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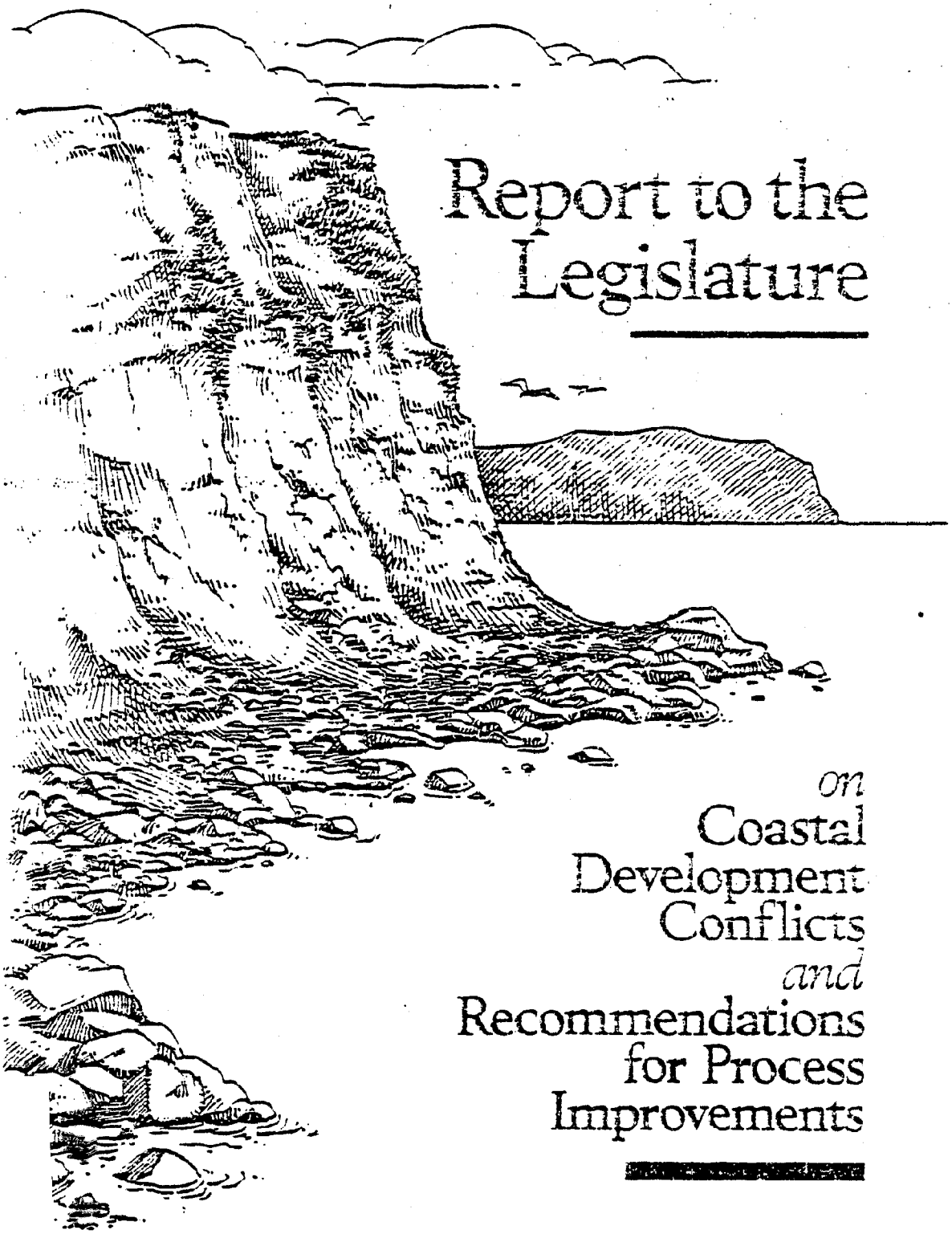

Report to the Legislature

on

Coastal Development Conflicts *and* Recommendations for Process Improvements

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REPORT TO THE LEGISLATURE

ON

POLICY CONFLICTS ARISING FROM THE REVIEW OF

COASTAL DEVELOPMENT PROPOSALS

MAY 1985

PREPARED BY:

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SUMMARY

The Supplemental Report of the 1984 Budget Act directs that:

> It is the intent of the Legislature that OPR shall report by January 31, 1985, on apparent policy conflicts arising from the review of coastal development proposals and to report to the Legislature on possible resolutions to these conflicts.

This report analyzes relationships, potential policy conflicts, and proposed conflict resolutions among the many federal, State and local agencies having permit authority over California's coastal zone. The report is organized into sections addressing major inconsistencies in three categories: between the State and local governments, between State agencies, and between State and federal agencies.

The individual conflicts and recommendations of this report are summarized below. The recommendations proposed are addressed to each individual situation; however, many of the problems identified lead to a common conclusion. That conclusion is that the Coastal Commission has failed to carry out certain intents of the Coastal Act in some areas and has greatly exceeded the Act's intent in others. The result is that the Coastal Commission has vastly and unnecessarily expanded its role beyond that originally envisioned through enactment of the Coastal Act in 1976.

STATE CONFLICTS WITH LOCAL AGENCIES

Conflict: The Coastal Commission has certified only 26 percent of the Local Coastal Programs (LCP) mandated under the Coastal Act. This serious lack of progress is the result of ongoing conflicts between many local jurisdictions and the Coastal Commission over some fundamental planning issues. The effectiveness of the coastal planning process is heavily dependent on establishing balanced negotiations

between local governments and the Coastal Commission. The failure of this negotiating process due to built-in biases favoring the Coastal Commission has been the single most important block to certifying the numerous outstanding LCP's.

Recommendation: The Legislature should enact legislation requiring submittal of the remaining LCP segments to the Coastal Commission no later than December 1, 1986, and certification by the Coastal Commission not later than June 30, 1987. Any remaining unresolved conflicts on LCP's after June 30, 1987 should be submitted for arbitration by an arbitrator appointed by the Governor, subject to confirmation by the Legislature. The decisions of the arbitrator should be completed no later than December 1, 1987.

STATE AGENCY CONFLICTS

Conflict: The proposed State Lease Sale from Point Conception to Point Arguello is on hold. At issue is the question of proper jurisdiction of the State Lands Commission and the Coastal Commission over the lease sale. Review of the state laws pertaining to this issue reveals that some ambiguity exists concerning the authority to review State tide and submerged lands lease sales.

Recommendation: The ultimate responsiblity for State lease sales should remain with the State Lands Commission. The Legislature should clarify its intent through legislation which provides that a State lease sale does not require a coastal development permit.

Conflict: The Coastal Commission has recently adopted several general policy statements. These statements are portrayed by the Commission as general guides rather than formal regulations. However, the substance of these policy statements consists of detailed protection criteria and specific mitigation measures which clearly imply they should be included in an "approvable" project. Furthermore, these statements generally address policy areas already under the jurisdiction of existing state agencies.

Recommendation: The Coastal Commission's "guidelines" function as regulations and should be subject to the appropriate provisions of the Administrative Procedure Act. Adhering to the process of this Act would minimize the Coastal Commission's duplication of other State agency regulations.

Conflict: A potential conflict exists concerning the siting and design of onshore processing facilities associated with oil and gas development in State waters. Coastal Act policies which must be reflected in local coastal policies require consolidation of such facilities. However, consolidation may not be consistent with the accounting procedures that the State Lands Commission requires of its lessees. Problems occur when state leases with differing royalty payment provisions are being developed as in the case of Arco's proposed Coal Oil Point project offshore Santa Barbara County. It is difficult for applicants to design a viable project which must gain approval from agencies implementing differing requirements to fulfill their differing mandates.

Recommendation: Currently, under the mediation services of the Secretary of Environmental Affairs, the affected agencies are attempting to resolve this conflict in advance of any permit decisions on the Coal Oil Point Project. As part of the EIR for this project, the conflict is being analyzed through a feasibility study that will identify the comparative environmental, policy, and fiscal impacts of alternative consolidated and non-consolidated technologies. This study will be completed in March 1985. If the study identifies irreconcilable policy conflicts, a legislative solution may become necessary.

STATE CONFLICTS WITH FEDERAL AGENCIES

Conflict: State consistency reviews are done only at the exploratory and development stages for offshore energy developments. In the Lease Sale 53 suit, the U.S. Supreme Court held that lease sales do not constitute a federal activity directly affecting the coastal zone. Because lease sales are not reviewed for consistency, the Coastal Commission has argued that uncertainties may remain which will arise during the review of exploratory and development plans. Federal legislation was introduced last year which would overturn the Supreme Court's decision.

Recommendation: There are ample opportunities under other federal acts to ensure that lease sales conform to State and local policies and environmental conditions. Any uncertainties that could be created at the exploratory and development stages will be avoided if the Coastal Commission participates in these alternative opportunities and if it acts responsibly in accordance with the positions negotiated at the lease sale

stage. Legislation to overturn the Supreme Court's decision should not be pursued.

Conflict: Controversies exist over the definitions of "directly affecting" and "to the maximum extent practicable," as used in the Coastal Zone Management Act. The Coastal Commission has attempted to provide guidance on their interpretations of these two terms through the adoption of general policy statements. These statements contain specific policies, mitigation measures, and recommendations for federal agency actions the Commission considers necessary to ensure conformance to general provisions of California's Coastal Management Program. Conflicts arise when federal agencies do not agree with these specific interpretations of general coastal policies.

Recommendation: The general problem of imprecise definitions in the Coastal Zone Management Act will be addressed during the Congressional reauthorization process later this year. In the interim, the Coastal Commission can avoid creating conflicts over interpretations of the State's coastal program if it follows the established regulatory procedures, rather than using general policy statements:

1. The program amendment process under the Coastal Zone Management Act ensures consistency between State and federal interpretations of the State's Coastal Program.

2. The consultation procedures under NEPA and the OCS Lands Act ensure regulatory enforcement of any mitigation measures considered necessary to minimize direct affects on the coastal zone.

Conflict: Federal air quality standards for OCS activities are less stringent than those for activities in State waters and onshore areas. State and local governments are required to meet EPA-mandated air quality improvements, but they have no control over emission sources in the OCS. If these improvements are not met, the coastal areas are subject to EPA-imposed development sanctions.

Recommendation: The Department of Interior has agreed to institute rule-making to change the air quality regulations for OCS developments offshore California. This agreement was reached through the OCS Lands Act consultation process. The success of this effort demonstrates that this consultation process can be used to resolve other federal/State conflicts, if properly applied.

Conflict: Environmental Impact Studies completed on recent major offshore oil and gas development proposals have indicated that associated growth impacts will put severe strains on local housing markets and public works that already are near capacity. These studies have shown that offshore development may not produce the level of revenues local governments need to meet expanded demands on public services.

Recommendation: Federal oil lease revenue sharing is an appropriate means to enable local governments to cope with the impacts from offshore energy development, and efforts to enact this revenue sharing should be supported. In the interim, mitigation programs are being required by permitting agencies on a project by project basis, but local decision makers have indicated a need for a more comprehensive analysis of the potential impacts. Current EIS/EIRs for

projects in the Central Coast Region are attempting to provide this analysis through further definition of the extent of this conflict, and to insure that infrastructure mitigation measures are applied consistently. If these documents do provide the necessary information, future documents will be able to build from the analysis.

Conflict: The use of joint environmental documents has helped to expedite the environmental review process and to ensure that federal, State, and local actions on development proposals consider all impacts. However, separate actions of permitting agencies may still be in conflict with each other after certification of the joint environmental documents. Exxon's Santa Ynez Unit expansion proposal illustrated many of these potential conflicts.

Recommendation: Since the Exxon experience, many of the potential conflicts have been handled as the reviewing agencies have gained further experience on similar complex offshore development projects. Further efforts to minimize these conflicts should continue to be provided through the coordination role of the Secretary of Environmental Affairs acting as the Governor's OCS Policy Coordinator.

Conflict: A criticism of early NEPA and CEQA documents evaluating offshore projects was the absence of adequate consideration of cumulative impacts. Similarly, full consideration of the associated onshore impacts was not being studied adequately in federal documents.

Recommendation: The Joint Review Panel process is an effective means to adequately address cumulative impacts and to ensure that

the documents prepared to review offshore projects incorporate information on the onshore impacts. Additionally, continued use of the Minerals Management Service's Area Study concept in frontier areas should ensure consideration by federal agencies of cumulative impacts.

Conflict: Current CZMA regulations exclude all federal lands from the definition of the coastal zone. However, the ownership circumstances of certain federal lands, notably patented mining claims, leave federal agencies no discretion over land use decisions. The Coastal Commission has argued that these lands should be subject to coastal development permits in order to be able to impose permit conditions to minimize any negative environmental impacts.

Recommendation: Combined with existing State development statutes, the consistency determination process can be used to ensure that development of these "grey area" lands will be done in an environmentally sound manner, in conformance with all provisions of the Coastal Act. Any changes in the interpretation of the lands to be covered by the Coastal Zone Management Act should be pursued through the reauthorization process later this year, and not through the Coastal Commission's current litigation.

INTRODUCTION

The Legislature, recognizing the existence of apparent policy conflicts arising from the review of coastal development proposals, directed the Governor's Office of Planning and Research to prepare a report on these conflicts and to suggest possible resolutions. This directive was contained in the Supplemental Report of the 1984 Budget Act, as follows:

> It is the intent of the Legislature that OPR shall report by January 31, 1985, on apparent policy conflicts arising from the review of coastal development proposals and to report to the Legislature on possible resolutions to these conflicts.

In addition, Section 30415 of the Coastal Act provides a coordinating role for the Office of Planning and Research to ensure that the policies of State agencies are consistent with the mandate of the Coastal Act:

> The Director of the Office of Planning and Research shall, in cooperation with the commission and other appropriate state agencies, review the policies of this division. If the director determines that effective implementation of any policy requires the cooperative and coordinated efforts of several state agencies, he shall, no later than July 1, 1978 and from time to time thereafter, recommend to the appropriate agencies actions that should be taken to minimize potential duplication and conflicts and which could, if taken, better achieve effective implementation of such policy. The director shall, where appropriate and after consultation with the affected agency, recommend to the Governor and the legislature how the programs, duties, responsibilities, and enabling legislation of any state agency should be changed to better achieve the goals and policies of this division.

In keeping with these two provisions, the Office of Planning and Research has prepared this report which analyzes the relationships, potential policy

conflicts, and proposed conflict resolutions among the many federal, State, and local agencies having permit authority over California's Coastal Zone.

In general, California's coastal zone extends from the State's three mile seaward limit to 1000 yards inland from the mean high tide line. In coastal estuaries, watersheds, wildlife habitats, and recreational areas, the coastal zone may extend inland to the ridge of the nearest mountain range or farther. The functional result of this definition is that applicants proposing projects within this zone must obtain permits and approvals from a wide range of federal, State, and local agencies.

Because these agencies range from small special districts to federal agencies addressing nation-wide goals, their policy missions and regulatory procedures have not always been mutually consistent. Project applicants in some cases have faced regulatory delays and added expense as they have attempted modifications to fulfill conflicting directives. Public undertakings similarly have encountered delays as agencies have sought to settle policy conflicts through ad hoc arrangements and in some cases through litigation.

Several legislative attempts have been made to resolve these conflicts. On the national level, the Coastal Zone Management Act, the Outer Continental Shelf Lands Act, and the National Environmental Policy Act have sought consistent and coordinated actions by agencies with jurisdiction over the coastal zone. These acts provide clear statements of national goals and policies, and incorporate formal opportunities for addressing state and local concerns. On the State level, the Coastal Act, the Permit Streamlining Act, the California Environmental Quality Act, and similar regulations give a framework for ensuring orderly development and protection of coastal resources.

The administration of these acts, however, has revealed several instances where policy inconsistencies still exist. This report addresses the major

inconsistencies which have arisen to date within three categories: conflicts between the State and local governments, conflicts between State agencies, and conflicts between State and federal agencies. In preparing this report, the Office of Planning and Research reviewed several previous reports submitted to the Legislature on specific conflicts, as well as material on file in the Office of Permit Assistance. Additional information was obtained from interviews with State and local officials of the agencies having responsibilities over coastal development.

STATE CONFLICTS WITH LOCAL AGENCIES

The federal Coastal Zone Management Act encourages the development of a unified planning process in each coastal state, adopted by all government agencies that share responsibility for coastal planning. To receive federal approval, a state coastal management program must demonstrate among other things, that it can control coastal development and that implementing regulations are in place. In California, the coastal management program has assigned the responsibility for meeting these two conditions to local governments, through the Local Coastal Programs of the California Coastal Act.

In assigning these responsibilities to local government, the Coastal Act stressed the importance of local control. Section 30004(a) of the Act states:

> To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement.

The Act also recognized the importance of conforming the Local Coastal Programs (LCP) to the state-wide policies contained in the Coastal Management Program. Consequently, the power to review and approve LCPs was given to the Coastal Commission, along with interim authority over all coastal development permits. Local governments were to regain control over coastal development within their jurisdictions only after adoption and Coastal Commission certification of their LCP.

The original provisions of the Coastal Act called for a speedy return of coastal development review authority to local government; but in spite of these provisions, only 26 percent of the LCPs have been fully certified. As a result, the Coastal Commission has retained substantial authority over local decisions, a situation which has led to frequent conflicts between State and local policies.

LOCAL COASTAL PROGRAMS

The enactment of the Coastal Act of 1976 created an entirely new planning and permit process for the 67 coastal cities and counties which lie within the boundaries of the coastal zone. Local governments which previously had primary authority to issue development permits for the coastal portion of their jurisdictions were required by the Coastal Act to prepare a Land Use Plan (LUP) and implementing ordinances consistent with the policies of the Coastal Act. These two elements, a LUP and its implementing ordinances, constitute a Local Coastal Program (LCP). Both elements of the LCP are subject to certification by the Coastal Commission.

The Coastal Act further transferred all coastal development permit authority to the regional and statewide Coastal Commissions pending the final certification of a jurisdiction's LCP. This new process understandably created confusion on the part of local governments and project proponents and was met with considerable resistance by many.

Local permitting authority is returned to the local governments as soon as an approved LCP is in place. Upon certification of all LCPs, the Coastal Commission retains primary jurisdiction only over development proposals located in specified portions of the coastal zone. The Commission also retains authority for approving any amendments to a LCP.

Originally, approval of all LCPs by the Coastal Commission was anticipated within 5 years of the Coastal Act, or by 1981. This deadline was missed, and the Legislature imposed a completion date of January 1983 for LUPs and January 1984 for LCPs. However, the Legislature did not include any sanctions as part of this new schedule, with the result that most of the LCPs are still awaiting action.

Initially, permit authority was to be returned to the local jurisdictions only upon final "effective" certification of the LCP. However, delays in approving the LCPs resulted in amendments to the Coastal Act (Statutes 1981,

Chapter 1173), which enabled local governments to assume coastal permit authority upon certification of its LUP but prior to effective certification of its entire LCP.

Under the present system, a local jurisdiction with an approved LUP but still without a certified LCP may issue coastal development permits. However, the Coastal Commission retains appeal authority over all coastal development permits until the full LCP is certified. Once the LCP is certified, the Coastal Commission's appeal authority is limited to certain types of developments and to specified grounds for appeal.

LCP Certification Progress

The coastal zone has been divided into 123 segments, each requiring a LCP. The basis for these 123 LCPs are the 67 counties and cities located within the coastal zone; however, several jurisdictions have been allowed to segment themselves into smaller geographical units within the coastal zone for planning purposes. At this writing, the Coastal Commission still has yet to fully certify the majority of these LCPs.

To date, the Coastal Commission has reviewed 104 LUPs. The record of their actions on these LUPs is as follows:

Certified LUP and issuing interim permits	8
Certified LUPs	65
LUPs denied or certified with recommended modifications	31
No LUP	19

Implementation segments which complete the jurisdiction's LCP are considered after the LUP has been satisfactorily certified. To date, the Commission's record for implementation segments is as follows:

Certified ordinance and issuing permits	32
Certified ordinances	4
Ordinances denied or certified with recommended modifications	29
No ordinance	58

Altogether, only 32 complete LCPs or 26 percent of the total have been certified. The majority of uncertified LCPs are for areas located in the southern portion of the state. Appendix C details the present status of Local Coastal Programs.

This serious lack of progress is the result of ongoing conflicts between many local jurisdictions and the Coastal Commission over some fundamental planning issues. In attempting to identify the specifics of these conflicts, OPR has relied on discussions with Coastal Commission staff, local government planning officials, and officials at NOAA who are currently completing a review of the California Coastal Management Program.

These discussions revealed a broad range of conflicts that vary from jurisdiction to jurisdiction. However, the common element to these conflicts is that the planning process provided in the Coastal Act has failed to provide for the needs of local government. The Coastal Act basically established a planning process based upon negotiation between the State Commission and the local jurisdictions. Because the Coastal Act also heavily weighted the negotiating position in favor of the Coastal Commission, it is this negotiation process that has failed to work in many jurisdictions. In this regard, the main problems identified in discussions with local officials include the following:

1. Some local jurisdictions have had difficulty in arriving at an internal consensus on how to implement the State-mandated coastal development policies.

2. Coastal Commission staff have been unwilling to compromise on issues of local importance.

3. The structure of the Coastal Commission has limited its ability to properly address local conditions.

Local Consensus on Implementing Coastal Act Policies

Many local jurisdictions have encountered a great deal of difficulty in reaching community consensus on the contents of their LCPs. The policy areas covered by the Coastal Act which must also be covered in the LCPs range across a number of issues, each of which are highly sensitive in their own right. In the preparation of the LCPs, communities must set policies on such issues as public access, industrial development, resource conservation, agricultural preservation, cultural resources, aesthetics, commercial fishing, recreation, and habitat preservation. The ability to come to a consensus on these issues is further complicated by the extent of the coastal zone, which covers some of the most heavily populated areas in the State. In other states, the difficulty of arriving at consensus planning has been handled by restricting the number of issues covered by the coastal management programs, and by limiting the extent of the coastal zone affected by the LCPs. Where this has been done such as in Washington, certification of the LCPs has proceeded with fewer delays.

The ability to reach local consensus is further complicated by the need to comply with the policies of the Coastal Act, as interpreted by the Coastal Commission. Not only do local jurisdictions have to come to an agreement on how to handle a broad range of sensitive issues, they also must do this in a way that conforms to State standards. In their interpretation of these standards, Coastal Commission staff have shown little leeway to account for variances in local conditions. In many cases, local governments have been able to finally produce a LCP that is acceptable to their constituents, only to find it rejected by Coastal Commission staff on the basis of hundreds of points.

The extent of this problem may be severe enough in some jurisdictions to ensure that some local governments will never produce a certified LCP. Some jurisdictions have found it politically expedient to avoid developing a LUP that would be acceptable to Coastal Commission staff, but that would also require local decision makers to make unpopular planning and permitting decisions. If permit decisions must be made based on a plan that local decision makers consider excessively restrictive, they prefer to let the Coastal Commission make those decisions. Many of these jurisdictions are convinced that an acceptable compromise on plan contents cannot be reached with the Coastal Commission. In these cases, little progress can be anticipated. Staff of NOAA, which has oversight authority over the implementation of the Coastal Zone Management Act, estimate that a significant number of California's outstanding LCPs can be placed in this category.

Many jurisdictions have either refused to submit LUPs to the Commission at all or, as in the case of San Luis Obispo County, have allowed only portions of their LUPs to be approved. In this second case, the portions of the LUP where significant controversy still exists or where more study is needed have been put on hold. These unapproved LUP portions are termed "white holes" by the Coastal Commission, and many may remain in limbo indefinitely due to unresolved issues.

Applicants for coastal permits in "white hole" areas or in jurisdictions with unapproved LUPs must gain project approval from the Coastal Commission. Since Commission hearings are held throughout the coastal zone, this situation frequently forces local officials to spend their limited time and funds travelling to the opposite end of the State to attend the hearings affecting their jurisdictions. In order to regain their permitting authority, some local governments have received Coastal Commission certification by accepting the Commission's modifications in spite of serious reservations as to their applicability to local conditions. Several local jurisdictions have indicated that their acquiescence to Commission modifications were so motivated. Some have further indicated that the

portions of their LUP or implementing ordinances certified under these circumstances would be impossible to enforce, and therefore would either be ignored or amendments would be proposed at a later date.

Coastal Commission Staff Reviews

Once a local jurisdiction does finally reach consensus and adopts a plan, it often finds that their problems have only just begun. The LUP and its implementing ordinances must be submitted to the Coastal Commission staff for review and finally to the Commission for approval. The problems at this stage stem both from the organizational structure of the Coastal Commission, and from the positions taken by Coastal Commission staff in interpreting their policy responsibilities under the Coastal Act.

Currently, the Coastal Commission staff is located in the Commission's San Francisco headquarters and in three district offices serving the North Coast, Central Coast, and South Coast. Local governments work most often with the district office staff having responsibility over their jurisdiction. It is the district staff that provide the majority of the input to the local government during the process of developing LUPs and ordinances. The district staff also provide the first Coastal Commission comments local governments receive prior to local adoption of the LCP elements. However, the final decision on LCPs rests with the State Coastal Commission which must certify, certify with modifications, or deny an LCP based on the Executive Director's recommendations. Consequently, local governments have frequently approved LCPs at the local level, only to find them rejected after review by Coastal Commission staff who do not always have a full understanding of local conditions and constraints.

Many local officials have found it difficult to negotiate with the Coastal Commission staff. Particularly at the headquarters level, the Commission staff do not always have a full understanding of local issues, and are unfamiliar with the many compromises that already have been painstakingly built into the locally-adopted LCPs. Local officials have found that the

Commission staff tends to interpret their policy responsibilities on the broadest and strictest of terms, and are hence often unwilling to concede on even the most minor points. The Commission staff frequently takes issue with literally hundreds of items within a LCP, each of which either must be satisfactorily resolved through staff negotiation or the local jurisdiction is faced with pleading its case to the State Commission.

Further, there are few incentives within the current structure of the Coastal Management Program for this situation to change. Due to its independent status, the Coastal Commission is able to retain a narrow focus in addressing coastal development issues. In the absence of legislative action, the Coastal Commission is accountable only to itself in the interpretation of its policy missions; there are no administrative lines of authority to ensure that the Coastal Commission actions are consistent with those of other State agencies, and that Coastal Commission policies are consistent with other agency policy responsibilities affecting the use of coastal resources. In addition, the extent of the Commission's authority and therefore the influence of the Commission staff is considerably greater under the current circumstances compared to the original intentions of the Coastal Act. As long as LCPs remain uncertified, Commission staff retain substantial influence over local development decisions. Once the LCPs are approved, the staff influence will be diminished and will be limited only to indirect means.

Coastal Commission Structure

The current structure of the Coastal Commission itself limits its ability to adequately address and thoroughly understand the many complex and localized issues inherent in any LCP. The Commission includes twelve voting members, eight appointed by the Legislature and four appointed by the Governor. These appointments include representatives from the State at large and elected officials from coastal counties. In addition, three non-voting members represent the Resources Agency, Business Housing and Transportation Agency, and the State Lands Commission. The Commission meets twice a month

for two, and sometimes up to four, days at a time. The voting Commissioners serve on a part-time basis, and receive only per diem and expenses in return for their services.

Due to their part-time involvement, the Commissioners inevitably have become heavily reliant on staff for the review of permit applications and policy interpretations. This reliance on staff ensures that the problems addressed above become enmeshed in Commission decisions. This situation is further complicated by the workload of the Commission. Due in large part to their continuing responsibilities for local coastal development permit reviews, the Commissioners face agendas that are long and that call for decisions on a number of complex issues at any one hearing. In considering LCPs as when considering complex coastal permit applications, the Commissioners often must act in one hearing on a plan that may have taken a year of hearings at the local level. In this situation, the nuances of local constraints can easily be lost.

LCP Examples

Examples of LCPs that have encountered a significant degree of difficulty moving through the certification process include all seven segments within the the City of Los Angeles, the Los Angeles County Malibu/Santa Monica Mountains LUP, and the City of Carlsbad.

The City of Los Angeles, California's largest urban area, has segmented its coastline into seven separate planning areas. The Coastal Commission has yet to approve all seven of these segments. Early in the Coastal Act process, the City planning staff prepared LUPs and submitted them for Coastal Commission approval. In every case, the City and the Commission were unable to reach an accord. The City has very limited staff presently assigned to the LCP process, and does not expect much progress in the near future.

The County of Los Angeles submitted its LUP for Malibu/Santa Monica Mountains for approval by the Coastal Commission in 1982. The Commission voted to deny certification. Among the significant issues identified were public access to the coast, cumulative impacts, and impacts to environmentally sensitive habitats. The County will resubmit its LUP in 1985 in hopes of gaining Commission approval. However, certification is by no means assured.

The City of Carlsbad has had a great amount of difficulty with the LCP certification process. Only one LUP out of the City's three segments has been approved. The remaining uncertified segments face continued problems. For these two segments, resolution of the impass between the City and Coastal Commission was attempted through enactment of special legislation to require approval by the Coastal Commission in one case by October 1, 1980 and in the other by July 1, 1981. In one case, the Commission prepared the LCP; and in both cases, the Commission certified the LCPs by the required dates. However, the City has declined to accept these LCPs. The City continues to object to the implementation of the Commission's agricultural preservation policies. According to City policy, agricultural land may revert to other uses once agriculture is deemed to be no longer economically feasible. The Coastal Commission's policies do not allow for this reversion to the same degree.

RECOMMENDATION: The effectiveness of the coastal planning process envisioned in the Coastal Act was heavily dependent on establishing balanced negotiations between local governments and the Coastal Commission. The failure of this negotiating process due to built-in biases favoring the Coastal Commission has been the single most important problem standing in the way of certifying the numerous outstanding LCPs, and of returning control of coastal development and planning to local governments.

Several attempts have been made in the past to force the Coastal Commission to complete certification of the remaining 74 percent of the LCPs. A certification deadline has been established through legislation, with few

tangible results. As in the case of City of Carlsbad, the Legislature has attempted imposing additional deadlines, again with few results. In other cases, local jurisdictions have simply given in and accepted versions written by the Coastal Commission, a procedure which decreases local government willingness to rigorously enforce the LCP as envisioned under the Coastal Act.

As detailed above, the structure of the Coastal Commission is such that there are few incentives for the Commission to rectify this imbalance on their own. Consequently, it is necessary for the Legislature to intervene by enacting legislation that would require the following:

1. Specify that all remaining uncertified portions of LCPs shall be submitted for review by the Coastal Commission no later than December 1, 1986.

2. The Coastal Commission shall certify all uncertified portions of LCPs so submitted no later than June 30, 1987, in accordance with the provisions of the Coastal Act.

3. Any remaining unresolved conflicts between local governments and the Coastal Commission on LCPs as of June 30, 1987 shall be submitted for arbitration by an arbitrator appointed by the Governor, subject to confirmation by the Legislature. The decisions of the arbitrator will be completed no later than December 1, 1987.

The precedent for settling this matter through the use of an arbitrator is contained within the Coastal Zone Management Act. As specified in Section 308(h) of that Act, similar unresolvable disputes between the state and federal governments on coastal zone management programs are to be submitted for mediation by the Secretary of Commerce with the cooperation of the Executive Office of the President. The arbitrator solution proposed above would establish a similar process for disputes between the State and local

governments on the coastal zone management program, but with results that would be binding on both parties.

CONCLUSION

California's Coastal Act created a process whereby statewide goals and policies are to be implemented and enforced through the adoption of Local Coastal Programs by local government. The intent was to temporarily place the power of issuing local permits for developments within the coastal zone into the hands of a State commission, but to return that authority quickly to local government. In an attempt to expedite the return of this authority, the Legislature has already had to impose a deadline for plan submittal through legislation. This deadline has already been surpassed and no further legislative action has been taken. To date, the number of certified LCPs stands at 32, a mere 26 percent of the total.

The Commission itself, due to its size and due to the number and complexity of issues it has to decide, is unable to adequately understand the special local problems and conditions that may exist. This situation has lead to an over-reliance on staff, contrary to the conditions existing at comparable State agencies such as the Air Resources Board, State Water Resources Control Board, and Energy Commission. Due to these problems, the Coastal Commission is unable to properly carry out an important part of intent of the Coastal Act, which is to return local permit authority to local government in a reasonable amount of time.

STATE AGENCY CONFLICTS

Since the enactment of the 1976 Coastal Act, the Coastal Commission has become the State agency with the most comprehensive control over coastal development. The Coastal Commission maintains direct permit authority for nearly all development for jurisdictions where Local Coastal Programs (LCPs) remain unadopted. Many other State agencies have the authority to issue permits for certain activities or to carry out activities under their own mandates within the coastal zone. However, in many cases the Coastal Commission exercises the right of final approval. For example, should the State Lands Commission approve a lessee's request to explore for oil and gas on a State lease, the lessee must then obtain all other applicable State and local government permits, including a coastal development permit from the Coastal Commission. In some cases, the Coastal Act has clearly identified areas of jurisdiction and processes for agency interaction. In other cases, the roles of the agencies are not so clearly defined, and hence conflicts occasionally arise.

STATE LANDS COMMISSION PROPOSED LEASE SALE

The most visible and troublesome policy and jurisdictional conflict between the Coastal Commission and another State agency involves the State offshore leasing program. The State Lands Commission is mandated by the Public Resources Code Section 6001 et. seq. to carry out the State's leasing program. The State Lands Commission and the Department of Conservation, Division of Oil and Gas have direct regulatory control over oil and gas extraction on State lands.

In 1969, in reaction to a major blowout of a production platform located in federal waters offshore Santa Barbara, the Lands Commission imposed a moratorium on further leasing and development in State waters. By 1973, the Lands Commission lifted the moratorium to allow exploration and development

to occur only on existing State leases. During this period of time, however, leasing and development proceeded unabated in federal waters offshore California. It became apparent that the State was in danger of having its own resources drained as a result of this federal activity. The State Lands Commission decided that in order to ensure that State revenues would not be lost as a result of federal drainage, it would be necessary to resume leasing in State waters.

In 1978, the State Lands Commission renewed efforts to develop State offshore oil and gas resources. This work resulted in a proposal to lease State waters between Point Conception and Point Arguello off Santa Barbara County. The proposed sale has yet to take place and remains in limbo due to a policy conflict focussed on the Coastal Commission's authority to review leasing actions of the Lands Commission. The proposed State lease sale is an example of the conflicts provoking differences between the Lands Commission and the Coastal Commission sufficiently severe to be brought to the attention of the State Legislature.

The conflict between these two State agencies focuses on who has authority over leasing in State waters. The Lands Commission contends that they have sole discretion in deciding whether or not to proceed with a State lease sale. The Coastal Commission contends that under the Coastal Act of 1976, a State lease sale constitutes a development project and therefore requires issuance of a development permit by the Coastal Commission before it may proceed.

The procedure which was followed to review this lease sale was long and complicated as shown in the detailed timeline in Appendix A. In order to minimize the potential conflicts during the process, much of the procedure was worked out during meetings between the Executive Officer of the Lands Commission and the Executive Director of the Coastal Commission. Also included at some of these meetings were representatives from then-Governor Brown's office. During the initial meetings, the position of the Coastal

Commission staff was that a coastal development permit was not required for the State lease sale, but there was a need to be consistent with the Coastal Commission's position that consistency with the state's coastal management plan was required for federal lease sales. Consequently, the Coastal Commission staff felt that some sort of approval process should be devised for the State lease sale proposal. The Executive Officer of the Lands Commission and the Executive Director of the Coastal Commission agreed that the Lands Commission would submit its leasing program for approval by the Coastal Commission following a process similar to consistency determinations included in the federal Coastal Zone Management Act. This compromise provided the Coastal Commission with the opportunity to formally review the State leasing program without requiring the Lands Commission to apply for an actual permit.

Some months into the environmental review process, the Executive Director of the Coastal Commission was advised by his legal staff that after reconsideration, it appeared that a coastal permit might be required. This information was passed along informally to the Lands Commission staff. However, a formal determination that a permit was required was not presented to the Lands Commission legal counsel until the final hearing during which the Environmental Impact Report was certified. Despite a total disagreement between the agencies on the coastal development permit issue, the Lands Commission continued to work with the Coastal Commission staff in hopes of satisfying their concerns. The Lands Commission then approved the lease program and agreed to submit it to the Coastal Commission for review without conceding the jurisdictional issue. At this point, all of the recommendations which had been submitted by the Coastal Commission during the preparation of the Environmental Impact Report had been accepted by the Lands Commission and incorporated verbatim into the proposed sale. The Coastal Commission denied the sale, overturning their staff's recommended approval.

At the request of the involved parties, the Secretary of Environmental Affairs convened an interagency group of representatives from the Office of Planning and Research, the Attorney General's Office, the Lands Commission, and the Coastal Commission. Staff from the Lands Commission and the Coastal Commission jointly authored a revised lease package. The new lease sale package was modified to prohibit exploration and development in the 15 fathom - 1/2 mile offshore area, prohibit marine terminals within the lease sale area, create and continually update a sensitive biological area map, restrict exploration to allow seasonal halibut trawling, and provide an interagency agreement between the two Commissions. The Lands Commission again approved the sale, and this time the Coastal Commission voted to issue a permit for the lease sale.

However, a lawsuit was filed by environmental groups claiming that the Coastal Commission did not provide adequate public notice before approving the sale. The Santa Barbara Superior Court ruled that the Coastal Commission had to vacate its approval and hold a properly noticed public hearing. Even though the issue of the Coastal Commission's permit jurisdiction over the Lands Commission was not raised by the environmental groups in their suit, the Court also restrained the Lands Commission from opening lease bids until it had a Coastal Commission permit. The Lands Commission is currently appealing the Court's ruling.

In October 1983, the Coastal Commission vacated its previous action of approval, held a properly noticed hearing, and voted 10-1-1 to deny a permit for the lease sale. The Commission took this action even though its staff recommended approval and stated in their recommendation: "The State Lands Lease Sale, as now before the Commission, includes strong measures to protect coastal resources which have never been part of a federal sale." The Lands Commission had been advised by the Attorney General's Office and their attorneys that if they wished to maintain their position on the issue of agency jurisdiction, they should not participate in this meeting. The Coastal Commission findings on their rejection of the proposed lease program

were adopted in October 1984, a year after their decision. These findings stated that the permit was denied on the grounds that the lease sale, "...is not in conformity with Chapter 3 of the California Coastal Act, and the certified Local Coastal Program of Santa Barbara County, and, ... will have significant adverse effects on the environment..." This is the last official agency action to have been taken in this stalemate.

In April 1984, the Lands Commission issued a report to the Legislature that points out that the Coastal Commission staff did not notify them of the need for a coastal permit until almost two years after the first public notice concerning the lease sale had been issued. The Lands Commission argues that a coastal development permit is not required and the Coastal Commission may only provide recommendations based on Sections 30401 and 30404 of the Coastal Act concerning the Act's effect on existing State agencies and the duplication of regulatory controls. Additionally, the Lands Commission was statutorily granted exclusive authority over State tide and submerged lands. Because it has this authority, the Lands Commission contends that its lease sale is exempt from the Coastal Act. Their report recommends a Legislative finding that the leasing of State tide and submerged lands between Point Conception and Point Arguello is consistent with the Coastal Act and that the Lands Commission be authorized to proceed with the sale without any other State agency or local approval.

The Coastal Commission's response (September 1984) states that the Coastal Act is not ambiguous and cites Section 30106 which defines development to mean "on land, in or under water, change in the density or intensity of use of land, including but not limited to , subdivision pursuant to the Subdivision Map Act, and any other division of land...change in the intensity of use of water, or of access thereto..." Additionally, Sections 30111 and 30106 of the Act clarify that any agency of the State government is included under persons who must apply for permits to undertake development in the coastal zone. The Coastal Commission points out that in passing the Coastal Act, the Legislature specifically provided that in-place

regulatory programs by agencies such as the Energy Commission, Board of Forestry, and Water Resources Control Board were expressly exempted from Coastal Act permit requirements. The Lands Commission leasing programs were not expressly exempted and therefore require coastal development permits. The Coastal Commission also asserts that Section 30404 of the Act does not limit their authority to making recommendations only. The Coastal Commission recommends that to avoid any further delay, the Lands Commission file an application for a coastal development permit for the proposed lease sale. The Coastal Commission opposes the Lands Commission recommendation that they be authorized to proceed without further approvals and feels that new legislation clarifying the agency roles on State lease sales is unnecessary.

Unresolved Conflicts

The fundamental conflict concerns each Commission's jurisdiction over State tide and submerged lands lease sales. The following analysis will show that the delineation of authority is not readily apparent. Absent a clear delineation of jurisdiction on this issue, the question remains: Where should the responsibility lie? To answer this, it is first necessary to review what a State lease sale involves.

The Legislature created the framework for the State Lands Commission's authority in 1938 by enacting the State Lands Act of 1938. In 1941, the Legislature incorporated the State Lands Act of 1938 into the Public Resources Code by creating Division 6 (Section 6001 et seq). This statute expressly provides that: "The commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State..." (Section 6301). In addition, Sections 6870 thru 6879 detail the Lands Commission's authority concerning oil and gas leases on tide and submerged lands. These sections specifically provide for the Lands Commission's authority to lease for oil and gas on tide and submerged lands, delineate areas where leasing is expressly prohibited, and detail the procedure the Lands Commission must

follow in making its decision to lease. There is no mention of the Coastal Commission within later amendments to these sections.

The framework for the Coastal Commission's authority was created by the passage of Proposition 20 in 1972, and by the Legislature in 1976 with the passage of the Coastal Act (Division 20 of the Public Resources Code, Section 30000 et seq). The powers and duties of the Coastal Commission are described in Section 30330: "The commission...is designated as the state coastal zone planning and management agency for any and all purposes, and may exercise any and all powers set forth in the Federal Coastal Zone Management Act of 1972..." The Act also provides in Section 30401 concerning State agencies: "...enactment of this division does not increase, decrease, duplicate or supersede the authority of any existing state agency." In addition, the Coastal Commission is authorized to submit recommendations to other State agencies to encourage them to carry out their functions consistent with the Act. Any agency which does not implement the Coastal Commission's recommendations within six months must explain its actions to the Governor and the Legislature. The section specifically concerning the State Lands Commission (Section 30416) mentions that boundary settlements are not considered to be a "development," but there is no mention of State tide and submerged lands lease sales.

Review of the State law does not provide a clear distinction of each Commission's jurisdiction on this issue. The State Lands Commission was given specific authority over lease sales. Their authority is so specific that the law actually details what offshore areas the Lands Commission may not lease. The Coastal Commission's general development review authority is not supposed to supersede the authority of any other State agency to carry out its duties.

The Legislative Analyst's Office in its review of the 1984/85 State budget concluded that legislation was needed to clarify the roles of these two Commissions before leasing State tidelands for oil and gas development. The

Analyst's recommendation was that a coastal development permit should be obtained by the Lands Commission. This recommendation was based on the argument that leasing and development are inextricably intertwined, and that in order to reduce uncertainty in the lease bidding process, it was preferable for the Coastal Commission to review the lease sale and indicate up front what conditions it would put on any future development activities. However, this argument ignores two factors. First, potential lessees already have substantial information on the likely conditions that would be imposed by the Coastal Commission on any future development activities. The Coastal Commission has made this information available through previous review of similar projects. Under the Coastal Act, the Commission already has the authority to review any proposed lease sale and suggest modifications that would be necessary to conform the proposed sale to the Coastal Plan. Second, lessees still would have no guarantee that the Commission would not place additional, costly conditions on the permits required for exploration and development. As evidenced by their actions on the pending State lease sale, the Coastal Commission can and does change their position as proposals move their way through the regulatory process. The long lead time between the award of a lease and development of that lease increases the chances of such a change, thereby retaining an element of uncertainty at the time of the lease sale.

The crux of the Coastal Commission's argument supporting the need for a coastal development permit is based on two points: (1) a State lease sale should be considered a subdivision, as it is defined in the Subdivision Map Act, and (2) there is a need for review of State leasing programs comparable to the Commission's consistency determination authority under the federal Coastal Zone Management Act. The subdivision argument follows from the contention that a subdivision is considered a development under the Coastal Act, and therefore a lease sale, being a subdivision, requires a coastal development permit. This argument would hold only if it is clearly the intent of the Legislature to include lease sales within the definition of a subdivision. Current law is vague on this point. The Subdivision Map Act

says the definition is inapplicable to mineral, oil, or gas leases (Government Code Section 66412(b)). Additionally, Section 66414 states that the definitions contained within the Map Act apply only to the Map Act and do not affect any other provisions of law. The Coastal Act says that development includes subdivisions as defined in the Subdivision Map Act or any other division of land, but this Act does not specifically mention State lease sales and whether they are to be treated differently for the purposes of the Coastal Act as opposed to the Subdivision Map Act.

The second argument is based on the Coastal Commission contention that leasing by itself requires a more intensive land use, similar to the argument presented by the Legislative Analyst in his review of the 1984/1985 State budget. The act of leasing, under this argument, begins an inexorable process leading to the subsequent exploration and development of the subject land. Because of this process and because the lease sale stage is the only point at which the Coastal Commission reviews the full development, this argument contends that the Commission can only consider cumulative impacts and consistency with the Coastal Act if a full development review is performed. This position is similar to the arguments the Commission presented in their unsuccessful suit to require consistency review of federal lease sales. As discussed later in this report, the U.S. Supreme Court in that case held that federal lease sales do not constitute development activities affecting the coastal zone, by reasoning that lease sales by themselves do not automatically result in exploration and development activities without further review. The Court held that consistency determinations were not required at the lease sale stage, but were required only for exploration and development plans. In any event, the Commission's argument has little foundation in existing State law, and is instead more a statement of what the Commission believes would be the pressures faced by oil companies to develop their leases once they have been awarded.

Jurisdictional disputes similar to this have occurred in the past. In situations like this, it is desirable to have the Legislature clarify its intent rather than take the issue through the courts. Recent occasions where the Legislature has been required to take action to clarify the role of the Coastal Commission and another State agency or other established state regulations include:

Statutes 1983, Chapter 824 - Added Section 30419 of the Coastal Act by specifying that the Department of Boating and Waterways is the principal State agency to evaluate the economic feasibility of boating facilities within the coastal zone. The Coastal Commission is required to request the Department of Boating and Waterways' comments if economic feasibility is a permit issue, rather than performing this analysis on their own.

Statutes 1983, Chapter 1203 - Added Section 30237 to the Coastal Act to allow Orange County to petition the Department of Fish and Game and the State Coastal Conservancy to prepare a habitat conservation plan for the Bolsa Chica wetlands. The Coastal Commission must approve the plan if it raises no substantial issue as to conformity with the Coastal Act.

Statutes 1982, Chapter 1246 - Amended Section 30414 of the Coastal Act to specify that the Coastal Commission or any local government were not authorized to establish ambient air quality or emission standards. Furthermore, any provision of any certified local coastal program which established or modified air standards was deemed inoperative.

Statutes 1981, Chapter 1007 - Added Section 30500.1 to the Coastal Act to specify that no local coastal program is required to include housing policies and programs. This bill also provided for revision of coastal development permits which had conditions requiring low- and moderate-income housing. Housing regulations were found to be more aptly

provided for within the planning and zoning laws contained in the Government Code sections 65000 thru 66403.

These examples show that the authority of the Coastal Commission and the clarity of the Coastal Act have come into question in the past. In each of these instances, after long jurisdictional battles, the Coastal Commission was made to concede its supposed authority over a particular area to the agency originally having authority at the time of the Coastal Act's enactment.

RECOMMENDATION: This jurisdictional dispute exists because the law is sufficiently ambiguous concerning State agency jurisdiction over lease sales in State waters. The Legislature should take action to clarify the jurisdiction of these two State agencies over tide and submerged lands lease sales. This clarification can be handled through legislation stating the Legislature's intent concerning existing law, rather than requiring legislation creating new procedures that would reallocate existing agency responsibilities. The legislation should specify that a State lease sale does not require a coastal development permit under the Coastal Act. The reasons for this recommendation are as follows:

1. This approach reinforces existing law. The Legislature has given the Lands Commission the ultimate responsibility for State lease sales over the past 40 years, and to this point has not yet seen the need to diminish this authority. As agreed to by both Commissions early in the process, State law also ensures Coastal Commission review of State agency functions affecting the coastal zone. The Coastal Commission already has this oversight authority, and State agencies are required by law to address their findings. Finally, State Lands must prepare an environmental document in accordance with the California Environmental Quality Act which requires consideration of the cumulative effects of the lease sale and an assessment of compliance with the Coastal Act, Local Coastal Plans, and other applicable land use plans and

regulations. The Lands Commission must hold public hearings on their environmental review and lease sale decisions, at which the Coastal Commission has the opportunity along with other agencies and the public to make their views known and part of the public record.

2. The U.S. Supreme Court in its decision on the consistency determination requirements of the Coastal Zone Management Act has already found that lease sales do not require a finding of consistency with State plans. The Court held that leasing does not necessarily lead to exploration and development, and therefore leasing, itself, does not constitute development activity.

3. This clarification of legislative intent is also consistent with past actions of the Legislature clarifying the Coastal Commission's role in relation to existing agencies and law. The Boating and Waterways example cited above reinforced the Legislature's delegation of an oversight rather than a review responsibility to the Coastal Commission. The housing example demonstrated the Legislature's belief that agencies understand existing law, and can be counted on to incorporate the provisions of the Coastal Act into their findings, as required under existing State law.

4. The statement of legislative intent would also provide the basis for early resolution of the current lawsuit affecting completion of the State lease sale.

There is no dispute over the Coastal Commission's authority to review and issue coastal development permits for lessee proposals for exploration and development of oil and gas. Current law fully provides for the Commission's review of these development proposals, and sets the framework for ensuring that all offshore energy development in State waters is consistent with the provisions of the Coastal Act. This solution allows the Coastal Commission to review the Lands Commission action for compliance with the Coastal Act

while not allowing the Coastal Commission's authority to supersede that of the Lands Commission, as also provided for in the Coastal Act.

COASTAL COMMISSION POLICY STATEMENTS

In carrying out its duties, the Coastal Commission has recently turned to the use of General Policy Statements. These policy documents have reviewed existing agency standards and regulations, programs, and scientific data related to specific topics the Commission claims as falling within the broad policy areas assigned to it under the Coastal Act. Because these policy statements have also proposed changes to existing agency regulations and activities, the potential for jurisdictional conflicts have arisen on several points.

To date, the Commission has reviewed and adopted three General Policy Statements:

1. Oil Spill Response Capability Study (November 1983)

2. General Policy Statement on Conflicts Between the Commercial Fishing and Oil and Gas Industries (October 1984)

3. General Policy Statement on the Ocean Disposal of Drilling Muds and Cuttings (October 1984).

In preparing these documents the Coastal Commission has sought to achieve the following aims:

1. Establish criteria for protection of coastal and marine resources.

2. Recommend policy and program changes to federal agencies necessary to ensure protection of these resources.

3. Recommend similar changes to State agencies necessary to ensure protection of these resources and to ensure compliance with the Coastal Act.

4. Recommend changes to industry practices necessary to meet the protection criteria.

Of these four aims, the second raises the potential for conflicts with federal agencies, and is therefore addressed in the next chapter under the Coastal Zone Management Act. As addressed in this chapter the other three have raised the potential for conflicts with State agencies and with State law.

To the extent the policy statements address State agency actions and regulations affecting the coastal zone, the Coastal Commission is acting properly under the Coastal Act. Section 30404 of the Act gives this oversight responsibility to the Commission, and requires the affected agencies either to implement the Commission's recommendations or to explain their reasons for not doing so in a report to the Governor and the Legislature. On each of the three policy statements prepared to date, the Commission has first submitted their proposed recommendations in a draft policy statement for review by the relevant agencies. Prior to the adopting of the final policy statements, Commission staff have worked with these agencies to reach a consensus on the recommended changes. Generally, most of the potential conflicts have been resolved before the Commission's final action.

The more serious conflicts arise in the case of the remaining two aims: establishing protection criteria and recommending changes to industry practices. The questions in these instances are whether the Commission is superseding existing agency authorities and whether the Commission is attempting to establish standards without following the regulatory process required of all other state agencies.

Existing Agency Authority

In creating the Coastal Commission, the Coastal Act specifically forbids actions that would "increase, decrease, duplicate or supersede the authority of any existing state agency" (Section 30401). The Act recognizes that due to its special expertise, the Commission may identify instances where existing regulations, policies, and agency actions may be incompatible with the Coastal Act. However, in these cases, the Commission is empowered to recommend changes to the agencies under Section 30404. In cases where another agency already has jurisdiction, the Commission is not authorized to remedy the problems on its own.

In recognition of this fact, the Coastal Commission has attempted to portray the policy statements as general guides rather than formal regulations. The drilling muds and cuttings document states that the "criteria and suggestions are to be used as guides when evaluating drilling proposals. They are not fixed, inflexible rules." The commercial fishing document similarly states that "the Commission will not use these policies as mandatory standards, but it believes it must establish guidelines as a general approach to resolve conflicts, and allow future oil and gas development consistent with sound resource management in the coastal zone."

However, the substance of the policy statements consists of detailed protection criteria and specified mitigation measures the Coastal Commission considers effective in reducing impacts on coastal and marine resources. By providing this information, the Coastal Commission is clearly setting the standards by which it will review development permits and consistency determinations. Any applicant has been fully warned by these statements of the types of project elements and mitigation measures the Commission expects to see in an "approvable" project.

Furthermore, the policy standards set in these statements generally address areas already under the jurisdiction of existing state agencies. For

example, the Drilling Muds and Cuttings statement forbids disposal of muds and cuttings in Areas of Special Biological Significance, which are marine areas under the regulatory responsibility of the State Water Resources Control Board. The Commercial Fishing Conflicts statement contains specifications on the appropriate types of drilling equipment, subsea pipeline locations, and operating seasons; but these elements of offshore oil development have generally been the responsibility of the State Lands Commission and Division of Oil and Gas.

Regulatory Review Process

In adopting regulations, State agencies are required to follow the rules of the Administrative Procedure Act (Government Code Section 11340 et seq) which includes provisions for public comment and legal review. Section 11347.5 of the Government Code specifies:

> No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in subdivision (b) of Section 11342, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

As given in Section 11342(b), "regulation" is defined as follows:

> "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of the state agency. "Regulation" does not mean or include any form prescribed by a state agency or any instruction

> relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued.

In adopting their General Policy Statements, the Coastal Commission has not followed the Administrative Procedure Act process. Instead, the Commission has used their own internal procedures, based on the argument that the policies are only general guidelines rather than fixed rules subject to Section 11347.5 of the Government Code. These procedures have generally consisted of the following: (1) the draft staff report is released for review, (2) a Commission hearing is held on the draft statement, and (3) the final statement is approved at a later hearing. Public and agency comments are taken at the hearings, although the review time prior to a hearing generally is extremely short. For the Drilling Muds and Cuttings Statement, there were 12 days between release of the draft report and the first hearing. For the Commercial Fishing Conflicts statement, there were also only 12 days.

In making their policy statements, the Coastal Commission is providing further clarification of its interpretation of the resource protection mandates under the Coastal Act. The Coastal Act does not mention drilling muds and cuttings disposal; yet, the Commission by adopting these policies made it clear that this issue is covered by their general policy responsibilities.

Similarly, the Commission is clearly establishing standards of general application in setting protection criteria and recommended action to implement those interpretations. Regardless of whether the Commission agrees it is only stating general guidelines that can vary from case to case, the policy statements set standards against which applicants will measure their project designs. The question remains: If the Commission does not intend the policies to be used in this manner, then why adopt them formally?

Recommendation: There is no question over the Coastal Commissions's authority to review existing agency regulations and actions and to recommend changes. Conflicts arise from time to time as these recommendations are made. However, this oversight responsibility was given to the Coastal Commission under the Coastal Act, which also specifies the resolution process for any conflicts that do arise.

Questions do remain over the other portions of the Coastal Commission's policy statements. These are questions as to whether the Commission is making regulations to begin with, and whether these "regulations" fall within existing agency jurisdictions.

The Coastal Commission's answer has been to dismiss these questions altogether by maintaining that it is only adopting general guidelines, not regulations. This assertion has been challenged by agencies and public groups, but only within the context of the Commission's own proceedings.

A solution to this matter is readily available in existing law. The Coastal Commission's "guidelines", since they function as regulations, should be subject to the appropriate provisions of the Administrative Procedure Act. The purpose of the Act is to ensure clarity, necessity, consistency, and authority for the adoption of regulations. Adhering to the process of this Act would minimize the Coastal Commission's duplication of other State agency regulations.

CONSOLIDATION OF PETROLEUM PROCESSING FACILITIES

A potential conflict between State agencies has arisen recently over the policies affecting the siting and design of the onshore processing facilities associated with offshore oil and gas production. The Coastal Act includes policies that require consolidation of these facilities. However,

these policies may not be consistent with the accounting procedures the State Lands Commission requires of its lessees.

This potential conflict has surfaced only within the last year. Since the Lands Commission imposed a moratorium on leasing and development in State waters in 1969, no new State platforms were proposed until 1983, when ARCO submitted its Plan for Development and Production of the Coal Oil Point Field. ARCO's Coal Oil Point Project proposes development of Leases PRC 308.1, 308.2, and 3242.1 off Santa Barbara County. The offshore facilities will consist of two new platform complexes. Processing of the oil and gas will be at one of three onshore sites, to be identified in the Environmental Impact Report (EIR) now being prepared under contract by the Lands Commission. The three alternative sites being evaluated in the EIR consist of: (1) ARCO's existing Ellwood facility, which currently processes oil and gas from Platform Holly; (2) an undeveloped canyon near the Ellwood site; and (3) a canyon further west which is the site of existing and proposed processing facilities serving platforms in federal waters.

Consolidation Policies

One of the major factors affecting the alternative site evaluation is the issue of consolidation. The Coastal Act Section 30262 states in part:

> Oil and gas development shall be permitted... if the following conditions are met: (b) New or expanded facilities related to such development are consolidated, to the maximum extent feasible and legally permissible, unless consolidation will have adverse environmental consequences and will not significantly reduce the number of producing wells, support facilities, or sites required to produce the reservoir economically and with minimal environmental impacts.

In its 1975 Coastal Plan, the Coastal Commission adopted the following policies:

63. Criteria for Location of Industrial Development: Industrial development shall be concentrated in already developed areas unless public health or safety require other locations as provided in the Energy chapter...All potentially hazardous industrial activities or other industrial development that Coastal Plan policies have determined cannot be located in already-developed areas (e.g., possibly liquefied natural gas plants or nuclear power-generating facilities) shall be sited a safe distance away from population centers. All potential industrial sites in such areas shall be used to the maximum extent feasible (subject to safety requirements) prior to the commitment of any new areas.

83. Criteria for Siting and Design of Petroleum Facilities: On publicly or privacy owned lands in the coastal zone, offshore and onshore drilling and production and related facilities shall be permitted where, in addition to the standards set forth in Policy 11, all of the following criteria are met. Compliance shall be required by the coastal agency as a condition of any required coastal permit, by the State Lands Commission as a condition of a lease on State-owned lands, and by the Division of Oil and Gas...

c. Consolidate Drilling, Production, and Processing Sites: Petroleum-related facilities and operations shall be consolidated (i.e., drilling, production, separation facilities, and support sites shall be unitized - developed and operated as a unit by a single company or group of companies for the benefit of all interested companies - or shall be shared) to the maximum extent feasible and legally permissible, unless such consolidation will have adverse environmental consequences and will not significantly reduce the number of producing wells, support facilities, or sites required to produce the reservoir economically and with minimal environmental impacts. Unitization negotiations shall be entered into by all operators

covering one producing structure, and unitization of a new offshore field shall be carried out before commercial production is initiated. The unitization or consolidation requirements shall apply to (1) all types of offshore platforms; (2) submerged production systems; (3) onshore drilling and production facilities; (4) pipelines; (5) separation, treatment, and storage facilities; (6) transfer terminals related to petroleum production; (7) rights-of-way for transporting produced oil and gas; (8) equipment lay-down areas; and (9) port facilities to supply and service offshore platforms...

f. Minimize Impact of Petroleum Facilities Onshore: Drilling, production, and support facilities onshore, including separation and treatment plants, pipelines, transfer terminals, storage facilities, and equipment lay-down areas, shall be designed and located to minimize their adverse environmental impacts consistent with recovery of the resource. Where such onshore development would result in substantial impacts on the resources of the coastal zone, it shall be permitted only where there is a need for the project (as specified in Policy 81), where feasible alternatives would have a greater adverse environmental impact, and technology that would substantially reduce such impacts will not be available in the immediate future (e.g., new technology for carrying out subsea production, oil and gas separation, storage, and natural gas liquefaction that might reduce the need for large onshore facilities)...

in conformance with these provisions, the approved portions of the Santa Barbara County LCP include similar plan policies also favoring consolidation or colocation of onshore processing facilities. Further, the County's Coastal Zoning Ordinance (Sec. 35-154.4) allows the approval of separate facilities only if the following four condition are met:

1. Consolidation or colocaton is not feasible or is more environmentally damaging.

2. There are no feasible alternative locations that are less environmentally damaging.

3. There are no existing processing facilities within three miles of the proposed site.

4. The proposed facility is compatible with recreational and residential development and with the scenic resources of the area.

With several major oil projects now moving through the regulatory process, Santa Barbara County has had to develop further clarification of what is meant by the term "consolidatiects have been proposed, the County's position has evolved into one favoring processing at only a few sites containing either: (1) a single industry-wide facility capable of handling production from several platforms, or (2) several smaller facilities colocated at a single site but sharing as many common elements as possible. Of the two, the County tends to favor industry-wide facilities, based on the lower land use requirements and lower environmental impacts.

In applying their consolidation policies, the County has been assisted by the Area Study approach the U.S. Minerals and Management Service is using for frontier development in the Santa Maria Basin. As described in the next chapter, the first applicant in each of the sub-basins is required to propose a pipeline to shore capable of handling production from the applicant's platform(s) plus all future platforms in the sub-basin. In their plans submitted for review by the County, the applicants also show how the sub-basin production will be handled at the proposed processing site, either through consolidated facilities or provisions for colocated facilities.

State Lease Accounting Requirements

A second major factor affecting the alternative site evaluation for the Coal Oil Point Project stems from the accounting procedures the Lands Commission requires of its lessees. These procedures affect the design and size of the onshore processing facilities, which in turn may affect the feasibility of each of the alternative sites.

The basic problem stems from the number of leases involved. The Coal Oil Point Project will produce from PRC 308.1, 308.2, and 3242.1. The existing Ellwood processing facility already handles production from PRC 3242.1 and 3120. The 308.1/308.2 leases contain similar royalty rates to be paid to the State, but the royalties due under the other two leases differ.

Lands Commission staff have taken the position that the amount of oil produced from each lease, and therefore the State's royalties, can be accurately measured only after the production streams have been processed to pipeline quality. Up to this point, the production stream also contains gas and water which make accurate metering technically impossible. As a result, Lands Commission staff have indicated that ARCO's processing facilities will have to be designed such that the 308.1/308.2 stream will remain totally segregated from the 3242.1 stream. The facilities required to handle segregated streams are somewhat larger than a similar facility that would process all the leases in a commingled stream. Maintaining segregated streams also greatly increases the number of pipelines from the platforms to shore.

Policy Conflict

The potential policy conflict is limited to projects located in State waters only. Federal leases have more consistent royalty terms, and the federal government has not objected to commingled processing facilities. However, State leases have a wide range of royalty rates, and some level of

segregated processing likely will be necessary to meet the State Lands accounting requirements.

The potential for this policy conflict will increase as new development projects are proposed in State waters. The different royalty rates will limit the opportunities for processing new State production at existing facilities. The use of larger, segregated facilities may reduce the holding capacity of colocated sites, resulting in an increase in the number of sites needed to process State production.

Until this conflict is resolved, applicants for projects in State waters carry the risk of being unable to propose a viable project. State Lands has a fiduciary responsibility to ensure the State receives the proper revenues from the leasing of public mineral resources. Consequently, the Lands Commission's position is that based on the current state of metering technology, only segregated facilities are permittable. However, an applicant must then submit the same project for permits from the Coastal Commission and local government. Based on the consolidation policies of the Coastal Plan and LCPs, it is possible that only commingled facilities would be permittable from these agencies.

Recommendation: The affected agencies are currently attempting to resolve this conflict in advance of any permit decisions on the Coal Oil Point Project. Under the mediation services of the Secretary of Environmental Affairs, a working group has been formed with staff from State Lands Commission, Coastal Commission, and Santa Barbara County Energy Division. Additional technical expertise is being provided by ARCO, U.S. Minerals Management Service, State Division of Oil and Gas, and other State agencies as needed.

In order to better define the potential conflict, the working group expanded the Coal Oil Point EIR to include an engineering study of alternative metering methods. On a case study basis, the study will develop generic

designs for five potential processing/metering configurations: (1) fully segregated but colocated facilities, (2) partially segregated but colocated facilities, (3) commingled facilities, (4) segregated but separate facilities, and (5) platform processing. These alternatives are being compared on the basis of:

1. Engineering feasibility of the metering technology
2. Systems safety and reliability
3. Environmental impacts
4. Compliance with State, local, and federal policies and regulations
5. Fiscal impacts.

The intended result of this study is clarification of the extent to which current metering technology can provide accurate information on oil/water/gas emulsions. The study will also provide information on the actual trade-offs that must be considered between the fiduciary goals contained in the Lands Commission's leasing practices, and the environmental goals contained in the Coastal Commission and local government policies.

At present, this potential conflict is being handled adequately at the working group level. Whether this approach will continue to be effective will depend in large part on the results of the engineering study, which are due in March 1985. If this study does identify irreconcilable policy conflicts, then a legislative solution may become necessary.

CONCLUSION

The creation of an independent Coastal Commission has led to inevitable conflicts with the traditional State resource management agencies. As the Commission has attempted to define further its responsibilities, it has extended its concerns to policy and regulatory areas which have been under the traditional authority of line agencies. These conflicts have arisen since the Coastal Commission's inception, and have been handled through a combination of direct agency negotiation, litigation, and legislative action.

Due to the independent nature of the Coastal Commission, if it should continue to exist as presently structured, no other alternatives for conflict resolution are available. In the case of traditional line agencies, such conflicts could be handled easily through administrative action. But in the case of an independent commission, a more permanent solution is possible only through legislative clarification.

Under the California Coastal Act of 1976, as amended, the Legislature provided the Coastal Commission with the following major roles. These roles were assigned to the Commission assuming that local governments would be responsible for most development planning and review under approved Local Coastal Programs:

1. Function as the State coastal zone management and planning agency pursuant to the Coastal Zone Management Act.

2. Provide a central storage and clearinghouse facility for scientific studies and technical data relevant to resources located in the coastal zone and OCS.

3. Prepare specified reports, including a coastal resources guide.

4. Periodically review adopted LCPs and suggest and approve amendments to the LCPs.

5. Issue coastal development permits for development proposed between the sea and the first public road paralling the sea or within 300 feet of any beach; for development located on tidelands, submerged lands, or public trust lands lying within the coastal zone; and for any project which constitutes a major public works project or major energy facility.

6. Hear appeals of local coastal development permit decisions for only certain types of development, and only on specified grounds for appeals.

7. Periodically review State agency regulations, rules, and statutes and recommend changes as necessary to ensure consistency with the Coastal Act.

The Coastal Act also was clear on what the Commission was not to do. Section 30401 states that enactment of the Coastal Act "does not increase, decrease, duplicate or supersede the authority of any existing state agency." This section further states that "neither the commission nor any regional commission shall set standards or adopt regulations that duplicate regulatory controls established by any existing state agency pursuant to specific statutory requirements or authorization."

In order to prevent the recurring problem of policy conflicts between the Coastal Commission and other State agencies, there is a need to restate the Commission's limited role as was originally intended in enacting the Coastal Act. Currently, the Coastal Commission in essence operates as an independent regulatory body, setting its own policies and overlaying these policies on top of existing agency regulations that coastal development projects must meet. This role goes beyond that envisioned in the Coastal

Act, which emphasized local authority and the continuation of line agency responsibilities over coastal and marine resources. In past conflicts on coastal development issues, the Legislature has generally held to this original emphasis.

The steps necessary to minimize future agency conflicts are contained within the Coastal Act itself:

1. Section 30401 specifically states that Coastal Act provisions should not "increase, decrease, duplicate or supersede the authority of any existing state agency." This point is further emphasized in Sections 30410-30418, which detail the authority of certain agencies in regards to coastal development.

2. In cases where the Commission feels that additional regulations or coastal protections are necessary, the Commission has the authority to recommend changes to the appropriate agency under Section on 30404. If the affected agency does not concur with these recommendations, then it is the responsibility of the agency to explain their reasons in a report to the Governor and the Legislature.

In conformance with these provisions, review of coastal development projects by any agency should result in consistency with the Coastal Act and the Coastal Plan. If the Coastal Commission has properly done its job under Section 30404 of the Act, then the Commission can be assured that permits issued by other State agencies contain the necessary provisions to protect coastal and marine resources. If this is not the case the remedy is not to allow the Coastal Commission to expand its role beyond the clearly stated limitations in Section 30401. Rather, Section 30404 should be properly implemented.

STATE CONFLICTS WITH FEDERAL AGENCIES

Throughout much of its history, California had complete authority over offshore activities and resource management in its adjacent marine areas. This authority stemmed in part from the Supreme Court's 1845 decision in Pollard's Lessee v. Hagan, which held that the states owned the lands underlying navigable waters within their jurisdictions, including those lands encompassed by boundaries extending out from the coast. Federal policy originally recognized the states' jurisdiction, but this policy was reversed by the Truman Proclamation of 1945, which established the federal government's claim over the resources of the Outer Continental Shelf (OCS). This claim extended to the submerged lands previously controlled by the states. The federal government's claim was upheld by the Supreme Court through a series of decisions referred to as the Submerged Lands Cases. Congress, however, reversed this situation in part through the Submerged Lands Act of 1953. This Act granted the states ownership of lands underlying navigable waters within three geographical miles of the coast or within the historical seaward boundaries existing at the time the state entered the Union. Also in 1953, Congress established the federal government's authority to lease OCS resources through passage of the OCS Lands Act. Federal jurisdiction over the OCS seaward of the 3-mile limit was reaffirmed as recently as 1969, in United States v. Maine.

This separation of authority over the marine areas has led to numerous conflicts between federal and California efforts to provide for effective development and preservation of the State's coastal and marine resources. By their nature, federal plans and regulations have been broadly defined for application throughout the country. California's plans and regulations have been more specific to regional conditions, and have been applied to reflect the important role our coastal resources play in the State's economy and way of life.

These conflicts have arisen on a broad range of issues related to fisheries management, marine transportation, and resource conservation and development. However, these issues have been raised within a common context of the broader issue of the distribution of state and federal powers. As such, the last few decades have seen several attempts to resolve these conflicts on a general level, through the passage of major resource management and environmental legislation and through cooperative agreements between the State and the affected federal agencies. This new legislative and regulatory framework has sought to create a cooperative approach to coastal management that takes into full account the unique conditions and development constraints faced by state and local governments. However, actual experience in applying this framework has revealed several areas where conflicts still remain, and where clarification of the state and federal relationship is still required.

Nowhere else have these shortcomings been so dramatically and so frequently shown as in the State and federal dealings on the leasing and development of offshore energy resources. Due to the complicated nature of this subject, decisions on lease sales and on development projects have become enmeshed in virtually every other coastal issue, with implications to state regulations related to air quality, water quality, solid waste management, systems safety, housing, fisheries, rare and endangered species, recreation, tourism, marine transportation, government finances, growth management, land use planning, and other areas of concern to state and local governments.

Rather than attempting to detail every specific of State and federal conflicts on coastal management issues, this report addresses these conflicts through the example of OCS energy development. Because offshore energy leasing and development encompasses so many of the coastal issues, the solutions found to date and the remaining conflicts yet to be resolved should provide insights useful in dealing with state and federal conflicts on other coastal issues. Consequently, the offshore energy issue is discussed within the framework of the three major federal laws intended to

ensure the compatibility of federal and state policies regarding the OCS: Coastal Zone Management Act, Outer Continental Shelf (OCS) Lands Act Amendments, and National Environmental Policy Act.

This chapter discusses each of the three acts and describes the State's role as allowed under the acts. Conflicts arising from these acts are presented through specific examples, and possible solutions are identified based on the extensive history of negotiations on specific issues, memoranda of agreement, and lawsuits stemming from interactions of the State and federal agencies.

COASTAL ZONE MANAGEMENT ACT

The federal Coastal Zone Management Act (CZMA) was passed in 1972 and amended in 1976 and 1980. The CZMA calls for a unified planning process in each coastal state to be adopted by all government agencies that share responsibility for coastal activities in order to protect, develop, and enhance the coast. Prior to approving a state's management program, the Secretary of Commerce must find that the state seeking approval has adopted a program which:

identifies inland coastal zone boundaries;

determines permissible land and water uses;

designates areas of particular concern;

provides that local land- and water-use regulations do not unreasonably restrict uses of regional benefit;

considers the national interest when siting facilities designed to meet requirements that are not local in nature;

provides for public participation;

demonstrates the state's authority and organizational structure to control coastal resource uses and to implement the program;

coordinates program development activities with interested federal and state agencies, local governments, regional organizations, port authorities, and other interested parties; and,

obtains and adequately considers the views of principally affected federal agencies.

Program approval is subject to the general provisions of Section 306 of the CZMA. The National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce is responsible for approving state programs and administering the requirements of the CZMA. NOAA has issued specific guidelines (15 Code of Federal Regulations 923) which detail the requirements of state coastal management programs.

California's Coastal Management Program (CCMP) was approved by the Department of Commerce in 1977 and became operational in 1978. The Program is primarily comprised of five sections:

1. California Coastal Act of 1976.
2. California Coastal Conservancy Act of 1976.
3. California Urban and Coastal Park Bond Act of 1976.
4. California Coastal Commission Regulations.
5. Program Description.

Essentially, California's approved Coastal Management Program is the California Coastal Act of 1976. Other aspects of the Program have to do with implementation, but the Coastal Act contains the enforceable policies. Section 30008 of the California Coastal Act states that "...the California

Coastal Act shall constitute California's coastal zone management program for purposes of the Federal Coastal Management Act..." Section 30330 of the Act designates the Coastal Commission as the State agency responsible for implementing the CZMA.

Consistency Procedures

To ensure that federal actions do not undermine the comprehensive management framework established by states with approved coastal management programs, Section 307(c)(1) of the CZMA specifies:

> Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

Any federal agency proposing to conduct or any applicant for a federal license or permit to conduct an activity affecting the coastal zone is required to certify in their application that the proposed activity complies with and is consistent with the state's approved management program. Those certifications are sent to the state for review. The state has up to six months to concur or object to the certification and notify the concerned federal agency of this decision. Federal agencies cannot grant any license or permit until the state has concurred with the certification unless the Secretary of Commerce, on his own initiative or by appeal of an applicant, finds that the activity is consistent or is in the national interest.

The Coastal Commission has adopted regulations for determining the consistency of federal activities with the CCMP. For example, 30 days prior to submitting a Development and Production Plan (DPP) to the Minerals Management Service (MMS), an applicant must first consult with the Executive Director of the Commission concerning all of the prospective activities which will affect the coastal zone. Second, a certification that the

project is consistent with the CCMP must accompany the DPP. The certification must contain a brief assessment of probable effects on the coastal zone and a brief set of findings indicating how these effects are consistent with the CCMP. The Commission's Executive Director may request additional information, and failure to provide this information may result in an objection by the Commission. The Commission staff prepares a summary of the application and recommendations on how the Commission should vote. Public hearings are held to consider the application and staff recommendations. The Commission's decision is issued no later than six months from receipt of the certification. (Note: If a decision is not reached within three months the Executive Director informs the applicant in writing that it will take longer.) If the Commission objects to a certification, the applicant may amend its project. Such an amendment will be considered a new submittal, but the Commission must decide on the amended plan within three months instead of six. The applicant may also appeal the State's decision to the Secretary of Commerce.

In applying their consistency certification authority under the CZMA, the Commission has held that the requirements of the Coastal Act must be met to the "maximum extent practicable" and all environmental impacts of the plan must be mitigated to the "maximum extent feasible."

CZMA Controversies

Experience with the CZMA has identified certain areas where the Act is unclear. Two of the main areas have centered around controversies over the definition of certain terms in Section 307: (1) "directly affecting" and (2) "to the maximum extent practicable."

Currently, no definition of the term "directly affecting" as used in Section 307 exists. In 1978, NOAA defined "directly affecting" to mean "significantly affecting the coastal zone." The phrase "significantly affecting the coastal zone" was then defined as "changes in the manner in

which land, water or other coastal zone natural resources are used; limitations on the range of coastal zone natural resources; or changes in the quality of coastal zone natural resources." In arriving at this definition, NOAA was guided by the Council on Environmental Quality's guidelines (since codified) for defining major federal actions "significantly" affecting the human environment, as used in the National Environmental Policy Act. The Department of Justice, in an advisory opinion issued in April 1979, concluded that NOAA's definition was inconsistent with the plain language of the CZMA, which should control. In response to the Justice opinion, NOAA amended its regulations by deleting the definition of "significantly affecting," and returned to the statutory language of "directly affecting." NOAA left it to federal agencies to determine which of their activities directly affect the coastal zone.

- In 1981, NOAA again adopted regulations defining "directly affecting." The regulations were adopted shortly before the decision on the Lease Sale 53 suit discussed below. However, the Merchant Marine Committee of the House adopted a resolution disapproving the definition, and NOAA withdrew the regulations. NOAA currently is assessing alternative definitions as part of its comprehensive review of the federal consistency process.

The CZMA contains no definition of the term "maximum extent practicable," nor does the Act specify who determines that an activity is sufficiently Aonsistent. In its decision on the Lease Sale 53 suit described below, the Ninth Circuit Court ruled that the federal government, not the state, makes the final determination as to whether a federal activity is consistent to the "maximum extent practicable." The Supreme Court ruling on this case noted the problem, but did not decide who holds final authority to determine when sufficient consistency has been achieved.

NOAA's current regulations define the term "consistent to the maximum extent practicable" as:

> ...the requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations.

In keeping with their past position, NOAA current regulations also maintain a narrow application of the term:

> Aiate from full consistency with an approved management program when such deviation is justified because of some unforeseen circumstances arising after the approval of the management program which present the Federal agency with a substantial obstacle that prevents complete adherence to the approved program.

There is no potential for conflict in cases where the state management program is specific on when, where, and to what extent federal activities are permitted in the coastal zone. The potential does arise, however, in cases where the management program is not so clear, and where the state and federal agencies arrive at different interpretations of the program's meaning. State agencies generally have maintained that federal agencies should conform to the states' interpretations of general management program provisions. On the other hand, federal agencies have held to the position that they are bound only to what is stated in the approved management program.

The federal position, as argued by NOAA in adopting their current regulations, is that the approved management programs were subject to consultation with the affected federal agencies and were approved by the Secretary of Commerce on that basis. Any subsequent interpretations by the state agency are not subject to this consultation and approval process, leaving open the possibility that the state's interpretation may create a barrier to federal activity unforeseen at the time of the program's

approval. NOAA maintains that should additional coastal issues not covered by the approved program be identified during consistency review, the affected state agency still has the opportunity to pursue program refinements or amendments.

These two controversies are being addressed on the federal level as part of the CZMA reauthorization which is anticipated for this year. Amendments made to the CZMA in 1980 continued authorization (including congressionally authorized grants) through fiscal year 1985. Reauthorization this year will be needed to continue funding to support the programs under the CZMA, although the statutes of the CZMA would continue in force if reauthorization does not take place. NOAA intends to use the reauthorization process to consider new amendments to the CZMA. NOAA is presently conducting a comprehensive review of the consistency process, and will use the results of this study to present recommended clarifications to the CZMA during the Congressional hearings scheduled for later this year.

Conflict Example: Lease Sales

Consistency determinations under the CZMA originally were made at four stages of the Department of Interior's Offshore Leasing Program: (1) 5-Year Lease Plan, (2) Lease Sale, (3) Exploration Plan, and (4) Development Plan. This scope was changed after two lease sales off California's coast in 1980 and 1982 ended in protracted litigation between the State and the Department of the Interior. The results of this litigation provided for state consistency authority only at the exploration and development stages.

In 1980, Secretary Andrus proposed Lease Sale 53. The original sale proposal included areas from Point Conception in Santa Barbara County to the Oregon border. The sale area was divided into five basins, but only a portion of each basin was to be offered for lease. From north to south, the basins were named: Eel River, Point Arena, Bodega Bay, Santa Cruz, and Santa Maria. The inclusion of areas offshore northern and central California

engendered strong bipartisan opposition. The Eel River, Point Arena, Bodega Bay, and Santa Cruz Basins (referred to as the "four northern basins") were deleted from the Sale after extensive negotiation among the State, local governments, and the DOI.

In February 1981, Secretary Watt reinstated the four northern basins into the proposed Sale. Once again, the inclusion of areas offshore northern and central California generated significant opposition.

In April 1981, Secretary Watt agreed to separate the lease sale into two parts and to defer the final decision on leasing in the four northern basins. Thus, only tracts in the Santa Maria Basin (offshore northern Santa Barbara County and southern San Luis Obispo County) were offered for lease.

Following this decision, then-Governor Brown, the Coastal Commission, and 4 other State agencies sued under the Coastal Zone Management Act and the OCS Lands Act to prevent the leasing of certain tracts in the northern third of the Santa Maria Basin. Under the CZMA, California claimed that DOI had to determine whether Lease Sale 53 was consistent with the State's CZM Program at the time DOI issued the Final Notice of Sale for Sale 53. The basis of this claim was the contention that the Final Notice of Sale sets in motion a chain of events that directly affects the coastal zone. DOI claimed that a lease sale does not directly affect the coastal zone and was therefore exempt from the consistency requirement. DOI argued that the law required consistency only at the point a federal agency grants an applicant the authority to conduct activities that could affect the coastal zone. DOI's position was that such a situation only existed at the next major steps in the process: issuing permits for exploration drilling on individual leases, and the subsequent development steps. Although DOI refused to provide a consistency determination in their lease sale documents, the California Coastal Commission reviewed Lease Sale 53 for consistency with California's CZM Program and found that leasing of the northernmost 32 tracts would be inconsistent with the Program.

Under the OCS Lands Act, California claimed that the Secretary had not properly considered Governor Brown's recommendation that 34 tracts be deleted from the sale. As discussed below, the OCS Lands Act requires DOI to accept the recommendations of the Governors of affected states on the size, timing, and location of OCS lease sales if the recommendations provide for a reasonable balance between the well-being of the citizens of the affected state and the national interest.

In July 1981, Federal District Court Judge Phfalzer issued a permanent injunction on leasing the 32 northern most tracts of the 111 tracts offered in Lease Sale 53. Judge Phfalzer enjoined the leasing of all the tracts challenged under the CZMA but allowed leasing of the two other tracts that were challenged only under the OCS Lands Act. DOI appealed, claiming that lease sales do not directly affect the coastal zone and that determining whether lease sales were consistent with California's CZM Program was unnecessary.

In August 1982, the Ninth Circuit Court of Appeals confirmed the District Court decision upholding California's claim that lease sales directly affect the coastal zone and must be consistent with California's federally approved Coastal Program. The Court's decision also denied that DOI had improperly considered the Governor's recommendations for tract deletions.

In January 1984, the Supreme Court overturned the lower court decisions holding that the consistency provisions of the CZMA did not apply to the lease sale stage of OCS development. Similar issues brought in the suit between California and DOI as a result of Lease Sale 68 (Point Conception to the Mexican border) were also resolved by this case.

RECOMMENDATION: Governor Deukmejian has gone on record in support of the Supreme Court's decision. This position is based on the fact that adequate opportunities exist at the exploration and development stages of the process for California to impact federal decision making through the consistency

procedures. At the lease sale stage, the State still retains a significant role through the consultation requirements of the OCS Lands Act and the National Environmental Policy Act. Federal legislation to overturn the Supreme Court's consistency decision should not be pursued.

As described further below, State agencies and local governments have the opportunity to comment on the size, timing, and location of proposed lease sales through the consultation procedures of the OCS Lands Act. A similar opportunity to comment on the environmental impacts and consistency with State and local plans is provided for in the public commenting requirements for the Environmental Impact Statement prepared for the proposed lease sale. However, the key to the effectiveness of these two processes is to ensure that the permitting agencies transmit their concerns regarding a particular lease sale to the Governor so that appropriate protections can be built into the leases.

Properly applied, the Governor's consultation process under the OCS Lands Act and the NEPA environmental review process provide more than adequate opportunity for meaningful state input into the federal OCS leasing process. Given these two additional processes, the Coastal Commissions's inability to make consistency determinations at the lease sale stage should not create uncertainty on the part of industry, as argued by the Commission. Even if the Coastal Commission remains as it is presently constituted, the OCS Lands Act and the NEPA provisions should ensure a consistent State position from the lease sale stage through production provided that the Coastal Commission participates in the process described and acts responsibly when making consistency determinations at later stages in the process. The consistency provision of the CZMA can and should be applied to the exploration and development stages of the process when the details of development proposals are known and site specific environmental information is available.

Conflict Example: Coastal Commission Drill Muds and Cuttings Disposal Policy

In October 1984, the Coastal Commission adopted its final "General Policy Statement on the Ocean Disposal of Drilling Muds and Cuttings." The procedures outlined in this policy statement provide an example of the potential conflicts that arise when State and federal interpretations of the Coastal Management Program differ.

When drilling exploratory and production wells, oil operations produce solid and liquid wastes in the form of used drilling muds and well cuttings. In federal waters, the bulk of these wastes are disposed near the platform site under a general NPDES permit issued by the EPA. Wastes having a certain level of contaminants or wastes produced from leases with special lease stipulations are hauled to shore for disposal in approved sites.

The Coastal Commission policy statement contained several recommendations to federal agencies, State agencies, and the oil industry that the Commission found would be necessary to protect marine water quality. These recommendations included suggested actions for the EPA in issuing and enforcing a general NPDES permit for Southern California, and inspection procedures and environmental studies to be performed by the MMS. Recommended actions to State agencies included monitoring procedures, biological surveys, water quality standards, and enforcement activities to be undertaken by the State Water Resources Control Board, Regional Water Quality Control Boards, Department of Fish and Game, and the State Lands Commission. The statement also specified certain actions and mitigation measures that the Commission would require of any offshore applicants.

In reviewing the State agency policies and actions under this policy statement, the Coastal Commission was properly performing its duties under the Coastal Act. Section 30404 of the Act states that the "commission shall periodically, with respect to any . . . state agency, submit recommendations

designed to encourage it to carry out its functions in a manner consistent with this division. The recommendations may include proposed changes in administrative regulations, rules, and statutes."

In regards to the review of federal agency actions, the muds and cuttings policy statement is an instance of the Coastal Commission providing a specific interpretation of general Coastal Management Program provisions. Through this statement, the Coastal Commission provided a clear indication of the types of actions applicants and federal agencies would have to follow in order to be consistent with the State Program. The process for setting this interpretation was through the Coastal Commission's internal procedures which did include public hearings; however, by using these internal procedures, the Coastal Commission circumvented the amendment/refinement procedures provided for under the CZMA. Consequently, adoption of this policy statement did not guarantee a similar interpretation by the affected federal agencies. In such a case, the applicant is put at risk, and is forced to modify their plans in an attempt to fulfill conflicting agency directives.

Furthermore, by setting mitigation measures and other industry actions, the policy statement attempted to achieve the recommended agency changes through the Coastal Commission's own procedures. The policy statement does specify that it only "serves as general guidance for the Commission's interpretation of its offshore oil and gas responsibilities" and that "each project proponent will have the opportunity to present specific information relating to the particular proposal and its surrounding circumstances that might justify addressing the discharge of muds and cuttings in some other manner." However, the policy statement also makes it clear that the Commission's or comparable measures for protecting marine water quality would be required for approval of coastal development permits or consistency determinations. In following this procedure, the Commission in essence installed another level of water quality regulations over and above those of the existing agencies, that provide for stricter water quality protections that the

Commission recommended the other agencies adopt. The Coastal Commission adopted their water quality policies using their internal procedures. Any other State agency proposing similar standards would have to follow prescribed regulation procedures that provide for extensive public comment and administrative law review.

RECOMMENDATION: The problems that have arisen over the lack of precise definitions in the CZMA are being addressed in the reauthorization proceedings on the CZMA this year. This is the appropriate forum for considering any necessary fine tuning to the Act, within the broader context of the consistency process and the nation's coastal management goals. The Administration will provide comments during this process, actions outside of this forum are not necessary.

In the interim, alternative means exist to achieve the State's Program goals in a manner that provides applicants with a consistent and predictable set of rules. The Program amendment process provided under the CZMA ensures consistency between State and federal interpretations of the Program's provisions. The consultation procedures under the OCS Lands Act and the public review and mitigation requirements under NEPA and CEQA further provide for regulatory enforcement of any mitigation measures that are considered essential to minimizing a project's potential impacts on the coastal environment.

OUTER CONTINENTAL SHELF LANDS ACT

Even though the consistency issue was settled through the Supreme Court's decision, the potential for conflict between the State and federal governments on other issues during the lease sale stage still exist. The last two federal lease sales, Lease Sale 73 extending from Santa Barbara to Point Conception and Lease Sale 80 extending from Santa Barbara to the Mexican border, were rife with the potential for dispute. In both cases,

Interior's initial proposals were met with opposition on the part of many State and local agencies.

These two federal sales were the first encountered by the newly elected Deukmejian Administration. Furthermore, these two lease sales also were the first where the Governor's comments to Interior under the OCS Lands Act were the State's primary opportunity for ensuring compliance of the lease sale conditions with the State's environmental policies, other than through the environmental review process. In the case of Lease Sale 73, Interior had requested a consistency determination per the District Court decision. The Coastal Commission denied consistency, but this determination was overturned by the Supreme Court ruling. In the case of Lease Sale 80, the Coastal Commission no longer had consistency authority at this early stage of the process.

Consultation Requirements

The OCS Lands Act was enacted in 1953 to provide the authority for federal leasing of mineral resources of the OCS. This Act provided the Secretary of Interior with broad authority to conduct the leasing program. The Secretary's authority was more clearly delineated by the OCS Lands Act Amendments of 1978, which among other things: (1) established a planning framework for development of OCS oil and gas resources, (2) provided for state and local government participation in OCS decisions, and (3) specified the national goals for the development and conservation of OCS resources. The consultation provisions of the Amendments were largely in recognition of the wide-ranging potential for policy and regulatory conflicts on issues surrounding offshore energy development. Under these provisions, the Secretary of Interior is required to consult with the governor of the affected state prior to the approval of the 5-Year Lease Plan, lease sales, and development plans.

Section 18 of the Act provides for consultation on the 5-Year Lease Plan. This Plan sets forth the size, timing, and location of all lease sales proposed during the forthcoming 5-year period. The Secretary of Interior invites and considers recommendations from the governor of the affected states. In accordance with provisions in the Act, the executives of any affected local government may also provide suggestions to the Secretary after submitting them to the governors.

Under the Act, consultation is required at two points during preparation of the Plan. The Secretary must first invite the governor's suggestions during preparation of the Plan studies. The second opportunity is after the draft Plan is completed and at least 60 days prior to publication of the draft Plan in the Federal Register. Prior to submitting the draft Plan to Congress, the Secretary of Interior must respond to each of the governor's suggestions and grant or deny each one in whole, in part, or in modified form.

As required under the Act, Interior's regulations also provide for consultation with the states at other points during the 5-Year Plan process. These regulations are currently being revised to increase the participation of state and local government.

Section 19 of the Act requires similar consultation for lease sales and for Development and Production Plans (DPP). The governor of the affected state and, through the governor, executives of affected local governments may submit recommendations on the size, timing, and location of the proposed lease sale or DPP. These recommendations are submitted within 60 days after notice of the proposed lease sale or receipt of a DPP. The Secretary of Interior must accept the recommendations if they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected state. The Secretary must state the reasons for accepting or rejecting each recommendation or for implementing alternative means

identified in consultation with the governor to achieve the purpose of the recommendation.

In addition to the consultation opportunities mandated under the Act, Interior's implementing regulations and the NEPA public review process provide additional opportunities for the review of federal leasing plans. The full process for the 5-Year Lease Plan and for Lease Sales is shown in Appendix B.

Consultation Procedures

To ensure adequate consultation on these issues with full participation by State and local agencies, Governor Deukmejian appointed Gordon Duffy, the Secretary of Environmental Affairs, as his OCS Coordinator. Secretary Duffy has established consultation procedures with these groups that are used to develop the Governor's comments on lease sales and on development plans. The goals of these procedures are to ensure that local policies and concerns are adequately addressed in federal actions, and to resolve specific State/federal conflicts well in advance of any development activities in the OCS.

Upon receipt of a lease sale or development plan, Secretary Duffy solicits recommendations from all interested State and local agencies as well as from industry, environmental groups, and the general public. These requests are generally by letter. In the case of lease sales, meetings with the affected parties are also held during the 60-day consultation period. As soon as major areas of concern have been identified, Secretary Duffy initiates negotiations with the Department of Interior in hopes of reaching a workable compromise that would allow the lease sale or development plan to go forward without litigation and still provide for the necessary environmental protections. In the case of lease sales, these negotiations are held directly with the Department of Interior. In the case of development plans,

the concerns are addressed within the framework of the Joint Review Panels discussed below under the National Environmental Policy Act.

For Lease Sale 73, this process resulted in a formal Memorandum of Agreement containing a comprehensive package of stipulations to be applied to all the affected leases. These stipulations covered California's concerns related to air quality, marine water quality, biological resources, endangered species, systems safety, commercial fishing, and onshore impacts due to oil processing and transportation. DOI was able to proceed with the sale without serious legal challenge.

A similar approach was applied to Lease Sale 80 with equally successful results. The only difference in this case was that because the process had been established during the previous lease, it was not necessary to sign a formal agreement. Interior had already incorporated most of the Lease Sale 73 stipulations into their Lease Sale 80 documents, and the remaining areas of conflict were handled through direct negotiations over the Secretary of Interior's response to the Governor's comments on the Draft EIS and the Proposed Notice of Sale prepared by Secretary Duffy. A similar process of negotiation can be applied to all future lease sales to ensure that the State's concerns are addressed without relying on costly and sometimes futile litigation.

Conflict Example: Air Quality

The problem of how to deal with the onshore air quality impacts caused by offshore development is a prime example of the disagreements between the State and the Department of Interior (DOI) that must be resolved if energy development is to proceed with minimal impacts on California's coast. Major reserves have been discovered the California coast, and the federal government has clearly stated that these reserves will play an important role in reducing the nation's dependence on foreign sources of oil. Some background will be necessary in order to understand this complex issue.

The OCS Lands Act directs DOI to adopt regulations to ensure that OCS operations do not significantly affect onshore air quality. DOI responded to this directive through the following process:

1. In 1979, DOI proposed nationwide regulations which California claimed were inadequate given air quality conditions on the West Coast. Contrary to conditions elsewhere in the country, the prevailing West Coast winds blow towards shore, carrying emissions from offshore sources on shore with little if any dispersion at sea.

2. In 1980, DOI adopted the nationwide regulations but proposed special regulations for California. California found that the proposed "California" regulations still did not meet State concerns.

3. In 1981, DOI withdrew the "California" regulations, leaving the inadequate national regulations in force.

Then-Governor Brown and the Air Resources Board, joined by Citizens for Better Environment and the Clean Air Coalition as intervenors, brought suit, claiming that:

1. DOI improperly related pollution impacts to distance from shore and exempted too many polluting operations from regulation. The regulations set an emissions significance standard of 2 percent over existing conditions that had to met before DOI would even require air emission assessments.

2. DOI regulations allowed offshore activities to impact non-attainment areas. Any additional pollution in a non-attainment area decreases the likelihood of local attainment of the ambient

air quality standards and may result in the imposition of sanctions by EPA.

3. DOI regulations required only best available control technology, and then only in cases where the 2 percent significance standard was exceeded. California requires offsets. Onshore development, which is required to provide offsets, thereby bears the burden of offshore emissions.

This lawsuit is still pending.

The matter is further complicated by the fact the Environmental Protection Agency, under the auspices of the Clean Air Act, requires that onshore areas of the State have federally approved State Implementation Plans (SIP) which demonstrate attainment of air quality standards by statutory deadlines, and which provide for subsequent maintenance of those standards. Section 172 of the Clean Air Act requires that the SIPs include all sources of emissions which potentially impact the onshore area. This situation potentially places the State and local jurisdictions in the position of being unable to meet the requirements of one federal agency due to actions of another federal agency. Should the deadlines and standards maintenance provisions of the SIPs not be met, EPA further has the authority to impose sanctions that would severely limit future industrial growth in the affected air basins.

In the past, State and local governments have attempted to resolve this quandry on a case by case basis. The air quality conflict was addressed for individual projects, and then only in situations where State involvement was possible through the use of joint environmental documents. The approach merely added to the inequity of the overall situation: onshore industry and platforms in State waters had to meet the State regulations; most platforms in federal waters faced the more lenient federal regulations; other federal

platforms met regulations somewhere in between based on conditions arising out of the environmental and consistency determination processes.

This Administration has applied the Governor's consultation process in an attempt to formulate a consistent set of air regulations that treat all offshore emission sources equally, and that ensure that local governments retain the ability to meet the federally-mandated air quality standards. This approach was first applied in Lease Sale 73. As part of the Memorandum of Agreement, strict air quality standards were negotiated as part of the package of stipulations to be included with each lease awarded under this sale. These successful negotiations produced the first instance in which DOI agreed to apply air quality protections comparable to those required for industry located elsewhere in the State. However, these stipulations applied only to Lease Sale 73 leases, and not to tracts covered by previous or future lease sales. This situation still left the potential for unequal treatment of offshore emission sources; and by not specifying in advance the level of mitigation that would be required of their future development activities, retained a significant amount of uncertainty that oil companies had to incorporate into their investment decisions.

The remaining problems were addressed during the Governor's consultation on Lease Sale 80. In their Proposed Notice of Sale, DOI included an Information to Lessees clause indicating the DOI's intention to review their existing air quality regulations. The clause stated that changes to these regulations would be applied to all OCS leases at some future date. As a result of negotiations between the State and Interior, the Final Notice of Sale included more definite air measures, providing the oil industry with the information necessary to make their investment decisions, and local government with the assurance that their efforts to meet the SIP deadlines would not be affected by the new leases. As a result of this agreement, DOI agreed to apply a stipulation to the Lease Sale 80 leases requiring measures similar to the Lease Sale 73 stipulations. DOI also agreed to revise its regulations relating to offshore operations in an attempt to solve

California's "unique" air quality problems on a permanent basis. The DOI has initiated a notice of advance rulemaking in order to develop regulations that will be applied to all OCS operations offshore California.

RECOMMENDATION: The Lease Sale 80 negotiations were the first step of a process that should result in DOI adopting acceptable regulations to protect California's already severely degraded air basins from offshore impacts. DOI's Final Notice of Sale for Sale 80 included a notice to lessees which announced that it would be revising its air quality regulations for offshore development. Revised air regulations should eliminate the need to continue the lawsuit, provided all intervenors are satisfied. The State, through Secretary Duffy, will continue to work with DOI to bring these negotiations to a satisfactory conclusion. At this time, DOI intends to initiate the rulemaking process in Spring 1986.

The air quality issue has been a continual source of conflict between the State and federal governments. However, the application of the consultation process under the OCS Lands Act appears to be providing a lasting resolution of this conflict, in a manner that is meeting the concerns of all the involved parties. The results of the air quality negotiations clearly point out that, properly applied, the consultation process provides an effective means of ensuring the protection of State and local government concerns at the lease sale stage.

Conflict Example: Fiscal Impacts

As several major offshore projects have recently begun to move through the review process, local governments in the central California coast developed concerns over whether they will have the resources to cope with growth impacts stemming from new oil and gas development in state and federal waters. The environmental impact studies completed to date have indicated that this growth will put severe strains on central coast housing markets and infrastructure that already are near capacity. These studies have also

shown that offshore developments may not produce the level of revenues local governments need to meet expanded demands on public services and infrastructure.

Offshore energy developments have the potential to induce substantial growth which could strain the ability of local governments to plan for and finance housing, public services, sewerage, water, and other public needs. For example, Oxnard will soon be at the limit of its sewage treatment capacity. The Santa Barbara housing market is already experiencing severe shortages. Major segments of the central coast do not have adequate fresh water supplies, a situation which has led some areas to impose growth moratoria.

At the same time offshore energy development is expanding, other sectors of the economy are challenging the growth capacities of the central coast. Major construction at Vandenberg Air Force Base for the space shuttle and MX programs will continue for the next few years. Ventura County has seen rapid urban development due to its proximity to the Los Angeles region. Several large industrial and recreational projects have been proposed for Santa Barbara County, but these may be precluded if the local economy is unable to absorb this growth along with the new level of offshore activity.

The tax base available to local governments is not increasing in proportion to the growth impacts from offshore development. Because of the nature of this development, the majority of investment for new construction is for the offshore facilities in state and federal waters. Most purchases of new supplies, materials, and services are from businesses located outside the central coast area and outside California. In the case of federal platforms, purchases that are made locally are for offshore delivery and are therefore not subject to sales tax. Consequently, local governments are having to cope with the growth impacts, but do not have adequate increases in property and sales tax revenues to meet the demands on existing services and public needs.

Several previous public works impact studies have been completed for this area, but these have not provided the necessary planning information local agencies are requesting. Environmental impact statements and environmental impact reports have been prepared for individual development projects and, on a more general level, for lease sales. These studies have been primarily modeling studies reporting generalized impacts (e.g., number of new immigrants, net present value of fiscal impacts); local agencies need more detailed information (e.g., 2 mgd additional sewage treatment capacity by 1990) in order to effectively plan for these impacts. These studies have analyzed the marginal impacts of individual projects; local agencies need information on the cumulative impacts in order to know when capital improvements, additional service personnel, and general plan changes will be needed. These studies have not identified sufficient mitigation measures; local agencies need assistance in developing alternative funding sources and programs to compensate for the lack of tax revenues from offshore projects. These studies generally have addressed only the impacts on one county; changes in infrastructure conditions have regional impacts affecting the entire central coast.

The U.S. Minerals Management Service also has completed several recent socioeconomic impact studies. However, these have been generalized modeling studies that have looked only at the impacts of existing developments; none of the detailed planning information has been developed. These studies have considered only the impacts of developments in federal waters; information for projects in State waters has not been included. These studies have only considered Santa Barbara and Ventura Counties; no baseline information has been developed for San Luis Obispo County, which will soon be affected by several projects in the northern Santa Maria Basin.

RECOMMENDATION: The Governor has supported oil lease revenue sharing as the appropriate means to enable local governments to cope with the impacts from offshore energy development. Efforts to enact such federal legislation should continue to be supported.

At the State level, increased revenue sharing will be provided by SB 1983, which was signed into law by the Governor (Statutes 1984, Chapter 1553). This measure will assist local governments in providing the public works improvements necessary to support increased activity by the offshore oil industry and its support industries. However, there are no comparable provisions for federal revenue sharing. Given the current status of efforts to reduce the federal deficit, chances of a federal revenue sharing measure are dim for the next few years.

In the meantime, fiscal impacts are being analyzed on a project by project basis. As part of the permit conditions, Exxon's recent Santa Ynez Unit and Chevron's Point Arguello project will be monitored by by Ventura, Santa Barbara, and San Luis Obispo Counties. In accepting the permits, the companies agreed to fund the monitoring expenses and to compensate the local governments for any negative fiscal impacts. However, this is still a piecemeal approach that may only capture the direct impacts on local government. There still may be a need for a more comprehensive analysis of impacts on public works that would ensure that all direct and indirect impacts are accounted for, and that would ensure that similar permit conditions imposed on future applicants are based on common assumptions and evaluation measures.

For local governments, such a comprehensive analysis should provide the information necessary to plan for the growth impacts of offshore development. For industry, the analysis should reduce potential delays in the permitting process. Questions on public works impacts are becoming major issues raised during public scoping and permit hearings. Ensuring full information that would assist local governments in handling these impacts would help resolve the issues before they become significant enough to delay energy development. For State government, the analysis should provide the means to assist local government and industry in resolving potential conflicts before they become a problem. At the same time, some delays to State lease revenues due to local opposition may also be avoided.

The current EIS/EIRs being prepared for oil development projects offshore northern Santa Barbara County are attempting to provide this comprehensive analysis as part of the socioeconomic studies. These documents are addressing the cumulative impacts of all oil development off the Central California Coast. If these documents show that the normal CEQA/NEPA process can provide this information at a level of detail sufficient to provide the information on public works impacts that local decision makers are seeking, then no further actions would be necessary. The analytical procedures and data produced by these documents then could be incorporated into the environmental studies of future offshore projects.

NATIONAL ENVIRONMENTAL POLICY ACT

Many of the offshore energy projects presently working their way through the permit process resulted from early lease sales that took place without consistency determinations or without benefit of the consultation procedures developed by this Administration. While exploration plans are generally gaining consistency approval from the Coastal Commission, problems are developing for some of these projects once they reach the more complex Development and Production Plan stage. These projects involve components both offshore and onshore crossing local, State, and federal jurisdictions. Due to the complexity of these projects and due to the fact that each agency has different interests to protect, the potential for conflict is tremendous.

Faced with proposals for several large OCS projects, this Administration responded with an attempt to minimize the potential for conflict by carefully coordinating the environmental review and permit process. One tool used by the Secretary of Environmental Affairs has been the Governor's consultation process under the OCS Lands Act for Development and Production Plans, similar to the process used for the Governor's comments on lease

sales. This approach early in the project review cycle helps to flush out potential problem areas when the project is first proposed.

A second and more comprehensive tool has been the formation of Joint Review Panels to oversee the preparation of the project environmental documents under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). Through these panels, the Secretary of Environmental Affairs has encouraged the preparation of joint environmental documents to avoid costly duplication and to encourage cooperation between the federal, State, and local agencies reviewing the projects. The Joint Review Panels include representatives from each major permitting agency. These generally include a federal, State, and local agency with a representative of the Secretary of Environmental Affairs serving as mediator and facilitator.

Conflict Example: Exxon Santa Ynez Unit

While the Joint Review Panel approach appears to be working very well in minimizing conflicts in the preparation of the document itself, the separate actions of the permitting agencies after the document has been certified may still be in conflict with one another and therefore cause considerable problems for the project proponent. A case in point is Exxon U.S.A.'s proposal to expand its Santa Ynez development offshore Santa Barbara County.

The existing Santa Ynez Unit involves one production platform and an offshore storage and treatment facility (OS&T). When the project was first constructed, Exxon placed the OS&T just outside State waters to treat production from its platform when it was unable to negotiate what it considered to be reasonable permit conditions for an onshore facility. With the new proposal Exxon intended to expand the Santa Ynez development by adding three to four additional platforms, expanding the OS&T, and expanding onshore treatment facilities. As an alternative to their preferred project, Exxon also proposed to remove the OS&T and construct new storage and

treatment facilities onshore and to construct a marine tanker terminal in State waters just offshore from its proposed treatment facilities.

Early in the process, the Coastal Commission deemed the "offshore option" to be inconsistent with the State's Coastal Program. Exxon appealed this decision to the Department of Commerce but continued through the environmental review process. The EIR/S was completed in July 1984, with all participating agencies concurring that the document met the requirements of both federal and State environmental laws. However, the Department of Interior disagreed with the other agencies on air quality issues and prepared a separate air section of the report for its use. The dispute between federal and State agencies in regard to air quality standards in general is discussed above under the OCS Lands Act section.

When the Exxon project reached the final decision stage of the process at the local level, it began to experience severe problems. The County of Santa Barbara, acting as the lead agency under CEQA, approved the onshore processing portion of the project. However, the County felt that it could not approve the marine terminal portion of the project within its jurisdiction until other potential terminal locations including a pending proposal by another oil company had been analyzed. Exxon did not feel that the County was acting fairly by withholding approval of its project until it had a chance to look at the advantages of a competing project. Exxon argued that CEQA only requires that other project alternatives be analyzed for purposes of general comparison and that there is no requirement to examine the alternatives and the proposed project in equal detail.

Prior to the County's action on this project, the Department of Commerce had rendered a partial decision on Exxon's appeal of the Coastal Commission's determination that the offshore treatment option was inconsistent with the State Coastal Program. The Commerce Secretary made some partial findings in Exxon's favor but declined to render a final decision pending the outcome of the permit process on the onshore option. Exxon has now reinitiated the

appeal to Commerce, citing its inability to receive reasonable project approval from the County. Exxon considers many of the conditions placed on the project by the County--especially in regards to air quality protection--to be unreasonable and beyond the jurisdiction of the County. Exxon has filed a lawsuit charging that the County has exceeded its jurisdiction.

RECOMMENDATION: The Santa Ynez Unit expansion was one of the first of the latest round of major offshore California projects to undergo the review process. This project also was one of the first major and highly complex projects where the joint document approach was tried under the current NEPA regulations and California's Permit Streamlining Act. Consequently, many of the procedures which the agencies are now applying to their review of the offshore projects were developed in response to many of the problems which arose during the Exxon review.

Other projects now moving through the permitting process are avoiding many of the problems that arose during the Exxon review. The scoping process at the beginning of the review has become more refined as the public and agencies have become more familiar with the issues. A more comprehensive and current data base on environmental conditions has been developed as part of the Exxon documents and other project studies. A better picture of the cumulative impacts offshore development in general similarly has been developed through these studies.

Further efforts to minimize future conflicts arising out of the permitting process is being provided through the coordination role of Secretary Duffy. In his role of the Governor's OCS Policy Coordinator, Secretary Duffy meets regularly with representatives of local government, environmental groups, and the oil industry to discuss issues related to offshore development and to identify potential means of resolving problems.

On a permitting level, Secretary Duffy also meets regularly with State Lands Commission, Coastal Commission, Resources Agency, and the planning

departments of Santa Barbara, Ventura, and San Luis Obispo Counties. The purpose of these meetings is to ensure communication among these agencies, and to resolve potential conflicts at the management level before potential delays to the permitting process occur.

Conflict Example: Cumulative Impacts

A frequent criticism of early NEPA and CEQA documents evaluating offshore projects was the absence of adequate consideration of cumulative impacts. The public and State agencies were concerned that the ultimate impacts of offshore development in an area were not being addressed in the permitting decisions. Similarly, full consideration of the onshore impacts due to processing, storage, and transportation of offshore production was not being included.

The Joint Review Panel process has provided the means to adequately address cumulative impacts and to ensure that the documents used to review offshore projects incorporate information on the onshore impacts. The environmental documentation for Chevron's Point Arguello Project is a case in point.

The Point Arguello Project was the first proposed in the Southern Santa Maria Basin off the Santa Barbara Coast. Chevron proposed two platforms and a subsea pipeline system and onshore processing facilities capable of handling all future production from the southern basin. Near the same time, Texaco proposed a new platform in this basin. In order to fully consider the potential impacts from development of the southern basin, MMS proposed to incorporate an Area Study in the environmental studies to evaluate the full impacts from the three proposed platforms plus another 5 platforms MMS believed may be necessary to fully develop the resources of this basin. The Area Study scope was set in cooperation with the State and local agencies represented on the Joint Review Panel, and was administered by this panel as part of the joint EIS/EIR. The document was certified by Santa Barbara County in October 1984.

The joint document will now be used by the permitting agencies to make permit decisions on the three platforms and the associated onshore facilities. Subsequent developments in the Southern Santa Maria Basin will be evaluated incorporating the cumulative impacts identified in the Area Study.

RECOMMENDATION: The Area Study concept appears to be a workable means to ensure consideration of cumulative impacts prior to development of frontier areas. This approach also ensures that federal agency decisions on future offshore developments in these areas will be made on the basis of environmental documents that address onshore impacts of concern to State and local agencies. An Area Study similar to the Point Arguello study currently is being completed for the Central Santa Maria Basin, and a third Area Study for the Northern Santa Maria Basin is expected to begin in early 1985.

OTHER STATE CONFLICTS WITH FEDERAL AGENCIES

The previous three sections analyzed the conflicts between State and federal agencies through the example of OCS energy development. As stated in the introduction to this chapter, the broad nature of this development and its potential impacts on offshore and onshore resources, regulations, and environmental conditions serves as a useful illustration of the types of conflicts that can arise where management of coastal resources overlaps the jurisdictions of the two levels of government. The OCS energy development example also illustrates several cooperative processes and specific actions which have been taken to resolve these conflicts, and which could be applied to similar conflicts in other resource management areas.

The full range of conflicts potentially could extend to a number of resource management issues and the various federal, State, and local statutes and regulations applicable to these issues. Offshore, conflicts can arise in cases where State and federal goals differ on such topics as fisheries

management, vessel traffic, marine life conservation, and environmental quality standards. Onshore conflicts generally arise in cases involving the extensive federal land holdings and their use for timber, mining, recreation, military bases, and conservation.

A full consideration of the actual and potential conflicts in each of the resource areas is beyond the capabilities of this report. However, to illustrate the applicability of the previous analysis and solutions, this section presents an additional conflict involving a non-energy development.

Conflict Example: Onshore Mining

Since the 1920's, Granite Rock Company has operated near the Big Sur area of Monterey County. Their current operations include an open-pit limestone mine encompassing five acres located on U.S. Forest Service lands. This mine is being operated under a Forest Service-approved Plan of Operations for 1981-1986.

In October 1983, the California Coastal Commission informed Granite Rock Company that a coastal development permit was required. Granite Rock sued, claiming that the Coastal Commission has no authority to issue such a permit for their operation. The District Court ruled against Granite Rock, and the case is now under appeal to the Ninth Circuit Court of Appeals. The federal government has joined this case on the side of Granite Rock.

In their suit, Granite Rock maintained that the Coastal Commission lacked permit authority for two reasons: (1) a coastal development permit issued under the Coastal Act would preempt federal authority under the 1872 Mining Act; and (2) the mine is located on federal lands which lie outside of the coastal zone, as defined in the Coastal Zone Management Act.

For the purposes of this report, the answer to the first point is largely dependent on the resolution of the second point. That is, if the mine is

located within the coastal zone, then the development would potentially be subject to a coastal development permit. As stated in Section 30600 of the Coastal Act:

> ...any person wishing to perform or undertake any development in the coastal zone, other than a facility subject to the provisions of Section 25500, shall obtain a coastal development permit.

If the mine is considered within the coastal zone, then the provisions of the Coastal Act would apply, to the extent that the exercise of State police power does not preempt federal law. In this event, Granite Rock would be subject to the coastal development permit provisions, just as it would be subject to local property taxation, other development statutes, and State environmental laws that similarly do not preempt federal law. Location on federal lands by itself would not exempt the mine from State and local regulation, as recognized in Section 30008 of the Coastal Act:

> ...provided, however, that within federal lands excluded from the coastal zone pursuant to the Federal Coastal Zone Management Act of 1972, the State of California shall, consistent with applicable federal and state laws, continue to exercise the full range of powers, rights, and privileges it now possesses or which may be granted.

As Monterey County does not yet have an approved LCP, the issuing body for the permit would be the California Coastal Commission.

In fact, Granite Rock argued in their suit that the permit conditions proposed by the Coastal Commission constituted a prohibition on mining activity and an interference with federal mining rights. The Coastal Commission and the Attorney General's Office claim that the conditions are merely a reasonable regulation of the mining activities designed to minimize potential adverse environmental impacts. Resolution of this dispute is primarily one of fact which is best left up to the courts, and is basically

an extension of the overall conflict of whether the Coastal Commission actually does have jurisdiction over this operation.

Under the Coastal Act and the Coastal Zone Management Act, federal lands are specifically excluded from the coastal zone. Section 1453(1) of the Coastal Zone Management Act states:

> ...Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal government, its officers or agents.

The Coastal Commission maintains that, although the mine is nominally on Forest Service land, that the full circumstances of ownership are not in conformance with the Section 1453(1) definition, and that the mine is within the Coastal Zone.

Granite Rock operates its mine under a perfected mining claim in accordance with the 1872 Mining Act. This claim can be retained by Granite Rock so long as it conforms to certain requirements (e.g., locating and mining a valuable mineral for commercial resale, carrying out at least $100 of assessment work since 1959, and performing more than $500 of assessment work needed for a patent). Once such a claim is established, the federal government's discretionary powers are limited primarily to protection of surface resources from waste, allowing limited public uses, and requiring a plan of operations. The federal government has no discretion in issuing such a claim, cannot allow other uses that are incompatible with mining, receives no revenues from the mining, retains no powers to ensure that mining continues, and cannot regain the claim except through condemnation. In fact, holders of perfected claims are able to obtain a patent granting fee title to the land through payment of $5 an acre for lode claims or $2.50 an acre for placer claims. The federal government has no discretion to approve or deny such a transfer of title. The Coastal Commission argues that these circumstances mean that land use decisions affecting the Granite

Rock mine are actually not "subject solely to the discretion" of the federal government, and are in fact solely the discretion of Granite Rock Company. ts a result, the Coastal Commission argues that the mine does not conform to Section 1543(1) of the Coastal Zone Management Act, and should be considered to be within California's coastal zone.

The circumstances surrounding the ownership of this mine and similar patented claims were recognized at the time the Coastal Zone Management Act was passed. NOAA, the agency responsible for implementing this Act, recognized that certain federal lands could fall within a "grey" category subject to state coastal management programs. NOAA's original regulations implementing the Act specified that the federal lands subject to the Section 1543(1) exclusion were only those lands over which the federal government exercised exclusive legislative jurisdiction. Other lands such as patented claims were to be included within state coastal zones. The Department of Interior objected to this proposed regulation, and the matter was referred to the Department of Justice for resolution. Justice ruled in favor of Interior's interpretation, which resulted in all federal lands being excluded from tstal zone.

RECOMMENDATION: At the time the Coastal Zone Management Act was passed, it was acknowledged that there were certain "grey areas" on federal lands where the actual circumstances of ownership could result in the inclusion of the lands in state coastal zones. However, the regulations as they were eventually issued provided for no such distinction. Even so, these regulations still retain ample provisions for the Coastal Commission to ensure protection of coastal resources through more direct means than what it is now seeking to do through the courts.

Specifically, the Coastal Commission could have subjected the Granite Rock plan of operations to a consistency determination, and reviewed this plan for whatever environmental protections it considers necessary for conformance with the Coastal Act. Additional conditions to the project then

would have been possible through local government reviews pursuant to any other permits necessary for operation of the project. However, the Coastal Commission waived a consistency review at the time the plan was completed.

At this point, there are two alternatives for resolving the issue of the federal lands "grey areas" which would avoid the delays and expense of the current court actions. First, the coastal management program amendment process is available to revise the coastal zone boundaries. Use of the amendment process requires consultation with the affected federal agencies, and as such would ensure that appropriate arrangements with the Forest Service could be made to apply coastal development permits in a manner that would not preempt federal laws. Second, a more effective and lasting solution is available through the Coastal Zone Management Act reauthorization process this year. As discussed above, certain clarifications to the Act will be considered during this process. This process would also be appropriate time to consider a clarification of Congress's intent in regards to the federal lands "grey areas."

CONCLUSION

Apparent conflicts between State and federal agencies have arisen as the level of development activities has increased in the OCS, adjacent to State waters but beyond the jurisdiction of State agencies. This level of activity is a relatively recent phenomena, and has raised concern among several State agencies over their ability to handle the additional impacts from federal activities in their planning and resource management responsibilities.

This situation has placed many State agencies in an apparent dilemma. Under State and federal law, these agencies are mandated to maintain environmental standards in the coastal and marine areas of the State. Yet, at the same time, a major source of potential impacts to these areas comes from

activities in federal waters, over which State agencies have no direct control.

Several agencies have attempted to resolve this dilemma through simplistic methods. In particular, the Coastal Commission has sought to acquire a veto authority over federal activities, depending on their consistency responsibilities under the Coastal Zone Management Act. The need for this type of direct control over federal actions has been the primary basis of their arguments in favor of requiring consistency determinations at the lease sale stage. The type of "direct control" that would be obtained through this additional authority would be largely illusory.

First, the consistency process is largely an advisory process. The responsibility for making the consistency determination remains with the federal agency or with the applicant proposing a project; the role of the Coastal Commission is only to concur or reject this determination. The consistency review occurs later in the leasing/development process, after most of the details of the proposed activity have been set. Second, the ultimate decision on consistency determinations remains the province of the federal government. All decisions of the Coastal Commission are appealable to the U.S. Secretary of Commerce, who may overrule the Coastal Commission on either substantive grounds or on the basis of the national interest.

Furthermore, the attempts by states to obtain direct control over federal actions have generally been rejected. This point was impressed on the Coastal Commission when the Supreme Court rejected their arguments on the Lease Sale 53 suit. In the final analysis, the federal government has the ultimate authority over development in the OCS, even though this development often results in impacts to California's coastal and marine areas.

There are, however, numerous provisions in federal law for the State to indirectly affect the extent and nature of OCS development. The consultation provisions of the OCS Lands Act, consistency determinations on

exploratory and development activities under the Coastal Zone Management Act, and the public comment requirements of the National Environmental Policy Act provide extensive opportunities for the review of proposed federal actions. Similarly, these opportunities also provide the means for State agencies to recommend alternatives and mitigation measures necessary to ensure protection of California's coastal resources, and specify the administrative procedures the federal agencies must follow in approving or denying the recommendations.

In order for this indirect authority to be effective, it is essential to maintain open communications with the federal agencies, and to foster a spirit of cooperation rather than confrontation. Accordingly, this Administration has attempted to work closely with the federal agencies well in advance of the final decisions affecting OCS development. These efforts have been made to ensure that State policies and local environmental constraints are fully considered in these decisions. Where appropriate, the results of these efforts have been formalized into lease stipulations and agency regulations.

The accomplishments of this approach to date demonstrate that it can be effective. DOI has agreed to major modifications in lease sale offerings and has added strict environmental protections for exploration and development activities without the lengthy and costly litigation that has been tried with little success in the past. A major issue of contention between the State and federal governments—air quality protection—is now finally being resolved through regulatory changes. The individual and cumulative impacts on coastal areas are being carefully explored through joint environmental documents, in sharp contrast to other areas of the country such as the Gulf Coast where DOI has never prepared an EIS for a proposed project.

REPORT CONCLUSION

This report has discussed several areas of conflict affecting coastal development, and has recommended possible resolutions of those conflicts at the State, federal, and local levels of government. Many of the problems reviewed lead to a common conclusion. That conclusion is that the Coastal Commission has failed to carry out certain intents of the Coastal Act in some areas and has greatly exceeded the Act's intent in others. The result has been that the Coastal Commission has vastly and unnecessarily expanded its role beyond that originally envisioned in the Coastal Act.

In regards to local government authority, the Coastal Commission's role has grown as the Commission has continued to retain much of the regulatory functions that the Legislature had intended to return to local governments. Much of the Commission's time is taken up in reviewing development permits that otherwise would be heard by local bodies, and the Commission's interests have expanded as the types of development projects heard before it have increased. This organizational spread has been inevitable. In order to make informed decisions on these projects, the Commission reasoned that it had to develop the in-house expertise and set policy standards for their review. In many local jurisdictions, local permit authority for coastal development likely will remain in the hands of the Commission indefinitely. Due to the lack of incentives on the part of the Coastal Commission staff to expedite the process of LCP approval, little progress can be expected in local areas with difficult planning problems.

In regards to State agency authorities, the Commission has functioned as an independent regulatory body setting its own policies. This situation has led to numerous instances where it has become necessary to clarify the Coastal Commission's role in relation to other state agencies. Its intrusion into areas previously the sole responsibility of other agencies based on a broad interpretation of the Coastal Act is in direct conflict with the Act itself, which states that the provisions of the Act should not

"increase, decrease, duplicate or supercede the authority of any existing state agency."

Where the federal government is concerned, apparent conflicts have arisen in recent years as development activities in the OCS have increased. The primary decision on any activities on the OCS lies with the federal government. However, numerous provisions currently exist in federal laws for the State to indirectly affect the nature and extent of OCS development. This Administration's approach of maintaining open communications and a spirit of cooperation are key elements in ensuring that California will retain a voice in those decisions. To this end, this Administration has negotiated precedent-setting federal lease conditions to preserve the quality of the coastal environment.

On several occasions, it has been necessary for other agencies or members of the public to proceed to the courts or to the Legislature in search of relief from the Coastal Commission's ever expanding claim of authority. This report has examined several of the conflicts which led to this litigation and which will likely result in future disputes. For each of these conflicts, specific recommendations were proposed in keeping with the original intent of the Coastal Act. Taken together, these recommendations should produce a Coastal Commission that is more cooperative with existing local and state agency mandates, and that properly implements the coastal protections enacted in the Coastal Act.

APPENDIX A

STATE LANDS PROPOSED LEASE SALE TIMELINE

DATE	ACTION
October 1980	State Lands Commission issued Notice of Preparation (NOP) for state lease sale Environmental Impact Report (EIR)
April 1982	Lands Commission issued Draft EIR with an extended public review period of 60 days (rather than the mandated 45 days)
April 30, 1982 May 15, 1982	Lands Commission public hearings in Santa Barbara
June 7, 1982	Lands Commission hearing in Sacramento to allow for Coastal Commission comments to be placed into the record
August 9, 1982	Lands Commission, Coastal Commission, Office of Planning and Research, and Attorney General staff review DEIR responses. (Coastal Commission comments accepted verbatim.)
September 23, 1982	Lands Commission certified Lease Sale EIR. Coastal Commission formally notified Lands Commission that a coastal permit is required.
December 23, 1982	Lands Commission approved the lease program
January 24, 1983	Lands Commission sent lease package to Coastal Commission for review
April 15, 1983	First Coastal Commission hearing
May 25, 1983	Coastal Commission voted (12-0) not to support staff recommendation to approve the lease program
	Secretary of Environmental Affairs chaired a group consisting of a Lands Commissioner, 2 Coastal Commissioners staff from each agency and from the Attorney General's office to draft a revised state lease program
August 12, 1983	Lands Commission approved amended lease program

August 23, 1983	Coastal Commission approved amended lease program (6-4) and issued a coastal permit. Lands Commission acknowledged approval but did not sign permit.
September 25, 1983	Santa Barbara Superior Court ruled that the Coastal Commission must vacate its approval and hold a properly noticed public hearing. Furthermore, the Lands Commission was restrained from opening bids until it obtained a coastal permit.
October 26, 1983	Coastal Commission revoked its permit approval and then voted to deny the lease program (10-1-1) even though staff recommended approval

APPENDIX B

CONSULTATION OPPORTUNITIES IN THE OFFSHORE LEASING PROCESS

5-YEAR LEASE PLAN

The following is DOI's current schedule for the new 1986-1991 5-Year Lease Plan:

Request initial suggestions*	July 1984
Prepare Draft Program	June 1984-February 1985
Distribute Draft Proposed Program*	February 1985
Notice of Intent to Prepare EIS*	February 1985
Publish Proposed Program*	September 1985
Publish Draft EIS*	September 1985
Complete Final EIS	April 1986
Publish Final Program	May 1986
Congressional Review	May-July 1986
Approve Final Program	July 1986

LEASE SALES

The following is the general steps followed for each lease sale:

Identify area of hydrocarbon potential	month 1
Call for Information*	month 1
Notice of Intent to Prepare EIS*	month 1
Area Identification	month 4
Draft EIS*	month 12
Final EIS	month 18
Proposed Notice of Sale*	month 19

Final Notice of Sale	month 22
Sale	month 23
Bid Review	month 24
Lease Issued	month 25

* State consultation opportunity

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

January 1, 1985

TO: STATE COMMISSIONERS AND INTERESTED PARTIES

FROM: JAMES W. BURNS, DEPUTY DIRECTOR FOR LAND USE
GARY L. HOLLOWAY, LCP ADMINISTRATION

SUBJECT: LCP STATUS REPORT

This quarterly status report is for the 67 county and city local coastal programs (LCPs) mandated by the Coastal Act of 1976. Each LCP consists of a land use plan (LUP or Phase II) and implementation ordinances (Zoning or Phase III). Most local governments prepare these in two separate phases, but some are being prepared simultaneously as a total LCP. An LCP does not become final until both phases are certified, have been formally adopted by the local government, and are then "effectively certified" by the Commission. This means that the Commission concurs with the determination of the Executive Director that the LCP as adopted by the local governing body is legally adequate to meet the provisions of the Coastal Act. Once effective certification has occurred, the local government assumes coastal permit-issuing authority.

The Coastal Act allows local governments, with Coastal Commission approval, to divide their coastal zone into geographic segments, with a separate LCP prepared for each segment. For this reason, there are 123 LCPs being prepared, instead of 67.

There is an interim procedure which allows for the transfer of permit authority, whereby local governments may take over coastal permit review responsibilities within 120 days after the LUP portion has been effectively certified.

Current LCP Status

To date, the Commission has reviewed and acted upon 104 land use plans (85% of the 123 LCP segments). Of these, the Commission has certified 73, and denied or certified with suggested modifications the other 31. Twenty-four of these LCPs or LUPs have portions or areas that are uncertified at this time, and are referred to as "white holes".

The Commission has acted upon 65 implementation (zoning) submittals (or 53% of the 123 segments). Of these, 36 have been approved, and the remaining 29 either rejected or approved with suggested modifications. Unlike the LUP portion of the LCP, there will not be 123 different zoning portions, because most local governments will implement their LUP segments through a single zoning ordinance which covers their entire coastal geographic area.

To date, 32 total LCP segments (26% of the 123) have been effectively certified and these local governments are now issuing coastal development permits. Also, local governments have assumed interim permit authority for an additional seven segments, and all of these have issued permits.

Permit Takeover Forecast

Current estimates indicate that an additional 2 LCP segments will be effectively certified by April 1st, bringing the total number of LCP segments where local governments will be issuing coastal permits to 34, or 28% of the 123 segments.

Projected LCP Submittal and Review

Land Use Plan certifications and amendment reviews will continue to be a large portion of the Commission's LCP workload during the coming year, with an increasing number of Zoning submittals occupying the Commission's attention during 1985.

Local Government Post-Certification Permit Activity

The Commission, under both the Coastal Act and its federally approved program, has the responsibility to monitor and periodically evaluate local coastal permit activity. Local decisions made pursuant to an effectively certified LCP as well as decisions made by any jurisdiction having interim permit authority are monitored in the Commission's Post-Certification Program. Maintaining information on all coastal permit applications processed by local governments aids in evaluating the effectiveness of the regulatory process in meeting the objectives and goals of the certified programs.

Statistics on local decisions have been reported to the federal Office of Coastal Zone Management on a quarterly basis beginning with the second quarter of 1982. The table below is a cumulative total of statewide local coastal permit and appeal activity from April 1, 1982 through September 30, 1984.

Permits Approved	# Appealable To Commission	Appeals To Commission
1,329	912	24

TABLE LCP Status by Jurisdiction (January 1, 1985)

AREA AND JURISDICTION[1]	LAND USE PLAN NONE or PEND	DENY or CM	CERT	CERT & ISSUING INTERIM PERMITS	TOTAL	ZONING[2] NONE or PEND	DENY or CM	CERT	EFFECTIVE CERT & ISSUING PERMITS	TOTAL
SUMMARY										
NORTH COAST	2	1	8	6	17	9	0	2	6	17
NORTH CENTRAL COAST	1	1	3	0	5	1	1	0	3	5
CENTRAL COAST	2	6	13	1	22	14	3	0	5	22
SOUTH CENTRAL COAST	0	0	13	1	14	5	0	0	9	14
SOUTH COAST	11	15	16	0	42	24	11	0	7	42
SAN DIEGO COAST	3	8	12	0	23	5	14	2	2	23
TOTAL	19	31	65	8	123	58	29	4	32	123
	15%	25%	53%	7%	--	47%	24%	3%	26%	
NORTH COAST AREA										
DEL NORTE COUNTY										
COUNTY			X+						X+	
HARBOR			X			X				
PT. ST. GEORGE	X					X				
CRESCENT CITY			X						X	
McNAMARA-GILLISPIE			X						X	
HUMBOLDT COUNTY										
NORTHCOAST				X+		X				
TRINIDAD				X+		X				
MCKINLEYVILLE				X		X				
HUMBOLDT BAY				X		X				
EEL RIVER				X		X				
SOUTH COAST				X+		X				
TRINIDAD (CITY)			X						X	
ARCATA		X						X		
EUREKA			X					X		
MENDOCINO COUNTY	X					X				
FORT BRAGG			X+						X+	
POINT ARENA			X						X	
TOTAL	2	1	8	6	17	9	0	2	6	17
NORTH CENTRAL COAST AREA										
SONOMA COUNTY			X						X	
MARIN COUNTY										
SOUTH (UNIT I)			X						X	
NORTH (UNIT II)			X+						X+	
SAN FRAN CITY/CO.		X					X			
OLYMPIC CLUB	X					X				
TOTAL	1	1	3	0	5	1	1	0	3	5

TABLE LCP Status by Jurisdiction (January 1, 1985)

AREA AND JURISDICTION[1]	LAND USE PLAN NONE or PEND	DENY or CM	CERT	CERT & ISSUING INTERIM PERMITS	TOTAL	ZONING[2] NONE or PEND	DENY or CM	CERT	EFFECTIVE CERT & ISSUING PERMITS	TOTAL
CENTRAL COAST AREA										
SAN MATEO COUNTY			X						X	
DALY CITY			X						X	
PACIFICA				X			X			
HALF MOON BAY		X				X				
SANTA CRUZ COUNTY			X						X	
SANTA CRUZ (CITY)			X+				X			
CAPITOLA			X			X				
WATSONVILLE			X			X				
MONTEREY COUNTY										
NORTH COUNTY			X			X				
DEL MONTE FOREST			X+			X				
CARMEL AREA			X+			X				
BIG SUR COAST		X				X				
MARINA			X						X	
SAND CITY			X+						X+	
SEASIDE		X				X				
MONTEREY (CITY)										
LAGUNA GRANDE		X				X				
DEL MONTE BEACH		X				X				
HARBOR/DOWNTOWN	X					X				
CANNERY ROW			X			X				
SKYLINE		X				X				
PACIFIC GROVE	X					X				
CARMEL (City)			X+				X			
TOTAL	2	6	13	1	22	14	3	0	5	22
SOUTH CENTRAL COAST AREA										
SAN LUIS OBISPO COUNTY			X+			X				
MORRO BAY				X		X				
PISMO BEACH			X						X	
GROVER CITY			X						X	
SANTA BARBARA COUNTY			X+						X+	
UCSB (LRDP)			X						X	
SANTA BARBARA (CITY)										
CITY			X			X				
AIRPORT			X			X				
CARPINTERIA			X						X	

TABLE LCP Status by Jurisdiction (January 1, 1985)

AREA AND JURISDICTION[1]	LAND USE PLAN					ZONING[2]				
	NONE or PEND	DENY or CM	CERT	CERT & ISSUING INTERIM PERMITS	TOTAL	NONE or PEND	DENY or CM	CERT	EFFECTIVE CERT & ISSUING PERMITS	TOTAL
SOUTH CENTRAL COAST AREA (Cont.)										
VENTURA COUNTY			X						X	
SAN BUENAVENTURA CITY			X						X	
HARBOR			X						X	
OXNARD			X+			X				
PORT HUENEME			X						X	
TOTAL	0	0	13	1	14	5	0	0	9	14
SOUTH COAST AREA										
LOS ANGELES COUNTY										
MALIBU/MOUNTAINS		X				X				
MARINA DEL REY		X				X				
STA. CATALINA IS.			X			X				
CERRITOS WETLAND		X				X				
LOS ANGELES (CITY)										
PACIFIC PALISADES	X					X				
VENICE NORTH	X					X				
VENICE OAKWOOD	X					X				
VENICE CANALS		X+					X+			
DEL REY LAGOON		X+					X+			
AIRPORT DUNES	X					X				
SAN PEDRO	X					X				
SANTA MONICA	X					X				
EL SEGUNDO			X						X	
MANHATTAN BEACH			X+			X				
HERMOSA BEACH			X			X				
REDONDO BEACH			X+			X				
TORRANCE		X					X			
P.V. ESTATES		X					X			
RANCHO P.V			X						X	
LONG BEACH			X						X	
AVALON			X						X	
ORANGE COUNTY										
N/SUN. BEACH			X						X	
N/SUN. AQ. PARK*	X					X				
N/BOLSA CHICA*		X				X				
N/STA ANA RIV.*	X					X				
N/STA ANA HTS.*		X				X				
N/NEW. DUNES*	X					X				
IRVINE COAST			X			X				
ALISO VIEJO			X						X	

TABLE LCP Status by Jurisdiction (January 1, 1985)

AREA AND JURISDICTION[1]	LAND USE PLAN					ZONING[2]				
	NONE or PEND	DENY or CM	CERT & ISSUING INTERIM	PERMITS	TOTAL	NONE or PEND	DENY or CM	EFFECTIVE CERT & ISSUING	PERMITS	TOTAL
SOUTH COAST AREA(Cont)										
ALISO CRK. REM.			X				X			
S/EM. ALLVIEW.		X				X				
S/SO. LAGUNA		X					X			
S/LAGUNA NIGUEL			X				X			
S/DANA POINT		X					X			
S/CAP. BCH.		X					X			
SEAL BEACH		X				X				
HUNTINGTON BEACH			X+				X			
COSTA MESA	X					X				
NEWPORT BEACH			X			X				
IRVINE (CITY)			X						X	
LAGUNA BEACH	X					X				
SAN CLEMENTE		X					X			
TOTAL	11	15	16	0	42	24	11	0	7	42
SAN DIEGO COAST AREA										
SAN DIEGO COUNTY										
SAN DIEGUITO			X				X			
SOUTH BAY IS.		X					X			
OCEANSIDE		X+				X				
CARLSBAD										
AGUA HED.			X			X				
MELLO I			X					X		
MELLO II			X					X		
DEL MAR	X					X				
SAN DIEGO (CITY)										
NORTH CITY		X+					X+			
LA JOLLA			X+				X			
PACIFIC BEACH		X+					X			
MISSION BEACH		X					X			
MISSION BAY	X					X				
PENINSULA		X+					X+			
OCEAN BEACH		X					X			
CENTRE CITY		X+					X			
BARRIO LOGAN			X				X			
OTAY MESA			X				X			
TIA JUANA R.V.			X				X			
BORDER HIGH.			X				X			
CORONADO			X						X	
NATIONAL CITY	X					X				
CHULA VISTA			X				X			
IMPERIAL BEACH			X						X	
TOTAL	3	8	12	0	23	5	14	2	2	23

TABLE NOTES

1. Table assumes a total of 123 LCP segments, and includes five Orange County segments that do not yet have official status.

2. "Zoning" means the Phase III Implementation Program.

3. LCP status. There are four status categories for LUPs:

   NONE or PEND: NONE means no submittal yet. PEND means submittal filed and under Commission review (also includes LUPs that were withdrawn prior to Commission action).

   DENY or CM: DENY means denied as submitted (no suggested modifications). CM means submittal denied and then certified with suggested modifications.

   CERT: Means certified as submitted or suggested modifications accepted by local government. Includes LUPs that were certified in part (i.e. geographic areas remain uncertified). May or may not be effectively certified per Commission regulations.

   INTERIM PERMIT: Means LUP effectively certified and jurisdiction has assumed interim permit authority per AB 385 (Hannigan).

   There are also four status categories for Zoning programs. Three are the same as those for LUPs (NONE or PEND, DENY or CM, and CERT). The fourth, EFFECTIVE CERT and ISSUING PERMITS, means LCP effectively certified and the local government has assumed coastal permit authority per PRC Section 30519.

4. + Portion uncertified at this time ("white holes").

5. * Not officially segmented by the Commission.

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