

# COASTAL ZONE MANAGEMENT AND PLANNING IN CALIFORNIA: STRATEGIES FOR BALANCING CONSERVATION AND DEVELOPMENT

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The continued pressure of population and urban growth in coastal regions,<sup>1</sup> and the rapid conversion of estuarine areas to developmental uses,<sup>2</sup> underscore the need for new mechanisms of allocating shoreline resources. Several state governments have responded to these concerns by establishing comprehensive management programs for coastal waters and related land areas.<sup>3</sup> With substantial federal

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1. Over 50% of the United States population lives within 50 miles of the Great Lakes or the Atlantic and Pacific Oceans, and the nation's seven largest metropolitan areas are located within the coastal zone. COMMISSION ON MARINE SCIENCES, ENGINEERING AND RESOURCES, *OUR NATION AND THE SEA* 48 (1969). In the 31 states bordering the coasts or Great Lakes, estuarine regions constitute only 15% of the states' lands but contain 33% of their populations. See B. KETCHUM, *THE WATER'S EDGE: CRITICAL PROBLEMS OF THE COASTAL ZONE* 103 (1972); D. RICHARDSON, *THE COST OF ENVIRONMENTAL PROTECTION*, 5-7 (1976).

2. In the 20-year period 1950-1970 more than 500,000 acres, or 7%, of the fish and wildlife estuaries were dredged and filled. D. RICHARDSON, *supra* note 1, at 7. Between 1922 and 1955, over one-fourth of the salt marshes in the United States were destroyed by filling, diking, or by constructing walls along the seaward edge. *Id.*

3. See, e.g., N.J. STAT. ANN. §§ 13:19-1 to 15 (West Supp. 1977) (New Jersey Coastal Area Facility Review Act); N.C. GEN. STAT. §§ 113A-100-128 (1975) (North Carolina Coastal Area Management Act); R.I. GEN. LAWS § 46-23-1 (Supp. 1977) (Rhode Island Coastal Resources Act); WASH. REV. CODE ANN. §§ 90.58.010-.140 (Supp. 1977) (Washington Shoreline Management Act of 1971). Cf. *Toms River Affiliates v. Department of Environmental Protection*, 140 N.J. Super. 135, 355 A.2d 679 (App. Div. 1976) (upholding New Jersey Coastal Facility Act); *Just v. Marinette County*, 56 Wis. 2d 7, 201 N.W.2d 761 (1972) (upholding regulation of wetlands

assistance,<sup>4</sup> these coastal zone programs alter traditional state and local responsibilities for planning and regulation, creating new institutional arrangements for arbiting demands for conservation, development and public access to coastal resources.<sup>5</sup> The success of these efforts in protecting the coastal zone for future generations<sup>6</sup> will depend on the responsiveness of governments, the adaptability of traditional legal doctrines to innovative exercises of a state's police power, and the capacity of coastal ecosystems to accommodate multiple uses.<sup>7</sup>

In California, an innovative strategy for coastal management has been operative on a regional scale since 1965 in the San Francisco Bay area,<sup>8</sup> and for the entire California coast since 1972. In the period preceding passage of the first statewide coastal act, demands for development of the state's 1100-mile coastline were particularly

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under state shoreland zoning law); Crooks, *The Washington Shoreline Management Act of 1971*, 49 WASH. L. REV. 423 (1974); MacDonald, *Shoreland Zoning in Maine*, 1 COASTAL ZONE MANAGEMENT J. 109 (1973); Pedrick, *Land Use Control in the Coastal Zone: The Delaware Example*, 2 COASTAL ZONE MANAGEMENT J. 345 (1976); Schoenbaum & Rosenberg, *The Legal Implementation of Coastal Zone Management: The North Carolina Example*, 1976 DUKE L.J. 1. See generally BRADLEY & ARMSTRONG, A DESCRIPTION AND ANALYSIS OF COASTAL ZONE AND SHORELAND MANAGEMENT PROGRAMS IN THE UNITED STATES (1972); D. MANDELKER, ENVIRONMENTAL AND LAND CONTROLS LEGISLATION 246-65 (1976) [hereinafter cited as D. MANDELKER]; Ausness, *Land Use Controls in Coastal Areas*, 9 CAL. W. L. REV. 391, 404-13 (1973).

4. See Coastal Zone Management Act of 1972, 16 U.S.C. § 1451 (1976). The federal program now provides up to 80% of the costs of administering a state's management program. *Id.* § 1455(a) (1976). See generally Mandelker & Sherry, *The National Coastal Zone Management Act of 1972*, 7 URBAN L. ANN. 119 (1974).

5. See notes 40-49 and accompanying text *infra*.

6. See 16 U.S.C. § 1452(a) (1976). This section declares a national policy to "preserve, protect, develop, and where possible to restore or enhance, the use of the coastal zone for this and succeeding generations." *Id.* See generally Wilkes, *Consideration of Anticipatory Uses in Decisions on Coastal Development*, 6 SAN DIEGO L. REV. 354, 371-74 (1969).

7. See D. GODSCHALK, F. PARKER & T. KNOCH, CARRYING CAPACITY: A BASIS FOR COASTAL PLANNING? 134-37 (1974). There are limits to the capacity of environmental systems to accommodate human activity. Beyond certain threshold levels, "growth can only be tolerated if paired with major public investments or new institutional arrangements." *Id.* at 144.

8. See CAL. GOV'T CODE § 66600-66606.6 (Deering 1974). See generally R. ODELL, THE SAVING OF SAN FRANCISCO BAY 98 (1972); Swanson, *Coastal Zone Management from an Administrative Perspective: A Case Study of San Francisco Bay Conservation & Development Commission*, 2 COASTAL ZONE MANAGEMENT J. 81 (1975).

acute.<sup>9</sup> Over two-thirds of California's wetlands have been lost to diking and filling operations since 1900,<sup>10</sup> and by 1972 only 260 miles (approximately twenty-five percent) of the coast remained accessible to the public.<sup>11</sup> Furthermore, potential solutions to this worsening situation were frustrated by numerous overlapping governmental jurisdictions.<sup>12</sup> California voters responded to these concerns through an initiative measure, enacting the Coastal Zone Conservation Act of 1972 (also referred to as Proposition 20).<sup>13</sup> The Act created a temporary state coastal commission and six regional commissions charged with preparing a comprehensive plan for the coastal zone,<sup>14</sup> and having authority to exercise interim regulatory controls over all developments<sup>15</sup> within one thousand yards of the shoreline.<sup>16</sup>

9. See S. SCOTT, GOVERNING CALIFORNIA'S COAST 5 (1975); Douglas & Petrillo, *California's Coast: The Struggle Today—A Plan for Tomorrow, Part I*, 4 FLA. ST. L. REV. 179, 179 n.1 (1976) [hereinafter cited as Douglas & Petrillo]. In the 1970's, about 84% of the state's 20 million persons live within 30 miles of the Pacific shore. To date, two-thirds of California's economic activity is concentrated in its 15 coastal counties. *Id.*

10. CALIFORNIA COASTAL ZONE CONSERVATION COMMISSIONS, ANNUAL REPORT 1973 at 4 (1973). California's coastal zone has lost over 250,000 acres of wetlands due to diking and filling since 1900, with only 125,000 acres remaining. *Id.*

11. *Id.* at 6. Over 60% of the coastline is owned by private parties. *Id.*

12. See SCOTT, *supra* note 9, at 7. In 1972, there were 172 separate governmental entities with jurisdiction in the coastal zone, including 15 counties, 45 cities, 42 state units, and 70 federal agencies. *Id.*

13. CAL. PUB. RES. CODE §§ 27000-27650 (Deering 1976). See R. HEALY, LAND USE AND THE STATES 64-102 (1976); M. MOGULOF, SAVING THE COAST: CALIFORNIA'S EXPERIMENT IN INTERGOVERNMENTAL LAND USE CONTROL (1975); SCOTT, *supra* note 9; Douglas, *Coastal Zone Management—A New Approach in California*, 1 COASTAL ZONE MANAGEMENT J. 1, 3-6 (1974); Note, *A Decision-Making Process for the California Coastal Zone*, 46 S. CAL. L. REV. 513 (1973); Note, *Saving the Seashore: Management Planning for the Coastal Zone*, 25 HASTINGS L.J. 191 (1973); Note, *Saving the Coast: The California Coastal Zone Conservation Act of 1972*, 4 GOLDEN GATE L. REV. 307 (1974); 11 HARV. J. LEGIS. 463 (1974).

14. CAL. PUB. RES. CODE §§ 27300-27320 (Deering 1976).

15. CAL. PUB. RES. CODE § 27103 (Deering 1976). The Act uses an encompassing definition for developments subject to interim permit controls, including the placement on land, in or under water, of any solid material or structure; discharge or disposal of dredged material or waste; grading, removing, mining, or extraction of any materials; changing the density or intensity of land or water use; construction, reconstruction, demolition, or alteration of the size of any structure; and the removal or logging of major vegetation. *Id.*

16. CAL. PUB. RES. CODE § 27104 (Deering 1976). The permit area is between the "seaward limit of the jurisdiction of the state and 1,000 yards landward from the mean high-tide line of the sea. . . ." *Id.* The permit authority and the Coastal Commissions were to last until January 1, 1977. CAL. PUB. RES. CODE § 27650 (Deering 1976).

Before the expiration of these interim powers, the California legislature enacted the Coastal Act of 1976.<sup>17</sup> The 1976 Act supersedes the coastal initiative and establishes the state commission as a permanent agency responsible for continued coastal planning and management.<sup>18</sup> The new Coastal Act, however, transfers development controls from the temporary commissions to local governments, which must prepare local coastal programs that meet state approval.<sup>19</sup> The Act reserves to the state commission power to amend local policies involving sensitive coastal resource areas<sup>20</sup> and major development projects that would, on balance, serve the needs of a broader area.<sup>21</sup> Although the 1976 Coastal Act does not adopt the California Coastal Plan,<sup>22</sup> the comprehensive plan prepared during the interim period, many of the plan's recommendations are included in the Act's planning and management policies.<sup>23</sup> These policies are intended to guide the coastal commission and local governments in program activities ranging from public access and protection of wetlands to the preservation of agricultural lands and concentration of urban development patterns.<sup>24</sup>

This Note examines the utility of California's coastal program as a response to competing demands for land use and environmental protection. The experience of the coastal commissions during the interim phase, and the integrated planning and management approach of the 1976 Coastal Act are analyzed and compared. After an overview of the coastal planning and management context, the Note discusses legal and policy concerns raised during the commissions' interim authority, strategy of the 1976 Coastal Act toward distributing state and local responsibilities, and the implications of its plan-

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17. CAL. PUB. RES. CODE §§ 30000-30900 (Deering Supp. 1977).

18. *Id.* §§ 30330-30333.

19. *Id.* §§ 30500-30522.

20. *Id.* § 30502.

21. *Id.* § 30515.

22. CALIFORNIA COASTAL ZONE CONSERVATION COMMISSIONS, CALIFORNIA COASTAL PLAN (1975).

23. CAL. PUB. RES. CODE §§ 30200-30255 (Deering Supp. 1977). *See* notes 164-69 and accompanying text *infra*.

24. CAL. PUB. RES. CODE § 30200 (Deering Supp. 1977). "[T]he policies of this Chapter [*Coastal Resources Planning and Management Policies*] shall constitute the standards by which the adequacy of local coastal programs . . . and, the permissibility of proposed developments subject to the provisions of this division are determined." *Id.*

ning and management policies for areas beyond the immediate land and water resources of the coastal zone.

## I. A CONTEXT FOR STATE COASTAL PLANNING AND MANAGEMENT

The issues involved in managing coastal resources are elements of a broader conflict between the demands of a growth-oriented economy and the ecological life-support system in which it operates. A preference for shoreline locations for industrial, commercial, residential and recreational development vies with continued shoreline use as habitats for fish and wildlife, as unique ecologic and scenic areas, and as sources of food and other benefits for man.<sup>25</sup> From a strict developmental perspective, these resources are considered only in terms of supplying needed goods to an expanding population and economic base.<sup>26</sup> In contrast, the conservationist approach begins with a premise that there are outward limits on the amount of growth the natural environment can sustain,<sup>27</sup> and warns that unrestrained exploitation of natural resources is self-destructive. Between these extremes, policymakers and planners seek optimal use of the coastal zone<sup>28</sup> by considering competing values and preferences of both public and private sectors.<sup>29</sup>

25. See, e.g., Friedman, *The Growth of Economic Values in Preservation: An Estuarine Case Study*, 3 COASTAL ZONE MANAGEMENT J. 171, 179-80 (1977); Odum & Skjei, *The Issue of Wetlands Preservation and Management: A Second View*, 1 COASTAL ZONE MANAGEMENT J. 151, 152-57 (1974); 12 URBAN L. ANN. 301, 301 n.1 (1976).

26. See Krutilla, *Some Environmental Effects of Economic Development*, in AMERICA'S CHANGING ENVIRONMENT 161 (R. Revell & H. Landsberg eds. 1970); ENVIRONMENTAL QUALITY IN A GROWING ECONOMY, at xii (H. Jarrett ed. 1966).

27. See L. CALDWELL, ENVIRONMENT: A CHALLENGE FOR MODERN SOCIETY 38 (1970); B. COMMONER, THE CLOSING CIRCLE, 29-44 (1972); D.H. MEADOWS, D.L. MEADOWS, J. RANDERS & W. BEHRENS, THE LIMITS TO GROWTH 29 (1972); Boulding, *The Economics of Coming Spaceship Earth*, in ENVIRONMENTAL QUALITY IN A GROWING ECONOMY 9 (H. Jarrett ed. 1966).

28. See Hufschmidt, Knox & Parker, *A Policy Analysis Approach*, in COASTAL ZONE RESOURCE MANAGEMENT 107 (J. Hite & J. Stepp eds. 1971). See also J. HITE & F. LAURENT, ENVIRONMENTAL PLANNING: AN ECONOMIC ANALYSIS 3 (1972). Hite and Laurent refer to the conflict between preservationists and exploiters as the "environmental dichotomy," since in many cases (particularly in the coastal zone) it involves either/or decisions. *Id.* at 3.

29. See Hufschmidt, Knox & Parker, *supra* note 28, at 107; Slonin, *Coastal Zone Resource Allocation: Some Legal and Economic Considerations*, 1 SEA GRANT L.J. 369, 374-75 (1976).

The resolution of these conflicts over the use and development of coastal resources is both spatial and temporal. First, there are problems with accommodating multiple land and water uses in the region.<sup>30</sup> Each site is capable of being evaluated in terms of development potential, natural capabilities, and the social desirability of alternative uses.<sup>31</sup> However, even the most desirable present use may have negative effects on the welfare of future generations.<sup>32</sup> For example, the decision to dredge and fill an estuary may offer inexpensive land for housing or industry, but research indicates that such areas have significant ecological value and productive properties that outweigh long-term developmental benefits.<sup>33</sup> If the decision is left to the individual property owner or to the local municipality,<sup>34</sup> the environmental and social costs could be passed off to a wider public.

30. See, e.g., 16 U.S.C. § 1452(b) (1976). The findings of the federal Coastal Zone Management Act note that among the increasing and competing demands on the lands and waters of the coastal zone are "requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources. . . ." *Id.* at § 1451(c).

31. See J. HITE & F. LAURENT, *supra* note 28, at 31; W. ISARD, *ECOLOGIC-ECONOMIC ANALYSIS FOR REGIONAL DEVELOPMENT* 2 (1972); Dickert & Sorensen, *Social Equity in Coastal Zone Planning*, 1 *COASTAL ZONE MANAGEMENT* J. 141, 148-49 (1974); Knetch, *Economics and Management of Coastal Zone Resources*, in *COASTAL ZONE RESOURCE MANAGEMENT*, *supra* note 28, at 89-90.

32. See Wilkes, *Consideration of Anticipatory Uses in Decisions on Coastal Development*, 6 *SAN DIEGO L. REV.* 354 (1969). Wilkes notes that "[e]ach stage of the normal process followed today actually is geared to rule out any consideration of possible future activities in the same location." *Id.* at 356.

33. See, e.g., R. LUKEN, *PRESERVATION VERSUS DEVELOPMENT: AN ECONOMIC ANALYSIS OF SAN FRANCISCO BAY WETLANDS* 125 (1976). Luken concludes from his economic analysis that preservation of the vast majority of the wetlands from non-water related industrial, commercial and residential activity is the more efficient allocation of these resources. *Id.* at 125. See also note 3 *supra*. But cf. Hufschmidt, Knox & Parker, *supra* note 28, at 107-08: "How much damage to the natural system is acceptable in return for providing employment and dignity for 200 poor families? Some ecologists would say none, while some economists and others concerned with social welfare might accept quite a bit."

34. See M.I.T. TASK GROUP, *ECONOMIC FACTORS IN THE DEVELOPMENT OF A COASTAL ZONE* 7 (1970) (prepared for the National Council on Marine Resources and Engineering Development). The M.I.T. study warns that local communities tend to emphasize "parochial" or secondary local benefits that raise one community's economic base only at the expense of another's. *Id.* But see CAL. PUB. RES. CODE § 30515 (Deering Supp. 1977); notes 130-31 and accompanying text *infra*. Since a community may also overestimate the negative impacts of a proposed facility that it does not wish to be located within its borders, this provision allows the state commission to preempt local wishes if the needs of a broader area would be advanced. CAL. PUB. RES. CODE § 30515 (Deering Supp. 1977).

Thus, an explicit recognition of alternative uses and trade-offs from a regional or statewide perspective could lead to different conclusions concerning the "best use" of the property.

An effective coastal zone management program must assess regional and statewide impacts of development decisions. The federal Coastal Zone Management Act,<sup>35</sup> for example, finds that traditional state and local institutional arrangements are inadequate for this task,<sup>36</sup> and focuses on unified state strategies<sup>37</sup> as the key to coastal protection. The legislation sets out three alternative frameworks for state programs: direct state planning and regulation; state criteria and standards for local implementation subject to administrative review and enforcement; and state review of local plans and regulations for consistency with state management objectives.<sup>38</sup> The federal program thus allows substantial flexibility and experimentation with new approaches to land and water management.<sup>39</sup>

Several states have comparable coastal management frameworks, but vary in program scope and the extent of state involvement. New Jersey's coastal program utilizes a comprehensive state permit control over major developments,<sup>40</sup> and directs the state environmental commissioner to generate long-term strategies for optimal development within the coastal zone.<sup>41</sup> In Washington, local governments are required to prepare "master programs"<sup>42</sup> for shorelines and related in-

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35. 16 U.S.C. §§ 1451-1464 (1976).

36. *Id.* § 1451(g). "In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate." *Id.*

37. *Id.* § 1451(h). States should enact "unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance." *Id.*

38. *Id.* § 1455(e)(1)(A)-(C). See generally Brewer, *The Concept of State and Local Relations Under the Coastal Zone Management Act*, 16 WM. & MARY L. REV. 717 (1975). "One of the goals of the Coastal Zone Management Act is to shift the focus of decisionmaking in certain areas of regional and national interest from the local to the state level." *Id.* at 728.

39. 16 U.S.C. § 1452(a) (1976).

40. N.J. STAT. ANN. §§ 13:19-1 to 15 (West Supp. 1977) (New Jersey Coastal Area Facility Review Act). See *Toms River Affiliates v. Department of Environmental Protection*, 140 N.J. Super. 135, 142, 150-53, 355 A.2d 679, 683, 687-89 (App. Div. 1976), D. MANDELKER, *supra* note 3, at 252-53.

41. N.J. STAT. ANN. § 13:19-16 (West Supp. 1977).

42. WASH. REV. CODE ANN. § 90.58.080 (Supp. 1976). A master program is the "comprehensive use plan . . . and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals and stand-

land uses.<sup>43</sup> These locally prepared programs must include regulatory controls, and are subject to state review and approval.<sup>44</sup> The North Carolina Coastal Area Management Act<sup>45</sup> requires that each of the state's coastal counties develop a comprehensive plan following state guidelines.<sup>46</sup> A state coastal commission reviews and approves these plans, and can require additional local policies with respect to state-designated areas of environmental concern.<sup>47</sup> The present California approach maintains the stringent development controls that characterized interim state-level coastal commissions, but provides for their transfer to those local governments meeting state standards for integrated planning and regulations in their coastal programs.<sup>48</sup> The state commission retains power to amend local programs that conflict with regional and statewide interests and objectives.<sup>49</sup> These new distributions of state and local responsibilities, and combinations of comprehensive planning with case-by-case regulatory controls, form the basic elements of a comprehensive coastal zone management program.

## II. THE INTERIM PERIOD OF COASTAL MANAGEMENT, 1972-1976

The California Coastal Zone Conservation Act of 1972<sup>50</sup> was the culmination of citizen efforts to "save the coast." Its approval as an initiative measure, Proposition 20,<sup>51</sup> enabled supporters to refer to

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ards developed in accordance with the policies . . . [of the Act] . . ." *Id.* § 90.58.030(3)(b).

43. See WASH. REV. CODE ANN. §§ 90.58.010-.140 (Supp. 1976) (Shoreline Management Act of 1971). See generally D. MANDELKER, *supra* note 3, at 254-61; Crooks, *The Washington Shoreline Management Act of 1971*, 49 WASH. L. REV. 423 (1974).

44. See WASH. REV. CODE ANN. §§ 90.58.070-.090 (Supp. 1976).

45. N.C. GEN. STAT. §§ 113A-100 to 128 (1975).

46. N.C. GEN. STAT. § 113A-110 (1975). See generally D. MANDELKER, *supra* note 3, at 261-65; Schoenbaum, *The Management of Land and Water Use in North Carolina*, 53 N.C. L. REV. 275 (1974); Schoenbaum & Rosenberg, *The Legal Implementation of Coastal Zone Management: The North Carolina Model*, 1976 DUKE L.J. 1 (1976).

47. N.C. GEN. STAT. § 113A-110(f) (1975).

48. See CAL. PUB. RES. CODE §§ 30500-30522 (Deering Supp. 1977).

49. See *id.* §§ 30502, 30515.

50. CAL. PUB. RES. CODE § 27000-27650 (Deering 1976).

51. See Adams, *Proposition 20—A Citizen's Campaign*, 24 SYRACUSE L. REV. 1019, 1019-46 (1973); Douglas, *Coastal Resources Planning and Control: The California Approach*, 5 ENVIR. L. 741, 745-48 (1975). When the California legislature failed to enact a coastal bill in its 1972 session, an alliance of interest groups successfully



the Act as a statewide mandate to forestall haphazard development and plan for future uses along the coast.<sup>52</sup> The rationale of Proposition 20, providing interim permit controls while planning for the coast, was similar to the McAteer-Petris Act,<sup>53</sup> which created the San Francisco Bay Conservation and Development Commission (BCDC). The BCDC, granted temporary authority in 1965, has been a permanent agency since 1970. The BCDC, along with the similar bi-state Tahoe Regional Commission,<sup>54</sup> provide a precedent for state-approved regional controls. This early effort at metropolitan coastal planning was a useful model for the interim state and regional Coastal Zone Conservation Commissions (CZCC's), established as agents for coastal management under the interim Act.

In contrast with the subsequent 1976 Coastal Act, Proposition 20 reflects a conservationist approach to coastal controls. The 1972 Act intended that delicately balanced coastal ecosystems be protected from further deterioration,<sup>55</sup> and authorized the coastal commissions to approve only those coastal development permits that had no substantial adverse environmental effect.<sup>56</sup> However, the interim coastal

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campaigning for its approval as a statewide initiative measure. The Act became law after 55.5% of the voters approved it at the general election on November 8, 1972. Adams, *supra*, at 1032-42.

52. See Adams, *supra* note 51, at 1043; Douglas & Petrillo, *California's Coast: The Struggle Today—A Plan for Tomorrow, Part II*, 4 FLA. ST. L. REV. 315, 330-31 (1976).

53. CAL. GOV'T CODE § 66600-66606.6 (Deering 1974). The McAteer-Petris Act finds that "a governmental mechanism must exist for evaluating individual projects as to their effect on the entire bay." *Id.* § 66601. During its interim period, the BCDC completed a policy-plan for the Bay. See SAN FRANCISCO BCDC, SAN FRANCISCO BAY PLAN (1969). See generally Note, *Saving San Francisco Bay: A Case Study in Environmental Legislation*, 23 STAN. L. REV. 349 (1971); Swanson, note 8 *supra*.

54. CAL. GOV'T CODE §§ 66800-66801 (Deering 1974 & Supp. 1977); NEV. REV. STAT. § 277.200 (1977) (Tahoe Regional Planning Act). See CAL. GOV'T CODE §§ 67000-67130 (Deering 1974) (California Tahoe Regional Planning Agency); *People ex rel. Younger v. County of Eldorado*, 5 Cal. 3d 480, 487 P.2d 1193, 96 Cal. Rptr. 553 (1971) (en banc).

55. CAL. PUB. RES. CODE § 27001 (Deering 1976).

The people of the State of California hereby find and declare that the California coastal zone is a distinct and valuable resource belonging to all people and existing as a delicately balanced ecosystem; . . . that in order to promote the public safety, health, and welfare . . . it is necessary to preserve the ecological balance of the coastal zone and prevent its further deterioration and destruction.

*Id.* See notes 138-42 and accompanying text *infra*.

56. CAL. PUB. RES. CODE § 27402 (Deering 1976). The proposed development must have no "substantial adverse environmental or ecological effect" and be consistent with the findings and objectives of the Act. *Id.*

program was not a moratorium on development. During the four-year period the commissions approved nearly ninety-seven per cent of the more than 25,000 permit applications.<sup>57</sup> This approval rate does not reflect the size or value of rejected developments, the commissions' power to condition permits on the lowering of planned development densities, the provision of public access to the oceanfront, nor the requirement of safeguards to protect land and water resources,<sup>58</sup> yet it refutes the notion that Proposition 20 was a no-growth measure.

During the interim authority of the coastal commissions, the administration of the permit program and the planning process caused significant controversies between the public and private developers. In addition to constitutional challenges and claims for exemption from the Act, the administrative procedures of the commissions, the public access provisions, and the assertion of regional and statewide controls over coastal development brought the program before the California courts. While preparation of the Coastal Plan also generated debate, the legislature's decision not to adopt the plan deferred or mooted many of the land use control issues raised. The following legal and policy issues emerged in the interim period:

#### A. *Constitutional Issues*

While the interim program faced numerous challenges as an unconstitutional infringement of property rights, the characterization of Proposition 20 as a stop-gap measure<sup>59</sup> helped sustain it against these challenges. Courts took notice that the Act's permit restrictions lasted only for a limited duration, and concluded that any impact on property rights was not severe enough to require compensation by the

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57. CALIFORNIA CZCC, PRESS RELEASE 2 (December 28, 1976). See SOUTH COAST REG'L COMM'N, SUMMARY OF 1973/1974/1975/1976 COMMISSIONS ACTIONS 1 (1976). The South Coast Commission, covering highly urbanized Los Angeles and Orange Counties, approved 97.5% of its nearly 9,000 requests for permits, including a total of 19,994 residential units, or 84.5% of the total seeking development approval. It also approved 304 recreation projects, or 98.3% of the total applications, 94.3% of the proposed commercial projects, and 99% of the permit applications for industrial projects. *Id.* at 1-2.

58. CAL. PUB. RES. CODE § 27403 (Deering 1976). See CALIFORNIA CZCC'S, ANNUAL REPORT 1973, at 8 (1973).

59. See *State v. Superior Court*, 12 Cal. 3d 237, 253, 524 P.2d 1281, 1292, 115 Cal. Rptr. 497, 508 (1974); *CEEED v. California CZCC*, 43 Cal. App. 3d 306, 314, 118 Cal. Rptr. 315, 321 (1974). See generally Freilich, *Interim Development Controls: Essential Tools for Implementing Flexible Planning and Zoning*, 49 J. URB. L. 65 (1971); I N. WILLIAMS, AMERICAN LAND PLANNING LAW §§ 30 01-30.06 (1975).

state. Furthermore, the urgency of the coastal initiative allowed courts to bypass direct opportunities for affected property owners to be heard before passage,<sup>60</sup> relying instead on the later procedural guarantees available during the interim permit process.<sup>61</sup> One court found sufficient standards inherent in the Act's delegation of permit power to overcome a challenge that it was unconstitutionally vague.<sup>62</sup> The Act's explicit mandate to protect resources through interim controls while the coastal plan was preparing for long-range coastal management were adequate guides for the commissions to exercise discretionary authority.<sup>63</sup>

In sustaining the Coastal Act against claimed infringements on property rights, California courts relied on earlier decisions validating temporary zoning actions that preserved the status quo pending adoption of a comprehensive plan.<sup>64</sup> In *State v. Superior Court*,<sup>65</sup> the supreme court found that the commissions' permit controls were a necessary method of assuring that development did not irreversibly commit coastal resources to uses inconsistent with the contemplated coastal plan.<sup>66</sup> As such, the permit controls could not constitute inverse condemnation "at this time" since the restrictions would last only so long as Proposition 20 was in effect.<sup>67</sup>

However, the issue concerning when an interim control is so extensive as to require compensation to the affected landowner was never resolved by the courts. The decision in *CEED v. Coastal Commission*<sup>68</sup> applied a hardship test, based on the reasonableness of

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60. See *CEED v. California CZCC*, 43 Cal. App. 3d 306, 319, 118 Cal. Rptr. 315, 325 (1974).

61. See *Reed v. California CZCC*, 55 Cal. App. 3d 889, 895, 127 Cal. Rptr. 786, 790 (1975) (sustaining commission's hearings procedures against procedural due process challenge).

62. See *CEED v. California CZCC*, 43 Cal. App. 3d 306, 325-29, 118 Cal. Rptr. 315, 328-31 (1974).

63. *Id.* at 326, 118 Cal. Rptr. at 330.

64. See, e.g., *Miller v. Board of Pub. Works*, 195 Cal. 477, 496, 234 P. 381, 388 (1925), *appeal dismissed*, 273 U.S. 781 (1927) (upholding revocation of a building permit after city council passed ordinance prohibiting construction of units on ground that it was contemplating a city-wide zoning plan); *Candlestick Properties, Inc. v. San Francisco Bay Conserv. & Dev. Comm'n (BCDC)*, 11 Cal. App. 3d 587, 89 Cal. Rptr. 897 (1970) (denying inverse condemnation claim for BCDC's denial of permit to fill bay while it was completing a comprehensive bay plan).

65. 12 Cal. 3d 237, 524 P.2d 1281, 115 Cal. Rptr. 497 (1974).

66. *Id.* at 253, 524 P.2d at 1292, 115 Cal. Rptr. at 508.

67. *Id.* at 254, 524 P.2d at 1292, 115 Cal. Rptr. at 508-09.

68. 43 Cal. App. 3d 306, 118 Cal. Rptr. 315 (1974).

such controls, to determine what would be a "taking" of private property: A temporary restriction may be a mere inconvenience, while the same control indefinitely prolonged would constitute a compensable taking.<sup>69</sup> Subsequent decisions failed to refine this definition, although loss of economic value resulting from denial<sup>70</sup> or conditioning<sup>71</sup> of permit applications were insufficient hardships to require compensation.

Whether the rationale of the interim permit control regulation as perceived by the California courts is applicable to other states contemplating coastal management will depend on the responsiveness of state courts to infringements on the rights of prospective developers.<sup>72</sup> Even where there is limited acceptance of such controls, the necessity to prevent serious harm to the environment and the initiation of a comprehensive management process arguably should lead to greater acceptance of interim regulation.<sup>73</sup> Controls should not, however, extend beyond the reasonable time required to develop a comprehensive strategy.<sup>74</sup>

In California, the transition to integrated planning and management controls under the 1976 Act is likely to change the criteria that determine the reasonableness of coastal controls. Permit denials by local governments and the coastal commissions must either find support as permanent police power controls or else compensate landowners in some way for the diminished use of their property.<sup>75</sup>

69. *Id.* at 315-16, 118 Cal. Rptr. at 322.

70. *See* AVCO Community Developers v. South Coast Regional Comm'n, 17 Cal. 3d 785, 800-02, 553 P.2d 546, 556-57, 132 Cal. Rptr. 386, 396-97 (1976).

71. *See* Frisco Land & Mining Co. v. State, 74 Cal. App. 3d 736, 141 Cal. Rptr. 820 (1977). "Here, the loss of income was not occasioned by a threat of taking the subdivider's lots, but by public uncertainty as to the terms on which development would be permitted throughout the whole coastal area." *Id.* at 761, 141 Cal. Rptr. at 835.

72. *See generally* N. WILLIAMS, *supra* note 59, at § 30.02.

73. *See, e.g.,* Fowler v. Obier, 224 Ky. 742, 758-59, 7 S.W.2d 219, 226 (1928); Monmouth Lumber Co. v. Ocean Twp., 9 N.J. 64, 74-75, 87 A.2d 9, 14 (1952); McCurley v. City of El Reno, 138 Okla. 92, 94-95, 280 P. 467, 469-70 (1929); N. WILLIAMS, *supra* note 59, at § 30.03.

74. *See, e.g.,* K.G. Horton & Sons v. Board of Zoning Appeals, 235 Ind. 510, 516-17, 135 N.E.2d 243, 246 (1956) (invalidating one-year interim ordinance that was successively re-adopted for ten years); Deal Gardens, Inc. v. Board of Trustees, 48 N.J. 492, 500, 226 A.2d 607, 611-12 (1967) (invalidating interim zoning ordinance after two-year period).

75. *See, e.g.,* Hagman, *Windfalls for Wipeouts*, in *THE GOOD EARTH OF AMERICA* 109, 119-24 (Harriss ed. 1974). *See generally*, Berger, *To Regulate, or not to Regulate—Is that the Question? Reflections on the Supposed Dilemma between Environmen-*

Particularly where the commissions alter local policies, balancing hardships suffered by private owners and by local and state publics will be significant in allocating the costs of coastal development controls.<sup>76</sup>

### B. *Regulatory Issues in the Interim Permit Program*

The power to issue the condition permits during the initial phase of the coastal program vested the coastal commissions with discretion<sup>77</sup> over coastal development decisions. Not surprisingly, developers claimed exemptions from this authority based on substantial completion of projects or prior approvals and negotiations with local governments. Once they were required to obtain coastal development permits, property owners challenged both the application procedures and the substantive weighing of evidence by the coastal commissions.

#### 1. The Vested Rights Exemption

To avoid the hardships of a newly imposed regulation, Proposition 20 included a provision that allowed construction on projects already substantially complete where the developer relied in good faith on locally issued building permits.<sup>78</sup> During the interim period, courts generally supported the commissions' efforts to confine exemptions. With the exception of the "See the Sea" exemption, discussed below, most decisions showed a preference for routing developments through the state permit system.

One exemption, resulting from *San Diego Coast Regional Commis-*

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*ital Protection and Private Property Rights*, 8 LOY. L.A. L. REV. 253 (1975); Michelman, *Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HARV. L. REV. 1165 (1967).

76. See CAL. PUB. RES. CODE § 30010 (Deering Supp. 1978). This section directs that the Act not be construed as authorizing the state commissions and local governments to exercise permit powers "in a manner which will take or damage private property for public use, without the payment of just compensation therefor." *Id.* See also CAL. PUB. RES. CODE § 31000 (Deering Supp. 1977) (California Coastal Conservancy Act). The newly established Coastal Conservancy is authorized to acquire property rights ranging from scenic easements to ownership in fee. *Id.* at § 31105. See note 135 and accompanying text *infra*.

77. See *State v. Superior Court*, 12 Cal. 3d 237, 248, 524 P.2d 1281, 1288, 115 Cal. Rptr. 497, 503 (1974): "The court rejected the contention that the commission's function was purely ministerial—even the most cursory examination of the Act reveals that determination of whether the applicant qualifies for a permit is entrusted to the commission's discretion." *Id.*

78. See CAL. PUB. RES. CODE § 27404 (Deering 1976).

*sion v. See the Sea*,<sup>79</sup> involved the nearly three-month time lag between the effective date of the Coastal Zone Conservation Act and the initiation of the permit program. The court held that developments within this period should be eligible for exemption from the permit program to avoid serious economic dislocations during the transition to new coastal regulation.<sup>80</sup> However, the dissent noted that the practical effect of the decision rewarded developers who were quick to incur construction costs before the starting date for commission permits,<sup>81</sup> and penalized those who in good faith adhered to the purposes of the Act.<sup>82</sup>

Despite the apparent loophole created by the *See the Sea* court, subsequent decisions restricted exemptions to specific stages in the development process. Thus, oil drilling rights,<sup>83</sup> grading,<sup>84</sup> or completion of subdivision improvements<sup>85</sup> did not entitle the owner to any exemption from the coastal permit program. Courts also rejected claims for exemption where the financial success of a project depended on a previously-approved construction design.<sup>86</sup> In addi-

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79. 9 Cal. 3d 888, 513 P.2d 129, 109 Cal. Rptr. 377 (1973).

80. *Id.* at 893-94, 513 P.2d at 131, 109 Cal. Rptr. at 379-80. The court reasoned that built-in delays incident to the permit program could suspend construction in progress for a significant period, and be "tantamount to a moratorium . . . not contemplated by the act, its authors, or the voters." *Id.*

81. *Id.* at 902, 513 P.2d at 137, 109 Cal. Rptr. 385 (Mosk, J., dissenting). "While the majority agrees that the building permit alone is insufficient, the result is that the builder who sought to beat the deadline by starting work is deemed to be in good faith." *Id.* at 896, 513 P.2d at 133, 132 Cal. Rptr. at 381. *But cf.* *South Coast Reg'l Comm'n v. Higgins*, 68 Cal. App. 3d 636, 645, 137 Cal. Rptr. 551, 556 (1977) (no exemption for substantial work involving off-site manufacture of pre-fabricated housing units).

82. *San Diego Reg'l Comm'n v. See the Sea*, 9 Cal. 3d 888, 902, 513 P.2d 131, 137, 109 Cal. Rptr. 377, 385. *But see* *Aries Dev. Co. v. California CZCC*, 48 Cal. App. 3d 534, 122 Cal. Rptr. 315 (1975). In *Aries*, the developer obtained a building permit on January 23, 1973, but could not begin construction until April, after it revised plans to satisfy the seismic safety element. The appellate court determined that *Aries* had not proceeded with a good-faith belief that all development approvals had been obtained. Rather, there was evidence that the developer "speeded up its timetable in a calculated effort to escape impending state land use controls." *Id.* at 554, 122 Cal. Rptr. at 329.

83. *See No Oil v. Occidental Petroleum*, 50 Cal. App. 3d 8, 28, 123 Cal. Rptr. 589, 603 (1975).

84. *See Environmental Coalition of Orange County v. AVCO Community Developers*, 40 Cal. App. 3d 513, 115 Cal. Rptr. 59 (1974).

85. *See AVCO Community Developers v. South Coast Reg'l Comm'n*, 17 Cal. 3d 785, 795, 553 P.2d 541, 547, 132 Cal. Rptr. 386, 392 (1976).

86. *See Urban Renewal Agency of Monterey v. California CZCC*, 15 Cal. 3d 577,

tion, in *AVCO v. South Coast Commission*,<sup>87</sup> the court rejected a claim that previously-approved zoning as a "planned unit development" provided the basis for a *See the Sea*-type exemption.<sup>88</sup> The supreme court noted that designation as a planned development merely imposed a special zoning on the property. As such, the developer had no vested right to that classification, nor a right to rely on official assurances as the basis for claiming a right.<sup>89</sup> Thus, despite extensive negotiations between the developer and government, the project was ineligible for an exemption from a coastal development permit.<sup>90</sup>

Other requests based on local actions for vested rights exemptions from the state program were similarly treated. For example, one party's sixty-year lease with a county to manage a proposed hotel-apartment complex did not establish any right to proceed without a coastal permit.<sup>91</sup> Other courts found no vested rights for private developers who purchased land from an urban renewal authority that was included under a granted exemption for the municipality.<sup>92</sup> Even when a locality's arbitrary action caused delay beyond the effective date of the state permit program, the developer's good-faith efforts did not qualify as a vested right before the state commission.<sup>93</sup>

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586-87, 542 P.2d 645, 649-50, 125 Cal. Rptr. 485, 489-90 (1975); *South Coast Reg'l Comm'n v. Higgins*, 68 Cal. App. 3d 636, 645, 137 Cal. Rptr. 551, 556 (1977).

87. 17 Cal. 3d 787, 553 P.2d 546, 132 Cal. Rptr. 386 (1976).

88. *See AVCO v. South Coast Reg'l Comm'n*, 17 Cal. 3d 785, 801-02, 553 P.2d 546, 556-57, 132 Cal. Rptr. 386, 396-97 (1976); *Oceanic California v. North Central Coast Reg'l Comm'n*, 63 Cal. App. 3d 57, 77, 133 Cal. Rptr. 664, 676 (1976).

89. *Id.* at 793, 553 P.2d at 551, 132 Cal. Rptr. at 391. *See generally* HFH v. Superior Court, 15 Cal. 3d 508, 516, 542 P.2d 237, 243, 125 Cal. Rptr. 365, 371 (1975); *Spindler Realty v. Monning*, 243 Cal. App. 2d 255, 53 Cal. Rptr. 7 (1966); *Anderson v. City Council*, 229 Cal. App. 2d 79, 40 Cal. Rptr. 41 (1964).

90. 17 Cal. 3d 785, 801-02, 553 P.2d 546, 556-57, 132 Cal. Rptr. 386, 396-97 (1976).

91. *See Marina Plaza v. California CZCC*, 61 Cal. App. 3d 388, 132 Cal. Rptr. 120 (1976).

92. *Urban Renewal Agency of Monterey v. California CZCC*, 15 Cal. 3d 577, 580, 542 P.2d 645, 647, 125 Cal. Rptr. 485, 487 (1975). The city's urban renewal plan was not sufficiently defined and unified to extend a blanket exemption to private developers. *Id.* at 583, 542 P.2d at 647, 125 Cal. Rptr. at 487. *See also* *People ex rel. San Francisco BCDC v. Town of Emeryville*, 69 Cal. 2d 533, 545-46, 446 P.2d 790, 799, 72 Cal. Rptr. 790, 799 (1968) (denying permit exemption to local plan because it was insufficient in detail to determine which actual developments would ensue).

93. *See California Central Coast Reg'l Comm'n v. McKeon Construction*, 38 Cal. App. 3d 154, 160-61, 112 Cal. Rptr. 903, 906-07 (1974). In *McKeon*, a court-mandated local approval of a sanitation permit that was arbitrarily denied before the passage of

Although these decisions regarding vested rights had inequitable effects in terms of the reasonable reliance of private parties, the actual hardship was to require state approval before further developing the property.<sup>94</sup> Those court decisions increasing the scope of the commissions' regulatory authority during the interim period reserved a great number of coastal development decisions to the comprehensive management process of the present coastal program.

## 2. Application Procedures in the Interim Coastal Program

The permit application procedures of the interim program gave significant weight to environmental concerns. In addition, the procedures imposed the burden of proof on the applicant.<sup>95</sup> The interim program required a two-thirds vote by the commission for actions on dredge and fill proposals and for those developments affecting physical or visual access to the coast.<sup>96</sup> Furthermore, the state commission was granted discretion to decline review of matters not presenting substantial issues, and could accept evidence, upon review, not presented at the regional level.<sup>97</sup> The Act also contained a broad standing provision<sup>98</sup> that permitted any persons whose interests were adversely affected by permit approvals, including self-proclaimed *ami du peuple*,<sup>99</sup> to appeal decisions to the state commission.

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the Coastal Act did not qualify for exemption when the remedy took effect after the coastal permit program was operative. *Id.*

94. See *AVCO v. South Coast Reg'l Comm'n*, 17 Cal. 3d 785, 801-02, 553 P.2d 546, 551-52, 132 Cal. Rptr. 386, 396-97 (1976); *Marina Plaza v. California CZCC*, 61 Cal. App. 3d 388, 132 Cal. Rptr. 120 (1976).

95. See CAL. PUB. RES. CODE § 27402 (Deering 1976); *Patterson v. Central Coast Reg'l Comm'n*, 58 Cal. App. 3d 833, 850, 130 Cal. Rptr. 169, 179 (1976); *REA v. California CZCC*, 52 Cal. App. 3d 596, 605, 125 Cal. Rptr. 201, 207 (1975); *CEEEED v. California CZCC*, 43 Cal. App. 3d 306, 319, 118 Cal. Rptr. 315, 324 (1974). See also *Douglas & Petrillo*, *supra* note 9, at 206-07.

96. See CAL. PUB. RES. CODE § 27401 (Deering 1976); *Patterson v. Central Coast Reg'l Comm'n*, 58 Cal. App. 3d 833, 843, 130 Cal. Rptr. 169, 175 (1976); *REA v. California Central Coast Reg'l Comm'n*, 52 Cal. App. 3d 596, 605, 125 Cal. Rptr. 201 (1975).

97. See CAL. PUB. RES. CODE § 27423(c) (Deering 1976); *Davis v. California CZCC*, 57 Cal. App. 3d 700, 709, 129 Cal. Rptr. 417, 422 (1976); *REA v. California CZCC*, 52 Cal. App. 3d 596, 605, 125 Cal. Rptr. 201, 208 (1976); *Klitgaard & Jones v. San Diego Coast Reg'l Comm'n*, 48 Cal. App. 3d 99, 108, 121 Cal. Rptr. 650, 655 (1975).

98. CAL. PUB. RES. CODE § 27423(a) (Deering 1976).

99. See *Klitgaard & Jones v. San Diego Coast Reg'l Comm'n*, 48 Cal. App. 3d 99, 110, 121 Cal. Rptr. 650, 656 (1975) (permitting a self-appointed "San Diego Coastwatcher" to intervene in state commission hearing on permit application); Sand-



All the above procedures of the interim coastal program were upheld, and thus have precedential value in defending commission procedural policies under the 1976 Coastal Act. However, while the allocation of the burden of proof to the applicant and the deference shown to administrative judgment may be appropriate for interim measures to reduce environmental harm,<sup>100</sup> more procedural guarantees may be required when the infringements on property rights are governed by a permanent regulatory structure.

### 3. Substantive Issues: Scope of Commissions' Discretion

Consistent with the procedures favoring environmental protection, the commissions under the interim coastal program were granted broad discretion<sup>101</sup> as arbiters of coastal development decisions. Although the Act required that the commissioners decide permit issues in accordance with the policies and objectives of the program, the commissioners had relative freedom to determine the scope and weight of evidence presented. Each application for an interim permit was subjected to a balancing of the project's impact on coastal resources, and public access to those resources, against the activity's positive economic benefits.<sup>102</sup>

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ers v. Pacific Gas & Electric, 53 Cal. App. 3d 661, 126 Cal. Rptr. 415 (1975) (supporting commission's grant of standing to parties whose line-of-sight to the ocean was partially obstructed by overhead electric utility lines). In *Klitgaard*, the court interpreted the standing provision broadly despite the potential for opening the Act to "eager beavers, busybodies and intermeddlers." 48 Cal. App. 3d at 109, 121 Cal. Rptr. at 665-66.

100. See, e.g., *Reed v. California CZCC*, 55 Cal. App. 3d 889, 896, 127 Cal. Rptr. 786, 790 (1975) (upholding state commission's policy to limit presentations at hearings to ten minutes against procedural due process challenge). Cf. *Pillsbury v. South Coast Reg'l Comm'n*, 71 Cal. App. 3d 740, 753, 139 Cal. Rptr. 760, 767 (1977) (commission's notification procedures to parties within 100 feet of proposed development was inadequate).

101. See *State v. Superior Court*, 12 Cal. 3d 237, 248, 524 P.2d 1281, 1288, 115 Cal. Rptr. 497, 504 (1974); *Natural Resources Defense Council v. California CZCC*, 57 Cal. App. 3d 76, 89, 129 Cal. Rptr. 57, 64 (1976); *CEED v. California CZCC*, 43 Cal. App. 3d 306, 325-29, 18 Cal. Rptr. 315, 328-31 (1974).

102. See, e.g., *State v. Superior Court*, 12 Cal. 3d 237, 248, 524 P.2d 1281, 1288, 115 Cal. Rptr. 497, 504 (1974); *Coastal Southwest Dev. Corp. v. California CZCC*, 55 Cal. App. 3d 525, 537, 127 Cal. Rptr. 775, 781 (1976). Accord, *Transcentury Properties v. State*, 41 Cal. App. 3d 835, 843, 116 Cal. Rptr. 487, 492 (1974) (balancing economic loss to developer against potential irreversible harm to environment to enjoin construction without applying for coastal permit). In *State v. Superior Court*, 12 Cal. 3d 237, 248, 524 P.2d 1281, 1288, 115 Cal. Rptr. 497, 504 (1974), the supreme court called the commission's permit review a "delicate balancing of the effect of each proposed development upon the environment of the coast."

Two contrasting appellate opinions illustrate the judicial deference shown the commissions' weighing of evidence in light of broader coastal concerns. In *Natural Resources Defense Council v. California CZCC*,<sup>103</sup> one court upheld the approval of permits for fifteen home-sites within a contemplated large-scale planned development, since there were only minimal adverse environmental effects. The court rejected a contention that the Act required full consideration of serious environmental hazards that could attend the project when large-scale development eventually took place.<sup>104</sup> Instead, the court found that the commission's discretion was restricted to only the immediate environmental impact of the permits at issue.<sup>105</sup>

However, in *Coastal Southwest Development Corp. v. California CZCC*,<sup>106</sup> another court upheld the denial of a permit for the first phase of a motel complex.<sup>107</sup> That court found the opinion evidence given by planning experts concerning potential secondary growth-inducing effects and the scenic value of the site, provided substantial evidence to support the denial.<sup>108</sup> In addition, *Coastal Southwest* suggested that any single project that could set in motion or accelerate a trend adverse to the environment should be similarly considered.<sup>109</sup>

Between these differing views of discretion, coastal commissioners have indicated an awareness of the conflict between present and future uses of the coast. For example, the commission, granting a permit for a recreational vehicle park,<sup>110</sup> acknowledged that a temporary intensive use that allowed many people to enjoy coastal amenities should have preference over a less intensive use such as housing. In another case, a permit was denied for private housing in one of the four remaining large open areas in the south coast region,<sup>111</sup> the commission choosing to maintain options for future use of the site in the interests of the recreational needs of both coastal and inland residents.<sup>112</sup>

These decisions reflect Proposition 20's objective of ensuring access

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103. 57 Cal. App. 3d 76, 129 Cal. Rptr. 57 (1976).

104. *Id.* at 89, 129 Cal. Rptr. at 65.

105. *Id.* at 91, 129 Cal. Rptr. at 66.

106. 55 Cal. App. 3d 525, 127 Cal. Rptr. 775 (1976).

107. *Id.* at 536, 127 Cal. Rptr. at 780-81.

108. *Id.* at 536, 127 Cal. Rptr. at 781.

109. *Id.* at 537, 127 Cal. Rptr. at 781.

110. *See* CAL. CZCC'S, ANNUAL REPORT 1973, at 9 (1973).

111. *See* CAL. CZCC'S, ANNUAL REPORT 1974, at 11 (1974).

112. *Id.*

to the coast.<sup>113</sup> However, absent unified criteria for determining which of the remaining coastal areas should serve either intensive recreational development or scenic parkland dedication, any pecuniary benefits and costs are borne unequally by present coastal property owners. With the advent of the 1976 program, the policies and standards for state and local regulation must require greater consistency to ensure that those persons subjected to controls will be evaluated by uniform or comparable methods.

### C. Coastal Planning Concerns under Proposition 20

In conjunction with the interim authority to issue permits, the commission was also responsible for preparing the comprehensive California Coastal Plan.<sup>114</sup> Although the plan's objectives provided guidance for the permit regulation, there was no official requirement to coordinate commission decisions with its planning function.<sup>115</sup> Nonetheless, the plan generated controversy over its impact on both economic growth<sup>116</sup> and coastal land values and development,<sup>117</sup> and

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113. See CAL. PUB. RES. CODE §§ 27401(c)-(d), 27403(a) (Deering 1976). See also Eickel & Williams, *The Public Trust Doctrine and California's Coastline*, 6 URB. LAW. 519, 555-61 (1974). "The presence of protectable public trust rights may provide a stronger legal foundation for regulating land use of nearby non-trust land." *Id.* at 574. See generally Berland, *Toward the True Meaning of Public Trust*, 1 SEA GRANT L.J. 83, 135-38 (1976); Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 473, 477 (1970); 79 YALE L.J. 762, 769 (1970).

114. CALIFORNIA COASTAL COMMISSIONS, CALIFORNIA COASTAL PLAN (1975) [hereinafter cited as COASTAL PLAN]. See CAL. PUB. RES. CODE §§ 27001(b), 27300-27320 (Deering 1976). The coastal plan was submitted to the California legislature on December 1, 1975. *Id.* § 27320(c).

115. See *id.* § 27402; State v. Superior Court, 12 Cal. 3d 237, 248, 524 P.2d 1281, 1288, 115 Cal. Rptr. 497, 504 (1974); Patterson v. Central Coast Reg'l Comm'n, 58 Cal. App. 3d 833, 841, 130 Cal. Rptr. 169, 173-74 (1976); National Resources Defense Council v. California CZCC, 57 Cal. App. 3d 76, 88, 129 Cal. Rptr. 57, 64 (1976). *But cf.* Douglas & Petrillo, *supra* note 9, at 200. The fact that the same commissioners are responsible for coastal planning and day-to-day permit decisions led to greater understanding of the conflicts between conservation and development, between conservation and public use, and among competing use demands. *Id.*

116. See generally LEGISLATIVE ANALYST, REVIEW OF COASTAL PLAN 2 (1976); Ellickson, *Ticket to Thermidor: A Commentary on the Proposed California Coastal Plan*, 49 S. CAL. L. REV. 715, 715-17 (1976); Ott, *Income Distribution Consequences*, in THE CALIFORNIA COASTAL PLAN: A CRITIQUE 40-41 (Inst. for Contemporary Studies 1976).

117. See, e.g., Frech & Lafferty, *The Economic Impact of the California Coastal Plan on Land Use and Land Values*, in CRITIQUE OF COASTAL PLAN, *supra* note 116, at 89; ICF & Assoc's, *Assessing the Impact of the Coastal Plan's Policies on Residential*

for recommending a broad range of policies ranging from aesthetic controls to alternative energy sources.<sup>118</sup>

Proposition 20, which authorized the plan, contained a broad outline of the plan's components<sup>119</sup> but did not identify any specific method for preparation and presentation.<sup>120</sup> The commissions responded to this flexibility by adopting a policy-plan approach.<sup>121</sup> Under the policy-plan approach, the commission made no recommendations regarding specific allocations for land and water uses within the coastal zone. Rather, the commission made 162 statements of findings and recommendations that formed the framework of a management program.<sup>122</sup> The plan was likened to a constitution for the coast,<sup>123</sup> setting forth model planning and management principles for assessing both present and future actions. Although this approach was criticized for making the costs of implementation indeterminate,<sup>124</sup> it established a basis for an enforceable means to integrate planning considerations into the coastal management program.

The legislature chose not to adopt the coastal plan as an official document.<sup>125</sup> The planning and management policies of the 1976 Coastal Act do, however, include many of these earlier specific recommendations.<sup>126</sup> Therefore the model established in the California Coastal Plan continues to provide standards and guidelines for commissions and local governments to evaluate regulatory decisions and local coastal programs.<sup>127</sup>

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and *Commercial Development*, in REVIEW OF COASTAL PLAN, *supra* note 116, at 25-27.

118. See, e.g., CALIFORNIA COASTAL PLAN, *supra* note 114, at 68-78 (Policies 44-56, Coastal Appearance and Design); *id.* at 101-09 (Policy 74, Alternative Energy Sources). See generally Ellickson, *Ticket to Thermidor: Commentary on the Proposed California Coastal Plan*, 49 S. CAL. L. REV. 715 (1976).

119. See CAL. PUB. RES. CODE § 27304(a)-(e) (Deering 1976).

120. See *id.* § 27303.

121. See CALIFORNIA COASTAL PLAN, *supra* note 114, at 5; Douglas & Petrillo, *supra* note 52, at 315-17.

122. See CALIFORNIA COASTAL PLAN, *supra* note 114, at 25-176.

123. See CAL. CZCC'S, ANNUAL REPORT 1974, note 111 *supra*.

124. See Bowden, *Hurdles in the Path of Coastal Plan Implementation*, 49 S. CAL. L. REV. 759, 762 (1976); Johnson, *supra* note 117, at 719.

125. CAL. PUB. RES. CODE § 30002 (Deering Supp. 1977).

126. See notes 164-69 and accompanying text *infra*.

127. CAL. PUB. RES. CODE § 30200 (Deering Supp. 1977).

#### D. *Conclusions Concerning the Interim Program*

Under the authority of Proposition 20, California established a coastal program encompassing both a regional and statewide framework for regulatory controls and planning. By declaring the protection of coastal resources a matter of concern to all the state's people,<sup>128</sup> the coastal program could impose an interim structure of state controls. The state commission could consider additional environmental factors from a coast-wide perspective, and conclude that adverse environmental effects outweighed any local benefits.

Although the regional commissions will be phased out under the new coastal program,<sup>129</sup> their manner of processing permit applications in terms of a coast-wide impact rather than only local impacts added a new dimension to development controls. Thus, a contention that a particular project was compatible with adjacent commercial uses,<sup>130</sup> or consistent with local objectives could be balanced against other concerns such as the potential adverse effect on coastal ecosystems.<sup>131</sup>

If the regional decision was appealed by any party, the state commission could review new evidence in terms of statewide interests. This *de novo* review<sup>132</sup> could consider additional factors, including regional disparities in development and the preservation of unique state and national resources.<sup>133</sup>

In sum, the Coastal Zone Conservation Act of 1972 intended the coastal commissions to be temporary state guardians of the coastline. The Act provided valuable time to develop a comprehensive strategy for long-term management of these resources. To accomplish these tasks, the Act bypassed local governments as direct participants in the overall process. While the state program appeared effective for

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128. CAL. PUB. RES. CODE § 27001 (Deering 1976); *CEEED v. California CZCC*, 43 Cal. App. 3d 306, 320, 118 Cal. Rptr. 315, 325 (1974) (rejecting contention that Proposition 20 violates home rule charter, since coastal management is a matter of statewide concern).

129. See CAL. PUB. RES. CODE § 30305 (Deering 1977).

130. See *Coastal Southwest Dev. Corp. v. California CZCC*, 55 Cal. App. 3d 525, 537, 127 Cal. Rptr. 775, 781 (1976).

131. *Id.* at 538, 540-43; 127 Cal. Rptr. at 782, 783-86; *REA v. California CZCC*, 52 Cal. App. 3d 596, 605, 125 Cal. Rptr. 201, 207 (1976).

132. See *REA v. California CZCC*, 52 Cal. App. 3d 596, 605, 125 Cal. Rptr. 201, 207 (1976); *Klitgaard & Jones, Inc. v. San Diego Coast Reg'l Comm'n*, 48 Cal. App. 3d 99, 108, 121 Cal. Rptr. 650, 655 (1975).

133. See generally Hershman, *Achieving Federal-State Coordination in Coastal Resources Management*, 16 WM. & MARY L. REV. 747, 767-72 (1975).

short-term control over coastal development, a realistic long-term approach should include local initiatives as part of the overall framework for state coastal zone management.

### III. THE CALIFORNIA COASTAL ACTS OF 1976

Three months before Proposition 20 expired, the California legislature adopted the Coastal Act of 1976<sup>134</sup> and a state Coastal Conservancy Act<sup>135</sup> to acquire lands for resource protection, restoration and enhancement. The coastal program under the 1976 Coastal Act basically transferred all but a few "critical area"<sup>136</sup> controls to local governments through state-certified local coastal programs. Although the regional commissions were maintained for a limited period to review and approve local programs,<sup>137</sup> the long-term strategy of the 1976 Act is based on local implementation with concurrent state power to amend policies affecting state or regional concerns.

The substantive provisions of the Coastal Act of 1976 reflect a more developmental viewpoint than Proposition 20.<sup>138</sup> Although recognizing the coast as an environmental resource,<sup>139</sup> the Act sets state goals for socio-economic<sup>140</sup> and energy<sup>141</sup> needs in the coastal zone. However, the Act does specify that conflicts between goals are to be resolved in a manner most protective of coastal resources.<sup>142</sup>

134. See CAL. PUB. RES. CODE §§ 30000-30900 (Deering Supp. 1977).

135. CAL. PUB. RES. CODE §§ 31000-31466 (Deering Supp. 1977). The conservancy is authorized to acquire . . . real property or any interests therein for preservation of agricultural land, *id.* § 31150; coastal resource enhancement projects, *id.* § 31251; resource protection zones, *id.* § 31300; reservation of significant coastal resource areas, *id.* § 31350; and for a system of public accessways to and along the state's coastline, *id.* § 31400.

136. See, e.g., CAL. PUB. RES. CODE § 30502 (Deering Supp. 1977) (sensitive coastal resource areas); *id.* § 30515 (public works or energy facility developments). See generally COUNCIL OF STATE GOVERNMENTS, ISSUES AND RECOMMENDATIONS IN STATE CRITICAL AREAS PROGRAMS (1975); Mandelker, *Critical Areas Controls: A New Dimension in American Land Development Regulation*, 41 J. AM. INST. PLANNERS 21 (1975); Schoenbaum & Silliman, *Coastal Planning: The Designation and Management of Areas of Critical Environmental Concern*, 13 URBAN L. ANN. 15, 17-22 (1977); Schroeder, *Implementing the Coastal Plan: A New Test for the Concept of State Control for Areas of Critical State Concern*, 46 S. CAL. L. REV. 772 (1976).

137. CAL. PUB. RES. CODE § 30305 (Deering Supp. 1977).

138. See notes 55-56 and accompanying text *supra*.

139. CAL. PUB. RES. CODE § 30001(a) (Deering Supp. 1977).

140. *Id.* § 30001.5(b).

141. *Id.* § 30001.2.

142. *Id.* § 30007.5.

### A. *The New Structure for State and Local Coastal Controls*

While most of the regulatory controls are shifted to the local level, the 1976 Coastal Act recognizes continued state planning and management through the state coastal commission.<sup>143</sup> The state retains limited jurisdiction for initial or appellate review of coastal development permits adjacent to wetlands and estuaries, and for developments within 300 feet from the coastline.<sup>144</sup> The commission also designates "sensitive coastal resource areas"<sup>145</sup> in consultation with affected local governments and regional commissions. The agency must justify the regional or statewide significance of the site,<sup>146</sup> and recommend implementing actions to be carried out through the local coastal program.<sup>147</sup>

The new coastal program also establishes state control over proposed public works projects<sup>148</sup> and major energy facilities.<sup>149</sup> In these cases, the developer must first request that the local government amend its coastal program to meet the needs of a broader area.<sup>150</sup> If refused, the developer may file a request for amendment with the state commission that indicates how the proposal is consistent with the policies of the coastal act.<sup>151</sup> The commission may then, after public hearings, approve and certify the amendment if it finds that a balancing of social, economic and environmental impacts indicates the project serves a greater need in the surrounding area.<sup>152</sup>

As a result of this state override provision, the commission must balance competing interests involving the location of highways, airports, and other growth-inducing public investments. Presumably, the commission will consider alternate sites in weighing benefits and costs from a regional or statewide perspective. This power to over-

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143. *Id.* § 30004(b).

144. *Id.* § 30602.

145. *Id.* § 30502(a). These areas are to be designated by September 1, 1977. *Id.*

146. *See id.* § 30502(b)(2).

147. *See id.* § 30502(c).

148. *Id.* §§ 30515, 30114(a), (b). These projects include water, sewer, telephone, and other utility lines; all public transportation facilities, *e.g.*, highways, parking facilities, airports, and mass transit facilities. *Id.*

149. *Id.* § 30515. Major energy facilities include electric power, generating plants, transmission lines, fuel storage facilities, petroleum refineries and new or expanded tanker terminals. *Id.*

150. *Id.* § 30515.

151. *Id.*

152. *Id.*

ride local decisions may also apply when communities are reluctant to accept power plants or large institutional facilities within their borders. The experience of the interim permit program and coastal planning under Proposition 20 should assist the commissions in this complex review process.

In accordance with the Coastal Act's planning and management policies, local governments must prepare a detailed land use plan and implementation actions as components of the overall management strategy. The local coastal program must conform to a state-determined methodology<sup>153</sup> and be certified<sup>154</sup> by the regional and state commissions. The locality may request the commission to prepare its program,<sup>155</sup> but failure to act locally allows controls to be retained at the state level.<sup>156</sup> Once certified, the local government is an administrator of the coastal permit program and can integrate permits with other development approvals.<sup>157</sup> Only local actions inconsistent with the coastal program,<sup>158</sup> or which affect public access or the ecology of the adjacent shoreline,<sup>159</sup> may be appealed to the state commission.<sup>160</sup>

This intergovernmental allocation of roles ensures a strong commission interest in both state and local actions affecting coastal development. The Coastal Act of 1976 sets out a policy framework and a structure for management that provides discretion at all levels for determining the details of planning and regulation. It transfers much of the initiation of coastal strategies to the local level, although state specification and review limits the variety of these programs. With the elimination of regional commissions by 1981,<sup>161</sup> the state commission will have an increased burden to assess any spillover effects of local actions on broader coastal interests. The capacities of local governments will also be tested by requiring municipalities to account for regional needs as well as their own interests.

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153. *Id.* § 30501(a).

154. *Id.* §§ 30510-30522.

155. *Id.* § 30500(a).

156. *Id.* § 30600(c).

157. *Id.* §§ 30600(b), 30519.

158. *Id.* § 30603(a)(3).

159. *See id.* § 30603(b)(1)-(5).

160. *See id.* §§ 30620-30626.

161. *Id.* § 30305.



B. *Planning and Management Policies of the 1976 Coastal Act*

The planning and management policies of the 1976 Coastal Act<sup>162</sup> are the guiding force behind California's present coastal program. These policies, many adapted from the earlier coastal plan, establish objectives and priorities for land and water use within the coastal zone without specifying particular uses for individual parcels. The planning and management policies provide standards for determining and evaluating the content of local and state management strategies.<sup>163</sup>

These guiding policies include a range of both conservation and development concerns. For example, the Act states a strong preference for maintaining lands in agricultural production, and seeks to establish clearly defined buffer areas between rural and urban land uses.<sup>164</sup> A related policy favors concentration of new activity within or adjacent to existing developed areas.<sup>165</sup> Near the shoreline, coastal-dependent development is given priority over other types.<sup>166</sup> Among preferred coastal uses, industry has a higher priority than recreational uses,<sup>167</sup> and visitor-serving commercial recreation facilities have preference over general industrial, commercial, or private residential development.<sup>168</sup> In estuarine areas, dredging and filling is limited to water-related uses and needs, and authorized only when mitigation measures are taken and no feasible less-damaging alternative exists.<sup>169</sup>

By ranking uses according to established priorities without specifying land and water allocations, California avoids challenges and inflexibilities that could emerge from a direct state master plan for the coast. At the same time, these policies indicate a mission for coastal

162. *See id.* §§ 30200-30264.

163. *See id.* § 30200.

164. *See id.* § 30241; COASTAL PLAN, *supra* note 114, at 60-61 (Policies 34-37, Agriculture). *See generally* Miner, *Agricultural Lands Preservation: A Growing Trend in Open Space Planning*, III MANAGEMENT AND CONTROL OF GROWTH 52 (R. Scott, ed. 1975).

165. CAL. PUB. RES. CODE §§ 30250, 30007.5 (Deering Supp. 1977); COASTAL PLAN, *supra* note 114, at 79-81 (Policies 59-60, concentrating development in urban areas). *See generally* REAL ESTATE RESEARCH CORP., THE COSTS OF SPRAWL (1974).

166. CAL. PUB. RES. CODE §§ 30255, 30001.5(d) (Deering Supp. 1977); COASTAL PLAN, *supra* note 114, at 25 (Policy 1(3)).

167. *Id.* § 30222.

168. *Id.*

169. *Id.* § 30233; COASTAL PLAN, *supra* note 114, at 38-42 (Policies 15-16).

management that extends well beyond protection of the shoreline from haphazard development and loss of public access. The mandate for local communities to plan comprehensively for their entire land area extends the coastal program into regional and statewide policy concerns.

### CONCLUSION

The California coastal program is currently in transition between state interim controls and a predominantly local planning and management system. In this stage, the regional and state commissions provide guidance and review for local programs and retain an appellate role for matters beyond local concern. As the regional commissions are phased out, the permanent local-state system should develop more explicit criteria for balancing conservation and development interests in coastal management decisions. The conflicts between private interests and governmental concerns at the local, regional, statewide and national levels<sup>170</sup> will also test governmental capacities to balance equitable and legal interests in property with policies and objectives for coastal use and protection.

Despite these burdens, the California coastal zone management approach may serve as a model for other state programs in resource conservation and development. Certain elements in the California experience indicate the likelihood of such implementation. First, the concentration of public concern on the need for improved land and water management provides an impetus for new state legislation. For example, the prospect of minimum public access to the shore or the conversion of natural areas to private developmental uses may promote political interest. Even if other states lack the California statewide initiative procedure, a concentrated concern on environmental issues seems a requisite for acceptance of a management program.

Second, the California emphasis on stringent interim controls with concurrent development of a comprehensive plan or strategy provides an assertive state role in coastal protection. The visibility of the commissions, and acceptance by the public and courts of the permit program and planning process, established precedent in law and fact for state management controls and directives. Even with conces-

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170. *See, e.g.*, Coastal Zone Management Act Amendments of 1976, § 7, 16 U.S.C. § 1456a (1976) (providing federal grants for state coastal energy impact programs). *See generally* Note, *Coastal Zone Impacts of Offshore Oil and Gas*, 8 PAC. L.J. 783 (1977).

sions to both local controls and to various social and economic interests in the 1976 Coastal Act, the permanent structure for coastal management retains both the commission system and development controls as part of its overall strategy. Without the four-year experience under Proposition 20, it seems unlikely that such a comprehensive approach would be as readily accepted.

Finally, before other states imitate strategies on the scale of the California program, there must be political and legal acceptance of the doctrines necessary to carry out the program. Since other states may be less flexible in the extent of discretion allowed an administrative body,<sup>171</sup> or may be less willing to accept regulatory procedures affecting property interests,<sup>172</sup> proponents of a resource management system must consider the ability of existing institutions to exercise new roles or powers. Furthermore, these institutions must respond to the need for environmental controls of varying scope and duration. The California management strategy is a proven framework for a strong state response to conflicting demands of developmental pressures and the imperatives of natural ecosystems.

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171. *Cross Keys Waterways v. Askew*, 351 So.2d 1062 (Fla. Dist. Ct. App. 1977). See generally 1 COOPER, STATE ADMINISTRATIVE LAW 73-91 (1965); notes 62-63 and accompanying text *supra*; Schoenbaum & Silliman, *supra* note 136, at 28-30.

172. See, e.g., notes 72-74 and accompanying text *supra*; COOPER, *supra* note 171, at 81; Schoenbaum & Silliman, *supra* note 136, at 34-36.

