



ternative to the secondary treatment system it has agreed to implement. Judge Brewster determined that the description of the test was acceptable to all parties, and ordered the City to proceed with the testing shortly after the first of the year. The test will last approximately one year, after which a report outlining the results will be given to all parties. Judge Brewster also ordered quarterly reports and quarterly status conferences at the City's Point Loma reclamation plant to be attended by Judge Brewster and the attorneys for all parties. Judge Brewster ordered that the expert witness of the Sierra Club, an intervening party, be allowed to fully participate in the design and implementation of the proposed testing process.

This decision is part of a pending lawsuit brought by the federal and state governments against San Diego based on the City's long-term failure to comply with the federal Clean Water Act (CWA). (See CRLR Vol. 11, No. 3 (Summer 1991) p. 181; Vol. 11, No. 2 (Spring 1991) p. 165; and Vol. 11, No. 1 (Winter 1991) p. 135 for background information on this case.) Pursuant to a 1989 consent decree, the City of San Diego has agreed to upgrade its Point Loma facility to secondary treatment level and build seven new sewage water reclamation plants by 1998. However, Judge Brewster decided in June 1991 to withhold final approval of the consent decree and defer a final decision until January 1993, pending the City's completion of the testing at its Point Loma facility of a cheaper alternative treatment and reclamation process which may substantially reduce the cost of compliance with the CWA. At this writing, Judge Brewster has already fined the City \$3 million for violating the CWA; ordered the City Council to adopt a water conservation ordinance (which the Council did on November 12, requiring the retrofitting of water-saving plumbing fixtures whenever buildings are reconstructed or sold and whenever bathrooms are remodeled, effective January 1, 1992); and ordered the City to finish building a 2.5-mile extension onto its 2.2-mile underwater sewage outflow pipe by July 1, 1994. (See *infra* agency report on CALIFORNIA COASTAL COMMISSION for related discussion.) The major remaining issue is the determination of how much reclaimed water, which the seven new reclamation plants will be producing, should be beneficially used instead of simply discharged into the ocean.

A trial has been set for late 1992 in *Earth Island Institute v. Southern California Edison*, No. 90-1535 (U.S.D.C.,

S.D. Cal), in which Earth Island alleges that Southern California Edison (SCE) is operating the San Onofre Nuclear Power Plant in a manner which violates the federal CWA. Under the CWA, state boards or private citizens may bring a lawsuit alleging violations of the CWA. Earth Island filed the lawsuit in reaction to a lack of response from the Coastal Commission and the San Diego Regional Water Quality Control Board, both of which have issued SCE permits to operate the San Onofre plant, in determining whether SCE is operating the facility in violation of its permits. A condition of the Coastal Commission permit was that SCE fund an independent Marine Review Committee (MRC), consisting of three scientists, to carry out an extensive study of the marine environment and the effects of the plant on the marine environment. In 1989, following a fifteen-year study, the MRC concluded that SCE is violating regulatory requirements at the state and federal level. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 172-73; Vol. 11, No. 3 (Summer 1991) p. 181; and Vol. 11, No. 2 (Spring 1991) p. 166 for background information.)

The San Diego Regional Water Quality Board is currently in the process of holding hearings to decide whether SCE is in violation of the NPDES permit issued by the Board. At the last hearing on October 31, the Board heard testimony from SCE arguing that any violation of the permit should be determined from SCE's report of impact on the marine environment rather than from the MRC's report, because the SCE report was narrowly tailored to determine compliance with the specific NPDES permit. However, regional board staff

disagreed with SCE, stating that the testing method used by SCE "has an inherently greater chance of failing to detect a violation of the permit requirements" and noting that SCE's monitoring program is perhaps "something less than perfect."

At the hearing, the Board heard testimony from many interested parties, including officials from the Coastal Commission, a member of the MRC, and various environmental groups. The Board has not yet reached a decision and is scheduled to hold a number of additional hearings in order to receive all relevant testimony.

The May 1991 lawsuit filed by a coalition of environmental groups against WRCB over the Board's Water Quality Control Plan for Salinity was scheduled for hearing on January 15 in Sacramento County Superior Court. In *Golden Gate Audubon Society, et al. v. State Water Resources Control Board*, No. 366984, plaintiffs challenge the validity of the plan, which the Board adopted as part of its four-year-long proceeding to establish a long-range protection plan for the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. (See *supra* MAJOR PROJECTS; see also CRLR Vol. 11, No. 4 (Fall 1991) pp. 37-38 and 172, and Vol. 11, No. 3 (Summer 1991) pp. 34 and 180 for background information.)

## FUTURE MEETINGS:

Workshop meetings are generally held the first Wednesday and Thursday of each month. For exact times and meeting locations, contact Maureen Marche at (916) 657-0990.



## 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,



## REGULATORY AGENCY ACTION

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 125 certifiable local areas in California, 74 (60%) have received certification from the Commission as of July 1, 1991.

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 Rejects Pebble Beach Private Membership Plan.** After more than two hours of discussion at its October 10 meeting, the Coastal Commission asserted its authority over the state's shoreline and rejected by a 10-1 vote a controversial agreement that would have allowed the Japanese-owned Pebble Beach Company to sell private memberships at its world-famous golf courses located on the Monterey coast. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 174-75 for background information.)

The agreement was a settlement negotiated in July by the Commission's staff, who recommended approval of the plan. The settlement was designed to allow Pebble Beach Company to proceed with private membership sales, which the company said could cost \$150,000-\$740,000 each, in return for dropping a lawsuit challenging the Commission's jurisdiction over the matter. Under the membership proposal, which was approved by the Monterey County Board of Supervisors, the Company would set aside hotel rooms and tee times for members of a new "Pebble Beach National Club" but also guarantee one hour per day of tee times for use by non-members who can afford the \$200 green fees.

In rejecting the settlement, the Commission unanimously affirmed its jurisdiction over the matter—an issue disputed by Pebble Beach. The Commission claimed jurisdiction based on the state's 1976 Coastal Act, under which any proposed change in use of a coastal property requires a permit and an amendment to the local coastal plan (LCP), a procedure that includes public hearings. On July 9, the Monterey County Board of Supervisors approved the plan without an LCP amendment. The Commission is authorized by section 13569, Title 14 of the CCR, to resolve disputes regarding the status of a project if requested to do so by a local government, applicant, or interested party. After the company's plan was approved by Monterey County, environmentalist Carl Larson appealed to the Commission to assert jurisdiction and reverse the county's decision. Pebble Beach may still apply for a coastal permit and LCP amendment, a process that will take four to six months; however, it elected to file a lawsuit challenging the Commission's jurisdiction and decision on December 10.

The Commission's decision engendered strong feelings on both sides.

Those opposed to the plan were pleased because they feared it would set a dangerous precedent that could lead to creeping privatization along the entire California coast. The one dissenter, Commissioner David Malcolm, disagreed with his colleagues that the plan would infringe on the public's right to enjoy the coast or limit their access to it. A Sacramento lawyer attributed the Commission's negative vote to racism and hatred toward Japanese. Others criticized the Commission for its allegedly inconsistent decisions regarding coastal access, particularly its neutral position on the Port Disney project (*see infra*).

**Disney Rejects Long Beach for Theme Park.** In December, the Disney Company announced its abandonment of plans for a \$3 billion harborfront resort and theme park in Long Beach. Called "Port Disney" or "DisneySea," the proposal had gained the neutrality of the Commission in June, after an initial vote in opposition. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 174 and Vol. 11, No. 3 (Summer 1991) p. 164 for background information.) Disney had stepped up its public relations drive to gain support after SB 1062 (Maddy), which would have exempted the project from the Coastal Act's prohibition on dredging and filling open coastal waters, became a two-year bill. In October, nearly 1,700 pro-Disney supporters attended an elegant cocktail party at the Queen Mary to announce the creation of "Friends of Port Disney." The gala was the biggest show of support for the controversial theme park yet. However, in the face of continued opposition by environmentalists and prospects of a costly regulatory review process, Disney announced on December 12 that it would abandon the Long Beach project and instead build in Anaheim. Critics of the Long Beach site had warned that 13 million Disney tourists per year would bring monumental traffic jams and pollution. Disney claims the regulatory process would involve 27 local, state, and federal agencies and could cost \$70 million.

Disney representatives stress that they have not made a final decision to build in Anaheim but, if finalized, construction could begin in 1993 and be completed by 1999. The new resort would include three new "theme" hotels, a retail complex on the banks of a six-acre man-made lake, and a new theme park called Westcot Center, a world's fair-type park patterned after Epcot Center in Florida. According to Disney, the new resort could inject \$2.3 billion per year into the southern California economy, create 28,000 new



jobs, and return about \$38 million in tax revenues to Anaheim. The final decision will not be made until an environmental impact report is completed in a year.

**CCMP Evaluation.** The federal Office of Ocean and Coastal Resource Management (OCRM) has directed the Commission to evaluate the capacity of the CCMP to achieve the coastal zone "enhancement objectives" set forth in section 309 of the CZMA, as amended in 1990. The 1990 amendments identified eight enhancement areas: wetlands, coastal hazards, public access, marine debris, cumulative impacts, special area management planning, ocean resources, and energy and government facility siting. OCRM has directed the Commission to assess the CCMP in each of these areas and submit an Enhancement Grant Strategy based on its evaluation in order to qualify for Federal Coastal Zone Enhancement Grant Funds. Up to \$500,000 annually in federal grant funds is at stake.

The Commission must develop a strategy to improve its program in one or more of the enhancement areas by February 1992. As a result, the Commission drafted a preliminary assessment report reviewing the nature and extent of problems in each area. The preliminary assessment was discussed at two public hearings during November in San Diego and San Francisco. The preliminary assessment report identifies the following issues in each of the enhancement areas:

**-Wetlands.** California's precious wetlands continue to be threatened by agricultural, port and marina, flood control, residential, commercial, and industrial development. These threats could be lessened by strengthening Commission involvement in CEQA/NEPA environmental reviews, creating a detailed wetlands database, developing systematic monitoring of restoration projects, promoting a wetlands training program for consultants, and evaluating new mechanisms to update certified LCPs.

**-Coastal Hazards.** California's coastline is subject to earthquake, tsunami, uplift and subsidence, storm, flooding, erosion, bluff retreat, and other natural hazards. Damage from hazards could be reduced by a greater effort to direct development away from hazard areas, a reassessment of the effectiveness of setback requirements, and a better system for regulation and management of grading, protective structures, and beach "nourishment."

**-Public Access.** Currently, a lack of money precludes the opening and maintenance of publicly-owned lands. As a

result, such lands remain closed due to an absence of agencies willing to manage them. The Commission needs to study and implement new funding mechanisms for access, train local planners to apply LCP policies, and review the coastal access plans in many LCPs.

**-Marine Debris.** Trash and litter in the coastal zone kills wildlife, threatens the health and safety of coastal users, and costs millions of dollars in repeated clean-up costs. To help mitigate the effects of debris, there should be better coordination among agencies to improve enforcement of existing laws, new regulatory approaches to reduce debris, and an expansion of education and awareness activities directed at the general public.

**-Cumulative Impacts.** The cumulative impacts of all development in an area can seriously degrade the area's environment. The CCMP's weakest link in managing these impacts may lie in its monitoring and evaluation of the effectiveness of implementing Coastal Act policies at the local level over time. The preliminary assessment says the Commission should consider expanding its efforts to collect, maintain and distribute data on key issues, study cumulative impact analysis methodologies, strengthen its enforcement program, examine the possible linkage of its programs to other state efforts to develop long-term growth management strategies, and develop a coastal pollution control program that addresses the cumulative impacts of land use on water quality.

**-Special Area Management Planning (SAMP).** The CCMP already provides the necessary structure for developing special area management plans; therefore, this objective is given lower priority than the others. SAMP equivalents have been used in specific enhancement and restoration plans, habitat conservation plans, port master plans, public works, and parks plans.

**-Ocean Resources.** In 1989, the legislature passed the California Ocean Resources Management Act (CORMA) to provide a wide-ranging review of state ocean resource management. Since this evaluation is still in its embryonic stages, the Commission recommends that enhancement objectives in this area be deferred to the future.

**-Energy and Government Facility Siting and Activities.** California's coast is the home of power plants, oil and gas processing facilities, refineries, marine terminals, and oil and gas pipelines. Government activities in the coastal zone include military installations, port dredging, boating facilities,

installation of navigational equipment, marine research, and restoration of parks, forests, and fishery habitats. Because the state already has a relatively complete regulatory system for overseeing such activities, the Commission has given this enhancement objective a lower priority.

The Commission was required to submit a final assessment of its program, incorporating public comment, to OCRM by January 10. Based on this assessment, the Commission is to develop a formal strategy to target grants for enhancement projects in the priority policy areas over the next two to four years, and submit that strategy to the federal government for evaluation by February.

**Federal Marine Sanctuary Awaits Final Revisions.** It has been over a year since more than 1,200 people attended hearings along the central California coast to express support for a Monterey Bay National Marine Sanctuary, as promised by President Bush in June 1990. In October 1990, the Commission approved a staff informational report on the National Oceanic and Atmospheric Administration's (NOAA) Draft Environmental Impact Statement/Management Plan (DEIS/MP) on the proposed sanctuary. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 122 and Vol. 10, No. 4 (Fall 1990) p. 151 for background information.) The final version of the plan was expected this fall, but is still being prepared at this writing. After the final EIS/MP has been issued, a 30-day public comment period and gubernatorial and congressional review will follow.

The size of the sanctuary remains the key issue of discussion. NOAA has recommended a sanctuary that covers 2,200 square nautical miles, but most advocates have expressed a desire for expanded boundaries. California Congressman Leon Panetta supports a 2,900-square-mile version that would extend the southern boundaries farther along the Big Sur coast and enhance the protection of threatened sea otters. The majority of supporters favor the adoption of a 3,800-square-nautical-mile version, known as Option #5. This alternative would extend the northern boundaries of the sanctuary to the Gulf of the Farallones. If coupled with a ban on offshore oil and gas activities, this could permanently protect areas of the San Mateo coast now covered by the oil industry. The sanctuary would also include the Fitzgerald Marine Reserve and better protect the sensitive resources of Año Nuevo and Monterey Bay.



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Option #5 faces opposition from the Ports of Oakland and San Francisco and the U.S. Army Corps of Engineers, who fear its boundaries will hinder their ability to dump dredge spoils in ocean waters that fall within the proposed boundaries. As a candidate for governor, Pete Wilson supported Option #5, along with an oil and gas ban. Wilson's endorsement will be essential in persuading the Bush administration and Congress to accept the largest possible sanctuary. Due to the extensive scientific and public response to this issue, no definite date has been announced for release of the final EIS/MP.

**Commission Approves Extension of San Diego Sewage Pipeline.** Every day, the City of San Diego dumps 190 million gallons of partially treated sewage into the ocean, via a two-mile-long, twelve-foot diameter pipeline. At its November meeting, the Commission approved by a 9-1 vote the City of San Diego's application to construct a 2.5-mile extension of the pipeline. The extension is deemed necessary to comply with the State Ocean Plan, which was modified in 1983 to designate the Point Loma kelp beds (which are adjacent to the current discharge point) as "body-contact areas" with specific bacteriological standards. The construction activity is expected to take approximately two years. The proposed project could adversely affect water quality at the new discharge point. However, the city claims the project is consistent with the water quality policies of the CCMP (PRC section 30231) because the discharge will occur outside the coastal zone and any adverse effects on coastal zone resources are expected to be minor and short-term. The project is expected to improve water quality within the adjacent Point Loma kelp beds. The proposed extension will eliminate 15 acres of soft-bottom habitat and associated infauna along the pipeline corridor, but Commission staff considered this impact to be insignificant because of the vast amount of undisturbed soft-bottom habitat. The pipeline construction may also adversely affect the migration patterns of the endangered gray whale. Injury or death could result from collisions with construction barges and transport vessels, segments of floating pipeline, or cables used to lower pipeline sections. However, the project is thought to be consistent with the marine resources policies of the CCMP (PRC sections 30230 and 30233) by virtue of a mitigation plan that mandates a whale/marine mammal watch on every project-related vessel.

**Increasing the Commission's Ethnic Diversity.** The Commission is increasing efforts to promote ethnic diversity and minority participation in coastal management. The Commission has created a four-pronged program to expand minority and ethnic participation in its activities, and held a public hearing inviting comment on the program at its November 13 meeting in San Diego. The Coastal Commission also gave Executive Director Peter Douglas instructions to increase ethnic diversity during his performance evaluation in July. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 174 for background information.)

Coastal Commission efforts to expand ethnic and minority participation will be concentrated in the areas of staffing, outreach, education, and a minority internship program.

The Commission hopes to continue its policy of affirmative action in hiring despite high demand and short supply of minority professionals in the environmental field. To date, the Commission believes it has enjoyed moderate success in recruitment efforts in spite of continuing budget and staff cuts suffered during the past nine years.

The Commission recognizes that new efforts are required to reach out to California's rapidly growing minority communities. The Commission has created a modest plan limited by staff and travel funds, and plans to form a "Listeners Bureau" with the objective of expanding public involvement and outreach to minority communities.

The Commission will also continue its Coastal Environmental Education Program to engage minority youth in coastal and other environmental concerns. The Commission believes its Adopt-A-Beach School Curriculum and Youth Group programs have taught school children about the coastal and ocean environments. To meet staff concerns that students in financially troubled schools lack transportation necessary to participate in coastal and beach activities, Commission funding for school bus transport would be required. The Commission will also continue efforts to recruit minority interns.

**Commission Increases Permit Fees.** On August 15, the Commission made permanent its previous emergency regulatory changes that significantly raise fees for various categories and types of permits. The amendments to section 13055, Title 14 of the CCR, currently await review and approval by the Office of Administrative Law. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 175 and Vol. 11, No. 3 (Summer 1991) p. 164 for background information.)

**Commission Rulemaking.** On November 29, the Commission announced its intent to amend section 13012, Title 14 of the CCR, which currently sets forth the definition of the term "major public works" as used in PRC sections 30601 and 30603.

Prior to certification of an LCP, local jurisdictions may elect to issue coastal development permits by following procedures outlined in PRC sections 30600(b) or 30600.5. For three types of development specified in PRC section 30601, including major public works, a permit applicant must additionally obtain a coastal development permit from the Commission. After an LCP is certified, the local government is delegated permitting jurisdiction pursuant to PRC section 30519. However, local government approvals and denials of coastal development permits for major public works and major energy facilities may be appealed to the Commission.

Regulatory section 13012 currently defines major public works as "facilities that cost more than one hundred thousand dollars (\$100,000) . . ." subject to the annual cost adjustment factor set forth in the regulation and excluding development which is statutorily exempt from the permit approval process. The proposed amendment would add new subsection (b), providing that major public works projects also include "development of any cost that would serve regional or statewide recreational needs." The effect of the proposed subsection would be to provide the Commission with the opportunity to review public works projects in the coastal zone that would provide substantial recreational benefits of statewide or regional value regardless of cost pursuant to section 30601 or on appeal from the local government pursuant to section 30603.

The Commission was scheduled to hold a public hearing on this proposed amendment on January 14 in Marina del Rey.

**Conflict of Interest Code.** On December 13, the Commission announced its intent to adopt the conflict of interest code developed by the Fair Political Practices Commission in section 18730, Title 2 of the CCR, and apply it to Commission employees. The conflict of interest code sets forth four categories of employees who must report sources of income, interests in real property, and investments and business positions in business entities, and who must disqualify themselves from various Commission decisions related to those interests. The commissioners themselves are not covered by this conflict of interest code, but must comply with disclo-



sure and recusal requirements set forth in Article 2, Chapter 7 of the Political Reform Act of 1974, Government Code section 81000 *et seq.*

**Coastal Commissioner Subject of Corruption Investigation.** An investigation that led to the November resignation of state Senator Alan Robbins is now focused on Commissioner Mark Nathanson. Robbins implicated Nathanson in the extortion of more than \$230,000 from San Diego hotel developer Jack Naiman. Naiman reportedly testified to a grand jury that he understood that without the payment, his plans to build a major hotel in La Jolla would be scuttled, and he would never be allowed to develop property along the California coastline. Through his attorney, Nathanson has denied the charges.

Nathanson, a Beverly Hills real estate broker and investment consultant, was appointed to the Commission in 1986 by Assembly Speaker Willie Brown. Nathanson is one of four Brown appointees on the panel. In 1973, Nathanson was arrested in a West Hollywood parking lot on suspicion of soliciting a \$2,500 bribe from a businessman turned police informant. A member of the Los Angeles County Delinquency and Crime Commission at the time, Nathanson pleaded no contest to a reduced misdemeanor charge of attempted grand theft, for which he was given three years' probation and a \$2,500 fine. Brown claims he was unaware of the 1973 incident when he appointed Nathanson to the Commission.

In 1986, the year of his appointment, Nathanson agreed to pay a \$13,400 fine to the Fair Political Practices Commission for failing to disclose his income and investments under a conflict of interest statute while serving between 1983 and 1985 as Governor Jerry Brown's appointee to the Little Hoover Commission.

Environmentalists have long criticized Nathanson for his pro-development bias. The Natural Resources Defense Fund reported that Nathanson voted to protect the coastal environment only 27% of the time. Assemblymember Tom Hayden complained confidentially to Willie Brown about Nathanson as early as 1987; in December, Hayden renewed his call for Nathanson's removal from the Commission.

## LEGISLATION:

**AB 1420 (Lempert)** would appropriate \$404,000 from the Oil Spill Prevention and Administration Fund to the Coastal Commission for purposes related to oil spill contingency planning

and response. This two-year bill is pending in the Assembly Natural Resources Committee.

**SB 1062 (Maddy)**, as amended June 18, would exempt the Disney Company from the Coastal Act's prohibition against dredging and filling open coastal waters, enabling it to dredge and fill 250 acres of Long Beach Harbor to build its proposed "Port Disney." The bill is not likely to be pursued since Disney has abandoned its harborfront project (*see supra* MAJOR PROJECTS). This two-year bill is pending in the Senate Committee on Natural Resources and Wildlife.

**AB 854 (Lempert, et al.)** was substantially amended on June 28. As amended, it would repeal and reenact the Coastal Resources and Energy Assistance Act, and authorize the Secretary of Environmental Affairs to award grants to coastal counties and cities for activities related to offshore development. Earlier provisions creating the California Coastal Sanctuary were deleted from AB 854 and amended into AB 10 (Hauser) (*see infra*). AB 854 is pending in the Senate Committee on Natural Resources and Wildlife.

**AB 10 (Hauser)**, as amended June 27, would create the California Coastal Sanctuary including all state waters subject to tidal influence, except for specified waters; and would prohibit any state agency, with specified exceptions, from entering into any new lease for the extraction of oil or gas from the Sanctuary unless specified conditions are present. This bill is pending in the Senate Governmental Organization Committee.

**AB 616 (Hayden)** would authorize the State Lands Commission and the Coastal Commission to issue cease and desist orders in accordance with specified procedures with respect to any permit, lease, license, or other approval or authorization for any activity requiring a permit, lease, license, or other approval or authorization. This two-year bill is pending in the Assembly Natural Resources Committee.

**SB 284 (Rosenthal)**, as amended August 22, would require the Coastal Commission to develop and implement a comprehensive enforcement program, to ensure that any development in the coastal zone is consistent with the California Coastal Act of 1976; oversee compliance with permits and permit conditions issued by the Commission; and develop and implement a cost recovery system to offset the costs of administering the enforcement program, consisting of fees charged to violators of the Act for the costs incurred by the Commission in the enforcement process. This

two-year bill is pending on the Assembly floor.

## LITIGATION:

On November 18, the U.S. Supreme Court agreed to hear a property rights case which may affect the future of coastal regulation in California. In **Lucas v. South Carolina Coastal Council**, a South Carolina man was recently awarded \$1.23 million in compensation after a trial court ruled that a law prohibiting the construction of any permanent structure in the beach/dune system deprived him of "all economically viable use" of his property. Developer David Lucas lost the right to build on two oceanfront lots for which he paid \$975,000 after the state passed a law banning development to prevent beach erosion. The South Carolina Supreme Court reversed the trial court's decision, finding a "nuisance exception" to the fifth amendment's takings clause because the regulation was intended to prevent serious public harm.

Lucas appealed to the U.S. Supreme Court, arguing that the fifth amendment prohibits government from taking private property for public use without compensating the landowner. The prevailing Supreme Court test for regulatory takings is set out in **Nollan v. California Coastal Commission**, 483 U.S. 825 (1987). In that case, the Commission granted a permit to the Nollans to replace a small beach bungalow on their beachfront lot with a larger house upon the condition that they allow a public easement to pass across their beach, which was located between two public beaches. The Supreme Court ruled that conditioning a rebuilding permit on the grant of an easement would be lawful if it substantially furthers government purposes that would justify denial of the permit, but that the condition must further the same governmental purpose advanced as justification for prohibiting the use. The Court held that a taking had occurred because the access-easement condition did not serve public purposes related to the requirement of a permit to build a new house.

Property rights advocates believe the government should pay compensation regardless of the government interest involved; to do otherwise requires a few to fund a governmental objective for the benefit of many. They argue that if the government regulates for environmental protection, then the government and society as a whole ought to bear the economic burden of those regulations instead of a few select property owners.

The issue in this case is whether the government can regulate property to



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prevent a public harm without giving rise to a compensation claim. If the court decides in favor of Lucas, compensation may have to be paid property owners whose land is regulated for numerous objectives, including wetlands preservation, endangered species protection, public open space expansion, scenic river and view corridors, land use planning and zoning laws, and growth management plans. This would severely inhibit government efforts to preserve the environment, particularly in coastal zones where property tends to be valuable.

In addition to *Lucas*, the U.S. Supreme Court has agreed to review several additional cases concerning property and economic rights this term. This group of cases is particularly significant in light of recent changes in the Supreme Court's composition. In two 1987 cases rejecting regulatory taking claims, now-retired Justices William Brennan and Thurgood Marshall cast key votes that served to dampen further development of such actions. Since then, Anthony Kennedy, David Souter, and Clarence Thomas have been added to the Supreme Court. Little is known of Kennedy's and Souter's views on property rights. By contrast, the Court's newest member, Justice Thomas, wrote extensively in support of property rights before he became a federal appellate judge.

Settlement negotiations continue to drag on in *Sierra Club, et al. v. California Coastal Commission*, No. 637550 (San Diego County Superior Court), in which the Sierra Club and the Buena Vista Audubon Society challenge the Commission's approval of a proposal to dredge the Batiquitos Lagoon in Carlsbad. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 176; Vol. 11, No. 3 (Summer 1991) p. 166; and Vol. 11, No. 2 (Spring 1991) pp. 151-53 for extensive background information on this case.) Although the City of Carlsbad subsequently agreed to pursue a less environmentally damaging option than the one approved by the Commission over the objections of its staff, the Sierra Club plans to continue the lawsuit.

### RECENT MEETINGS:

At its November meeting in San Diego, the Commission approved a \$6 million plan to renovate the deteriorating canals of Venice, California. The canals were built by Abbot Kinney in just one year early in the century; his plan was to create an "American Venice," complete with canals and gondoliers. At that time, the canals were home to "hippies" and artists, but today

a wide mix of people reside in the area. For the last three decades, residents along the six waterways located between Washington and Venice boulevards have attempted to come up with a plan for saving the polluted waterways. The Commission approved a proposal that will line the crumbling banks with vertical, porous concrete-block walls. The canals will be emptied of stagnant waters and a flushing system will be installed. Sidewalks so unsafe that they were closed to the public in 1942 will be repaired, wooden footbridges will be rebuilt, and even duck ramps will be constructed. If all goes as expected, construction will begin in March and be finished in 1994.

On October 10, San Diego's Sea World won the Commission's approval to add several new facilities, including a beer-tasting area, a restaurant, a catering kitchen, and a structure that will house six of the famous Anheuser-Busch Clydesdale horses. The 6-2 vote authorized nearly 60,000 square feet of new buildings. Sea World spokesman Dan LeBlanc said this project is just one portion of the plans Sea World hopes to accomplish during 1992. The proposed additions are also subject to various city approvals.

At its November meeting, the Commission approved a permit for a temporary entertainment/support complex for America's Cup participants located in San Diego's Mission Bay Park. The facilities, which will be in operation from mid-January to late May 1992, include three large outdoor tents to be used for exhibit space, food service and beer gardens for the nearby yacht syndicates (Japanese, French, Australian and Swedish), a studio and floating platform for media interviews with race participants, a lounge for syndicate receptions and gatherings, tourist information booths, and a VIP trailer. In addition, two entertainment programs were approved to take place within the support facility. One weekend each month, a temporary stage and seating will be erected for opening and closing ceremonies and musical reviews conducted by the different countries involved. These improvements will be removed each month as events occur, and the area will be ultimately restored to pre-project condition by Memorial Day weekend.

### FUTURE MEETINGS:

April 7-10 in San Rafael.

May 12-15 in Marina del Rey.

### CALIFORNIA ENERGY COMMISSION

*Executive Director: Stephen Rhoads*  
*Chairperson: Charles R. Imbrecht*  
(916) 324-3008

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*, published every two months, is available from the CEC, MS-22, 1516 Ninth Street, Sacramento, CA 95814.

On November 25, Governor Wilson named Tracey Buck-Walsh as the new CEC Public Adviser. Buck-Walsh, who practiced law for four years prior to her appointment as public adviser, is a former member of the Humboldt County Energy Commission.