

## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200

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August 25, 2002

TO: CALIFORNIA COASTAL COMMISSION

FROM: PETER M. DOUGLAS, Executive Director  
REBECCA K. ROTH, Federal Programs Manager

SUBJECT: **Federal Evaluation Findings for the California Coastal Management Program** for public hearing at the Coastal Commission Meeting of September 11, 2002, Item 9d.

Attached is a copy of the final "Evaluation Findings for the California Coastal Management Program" (CCMP), covering the period from December 1996 through May 2001 from the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA). As required by Section 312 of the Coastal Zone Management Act of 1972, OCRM conducted a periodic review of California's coastal management program. The report concluded that the Coastal Commission, the San Francisco Bay Conservation and Development Commission, and the State Coastal Conservancy are successfully implementing and enforcing the state's coastal management program.

**Commission Accomplishments**

The report cites the following ten accomplishments pertaining to the Commission:

1. Increase in staff as a result augmentation to the State's FY 2000 and 2001 budgets.
2. Improved effectiveness of the enforcement program.
3. Re-institution of the Local Planning Grants Program to assist local governments in completing and updating their Local Coastal Programs (LCPs); re-establishment of the Local Assistance Program; and, the Regional Cumulative Assessment Program efforts to evaluate regional development trends and cumulative impact issues.
4. Re-opening of the Eureka District Office.
5. Improved technical assistance capabilities including the addition of habitat conservation planners, ecologists and a geologist.
6. Effective use of federal consistency.
7. Improvement in public information and opportunities for public participation, including locating meetings to maximize the chance that projects will be heard in the local area, and creating and maintaining an excellent website.
8. Development of excellent programs to educate the public about coastal issues and allow the public to contribute to improving the health of coastal resources such as the Coastal Cleanup Day, the Adopt-A-Beach Program, the Save Our Seas Curriculum, the annual art/poster contest for K-6th graders, the Kids Cleanup Day, the Marina Clean and Green Campaign, and the Whale Tail License Plate program.

9. Initiation and work done in increasing public access to the California coast through the completion of the "Public Access Action Plan," work on the California Coastal Trail and development of a plan and work to protect prescriptive public rights.
10. Completion of and EPA and NOAA approval of the statewide non-point source pollution control program citing staff including the leadership in implementing the program by working with the State Board to establish an Interagency Coordinating Committee (IACC) of 38 State agencies.

### **Necessary Action and Program Suggestions**

The report details one necessary action and twelve program suggestions. The necessary action requires the Commission to continue efforts to establish a statewide periodic review program that will address the current backlog of periodic reviews and allow the Commission to meet the statutory requirement of conducting a periodic review for each certified LCP every five years. The action recommends that the Commission should seek resources for this purpose. The Commission has submitted a budget change proposal to seek staff for this purpose for the last five years. The Commission did receive some initial support for additional staff to work on priority reviews; however, the few positions provided were insufficient to address the large backlog. In 2000, the Commission staff prepared a supplemental report of the 2000 Budget Act for the Joint Legislative Budget Subcommittee that outlined a 5 year phased program and staffing needs to eliminate the backlog. Subsequent staffing requests (e.g. 14 positions requested in Fiscal Year 2002/03) necessary to establish the statewide periodic review program and implement a phased strategy to eliminate the backlog of reviews were ultimately not approved. As such, there continues to be a tremendous need for additional staff to review the 88 certified LCPs and LCP segments that were developed in the late 1970's or 1980's.

### **Executive Summary and Findings**

The Executive Summary provides an overview, summary of accomplishments, and summary of findings and recommendations (*pages i through xii*). The more detailed findings and recommendations can be found on pages *41 through 65*. A number of the findings discuss the effects of the Coastal Commission's continuing staffing deficits in many of the program's core functions such as local assistance, periodic reviews, enforcement, technical services, public access, public information, public education and long range planning.

### **Agency and Public Participation**

During the evaluation two public hearings and numerous meetings were held with approximately 65 representatives for federal, state and local governments and interest groups. In addition, six site visits were conducted during the ten-day evaluation that dealt solely with the Coastal Commission. Twenty public comment letters about the Commission, as well as OCRM's responses to those letters, are attached to the report (*See Appendix D*).



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL OCEAN SERVICE  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
Silver Spring, Maryland 20910

JUL 18 2002

Mr. Peter M. Douglas  
Executive Director  
California Coastal Commission  
45 Fremont Street, 20th Floor  
San Francisco, CA 94105-2219

Mr. William Travis  
Executive Director  
San Francisco Bay Conservation and Development Commission  
50 California Street, Suite 2600  
San Francisco, CA 94111

Mr. Sam Schuchat  
Executive Director  
State Coastal Conservancy  
1330 Broadway, Suite 1100  
Oakland, CA 94612-2350

Dear Mr. Douglas, Mr. Travis, and Mr. Schuchat:

Enclosed are the Final Evaluation Findings for the California Coastal Management Program (CaCMP), covering the period from December, 1996 through May, 2001.

We appreciate your cooperation, and that of your staff, in conducting this evaluation of the CaCMP.

Sincerely,

Douglas L. Brown  
Deputy Director

Enclosure



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**FINAL EVALUATION FINDINGS**  
**FOR THE**  
**CALIFORNIA COASTAL MANAGEMENT PROGRAM**  
**DECEMBER, 1996 THROUGH MAY, 2001**

**Office of Ocean and Coastal Resource Management**  
**National Ocean Service**  
**National Oceanic and Atmospheric Administration**  
**United States Department of Commerce**



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## **EXECUTIVE SUMMARY**

### **A. OVERVIEW**

Section 312 of the Coastal Zone Management Act (CZMA) of 1972, as amended, requires NOAA's Office of Ocean and Coastal Resource Management (OCRM) to review the performance of states and territories with federally-approved coastal management programs. This review examined the operation and management of the California Coastal Management Program (CaCMP) by the three lead agencies – the California Coastal Commission (CCC), the San Francisco Bay Conservation and Development Commission (BCDC), with jurisdiction in the San Francisco Bay segment of the program, and the State Coastal Conservancy (SCC) – for the period from December, 1996 through May, 2001.

It is the conclusion of this evaluation that the CaCMP is satisfactorily implementing and enforcing its federally-approved coastal management program, addressing the coastal management needs identified in Section 303(2)(A) through (K) of the CZMA, and adhering to the terms of federal financial assistance awards. This document contains one recommendation in the form of a Necessary Action that is mandatory and 19 recommendations in the form of Program Suggestions that denote actions OCRM believes the State should take to improve the program, but which are not mandatory at this time.

### **B. SUMMARY OF ACCOMPLISHMENTS**

Significant accomplishments have been made in the following areas listed below. These are reviewed in detail in Section IV.

#### **CaCMP-WIDE**

1. A major reason for the effectiveness of the CaCMP is the committed, creative, innovative and passionate staff of the three CaCMP lead agencies. The CaCMP's Executive Directors and managers are proven leaders who have been able to attract and retain high quality staff, who are well-respected and able to work constructively with a wide array of interests.
2. Under the Joint Access Program created in 1979, the CCC and the SCC have worked together to create over 2,000 new public access sites along the California coast. During this review period, the two agencies have cooperated to facilitate the acceptance by qualified agencies or non-profit groups of Offers to Dedicate public access easements (OTDs), which have been secured as mitigation for past development projects. OTDs are open for a fixed period of time, usually 21 years. If they are not accepted by a qualified entity during that time, they expire, and the opportunity for public access at that site is lost forever. Through planning and mapping assistance, outreach, grants to local government, technical assistance publications, and a Memorandum of Understanding between the SCC and the

CCC, the two agencies have doubled the acceptance rate for OTDs during the review period.

3. In 1995, the CCC took the initiative to form the Coastal and Ocean Manager Group. The Group consists of the Executive Directors of the CCC, BCDC and SCC, the Managers of California's two and one proposed National Estuarine Research Reserves and four National Marine Sanctuaries, the State Lands Commission and the Ocean Program. During this review period, the Group has been a very effective forum for these Executives and Managers to share information, discuss approaches to common problems and issues, and identify opportunities for coordination. All three of the CaCMP implementing agencies participate actively in the Group and it has become an effective mechanism for CaCMP-wide coordination that was lacking before it was created.

## **CALIFORNIA COASTAL COMMISSION**

1. The State's FY 2000 and 2001 budgets included significant increases in CCC staffing.<sup>1</sup> This has resulted in substantial improvements to program operations, better implementation of the California Coastal Act and better customer service.

2. In June of 2000, CCC received authority for a substantial augmentation of its enforcement staff. As a result, CCC has been able to increase its Headquarters enforcement staff and now has enforcement staff in each of its six District Offices. The additional staff have improved the follow-up on reports of violations, initiated monitoring activities, and opened and investigated new cases. CCC has greatly improved the effectiveness of its enforcement program, which was a major concern of the two previous evaluations.

3. During the review period, CCC was also able to re-institute its Local Planning Grants program to assist local governments in completing and updating their Local Coastal Programs (LCPs). In addition, CCC was able to re-establish its Local Assistance Program, to provide information and technical assistance to coastal planners in local governments. Four new staff have also been provided to the CCC District Offices to assist local governments who are undertaking major LCP completion or update efforts. CCC is also continuing its Regional Cumulative Assessment Program (ReCAP) efforts to evaluate regional development trends and cumulative impact issues, focusing during this review period on the Santa Monica Mountains/Malibu area, and CCC is nearing completion of a periodic review of the San Luis Obispo (SLO) County LCP, using the ReCAP methodology. These efforts have resulted in 4 submittals of new LCP components to the CCC, updates of 18 certified LCPs, as well as development of databases to assist planners in tracking access and conservation easements.

4. In 1999, CCC was able to re-open its North Coast District Office in Eureka, California. The re-opening of this District Office, which had been closed since 1985, substantially improves service to

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<sup>1</sup>Subsequent to the evaluation site visit, the CCC's FY 2001 general fund budget baseline was cut by \$413,000.

North Coast communities and residents along 313 miles of shoreline, 30% of the State's total.

5. During the review period, CCC was able to add several scientific and technical staff to provide critical analysis functions for the large number of regulatory and planning items it acts upon each year that raise scientific and technical issues. These include hiring two staff biologists/ecologists and a geologist to assist in analyzing complex wetlands and hazards issues raised by development proposals. In addition, CCC has recently been able to add two habitat conservation planners for its Technical Services Unit to help review and participate in meetings involving the increasing number of habitat conservation plans in the coastal zone. CCC has also been able to increase the staff of its Mapping Unit to provide data layers, aerial photography and other geographic information for use in permitting and planning efforts. These staff have substantially improved the CCC's access to sound scientific and technical information for decision-making.
6. CCC continues to make effective use of its federal consistency authority. During the review period, CCC staff have continued to provide excellent federal consistency reviews of federal projects and federally-licensed or permitted projects, and have resolved many issues through collaboration and cooperation with federal agencies. In addition, CCC staff participated in OCRM's efforts to revise the Federal Consistency regulations and quickly updated its guidance documents, including "Federal Consistency in a Nutshell," after the final regulations went into effect.
7. CCC has made significant progress in improving public information and opportunities for public participation, including locating meetings to maximize the chance that projects will be heard in the local area, creating an excellent website that posts the CCC meeting agendas, meeting results and staff reports of interest to the public, changing meeting procedures to allow both project proponents and opponents to make the best use of their limited time, and addressing the concerns of the previous evaluation regarding *ex parte* communications.
8. The CCC has developed excellent programs to educate the public about coastal issues and allow the public to contribute to improving the health of coastal resources. These include the Coastal Cleanup Day, the Adopt-A-Beach Program, the Save Our Seas Curriculum, the annual art/poster contest for K-6th graders, the Kids Cleanup Day, the Marina Clean and Green Campaign, and the Whale Tail License Plate program.
9. The CCC continues to show outstanding initiative in increasing public access to the California coast. In June, 1999, CCC issued its "Public Access Action Plan," which highlighted CCC's three top projects to improve public access priorities – the Offer to Dedicate (OTD) Public Access Easement Program, the California Coastal Trail, and Prescriptive Rights. As described under the Joint Access Program, CCC has taken a leadership role to work cooperatively with SCC to find qualified accepting agencies and groups for the OTD easements. CCC has analyzed gaps in the California Coastal Trail system and has worked with SCC and other public and private partners to identify creative ways to close some of the gaps. CCC has also identified and developed a plan to protect the public's right of access to the sea where acquired through historic use (so-called "prescriptive rights").

10. In July, 2000, California's statewide non-point source pollution control program was approved, making it the third fully-approved coastal non-point program in the Nation. The CCC and the State Water Resources Control Board (State Board) formed a partnership to develop and implement a statewide non-point source pollution control program that full integrates the programs under Section 6217 of the Coastal Zone Act Re-authorization Amendments and Section 319 of the Clean Water Act. Over the past year, CCC has shown leadership in implementing the program, including working with the State Board to establish an Interagency Coordinating Committee (IACC) to serve as the primary forum for coordination of program activities of the lead and implementing agencies.

## **SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION (BCDC)**

1. BCDC is accomplishing its mission of stopping unnecessary filling of San Francisco Bay and increasing public access to the Bay. Shrinkage of the Bay has ended and public access has increased from only 4 miles of accessible shoreline when BCDC was established to over 200 miles today.

2. During this review period, BCDC has strengthened its role in region-wide planning through forming several effective partnerships with federal, state and local agencies and private groups. With more adequate staff and resources, due to a growing budget, BCDC has been able to extend beyond its permitting role into a proactive regional planning approach. Some of the noteworthy benefits of this approach include:

- The Long-Term Management Strategy (LTMS) for the Placement of Dredged material in the San Francisco Bay Region. BCDC and its partners in the LTMS completed a Management Plan in June of 2000 that will result in reducing in-Bay disposal of dredged material from the current 80% to 20% by 2012. The LTMS also includes the establishment of the Dredged Material Management Office (DMMO), a one-stop shop for dredging permit applicants. The DMMO was awarded the NOAA Excellence Award for Integrated Coastal Zone Management in 1999.
- Major revisions to the San Francisco Waterfront Special Area Plan, which increases public access opportunities while maintaining a strong role for maritime-related uses.
- The Oakland Army Base Reuse Plan, which will allow the Port of Oakland to expand without filling approximately 127 acres of the Bay.
- Bridge replacement planning, which streamlined the review process for the eastern span of the San Francisco-Oakland Bay Bridge and the Benecia-Martinez Bridge, while improving public access and minimizing harm to the Bay's resources.



- Regional transportation planning, which resulted in 2000 in the establishment of the San Francisco Bay Area Water Transit Authority (WTA) to prepare a plan for expanded ferry service in San Francisco Bay.
- Smart growth partnership, which is helping to integrate two significant regional programs to address urban sprawl and develop alternative growth strategies that will better serve the Bay Area's growing population.
- A "toolkit" for North Bay communities to protect wetlands and agriculture.
- A major, cutting-edge study to address public access and wildlife compatibility issues.
- Initiating revisions to the San Francisco Bay Plan's policies on marshes and mudflats, including a proposed Subtidal (Aquatic) Goals Project in order to create a scientifically-based vision for restoration, enhancement and protection of Bay aquatic habitats.
- Assistance in planning the San Francisco Airport Expansion Project, including working with NOAA to convene a panel of scientific experts to identify the key scientific questions the airport should address in its environmental reviews.

3. BCDC has continued to emphasize regulatory streamlining during the review period. Specifically, BCDC increased the range of projects that can be approved administratively by pre-approving a wider variety of activities under its region-wide permits and by creating a new category of abbreviated region-wide permits. BCDC's website also provides excellent information for permit applicants and BCDC continues to offer pre-application consultation through its innovative volunteer review boards – the *Design Review Board* and *Engineering Criteria Review Board*.

4. BCDC's annual strategic planning process, which involves all of the managers and staff, as well as all of the Commissioners and Alternates, has been invaluable in focusing the agency's efforts toward pro-active planning and partnership-building activities.

5. BCDC has been effective in bringing scientific and technical assistance to inform policy and development decisions around the Bay, by relying on a flexible, case-by-case approach that targets specific projects or issues. BCDC has also taken steps to increase the public's understanding of BCDC's mission, jurisdiction and authority, including hiring a public information intern to deal with short-term requests, hiring an outside consultant to plan a long-term public information campaign, improving BCDC's public website, and entering into a partnership to produce a video documentary about San Francisco Bay.

## STATE COASTAL CONSERVANCY (SCC)

1. During the review period, SCC continued to work effectively with CCC to implement the Joint Access Program, established the new San Francisco Bay Area Conservancy Program under a 1997 mandate from the State Legislature, and used the new resources from the Parks Bond Act of 2000 to fund significant projects to improve public access and protect natural resources along the California coast and San Francisco Bay.
2. SCC provided important leadership on wetlands restoration, including partnering with BCDC to expand wetland restoration at the former Hamilton Air Force Base by purchasing adjacent land known as Bel Marin Keys, and by providing the main staff support for the Southern California Wetlands Recovery Project (SCWRP). SCWRP is a partnership of 16 state and federal agencies to acquire, restore and enhance coastal wetlands and watersheds between Point Conception and the International border with Mexico.
3. SCC continues to produce excellent outreach and education materials, including its signature publication, *Coast & Ocean*, as well as many other publications on public access, coastal wetlands and technical assistance to non-profit groups and land-owners. SCC also emphasizes outreach and training to build the capacity of non-profit groups and individuals to undertake conservation projects.

## C. SUMMARY OF FINDINGS AND RECOMMENDATIONS

### CaCMP-WIDE

**Finding:** Although each of the three CaCMP lead agencies – the CCC, BCDC and SCC – has a strong individual identity, there is no identity for the overall CaCMP. Few people understand how the three lead agencies inter-relate and what their respective roles are in implementing the CaCMP. Although the lead agencies are involved in many of the same regional and statewide initiatives, to the Evaluation Team's knowledge, there has been no organized effort to clarify their respective roles in these initiatives or target their limited resources. To the Team's knowledge, the Coastal and Ocean Managers Group has not been used to discuss how to expand CaCMP program visibility and coordination.

**Program Suggestion 1:** The three lead agencies for the CaCMP – CCC, BCDC and SCC – should work together, using the Coastal and Ocean Managers Group where appropriate, to develop a proactive strategy for expanding CaCMP coordination and increasing the public's understanding of the overall CaCMP. The strategy should consider:

- seeking opportunities to increase the public's understanding of the overall CaCMP and each of the three lead agencies' roles. The agencies should consider making use of

existing publications for this purpose, such as the SCC's *Coast and Ocean*.

- developing a symbol or logo for the CaCMP that all three of the lead agencies could use along with their agency logos.
- developing a CaCMP brochure and information that can be included in each of the agencies' public information materials.
- coordinating more closely on regional and statewide coastal initiatives, including clarifying their respective roles in these various initiatives and analyzing how best to target their limited resources to serve the needs of the coast.
- making more use of their partners, such as National Estuarine Research Reserve and National Marine Sanctuary Advisory Committees, to obtain feedback on regional issues and projects.

**Finding:** Despite a doubling of the acceptance rate for Offers to Dedicate Public Access easements during this review period, the terms of more than 30% of the existing 1200+ OTDs will expire within the next four years unless accepted by a qualified entity. Once an OTD has expired, the opportunity to gain a public access easement at that location is, in most cases, lost forever. Given the large pulse of expiring OTDs in the next 4 years, there is a special urgency for the SCC and the CCC to work together to identify alternative approaches for locating accepting entities for expiring OTDs. However, this collaboration is being impeded by a difference of opinion regarding interpretation of the terms of a 1998 Memorandum of Understanding between the agencies.

**Program Suggestion 2:** The SCC and the CCC should undertake time-critical review of OTDs that are due to expire within the next 2-4 years, agree on priorities for acceptance, and determine their respective roles in undertaking an intensive community outreach effort to identify potential accepting agencies. The SCC and the CCC should clarify their roles involving OTDs and make changes, if needed, to their existing MOU.

## **CALIFORNIA COASTAL COMMISSION**

**Finding:** Although staffing levels at the CCC have increased recently, staffing is still only marginally adequate for many core functions. More staff are needed for local assistance to coastal cities and counties, periodic reviews of Local Coastal Programs, dealing with a large backlog of enforcement cases, scientific and technical expertise to meet the needs of local governments, dealing with the large number of expiring Offers to Dedicate Public Access easements over the next few years, and public education and long-range planning.

**Program Suggestion 3:** CCC should analyze and quantify staffing requirements to meet unmet needs

in core program areas, such as local assistance, LCP periodic reviews, monitoring and enforcement, technical services, public access, public education and information, and long-range planning. CCC should continue to seek staff augmentations in these areas.

**Finding:** A large backlog of un-investigated enforcement cases has built up over the past few years due to lack of enforcement staffing. CCC estimates this backlog at 620 cases statewide. Additional enforcement staff are needed to resolve the backlogged cases. In addition, CCC needs to re-institute systematic monitoring of both permitted and un-permitted activities, educate the public (so-called "interpretative enforcement") to reduce the incidence of violations, and have additional tools, such as administrative fine or "ticketing" authority, to deal with minor violations.

**Program Suggestion 4:** CCC should consider ways to increase the emphasis on interpretive enforcement – educating the public so as to prevent unintentional violations. When staff resources allow, CCC should also implement systematic monitoring of both permitted and un-permitted activities; explore opportunities to make its Enforcement Database more robust (by adding more data layers) and integrate it with the Permit Tracking Database in GIS format; and join with interested state and local agencies to create additional enforcement task forces like the Santa Monica Mountains Enforcement Task Force. CCC should consider seeking legislation to provide administrative fine authority, in order to streamline the enforcement process.

**Finding:** The California Coastal Act envisions that most coastal development permitting will be handled by local governments under Local Coastal Programs (LCPs) that have been certified by the CCC. However, 30% of these LCPs have never been completed and CCC processes coastal development permits directly in these areas. In 1993, the Legislature removed the Coastal Act mandate for remaining local governments without certified LCPs to complete them, because it was considered an unfunded mandate. As a result, permit processing takes precedence at the CCC over other statutorily-intended functions, and the public is frustrated because decisions are removed from the local level, where they were intended to be made.

**Program Suggestion 5:** The CCC should work with the Administration, Legislature and constituents to seek increased incentives to enable local governments to complete remaining uncertified LCPs. CCC should also explore options with these parties for re-instituting the statutory mandate for local governments to complete LCPs.

**Finding:** The majority of the 88 certified LCPs and LCP segments were developed in the late 1970's or 1980's and have never been comprehensively updated. Instead, they have been amended in a piecemeal fashion and their policies have become increasingly out-of-date. The Coastal Act requires the CCC to conduct periodic reviews of certified LCPs at least every five years, but CCC has not been able to do so because of lack of staff. Through its Regional Cumulative Assessment Program (ReCAP), CCC has developed an effective methodology for assessing trends and cumulative impacts, but CCC has only had the resources to apply this methodology to one periodic review – for San Luis Obispo County.

**Necessary Action 1:** The CCC must continue efforts to establish a statewide periodic review program that will address the current backlog of periodic reviews and allow the CCC to meet the statutory requirement of conducting a periodic review for each certified LCP every five years. NOAA/OCRM acknowledges that establishing this program will require more resources for the CCC and strongly supports efforts to seek resources for this purpose.

**Program Suggestion 6:** The CCC should consider seeking legislative changes to the Coastal Act that will encourage local governments to revise their LCPs based on the recommendations made as a result of periodic review.

**Finding:** There is an unmet need for technical assistance from the CCC to support local planning efforts. There is a high turnover of staff in local planning departments and this creates the need for CCC District Offices to help train and orient new staff on the requirements of the Coastal Act, as well as provide ongoing scientific and technical services, advice and mentoring programs. Community planners who are implementing LCPs on-the-ground also need a forum to exchange information and solutions to common issues and problems.

**Program Suggestion 7:** When resources permit, the CCC should seek additional ways to provide increased assistance to local governments in the CaCMP. Some ideas CCC could consider are:

- providing regular training for new CCC planners and local planners of the California Coastal Act. CCC should explore opportunities to coordinate this training with the NOAA CSC and/or the NERRS Coastal Training Initiative.
- contracting with experienced retirees of the CCC and local planning departments to assist with LCP updates and mentor new staff.
- sponsoring Regional Planners Forums, possibly in conjunction with California Sea Grant, to facilitate information exchange on planning issues and projects.
- exploring ways to make more technical services available to CCC District Offices and local governments, including GIS tools that District and local staffs can use. One such tool could be providing additional data, such as ReCAP data layers, on the CCC website that local planners can use.

**Finding:** From 2002 to 2005, an average of 70 Offers to Dedicate Public Access easements per year will reach their expiration dates. Because of the CCC's specialized knowledge about these expiring OTDs, the majority of the work to prepare them for acceptance has fallen to CCC staff. The CCC needs more staff, especially over the next 5 years, to handle this large workload pulse from expiring OTDs. In addition, under the SCC's interpretation of its 1998 Memorandum of Understanding with the CCC, SCC agreed to *consider* accepting expiring OTDs as a last resort, but reserved the right,

after consideration, not to accept some OTDs and to allow them to expire. At present, CCC cannot perform this function because it is prohibited from holding interests in land. In addition, currently there is no systematic tracking to determine if OTDs that have been accepted have actually been opened to the public.

**Program Suggestion 8:** The CCC should consider seeking legislation to allow it to become the acceptor of expiring OTDs that the SCC cannot accept, and to hold the OTDs until a suitable agency or non-profit group can open them to the public. The CCC should also consider expanding its OTD tracking system to track openings and closings of OTD access ways.

**Finding:** In recent years, California has turned increasingly to the development of Habitat Conservation Plans (HCPs) under the federal Endangered Species Act and Natural Community Conservation Plans (NCCPs) under the State's Natural Communities Conservation Planning Act to balance development of land with impacts to threatened and endangered species. Many HCPs or NCCPs in the coastal zone require amending certified Local Coastal Programs. The agencies principally responsible for leading the development of HCPs and NCCPs, the State Department of Fish and Game and the federal U.S. Fish and Wildlife Service and National Marine Fisheries Service, note the need for early involvement by the CCC in the development process so that Coastal Act policies can be addressed at an early stage of planning. In 2001, the CCC hired two full-time Habitat Conservation Planners, who will greatly increase CCC's capacity for early involvement in HCP and NCCP development.

**Program Suggestion 9:** The CCC should work with Federal, state and local governments early in the planning process for HCPs and NCCPs affecting coastal resources and uses in order to ensure that the requirements of the Coastal Act are integrated into the HCP and NCCP development processes at the earliest point feasible

**Finding:** Through its ReCAP Program, CCC has documented the increasing incidence of "shoreline armoring" – that is, placement of hard protective structures, such as vertical seawalls, revetments, riprap and bulkheads – to mitigate localized shoreline erosion. These structures change the beach profile from a gentle slope, which dissipates wave energy, to a steep slope, which magnifies wave energy. The net result is the rapid loss of the sandy beach. Current Coastal Act policies require the CCC to grant permits for shoreline armoring for "existing development" that is threatened by shoreline erosion, with no cut-off date for defining "existing development." Other coastal states use alternative erosion control approaches, which help to preserve beaches. The California Resources Agency is also undertaking a statewide shoreline erosion policy study, which may result in a new statewide strategy for dealing with shoreline erosion.

**Program Suggestion 10:** CCC should participate, as appropriate, in the development of the California Resources Agency's revision of the State's coastal erosion policy. CCC should also seek resources for the State Lands Commission and other appropriate entities to perform studies to assess regional and sub-regional shoreline processes, with particular focus on areas that exhibit both erosion and encroaching development. CCC should review the innovative mitigation programs of other states.

CCC should also consider seeking legislation to clarify Coastal Act policies regarding both new and existing development in erosion-prone areas and promote alternatives to conventional shoreline armoring that can impact adversely an eroding shoreline, such as setbacks, beach renourishment, or moving structures away from high hazard areas.

**Finding:** During the review period, the CCC has improved the public participation process by providing more information to the public, making Commission meetings more accessible, and establishing procedures to insulate Commissioners from *ex parte* communications. However, commenters still felt that, too often, projects were not heard in the local area. Some commenters also seemed confused about the CCC's jurisdiction and permitting process. Commenters at the evaluation public meetings had widely varying opinions about the effectiveness of the CCC; the CCC needs a mechanism for assessing the overall level of public satisfaction with its operation.

The process of making appointments to the CCC was also a concern noted in the previous evaluation. This process, under which the California Assembly, the Senate and the Governor each appoint four Commissioners, was ruled an unconstitutional violation of the Separation of Powers by the State Superior Court in *Marine Forests Society, et al v. California Coastal Commission, et al*. The decision in this case is now on appeal. It is not appropriate for the evaluation to comment on this issue until a final decision has been rendered by the courts.

**Program Suggestion 11:** The CCC should seek additional ways to provide increased public information and participation in the CaCMP. Some ideas the CCC could consider are:

- exploring the feasibility of televising or tele-conferencing Commission meetings in order to increase the public's ability to participate. If resources are available, the CCC should do a cost analysis of these options and present this to the California Resources Agency.
- promoting its website more in meeting agendas and providing an online bulletin board for public comments/questions.
- when resources permit, developing a Citizens Guide describing CCC's jurisdiction, what activities require a Coastal Act permit, how to go about obtaining a permit, and when permits are required. This Guide should also explain the coastal zone boundaries, including the reasons why they are wider in some places than others.
- when resources permit, conducting a public opinion poll, perhaps in cooperation with the League of Women Voters, to determine the public's level of satisfaction with the CCC and opinions concerning key coastal issues. This poll could contain benchmarking questions that could be used to assess changes in public opinion over time or to determine whether CCC activities and

programs result in increased or decreased public satisfaction.

**Finding:** The CCC has done an excellent job within its limited resources of developing public education and outreach programs for kids, adults and teachers. However, as one commenter noted, a whole new generation has come into the world since the Coastal Act was passed in 1976. Another important factor for the public education program is the growing Spanish-speaking population. Much of the Spanish-speaking population is under-served by traditional public education programs.

**Program Suggestion 12:** When resources permit, CCC should seek to expand on its public education and outreach activities, and especially seek to serve under-served audiences, such as Spanish-speaking communities.

## **SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**

**Finding:** Despite recent staff increases, BCDC's enforcement workload grew during the review period and its backlog of pending enforcement cases tripled – from 46 pending cases at the beginning of 1997 to 149 pending cases by the end of 2000. BCDC also currently lacks any systematic process for compliance inspections of permitted projects or for monitoring of un-permitted activities. Instead, it relies on “good neighbors,” such as California Department of Fish and Game, San Francisco Baykeeper and citizen reports of violations.

**Program Suggestion 13:** BCDC should strengthen and systematize its enforcement process. BCDC should implement a systematic compliance inspection process for permitted activities and should analyze options for routine monitoring of the San Francisco Bay shoreline for un-permitted activities. Because of the urbanized nature of the shoreline, BCDC should explore partnerships with other state and federal agencies for using airplane overflights or other means to monitor for un-permitted activities.

**Finding:** The two most recent previous evaluations of the CaCMP have noted the need to educate the public about BCDC's role and what it has accomplished. In the 35 years of BCDC's existence, the population of the Bay area has grown substantially. Many new residents may not be aware of how shallow the Bay is, how much of the shoreline is already built on fill, or how vulnerable the Bay remains to filling, pollution or habitat loss. They also may not be aware of BCDC's role in addressing these issues.

**Program Suggestion 14:** BCDC should continue to place priority on implementing its public outreach program aimed at increasing the public's awareness of San Francisco Bay issues and BCDC's role in addressing them. BCDC should continue to provide dedicated staff support for this effort, either through continuation of the public outreach internship or another position. BCDC should also explore additional opportunities to expand the public information on its website, if possible under the new State directive, and provide increased electronic distribution of information, where feasible.



**Finding:** This evaluation identified a need for greater BCDC involvement in California's Coastal Non-point Pollution Control Program, as well as better coordination of activities between BCDC and the San Francisco Regional Water Quality Control Board. While BCDC's authority is limited and its jurisdiction extends over only a small part of the watershed that drains into San Francisco Bay, BCDC does have an important role in improving the water quality in San Francisco Bay. BCDC's analysis of its current polluted runoff authority identifies the authority to implement several of the urban, marinas and recreational boating, hydromodification and wetlands management measures called for in California's Coastal Non-point Program. However, BCDC's participation is hampered by lack of funding and staff resources.

**Program Suggestion 15:** BCDC should work to increase its participation in the California Coastal Non-point Pollution Control Program and to strengthen the relationship with the Regional Water Board. This could be accomplished by participating in the Statewide Interagency Coordinating Committee (IACC) on the Non-point Pollution Control Program, amending the Memorandum of Understanding with the Regional Water Board, participating in the development and review of various water quality management plans, or other appropriate means. NOAA encourages BCDC to continue to assess gaps in the program for coastal non-point pollution control in the San Francisco Bay area and to seek opportunities and funding to address those gaps.

**Finding:** BCDC needs to increase public awareness of the comprehensive, linked system of public access points around the San Francisco Bay shoreline.

**Program Suggestion 16:** BCDC should consider developing additional signage and information to promote the public access that exists around the San Francisco Bay shoreline. BCDC should provide the public with information on the public access created by BCDC as an accountability measure.

**Finding:** BCDC needs to continue its pro-active planning and partnership efforts that are just in the beginning stages, such as the regional "Smart Growth" strategy for the Bay, the LTMS Management Plan for disposal of dredged material, the Public Access and Wildlife Compatibility Project, the San Francisco Waterfront Plan and other efforts described in its new Section 309 Coastal Zone Enhancement Strategy.

**Program Suggestion 17:** BCDC should continue its proactive long-range planning and partnership building activities in order to keep a focus on the health of the Bay ecosystem.

## STATE COASTAL CONSERVANCY

**Finding:** The SCC has been a major source of technical assistance and capacity building for local land trusts and other community and non-profit groups. A key need identified through SCC's partnerships with these groups is the need for funding to support the operation and maintenance of public access

ways and to support stewardship activities on lands purchased for long-term public enjoyment and conservation. To help respond to this need, SCC in 1997 succeeded in obtaining legislation to allow CCC permit fees to go into a fund that SCC administers for this purpose.

**Program Suggestion 18:** The SCC should continue to provide technical assistance to local and nonprofit groups, assess needs, and look for opportunities to meet these needs. In this regard, SCC should continue to seek innovative sources of stewardship funding to assist community and nonprofit groups to maintain public access ways and conservation lands.

## **PROGRAM CHANGES**

**Finding:** BCDC continues to submit program changes in a timely manner to OCRM, as provided in NOAA's regulations. However, CCC has not kept up with this requirement during the review period.

**Program Suggestion 19:** The CCC should continue to work with OCRM/Coastal Programs Division staff to develop expedited procedures and an action plan for submitting programs changes to the CaCMP.

## I. INTRODUCTION

Section 312 of the Coastal Zone Management Act (CZMA) of 1972, as amended, requires NOAA's Office of Ocean and Coastal Resource Management (OCRM) to conduct a continuing review of the performance of states and territories with federally-approved coastal management programs. This document sets forth the evaluation findings of the Director of OCRM with respect to how the State of California has implemented and enforced the California Coastal Management Program (CaCMP), addressed the coastal management needs identified in Section 303(2)(A) through (K) of the CZMA, and adhered to the terms and conditions of the NOAA financial assistance awards for the period from December, 1996 through May, 2001. It contains an executive summary of the review findings, a description of the review procedures, a description of the coastal program, major accomplishments during the review period, evaluation findings and recommendations, a conclusions and appendices.

The recommendations made by this evaluation appear in bold type and follow the section of the findings in which the facts relevant to the recommendation are discussed. The recommendations may be of two types:

**Necessary Actions** address programmatic requirements of the CZMA's implementing regulations and of the CaCMP approved by NOAA, and must be carried out by the date(s) specified;

**Program Suggestions** denote actions that OCRM believes would improve the program, but which are not mandatory at this time. If no dates are indicated, the State is expected to have considered these Program Suggestions by the time of the next CZMA Section 312 evaluation.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specific in the CZMA Section 312 (c). Program Suggestions that must be reiterated in consecutive evaluations to address continuing problems may be elevated to Necessary Actions. The findings in this evaluation document will be considered by NOAA in making future financial assistance award decisions relative to the CaCMP.

## **II. REVIEW PROCEDURES**

### **A. OVERVIEW**

The Office of Ocean and Coastal Resource Management (OCRM) evaluation staff began its review of the California Coastal Management Program (CaCMP) in December, 2000. Staff worked with OCRM's Coastal Programs Division (CPD) as a team in the preparation for and conduct of this review. The Section 312 evaluation process involves four distinct phases:

- an initial document review and identification of specific issues of concern;
- a two-part site visit to California including scheduled interviews and three public meetings, one during the Part I site visit and two during the Part II site visit;
- subsequent development of the draft evaluations findings; and,
- preparation of the final evaluation findings based, in part, on comments from the State regarding the content and timetables of necessary actions specified in the draft document.

### **B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT**

This process included an analysis of the following documents of relevance to the CaCMP: the federally-approved Environmental Impact Statement and program documents for the CaCMP implementing agencies; approval findings; subsequent changes to the program; various financial award documents; performance reports and work products; programmatic correspondence between the CaCMP and OCRM; the previous CZMA Section 312 evaluation findings dated July 9, 1997; public comments; and other relevant information and documents.

Based on this review, and in conjunction with discussions with CPD staff, the evaluation team identified the following as priority issues:

- The effectiveness of the State in implementing and enforcing the core authorities that form the legal basis of the CaCMP;
- The status of Local Coastal Program (LCP) implementation; status of the Regional Cumulative Assessment Project (ReCAP); and relationship of this project to the periodic review process for LCPs;
- Implementation of Federal consistency authority, including the CaCMP's involvement in Habitat Conservation Plans;

- Public participation in CaCMP programs, particularly opportunities for involvement in permit decisions;
- Local, state, and regional intergovernmental coordination and cooperation in CaCMP implementation;
- The status of implementation of the coastal access program and other area restoration and enhancement activities;
- The status of coastal watershed protection planning activities;
- The status of the approved California Coastal Nonpoint Pollution Control Program;
- The status of implementation of the CaCMP's Coastal Zone Enhancement Strategy;
- The leadership role played by the CaCMP agencies in major coastal management issues in the State, such as waterfront planning, the new long-term management strategy for dredging of San Francisco Bay, livability and "smart growth" issues, placement of fiberoptic cables, etc.; and
- Changes to the core statutory and regulatory provisions of the CaCMP.

### C. SITE VISITS TO CALIFORNIA

Notification of the scheduled evaluation was sent to the three lead agencies of the CaCMP – California Coastal Commission (CCC), the San Francisco Bay Area Conservation and Development Commission (BCDC), and the State Coastal Conservancy (SCC) – as well as to the Headquarters and regional offices of relevant federal agencies, and to congressional Offices. The CCC, BCDC and SCC distributed notices of the evaluation to individuals and organizations listed to receive their mass mailings and placed announcements of the evaluation's planned public meetings on their websites. In addition, a notice of NOAA's "Intent to Evaluate" was published in the Federal Register on January 18, 2001.

With agreement from all three lead agencies, a two-part site visit was conducted to California. The first site visit took place from March 5 through 9, 2001 and focused on the San Francisco Bay Conservation and Development Commission (BCDC) and the State Coastal Conservancy (SCC). The second site visit took place from June 5 through 13, 2001 and focused on the California Coastal Commission (CCC). The OCRM Evaluation Team for the first site visit consisted of Vickie Allin, Evaluation Team Leader, Director's Office, Keelin Kuipers, Program Specialist (CPD), and Gwynne Schultz, Manager of the Maryland Coastal Management Program. The Evaluation Team for the second site visit consisted of Vickie Allin, Keelin Kuipers, Gordon White, Manager of the Washington

Coastal Management Program, Joe Witczak, Section Manager, Washington Coastal Management Program, and Chris Chung, Manager of the Hawaii Coastal Management Program.

During the site visits, the evaluation team met with Executive Directors and staff from the CCC, BCDC and SCC, as well as representatives from federal, state, and local governmental agencies, environmental groups, business groups, and others involved with California's coastal management efforts. Appendix A contains a listing of individuals contacted during this review.

The CZMA provides three modes of public participation in the Section 312 evaluation of coastal programs: public meetings, interviews, and submission of written comments. Advertised public meetings were held on Wednesday, March 7, 2001 from 4:00 - 6:00 PM in the McAteer-Petris Room at the BCDC offices, 50 California Street, Suite 2600, San Francisco, CA; on Wednesday June 6, 2001 from 7:00 - 9:00 P.M. in the Bayside Conference Room, Pier 1, San Francisco, CA; and on Monday, June 11, 2001 from 7:00 - 9:00 P.M. in the Scottsdale Room at the Los Angeles Airport Marriott Hotel, 5855 West Century Blvd., Los Angeles, CA, where members of the general public were given the opportunity to provide input on the operation and management of the CaCMP. A list of public meeting attendees can be found in Appendix B. The written comments received in response to the evaluation, with OCRM's responses, can be found in Appendix D.

### **III. COASTAL PROGRAM DESCRIPTION**

For the purpose of implementing the CZMA, the CaCMP was approved in two segments, San Francisco Bay and the Pacific coast. This was due to the existence of prior statutes and agency authorities governing coastal management in San Francisco.

Through the McAteer-Petris Act of 1965, the San Francisco Bay Area Conservation and Development Commission (BCDC) was granted authority by the State to plan and regulate activities and development in and around the Bay through policies adopted in the San Francisco Bay Plan (Bay Plan). The Suisun Marsh Preservation Act of 1974 gave BCDC expanded permit jurisdiction over the 85,000-acre Suisun Marsh, the largest remaining wetland in California. The management program for the San Francisco Bay segment was approved by NOAA on February 16, 1977.

The California Coastal Act (CCA) of 1976 granted state authority to the California Coastal Commission (CCC) to manage the conservation and orderly development of coastal resources through a comprehensive planning and regulatory program for the remainder of California's coast. The management program for the 1,100-mile Pacific coast segment was approved by NOAA on November 7, 1977. As a stipulation for approval, BCDC and the CCC were required to devise mechanisms to integrate the two program segments.<sup>1</sup>

The third element of the CaCMP is the State Coastal Conservancy (SCC), an agency established by an act of the State legislature in 1976 and funded through the California Urban and Coastal Park Bond Act approved the same year. The SCC works to preserve, improve, and restore public access and natural resources along the Pacific coast and San Francisco Bay. The SCC is able to complement the regulatory activities of its sister agencies through its authority to acquire land, design and implement resource restoration and enhancement programs and resolve coastal land use conflicts. The Conservancy Act was included as part of the State's program submittal.

The three agencies plan and work together to achieve the national and state goals and objectives for coastal management embodied in the CaCMP. The CCC has been designated by the Governor as the lead agency for administration of the NOAA financial assistance awards for program implementation under the CZMA. The following sections provide further detail on the structure and scope of each of the CaCMP's implementing agencies.

#### **CALIFORNIA COASTAL COMMISSION**

The California Coastal Act of 1976 (CCA) established the California Coastal Commission (CCC) as a permanent, independent regulatory body to promote environmentally sustainable coastal development.

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<sup>1</sup>See footnote 6 from the Approval Findings for the California Coastal Management Program, U.S. Department of Commerce, NOAA. November 7, 1977.

The State's basic coastal management goals for the Pacific coast segment of the CaCMP are expressed in Chapter 1 of the CCA. These goals are to:

- Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal environment and its natural and manmade resources.
- Assure orderly, balanced use and conservation of coastal resources, taking into account the social and economic needs of the people of the State.
- Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone, consistent with sound resource conservation principles and constitutionally protected rights of private property owners.
- Assure priority for coastal-dependent development over other development on the coast.
- Encourage State-local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.<sup>2</sup>

The CCA also contains specific policies pertaining to public access, recreation, the marine environment, coastal land resources, and various categories of development, including residential, industrial, port and energy facilities. These policies are the standards used in the CCC's planning and regulatory programs and the federal consistency review process to ensure that the CCA's goals for the coastal zone are met.

The coastal zone boundary is mapped specifically by statute and generally extends seaward three miles and inland 1000 feet from mean high tide or to the nearest coastal road. However, in specified "less developed areas," such as the Malibu Canyons, the Coastal Act boundary can extend inland up to 5 miles.

The State of California determined that its coastal management program could best be implemented at the local level – with State overview and guidance. Therefore, the CCA provides for a partnership between the State and the 15 counties and 58 cities within or overlapping the coastal boundary. Each jurisdiction was required to prepare a local coastal program (LCP) that contained a land use plan and the zoning ordinances needed to implement the plan. Once the LCP was certified by the State, the authority for issuing coastal permits for new development was delegated to the local government. The CCC retains responsibility for coastal development permitting in areas of the coast which do not yet have a certified local coastal program, and CCC retains permanent coastal permit jurisdiction over development proposed on the immediate shoreline (tidelands, submerged lands and public trust lands).

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<sup>2</sup>Chapter 1 of the California Coastal Act, California Public Resources Code Section 30001.5.



CCC also considers appeals for certain types of local permit decisions<sup>3</sup> and reviews and approves amendments to previously certified LCPs. Under the CCA, port master plans (PMPs) are required for the industrial ports of Hueneme, Los Angeles, Long Beach, and San Diego; PMPs and changes to them must be approved by the CCC. The CCC has a variety of other important and permanent responsibilities, such as implementing public access and education programs, and a water quality program.

The Coastal Commission is made up of 12 voting members and four non-voting members representing other state agencies (the Resources Agency, the Business and Transportation Agency, Trade and Commerce, and the State Lands Commission). The composition of voting Commissioners includes six City Council members or County Supervisors nominated by local governments, and six non-elected members of the public. Four of these appointments are allotted each to the Governor, the Senate Rules Committee, and the Speaker of the Assembly. The Commission implements the CCA by holding four-day monthly public meetings around the coast to hear testimony and make regulatory and planning decisions. The Commission is supported by a staff of about 155 state employees, who are managed by a Commission-appointed Executive Director. Staff are situated at the Commission's headquarters office in San Francisco, and at District offices in Eureka, Santa Cruz, Ventura, Long Beach and San Diego.

#### **SAN FRANCISCO BAY AREA CONSERVATION AND DEVELOPMENT COMMISSION**

The BCDC's enabling legislation, the McAteer-Petris Act, focuses on limiting fill, increasing public access to and along the Bay, and assuring that sufficient land is available for high priority water-dependent uses, such as ports, airports, water-related industry, wildlife refuges and water-related recreation. The BCDC administers a regulatory program based on the standards of the Bay Plan, in which permits are required for Bay filling and dredging and for development along a shoreline band extending 100 feet inland from the Bay. The extent of the Commission's Bay jurisdiction includes specified waterways, managed wetlands, salt ponds, and all areas of San Francisco Bay that are subject to tidal action, such as sloughs, marshlands, tidelands and submerged lands. The Bay Plan contains dual mandates:

- (1) Protect the Bay as a great natural resources for the benefit of present and future generations; and
- (2) Develop the Bay and its shoreline to their highest potential with a minimum of Bay filling.

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<sup>3</sup>Coastal Development Permits can be appealed between the first public road and the sea, and along the immediate shoreline.

The Bay Plan includes policies on fish and wildlife, water pollution, water surface area and volume, marshes and mudflats, fresh water inflow, dredging, water-related industries, ports, airports, recreation, public access, salt ponds, transportation, project appearance and design, and scenic views.

The Suisun Marsh Protection Plan, adopted in 1976 as a result of the Suisun Marsh Protection Act of 1974, is another component of the San Francisco Bay management program. The Protection Plan was designed to be a more specific application of the general, regional policies of the Bay Plan and to supplement such policies, where appropriate, because of the unique characteristics of the Suisun Marsh. The Protection Plan's objectives are to preserve and enhance the quality and diversity of the area's 85,000 acre aquatic and wildlife habitats and to assure that uses of upland areas adjacent to the Marsh are compatible with its protection.<sup>4</sup> Local governments were required to prepare local protection plans for the wetlands and surrounding upland areas for certification by BCDC. BCDC maintains permit authority over development in the Suisun Marsh wetlands and appellate authority over local government permits in the surrounding upland area.

In addition to the permit program, the BCDC, with the support and cooperation of local governments, develops special area plans, consistent with the McAteer-Petris Act and the Bay Plan, containing enforceable policies and use designations. These plans are adopted by the BCDC as amendments to the Bay Plan, and by local governments as amendments to their general plans and zoning ordinances.

The 27-member Commission is composed of one member of each of the nine Bay Area county boards of supervisors, four elected officials representing area municipalities appointed by the Association of Bay Area Governments, five State of California representatives of the Business and Transportation Agency, Department of Finance, Resources Agency, State Lands Commission, and the San Francisco Regional Water Quality Control Board, two federal representatives of the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency, and seven members appointed from the public sector. The Commission holds public meetings twice monthly. The Commission is served by an Executive Director and a staff of 40 full time employees.

## **STATE COASTAL CONSERVANCY**

The SCC is responsible for implementing a multi-faceted program focused on preservation, protection, restoration and enhancement of coastal lands and resources, as well as public access. To this end, the Conservancy is empowered to acquire land and provide technical and financial support (primarily from bond funds) to state and local public agencies and non-profit organizations. The Conservancy's work is concentrated in the following areas:

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<sup>4</sup>San Francisco Bay Plan. San Francisco Bay Conservation and Development Commission. July, 1979, as amended.

- Land acquisition, and design and implementation of projects to improve public access to the coast and bay shore;
- Preservation of open space and farmland;
- Protection, enhancement and restoration of wetlands and watersheds;
- Protection, through acquisition, of coastal lands that are environmentally sensitive or have high scenic, recreational, or habitat value; and
- Urban waterfront improvement and restoration, including support for coastal-dependent industries, such as commercial fishing.

In addition, the Conservancy serves an invaluable role of catalyzing cooperation between government agencies, non-profit organizations, and the private sector, including mediating and offering innovative solutions to land use conflicts.

By an amendment to the CCA in 1979, the Joint Access Program was created to coordinate the efforts of public agencies and non-profit organizations to purchase, develop, operate, and maintain public accessways along the coast. The Conservancy collaborates with the CCC and BCDC to ensure compliance with public access and mitigation requirements arising from the two regulatory agencies' permit programs. The Conservancy also assists in the completion and implementation of LCPs. The Conservancy, based in Oakland, California, operates with a seven-member Board of Directors appointed by the Governor and California Legislature, three alternates, six ex-officio Members of the Legislature (three from each House), an Executive Director and a staff of 46 people.

## **IV. ACCOMPLISHMENTS**

### **A. CALIFORNIA COASTAL MANAGEMENT PROGRAM WIDE**

#### **1. High Quality Staff**

The Evaluation Team was very impressed by the committed, creative, innovative and passionate staff of the three CaCMP lead agencies – CCC, BCDC and SCC. The CaCMP lead agencies have a history of strong management and high quality staff, who are well-respected and able to work constructively with a wide array of interests. During the review period, they have been able to attract equally talented new staff, who have allowed them to become more proactive in meeting the needs of local governments for more information and tools for coastal management, meeting the needs of many public and private groups for integrating coastal and Bay-area initiatives with common goals, and contributing to the solution of 21<sup>st</sup> century problems by doing cutting-edge research on emerging coastal issues. Throughout the site visit, the Evaluation Team heard praise of CaCMP lead agencies' staff for their hard work, innovative thinking, and constructive approach to achieving balance between conservation and development of the State's coastal resources.

#### **2. The Joint Coastal Access Program**

During this review period, the SCC and the CCC continued to coordinate on the Joint Coastal Access Program. Amendments to the California Coastal Act in 1979 created this unique partnership that gives the SCC authorities to fund, acquire, develop and manage access sites in concert with the CCC's authorities to plan and regulate development that affects coastal access. Under this program, the SCC and CCC have worked together over the years to create over 2,000 new public access sites along the California coast.

The current central focus of the Joint Access Program is facilitating acceptance of Offers to Dedicate (OTDs) public access easements which have been secured through the regulatory program. The CCC implements its public access mandates through its planning and regulatory programs. Both the CCC and local governments with certified Local Coastal Programs may impose conditions as appropriate to mitigate public access impacts from development projects receiving coastal permits. The most common tool used to mitigate such impacts is the OTD. OTDs are either lateral (along the beach above wet sand), vertical (from the beach to the first public road) or bluff top. They are dedicated for a fixed period of time, usually 21 years, and are perfected when a suitable public or non-profit organization agrees to accept responsibility for operating and maintaining the accessway for public use.

Finding agencies or organizations to accept these OTDs and open them to the public has been a slow and difficult process. Budget constraints at both the state and local level, fear of liability for injuries the public might sustain while using the accessway, and opposition from adjacent landowners and local

communities have all been obstacles to getting OTDs accepted. If an OTD is not accepted during the time that it is open, it expires and the opportunity for public access at that site is generally lost forever.

The 1994 Section 312 evaluation identified the pending expiration of these OTDs as a significant problem. Since that time, as documented in the 1997 final evaluation findings and below in these findings, both the CCC and the SCC have made the acceptance of OTDs a high priority and much progress has been made.

The CCC maintains the Access Inventory, provides technical mapping of OTDs, and reviews legal documents associated with the OTDs. The SCC provides funding to local governments and nonprofit organizations to acquire and develop public access facilities. Both the CCC and the SCC have jointly initiated and participate in outreach programs to explain the OTD program, identify priority OTDs, locate accepting agencies, and provide technical assistance to the accepting agencies.

During this review period, both the CCC and the SCC have had full-time staff for the Joint Access Program working on resolving OTD issues. This is particularly significant for the CCC, which had only one Access staff member statewide at the start of the review period and now has three full-time staff for this program.

Locating an accepting agency or qualified nonprofit group or land trust willing to accept the responsibility for operation, maintenance and liability for the easement area involves a significant amount of work. It involves mapping the hundreds of OTDs statewide, holding workshops and meetings with potential accepting agencies and groups, assisting accepting agencies and groups to obtain funds and make needed physical improvements (e.g., stairs, signs, etc.), helping them to find funding for long-term maintenance, and assisting them to deal with liability issues. Although the CCC and SCC coordinate on this effort, because of their specialized information on the OTDs, much of the workload has fallen on the CCC.

Some of the CCC's and SCC's activities during this review period that have helped to facilitate acceptance of OTDs include:

- a. *Planning.* Three counties, San Mateo, San Luis Obispo, and Santa Barbara, are currently evaluating all of their easements (including OTDs and other access opportunities) and are preparing development plans to open these areas to the public.
- b. *Mapping.* In 1998, the CCC and the SCC initiated a joint program to develop a pilot mapping project for all vertical access easements (e.g., OTDs and Deed Restrictions that run from the shore to the first public road). As a result, 22 maps were produced showing each easement plotted onto a parcel map and then overlain onto a color aerial. In 2001, CCC began mapping all of the outstanding OTDs on a countywide basis. The OTDs are located on a USGS map format, then linked to scanned OTD documents

from CCC's files. CCC aims to have all OTD maps available electronically by the end of this year.

- c. *Outreach.* In 2000, the CCC and SCC held a local workshop with Mendocino County, the Department of Parks and Recreation (State Parks), and several land trusts to promote OTD acceptance in Mendocino County. As a result, 38 OTDs have been accepted by the nonprofit group, Coastwalk, and State Parks has committed to accepting 21 OTDs.
- d. *LCP Grants.* CCC has conditioned grants to local governments for preparation or updating of their Local Coastal Programs, as appropriate, to include an OTD acceptance strategy. As a result, two cities – the City of Pismo Beach and the City of San Diego – have accepted all of their outstanding OTDs.
- e. *Publications.* Because of the impending expirations of OTDs, the Joint Access Program received a federal grant from NOAA in 1997 to produce two new technical assistance documents: *Limitations on Liability for Nonprofit Managers*, and *Happy Trails to You – How to Accept and Manage Offers to Dedicate Access Easements*. These two booklets, jointly produced by the CCC and the SCC, are designed to encourage acceptance and opening of public access easements. Primarily targeted to the nonprofit community, they are useful for government agencies as well.
- f. *Memorandum of Understanding.* In December, 1998, the CCC and the SCC developed and signed a Memorandum of Understanding regarding the OTD program. The MOU defines the respective roles and responsibilities of the two agencies with regard to processing OTDs. An annual work program is required to be submitted to the Legislature to report on progress in implementing the program. A significant element of the MOU includes a provision that the SCC shall initiate their acceptance process for any pending OTD within 24 months of expiration.

To date, there are over 1200 OTDs. As of the beginning of this review period, the acceptance rate for these OTDs was just 19%. As a result of the joint efforts of the CCC and the SCC during this review period, *the acceptance rate has more than doubled – to 42%*. Both agencies know there is much that remains to be done to make these OTD access opportunities a reality, but they have made significant progress toward achieving their goal of increased public access for California's citizens.

### 3. The Coastal and Ocean Managers Group

Before this evaluation review period began, in 1995, the CCC took the initiative to form the Coastal and Ocean Managers Group. However, because the Group was new, it was not comprehensively addressed in the last evaluation findings.

The Group consists of the Executive Directors of the CCC, BCDC and SCC, the Managers of California's two National Estuarine Research Reserves – Elkhorn Slough National Estuarine Research Reserve and Tijuana River National Estuarine Research Reserve – and one proposed Reserve in San Francisco Bay, the Managers of California's four National Marine Sanctuaries – Gulf of the Farallones National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Monterey Bay National Marine Sanctuary, and Channel Islands National Marine Sanctuary– the State's Lands Commission, and the Ocean Program.

During this review period, the Group has been very effective in providing a forum for these Executives and Managers to share information, discuss approaches to common coastal and marine issues, and identify opportunities to coordinate on projects or help each other to take advantage of opportunities. For example, during the evaluation review period, the Group coordinated on a variety of common issues, such as coastal nonpoint source (or runoff) pollution, permitting of fiber optic cables, shoreline erosion and shoreline armoring, and desalination. The evaluation team met with several members of the Group during the evaluation site visit and all were unanimous in saying how beneficial the Group had been to them. The Group allows the Executives and Managers to plan their coordination on mutual issues and projects in advance. It also helped members of the Group to learn about and take advantage of funding and other opportunities. For example, through the Group, the CCC assisted both the Monterey Bay National Marine Sanctuary and the Elkhorn Slough National Estuarine Research Reserve to develop Coastal Impact Assistance Program applications on short notice. The Managers of the Sanctuary and Reserve said they would not have known of this opportunity and would not have been able to take advantage of it, were it not for their participation in the Coastal and Ocean Managers Group.

The CCC should be commended for initiating this Group and all of the members for participating. The Group provides an effective coordination vehicle for the CaCMP that was lacking before it was created.

## B. CALIFORNIA COASTAL COMMISSION

For the California Coastal Commission (CCC), this review period has seen increased State funding and staff positions, which has strengthened core program implementation in many critical areas. As detailed below, the increases have allowed the CCC to increase its cooperative work with other agencies in such areas as non-point source pollution control, public education, public access, oil spill response and transportation; to improve implementation of the California Coastal Act in critical areas such as enforcement and technical services; to strengthen partnerships and build capacity through such things as the re-opening of the North Coastal District Office in Eureka and the resumption of the Local Assistance Grants for coastal cities and counties; and to improve service and opportunities for the public to participate in the CaCMP.

### 1. Increased Staff

As documented in the 1997 evaluation findings, the CCC has struggled mightily to operate the California Coast portion of the CaCMP and implement the California Coastal Act over the last two decades with minimal staff during most of that period. Although workload increased inexorably over this period, staff for the core program was cut by 43 percent (from 185.9 positions to 106.5 positions).<sup>5</sup>

Because many cities and counties, particularly in Southern California were not able to complete their Local Coastal Programs (LCPs) and assume coastal development permitting prior to the loss of staff and funding for the CCC's Local Assistance Program, the CCC had to devote most of its available staff during this period to processing permits. All enforcement was done by a small (2-5 person) Headquarters staff. With no district office staff for this purpose, enforcement was necessarily reactive. There was no monitoring capability and no ability to educate the public to help prevent violations from occurring.

The State's FY 2000 and 2001 budgets have included significant increases in CCC staffing.<sup>6</sup> This is resulting in substantial improvements to program operations, better implementation of the California Coastal Act and better customer service. For example, in 1999, the CCC was able to reopen its North Coast (Eureka) District Office, which was closed in a cost saving move in 1985. This is a major improvement in service to North Coast residents, who previously were served from the San Francisco Headquarters. Also, most significantly, enforcement staffing was increased from 5 to 14 full-time employees. This increase has allowed for at least one full-time enforcement person in each District

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<sup>5</sup>U.S. Department of Commerce, NOAA. Evaluation Findings for the California Coastal Management Program: July 1993 Through November 1996, p. 31.

<sup>6</sup>Subsequent to the evaluation site visit, the FY 2001 general fund budget baseline was cut by \$413,000.



Office, as well as enforcement supervisors for both the North and South Coasts. With full-time staff in each district, enforcement is becoming more proactive (although there is still the issue of how to deal with the huge backlog of unresolved cases – see Section V.B.2 for further discussion.)

Because of the loss of habitat and steep slopes along much of the California coast, the lack of technical staff to advise applicants and the Commission on complex biological and geological issues has been a long-standing problem. Thanks to the State budget increases, the CCC has been able to hire two biologists and one geologist. Their advice is much in demand as the Commission deals with complex proposals for difficult sites.

To implement their joint responsibilities with the State Water Quality Control Board, the CCC has been able to add six staff positions for the Coastal Nonpoint Pollution Control Program. As described in more detail in the Water Quality section of this report, NOAA acknowledges California's accomplishment in crafting this statewide program to control runoff pollution – the third fully approved program of its kind in the Nation. The new non-point source (NPS) staff are a major reason for the success of this program to date.

During the review period, the CCC has also been able to increase its Public Access staff from 1 to 3 full-time staff. This very significant increase is critically needed to deal with the large "pulse" of Offers-to-Dedicate (OTDs) public access and conservation easements that are expiring over the next three years.

The State's budget increases are also making existing staff more efficient and effective and improving customer service. For example, previously, lack of funds for travel forced the Commission to meet mostly near San Francisco and Los Angeles. This placed a heavy burden on those applicants and members of the public who did not live near these two cities to participate in permit decisions. In addition, Federal consistency staff could not visit project sites or meet with affected parties, unless the parties could come to CCC's San Francisco Headquarters, thus complicating the Federal consistency review process and placing additional burdens on applicants and the public. Now, the Commission is able to be much more accessible by meeting at many different locations around the State. Also, Federal consistency staff are now able to travel to project sites and attend coordination meetings with other agencies. This has resulted in a Federal consistency process that has succeeded in many cases in bringing all sides together and avoiding litigation.

CCC has also struggled for years with outdated equipment (Wang Word Processors). With the budget increase, the CCC was able to purchase modern computer equipment, which has greatly expanded their ability to communicate with applicants and the public and coordinate with other public and private groups. The equipment has also allowed the staff to rescue data from past CCC actions and use it in current permitting decisions, in developing strategies for dealing with expiring public access and conservation easements, and in Regional Cumulative Assessment Projects (ReCAPs).

The State is to be commended for providing increased staff and resources, which have contributed so significantly to improving the CCC's performance and the overall implementation of the CaCMP.

## **2. Enforcement**

In years past, enforcement staffing at the CCC has been as low as 2 staff statewide for the entire 1,100 mile long California coast. For the last few years, until June of 2000, enforcement staffing was 5 people statewide, all based in the CCC's San Francisco Headquarters. As a result, enforcement was reactive and a huge backlog of un-investigated cases built up. Due to lack of staff, CCC relied almost exclusively on citizens reports of violations. However, CCC had a very limited ability to follow-up even when violations were reported, and citizen's groups were often very frustrated by the slow response to their reports.

In June of 2000, CCC received authority to hire 10 more positions for enforcement – 1 attorney and 9 more enforcement staff. Thus, total enforcement staffing went from 5 to 14 – a major improvement. Now there is at least 1 full-time enforcement person in each of the CCC's six District Offices, as well as 2 supervisors (North Coast and South Coast), and a Chief, Assistant Chief (vacant at the time) and 4 enforcement staff at Headquarters to prepare Cease and Desist and Restoration Orders, support litigation, and oversee the review of backlogged cases. As a result of this new enforcement staffing, follow-up on reports of violations has improved, some reduction of the backlog has occurred, and new cases are being opened and investigated. In addition, CCC has been able to maintain its support for the Santa Monica Mountains Environmental Task Force – a partnership of 26 city, county and state agencies with enforcement authorities within the Santa Monica Mountains area. The ability of the partners to share information and coordinate cases, made possible by the Task Force, has improved the effectiveness of enforcement in this area.

The lack of enforcement was one of the principal concerns of NOAA in the last two evaluations. NOAA commends the State for its investment in balanced development and conservation of coastal resources through the effective enforcement of the California Coastal Act.

## **3. LCP Planning, Local Assistance and ReCAP**

### ***a. LCP Planning***

During this review period, the CCC has made substantial progress in dealing with several aspects of LCP planning and implementation. Attention to LCP planning has increased at both the state and local level, and several local jurisdictions have made substantial progress in the LCP certification process.

Beginning in FY 97/98, the CCC's budget included funds to re-institute a Local Planning Grants Program, as well as funds to provide a staff position to administer the LCP Grants Program. In FY 97/98, \$340,000 was allocated and in each of the following 3 years, the budget increased that allocation to \$500,000. To date, a total of \$1,589,000 has been awarded to local governments for completion and update of their LCPs, with priority given to LCP completion.

The LCP Grants Program has provided the CCC with an effective incentive for local governments to undertake LCP planning activities. The grants have resulted in 4 submittals of new LCP components to the CCC, as well as updates of 18 certified LCPs. In addition, starting in FY 98/99, the CCC has conditioned grant awards, where applicable, to address priority issues, particularly to include policies and programs for addressing nonpoint source (or runoff) pollution control and to develop strategies for accepting pending Offers-to-Dedicate Public Access Easements within the jurisdiction. As a result of these grant conditions, at least 28 OTDs have been accepted by local governments and other local governments are developing acceptance strategies to address as many as an additional 250 access OTDs, primarily in Los Angeles County and Mendicino County. Also, local jurisdictions are making significant progress in developing new or revised policies for addressing runoff pollution.

*b. Local Assistance*

The CCC recognizes that a strong Local Assistance Program is essential to further LCP completion and updates. Since January, 1997, the CCC has re-instituted its Local Assistance Program in a limited way with available resources. A one-half time position has been allocated to this function and this has allowed the CCC to re-institute its local planning assistance newsletter – *California Coastal Currents* – that is directed towards coastal planners in the districts and in local government as the primary audience. The newsletter has been developed in an electronic format to facilitate links to online resources. In addition, the staff has developed a Local Assistance Program Webpage online to facilitate providing technical assistance.

Also as part of the CCC's budget since 1997, four new staff have been provided in the Districts to assist local governments who are undertaking major planning efforts to complete or update LCPs. While the number of additional staff provided has not matched the workload created by the LCP grants program and self-initiated planning updates, it has helped to support this very important effort.

*c. ReCAP*

Since the 1997 evaluation, the CCC has continued to expand its Regional Cumulative Assessment Program (ReCAP). ReCAP's goals include providing a regional context for the periodic review of certified LCPs, identifying cumulative impacts, and developing recommendations for addressing these types of impacts through the LCPs. Funded primarily by CZMA Section 309 grants, the CCC has undertaken two additional ReCAP reviews, as well as other statewide implementation projects.

The Santa Monica Mountains/Malibu ReCAP was undertaken in order to provide technical assistance to Los Angeles County and the City of Malibu. Using the ReCAP process, the CCC evaluated cumulative impacts and implementation of coastal permitting in three major issue areas: Concentration and Location of Development, including an evaluation of the Transfer of Development Credit (TDC) Program; Public Access; and Shoreline Armoring. Findings were adopted and recommendations transmitted to the various local governments in June, 1999. This project resulted in many significant program improvements, including improving and expanding the TDC program and identifying a significant new coastal management issue – the looming expiration of numerous Offers to Dedicate (OTD) non-access easements. These include OTDs required for scenic and open space easements, OTDs to implement the TDC program, agricultural easements and habitat and conservation easements. Similar to the problem with the potential expiration of Public Access OTDs, the ReCAP staff projected that there were likely hundreds of recorded documents for non-access OTDs required by the CCC as mitigation for coastal development permits statewide that would be expiring. Under a CZMA Section 309 grant, ReCAP staff have begun to identify these in order to develop a strategy for acceptance. Electronic capture of information on existing paper logs has begun. The problem of outstanding OTDs is also gaining statewide awareness. Proposed state legislation is currently being considered that would require County recorders to maintain indexes of existing recorded easements to make that information more easily accessible.

The findings of the Santa Monica Mountains/Malibu ReCAP are being applied in development of the LCPs for the County of Los Angeles and the City of Malibu. The CCC is developing the LCP for the City of Malibu at the direction of the State Legislature. The GIS parcel coverage data developed through ReCAP are being used in these planning efforts.

The CCC staff are nearing completion of a periodic review of the San Luis Obispo (SLO) County LCP, using the ReCAP methodology. This project addressed all major policy groups under the Coastal Act, as well as procedural issues. The project collected 10 years of local permit data and has involved extensive public participation. This review is also developing more extensive recommendations for how LCPs can effectively carry out provisions of the State's new Coastal Nonpoint Pollution Control Program.

During this review period, ReCAP staff have also developed an Implementation Strategy and Priorities for the Monterey Regional ReCAP, completed earlier. The ReCAP project has also developed improvements to the statewide Permit Tracking System and has completed design of a database for recorded documents. When completed, the Access OTD Database, TDC Database and non-Access OTD Database, will be linked and will facilitate tracking to ensure that OTDs do not expire.

The CCC completed the *Administrative Draft Report on the LCP Periodic Review Program* in

compliance with the 1997 final evaluation findings.<sup>7</sup> The report outlined the benefits and results of the ReCAP program and identified program needs to expand periodic reviews of LCPs. The report contributed to the CCC's request for additional funds to support LCP periodic review. It provided background for completion of the *Supplemental Report of the 2000 Budget Act, December 21, 2000*, for the Joint Legislative Budget Committee. Following this report, the Legislative Analyst Office's Analysis of the 2000-01 Budget Bill included recommendations for additional funds to complete the backlog of LCP periodic reviews within 5 years.

#### **4. Re-opening North Coast Office**

In 1999, as a result of budget and staff increases received from the Governor and Legislature, the CCC was able to re-open its North Coast District Office in Eureka, California. This District Office was closed in 1985 at the direction of then-Governor Deukmejian and all North Coast operations were handled out of the CCC's Headquarters Office in San Francisco between 1985 and 1999.

The North Coast Region consists of three counties – Del Norte, Humboldt and Mendocino – including 313 miles of shoreline, 30% of the State's total. In addition to the counties, coastal local governments include the cities of Crescent City, Trinidad, Arcata, Eureka, Fort Bragg, and Point Arena.

The lack of a District Office for the North Coast meant, in practical terms, that there was no way the CCC could provide the same level of service to residents and local governments of the North Coast Region as they provided elsewhere in the State. Also, coastal issues particularly affecting the North Coast Region, such as fisheries and timber harvesting, could not receive the same level of attention as others in the State because of the lack of a regional staff to address them.

The re-opening of the North Coast District Office has allowed the CCC to work more closely with local North Coast communities, the public, permit applicants and local governments. Staff of the new North Coast District Office will provide planning assistance to local governments on amendments and updates to their Local Coastal Programs, review coastal permit applications from applicants with proposed projects located in wetlands or tidelands where the CCC has direct jurisdiction, and provide public information, education and enforcement services.

CCC's renewed ability to provide an onsite presence and assistance to this important region of the State is already paying dividends in improved customer service, planning assistance to local governments, increased public access opportunities, and more effective enforcement of the Coastal Act.

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<sup>7</sup>*Report of the LCP Periodic Review Program: Administrative Draft*, California Coastal Commission, April 6, 2000.

## **5. Technical Services**

During the evaluation period, the CCC made substantial improvements to the scientific and technical expertise available on its staff in order to provide critical analysis functions for the large number of regulatory and planning items it acts upon each year. At the beginning of the evaluation period, the Technical Services Unit consisted of a coastal engineer, the Mapping Unit, and had just advertised for a biologist position. Since that time, the unit has added several positions to address key scientific and technical needs. These include filling the senior ecologist vacancy and recently hiring a second ecologist to round out the CCC's biological expertise. This second ecologist is based out of the Ventura office, therefore allowing greater geographic coverage. In addition to the expertise each of ecologists brings, they have also been successful in putting together independent scientific panels to look a number of complex and controversial proposed projects, including the proposed development adjacent to the Bolsa Chica wetlands and the San Onofre Nuclear Generating Station (SONGS) mitigation efforts. The CCC's staff ecologists have also been involved in successful cleanup and restoration efforts for the Guadalupe Oil Field. The CCC also recently added two habitat conservation planners to the Technical Services Unit. These new staff members will help the CCC respond to the increasing prevalence of habitat conservation plans in the coastal zone and carry out its role in reviewing these plans.

The CCC also recently hired a geologist to provide necessary expertise in coastal hazards management and shoreline erosion, which augments that provided by the coastal engineer over the past several years. The geologist participates in the review of projects involving development on bluffs or steep slopes, shoreline protection devices, beach nourishment programs, and energy projects, among others. Before hiring a coastal geologist, the CCC had to rely primarily on the geologic reports and other information provided in permit applications. Now, they have enhanced capability to assess independently whether a project will pose a significant hazard due to geologic conditions and recommend appropriate mitigation measures. The addition of this position rounds out the CCC's ability to address coastal hazards and shoreline erosion issues raised by proposed projects, LCP amendments, and other planning and regulatory actions.

At the beginning of the review period, the Mapping Unit consisted of two permanent and two limited term staff positions. Since then, this unit has grown to include four permanent, one limited term, and two intern staff positions. These staff increases include additional mapping analysts and a graphic artist. With these new positions, the Mapping Unit has been able to expand considerably the mapping and information management support it provides for the CCC's regulatory and planning activities. In addition, the Mapping Unit produces maps for use by other state and federal agencies. One notable accomplishment was the development of the GeoTools Intranet website. This website provides permit analysts and other CCC staff with access to data layers, aerial photography, and other geographic information for use in analyzing permit applications, as well as planning efforts. The CCC hopes to make this information available to the public soon. The Mapping Unit is also continuing its work with BCDC staff to develop access to the 1996 aerial images of San Francisco Bay. Mapping Unit staff

also participate in a number of statewide and regional geographic data coordination efforts, such as the State's Computer Mapping Coordinating Committee and the Channel Islands Regional GIS Cooperative.

The CCC has been able to enhance the capabilities of the Technical Services Unit by successfully attracting Coastal Service Fellows. During the evaluation period, the CCC sponsored three Coastal Service Fellows, one of whom has gone on to become a permanent staff member in the Mapping Unit. One former Fellow undertook an important study on shoreline erosion in Orange County. The CCC's current Fellow is undertaking an inventory of coastal wetlands along the north central coast of California.

## **6. Federal Consistency**

As discussed in previous evaluation findings, the CCC continues to make effective use of its federal consistency authority. CCC staff have been able to resolve many issues through collaboration and cooperation with federal agencies. The evaluation team met with several federal agencies during the site visit and heard many positive comments about the professionalism and expertise of the CCC's federal consistency staff. Examples of coordination efforts by CCC staff with Federal agencies include:

- The CCC and the Navy participated in an OCRM-led mediation on a project to develop a Virtual Test Capability at the Surface Warfare Engineering Facility (SWEF) at Port Hueneme. The purpose of this mediation was to establish an independent panel of experts to advise the CCC as to the potential coastal zone effects of existing SWEF facilities and therefore address concerns about the project raised by the CCC and the public. This mediation was initiated at the request of the CCC and resulted in the resolution of most of the concerns raised about this project.
- Coordination with CalTrans to ensure that the Devil's Slide Tunnel, an important public safety project, could be undertaken while minimizing potential negative effects on coastal resources and uses. To address these concerns, the project included features to minimize and mitigate wetlands impacts, as well as water quality measures, revegetation of disturbed slopes, and public access signage.
- Concurrences for projects that include regionally important scientific studies. For example, EPA is undertaking a pilot capping study for sediments contaminated with DDT and PCBs on the Palos Verdes Shelf.

The CCC staff was also a key participant in OCRM's efforts to revise the Federal Consistency regulations. The CCC provided comments on draft regulations at various stages of the regulation development process. Once the final regulations went into effect, the CCC quickly updated its federal consistency guidance documents, including "Federal Consistency in a Nutshell," to provide federal

agencies and others with information on how the new regulations affected the CCC's federal consistency policies and procedures.

## **7. Public Participation**

The CCC has made significant progress in improving public information and opportunities for the public to participate in the Coastal Program during this review period. With increased funding, the CCC Commissioners are able to travel to meetings all around the State, thus maximizing the chance that projects will be heard in the local area. For example, in 2000, 8 of the Commission's 12 monthly meetings were in Southern California, reflecting the greater volume of direct permitting actions and appeals from that region of the State.

The CCC has also created an excellent website, with information about meeting agendas and procedures, as well as substantive information on a wide array of coastal issues and programs, such as public access, water quality, contaminated sediments, the boating clean and green campaign, federal consistency, local assistance and volunteer and education programs.

The CCC has made changes to their meeting procedures to allow both project proponents and opponents to make the best use of their limited time to present a coherent argument. Both sides may provide written materials, which are presented to the Commissioners ahead of time. The Commissioners are engaged, study the written materials they receive, and are well-prepared for the projects and issues on each month's agenda.

The CCC has also addressed the previous evaluation findings concerning Commission Function and Evolution. As mentioned above, the CCC has attempted to make its monthly meetings more accessible to the public throughout the State by meeting more frequently outside of the major metropolitan areas of San Francisco, Los Angeles and San Diego. For example, in 2001, the CCC is scheduled to meet in San Luis Obispo, Santa Barbara, Monterey, Santa Rosa, Redondo Beach, Eureka, and Coronado, in addition to Los Angeles, San Francisco and San Diego. The CCC has also addressed the issue of ex parte communications. During this review period, the CCC has worked with the Attorney General's Office to develop procedures for the Commissioners to follow to minimize ex parte communications and to disclose ex parte communications promptly to the public if they occur. The CCC has also developed a code of ethical conduct for Commissioners and has provided training to new Commissioners.

## **8. Public Education**

The CCC has developed an excellent set of Public Education Programs. Program objectives include reaching out to a diversity of populations, especially under-served communities, and expanding the



range of topics addressed in CCC's educational programs. These programs not only educate and inform, they allow the public to contribute to improving the health of coastal resources for themselves and others to enjoy.

The CCC has created educational programs for the general public, for recreational users and for schools, as well as developing educational materials for educators and supporting local education programs. Its premier event for the general public continues to be the **Coastal Cleanup Day**, which began in 1985. Since then, the idea for this event has spread throughout the Nation and internationally. In 2000, the event attracted over 40,000 participants, who picked up more than 700,000 pounds of debris from California beaches. The CCC recruits and coordinates local organizers, who stage cleanups in every coastal county and at many inland sites, as well. On a year-round basis, the CCC operates the **Adopt-A-Beach Program**, which offers school groups, businesses, civic groups and others an opportunity to help take care of a favorite stretch of the coast. Volunteers pledge to clean their beach three times over the course of one year. The CCC coordinates about 60 local Adopt-A-Beach organizers who run the program locally. About 20,000 volunteers participate annually. In 2001, the CCC also held its third annual photography contest. The prize-winning photographs will be featured on the CCC website, used to produce products such as notecards and a calendar, and used in educational publications.

The **Boating Clean and Green Campaign** is an educational program to combat runoff (non-point source) pollution associated with recreational boating. The program, which began in 1997, focuses on providing assistance to local program partners – local governments and non-profit organizations – in developing outreach programs and installing pollution prevention services for boaters. In 2001, the Campaign held seven Dockwalkers trainings, developed clean boater kits in collaboration with local organizations, publicized Best Management Practices for Marinas, and continued to facilitate the California Clean Boating Network and update its website.

The CCC's school education program focuses on the **Save Our Seas Curriculum**, first published in 1993. This year, the CCC is working with a consultant to update the curriculum and expand the range of coastal and marine topics. CCC also offers educators a video and slide show library, free of charge.

In 1998, CCC began an **annual art/poster contest for K-6 graders** on the theme of Save Our Seas. Teachers who elect to participate in the contest are provided with educational materials to provide a context for the art project. The grand prize winning artwork is used to create a poster and brochure for the CCC's Adopt-A-Beach Program.

In 2001, the **Kids Cleanup Day** was held on May 22<sup>nd</sup>, "Ocean Day," in Los Angeles, San Francisco and San Diego County. A total of over 6,000 kids came to the three sites. After cleaning the beach at each site, the kids stood in formation to create "CLEAN H<sub>2</sub>O" in the sand, for an aerial photograph. In the Fall, there will be a Kid's Cleanup in Monterey, by students from Fresno. The Kids' Cleanup is

the culmination of the Adopt-A-Beach School Assembly Program, which teaches how urban neighborhoods are connected to the beaches through storm drains, and addresses the need for recycling and waste reduction. The Program targets underserved schools. In addition, CCC offers the **Youth Environmental Summit Simulation Project** for High School students. This project is designed to foster environmental awareness and build research, communication and interpersonal skills necessary to succeed in college or in the work force. The topic for the 2001 pilot program is global climate change.

Part of the funding for the CCC's public education programs comes from the **Whale Tail License Plate**. The Whale Tail License Plate is a mechanism through which the public can contribute funds to protect and conserve California's coast and ocean. As of January, 2001, over 53,000 Californians have purchased the plate. It has consistently been the highest selling specialty plate since its inception in 1997. The funds have been used to carry out public education programs and give grants to non-profit organizations and local agencies for coastal and marine education. The grants focus on projects that serve populations that have limited opportunities for marine education, such as lower income communities and inland areas. To date, the CCC has awarded \$620,000 in grants to various organizations for these purposes.

## **9. Public Access**

The CCC has continued to show outstanding initiative in the area of increasing the public's access to the California coast. In 1999, the CCC issued its "Public Access Action Plan,"<sup>8</sup> prepared pursuant to direction and funding under former Governor Wilson's "Coastal Initiative" in 1998. The Access Plan analyzed eight key access-related issues – Offers to Dedicate (OTD) Public Access easements, the California Coastal Trail, prescriptive rights, shoreline armoring, public information, cumulative impacts, inadequate parking, and water quality – and made a total of 39 recommendations for dealing with these issues. The Plan highlighted the CCC Access Program's three top priorities:

- The Offer to Dedicate (OTD) Public Access Easement Program
- The California Coastal Trail
- Prescriptive Rights

Following release of the Access Plan, the Governor's budgets of October, 1999 and August, 2000 each authorized an additional full-time staff person at the CCC to work on the Public Access Program. This brings the program to three full-time staff statewide – a very significant improvement over the

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<sup>8</sup>*Public Access Action Plan*, California Coastal Commission, June, 1999.

previous review period. Obtaining full-time staff for the Public Access Program has allowed the CCC to work energetically with SCC, other agencies and nonprofit partners to increase the rate of OTD acceptance, open new public accessways, and increase interagency coordination to speed up completion of the California Coastal Trail.

The CCC has analyzed gaps in the Trail system and has worked with SCC, State Parks, California Department of Transportation (Caltrans), local governments and nonprofit groups to identify creative ways to close some of the gaps. A model for close cooperation is the recently initiated Coast Highway Management Plan (CHMP) process for the Big Sur Coast. This effort includes a Caltrans funded limited term position in the CCC's Central Coast District Office. The CHMP will contain appropriate strategies for maintaining the continuity of Highway One, disposing of landslide debris, and replacing antiquated bridges and failing roadway segments. At the same time, it will identify strategies for protecting coastal resources and providing for public access, including identifying a continuous California Coastal Trail route along the entire Big Sur Coast, designing suitable staging and trailhead sites, and coordinating the Coastal Trail and shoreline access with the development of public parking facilities and scenic vista points.

The CCC's Access Plan also identified the need to protect the public's right of access to the sea where acquired through historic use (so-called "prescriptive rights") as a priority need. In some areas, development proposals and non-permitted encroachments, such as fencing and signage, threaten continued use of these historically-used areas. The Access Plan identifies an ambitious program for identifying, prioritizing and documenting the level of public use of such areas.

#### **10. Coastal Non-point Source Pollution**

On July 17, 2000, California's statewide non-point source pollution control program was approved, making it the third fully approved coastal non-point program in the nation. This accomplishment was due in great measure to the hard work and dedication of staff at the CCC. The CCC and the State Water Resources Control Board (State Board) formed a partnership to develop and implement a statewide non-point source pollution control program that fully integrates programs under Section 6217 of the Coastal Zone Act Reauthorization Amendments and Section 319 under the Clean Water Act. This partnership was a key element for program approval and is critical for successful implementation of the program.

Over the past year, the CCC has made strong efforts to implement the program. These include working with the State Board to establish an Interagency Coordinating Committee (IACC) to serve as the primary forum for coordination of program activities of the lead and implementing agencies. In its first year, the primary focus of the IACC has been to develop five year implementation plans for each implementing agency. The CCC has also taken the lead in establishing an interagency work group on critical coastal areas. This work group is currently developing a list of proposed coastal critical areas where additional nonpoint source management measures will be applied. The CCC and the State

Board also held a joint meeting on program implementation in February, 2001. As a result of this meeting, a subcommittee of Coastal Commissioners and State Board Members was established to address ways to improve public participation in the non-point program. Ongoing efforts such as these to improve program implementation activities, such as public participation, are very important to the long-term success of the program.

The CCC has also been able to dedicate considerably more staff resources to program implementation. Over the course of the review period, water quality staff at the CCC has grown from 2 to 6. In addition to the coordination activities described above, the water quality staff works to ensure that non-point source pollution issues are addressed as part of the everyday business of the CCC. They work with District staff to review coastal development permit applications, local coastal programs, local coastal program amendments, and federal consistency cases to ensure that appropriate non-point source management measures and best management practices are addressed. One key example of this was the CCC's negotiations with the Irvine Company to ensure that a comprehensive suite of best management practices to address non-point source pollution were included in plans for the Newport Coastal Planned Community in Orange County.

CCC staff members have also worked closely with the Monterey Bay National Marine Sanctuary's Water Quality Protection Program to develop and implement the Model Urban Runoff Program (MURP), a how-to-guide for local governments to develop, finance, and implement a comprehensive program to address polluted runoff in urban areas. The CCC, in partnership with the City of Watsonville and the Monterey Bay National Marine Sanctuary, recently held three MURP workshops. Fifty people from more than 20 cities attended each of the workshops.

## **C. SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**

During this review period, BCDC has benefitted from the recovery of the California economy and improvement in the State budget, which has allowed the State to increase its support of BCDC. With more adequate staff and resources, BCDC has been able to change from a reactive agency, focused on its regulatory role, to a proactive agency, focused less on regulation and more on long-range planning and partnership-building. The benefits of this broadened focus include saving time and money through significant innovations in regulatory streamlining and beneficial reuse of dredged materials, increasing public access to the Bay through creative project design assistance, integrating various initiatives and organizations dealing with "smart growth" issues in the Bay, and conducting cutting-edge research on how to mesh desires for public access with needed protections of sensitive resources. These benefits and others are detailed below:

### **1. Accomplishing the Mission**

BCDC was created to accomplish two primary goals: first, to stop unnecessary filling of San Francisco Bay, and second, to increase public access to the Bay. Despite its narrow jurisdiction (generally, the Bay itself and land within 100 feet of the Bay shoreline), BCDC has accomplished these goals. Shrinkage of the Bay has ended. Before BCDC was created, the Bay was being filled in an average of four square miles per year. Since BCDC was created, the surface area of the Bay has actually increased. Public access has increased from only 4 miles of accessible shoreline when BCDC was established, to over 200 miles of accessible shoreline today, of which 65 miles is the direct result of BCDC permits and the remainder is the result of partnerships with local governments and interest groups.

### **2. Leadership in Fostering Partnerships in Planning**

Over the past 4 years, BCDC has strengthened its role in region-wide planning through several effective partnerships with federal, state and local governments and private groups. Due to growing budgets in recent years, BCDC has been able to continue to expand effectively beyond permitting into a proactive regional planning approach.

#### *Dredging Management*

One of the most notable of these activities is the Long Term Management Strategy (LTMS) for the Placement of Dredged Material in the San Francisco Bay Region. Initiated in 1991, the goal of the LTMS is to address the problem of limited capacity for disposal of dredged material in San Francisco Bay, as well as the different agency policies regarding the dredging and disposal of dredged material in San Francisco Bay. BCDC is a partner in this effort, along with the Army Corps of Engineers, the Environmental Protection Agency, the San Francisco Regional Water Quality Control Board, and the

State Water Resources Control Board. The LTMS also includes the establishment of a Dredged Material Management Office (DMMO) made up of the permitting agencies, including BCDC, to serve as a single point of contact for dredging permit applicants. For this effort, BCDC and two other state agencies received a NOAA Excellence Award for Integrated Coastal Zone Management in 1999.

The LTMS interagency team completed the LTMS Management Plan in June 2000 after an extensive public review process. The management plan is the regional decision making framework for disposal of dredged material and mechanisms for implementing the strategy. The management plan calls for about 40% of dredged material to be used for beneficial reuse, 40% to be disposed at a deep-ocean site, and 20% to be disposed at specified in-Bay sites. This will result in reducing in-Bay disposal of dredged material from the current 80% to 20% by 2012. With dredging currently at an annual average rate of 2.8 million cubic yards per year, this will reduce in-Bay disposal from about 2.2 million cubic yards to about .6 million cubic yards by 2012. In addition, about 1.2 million cubic yards will be beneficially reused for wetland restoration, dike maintenance, capping material in land fills, and other beneficial uses.

In 2000, BCDC revised its Bay Plan policies and regulations to provide a policy basis for BCDC's implementation of the program. The revised policies and regulations address when and how dredging and disposal activities should be allowed in San Francisco Bay, BCDC involvement in the LTMS and the DMMO, funding and implementation of alternatives to in-Bay disposal, use of specific sites around the Bay for beneficial reuse, and consistency of dredged material rehandling facilities with water-related industry priority use designations. This process included extensive public involvement to ensure that the policy and regulatory changes addressed the concerns of a wide range of interest groups.

Restoration of the wetlands at the Hamilton Army Airfield is an important part of the beneficial reuse components of the LTMS. Working in partnership with the State Coastal Conservancy, the City of Novato and the U.S. Army Corps of Engineers, BCDC has continued planning efforts for the restoration of over 700 acres of tidal and seasonal wetlands as part of the Hamilton Army Airfield closure. The project will also provide for beneficial use of over 10 million cubic yards of dredged material from San Francisco Bay maintenance dredging and new deepening projects that otherwise would likely be disposed as waste in the Bay or ocean.

#### *San Francisco Waterfront Plan revisions*

In July 2000, BCDC completed a major revision to the San Francisco Waterfront Special Area Plan. This revised plan was the result of an extensive cooperative process among BCDC, the Port of San Francisco, and the City and County of San Francisco. The new plan reflects the need for a balance among the varying uses along the waterfront, including port and related maritime facilities, public access, open space, and recreation. The plan provides for increased opportunities for public access and recreation, while still maintaining a strong role for maritime related uses. Few cities in the world equal San Francisco's spectacular waterfront setting. The San Francisco Waterfront Special Area Plan is helping to realize the potential of the waterfront as the focus of civic life and urban recreational activity.

### *Oakland Army Base Reuse Plan*

In October 2000, BCDC revised its San Francisco Bay Plan and San Francisco Bay Area Seaport Plan to accommodate the Oakland Army Base Reuse Plan. As part of the Army Base closure process, the City of Oakland intends to take title to the Army Base, using a portion of it for port use and the remainder for a mixture of commercial, office, light industrial and public park uses. BCDC worked with the City and the Port of Oakland in developing this reuse plan, which will allow the Port to expand and reconfigure its existing and planned marine terminals and its planned Joint Intermodal Terminal (JIT) to increase future container cargo throughput without filling approximately 127 acres of the Bay, as allowed in the Seaport Plan.

### *Bridge Replacements*

BCDC has forged a positive and cooperative relationship with the California Department of Transportation (CalTrans) and the Metropolitan Transportation Commission (MTC) on projects that need BCDC permits, by getting involved proactively to assist in project planning and design, rather than waiting for a permit application. Following are examples during this review period of how this proactive partnership approach has improved transportation project planning in the Bay:

Since 1997, BCDC has been working with the MTC on the Bay Bridge Design Task Force, which was created by the MTC to decide on what type of structure should be used to replace the eastern span of the San Francisco-Oakland Bay Bridge as part of the seismic retrofit of the overall span. The Task Force has been assisted by an Engineering and Design Advisory Panel (EDAP) that includes all of the members of BCDC's Design and Engineering Criteria Review Boards. Although the project is currently being held up over un-related community issues, BCDC's assistance with project design will expedite permit review at the appropriate time by dealing with BCDC's concerns upfront in the planning process.

In 2000, BCDC approved a project to construct a new bridge for northbound I-680 from the City of Martinez to the City of Benecia. Public access will include a new bicycle/pedestrian pathway. Mitigation will include creating 22.8 acres of wetlands habitat in the Suisun Marsh to mitigate for adverse impacts of the project. This project moved through the regulatory process efficiently because BCDC was able to work with Cal Trans to address key regulatory issues in advance. BCDC used its Design Review Board and Engineering Criteria Review Board (see #4 below) to advise on the design of the project, and as a result, BCDC's concerns were dealt with upfront, before the project ever came to BCDC for a permit. BCDC's work with Cal Trans on this project helped to forge a more positive working relationship between the two agencies, one that saved time and money, as well as improved access and minimized harm to the Bay's resources.

### *Regional transportation planning*

In 1997, BCDC enthusiastically supported a proposal from the Bay Area Economic Forum's Bay Area Defense Conversion Action Team to conduct a feasibility study on creating a ferry system linking closed

military bases, waterfront communities, recreational areas, and job centers. The ferry system would be a key component in the Bay Area Council's comprehensive transportation strategy that addresses regionwide mobility issues. As a result of that feasibility study, in 2000 the San Francisco Bay Area Water Transit Authority (WTA) was established by the California Legislature to prepare a plan for the development and operation of an expanded ferry service in the San Francisco Bay. BCDC has assisted the WTA in developing the plan in a variety of ways, including identifying terminal locations that will not require extensive dredging and will not damage sensitive habitats, and that would provide easy access to landside transportation facilities. BCDC is also assisting in coordinating with local jurisdictions and community organizations to gain their support for the plan and provide recommendations on terminal designs that will ensure public access to the shoreline.

#### *Smart growth partnership*

BCDC has participated in and helped to integrate two significant regional programs to address urban sprawl and develop alternative growth scenarios that will better serve the Bay Area's growing population. Both efforts aim at promoting economic prosperity, protecting the region's natural environment, reducing traffic congestion and providing opportunities for everyone in the region to enjoy the region's economic and environmental bounty. One program involves BCDC and four other regional agencies -- the Association of Bay Area Governments (ABAG), the Bay Area Air Quality Management District (BAAQMD), the Metropolitan Transportation Commission (MTC) and the San Francisco Regional Water Quality Control Board (RWQCB) -- to investigate smart growth and sustainable development in the Bay Area. One goal is to develop consensus on a set of "best practices" and financial incentives to spur similar efforts. The agencies also intend to work with local governments to identify environmentally important areas that should be preserved or enhanced, as well as to define appropriate land-use patterns for those areas deemed suitable for development, thus creating a "regional livability footprint." The other program involves the Bay Area Alliance for Sustainable Development -- an Alliance of over 40 regional organizations, representing business, labor, local government, environmental organizations, and community groups -- which is developing a consensus Compact for a Sustainable Bay Area, including a series of action commitments and indicators. In 2000, the two efforts developed a coordinated work program as a combined Smart Growth/Footprint Project.

The coordinated project aims to promote changes in how Bay Area communities accommodate growth by promoting transit-oriented and mixed use development, preserving environmental resources and promoting a more equitable development process. BCDC's involvement in this effort is focusing on two goals: advocating the importance of continued protection of the Bay and ensuring that BCDC carries out its responsibilities in a manner that will advance a broader regional strategy. Many of the participants in this effort praised BCDC's leadership in integrating the related efforts and in providing the broader perspective of what is best for the whole Bay. They appreciate BCDC's willingness to serve as the integrator in the Bay Area because they realize that their goals of improved economic prosperity, better transportation, better housing, environmental quality and a better quality of life can only be achieved through an integrated approach.



### *Partnerships with Bay Communities*

BCDC has also successfully partnered with Bay area communities on planning efforts. These include the North Bay Wetlands and Agriculture Protection Program, which was a partnership between BCDC and 4 cities and 4 counties in the North Bay to provide local governments with tools and information to protect wetlands and agriculture. Local governments have used these tools to modify and develop local ordinances and modify major development projects to protect wetlands and agricultural uses.

### *Public Access and Wildlife Compatibility Project*

In 1998, BCDC initiated the Public Access and Wildlife Compatibility Project in partnership with the Association of Bay Area Government's Bay Trail Project. The goal of this project was to revise its policies in order to better address public access and wildlife compatibility issues. This study was part of a broader effort to update Bay Plan policies in a variety of areas.

The Bay Trail Project, with assistance from BCDC, has been conducting field research to measure public access impacts on avian species that inhabit San Francisco Bay. This partnership offered opportunities for greater scientific input into the policy development process.

In order to provide a forum for public input and facilitate consensus among public agencies and public interest groups on the development of policy recommendations, BCDC formed a Policy Advisory Committee (PAC). The PAC was an integral part of all phases of the project, from information gathering through policy development and adoption by the Commission. The PAC included 14 members from a wide range of agencies and organizations and representing a broad cross section of expertise in wildlife biology and public access. Members included biologists, resource managers, regional park district employees, landscape architects, environmental planners, and both recreation and wildlife protection activists.

BCDC staff made a tremendous effort to gather all available information on the impacts of public access on wildlife and design options that addressed these impacts. This included an extensive review of the scientific literature on this subject and a nationwide survey of coastal land managers. The goal of the survey was to gather additional information on recreational effects on wildlife and the effectiveness of specific design and management strategies as a tool to avoid or reduce the adverse effects of human recreational activities on wildlife.

Through this project, BCDC has situated itself as a national leader on the issue of public access and wildlife compatibility. This effort has been very well received by resource managers in California and nationally. BCDC staff have also presented ongoing updates and results of the project at national conferences.

### *San Francisco Bay Plan Aquatic Habitat and Species Policies*

Following on its success with the Public Access and Wildlife Compatibility Project, BCDC is revising the Bay Plan's policies on marshes and mudflats. In order to provide strong scientific input into the

policy revision process, BCDC held a subtidal workshop on September 28, 2000, with panelists from academia, the private sector and state and federal agencies with expertise in fish biology, hydrogeomorphology, marine mammal biology, oceanography, benthic ecology and water quality. During the workshop, panelists were asked to answer several scientific questions aimed at helping BCDC to update the Bay Plan's policies and findings on aquatic habitats and species. One of the key recommendations of the panel was to conduct a Subtidal (Aquatic) Goals Project, similar to the recently completed Baylands Ecosystem Goals Project, in order to create a scientifically-based vision for restoration, enhancement and protection of Bay aquatic habitats.

The Goals Project was an extremely valuable effort in identifying priorities for restoration and protection of wetlands in the San Francisco Bay Area. It calls for restoration of over 60,000 acres of tidal marsh and cessation in the development of diked baylands. Many state and federal agencies now look to the Goals Project when looking for recommended sites for restoration and protection. The Goals Project has also been important to informing policy changes and permit decisions. Both BCDC and the State Coastal Conservancy were very active participants in the Goals Project. A similar effort for subtidal habitats also has the potential to be extremely valuable.

BCDC has also prepared a chapter on restoring and protecting subtidal habitats which describes key issues, the proposed Subtidal Habitat Goals Project, and draft Bay Plan findings and policies. This chapter will be part of a larger report on the Bay's habitats that will be considered for adoption by the Commission.

#### *San Francisco International Airport Expansion Project*

BCDC has played a key role in bringing together federal and state agencies over the proposed reconfiguration of San Francisco International Airport's runways. The runway reconfiguration project could result in up to 3 mi<sup>2</sup> of fill in San Francisco Bay, which would be the largest Bay fill project in 30 years. The project will also likely require extensive mitigation, most likely through restoration of Bay wetlands. In addition, Oakland Airport is also considering the need for new runways. Through numerous coordination activities, BCDC has successfully brought together federal and state agencies. Given the magnitude of these projects, BCDC requested that the National Oceanic and Atmospheric Administration convene a panel of scientific experts to identify the key scientific questions the airports should address in their environmental reviews. The panel met October 19-20, 1999 and developed the following recommendations:

- There is a need for a comprehensive, peer-reviewed research program, focusing on the information needs of decision makers as well as advancing basic knowledge of the processes characterizing San Francisco Bay.
- The program must include peer-review at all stages.
- BCDC, in cooperation with other Bay management agencies and the research community, should take the lead in facilitating the process of identifying and evaluating various organizational and programmatic models that have been used in complex multi-disciplinary environmental research programs geared toward generating information for decision makers.

- Throughout the research program, the "no action" alternative needs to be examined along with the various runway reconfiguration proposals.
- This program should promote the use of adaptive management.
- Scientists and engineers should be encouraged to search for creative solutions, including those outside of the array of options currently being considered.

BCDC also took the lead in developing a Memorandum of Understanding with several federal and state agencies, including San Francisco International Airport, the Federal Aviation Administration, the Army Corps of Engineers, the San Francisco Regional Water Quality Control Board, and the Environmental Protection Agency. This MOU establishes a coordinated regulatory review process for the planning, environmental review and implementation stages of the project. BCDC is a strong participant on the interagency working group addressing the environmental review process. In addition, BCDC has hired a full time consultant to ensure that they are fully involved in this process. BCDC's role in this process prompted the airport to examine less environmentally damaging alternatives for the project.

San Francisco International Airport is in the process of completing the environmental review documents and a second panel is being convened by NOAA to provide independent scientific peer review of these documents.

### 3. Improving Customer Service

Dredging, filling or any substantial change in use of the bay or shoreline requires a BCDC permit to assure that the project complies with State laws administered by the Commission. Although the Commission's permit workload has increased during the review period, its continuing emphasis on regulatory streamlining has resulted in significant improvements to the efficiency of its regulatory program. BCDC improved its permit processing system during the review period by increasing the range of projects that can be approved administratively and by pre-approving a wider variety of activities under its regionwide permits and its newly-created abbreviated regionwide permits. These efforts paid off in faster decisions for permit applicants and greater efficiency for BCDC.

BCDC's website provides excellent information for applicants on how to apply for a BCDC permit. BCDC also encourages pre-application consultation with its staff on large projects and offers an exceptional level of technical advice through its innovative volunteer review boards – the *Design Review Board* and the *Engineering Criteria Review Board*. The *Design Review Board* is made up of prominent architects, landscape architects and planning professionals who are experts in open space and waterfront development issues. This Board advises the Commission on appearance, design and opportunities to provide the best possible public access. The *Engineering Criteria Review Board* is made up of eminent geologists, geotechnical, civil and structural engineers, and architects, who advise the Commission on whether structures proposed on fill will be safe and afford reasonable protection to

persons and property during earthquakes. As mentioned previously, these Review Boards have been used frequently to assist in the design of major projects, such as bridge replacements and waterfront planning.

#### **4. Strategic planning**

After successfully withstanding a challenge to its existence in 1994, in 1995, BCDC adopted its first strategic plan. Through the strategic planning process during this review period, BCDC took steps to improve its operations, planning and regulatory programs, as well as to explore its role as a collaborator, integrator and facilitator of consensus on a range of complex, baywide issues.

Through its strategic planning process, BCDC has identified necessary changes to its Bay Plan policies and has been very proactive in addressing these needs over the review period. For example, as noted above under Leadership in Fostering Partnerships in Planning, BCDC undertook significant revisions to the Bay Plan's dredging and public access and wildlife policies, as well as started a review of the marshes and mudflats policies. BCDC also identified the need to review its water quality policies through this process. BCDC undertook this Bay Plan review effort through a Bay Plan Review Subcommittee. BCDC's efforts to review and update the Bay Plan have been important achievements during this evaluation review period.

BCDC's strategic plan includes a vision statement, a mission statement, ongoing and three-year goals, and objectives for reaching those goals. Each year, the Commission updates its strategic plan. During this review period, in 1997, the Commission added a statement of "Core Values." In 1999, the Commission created a Regional Collaboration Task Force to develop a plan to accomplish its goal of working collaboratively with others to achieve an efficient baywide planning and regulatory program. Through the work of the Task Force, the Commission identified the following seven areas for regional collaborative efforts: (1) restoration, (2) permit streamlining, (3) transportation, (4) sustainable development, including open space and agriculture preservation, (5) toxic cleanup, (6) non-point source pollution, and (7) invasive species. In 2000, the Commission decided to place a greater emphasis on increasing understanding of BCDC's mission, jurisdiction and authority. As described in more detail below under Outreach to the Public, BCDC has taken many steps toward meeting this objective during the last fiscal year. BCDC's managers and staff told the Evaluation Team that this annual strategic planning process, which involves all of the Commissioners and Alternates, has been invaluable in setting priorities, focusing the staff's efforts, responding better to customers and constituents needs, and increasing support and funding for BCDC.

## **5. Technical Assistance and Outreach to the public**

BCDC has been very effective in bringing technical assistance from many sources to inform policy and development decisions around the Bay. During the review period, NOAA chose BCDC as one of the two regions in the country to develop a demonstration program to illustrate how technology and data developed by NOAA's National Ocean Service can provide new and better tools to manage coastal, maritime shipping and natural resources. BCDC has assisted NOAA to partner with maritime interests, including the Port of Oakland, the Harbor Safety committee, the Marine Exchange, and others. The NOS San Francisco Bay Project supports navigation and coastal resource management and protection activities by providing access to real-time, detailed tide and water level information for planning and controlling vessel transits, providing computerized shoreline data, and providing real-time data and circulation models to conduct in-depth investigations of fundamental Bay ecosystem processes.

BCDC also secured NOAA's assistance in convening a scientific review panel to identify the key scientific questions the San Francisco International Airport (SFIA) should review in preparing the environmental documentation for its proposed expansion. The NOAA panel recommended that scientific studies that are done in connection with the development of the Environmental Impact Statement be peer-reviewed. This recommendation was partially adopted and another NOAA panel will be convened to review the studies and peer review the results. Through this initiative, BCDC is helping to resolve questions about the scientific information used in this very important project.

BCDC has also developed studies and tools to increase local government capacity for environmental planning. For instance, BCDC's North Bay Wetlands Protection, Public Access and Wildlife Compatibility and Subtidal Habitats Projects have all resulted in new studies and tools that can be used by communities in their planning and decision-making processes.

The 1997 Evaluation Findings contained a finding and recommendation (Program Suggestion 7) on the need for BCDC to investigate mechanisms for increasing its communications with the scientific community on policy issues and information needs, and obtaining scientific and technical expertise for specific projects. During this review period, BCDC has responded to this Program Suggestion through a flexible, case-by case approach, targeted to specific issues or projects. This approach best meets BCDC's needs for scientific and technical expertise.

The two previous evaluations of the CaCMP also noted that BCDC should place a priority on developing a public outreach campaign to educate the public about the Bay and BCDC's role in protecting it. The 2000 update of BCDC's strategic plan recognizes this need and calls for greater emphasis on increasing the public's understanding of BCDC's mission, jurisdiction and authority. Over the past year, BCDC has taken many steps to address this objective by: hiring a public information intern and outside consultant to provide both a short-term and long-term public information program; improving BCDC's website; and entering into a partnership to produce a video documentary about San Francisco Bay.

## **D. STATE COASTAL CONSERVANCY**

The SCC was created in 1976 to balance the regulatory authority of the CCC and BCDC with the ability to purchase, protect, restore and enhance coastal resources and provide public access to the coast. Since 1976, SCC has spent more than \$200 million on over 700 projects along the California coast and San Francisco Bay. The SCC is primarily funded by state general obligation bonds. By the late 1990's, with no new bond issue since 1976, SCC was running out of money. In March of 2000, the California voters passed a \$2.1 billion Parks Bond Act, of which about \$250 million went to the SCC. With this infusion of new resources, the SCC has been able to rebuild its staff to about 50 people, most of whom manage SCC projects along the coast (about 20 projects per staff person). The SCC also provides hands-on technical assistance and capacity building to local conservation groups and helps to facilitate solutions to coastal issues using its land redevelopment authorities.

### **1. Increasing Public Access to the Coast**

During this review period, the SCC has continued to work effectively with the CCC to implement the Joint Access Program (See Section IV.A.2.) In addition, it has expanded its mission to encompass the 9-county San Francisco Bay region and has initiated or completed many projects that have significantly increased public access opportunities along the California coast. The SCC has not only provided funding, but also hands-on technical expertise to local governments, community groups, and nonprofit organizations to design, develop and maintain public access areas along the coast.

In 1997, under legislative mandate, SCC established the San Francisco Bay Area Conservancy Program. This program is the SCC's primary effort to identify and adopt long-term goals for resource protection and outdoor recreation in the nine-county Bay Area. It involves governmental agencies, nonprofit land trusts, and other interested parties. The goals developed in this program will guide the SCC's priorities for undertaking projects and awarding grants.

With the infusion of new resources from the Parks Bond Act of 2000, SCC has been able to make significant progress in improving public access and protecting natural resources along the California coast and around San Francisco Bay. Some significant projects include:

- riparian habitat restoration planning and the creation of bikeways and greenways in the Los Angeles and San Gabriel River watersheds.
- purchase of the 800-acre Arroyo Hondo (JJ Hollister) Ranch along the beautiful Gaviota coast as a natural and historic preserve. This is the first major step toward preserving portions of the Gaviota coast for public access and resource conservation.
- purchase of commercial properties in Monterey, California to assist the City to open a

“Window-on-the-Bay.” The project aims to create a continuous stretch of parks and open space along the Monterey Bay shoreline.

- assistance in acquiring a conservation easement over the 195-acre Triple M Ranch, northeast of Moss Landing in Monterey County, to protect wildlife habitat and promote sustainable agricultural practices.
- assistance in acquiring conservation and trail easements at Purisima Farms near Half Moon Bay in San Mateo County. The trail easements will allow a 3 mile extension of the California coastal Trail, which will eventually link with upland trails leading to San Francisco Bay.
- purchase of Mori Point near Pacifica. The 105-acre headland offers spectacular views and contains freshwater wetlands that are home to two endangered species.
- restoration of Richmond’s Ferry Point Pier in San Francisco Bay for fishing and recreational use, while also preserving it as a historic landmark.
- funding for three major trail projects – the San Francisco Bay Trail project, which is building a 400-mile trail around the entire Bay shoreline linking parks and open space; the Bay Area Ridge Trail, which will also eventually be 400 miles long, running along or near ridge lines; and the California Coastal Trail, which is to run the entire length of the California coast.

## **2. Leadership on Wetlands Restoration**

### *Hamilton Air Force Base Wetland Restoration/Bel Marin Keys*

The SCC has been assisting BCDC, its San Francisco Bay area partner in the CaCMP, to advance the beneficial reuse of dredged material for habitat restoration since the Sonoma Baylands restoration project in the early 1990’s. During this review period, in September 2000, the SCC agreed to buy 1,613 acres of wetlands and wildlife habitat adjacent to Hamilton Air Force Base at a cost of \$16 million. This land, known as Bel Marin Keys, will be added to the over 700 acres of diked baylands and runways at Hamilton to create the largest wetland restoration project in San Francisco Bay. (See also Section IV.C.2.)

The project will be used to help implement the San Francisco Bay LTMS by beneficially reusing over 10 million cubic yards of dredged material from port channel maintenance and deepening projects. The SCC and the U.S. Army Corps of Engineers are taking the lead to prepare a design for the restoration. Federal matching funds for the restoration were authorized in the 1999 Water Resources Development Act.

### *Southern California Wetlands Recovery Project (SCWRP)*

The SCC provides the main staff for the SCWRP, which is a partnership of 16 public agencies working cooperatively to acquire, restore and enhance coastal wetlands and watersheds between Point Conception and the International border with Mexico. Using a non-regulatory approach and an ecosystem perspective, the SCWRP partners work together to identify wetland acquisition and restoration priorities, prepare plans for these priority sites, pool funds to undertake these projects, implement priority plans, and oversee post-project maintenance and monitoring. The goal of the SCWRP is to accelerate the pace, extent and effectiveness of coastal wetland restoration in Southern California through developing and implementing a regional prioritization plan for acquiring, restoring and enhancing Southern California wetlands and watersheds. Ultimately, the SCWRP will result in a long-term increase in the quantity and quality of the region's wetlands.

It is estimated that 70-75 percent of coastal wetlands in Southern California have been lost. Despite their recognized importance, efforts over the past 25 years to acquire, restore and enhance Southern California's coastal wetlands have been uncoordinated, piecemeal, and disappointing. There has been no comprehensive, region-wide focus recognizing the important interrelationships among all Southern California wetlands. The SCWRP establishes a process to bring interested parties together to develop a more coordinated, systematic and regional approach. This region-wide approach will also focus the political and economic resources needed to conserve these important wetland resources.

The SCWRP is structured with a Board of Governors that provides policy direction; a Management Committee that drafts restoration plans and advises the Board of Governors on acquisition, restoration and enhancement priorities; a Science Panel that provides expert advice on the design of restoration projects; and a Public Advisory Committee that represents community and interest group views to the Board of Governors. The participating agencies are:

**Federal Partners –** U.S. Army Corps of Engineers  
U.S. Environmental Protection Agency  
U.S. Fish and Wildlife Service, USDO  
National Marine Fisheries Service, NOAA, USDOC  
Natural Resources Conservation Service, USDA

**State Partners –** California Resources Agency  
California Environmental Protection Agency  
California Coastal Commission  
California Department of Fish and Game  
State Coastal Conservancy  
State Lands Commission  
State Water Resources Control Board  
Regional Water Quality Control Board, San Diego  
Regional Water Quality Control Board, Santa Ana



Regional Water Quality Control Board, Los Angeles  
Regional Water Quality Control Board, Central Coast

The SCWRP was initially funded by the State of California through an interagency grant from the Department of Fish and Game to the SCC. Several participating agencies also contributed funds and services for developing a Southern California Coastal Wetlands Inventory. The State of California budget has provided substantial resources for the SCWRP, including \$28.5 million in FY 2000.

The SCC has done an excellent job of establishing the SCWRP, keeping it running smoothly, and securing state and federal resources and services to support its restoration activities. The SCC also serves as the financial manager of the Project – receiving, holding and disbursing funds for acquisition, restoration and enhancement activities.

The SCC has also done an excellent job of building grassroots support for the Project at the County level through establishing five County Task Forces. These County Task Forces have helped to move decision-making from the tradition top-down to more bottom-up. The SCC also has a full-time Public Outreach Coordinator for the SCWRP located in the Los Angeles area and this has helped to keep the public informed about the Project and its activities.

### 3. Outreach and Training

The SCC continues to produce excellent materials to educate the public about coastal issues and resources. The SCC's signature publication is the quarterly *Coast and Ocean*. This journal provides a snapshot of SCC activities for the quarter and covers current and emerging coastal issues in depth. Recent issues have included topics such as coastal wetlands restoration and mitigation, invasive species, coastal water pollution and water quality, hazardous waste cleanup, shoreline erosion, coastal open space and agricultural land preservation, public access and coastal and marine science and education. Since *Coast and Ocean* often highlights issues of importance to all three state coastal agencies, it is an ideal publication to promote understanding of the overall CaCMP to the public.

The SCC also has a wide range of other publications on public access, coastal wetlands and technical assistance to nonprofit groups and landowners. Its *Coastal Access in California*, *California's Public Piers*, *San Francisco Bay Shoreline Guide*, and *A Wheelchair Riders Guide: San Francisco Bay and Nearby Shorelines*, are the definitive guides to coastal public access opportunities along California's 1,100 mile coastline and San Francisco Bay.

Another very important element of SCC's program is outreach and training to build the capacity of community groups, land trusts and other nonprofit organizations, and landowners to undertake conservation projects. SCC has been a major stimulus to the development of local conservation groups and land trusts in California, and continues to help them after they have been established – from funding and hands-on assistance with project implementation to organizational development and

planning. For example, SCC brought in an expert from the Land Trust Alliance to assist the Southwest Wetlands Interpretative Association to revamp its Articles of Incorporation in order to expand its interpretative functions. SCC has also been willing to support innovative approaches, such as funding an innovative low tech sewage treatment system to treat sewage in the upstream, Mexican, portion of the Tijuana River watershed, and assisting the Elkhorn Slough National Estuarine Research Reserve and the Elkhorn Slough Foundation to develop a model program with the agricultural community.

## **V. FINDINGS AND RECOMMENDATIONS**

### **A. CALIFORNIA COASTAL MANAGEMENT PROGRAM WIDE**

#### **1. CaCMP Program Visibility and Coordination**

Although each of the three CaCMP lead agencies – the CCC, BCDC and SCC – has a strong individual identity, there is no identity for the overall CaCMP and the public has little understanding of how it works. For example, each of the three CaCMP lead agencies has its own logo and promotional materials, but there is no such logo and promotional material for the CaCMP overall. Few people understand how the three lead agencies inter-relate, what their respective roles are in addressing important coastal issues, what the achievements of the overall CaCMP have been, and what the future directions are for coastal management in California. As a result, the CaCMP is not benefitting as much as it could from public support for balanced conservation and development of coastal resources. While the three lead agencies have a long history of good coordination on specific issues or projects, such as public access, energy and offshore resources, there are other areas where more program coordination is needed. Without such coordination, some of the opportunities for synergies envisioned in the overall CaCMP are not occurring.

For example, the CaCMP lead agencies are involved in a plethora of regional and statewide initiatives but, to the Evaluation Team's knowledge, there has been no organized effort to clarify their respective roles and target their limited resources. For example, just concerning wetlands planning in the San Francisco Bay Area alone, BCDC and SCC are involved in the following regional planning initiatives: the Baylands Habitat Goals Project, the CALFED Bay-Delta Project, the Bay Area Conservancy Program, the Bay Plan Update, the San Francisco Bay Joint Venture, and the Comprehensive Conservation Plan for the San Francisco Bay National Wildlife Refuge Complex. This is not to mention regional "smart growth" and transportation initiatives or their roles in the statewide Non-point Pollution Control Program.

In an attempt to understand better the growing number of initiatives and the resulting array of requests for state funding, the California Resources Agency has embarked on a six-year planning process to put all resource information into a single database (the database is known as C-CRISP, which stands for California Continuing Resource Investment Strategy Program) and produce one set of state priorities for investment. It is important for the CaCMP agencies to produce coherent data sets for this effort, so that the needs of the coast do not get lost. SCC is talking with CCC and BCDC about the three agencies together developing coastal data sets and priorities that would maintain an identity for coastal needs within the overall statewide database. SCC told the Evaluation Team that they would be willing to take the lead in this effort, if the CCC and BCDC agree.

The Coastal and Ocean Managers Group, formed by the CCC in 1995, is an important start toward more communications, coordination and integration of programs and activities to meet the needs of the coast. As discussed in Section IV.A.3, the Coastal and Ocean Managers Group is made up of managers from CCC, SCC, BCDC, and the managers of California's four National Marine Sanctuaries and two National Estuarine Research Reserves. This Group has been quite successful in increasing information-sharing, identifying opportunities, and coordinating efforts on issues of mutual importance to the members. However, to the Evaluation Team's knowledge, the Group has not been used to discuss how to expand CaCMP program visibility and coordination. In addition, the managers of the Reserves and Sanctuaries pointed out that they have Advisory Committees, made up of a wide array of public and private groups and individuals, who could advise the CaCMP lead agencies on coastal issues and projects in their regions.

**PROGRAM SUGGESTION 1:** The three lead agencies for the CaCMP – CCC, BCDC and SCC – should work together, using the Coastal and Ocean Managers Group where appropriate, to develop a proactive strategy for expanding CaCMP coordination and increasing the public's understanding of the overall CaCMP. The strategy should consider:

- seeking opportunities to increase the public's understanding of the overall CaCMP and each of the three lead agencies' roles. The agencies should consider making use of existing publications for this purpose, such as the SCC's *Coast and Ocean*.
- developing a symbol or logo for the CaCMP that all three of the lead agencies could use along with their agency logos.
- developing a CaCMP brochure and information that can be included in each of the agencies' public information materials.
- coordinating more closely on regional and statewide coastal initiatives, including clarifying their respective roles in these various initiatives and analyzing how to target their limited resources to best serve the needs of the coast.
- making more use of their partners, such as National Estuarine Research Reserve and National Marine Sanctuary Advisory Committees, to obtain feedback on regional issues and projects.

## 2. Joint Access Program

Despite a doubling of the acceptance rate for Offers to Dedicate Public Access easements during this review period, the terms of many OTDs secured in the 1980's will soon be expiring. This creates the near-term potential for irreversible losses of public accessways. A recent analysis by the CCC showed

that more than 30% of the existing 1200+ OTDs will expire between 2002 and 2005. Once an OTD has expired, the opportunity to gain a public access easement at that location is, in most cases, lost forever.

Because the consequences of allowing OTDs to expire are so damaging to public access opportunities, the SCC and the CCC have been working cooperatively for several years to assess the problem and find solutions for getting OTDs accepted. In addition, as mentioned in Section IV.A.2, in 1998, the SCC and the CCC entered into a Memorandum of Understanding under which the SCC will consider becoming the accepting agency of last resort. Traditionally, the SCC has avoided accepting OTDs because it is not able to manage properties efficiently with its centralized office and small staff. Accepting OTDs also requires amassing a significant amount of legal documentation, with serious workload implications for SCC staff. This administrative role would divert SCC from its priority on project development. However, rather than lose the OTDs, under the terms of the MOU, the SCC will consider accepting the easements and holding them until they can be transferred to a local agency capable of handling their operations and maintenance.

During the evaluation site visit, the Evaluation Team was made aware of a difference of opinion between the CCC and the SCC over interpretation of the terms of the MOU. The CCC thought that the MOU committed the SCC to become the accepting agency of last resort in all cases where that is needed. However, the SCC said that they only agreed to *consider accepting* the OTDs. Thus, under their interpretation, no OTD will be allowed to expire without the SCC considering it for acceptance. However, after SCC consideration, it is possible the some OTDs will not be considered high enough priority for SCC to become the acceptor of last resort. Thus, some OTDs may be allowed to expire.

Given the large "pulse" of expiring OTDs in the next 4 years, there is a special urgency for the SCC and the CCC to work together to identify alternative approaches for locating accepting agencies for expiring OTDs. The mis-understanding regarding the terms of the MOU adds further urgency to this effort.

The CCC's Access Plan also highlighted the need for an intensive, coordinated effort to complete the California Coastal Trail. The Coastal Trail is envisioned as a continuous passage along the entire 1,100-mile length of the State's shoreline. It is intended to provide a trail system for a variety of users (i.e., pedestrians, bicyclists and the mobility impaired), and to connect to other existing coastal and inland trail networks. However, after 25 years of effort, it is only 65% complete.

In FY 2000, the Governor's budget included \$5 million for implementation of the California Coastal Trail. The funds were distributed to the SCC, which then formed a work group comprised of SCC, CCC, State Parks and the nonprofit group, Coastwalk, to develop a planning strategy for use of the funds. The Evaluation Team understands that the SCC has contracted with Coastwalk to develop a strategic plan for completing the Trail. While respecting Coastwalk's expertise, the Evaluation Team hopes that the strategic planning process will continue to involve the state agencies, including the CCC, which have significant responsibilities and expertise to offer in this important effort. (NOTE:

Subsequent to the review period, Governor Gray Davis signed SB 908, a bill by North Coast Senator Wesley Chesbro, which formally establishes the California Coastal Trail and requires the SCC, in cooperation with the CCC, State Parks Department and California Conservation Corps, to develop a plan and cost estimates for its completion.)

**PROGRAM SUGGESTION 2:** The SCC and the CCC should undertake time-critical review of OTDs that are due to expire within the next 2-4 years, agree on priorities for acceptance, and determine their respective roles in undertaking an intensive community outreach effort to identify potential accepting agencies. The SCC and the CCC should clarify their roles involving OTDs and make changes, as needed, to their existing MOU.

## B. CALIFORNIA COASTAL COMMISSION

### 1. Staffing

Although staffing levels have increased recently, staffing is still only marginally adequate for many core functions. Many public commenters stated the CCC was "overwhelmed [with work] and understaffed." Although several of these commenters said they felt the CCC had done a good job with limited resources, they cited many "gaps," such as those described below.

#### a. *Local Assistance and LCP Periodic Review*

One of the biggest gaps is "local assistance," or service to coastal cities and counties, both those with certified Local Coastal Programs (LCPs) and those without. The California Coastal Act is designed around the premise that coastal development permitting, like other land use decisions, is best made at the level closest to the people involved – the local level. During this review period, the Legislature resumed providing about \$500,000 per year of funds for Local Assistance Grants to coastal cities and counties. This grants program has provided an effective incentive for local governments to undertake LCP planning. However, the lack of adequate CCC staff to provide timely planning assistance to cities and counties from the District Office level is contributing to delays in completing the LCP planning efforts. The lack of staffing for this function at the CCC is one of the principal barriers to meeting the promise of the California Coastal Act, that its regulatory program would be uniformly implemented at the level closest to the people.

Related to the gap in "local assistance" staffing is the lack of staff to perform the LCP periodic reviews. These reviews are supposed to be performed at least once every 5 years in order to assure that local coastal programs stay current and effective. Due to lack of staff at the CCC, only 3 of the 88 certified LCP segments have ever been reviewed, and most reviews are 5 to 15 years overdue. As a result, appeals of LCP permitting actions have increased 230% since 1992-93<sup>9</sup>, increasing the workload on the CCC staff and making it even harder to spare staff for the periodic reviews. This is a very difficult situation that cannot be resolved without more CCC staff for the periodic review function.

#### b. *Enforcement*

Despite the relatively large expansion of enforcement staff made possible by the California Legislature last year, there is still a need for more enforcement staff. The cumulative effect of inadequate staffing for this function over many years has resulted in a large backlog of un-investigated cases (estimated at over 600 cases as of June, 2001). In addition, with the length of California's coast and the large volume of coastal development permitting, one enforcement person per region is not enough to handle

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<sup>9</sup>"California Coastal Commission," from *Analysis of the Budget Bill: 2001-02*, California Legislative Analyst's Office, February, 2001, p. B-85.

the current workload, monitor for un-permitted activities, or educate property owners so as to avoid unintentional violations. This is a case where more enforcement staff could mean less enforcement, because the interpretative enforcement that the CCC would like to do could result in fewer unintentional violations.

*c. Technical Services*

The CCC now has two biologists, one geologist and one coastal engineer on staff to provide technical advice on all permitting and planning statewide. While this is a substantial improvement over no technical staff, these staff people are already greatly over-subscribed. The Evaluation Team heard from several local governments who said one of their biggest needs is access to these technical experts, but it is so hard to obtain because the demand so overwhelms the supply. In addition, although CCC has achieved a substantial amount of information-sharing and database development on a shoestring, more staff are needed to capture CCC's information in databases that can be accessed and used by cities and counties.

*d. Public Access*

With three full-time staff for the Public Access Program, the CCC has been largely responsible for more than doubling the acceptance rate for public access easements, from 19% in 1997 to 42% today.<sup>10</sup> However, more staff are needed to deal with the large workload pulse over the next three years, when over 40% of all Offers-to-dedicate (OTD) public access easements will expire unless accepted by a qualified entity. Although the CCC cannot accept these easements directly, there is a large workload for the CCC in compiling detailed information and maps for all of the hundreds of expiring easements and assisting interested parties to assess facility needs, legal issues and alternative funding sources for maintaining the easements for use by the public. Finding staff for this purpose is a very high priority because, if the OTDs are allowed to expire without being accepted, these public access opportunities will be lost forever.

*e. Other Staffing Needs*

Other "gaps" noted by the Evaluation Team include marginal staffing for the CCC's important public information and education programs, and for long-range planning to deal with coastal issues of importance to the State, such as watershed restoration, shoreline erosion and flooding, desalination, underwater acoustics, and fiber optic cables.

**Program Suggestion 3:** CCC should analyze and quantify staffing requirements to meet unmet needs in core program areas, such as local assistance, LCP periodic reviews, monitoring and enforcement,

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<sup>10</sup>Memorandum from Linda Locklin, Public Access Program Manager, California Coastal Commission, to Federal Evaluation Team, June 5, 2001.



technical services, public access, public information and education and long-range planning. CCC should continue to seek staff augmentations in these areas through Budget Change Proposals, as well as pursue other sources of funding.

## 2. Enforcement

CCC's enforcement goal is for all coastal development to have a permit and for all permit conditions to be met. Achieving this goal means having adequate staff to monitor both permitted and un-permitted activities and investigate complaints promptly, having appropriate penalties when violations are not corrected, and educating the public (so-called "interpretative enforcement") to reduce the incidence of violations. Despite the recent significant increase in CCC enforcement staffing, CCC has unmet needs in all of these areas.

With the recent staff increases, CCC is now able to respond more quickly to reports of violations. However, due to limitations of staff and resources, there is no systematic monitoring of permit compliance and un-permitted activities. In addition, the Evaluation Team heard from some public interest groups that, despite improvements, they were still frustrated by what they perceived as slow response by the CCC to investigate reported violations.

After investigation, if CCC confirms that a violation has occurred, they typically ask the property-owner to come in for an after-the-fact permit. However, if the property-owner refuses to do so, or the after-the-fact permit is denied, the CCC's only recourse is to issue a Case and Desist or Restoration Order or go to court. The CCC does not have administrative fine or "ticketing" authority to deal with more minor violations. Their only recourse is to use the more severe Cease and Desist Order, which may not fit the violation well. The CCC needs to have administrative fine authority in order to be able to have the remedy fit the violation and to streamline the enforcement process.

Because of the long California coast, much of which is developed, CCC has a large enforcement workload. The table below shows current open cases, by District:

	Eureka	North Central	Santa Cruz	Ventura	Long Beach	San Diego	State- wide w/Energy
Cases pending 7/1/00	48	28	175	130	134	55	570

Cases opened since 7/1/00	24	17	68	12	79	3**	203
Total Cases Open FY 00/01	72	45	243	142	213	58	773
Total Cases Closed since 7/1/00	4	17	81	22	29	0	153
Total Cases Open as of 6/01	68	28	162	120	184	58	620

\* Figures do not include Headquarters cases and backlog of 400 un-investigated allegations collected during the past 2-3 years in the Ventura District Office. The figures of new cases are calculated as of May 25, 2001.

\*\* The CCC did not hire a new enforcement officer in San Diego until March, 2001.

Enforcement workload varies by District. Current enforcement staffing provides the minimum of one full-time enforcement person per District but is not sufficient to provide additional enforcement staff in the Districts with the most workload. CCC has tried to provide some augmentation by locating the South Coast Enforcement Supervisor in the Ventura District Office, but he is still responsible for supervising all of the South Coast Districts. In addition, CCC staffs the Santa Monica Mountains Enforcement Task Force, described in the Accomplishments section. This cooperative approach of city, county and state agencies coordinating their enforcement authorities in one region is a potential model for other areas of the coast. However, coordination requires dedicated staff and CCC does not have the staff to expand this model to other areas.

A major issue is the large backlog of un-investigated enforcement cases that has built up over the past few years due to lack of enforcement staffing. CCC estimates the backlog at 620 cases statewide. A team of people from CCC Headquarters is going to each of the District Offices within the next few months to review the backlog. For example, in the Ventura District Office, there are over 400 un-

investigated cases, in addition to the 120 open cases. Files are in disarray due to the lack of past enforcement staffing. In its review of un-investigated cases, CCC is using the age of the case, the amount of resource damage involved and the strength of the evidence as criteria to determine whether to close or pursue a case. The Evaluation Team believes CCC is pursuing a reasonable approach to assessing the backlog. However, additional enforcement staff are needed to resolve the backlogged cases.

CCC has created an Enforcement Database, to which all District Enforcement Officers have access. At first the database just contained open cases, but now CCC is going back and attempting to capture closed cases. CCC's goal is to tie the Enforcement Database to the Permit Tracking Database they have been operating for some time. This would make monitoring of permitted activities and identification of un-permitted activities more efficient. CCC would also like to link both databases to a GIS and add additional data layers. However, they do not currently have enough technical services staff to do this.

With the staffing increase from 5 to 14, CCC has been able to begin reducing the backlog and to respond more rapidly to new reports of violations. Many violations have been resolved through permits authorizing development "after-the-fact" or through the landowner's agreement to remove un-permitted development. The enforcement program has established a process of prioritizing violations so that enforcement's efforts are focused on those violations with the most significant resource damage. However, CCC still needs more enforcement staff to handle the current enforcement workload, resolve the backlog, institute a systematic monitoring program and do "interpretive enforcement" to reduce the incidence of violations. CCC should identify its requirements for additional enforcement staffing under Program Suggestion 3 above. In addition, they should consider the following:

**Program Suggestion 4:** CCC should consider ways to increase the emphasis on interpretive enforcement – educating the public so as to prevent unintentional violations. When staff resources allow, CCC should also implement systematic monitoring of both permitted and un-permitted activities; explore opportunities to make its Enforcement Database more robust (by adding more data layers) and integrate it with the Permit Tracking Database in GIS format; and join with interested state and local agencies to create additional enforcement task forces like the Santa Monica Mountains Enforcement Task Force. CCC should request that the Legislature consider providing administrative fine authority, in order to streamline the enforcement process.

### **3. Local Coastal Programs (LCPs)**

#### **a. *LCP Completion***

A key element of the California Coastal Act is the unique partnership it creates between the State and local governments for coastal planning and resource management. Under the Coastal Act, local

governments were required to develop Local Coastal Programs (LCPs) that included land use policies and zoning ordinances consistent with the policies of the Coastal Act. Once these LCPs were reviewed and certified by the CCC, most coastal permitting authority was returned to the local government. However, for a variety of reasons, about 30% of the LCPs have never been completed. Currently, there are 73 coastal jurisdictions. Under the Coastal Act, local governments can prepare LCPs in separate geographic units or segments, so the 73 coastal jurisdiction currently have 125 geographic LCP segments. Of these, 88 or 70% are completed and have been certified by the CCC. This covers about 87% of California's coastal zone.<sup>11</sup>

In 1993, the mandate in the Coastal Act for local governments to complete LCPs was removed because it was considered an unfunded mandate. This has had two major repercussions. First, the CCC is required to issue coastal development permits directly in coastal jurisdictions that do not have a completed and certified LCP. This direct permitting workload of the CCC has dominated available staff resources, because priority has to be given to regulatory items with statutory deadlines. As a result, providing planning assistance to local governments to complete LCPs, as well as many other vital statewide planning functions, have had to be deferred. Second, the intention of the Coastal Act, that coastal development permitting should occur throughout the State at the level of government that is closest to the people, has not been met in areas without certified LCPs.

OCRM's 1997 evaluation stressed the importance of completing the LCPs in order to enable the CCC to reallocate limited staff resources to long-term planning, monitoring and evaluation efforts. The 1997 evaluation findings suggested that the CCC work with the Administration, Legislature and constituents to re-institute the requirement for completing LCPs and to enact a strategy through changes in legislation that would enable the local governments to complete LCPs.

The CCC has responded to this suggestion in several ways. As noted in the Accomplishments section, the CCC successfully sought funds from the Legislature to re-institute the LCP Planning Grants Program. Several of the grants have specifically targeted LCP completion and these grants have resulted in several local jurisdictions making substantial progress toward certification during the review period.

The Legislature has also focused attention on the completion of remaining uncertified LCPs. As part of the State 1999 Budget Act, CCC was required to prepare a Supplemental Report to the Joint Legislative Budget Committee on the status of LCPs and factors contributing to some cities and counties not completing the process. In FY 99/00, the CCC received additional funds from the Legislature to provide an additional 4 and one-half positions statewide to work on LCP planning. Four of these positions were allocated to the District Offices to assist communities directly and one-half position was allocated to CCC Headquarters to re-institute the Local Assistance newsletter, create a

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<sup>11</sup> CCC Report to Joint Legislative Budget Committee on LCP Status, January 10, 2000.

Local Assistance webpage, and provide other statewide local planning support. In September, 2000, a statute was enacted that required the CCC itself to complete the LCP for the City of Malibu. This jurisdiction generates a significant number of permit applications involving important coastal resource issues before the Commission, but the City has not yet completed an LCP. The statute required the CCC to complete an LCP for the City by 2002.

However, current incentives for completing LCPs may not be enough in many areas. Many of the remaining uncertified LCPs are in areas where coastal population is growing rapidly and development pressures are intense. CCC District Offices are still very sparsely staffed after years of inadequate resources and are not able to keep up with the demand from local governments for planning assistance. The resumption of the Planning Grants Program, while welcomed and effective, is still small relative to the demand from local governments. Local governments are also still recovering from the effects of the long recession in California and may be understandably reluctant to take on a new, significant workload without the assurance of adequate support from the CCC. In summary, the evaluation team has concluded that, without either increased incentives or re-institution of the statutory mandate for coastal cities and counties to complete LCPs, many of the remaining uncertified LCPs may never be completed.

**Program Suggestion 5:** The CCC should work with the Administration, Legislature and constituents to seek increased incentives to enable local governments to complete remaining uncertified LCPs. CCC should also explore options with these parties for re-instituting the statutory mandate for local governments to complete LCPs.

b. *Periodic Review/LCP Updates*

The need to update out-of-date Local Coastal Programs (LCP) continues to be a significant issue for the CCC. While the completion of LCPs continues to be a priority, the need to undertake periodic reviews and update out-of-date LCPs was expressed as a top priority to the Evaluation Team throughout the site visit in meetings with local governments, Legislature staff, CCC staff, and various interest groups.

The majority of LCPs were developed in the late 70's and early 80's, using data and research available at that time. Many of these plans have not been updated since, and therefore do not reflect information currently available on coastal uses and resources and also do not address current conditions, such as increasing population levels and development pressures on the coast.

The Evaluation Team met with representatives from several local governments during the site visit. Many of them expressed concerns that their LCPs were out-of-date and asked for additional resources and technical assistance from the CCC to address this issue. For example, in San Mateo County, concerns have been raised regarding inconsistencies between the wetland definition in the Coastal Act

and the County's LCP. The City of Half Moon Bay expressed willingness to pay for a position at the CCC that could provide support for them in their efforts to update the City's LCP.

Since many of these LCPs have never gone through a comprehensive review and update, they have been changed over the years through piecemeal amendments primarily to address specific development projects. For example, the Santa Barbara County LCP has been amended 63 times and the San Mateo County LCP has been amended 38 times without having a periodic review. In addition, numerous amendments without the benefit of regular review of the entire LCP limits the ability of the CCC and local governments to take a comprehensive view of the effectiveness of the LCP and how it has changed and evaluate the cumulative impacts of development over the years.<sup>12</sup>

As LCP policies have become increasingly out-of-date, the CCC has seen a significant increase in the number of appeals of local coastal permit decisions, particularly during over this review period. During this time, appeals increased from about 40 in FY 1996-1997 to over 70 in FY 1998-1999.<sup>13</sup> These appeals take considerable staff and Commission time to address.

Section 30519.5 of the Coastal Act requires the CCC to review local coastal programs at least every five years to determine whether the program is being implemented in conformity with the policies of the Coastal Act. While the periodic review provision requires the CCC to provide recommendations for local government to improve LCPs, there is no requirement for the affected local government to adopt those recommendations. Therefore, there is no assurance that LCPs will be updated on a regular basis, whether a periodic review has been completed or not, and the amendment process remains the key vehicle for implementing change in certified LCPs. The current legislative proposal to address this issue is a bill sponsored by Assembly Member Hannah-Beth Jackson (Assembly Bill 640), which would require local governments to submit a comprehensive LCP update to the CCC within 18 months of receiving the CCC's recommendations resulting from the periodic review.

Since the last evaluation in 1997, the CCC has made significant efforts to update out-of-date LCPs. A key component of this effort has been the continuation of the ReCAP Program. The goals of the ReCAP Program include furthering periodic review of certified LCPs and identifying ways to address cumulative impacts more effectively through LCPs. During the evaluation period, the CCC completed a ReCAP review for the Santa Monica Mountains/Malibu region and is currently completing a full periodic review under ReCAP for San Luis Obispo County. Both of these reviews required significant resource investments in terms of CCC staff time, data collection efforts and analysis, and developing recommendations. The San Luis Obispo County review is the first time that the CCC has used the ReCAP framework to undertake a full periodic review of an LCP.

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<sup>12</sup>During this review period, the CCC was sued by the Coalition to Save the Marina to force it to undertake a periodic review of the Marina del Ray LCP. After the close of the review period, the lawsuit was settled by the CCC agreeing to do a periodic review of this LCP.

<sup>13</sup>*Report of the LCP Periodic Review Program*, p.4.

For the Santa Monica Mountains/Malibu ReCAP, the CCC provided technical assistance and guidance to Los Angeles County and the City of Malibu in their efforts to develop LCPs, rather than a periodic review. Through this review, the CCC was able to identify actions for the CCC and these local governments to undertake in several key issue areas, including: concentration and location of development (including an evaluation of the Transfer of Development Credit Program), public access, and shoreline armoring. These included recommendations regarding the adoption of numerous Offers to Dedicate (OTD) open space easements that were about to expire in the Santa Monica Mountains and plans to get the first priority OTDs accepted. (See Section IV.B.3 for more information.)

The CCC has also been seeking additional resources from the State Legislature to expand its capability to complete periodic reviews. In 2000, the CCC completed a *Report on the LCP Periodic Review Program* in response to a Necessary Action from the previous evaluation. This report analyzed the benefits of implementing a periodic review program using the ReCAP methodology. The report recommended seeking permanent staff to establish the capability to undertake periodic reviews of LCPs and legislative changes to ensure that local governments respond to recommendations that result from periodic reviews.<sup>14</sup>

To date, the ReCAP Program has been supported solely on funding from the federal CZM grant. It is essential that the state demonstrate a commitment to the periodic review requirement of the Coastal Act by providing support for an expanded periodic review program, using the ReCAP methodology. As required in a *Supplemental Report of the 2000 Budget Act*, the CCC identified the LCPs that are overdue for periodic review (currently, about 50 LCP reviews are overdue, with a significant portion by more than 10 years) and ranked each LCP as a high, medium or low priority for review. In order to address this backlog within five years, the report states that the CCC would need an additional 16.5 positions.<sup>15</sup> Under this scenario, it would take about six person years to complete one high, one medium, and one low priority review in a year-long work program. Due to their complex nature, high priority reviews would likely take about two years to complete. To help address this need, there is currently a proposal in the Legislature to add 14 new positions to the CCC staff for a statewide periodic review program. NOAA/OCRM strongly supports these efforts to gain additional staff and other resources for the CCC to establish a robust periodic review program that can address the backlog of reviews in a timely manner.

**Necessary Action 1:** The CCC must continue efforts to establish a statewide periodic review program that will address the current backlog of periodic reviews and allow the CCC to meet the statutory requirement of conducting a periodic review for each certified LCP every five years. NOAA/OCRM acknowledges that establishing this program will require more resources for the CCC and strongly

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<sup>14</sup>Ibid. p. 16.

<sup>15</sup>Memorandum from Susan Hansch, Chief Deputy Director, California Coastal Commission, to Don Wallace, Assistant Secretary for Finance and Administration, Item 3720-001-0001 #3-California Coastal Commission, pursuant to the *Supplemental Report of the 2000 Budget Act*, December 21, 2000.

supports efforts to seek resources for this purpose.

**Program Suggestion 6:** The CCC should consider seeking legislative changes to the Coastal Act that will encourage local governments to revise their LCPs based on the recommendations made as a result of periodic review.

c. *Local Assistance*

There is a significant unmet need for technical assistance to support local planning efforts. The evaluation team talked with several communities that would like to update their LCPs but need technical support from the CCC. As mentioned above, one community, the City of Half Moon Bay, even offered to pay for a staff person at the CCC to provide this assistance. CCC also needs to be able to provide support to communities that are currently without certified LCPs but would like to develop them. Both communities updating their LCPs and communities developing new LCPs also need more access to technical services from the CCC.

Community planners and local elected officials told the evaluation team that there is a high turnover of staff in local planning departments. This creates a great need for CCC District Offices to help train and orient new staff on the Coastal Act and its requirements. New CCC District Office staff could also benefit from this kind of training. NOAA's Coastal Services Center (CSC) has designed and implemented a "CZM 101" course designed to help train new staffs of state CZM agencies. This could be a model for developing a "Coastal Act 101" training program. Also, the National Estuarine Research Reserve System and California's two National Estuarine Research Reserves have conducted coastal decision-maker workshops, which are forming the basis for a national Coastal Training Initiative. This is also a potential model for this effort.

In addition to training, there is also a need for ongoing advice and mentoring during LCP updates. Advice and assistance during this process from people who really understand the Coastal Act can speed up the process and eliminate much of the frustration of having a product revised several times. In the absence of additional CCC staff for this purpose, one source of such ongoing advice and assistance might be enlisting the services of experienced retirees from the CCC and local governments.

Community planners who are implementing LCPs on-the-ground also need a forum to exchange information and solutions to common issues and problems. Although the CCC has recently re-instituted the Local Assistance Notes, to the Evaluation Team's knowledge, there is no forum that allows local and regional planners to meet face-to-face to share information, ideas and approaches.

There are also many unmet needs for technical services to local governments. Although the CCC now has two biologists, one geologist, and one coastal engineer statewide, their services are already greatly over-subscribed. In addition, local governments could do their work more efficiently if they had access to additional data layers, such as ReCAP information, as well as better GIS tools.



CCC should identify requirements for additional staff and resources to support local planning and LCP completion and updating efforts, and to provide local governments with more access to technical services, under Program Suggestion 3 above.

**Program Suggestion 7:** When resources permit, the CCC should seek additional ways to provide increased assistance to local governments in the CaCMP. Some ideas CCC could consider are:

- providing regular training for new CCC planners and local planners of the California Coastal Act. CCC should explore opportunities to coordinate this training with the NOAA CSC and/or the NERRS Coastal Training Initiative.
- contracting with experienced retirees of the CCC and local planning departments to assist with LCP updates and mentor new staff.
- sponsoring Regional Planners Forums, possibly in conjunction with California Sea Grant, to facilitate information exchange on planning issues and projects.
- exploring ways to make more technical services available to CCC District Offices and local governments, including GIS tools that District and local staffs can use. One such tool could be providing additional data, such as ReCAP data layers, on the CCC website that local planners can use.

#### **4. Public Access**

Lack of public access to the California coast was one of the most important public concerns that lead to enactment of the California Coastal Act in 1976. Since then, much progress has been made in expanding public access, but coastal access opportunities are still limited and new access sites are needed to accommodate California's growing population. As noted in Section IV.D, the 2000 Park Bonds Act brought new public funds to the SCC to acquire lands for coastal access. However, with the high price of coastal lands, there will never be enough public funding to provide all of the coastal access that is needed through public acquisition alone. Therefore, the opening of new coastal access sites through Offers-to-Dedicate (OTD) public access easements remains an essential avenue for increasing public access to California's coast.

As noted in Section IV.A, the joint efforts of the CCC, the SCC, other State agencies, local governments and non-profit organizations has resulted in more than doubling the acceptance rate for OTDs during this review period. The CCC has developed a comprehensive Access Plan to provide a framework and priorities for its access activities. It now has three full-time staff to work on the access program, and provides the program with GIS support. The access staff have analyzed gaps in the California Coastal Trail and have worked with the SCC and others to fill those gaps. The staff have also updated access documents for the public, including the CCC's popular Access Guide.

Despite all of this progress, however, a more concerted effort is needed to locate accepting agencies for expiring OTDs. To date, there are a total of 1288 OTDs recorded statewide, of which 541 or 42% have been accepted. The remaining 747 OTDs must be accepted before their expiration dates, or the opportunity to use these easement areas for public use will be lost, probably forever. The OTDs are generally available for 21 years from the date they were recorded. *From 2002 to 2005, an average of 70 OTDs per year will reach their expiration dates.*<sup>16</sup> Since it often takes over a year to complete the acceptance process, it is critical to identify the accepting agency and begin the acceptance process for these expiring OTDs now. Because of the CCC's specialized information about these expiring OTDs, the majority of the work to prepare them for acceptance has fallen to CCC staff. The CCC needs more staff, especially over the next 5 years, to handle this large workload pulse from expiring OTDs.

In addition, as also discussed in more detail in Section IV.A, the CCC and the SCC have taken steps during this review period to intensify their inter-agency coordination with respect to the OTDs, including entering into a formal Memorandum of Understanding that defines the roles and responsibilities of each agency for implementing the OTD program. The CCC cannot accept OTDs because it is prohibited from holding interests in land, so one of the key elements of the MOU is the commitment by the SCC staff to process and submit to their Board for possible acceptance all OTDs which have not been accepted and are within 24 months of expiration. In accordance with the timelines in this MOU, the CCC staff are delivering OTD files to the SCC for review. However, as noted in Finding V.A.2, contrary to the CCC's understanding, the SCC has interpreted its commitment to be only *consideration* of these OTDs and not necessarily *acceptance*. Thus, it says no OTD will expire without being considered for acceptance, but after that consideration, some OTDs may be allowed to expire. Without the SCC's commitment to accept all otherwise unaccepted OTDs, the CCC is faced with losing OTDs and the access opportunities they represent unless some other alternative is found soon.

Once OTDs are accepted, a second critical step is actually opening them to the public. This often requires the development of facilities such as walkways, making provision for cleanup and maintenance, and consideration of liability issues. These issues are discussed in more detail in Section V.D.1 of the findings. However, the tracking of openings and closings of OTD accessways is something that is needed but, to the Evaluation Team's knowledge, is not being done systematically. The CCC's current database for tracking acceptances of OTDs could be expanded for this purpose.

The CCC should identify staff and resource needs to deal with the large number of OTDs that will reach their expiration dates within the next five years under Program Suggestion 3 above.

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<sup>16</sup>Public Access Action Plan, p. 17.

**Program Suggestion 8:** The CCC should consider seeking legislation to allow it to become the acceptor of OTDs that the SCC cannot accept, and to hold the OTDs until a suitable agency or non-profit group can open them to the public. The CCC should also consider expanding its OTD tracking system to track openings and closings of OTD access ways.

## **5. Habitat Conservation Planning**

Over the past year, the CCC has become more involved in efforts to develop Habitat Conservation Plans (HCPs) under the federal Endangered Species Act and Natural Community Conservation Plans (NCCPs) under the State's Natural Communities Conservation Planning Act. Both HCPs and NCCPs are designed to allow incidental "take" of threatened and endangered species during otherwise lawful activities (i.e., development of property), if property owners develop plans to protect and conserve these species, including measures to mitigate the impact of the proposed activity. The NCCP program seeks to do this on a regional basis, bringing several local governments and other landowners together under a single plan or set of plans so that species conservation can be addressed at an ecosystem scale. Under both programs, it is ultimately up to the applicant for the incidental take permit to decide who will be part of the HCP and/or NCCP development process.

In August, 2001, the CCC requested OCRM's approval to review under federal consistency an HCP for the City of Carlsbad in San Diego County. OCRM approved this request because there were reasonably foreseeable coastal effects from the granting of an incidental take permit by the US Fish and Wildlife Service (US FWS) for this HCP. Therefore, the CCC could apply the enforceable policies of the Coastal Act in its review of this HCP, even though part of the area covered by the plan was outside of the coastal zone. The CCC then requested that US FWS incidental take permits issued pursuant to HCPs be added to the California Coastal Management Program's list of license or permit activities subject to federal consistency. The CCC asked that OCRM extend the review period for this request in order to continue efforts lead by the California Resources Agency to develop an agreement between the CCC, the California Department of Fish and Game and the Resources Agency regarding the CCC's role in the development and review of HCPs and NCCPs. This agreement would help ensure that the requirements of the Coastal Act would be addressed by applicants preparing NCCPs and HCPs early in the planning process. Unfortunately, the agreement was not completed and the CCC withdrew its request to list US FWS incidental take permits. However, the fact that the CCC withdrew its request to list US FWS incidental take permits does not preclude it from making a request to review them on a case by case basis as an unlisted activity, as was the case with the City of Carlsbad.

In addition to the Carlsbad HCP, which straddles the coastal zone, the CCC has reviewed several HCPs within the coastal zone under its existing planning and permitting processes. These have included the Irvine Coast and Marblehead HCPs in Orange County and the Kelly Ranch HCP in San Diego County.

The National Marine Fisheries Service has noted the need for early involvement by the CCC in the development of HCPs and NCCPs to ensure that Coastal Act policies are addressed early in the process to avoid cases like Carlsbad, where the CCC became involved in the review of that HCP during the last stages of development. The US FWS has also expressed concerns that involvement by the CCC at the end of the HCP development process could jeopardize the success of these plans.

Although an agreement was not reached among the relevant state agencies regarding the CCC's role in the development and review of HCPs and NCCPs, the CCC has continued efforts to get involved in the development of these plans at an early stage. In 2001, the CCC hired two full-time Habitat Conservation Planners as part of its Technical Services Unit. These positions will greatly increase the CCC's capacity for early involvement in HCP and NCCP development. In addition, the CCC's two staff biologists, as well as planning staff in the District offices, are becoming increasingly involved in habitat planning issues. Through increased staff capacity, the CCC has been able to become involved early in the HCP and NCCP planning processes in order to address Coastal Act requirements at an early stage of planning. The Habitat Conservation Planner located in the Santa Cruz District Office is participating in the development of an HCP for Los Osos, which is located in San Luis Obispo County. The CCC is a member of the Technical Planning Committee for this HCP. This HCP will address several threatened and endangered animals and plants endemic to this region, including the Morro shoulderband dune snail, the Morro kangaroo rat, the Morro blue butterfly, the black legless lizard, Morro manzanita, and indiana knob mountainbalm. Through this process, the CCC is working closely with the incidental take permit applicant, San Luis Obispo County, to address Coastal Act issues and develop a process for integrating the HCP into the County's LCP. The CCC is also participating in the development of a National Marine Fisheries Service HCP being prepared by the Simpson Timber Company. NMFS has welcomed the CCC's early involvement in this HCP.

Although an agreement was not reached at the state level regarding the CCC's involvement in the HCP and NCCP processes, OCRM encourages the CCC to build on its efforts to engage local governments early in the planning process in order to ensure that the requirements of the Coastal Act are integrated in the HCP and NCCP development processes at the earliest point feasible. This will help to avoid situations in the future where inconsistencies with Coastal Act and LCP policies are not addressed until just before an incidental take permit is to be issued. OCRM is also committed to continuing to serve as a mediator between the CCC, US FWS and NMFS regarding the CCC's role in HCP review and approval. OCRM also hopes that at some point in the future, an agreement can be reached at the state level regarding the CCC's role in this process.

**Program Suggestion 9:** The CCC should work with Federal, state and local governments early in the planning process for HCPs and NCCPs affecting coastal resources and uses in order to ensure that the requirements of the Coastal Act are integrated into the HCP and NCCP development processes at the earliest point feasible.

## 6. Shoreline Erosion

The lure of "coastal living" has drawn increasing numbers of affluent Americans to build homes adjacent to the coast so that they can take advantage of the pleasures associated with living near the ocean. However, many of these people have only seen the beach in summer, when the waves are at their gentlest and the beach is at its widest. Thus, they may think the beach is a static environment, like inland areas, amenable to the maintenance of fixed points and property lines, when actually the opposite is true.

Beaches are a naturally dynamic environment, constantly being molded and remolded by the waves and tides. They are continually moving with the tides and currents, receiving and storing sand which will be eroded to sea during storms, thereby dissipating or dampening the force of the waves. In general, sand is built up on beaches by the gentler summer waves and is cut away by the larger, higher energy waves that occur during winter. Sand is also blown ashore to form dunes and beach ridges, which serve as storage areas to replace sand washing to the sea during storms. Sand movement, offshore, onshore and along the shore, causes alternate erosion and accretion of the beach, depending on weather conditions, the seasons, and the direction and violence of the wave attacks on the shore. This sand movement changes the shape of the beach from season to season, and sometimes, from day to day. Moreover, if sand is lost from the system, the sea rapidly moves inland.

People have introduced changes both onshore and offshore that have seriously interrupted the natural shoreline processes. Changes such as the construction of dams and roads and the urbanization of large land areas have reduced the supply of sand needed to nourish and maintain the shoreline. In addition, recent years have seen the rapid encroachment of development and population along the Nation's shoreline. Unwise development too close to the shore has created a demand to "stabilize" inherently unstable areas. Unfortunately, in many cases such stabilization efforts may actually accelerate erosion in nearby areas.

One of the most common tools of beach stabilization is "shoreline armoring." Shoreline armoring refers to hard protective structures such as vertical seawalls, revetments, riprap, and bulkheads. These structures change the beach profile from a gentle slope, which dissipates wave energy, to a steep slope, which magnifies wave energy. Thus, they can cause localized scouring of the beach sand, both in front of and at the end of the shoreline protective devices. The net result is the rapid loss of the sandy beach that drew people to the area in the first place.

The CCC has long been aware of the individual impacts of hard shoreline protective devices. As conditions have allowed, the CCC has required such devices to be designed for the minimum physical impact upon the beach. However, the cumulative impacts of the placement of miles of these devices were not well documented until the CCC completed two in-depth analyses through its Regional Cumulative Assessment Program (ReCAP). In the Monterey Bay ReCAP (1995), the CCC found

that permit approvals for shoreline armoring have already resulted in 12 miles of the 83-mile long shoreline being armored. Projections show that if this trend continues, 35.7 miles (or 43%) of the shoreline in this area will eventually be armored.<sup>17</sup>

In the Santa Monica Mountains/Malibu area ReCAP (1998), the CCC found armoring along 14.8 miles of the 27-mile long Malibu coastline. ReCAP also found that there were significant impacts from the installation of seawalls to protect public property, specifically Pacific Coast Highway. Mitigation for the public impacts of these devices was rarely required and/or offered.<sup>18</sup>

Statewide it is estimated that 12%, or about 130 miles, of the California coast has already been armored.<sup>19</sup> Current shoreline armoring policies need to be reconsidered to encourage alternative shoreline erosion mitigation techniques that preserve sandy beaches for public recreational use.

The shoreline erosion policies of the Coastal Act are among those that need to be reconsidered. Currently, the CCC is required by the Coastal Act to grant permits for shoreline armoring for "existing development" that is threatened by shoreline erosion. There is no cut-off date for defining what is "existing development." Thus, the CCC is required to approve shoreline armoring for new developments in eroding areas, no matter how recently constructed.

Other coastal states have taken a different approach to this problem. For example, Oregon and North Carolina both require setbacks for new development, based on the average annual erosion rates in the area. Both states "grandfather" existing developments, defined as developments that were platted on or before a set date, from the setback requirements. Generally, hard shoreline protective devices are not allowed for new developments (with certain exceptions), but are allowed for existing developments, defined in this way. The preferred approach for dealing with shoreline erosion, wherever it is suitable, is through beach nourishment. This approach helps to preserve the beaches, which are so important to the economy as well as to the environment.

CCC has developed a Beach Erosion and Response document (called "BEAR") which contains many options for dealing with shoreline erosion, and has an ongoing workgroup (called "BEACH") that is working to refine BEAR. CCC has also used a NOAA Coastal Services Center Fellow to develop a beach nourishment tool identifying where beach nourishment would work well and where it would not work well. The CSC Fellow's study focused on the Orange County shoreline and CCC would like to extend it when resources permit.

OCRM is also aware that the California Resources Agency is currently undertaking a statewide shoreline erosion policy study. This study may result in a statewide strategy that deals with the impacts

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<sup>17</sup> *Public Access Action Plan*, p. 43.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

of shoreline armoring for both private and public structures.

**Program Suggestion 10:** CCC should participate, as appropriate, in development of the California Resources Agency's revision of the State's coastal erosion policy. CCC should also seek resources for the State Lands Commission and other appropriate entities to perform studies to assess regional and subregion shoreline processes, with particular focus on areas that exhibit both erosion and encroaching development. CCC should review the innovative mitigation programs of other states. CCC should also consider seeking legislation to clarify Coastal Act policies regarding both new and existing development in erosion-prone areas and to promote alternatives to conventional shoreline armoring that can impact adversely on eroding shorelines, such as setbacks, beach renourishment, or moving structures away from high hazard areas.

## 7. Public Participation

The Coastal Act provides for an appointed Commission and an open process for public participation in decision-making. During this review period, the CCC has improved the public participation process. Commission meetings are held all around the State, to increase their accessibility to the public. Public notice has improved through the CCC's excellent website. In addition, anyone can request to be added to the CCC mailing list and receive mailings of staff reports on projects to be decided by the Commission. The CCC has also taken steps to reduce public perceptions of "politicization" in Commission decision-making by establishing procedures to insulate Commissioners from ex-parte communications, and promptly divulge such communications to the public when they occur unavoidably. However, despite the substantial improvements documented earlier in the Accomplishments Section of these findings, public concerns remain about the public's ability to participate in the Commission decision-making process.

One of the most frequently mentioned concerns is with the public's ability to participate in Commission meetings. Although having Commission meetings all around the State has helped, commenters still felt that too often, projects were not heard in the local area. This places a substantial burden on both applicants and public commenters. One commenter said he had driven four hours to a Commission meeting, but was unable to speak because he arrived a few minutes late and the item had already been voted on. Commenters pleaded that the Commission *hear items in the area where they are*. They also requested that the Commission consider hearing at least some controversial items in the evening, to give people who work a chance to be heard.

The Evaluation Team realizes that compliance with the strict processing deadlines in the State's permit streamlining law usually necessitates that permit applications be placed on the agenda for the next Commission meeting, wherever it is. This is a constraint that seriously limits options for responding to this concern. It was suggested that the Commission meet more often, but this is not possible with existing staff and resources. It may also be infeasible given the volunteer nature of the Commission.

The Commissioners already devote substantial preparation time plus four full days per month to Commission meetings. Thus, they are already contributing a very substantial amount of their time and it is questionable whether they would be able to contribute more.

However, another suggestion may be more feasible. Some commenters suggested that CCC explore the possibility of televising CCC meetings on California's public service TV network, Cal-Span, and allowing the public to call in. Another variant on this idea would be to have tele-conferencing facilities at each of the CCC District Offices. Then, the public could come to the District Offices and be tele-conferenced into at least some portions of the Commission meetings.

Some commenters also said there was not enough public notice of Commission meetings. The Evaluation Team found that the CCC satisfactorily notices its meetings through both mailings and its website. However, more could be done to promote the CCC website. For example, the Evaluation Team attended a portion of the Commission meeting on June 13, 2001, and noticed that the Commission meeting notice and agenda did not mention the CCC website or give its address.

The commenters who attended the evaluation public meetings expressed widely varying levels of satisfaction with the functioning of the CCC and widely varying opinions of its effectiveness. Some commenters said the CCC was doing too much to protect coastal resources and taking away their rights; other commenters said the CCC was not doing enough to protect the coast from commercialization; while still other commenters said the CCC was doing a good job of achieving balanced development and conservation of the coast with limited resources. It is hard to generalize as to the level of public satisfaction with the functioning of the CCC from such a small sample of opinions. A larger survey or poll, conducted with a random sampling methodology and a statistically significant sample size, would give the CCC a basis for evaluating the level of public satisfaction with its operations and determining feasible options for increasing public satisfaction.

Some commenters also seemed confused about the CCC's jurisdiction, what activities require a coastal development permit, how to go about obtaining a permit and why permits are required. The CCC says this information is on the permit application form, but to the Evaluation Team's knowledge, there is no brochure providing this information that is available to members of the public who are not permit applicants. One area of continuing misunderstanding is the rationale for the expanded boundaries of the California coastal zone in less urbanized areas of the coast, such as the Malibu Canyons. The CCC should not assume that the public understands how their activities miles inland can adversely affect coastal resources and water quality. It is important for the CCC to provide this information in order to maintain public support in these areas.

In addition, some commenters were confused and/or angry at conditions placed on their permits. This was especially the case with landscaping conditions. Commenters said they did not understand why the CCC was placing these conditions on permits. The Evaluation Team was shown houses in the Malibu area where the owners had extended landscaping into the public right-of-way along the street



in front of their houses, effectively eliminating the public walkways and parking that should have been there. However, this and other legitimate reasons for placing landscaping conditions on permits may not have been adequately explained to permit applicants and the public.

The process of making appointments to the CCC was also a concern noted in the previous evaluation. This process, under which the California Assembly, the Senate and the Governor each appoint four Commissioners, was ruled an unconstitutional violation of the Separation of Powers by the State Superior Court in *Marine Forests Society, et al v. California Coastal Commission, et al*. The decision in this case is now on appeal. It is not appropriate for the evaluation to comment on this issue until a final decision has been rendered by the courts.

**Program Suggestion 11:** The CCC should seek additional ways to provide increased public information and participation in the CaCMP. Some ideas the CCC could consider are:

- exploring the feasibility of televising or tele-conferencing Commission meetings in order to increase the public's ability to participate. If resources are available, the CCC should do a cost analysis of these options and present this to the California Resources Agency.
- promoting its website more in meeting agendas and providing an online bulletin board for public comments/questions.
- when resources permit, developing a Citizens Guide describing CCC's jurisdiction, what activities require a Coastal Act permit, how to go about obtaining a permit, and when permits are required. This Guide should also explain the coastal zone boundaries, including the reasons why they are wider in some places than others.
- when resources permit, conducting a public opinion poll, perhaps in cooperation with the League of Women Voters, to determine the public's level of satisfaction with the CCC and opinions concerning key coastal issues. This poll could contain benchmarking questions that could be used to assess changes in public opinion over time or to determine whether CCC activities and programs result in increased or decreased public satisfaction.

## 8. Public Education & Outreach

As documented in the Accomplishments Section, the CCC has done an excellent job of developing public education and outreach programs to educate and involve the public in coastal conservation in a

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positive way. The CCC has accomplished much with limited resources and innovative funding sources, such as the Whale Tail License Plate. However, as one commenter noted, a whole new generation has come into the world since the Coastal Act was passed in 1976. The new generation of Californians do not remember the challenges of resources destruction and loss of public access to the coast that the Coastal Act was designed to address. In addition, new challenges have emerged, such as polluted runoff, shoreline armoring, habitat protection for endangered species, energy shortages, fresh water shortages, and affordable housing in coastal areas. The new generation of Californians should have the opportunity to understand why the Coastal Act was needed, what it has accomplished, and what are the current challenges for the California coast.

Another important factor for the public education program is the growing Hispanic population. For example, in the 2000 Census, the population of Monterey County is 47% Hispanic. Many Hispanics, especially those who speak only Spanish, are under-served in traditional public education programs. Protecting endangered species habitat, reducing polluted runoff, preserving public access, and providing affordable housing along the coast are all much more challenging in the conditions of rapid population growth that California is experiencing. Since a large component of this population growth is Spanish-speaking, efforts should be made to reach out to the Spanish-speaking population with materials and programs in their language to educate them about natural processes on the coast, inform them about coastal and marine issues that affect them, and explain what they can do to help protect their health and the health of the coast.

One issue where public education is needed is in the area of public access and wildlife interaction, especially when the wildlife are endangered species. For example, Vandenburg Air Force Base, north of Santa Barbara, California, includes miles of lovely beaches that have traditionally been open to the public. Long stretches of these beaches are now closed to protect the endangered Snowy Plover, and trespassers are being prosecuted. These beach closures have been hotly debated. Other debates are occurring about predator control in the area. Coyotes in the area are attracted by garbage and prey on the Snowy Plover eggs. It is tempting to use lethal means to control the coyotes. However, predators have a very important role in a healthy ecosystem, so non-lethal controls, such as better waste management, beach monitoring and aversion techniques, are preferred. Public education about access and wildlife interactions is crucial to resolve these issues.

The CCC has many excellent plans and pilot programs to address these issues, such as the Monterey Bay SEA Camp and the Upper Newport Bay Restoration Education Project. The Monterey Bay SEA Camp aims to enhance the quality of marine science education for elementary school students (sixth grade) by providing selected students with a week-long educational experience at the Monterey Bay National Marine Sanctuary. The Upper Newport Bay Restoration Education Project includes a school curriculum, in which lessons will be enhanced with hands-on restoration activities in the Upper Newport Bay – a large coastal wetland. In addition, the community will be invited to participate in “work days” – planting native habitats, pulling invasives, etc. The Project, which will serve as a pilot project for the CCC for developing coastal restoration education projects throughout California, is

being funded by a settlement from an oil spill in Orange County.

The CCC should identify its staffing and resource needs to expand its excellent public education and outreach programs under Program Suggestion 3 above.

**Program Suggestion 12:** When resources permit, CCC should seek to expand on its public education and outreach activities, and especially seek to serve under-served audiences, such as Spanish-speaking communities.

## **C. SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**

### **1. Permitting, Monitoring and Enforcement**

As mentioned in Accomplishments Section IV.C (under Improving Customer Service), BCDC has an effective and streamlined permitting program. In 1996, BCDC revised its region-wide permit program to add a new category of "abbreviated region-wide permits." BCDC's region-wide permits are patterned after the Army Corps of Engineers' region-wide permits and serve a similar function – to pre-authorize routine work with negligible environmental impacts. The abbreviated region-wide permits pre-authorize: routine repair and maintenance of existing pile-supported structures, construction of new temporary facilities no larger than 1,000 square feet, installation of new service lines and utility cables, and up to 100,000 cubic yards of routine maintenance dredging.

In 2000, the Association of Bay Area Governments (ABAG) and the San Francisco Estuary Program (SFEP) took the lead to develop a Joint Aquatic Resources Permit Application (JARPA) to make it possible for applicants who require permits from multiple agencies to fill out a single application form. All participating agencies, including the Army Corps of Engineers, the California Department of Fish and Game, BCDC, CCC and the Regional Water Quality Control Board, agreed to accept this application form. Use of the form is just in the beginning stages and is voluntary for the applicants.

One model for JARPA is the DMMO – a single, multi-agency "one stop shop" for dredging projects. (See description earlier in Accomplishments.) The DMMO is a joint program of BCDC, its LTMS partners and the State Lands Commission. The DMMO joint dredging permit was easier to implement than JARPA because it involved fewer agencies and is for a single type of project. It has been very successful. Port officials described how important the LTMS and DMMO have been to their business, because predictability is so important to take advantage of dredging "windows," and the DMMO has brought that predictability. Now the ports of San Francisco Bay can put their dredging on a schedule. They also told the Evaluation Team that the LTMS and DMMO have had a dramatic effect on timeframes for obtaining permits for channel deepening projects. It took the Port of Oakland 22 years to go from 38 feet to 42 feet, but only 5 years to go from 42 feet to 50 feet, thanks to the LTMS and DMMO.

A key to BCDC's effective permitting program is adequate staffing. During the review period, due to increased support from the State General Fund, BCDC has been able to build a staff of 4 permit analysts, plus a Bay Design Analyst to support the Design Review Board (described earlier in Accomplishments), and a staff engineer to support the Engineering Criteria Review Board (also described earlier in Accomplishments). In 2000, BCDC created two new positions for a Chief of Permitting and a Chief of Enforcement. (Previously, the Chief of Permitting, Enforcement and Technical Services had served in both of these capacities.)

BCDC's enforcement staff consists of the new Chief of Enforcement, plus 3 enforcement analysts. This staff monitors projects approved by BCDC for compliance with permit conditions, and investigates reports of unauthorized fill and construction within BCDC's jurisdiction. To deal with violations, BCDC has the following tools: civil penalties, cease and desist orders, standardized fines, and restoration orders. Civil penalties are deposited into the Bay Fill Cleanup and Abatement Account, which is used to clean up or otherwise restore baylands, as sufficient funds are available and at the allocation by the Legislature and Governor.

BCDC has also continued its innovative Enforcement Committee, made up of 5-6 Commission members and appointed by the Chair. The Committee allows for more time to be spent in hearing enforcement cases than would be possible if they were presented to the full Commission. After an evidentiary hearing, the Committee makes findings of fact and recommends actions to the full Commission.

During the review period, BCDC's enforcement workload has grown and so has its backlog of enforcement cases. That backlog stood at 46 pending cases in the beginning of 1997 and grew to 149 pending cases by the end of 2000. The evaluation team is concerned with this trend. As enforcement cases linger, evidence becomes harder to obtain and restoration, if necessary, becomes more difficult to accomplish.

BCDC also does not currently have any systematic process for compliance inspections of permitted projects or for monitoring un-permitted activities. BCDC plans to implement a procedure for compliance inspections for permitted construction projects before permission is granted to occupy the structure, but BCDC had not implemented this procedure at the time of the evaluation site visit. BCDC said it monitored un-permitted activities exclusively through "good neighbors," such as California Department of Fish and Game, San Francisco Baykeeper and citizen reports of violations. BCDC believes that un-permitted activities are less likely in the highly urbanized shoreline of San Francisco Bay, because they would stand out. However, it has no routine monitoring to validate this assumption. It also acknowledges that its current compliance inspections are "hit or miss." BCDC now has the staff and resources to make its enforcement program as effective as its permitting program. Permits will not work to protect San Francisco Bay if they are not effectively enforced.

**PROGRAM SUGGESTION 13:** BCDC should strengthen and systematize its enforcement process. BCDC should implement a systematic compliance inspection process for permitted activities and should analyze options for routine monitoring of the San Francisco Bay shoreline for un-permitted activities. Because of the urbanized nature of the shoreline, BCDC should explore partnerships with other state and federal agencies for using airplane overflights or other means to monitor for un-permitted activities.

## **2. Public Awareness and Participation**

The two most recent previous evaluations of the CaCMP have noted the need to educate the public about BCDC's role and what it has accomplished. As noted in the Accomplishments section, BCDC has been very successful in carrying out the mandates of the McAteer-Petris Act to halt the shrinkage of the Bay from filling and increase public access to the Bay shoreline. However, in the 35 years that BCDC has been in existence, the population of the Bay area has grown substantially. Many of these new residents may not be aware of how shallow the Bay is, how much of the shoreline is already built on fill, or how vulnerable the Bay remains to filling, pollution or habitat loss. They also may not be aware of the role BCDC plays in addressing these issues. BCDC has been successful in the past because of strong public support for its mandates, and strong public support will be needed in the future for BCDC to continue to protect the Bay.

In its 1997 Strategic Plan update, the Commission adopted a three-year goal of "increas[ing] awareness and visibility of BCDC's programs." At that time, the Commission re-energized its Citizens Advisory Committee (CAC) by appointing a new Chair, and asked the CAC to take an active role in developing the Commission's public outreach program. The Commission also agreed to pursue production of a video documentary of historic San Francisco Bay issues and the historic efforts that lead to the creation of the Commission. BCDC has an excellent slide presentation that could be the basis for the video documentary. The San Jose public television station, KTEH, has agreed to produce and broadcast the video documentary if BCDC could secure the underwriting needed to finance the production costs. The CAC is a strong proponent of the video and recommended that BCDC become a partner in the project. BCDC has been working with Save San Francisco Bay Association, the San Francisco Planning and Urban Research Association, and the Bay Area Council on an underwriting campaign. Production of the documentary was expected to begin in 2001.

In addition, the Commission in 2000 hired its first intern devoted solely to public outreach. It is also adding information to its website that may be useful to the public, and is developing two new brochures – one on BCDC itself and one on compliance assistance. These efforts are an excellent start toward increasing the public's awareness of San Francisco Bay issues and BCDC's role in addressing them. However, it is the evaluation team's understanding that the public outreach internship is only for a 9-month period. We hope that BCDC will be able to continue to support this internship or another position for public outreach because dedicated staff support will be essential to continue these worthwhile efforts.

In addition to public awareness, BCDC has also been working to increase the public's opportunity to know about and participate in its planning and regulatory programs. To this end, in 1996, BCDC began distributing a twice-monthly listing of all new permit applications received. This listing provides early notice so that interested parties can visit project sites and become familiar with project issues. BCDC meetings are open to the public and time is provided on the agenda for public comments on projects.

However, some of BCDC's constituents believe that BCDC could do more to make public participation easier. They suggest that BCDC consider putting more project information on its website and provide for email distribution of information that it currently mailed. (Note: This may run counter to a recent State directive on the format and size of State agency websites.)

**PROGRAM SUGGESTION 14:** BCDC should continue to place priority on implementing its public outreach program aimed at increasing the public's awareness of San Francisco Bay issues and BCDC's role in addressing them. BCDC should continue to provide dedicated staff support for this effort, either through continuation of the public outreach internship or another position. BCDC should also explore additional opportunities to expand the public information on its website, if possible under the new State directive, and provide increased electronic distribution of information, where feasible.

### **3. Water Quality - Non-point Source Pollution Control**

Comprised of 28 receiving watersheds, the San Francisco estuary includes the lands and waters within the boundaries of the immediate San Francisco Bay watershed, Suisun Marsh and the Sacramento-San Joaquin Delta. The estuary drains 60,000 square miles, or more than 40 percent of the state. The Bay Plan recognizes the importance of maintaining water quality in San Francisco Bay at levels sufficient to protect the beneficial uses of the Bay and its resources. A number of policies are applicable to this end, particularly those addressed in the Water Quality, Fresh Water Inflow and Dredging sections of the Bay Plan.

Acting alone, BCDC cannot address all of these policies. BCDC's legal authority is quite limited within its jurisdiction, and that jurisdiction extends over only a small part of the watershed that drains into the Bay. Other agencies play key roles in the management of the Bay. The programs of these other agencies and what happens in the vast watershed upland of the Bay can either help or hinder BCDC in accomplishing its mission. Therefore, it is essential that BCDC carry out its activities in full coordination and cooperation with the agencies and organizations with which BCDC shares common objectives.

On July 1, 1999, BCDC adopted a three-year strategic plan which called for the creation of the Regional Collaboration Task Force charged with recommending priority issues and strategies for collaboration. The Task Force considered seven specific issues which appear to best be addressed through regional collaboration partnerships. Among others, the issues included non-point source pollution control and toxic clean-up. BCDC shares a common interest with the San Francisco Regional Water Quality Control Board in addressing these issues. In general, the policies, decisions, and authority of the State Water Resources Control Board and the San Francisco Regional Water Quality Control Board (Regional Water Board) provide the basis for the water quality responsibilities of BCDC.

In December, 1999, the BCDC agreed to place a high priority on working more closely with the Regional Water Board. BCDC's Regional Collaboration Task Force proposed that the staffs of BCDC and the Regional Water Board formulate proposed policies and procedures for accomplishing this collaboration and incorporating them into the Memorandum of Understanding between the two agencies.<sup>20</sup> BCDC was also asked to explore holding a joint workshop with the Regional Water Board to consider how BCDC and the Board can work together more effectively. Unfortunately, lack of resources and other more pressing priorities has precluded significant work on these activities.

In July, 2000, NOAA and EPA approved California's Coastal Non-point Pollution Control Program submitted pursuant to Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990. The California Coastal Commission and the State Water Resources Control Board, in coordination with the nine Regional Water Quality Control Boards, function as the lead agencies for implementing the Program Plan. While these agencies provide the primary authority needed to implement the Plan, other state agencies, including BCDC, have additional enforceable authorities and programs that are used to supplement these laws.

In 2000 and early 2001, BCDC conducted an analysis of 61 management measures (as defined by Section 6217) and their relationship to the Commissions' authority. Based on this analysis, and in accordance with a recent memorandum from the Secretaries of the California Environmental Protection Agency and Resources Agency to agencies under their purview, BCDC developed a draft 5-Year Plan which provides a succinct review of BCDC's current polluted runoff authority and strategy, identifies gaps in the strategy and proposes recommendations to address them. BCDC has the authority for implementing several of the urban, marinas and recreational boating, hydromodification and wetlands management measures.<sup>21</sup>

The draft 5-Year Plan: (1) identifies actions necessary to implement California's Non-point Source Pollution Control Program during the next five years for which BCDC has authority and resources; (2) designates a lead staff person for coordinating with the State Water Resources Control Board and the California Coastal Commission (CCC) on non-point source issues; (3) ensures that any actions BCDC takes to implement the Program Plan are tracked, monitored, assessed and reported to the State Water Resources Control Board and the CCC; and (4) states that BCDC will consider the need to revise the formal agreement with the State Water Resources Control Board and the CCC. The BCDC Commissioners were expected to review the draft plan in 2001.

Throughout the review period, BCDC effectively implemented its water quality review authority through its dredging permit review and approval process. BCDC regulates dredging and disposal of

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<sup>20</sup>San Francisco Bay Conservation and Development Commission, *Regional Collaboration Strategy*, December 2, 1999.

<sup>21</sup>San Francisco Bay Conservation and Development Commission, *BCDC Draft Polluted Runoff Analysis and Five-Year Plan*, March 16, 2001.



dredged material in the Bay, and has the dual mission of protecting the Bay's natural resources while fostering appropriate use of the Bay for maritime commerce and recreational boating. In reviewing permits for dredging and disposal of dredged materials, BCDC requires that materials meet water quality requirements of the Regional Water Board.

Outside of the permitting arena, BCDC continued to partner with the CCC on the Boating Clean and Green Campaign. Activities included raising the awareness among boaters and marina/boat yard operators of the environmental and economic impacts of pollution, and applicable pollution prevention laws; increasing the use of marinas and recreational boating management measures and best management practices; increasing the availability of convenient pollution prevention services for boaters; and increasing the local enforcement of pollution laws in marinas and on the water.

During the evaluation, the Evaluation Team was charged with reviewing the status of the approved California Coastal Non-point Pollution Control Program, as it relates to the authorities of BCDC. After reviewing several documents and interviewing a variety of participants from federal and state agencies, environmental organizations and businesses during the evaluation site visit, two significant points emerged – *there is a need for greater BCDC involvement in California's Coastal Nonpoint Pollution Control Program, and activities need to be better coordinated between the Regional Water Board and BCDC at both the staff and commissioner level, on issues of nonpoint source pollution.*

Participants interviewed during the evaluation site visit were not clear about the role of BCDC with regard to Coastal Non-point Pollution Control Program and were not clear if BCDC was participating in the Program's Interagency Coordinating Committee (IACC). They also stated that activities need to be better coordinated between the Regional Water Board and BCDC at both the staff and commissioner level on issues of non-point source pollution, including updating water quality plans (e.g., Bay Plan policies that address water quality, fresh water inflow, water surface area and volume, and the Regional Water Board's Water Quality Control Plan for the San Francisco Bay Basin) and tracking of best management practices (new requirement by the legislature). They recognized that the actions of the Regional Water Board (i.e., policy changes regarding contaminated sediment) have impacted BCDC's activities related to dredged material use for restoration projects, and noted that the independent sediment and water quality monitoring programs (conducted by the San Francisco Estuarine Institute and Regional Water Board), need to be better coordinated with BCDC's programs and the LTMS.

Based on these findings, the Evaluation Team determined that there is a real need for BCDC to be more involved in the statewide Coastal Non-point Pollution Control Program, and for BCDC and the Regional Water Board to work together to strengthen their relationship. While the CCC and the State Water Resources Control Board lead the Coastal Non-point Pollution Control Program, implementation relies on the efforts of a variety of state agencies, including – importantly – BCDC in the San Francisco Bay area. Improving control of non-point (or runoff) pollution is a critical issue for

both CCC and BCDC and one where BCDC's increased participation can make an important contribution, even within the confines of its limited authority and resources.

In addition, although there have been some successful coordination activities (i.e., LTMS ) between BCDC and the Regional Water Board, a concerted effort should be made during the next several years by both agencies to further enhance this relationship. The Team is aware that there have been initial discussions between BCDC staff and the Regional Water Board's staff on updating the MOU. BCDC has committed to revising the MOU with the Regional Water Board, as well as undertaking a review and update of its water quality and marinas policies, under the FY 2001 CZMA financial assistance award. However, implementation of the other recommendations noted above is hampered by a lack of fiscal and staff resources. BCDC feels that additional funds would allow for tracking and monitoring, and for implementation of the 5-Year Plan's provisions, such as increased coordination with water quality agencies, a review and update of BCDC's polluted runoff permit conditions, and potential further studies such as a marina design study and guidelines for new and expanding marinas. To address this concern, BCDC recently submitted a proposal to the Resources Agency requesting that staff and financial resources be provided to BCDC to enable it to participate in a variety of Bay management partnerships to deal with issues such as non-point source pollution control.

**PROGRAM SUGGESTION 15:** BCDC should work to increase its participation in the California Coastal Non-point Pollution Control Program and to strengthen the relationship with the Regional Water Board. This could be accomplished by participating in the Statewide Interagency Coordinating Committee (IACC) on the Non-point Pollution Control Program, amending the Memorandum of Understanding with the Regional Water Board, participating in the development and review of various water quality management plans, or other appropriate means. NOAA encourages BCDC to continue to assess gaps in the program for coastal non-point pollution control in the San Francisco Bay area and to seek opportunities and funding to address those gaps.

#### **4. Public Access**

As mentioned in the Accomplishments section, BCDC has been very successful in increasing public access to the San Francisco shoreline. However, several evaluation participants suggested that more needs to be done to promote this access. The Evaluation Team received a tour of areas included in the San Francisco Waterfront Plan. Much of this area is open to the public, but the Evaluation Team saw only one public access sign. In addition, BCDC's website, which is extremely user-friendly to permit applicants, currently contains no public access information.

BCDC has been responsible for much of the public access around the Bay, and its planning has helped to create the comprehensive, linked system of public access points around the San Francisco Bay shoreline. It is important for the public to know of these access opportunities, and BCDC's role in making them possible. Just as CalTrans posts signs that "Your tax dollars are at work," BCDC needs

to let the public know what their tax dollars are accomplishing to increase public access to the Bay.

**PROGRAM SUGGESTION 16:** BCDC should consider developing additional signage and information to promote the public access that exists around the San Francisco Bay shoreline. BCDC should provide the public with information on the public access created by BCDC as an accountability measure.

## **5. Need for Continued Proactive Planning and Implementation**

The Accomplishments section of this report documents many long-term proactive BCDC planning efforts that have made an important difference in increasing both the environmental and economic health of San Francisco Bay. Several of these efforts are only in the beginning stages. For instance, BCDC is a key player in developing a regional "Smart Growth" strategy for the Bay. Public meetings will begin soon in each of the nine Bay counties to develop community-based visions for how growth should be channeled. All of the participants in this strategy told the Evaluation Team that BCDC's perspective of what is best for the whole Bay provides a natural integrating perspective for turning there community visions into scenarios that can be the basis for regional housing, transportation and other plans.

In addition, although the LTMS for dredging in the Bay has been in development for several years, the agency partners – BCDC, Army Corps of Engineers, EPA and the State and Regional Water Boards – are just beginning implementation. They have agreed to a phased implementation in four 3-year increments, starting in 2000-2003, which will reduce in-Bay disposal of dredged material from 80% today to 20% by 2012. However, this ambitious goal can only be achieved by continued intensive efforts of the agency partners, including BCDC.

BCDC also needs to continue and expand its proactive planning efforts on public access and wildlife compatibility issues, the San Francisco Waterfront Plan, and other efforts described in its new Section 309 Coastal Zone Enhancement Strategy. BCDC's Strategy includes incorporating siting, design and management strategies to be used to avoid or minimize adverse effects of public access on wildlife into its Public Access Guidelines. BCDC is also planning to expand its joint planning efforts with other state agencies and public groups to identify and assess sensitive wildlife habitats and species around the Bay to improve location, design and management of public access required on projects in order to address potential impacts of these projects on wildlife. BCDC's Strategy also describes plans to continue its cooperative planning efforts on the San Francisco Bay Waterfront Plan to expand public access opportunities within the re-vitalized waterfront. Also, BCDC needs to be able to continue to update its Bay Plan policies in these and other areas, as described in the Strategy.

**PROGRAM SUGGESTION 17:** BCDC should continue its proactive long-range planning and partnership building activities in order to keep a focus on the health of the Bay ecosystem.

## **D. STATE COASTAL CONSERVANCY**

### **1. Technical Assistance and Stewardship Funding**

As mentioned in the Accomplishments Section IV.D.3, the SCC has been a major source of technical assistance and capacity building for local land trusts and other community and nonprofit groups. The Evaluation Team talked to representatives of several groups, all of whom spoke about the importance of the SCC as a source of technical assistance and facilitation to solve problems and allow conservation and access projects to move forward. The SCC also serves as a conduit to other agencies and groups to fulfill projects. For example, SCC provided hands-on technical assistance in planning, as well as seed money, to the Elkhorn Slough National Estuarine Research Reserve and the Elkhorn Slough Foundation to develop the Elkhorn Slough Watershed Protection Plan. This Plan has lead to securing \$16 million in acquisition funding from other sources to help fulfill the Plan. Because of its long experience, wide contacts and relationships of trust with local and nonprofit groups in California, the SCC is in an excellent position to assess their needs for continued technical assistance to build their capacities to undertake locally-led conservation and access projects and programs.

A key need identified through the SCC's many partnerships with community groups, land trusts and other nonprofit organizations, is the need for funding to support the operation and maintenance of public accessways and to support stewardship activities on lands purchased for long-term public enjoyment and conservation. Nonprofit organizations can attract funding for capital projects, such as acquisitions or capital improvements, more easily than for stewardship of existing projects. Also, the recession that plagued California through the late 1980's and early 1990's seriously eroded local government's ability to pay for public facilities. The inability of local sponsors to assume financial responsibility for operations and maintenance expenses has been a major barrier to opening more public accessways. There are very few public or private sources of stewardship funds. (The SCC's funding comes largely from voter-approved bonds, which cannot be used for operations and maintenance costs.) Nonprofit organizations believe having even small amounts of public seed money available for this purpose would help to attract private donations.

To help respond to this need, in 1997 the SCC succeeded in obtaining legislation allowing fees that the CCC charges for processing permits to go into a fund that the SCC can tap to provide small amounts of operations and maintenance funding to local groups to help maintain public accessways. This funding amounts to about \$600-700K per year. Although small relative to the need, it is providing seed money to allow local groups to take on the responsibility for maintaining public accessways while searching for long-term funding.

**PROGRAM SUGGESTION 18:** The SCC should continue to provide technical assistance to local and nonprofit groups, assess needs, and look for opportunities to meet these needs. In this regard, SCC should continue to seek innovative sources of stewardship funding to assist community and nonprofit groups to maintain public accessways and conservation lands.

## VI. PROGRAM CHANGES

One function of the evaluation is to determine whether changes have occurred in the CaCMP during the review period and whether those changes have been submitted to OCRM for processing as program amendments or as routine program changes (RPCs). NOAA regulations define amendments as substantial changes in one or more of the following coastal management program areas: (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization; and (5) coordination, public involvement, and national interest. An RPC is a further detailing of a state's coastal management program as a result of implementing the approved program that does not result in substantial changes to the program. In July, 1996, OCRM issued final program change guidance to coastal states clarifying requirements and submission procedures for changes to federally-approved coastal management programs.

During this review period, OCRM reviewed 22 submittals of programs changes to the CaCMP. These submittals are detailed in Appendix C. All of these changes were classified as RPCs under NOAA's regulations and all were approved, except for one change, File Number 247, submitted by the CCC to amend its list of federal permits automatically requiring federal consistency review by adding the Department of the Interior Fish and Wildlife Service's Incidental Take Permits. This submittal was later withdrawn by the CCC.

All but two of these program change submittals (File No. 229 to incorporate amendments to the City of Half Moon Bay's Local Coastal Program and File No. 247, noted above) were made by BCDC. BCDC continues to submit program changes in a timely manner, as provided in NOAA's regulations. However, CCC has not kept up with this requirement during the review period. OCRM recognizes that the CCC has experienced serious staffing constraints, but believes the requirement for submitting program changes can be met in an expeditious fashion. OCRM and CCC staff are currently working together to determine which items should be submitted as program changes to the CaCMP.

**Program Suggestion 19:** The CCC should continue to work with OCRM/Coastal Programs Division staff to develop expedited procedures and an action plan for submitting programs changes to the CaCMP.

## VII. CONCLUSION

Based upon the recent evaluation of the CaCMP, I find the State of California is adhering to its approved program and is making satisfactory progress in implementing the provisions of its approved coastal management program. The CaCMP as an entity has made notable accomplishments in: maintaining effective managers and high quality staff; facilitating acceptance of offers to dedicate public access easements; and establishing the Coastal and Ocean Managers Group. The CCC has significantly improved its enforcement, local assistance, technical services and public access programs due to recent state budget increases; re-opened its North Coast Office; continued its effective federal consistency and public education programs; increased opportunities for public participation and taken a leadership role in non-point source pollution control. The BCDC has made impressive accomplishments in controlling unnecessary filling of San Francisco Bay, increasing public access to the Bay shoreline, showing leadership in region-wide planning and partnership building activities, and regulatory streamlining. The SCC was successful in: public access and natural resource protection advances, providing leadership on wetlands restoration, and publications/outreach and training.

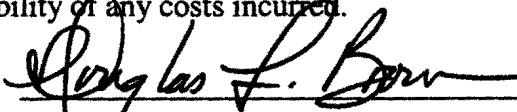
The Evaluation Team identified the following areas where the CaCMP as a whole should be strengthened: program visibility and coordination; and joint access program. Implementation by CCC could be improved by: further rectification of critical staffing shortages; improvements in enforcement; LCP completion and periodic reviews; early involvement in habitat conservation planning; review of shoreline erosion policies; improvements in public education, information and participation; and attention to submitting program changes. Implementation by BCDC could be further improved by: improved monitoring and enforcement; improved public outreach; more participation in the statewide non-point source pollution control program; and continued emphasis on proactive region-wide planning. Implementation by SCC could be further improved by seeking innovative sources of technical assistance and stewardship funding.

These evaluation findings contain 20 recommendations, 19 of which are Program Suggestions that should be considered by the CaCMP's lead agencies prior to the next Section 312 evaluation of the CaCMP, and one of which is a Necessary Action that is mandatory for the CCC.

This is a programmatic evaluation of the CaCMP which may have implications regarding the State's financial assistance award(s). However, it does not make any judgments on, or replace any financial audit(s) related to the allowability or allocability of any costs incurred.

7/18/02

Date



for Charles N. Ehler, Acting Director  
Office of Ocean and Coastal Resource  
Management

## APPENDIX A

### CALIFORNIA 312 SITE VISIT PARTICIPANT LIST

#### LOCAL/REGIONAL GOVERNMENT ENTITIES

Brian Brennan	City of Ventura
John Patton	County of Santa Barbara
Dianne Meester	County of Santa Barbara
Naomi Schwartz	County of Santa Barbara
Ralph Appy	Port of Los Angeles
Robert Kanter	Port of Long Beach
Stuart Sunshine	San Francisco International Airport
Charles Foster	Port of Oakland
Jim McGrath	Port of Oakland
Leonard Cardoza	Port of Oakland
Diane Oshima	Port of San Francisco

#### STATE AGENCIES

Ron Rampel	California Department of Fish and Game
Dwight E. Sanders	California State Lands Commission
Paul Thayer	California State Lands Commission
Bill Morrison	California State Lands Commission
Ken Harris	State Water Resources Control Board
Bruce Wolfe	Regional Water Quality Control Board
J. Michael Lyons	Regional Water Quality Control Board
Joe Witzak	Washington State Department of Ecology
Michael Endicott	California State Assembly, Member Jackson
Rick Best	California State Assembly, Member Keeley
Mary Shallenberger	California State Assembly, Member Burton
Scott Valor	California State Assembly on Natural Resources
Jason Weller	California State Legislative Analyst's Office
Mary Nichols	California Secretary of Resources
Michael Sweeney	California Undersecretary of Resources
Brian Baird	California Resources Agency
Matt Rodriguez	California Attorney General's Office
Dale Steele	Caltrans, Environmental Program
Harry Yahata	Caltrans
Paul Hensley	Caltrans
Kate Breen	Metropolitan Trans. Commission
Therese McMillan	Metropolitan Trans. Commission
Becky Christensen	Elkhorn Slough National Estuarine Research Reserve

## STATE CZM COMMISSIONERS AND STAFF

Sara Wan	California Coastal Commission (CCC) - Chairperson
Patricia McCoy	CCC Commissioner
Peter Douglas	CCC - Headquarters
Rebecca Roth	CCC - Headquarters
Chris Parry	CCC - Headquarters
Steve Scholl	CCC - Headquarters
Miriam Gordan	CCC - Headquarters
Jaime Kooser	CCC - Headquarters
Jack Gregg	CCC - Headquarters
Al Wanger	CCC - Headquarters
Derek Lee	CCC - Headquarters
Nancy Cave	CCC - Headquarters
Amy Roach	CCC - Headquarters
Tom Luster	CCC - Headquarters
Alison Dettmer	CCC - Headquarters
Ellen Faurot-Daniels	CCC - Headquarters
Susan Hansch	CCC - Headquarters
Jon VanCoops	CCC - Headquarters
Lesley Ewing	CCC - Headquarters
John Dixon	CCC - Headquarters
Darryl Rance	CCC - Headquarters
Bill VanBeckum	CCC - Headquarters
Susan Swift	CCC - Headquarters
Tania Pollak	CCC - Headquarters
Liz Fuchs	CCC - Headquarters
Allyson Hitt	CCC - Headquarters
Jamie Raives	CCC - Headquarters
Mark Delaplaine	CCC - Headquarters
Larry Simon	CCC - Headquarters
Sarah Christie	CCC - Headquarters
John Bowers	CCC - Headquarters
Christopher Pederson	CCC - Headquarters
Kim Burrafato	CCC - Headquarters
Mark Johnsson	CCC - Headquarters
Ralph Faust	CCC - Headquarters
Pam Emerson	CCC - Santa Cruz
Lee Otter	CCC - Santa Cruz
Linda Lockin	CCC - Santa Cruz
Tami Grove	CCC - Santa Cruz
Ross Clark	CCC - Santa Cruz
Andrew Fischer	CCC - Santa Cruz
Charles Lester	CCC - Santa Cruz
John Ainsworth	CCC - Ventura



Steve Hudson  
Teresa Henry  
Deborah Lee  
Will Travis

Bob Batha  
Katie Wood  
Steve McAdam  
Eliot Horwitz  
Caitlin Sweeney  
Jeffrey Blanchfield  
Lisa Bennett  
Don Neuwirth  
Steve Goldbeck  
Steve Horn  
Neal Fishman  
Karyn Gear

CCC - Ventura  
CCC - Long Beach  
CCC - Long Beach/San Diego  
Bay Conservation and Development  
Commission (BCDC)  
BCDC  
BCDC  
BCDC  
BCDC  
BCDC  
BCDC  
BCDC  
BCDC  
State Coastal Conservancy (SCC)  
SCC  
SCC

#### **FEDERAL AGENCIES**

Michael Murray  
Matthew Pickett  
Calvin Fong  
Tim O'Rourke  
Brian Ross  
Sam Ziegler  
Mike Monroe  
Paul Michel  
Bill Douros  
Ed Ueber

Beth Stevens  
Mel R. Corbett  
Joseph Rodriguez  
Merry Goodenough  
Peter Gautier  
Jim Bybee  
Joe Blum

Channel Islands National Marine Sanctuary  
Channel Islands National Marine Sanctuary  
U.S. Army Corp of Engineers  
U.S. Army Corp of Engineers  
U.S. EPA Region IX  
U.S. EPA Region IX  
U.S. EPA Region IX  
U.S. EPA Region IX  
Monterey Bay National Marine Sanctuary  
Gulf of the Farallones National Marine  
Sanctuary  
U.S. Fish and Wildlife Service - Sacramento  
U.S. Fish and Wildlife Service - Sacramento  
Federal Aviation Administration  
U.S. Coast Guard  
U.S. Coast Guard  
NOAA National Marine Fisheries Service  
NOAA National Marine Fisheries Service

#### **INTEREST GROUPS**

Susan Jordan  
  
Linda Krop  
Lee Quaintance

League for Coastal Protection &  
California Coastal Protection Network  
Environmental Defense Center  
The Beacon Foundation

Marcia Hanscom  
Tom Francis  
Wendy Rains  
Ruth Lansford  
Linda Sheehan  
Ann Notthoff  
Michael Paquet  
Mark A. Massara  
Peter Mull  
Michele Perrault  
Totten Heffelfinger  
Bill Allayaud  
Kim Delfino  
John McCaull  
Debbie Drake  
Vern Goehring  
Patricia McCoy

Mark Silberstein  
Richard Nichols  
Audrey Rust  
David Lewis  
John Woodbury  
Grant Davis  
Reed Holderman  
Patricia McCoy

#### **PRIVATE SECTOR**

Michael Wilmar  
  
Scott Summerfield  
Robert Douglass  
Lori Johnson  
Andrew Michael  
Ellen Joslin Johnck

#### **ACADEMIA**

Todd Hopkins

Wetlands Action Network  
Ballona Wetlands Land Trust  
Ballona Wetlands Foundation  
Friends of Ballona Wetlands  
Center for Marine Conservation  
Natural Resources Defense Council  
Surfrider Foundation  
Sierra Club  
Sierra Club  
Sierra Club  
Sierra Club  
Sierra Club  
Defenders of Wildlife  
National Audubon Society  
National Audubon Society  
California Native Plant Society  
Southwest Wetlands Interpretive  
Association  
Elkhorn Slough Foundation  
Coastwalk  
Peninsula Open Space Trust (POST)  
Save The Bay  
Bay Area Open Space Council  
The Bay Institute  
The Trust For Public Lands  
Wildcoast

Sheppard, Mullin, Richter &  
Hampton LLP  
SAE Communications  
Cargill Salt  
Cargill Salt  
Bay Area Council  
Bay Planning Coalition

Tiburon Romberg Center

**APPENDIX B**

**PUBLIC MEETING ATTENDEES**

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*Wednesday, March 7, 2001*

*4:00 - 6:00 p.m.*

*50 California Street, Suite 2600*

*San Francisco, California*

No members of the public attended this meeting.

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*Wednesday, June 6, 2001*

*7:00 - 9:00 p.m.*

*Bayside Conference Room, Pier 1*

*San Francisco, California*

Andy Mills

Self

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*Monday, June 11, 2001*

*7:00 - 9:00 p.m.*

*Scottsdale Room, Los Angeles Airport Marriott*

*5855 West Century Blvd.*

*Los Angeles, California*

Bill Eisen

Residents for a Quality City

Jeff Yazel

Zumbrun Law Firm (representing Marine Forest Society)

Patrick McBride

Resident of Manhattan Beach

Leslie Purcell

Ballona Wetlands Land Trust

Lucy Bailey

Hughes Slough

Frank E. Holmes

Western States Petroleum Assoc.

Carla Andrus

Coalition to Save the Marina

Rudolphe Streichenberger

Marine Forest Society

Debbie Purucker

Self; Resident of Malibu

Herb & Ilse Erfrel

Selves

Linda Moon

Amigos de Bolsa Chica

Eileen Murphy

Bolsa Chica Land Trust

Nancy Donaven

Bolsa Chica Land Trust

Chuck Allord  
Jennifer Pautz  
Donley Falkenstien  
Peggy Ann Buckley  
Donald Klein  
John Davis  
David Thompson  
Dr. David DeLange  
James Sokalski  
Glenn Michitsch

For a Safer Santa Monica  
Private Citizen  
Private Citizen  
Self  
Coalition to Save the Marina  
Coalition to Save the Marina  
Coalition to Save the Marina  
Coalition to Save the Marina  
Coalition to Save the Marina  
City of Malibu

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APPENDIX C

**CALIFORNIA COASTAL MANAGEMENT PROGRAM  
ROUTINE PROGRAM CHANGES - December 1996 to Present**

Year	File Number	Origin	Description	Date Rec'd	Approved/ Denied	Date Approved /Denied
1996	228	BCDC	Incorporate modifications to Sections 10120, 10125, 10130, 10411, and 10510. The changes to Section 10210 add "essential public services" to the categories of matters to which an immediate danger can pose an emergency. It also provides that the Commission can issue an emergency permit only when insufficient time exists to respond to such an immediate threat by following normal procedures for reviewing a permit application. The changes to Section 10125 raise the cost of a project from \$100,000 to \$250,000 or more before the project would qualify as a "substantial change in use" and require a permit if the project is built within the Commission's jurisdiction and add "substantial change in the intensity of use" to the types of activities that constitute a "substantial change in use". The change to Section 10130 exempts from the need to obtain a Commission permit for the extraction of materials for environmental or seismic testing purposes. The change to Section 10422 eliminates the need to hold another public hearing on a pending permit application when more than five weeks elapse between the close of the public hearing and the vote on the application. The change to Section 10510 provides that the Commission will normally vote on a permit application at the same meeting at which it closes the public hearing on the application and provides certain specified exceptions to that general policy.	11/14/1996	Approved	12/04/1996
1997	229	CCC	Certification of City of Half Moon Bay (Local Coastal Program - LCP) Land Use Plan and Implementation Plan - Amendments: 1-94 Major, 1-93 Major, 1-91 Major, and 1-88 Major.	1/02/1997	Approved	1/27/1997

1997	230	BCDC	Incorporate modifications to Sections 10810, 10820, 11386. The changes to Sections 10810 and 10820 impose specific limitation on when the Executive Director or the Commission can impose new or different conditions when approving a nonmaterial amendment to a Commission permit. The change to Section 11386 provide a 30 day "grace" period so that the Commission will not impose any civil penalty on an alleged violation that is corrected within 30 days of formal written notification. This change also doubles the standardized fine for certain specific violations that would apply if the alleged violation is not corrected within 30 days of formal written notification.	7/08/1997	Approved	7/28/1997
1998	231	BCDC	Incorporate modifications to Section 10920, 10246, 10311, 10312. The change to Section 10920 provides that an exemption from the need to obtain a Commission permit is transferable. The change to Section 10246 provides for a public comment period as part of every Commission meeting and for the limits placed on public comments offered during the public comment period. The change to Sections 10311 and 10312 expand the types of information normally required to be submitted in a Commission permit application the Executive Director can postpone or waive.	3/09/1998	Approved	4/06/1998
1998	232	BCDC	Incorporate modification to Section 11600. The change to Section 11600 consists of changes to our conflict of interest code's list of civil service employees who are required to file an annual statement of economic interest, as required by state law. The revisions include the addition of two designated positions, the deletion of two designated positions, and corrections to the civil service title for three designated positions.	9/21/1998	Approved	10/14/1998
1999	233	BCDC	Incorporate modification to Section 10270. The change to Section 10270 allows the appointment and use of alternate DRB (Design Review Board) members when the regular DRB members cannot participate and it establishes the number of DRB members allowed and a quorum requirement.	1/20/1999	Approved	2/12/1999
1999	234	BCDC	Incorporate the adoption of San Francisco Bay Plan Amendment No. 2-99 into BCDC Program. This amendment deleted 37 acres of Waterfront Park, beach priority use area at Oyster Point, in the City of South San Francisco and approved the San Francisco Bay Plan amendment Environmental Assessment.	11/22/1999	Approved	12/20/1999
1999	235	BCDC	Incorporate the modification to California Government Code Section 66605(d) into BCDC Program. This modification clarifies the Commission's ability to analyze environmental conditions affected by a proposed Bay fill project.	12/08/1999	Approved	1/03/2000

2000	236	BCDC	Incorporate the adoption of San Francisco Bay Plan Amendment Nos. 1-99 and 3-99 into the BCDC Program. This amended the San Francisco Bay Area Seaport Plan and the San Francisco Bay Plan. These amendments removed the port priority use designation from a 36 acre parcel along the Oakland Inner Harbor at the Encinal Terminals, in the City of Alameda, Alameda County and modified the San Francisco Bay Area Seaport Plan findings and policies to cause the Seaport Plan to be internally consistent with these changes.	5/08/2000	Approved	6/05/2000
2000	237	BCDC	Incorporate the adoption of the White Slough Specific Area Plan submitted by the City of Vallejo and Solano County into the BCDC Program. This plan gave permanent protection and enhancement to at least 336 acres of tidal wetlands and 132 acres of tidally influence areas. It established the ability to fill, up to 13 acres, of this area in order to widen a State Highway. It also offered flood protection for uplands, established suitable water quality, and offered wetland enhancement for all tidally influenced areas.	3/29/2000	Approved	5/17/2000
1999	238	BCDC	Incorporate modifications to Section 11386. The changes to Section 11386 include: (1) making the time periods for determining the amount of a standardized fine consistent with an initial 30 day "grace" period, within which time one can correct an alleged violation without any fine; (2) making the 30 day "grace" period and the time periods for determining the standardized fine start from a mailing of the notice of the violation rather than the receipt of the notice; (3) extending the time periods by five days to compensate for the previous action listed; (4) creating a new category of standardized fines for violations that cannot be authorized because the unauthorized activity is inconsistent with one or more Commission policies but is similar in size and scope to activities that the Executive Director can authorize.	1/12/1999	Approved	2/12/1999
2000	244*	BCDC	Incorporate the modifications of the coastal management program for the San Francisco Bay into the BCDC Program. The modifications would amend the date by which a vessel must have been built to qualify as a "historic ship" and supplement the Commission's permit application form to ensure the commission can obtain information from an applicant that is required in order for the Commission to fulfill its obligations under a recent change to the McAteer-Petris Act (Senate Bill 177).	7/31/2000	Approved	8/22/2000

2000	246	BCDC	Incorporate the adoption of San Francisco Bay Plan Amendment No. 5-99 into the BCDC Program. This amendment (1) eliminates certain descriptive portions of Part V, Carrying Out the Plan that are redundant or unnecessary; (2) moves the remaining descriptive portions from Part V to appropriate locations in Part I - Summary; (3) makes minor changes in Part I to accommodate those portions of Part V being moved to Part I; (4) moves the policy language contained in Part V to appropriate locations in Part IV, Development of the Bay and Shoreline: Findings and Policies.	7/26/2000	Approved	8/22/2000
2000	247	CCC	Amend the California Coastal Commission's list of federal permits automatically requiring federal consistency review by adding the following federal permit to that list: Department of the Interior-U.S. Fish and Wildlife Service. The change to the federal permit list provides notice to applicants for incidental take permits that their applications are subject to the federal consistency requirements of the CZMA.	10/2/2000	Withdrawal	1/10/2001
2000	248	BCDC	Incorporate the adoption of San Francisco Bay Plan Amendment No. 7-99 into BCDC Program. This amendment (1) added to Part IV of the San Francisco Bay Plan, Adding a New Policy Section, "Filling for Public Trust Uses on Publicly-Owned Property Granted in Trust to a Public Agency by the Legislature"; (2) noted on San Francisco Bay Plan Map 4, "San Francisco Waterfront Special Area Plan and Total Design Plan"; (3) amended the San Francisco Waterfront Special Area Plan to replace the introduction to the Special Area Plan, re-define boundaries where fill removal can offset fill placement for projects approved pursuant to the Replacement Fill policies in Part IV of the plan, delete the recommendations in all sections of the Special Area Plan, add policy to Fisherman's Wharf Geographic Specific Policies calling for community planning process to evaluate area between Hyde Street Pier and East Wharf Park, delete the partial quotations from McAteer-Petris Act and the Special Area Plan, modify Special Area Plan Maps 1 through 9, add Appendix I to provide brief history of development of Special Area Plan and amendments, make changes to Special Area Plan General Policies to indicate when these do not apply within the area between Pier 35 and China Basin, replace the Geographic Specific policies that apply to the Northeastern Waterfront; (4) rescinded the San Francisco Waterfront Total Design Plan for Piers 7 through 24.	11/07/2000	Approved	12/01/2000
2000	249	BCDC	Incorporate the adoption of San Francisco Bay Plan Amendment No. 2-00 into BCDC Program. This amendment deleted the water-related industry priority use area designation from the former Pacific Refinery property in the City of Hercules, as designated on Bay Plan Map 2. It also approved the San Francisco Bay Plan amendment Environmental Assessment.	11/08/2000	Approved	12/01/2000



2000	250	BCDC	Incorporate the adoption of San Francisco Bay Plan Amendment No. 3-00 into BCDC Program. This amendment (1) addresses the following elements of the Bay Plan: Dredging Findings and Policies, Water Related Industry Findings, Recreation Policies, Other Uses of the Bay and Shoreline Policies, and Bay Plan Maps and notes; (2) amends Commission Resolution 16, which specifies the boundaries of priority use areas around the edge of San Francisco Bay.	12/14/2000	Approved	1/04/2001
2001	251	BCDC	Incorporate amendment to Section 10713.5. This amendment (1) designates the Port of Oakland's Middle Harbor for use as a dredged material disposal site provided an array of criteria for the use of the site are satisfied; (2) states that the designation does not preclude the need for a Commission permit or substitute for findings required under the McAteer-Petris Act of San Francisco Bay Plan policies; (3) specifies the legal description for the Middle Harbor site; (4) corrects clerical errors.	12/18/2000	Approved	1/04/2001
2001	252	BCDC	Incorporate the legislative change in McAteer-Petris Act Section 66632.4 into the BCDC Program. The California Legislature added the following language to the end of the section: When considering whether a project provides maximum feasible public access in areas of sensitive habitat, including tidal marshlands and mudflats, the commission shall, after consultation with the Department of Fish and Game, and using the best available scientific evidence, determine whether the access is compatible with wildlife protection in the bay.	4/11/2001	Approved	5/03/2001
2001	253	BCDC	Incorporate the San Francisco Bay Plan Amendment No. 5-00 into the BCDC Program. This amendment revised the San Francisco Bay Plan public access findings and policies to provide for maximum feasible public access while preventing wildlife from significant adverse effects. It also approved the San Francisco Bay Plan amendment Environmental Assessment.	5/30/2001	Approved	7/11/2001

2001	254	BCDC	Incorporate the San Francisco Bay Plan Amendment No. 4-00 into the BCDC Program. This amendment (1) deleted from the San Francisco Bay Plan and San Francisco Bay Area Seaport Plan the port priority use and marine terminal designations for the proposed future Army Terminal at the closed Oakland Army Base; (2) deleted from both the proposed future Bay Bridge Site port priority use and marine terminal at the Port of Oakland; (3) deleted from both approximately 189 acres of port priority use area primarily in the closed Oakland Army Base; (4) added the designation of approximately 50 acres of port priority use area adjacent to Interstate Highway 880 to both plans; (5) revised the Seaport Plan text, maps and tables to be consistent with the deletion and addition of port priority use area and marine terminal designations in the Seaport Plan and assigned a revised throughput capacity to the container terminals at the Port based on a reconfiguration of Port land, which includes approximately 184 acres of the closed Oakland Army Base.	3/26/2001	Approved	4/18/2001
2001	263*	BCDC	Incorporate modifications to Section 10310, 10311, 10315, 10610, 10516, 10602, 10625 and Appendices D and F. The changes to these sections (1) streamline and otherwise improve the permit application form; (2) change the requirements to file environmental documents that are required by the California Environmental Quality Act to be consistent with other state law; (3) add categories of dredging projects that may be authorized administratively; (4) allow the Executive Director to modify the requirements to submit site plans and waive or modify the requirements to submit plans and other materials for design review.	2/10/1998	Approved	3/09/1998

\* These file numbers are out of chronological order due to program changes that were processed prior to the review period.

**APPENDIX D**  
**RESPONSES TO WRITTEN COMMENTS**

**Commenter:** Mrs. Peggy Ann Buckley

**Comment:** The commenter asserts there are very serious legal issues regarding the CCC's implementation of the CaCMP with constitutional ramifications. She asks NOAA to investigate issues discussed in three binders of documents containing 105 attachments.

The documents the commenter submitted can be generally placed into three categories: (1) documents concerning the legal and judicial history of the CZMA, the CaCMP and the California Coastal Act; (2) documents concerning the commenter's project before the CCC and subsequent litigation; and (3) documents concerning actions by the CCC, news reports about the CCC, litigation involving the CCC, legislation pertaining to the CCC, and other documents unrelated to her specific project but which presumably raise issues of concern to her. The commenter's accompanying letter did not identify specifically the issues she wanted investigated, so the Evaluation Team has done its best to respond based on the content of the documents and the commenter's statement at the public meeting, which she included as one of the documents in her written comments. (Note: Many of the documents submitted by the commenter deal with activities that are outside of the review period for this evaluation, which is December, 1996 through May, 2001. These documents are not addressed unless they relate to an issue that continued into this review period.)

**Category 1:** *Documents Concerning Legal and Judicial History*

**Comment:** The commenter did not make specific comments on these documents.

**Response:** NOAA appreciates the commenter's efforts to compile relevant documents and to understand the requirements of the CZMA and the California Coastal Act.

**Category 2:** *Documents Concerning the Commenter's Project*

**Comment:** The commenter did not make specific comments about her project in her letter to NOAA, but did include the written statement she presented at NOAA's June 11, 2001 public meeting on the evaluation. Since this statement summarizes her issues of concern about her project, NOAA will base its response on this statement.

**Background:** In order to understand the commenter's concerns more fully, a brief summary of her project is presented below:

The commenter owns an undeveloped 2.75 acre parcel in Malibu, which she purchased in 1988. The front portion of the property is a level area about 1.15 acres in size. The rear 1.6 acres of the property descend into a steep ravine. According to the Appellate Court summary (*Buckley v. California Coastal Com. (1998) 68 Cal. App. 4<sup>th</sup> 178, 80 Cal. Rptr. 2d 562*), at the time of purchase, the commenter and her former husband originally intended to build a 15,000 square foot residence on the level front portion of the lot. (They later changed their minds and decided to sell the property with permits to increase its value.) They were informed by their real estate broker that the lot was exempt from CCC regulation for construction of a single-family residence.

After receiving reports that fill was being placed on the property in 1989, the CCC contacted the commenter. The CCC agreed that the construction of the single-family residence on the front portion of the commenter's lot was exempt from CCC regulation under a so-called "Calvo" exemption. However, the CCC asserted jurisdiction over the rear portion of the lot because they determined it was an "environmentally sensitive habitat area" or EHSA.

The commenter applied to the CCC to grade the rear portion of the lot to stabilize it and to construct three building pads for a garden, riding ring or tennis court, and guest house, respectively. The CCC denied the application because, among other things, it was not the minimum grading necessary to stabilize the area. The commenter litigated the CCC's denial of the grading application. The commenter prevailed in both the trial court and the California Court of Appeals. The courts found that if any portion of a lot was exempt under the Calvo exemption, then the entire lot was exempt. However, the Court of Appeals reversed the trial court finding that the CCC's action constituted a "taking" of private property and award of damages. The Court of Appeals found that the CCC's mistaken assertion of jurisdiction was not a "taking."

Summary of Concerns: In her written and oral statements at the June 11, 2001 public meeting during the evaluation site visit, the commenter told the Evaluation Team that: "My life has been destroyed because the Coastal Commission [CCC] illegally asserted jurisdiction over my property in 1989." She stated she lived under threat of fines and the litigation had cost her a fortune. Even though the courts found in her favor that the CCC had no jurisdiction over her property, and she was not subject to any fines, she feels she was denied just compensation for a "taking" of her property. She says she has been destroyed financially because the County of Los Angeles is refusing to honor a previously granted permit to grade the property to abate a landslide that developed on her lot.

The commenter states her belief that the CCC's designation of the rear portion of her property as "ESHA" was illegal. She also states her concern that the City of Malibu and County of Los Angeles "are attempting to prepare Local Coastal Programs with illegal environmental designations which in turn would illegally subject property owners to the Commission's [CCC's] appeal."

The commenter asks NOAA to withdraw program approval and financial assistance from the CaCMP.

**Response:** The commenter has won her case against the CCC. The CCC has no jurisdiction over her property and she does not need to obtain any CCC permits to develop her property. The County permits are a separate process from the CCC's coastal development permit process. Issues concerning these permits are between the commenter and the County, not the CCC.

Another issue raised by the commenter concerns the CCC's designation of the rear portion of her property as "EHSA." Section 30502 of the Coastal Act required the CCC to work with local governments to identify "sensitive coastal resource areas" ("SCRAs") by September 1, 1977, just 8 months after the effective date of the Act. The "SCRAs" were to be reported to the Legislature and would lose their status as "SCRAs" if not confirmed by the Legislature within 2 years. The CCC, after consulting local governments, decided not to try to designate such areas in the short time permitted.

However, in its appeal of the trial court decision in the Buckley case, the CCC pointed out that the terms "sensitive coastal resource area" and "environmentally sensitive habitat area" have different meanings in the Act (compare Sections 30107.5 and 30116) and, more importantly, these designations serve different purposes. The CCC's decision not to designate SCRAs could not therefore be used to undermine the CCC's existing authority to enforce the ESHA policies in the Act. Without specifically mentioning the Buckley's argument, the Court of Appeals, in rejecting the Buckley's taking claim, held that "the record does not support a finding that there was anything improper about the Commission's position that the rear of the lot was indeed an environmentally sensitive habitat area." (*Buckley v. California Coastal Com.*, *supra*, at p. 201.)

The courts did not explicitly decide the issue raised by the commenter -- namely, whether the CCC's designation of the rear portion of her property as ESHA was proper -- in the Buckley case. However, in *Sierra Club v. California Coastal Commission*, 12 Cal. App. 4th 602 (1993), an appellate court for the State of California found that the CCC had improperly approved a Mendocino County plan that did not designate ESHA for pygmy forest areas. This decision clearly implies that designation of ESHA is legal when the appropriate criteria have been met. NOAA is aware that there is some public concern and, possibly, confusion regarding ESHA designations, and we urge the CCC to clarify its authority and criteria for making these designations as soon as practicable.

The commenter also expresses concern about the Malibu Local Coastal Program in development, which she believes contains illegal environmental designations. As discussed in Section V.B.3. of the Findings, the California Legislature directed the CCC to prepare an LCP for the City of Malibu because of the high number of coastal development permits in that area. The draft Malibu LCP was still in preparation during

the review period. The Evaluation Team understands that, subsequent to the review period, the CCC did vote to certify the Land Use Plan (LUP) component of the Malibu LCP. The draft LUP was subject to public review before it was certified, providing an opportunity for commenters to raise their concerns.

### **Category 3: *Other Documents***

**Comment:** Although the commenter did not identify specific issues concerning these documents in her comments, many of these documents seem to raise issues related to the CCC's direct permitting role for coastal development in areas of the coast which do not have certified Local Coastal Programs (LCPs). Some are documents concerning individual projects that may raise issues regarding the CCC's public participation process, and/or may raise issues regarding designations of "ESHA" similar to those raised in the commenter's project noted above. Other documents submitted by the commenter concern news reports about the CCC, pending litigation involving the CCC and pending legislation affecting the CCC and the California Coastal Act.

**Response:** Regarding the CCC's direct permitting role in areas of the coast which do not have certified LCPs, NOAA agrees that the California Coastal Act envisioned that regulation of coastal development would occur all along the coast at the level closest to the people – the local level. However, for a variety of reasons, some cities and counties (or segments of cities and counties) still do not have certified LCPs. In addition, many certified LCPs have not been updated, and are thus generating an increasing number of appeals to the CCC. As discussed in Section V.B.3. of the Findings, NOAA strongly urges the State to continue and, if possible, expand the positive incentives for cities and counties without certified LCPs to develop them. NOAA also urges the State to support updating of out-of-date LCPs through the periodic review process and urges the State to continue to provide local grant funds for LCP updates.

Concerning documents submitted by the commenter regarding individual projects, it is NOAA's policy not to comment in the findings on individual project decisions by a coastal management program. Rather, NOAA is concerned that established decision-making processes are followed and that these processes are open, public and equitable. NOAA comments on these processes in Sections IV.B.7. and V.B.7. In general, NOAA believes the CCC has made improvements in its public participation process during this review period, but we suggest additional ways to increase public information and participation. To the extent that these projects may raise "ESHA" issues similar to those raised in the commenter's project, NOAA has the same response as noted above.

Concerning news reports submitted by the commenter, it is NOAA's policy not to comment on news reports.

Concerning pending litigation submitted by the commenter, NOAA cannot comment until the courts have rendered a final decision.

Concerning pending legislation submitted by the commenter, NOAA did mention Assemblywoman Jackson's proposed legislation on LCP periodic review in Section V.B.3 of the findings, in the context of explaining the status of this function. As mentioned in that Section and as noted above, NOAA urges the State to provide positive incentives for local governments to update their LCPs through the periodic review process.

**Commenter:** Mr. Rodophe Streichenberger  
Marine Forests Society

**Comment:** The commenter is the Founder and President of the Marine Forests Society, a non-profit organization dedicated to preserving and restoring "marine forests" such as kelp beds.

**Background:** In order to understand the commenter's concerns more fully, below is a brief summary of his project that came before the CCC:

A number of years ago, the Marine Forests Society created an "experimental" artificial reef in Newport Harbor consisting of mooring 1,500 used tires to the sea bottom. They did so without obtaining a required permit from the CCC for the placement of a "hard structure" on the seafloor within CCC's jurisdiction. When the CCC learned of this activity several years later, they notified the commenter of a violation and requested that he apply for an after-the-fact permit. He complied with their request. The CCC took some time to make their decision in this matter, in part reflecting the division in scientific opinion concerning the merits of artificial reefs of this construction. They convened a scientific review panel to review the Marine Forests Society project. Ultimately, the Evaluation Team understands that the scientific review panel recommended against the project and the CCC followed their recommendation and denied the after-the-fact permit. The CCC then followed up their denial with a Cease and Desist order to the commenter. At this point, the commenter states that he went to the Pacific Legal Foundation and they filed suit on his and the Marine Forests Society's behalf. (*Marine Forests Society, et. al. v. California Coastal Commission, et. al.*, Superior Court of the State of California for the County of Sacramento, Case No. 00AS00567, filed May 8, 2001.) In its decision in this case, the Superior Court (Judge Charles Kobayashi) ruled that the CCC, as currently constituted, was unconstitutional because it violated the separation of powers provisions of the California Constitution. (Because 8 of the CCC's 12 members are appointed by and serve at the pleasure of the Legislature, the Judge ruled that the CCC was a legislative rather than an executive body, and therefore could not perform executive functions.) This decision is currently under appeal.

**Comments:** The commenter asks NOAA to withdraw further financial assistance from the CCC for the following reasons. (1) He states that the CCC has ignored NOAA's 1997 recommendations for "depoliticization" of the Commission. (2) He states that the CCC is incompetent because its coastal permitting program is "unfeasible." (3) He states that the CCC is dishonest because a former Coastal Commissioner plead guilty to extortion in 1993. (4) He states the CCC is unconstitutional because of the Superior Court decision noted above.

**Response:** Following are NOAA's responses to the commenter's four concerns:

(1) NOAA's comments on the 1997 evaluation regarding "depoliticization" of the Commission referred to the need to take additional steps to isolate Commissioners from "ex parte" communications, so as to avoid a public perception of improper influence. It is not correct to say that the CCC has ignored NOAA's recommendations. As noted in Section IV.B.7 of the Findings, the CCC has taken several steps during this review period to isolate Commissioners from "ex parte" communications and to assure that any such communications that do occur are promptly disclosed.

(2) The commenter states that the CCC is "incompetent" because it cannot accomplish its mission of permitting coastal development along California's 1,100 mile coastline. However, NOAA has found that the CCC and its certified Local Coastal Programs are satisfactorily implementing the Coastal Act permitting program. The commenter's project is located offshore, an area where the CCC retains permitting jurisdiction. As noted above, scientific opinion is divided over the merits of artificial reefs of the Marine Forests Society's type of construction, and reasonable people can differ on whether they have net benefits for the marine environment. However, NOAA can find no fault with the process that the CCC followed to make its decision in the Marine Forests Society case. The process was open and public and employed scientific information to the extent possible.

(3) The commenter states that the CCC is "dishonest" because of the actions of a former Commissioner a number of years ago. NOAA acknowledges this unfortunate episode. However, none of the current Commissioners were serving at that time and NOAA is not aware of any current allegations of misconduct against any of the current Commissioners. NOAA does not believe that the current actions of the CCC should be judged by the past mis-conduct of a Commissioner many years ago.

(4) NOAA is concerned that the issue of the constitutionality of the CCC be resolved as soon as possible through the judicial process.



**Commenter:** Mr. John Davis  
Vice President, Coalition to Save the Marina Inc.  
Management Committee, Los Angeles Chapter Airport Marina  
Regional Group Sierra Club

The commenter expresses concern that the CCC is acting out of conformance with the Coastal Management Program and requests that NOAA issue Necessary Actions to the State to bring them into compliance with the Coastal Zone Management Act. He raises several specific issues, which can be categorized as follows:

**Category 1:** *Public Participation in CCC Decision-Making*

**Comment:** The commenter expresses concern about CCC meeting procedures, including Coastal Development Permit (CDP) and Local Coastal Program (LCP) amendment and CDP appeal procedures, that he believes preclude the widest possible public participation and oversight; holding "de novo" hearings without first notifying the public; not defining the term *substantial issue*, which is used to determine if a CDP requires a public hearing; not assuring transmittal of appeals and information to the Commission in their entirety; disregarding public testimony during Commission meetings; and holding hearings on projects far away from the project area, thus precluding maximum public participation in decisions affecting the coastal zone.

**Response:** As noted in Section IV. B.7 of the Findings, the CCC has made several improvements to its public participation process during this review period, particularly given its limited staff and resources. Some of these improvements respond to Mr. Davis' comments (for example, traveling more around the State to maximize the chance that projects will be heard in the local area, providing an excellent website, changing CCC meeting procedures to allow both project proponents and opponents to use their time to maximum advantage, providing written materials from both project proponents and opponents to Commissioners ahead of time, and engagement of Commissioners during meetings.) However, the Findings also discuss additional suggestions for facilitating the public's involvement in coastal decision-making in Section V.B.7. These suggestions include exploring the feasibility of televising or tele-conferencing Commission meetings so as to increase the opportunity for input from local people when projects have to be heard at distant locations. In addition, some of the commenter's concerns may result from lack of clarity in CCC procedures. The suggestions at Section V.B.7 include developing a Citizens Guide to explain and clarify the CCC's permitting and appeal procedures and terminology, which would include clarifying requirements for "de novo" hearings and definition of "substantial issue."

**Category 2:** *Local Coastal Programs*

**Comment:** The commenter expresses concern that the CCC approves Coastal Development Permits that are out of compliance with certified Local Coastal Programs

(LCP) and inconsistent with the California Environmental Quality Act, the Clean Water Act, the National Environmental Protection Act, Federal Housing laws and Federal Civil Rights Act. In addition, he asserts that the CCC continues to establish and follow guidelines that are inconsistent with the Coastal Management Program. The commenter states the CCC must be forced to comply with Section 30519.5 of the California Coastal Act, which requires periodic review of certified LCPs. He expresses concern that the CCC is not complying with the Coastal Act requirement for periodic review of certified Local Coastal Programs, and specifically for review of the Marina Del Rey LCP. He states that the CCC's ReCAP program is not a substitute for periodic review. He contends that the "Procedural Guidance Manual: Conducting Regional Periodic Program Reviews" is inconsistent with the Coastal Zone Management Act of 1972, the Coastal Zone Management Program and the California Coastal Act. He supports an action to force compliance with the Coastal Management Program as it relates to the Guidance Manual.

**Response:** NOAA agrees that the CCC is not complying with the periodic review requirement of the Coastal Act. NOAA also agrees that the ReCAP program, while providing information that can be used in a periodic review, is not a substitute for periodic review of individual Local Coastal Programs. As discussed in Section V. B. 3. of the Findings, we recommend that the CCC continue its efforts to establish a statewide periodic review process and seek necessary resources for this purpose. (Note: Subsequent to the review period, the Evaluation Team understands that the CCC settled litigation with Save the Marinas by agreeing to conduct a periodic review of the Marina Del Rey LCP.)

**Category 3:** *Enforcement*

**Comment:** The commenter expresses concern that the CCC fails to respond to cease and desist and restoration requests made by the public.

**Response:** NOAA discusses enforcement in Sections IV.B.1, IV.B.2, V.B.1 and V.B.2 of the findings. In those sections, NOAA notes that in June of 2000, CCC received authority to augment its enforcement staff substantially. This has resulted in at least one full-time enforcement staff person in each of the District Offices, as well as additional enforcement staff at Headquarters. Time must be given for the impact of these new staff to be felt. However, NOAA also notes that, even with the recent enforcement staff increases, enforcement staffing remains sparse in relation to the length of the State's coast and the large volume of coastal development permitting. NOAA suggests that the CCC seek support for additional enforcement staff in order to be more responsive to public concerns and in order to implement more proactive monitoring and enforcement.

**Category 4:** *Housing*

**Comment:** The commenter expresses concern that the CCC consistently fails to enjoin other agencies to exercise jurisdiction over housing for low and moderate income families in the coastal zone.

**Response:** The focus of the California Coastal Act is on balancing the utilization and conservation of coastal zone resources. Therefore, its policies deal primarily with resource management. Article 2 of the Coastal Act, dealing with Public Access, does provide at Section 30213 that: "Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided....New housing in the coastal zone shall be developed in conformity with the standards, policies, and goals of local housing elements adopted in accordance with the requirements of subdivision (c) of Section 65302 of the Government Code." NOAA has found that the CCC does a thorough job of reviewing proposed coastal development permits and Local Coastal Programs against all of the relevant policies of the Coastal Act, including this policy. However, NOAA is not aware of any authority that the CCC possesses to enjoin other agencies to take action in this regard.

**Category 5:** *Technical Information*

**Comment:** The commenter expresses concern that the CCC fails to require local agencies to provide geotechnical reports to them for evaluation and fails to consider information provided by FEMA and USGS in regard to natural hazards such as tsunamis.

**Response:** The commenter did not identify any specific project or project(s) of concern, but NOAA is not aware of any projects during this review period where this information has been disregarded.

**Category 6:** *Environmentally Sensitive Habitat Areas (ESHA)*

**Comment:** The commenter expresses concern about how the CCC defines areas as ESHA. Specifically, the commenter questions why the CCC defines the entire water area and tidelands of Venice as ESHA, but does not recognize Marina Del Rey Harbor as ESHA.

**Response:** The CCC reviews areas on a case-by-case basis, using scientifically qualified personnel, in accordance with the definition of ESHA in the Coastal Act (Section 30107.5). Given the commenter's specific concern, NOAA urges the CCC to review its ESHA designations during the upcoming periodic review of the Marina Del Rey LCP.

**Category 7:**     *Discriminatory Access*

**Comment:**     The commenter expresses concern that the CCC is discriminatory in granting access to the coastal zone.

**Response:**     NOAA's review found that the CCC is doing a commendable job of increasing public access to the coastal zone. All coastal access sites developed by the CCC and SCC are open to the public. Section IV.B.9. and V.B.4 of the findings deal with this issue. NOAA is not aware of any instance where the CCC has discriminated in granting access to the coastal zone.

**Commenter:**     Mr. Vern Goehring  
                         California Native Plant Society

**Comment:** The commenter discusses the role of the CCC in the review of Natural Community Conservation Plans (NCCPs), which are the State of California's equivalent of Habitat Conservation Plans (HCPs) that are prepared under the federal Endangered Species Act. The commenter is a former staff legislative analyst for the California Department of Fish and Game (DFG), so his comments are based on both the Society's analysis of the NCCP process and his own experience with the early years of its implementation.

The commenter states that: (1) there was no intention that the NCCP program would supercede other laws, such as the Coastal Act; (2) the NCCP Act contains only vague procedures and standards that need to be augmented by the more definitive standards in other Acts (e.g., Coastal Act, Federal Clean Water Act, Porter-Cologne Act, etc.) to ensure some minimum threshold of protection; and (3) the NCCP Act authorizes and encourages coordination and the DFG has the primary responsibility for identifying and including other agencies that are affected by the NCCP planning process. He states that the best example of how the NCCP/HCP's should be integrated with the Coastal Act was the recent development plans of the Irvine Company. There, the NCCP/HCP provisions pertaining to this development were approved by the CCC as an amendment to the Orange County Local Coastal Program (LCP), thereby giving them force and effect through the LCP permitting authority. The Society recommends that NCCPs that include some part of the coastal zone within the planning area be developed in coordination with the CCC and be consistent with the standards in the Coastal Act. The Society also recommends that relevant provisions of NCCPs be submitted to the CCC for approval and incorporation into the appropriate LCPs prior to approval by the DFG.

**Response:** NOAA discusses the CCC's role in Habitat Conservation Planning extensively in the Findings in Section V.B.5. This was an important issue in this evaluation. NOAA agrees that NCCPs that include some part of the coastal zone should be fully coordinated with the CCC and their relevant provisions incorporated into

appropriate LCPs, prior to DFG approval. This would give the NCCPs additional implementing authority. NOAA also recommends the CCC should be involved as early as possible in the development process for the NCCPs so that inconsistencies can be identified and resolved in a timely manner. There are a variety of reasons why this has not always happened in the past, but the CCC now has additional staff and has informed the Evaluation Team that it is committed to early and full coordination in the future. NOAA is hopeful that the DFG also will seek early coordination with the CCC on NCCPs that include some part of the coastal zone.

**Commenter:** Ruth Lansford, President  
Friends of Ballona Wetlands

**Comment:** Ms. Lansford states her belief that "we now have a Commission and staff who are truly committed to the mission of the Coastal Act and who are responsive to both public and private concerns." She cites improvements in enforcement staffing but believes enforcement is still under-funded. She states that "for many years, the Commission suffered from a State government that was hostile to its mission," but that is no longer the case. She commends the CCC for its assistance in restoring the Ballona dunes and negotiating "an outstanding permit for the creation of a freshwater marsh." She believes "the Commission and staff will continue to value good science, private property rights and the public good – a difficult balancing act, but one they strive to achieve with great integrity."

**Response:** NOAA, too, recognizes the difficult job of the CCC – balancing conservation and development of the California coast, respecting private property rights while promoting the public good. NOAA also recognizes the extensive effort the CCC has made to review the Ballona wetlands project. As discussed in Sections IV.B.2 and V.B.2. of the Findings, NOAA agrees that enforcement staffing has significantly improved during the review period, but that more resources for this function are needed.

**Commenter:** Mr. and Mrs. Doug and Cecile Donath

**Comment:** The commenters express their concern with the apparent trend by the CCC toward promoting public access in cases where it would be detrimental to the preservation of natural resources. As residents, they have seen continued growth of the population of the State. They think that this growth has led to the promotion of public access for the purposes of recreation, which is not always compatible with the maintenance of the fragile ecosystems. They believe that the CCC should support policies that will conserve the remaining land along the coast and concentrate recreation and access in those areas that are no longer viable to restore.

**Response:** NOAA recognizes that there are instances where policies to promote public access to the coast for recreation can conflict with policies to protect coastal resources. NOAA has found that the CaCMP's two regulatory agencies – the CCC and the BCDC – have done an acceptable job of balancing these two policies during this review period. BCDC has also undertaken a major study to develop better policies for promoting public access and wildlife compatibility. (See Section IV.C.2. of the Findings.) Hopefully, the results of this study can help to inform the actions of both CCC and BCDC as they attempt to balance these considerations in the future.

**Commenter:** Mr. and Mrs. Benton and Marjorie Allen

**Comment:** The commenters express their gratitude for the existence of the Commission and believe it has performed an invaluable service for the State residents who live near beaches and for tourism. The general public has benefitted by the increase of tourist dollars brought to the local communities and the State. They express concern about "disinformation" from developers. They express a wish that the Coastal Commission had increased resources to do their essential work.

**Response:** NOAA appreciates the commenter's support for coastal stewardship. NOAA agrees that the CCC needs increased resources to perform several important functions. NOAA discusses this matter in Section V.B.1. of the Findings. NOAA's budget limits the amount of funds it can provide to the State. NOAA recommends that the CCC quantify its needs and seek additional resources from all potential sources.

**Commenter:** Dr. Ronald Lawrence

**Comment:** The commenter states that the CCC is "an autocratic, non-democratic, strongly flavored political organization, to which the average citizen has no true access." He believes many of the Commission's decisions are motivated for their personal gain rather than the need to protect the coastline of California. He suggests that the individuals who comprise the Commission should be elected to their positions. He believes this will ensure that the average citizen might have recourse to a fair evaluation and the coastline would be better served.

**Response:** The State of California chose to implement the California Coastal Act through an appointed rather than an elected Commission. Such Commissions are acceptable under the Coastal Zone Management Act and NOAA approved the California Coastal Management Program with that structure. CCC meetings and decisions are open and public and provide for public input and participation. However, NOAA does make suggestions in Section V.B.7. for improving public participation in the CCC decision-making process.

**Commenter:** Mr. Kenneth Roe

**Comment:** The commenter expresses support for the continued need to retain the Commission. He fought hard for the creation of the Coastal Management Program in 1972 and fears that short-sighted business and conservative self interest groups are trying to undermine the power of the Management Program and the Commission to the detriment of California's precious coast. The commenter states that he will continue to support and fight for the Commission's current role and capacity.

**Response:** NOAA appreciates the commenter's support for the California Coastal Management Program and for coastal stewardship. NOAA recognizes the importance of balancing economic development with conservation of California's many unique coastal resources. This is a difficult job and one that relies on the support of the commenter and other citizens of California.

**Commenter:** Ms. Joanne Williamson

**Comment:** The commenter expresses concern about the Commission's prioritization of public access above the protection of the natural resources. Throughout the years, she has watched the natural Southern California coast disappear as the population expanded and development took over. She feels that parks and beaches should be maintained as close to a natural state as possible. Additionally, she feels it is a public responsibility to deter any further access to land that is still undeveloped and available to native plants and animals. It is essential to protect the limited private and government properties that are currently off limits to public access.

**Response:** The commenter raises the issue of potential conflict between policies to promote public access to the coast for recreation and policies to protect coastal resources. As noted in response to another similar comment, NOAA has found that both of the CaCMP's regulatory agencies – the CCC and the BCDC – have done a acceptable job of balancing these two policies during this review period. BCDC has also undertaken a major study to develop better policies for promoting public access and wildlife compatibility. (See Section IV.C.2. of the Findings.) Hopefully, the results of this study can help to inform the actions of both CCC and BCDC as they attempt to balance these considerations in the future.

**Commenter:** Mr. Melvin Nutter  
Chair, League for Coastal Protection

**Comment:** The commenter commends the CCC's effort to protect California's coast and recognizes that it has made a significant and positive contribution to the well-being of the coast. However, the commenter voices concern that once a city or county Local

Coastal Program (LCP) is certified, California loses its ability to require continuing adherence to the policy mandates of the Coastal Act. The Act requires periodic review of LCPs but does not require that they be updated. The result can be dismantling of the community vision represented by the LCP through the piecemeal granting of variances. Mr. Nutter believes that the California Coastal Management Program should address this deficiency.

**Response:** NOAA agrees that there is a critical need to update LCPs. This issue is discussed extensively in the Findings in Section V.B.3. Part of the problem is that the CCC needs additional staff resources to comply with the periodic review requirement of the Coastal Act. Hopefully, these Findings will serve to highlight the pressing need to reassess the resources needed for periodic review and local assistance functions. However, NOAA also recognizes that once a periodic review is done, there is no requirement for local governments to update their LCPs. NOAA suggests that the CCC consider seeking legislative changes that would provide incentives for local governments to update their LCPs based on the results of periodic reviews.

**Commenter:** Ms. Leslie Purcell  
South Bay Chapter, Surfrider Foundation  
The Ballona Wetlands Land Trust

**Comment:** The commenter submitted a report which she co-authored entitled "Ballona Wetlands "Freshwater Marsh" – An Historical and Critical Analysis." The report investigated: 1) why the 1991 CCC did not have access to the most significant information (a 1986 EPA report) and had been given misleading information about the true nature of the Area B of the Ballona Wetlands slated for development of a freshwater marsh; and 2) why the 1991 CCC was pressured by both the developer and the Friends of Ballona Wetlands to grant the freshwater basin permit. The commenter believes that a tragic mistake was made by the CCC in 1991 when they granted a permit for conversion of what they believed was agricultural land (but which the 1986 EPA report says was recovering natural salt marsh) into a "freshwater marsh," which she terms an urban detention basin. Although this event occurred outside of this evaluation review period, the commenter believes there are lessons from this event which have relevance today. Specifically, she recommends the allocation of additional resources to the CCC staff for technical services, specifically to retain biologist support staff. She also recommends the CCC encourage more public participation in the permitting process, especially public non-governmental organizations, and develop a process whereby decisions may be more easily revisited and revised. She also recommends periodic review and updating of Local Coastal Programs and their underlying Land Use Plans.

**Response:** Many of the issues the commenter raises are discussed in detail in the evaluation Findings (See Sections IV.B. 1,3,5 and 7 and V.B.1,3 and 7). Although NOAA acknowledges the significant augmentation of technical services staff during this



review period, NOAA also notes they are still only marginally adequate for the statewide scope and volume of CCC work. NOAA recommends that the CCC seek additional staff resources for this purpose. NOAA also makes suggestions for increasing public participation in the permitting process. The Findings discuss in detail the need for resources to implement the periodic review requirement of the Coastal Act. Hopefully, they will serve to highlight this pressing issue.

**Commenter:** Ms. Linda Krop  
Chief Counsel, Environmental Defense Center

The commenter represents a non-profit public interest environmental law firm – the Environmental Defense Center (EDC) -- that represents community organizations along California's Central Coast in cases involving protection of coastal resources and preservation of historic public access.

**General Comments:** The commenter states that the CCC's work would be greatly enhanced if its budget and staff are substantially increased, all jurisdictions complete the LCP certification process, and more scientific support is secured. The commenter states that the CCC has made advancements in preserving dedications of public access, attempting to schedule hearings near the affected communities, asserting consistency review over offshore oil and gas activities, and protecting the central coastline from massive development by the Hearst Corporation.

**Response:** NOAA agrees that the CCC has significantly improved its public access program, scheduled meetings around the State to increase the chance that projects will be heard near the affected communities, and continued its effective federal consistency program. NOAA also agrees that the CCC needs further staff increases for core functions, including technical and scientific support, and that increased incentives are needed to enable local governments to complete remaining uncertified LCPs. These topics are discussed in more detail the Sections IV.B and V.B of the findings.

**Specific Comments:** Specific comments are directed primarily towards the role and work of the CCC in the following areas:

*(1) Adherence to Policies in CZMA Section 303(2)(A)-(K)*

**Comment:** The commenter is concerned that the CCC at times deviates from strict enforcement of Coastal Act policies, which results in less protection than required and anticipated by CZMA Section 303(2). Specifically, she is concerned that the CCC implement more aggressively the Coastal Act's strict protection policies for "environmentally sensitive habitat areas" (ESHAs). The commenter also believes the Coastal Act should be strengthened to deal with shoreline armoring and ensure adequate bluff setbacks.

The commenter commends the CCC for its efforts to get Offers to Dedicate (OTD) public access easements accepted, so they won't expire. However, to have any meaningful public impact, the OTD must be not only accepted but also opened to the public and maintained. The commenter recommends the State identify funding sources to support the opening and operation of OTDs for public use and enjoyment. The commenter also recommends funding and staff to evaluate prescriptive easements.

The commenter also urges the CCC to become more involved in water quality programs at the city and county level, and to be stricter in enforcing the Coastal Act's protections for agricultural lands and scenic resources.

**Response:** These Findings contain a number of Program Suggestions (see Sections V.B.4, 5, and 6) that address several of the above-mentioned issues, including shoreline armoring, OTDs, and water quality. Regarding ESHA designations, the CCC reviews areas on a case-by-case basis, using scientifically qualified personnel, in accordance with the definition of ESHA in the Coastal Act (Section 30107.5). With the CCC's limited technical services staff and resources, this is the only feasible approach.

#### *(2) Coastal Permitting, Monitoring and Enforcement*

**Comment:** The commenter expresses the need for ALL coastal cities and counties to complete the LCP certification process, for the CCC to be more willing to consider the merits of permit appeals, for the CCC to be more diligent in reviewing emergency permits and for the CCC to be more diligent in evaluating and incorporating mitigation measures into permits. The commenter also believes the CCC still lacks adequate resources for enforcement.

**Response:** NOAA agrees that the CCC should place a high priority on LCP completion. This matter is discussed in the findings at Section V.B.3. There NOAA suggests that the CCC explore options for seeking increased incentives to enable local governments to complete remaining uncertified LCPs. NOAA also agrees that the CCC still needs additional resources for enforcement, as discussed in the findings at Section V.B.2. However, NOAA has found that the CCC has done an acceptable job of considering permit appeals, evaluating emergency permits and incorporating mitigation measures during this review period.

#### *(3) Implementing Federal Consistency Authority*

**Comment:** The commenter recommends NOAA play a more aggressive role in ensuring federal agency compliance with the Federal Consistency provisions. The commenter also recommends that the CCC update the "listed activities" contained in the CaCMP to include Incidental Take Permits/Habitat Conservation Plans. The commenter urges the CCC to monitor activities they have certified as consistent to ensure that they are truly carried out in a manner consistent with the State's coastal management program.

**Response:** NOAA acknowledges that it has a continuing role in educating federal agencies as to their obligations under the Federal consistency provisions of the CZMA. NOAA discusses the CCC's request to list Incidental Take Permits and its role in Habitat Conservation Plans and Natural Communities Conservation Plans in Section V.B.5 of the findings. Ultimately, the CCC withdrew its listing request. However, NOAA urges the CCC to engage Federal, state and local governments early in the planning process for HCPs and NCCPs that affect coastal resources in order to ensure that the requirements of the Coastal Act are integrated into these plans at the earliest possible time. NOAA agrees that monitoring of activities that CCC has certified as consistent is important, but this is limited by available staff and resources.

#### *(4) Playing a Leadership Role*

**Comment:** The commenter urges the CCC to be more pro-active in providing education, training and guidance to local coastal agencies on policy statements or judicial decisions of state-wide import. In particular, the commenter would like to see the CCC take a more pro-active role regarding state-wide issues of concern such as fiber optic cables, desalination facilities, acoustics, cell towers and seawalls/setbacks. The commenter also urges the SCC to play a more pro-active role in identifying priority acquisition, conservation and restoration opportunities.

**Response:** NOAA agrees that the CZMA intended for state coastal zone management programs to play a leadership role in long-range planning to analyze and develop state-wide alternatives for coastal issues of state-wide concern. These findings document several instances in which the three CaCMP lead agencies – the CCC, BCDC and SCC – have played such a leadership role during this review period. However, the CCC in particular has been constrained from taking a more active role in this area due to lack of staff and resources. As long as the vast majority of the CCC's staff and resources must be directed to the coastal development permitting function, it cannot engage fully in long-range planning and cannot provide the education and training that local governments have requested. That is one reason the findings urge the State to develop additional incentives for completion of remaining uncertified Local Coastal Programs.

#### *(5) Ensuring Full Public Participation*

**Comment:** The commenter is impressed with the changes that the CCC has made to its meeting schedule and other procedures to facilitate more public participation. However, she continues to be concerned that processing deadlines often force hearing items very far from the most affected public. The commenter suggests the CCC modify its timelines to make Commission meetings more accessible.

**Response:** Both the Accomplishments and Recommendations sections of the findings deal with this issue. (See Sections IV.B.7 and V.B.7, respectively.) The Evaluation Team finds that the CCC is doing a good job to facilitate public participation, given strict

State permit processing deadlines, and given its present staff and resources. However, the findings suggest some other avenues that the CCC may wish to explore to promote public participation further, within the constraints of permit processing deadlines and current resources.

*(6) Coordination with Local, State and Regional Entities*

**Comment:** The commenter notes that the CCC used to coordinate more closely with local permitting authorities and provide more local assistance. The commenter recommends that the CCC's budget be enhanced so that its staff can revive this coordination, and also so that it can re-open some of the closed offices to provide more accessibility and coordination with local, regional and state entities.

**Response:** NOAA notes that the CCC has received a modest budget increase for this purpose, which has allowed the CCC to re-institute the Local Assistance Grant Program and Local Assistance Program of the CCC in a limited way. CCC has also been able to re-open its North Coast District Office in Eureka, a major accomplishment. However, local officials who participated in the evaluation noted the need for much more assistance from the CCC. A Program Suggestion addressing this issue is at Section V.B.3. of the findings.

*(7) Implementing the LCP Process*

**Comment:** The commenter notes the problem with out-dated LCPs and notes that the CCC is not complying with the Coastal Act mandate calling for periodic review of LCPs every 5 years. The commenter also urges the CCC to work with the State legislature to strengthen the effectiveness of the periodic review.

**Response:** NOAA agrees that periodic review should be a high priority of the CCC. Staff and resource constraints have prevented the CCC from complying with the Coastal Act mandate for periodic review in the past. NOAA requires the CCC to continue its efforts to establish a statewide periodic review program and to seek additional staff and resources for this purpose. NOAA also urges the CCC to seek legislative changes that would increase local incentives to update LCPs based on a periodic review. (See Section V.B.3.)

*(8) Working with State and Regional Water Quality Control Boards*

**Comment:** The commenter encourages the CCC to work with the State and Regional Water Boards, as well as non-profits and city and county agencies to identify and reduce sources of nonpoint (runoff) pollution along the California coast.

**Response:** NOAA commends the State for developing an approved Coastal Nonpoint Program, which integrates both the provisions of the CZMA (Section 6217) and the

Clean Water Act (Section 319) into one statewide program. CCC has played a leadership role in the development of this program and continues to play a leadership role in its implementation. We urge the other CaCMP lead agencies to increase their participation in this program.

*(9) Incorporating Scientific Information into Management Decisions*

**Comment:** The commenter notes that the CCC is woefully understaffed when it comes to scientific and technical support. She urges that each District Office be staffed with a biologist and that CCC also have staff geologists, archaeologists and hydrologists.

**Response:** NOAA commends the State for providing the resources to hire additional technical services staff, including 1 biologist, 1 ecologist and 1 geologist statewide, during this review period. This is an important start but NOAA agrees that CCC still needs additional staff for scientific and technical support. Local governments, too, have expressed to the Evaluation Team how important it would be for them to have access to more technical and scientific support from the CCC. NOAA discusses this issue in the findings at Sections IV.B.5 and V.B.1. NOAA suggests that CCC document its needs in this regard and continue to seek staff augmentations for this critical function.

**Commenter:** Ms. Patricia McPherson  
Grassroots Coalition

**Comment:** The commenter asserts that the Commission did not perform a reasonable or prudent investigation into the health and safety issues of the Playa Vista site and the coastal environment overlying the Playa del Rey/Venice oil and gas fields. She recommends that the authority of the Commission be revoked because it has adopted guidelines inconsistent with the Coastal Act and violated sections of the Coastal Act.

Specifically, she asserts that, in violation of Section 30004, the Commission has been non-responsive and has not performed with due diligence regarding health and safety issues in the Ballona Wetland area, which includes the areas contiguous to Playa Vista site, the Playa del Rey bluffs, and the Marina del Rey/Venice areas. She expresses concern that the SOCALGAS Playa del Rey/Venice oil and gas facility is harming the public and coastal environment more than it is doing any good for the public in violation of Section 30260. She says the Commission continues to ignore concerns about the facility's safety. In violation of Section 30262, she says the Commission will not investigate the geologic conditions or perform a subsidence study of the area as it relates to the approved detention basin. She says the Commission is infringing on Section 30231, as the approved detention basis is causing contamination problems in the area and has not been adequately studied in order to determine its ill effects upon the area, which is a viable habitat area. In violation of Section 30240, she says the Commission has done inadequate studies of the geotechnical problems of the approved detention basin,

the agreed upon "primary water source," to determine if it will create subsidence problems. In violation of Section 13105, she says the Commission should have known through prudent investigation that the proposed detention basin sits atop a zone of dangerous high volumes and pressures of oil field gas. She also asserts that the applicant for the permit intentionally provided incomplete information.

The commenter's organization initiated a revocation request in 1999. They were notified that they would be immediately scheduled for the next hearing. She says the Commission issued an erroneous staff report before the hearing. She says her organization attempted to correct the perceived errors in the staff report prior to the hearing but was unsuccessful. Additionally, she says they were told they would have ample time to present their case, however; they had to share speaking time with the entire audience. Despite the fact her organization asked the Commission for a postponement so that her organization could further investigate the request, the Commission denied the revocation request. The commenter believes that if the Commission had postponed the decision and undertaken further investigation, it would have granted the revocation request. She states that the CCC denied the revocation request because her organization could not meet the high standard of proof required for revocation of permits under the Coastal Act – namely, "intentional" inclusion of inaccurate, erroneous or incomplete information. She believes the CCC's rules for granting revocations should be changed.

The commenter also asserts that the Commission refuses to participate in the fact finding regarding the hazards of the area. She says her organization will continue to study this area for these concerns as well as ecological concerns. She requests: 1) the Commission provide a new revocation proceeding; 2) the Commission address detention basis issues in public; and 3) these issues become part of an agendaized Commission schedule immediately. The commenter also expresses concern that the Commission is not addressing soil contamination issues within the proposed detention basin area.

**Response:** NOAA understands that the commenter's concerns stem from a permit granted by the CCC in 1991 for creation of a "freshwater marsh" within the Ballona wetlands area near Marina Del Rey. Although this event occurred outside of the review period for this evaluation, her organization apparently initiated a revocation request within this evaluation review period.

NOAA understands that the Coastal Act's standards for revoking permits are high because once a permit is granted, the permittee relies on the permit and may incur substantial effort and expense in implementing a permitted activity. However, NOAA recognizes that the commenter's organization raises a possibly serious public health and safety concern. NOAA understands that the "freshwater marsh" permit contains conditions regarding monitoring. NOAA urges the CCC to review the monitoring data and work with the permittee as necessary to remediate any threats to public health and safety.

The commenter also raises concerns about the CCC's public participation and decision-making process. NOAA understands that the CCC hears many actions at each monthly meeting and must necessarily limit the amount of time it spends on each action. The CCC must also take care to provide an equitable allocation of time to both project proponents and opponents. As discussed in Section IV.B.7, NOAA commends the CCC for the efforts it has made during this review period to facilitate more public participation. However, NOAA also has suggestions for how the CCC might do more to make its meetings and decision-making more accessible to the public. (See Section V.B.7.)

**Commenter:** Ms. Kathy Knight  
Wetlands Coordinator, Spirit of the Sage Council

**Comment:** The commenter expresses general concern that the Commission is not protecting coastal resources. She states that the Commission is a political tool and the individuals that comprise the Commission need more independence from their political appointers and big donors to those politicians. She states that the Commission staff sides with the developer and often borrows their terminology. Additionally, she says they do not take aggressive stands to protect the resources, because the political Commissioners don't support them. For example, she was attempting to save a natural upland bluff supporting the Ballona Wetlands in Los Angeles and was told that it was an "in-fill" project by Commission staff, a favorite term used by a local developer. She articulates that if scientists, hired by developers to do an Environmental Impact Report, find endangered species on a property proposed for development, they are fired and not used again in the industry. In the case of the LAX expansion, she says a company hired by the developers found the endangered Riverside Fairy Shrimp and was fired from that job and from overseeing an adjoining restoration project. She also states it makes no sense that developers are allowed to destroy coastal wetlands in return for promising to create new wetlands. These artificial wetlands have an extremely high rate of failure over time and the original wetland of thousands if not millions of year's duration was destroyed. She expresses concern that the Commission no longer has regular training workshops to educate the citizens on how to use the Coastal Act. These workshops enabled citizens to be effective in protecting the coast, especially given that they face corporations with extreme wealth, power, and knowledge. She concludes that the Coastal Management Program is not working and it continues to fail for all of the reasons listed above and many more.

**Response:** Regarding the commenter's concern about inadequate protection of coastal resources, NOAA understands that very little natural coastal habitat, such as coastal wetlands, remains in Southern California. NOAA also understands that the high value of coastal land, coupled with rapid population growth, creates great pressure for development regardless of the cost to coastal resources. However, the goal of coastal management is about balance – so that property owners can use their land, but there are

some areas that the public can access for recreation and some areas where coastal resources can be conserved to provide habitat for fish and wildlife. As such, coastal management must balance development and conservation objectives, the rights of the public and individuals. Striking that balance is extremely difficult, especially in an area such as Southern California that was already so developed before the California Coastal Management Program even began. NOAA finds that the CCC's decision-making process is open and public and seeks to find this balance, even though that may mean that both developers and conservationists find fault with them.

Regarding the commenter's concern that the CCC is a "political tool," NOAA notes that the CCC is a politically appointed body as required by the California Coastal Act. However, as noted in Section IV.B.7 of the Findings, the CCC has taken several steps during this review period to isolate Commissioners from "ex parte" communications, so as to avoid a public perception of improper influence. As noted in Section V.7 of the Findings, a recent Superior Court decision (*Marine Forests Society, et al. v. California Coastal Commission, et. al.*) found that the CCC, as currently constituted, was unconstitutional because it violated the separation of powers provisions of the California Constitution. This decision is currently on appeal, and it is not appropriate for NOAA to comment further on the case until the courts have rendered a final decision.

Regarding the Ballona Wetlands project cited by the commenter, the commenter may be referring to a permit granted by the CCC in 1991 for creation of a "freshwater marsh" within the Ballona Wetlands area near Marina Del Rey. Although this permit was granted in 1991, NOAA understands that the project remains controversial. A revocation request initiated in 1999 by the Grassroots Coalition was unsuccessful. However, the CCC now has independent scientific and technical staff to review future permit applications, as well as monitoring data from the current project. Having such independent scientific and technical expertise is essential to evaluate issues such as endangered species, assist applicants to craft effective mitigation, and restore public confidence in fair and balanced management of the coast. These issues are discussed in more detail in the Findings, Sections IV.B.5 and V.B.1.

Regarding the commenter's concern about the problems of wetland restoration, NOAA shares the commenter's concern. The California Coastal Act policies regarding wetland protection are strong and NOAA has found that they are being effectively implemented by the CCC. However, NOAA believes it is still worthwhile to pursue wetlands restoration projects. Scientists are learning more and more about how to re-create functioning wetlands and the science of wetlands restoration will improve as more carefully designed projects are implemented.

Regarding the commenter's statement about the value of regular training workshops, the evaluation findings discuss additional suggestions for facilitating public



participation in Section V.B.7. NOAA urges the CCC to consider resuming regular training workshops as staff and resources permit.

**Commenter:** Ms. Joanne Pearson  
Chair, San Diego Sierra Club Coastal Committee

**Comment:** The commenter conveys appreciation for the San Diego CCC staff, which assisted the City of San Diego in its rewrite of all of the City's Land Development regulations. The staff demonstrated a high degree of professionalism and technical competence that is a valuable resource for the public. She requests additional staffing for the CCC's San Diego District Office. The additional staff would assist the local government and members of the public in the implementation and enforcement of issues arising from the new Land Development code and provide technical assistance to local government and planning staff. Recent additions of enforcement personnel to the Commission staff have improved the enforcement situation. However, she states that even more staffing in enforcement personnel is required in order to accomplish effective enforcement. After-the-fact permits for unpermitted activity are viewed as the "cost of doing business". She feels these permits encourage additional violations. Penalties should be swift and sure as inadequate enforcement can create cynicism and discourage much needed public participation in coastal resource protection.

**Response:** NOAA agrees that additional staff are needed in the CCC District Offices for several core functions, including local assistance and enforcement. These matters are discussed in the findings at Sections V. B. 1, 2 and 3. However, NOAA has found no improper use of after-the-fact permits.

**Commenter:** Mr. and Mrs. Hugh and Kim Sutherland

**Comment:** The commenters acknowledge that the Commission has accomplished some protection of coastal resources; however, they are concerned that the Commission is favoring public access over preservation. They feel that to protect habitat and natural resources, some areas must be off-limits to the public. However, when private landowners demonstrate the will and ability to protect their own lands, they should be allowed to do so. They give a number of examples of private lands with successful preservation efforts, such as the Yosemite Mountain Ranch in the Sierra Nevada mountains. They express concern that the California Coastal Management Program should place resource protection above public access, and that the ultimate goal of the Commission or other organizations or individuals should be to protect coastal resources, not destroy them with a policy to provide access to every last inch.

**Response:** The commenters raise the issue of potential conflict between policies to promote public access to the coast for recreation and policies to protect coastal resources.

As noted in response to other similar comments, NOAA has found that the CaCMP regulatory agencies – the CCC and the BCDC – have done an acceptable job of balancing those two policies during this review period. BCDC has also undertaken a major study to develop better policies for promoting public access and wildlife compatibility. (See Section IV.C.2. of the Findings.) Hopefully, the results of this study can help to inform the actions of both CCC and BCDC as they attempt to balance these considerations in the future.

**Commenter:** Ms. Anne DeWitt

**Comment:** The commenter supports a shoreline that is as clean and environmentally pristine as possible while protecting and preserving the right of public access. She requests adequate staffing and more funding for coastal protection projects and the CCC. She urges the CCC to protect the average citizen, who does not have the wealth to enjoy life by the ocean, but who still wants to go there to take a breath of fresh air.

**Response:** NOAA appreciates the commenter's support for coastal management policies and programs of the CCC and the SCC to increase public access to the shoreline and protect and restore coastal resources.

**Commenter:** Ms. Eileen Murphy

**Comment:** The commenter expresses her appreciation of the CCC and its staff. She believes that the CCC requires more funding from the budget to hire additional staff to aid in its duties. She expresses concern that the responsibility mandated by the Coastal Act to the CCC should not be given to the Department of Fish and Game.

**Response:** NOAA agrees that, despite recent budget and staff increases, the CCC is still only marginally staffed to perform many core functions. This matter is discussed in the findings in Section V.B.1.

Regarding the commenter's concern that Coastal Act responsibilities not be given to the Department of Fish and Game, she may be referring to the CCC's role in Habitat Conservation Plans and Natural Community Conservation Plans. This matter is discussed in detail in the evaluation findings at Section V.B.5. NOAA agrees that the CCC needs to be involved in developing these Plans if they affect the coastal zone. NOAA urges the CCC to engage the Department of Fish and Game and other state, federal and local agencies early in the planning process for HCPs and NCCPs affecting coastal resources and uses, in order to ensure that the requirements of the Coastal Act are integrated into the HCP and NCCP development processes at the earliest feasible point.

**Commenter:** Mr. Charles Kimbell

**Comment:** The commenter says that the Coastal Act clearly states that when public access and resource protection conflict, the protection of the resources should prevail. He feels that the CCC has not always followed this directive and has erroneously seen its mission as opening up access regardless of the degradation of the resources. In his observation, this is done with little or no public constituent support but at the behest of the CCC staff. He believes that increased public access degrades the resources. Public access should be fostered in urbanized areas with already degraded resources and discouraged in areas that remain in a pristine state. With increasing population pressures, California risks losing entire ecosystems unless the resource protection provisions of the Coastal Act are implemented in an effective way.

**Response:** NOAA appreciates the commenter's concern for coastal stewardship. He raises the issue of potential conflict between policies to promote public access to the coast for recreation and policies to protect coastal resources. As noted in response to other similar comments, the CCC has had to try to balance those two policies, as has the BCDC. During this review period, BCDC has undertaken a major study to develop better policies for promoting public access and wildlife compatibility. (See Section IV.C.2. of the Findings.) Hopefully, the results of this study can help to inform the actions of both CCC and BCDC as they attempt to balance these considerations.

