RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

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The California Coastal Commission was established by the California Coastal Act of 1976, Public Resources Code (PRC) section 30000 *et seq.*, to regulate conservation and development in the coastal zone. The coastal zone, as defined in the Coastal Act, extends three miles seaward and generally 1,000 yards inland. Except for the San Francisco Bay area (which is under the independent jurisdiction of the San Francisco Bay Conservation and Development Commission), this zone determines the geographical jurisdiction of the Commission. The Commission is authorized to control development of, and maintain public access to, state tidelands, public trust lands within the coastal zone, and other areas of the coastal strip through its issuance and enforcement of coastal development permits (CDPs). Except where control has been returned to local governments through the Commission's certification of a local coastal plan (LCP), virtually all development which occurs within the coastal zone must be approved by the Commission.

The Commission is also designated the state management agency for the purpose of administering the federal Coastal Zone Management Act (CZMA) in California. Under this federal statute, the Commission is authorized to review oil exploration and development in the three-mile state coastal zone, as well as federally sanctioned oil activities beyond the three-mile zone which directly affect the coastal zone. The Commission determines whether these activities are consistent with the federally certified California Coastal Management Program (CCMP). The CCMP is based upon the policies of the Coastal Act. A "consistency certification" is prepared by the proposing company and must adequately address the major issues of the Coastal Act. The Commission then either concurs with, or objects to, the certification.

A major component of the CCMP is the preparation by local governments of LCPs, as mandated by the Coastal Act of 1976. Each LCP consists of a land use plan (LUP) and an implementation plan (IP, or zoning ordinances). Most local governments prepare these in two separate phases, but some are prepared simultaneously as a total LCP. An LCP does not become final until both phases have been formally adopted by the local government and certified by the Commission. Until an LCP has been certified, virtually all development within the coastal zone of a local area must be approved by the Commission. After certification of an LCP, the Commission's regulatory authority is transferred to the local government, subject to limited appeal to the Commission. Of the 127 certifiable local areas in California, 83 (65%) have received certification from the Commission at this writing. In May 1994, the Commission certified the LCP of the City of Manhattan Beach; in June, the LCP of the City of Pacifica was certified. At this writing, the first submittal of the LCP of the City of Encinitas is tentatively scheduled for the Commission's October meeting.

The Commission meets monthly at various coastal locations throughout the state. Its meetings typically last four consecutive days, and the Commission makes decisions on well over 100 items. The Commission is composed of fifteen members: twelve are voting members and are appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly. Each appoints two public members and two locally elected officials representing districts within the coastal zone. The three remaining nonvoting members are the Secretaries of the Resources Agency and the Business, Transportation and Housing Agency, and the Chair of the State Lands Commission. The Commission's regulations are codified in Division 5.5, Title 14 of the California Code of Regulations (CCR).

MAJOR PROJECTS

Update on Beach Curfew Issue. For the past year, the Commission has tackled the issue of beach curfews imposed by local governments, a touchy issue given the desire of fiscally-strapped coastal zone cities to deter crime by limiting access to the beach during late-night hours and the Commission's statutory mandate to preserve public access to the beach area. The Commission's original stance—an assertion of jurisdiction over the curfews and declaration that routine, long-term nightly beach closures are illegal without Commission approval—was greeted with complaints from numerous coastal cities, criticism from Governor Wilson and Attorney General Lungren, a lawsuit, and several pieces of legislation to strip it of authority to invalidate a local government's beach curfews. As a result, that stance has somewhat softened, and Commission staff developed a set of guidelines called *Proposed Guidance on Actions Limiting Public Access to Beaches and State Waters* to assist both local governments and the Commission itself in addressing beach curfew issues. The Guidance sets forth three types of beach use restrictions in which Commission review is not required (public emergencies, a legal declaration of a public nuisance the abatement of which requires a beach closure, and curfews which were enacted and enforced prior to the effective date of the Coastal Act). Under the Guidance, all other beach use restrictions must be approved by the Commission, and the Guidance discusses several specific issues which should be carefully considered by the Commission in reviewing each restrictive order on a case-by-case basis. Applying the factors in the Guidance, the Commission approved scaled-back curfew programs submitted by the cities of Coronado and Long Beach earlier this year. *[14:2&3 CRLR 180–81]*

At its July meeting, the Commission once again discussed the Guidance and numerous comments it had received from coastal cities. Many cities continue to challenge the Commission's authority to prevent a local government from imposing a beach curfew. As a result, the Commission decided to sponsor legislation expressly authorizing it to review and approve beach curfews. Late in the legislative session, Commission staff sought to amend such a provision into AB 3427, but the proposed amendment was opposed by the City of Long Beach and the California League of Cities. Although the Commission was unsuccessful in securing express authority to review beach curfews, several other bills which would have explicitly precluded the Commission from asserting jurisdiction over beach curfews were killed as well. *[14:2&3 CRLR 182]*

Although no local beach curfews are pending before the Commission at this writing, staff intends to apply the factors in the Guidance to any beach access restrictions which are imposed by local governments. Given the debate this issue has generated and the stark differences of opinion between the Commission and the

local governments with respect to the Commission's authority, this issue is ripe for legislative attention during 1995.

Commission Rejects Marina del Rey Dredging Project. At its September meeting, the Commission rejected the U.S. Army Corps of Engineers' request for a consistency determination for the dredging of 132,000 cubic yards of sediment from channels within Marina del Rey, with disposal of the sediment at the shallow water habitat mitigation site within the Port of Los Angeles.

The project has a long history. In May 1991, the Corps submitted a consistency determination for maintenance dredging of Marina del Rey entrance channels. An analysis of the sediments indicated that the material had elevated levels of heavy metals and other contaminants, which was unsuitable for either ocean or nearshore disposal. The Corps withdrew the project in June 1992 after concluding that there were no feasible environmentally acceptable alternatives for disposal of the contaminated materials. Instead, the Corps submitted a fallback proposal to "knock down" the shoals as an interim solution, in order to remove the more serious navigational hazards until a permanent solution to the disposal problem could be found. Somewhat reluctantly, the Commission concurred with the consistency determination on the interim solution, but directed the Corps to continue working with federal, state, and local agencies to find a long-term solution to the dredging and disposal dilemma.

On July 19, the Corps returned to the Commission with a consistency determination for the dredging of 530,000 cubic yards of sediment from the channels within Marina del Ray. Although the Corps sought an August Commission hearing on the determination, staff raised so many concerns about the project that the Corps revised it in time for a September hearing. Under the revised plan, the Corps proposed to dredge 132,000 cubic yards, place the sediment in "geotubes" (which the Corps maintains have "zero discharge capability"), place the geotubes in the Pier 400 shallow water habitat mitigation site at the Port of Los Angeles along with Port-generated contaminated material resulting from an ongoing Port expansion project, and cap the entire area with 17 feet of suitable clean material.

Even with this and other modifications proposed by the Corps, the Commission rejected the proposal, citing several concerns. First, the Commission did not consider the Corps' revised proposal to be a sufficient response to its earlier directive to find a long-term solution to the problem; the Commission found that the project failed to address the cumulative impact from repeated dredging and disposal of contaminated material from Marina del Rey. Staff's report stated that "the Corps has proposed the current project without following through with any of its commitments from the previous project. If the Commission were to concur with this consistency determination without follow through, it would undermine the integrity of the federal consistency process and, more importantly, allow for continued cumulative water quality impacts." The Commission also agreed with staff that the project failed to adequately protect water quality resources due to the Corps' choice of equipment to handle contaminated materials at the dredge site. Finally, the Commission found the Corps failed to demonstrate that it is adequately coordinating with the Port of Los Angeles, which is in the process of expanding the Port and whose shallow water habitat mitigation area is the proposed site of the Corps' contaminated material disposal *[13:1 CRLR 112; 12:4 CRLR 194]*; "without adequate coordination, the Marina del Rey project may interfere with the Port's demonstration project." The Commission noted that it may be possible to bring this project into compliance with the CCMP if the Corps addresses these three concerns.

Unocal Issued Emergency Permit for Oil Spill Cleanup. On August 23, Commission Executive Director Peter Douglas issued an emergency permit with special conditions to Unocal for oil spill site cleanup work at the Guadalupe Beach area of the Guadalupe Oilfield in San Luis Obispo County. PRC section 30624(a) permits the Commission's Executive Director to issue emergency CDPs when he/she determines that there has been a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services. Unocal requested the emergency permit on July 1, to enable it to prevent hydrocarbon (diluent) contamination caused by subsurface pipeline leakage from seeping into the ocean. Diluent is a petroleum-based thinner used by Unocal to thin the crude oil still in the ground to facilitate its recovery at the Guadalupe Oilfield. Unocal's action follows its agreement to pay $1.5 million to resolve criminal charges brought by the San Luis Obispo County District Attorney's Office. *[14:2&3 CRLR 179]*

In issuing the permit, Douglas found that there is a high risk that diluent will re-enter ocean waters at the Guadalupe Beach site during the 1994–95 winter storm season. The natural process of wave action and beach erosion at the site carries both diluent and diluent-contaminated sands into the ocean. Under the emergency permit, Unocal must install a temporary sheetpile coffer dam on the beach and remove the diluent-contaminated sand and mobile diluent from inside the coffer dam; install a temporary high-density polyethylene retain wall to prevent recontamination of the remediation area by diluent; and return clean sand to the beach, remove the coffer dam, and restore the site to its natural state.

In a letter accompanying the emergency permit, Douglas expressed "extreme displeasure" with the way Unocal has handled the matter, and noted that it should have been handled through the regular permit process including a public hearing. According to Douglas, "Unocal did not prepare a project description and a regular permit application with the speed and thoroughness we believe was necessary and feasible." Douglas attached 19 conditions to the emergency permit, including the following: All work under the permit must be completed by October 15; Unocal must follow a prescribed schedule and obtain a regular CDP for the work being conducted under the emergency permit; Unocal must submit a compliance plan which provides procedures for monitoring and reporting compliance with all conditions of the emergency permit; Unocal must identify the locations of all rare, threatened, and endangered plans and nesting birds and various types of dune habitat in the project area, and mark these areas with flags in order to minimize project activities in these areas; and Unocal must retain an independent monitoring team for the duration of the operation to report permit compliance, observe the impact of operations on rare, threatened, and endangered plants and animals, record day-to-day events, and prepare a final monitoring report for the Executive Director.

LEGISLATION

ACR 148 (O'Connell) proclaims September 17 through October 10, 1994, as California COASTWEEKS, and September 17, 1994, as Adopt-a-Beach Coastal Cleanup Day. This measure was chaptered on August 29 (Chapter 108, Resolutions of 1994).

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2&3 (Spring/Summer 1994) at pages 182–83:

AB 2444 (O'Connell). Existing law creates, until January 1, 2003, the California Coastal Sanctuary which includes all state waters subject to tidal influence from

a line parallel to the southernmost boundary of tidelands surrounding the Farallon Islands north to the Oregon border, except for waters in the Sacramento-San Joaquin Delta situated east of the Carquinez Bridges; and prohibits any state agency from entering into any new lease for the extraction of oil or gas from the sanctuary unless the President has found a severe energy supply interruption and has ordered distribution of the Strategic Petroleum Reserve pursuant to specified provisions, the Governor finds that the energy resources of the sanctuary will contribute significantly to the alleviation of that interruption, and the legislature subsequently acts to amend these provisions. As amended August 23, this bill extends the sanctuary to include all state waters subject to tidal influence, except for waters subject to a lease for the extraction of oil or gas in effect on January 1, 1995, unless the lease is thereafter deeded or otherwise reverts to the state. The bill deletes other provisions which impose similar restrictions on leasing in state waters from the southern boundary of the proposed Monterey Bay National Marine Sanctuary north to a line parallel to the southernmost boundary of tidelands surrounding the Farallon Islands, but which authorize the State Lands Commission to enter into new leases under specified circumstances.

Existing law authorizes the Commission to lease specified tide and submerged lands if the Commission determines that oil or gas deposits are contained in those lands, those oil or gas deposits are being drained by means of wells upon adjacent lands, and the leasing of the land for oil or gas production is in the best interests of the state. This bill repeals that provision and instead authorizes the Commission to enter into a lease for the extraction of oil or gas from state-owned tide and submerged lands in the sanctuary if the Commission determines that those deposits are being drained by means of producing wells upon adjacent federal lands and the lease is in the best interest of the state.

Existing law authorizes the Commission to modify the boundaries of existing leases to encompass all of a field partially contained within the existing lease subject to specified conditions. The bill requires, as an additional condition, that the Commission find that the number and size of existing offshore platforms will not be increased, except as specified, that the boundary adjustment will not require the construction or major modification of a refinery in this state, except as specified, and the boundary adjustment represents the environmentally least damaging feasible alternative for the extraction and production of affected resources. This bill was signed by the Governor on September 28 (Chapter 970, Statutes of 1994).

SB 1668 (Mello), as amended August 8, establishes the Monterey Bay State Seashore, consisting of lands extending from Natural Bridges State Beach to Point Joe in Santa Cruz and Monterey counties. This bill was signed by the Governor on September 21 (Chapter 744, Statutes of 1994).

AB 3427 (Committee on Natural Resources). The Coastal Act requires amendments to a certified LCP or port master plan to be submitted to the Commission for approval, and provides for a special procedure with regard to proposed amendments that are designated as minor in nature. As amended July 7, this bill also specifies a special procedure for the designation and approval of amendments to a LCP or port master plan that are de minimis, as specified.

The Coastal Act prescribes the grounds for an appeal to the Commission of an action taken by a local government on a CDP under the Act, and provides that any action taken by a local government on a CDP application becomes final after the tenth working day, unless an appeal is filed within that time. This bill requires a local government taking an action on a CDP to send notification of its final action by certified mail to the Commission within seven calendar days from the date of taking the action, and specifies that any such action becomes final after the tenth working day of the date of receipt by the Commission of the local government's notice of final action (*see* LITIGATION). This bill was signed by the Governor on September 11 (Chapter 525, Statutes of 1994).

The following bills died in committee: **AB 3698 (McPherson)**, which would have established the Monterey Bay State Seashore; and **SB 158 (Thompson)**, which would have enacted the California Parks, Natural Resources, and Wildlife Bond Act of 1994 and authorized the issuance of bonds in the amount of $501 million for the development and restoration of state and local park and recreational facilities, the protection of unique coastal, lake, river, forest, and desert resources, the restoration and enhancement of critical fish and wildlife habitat, and the employment of local youth in these activities.

LITIGATION

In an opinion sharply critical of the Commission and the CDP process, the Second District Court of Appeal ruled that the Commission's 17-year delay in processing the CDP application of Los Angeles landowner Kenneth Healing constituted a taking of his property rights in ***Healing v. California Coastal Commission***, 22 Cal. App. 4th 1158 (Feb. 22, 1994). The Second District also concluded that takings issues raised by an inverse condemnation action alleging a regulatory taking arising from the Coastal Commission's denial of a CDP are to be determined in a court trial and not solely on the basis of the Commission's administrative record. *[14:2&3 CRLR 183–84]* On June 30, the California Supreme Court denied the Commission's petition for review of the Second District's decision, and also denied the Commission's request for depublication of the opinion.

On June 2, the California Supreme Court denied the Commission's petition for review of the Second District's ruling in ***Transamerica Reality Services, Inc. v. California Coastal Commission***, 23 Cal. App. 4th 1536 (Mar. 31, 1994), in which the appellate court affirmed the trial court's ruling that a city's approval of a CDP application starts the ten-day appeal period in PRC section 30603(c), not the receipt of notice of the city's action by the Coastal Commission. *[14:2&3 CRLR 184]* However, the Supreme Court agreed to depublish the Second District's decision, and the Commission subsequently sponsored AB 3427 (Committee on Natural Resources) to void the court's holding. The bill, which was signed by the Governor (*see* LEGISLATION) amends section 30603(c) to provide that an appeal to the Commission of a local government's action on a CDP application must be filed with the Commission within ten working days from the date of receipt by the Commission of notice of the local government's final action.

On July 13, the California Supreme Court denied the Surfrider Foundation's petition for review of the First District Court of Appeal's decision in ***Surfrider Foundation v. California Coastal Commission***, 26 Cal. App. 4th 151 (Apr. 25, 1994), in which the court rejected the Foundation's contentions that the Commission's approval of applications by the California Department of Parks and Recreation for permits to install devices for the collection of parking fees at 16 state park beaches violated both the California Environmental Quality Act (CEQA) and the Coastal Act.

In 1990, the legislature imposed a $16 million budget cut on the Department and directed it to increase its user fees to compensate for the shortfall. The Department responded by raising existing parking fees and imposing new ones at various locations throughout the state park system, some of which are in the coastal zone. The

Department applied to the Commission for CDPs authorizing it to install parking fee devices at 16 state park beaches. After a protracted period of public hearings and debate, the Commission approved the CDPs in three separate groups and adopted supporting written findings. Surfrider challenged the Commission's decision; the trial court ruled that both the Department's imposition of parking fees and the Commission's approval of the device installations are exempt from CEQA and its environmental impact report (EIR) requirement; and that there was substantial evidence in the administrative record to support the Commission's decision.

The First District affirmed. Noting that only the Commission's approval of the CDP applications was at issue, the court found it exempt from CEQA and the EIR requirement on two bases: PRC section 21080(b)(8) provides an exemption from CEQA for the approval of fees charged by public agencies for the purpose of meeting operating expenses; and PRC section 21084(a) provides a "categorical" exemption from CEQA for the construction of "small structures." On Surfrider's Coastal Act claim, the court held that the imposition of parking fees, while not "physical impedances" which block access to the coast, are "indirect" "nonphysical" impediments which come within the scope of the Coastal Act's public access and recreational policies. However, the court found that "[t]he Commission...made findings of consistency with these policies." Specifically, the Department presented evidence that the imposition of parking fees at state parks in 1987 had little or no effect on attendance, and that it had implemented measures to provide low-cost access where needed. "Thus, the evidence completely undermines the premise underlying Surfrider's access arguments—that the challenged fees will prevent people from using state park beaches." The court was not entirely unsympathetic to Surfrider's views. "In an ideal world, people should not have to pay a fee to enjoy the coast. But we do not live in an ideal world...That is an unpleasant fact of life in California in the 1990s."

While not a coastal zone access case, the U.S. Supreme Court's recent decision in ***Dolan v. City of Tigard***, ___ U.S. ___, 114 S.Ct. 2309 (June 24, 1994), will undoubtedly impact local governments and permit-issuing agencies, such as the Commission, where dedication of a landowner's property to public uses is required in exchange for a permit. In a 5–4 vote in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the Court ruled that the Commission violated the Takings Clause of the U.S. Constitution when it required beachfront landowners to dedicate a portion of their land for public access (without paying them for it) in exchange for a CDP to build a new house. *[7:3 CRLR 117; 7:1 CRLR 82]* The *Nollan* majority found a constitutional violation because the Commission failed to prove an "essential nexus" between the articulated public policy purpose and any harm created by the construction of a single-family home. In *Dolan* (which was also decided on a 5–4 vote), the majority's analysis went further because it found the "essential nexus" between a legitimate state interest and the permit condition at issue which was missing in *Nollan*. Once such a nexus is found, *Dolan* requires a permit-issuing agency which seeks to compel the dedication of private land in exchange for a permit to show that it has made "some sort of an individualized determination that the required dedication is related both in nature and extent to the proposed development's impact," and demonstrate that the particular land dedication at issue is "roughly proportional" to any harm caused by the project. If the local government is unable to demonstrate the required relationship, it must drop the dedication requirement or compensate the landowner for the taking.

RECENT MEETINGS

At its July meeting in Huntington Beach, the Commission considered a major amendment to the City of San Diego's LCP; specifically, San Diego sought to amend one segment of its 12-part LUP and several implementing ordinances. The proposed LUP amendment, which the Commission approved, redesignates a 16-acre site in Carmel Valley from "employment center" to "specialized commercial" in order to accommodate the development of a shopping center anchored by K-Mart. A second amendment deletes outdoor dining areas from restaurant parking requirements in the La Jolla Planned District Ordinance. Although staff objected to this proposal because it would significantly reduce the amount of available parking and past permit decisions have always included outdoor dining areas, the Commission approved the amendment. The third proposal would have revised La Jolla's Hillside Review Ordinance to make it easier for residents of Mount Soledad to be exempt from current hillside review standards for improvements such as retaining walls, decks, and minor remodeling. Adopting staff's recommendation, the Commission rejected this proposal, finding that it is inconsistent with the resource protection policies in the City's certified LUP documents.

At its September meeting in Eureka, the Commission granted a permit to the State Lands Commission (SLC) and the U.S. Coast Guard for the purpose of plugging and abandoning five oil wells at Summerland Beach in Santa Barbara County. The wells were improperly plugged and abandoned in 1907 and are currently leaking oil and gas to the beach and adjacent ocean waters at a rate of two to five barrels per day. The SLC/Coast Guard project will begin no later than October 1 and be completed within two months. Staff recommended that the project be approved because it will protect marine resources and help sustain the biological productivity of coastal waters and, therefore, is consistent with the Coastal Act.

Also at its September meeting, the Commission approved a permit for the mass grading of 89 acres in Carlsbad, above the northwest short of Batiquitos Lagoon. Staff recommended approval of the project subject to special conditions regarding protection of sensitive resources, blufftop setbacks, recordation of open space and public access easements, trail improvements, grading and erosion control, runoff control, and the payment of mitigation fees for the conversion of agricultural lands to urban uses. Nearly all of the 89 acres have been used for agricultural production at some point, and the Carlsbad LCP contains an agricultural conversion program which requires the payment of a $5,000-per-acre conversion fee. The money is deposited with the State Coastal Conservancy for use in programs involving restoration or improvements to a number of the natural resources in Carlsbad. The priority for expenditure rests first with restoration and enhancement of Batiquitos Lagoon, second with development of facilities at Buena Vista Lagoon, and third with restoration of public beaches in Carlsbad. Fourth on the priority list for expenditure of these funds is the purchase of lands within Carlsbad's coastal zone for continued agricultural use. Commission Vice-Chair Louis Calcagno argued against the permit due to the agricultural conversion issue because he believes that purchasing lands for continued agricultural use should be the top priority for conversion funds; he later acknowledged that this is an issue the Commission should raise with the City of Carlsbad.

FUTURE MEETINGS

October 11–14 in Los Angeles.
November 15–18 in San Diego.
December 13–16 in San Francisco.
January 10–13, 1995 in Los Angeles.
February 7–10, 1995 in Santa Barbara.
March 7–10, 1995 in San Diego.
April 11–14, 1995 in San Rafael.
May 9–12, 1995 in Huntington Beach.