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Transforming the California Coastal Commission: Case Studies from Other Coastal Management Programs

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**Transforming the
California Coastal Commission**

Case Studies from Other Coastal Management Programs



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Abstract

In 2002, the California Third District Court of Appeal found that the California Coastal Commission's (CCC) appointment process violated the separation of powers doctrine of the California Constitution. Although the Legislature partly addressed the issue in 2003, the constitutionality of the CCC remains unclear. The CCC is facing other significant challenges, including strained relationships with local government and criticism of its public participation process.

This paper examines whether organizational changes to the CCC could result in improved relationships with local government and more effective public participation processes while addressing the separation of powers issue. Websites from 30 coastal management programs (CMPs) were reviewed to determine the types of organizational models employed by various agencies. In-depth case studies of four CMPs that had received positive NOAA evaluations were developed to determine how these programs had achieved success in terms of local government relations and public participation.

Based on the analysis, thirteen recommendations are provided, including reducing CCC permit authority, reassigning CCC staff to local support and assistance, reinstating local planning grants, requiring performance measurement and restricting grant eligibility for local non-compliance. Additional research is warranted on the effectiveness of enforcement programs and the effects of reorganization on CMPs.

Introduction

Background

The agency with primary responsibility for implementing coastal policy in California is the California Coastal Commission (hereinafter CCC). The CCC derives its regulatory authority from the California Coastal Act of 1976 (Coastal Act), which was adopted by the legislature following expiration of the voter-approved Proposition 20, the California Coastal Zone Conservation Act of 1972 (CCC, 2003).

Together with the Bay Conservation and Development Commission (BCDC) and California Coastal Conservancy, the CCC administers California's Coastal Management Program pursuant to the Federal Coastal Zone Management Act (CZMA). With the notable exception of the San Francisco Bay area, which is regulated by the BCDC, the CCC is the regulatory arm of the Coastal Management Program, while the CZMA's federal grant program is managed by the Coastal Conservancy.

Appointment Structure. The CCC is organizationally located within the California Resources Agency. The CCC is comprised of 12 appointed voting members and four non-voting members. The voting members are appointed equally (four each) by the Governor, Senate Rules Committee, and the Speaker of the Assembly. Six of the voting members are local elected officials and six are selected from the public at large. The ex officio (non-voting) members represent the Resources Agency, the Trade and Commerce Agency, the State Lands Commission, and the Business, Transportation and Housing Agency.

Agency Jurisdiction and Responsibilities. The California Coastal Zone, for which the CCC has purview, is a vast area of land, stretching over 1,100 miles in length and varying in width from several hundred feet to over five miles (CCC, 2003). Offshore, the

Coastal Zone extends for three miles. The stated mission of the CCC is to: "Protect, conserve, restore and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations" (CCC, 2003).

A primary responsibility of the CCC is certification of Local Coastal Programs (LCPs). The Coastal Act requires all local jurisdictions (cities and counties) within the Coastal Zone to prepare and adopt an LCP. LCPs are comprised of a Land Use Plan (LUP), which lays out land use designations and policies within the Coastal Zone, and zoning ordinances, maps and other legal instruments necessary to implement the LUP. The CCC reviews and certifies each LCP and any subsequent LCP amendments based on the proposed plan's consistency with the policies of the Coastal Act.

Once a local community has a certified LCP, the community is granted the authority to issue Coastal Development Permits (CDPs) for proposed development in most of its portion of the Coastal Zone (called the local permit jurisdiction). However, until an LCP is certified, the CCC retains all authority to issue CDPs for development in the affected community.

Even after local permit jurisdiction is granted, CDPs granted by the local government may be appealed to the CCC if they are located within specified areas or if they involve major public works projects. The appeals areas are typically located between the coastline and the first public road and near environmentally sensitive areas. These CDPs are referred to as being in the "appeals jurisdiction." Further, the CCC retains full authority to grant CDPs (called permanent jurisdiction) in areas containing tidelands and public trust lands, including areas below the mean high tide line, estuaries, and tidally influenced streams.

In addition to these functions, the CCC has authority under the CZMA to review any federal permits or activities or any projects that receive federal funding for consistency with the Coastal Act, such as proposals for offshore oil development and power plants. The CCC also has authority to review and approve development on property owned by the University of California and community colleges pursuant to CCC-certified Long Range Development Plans (LRDPs) and for all ports pursuant to CCC-certified Port Master Plans.

Agency Structure. The headquarters office of the CCC, located in San Francisco, is responsible for statewide programs including offshore energy, ocean resources, oil spill prevention, water quality, statewide planning, federal consistency, federal grants, and legal, and mapping activities. In addition to the headquarters office, there are six regional district offices that are responsible for LCP administration and permitting activities for the cities and counties located within each respective region. In addition to headquarters and district offices, an office of the legislative liaison is located in Sacramento. The organization is led by the Executive Director, who is appointed by, and serves at the will of the Commission.

Central Problems

Supporters maintain that the CCC is "the guardian angel of the coast," protecting it from high-rise development, gated communities, oil development, nuclear power plants and multi-lane coastal freeways (Faber, 2003). However, the CCC has been the subject of widespread and vocal controversy since its inception. Critics charge that the non-elected Commission has been subject to political and interest group manipulation and has extended its powers well beyond the authority granted it by the Coastal Act. ("Going Coastal," 2001). This controversy has been exacerbated by funding shortfalls, strained relationships with

local governments, criticism of its public participation process, and, most recently, a finding that the CCC's composition is unconstitutional by the State Court of Appeals.

Budget Woes. Over the years, the CCC has endured massive budget cuts from governors that did not support its mission, particularly during the Deukmejian and Wilson administrations (Gladstone, 1992; King, 2001). Between the 1980's and the mid-1990's, the CCC's budget was cut more than 43 percent and its staff was cut by more than half (National Oceanic and Atmospheric Administration (NOAA), 2001). The Davis Administration restored a significant portion of the CCC's budget during the 2000 and 2001 fiscal years (NOAA, 2001), reaching a high of \$16.3 million in 2001 (LAO, 2003). Despite the increases, NOAA noted that staffing levels were only "marginally adequate" to meet core functions.

Significant reductions were made once again due to the recent budget crisis. As part of their mid-2003 budget proposal, Republican legislators proposed abolishing the CCC altogether (Weiss, 2003). Ultimately, the agency's budget was reduced from \$16 million in Fiscal Year 2003 to \$14.9 million in Fiscal Year 2004, including a reduction in staff positions from 155 to 137. For Fiscal Year 2005, Governor Schwarzenegger has proposed an additional reduction of approximately \$384,00 from the agency's Fiscal Year 2004 budget, without further reductions in staff (Governor's Budget 2004-5, 2004).

Local Government Relationships. The 1975 California Coastal Plan, which remains the primary state coastal policy document and served as the basis for development of the Coastal Act in 1976, states that implementation of California's coastal management program (CMP) should rely primarily on local governments because:

- Using existing local government land use planning and development review system can help eliminate duplication at the state level;
- Local government is most accessible and accountable to local citizens;
- Consolidation of the development review process at the local level reduces the time and money costs to applicants;
- Local governments are best able to reflect the different conditions and values of the many communities along the 1,100-mile coastline; and
- Local government preparation of general plans is already required; therefore, local coastal plan implementation is a logical step.

According to the Coastal Plan, the primary role of the state coastal agency is to assist local governments by providing data, staff support and technical assistance in the preparation of local plans and implementation strategies. The Coastal Plan envisioned that only limited permit and appeal authority should remain at the state level and only for projects where the state's interest should be protected and uniform application of the Coastal Act would be in question. Specifically, the Coastal Plan identifies these projects as major coastal facilities, construction in or near sensitive resource areas and developments at variance with local plans. To this end, Section 30004(a) of the Coast Plan (1976) states that: "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."

In 1996, the Wilson Administration charged that the CCC had neglected its primary role as a resource management agency because it had been forced to spend excessive amounts of time on processing CDPs that should be the responsibility of local government

(Leshner, 1996). His charge was supported by the fact that several major Coastal jurisdictions, including the City of Los Angeles, Los Angeles County, and the City of Malibu have never adopted LCPs. Of 125 coastal jurisdictions required to adopt LCPs, 37 (roughly 30 percent) have not yet done so (NOAA, 2001). As a result, the CCC remains responsible for all permitting activities within the coastal zones of these jurisdictions.

The problem of uncertified LCPs exacerbates the CCC's workload problem because the CCC is continuing to process permits that are the responsibility of the 37 non-compliant local jurisdictions. Conversely, because of the need to keep the permitting system operational, there are no CCC staff available to assist any community that lacks a certified LCP. NOAA's 2001 evaluation of the CCC for program compliance as required under Section 312 of the CZMA cited the lack of staffing for LCP planning as "one of the principal barriers to meeting the promise of the California Coastal Act, that its regulatory program would be uniformly implemented at the level closest to the people."

Officials from Los Angeles City and County have acknowledged their failure to comply with the Coastal Act, but have stated that there is no incentive to undertake the cost and time required to go through the controversial process of developing and certifying a LCP, let alone assuming the ongoing costs and the fallout from controversial decisions that ensue once permit authority is granted (Leshner, 1996). Thus, these communities have been willing to delegate this task to the CCC. In 1997, State Senator Bruce McPherson stated, "By not adopting coastal plans, locals can avoid the pressures of developers and businessmen to approve projects and instead let the Commission take the blame for killing projects" (Brinkerhoff, 1997).

To encourage communities to prepare LCPs, Governor Wilson in 1996 amended the CCC's budget to include \$500,000 annually in grants to assist local governments in preparing LCPs. The program was successful in gaining certification of four additional LCPs between 1996 and 2001 (NOAA, 2001). However, funding for the grant program was cut from the CCC's budget in Fiscal Year 2002 due to the state budget crisis (LAO, 2003). In addition, four new staff positions that were created in 1997 to improve local assistance have since been lost. As a result, the actions taken by the CCC toward resolving this problem have since ceased.

In frustration over the LCP certification problem, Governor Gray Davis, Senate President Pro Tem John Burton and Assembly Speaker Bob Hertzberg sponsored Assembly Bill 988 in 2000, which ordered the CCC to develop an LCP for the City of Malibu by September 15, 2002 (Weiss, 2002). These political leaders had grown weary of lobbying from Malibu residents with pending CDPs. Further, the CCC was so overwhelmed with applications from Malibu that the monthly meetings were often referred to as "Malibu Days," referring to the lengthy sessions where the CCC heard nothing but a stream of permits for single family homes, remodels, deck expansions and other minor projects (Weiss, 2002).

The CCC ultimately prepared and certified an LCP that was so unpopular with Malibu residents that voters passed a referendum in 2002 suspending the LCP. The CCC maintained that Malibu had no right to rescind the LCP through referendum and that the City had the responsibility to assume permit authority and begin issuing CDPs pursuant to the certified LCP (Faust 2002). In May 2003, the Los Angeles Superior Court concurred with the CCC. The matter remains on appeal, and no CDPs have been issued by either

agency for development in Malibu for over one year while the City attempts to prepare its own LCP (Friedman, 2003).

Local compliance with Coastal Act provisions that require regular updates to LCPs is also a significant problem. Despite the fact that the Coastal Act requires updates once every five years, only two communities have comprehensively updated their LCPs since initial certification and most are over 15 years old (NOAA, 2001). The LCP update problem is so severe that NOAA's 2001 Section 312 evaluation of the CCC included a "necessary action" requiring the CCC to address the problem. Failure to address a necessary action could result in a finding of non-adherence with the CZMA and possible sanctions by NOAA, such as withholding grant funds.

In early 2003, a divided CCC agreed to give San Luis Obispo County a two-month reprieve to develop a plan to update their certified LCP or face threat of legislative action similar to that employed in Malibu. The CCC had notified San Luis Obispo County two years prior that an LCP update was required and identified 165 modifications that the County would be required to incorporate into their LCP. After granting the reprieve, the CCC passed a resolution to the legislature urging it to amend the Coastal Act and give the Commission more funding and authority to mandate regular updates (Sneed, June 13, 2003). However, no action was taken by the Legislature.

Local communities that have voluntarily attempted to update their plans have also faced difficulties with the CCC. Santa Barbara County recently spent over five years developing a land use plan for the Toro Canyon neighborhood near the community of Summerland, of which 2,000 of the 5,000 acres involved are located in the Coastal Zone (Koeberl, 2003). The plan was developed with extensive public involvement and received

broad support when it was adopted by the County Board of Supervisors. At the certification hearing, the CCC mandated 172 modifications to the proposed LCP amendment, despite protests from the County and residents of Toro Canyon. As a result, the County has elected to scrap the proposed Toro Canyon plan rather than adopt an LCP with the CCC's unacceptable modifications.

Similarly, the City of Santa Barbara proposed rezoning a commercial area within the coastal zone that has been in economic stagnation because of restrictive tourist commercial zoning (Molina, 2003). The City adopted more flexible zoning regulations, which would have allowed residential uses as well as a wider range of commercial uses. During the certification process, the CCC modified the proposed zoning ordinance to require all residential developments to reserve at least 30 percent of the floor area for commercial and ocean-related uses. As a result, the City withdrew its application for LCP certification. City Council member Gregg Hart, who is also a CCC commissioner, stated, "We do a good job controlling our own destiny in this community. The premise that the Coastal Commission is here to protect us has changed" (Molina, 2003).

The management style of CCC Executive Director Peter Douglas, combined with his philosophy regarding relationships with local communities provides some insight into the CCC's current adversarial relationship with local government and ultimately the reason why many communities have chosen not to prepare or update their LCPs. Douglas, after participating as one of the principal authors of Proposition 20 and the Coastal Act, joined the CCC staff as a deputy director in 1977 and has led the CCC since 1985. Douglas has been described as a "coastal visionary" by Ann Notthoff of the Natural Resources Defense Council and as an "effective communicator," and a "political animal" with a "a cult-like

following” by former conservative commissioner, Arnold Steinberg (Bailey, 1998). Former CCC coastal analyst John Ledbetter also described Douglas as having “a cult-following” both within the CCC and outside the organization (personal communication, December 2003).

Both Ledbetter and former CCC coastal analyst Mark Capelli (personal communication, December 2003) agreed that Douglas, while visionary and charismatic, tends not be a risk-taker and prefers to concentrate power at the top of the organization, generally trusting no one’s decision-making ability but his own. Douglas admits that he is a bit of a loner and that early childhood experiences where he fled Berlin ahead of the Russian Army to be raised by relatives in the United States “taught me a lot about survival and independence” (Pfaff, 1997).

Douglas’ centralized system of command appears to be combined with a deeply rooted personal distrust of local government. In a Los Angeles Times interview (King 2001), Douglas noted that he grew up in Redondo Beach, “where I witnessed first-hand what can happen when developers work their magic on city planning commissions and city councils.” During development of the Coastal Act in 1975, Douglas stated in reference to the composition of the original Coastal Zone Conservation Commission following adoption of Proposition 20 in 1972: “The real problem is with the local government appointments...Some were good...the majority however were bad...There should be no representative of local government, as such...If there has to be representation from local government, this should not be a majority” (Scott, 1975).

However, Capelli reflected that while others in CCC during the early years began to forge close relationships with local government officials and create partnerships to

implement the Coastal Act, "Peter never got over it" (personal communication, December 2003). Capelli believes that Douglas' tendency to centralize power combined with his deep-seated distrust of local government caused him to actively discourage others in the organization from working proactively with local government.

Public Participation. Until 1981, the Coastal Act provided for the establishment of six regional commissions in addition to the statewide commission. The regional commissions (North Coast, North Central Coast, Central Coast, South Central Coast, South Coast and San Diego Coast) were comprised twelve persons each, and were a combination of local elected officials and members of the public. These regional commissions met twice monthly and had broad powers, including: 1) certification of LCPs; 2) review and approval of CDPs for jurisdictions who did not yet have certified LCPs and for projects within CCC permanent jurisdiction; and 4) hearing appeals of CDPs from local jurisdictions for projects within the appeals jurisdiction (Janice Hubbell, personal communication, February 2004). The powers of the statewide commission during that period were limited to establishing statewide coastal policy, developing the coastal zone jurisdictional boundaries and hearing appeals from the regional commissions. As envisioned by the Coastal Act, the regional commissions were abolished and their powers were transferred to the statewide commission in 1981, after a number of LCPs had been certified and local governments were granted permit authority (Mark Capelli, personal communication, December 2003; California Coastal Plan, 1975).

After the regional commissions were abolished, the statewide commission assumed the entire workload undertaken by the six regional commissions, and began alternating its monthly meetings between northern and southern California, often visiting some regions just

once per year. As a result, a member of the public who testifies on an agenda item pertaining to Malibu may have to travel over 650 miles to a public hearing in Eureka.

Members of the public involved in development of Santa Barbara's Toro Canyon Plan have commented publicly on their frustration with the lack of opportunity for public participation at the CCC level (Koeberl, 2003). Despite involvement by hundreds of Toro Canyon residents during the four years of planning at the County level, only a dozen were able to make the 100-mile trip to San Pedro for the first hearing and only one member of the public was present at the final hearing in Coronado, over 200 miles away. Citizens complained that one week prior to the first hearing, the CCC released a 300-page staff report recommending 172 proposed modifications to the Toro Canyon Plan. Yet in the days prior to the hearing, CCC staff recommended that members of the public limit their written comments to three pages and those that attended the hearings were granted only two minutes to speak (Koeberl, 2003). Compounding the citizen frustration was the fact that no CCC staff had ever attended any of public meetings during the four-year development of the plan, despite receiving mailed notices for all of the meetings.

The 2001 NOAA Section 312 evaluation noted that the CCC has made improvements in their public participation processes since 1996, citing improvements to the CCC's website to include public notices, increased efforts to move CCC meetings around the state and, when possible, scheduling items when meetings are close to the local area. Nevertheless, many of the public comments received by NOAA during preparation of the CCC's 2001 Section 312 evaluation included complaints about the distance to meetings and the short public notice given the lack of proximity to meeting locations. Several members of the public called for evening hearings on controversial items, teleconferencing opportunities,

and longer lead-time between the release of notices and staff reports and the date of public hearings. Others also commented on the lack of public information available on what activities require a Coastal Development Permit and how to go about getting one.

Political Influence and Unconstitutionality. One of the most serious problems facing the CCC has been ongoing allegations of undue political influence. These allegations are significant when considered in light of the recent decision by the California State Court of Appeals in *Marine Forests Society v. California Coastal Commission* that the composition of the CCC is unconstitutional because the appointment process for commissioners violates the separation of powers doctrine and creates the potential for political influence in its decision-making.

Under the appointment system established by the Coastal Act, commissioners were appointed to two-year terms and served at the pleasure of whoever appointed them, whether it was the Governor, Assembly Speaker or Senate Rules Committee. Because commissioners served "at-will", they could be removed from office at any time. Thus, critics charge, they were vulnerable to political machinations and pressure from developers, environmentalists and local jurisdictions. Michael Fischer, the CCC's Executive Director from 1978-85, described a particularly egregious incident that occurred during the term of Assembly Speaker Willie Brown (Brinkerhoff, 1997). While a CCC hearing was in progress on a controversial development, a lobbyist for the applicant walked up to each Commissioner appointed by Brown and handed them a cell phone saying, "It's the Speaker." While this example was extreme, Fischer went on to observe that such actions were not exclusively limited to Brown and he recalled "a half dozen times when commissioners either got yanked from the commission just before a meeting or were called to the phone during

one, and then voting differently afterward.” Fischer further observed that such actions indicate that CCC decisions are influenced by “money politics,” and he added that the system sometimes “placed commissioners in an untenable position” (Brinkerhoff, 1997). State Senator Tom Hayden agreed with this assessment when he stated, “It’s the lobbyists for development interests that take over and occupy the inside politics. The Commission has become more of the status quo agency brokering deals than one advocating for the restoration of the coastal environment” (Brinkerhoff, 1997).

On December 30, 2002, the Third District Court of Appeal issued a decision in *Marine Forests Society v. California Coastal Commission* that the Legislature’s authority to appoint two-thirds of the CCC’s members and to remove them “at will” violated the separation of powers clause of the California Constitution (Reiger, 2003) because the CCC is an executive branch function charged with implementing the law pursuant to the California Coastal Act. The court concluded the following:

The flaw is that the unfettered power to remove the majority of the Commission’s voting members, and to replace them with others, if they act in a manner disfavored by the Senate Committee on Rules and the Speaker of the Assembly makes those commission members subservient to the Legislature. (p. 3)

This ruling would have effectively disbanded the CCC as of January 29, 2003 (Reiger, 2003). However, the CCC has appealed the decision to the California Supreme Court. Further, in response to this ruling, Governor Gray Davis called the Legislature into special session and passed Assembly Bill (AB) 1, which created a fixed term of four years for all legislative appointments and deleted the “at-will” language contained in the Coastal Act. Although AB 1 addressed the “at-will” issue, it failed to address the fundamental legal

question of whether the Legislature has the power to appoint a majority of representatives to an executive branch function. The appellate court stated that:

There are no safeguards and checks which would serve to ensure that the Commission is under the primary authority and supervision of the executive branch. Rather, the retention by the Legislature of the virtually unfettered power of appointment, and wholly unfettered appointment of removal, over two-thirds of the voting members of the Commission serves to ensure that the Commission is under the control of the Legislature. (p. 18)

Therefore, the constitutionality of an appointment process where a majority of commissioners are selected by the legislature remains unclear, and will most likely be resolved through the appeal filed with the California Supreme Court.

Research Questions

A 2003 poll by the Public Policy Institute of California stated that 69 percent of Californians say the well being of marine and coastal resources is very important to California's quality of life (Rogers, 2003). The same percentage also said the CCC is either not strict enough or their restrictions are "about right" when it comes to protecting the Coast. Thus, Californians appear to have maintained their support for a statewide coastal resource agency much to the same degree as in 1972 when Proposition 20 was first enacted.

Nevertheless, the CCC has suffered from problems associated with budget cuts, reduced staff, local non-compliance with Coastal Act provisions, difficulties with public participation and the lingering possibility that its appointment system will be found unconstitutional once again.

Toward the goal of creating a more effective Coastal Management Program for California, this paper examines whether organizational changes to the CCC can create better relationships with local government, strengthen public participation and address the separation of powers question. This paper attempted to answer the following research questions:

1. What organizational models are used by coastal management programs (CMPs)?
2. What approaches have been used by other CMPs to develop positive relationships with local government, effective public participation processes and avoid separation of powers problems and how can their experiences be applied to the CCC?
3. What constraints to organizational change of the CCC may exist?

Literature Review

The literature review examined four areas relevant to the research questions posed above:

1. An overview of U.S. coastal management was undertaken, focusing on the federal Coastal Zone Management Act and NOAA's use of the Section 312 evaluation process for coastal management programs (CMPs). Section 312 evaluations provided a starting point for case studies of four CMPs included in this analysis.
2. An analysis of previous research on state-local intergovernmental relationships and effective local government compliance with state mandates was undertaken to develop an operational definition of what constitutes a "positive relationship between state and local government."

3. An evaluation of previous research on public participation was carried out to define what constitutes "effective public participation."
4. An overview of separation of powers doctrine and executive branch authority as it relates to the California Constitution was developed to allow meaningful evaluation of possible approaches to the CCC appointment process.

Coastal Management and the Section 312 Evaluation Process

The Coastal Zone Management Act of 1972 (CZMA) is the cornerstone of federal coastal management policy and represents a combination of goals. The CZMA establishes a voluntary grant-in-aid program administered by the NOAA's Office of Coastal Resource Management (OCRM) that encourages but does not require coastal states to achieve a balance between development and the environment through coastal land use planning, management and other programs (Beatley, 2002). Thus, the CZMA provides incentives in the form of grants for states that prepare and implement coastal management programs (CMPs). Pursuant to Section 306(d)(2) of the CZMA, a state CMP must include a number of elements, including coastal zone boundaries, an organizational structure for implementation of the program, regulatory mechanisms and planning processes for protection of coastal resources.

Once a CMP has been approved, a state is eligible for annual matching grants to administer the program and to provide coastal enhancements including preserving and restoring areas valued for recreational ecological or aesthetic purposes, redeveloping ports and waterfronts, and improving beach and coastal access. In 1990, Congress amended the CZMA with the addition of Section 309, which encourages states to amend their CMPs to "support attainment" of one or more "coastal zone enhancement objectives" such as

protecting wetlands, eliminating development in hazardous areas, and improving beach access (Beatley, 2002). The Section 309 program does not require state matching funds and is competitively awarded to states.

Section 312 of the CZMA requires periodic evaluation and approval of each states' CMP by NOAA-OCRM. The Secretary of Commerce has the authority to suspend or even withdraw approval of a state CMP if the program fails to adhere to the terms of any grant or its cooperative agreement. The Section 312 evaluations focus on each state's accomplishments in implementing their CMP during the review period and place particular emphasis on public outreach and participation and intergovernmental relationships. The Section 312 evaluation is based on reviews of agency records, site visits by NOAA-OCRM staff and public meetings conducted by NOAA-OCRM in each state. The Section 312 evaluations incorporate review findings and recommendations for CMP improvement. These recommendations may include program suggestions, which denote actions that OCRM believes would improve management of the program but are not mandatory; and necessary actions, which are programmatic requirements which OCRM mandates are necessary for compliance with the CZMA. The Section 312 evaluations provided a significant source of data on the four CMPs selected for further analysis in the case studies contained herein.

Intergovernmental Relations

A large body of research exists in the area of state-local intergovernmental relations, representing a broad range of topics, including devolution, fiscal effects, appropriate delegation of power, the effects of grants-in-aid, and unfunded mandates. A summary of the research most relevant to the issues faced by the CCC is presented below and was condensed

to create an operational definition of what constitutes a “positive relationship with local government.”

Colman (1989) believes that the approach of pushing down regulatory responsibility from higher to lower levels of government has led to substantial economic, fiscal, and administrative impacts, and makes a number of recommendations for changes to regulatory frameworks to address these problems and improve intergovernmental relationships, including:

- Establishing a procedural framework of legislatively established principles and criteria so that future calls for regulation can be assessed in terms of need, cost, and alternative modes;
- Addressing economic, intergovernmental, fiscal and enforceability issues in the initial legislation and future amendments;
- Intergovernmental deregulation and grant consolidation on a variety of fronts to lessen regulatory overlap;
- Legislative cleanup of programs that are selectively enforced or generally ignored; and
- A trend away from formulating regulatory laws based on the “worst possible case” and instead giving priority to the normal case and considering the bulk of the normal caseload, while taking into account best and worst case situations.

May (1996) believes that a key aspect of successful intergovernmental relations for environmental regulation is local development of plans through a state-specified planning process. May makes note of the inherent uneven relationship between state and local

governments and advocates state relationships based on partnerships and facilitation rather than superiority.

In analyzing local implementation of growth management programs mandated by the State of Florida in the 1980's and 1990's, May claims that the state's program reflected the belief that local governments were not competent to manage growth and its consequences. The program imposed new rules and threatened imposition of direct state regulation of development if local governments did not comply. As a result, the program was controversial with citizens and local government because of its "heavy-handed" coercive/prescriptive approach. While the program was successful in achieving high levels of compliance in a timely manner, a recurring criticism was that the approach led to a "cookbook approach to planning," with plans prepared to meet the state's checklist that did not represent the vision of each community. Despite the criticism, the program remains predominantly state-controlled to the present day.

In contrast, May examined "cooperative" approaches to state-local intergovernmental relations in New South Wales and New Zealand that empower local government to devise methods for managing the environment in a sustainable way. The cooperative approach has been significantly less successful in achieving compliance and has experienced problems of inconsistency and "capture" by development interests. However, the cooperative approach allowed greater opportunities for flexibility and innovation by local government to achieve the state mandates, higher commitment by local officials and fewer situations where frustrated local governments attempted to "undermine" program effectiveness or refused to cooperate.

May believes that cooperative systems are most effective when there is a shared level of commitment to the proposed policy issue at both the state and local level from the outset of the program. A hands-on, "consultative" approach by state officials to assisting local governments, along with a targeted approach to mobilizing community involvement were also cited as critical to the success of a cooperative approach. May concludes that neither coercive nor cooperative regimes are ideal and the key to success is getting the mix of provisions in terms of coercion/cooperation right.

Tilton (1998) discusses "unfunded mandates" imposed on local government resulting from "living at the end the political food chain." Tilton identifies the first question raised by local officials: "Do they really mean it?" given the vast numbers of statutes that are outdated and ignored while others are current and critical. Once local officials determine that a mandate exists and demands their attention, the next steps are far from certain. In some cases, certain local officials will use the mandate as an opportunity to institute a long-desired policy where local support was insufficient. In other cases, local officials may "dig in their heels" and ignore or resist the mandate. Next, local government must consider the legal and political costs of noncompliance. Finally, hard-strapped local governments may be incapable of compliance. Mandate compliance may then turn to bargaining between enforcers and the local government to establish the degree and timing of compliance. Tilton further notes that local governments tend to neglect grants to finance mandates from higher levels of government and the inherent strings attached to these grants. Further, local governments vary in their capacity to apply for and obtain grants to fund state mandates.

Cigler (1998), in examining trends in state-local relations, accurately predicted the large and cumulatively growing deficit in state government during the first part of the 21st

century due to escalating growth in state government employment and spending. Cigler expresses concern that this trend will result in increased pressure on local government to provide services without sufficient financial support from states. Cigler also believes that local government has an advantage in terms of public participation in the development of mandated programs.

Cigler advocates increased mandate, regulatory and fiscal flexibility for local government, with fewer conditions attached to grant-in-aid programs and mandates that are less prescriptive in terms of legal and procedural complexity. Instead, Cigler advocates greater use of performance measurement, benchmarking, and consultative processes with citizens in the form of "contracts for performance" that allow greater flexibility but demand more accountability.

Based on the findings from Colman, May, Tilton and Cigler, an operational definition of the elements necessary for a positive relationship between state and local governments can be established as follows:

- Program priorities established based on need, cost and the availability of alternative modes of implementation;
- Consideration for economic, fiscal and enforceability impacts faced by local governments;
- Little or no regulatory overlap between similar programs;
- Priority given to the normal case when developing regulation while taking into account possible best and worst case situations;
- Consultative approach to assisting local governments;
- A mix of both coercive and cooperative mechanisms to achieve local compliance;

- Few strings attached to assistance grants and providing grant application assistance to local jurisdictions without the capacity to apply for grants; and
- Use of performance measurement, benchmarking, and performance contracts to allow local flexibility while requiring accountability.

Public Participation

As with intergovernmental relationships, the effectiveness of public participation processes has been studied by various researchers. This research has been summarized below and then compiled to develop a definition of what constitutes “successful public participation.”

King (1998) explores whether public participation in the governmental decision-making process can be improved, arguing that participation through the normal institutional channels has little impact on the substance of government politics, leading to citizen discouragement, cynicism and apathy. Although the political system in the United States is designed to engender an active citizenry, it has also been designed to protect political and administrative processes from a “too-active” citizenry. Barriers to authentic participation are defined by King as: 1) the nature of life in contemporary society; and 2) administrative processes and current practices and techniques of participation. In terms of the nature of life in contemporary society, factors associated with transportation, time constraints, family structure, education, number of family members in the work force and child care can hinder participation. Administrative processes and current practices, such as public hearings, are also problematic because they prohibit give-and-take, lack accessibility and are usually held late in the decision-making process. King advocates empowering citizens through

education, making room for non-bureaucratic discourse and bringing decision-making processes to "where the citizens are, rather than asking citizens to come to them."

Tauxe (1995) studied how commonly employed public participation techniques used in planning, such as public hearings before governmental commissions, marginalized local participants in rural North Dakota communities in favor of urban development interests. The bureaucratic style of participation employed by the government agencies was in conflict with the local styles of communication and negotiation typically used by rural residents. Thus, government decision-making favored urban industry representatives who were more familiar and comfortable with bureaucratic public participation processes. Thus, concerns of rural residents were frequently found irrelevant to the procedural issues at hand and were often ignored. Tauxe emphasizes the need for public participation processes to incorporate methods to address customs, values and attitudes that may be contrary to traditional bureaucratic participation processes. Tauxe notes that little work has been done to understand the articulation of political issues and communication as it relates to problems of culture difference. While the public participation biases against ethnic minorities have been studied to some degree, there has been little research undertaken to address the problems of Euro-American English speakers in rural settings, and Tauxe suspects that this is a widespread problem in the United States.

Finally, Layzer (2002) calls into question the value of local public participation programs for environmental decision-making in the absence of stringent federal and state regulatory requirements. Based on a collaborative environmental decision-making process carried out in Belmont, Massachusetts, Layzer concludes that despite the appeal of civic environmentalism in which citizens deliberate to arrive at a common vision of a

community's collective interest, local processes are likely to favor development interests. Layzer bases this conclusion on poll results that indicate that Americans consider themselves to be "environmentalists," but generally are not willing to see environmentally protective regulations imposed on their own communities. Further, citizens generally have widely disparate views on what constitutes "quality of life," with one group more concerned with good roads and schools and another concerned with wildlife habitat. Finally, even local governments that are environmentally oriented are usually concerned about economic growth, and compromise decisions on the environment often occur. Finally, ad hoc citizen groups often do not have the resources to fight off "well-heeled" development interests. Thus, Layzer believes that strong regulation from higher levels of government is necessary to protect important resource values.

Based on the findings from King, Tauxe and Layzer, an operational definition of an effective public participation process can be developed based on the presence of the following elements:

- Elimination of barriers to authentic public participation such as constraints associated with distance, transportation, time constraints, education, work and family responsibilities by bringing decision-making processes to "where the citizens are";
- Incorporation of elements that allow give-and-take and accessibility, and are held early in the decision-making process;
- Consideration of customs, values and attitudes that may be contrary to bureaucratic public participation processes; and
- Provision of strong regulation from higher levels of government to protect important resource values when public discourse and decision-making occurs at the local level.

Separation of Powers Doctrine and Executive Branch Authority

Separation of powers doctrine as it applies to appointment and removal powers has had a conflicting history. Pertaining to the U.S. Constitution's concept of separation of powers, Fischer (1991) stated: "The appointment power operates in a framework of studied ambiguity, its limits established for the most part not by court decisions but by imaginative accommodations between the executive and legal branches." Thus, the concept of clear executive appointment authority at the federal level may be illusory at best and relies more on tacit understanding between the two branches of government than judicial case law, despite the findings in the landmark cases of *Myers v. United States* and *Humphrey's Executor v. United States*, which tended toward strict interpretation of executive privilege of appointment and removal (Cooper, 1997).

The decision by the Third District Court of Appeal in *Marine Forests Society v. California Coastal Commission* provides significant background in separation of powers doctrine as implemented in Article III Section 3 of the California Constitution and its differences from the U.S. Constitution. The decision states that: "the courts have not hesitated to strike down provisions of law that either accrete to a single branch powers more appropriately diffused among separate branches or that undermine the authority and independence of one or another branch."

At the same time, the decision recognizes that the three branches of government are interdependent and that the actions of one branch may significantly affect another branch "as long as there is no material impairment of the other branch's core functions." Instead, the court opines that, "The purpose of the doctrine is to prevent one branch of government from exercising the *complete* power constitutionally vested in another; it is not intended to

prohibit one branch from taking action properly within its sphere that has the incidental effect of duplicating a function or procedure delegated to another branch.” (p. 9)

The Court found that the CCC, with its defined role as the agency charged with executing the Coastal Act, not only has executive branch authority but also exercises appropriate quasi-judicial powers when granting and denying permits and issuing cease and desist orders, and performs other review functions. The quasi-judicial authority is appropriate because remedy from improper actions taken by the CCC remains available through the judicial branch. However, because the CCC has no power to enact laws, it is not a legislative branch function.

The California Constitution differs from the U.S. Constitution, because in Article XX it states that: “Every officer, the mode of whose appointment is not prescribed by law, shall be appointed by the Governor.” This section allows the Legislature to enact statutes that provide for appointment mechanisms other than appointment by the Governor. However, the Court concluded that the fact that the legislative branch has the authority to appoint executive branch officers does not mean that this authority is not without limits nor does it mean that a given structure cannot violate the separation of powers doctrine. The Court concluded that the appointment mechanism in the Coastal Act infringed upon the inherent authority of the executive branch and did not include sufficient safeguards or checks preventing such an infringement because an appointment mechanism where eight of the twelve members were appointed at-will by the Legislature meant that the CCC was subject to the direct control of the Legislature and not the executive branch.

Methodology

Operational definitions of “positive state-local government relationships” and “effective public participation” used in this analysis were developed based on the previous research summarized in the literature review. The literature review also provided an understanding of separation of powers doctrine and executive branch authority as it relates to the California Constitution to allow meaningful evaluation of alternate approaches to the CCC appointment process.

A review of websites from 30 U.S. coastal management programs was undertaken to determine the organizational models employed by programs similar to the CCC. The website review provided insight into the variety of organizational models presently employed, including direct regulation of coastal development by the coastal management agency and state agency “networked” systems. The analysis provided an overview of other possible organizational models that could be employed by the CCC.

In-depth case studies of four coastal management agencies were then developed based partially on information contained in their most recent NOAA-OCRM Section 312 evaluations. The Section 312 evaluation covers all aspects of each program, including performance and implementation of its regulatory activities, allocation of CZMA grant funds, public participation programs, public outreach and interagency relationships (Cheryl Graham, personal communication, 2004). The evaluation is carried out by a team of at least three evaluators from OCRM who visit the program, review records, and interview key program staff and representatives from other agencies and organizations who regularly come into contact with the agency. A public hearing is also held and written public comments are solicited prior to release of the evaluation. Graham noted that Section 312 evaluations can

be somewhat subjective and are generally developed under the premise of helping the agency improve its program or providing support for more funding from NOAA or the state government. However, Section 312 allows NOAA to de-certify a program if the agency fails to implement its program. Graham stated that the evaluation process has been used punitively in the past; however such severe actions are rarely necessary. Although subjective in nature, the Section 312 evaluations provided a third-party analysis of CMP effectiveness was used herein as a "jumping off point" for further analysis of the programs included in the case studies.

The agencies selected for the case studies were the Bay Conservation and Development Commission (BCDC) with jurisdiction over San Francisco Bay, the South Carolina Office of Coastal and Resource Management (SCOCRM), the Virginia Coastal Program (VCP), and the Alaska Coastal Management Program (ACMP). Agencies were selected based on generally positive Section 312 evaluations in the areas of public participation and intergovernmental relationships. Given California's size and diversity, and the population and growth pressures along its coast, significant consideration was also given to the size and diversity of the coastal zone managed by the selected programs, as well as population characteristics and the relative growth pressures being experienced.

In addition to information contained in the Section 312 analysis, additional information and verification of program details was obtained and included in the case studies from agency websites, press accounts and interviews held with key program staff, NOAA-OCRM evaluation staff and other individuals outside of the organization as appropriate. Finally, political, fiscal and organizational constraints to CCC change were

analyzed, taking into consideration current research on organization development and based on current conditions and trends at the CCC and in California government as a whole.

The findings from the website review, the case studies and the constraints analysis were then used to develop a series of recommendations for improving the effectiveness of the CCC in the areas of local government relationships and public participation processes and to address the separation of powers problem.

Case Studies

Case Study 1: Bay Conservation and Development Commission (BCDC)

The 27-member BCDC was created by the California Legislature in 1965 in response to broad public concern over the future of San Francisco Bay (BCDC, 2004). In the 1960's, all but four miles of the Bay's 276-mile shoreline was closed to the public and the shoreline was primarily a utilitarian place used for refineries, military bases, firing ranges, dumps, sewage outfalls, ports and airports. In 1965, the U.S. Army Corps of Engineers published a plan for the Bay showing that it would be reduced to a river by 2020, based on the assumption that 70 percent of the Bay's mudflats, shallow waters and wetlands would continued to be filled (Kay, 2003). Public outcry over the plan led to the approval by the state legislature of the McAteer-Petris Act of 1965, which established the BCDC as the first coastal management agency in the nation.

The BCDC is responsible for implementation of California's Coastal Management Program as it pertains to San Francisco Bay, including San Pablo and Suisun Bays and Suisun Marsh. All activities involving filling and dredging within San Francisco Bay and all new development within the first 100 feet inland of the Bay are regulated by the BCDC (BCDC, 2004).

The BCDC predated Proposition 20, the California Coastal Zone Conservation Act of 1972 by seven years, and in many ways, it served as a model for what eventually became the CCC (Squire, 1984). As established in 1965, the BCDC was a temporary agency charged with developing the Bay Plan to serve as the long-term guide to management and use of the Bay. The McAteer-Petris Act was amended in 1969 to make the BCDC a permanent agency and to incorporate the Bay Plan into State Law.

Local Government Relationships. Although the BCDC is a state agency, it functions more like a regional government authority, with 13 of its 27 members representing local government agencies within the region. Further, most of the remaining members represent state and federal agencies based in Bay Area offices or are Bay Area residents appointed by the Governor or Legislature.

The permit authority of the BCDC is also limited to the waters of the San Francisco Bay and an area of 100 feet inland, and as such its permit authority is significantly more limited than that of its sister agency, the CCC. This appears to result in generally less regulatory conflict with local government land use planning and decision-making (Steven McAdam, personal communication, February 2004).

The most recent Section 312 evaluation of the BCDC (1996-2001) noted that during the last review period, the agency has been able to extend beyond its permitting role to establish a pro-active regional planning approach. The evaluation credits improved funding by the state as the primary reason the BCDC has been able to pursue intergovernmental partnerships. Examples of BCDC's recent involvement in intergovernmental partnerships cited in the Section 312 evaluation include:

- San Francisco Waterfront Plan revisions, which involved a cooperative process between the BCDC and the City/County of San Francisco and the Port of San Francisco to develop a plan that reflects the need to balance the varying uses along the waterfront, including public access, recreation and port and maritime facilities.
- Oakland Army Base Reuse Plan which involved working with the City and Port of Oakland to develop a reuse plan that increases container cargo throughput without filling 127 acres of the Bay.
- Participation in the Bay Area Economic Forum's Bay Area Defense Conversion Action Team to conduct a feasibility study on creating a ferry system linking Bay Area cities to address region-wide mobility issues. As part of this effort, BCDC is coordinating with local jurisdictions and community organizations to gain their support for the plan and to obtain their recommendations on terminal designs and locations.
- Smart Growth Partnership – BCDC has participated in two regional programs in conjunction with other local and regional agencies, environmental organizations, businesses and community groups, to address urban sprawl and develop alternative growth scenarios that better serve the Bay Area's growing population.
- Partnerships with Bay Area Communities – BCDC regularly partners with Bay Area communities on planning efforts. One successful example is the North Bay Wetlands and Agriculture Protection Program, which involved a partnership between BCDC, four cities and four counties in the North Bay to provide local governments with tools and resources to protect wetlands and agriculture.

- San Francisco International Airport (SFO) Expansion Project – Perhaps the most controversial project involving the BCDC, the formerly proposed SFO expansion project involved more than 3 square miles of fill in San Francisco Bay to create a new runway, constituting the largest fill project proposed in over 30 years. The BCDC took a leading role in coordinating the efforts of numerous federal, state, regional and local agencies to identify key issues and to develop a Memorandum of Understanding (MOU) between the Airport and the regulatory agencies establishing the review process for the project. The BCDC's actions prompted the Airport to examine less environmentally damaging alternatives to the project. However, the airport project is now on hold, following significant declines in passenger loads after September 11, the United Airlines bankruptcy and the SARS epidemic (Steven McAdam, personal communication, 2004).
- Participation in a multi-agency stakeholder effort, including federal, state, and local agencies to purchase and restore thousands of acres of salt ponds in the South Bay region owned by Cargill Inc (BCDC, 2004). Although the purchase took place in 2003, plans for restoration are ongoing. A major issue for local jurisdictions is flood control, since the salt ponds currently provide protection from tidal inundation of low-lying areas (Steven McAdam, personal communication, 2004).

As a result of these efforts, NOAA concluded in the 2001 Section 312 evaluation that the BCDC has been able to change from a reactive agency, focused solely on its regulatory function, to a proactive agency focused less on regulation and more on long-range planning and partnership-building. However, BCDC Director Will Travis recently expressed concerns that proposed state budget cuts may necessitate that the agency shift its focus from

priority projects to work that can be funded by grants (Hoge, 2003). Deputy Director Steven McAdam confirmed that the budget cuts have resulted in a reduction of staff from 47 to 32 positions, and as a result, items in its long-range planning program have been pushed back on the agenda by at least three to five years, with an increased emphasis on projects for which grant funding can be obtained (personal communication, February 2004). If this trend continues, the BCDC's ability to forge new relationships and participate in intergovernmental efforts could decline.

McAdam further commented that the agency has been able to develop effective intergovernmental relationships through its permitting process. He noted that some local communities could be difficult to work with when BCDC permits are required for their own projects, such as ports, marinas, and sewer treatment plants. However, others share the BCDC's protectionist philosophy toward the Bay. In terms of coordination between local agencies and the BCDC when processing permits for private applicants, McAdam reports very strong relationships, since the BCDC and the agencies both believe in streamlined, "seamless" permitting processes and helping good projects to get built quickly. In general, McAdam believes that the BCDC's good relationships with local government can be attributed to their regional focus, limited permit authority, and the urbanized character of the Bay Area.

Public Participation. Until Fiscal Year 2004, the BCDC's meetings were held twice per month, alternating between San Francisco and Oakland locations, with special meetings occasionally held in other Bay Area communities. However, recent budget cuts have necessitated a reduction to one meeting per month (Steven McAdam, personal communication, February 2004). The 2001 Section 312 evaluation credits the BCDC with

improved public access to its permitting process due to upgrades to its website to increase public information and hearing notifications and because of increased time on each agenda for public comment. The Section 312 evaluation further credits efforts by the BCDC to improve the efficiency of its permitting system by increasing the range of projects that can be approved administratively by its staff. While this change may result in less opportunity for public involvement in minor items, the evaluation notes that the streamlined process has created more time for public discussion of major and controversial permits during hearings.

A testimony to BCDC's success in implementing public participation came in 1995, when major public objections were raised over a plan by Governor Wilson to merge the BCDC with the CCC. Bay Area residents, businesses and environmental groups all protested the proposed merger of the "publicly accessible, broadly representative" BCDC with the "inaccessible and unrepresentative" CCC (Garcia, 1995). The proposal was subsequently scrapped.

Another indicator of the BCDC's public credibility is the number of persons who attended public meetings or wrote comment letters during the Section 312 evaluation process in 2001. No members of the public attended the meeting pertaining to the BCDC or submitted a comment letter to NOAA. McAdam credits the agency's lack of controversy to its collaborative, consensus-building approach to decision-making and the clear policies and expectations laid out in the Bay Plan. McAdam also proudly noted that the agency has not denied a permit in four years and has only faced a third-party lawsuit once in its history. However, he is concerned that the recent staff reductions may, at some point, place the agency in a reactive position similar to that of the CCC, with few opportunities for collaboration and consensus building.

Separation of Powers Doctrine. While bearing some similarities to the CCC's appointment structure, the BCDC's structure is fundamentally different, with more emphasis on local and regional government appointments. The BCDC's 27 members are made up of appointees from a number of state, federal and local agencies as follows:

- Five members, including the chair and vice chair appointed by the Governor;
- One member appointed by the Speaker of the Assembly;
- One member appointed by the State Senate Rules Committee;
- One member appointed by the State Director of Finance;
- One each appointed by the Board of Supervisors of the nine Bay Area counties;
- One each from a north, east, south and west Bay Area city appointed by the Association of Bay Area Governments;
- One member from the California Business and Transportation Agency;
- One member from the California Resources Agency;
- One member from the State Lands Commission;
- One member from the California Regional Water Quality Control Board, San Francisco Bay Region;
- One member from the U.S. Army Corps of Engineers; and
- One member from the U.S. Environmental Protection Agency.

Notably, the appointment system does not include a majority of appointments by either the governor or the legislature, but rather emphasizes local and regional appointees, including regulatory agency representatives from the region. Given the regional character of the BCDC, its mission and the reduced level of legislative appointments as compared to the CCC, the agency has not faced the separation of powers challenges encountered by the CCC. In fact, Executive Director Travis considers the composition beneficial because all major interest groups have representation on the commission, which tends to generate opportunities for political consensus on issues ("Man in the Middle," 2000).

Case Study 2: South Carolina Office of Ocean and Coastal Resource Management (SCOCRM)

South Carolina contains 158 miles of Atlantic Ocean shoreline and has eight coastal counties. Once rural in character, South Carolina's coastline is changing rapidly. Horry

County, on the border with North Carolina, is now the third fastest growing county in the U.S. To the south, Beaufort County experienced nearly a 40 percent growth rate between 1990-2000 (NOAA, 2002). The tourism industry statewide has grown to \$20 billion dollars, with 70 percent of these expenditures generated in coastal counties.

South Carolina's Coastal Management Program (SCCMP) has existed since 1979. In 1993, the South Carolina General Assembly passed the State Restructuring Act, which resulted in fundamental changes to the management of the SCCMP. The South Carolina Coastal Council, which had been responsible for implementation of the SCCMP, was abolished as an independently functioning agency (NOAA, 2002). The Coastal Council had consisted of 14 representatives appointed by the General Assembly from each coastal congressional district and each coastal county. The Coastal Council had the power to establish enforceable statewide coastal policies and regulations and hear appeals of staff-issued permits and approvals. In its place, the South Carolina Office of Coastal Resource Management (SCOCRM) was created in 1994 within the vast Department of Health and Environmental Control (DHEC).

SCOCRM has direct permit authority over "critical areas" of the coastal zone, defined as coastal waters, tidelands, and the beach dune/system. The agency staff reviewed approximately 1,000 critical area permits in 2002 (SCOCRM, 2004a), with the number of permits growing at an average annual rate of 18 percent during the past 10 years (NOAA, 2002). The agency also has indirect management authority outside of critical areas through their federal and state consistency certification process. The consistency process requires that projects requiring federal or state permits must be reviewed for consistency with the policies of the SCCMP.

With the 1993 restructuring, the policy-making role shifted from the Coastal Council to the DEHC board (Richard Chinnis, personal communication, February 2004). Appeals of staff-issued critical area permits shifted from the appointed Coastal Council to the State's Administrative Law Judge Division. The Coastal Zone Management Appellate Panel (AP) was created and members of the Coastal Council became members of the AP until expiration of their terms. The role of the AP was to hear appeals of decisions from the Administrative Law Judge Division.

Local Government Relationships. The Section 312 evaluation of SCOCRM for the period of 1997-2002 notes that local land use laws and infrastructure are lagging in coastal counties of South Carolina, with the exception of Charleston County. In 1988, the State General Assembly passed the South Carolina Beachfront Management Act, which requires the use of scientific studies of coastal processes to establish building setback lines along the coast, bans future construction of seawalls, limits the size of buildings within the predicted erosion zone, enacts damage assessment procedures and adopts a policy of retreat away from the erosional beach. An important part of the Act requires the adoption of beachfront management plans by local governments.

Further, the South Carolina Local Government Comprehensive Planning Act was passed in 1994 to focus attention on the need for local governments to formulate an overall land use and growth vision and develop mechanisms to achieve that vision. With these new mandates, SCOCRM's role as advisor and facilitator to local governments grew dramatically.

The 2002 Section 312 evaluation commented that SCOCRM has made effective use of the Special Area Management Plan (SAMP) tool available under the CZMA. The CZMA

enables coastal states to prepare and implement SAMPs as part of their coastal enhancement efforts pursuant to Section 309 of the CZMA. In the past three years, SCOCRM has used Section 309 grants to undertake intergovernmental efforts to develop SAMPs for Charleston Harbor and Beaufort County. Through the SAMP process, SCOCRM has been able to create an inclusive dialogue that emphasizes conflict resolution and cooperation among disparate groups and individuals to address coastal management issues in these specific areas.

However, the Section 312 evaluation included a program suggestion stating that SCOCRM should take more steps to engage stakeholders, including local, state, federal and nongovernmental organizations, outside of the SAMP process in the review, debate and formulation of policies that affect South Carolina's coastal resources, and in particular emerging issues. While the Section 312 evaluation noted that SCOCRM has taken positive steps in this area, NOAA remains concerned that the resulting new structure under the 1993 State Restructuring Act did not provide an avenue to engage stakeholders in policy debates and has resulted in a loss of state leadership in coastal policy planning. In particular, NOAA commented that the failure to provide a meaningful avenue for dialogue and input on emerging policy issues in light of the development pressure on South Carolina's coast has caused local governments and non-governmental organizations to feel disenfranchised from the state coastal policy-making process.

An example cited by NOAA is the problem of rapid growth near tidal creeks and marshes and the expansion of small private bridges and docks to achieve access to previously undeveloped islands. SCOCRM has been roundly criticized for its failure to develop policies pertaining to docks and bridges and its failure to consider the cumulative

impacts of individual dock and bridge permit applications (NOAA, 2002; South Carolina Coastal Conservation League, 2003).

Compounding the problem is the fact that the DHEC Board, which adopts policy for OCRM, manages a broad array of programs and addresses a range of issues as diverse as infant mortality, teen pregnancy, air and water quality and access to local health care. Seventy-five percent of the agency's budget and 90% of DEHC's employees support its public health-related programs. As a result, NOAA noted that it is difficult for DEHC to dedicate time on its monthly agenda to address coastal-related issues.

Recognizing this reality, the DEHC sent a legislative proposal to the General Assembly in 1998 to create a separate body for the coastal program with the authority to set policy. Unfortunately, this proposal was not adopted by the General Assembly. Similar legislation that would create a separate resources agency, of which SCOCRM would be a part, was recently proposed and remains under consideration (South Carolina Coastal Conservation League, 2003).

In the meantime, SCOCRM has undertaken its own efforts to address local government coordination. A local government liaison position has recently been created within SCOCRM to provide technical assistance to local jurisdictions in writing local ordinance and regulations for coastal protection and to integrate with local planning commissions to assist with coastal permit decisions. According to Deputy Director Richard Chinnis, the liaison role is an important step for SCOCRM and is similar to a liaison program undertaken in Georgia (personal communication, February 2004). In the past, local jurisdictions, particularly small ones, relied on the technical expertise of the Coastal Council and later, SCOCRM to deal with difficult issues through the state permitting process. As

SCOCRM workload has increased and its staff has been reduced, it has become imperative for SCOCRM to delegate a larger role in coastal resource planning to local government.

Chinnis views the liaison program as the future direction of SCOCRM and coastal planning in South Carolina.

SCOCRM has also recently begun conducting three technical workshops per year for local decision-makers on a range of issues, including managing stormwater runoff, estuary health, riparian buffers, docks and bulkheads, and legal issues. NOAA cites these workshops as an effective method to communicate and educate local leaders who are increasingly called upon to make difficult decisions affecting the coastal environment.

Public Participation. According to the 2001 Section 312 evaluation, under the former Coastal Council, the SCCMP had an exceptionally strong public participation program, including successful use of the media to communicate to the public and a high level of public awareness about major projects and issues that the Council was facing. However, the Section 312 evaluation states that following the 1993 restructuring process, the SCCMP has focused more inwardly and there have been fewer opportunities for public input. NOAA notes that SCOCRM has made significant strides to reinvigorate their public information program, including an updated and expanded website that provides a broad array of information and notices for major projects, updates of most of its public outreach documents, and coordination with other state agencies to improve public awareness and technical understanding of coastal issues.

However, with elimination of the Coastal Council, the primary opportunity for public comment is during the 15-day public review period following publication of a notice of intent to issue a critical area permit. Public hearings are held only if 20 persons file letters

requesting a hearing. In addition, the SCOCRM has no mechanism to provide feedback to interested parties regarding consideration of their comments or the regulatory basis for final permit decisions.

NOAA noted that SCOCRM has seen a dramatic increase in the number of appeals to the Administrative Law Judge Division and the AP. At the public meetings held during the Section 312 evaluation, several commenters testified that citizens and interest groups would likely challenge even more cases if the cost of legal representation before the Administrative Law Judge were not prohibitive. Richard Chinnis also commented that the appeals process is primarily used by organized opposition groups as a delaying tactic rather than as a method of dispute resolution. NOAA concluded that this trend signals a loss of assurance to the public that their comments are being considered as well as a loss of flexibility within the program to negotiate mutually acceptable solutions (personal communication, February 2004). As a result, the Section 312 evaluation included a program suggestion that strongly encourages SCOCRM to improve the level of information available to the public on permit applications and permit decisions and to develop a mechanism to provide interested parties with feedback on their comments and the basis on which a permit decision was made.

SCOCRM appears aware of these problems. Richard Chinnis noted that the agency initially experimented with a consensus-building process to bring stakeholders together to work through issues on major projects, but the experiment was “a dismal failure” because participants tended to remain entrenched in their respective positions (personal communication, February 2004).

Two years ago, the DEHC created the Council on Coastal Futures, a citizen-based stakeholder group to assess the future direction of the SCOCRM (Richard Chinnis, personal communication, February 2004). The recommendations of the committee are currently being drafted and are scheduled for public release in April 2004. Chinnis expects that fundamental changes to the public participation and appeals processes will be included in the recommendations, given that the current process is frustrating, time-consuming and expensive for both applicants and opponents. Chinnis believes that the recommendations will likely include eliminating the appeals to the Administrative Law Judge and the AP (thereby eliminating the AP) and sending appeals directly to the DHEC board or, if a new resources agency is ultimately created, to the governing board of that agency. Chinnis also expects a recommendation for a separate committee to be established to make coastal policy recommendations to the DHEC board.

Separation of Powers Doctrine. Chinnis stated that South Carolina has historically had a "weak governor" system, with most governmental powers resting in the legislative branch through actions of the General Assembly (personal communication, February 2004). However, the trend in recent years has been to shift more power to the executive branch and away from the General Assembly. The 1993 Restructuring Act that abolished the General Assembly-appointed Coastal Council and created SCOCRM within the cabinet-level DEHC was consistent with this trend. Chinnis further commented that if a new Department of Natural Resources is ultimately created, it would also be a cabinet-level department.

Under the present organizational structure, the majority of critical area permits are granted by SCOCRM staff. This structure appears to be the typical executive branch delegation of implementation functions to administrative staff (Cooper, 1997). Initial

appeals of staff permit decisions, which are considered a quasi-judiciary function that may be appropriately undertaken by the executive branch (Cooper 1997), are heard by an Administrative Law Judge (SCOCRM, 2004b). Decisions of the Administrative Law Judge may then be appealed to the 14-member AP.

The AP is comprised of six members that represent each of the six federal congressional districts in the state and are appointed by the General Assembly, South Carolina's legislative body (SCOCRM, 2004b). The remaining eight members represent the eight coastal counties. These members are also appointed by the General Assembly from a field of three persons selected by each coastal County Council. All 14 members serve fixed four-year terms.

The composition of the AP, with all of its members selected by the General Assembly raises some questions of consistency with the separation of powers doctrine. In *Marine Forests Society v. CCC*, the California Appellate Court concluded that the CCC's appointment mechanism infringed upon the inherent authority of the executive branch because it did not include sufficient safeguards or checks preventing such an infringement. The Court argued that the fact that some the appointed members of the CCC were local government officials and local persons recommended by local governments was not a sufficient safeguard because the legislature could ignore the recommendations of local government and select their own representatives. However, in the case of the South Carolina AP, the General Assembly is required to select each of the county representatives to the AP (which constitute the majority of members) from a field of the three persons selected by each coastal County Council. Thus, the legislative appointment scheme employed in South Carolina using county council-recommended members and fixed terms

may employ sufficient safeguards to prevent a separation of powers conflict. Further, if the AP is ultimately abolished, appeals would be heard by the 7-member DHEC Board, which is made up entirely of gubernatorial appointments.

Case Study 3: Virginia Coastal Resources Management Program (VCP)

Virginia's coastal shoreline is 5,000 miles in length, when taking into consideration both the Atlantic coastline and the shores of the Potomac, Rappahannock, York, and James, its four largest tidal rivers (Virginia DEQ, 2002). Approximately 60 percent of Virginia's population of seven million lives within the coastal region, which is comprised of 14 cities and counties (NOAA, 2000). Thus, Virginia represents a state with a large, highly populated coastal region.

Virginia's VCP was established in 1986 based on a "networked" program management concept. Through the "networking" process, the VCP binds together existing Commonwealth programs, agencies, regulations and laws with an Executive Order. Federal requirements for compliance with the CZMA are achieved through implementation of the VCP policies through these existing activities. Since 1993, the Virginia Department of Environmental Quality (DEQ) is the designated lead agency and responsible for monitoring all Commonwealth actions for consistency with the VCP.

The central feature of the VCP is a core of eight separate regulatory programs which, taken together, ensure that critical land and water uses in the coastal zone meet the goals of the overall coastal management program under the umbrella of the VCP organization. VCP itself is very small, with a staff of just 10 persons, half of which are assigned to consistency review of federal projects and the remainder assigned to program coordination and grant administration.

Local Government Relationships. The VCP does not have any direct permitting authority; therefore, a major role of VCP staff is coordinating planning efforts between the eight partnering agencies, the regional planning district commissions (PDCs), and the cities and counties within the coastal zone (Laura McKay, personal communication, February 2004). For example, the 1999 Section 312 evaluation cites the VCP's successful partnership with the cities of Chesapeake and Virginia Beach and the Hampton Roads Planning District Commission (HRPDC) to develop a SAMP for the Southern Watershed Area, entitled the Southern Watershed Area Management Plan (SWAMP). The geographic area addressed in the SWAMP is one of the most biologically diverse in the Commonwealth, supporting more than 40 rare species and 10 wetland communities, and yet it is undergoing rapid urban development. The plan seeks to minimize the adverse impacts of continued urbanization in the area. The development of the SWAMP has been guided by a Local Government Advisory Committee and has resulted in enhanced enforceable policies to protect significant wetland habitat. For example, both cities have completed work on comprehensive plans to address many of the watershed issues, such as public access, water quality protection and wetlands preservation. Working with HRPDC, the VCP has developed a series of goals and objectives for water quality protection and open land preservation in the rural portions of the planning area. Efforts are now focused on developing a series of development controls to implement these goals and objectives (Cheryl Graham, personal communication, February 2004).

In addition to major policy efforts, the VCP provides significant support to coastal PDCs, which are the regional government entities in Virginia (Laura McKay, personal communication, February 2004). In turn, the PDCs support the VCP by providing

assistance to local government entities through educational programs, technical assistance, water quality efforts, and access and resource studies.

One problem cited in the 1999 Section 312 evaluation was a lack of cohesiveness between the networked state agencies carrying out the coastal management program. Until 1997, the VCP had an executive level council (Coastal Committee) that met to deal with jointly shared policy issues pertaining to implementation of the program, award grants and act as a coordination mechanism for state agency actions. The PDCs were also invited to provide a participant representative to address regional and local-level issues. In 1997, the Coastal Committee went out of existence under the administration of former Governor George Allen and its duties were assigned to the gubernatorially-appointed director of DEQ. Although the VCP continued to hold quarterly meetings with the PDCs after the abolition of the Coastal Committee, which allowed the VCP to remain in contact and communication with the PDCs, these meetings were related to the business of the PDCs and their broad set of environmental issues and activities. The Section 312 evaluation noted that what was lacking was overall programmatic support from a group specifically constituted to provide policy guidance and grant recommendations to the VCP.

To address this problem, the Coastal Policy Team was established during the term of former Governor James Gilmore (Laura McKay, personal communication, February 2004). The Coastal Policy Council includes staff representatives from the various affected state departments and a local government representative (Virginia DEQ, 2004). The team's mission is to: 1) identify coastal policy issues that cut across agency jurisdictions and develop policy recommendations; 2) guide a biennial performance review, including development of indicators and performance measures to evaluate the performance of the

VCP as it relates to the health and status of coastal resources; and 3) make grant funding recommendations to the DEQ Director for coastal zone management projects. McKay commented that the Coastal Policy Team includes an appointed local representative, specifically a member of the Hampton Roads PDC, which is the largest PDC in the Coastal Zone. However, NOAA evaluator Cheryl Graham (personal communication, February 2004) believes that increased local government representation on the Coastal Policy Team would be appropriate.

Public Participation. DEQ has no direct permit or policy-making authority as part of the VCP, but rather delegates this authority to the individual state agencies that carry out the various aspects of the program. As such, there is little direct public participation in the operation of the overall VCP (Laura McKay, personal communication, February 2004). Further, the various agencies under the umbrella of the VCP tend to address resource-specific issues, leaving most of the land use decision-making to local entities.

The Section 312 evaluation notes that one consequence of this arrangement is that there is little public visibility of the VCP as a distinct program. Further, the VCP and its elements are not well understood at the local government level. The Section 312 evaluation notes that this does not mean that Virginia does not have a strong and viable coastal program; in fact, both the Section 312 evaluation and Graham credit Virginia with having an outstanding program, particularly in light of its small size and budget (personal communication, February 2004). However, the evaluation notes that there exists an absence of recognition of the coastal program network that defines the VCP. Instead, state and local agencies tend to view the VCP as a funding vehicle for each agency's individual coastal management objectives. NOAA recommended that the VCP develop mechanisms to

increase its visibility through meetings with reporters and legislators, and development of user-friendly program documents and informational materials. NOAA also suggests an awareness vehicle, such as an agency coastal conference, to develop a programmatic coastal consciousness among the networked entities within the VCP.

Separation of Powers Doctrine. Since the VCP relies on professional staff within DEQ and does not have a separate appointed commission to carry out decision-making, no issues pertaining to executive branch authority arise from Virginia's coastal management structure. The Coastal Policy Team is a staff-level team, with the exception of its local government representative, and it has no decision-making authority; instead, it makes recommendations to the DEQ Director (McKay, 2004). Any separation of powers issues would arise through implementation of individual state agency programs under the umbrella of the VCP.

Case Study 4: Alaska Coastal Management Program (ACMP)

With a vast 44,000-mile coastline measuring one-third of the total marine shoreline of the U.S., and a population of just 635,000 persons (of which 80 percent live in the Coastal Zone), the Alaska Coastal Management Program (ACMP) faces significant management challenges related to distance and the enormous variety of climates, ecosystems and land uses within its coastal zone (NOAA, 1998). The state's coastal zone varies in width from 1,320 feet inland in some urban areas, to more than 250 miles inland along coastal rivers in remote regions. The southeastern maritime region, including the City of Juneau, is experiencing population growth and increased tourism. The south-central transitional region is facing a mix of urban growth near Anchorage, oil and port facilities near Valdez, tourism and commercial fishing throughout the region combined with vast areas of undeveloped and

lightly populated coastal land. The northwestern arctic region is largely untouched and minimally populated except in areas where oil and gas development and some commercial fishing activity is taking place. A unique consideration for Alaska is its large community of indigenous people who rely on coastal resources for subsistence.

The ACMP, which was established in 1979, has addressed this challenge through a complex networked program with some similarities to and many differences from that employed by the Commonwealth of Virginia. Like Virginia, the program is implemented through the permitting processes of various state agencies, which are linked together by the ACMP rather than by issuance of separate state coastal permits. However, unlike Virginia, Alaska has relied on the Division of Governmental Coordination (DGC) within the Governor's office to coordinate coastal consistency review if permits are required from more than one state agency, which represents the majority of projects (NOAA, 1998). One application for all the various state permits is submitted to DGC, which distributes the application to all of the affected agencies. DGC solicits input and coordinates the permit process through the affected agencies and acts as the single point of contact in preparing a response to the applicant. Based on the agency input received, DGC makes a determination of coastal program consistency for the project and coordinates issuance of permits and authorizations from the affected agencies.

As of July 1, 2004, a number of significant changes to this process will be implemented (ADNR, 2004a). Under Executive Order 106 signed by Governor Frank Murkowski in April 2003, the ACMP will move from the DGC to the Office of Project Management and Permitting within the Alaska Department of Natural Resources (ADNR). This change was ostensibly undertaken to streamline permitting and consolidate permitting

into one department, improve coordination between the affected agencies, improve efficiency and provide better access to scientific data and technical experts on coastal resources (Bates, 2004).

Local Government Relationships. According to the 1998 Section 312 evaluation of the ACMP, the ACMP actively involves local jurisdictions in the coastal consistency review process. Under the ACMP, local jurisdictions such as cities, town and villages (and referred to under the ACMP as “coastal districts”) may voluntarily prepare a Coastal Resource District Plan (District Plan), which includes local policies for protection of coastal resources (ADNR, 2004a). Once a coastal district has a District Plan adopted by the state and NOAA, the District Plan becomes part of the ACMP and used as a standard of review for coastal program consistency reviews and issuance of state agency permits. The coastal district also becomes a participating agency in the federal and state consistency review processes. According to ADNR Coastal Resource Manager Sara Hunt, this role is particularly important to the local agencies, because it gives them a “seat at the table” in the decision-making on federal actions involving oil development and timber sales, which are common in Alaska (personal communication, February 2004). Participation in the program also qualifies the coastal district for state funding and technical assistance in implementing their coastal program. Since sources of assistance for long-range planning are scarce in Alaska, this support is viewed as a significant incentive for participation (Sara Hunt, personal communication, February 2004).

Prior to adoption of House Bill (HB) 191 in May 2003, district plans were adopted by the Alaska Coastal Policy Council (CPC), which was comprised of seven state agency representatives and nine local government representatives appointed by the Governor. The

CPC was charged with providing policy-level leadership for implementation of the ACMP, including adoption of regulations, approval of district plans and hearing petitions from parties regarding consistency with, and implementation of district plans. However, HB 191 abolishes the CPC and reassigns all of these duties, including district plan adoption, to the gubernatorially-appointed director of the ADNR. Further, HB 191 requires re-adoption of all of the coastal district plans by ADNR by July 1, 2006. The revised coastal district plans "must not address a matter regulated or authorized by state or federal law unless the enforceable policy relates specifically to a matter of local concern" (Bates, 2004). A matter of local concern is defined by the law as "a specific coastal use or resource within a defined portion of the district's coastal zone, that is (i) demonstrated as sensitive to development; (ii) not adequately addressed by state or federal law; and (iii) of unique concern to the coastal resource district as demonstrated by local usage or scientific evidence." HB 191 also provides no funding to the local communities to rewrite their plans.

Two partner bills to HB 191 were also recently adopted (Bates, 2004). HB 69 exempts certain types of projects, including some types of oil and gas projects, from consistency review, and HB 86 eliminates third party lawsuits against OCMP/ACMP consistency determinations. However HB 86 still allows still coastal resource districts to file judicial challenges.

The coastal districts have expressed unrestrained outrage with these new regulations, claiming that local representation is effectively gone (Marv Smith, personal communication, February 2004). Andrew deValpine, representing the Bristol Bay Coastal Resource Service Area, stated, "There is a Section 14 in these bills that imposes requirements that will establish an almost impossible threshold for ADNR approval of coastal district policies

rendering coastal district plans unworkable. This will mean coastal district and resource service areas which have had a seat at the table during state and federal permitting will in essence not have a seat" (Alaska Conservation Voters, 2003). Marv Smith, Coastal District Coordinator for the Lake and Peninsula Borough, stated during consideration of HB 191, "I am not opposed to this administration by any means. I am opposed to how this bill is being pushed to the bush communities to accept it" (Alaska Conservation Voters, 2004). In a letter to NOAA dated August 22, 2003, Smith claims that the proposed changes would: "(1) make federal agencies the experts on environmental impacts to the state's coastline; (2) exempt some major oil and gas proposals from state review; and (3) give greater weight to the opinion of federal agencies, thereby eliminating the historical deference given to the state and local government." The changes have been submitted to NOAA by the state as a Routine Program Change to their adopted CMP and are currently undergoing a 28-day public review period as mandated under the CZMA prior to NOAA action, which is scheduled for March 15, 2004. The coastal districts have banded together to form the Coastal District Association and are currently urging NOAA not accept the Routine Program Change and instead require that the change be processed as a more substantial Program Amendment (Marv Smith, personal communication, February 2004).

In 1998, the Section 312 evaluation of ACMP recognized the continuing efforts of the program to increase the standing of the coastal districts in implementation of the ACMP. Graham concurred that Alaska in the past has had an outstanding program for local government participation in the state consistency review process, particularly in light of the state's need to balance protection of coastal resources with support for oil development, which is a major component of its economy (personal communication, February 2004).

Graham also credited the program for its effective annual meetings with the coastal districts that are rotated to different regions of the state, including some very remote communities. However, the proposed changes in HB 191 appear to have, at least initially, brought about negative consequences with respect to intergovernmental relationships with local communities.

Public Participation. ACMP allows for focused public comment during its coastal consistency review process (ADNR, 2004a). Specific regulations are provided for noticing projects in newspapers in the affected coastal district, through posting on an Internet website, posting at the project site and through direct mail or e-mail to interested parties. Written comments must be received by ADNR during a 17 to 30-day comment period (depending on project type) and a public hearing to take oral comments may be requested by members of the public. ADNR regulations require the agency to take into consideration all timely comments received and ADNR must consult with the other resource agencies with expertise and the coastal districts to consider each comment.

However, ADNR regulations stipulate that all public comments must be relevant to ACMP standards and the commenter must specifically identify the standard or enforceable policy in question and explain how the project is inconsistent with the standard or enforceable policy (ADNR, 2004a). A brief review of the consistency determination public notices listed on the agency's website indicates that these public comment requirements are not identified on the public notices and requests for comments (ADNR, 2004b).

Members of the public who have submitted timely comments may petition ADNR if they do not concur with a consistency determination (ADNR, 2004a). Like the public comment regulations, the regulations pertaining to petitions serve to limit the scope of issues

that may be raised in a petition. Petitioners must be citizens of the coastal district, must state in writing all points they wish to raise during the petition process, must explain how a District Plan is not being implemented, and suggest an alternative action that will implement the District Plan. The petition regulations further state that the burden of proof for providing evidence of inconsistency falls on the petitioner. Once the petition is heard, ADNR considers the evidence presented and determines whether petitioner's comments were "fairly considered" during the consistency determination process.

One unique element of the State of Alaska's government is reliance on teleconferencing to allow public participation given the enormous distances involved and the difficulty of travel from many parts of the state. The state has developed a teleconferencing system that allows active participation in state public hearings from various locations throughout the state. The petitioning process allows petition hearings to be carried out via teleconference.

Separation of Powers Doctrine. The CPC, which is in the process of being abolished, consisted of gubernatorial appointments and therefore raised no issues regarding executive branch authority or separation of powers doctrine. With abolition of the CPC, all powers and duties are being transferred to the director of the ADNR, a gubernatorial appointment. Therefore, the revised program also does not raise any issues pertaining to executive branch authority.

Findings

Research Question 1: What organizational models are used by coastal management programs (CMPs)?

Appendix 1 includes a list of the 30 states with CMPs and a brief summary of each program's organization based on the website review. The review determined that 17 CMPs (57%) operate in a policy advisory or "networked" capacity and utilize other state or local programs for CMP compliance, similar to Virginia's program. The remaining 13 states (43%) require a direct permit for coastal development from the CMP or mandate some other form of indirect approval, such as the state consistency review process employed by Alaska. However, of these 13 programs, nine have limited regulatory jurisdiction. For example, these agencies issue limited permits for activities in navigable open waters, in the immediate shoreline area, or in sensitive coastal habitats such as beaches, dunes, estuaries and marshes. Only the CCC, Alaska, South Carolina, and North Carolina have broad direct or indirect approval powers for development inland of the immediate coastal area. Further, in 11 of the 13 programs, permits or approvals are granted at the staff level, although at least two (North Carolina, South Carolina) appear to incorporate some form of quasi-judicial review of appeals by an appointed hearing officer or commission. Only the CCC and the BCDC utilize a commission-based approval process.

Research Question 2: What approaches have been used by other CMPs to develop positive relationships with local government, effective public participation processes and avoid separation of powers problems and how can their experiences be applied to the CCC?

The case studies and the website analysis demonstrate that there is an array of options available to the CCC to improve relationships with local government, build stronger public participation processes and avoid separation of powers issues.

Local Government Relationships. Table 1 provides a summary of the positive and negative characteristics of the four programs analyzed in the case studies in terms of relationships with local government. The case studies demonstrate that both networked CMPs and those with direct regulatory authority can develop successful relationships with local governments through a variety of techniques.

Local government non-compliance with state mandates, such as that faced by the CCC, did not appear to be a major issue for the other CMPs included in this analysis. None of the CMPs analyzed in the case studies have a mandatory requirement for a local plan, nor do they have mechanisms to transfer permit authority to local government. It is notable that local participation in Alaska's program is voluntary, yet there has been a high level of participation because of the local governments' desire to have "a seat at the table" in the state's consistency review process (Cheryl Graham, personal communication, February 2004). However, the proposed changes to Alaska's CMP, which require complete update of coastal district plans within two years combined with limitations on enforceable policies and a lack of funding for updates may jeopardize future participation.

Table 1. Comparison of CMPs in terms of Intergovernmental Relationships

Program	Positive Characteristics	Negative Characteristics
Bay Conservation and Development Commission (BCDC)	Regional focus, limited permit jurisdiction, use of intergovernmental partnerships.	Funding cuts may reduce future participation in intergovernmental coordination.
South Carolina Office of Coastal Resource Management (SCOCRM)	Use of SAMPs, local liaison program, technical workshops.	Need for statewide policy-making body focused on coastal issues.
Virginia Coastal Program (VCP)	Use of SAMPs, quarterly meetings with regional government, regional government participation on Coastal Committee.	Little interaction with local government; only one regional government member on Coastal Committee.
Alaska Coastal Management Program (ACMP)	Local government participation in state review process, annual meetings with local coastal partners.	Program changes may limit future local participation in state consistency review processes.

The findings from the case studies highlight certain factors that could shed some light on the CCC's current adversarial relationship with local government. First, the fact that California's mandatory LCP requirement has had a lower participation rate than

Alaska's voluntary coastal district plan program is significant. This finding suggests that the mix of coercive versus cooperative mechanisms contained in the Coastal Act have not been effective in achieving local government compliance. Second, the CCC's broad permit authority as compared to that of other CMPs may prevent it from focusing on larger coastal policy issues or developing relationships with local governments through partnerships and long-range planning efforts.

Public Participation. Table 2 provides a comparison of the four programs analyzed in the case studies in terms of their public participation programs. The BCDC in particular has a reputation for open public participation and responsiveness. This reputation was also shared by South Carolina's program prior to abolition of the Coastal Council. However, the 1993 reorganization to a staff-based permit system appears to have disenfranchised non-governmental organizations and the public, with some feeling that there is little opportunity for meaningful feedback on both permits and emerging policy issues. Alaska's use of teleconferencing is notable, though the restrictions on participation that require knowledge of specific coastal policies by the public may serve to marginalize many in its population, including its rural and indigenous populations (Tauxe, 1995).

Based on the experiences of other CMPs, the CCC's difficulties with public participation could be addressed in several ways. One possible scenario is reestablishment of the regional commissions to create a regional focus similar to that enjoyed by the BCDC. Regional commissions would provide better access for the public, who would no longer need to travel long distances to participate in public hearings. It would also lighten the workload of the statewide commission and allow it to address larger, statewide policy issues. Former coastal analyst Mark Capelli favors this approach, noting that many of the agency's

Table 2. Comparison of CMPs in Terms of Public Participation Processes

Program	Positive Characteristics	Negative Characteristics
Bay Conservation and Development Commission (BCDC)	Website notice, public hearings accessible with region, consensus- building decision-making.	Funding cuts may reduce number of meetings, and increase workload allowing less time for consensus building.
South Carolina Office of Coastal Resource Management (SCOCRM)	Website notice, written public comment on permits, limited opportunity for public hearing.	No feedback on public comments or basis for decisions. Costly, time-consuming appeals process.
Virginia Coastal Program (VCP)	No direct public participation program except for SAMPs.	Little public awareness of program.
Alaska Coastal Management Program (ACMP)	Limited public review process allowed, opportunity for public hearing, teleconferencing.	Public must understand coastal policies and direct comments specifically to coastal policies.

difficulties began after the regional commissions were abolished (personal communication, December 2003).

Alternatively, reducing the CCC's permit responsibilities by granting broader decision-making authority to local government may also improve the public's ability to participate in the decision-making process. Such an arrangement would bring the decision-making processes to "where the citizens are, rather than asking citizen to come to them" (King, 1998). The key to success would be retention of a statewide commission to establish strong statewide policies and to certify local plans in order to prevent compromised local decision-making as feared by Layzer (2002).

Finally, a statewide teleconferencing system, similar to that utilized by Alaska, could be developed to improve public participation and feedback at CCC meetings without the necessity of travel by citizens. This approach could be incorporated without any changes to the existing organizational structure of the CCC.

Separation of Powers. Finally, there are countless appointment structures that could be implemented to address the separation of powers/executive branch authority problem faced by the CCC. Most CMPs have avoided the problem entirely by utilizing staff for permit decision-making or by using a networked system of state agencies. In CMPs where appointed commissions are used for policy development, members appear to be directly appointed by the governor, selected from the staff of state agencies or appointed by local government. The BCDC's appointment structure, which is most similar to the CCC's, avoided the issue by only including only a small number of legislative appointees. Any of these approaches would likely solve the CCC's separation of powers issue.

Research Question 3: What constraints to organizational change of the CCC may exist?

Three major constraints to organizational change of the CCC appear evident. First, budget shortfalls are a reality in California for the foreseeable future. The state budget

shortfall placed the CCC in the limelight once again when the 2004 budget plan proposed by Republican legislators included a provision to eliminate the CCC. While this proposal did not come to pass, Governor Schwarzenegger in his 2004 State of the State speech stated, "We have multiple departments with overlapping responsibilities. I say consolidate them. We have boards and commissions that serve no pressing public need. I say abolish them." This statement appears to reflect the administration's desire to eliminate some agencies and commissions, thus changes to the CCC under the current administration in light of the budget crisis are not out of the question.

At the same time, the budget may present a constraint to some reorganization options. It seems clear that the best long-term solution to the over-commitment of CCC staff to permitting efforts at the expense of long-range planning is resolution of the LCP non-compliance problem. Such a solution is not likely to occur soon, given the lack of CCC staff available to assist local government in solving the LCP non-compliance problem and the suspension of the grant program for LCP development. Changes that would include hiring additional staff or creating regional commissions appear unlikely at this time given potential higher costs to the state. Funds are probably not available in the near future to create a state teleconferencing network, though this would likely be a relatively low cost expenditure, which could be linked to existing local government teleconferencing and government access cable television systems statewide.

Secondly, the centralized management style of Executive Director Douglas combined with his apparent distrust of local government may help explain the current adversarial relationship between the CCC and local government and the lack of serious efforts by the CCC to enforce the LCP certification requirements of the Coastal Act. Schein

(1992) contends that if the environmental changes and the initial assumptions made by organizational leaders become incorrect over time, an organization's culture must find a way to change its culture, a process that is exceedingly difficult to accomplish. However, until the organizational culture of the CCC changes to loosen the top-down approach to decision-making and seeks to improve relationships with local government, the intended implementation of the Coastal Act by local government is not likely to occur.

Finally, transforming the CCC may be an idea whose time is just now coming to pass. Kingdon (1995) theorizes that "policy windows," or opportunities for significant change can only occur when a problem is identified, possible solutions have already been suggested by advocates for change and there have been changes in the political stream resulting from a shift in public mood or a change in administration. Kingdon notes that a focusing event, such as a crisis, is often necessary to draw attention to a problem that was already "in the back of people's minds." Although the CCC has faced several crises during its lifetime, Kingdon suggests that awareness sometimes comes only after two or more focusing events have occurred. The current budget crisis, the recent changes in the administration and the desire to make state government more efficient could be focusing events that initiate meaningful efforts to change the CCC.

Conclusions and Recommendations

The following recommendations propose systematic changes to the CCC to improve relationships with local governments, achieve effective public participation processes and establish clear executive branch authority. Although implementation of these recommendations in some cases would require amendment of the Coastal Act, they are

based on the assumption that the original intent of the Coastal Act should be maintained to the extent feasible.

1. Delegate most authority for CDPs to local governments regardless of current LCP certification status and eliminate the appeals jurisdiction for communities with certified LCPs. Amend the Coastal Act to require local governments without certified LCPs to issue permits based on the existing Coastal Act policies and statewide interpretive guidelines already developed by the CCC. Reassign most existing CCC regulatory staff to providing support and assistance for local government development of and updates to LCPs, similar to the role of the local liaison being used by SCOCRM, and the intergovernmental efforts being undertaken by the BCDC and the VCP.

Requiring local governments to issue CDPs absent the guidance of an LCP would compel non-compliant local governments to face the very responsibility that the CCC has been handling since 1976. Further, reassigning CCC staff to local assistance would provide needed support to the local communities in developing their LCPs. This recommendation combines both coercive and cooperative mechanisms to achieve local compliance with the Coastal Act, reduces regulatory overlap between the CCC and local government and makes CCC staff more available to develop relationships with local governments. Further, since more CDPs would be granted at the local level, citizens would have increased access to the decision-making process and greater ability to participate in actions affecting their communities.

2. Increase the time period for mandatory LCP reviews and updates from 5 years to 10 years, given the inherent long-range context of LCPs, to reduce the regulatory burden on local government and focus the limited resources of the CCC staff on those LCPs most in need of update.
3. Establish a staggered schedule for initial LCP certifications and overdue LCP updates, similar to that currently used by the State Department of Housing and Community Development (HCD) for Housing Element Updates. First priority should be given to those jurisdictions without certified LCPs and those with the most serious issues resulting from lack of an update. With a state mandated schedule for compliance, CCC can prioritize its staff resources to assisting local communities with the greatest need and local governments will have the opportunity to properly plan and budget for scheduled updates.
4. Reinstate local planning grants for LCP development and updates as a cooperative mechanism toward local compliance with the Coastal Act. Priority for grant allocation should be based on the mandated schedule.
5. As suggested by Cigler (1998), require local governments to incorporate into LCP updates measurement of their performance in achieving compliance with Coastal Act policies based on adopted statewide performance standards, benchmarking or performance contracts with the CCC. Performance measurement will allow for local flexibility in implementation of LCPs while requiring accountability for carrying out important coastal policy mandates.
6. The CCC should retain appeals jurisdiction only in communities without certified LCPs or with certified LCPs that have not been updated consistent with the

mandated schedule. This recommendation will ensure that the CCC maintains some oversight of controversial projects in those communities that are out of compliance with LCP requirements.

7. The CCC should retain CDP authority for major projects of statewide concern to allow participation of those beyond the immediate local community. These major projects should include:

- Major oil and gas projects
- Energy generation projects (such as power plants and nuclear energy facilities)
- Public works projects valued over \$10 million, including state agency sponsored projects (such as highway and bridge projects)
- Projects in State tidelands (including beaches, dunes, estuaries and tidal rivers and streams) (current permanent permit jurisdiction).

8. Similar to the BCDC's actions, increase the number of categories for Coastal Exclusions, which allow staff-level approval of minor projects within the CCC's permit jurisdiction. For example, excludable activities should include minor improvements to harbors, wharves or public works facilities that do not result in environmental impacts, installation of monitoring wells, installation of manholes or sewer laterals without expansion of service or capacity and minor wetland restoration projects. This recommendation will streamline review for minor projects that currently must receive CDPs from the CCC and are not likely to raise public concern or result in significant environmental impacts. This recommendation will also

increase CCC staff's ability to work with local government on major coastal policy issues and planning efforts rather than minor permits.

9. Similar to the networked CMP programs in Virginia and Alaska, delegate certain coastal policy consistency reviews to other state agencies with existing expertise and regulatory authority to address the lack of staff and expertise within the CCC for addressing these issues. For example, coastal policy consistency review of point and non-point water pollution control issues should be delegated to the Regional Water Quality Control Board and habitat, endangered species and wetland issues should be delegated to the California Department of Fish and Game. This recommendation would reduce regulatory overlap between state agencies and increase CCC staff availability to work with local government on major coastal planning efforts.
10. As a condition of eligibility for coastal program management grants for coastline enhancement (either from the CCC or the Coastal Conservancy), require that local jurisdictions have a certified LCP or have completed their update based on the mandated schedule. This recommendation provides an additional coercive mechanism to compel local compliance with the Coastal Act.
11. The appointment structure of the CCC should be modified to eliminate direct legislative appointments. Instead, the CCC should be reconstituted with a mix of representatives from state agencies, local government and citizens at large, similar to the appointment structure of the BCDC. Local government officials and citizens at large should be selected by each of the regional government entities within the coastal zone. Regional governments should either select a slate of three more suitable candidates from whom the governor may appoint representatives or the

candidates should be selected directly by regional governments and confirmed by the governor. This arrangement would allow better representation of each region on the CCC and resolve issues of executive branch authority. This approach would also address the remaining separation of powers issues raised by *Marine Forests Society v. California Coastal Commission* and would create opportunities for consensus-based decision-making similar to the BCDC.

12. To eliminate undue political influence, the appointment structure should also be modified to eliminate "at-will" status for any gubernatorial appointees, similar to what was accomplished under AB 1 for legislative appointees. Unless changes are made, the power and politics approach to decision-making will likely continue, stemming from the governor's office instead of the legislature.
13. The CCC (or the State of California as a whole) should develop a teleconferencing network similar to that employed in Alaska to allow public access regardless of where a meeting is held. Oral public comments could then be submitted through a statewide network of facilities with teleconferencing capability. This recommendation would allow greater accessibility and fairer representation by allowing testimony and feedback by members of the public who cannot travel long distances. CCC meetings should also be broadcast on cable TV through local government access channels to allow citizens to observe meetings even if they do not plan to present comments. This provides for more accountability for CCC actions and better public understanding of the CCC and the CMP overall.

Areas for Further Research

The Section 312 evaluations for all five CMPs touched on the difficulty of enforcement of coastal policies regardless of whether enforcement was carried out by the CMP itself, other state agencies or local government. A common theme is lack of funding and staff resources for enforcement efforts. Additional analysis of CMP enforcement efforts is warranted to determine the most effective approaches. Steven McAdam commented that his Masters of Public Administration thesis at the University of San Francisco in 1977 involved an analysis of enforcement programs, which determined that most CMPs at that time lacked regulatory tools (personal communication, February 2004). He believes that the necessary regulatory tools, such as civil citation authority, now exist. However, most CMPs continue to lack the staff and funding necessary to carry out effective enforcement.

Additionally, four of the CMPs evaluated herein underwent some type of major reorganization during their history, including CCC's elimination of the regional commissions, South Carolina's loss of the Coastal Council, Virginia's abolishment of the Coastal Committee and its subsequent introduction of the Coastal Policy Team, and Alaska's current reorganization under HB 191. It is likely that other CMPs have undergone major reorganization at some point in their lifetime. The long-term effects of these reorganization efforts and whether the desired effects were achieved are subjects worthy of further study. Significant lessons may be gleaned from such an analysis prior to undertaking efforts to change the CCC or any other CMP.

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Appendix 1
Summary of State Coastal Management Programs

State	Permit or Approval Authority?	Approval by Staff or Commission?	Notes
Alabama	Yes	Staff	Limited to areas immediately adjacent to coast. Public review period and public hearing if staff determines one is necessary.
Alaska	Yes	Staff	Networked program that uses state consistency review. Public review period and limited public comment available. Appeal available, but very limited. Local plans approved by state and NOAA are incorporated into the overall CMP.
California (BCDC)	Yes	Commission	Limited to work within 100-feet of San Francisco Bay
California (CCC)	Yes	Commission	Permits for all development in state public trust lands and communities without state-certified plans. State commission hears appeals of some local permits.
Connecticut	Yes	Staff	Only required for activities in tidal wetlands and navigable waters.
Delaware	No		Advisory to state agencies and local government.
Florida	Yes	Staff	Primarily a networked program between 10 state agencies and local government. Permits limited solely to construction below 100-year storm surge line.
Georgia	Yes	Staff	For development in tidal waters, marshes, beaches and dunes.
Hawaii	No		Networked program with permit authority granted to other state and local agencies.
Indiana	No		Networked with other state agencies.
Louisiana	Yes	Staff	Primarily for work in open coastal waters – mainly oil and gas development, dredging operations and underwater pipeline and cable installation.
Maine	No		Networked system implemented by other state and local agencies.

Appendix 1
Overview of State Coastal Management Programs (cont.)

State	Permit or Approval Authority?	Approval by Staff or Commission?	Notes
Maryland	No		Networked system implemented by other state and local agencies.
Massachusetts	No		Networked system implemented by other state and local agencies. Program is advisory only.
Michigan	No		Networked with other state programs that regulated work in sand dunes and submerged lands. 7-member commission appointed by governor makes policy.
Minnesota	No		New program approved by NOAA in 1999. Networked program. Waters Division has permit authority for work in all state waters.
Mississippi	Yes	Staff	Coordinated with Army Corps of Engineers Clean Water Act Section 401 permit process for work in wetlands and navigable waters,
New Hampshire	No		Networked system implemented by other state and local agencies.
New Jersey	Yes	Staff	Within defined coastal area, coastal waters and wetlands.
New York	No		Networked program within regions and local communities.
North Carolina	Yes	Staff	Major permits processed by state; minor permits (such as single family homes) delegated to local governments. Local land use plans required. Appeals to administrative hearing officer.
Ohio	Yes	Staff	Primarily a networked program. Direct permits required only for shorelines structures and coastal erosion along Lake Erie.
Oregon	No		Networked system implemented by other state and local agencies. Program is advisory only.
Pennsylvania	No		Networked system implemented by other state and local agencies.

Appendix 1
Overview of State Coastal Management Programs (cont.)

State	Permit or Approval Authority?	Approval by Staff or Commission?	Notes
Rhode Island	No		Coastal Resources Council appointed by governor and consisting of state and local representatives and technical experts has authority to adopt policies and regulations that are implemented by state and local agencies.
South Carolina	Yes	Staff	Areas of Special Concern, including open waters and wetlands. Indirect consistency review of projects requiring other state permits. Appeals available to Administrative Law Judge and Appellate Panel.
Texas	No		Networked with other state agencies. New program established in 1997.
Virginia	No		Networked with other state agencies.
Washington	No		Cities and counties have plans approved by state Coastal Management Council, which also provides program oversight and support. Permitting at local level.
Wisconsin	No		Network of six state agencies.

Total Programs: 30

Total without permit/approval authority (networked or advisory only): 17 (57%)

Total with permit/approval authority: 13 (43%)

Total with permit/approval authority by staff: 11 (36%)

Total with approval by appointed commission: 2 (7%) (both California)

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