

TICKET TO THERMIDOR: A COMMENTARY ON THE PROPOSED CALIFORNIA COASTAL PLAN

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Proposition 20,¹ an initiative measure approved by California voters in November 1972, established a California Coastal Zone Conservation Commission and required it to produce a coastal plan by December 1, 1975. The Commission completed its 443-page Plan² on schedule and, as the initiative required, forwarded the document to the legislature for consideration and adoption.

Although Proposition 20 required that the Plan contain, among other things, a "land-use element" and a "population element for the establishment of maximum desirable population densities,"³ the Commission's product is notably lacking in concrete designations.⁴ One-third of the Plan's length is indeed devoted to multicolored maps of coastal zone segments,⁵ but these maps essentially show *existing* land uses and provide no indication of what areas might ultimately be earmarked for high-density development or for stabilization. The text accompanying the maps includes general recommendations on uses, but usually in a form too general and cursory to provide much guidance.⁶

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1. Formally known as the California Coastal Zone Conservation Act of 1972, generally codified at CAL. PUB. RES. CODE §§ 27000-650 (West Supp. 1976).

2. CALIFORNIA COASTAL ZONE CONSERVATION COMM'NS, CALIFORNIA COASTAL PLAN (1975) [hereinafter cited as COASTAL PLAN].

3. CAL. PUB. RES. CODE §§ 27304(c)(1), (8) (West Supp. 1976).

4. CAL. GOV'T CODE § 65302(a) (West Supp. 1976) requires that the land use element of a local plan designate "the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space . . ." The Coastal Plan, however, postpones these designations to a later date. See COASTAL PLAN, *supra* note 2, Policy 59, at 79. See also *id.*, Policies 161-62, at 175-76.

5. COASTAL PLAN, *supra* note 2, at 278-420.

6. See, e.g., the excerpts in notes 57-69 *infra*.

Rather than making specific land use designations, the Commission proposed several hundred policies and subpolicies of general application, and recommended an administrative structure for carrying them out. Many of the suggested policies are not suited to legislative adoption. Two provide, for example, that "[t]he State Department of Fish and Game . . . shall be adequately funded . . . and adequately staffed,"⁷ and that "[t]ransportation agencies shall also cooperate with education agencies at all levels and the public media to promote broader public consciousness and acceptance of mass transportation"⁸ The proponents of the Plan have devoted several months to translating its salvageable parts into legislative language. The resulting bills,⁹ introduced in February 1976, are remarkably faithful to the Commission's substantive policies, and in fact often cite them by number and borrow their exact language. Although they contain blanket declarations that the Commission's Plan shall be the policy of the state,¹⁰ the bills do not attempt to apply any of the designated policies to specific geographic areas. This lack of specificity is probably a conscious strategic choice of the Plan's sponsors. Recent experiences in Vermont and Maine demonstrate that proposing a concrete state land use plan is politically suicidal because it is certain to stir up intense local opposition.¹¹

Unless otherwise noted, this critique discusses only those substantive policies and procedural structures that are common to both the Commission's Plan and the bills introduced to implement it. Because the Coastal Plan is extraordinarily complex, a few of its features must inevitably be selected as illustrations to convey the flavor of the whole. The basic theme of this commentary is that the California Legislature should reject the Plan before it.

I. TWO CURRENT ENVIRONMENTALIST FADS: AGRICULTURAL LANDS AND THE "ENERGY OF THE FUTURE"

The Coastal Plan betrays that its authors lack even a rudimentary grasp of economic theory. As a consequence, although the Commissioners

7. COASTAL PLAN, *supra* note 2, Policy 3a, at 28.

8. *Id.*, Policy 111, at 147.

9. S.B. 1579 (Beilenson), Cal., 1975-76 Sess., introduced Feb. 10, 1976. Its companion is A.B. 3076 (Sieroty), Cal., 1975-76 Sess.

10. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30003(a).

11. For a one-sided account of the repeated legislative defeats of specific statewide land use plans in Vermont, see McClaughry, *The New Feudalism*, 5 ENVIRONMENTAL L.

claim to be attempting to enhance the efficiency of resource allocation in coastal areas,¹² the Plan is in fact chock-full of inefficient policies. The two best illustrations are the program to preserve agricultural lands and the policies to facilitate the switch to a particular new source of energy.

A. THE PROGRAM TO PRESERVE AGRICULTURAL LANDS

The Commission concluded that

[b]ecause coastal agriculture contributes substantially to State and national food supply and is a vital part of the State's economy, the State's goal shall be to maintain agricultural lands in agricultural production.¹³

This policy, which the Coastal Commissioners clearly regard as one of the keystones in their cathedral, demonstrates that the Plan's proponents have no conception of the merits of relying on private markets to allocate resources. They are apparently not alone. The Governor of California, Edmund G. Brown, Jr., has himself recently declared "the need to preserve prime agricultural land."¹⁴ In addition, the State Assembly has passed a bill¹⁵ that would establish a statewide program nominally aimed at preserving prime agricultural land (but arguably actually intended to accord substantial abatement in property taxes to California's largest rural landowners).¹⁶ An elementary lesson in land economics thus seems in order.

675 (1975). The (temporary?) demise of the specific plan for the midcoast area of Maine is described in Lewis, *Coastal Plan Runs Aground*, *PLANNING*, Nov. 1975, at 12.

12. See, e.g., *COASTAL PLAN*, *supra* note 2, at 4.

13. *Id.*, Policy 30, at 55, incorporated in S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE §§ 30215-21, 30422(f).

14. State of the State address, Jan. 7, 1976, in *L.A. Times*, Jan. 8, 1976, § 2, at 2, col. 4.

15. A.B. 15 (Warren), Cal., 1975-76 Sess., proposing the addition of CAL. GOV'T CODE §§ 67700-80 and CAL. REV. & TAX. CODE § 402.3. The bill passed the Assembly by a 41-36 vote on Jan. 29, 1976.

16. The Warren Bill (A.B. 15) authorizes local governments to recommend that a state agency restrict specific prime agricultural lands to their current use. If the state agency agrees, the land is then assessed for property taxes according to its value as restricted. Although there is a conclusive presumption for tax purposes that the restriction will never be removed, in fact it can be if, for example, the land is "needed for urban growth." Local recommendations for removal of the agricultural designation are reviewed by the state agency. If that agency generally defers to local requests, as it is likely to do, a landowner with considerable local political influence will thus be able to reduce his holding costs by having his land designated for agricultural use until it is ripe for development, and then having it reclassified.

This would then be a more perfect tax avoidance system than the more complicated

Land can be used in many ways—for example, for grazing cattle, growing wheat, or building houses. The businessmen who buy land for these purposes derive their demand for it from the demand of consumers for finished goods—in these cases, steak, bread, and shelter.¹⁷ If a homebuilder outbids a wheat farmer for a parcel of land, the higher value of the land for residential construction generally indicates that more consumer satisfaction will be derived from its development than from its continued use in agriculture. In other words, in a market economy, factors of production tend automatically to be allocated to the industries that can satisfy human wants most cheaply.

There is, of course, a catch. Unbridled land markets may not result in optimal resource allocation where the use of a specific tract substantially affects outsiders. For instance, certain parcels may provide magnificent vistas to motorists or replenish aquifers essential to a municipal water supply; their development might deprive motorists and water consumers of these benefits. Where externalities of this sort are present, it may be efficient for government to intervene in the private land market—for example, by buying up land itself, by taxing or subsidizing various uses, or by enacting mandatory regulations of the type the Coastal Plan emphasizes.¹⁸ These governmental interventions are

Williamson Act (California Land Conservation Act of 1965), CAL. GOV'T CODE §§ 51200-95 (West Supp. 1976), which sometimes requires participating landowners to disgorge part of their past tax benefits if they terminate their participation and develop. See CAL. GOV'T CODE § 51283 (West Supp. 1976).

17. For a relatively comprehensible discussion of derived demand and land markets, see P. SAMUELSON, *ECONOMICS* 513-46 (8th ed. 1970).

18. There are other superficially plausible economic justifications for preserving agricultural lands. Since land in urban use can be reconverted to farming only at great cost, owners of farmland who develop could make serious allocational mistakes if they underestimate the future demand for cropland. The risk is reciprocal, however; if planners overestimate the future demand for food, they will "overconserve" farmland and thereby deprive consumers of highly valued present consumption in return for less valued future benefits. The loss could be as great either way. The critical issue is who is likely to know more about agricultural economics—farmers or Commissioners? The Plan makes one doubt it's the latter.

Nor is there any reason to believe that centralized planners would apply "more efficient" discount rates than farmers in weighing the importance of future agricultural uses. Discount rates in private markets reflect the aggregate trade-offs of consumers between current and postponed satisfactions. Unless the citizens of California are in need of paternalistic second-guessing of their routine, day-to-day time preferences, collectively decreed discount rates will only diminish the value of human welfare over time.

Governmental intervention in agricultural land markets may of course be justified to counter monopoly pricing. However, there is no evidence of problems with agricultural monopolies along the California coast, and the Commission itself never invokes this justification.

not without cost, however. The costs of intervention may exceed its benefits, particularly when the most inflexible device, mandatory regulation, is the one used.¹⁹

The agricultural land preservation policy in the Coastal Plan thus might be theoretically sound if it were motivated to control externalities such as the loss of scarce open space in dense urban areas. Externality control, however, was not the primary motivation behind the Commission's policy. If it had been, the Commission would have tried to frame a program to identify and preserve agricultural lands that have special aesthetic importance, and would not have recommended a blanket program that would apply even where development would not injure neighbors or passers-by. Although the Commission does list the preservation of open space as one of the aims of its agricultural lands policy, its chief concerns are "[w]orld food shortages, price increases, and balance of payments considerations. . . ."²⁰ These latter considerations provide no rational basis for the massive intervention in private land markets proposed by the Coastal Plan. If developers have been outbidding farmers for coastal land, there must be many good alternative sites for farming (*i.e.*, agricultural land is quite elastically supplied), but few alternative locations that developers believe to be as appealing to housing consumers. A policy barring the conversion of agricultural lands along the California coast to urban use could at most microscopically reduce food prices, but might well significantly raise housing prices. This appears to have been the effect of the programs to preserve Hawaii's pineapple and sugar cane fields.²¹ On balance, a prohibition on the development of aesthetically undistinguished agricultural land is an anticonsumer policy. If the Commissioners aspire to allocate productive factors by state decree, they have missed out on some good bets. For instance, they might prohibit farmers from converting agricultural lands from "good" crops (naturally

Lastly, the policy conceivably could be designed to redistribute wealth from disfavored groups (say, wealthy housing consumers) to favored ones (say, middle-income tourists motoring along coastal highways). Wealth redistribution, however, is usually much more efficiently accomplished by means of direct cash transfers. In addition, the Coastal Plan on balance will hurt the less wealthy individuals who normally are viewed as the most sympathetic candidates for redistributive programs. See text accompanying notes 115-22 *infra*.

19. See Ellickson, *Alternatives to Zoning: Covenants, Nuisance Rules, and Fines as Land Use Controls*, 40 U. CHI. L. REV. 681, 706-10 (1973).

20. COASTAL PLAN, *supra* note 2, at 55.

21. F. BOSSELMAN & D. CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* 13-18, 25-27 (1971) (prepared for the Council on Environmental Quality).

grown grains?) to "bad" crops (cut flowers?).²²

The policy of preserving agricultural lands not only is theoretically unsound, but also seems to be based on misinformation. Although the acreage planted in crops in the United States has indeed dropped a bit lately,²³ the principal reason for this decline has been the 50 percent increase in agricultural productivity per acre over the past 20 years.²⁴ (The productivity gains have been so pronounced that one may in fact recall federal programs to pay farmers *not* to plant their lands.) The proponents of agricultural land preservation claim there has been a continuing decline in California acreage devoted to agricultural production.²⁵ With regard to the basic foodstuffs, this is simply false.²⁶ The Coastal Plan's proponents seem to be unaware that California's 1975 crop smashed the state's tonnage record for field crops, and also established new production peaks for lemons, navel oranges, grapefruit, walnuts, avocados, wine grapes, vegetables, and processing tomatoes.²⁷ In short, market forces have smoothly accommodated the urbanization of Orange County and other prime agricultural lands over the last generation. As developers converted cropland to urban use, farmers simply shifted to more intensive cultivation of their remaining land, and started planting the best tillable acreage that had been in the great reserve of uncultivated land. A U.S. Department of Agriculture survey in 1967 found that for every three acres actually used in cropland there are two additional acres suitable for regular cultivation but which are devoted to other uses, such as pasture or forest.²⁸ The Department sees no "short-

22. This crop may in fact be among the favored. The Commission has denied applications to build dense condominium projects in order to preserve lands especially suited for growing cut flowers. See CALIFORNIA COASTAL ZONE CONSERVATION COMM'NS, ANNUAL REPORT 1974, at 6-7.

23. The U.S. Department of Agriculture reports that the 409 million acres in cropland in 1949 declined to 382 million in 1973. ECONOMIC RESEARCH SERVICE, U.S. DEP'T OF AGRICULTURE, OUR LAND AND WATER RESOURCES: CURRENT AND PROSPECTIVE SUPPLIES AND USES (1974), in SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, 94TH CONG., 1ST SESS., READINGS ON LAND USE POLICY 321, 327 (Comm. Print 1975).

24. *Id.* at 321.

25. See, e.g., statement of Assemblyman Charles Warren, *quoted in* L.A. Times, Jan. 30, 1976, § 2, at 1, col. 6.

26. From 1964 to 1974, the California acreage used for raising field crops climbed from 6.23 million to 6.52 million; for vegetable crops, from 0.68 million to 0.86 million; and for fruit and nut crops, from 1.27 million to 1.50 million. See 1966 CALIFORNIA STATISTICAL ABSTRACT 124, 126, 128; 1975 CALIFORNIA STATISTICAL ABSTRACT 85-86, 90.

27. L.A. Times, Jan. 27, 1976, § 2, at 6, col. 1.

28. ECONOMIC RESEARCH SERVICE, U.S. DEP'T OF AGRICULTURE, OUR LAND AND WATER RESOURCES: CURRENT AND PROSPECTIVE SUPPLIES AND USES (1974), in SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, 94TH CONG., 1ST SESS., READINGS ON LAND USE POLICY 321, 341 (Comm. Print 1975).

age" of cropland.²⁹ Hopefully, California politicians also will soon recognize the absurdity of general programs to preserve all prime agricultural lands.

B. THE "ENERGY OF THE FUTURE"

The Plan's energy policies also demonstrate the woeful lack of understanding of a market economy possessed by the Commissioners and their staff. If the relative prices of the traditional fossil fuels—oil, coal, and natural gas—rise in the years ahead, there will no doubt be some shifting to alternative sources of energy. Which alternatives will prove to be the most efficient substitutes? Nuclear energy? Oil shale? Geothermal energy? Tidal energy? Wind energy? The Coastal Commissioners devoted much thought to this riddle and eventually divined the fuel of the future: solar energy. They find this energy source particularly appealing, because it poses the "fewest environmental problems" and is unlimited in supply.³⁰

The Coastal Plan includes authorization for a two-step program to reap the benefits of the revelation that solar energy is the fuel of the future. One would prepare the stage for the Prophet, and the other would command his worship. First, beginning in mid-1977, the Coastal Plan would allow the Commission to require that all new structures built in the coastal area be designed to facilitate their easy conversion at a later date to heating systems substantially based on solar sources.³¹ Second, if the Plan were adopted, the Coastal Commission would be authorized to declare when "an effective delivery system for solar-assisted heating . . . exists in California,"³² *i.e.*, when solar heating systems are "comparable to conventional systems in costs over the life of the systems" ³³ After the date of that declaration, solar-assisted heating systems would have to be installed both on all structures subsequently built (or substantially remodeled) in the coastal area,³⁴ and also on all the "prepared" structures required to be designed for easy conversion.³⁵ (The ironic result of these provisions might be that

29. "[W]e are in no danger of running out of farmland." *Id.* at 321.

30. COASTAL PLAN, *supra* note 2, at 101.

31. *Id.*, Policy 75(c)(1), at 109-10. The bills contain a specific endorsement of all of Policy 75, but prudently decline to describe its contents. See S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30251. See also *id.*, proposed § 30422(m).

32. COASTAL PLAN, *supra* note 2, Policy 75(a), at 108.

33. *Id.*

34. *Id.*, Policy 75(b), at 109.

35. *Id.*, Policy 75(c)(2), at 110.

solar equipment would first be required in a portion of California that receives less sun than most.³⁶ To alleviate possible hardships from these policies, the Plan does require that public hearings precede their adoption and also authorizes variances from the requirement.³⁷

Solar energy may indeed prove to be one of the most efficient sources of energy. But there is certainly a chance that the Commissioners have not been (and will never be) able to foresee perfectly all future technological changes. First, even if the sun's energy becomes the best source to harness, the optimal technology may involve large solar power stations run by utility companies rather than the individual units for each structure which the Coastal Plan contemplates.

Second, the Commissioners seem to ignore a major environmental cost of solar energy: aesthetic blight. The energy systems envisioned in the Plan would involve several hundred square feet of southerly directed flat-plate solar collectors per single-family dwelling.³⁸ Most traditionally popular architectural styles would be severely tested by this design element; one finds it hard to imagine collector plates being attractively integrated with cedar shakes or Spanish tile. The solar approach would also require strict restrictions on tall shade trees, particularly in the dense urban areas that the Coastal Plan attempts to foster.³⁹ The Plan itself admits that 65 percent of existing dwellings could not be retrofitted to solar energy because they are either shaded by other buildings or trees, or possess the wrong roof angles.⁴⁰

Third, and most important, solar energy is at present not cost competitive with the more traditional fuels used for space and water heating. The capital costs of installing in a new single-family home the collectors, storage units, and associated hardware and labor for a solar system somewhat more ambitious than that contemplated by the Coastal Plan recently has been estimated at \$10,000.⁴¹ In addition,

36. The Commission claims that Los Angeles and Orange County coastal locations, despite frequent fogs, receive a surprising 90% of the mean daily solar radiation that falls on Phoenix. See *id.* at 102. Nevertheless, solar heating first would become cost competitive at desert locations such as Palm Springs.

37. *Id.*, Policies 75, 75(b), at 108-09.

38. See Faltermayer, *Solar Energy Is Here, But It's Not Yet Utopia*, FORTUNE, Feb. 1976, at 102, 106.

39. See text accompanying note 44 *infra*.

40. COASTAL PLAN, *supra* note 2, at 102.

41. See Faltermayer, *Solar Energy Is Here, But It's Not Yet Utopia*, FORTUNE, Feb. 1976, at 102, 106. The M.I.T. Solar Energy Working Group has concluded that

each home must still be equipped with a conventional back-up heating system.

It is disturbing that the Commissioners even thought about compelling consumers to use solar energy. If solar energy in fact proves to be the most cost-effective fuel, the self-interest of builders and building owners will lead them to adopt it voluntarily. If the Commissioners dislike the air pollutions produced by fossil fuels, they should recommend taxes or controls on those pollutants,⁴² and not threaten to place the coercive power of the state behind just one of the many alternative energy sources. The requirement of a solar energy system is the sort of inflexible "specification standard" against which architects and other critics of building codes have fought for years.

The Plan alleges that the policy is necessary because builders "are slow to adopt and promote any new device that raises capital costs even if long-term overall costs are lower"⁴³ This assumes that those who purchase buildings are insensitive to the operating costs of various heating systems, and thus need the Commissioners to look after them. No effort is made to prove this allegation and it would be difficult to do so. Electric baseboard units—one widely available heating system with very low capital costs—are in fact sparingly specified by architects or installed by builders because they realize that most consumers are sensitive to the high long-term costs of that system. Moreover, if consumer ignorance is a problem, the appropriate policy is not to dictate use of a particular technology, but simply to require builders to disclose the estimated operating costs of whatever heating systems they install.

In sum, even if the Commissioners have guessed correctly, no efficiency gains will result from their requiring use of solar energy; solar systems would be freely adopted by the market. If they have backed the wrong horse, however, the Coastal Plan will cause a deadweight loss of welfare equal to the amounts spent and design opportunities foregone in providing solar energy capability for coastal structures in anticipation of a Prophet who never came.

"[s]olar energy's major potential lies well in the future." L.A. Times, Mar. 1, 1976, § 2, at 2, col. 5. For a somewhat more optimistic view, see Duffie & Beckman, *Solar Heating and Cooling*, 191 SCIENCE 143 (1976). To sample the views of the apostles, see Commoner, *Energy-II*, NEW YORKER, Feb. 9, 1976, at 38, 54-77.

42. Cf. COASTAL PLAN, *supra* note 2, Policy 74(b), at 108 (advocating tax incentives to promote use of nonfossil fuels).

43. *Id.* at 103.

II. POLICIES AND PROCEDURES FOR CONTROLLING URBAN DEVELOPMENT

The Coastal Plan's administrative structure is also vulnerable to criticism. The problem can be illuminated by a discussion of one of the major substantive issues the Commission considered—the location of future urban growth. The Commissioners have decided to “encourage orderly, balanced development that avoids wasteful sprawl by concentrating new growth in developed areas with adequate public services”⁴⁴ Scattered development is announced to be inefficient because it necessitates greater expenditures on urban infrastructure per dwelling and adds to the travel time of residents.⁴⁵ The authors cite *The Costs of Sprawl*, a well publicized study by the Real Estate Research Corporation,⁴⁶ to support these propositions. They also prefer high-density development because it facilitates increased reliance on mass transportation systems.⁴⁷

It is hardly news that the per-dwelling costs of urban infrastructure go down as density increases. However, this does not in itself prove that concentration is more efficient than scatteration. If many consumers prefer low-density neighborhoods to concentrated ones—a proposition that seems to be supported by the suburbanization of the United States over the last several generations—then it is possible that the added consumer satisfaction derived from the free exercise of this preference more than outweighs the additional costs of servicing some scattered developments. Where this is so, scattered development is more efficient than concentrated development.⁴⁸ In short, as *The Costs of Sprawl* itself is careful to note, one must consider not only the costs of supplying various environments, but also the demand of consumers for them.⁴⁹

44. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30008. The bill quotes almost verbatim the COASTAL PLAN, *supra* note 2, Policy 1(5), at 25. See also S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE §§ 30242-44, 30422(a)(1)-(2); COASTAL PLAN, *supra* note 2, Policies 59-61, at 79-81.

45. COASTAL PLAN, *supra* note 2, at 22. See also *id.* at 79.

46. REAL ESTATE RESEARCH CORP., *THE COSTS OF SPRAWL: EXECUTIVE SUMMARY* (1974) (prepared for the Council on Environmental Quality).

47. COASTAL PLAN, *supra* note 2, Policy 59(f)(1), at 81. See also *id.* at 145-47.

48. Cf. Lessinger, *The Case for Scatteration*, 28 J. AM. INSTITUTE OF PLANNERS 159 (1962); Ohls & Pines, *Discontinuous Urban Development and Economic Efficiency*, 51 LAND ECON. 224 (1975).

49. REAL ESTATE RESEARCH CORP., *THE COSTS OF SPRAWL: EXECUTIVE SUMMARY* 6-7 (1974):

The correct pricing of public services can assure that consumer choices between concentrated and scattered environments are not biased by government policies. Remote developers thus should be required to bear—via subdivision exactions and the like—the added infrastructure costs resulting from their developments;⁵⁰ remote residents should be required to pay in user charges the incremental service costs they impose. Were these pricing policies in effect, entrepreneurs could profitably develop remote sites only if some consumers in fact derived great value from living at those locations. As was its wont, the Commission declined to take this flexible pricing approach, but instead chose to condemn scattered growth across the board. This is simply an instance of one group of individuals imposing their version of the good life on others.

Closer examination of the Plan also reveals that the Commissioners' true policy is not to shift new construction from scattered locations to central ones, but to reduce the absolute amount of coastal development. Despite its claims to the contrary,⁵¹ the California Coastal Plan is at bottom adamantly antigrowth.

The rules governing litigation over permit decisions are one indication of this unarticulated policy. The bills introduced to implement the Plan provide that plaintiffs seeking to enforce Plan policies cannot be required to post bonds⁵² regardless of the merits of their claims. When plaintiffs prevail in suits to halt violations of the Plan, they automatically are entitled to recover their attorney fees from defendants.⁵³ However, when a defendant developer who was granted

Nor should the results be interpreted as recommending one type of development over another. There are too many costs and benefits which have not been included, particularly those associated with questions of personal preferences and the revenues generated by different development types.

50. This is actually common practice. For examples of the technique at work, see *City of Glendale v. Barclay*, 94 Ariz. 358, 385 P.2d 230 (1963) (sanitary sewer mains); *American-Hawaiian S.S. Co. v. Home Sav. & Loan Ass'n*, 38 Cal. App. 3d 73, 112 Cal. Rptr. 897 (1974) (water "feeder" line); *Brous v. Smith*, 304 N.Y. 164, 106 N.E.2d 503 (1952) (improvement of access road).

51. The Coastal Plan seeks *not* to stop growth and development, but to direct new construction primarily into the rebuilding and upgrading of already-developed areas where additional development can be accommodated. The issue is not *whether* there should be new development, but *where*.

COASTAL PLAN, *supra* note 2, at 22 (emphasis in original).

52. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE §§ 30602-03. The Commission was silent on the issue of bonds. Proposition 20 contained a provision similar to the one in the bills. See CAL. PUB. RES. CODE § 27425 (West Supp. 1976).

53. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES.

a permit prevails over an environmentalist who erroneously challenges his permit approval, the developer is not only not entitled to recover his attorney fees,⁵⁴ but may in fact be required to pay the plaintiff's attorney fees if the losing plaintiff was serving "the public interest."⁵⁵

Second, the regional summaries printed at the end of the Commission's Plan reveal a definite antigrowth bias. These summaries contain brief applications of the general policies to specific areas.⁵⁶ The regional summaries for Los Angeles and Orange Counties, where development is as dense as anywhere along the California coast, call for severe curbs on prospective residential development in the following communities: Malibu,⁵⁷ Venice,⁵⁸ Marina Del Rey,⁵⁹ the Los Angeles Airport area,⁶⁰ the South Bay cities,⁶¹ the Palos Verdes peninsula,⁶² Long Beach,⁶³ Santa Catalina Island,⁶⁴ North Orange County,⁶⁵ Newport Beach/Costa Mesa,⁶⁶ the Irvine Ranch area,⁶⁷

CODE § 30605; cf. CAL. PUB. RES. CODE § 27428 (West Supp. 1976); COASTAL PLAN, *supra* note 2, General Provision 35, at 190.

54. See CAL. CIV. CODE § 1717 (West 1973) (whenever a contract entitles one party to collect attorney fees, the unfavored party shall also be entitled to collect them should he prevail in litigation arising out of the contract).

55. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30605. The Commission did not propose this policy; it was added by those who drafted the bills.

56. The bills' general endorsement of the Commission's Plan presumably extends to these applications. *Id.*, proposed § 30003(a).

57. "The Plan designates Malibu as nonurban . . ." COASTAL PLAN, *supra* note 2, at 246.

58. "The old Venice area . . . should be protected and preserved." *Id.* at 247.

59. "No intensification of land uses in the Venice, Marina Del Rey, and Venice Peninsula areas should be permitted . . ." until traffic, open space, and land use priorities have been solved. *Id.*

60. "Stable single-family neighborhoods should be preserved and protected from pressures for recycling to higher densities." *Id.* at 248.

61. "[T]he Plan would limit further increases in housing density until there are major improvements in beach access, traffic circulation, and the amount of open space." *Id.* at 249.

62. Coastal lands should only be used for "very low-density residential projects." *Id.*

63. "Residential recycling in Long Beach should be primarily at existing densities . . ." *Id.* at 251.

64. New housing construction shall be ". . . permitted only in a few clustered, planned communities, primarily for the resident population." *Id.* at 252.

65. "Recycling and rehabilitation of residential areas at the same densities should be encouraged in most areas." *Id.* at 253.

66. "Also important will be . . . limiting development as necessary to protect recreational travel capacity." *Id.* at 254.

67. "The overall subregional growth should be restricted . . ." *Id.*

Laguna Beach,⁶⁸ and South Orange County.⁶⁹ These areas constitute the vast majority of the coastline in Los Angeles and Orange Counties. In contrast, the regional summaries identify only two locations in these counties as appropriate for new high density development: "downtown Santa Monica,"⁷⁰ and the "downtown area" of Long Beach.⁷¹ Even if the Commission is using a relatively expansive definition of "downtown," the net effect of these specific policies must inevitably be a much lower level of coastal housing construction than would otherwise result.

The third clue which refutes the Commission's contention that housing opportunities will not be curtailed is a proposed administrative structure procedurally stacked against new development. This requires a bit of explanation. The specific applications of the Plan's general policies are to be contained in "local coastal programs," initially drafted by local governments and submitted to the Commission no later than January 1, 1979.⁷² The Commission is given up to 2½ years (until June 1, 1981) to certify either these local proposals or substitutes it has itself prepared.⁷³ The land use controls contained in certified programs would apply not only to the current narrow permit area (generally 1000 yards back from the mean high tide line⁷⁴), but also to a newly defined "coastal resource management area."⁷⁵ This latter area is usually much larger. The Commission's Plan⁷⁶ shows it extending 5 miles inland in most rural areas, and as much as 9 miles inland in several midcoast regions.⁷⁷

68. "Policies . . . include the maintenance of the higher hills for open space use, with probably only very limited low-density residential uses in selected locations." *Id.* at 256.

69. "Faithfully meeting Plan goals . . . will necessitate severely restricting residential growth in this subregion." *Id.* at 257.

70. *Id.* at 247.

71. *Id.* at 251.

72. The Commission termed these "local implementation programs," and would have allowed 3 years for their preparation. *Id.* at 180-85. The bills changed the name and shortened the deadline. *See* S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE §§ 30420-22, 30400(c).

73. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE §§ 30444, 30447.

74. CAL. PUB. RES. CODE §§ 27104, 27400 (West Supp. 1976).

75. *See* S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE §§ 30103, 30401, 30405, 30453-55, 30504(b); COASTAL PLAN, *supra* note 2, at 180, 184, 277.

76. The State Commission approved the boundary lines shown in the regional summaries. COASTAL PLAN, *supra* note 2, at 277.

77. *See, e.g., id.* at 339 (Santa Cruz area); *id.* at 361 (San Simeon area).

By potentially extending the planning period to 1981, the pending legislation would more than double the 4-year development moratorium imposed by Proposition 20 to a total of 8½ years. (Frustrated developers will no doubt claim the prolonged delay entitles them to just compensation.⁷⁸) The postponement of the concrete planning decisions also side-steps Proposition 20's call for legislative review of a final plan—a wise administrative procedure perhaps, but probably one not envisioned by many of those who voted for Proposition 20.

Had the Commissioners been serious about redirecting urban growth from scattered locations to concentrated ones, they would have provided the proposed State Coastal Agency with authority to preempt local zoning ordinances. For example, when the Commissioners divined the need for intensive future development in the City of Santa Monica, they should have been concerned that that city has recently been rolling back the residential densities it allows in apartment zones near the beach.⁷⁹ Unless the Coastal Plan provides a method for overriding local housing density controls in areas where the Plan calls for higher densities than are permitted by local regulations, its net impact must be to dampen the amount of development.

State land use planning programs come in two quite different forms. Those that provide for state preemption of local ordinances tend to be favored by the prodevelopment lobby, which sees them as a means for breaking through local exclusionary practices.⁸⁰ State per-

The authors of the bills, ever true to their strategy of ducking concrete decisions that might provoke controversy, do not specifically endorse these mapped boundaries, and in fact ask the Commission to have a new go at drawing them after the coastal legislation is adopted. See S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30344.

78. Proposition 20's 4-year moratorium was held not to constitute a taking of property in *State v. Superior Court (Veta Co.)*, 12 Cal. 3d 237, 252-55, 524 P.2d 1281, 1291-93, 115 Cal. Rptr. 497, 507-09 (1974). Justice Mosk referred to the moratorium as a "temporary" measure that did not amount to a taking "at this time." *Id.* at 255, 524 P.2d at 1293, 115 Cal.Rptr. at 509.

79. See, e.g., Santa Monica, Cal., Ordinance 1012, Aug. 26, 1975 (establishing a transitional two-family dwelling zone later used as a substitute for apartment zoning near the beach). Santa Monica officials favor an ambitious downtown commercial redevelopment project. See L.A. Times, Feb. 12, 1976, § 7, at 1, col. 6 (West Side ed.). However, they also have imposed a development moratorium in the downtown area pending completion of renewal planning. Santa Monica, Cal., Ordinance 995, Mar. 25, 1975.

80. There is no insurmountable legal barrier to the preemption approach. Constitutional home rule provisions have been consistently construed as not protecting local governments from preemptive state land use controls. See *CEEED v. California Coastal Zone Conservation Comm'n*, 43 Cal. App. 3d 306, 320, 118 Cal. Rptr. 315, 325 (1974) (dictum); *Board of Appeals v. Housing Appeals Comm.*, — Mass. —, 294 N.E.2d 393,

mit requirements that merely supplement local requirements are violently opposed by developers and warmly embraced by the antigrowth lobby. The latter "dual veto" system was expressly adopted for the planning moratorium period under Proposition 20,⁸¹ and expressly would be continued by the proposed legislation at least until certification of the local coastal programs.⁸² The Reporters who drafted the *Model Land Development Code*,⁸³ the premier piece of legal thinking about state land use planning, had no hesitation in choosing the preemption model over the dual veto system.⁸⁴ In their view, one of the main functions of state land use controls is to force local governments to accept what they call "development of regional benefit"—activities that on balance are detrimental to local interests but, because of spillover benefits, are efficient from a statewide perspective.⁸⁵

The California Coastal Plan waffles on the critical structural issue of whether independent local planning decisions will continue to be permitted in the coastal region. Some general provisions are consistent with the preemption approach; they assert that local governments are to be bound by the Coastal Plan, and must bring their master plans and ordinances into conformity with it or risk imposition of a Commission program.⁸⁶ But two other specific provisions, which probably would be construed by courts as prevailing over the more general ones, authorize the state Commission to override local officials *only* when those officials have made prodevelopment decisions; state officials apparently will be helpless to overcome local exclusionary practices that stymie state policy.⁸⁷

407-10 (1973); *Floyd v. New York State Urban Dev. Corp.*, 33 N.Y.2d 1, 300 N.E.2d 704, 347 N.Y.S.2d 161 (1973); *cf. People ex rel. Younger v. County of El Dorado*, 5 Cal. 3d 480, 487 P.2d 1193, 96 Cal. Rptr. 553 (1971).

81. CAL. PUB. RES. CODE § 27400 (West Supp. 1976) requires developers seeking coastal permits to comply also with all other local or state land use restrictions.

82. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30500.

83. MODEL LAND DEVELOPMENT CODE (all citations are to Proposed Official Draft, 1975).

84. *See id.* § 7-101, Note 1. This should not be surprising. Fred P. Bosselman, the *Code's* Associate Reporter and one of the leading theoreticians of state land use planning, is a well-known opponent of local exclusionary practices. *See, e.g., Bosselman, Can the Town of Ramapo Pass a Law to Bind the Rights of the Whole World?*, 1 FLA. ST. U.L. REV. 234 (1973).

85. *See* MODEL LAND DEVELOPMENT CODE §§ 7-301(4), -304, -502, 8-502, 9-103.

86. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE §§ 30420, 30446; COASTAL PLAN, *supra* note 2, General Provisions 4, 5, 10, at 181, 184.

87. *See* notes 88-95 *infra*.

First, if the City of Santa Monica, for example, does not adopt a "local coastal program," the state Commission is expressly empowered only to prohibit Santa Monica from issuing development permits, but is not expressly empowered to mandate that the city issue them.⁸⁸ Second, if Santa Monica does produce a local coastal program acceptable to the proposed State Coastal Agency, the City itself then has exclusive initial jurisdiction over coastal permit applications.⁸⁹ While the *Model Land Development Code* also relies on local permit decisions to implement state planning policies,⁹⁰ the Reporters were careful to assure that any aggrieved party, including of course a disappointed permit applicant, could appeal the local decision to a state review tribunal.⁹¹ The Coastal Commissioners, however, show their true anti-development stripe by recommending that the State Coastal Agency have jurisdiction to hear only appeals from local permit *approvals*, but not from local permit denials.⁹² Even Proposition 20 was not so one-sided as to allow only environmentalists to appeal Regional Commission decisions.⁹³ A developer aggrieved by a local refusal of development permission is of course still entitled to judicial review. But in court, a developer would have to prove that the local decision was not supported by substantial evidence,⁹⁴ and might have to overcome the presumption of regularity often accorded local land use decisions. Environmentalists appealing local permit approvals to the commission would receive de novo review of the evidence.⁹⁵

Despite endorsement by the Reporters of the *Model Land*

88. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30453(a); COASTAL PLAN, *supra* note 2, General Provision 10(c), at 184.

89. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30504; COASTAL PLAN, *supra* note 2, General Provision 10(b), at 184.

90. MODEL LAND DEVELOPMENT CODE §§ 7-204(3), -303.

91. *Id.* § 7-301, Note 1; *id.* §§ 7-502, 9-103.

92. S.B. 1579, § 1, Cal. 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30501(a), controlling proposed § 30515(a); COASTAL PLAN, *supra* note 2, General Provision 11, at 184-85. There is an exception; the State Commission will hear appeals when a local government turns down an energy facility or public works project. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30501(a).

93. CAL. PUB. RES. CODE § 27423(a) (West Supp. 1976) expressly authorizes appeals by disappointed permit applicants.

94. Since (presumably) no "fundamental vested right" would be involved, a trial court would apply the substantial evidence test. *See Strumsky v. San Diego County Employees Retirement Ass'n*, 11 Cal. 3d 28, 520 P.2d 29, 112 Cal. Rptr. 805 (1974).

95. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30515(c). Under Proposition 20, the State Commission held de novo public hearings when it heard appeals. CAL. PUB. RES. CODE § 27423(c) (West Supp. 1976).

Development Code, state land use programs that preempt local controls are apparently politically untenable in the long run. Modest programs enacted in Massachusetts and New York to facilitate construction of subsidized housing in exclusionary suburbs seem to have since been repudiated by their legislatures.⁹⁶ The most solidly established state land use programs—in Hawaii, Maine, and Vermont—all explicitly adopt the dual veto, antidevelopment format.⁹⁷ When aroused, the interest groups who want to retain local control over development apparently are able to wield decisive political influence over the contents of state land use legislation.⁹⁸ The Commissioners' decision to provide Santa Monica with loopholes for frustrating state policy is thus, no doubt, wise political strategy. If any plan eventually does emerge from the California Legislature, it is likely to have been amended to incorporate an explicit dual veto format.⁹⁹

In short, the Commissioners' substantive policies on urban growth would impair consumer satisfaction not only by unnecessarily restricting the variety of residential environments where development could occur, but also by sharply reducing the total volume of coastal housing con-

96. The Massachusetts program is described in Note, *The Massachusetts Zoning Appeals Laws: First Breach in the Exclusionary Wall*, 54 B.U.L. REV. 37 (1974). By late 1975, only 600 dwelling units had been built as a result of the act, and the Massachusetts Legislature had refused to appropriate further funds to run the program. Boston Globe, Nov. 1, 1975, at 4, col. 1.

The New York Urban Development Corporation was originally authorized to override local zoning ordinances. In 1973, the New York Legislature not only stripped it of this power, but also authorized local governments to veto UDC projects that conformed to preexisting zoning and building regulations. N.Y. UNCONSOL. LAWS ANN. § 6265(5) (West Supp. 1975).

97. See HAWAII REV. STAT. §§ 205-5(a), -15 (1968); ME. REV. STAT. ANN. tit. 12, § 685-A(4) (Supp. 1975-76); VT. STAT. ANN. tit. 10, § 6082 (1973). *But cf.* FLA. STAT. ANN. §§ 380.05(8), -.06(11)(b) (1974).

98. One exceptionally interesting analysis of the politics of state land planning has pointed out the critical "swing" position held by local control forces. See Godwin & Shepard, *State Land Use Policies: Winners and Losers*, 5 ENVIRONMENTAL L. 703 (1975).

99. The legislators, however, have a strong monetary incentive to disguise a grant of local veto power. The *Plan's* supporters would like their program to qualify for federal subsidies available under the Federal Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-64 (Supp. II, 1972). See S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE §§ 30010, 30330; COASTAL PLAN, *supra* note 2, at 13-14. To be eligible, however, a state plan must contain "a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." 16 U.S.C. § 1455(e)(2) (Supp. II, 1972). Thus the explicit pro-"home rule" amendments that may be necessary to secure favorable legislative action could assure California's lack of eligibility for federal coastal planning funds.

struction. What is especially troublesome is that those who drafted the Coastal Plan lacked the candor to admit their desire to slow growth and instead chose to enforce their intentions through one-sided procedural rules and by implicitly preserving local veto power over state policies.

III. BENEFICIARIES AND VICTIMS

Since the Coastal Plan contains an abundance of inefficient policies, on balance it will inflict losses in excess of benefits. Some individuals might of course come out ahead. Members of the planning profession are one obvious example. The Commission's document asked for preparation of future comprehensive plans for no less than: (1) estuarine areas;¹⁰⁰ (2) watersheds;¹⁰¹ (3) water supply;¹⁰² (4) subregional agricultural protection;¹⁰³ (5) ports;¹⁰⁴ (6) open space acquisition;¹⁰⁵ (7) restoration of visually degraded areas;¹⁰⁶ and, most important (8) "regional supplements";¹⁰⁷ (9) "subregional plans";¹⁰⁸ and (10) "local implementation programs."¹⁰⁹ A second obvious set of beneficiaries are attorneys, who will enjoy and profit from litigating the correctness of not only a much larger number of coastal permit decisions, but also ones governed by scores of ambiguous and conflicting policies.¹¹⁰ Best treated of all are attorneys for environmental groups; they recover attorney fees from developers when they win, and sometimes even when they lose.¹¹¹

Another group of beneficiaries might be the members of Cali-

100. COASTAL PLAN, *supra* note 2, Policy 15(c), at 41.

101. *Id.*, Policy 22, at 49.

102. *Id.*, Policy 23(a), at 50.

103. *Id.*, Policy 32, at 57-59.

104. *Id.*, Policy 117, at 149-50.

105. *Id.*, Policy 140(b), at 162.

106. *Id.*, Policy 152(b), at 171.

107. *Id.*, Policy 161(a), at 176.

108. *Id.*, Policy 162, at 176.

109. *Id.*, Policy 161(c), at 176; *id.*, General Provision 7, at 182-83.

110. For example, new projects in special communities are to "strengthen the physical form of the community." S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30241(a); COASTAL PLAN, *supra* note 2, Policy 58(e), at 78. It is hard to imagine what evidence would be relevant if a permit approval were challenged as violating this policy. Presumably, attorneys for both sides would call architects and city planners as experts to testify whether the proposed development would strengthen or degrade the community's physical form. If so, these experts would constitute another group of beneficiaries.

For examples of indefinite policies in the Regional Summaries, *see* notes 57-69 *supra*.

111. *See* text accompanying notes 53-55 *supra*.

fornia's economic and intellectual elites. Their value preferences are rather consistently reflected in the Plan's substantive policies.¹¹² For example, the design guidelines do not even attempt to disguise the Commissioners' contempt for middle-American tastes: "Pre-set architectural styles (*e.g.*, pseudo-Spanish mission and standard fast-food restaurant designs) shall be avoided."¹¹³ The "special communities" singled out for preservation—*e.g.*, La Jolla, Venice, Carmel, Mendocino¹¹⁴—also tend to be the watering holes favored by those who can afford to dislike mass-produced architecture.

The principal losers from enactment of the Coastal Plan would be average California taxpayers and housing consumers. Demand for housing along the coast is relatively inelastic because there is no close substitute for that location. As a result, the Plan's restrictions on new construction can be expected to increase sharply the price of both new and used housing near the beach. Although definitive empirical studies are not yet available, observers believe that supplementary state land use controls in both Hawaii and California have in fact significantly boosted housing prices.¹¹⁵ The Coastal Plan's restrictions thus can be expected to hurt, among others: (1) present coastal tenants (as their landlords will be able to raise their rents); (2) those who will move to the coastal area in the future; and (3) those who would otherwise have settled in the coastal area but are now deterred from doing so by high prices.¹¹⁶ The beneficiaries of the higher housing prices will be the landlords and homeowners who own existing coastal structures; note, however, that the damage suffered by the third-mentioned group of consumers is a deadweight loss of no benefit to landlords.

112. A large majority of the public representatives who have served on the State and Regional Commissions have been either business executives, members of professions, or academicians. See COASTAL PLAN, *supra* note 2, at viii-x. One should not be surprised that these representatives attempted to enhance the welfare of their own kind.

113. *Id.*, Policy 51, at 73. See also S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30231 (endorsing the design guidelines in the Commission's Plan).

114. COASTAL PLAN, *supra* note 2, Findings & Policy 58, at 77-78.

115. For the Hawaii experience, see F. BOSSELMAN & D. CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* 5-34 (1971).

In California, five county assessors testified before a state legislative committee that in its first year, Proposition 20 had, in effect, substantially increased the values of developed property along the coast, and probably caused a decline in the value of undeveloped land. *L.A. Times*, Oct. 25, 1973, § 2, at 1, col. 5.

116. For a more formal explanation, see R. Ellickson, *Suburban Controls on Urban Growth: An Economic and Legal Analysis*, Mar. 1976 (unpublished manuscript, on file with the author).

The authors of the California Coastal Plan, without question a well-intentioned sort, were not totally insensitive to the risk that they might be accused of injuring housing consumers. They included several policies aimed at ensuring that housing along the coastline would be available to low- and moderate-income families.¹¹⁷ (This is reminiscent of the OPEC nations granting foreign aid to underdeveloped nations to mitigate hardships from high petroleum prices.) The Commissioners' policy of priority treatment of housing for those of modest income is disingenuous in several respects. First, given the existing political opposition of the development lobby, it is inconceivable that a coastal plan requiring communities like Carmel and Laguna Beach to provide for subsidized housing could pass the legislature.¹¹⁸ Political necessity will compel approval of amendments to permit the wealthier beach communities to veto subsidized housing projects; in fact, the Plan probably already allows this.¹¹⁹ Second, housing strategists are increasingly asking that housing subsidies take the form of cash allowances, not the administratively expensive, scandal-prone, project subsidies which the Plan contemplates.¹²⁰ The federal spigot on which the Commissioners rely for deep housing subsidies may well be turned off. Third, the Coastal Plan's proposed restrictions on the conversion of apartments to condominiums and on the demolition of existing low-priced housing units¹²¹ will not protect modest renters in an area like Venice. If the Commissioners succeed in stifling the supply of additional housing in places like the South Bay, Marina Del Rey, and Malibu, the young professionals who want to live near the beach will of necessity increasingly start looking for housing in the Venice area. Venice landlords will then be able to raise their rents without making improvements; they may also choose to upgrade their structures to cater to a wealthier tenantry. Poor tenants in Venice would be damaged either way.

117. See, e.g., COASTAL PLAN, *supra* note 2, Policy 58, at 77-78 (preservation of "special coastal communities" providing a "diversity of . . . housing opportunities"); *id.*, Policy 126, at 156; *id.*, General Provision 7(k), at 182.

118. See S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE § 30422 (l) requiring local coastal programs to contain a "low- and moderate-income housing component . . . that assures an adequate amount of [subsidized] housing . . . in new developments . . ."; cf. COASTAL PLAN, *supra* note 2, Policy 126(b), at 156; *id.*, General Provision 7(k), at 182 (calling for a "significant amount" rather than an "adequate amount" of such housing).

119. See text accompanying notes 86-95 *supra*.

120. See, e.g., H. AARON, SHELTER AND SUBSIDIES (1972).

121. S.B. 1579, § 1, Cal., 1975-76 Sess., proposing the addition of CAL. PUB. RES. CODE §§ 30276(a), (c); COASTAL PLAN, *supra* note 2, Policies 126(a), (c), at 156.

There is no evidence that the Commissioners considered the ultimate step—rent controls on coastal properties. Advocacy of that policy would be a confession of the Plan's unfortunate effects on housing prices and would alienate some of the Plan's major beneficiaries, coastal landlords.

The Plan's policies that are aimed at redistributing coastal wealth to less advantaged groups suffer the usual drawbacks of in-kind housing subsidies. Only an arbitrary fraction of the class of eligible beneficiaries—poorer families—can be benefited, and much efficiency is inevitably lost through administrative costs and the inalienability of the largess provided. Working class voters, many of whom have a direct stake in the construction industry, apparently are able to recognize that exclusionary state land use planning is not in their interest; they led Utah voters in rejecting a state land use program in a recent referendum.¹²²

IV. THE BANKRUPTCY OF STATE MASTER PLANNING

Prior to voter approval of Proposition 20, coastal resources in California were being managed primarily by: (1) private and public landowners; (2) cities and counties (both of which are required in California to engage in land use planning);¹²³ and (3) a welter of special-function state and federal agencies. Without question, the management process was untidy and characterized by the muddling through of problems. Those who drafted Proposition 20 had a very low tolerance for untidiness. They called for the "precise, comprehensive definition of the public interest in the coastal zone,"¹²⁴ and the creation of a strongman agency to achieve it. In a world of perfect information and infallible civil servants, this would be as good an approach as any. But in the real world—where people hold sharply conflicting values, where technological change outstrips the imagination of science fiction writers, and where civil servants may be uninformed or subject to corruption—the centralized master planning of the use of widely scattered resources is likely to inpair rather than augment human welfare. Perhaps a passive State Coastal Agency acting as a clearinghouse for information would enhance coastal efficiency; the many anti-consumer policies in the Coastal Plan make it clear that an agency with coercive powers certainly will not.

122. "Blue-blood Republican areas" in Utah favored the proposed measure. *See* Dean, *How to Kill a Land-Use Bill*, *PLANNING*, Jan. 1976, at 22, 23.

123. *See* CAL. GOV'T CODE § 65300 (West 1966); *id.* § 65302 (West Supp. 1976).

124. CAL. PUB. RES. CODE § 27304(a) (West Supp. 1976).

The California Legislature could of course make the Plan more palatable by deleting the most inefficient and elitist policies. Political precedent indicates, however, that only a version that gives both local and state agencies veto power over private development is likely to survive. In short, the only enactable state land use programs of general application are undesirable ones. The recent trend toward greater state land use planning is known among the cognoscenti as the "quiet revolution in land use control."¹²⁵ Recent developments in other states seem to indicate that the tide toward greater state control may be reversing.¹²⁶ Rejection of the California Coastal Plan by the California Legislature would help turn the "quiet revolution" in its most promising direction: toward Thermidor.¹²⁷

125. The phrase is drawn from F. BOSSELMAN & D. CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* (1971), which first described the emerging state programs.

126. See notes 11, 122 and accompanying text *supra* (describing recent developments in Vermont, Maine, and Utah).

127. Thermidor:

[F. *Thermidor*, month of the Fr[ench] revolutionary calendar beginning July 19; fr[oin] the overthrow of Robespierre which took place in that month in 1794]: a moderate counterrevolutionary stage following an extremist stage of a revolution and usu[ally] characterized . . . by an emphasis on the restoration of order, a relaxation of tensions, and some return to patterns of life held to be normal.

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (Unabr. ed. 1966).