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).

On May 11, Assembly Speaker Willie Brown announced the resignation of Commissioner Mark Nathanson, one of Brown's appointees. On May 7, Nathanson was indicted on charges of extortion, racketeering, obstruction of justice, and tax evasion. He faces up to 79 years in prison and $1.5 million in fines if convicted of extorting payments from developers and Hollywood notables who needed permits from the Coastal Commission. *[12:1 CRLR 161]* Brown named Beverly Hills real estate agent Diana Doo to replace Nathanson. Doo had been chosen by Nathanson as his alternate on the Commission in 1990. In addition, Governor Wilson recently appointed William Rick of San Diego to replace Donald McInnis.

MAJOR PROJECTS:

Bush Reconfirms Plan to Create Marine Sanctuary. On January 24, President Bush waved an election-year carrot at environmentalists by repeating his 1990 pledge to create a 4,000-square-mile marine sanctuary stretching more than 200 miles from Marin County to San Simeon south of Monterey. *[12:1 CRLR 159–60; 11:1 CRLR 122; 10:4 CRLR 151]* If approved as part of the federal Environmental Protection Agency's budget, the plan could forever ban offshore oil drilling along one-fourth of California's coast. The oil industry, which now maintains drilling rigs off the San Mateo coast, strongly opposes the plan. The sanctuary is part of the President's 1992–93 budget proposals designed to assist the California environment.

The boundaries designated by President Bush include the Fitzgerald Marine Reserve and the Año Nuevo State Reserve. However, his plan was greeted skeptically by environmentalists who, while pleased with the size of the proposed sanctuary, viewed the timing of the release as aimed at attracting election year attention to the President's conservation efforts and remained concerned about implementation. At this writing, there is no federal timetable for implementation and the plan must still be approved by Congress.

Developer Seeks Temporary Solution in Batiquitos Lagoon. Hillman Properties, developer of the huge Aviara resort hotel overlooking the Batiquitos Lagoon near the City of Carlsbad, and the Batiquitos Lagoon Foundation, a private group, have asked the Commission for permission to construct a temporary five-foot-high cobblestone berm at the mouth of the lagoon's coastal opening. The berm would replace a natural one torn down several years ago and, its proponents hope, would retain water in the lagoon during summer months.

In early March, the City of Carlsbad filed an application with the Commission on behalf of Hillman Properties and the Batiquitos Lagoon Foundation. Three permits must be acquired before the berm may be built: a coastal development permit from the Commission, an encroachment permit from the City of Carlsbad, and a section 404 permit from the U.S. Army Corps of Engineers (required for construction on wetlands).

The twenty-yard-long berm would effectively dam off the mouth of the lagoon and is scheduled to remain in place for approximately one year, until the Batiquitos Lagoon Restoration project begins. The restoration project involves the dredging of 2.2 to 3.1 million cubic yards of material from the lagoon and is currently the subject of a Sierra Club lawsuit against the Commission and the City of Carlsbad. *[12:1 CRLR 25, 162]* While the

lawsuit remains at an impasse, the berm is advocated as a short-term solution to keep the lagoon from drying up.

The City of Carlsbad claims neutrality and environmentalists are reserving judgment until they can determine how the proposed structure would affect the lagoon's environment. (*See supra* report on SIERRA CLUB for related discussion.) The project application is supported by area legislators Senator Bill Craven and Assemblymember Bob Frazee. At this writing, the Commission has taken no action on the petition.

In a related matter, the Commission on May 12 granted Hillman's application for a permit to remove one-quarter ton of rocks it illegally dumped into Batiquitos Lagoon in March 1991 to keep the water from draining out. The Commission cited Hillman for dumping the rocks without a permit, and ordered their removal as they have become a hazard to swimmers and surfers.

Commission's Definition of "Major Public Works" Rejected by OAL. On January 14, the Commission adopted an amendment to section 13012, Title 14 of the CCR, to define the term "major public works" as that term is used in PRC sections 30601 and 30603. *[12:1 CRLR 160–61]* Before certification of an LCP, local jurisdictions may elect to issue coastal development permits by following the 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 Coastal Commission. After an LCP is certified, the local government is delegated 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.

Section 13012 previously defined major public works as "facilities that cost more than one hundred thousand dollars." The proposed amendment would add new subsection (b) to provide that "major public works" projects also include "development of any cost that would serve regional or statewide recreational needs." This would give the Commission the opportunity to review public works projects in the coastal zone that 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.

On April 3, the Commission filed the proposed regulation with the Office of Administrative Law (OAL). On May 22, OAL disapproved the package on grounds it failed to satisfy the consistency and clarity standards of Government Code section 11349.1. OAL asserted that use of the term "development" in new subsection 13012(b), as broadly defined by PRC section 30106, could be interpreted as including private as well as public developments, and could apply to developments other than those "public works" listed in PRC section 30114. Such an application would be inconsistent with the statutory definition and scope of "public works." For related reasons, OAL found the proposed change lacking in clarity. The Commission has 120 days in which to correct these deficiencies and resubmit the rulemaking file to OAL.

Commission Proposes to Adopt New Procedures for Cease and Desist Orders. On March 6, the Commission noticed a proposal to adopt regulations to implement SB 317 (Davis) (Chapter 761, Statutes of 1991), which confers on the Commission legal authority to issue cease and desist orders to restrain violations of the Coastal Act. The new law, which took effect on January 1, also grants the Executive Director the power to issue a cease and desist order when immediate action is needed before the matter can be brought before the Commission. Development activity without a required permit or inconsistent with a previously issued permit will justify issuance of a cease and desist order by the Commission or the Executive Director.

The issuance of a cease and desist order by the Commission is governed by PRC section 30810, which requires that any such order issued by the Commission be preceded by a public hearing. In addition, the Commission may issue a cease and desist order pursuant to the request of a city or county for an activity that is inconsistent with the permit requirements of the certified LCP of that city or county. Section 30810(b) authorizes the Commission to include in its order "such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including the immediate removal of any development of material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division."

The issuance of a cease and desist order by the Executive Director is governed by PRC section 30809. Section 30809(a) allows the Executive Director to issue an order in situations in which (1) a request is made by a port governing body, (2) a local government or port governing body does not respond in a satisfactory manner to a request by the Commission to enforce the requirements of a certified LCP or port master plan, or (3) the local government or port governing body is a party to the violation. Section 30809(b) provides that the Executive Director may only issue an order if the alleged violator fails to respond in a satisfactory manner to an oral or written notice of the alleged violation. Section 30809(c) authorizes the Executive Director to include in the cease and desist order such terms and conditions as determined necessary to avoid irreparable injury to any area within the Commission's jurisdiction until the Commission can act. Pursuant to section 30809(e), a cease and desist order issued by the Executive Director "shall become null and void 90 days after issuance."

SB 317 also added new section 30821.5(a) to the PRC, which subjects any person who violates a cease and desist order to civil liability of up to $6,000 per day. Section 30821.5(b) renders cease and desist orders inapplicable to "any activity undertaken by a local government agency pursuant to a declaration of emergency by a county board of supervisors." Section 30803(b) authorizes a court to grant a stay of any cease and desist order "only if it is not against the public interest." Finally, SB 317 amended PRC sections 30803 and 30805 to include within their scope cease and desist orders and civil fines for violations.

In order to implement the new authority granted by SB 317, the Commission has proposed the adoption of sections 13180–13188, Title 14 of the CCR. Section 13181 would describe the circumstances in which a response to a notice provided pursuant to PRC section 30809(b) will be considered "satisfactory." Section 13181 would provide, before the Commission commences a cease and desist order proceeding, for submission of a "statement of defense form" in which the alleged violator may respond to the allegations. Sections 13182–13186 would set forth procedures for the public hearing required by PRC section 30810(a) before the Commission may issue a cease and desist order. Section 13187 would specify the content of the order and section 13188 would provide for rescission or modification of the order.

A public hearing on this proposed regulatory action was scheduled for May 14 in Marina del Rey.

Oil Shipping Agreement Proposed. On March 31, the state Resources Agency proposed to settle a decade-long environmental dispute over transporting oil from the Point Arguello offshore oil project off

the Santa Barbara coastline by allowing oil to be shipped by tanker for three years while a pipeline is built from Gaviota to Wilmington. Santa Barbara County officials and area environmentalists criticized the announcement as premature, misleading, and without necessary environmental safeguards.

Last year, Santa Barbara County denied Chevron's proposal to ship oil by tanker until a pipeline could be built because it feared an increased risk of oil spills and greater air pollution from tanker shipments. Chevron appealed to the Coastal Commission, which upheld the county's position. Chevron subsequently filed suit against the Commission and the County of Santa Barbara.

At issue is whether Chevron and its 17 partners in the $2.5 billion project should be allowed to send heavy crude oil by tanker from Gaviota to Wilmington until a new pipeline is built. In the past year, Chevron has been producing 30,000–35,000 barrels per day, sending 20,000 barrels by pipeline to northern California and 15,000 barrels by pipeline east through Kern County and then south to Los Angeles refineries. The Resources Agency's proposal came after three months of negotiations among oil company, county, environmentalist, and Coastal Commission representatives, with Resources Agency staff acting as facilitators.

Environmentalists criticized the state's proposal because it would not require Chevron to commit to building a pipeline until 15 months after tanker shipments begin. Santa Barbara County officials indicated they would agree to interim tanker shipments on two conditions: (1) that Chevron ship as much oil as possible through existing pipelines, and (2) that the oil company commit to building the pipeline before beginning tanker shipments. The company wants to halt all use of the existing pipelines.

The Commission took no action on the proposal at its April 8 meeting.

Final Assessment of the California Coastal Management Program Completed. The federal Office of Ocean and Coastal Resources Management (OCRM) recently approved the Commission's Final Assessment of its California Coastal Management Program (CCMP), clearing the way for federal grant funding to enhance the CCMP in identified priority areas. *[12:1 CRLR 159]* Topping OCRM's enhancement priority list are cumulative impacts, wetlands, and coastal hazards. Funding is competitive among the states, depending on their multi-year management strategy and proposal for funding.

Status Report on Oil and Gas Activities. The Commission's Energy and Ocean Resources Unit (EORU) provides regular updates of current and pending oil and gas activities and other projects that require, or may require, Commission action. EORU's report for the first half of 1992 includes the following:

(1) On March 11, the Commission concurred with the consistency certification made by the state Department of Fish and Game (DFG) for the construction of an artificial reef in federal waters approximately seven nautical miles south of Point Loma, San Diego, in 160–165 feet of water. DFG's plan calls for initial construction of the Point Loma Artificial Reef (PLAR) with 10,000 tons of quarry rock placed in four groupings and future augmentation with 30,000 tons of approved "clean" materials. Upon completion, the reef will occupy 1.84 acres of ocean bottom on a site encompassing 92 acres. The purpose of the PLAR is to enhance recreational fishing opportunities in the San Diego Bay area. The PLAR is expected to provide a location for good winter fishing within a distance reachable by half-day "party boats" out of San Diego Bay.

(2) The marine mammal monitoring program conducted by Exxon Co., USA during the development of the Santa Ynez Unit was terminated on March 13 with the completion of nearshore pipelines and power cables tie-in work.

(3) On April 8, the Commission concurred with DFG's consistency certification for augmentation of the Bolsa Chica Artificial Reef (BCAR) with up to 30,000 tons of approved clean materials such as fired bricks and reinforced concrete rubble. The primary function of BCAR is to increase recreational fishing opportunities to vessel operators from ports located in southern Los Angeles and northern Orange counties.

(4) In 1986 and 1987, the Commission voted to oppose any further leasing offshore under the federal Five-Year Program because subsequent lease sales and development would result in unacceptable impacts on coastal resources. As announced May 1 by the federal government, the proposed Five-Year Lease Program for 1992–1997 includes a postponement of all lease sales off California until 2000. *[10:4 CRLR 151]* There is currently no exploratory drilling rig activity off the California shore.

(5) Drought conditions in California have prompted a demand for information on desalination. A staff desalination report, including a brief description of proposed and existing seawater desalination plants in California, jurisdictional issues, and a discussion of potential impacts to coastal resources, is expected soon.

LCP Status Report Released. On January 1, the Commission released its annual status report on local coastal programs. The Coastal Act allows local governments, with Commission approval, to divide their coastal zone into geographic segments, and to prepare a separate LCP for each segment. For this reason, 126 LCPs are being prepared instead of 73 (the number of actual coastal zone cities and counties). There has been an increase of one new city/LCP segment since January 1, 1991, due to the incorporation of the City of Malibu in March 1991.

To date, 79 (63%) total LCP segments have been effectively certified. During the 1991 calendar year, five LCP segments were certified: City of Watsonville, City of Guadalupe, Airport/Goleta Slough (Santa Barbara City), City of Palos Verdes Estates, and the City of National City. Three land use plan portions were certified (City of Pacific Grove, San Pedro Segment, City of Del Mar) and two implementation plans were certified (Mendocino County, Airport/Goleta Slough). The Commission acted on 72 major and minor LCP amendments in 1991, bringing the total number of LCP amendments since February 1981 to 544. The Commission has also acted on 34 amendments to Port Master Plans.

Regional Water Quality Control Board Clears San Onofre Nuclear Plant of Clean Water Act Violations. In a shocking ruling which constitutes a major victory for Southern California Edison (SCE), the major owner of the San Onofre Nuclear Generating Station (SONGS), the San Diego County Regional Water Quality Control Board (RWQCB) ruled on February 10 that SONGS is not violating provisions of the Clean Water Act and discounted claims that the plant is damaging marine ecosystems. This decision came after 17 years of debate over the environmental impact of SONGS. By a unanimous vote, the RWQCB found that there is no clear and convincing evidence to indicate the plant is violating provisions of its federal pollution discharge permit.

After a 15-year study, the Commission's Marine Review Committee previously concluded that the operation of SONGS had caused a 48% decline in the size of offshore kelp beds, and had reduced by 70% the abundance of fish populations in the area. *[9:4 CRLR 115]* As a result, the Commission adopted a mitigation plan for the power plant at its July 1991 meeting. *[11:4 CRLR 176]* In a 7–2 vote, the Commission approved a plan

requiring SCE to improve the plant's fish protection systems, build a 300-acre artificial reef nearby, and restore a 150-acre coastal wetland somewhere in southern California. The Commission rejected an option requiring retrofitting of the nuclear plant's existing cooling systems with cooling towers, which use less sea water, despite previous staff acknowledgment that the towers are the only technique that provides full marine resource protection. The Commission decided cooling towers would be too costly. Also in its 1991 decision, the Commission found that SCE was violating the terms of its federal discharge permit, and agreed to recommend that the RWQCB modify SCE's permits to incorporate regular monitoring and reporting by SCE.

The February 10 RWQCB decision inexplicably rejected the recommendations of the Coastal Commission, the Marine Review Committee, and the regional board's own staff.

In March, the San Francisco-based environmental group Earth Island Institute appealed the RWQCB decision to the state Water Resources Control Board, alleging improper lobbying by SCE. Earth Island claimed that SCE representatives met with RWQCB Executive Officer Arthur Coe on January 24, just prior to the Board's February 10 ruling. SCE defended its actions on grounds that Coe is not a board member. Coe and SCE admit that, during the January 24 meeting, they discussed a resolution to be presented to the RWQCB on the San Onofre issue. In May, Earth Island amended its existing 1990 federal court action against SCE, which alleges violations of the federal Clean Water Act stemming from operations of SONGS, to add the federal EPA as a defendant and to add two fraud counts. *[11:2 CRLR 154]* The same month, SCE filed a motion for summary judgment seeking to have the case dismissed. A decision was expected in July.

LEGISLATION:

AB 3394 (Hayden), as amended May 7, was a direct response to the Mark Nathanson extortion scandal which was rebuffed by the legislature. AB 3394 would have prohibited any voting member of the Commission from donating, soliciting, or accepting campaign contributions for the benefit of his/her appointing authority. The bill would also have prohibited voting members from accepting any income from, or from donating, soliciting or accepting campaign contributions from, or for the benefit of, any person who had an application before the Commission within the three-year period prior to taking any such action, and would have required voting members to abstain from voting on an application under specified circumstances. This bill was rejected by the Assembly Committee on Elections, Reapportionment and Constitutional Amendments on May 12.

AB 2559 (Farr), as amended April 1, would state the intent of the legislature that the Commission, in addition to developing its own expertise in significant applicable fields of science, interact with members of the scientific community so that the Commission may receive technical advice and recommendations with regard to its decisionmaking; require the Commission, to the extent its resources permit, to establish a scientific advisory panel; and encourage the Commission to seek funding from any appropriate public or private source for this purpose. *[A. Floor]*

SB 375 (Allen). The California Environmental Quality Act requires a public agency to adopt a monitoring or reporting program for changes to a project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. As amended April 20, this bill would require public agencies, if there is a project for which mitigation is adopted, and that mitigation is to be achieved through the imposition of conditions of project approval, to adopt mitigation measures as conditions of project approval which include prescribed matters. *[S. GO]*

AB 1449 (Rosenthal). Under existing law, any person who violates any provision of the California Coastal Act of 1976 is subject to a civil fine not to exceed $10,000, and may be subject to a specified additional daily civil fine for any development in violation of the Act. As amended March 31, this bill would delete those penalties, and would specify the circumstances under which the Coastal Commission, a local government, or port governing body may enforce violations of the Act. The bill would authorize civil liability to be imposed on any person who performs or undertakes development in violation of the Act, or inconsistent with any coastal permit previously issued by the Commission or a local government that is implementing a certified LCP or a port governing body that is implementing a certified port master plan, subject to specified maximum and minimum amounts, varying according to whether the civil liability is administratively or judicially imposed and whether the violation is intentional. *[S. Floor]*

SB 1578 (McCorquodale). The California Coastal Act of 1976 requires specified mitigation measures to be taken where any dike and fill development is permitted in wetlands in conformity with the Act. The permissibility of a proposed development subject to the Act is determined with regard to stated coastal resources planning and management policies. As introduced February 19, this bill would, instead of referring to such a development being permitted in conformity with the Act, refer to the development being permitted in conformity to specified coastal resource planning and management policies relating to diking, filling, and dredging, and to other applicable policies set forth in the Act. *[A. NatRes]*

AB 72 (Cortese), as amended January 29, would enact a framework for the California Heritage Lands Bond Act of 1992 which, if adopted, would authorize, for purposes of financing a specified program for the acquisition, development, rehabilitation, or restoration of real property for wildlife, park, beach, recreation, coastal, and historic purposes, the issuance of bonds in an amount of $678 million. *[S. NR&W]*

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 161:

AB 854 (Lempert, et al.) 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. *[S. GO]*

AB 10 (Hauser) 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. *[S. GO]*

SB 284 (Rosenthal) 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. *[S. inactive file]*

The following bills died in committee: ***AB 1420 (Lempert)***, which would have appropriated $404,000 from the Oil Spill Prevention and Administration Fund to the Coastal Commission for purposes re-

lated to oil spill contingency planning and response; ***SB 1062 (Maddy)***, which would have exempted 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 now-abandoned "Port Disney"; and ***AB 616 (Hayden)***, which would have authorized 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.

LITIGATION:

In ***Patrick Media Group Inc. v. California Coastal Commission***, No. B056181 (Mar. 27, 1992), the Second District Court of Appeal held that an appeal of a Coastal Commission order must be by petition for a writ of administrative mandamus.

In April 1978, Foster & Kleiser Outdoor Advertising obtained the right under its lease agreement to maintain three outdoor advertising structures on property owned by Solana Beach Property (Solana). The lease granted Solana the right to terminate the lease if at any time a building was to be constructed on the property.

Prior to December 1985, Solana applied to the Coastal Commission for a coastal development permit to construct a hotel complex. The permit was initially granted in December on the condition that all offsite signs, including Foster & Kleiser's three advertising structures, be removed. One month later, on January 1, 1986, Business and Professions Code section 5412.6 went into effect, requiring a governmental agency to pay compensation when it conditions the issuance of a permit on the removal of an advertising display. Foster & Kleiser was given advance notice of neither the December hearing when Solana's permit was tentatively approved nor the hearing in March when it received final approval. Solana merely notified Foster & Kleiser in writing that it was terminating its lease and requested that the signs be removed by May 1, 1986. Foster & Kleiser removed the structures on May 23, 1986.

On April 22, 1986, Foster & Kleiser demanded compensation from the Commission under section 5412.6 in the amount of $34,514, on grounds that the Commission's actions had forced Solana to terminate its lease. On April 28, 1986, the Commission responded that Foster & Kleiser would have to discuss the issue of compensation with Solana. On August 25, 1986, Foster & Kleiser filed with the State Board of Control a formal claim for compensation under section 5412.6. Foster & Kleiser's assets were then conveyed to Patrick Media Group (PMG). On October 8, 1986, the Board of Control rejected PMG's claim for compensation under section 5412.6. PMG filed its complaint for compensation in superior court under sections 5412 and 5412.6 on February 24, 1987. On PMG's motion for summary adjudication of issues, the trial court held that the Commission was liable for compensation.

The court of appeal reversed, holding that the trial court correctly found the provisions of Business and Professions Code sections 5412 and 5412.6 applicable to the Commission's actions respecting the advertising structures; however, it concluded that PMG's exclusive remedy under those statutes was by way of administrative mandamus, as provided in PRC section 30801 and Code of Civil Procedure section 1094.5. Since PMG failed to avail itself of this remedy, it was barred from bringing an action.

The court of appeal rejected the Commission's arguments that sections 5412 and 5412.6 do not apply to it, that it is immune from section 5412 compensation liability under Government Code section 818.4 (which shields government agencies from tort liability for injuries caused by the issuance of a permit), and several other technical arguments related to the date the permit was issued. However, it upheld the Commission's contention that the appropriate procedure for PMG to use in asserting its claim for compensation under section 5412.6 for a taking order by the Commission was administrative mandamus, and that PMG's failure to utilize that procedure within the appropriate time limits barred it from asserting the claim in this collateral action. According to the court, "[s]pecial procedural requirements apply where an inverse condemnation action is based upon a regulatory taking accomplished by an administrative agency." In such cases, the proper procedure is a petition for administrative mandamus. Where, as here, the Coastal Commission is the administrative agency whose action is being challenged, the writ of petition must be filed within 60 days after the Commission's decision or action has become final, rather than the 90 days allowed for seeking judicial review of administrative decisions generally. Failure to obtain judicial review of a discretionary administrative action by a petition for a writ of administrative mandate renders the administrative action immune from collateral attacks.

The court cited an agency's interest in prompt notice of a challenge to its decisions and considerations of judicial economy as the policy reasons behind its decision. The court also noted that the failure of the Commission to provide proper advance notice to PMG's predecessor did not excuse PMG from seeking review by administrative mandamus. The court concluded that PMG's available and proper action was either to request that the Commission revoke Solana's permit pending resolution of PMG's claim for compensation under sections 5412 and 5412.6 or to file an immediate petition for writ of administrative mandamus challenging the billboard removal condition as invalid if imposed without providing for compensation. Since PMG failed to exercise these actions, it is barred from asserting its claim in any collateral proceeding.

On March 2, the U.S. Supreme Court heard oral argument in ***Lucas v. South Carolina Coastal Commission***, a case that could severely affect the realm of regulatory takings. (*See supra* report on PACIFIC LEGAL FOUNDATION for related discussion.) In 1986, David H. Lucas bought two beach front lots in South Carolina for $975,000. He intended to build two houses, one for himself and one to sell. Two years later, South Carolina passed the Beach Front Management Act, designed to protect the state's coastal area from overdevelopment and erosion. Under that act, no building is permitted on land subject to beach erosion. Lucas sued the state government, claiming the state had violated the Fifth Amendment by taking his property without just compensation. He was successful in the trial court but the South Carolina Supreme Court reversed that decision, ruling that the government need not pay compensation when it regulates "to prevent serious harm." *[12:1 CRLR 161–62]*

The Court now must decide whether the state's claim that building along the shore will harm fragile coastal dunes shields it from having to pay compensation. Environmentalists and many state officials dread the outcome of *Lucas*. They fear a Supreme Court ruling in favor of Lucas could undercut laws protecting wetlands, forests, and beaches. A majority of states joined in an *amicus curiae* brief drafted by the Florida Attorney General, urging the Court to rule in favor of South Carolina. California Attorney General Dan Lungren filed a separate *amicus* brief to illuminate California's concerns. He warned that a decision allowing the taking claim could affect many California regula-

tions, ranging from the California Coastal Act—which is analogous to the South Carolina statute before the Court—to laws on earthquake development, toxic substance controls, and pesticide regulation. For example, California could be forced to pay millions of dollars to landowners who are barred from building on flood plains and unstable hillsides. Nearly 75 California cities and counties filed similar briefs. The Bush administration has taken a moderate position. It claims the government has the right to prevent harm to the public without owing compensation. However, in this case, the administration believes South Carolina should have to prove that building houses on Lucas' property would cause actual harm. The Supreme Court's ruling is expected this summer.

Last December, Minoru Isutani, owner of the Pebble Beach Company, sued the Commission over its refusal to permit him to sell private memberships at his world-famous golf courses on the Monterey coast. *[12:1 CRLR 158; 11:4 CRLR 174–75]* On February 20, however, Isutani announced his plans to sell the resort. This action, likely to end the legal controversy, was hailed by critics who sought to preserve public access to California's coast.

RECENT MEETINGS:

At its February meeting in San Diego, the Coastal Commission approved a plan to remodel the Monterey Bay Aquarium (MBA) and to install a desalination plant. Adopting an amendment to MBA's coastal permit, the Commission approved the remodeling of the main entry and ticket booth, new and larger classrooms, the main gift and bookstore, and improvements to the sea otter exhibit. In addition, MBA will install in the basement of the aquarium a reverse-osmosis desalination treatment facility with a 25,000 gallon storage reservoir to meet some of the facility's needs for nonpotable water. The plant is expected to reduce demand for city water by 20–30%.

At its April meeting in San Rafael, the Commission granted a permit, subject to specified conditions, for the maintenance dredging of the Monterey Marina. The permit will allow the annual maintenance of the Monterey Marina for ten years. The Marina is located between the city's Fisherman's Wharf and the commercial wharf. The initial dredging will produce about 4,500 cubic yards of dredge spoils. Approximately 1,500 cubic yards of spoils will be disposed of east of the commercial wharf to replenish beach sand.

The annual maintenance dredging of the Monterey Harbor is complicated by significant contamination found throughout the harbor. In the late 1970s, higher than expected lead measurements were identified in the Monterey/Pacific Grove area, exhibiting increasing lead levels as one approached Monterey Harbor. Possible sources were atmospheric input, surface runoff from Cannery Row, and leaded boat and automobile fuels. In 1984, the Monterey County Department of Health warned the public in the Cannery Row area not to eat shellfish because of lead contamination. Lead concentrations in mussels and sediments from the Monterey Harbor were found to be among the highest observed in a marine environment anywhere in the world.

Although the source of much of the lead concentration was removed in 1989, the Commission and the RWQCB still note significant contamination in Monterey Harbor which will not necessarily be improved by the dredging/disposal project. Dredging and disposal needs may vary significantly from year to year. Specific conditions will need to be met each year to allow for maintenance dredging without full coastal development permit review. Each year, the city must determine the dredge areas, sample for contamination, propose a disposal method and plan, and receive RWQCB and Monterey County Health Department approval. If the dredging does not require special handling of dredge materials and is safe to dispose in the surf zone, will not impede public access, and in all aspects falls within the parameters of the permit conditions, the Commission will allow the city to proceed with annual dredging upon review and approval of the executive director. After five years the Commission will reanalyze using updated data, science, technology, and law. Although the project will not improve the existing water and sediment quality in Monterey Harbor, it has been reviewed and conditionally approved by the jurisdictions responsible for water quality and human health and no significant impacts have been identified. Future clean-up of the harbor sediments is under review by the RWQCB. Therefore, as conditioned, the Commission found the dredging proposal consistent with the marine resources policies of the Coastal Act.

FUTURE MEETINGS:

August 11–14 in Huntington Beach.
September 8–11 in Eureka.
October 13–16 in Monterey.

CALIFORNIA ENERGY COMMISSION
Executive Director: Stephen Rhoads
Chair: Charles Imbrecht
(916) 654-3888

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.

MAJOR PROJECTS:

Intervenor Funding Program Guidelines Reviewed. In 1991, CEC's Public Adviser embarked on a project to codify CEC's Intervenor Funding Program (IFP) guidelines as regulations and to implement SB 2211 (Rosenthal) (Chapter 1661, Statutes of 1990), which