



RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

Executive Director:

Peter Douglas

Chair: Thomas Gwyn

(415) 904-5200

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. This zone, except for the San Francisco Bay area (which is under the independent jurisdiction of the San Francisco Bay Conservation and Development Commission), determines the geographical jurisdiction of the Commission. The Commission has authority 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. Except where control has been returned to local governments, 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 has authority 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 local coastal programs (LCPs), mandated by the Coastal Act of 1976. Each LCP consists of a land use plan and implementing 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 are certified, formally adopted by the local government, and then "effectively 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 126 certifiable local areas in California, 79 (63%) have received certification from the Commission as of January 1, 1992.

The Commission meets monthly at various coastal locations throughout the state. Meetings typically last four consecutive days, and the Commission makes decisions on well over 100 line 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 of coastal districts. The three remaining nonvoting members are the Secretaries of the Resources Agency and the Business and Transportation 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

Commission Approves Port of Los Angeles Expansion. On October 14, the Coastal Commission unanimously approved a plan to deepen the Port of Los Angeles and expand Terminal Island by 582 acres to take on new cargo terminals; the project will be the state's largest coastal development in the past 20 years and one of the largest ever on the west coast. [12:4 CRLR 194]

The U.S. Army Corps of Engineers has long planned to expand the Port facility; however, the plan was held up by the Commission because the project was too large and environmentally disruptive. Further, the Commission expressed reluctance to approve an enormous 20-year expansion plan in a single vote, effectively terminating its control over the project.

A series of conditions developed over the past year eased the Commission's con-

cerns. First, the Port District is required to restore elsewhere all 582 acres of wetlands to be destroyed. Previously, the District wanted to limit "restoration" (*i.e.*, dredging) to the 380-acre Batiquitos Lagoon in San Diego County, and supplement this effort with artificial reefs or wetlands escrow funding.

Second, the Port District agreed to obtain Commission approval of the project in phases, beginning with the permit to begin dredging, which is scheduled to be presented to the Commission at its February meeting. The Port and the Corps will return to the Commission three or more times over the next ten years as the work progresses. The next step for the Port is to obtain final federal approval and then acquire \$100 million in funding from Congress. The balance of \$580 million needed for the expansion and mitigation project will be paid with Port funds.

The Sierra Club and Audubon Society continue to oppose both the Batiquitos Lagoon dredging project and the expansion of the Port facility. In January 1991, the groups filed suit against the Commission and the City of Carlsbad to stop the Batiquitos "restoration," but lost in the trial court. [12:4 CRLR 28, 194] The lawsuit is presently on appeal.

Commission Approves Orange County Tollway Despite Damage to Wetlands; Environmental Groups Threaten Litigation. On an 8-4 vote at its November 18 meeting, the Coastal Commission approved plans to construct the 17.5-mile San Joaquin Hills Transportation Corridor, even though the road will damage rare coastal wetlands near Upper Newport Bay. [12:2&3 CRLR 27] Citing the statutory ban on construction of new state highways in coastal wetlands and destruction of the habitat of the declining California gnatcatcher, Commission staff had recommended that the panel deny the tollway permit. Nonetheless, eight Commission members defied staff's recommendation and—taking an expansive view of the ban on such development—concluded that construction of the tollway is essential not only to relieve traffic congestion in the area but also to stimulate California's struggling economy by creating new jobs. The Commission attempted to bring its decision within the purview of its statutory duty to protect coastal resources by citing the tollway's potential for providing traffic relief for people headed for the beach.

Commission approval was one of the last roadblocks to construction of the San Joaquin Hills tollway, which will extend the Corona Del Mar Freeway (California 73) to Interstate 5 near San Juan Capistrano.



Twenty years in the making, the \$1 billion road will cross a total of fifteen streams and damage more than 14 acres of wetlands, mostly in the Mission Viejo and Laguna Niguel areas. The Commission has jurisdiction over only two-thirds of a mile of the road where it crosses San Diego Creek in Irvine, because that is the only point where the road may damage areas within the state's coastal zone. The planned tollway, already partly graded in the Aliso Viejo area, would cross the San Diego Creek, a marshy flood control channel that empties into Upper Newport Bay, on bridges 35 feet above the creek and then connect to the existing freeway. When completed, the tollway is forecast to carry nearly 73,000 vehicles per day at \$2 each for an end-to-end trip.

In a heated three-hour Commission hearing in Santa Monica, tollway proponents emphasized the two decades of planning and mitigation efforts that have gone into the project. They also pointed out that the Commission has previously allowed highway construction in wetlands, and argued that much of the development which has already occurred along the proposed route was approved on the assumption that the road would eventually be built. Opponents of the tollway, which included—among others—the Sierra Club, Audubon Society, Laguna Greenbelt, and the Natural Resources Defense Council, answered that although they sympathize about the jobs issue, the Commission's ultimate decision must comply with the Coastal Act, and that Act mandates protection of wetlands and the natural habitat of local species. Although job concerns were obviously behind the Commission's decision, the affirmative vote was technically based on the "balancing" test set forth in the Coastal Act. Generally, in order to make an exception to the ban on new highways, the Commission must find that other interests protected by the Coastal Act, such as improved beach access, outweigh wetlands concerns.

The tollway agency has promised to spend an estimated \$8 million to replace existing wetlands with man-made substitutes as mitigation for bulldozing wetlands along the route. In addition, the tollway agency also agreed to Orange County Commission member Linda Moulton-Patterson's proposal that the agency spend an additional \$400,000 of toll revenue to help restore the coastal sage scrub habitat of the gnatcatcher.

The environmental group opponents of the tollway have indicated their intent to challenge the Commission's decision in court.

Commission Adopts Guidelines for

Compliance with Ex Parte Communication Law. On January 1, AB 3459 (Friedman) (Chapter 1114, Statutes of 1992) takes effect. The new law prohibits Commission members, permit applicants, and interested persons from engaging in ex parte communications about a matter within the Commission's jurisdiction unless: (1) the Commission member notifies the interested person that a full report of the communication will be entered into the Commission's official record, and (2) the Commission member fully discloses and makes public the ex parte communication to the Executive Director or, if the communication occurs within seven days of the hearing on the matter, makes an oral report on the record of the proceeding at the hearing. Additionally, permit applicants must disclose the name and addresses of persons "who, for compensation, will be communicating with the Commission or Commission staff on their behalf" (Public Resources Code sections 30319-30324). [12:4 CRLR 195]

The law imposes serious penalties on both permit applicants and Commissioners for violation of the new requirements. Specifically, if an applicant fails to comply, he/she may be charged with a misdemeanor that is punishable by a fine of \$5,000 or imprisonment for up to six months. Additionally, a coastal development permit sought via unlawful ex parte communication is subject to immediate denial. If a Commissioner knowingly has an unreported ex parte communication, an aggrieved person may sue the Commission to obtain a writ of mandate requiring the Commission to revoke its action and rehear the matter. Moreover, if a Commissioner knowingly violates the law's requirements, he/she may be subject to a civil fine up to \$7,500 plus attorneys' fees and costs.

At its December meeting, the Coastal Commission adopted guidelines for Commissioners and permit applicants to follow to ensure compliance with the new law. Commission staff also prepared a model disclosure form for the Commission's use and modified the coastal development permit application form to require applicants to list all persons who will be communicating for compensation on their behalf with Commissioners and staff. Among these guidelines is a requirement that no written materials should be sent to Coastal Commissioners directly unless Commission staff simultaneously receives copies of all the same materials. Moreover, the Commission agreed that messages of a non-procedural nature should not be left for Commissioners. The Commission also recognized that all per-

mit decisions must be made only on the basis of information available to all Commissioners and the public; therefore, copies of all communications made to Commissioners and forwarded to the staff will be included in the public record and available for inspection at Commission meetings or in the Commission office. In addition, staff will notify applicants appealing to the Commission of their obligation to list all persons who will be communicating for compensation on their behalf with Commissioners or staff.

Impetus for the law grew from the 1992 indictment of former Coastal Commissioner Mark L. Nathanson on federal felony charges of attempting to extort money during private communications with applicants seeking Commission permits. [12:2&3 CRLR 224; 12:1 CRLR 161] On October 15, a federal grand jury filed additional corruption charges against the former Commissioner that expand his May indictment; the new charges allege racketeering, extortion, conspiracy, obstruction of justice and filing false tax returns. If convicted on all counts, Nathanson faces up to 80 years in prison plus forfeiture of the proceeds from the illegal activity.

Commission Agrees to Hear Chevron Appeal of Oil Tankering Permit. At its October 14 meeting, the Commission agreed to review a decision by the Santa Barbara County Board of Supervisors allowing Chevron to use tankers to ship crude oil from its Point Arguello offshore oil platform directly to Los Angeles, but only under conditions and restrictions which make the plan unworkable, according to Chevron. The decision is the latest development in the decade-long battle pitting Chevron against Santa Barbara County officials and environmentalists. [12:4 CRLR 195] At this writing, the Commission is scheduled to vote on the matter at its January meeting.

Restoration of Wetlands at the San Dieguito River Valley. The San Dieguito River Valley restoration project approved by the Commission in June 1992 is currently in the planning phases by Southern California Edison (SCE). The utility is required to restore 180 acres of wetlands to mitigate damage to marine life caused by its San Onofre nuclear power station. [12:4 CRLR 198; 12:2&3 CRLR 226-27] SCE must present its plan to the Commission for approval prior to proceeding with the restoration. Currently, the Commission is recruiting staff to monitor the San Onofre/San Dieguito project, and has hired Jodie Lufler as an Administrative Consultant and Dr. Michael McGowan as a project scientist. These staff positions



are funded by Southern California Edison.

Easements Purchased by Vandenberg Air Force Base. In September, the Commission objected to the Air Force's consistency determination for the acquisition of easements affecting the potential development of land adjacent to Vandenberg Air Force Base. The purpose of the easements is to assure that the level of development occurring on this land will not exceed that consistent with public safety needs. The Air Force is concerned about a "hazard footprint" of fallout debris from aborted missile launches at Vandenberg. The Commission objected to the Air Force's plan because the local coastal plan for Santa Barbara County requires public access, recreation, camping facilities, and biking trails to be provided concurrent with any future development of the area. [12:4 CRLR 198]

In September, the Department of the Air Force announced that it had proceeded with the purchase of the easements in the area known as Bixby Ranch. The Commission has requested arbitration of the issue with the National Oceanographic and Atmospheric Agency.

City of Ventura Repairs Bike Path in Violation of Commission Directive. On December 14, the City of Ventura defied the Commission by approving an emergency permit to construct a temporary rock barrier to halt erosion that has damaged a 250-foot section of the Omer L. Rains Shoreline Bike Path. Two days later, the city further disregarded a Commission staff order to halt the construction.

In 1986, the Commission approved plans for the five-mile-long bicycle path and adjacent Ventura County Fairgrounds parking lot. These projects were considered "temporary improvements" and could not be protected by seawalls or other artificial structures. Built in 1989 for \$223,000, the bike path has been eroded and threatened by winter storms. The City of Ventura requested permits from the Commission to erect a protective wall between the beach and the bike path four times since November 1991, only to be denied each time. The most recent denial came in August 1992, when the Commission again refused to grant the permit, stating that the temporary facilities were only expected to last from five to 25 years and are not intended to be permanent fixtures.

The city contends that it was authorized to grant the permit under the jurisdiction vested in it once the Commission certified its local coastal plan, and specifically under its "emergency" authority; however, Commission staff believe a situation that has arisen four times over 13

months cannot be considered an emergency.

At this writing, the issue is scheduled to be presented to the full Commission at its January meeting. Should the Commission find the city in violation, Commissioners could choose from a range of punitive actions, including ordering the rock barrier removed.

La Costa Resort's Parent Company Plans New Beach Resort Hotel Complex. Sports Shinko USA, the owner and parent company of the La Costa Resort and Spa, is scheduled to present plans for its new \$35 million, 130-room Encinitas Beach Resort at the Commission's January meeting. The resort will be located on a 4.3-acre blufftop site on Highway 101 in Encinitas. Along with the hotel, the plans call for a restaurant, banquet facilities, pool, blufftop overlook, and a 230-space underground garage. The difficult design, which provides each room with an ocean view, creates a three-story appearance even though the resort will be only two stories high. Commission staff has expressed concern that this three-story appearance gives the impression of a solid wall of buildings along the north-facing portion of the site. Staff is also concerned about increasing automobile traffic in the area to be caused by the new resort.

Coastal Development Permit Fee Increases Approved. In May 1991, the Commission adopted emergency amendments to section 10355, Title 14 of the CCR, substantially increasing coastal development permit fees; the Commission subsequently adopted the fee increases on a permanent basis in August 1991. [11:4 CRLR 174] On October 21, the Office of Administrative Law (OAL) belatedly approved the Commission's permanent amendments to section 10355, apparently delayed by mail problems. The amended section also adds new fees for minor amendments, permits, extensions, reconsiderations, waivers, continuances, and after-the-fact permits.

Desalination Report In Preparation. At this writing, the Coastal Commission's Energy and Ocean Resources staff is in the process of finalizing a report on the status of desalination projects within the coastal zone in California. The report includes a description of proposed and existing seawater desalination plants, jurisdictional issues, and a discussion of potential impacts to coastal resources. The final report on desalination should be available sometime in early 1993.

Coastal Commission Turns Twenty. In November, the Coastal Commission celebrated its twentieth birthday. Despite huge obstacles and the fact that it is com-

ing off one of the roughest years in its history, the Commission has nonetheless managed to survive as the state's primary coastal protector.

As the Commission looks to the future, it must cope with an \$833,000 budget cut, one of the largest in its history—an unexpected blow from avowed Commission backer Governor Pete Wilson. [12:4 CRLR 198] The Commission has faced financial constraints before. Former Governor George Deukmejian campaigned on a platform to eliminate the Coastal Commission and, when unsuccessful in that task, tried to kill the Commission off by financial deprivation. Among other problems, budget cuts have prevented the Commission from employing a marine biologist, geologist, water quality engineer, or wetlands expert, and have drastically limited its enforcement program. Moreover, in September the Commission issued notice that it might be forced to lay off 20 or more employees.

Despite its lean budget, the Commission must address many important decisions in 1993, including water quality issues, use of desalination plants, oil shipping, prevention of coastal erosion, and a policy for protecting and restoring wetlands. Moreover, the Commission is overseeing the expansion of the Port of Los Angeles (*see supra*) and must still approve scores of local coastal plans for cities and counties.

The Commission is also trying to clear itself of a tainted reputation left by the recent indictment of former Commissioner Mark Nathanson on extortion charges. And it must redeem itself of charges by environmentalists that it is overly pro-development and consistently oversteps the bounds of the Coastal Act. However, the Commission has at times been praised for its efforts to save coastal mountain ranges, protect wetlands, and limit development along Bodega Bay, Santa Monica Bay, and the Marin and Sonoma coasts. The Commission also played an instrumental role in creating the Monterey Bay National Marine Sanctuary, the second largest marine refuge in the world [12:4 CRLR 193-94], and halting oil drilling off the California coast [10:4 CRLR 151].

■ LITIGATION

On October 29, the California Supreme Court denied appellant's petition for review in *Antoine v. California Coastal Commission*, No. S028698. At the same time, the court ordered that the Second District Court of Appeal's decision, in which the appellate court reversed the trial court and reinstated a Coastal Commis-



sion order requiring public access as a condition to granting a permit to build a seawall, be decertified and not published in the official appellate reports. [12:4 CRLR 197]

On December 18, in *Landgate, Inc. v. California Coastal Commission*, No. 2 Civil B063485, the Second District Court of Appeal affirmed an earlier ruling of the Los Angeles County Superior Court that the Coastal Commission acted arbitrarily and capriciously when it denied a coastal development permit on a two-acre parcel of land owned by Landgate, Inc. in Malibu. The court found that the Commission erroneously claimed that a lot line adjustment previously approved and recorded by the County of Los Angeles was not valid because Coastal Commission approval had not been obtained.

It was the Commission's position that as a result of the failure to obtain Commission approval of the lot line adjustment, the lot was not a valid legal lot and no development could therefore take place. The court of appeal rejected that view and held that the Commission's refusal to recognize the lot reconfigurations resulted in Landgate's being denied any use of its property—an allusion to the U.S. Supreme Court's recent holding in *Lucas v. South Carolina Coastal Commission*. [12:4 CRLR 21-22, 196-97] The appellate court found that the Commission used the lot configuration issue to extract greater concessions from Landgate in its development plans. Landgate now intends to seek \$2.5 million in damages for what it asserts is a 27-month "taking" of its property.

Earth Island Institute v. Southern California Edison, No. 90-1535 (U.S.D.C., S.D. Cal.), is still in settlement negotiations. The two-year-old dispute over environmental harm caused by the utility's San Onofre Nuclear Generating Station survived SCE's motion for summary judgment in July 1992 [12:4 CRLR 196-97], and forced both sides to the bargaining table.

RECENT MEETINGS

At its October meeting, the Coastal Commission formally issued a permit allowing the demolition of the La Jolla Green Dragon Colony. The permit came fifteen months after most of the Colony had already been bulldozed. In June 1991, the City of San Diego issued a demolition permit, but bulldozing was halted by a temporary restraining order issued by a San Diego County Superior Court judge after the state Attorney General's Office argued that the owners of the property, a

trust, had not received the necessary permits from the state. The Commission issued the permit after the owners agreed to the condition that materials from the site be salvaged and that any future development adhere to "significant" design elements of the original cottages. The Green Dragon Colony was built around the turn of the century on the hillside overlooking La Jolla Cove and was a haven for artists and writers.

At its November 18 meeting, the Commission concurred with consistency determinations by the U.S. Army Corps of Engineers that allow the repair and reinforcement, as well as the implementation of a lighting system, for a fence along the U.S.-Mexico border. The Commission also concurred with a consistency determination by the Immigration and Naturalization Service to extend the Mexican border fence across the beach and into the surf zone.

Also in November, the Commission sharply criticized a plan by the city of Pacific Palisades to fill Potrero Canyon with three million cubic yards of dirt to a height of 100 feet. Citing a need to stabilize the canyon, the city intends to create a park on top of the fill complete with "native plants" and a plastic-lined streambed fed by tap water. By building the park, the city hopes to meet federal and Commission wetlands preservation regulations by replicating the area's "native riparian habitat." However, local residents and even some city officials note that such a habitat never existed on this site prior to the plans to fill the canyon. The Commission took no action on the proposal, other than to table the city's request to alter its irrigation plan.

At its December meeting, the Commission discussed enforcement of permit conditions. Historically, enforcement of conditions has been problematic due to lack of enforcement staff and a paucity of regulations permitting effective enforcement. Executive Director Peter Douglas announced that Governor Wilson had approved addition of three new positions to the Commission's enforcement staff. Douglas also noted that regulations implementing the Commission's new authority to issue cease and desist orders will improve enforcement efforts. Funds collected through the imposition of fines will be added to the Coastal Conservancy Fund.

The Commissioners agreed that enforcement should be a major concern in 1993 and requested that staff draft a mission statement and plan. Further, the Commissioners requested that they be notified of infractions found within their district.

FUTURE MEETINGS

June 8-11 in San Rafael.
July 13-16 in Huntington Beach.
August 10-13 in Long Beach.
September 14-17 in San Francisco.

CALIFORNIA ENERGY COMMISSION

Executive Director: B.B. Blevins
Chair: Charles R. Imbrecht
(916) 654-4489
Toll-Free Hotline:
(800) 772-3300

In 1974, the legislature enacted the Warren-Alquist State Energy Resources Conservation and Development Act, Public Resources Code section 25000 *et seq.*, and established the State Energy Resources Conservation and Development Commission—better known as the California Energy Commission (CEC)—to implement it. The Commission's major regulatory function is the siting of powerplants. It is also generally charged with assessing trends in energy consumption and energy resources available to the state; reducing wasteful, unnecessary uses of energy; conducting research and development of alternative energy sources; and developing contingency plans to deal with possible fuel or electrical energy shortages. CEC is empowered to adopt regulations to implement its enabling legislation; these regulations are codified in Division 2, Title 20 of the California Code of Regulations (CCR).

The Governor appoints the five members of the Commission to five-year terms, and every two years selects a chairperson from among the members. Commissioners represent the fields of engineering or physical science, administrative law, environmental protection, economics, and the public at large. The Governor also appoints a Public Adviser, whose job is to ensure that the general public and interested groups are adequately represented at all Commission proceedings.

There are five divisions within the Energy Commission: (1) Administrative Services; (2) Energy Forecasting and Planning; (3) Energy Efficiency and Local Assistance; (4) Energy Facilities Siting and Environmental Protection; and (5) Energy Technology Development.

CEC publishes *Energy Watch*, a summary of energy production and use trends in California. The publication provides the latest available information about the state's energy picture. *Energy Watch*, pub-