



REGULATORY AGENCY ACTION

Facility, which is southeast of downtown Los Angeles. CWMB members praised the facility because of its extensive proposed recycling which results from the fact that most of the facility's sources are commercial. Trucks depositing at this landfill will also pick up their loads before 7:00 a.m., thus helping to alleviate Los Angeles traffic problems.

CWMB Chair John Gallagher noted that Government Code section 66796.33(d) requires: "Any solid waste facility permit issued, modified, or revised under this chapter shall be reviewed and, if necessary, revised at least every five years." Of the 526 permitted and active solid waste facilities in California, 318 (or 60.5%) are overdue for completion of the five-year permit review. There are 16 overdue facilities in San Diego County. One sanction which CWMB may enforce is de-designation of the local enforcement agency (LEA). The Board would then determine if the LEA can fulfill its responsibilities or if these responsibilities should be given to another agency.

FUTURE MEETINGS:

To be announced.

COASTAL COMMISSION

Director: Peter Douglas
Chairperson: Michael Wornum
(415) 543-8555

The California Coastal Commission was established by the California Coastal Act of 1976 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 determines the geographical jurisdiction of the Commission. The Commission has authority to control development in state tidelands, public trust lands within the coastal zone and other areas of the coastal strip where control has not been returned to the local government.

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 consist-

ent 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. After certification of an LCP, the Commission's regulatory authority is transferred to the local government subject to limited appeal to the Commission. There are 69 county and city local coastal programs.

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.

MAJOR PROJECTS:

Advisory Panel Calls for Commission Restructuring. On May 12, the Senate Advisory Commission on Cost Control in State Government issued its findings after a year-long investigation of the Coastal Commission. The advisory panel called for drastic changes within the structure of the Commission. It advocated a full-time nine-member commission that would serve four-year terms; members could be removed only for cause. Currently, twelve commissioners work part-time, are paid \$100 per meeting they attend, and may be removed at the whim of whoever appoints them. The chair of the Senate Rules Committee appoints four commissioners, as do the Speaker of the Assembly and the Governor. The advisory commission also advocated a new code of conduct and stricter enforcement of existing conflict of interest laws, to give the Coastal Commission greater political independence, credibility, and efficiency.

The panel found that budget cuts have greatly impeded the Commission's ability to properly carry out its duties, creating short-term views and an enormous backlog of coastal violations. The panel advocated greater funding and legal authority for the Commission.

LEGISLATION:

AB 1735 (Friedman), which would prohibit a Commission member and any interested person from conducting an ex parte communication, passed the Assembly on June 6 and is pending in the Senate Judiciary Committee. The bill would require a Commission member to report any ex parte communication and would authorize the revocation of any action taken after an unreported communication. Any person who knowingly commits an ex parte communication violation would be subject to a civil fine not exceeding \$15,000.

AB 2072 (Friedman), as introduced, would require any alternate Commission member to be a county supervisor or city councilperson from the same region as the person making the appointment. This bill passed the Assembly on June 6 and is pending in the Senate Rules Committee.

SB 1260 (Bergeson), as amended May 3, would require any city which acquires new coastal zone jurisdiction through incorporation to request the Commission to prepare an LCP within 24 months of the date of incorporation. This bill passed the Senate on June 1 and is pending in the Assembly Natural Resources Committee.

SB 1499 (Roberti), which would require the Commission to study and report its findings and recommendations to the legislature on various options and mechanisms which may be used to deal with low- and moderate-income housing units in the coastal zone of southern California in the Laguna Niguel area of Orange County, passed the Senate on June 1 and is pending in the Assembly Natural Resources Committee. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 101 and Vol. 8, No. 4 (Fall 1988) pp. 103-04 for background information on this issue.)

SB 1500 (Hart), which would prohibit any new development within an existing wetlands areas if the development would cause degradation or destruction to the wetlands, is pending in the Senate Committee on Natural Resources and Wildlife.

The following is a status update on bills discussed in detail in CRLR Vol. 9, No. 2 (Spring 1989) at pages 100-01:



AJR 2 (Peace), which would request the President, the Congress, the U.S. Department of the Interior, and the U.S. Department of Defense to halt Lease Sale 95 off the coast of San Diego County, passed the Assembly on May 25 and is pending in the Senate Committee on Natural Resources and Wildlife.

AB 36 (Hauser), which would prohibit the State Lands Commission from leasing all state-owned tide and submerged lands situated in Mendocino and Humboldt counties for oil and gas purposes until January 1, 1995, is still pending in the Senate Governmental Organization Committee.

AB 145 (Costa) would enact the California Wildlife, Park, Recreation, Coastal, History, and Museum Bond Act of 1990 which, if approved by voters, would finance programs for the acquisition, development, rehabilitation or restoration of real property for specified purposes. The bond act would be submitted to the voters in the June 1990 election. This bill is pending in the Assembly Ways and Means Committee.

SB 204 (Stirling), which would extend the termination date of a program of research on the artificial propagation and distribution of adversely affected marine fish species from January 1, 1990, to January 1, 1993, passed the Senate on April 13 and is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 206 (Allen), which would include the recreational fishing industry within the scope of a program which provides funds to address the impacts of oil and gas exploration or development, is still pending in the Assembly Natural Resources Committee.

SB 332 (McCorquodale), which would revise the Commission's procedures for certification or refusal of certification of land use plans (LUPs) or proposed LUPs by deleting the current requirements for identifying substantial issues for conformity with the policies of the California Coastal Act of 1976, and for holding a public hearing on those issues, passed the Senate on April 13 and is pending in the Assembly Ways and Means Committee. This bill would also extend the current time limit under which the Commission is required to hold a public hearing on coastal development permit applications and appeals from 49 days after the application or appeal to 60 days thereafter.

AB 431 (Hansen), which would increase from \$50,000 to \$100,000 the amount the State Coastal Conservancy is authorized to provide for the cost of

preparing local coastal restoration and resource enhancement plans, is pending in the Senate Appropriations Committee. As amended May 24, this bill would authorize the Conservancy to loan funds to nonprofit organizations to acquire temporarily a site for later acquisition by a state or local public agency.

SB 467 (Davis), which would authorize the Coastal Commission and its Executive Director to issue cease and desist orders if it is determined that any person or governmental agency has undertaken, or is threatening to undertake, any activity that may require a permit from the Commission without securing a permit or that may be inconsistent with any permit previously issued by the Commission, passed the Senate on June 8 and is pending in the Assembly Health Committee. The bill would also provide for judicial review of the cease and desist orders, and would provide for civil liability in a sum not to exceed a specified amount for intentionally or negligently violating cease and desist orders issued, revised, or amended by the Commission or the Executive Director.

AB 678 (Frizzelle), which would change the LCP requirements to include drainage channels or drainage ditches within the provision requiring channelizations, dams, or other substantial alterations of rivers or streams to incorporate the best mitigation measures feasible to protect specified flood control projects or developments where the primary function is the improvement of fish and wildlife habitat, is still pending in the Assembly Natural Resources Committee.

AB 874 (Farr), which would amend sections 30235 and 30253 of the Public Resources Code to require the Commission to thoroughly evaluate nonstructural methods of shoreline protection, make a determination as to feasibility prior to granting a permit for a structure, and prohibit new development from requiring construction of protective services that significantly adversely affect shoreline processes as well as those that substantially alter natural landforms, is pending in the Assembly Ways and Means Committee.

LITIGATION:

In *California Coastal Commission v. Office of Administrative Law, et al.*, No. A039702 (1st Dist., May 17, 1989), the First District Court of Appeal affirmed a trial court judgment that certain interpretive guidelines of the Coastal Commission are not subject to the Administrative Procedure Act (APA).

The Pacific Legal Foundation (PLF)

had filed a request for determination with the Office of Administrative Law (OAL), seeking a ruling that certain specific Commission interpretive guidelines relating to coastal development permit applications are regulations within the meaning of the APA, and thereby subject to OAL review. OAL found that the guidelines are governed by the APA and declared them "invalid and unenforceable" until adopted pursuant to the APA and approved by OAL. The Commission instituted an action in superior court challenging OAL's determination. The trial court granted summary judgment in the Commission's favor, based on the California Supreme Court's ruling in *Pacific Legal Foundation v. California Coastal Commission*, 33 Cal. 3d 158 (1982). In that case, the Supreme Court upheld several permanent interpretive guidelines adopted by the Commission pursuant to Public Resources Code (PRC) section 30620(a)(3). PRC section 30333 provides that Commission rulemaking is generally subject to the APA, except as provided in Health and Safety Code section 18930 and PRC section 30620(a)(3). As the guidelines here challenged by PLF and OAL were adopted under section 30620(a)(3), the First District affirmed.

RECENT MEETINGS:

At its April 12 meeting in San Diego, the Commission decided to approve the City of San Diego's request for another extension to allow the City to use Fiesta Island as a base to dry sludge left over after treating waste water. (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 101-02 for background information.) The City will be able to dry sludge on the Mission Bay island until 1994. The City will have to pay some mitigation damages and is required to make various improvements on the island.

FUTURE MEETINGS:

August 8-11 in Eureka.
September 12-15 in Marina del Rey.

DEPARTMENT OF FISH AND GAME

Director: *Pete Bontadelli*
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The Department of Fish and Game (DFG) manages California's fish and wildlife resources. Created in 1951 as part of the state Resources Agency, DFG regulates recreational activities such as sport fishing, hunting, guide services and