

Is NOAA doing its job?

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Thank you for this opportunity to contribute to your considerations for advancing the restoration and protection of our coastal and ocean resources. I am requesting that the **Commission engage NOAA and the EPA in a case study of national policy significance. This study will illustrate why NOAA must exert proper oversight in order to really achieve national goals such as ocean stewardship.** Local buy-in and support through a credible and responsive input process is a key to such stewardship. NOAA should not be glossing over for whatever reasons growing significant problems in legal, policy and implementation relationships between federal agencies, California Coastal Commission (CCC), local governments and the public (as illustrated in NOAA's 3/25/02 section 312 draft evaluation report of the CCC).

Without appropriate federal intervention now, NOAA and EPA programs based on CCC performance will not be effective in reducing non-point source pollution of California coastal waters. Examples of CCC actions illustrate why as a top down, authoritarian agency, it is a poor candidate to achieve ineffective and often counterproductive in achieving NOAA and EPA goals. What follows contrasts what can go very right with democratic, science based methods or very wrong with dictatorial, opinion based approaches.

Responsible Democratic Local Approaches to Ocean Stewardship Work!

As a physician in Malibu for over twenty-five years, I became aware of surfers and swimmers becoming sick from polluted water at the world famous Malibu Surfrider Beach. I announced my concerns, did case studies, took cultures from patients, ocean and beach samples and encouraged a subsequent viral, parasite and epidemiological studies. I helped start the Malibu Creek Watershed Group and coordinate its work with the Santa Monica Bay Restoration Project working with a variety of citizens, local governments and environmental groups.

Using sound field based data and scientific knowledge, we worked together to find and clean up point and non-point sources of pollution. Our progress has been built upon mutual respect,; education, consensus building and finally locally supported implementation of practical site based solutions.

Mayor pro-tem Jeffrey Jennings from the City of Malibu has given you examples of our work, the interceptor treatment facilities for runoff draining into Malibu Creek, Lagoon and Surfrider Beach. A next generation exemplified by our daughters have been active with Heal the Bay's Steam Team work which also grew out of this successful democratic partnership between federal, state, and local governments and citizens who became informed and motivated stakeholders.

An Irrational and Authoritarian Process Undermines Ocean Stewardship!

Marked contrasts result from California Coastal Commission tendencies to use authoritarian, top-down methods. The following examples illustrate what has and will go wrong without your help in obtaining federal intervention. It pays for NOAA to change its evaluation methods and look at a series of land use decisions by the CCC to get a real picture of agency performance and public satisfaction:

A. CCC staff have recently taken the position that new agriculture nor little nonnative landscaping should not be allowed in much of the coast. In the Harris case, they required that nothing other than exotic weeds like mustard, thistles and wild oats and a few native sage brush could be permitted on 12 acres of rural residential land with agricultural zoning in Malibu. The CCC staff stated no site specific best management landscaping or agricultural practices would change their mind. [See Picture 1](#) illustrating Malibu's real endangered species under CCC policies: roses, ginger plants, and would be specialty crop farmer workers. [See Picture 2](#) showing the site with forbidden plants and CCC protected weeds. In the background are previously CCC approved houses and horse facilities that would now be forbidden under new CCC imposed Malibu Local Coastal Plan policies.

B. CCC required Ms Berget to remove her rose and other flower bushes and not replant her existing lawn in order to get a permit to remodel her home in a older neighborhood as illustrated in [Picture 3](#) and [Picture 4](#). Again, the CCC approach to theoretical non-point source pollution run-off from a lawn and garden was "just to say no", and not request a site specific management plan.

C. The CCC required the Sindell family to reduce the size of their house and eliminate a tennis court on their large lot in a neighborhood with similar improvements; the CCC rationale was their larger home dream and a tennis court would be seen from a public parking lot over a mile away as pictured. [See Picture 5](#). Their family home unexpectedly has become a "public scenic resource area" with the CCC as the judge, jury and enforcer. The CCC did not care about the ugly storm water collection devices seen in [Picture 6](#) by the neighbors nor would they allow non native landscaping to obscure these best management practice drains.

There are numerous other examples of CCC "just say no" and " just make it impossible to do" approaches to applicants for home remodels, farms, horse facilities and similar neighborhood compatible developments. CCC have not shown so far the inclination or scientific expertise to work with local governments and the public to develop practical, sustainable approaches to non-point source pollution management. NOAA needs to reexamine its policy of ignoring specific permitting and planning actions of coastal management

programs like the CCC. Undemocratic opinion based rather than science based CCC approaches will not engender support for NOAA and EPA programs. NOAA needs to know and influence what is happening on the ground in order to effect our watersheds and ocean.

2. The CCC has marched way beyond its statutory authority and consequently federal dollars and programs relying on these illegal actions are in jeopardy. The Commission originally had democratic checks and balances under the Coastal Act. The Commission was supposed to recommend to the Legislature for debate as to their merit, Sensitive Coastal Resource Areas including Environmental Sensitive Habitat Areas (ESHA) and public Scenic Resource Areas (SRA). The Commission chose not to undertake this task and cited local government with these responsibilities in 1978; however, the CCC has subsequently challenged local government's authority to do these duties and acted like it alone has these critically important powers.

All coastal program federal and state enforceable authority is based on accurate, scientific and legal designations of areas like ESHA. The NOAA report did not have the necessary rigorous analysis of these crucial legal issues. It merely accepted CCC self-described positions. The Commission should make certain that NOAA properly researches and reports these important legal underpinnings of the Coastal Act and management program.

3. NOAA also chose not to really investigate and react to the unreasonable processes and policies that have occurred since the CCC got special legislation AB 988 to dictate for the first time ever in California a Local Coastal Plan for a local government, in this case the City of Malibu; the CCC wrote their LCP after rejecting without any appropriate review draft LCPs from the elected City Council based on the work of thousands of citizen and visitor hours, expert consultants and previous suggestions from CCC staff. A few key CCC staff and Commissioners wanted their own special agendas like dramatic changes in ESHA definitions that they took advantage of anti-Malibu sentiments, dismissed the City LCP drafts and pressed for their version of what they want most LCPs to contain.

Here are some of the very unreasonable CCC LCP results; many set up precedents that would never occur in a democracy or hold up under scientific scrutiny:

Designating more than 90% of Malibu as ESHA and/or scenic resource area where before only about 10% of the same area had these designations in 1986 CCC approved LUP;

Designating for the first time ever in the state thousands of acres of common

coastal sage scrub and chaparral as ESHA through misapplied scientific theories and then denying normal home, farm and ranch uses in these areas.

Eliminating ESHA designations and policies for fragile coastal reef and kelp beds at Point Dume and elsewhere in Malibu;

Requiring removal of over a million dollars of Bluff Park baseball and soccer field improvements to be replaced by coastal sage scrub;

Requiring the removal of mature noninvasive home landscaping in well-established neighborhoods;

Having no economic analysis mandated by Executive Order 12866 for the virtual elimination of new agriculture, horse facilities, nonnative plant landscaping and typical home improvements and neighborhood build-outs in many coastal areas. Also, having no analysis of the costs of passing all liabilities for CCC requirements and errors onto local governments and permit applicants.

Because of these kinds of CCC authoritarian approaches and results, there is little statewide support among local governments and their citizens for NOAA desired legislation like AB 640 to mandate CCC standards and models for re-certifications of LCPs and SB 1916 to mandate CCC ideas for certified non-point source pollution programs in LCPs.

There is no hint of these problems in the current 3/25/02 draft of NOAA's final evaluation findings of the California Coastal Management Program (CaCMP), despite clear testimony and numerous letters to alert NOAA to these problems. Undemocratic, opinion rather than science based CCC approaches do not engender support for NOAA and EPA programs and jeopardize their success.

In summary, there is little democracy at work with the current CCC; citizens are routinely being given unreasonable CCC planning and permit requirements. Local governments are given unreasonable CCC planning area designations and policies to deal with. Too many CCC actions therefore alienate rather than engender support. Absurd CCC prohibitions and designations demean rather than advance environmental goals and draw support and scare resources away from programs and resources that deserve protection.

We encourage the Commission to have NOAA reexamine carefully its findings and methods and make timely corrections so that credible ocean stewardship can occur in California and elsewhere. NOAA should clearly support democratic relationships with accountable local governments and citizens writing their LCP and permitting decisions

with federal and state guidelines and support.