accord on release language contained in the proposed settlement agreement (which is intended to prevent future litigation on the matter) remains to be reached before settlements can be reached between the remaining plaintiffs and BCE.

Upon the conclusion of this litigation, BCE will submit the revised proposed regulation to OAL, which has agreed to review and either approve or reject it promptly.

A two-line ruling issued in late November by the court in *State Water Resources Control Board (WRCB) and the Regional Quality Control Board, San Francisco Region v. Office of Administrative Law*, No. 906452 (San Francisco County Superior Court), favors OAL. Plaintiffs seek a writ of mandate ordering OAL to vacate its Determination No. 4 (Docket No. 88-006). In that ruling, OAL found that certain WRCB amendments to the San Francisco Bay Plan, which define "wetlands" and set forth certain criteria for permit discharges to wetlands, are regulations which must be adopted in compliance with the APA. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 164 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 196-97 for background information.)

The plaintiffs argued that since the contested amendments to the San Francisco Bay Plan were accomplished and approved by a regional arm of WRCB, WRCB's ratification and adoption of that local entity's actions is not subject to the APA. The terse ruling handed down by the court thus far rejects the plaintiffs' position; however, it is not possible at this point to determine whether the ruling will lead to invalidation of the amendments. A more definitive and complete ruling was expected to be issued by the court after January 15. The outcome of this case may be significant, because it bears upon the administrative rulemaking procedures and powers of several state boards and agencies which conduct activities and enforcement procedures via local arms or local enforcement agencies and regional policy boards.

OFFICE OF THE AUDITOR GENERAL

Acting Auditor General: Kurt Sjoberg (916) 445-0255

The Office of the Auditor General (OAG) is the nonpartisan auditing and investigating arm of the California legislature. OAG is under the direction of the Joint Legislative Audit Committee (JLAC), which is comprised of fourteen members, seven each from the Assembly and Senate. JLAC has the authority to "determine the policies of the Auditor General, ascertain facts, review reports and take action thereon...and make recommendations to the Legislature...concerning the state audit...revenues and expenditures...." (Government Code section 10501.) OAG may "only conduct audits and investigations approved by" JLAC.

Government Code section 10527 authorizes OAG "to examine any and all books, accounts, reports, vouchers, correspondence files, and other records, bank accounts, and money or other property of any agency of the state...and any public entity, including any city, county, and special district which receives state funds...and the records and property of any public or private entity or person subject to review or regulation by the agency or public entity being audited or investigated to the same extent that employees of that agency or public entity have access."

OAG has three divisions: the Financial Audit Division, which performs the traditional CPA fiscal audit; the Investigative Audit Division, which investigates allegations of fraud, waste and abuse in state government received under the Reporting of Improper Governmental Activities Act (Government Code sections 10540 *et seq.*); and the Performance Audit Division, which reviews programs funded by the state to determine if they are efficient and cost effective.

RECENT AUDITS:

Report No. P-032 (October 1990) is OAG's preliminary review of the Martin Luther King, Jr. (MLK) Community Plaza project in Oakland, in order to determine the extent of work needed for a full-scope audit. Since 1982, the City of Oakland has been in the process of attempting to develop the MLK project, which will be a community center for office, cultural, retail, health, education, and recreation activities. The project will be located on the site of University High School, which consists of a main building, an auditorium, and a gymnasium. In 1987, the city issued a request for developer qualifications (RFQ), and subsequently selected a developer whose site plan called for demolition of all of the buildings on the site.

OAG's preliminary review focused on five issues. These issues and OAG's findings include the following:

-OAG determined that it appears to be economically feasible for Oakland to refurbish the main building and auditorium; however, OAG cautioned that it did not have sufficient time to review the building codes and regulations that would govern different types of construction or uses, or to conduct a thorough cost analysis.

-Regarding whether the property is adequately protected from vandals and deterioration, OAG concluded that the lack of documentation regarding the condition of the buildings when the city acquired them severely limited any analysis of deterioration or neglect.

-OAG found that the developer's ability to complete the contract is primarily a legal question related to corporations, and therefore is beyond the scope of OAG's audit.

-OAG concluded that there was insufficient time to determine whether it would be in the best interest of the city to grant more time to the developer, to issue a new RFQ, or to sell the property. However, OAG noted that the city had already spent over $1.9 million on the project as of August 31, 1990, and the project manager estimated that the project will cost an additional $840,000 over the next four years, not including the cost of construction.

-Finally, OAG found that it could not determine whether the city's process for selecting its developer was adequate because of the lack of records providing necessary information.

As a result of this preliminary review, OAG recommended to the Joint Legislative Audit Committee that it amend the approved audit to focus on only two areas: whether it is economically feasible to refurbish the main building and the auditorium, and whether it is it in the best interest of the city to grant more time to the develop to complete the project, to issue a new RFQ, or to sell the property.

Report No. P-979 (November 1990). The purposes of this audit were to review procedures of the Los Angeles County Department of Mental Health (Department) for selecting contractors and granting contracts for the provision of mental health services for fiscal year 1989-90; determine whether the Department adequately reviewed its contractors for mental health services; and determine whether the Department adequately followed up to ensure that contractors correct deficiencies identified during program and fiscal reviews. In the course of its audit, OAG found that the Department continued to pay contractors that did not provide services in fiscal years 1987-88 and 1988-89; and determined that during fiscal years 1985-86 and 1986-87, the Department paid rates of more than $200 per unit of service to contracted providers of mental health

services (noting that such payments do not necessarily indicate that the Department paid these contractors more than was appropriate).

In the course of the audit, OAG found no evidence of abuse or illegal activities by the Department. However, the audit did reveal the following weaknesses in the Department's monitoring of its contractors for mental health services:

-the Department did not always clearly require contractors to submit corrective action plans when deficiencies were identified during program and fiscal reviews;

-the Department did not always ensure that contractors provided corrective action plans by the dates requested; and

-the Department did not always follow up to ensure that contractors corrected identified deficiencies.

OAG concluded that the Department needs to improve its monitoring of contracted providers of mental health services. In particular, the Department needs to improve its follow-up on deficiencies identified during reviews conducted by program and fiscal monitors.

Report P-776 (December 1990) was conducted by OAG in compliance with section 5090.12 of the Public Resources Code, which requires OAG to prepare and submit to the legislature on or before January 1, 1991, a performance audit report on the implementation of the Off-Highway Motor Vehicle Recreation Act of 1988. The California Off-Highway Motor Vehicle Recreation Program (Program), under the administration of the Department of Parks and Recreation (Department), manages the recreational activities of off-highway motor vehicles in this state. The legislature established the Program within the Department with the intention of providing adequate facilities for off-highway motor vehicles while conserving the state's natural resources. The term "off-highway motor vehicle" includes, but is not limited to, motorcycles, snowmobiles, jeeps, dune buggies, and all-terrain vehicles.

OAG's audit revealed the following conditions:

-At the state's most popular facility for off-highway motor vehicles (Pismo Dunes), the Department's procedures for enforcing the registration requirement for those vehicles were not adequate. As a result, unregistered off-highway vehicles were used at the facility.

-One of the Department's contractors failed to complete a mandated inventory of wildlife populations and habitats until more than six months after the statutory deadline, and will not complete the plans for the protection programs for these habitats until more than one year after the mandated deadline.

-A guidebook describing the laws and regulations of the Program and a report on the adequacy of existing facilities, both mandated by the legislature, are several years late, and the biennial status report, also mandated by the legislature, was at least one year late.

-The Department's expenditures for conservation and enforcement activities were not accurately recorded in five of eleven purchase orders sampled by OAG, due to the failure of Departmental staff to properly code these expenditures.

As a result of its audit, OAG recommended that the Department develop procedures which require staff at all off-highway vehicle recreation areas to review the registration status of off-highway vehicles at the entry gates to these facilities, when feasible; at checkpoints established periodically along trails; and during routine patrols of the facilities. OAG also recommended that the Department, when appropriate, promptly determine whether it will issue contracts to accomplish mandated reporting requirements or whether the Department will perform the tasks itself. Further, if the Department awards contracts to accomplish these requirements, it should ensure that contractors complete the work on time. Finally, OAG recommended that the Department ensure that staff use the existing code system to specifically identify all purchase orders that represent expenditures for conservation and enforcement activities.

Report P-023 (December 1990). The Budget Act of 1990 directed OAG to examine a sample of twenty recently established redevelopment project areas, and determine the extent to which school districts receive tax increment revenues pursuant to sections 33401 and 33676 of the Health and Safety Code. Section 33401 permits redevelopment agencies to pay school and community college districts for financial burden or detriment caused by redevelopment, such as increased services the districts must provide. Section 33676 permits districts to receive a portion of the tax increment revenues attributable to the inflation-caused increases in assessed value in the project areas. Tax increment revenues are the property taxes collected on any increase in the assessed value of property that occurs after the redevelopment project area is established. As a result of its audit, OAG found the following conditions in its sample of school and community college districts:

-Twelve districts entered into agreements to receive payments under Health and Safety Code section 33401 to alleviate financial burden caused by redevelopment; however, four of these districts do not appear to have received the payments that their agreements required.

-Nine districts received $349,400 under section 33676 of the Health and Safety Code during the three fiscal years ending 1989-90.

-Nineteen districts neither received payments nor have agreements to receive payments under the two statutes, thus losing the opportunity to receive an estimated $45.2 million in revenues over the expected lives of the project areas.

-Nine districts had their state aid reduced by $353,500 because the tax increment revenues they received under the two statutes were reported to the state as local property taxes.

In response to these conditions, OAG made the following recommendations:

-To ensure that tax increment revenues are calculated correctly, the State Department of Education (SDE) and the California Community Colleges (CCC) should notify all county auditor-controllers that tax increment revenues that districts received under section 33676 should be based on the tax on the base-year assessed value adjusted for inflation (up to 2% per year) minus the base-year assessed value.

-To ensure that school and community college districts receive tax increment revenues, the legislature should amend section 33676 to require school and community college districts to be allocated tax revenues when a redevelopment project area is established, unless an agreement is entered into or payments are received under section 33401.

-To resolve the varying opinions concerning the reporting funds received under section 33676, the legislature should clarify whether funds received under section 33676 should offset a district's general apportionment.

-SDE and CCC should jointly develop consistent instructions on how the county auditor-controllers should report tax increment revenues to the state under sections 33401 and 33676.

Report No. P-927 (December 1990) reviews Los Angeles County's foster care program. The report concludes that the Los Angeles County Department of Children's Services (County) must make significant improvements in providing services to foster children, and that the state Department of Social Services (DSS) must improve its oversight and administration of the County's foster care program.

The purpose, in part, of DSS' Child Welfare Services program is to prevent or remedy the neglect, abuse, or exploitation of children while preventing

the unnecessary separation of children from their families by assisting families in resolving their problems. State law establishes and defines four programs—Emergency Response, Family Maintenance, Family Reunification, and Permanent Placement—within Child Welfare Services. Foster care essentially occurs within the Family Reunification and Permanent Placement programs.

The review uncovered several shortcomings. For example, the County may be overplacing foster children in county foster homes. State law allows no more than three special needs foster children requiring special in-home health care to be placed in a foster home. However, the report states that 9% of the homes to which the County reported making payments for children with special health care needs may be caring for more than three special needs children. As a result, these children may not be receiving adequate or appropriate care.

Also, County social workers are not complying with visitation or medical history requirements. For example, the report estimated that social workers made only 41% of the required face-to-face visits with foster children, only 26% of the required face-to-face visits with parents or guardians of the children, and only 44% of the required contacts with the foster parents. One of the children in the review had not been seen by a social worker for seventeen months. Also, 72% of the foster parents surveyed had not received a medical history for the child at the time of placement. The report noted that the lack of visits and contacts is due, in part, to the excessive caseloads being managed by County social workers. However, the report notes that these excessive caseloads could be significantly reduced if the County filled all of the social worker positions authorized by its budget.

Other findings noted in the report include the following:

-DSS did not conduct compliance audits of the County's foster care program every three years as required, and did not ensure that the County correct deficiencies found during the last compliance audit.

-DSS takes an average of twelve months to process requests for license revocations against foster parents who may be neglecting or abusing children in the County.

-DSS failed to take the necessary steps to claim an estimated $156 million in federal funds from March 1987 to June 1, 1990, for administering the state's foster care program in all 58 counties.

To ensure that the foster care program of the Los Angeles County Department of Children's Services meets state requirements, the report recommended that the County:

-hire additional social workers to fill all the positions authorized by its budget;

-enforce state law, regulations, and County policies that require social workers to comply with visitation and medical history requirements and to place foster children appropriately; and

-develop and implement corrective action plans to correct deficiencies found during its internal reviews.

Further, to ensure that all counties' foster care programs meet state requirements and that the state receives all available federal funds, the report suggested that DSS:

-monitor the County's progress in complying with state laws that allow no more than three special needs children to be placed in a foster home;

-conduct statewide compliance reviews of the Child Welfare Services program, as required;

-develop formal procedures for ensuring that counties take corrective action once DSS has determined that the counties are out of compliance with state regulations;

-establish formal procedures for the timely processing of license revocations against foster parents; and

-aggressively pursue all available federal funding.

COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY (LITTLE HOOVER COMMISSION)

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The Little Hoover Commission was created by the legislature in 1961 and became operational in the spring of 1962. (Government Code sections 8501 *et seq.*) Although considered to be within the executive branch of state government for budgetary purposes, the law states that "the Commission shall not be subject to the control or direction of any officer or employee of the executive branch except in connection with the appropriation of funds approved by the Legislature." (Government Code section 8502.)

Statute provides that no more than seven of the thirteen members of the Commission may be from the same political party. The Governor appoints five citizen members, and the legislature appoints four citizen members. The balance of the membership is comprised of two Senators and two Assemblymembers.

This unique formulation enables the Commission to be California's only truly independent watchdog agency. However, in spite of its statutory independence, the Commission remains a purely advisory entity only empowered to make recommendations.

The purpose and duties of the Commission are set forth in Government Code section 8521. The Code states: "It is the purpose of the Legislature in creating the Commission, to secure assistance for the Governor and itself in promoting economy, efficiency and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies, and instrumentalities and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives...."

The Commission seeks to achieve these ends by conducting studies and making recommendations as to the adoption of methods and procedures to reduce government expenditures, the elimination of functional and service duplication, the abolition of unnecessary services, programs and functions, the definition or redefinition of public officials' duties and responsibilities, and the reorganization and or restructuring of state entities and programs. The Commission holds hearings about once a month on topics that come to its attention from citizens, legislators, and other sources.

MAJOR PROJECTS:

Real Property Management in California: Moving Beyond the Role of Caretaker (October 1990). According to this report, California owns, leases, and manages a significant number of real property holdings; as of July 31, 1990, the state owned 3,097 properties totalling more than 2.1 million acres. State properties are divided into four categories based on their use and the method of acquisition: operational properties, which include recreational properties (public trust lands such as parks, wildlife refuges, and other recreational holdings) and administrative holdings (such as office buildings, warehouses, and garages); institutional properties (such as prisons, hospitals,