U.S. ___, 104 S. Ct. 656 (1984), *rev'g*, 683 F.2d 1253 (9th Cir. 1982).
236. CALIFORNIA COASTAL COMM'N, COASTAL ENERGY DEVELOPMENT: THE CALIFORNIA EXPERIENCE, A GUIDE FOR COASTAL LOCAL GOVERNMENTS 55 (1981) [hereinafter cited as COASTAL ENERGY DEVELOPMENT].
237. Telephone interview with Paul Thayer, Legislative Coordinator, California Coastal Commission (Oct. 26, 1984).
238. Telephone interview with Tim Eichenberg, Staff Energy Counsel, California Coastal Commission (Oct. 26, 1984).
239. *See* S. REP. No. 277, *supra* note 221, at 1770.

81 annual evaluation of California's management program, the federal OCZM commended the state's efforts to implement consistency.[240] Cooperation and coordination with the National Park Service, the Coast Guard, the Corps of Engineers, and the Navy were mentioned as examples of outstanding progress.[241] On the other hand, the LCP process has yet to be significantly affected by the federal consistency requirement, although federal consistency is measured in part against certified LCPs. One explanation is that LCPs generally do not include land-use designations or mapping for federal lands.[242]

The promise to local governments that a certified LCP would give them a voice in federal decisionmaking has been a "carrot" to encourage local cooperation. It is not readily apparent whether this promise has been an effective incentive. In those jurisdictions where OCS activity has historically taken place without meaningful local participation, it is likely that the advantages of the consistency obligation are apparent. Even so, local enthusiasm may be somewhat dampened because the state coastal commission represents local interest.

It is too early to determine the overall impact of the consistency obligation on California CZM. The record with OCS is, however, quite positive.[243] The substance of particular coastal commission consistency objections has not been appealed, and the effectiveness of voluntary mediation is uncertain. It remains to be seen how effectively the commission will require federal conformity to *local* as well as to statewide management policies.

The Washington Program

The federal consistency requirement was seen by Washington state officials as providing an important opportunity for the state to influence federal projects and programs. The reality of Washington's experience with the consistency provision can best be understood by studying three incidents:

1) The excluded lands dispute

When the State of Washington submitted its program for federal approval, a controversy ensued involving a section of the federal Act which states:

240. OFFICE OF COASTAL ZONE MANAGEMENT, SECTION 312 EVALUATION FINDINGS, THE CALIFORNIA COASTAL ZONE MANAGEMENT PROGRAMS FOR 1978-1979 (1979).

241. *Id.* at 4.

242. In the 1978-79 and 1979-80 OCZM evaluations, the commission was reminded that CZMA directs federal lands that are excluded from the state's mangement and the LCP development process. OCZM recommended that the commission instruct local governments to exclude federal lands from their LCPs.

243. *See* Karp, *supra* note 232, at 2106.

> Excluded from the coastal zone are [l]ands the use of which is by law subject solely to the discretion or of which is held in trust by the Federal Government, its officers or agents.[244]

Washington felt that this provision should be interpreted narrowly, thereby excluding only lands where the federal government had sole legislative jurisdiction. The federal government interpreted the provision to exclude all federal lands regardless of jurisdictional status. As a result, Washington submitted a revision of its CZM program, which adopted an interim position excluding all federal lands irrespective of jurisdictional status, pending a Department of Justice opinion on the matter.[245] The Washington CZM program was subsequently approved, but the controversy over excluded lands continued.

On April 10, 1976, the State of Washington filed suit alleging that the exclusion of all federal lands was contrary to the letter and intent of the CZMA.[246] The Department of Justice opinion requested by Washington and NOAA stated that "the exclusionary clause excludes all lands owned by the United States from the definition of coastal zone."[247] Because many agencies interpreted this to exclude all lands owned, leased, or otherwise used by the federal government, the opinion did little to clarify the dispute. NOAA requested an additional clarifying opinion from the Department, and that supplemental opinion now forms the basis of NOAA's definition:

> States must exclude from their coastal zone those lands owned, leased, held in trust or whose use is otherwise by law subject to the discretion of the Federal Government, its officers or agents.[248]

Washington regulations[249] remain unchanged:

> The permit system shall apply to developments undertaken on lands not federally owned but under lease, easement, license, or other similar federal property rights short of fee ownership to the federal government.[250]

The State of Washington, through the Department of Ecology, challenged NOAA's regulation in court, charging that the exclusion of all federally owned or leased lands from the coastal zone was inconsistent with the CZMA.[251] The district court found the regulation valid except

244. 16 U.S.C. § 1453(a) (1982).
245. Excluded Federal Lands Debated, Defined, 2 Shoreline/Coastal Zone Management No. 10, 1 (1978).
246. *Id.*
247. *Id.*
248. 15 C.F.R. § 923.33 (1980).
249. WASH. ADMIN. CODE R. § 173-14-062(3) (1983).
250. *Id.*
251. Washington v. United States, Civil No. C78-223v (W.D. Wash. filed Aug. 5, 1981).

to the extent that it excluded federally leased lands from the "coastal zone."[252]

> The court is unable to conclude that use of all federally leased lands is subject by law solely to the discretion of the . . . Federal Government. . . . Each lease will have to be analyzed to determine whether use of the leased land is subject solely to the discretion of the Federal Government.[253]

Apparently, lands over which the federal government is either lessee or lessor are covered by the court's opinion. In practice, there have been few incidents testing the district court opinion. In 1983, however, the Navy did apply for an SMA permit for a project on leased land adjacent to the Naval facility at Oak Harbor.[254] This case should set a precedent for future activity on federally leased land.

The "excluded lands" provision has aroused controversy, but perhaps more important to the implementation of Washington's plan are the consistency provisions relating to federal licenses and permits. The naval installations on the Olympic Peninsula are examples of developments on land excluded from the Washington plan but subject to the Act's consistency provisions.[255] Construction of a magnetic silencing pier for use by Trident submarines was proposed on land owned by the federal government. Although spillover effects, such as the loss of shellfish, were associated with the project, the state agreed with the Navy that the facility was consistent to the maximum extent practicable with the WCZMP.

2) Northern Tier Pipeline

A section of the CZMA has had broad applicability in Washington.[256] Many of the consistency determinations reviewed by the Department of Ecology involve Army Corps of Engineers permits. Several permits issued by the Corps to Northern Tier Inc. have been the subject of heated controversy and several lawsuits. The DOE filed suit in U.S. District Court, alleging that the permits issued for construction of a port and pipeline were invalid.[257] The first cause of action in the suit by DOE against the Corps alleged:

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252. *Id.*

253. *Id.*

254. Telephone interview with Jay Manning, Assistant Attorney General, Washington State (Oct. 26, 1984). In 1984 an additional "excluded lands" dispute arose involving a marina project on the lands of the Tulalip Indian Tribe. The tribe claimed that the SMA permit process was not applicable to their tribal lands. The marina project is now proceeding without an SMA permit. *Id.*

255. OFFICE OF COASTAL ZONE MANAGEMENT, WASHINGTON STATE PERFORMANCE WITH RESPECT TO COASTAL ZONE MANAGEMENT—ANNUAL REVIEW AND ACTION MEMORANDUM 7 (1978).

256. 16 U.S.C. § 1456(C)(3)(A) (1982).

257. *State Sues the Corps.*, Shoreline/Coastal Zone Mgmt., May 1, 1982, at 1; Washington v. Northern Tier Pipeline Co., Civil No. C82-482v (W.D. Wash. 1982).

> Any applicant for a federal license to conduct an activity affecting land or water in the coastal zone shall provide certification together with any other necessary data and information that the proposed activity is consistent with the state's CZM program.[258]

The proposed project involved construction of a "superport" near Port Angeles for transshipment of petroleum to northern tier states via a submerged pipeline under portions of Puget Sound. In accordance with Washington law, the Energy Facility and Site Evaluation Commission (EFSEC) made a recommendation to the governor that the project permit be denied.[259] During the 60 days which Governor Spellman had to consider the EFSEC recommendation and issue a final decision, the Corps issued permits to Northern Tier, disregarding the EFSEC process. Governor Spellman refused to approve the project on April 8, 1982.[260] Northern Tier responded with a lawsuit alleging various violations of the federal constitution.[261] Northern Tier also applied for a permit for a route around instead of under Puget Sound.[262] Issuance of a permit for this alternate route could moot the litigation surrounding Northern Tier's original proposal.[263] After further months of investigation, Northern Tier in 1983 abandoned the pipeline project entirely, citing as reasons the continuing hostility of the State of Washington, as well as lower oil prices.

3) Seismic Testing

A "memorandum of agreement" between the State of Washington and the Department of the Interior was signed on June 1, 1982.[264] The memorandum outlined a procedure to avoid or minimize conflicts between OCS seismic survey operations and state-managed fisheries resources. It included details of a notification process by which the Pacific Outer Continental Shelf Region of Interior's Minerals Management Service alerts the state to proposed surveys.[265] Also included were provisions for

258. *Lawsuit Cites Four Causes of Action,* 6 Shoreline/Coastal Zone Mgmt., May 4, 1982, at 4.

259. For an extensive chronology of the EFSEC proceedings, from the filing of the Northern Tier application for a permit in July, 1976, to the EFSEC negative recommendations on the project on January 27, 1982, see J.D. Currie, Puget Sound and the Pipe (Nov. 1983) (Report 83-10, Washington State Department of Ecology).

260. *Northern Tier Decision "no surprise,"* Seattle Times, Apr. 9, 1982, at 1, col. 4. *See also* Seattle Post Intelligencer, Apr. 9, 1982, at A-10, col. 1.

261. Northern Tier Pipeline Co. v. Spellman, Civil No. C82-548v (W.D. Wash. 1982).

262. *Northern Tier Returns to EFSEC Taking a New Look at an Old Route,* WASH. COASTAL CURRENTS (Sept. 1, 1982).

263. *See* Washington v. Northern Tier Pipeline Co., Civil No. C82-482v (W.D. Wash. 1982); Northern Tier Pipeline Co. v. Spellman, Civil No. C82-548v (W.D. Wash. 1982). *See also In re* Application of Northern Tier Pipeline Co., Washington State Energy Facilities Site Evaluation Council, Application No. 76-2.

264. *Agreement Reached to void OCS Seismic Survey/Fisheries Conflicts,* 6 WASH. COASTAL CURRENTS No. 9, 4 (June 4 1982).

265. *Id.*

state review of the proposed operation and a requirement that state comments and recommendations be incorporated into the permit, to avoid conflicts.[266]

The necessity for the agreement became apparent after an incident in December 1980, in which more than 1,250 crab pots were caught in a cable and trailing equipment of the *Geco Alpha,* a vessel surveying federal waters off Washington. The unfortunate incident resulted in economic hardships to individual crab fishermen and a loss to the state's Dungeness crab resource. Because crab pots are self-baiting, lost pots may continue to fish for several years until they disintegrate. Although Interior entered the Washington agreement, Oregon is treating the seismic testing crab fishery conflict as a matter of federal consistency under the CZMA.

In Washington, federal consistency remains a confusing and controversial issue. The 1981 OCZM evaluation of the Washington coastal management plan confirms the conclusion that problems continue to exist. Local officials and public interest groups were still inadequately informed about the federal consistency provisions and had misconceptions about the purpose of these provisions and how they were to be used.[267] In response to this finding, OCZM suggested that the DOE engage in more comprehensive educational efforts to alert officials and the public to the relevance of the provisions.

Considering the leverage which consistency has provided in very recent federal-state conflicts, it is unfortunate that it did not earlier rise to its full potential in Washington. Consistency objections which Washington raised to location of the Trident submarine base at Bangor, to construction of a NOAA facility on the shores of Lake Washington,[268] to supertankers larger than 125,000 dwt entering Puget Sound,[269] and to location of an oilport east of Port Angeles either were ineffectively raised by the state or summarily dismissed by the federal agencies concerned.

The Oregon Program

In May 1977, the Secretary of Commerce approved Oregon's coastal management program,[270] which became eligible to take advantage of the benefits of federal consistency. As Oregon's designated coastal management agency, the LCDC has been charged with coordinating the consistency review process among all other state agencies and local

266. *Id.*
267. 1981 EVALUATION FINDINGS, *supra* note 136, at 10.
268. *See* Save Lake Washington v. Frank, 641 F.2d 1330 (9th Cir. 1981).
269. *See* Ray v. ARCO, 435 U.S. 151, 178 n.8 (1978).
270. *E.g.*, OFFICE OF COASTAL ZONE MANAGEMENT, EVALUATION OF THE OREGON COASTAL ZONE MANAGEMENT PROGRAM COVERING THE GRANT PERIOD JUNE THROUGH JUNE 1 (1979).

governments.[271] It is the only state agency now authorized to comment officially on federal consistency determinations and to monitor federal activities which affect Oregon's coastal zone. The LCDC may seek court action or mediation by the Secretary of Commerce if it disagrees with a federal agency's decision.[272] The LCDC also has the responsibility to mediate consistency conflicts between the federal and the state governments, after other state agencies have identified and submitted potential conflicts for resolution.[273] Three Oregon examples of the consistency interplay between federal and state government are instructive:

1) The Sunset Cove Estuary Fill

Predictably, federal agencies were initially slow to respond to the consistency mandate. Some presumably were reluctant to surrender their discretionary powers; others simply may have been slow to comprehend the change in their own responsibilities under Oregon's coastal program. The Sunset Cove case[274] also illustrates confusion about the consistency process at the state and local levels.

Late in 1968, a developer, Sunset Cove, Inc., without a required permit from the Corps of Engineers, filled a total of 17 acres at Seaside, Oregon, on the Necanicum sand spit, and in the Necanicum estuary itself. Planning a residential development for the spit, Sunset Cove refused to apply for an "after-the-fact" permit when pressured by the Corps, and the Corps sued in federal court. The Ninth Circuit Court of Appeals ordered the developer to remove 500 feet of the length of the fill and to apply for an after-the-fact permit for the remainder.[275]

As a result of the court order, Sunset Cove submitted its application early in 1978, nearly 10 years after the fill was made. The Corps of Engineers was prepared to grant the after-the-fact permit as a matter of course. But 1000 Friends of Oregon, a statewide public interest group, citing the federal consistency provisions of CZMA, reminded the Corps of its federal consistency responsibilities and demanded a public hearing.[276] The hearing was held, and testimony disclosed that Sunset Cove's property lay on an active foredune subject to ocean flooding.[277] A local

271. 15 C.F.R. § 930.54 (1984). The review procedure varies according to whether the federal proposal is an "activity," a "grant," or a "license or permit." Various consistency review procedures were adopted in 1978 and have been codified as OR. ADMIN. R. § 660 div. 31 (1984).

272. 16 U.S.C. § 1456(h) (1982).

273. *Id.*

274. Benner, *Sunset Cove—"Federal Consistency" at Work*, 4 1000 FRIENDS OF OREGON NEWSLETTER No. 2, 4 (1978).

275. Sunset Cove, Inc. v. United States, 514 F.2d 1089 (9th Cir. 1975), *cert. denied*, 423 U.S. 865 (1975). *See also* Northwest Envtl. Defense Fund v. Bratton, 16 Env't Rep. Cas. (BNA) 1097, 1688 (D. Or. 1981) (consistency of jetty restoration at Nehalam Bay).

276. Benner, *supra* note 273, at 4.

277. *Id.*

builder testified that neither he nor any responsible builder would construct residences on such an unstable site. In addition, LCDC's Beaches and Dunes Goal prohibits residential development on active foredunes and other foredunes subject to ocean flooding. It was at once apparent that the developer's application was inconsistent with Oregon's coastal program.

Still, the Corps of Engineers was required to make such a determination formally by applying to the appropriate local government or state agency for a consistency review. The proposed development lay within the jurisdiction of the City of Seaside. Although Seaside had a comprehensive plan, it had not yet been approved by LCDC as complying with the four coastal goals. Consequently, the Corps had to apply to the appropriate state agency for a determination of whether granting the permit was consistent with Oregon's coastal goals.

Under LCDC's consistency rule the Division of State Lands (DSL) was designated as the agency to make the consistency determinations in fill situations.[278] DSL, however, declined to require an after-the-fact permit because the fill had been made prior to the effective date of the state legislation which transferred fill permit authority to DSL.[279] The task of consistency determination thus fell on LCDC. Ultimately, the Corps denied an after-the-fact permit, in part, because the project was inconsistent with three goals of the Oregon Coastal Management Program.

2) Seismic Testing

In November 1981,[280] the chairman of LCDC issued a determination that seismic testing off the Oregon coast, being conducted under a federal geophysical exploration permit, was inconsistent with Oregon's coastal management program in that it interfered with deep-sea crab fishing.[281] Unfortunately, the particular test was completed and the damage to crab pots had already occurred before OCZM and Interior responded to LCDC's determination.

On June 15, 1983, the Department of Land Conservation and Development negotiated a "Memorandum of Agreement" with the Department of Interior.[282] The agreement is similar to one recently concluded in Washington to resolve future OCS seismic testing-fisheries conflicts. According to one LCDC official, the agreement has been successful in preventing conflicts with Oregon fishermen.[283]

278. *Id.;* Telephone interview with Don Oswalt, Plan Review Specialist, LCDC (Oct. 25, 1984).
279. *Id.*
280. *See* 15 C.F.R. § 930.54 (1984).
281. *Geophysical seismic testing off the Oregon Coast,* 4 OR. COAST No. 4, 2 (1981).
282. Telephone interview with Dick Matthews, Coastal Program Manager, LCDC (Oct. 25, 1984).
283. *Id.*

3) OCS oil and gas development

In the dispute between the Department of the Interior and the Pacific Coast states about oil and gas lease sales on the OCS, Oregon was less vocal in its opposition than its neighboring states have been. The Department of Interior's position was that "pre-lease activities" were merely preliminary, and not activities directly affecting a state's coastal zone.[284] In January 1981, LCDC adopted a staff report opposing the Department of Interior's position.[285] The report offered recommendations on how OCS lease sales could be undertaken in a manner consistent with Oregon's coastal management plan. Oregon's governor transmitted the report the following month to Secretary Watt, requesting a consistency determination be made at the time of final notice of sale.[286] The United States Supreme Court ultimately ruled in Interior's favor in a similar dispute in California.[287]

In general, consistency reviews have been running more smoothly in Oregon than in its neighboring coastal states, despite the initial slowness of federal agencies to respond to their new responsibilities under Oregon's coastal management program. Once LCDC formulated and promulgated a review procedure in the form of an administrative rule, consistency conflicts have usually been resolved with a minimum of difficulty. Oregon has not yet offered any instance of consistency conflicts which simultaneously are unique to the state and constitute an exemplary test of the federal consistency provisions of the CZMA. The greatest short-term challenge to the consistency provisions will most likely come from federal permits related to oil exploration and development on the OCS. Oregon will share this challenge with its sister states of California, Washington, and Alaska.

DEVELOPMENT IN HAZARDOUS COASTAL AREAS

Introduction

Stimulated in part by changes in the federal CZMA, there has been a growing emphasis in coastal zone management on regulating development in hazardous coastal areas. In 1976, the Act was amended to require that state CZM programs contain a planning process for shoreline erosion problems.[288] In addition, the 1980 CZMA amendments state that programs should manage coastal development to minimize the loss of life and

284. *See* Secretary of Interior v. California, ___ U.S. ___, 104 S. Ct. 656 (1984).

285. The staff report was a Section 307 consistency review drafted by Jon Christensen. The report was adopted by LCDC on January 30, 1981. Telephone interview with Jon Christensen, former Manager, Oregon Coastal Energy Impact Program (Oct. 25, 1984).

286. *Id.*

287. *See* Secretary of Interior v. California, ___ U.S. ___, 104 S. Ct. 656 (1984).

288. 16 U.S.C. § 1454(b)(9) (1982).

property caused by improper development in areas susceptible to floods, storm surges, geological hazards, and erosion.[289] Management efforts already underway in California, Washington, and Oregon were strengthened in response to these changes. While local implementation of hazard management policies is just beginning, some predictions about the likelihood of its success are derivable from the states' experience with coastal hazards management to date.

BCDC

The McAteer-Petris Act mandates that any fill placed in San Francisco Bay "afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters."[290] The San Francisco Bay Plan includes findings and policies with regard to development in hazardous areas. Risks associated with destructive seismic activity are a primary consideration. BCDC policies are particularly directed at reducing the risks to life and property from developments located on fill.[291] Recognizing that safety depends on the procedures and materials used to fill, the plan requires investigation of potential hazards and consideration of special design conditions.[292] Because sufficient data are not available specifying general minimum construction standards, the plan directs that a board of consulting civil engineers, geologists, structural engineers, and similar professionals shall review projects to establish development criteria and inspection programs.[293] This Engineering Criteria Review Board determines seismic risk and recommends to BCDC permit conditions necessary to ensure that risks to life and property are reduced to acceptable levels.

Hazards to development from flooding and subsidence also are specifically addressed by the plan.[294] Elevated building pads and dikes are mentioned in the plan as construction techniques which can be required to minimize risks of damage from these hazards. The Engineering Criteria Review Board may recommend such construction and design conditions. The Board is empowered to recommend that permit applications be denied if projects cannot be safely developed within the policy limits of the plan.[295]

289. *Id.* § 1452(2)(B).

290. CAL. PUB. RES. CODE § 66605(e) (West 1983).

291. SAN FRANCISCO BAY CONSERVATION AND DEV. COMM'N, SAN FRANCISCO BAY PLAN 15 (1969).

292. *Id.*

293. *Id.* at 17.

294. *Id.*

295. Telephone interview with Russell A. Abramson, Associate Executive Director, San Francisco Bay Conservation and Development Commission (Sept. 10, 1982).

The California Program

Proposition 20 provided that all permits were subject to reasonable conditions to ensure the minimization of danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.[296] The 1975 California Coastal Plan recognized the hazards of flooding, earthquake fault zones (and other seismic risks), tsunami run-up, unstable soils, and cliffs and bluffs subject to landslides.[297] Policies regarding hazards included restricting development in flood hazard areas (Policy 64); improving geologic hazards programs (Policy 65); requiring recordation of geologic hazards information (Policy 66); regulating new developments for geologic safety (Policy 67); eliminating public subsidies for development in hazardous areas (Policy 68); establishing measures for tsunami preparedness (Policy 69); and regulating bluff and cliff developments for geologic safety (Policy 70).[298]

The California Coastal Commission has developed guidelines for geologic stability of blufftop development.[299] The guidelines provide that in order to meet the requirements of the Act, bluff and cliff developments must minimize alteration of natural landforms and assure stability and structural integrity.[300] Retaining walls or sea walls will be allowed only when required to maintain public recreational areas or public services, or to protect port areas or principal structures in existing developments from erosion damage.[301] Furthermore, geologic report and investigation are required for developments in what the guidelines refer to as the "area of demonstration."[302] This area is defined as the base, face, and top of all bluffs and cliffs. The "area of demonstration" extends inland 50 feet from the face of the bluff or to the point where a line would intersect the blufftop if drawn at a 20° angle from the top of the bluff, whichever is

296. California Coastal Zone Conservation Act of 1972, CAL. PUB. RES. CODE § 27403(d) (repealed 1977).

297. CALIFORNIA COASTAL ZONE CONSERVATION COMM'N, STATEWIDE INTERPRETIVE GUIDELINES 83 (1981) [hereinafter cited as INTERPRETIVE GUIDELINES]. The Coastal Act deals with development in hazardous areas, in § 30253:

> New development shall:
>
> (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
>
> (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural land forms along bluffs and cliffs.

298. Oil and gas development conditions include CAL. PUB. RES. CODE § 30262(e) (West 1983) which declares that "such development will not cause or contribute to subsidence hazards unless it is determined that adequate measures will be undertaken to prevent damage from such subsidence."

299. INTERPRETIVE GUIDELINES, *supra* note 294, at 1.

300. *Id.*

301. *Id.* at 2.

302. *Id.*

greater.[303] The applicant has the burden of showing that proposed development will not create geologic hazard or diminish stability.[304] The geologic report must be prepared by a registered geologist, a civil engineer with expertise in soils or foundation engineering, or a certified engineering geologist.[305] The report must include the geologist's professional opinion as to whether the project would be subject to or contribute to significant geologic instability throughout its life.[306] In areas of geologic hazard, the commission can require the applicant to sign a waiver of public liability for any damage which might result to the development.[307]

In addition, the California "Local Coastal Program Manual" defines "geologic hazards"[308] and directs that local land use plans contain consistent policies regarding geologic, flood, and fire hazards and designation of appropriate land use categories for areas subject to those hazards. Plans must also impose setback or review criteria for bluff and cliff developments.[309] The zoning portion of the manual explains that while the 1976 Coastal Act does not specify which uses may be allowed in hazard areas, the land-use plan must determine what types and intensities of uses meet the mandate to minimize risks.[310]

The local land-use plan also should determine the degree of hazard which bluff or cliff areas pose for development, and the plan should indicate the appropriate type and intensities of uses to be permitted or conditionally allowed.[311] The manual also declares that local ordinances must require adequate site data from project applicants and impose appropriate setbacks and other safeguards. It also recognizes that some conditions "may be so restrictive that no development is allowed."[312] Local governments are employing a variety of techniques in their LCPs to minimize the risks of hazards in new developments. Overlay zones, setbacks, special review criteria, and geologic reporting procedures have all been used.[313]

Prior to LCP approval, the commission had relied heavily on permit conditions to minimize hazard risks. Setbacks, revegetation requirements, floodplain restrictions, waivers of liability, and deed restrictions have been imposed as permit conditions. Deed restrictions are recorded and,

303. *Id.*
304. *Id.* at 3.
305. *Id.*
306. *Id.* at 4.
307. *Id.*
308. CALIFORNIA COASTAL COMM'N, LOCAL PROGRAM MANUAL II-27 (1977).
309. *Id.* at II-28.
310. *Id.* at Z-19.
311. *Id.* at Z-20.
312. *Id.*
313. *See* Hildreth, *Coastal Natural Hazards Management*, 59 OR. L. REV. 201, 223-30 (1980).

thus, binding on the permit applicant and successors in interest. Typically, a deed restriction provides that the applicant understands that the site in question is subject to extraordinary hazards from erosion, seismic shaking, etc.; assumes the risk of those hazards; unconditionally waives public liability for any damage from the hazards; and understands that public funds may be unavailable for repair or replacement should damage occur.[314]

The foregoing approaches apply only to new development. In 1979, the legislature amended the Coastal Act to exempt from the permit process replacement of structures destroyed by natural disaster.[315] Severe winter storms in 1977-78 had destroyed or damaged many homes in Southern California, and property owners, fearing the commission would not allow rebuilding or would apply strict conditions, lobbied for this exemption. Although at first glance the exemption seems fair, it eliminates the commission's ability to prevent or even minimize risks in existing developments.

Prior to Proposition 20, it was not unusual for structures to be built within a few feet of eroding bluff faces.[316] Californians are familiar with stories of beachfront homes destroyed by erosion damage, cliff retreat, and soil failure.[317] Observers who were asked about regulation of development in hazardous areas subsequent to Proposition 20 and the 1976 Coastal Act unhesitatingly agreed that risks from hazards have been minimized, and developments made safer.[318] While supportive empirical evidence may be lacking, even commission critics agree that the quality of development has improved greatly with respect to hazards exposure.[319]

Zoning, permit conditions, and deed restrictions for hazard areas are not new techniques, but the amount and quality of information required from applicants for development permission is new. Other, less common techniques, such as transfer of development credits and waivers of liability, also may be effective in achieving the Coastal Act goal of minimizing risks, while removing the coastal commission and local governments from difficult choices of allowing imprudent development or prohibiting development altogether.

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314. Sample of conditions for permit in hazard area provided by commission staff, Aug. 1982.

315. CAL. PUB. RES. CODE § 30610(9) (amended by 1979 Cal. Stat. ch. 919).

316. Kuhn & Shepard, *Coastal Erosion in San Diego County, California,* in 3 COASTAL ZONE '80 1899 (B. Edge ed. 1982).

317. Three houses were destroyed in Santa Barbara in 1978 after rains triggered the failure of an historic landslide area.

318. Reflects comments made by M. Fischer, Executive Director, California Coastal Commission; N. Schwartz, Chairperson, California Coastal Commission; Phil Mees, Director, Southern Central District of California Coastal Commission.

319. This is the authors' opinion.

The Washington Program

Coastal erosion is not perceived as a critical problem in Washington for essentially two reasons. First, only a small percentage of the coastline is exposed to the high energy waves of the Pacific Ocean. Second, the exposed areas are relatively uninhabited.

Although Washington's marine coastline extends for 2,337 miles, 80 percent of this coastline lies within the more sheltered waters of Puget Sound, Strait of Georgia, and the Strait of Juan de Fuca. The erosion problems on these shorelines are less significant than those on the Pacific coastline, where storm waves of 25 feet are not uncommon. On the northern two-thirds of the coastline, erosion presents little difficulty because the coastline consists of steeply sloped, rocky beaches with uplands which are predominantly uninhabited. The more populated southern one-third of the coastline is still very rural and consists mainly of wide, sandy beaches with extensive dunes. It is in this southern region where erosion problems are most severe. The Washington CZM program designates two segments of this coastline as areas of particular concern. Both lie near Willapa Bay; Cape Shoalwater and Toke Point. The only other area in the state designated as an area of particular concern is Ediz Hook in the Strait of Juan de Fuca.

Inside Puget Sound erosion problems are less severe. Even during storms, waves rarely exceed four or five feet in height. Nonetheless, the natural erosion and accretion processes continue and can, at times, create problems for shorefront buildings. Many shorefront residents have constructed erosion defense structures in order to maintain their beaches. These structures interfere with the natural flow of beach sediment and are usually less than attractive. Many owners of existing structures will have to continue the battle to protect their property. It should be possible, however, to require that future structures locate a safe distance from the shoreline. Aside from wave related erosion, several areas in Washington's coastal zone are susceptible to ground failure. Such conditions can be found in several hillsides and coastal bluffs overlooking Puget Sound. The problem is compounded by earthquakes, where soil failure is a secondary, but still hazardous effect. Several large earthquakes have occurred in Washington,[320] especially in the Puget Sound Basin. Therefore, the potential for future damage is very real.[321]

320. Rasmussen & Grossen, *A Review of Earthquake Hazards in the Coastal Zone of Washington State*, in NATURAL HAZARDS IN WASHINGTON'S COASTAL ZONE—AN ANTHOLOGY OF RECENT ARTICLES 3 (F. Wilcox ed. 1979).

321. The Coastal Atlas developed by the Department of Ecology identifies areas susceptible to ground failure hazards. *See* WASHINGTON STATE DEP'T. OF ECOLOGY, COASTAL ZONE ATLAS OF WASHINGTON (1977-80).

The generally noncritical nature of erosion problems has undoubtedly colored Washington's efforts in this area of CZM. Several authorities have been responsible for the management of erosion related problems. Local governments—including cities, counties, port districts, and flood control districts—are authorized to raise revenues to manage erosion impacts. The Corps of Engineers provides studies and programs aimed at ameliorating erosion damage. After the 1976 amendments to the federal CZMA, these scattered attempts to manage erosion took on a more organized form. A planning element for controlling and mitigating shoreline erosion was incorporated into the Washington program.

The Shoreline Management Act refers only indirectly to avoidance of coastal hazards.[322] Furthermre, proper management of development in hazardous areas is undercut by several exemptions to the shoreline development permit procedure. These include construction on wetlands of single family residences, construction of normal protective bulkheads, and emergency construction necessary to protect property from damage by the elements.[323] These exemptions allow the construction of homes without adequate setbacks and uncoordinated construction of shoreline protective structures.

The regulations promulgated to implement the Shoreline Management Act contain more detailed reference to erosion problems. The regulations recognize that erosion caused by agriculture, forestry, mining, and residential development can adversely affect coastal resources. Local governments are urged to address erosion in their shoreline master programs.[324] Residential developers in particular should be required to indicate how they plan to control erosion during construction.[325]

The regulations also recognize that improper construction of breakwaters, jetties, groins, and landfills can cause shoreline erosion which leads to further construction of shoreline protective devices such as bulkheads and seawalls.[326] Although normal protective bulkheading is exempt from the shoreline management permit process, the builder must apply to the local jurisdiction for a letter of exemption.[327] Generally, exemptions

322. The provisions of the Shoreline Management Act do not specifically address coastal hazards. Instead, coastal hazards are referred to indirectly as in the statutes policy provision which provides in part: "This policy contemplates protecting against adverse effects to the public health, the land and its vegetation. . . ." WASH. REV. CODE § 90.58.020 (1983).

323. WASH. REV. CODE § 90.58.030(e)(ii),(iii),(vi) (1981).

324. WASH. ADMIN CODE R. §§ 173-16-040(4)(d)(ii), 173-16-060 (1983).

325. *Id.* §§ 173-16-060(11)-(14).

326. For areas with severe problems, WASH ADMIN CODE R § 17316-040(4)(b)(ii) (1983) states:
> The conservancy environment would . . . be the most suitable designation for those areas which present too severe biophysical limitations to be designated as rural or urban environments. Such limitations would include areas of steep slopes presenting ero sion and slide hazards, and areas prone to flooding.

327. WASH. REV. CODE § 90.58.030(ii) (1983); Telephone interview with William Obert, Shorelands Planner, Washington State Department of Ecology (Sept. 3, 1982).

are granted so long as the bulkhead is built to prevent erosion. In most cases, the local jurisdiction will allow builkheading if adjoining landowners have already constructed bulkheads.[328]

The Oregon Program

One of the few outright prohibitions of Oregon's coastal goals concerns development on ocean beaches and active foredunes. Goal 18, the Beaches and Dunes Goal, provides:

> [l]ocal governments and state and federal agencies shall prohibit residential developments and commercial and industrial buildings on active foredunes, and on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if [findings required elsewhere in the goal are made] . . . and it is demonstrated that the proposed development:
>
> (a) is adequately protected from any ecological hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and
>
> (b) is designed to minimize adverse environmental effects.[329]

Goal 18 also prohibits the issuance of permits for shoreline protective devices for post-1976 development. The impact of this prohibition, however, was dampened by an administrative interpretation treating subdivided, but undeveloped, lots as existing development. Even so, controversial 1981 lots-of-record legislation does not exempt from regulation single-family homes constructed on lots designated in a county comprehensive plan as being in a floodplain or a geographical hazard area.[330]

Goal 17, the Shorelands Goal, addresses reducing the hazard to life and property, and provides that nonstructural solutions to erosion and flooding problems are preferred to structural solutions. Goal 7, Areas Subject to Natural Disasters and Hazards, though not itself a coastal goal, supplements the requirements of Goals 17 and 18. Goal 7 provides:

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328. Telephone interview with William Obert, *supra* note 326.

329. *See* STATE-WIDE PLANNING GOALS, *supra* note 42, at Goal 18, implementation requirement (2). An active foredune is defined as "[a]n unstable barrier ridge of sand paralleling the beach and subject to wind erosion, water erosion, and growth from new sand deposits." Conditionally stable foredunes are active foredunes that have "ceased growing in height and [have] . . . become conditionally stable with regard to wind erosion." Examples of development of "minimal value" include boardwalks, fences which do not affect sand erosion or migration, and temporary open-sided shelters. It was the original intention of the former Oregon Coastal Conservation and Development Commission that a site investigation report be required where development is proposed for a questionable location, but such a report has been demoted to the status of a nonobligatory "guideline."

330. 1981 Or. Laws ch. 884, §§ 9-13; Hildreth, *Laws Regulating Ocean Shore Development*, in SUMMARY PROCEEDINGS: LEGAL ISSUES AND LIABILITY FOR CONSTRUCTION ALONG THE OCEAN SHORE (1982) (the published papers from a seminar conducted Feb. 23, 1982 in Newport, Oregon).

> Developments subject to damage or that could result in loss of life shall not be planned or located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazards.[331]

The three goals govern both issuance of permits for shoreline protective devices under the state's Ocean Shore Protection and Fill and Removal Laws and the preparation of local comprehensive plans and implementing ordinances. Oregon's coastal cities and counties are responding with appropriate plan provisions and a variety of regulatory techniques, including mandatory setbacks, hazard overlay zoning, site-specific geologic report requirements, and awarding development density bonuses to developers who avoid hazardous areas.[332] Three controversial developments in hazardous coastal areas illustrate the impact of Oregon's coastal hazard management strategy.

1) The Breakers Point condominium development

On November 3, 1976, the city council of Cannon Beach, a popular Oregon seaside resort town, voted to permit construction of a 97 unit condominium on an unstable foredune at Breakers Point, just north of Elk Creek within the city limits. Over the unanimous opposition of the city's planning commission, the city issued the permit on December 28, only three days before the four Coastal Goals were scheduled to take effect. Within 48 hours bulldozers were on the site, although only a small amount of grading ultimately occurred.

Members of the overruled planning commission joined with 20 residents of Cannon Beach and 1000 Friends of Oregon in petitioning the Clatsop County Circuit Court for a writ of review. Shortly thereafter, the LCDC brought a similar suit against the City of Cannon Beach through an assistant attorney general of Oregon, asking for a ruling that the Beaches and Dunes Goal, adopted December 12, 1976, and effective January 1, 1977, be applied to the proposed development.[333]

The litigation came to an end more than a year later. In April 1978, the LCDC agreed to dismiss its suit against the developer and the city in

331. Areas of natual disasters and hazards are defined as "areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion, and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local and regional areas." STATEWIDE PLANNING GOALS, *supra* note 42, at 23. The State Land Conservation and Development Commission's policy is that no Goal 2 exceptions which increase the hazard to life and property contrary to the mandates of Goals 7, 17, and 18 are allowed.

332. *See* Hildreth, *supra* note 287, at 228.

333. State v. City Council of Cannon Beach, Civil No. CC 77-142 (1977). 1000 Friends and its co-litigants sought to intervene in the State's suit. When the motion to intervene was denied, they filed a separate suit and sought a consolidation.

return for the city's assurance that it would make findings on Goal 18 requirements on all permits issued after the effective date of the Goals. Three months later, 1000 Friends of Oregon and its partners in litigation signed a more exacting agreement in return for dropping suit. The city agreed to apply all Goal 18 requirements to the development site, to revoke permits issued for 44 units planned for construction on an active foredune, and to limit development to stable portions of the property, as determined by a site survey conducted by a professional geologist.[334]

2) The Salishan Spit development

A narrow sandspit locally known as "Salishan" separates the Pacific Ocean from Siletz Bay, the estuary where the Siletz River meets the sea. Owing in part to the unusually large size of the sand grains on the spit, shoreline changes have been frequent and sometimes drastic. In the late 1960s, a developer platted the sandspit, sold lots, and constructed a resort lodge nearby.[335] Although historic shoreline changes on the spit were wellknown to local residents, lot owners began to construct expensive houses on the shorefront.

During the winter of 1970–71, severe storms eroded the high tide line inland as much as 300 feet, threatening to breach the spit. The 15 or so homes which had already been constructed were hastily protected with riprap. During the following winter, however, storms concentrated beachfront erosion on the remaining unprotected shoreline, carrying away completely one partially built house. Other homes were saved only by hurriedly dumped riprap. In 1974, a riprap seawall was built to protect the most heavily eroded lots, and bulldozers restored them to their original dimensions with beach sand.[336] For now, the shoreline protection strategy at Salishan Spit seems to have arrested further erosion.

The repercussions of the events at Salishan lingered on beyond the effective date of the coastal goals. The questions remained unanswered: who pays for the damage, and who is responsible for necessary protection measures? The statewide planning goals had nothing to say on that issue, but in two landmark decisions of 1977 and 1978 the Oregon Supreme Court ruled that the developer may be held liable under certain conditions.

In *Cook v. Salishan Properties,* the court held that a developer may be held negligent in failing to make adequate investigation of the land's fitness for residential development and in failing to warn prospective

334. Benner, *Agreement Keeps Breakers Point Condo Off Foredune,* 3 1000 FRIENDS OF OREGON NEWSLETTER 4 (1978).

335. *See* Beri, Inc. v. Salishan Properties Inc., 282 Or. 569, 580 P.2d 903 (1978).

336. OREGON STATE SOIL AND WATER CONSERVATION COMM'N, INVENTORY: OREGON COASTAL SHORELINE EROSION 66-68 (1978) [hereinafter cited as COASTAL EROSION].

purchasers of erosion danger.[337] In a companion case, *Beri v. Salishan Properties*—itself a consolidation of 20 individual suits against the developers—the court reaffirmed its decision of the previous year. The court held that there was no reason why a professional land developer may not be responsible for losses to purchasers caused by the developer's failure to take reasonable precautions to determine the fitness for the intended purposes of the offered lots.[338] All of this occurred while Oregon's coastal management program was in the development stage. Now that the program is in place, it is unlikely that the Salishan experience will be repeated, at least for development begun after the coastal goals went into effect in 1977, because Goal 18 strictly prohibits residential development on active foredunes. Indeed, it may be that the dramatic fate of some of the Salishan homes gave an impetus to the prohibition.

3) Development at Jumpoff Joe

On Nye Beach, within the city limits of Newport, Oregon, lies one of the most spectacular examples of coastal erosion in the United States. The site is called "Jumpoff Joe," after a local legend. When first described in the 19th Century, it was a narrow peninsula, jutting hundreds of feet into the Pacific. By the early part of this century, the peninsula had dwindled into a nearshore seastack. Today it is a barely noticeable promontory, flanked by gullies where the ocean has eroded into adjoining seabluffs. The remains of a city street disappear abruptly into one of the gullies.

Just south of Jumpoff Joe lie several acres where a landslide destroyed more than a dozen homes in December 1943, carrying them toward and on to the beach. The seabluffs surrounding this slide have retreated some 240 feet between 1939 and 1973, an average of more than seven feet per year.[339] Jumpoff Joe and its environs easily qualify as one of the most active and unstable landforms on the Oregon coast, other than beaches, dunes, and sandspits.

In mid-1981, Newport residents were surprised to find bulldozers grading the site of the 1943 landslide. In April 1981, the owners of the property had applied for and obtained tentative plan approval from the Newport

337. 279 Or. 333, 569 P.2d 1033 (1977). The court declined, however, to extend the doctrine of implied warranty of fitness from structures to the land itself. It had earlier ruled that an implied warranty of fitness accompanies the sale of a new house. Yepsen v. Burgess, 269 Or. 635, 525 P.2d 1019 (1974).

338. 282 Or. 569, 580 P.2d 173 (1978). The *Beri* court also declined to extend the implied warranty of fitness. *See also* Salishan Proprties, Inc. v. Lincoln County, Civil No. 38823 (Lincoln County Cir. Ct. filed Feb. 28, 1978) (allowing continued construction on lots in the Salishan develoopment based on the undeveloped lot owners' investment in the development's common facilities.

339. COASTAL EROSION, *supra* note 336, at 69.

Planning Commission for the development of 39 residential lots.[340] The developers proposed to construct a 900-foot-long seawall to stabilize the site for construction. Learning of the impending development, local opponents organized the "Friends of Lincoln County" and appealed to the planning commission to reconsider their approval, charging that the development violated the statewide planning goal on Open Spaces, Scenic and Historic Areas, Natural Resources, and Goals 7, 17, and 18 discussed above.[341] When the planning commission refused to rescind approval, the organization prepared to take its case to the Land Use Board of Appeals (LUBA), a quasi-judicial agency created by the 1979 legislature to hear land use disputes.[342]

The appeal of Friends of Lincoln County to LUBA was mooted when the Oregon Division of State Lands (DSL) denied the developer's application for a seawall permit.[343] As of September 1982, the original development plan for the slide area had been abandoned. Construction is still being planned, however, for dwellings at the tops of seabluffs adjoining the landslide. Presumably an appropriate setback is planned, although it is difficult to imagine that setbacks alone could protect residential development on these particularly hazardous landforms.

SUMMARY AND CONCLUSION

All four West Coast CZM programs were established, and are being implemented, over the vigorous and persistent opposition of two of the more powerful lobbying groups in state politics, real estate developers and local governments. Enactment and implementation in the face of such potent opposition can be attributed to a remarkably broad public activism. The public saw the all-too-visible changes in beaches and coastal areas brought about by new housing, industrial development, and port expansion. Losses in recreational and aesthetic experiences imposed by these activities were personal losses to many. If changes were not made in the management system, cherished coastal areas would be permanently altered. The quality of life would be diminished.

Voters in Washington and California had to place great pressure on their elected representatives to enact the desired coastal management laws.

340. Moore, *Controversy at Jump Off Joe,* Oregon Business 22 (July 1981).

341. Actually, the goals appear not to prohibit development such as this, provided the proper precautions are taken. Some see this as a major shortcoming of the goals.

342. OR. REV. STAT. § 197.810 (1983).

343. Earlier there had been some question whether the proposed seawall might lie beyond the jurisdiction of DSL, since its jurisdictional boundary is statutorily defined as a tide line on the beach, OR. REV. STAT. § 541.605 (1984), and the ocean had years ago eroded the sea cliffs back beyond the jurisdictional boundary—a telling example, perhaps, of how geological processes may overtake legislative ones. DSL, however, assumed jurisdiction when it determined that to be structurally sound the seawall would have to be placed at least partly within the tide line.

The voters felt that state and local officials were far too solicitous of developers' interests and were also overly concerned about tax bases. Local officials failed to recognize the cumulative impacts of coastal developments and did not adequately consider recreational, environmental, and regional interests in planning and zoning. The public recognized that public bodies, such as airport, port, and sewer control agencies, were among the more serious degraders of beaches and coastal areas. In order to protect coastal areas from inappropriate development, the public had to become involved directly in the political process, either through the initiative process or intense lobbying.

Although the four CZM programs which emerged from this process are exceptionally comprehensive, significant differences exist among them. Often these differences reflect a tradeoff between what coastal protection groups wanted and what they thought was politically possible.

BCDC was created entirely outside the existing state and local government structure as a new regional land and water-use management agency. At first it was feared that BCDC's independence might make it more vulnerable to attacks by state agencies and local governments whose turf had been invaded by the new organization. BCDC has been able, however, to resist such attacks. It has survived virtually unscathed and remains a strong and effective institution. Much of its strength can be attributed to its limited jurisdiction, only 100 feet inland, and limited goals of stopping the filling of the Bay and enhancing public access. These limited jurisdictional and goal attributes combine with the high visibility of the Bay and make it easy for the public to detect violations.

In contast, the voters of the State of California and the Oregon legislature both chose to adopt wide jurisdictional bases for the state coastal zone program—extending several miles inland on some portions of the coast—and a wide-ranging set of goals, including such controversial issues as wetlands and farmland preservation. Partly for these reasons, California and Oregon have had considerably more difficulty in maintaining a supportive consensus and in achieving full implementation.

Washington, on the other hand, followed the lead of BCDC in providing a limited jurisdictional area for its coastal management program—only 200 feet inland. Partly for this reason, Washington has succeeded in implementing its CZM program more than California and Oregon. All of Washington's local coastal programs have been approved and currently are in operation.

Other important differences aided Washington's successful implementation. One difference was that an existing line agency, the Department of Ecology, rather than a new independent commission as in California and Oregon, was given state level responsibility for administering the

program. Another difference was that local governments participated from the outset in the development of the statewide coastal zone plan.

By way of contrast, in California a new, independent state commission, with a cluster of regional commissions, initially administered the program at both state and local levels. Between 1972 and 1976, the state commission developed a comprehensive statewide coastal zone plan and set of goals with little input from local governments. In the 1976 Coastal Act, the legislature provided that administration and enforcement be returned to local governments, but local governments were slow to accept that responsibility. A key reason was that local governments were not the principal creators or shapers of the plans which they were asked to enforce.

One strength of both the BCDC and California programs was that the interim regulatory and long-range planning functions were combined in one agency. The agencies used their regulatory powers to avoid foreclosure of planning options, while the difficult issues they faced in the regulatory process tended to make their long-range planning more realistic.

Oregon's LCDC, on the other hand, was given no permit authority over coastal development which might have facilitated LCDC's administration of the planning process and provided interim program enforcement. Furthermore, through a combination of legislative direction and administrative choice, LCDC has administered local coastal planning as part of Oregon's larger statewide land use planning program. This adversely affected implementation of CZM in Oregon in several ways. Local implementation of the four coastal planning goals was delayed while coastal local governments grappled with other aspects of the statewide land use planning process. Federal CZM funds were used to carry out the statewide land use program generally rather than CZM specifically.

Washington's successful implementation has come at a distinct cost, as is illustrated by the "adjacent lands" controversy. The Washington program was approved by the federal OCZM with the understanding that the state somehow would exercise coordinated management control over lands adjacent to the narrow 200 foot strip directly covered by the Shoreline Management Act. It was feared that uncontrolled development on these adjacent lands could overwhelm planning for the shoreline under the Shoreline Management Act. OCZM finally approved the Washington program on the basis of the state's argument that it would adopt a networking process to regulate these adjacent lands, through the combined use of the Washington Environmental Policy Act,[344] the Water Pollution Control Act,[345] the Shoreline Management Act,[346] and other state laws.

344. WASH.REV. CODE § 43.21C (1983).
345. WASH. REV. CODE § 90.48 (1983).
346. *Id.* § 90.58 (1983).

This system has not worked well in practice. OCZM consistently has criticized Washington's failure to develop an effective management program for these adjacent lands. Likewise, BCDC's San Francisco Bay preservation efforts remain vulnerable to activities occurring on uplands just beyond BCDC's 100 foot jurisdiction.

A central element of all four West Coast coastal zone programs is the policy that developments on shorelines and in tidal and submerged areas should not be allowed unless they are "water-dependent," a phrase that has caught wide public attention and broad support in the adoption of these programs. "Water-dependent" has been described as a policy that would allow the location of marinas or ports in coastal waters because they "have" to be on the water, but would deny such locations to restaurants, apartment houses, and businesses which do not require direct water access. Like many thumbnail statements of complex concepts, the application of this policy posed problems.

What has gradually emerged from experience is that the water-dependency concept describes a priority rather than an absolute rule. Few, if any, activities are absolutely water-dependent. Marinas can be located on uplands adjacent to the water by stacking boats in bins six or eight stories high and using elevators to take them up or down. Such facilities are less aestheticlly pleasing than the standard "dock" marina, and boaters find them inconvenient. They are, however, economically feasible and are now in wide use. While restaurants do not functionally require direct access to the water, they sometimes acquire special charm and ambience when located over water and thus provide a valuable service to the public. Certain businesses, such as industries, airfields, and sewage disposal plants, might also justifiably be located on fills or over water because of their public value or the high cost of locating them inland.

Successful implementation of the water-dependency concept requires a strong monitoring and enforcement effort above the local government level. For San Francisco Bay, BCDC has provided the necessary effort, while in Washington, the state Shorelines Hearing Board and the courts have played similar roles. Despite the federal CZMA's mandate for planning coastal land and water uses, only BCDC has fully coordinated shoreline management with water surface area management.

Since 1974, federal funding has provided a major incentive for state implementation of CZM. An example of this influence is apparent in the efforts of OCZM, by delaying the state's grant, to induce the State of Washington to implement state coastal zone policies in the adjacent lands area. Severe reductions in federal CZM funding, unless replaced through OCS revenue-sharing or some other source, could make such OCZM coastal state disputes moot. Nevertheless, some states might view the benefits of the federal consistency obligation as a sufficient incentive to

maintain federal program approval. Coastal states with federally approved coastal programs and local governments within those states are just now beginning to perceive and receive the benefits of the federal consistency obligation. Unlike federal funds for coastal management which are distributed relatively evenly and widely, the benefits of federal consistency tend to be distributed unevenly, both temporally and geographically.

The fact that the West Coast programs are now in place or nearly so does not mean they have been entirely successful in achieving the ambitious goals set for them. A large share of their costs of program formulation and development already have been incurred. Operating costs will, of course, continue, but should decline over time as developers, the public, and other users adjust to new expectations about permissible uses of the coastal zone. Conversely, the larger share of the benefits will accrue in the future.

Washington and Oregon were the first states to obtain federal approval; all three West Coast states have adopted innovative and comprehensive coastal zone programs. The three states are used as models by other states. The successes and failures of these programs may be especially meaningful as a measure of the overall achievements of CZM. It is important, however, to remember that the real test of these programs lies in the future. The significant impact these programs have had in improving coastal zone management in the three states over the past ten years raises legitimate expectations for their future success. New ideas or policy developments, however, are not likely to occur in this field for a number of years. The concept of CZM was novel and dynamic in the 1960s and 1970s, but has now become an established part of the legal and administrative scenery of the West Coast states. The future is more likely to see efforts aimed at implementation, refinement, and defense of existing programs. Management of the economic, legal, and political effects of the existing programs and exportation of key concepts to other maritime nations will loom larger in the future.

It is unlikely that monitoring problems will be solved by any strikingly new institutional measures. If federal funding diminishes as expected, then state and federal agencies will withdraw further from their enforcement oversight activities. Program administration will be increasingly left to local governments, as has been the case in land use planning. Thus, successful enforcement of state-level policies, such as priority for water-dependent development, increasingly will depend on the knowledge, awareness, and efforts of private and public interest organizations and on the attitude of the judiciary.