



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

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

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

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

RECENT MEETINGS

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

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

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

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

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

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

FUTURE MEETINGS

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

CALIFORNIA ENERGY COMMISSION

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

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

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

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



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

MAJOR PROJECTS

Commission Considers Sacramento Ethanol Manufacturing and Power Cogeneration Plan Project. On September 3, a Sacramento-based company filed an application for certification of a proposed combination powerplant and ethanol manufacturing plant to be sited on a 25-acre plot in northern Sacramento County. On November 4, the Commission approved the Executive Director's data adequacy recommendation regarding the application for certification. In other words, the application contained the requisite information specified in CEC's siting regulations. Also on November 4, Commissioners Richard Bilas and Charles Imbrecht were selected to make up the Commission's Siting Committee on the project; Imbrecht will preside over the Committee. Currently, the matter is in "discovery," with CEC staff gathering information needed for a thorough evaluation of the application. Typically, a preliminary staff assessment is completed within four to six months of the data adequacy approval.

CEC Releases First Quarter Oil Report. CEC's Quarterly Oil Report for the first quarter of 1992 revealed that the total amount of petroleum products supplied to California declined 6% from the first quarter of 1991 and 1% from the previous quarter. The major change in the first quarter was due to a decrease in leaded gasoline volumes, due to air quality regulations which prohibit retail sales of leaded gasoline in California after December 31, 1991.

California crude oil production declined by 4% from one year ago and by 2% from last quarter. The average price of internationally-traded crude oil decreased 12% from the previous quarter and 11.34% from 1991. All oil companies reported a decrease in revenues and net income. The revenue decrease ranged from 4-8% and net incomes fell at least 39%, with some companies experiencing significant losses. Oil companies cite persistent weaknesses in the U.S. economy and environmental restrictions for poor revenues.

Commission Proposes to Update Rules Governing Practice and Procedure and Site Certification Process. On December 4, the Commission published notice of its intent to amend section 1101 *et seq.*, Title 20 of the CCR, its rules of practice and procedure, and section 1701

et seq., Title 20 of the CCR, its regulations governing the site certification process. At this writing, the regulatory package is scheduled for adoption at CEC's January 20 meeting in Sacramento.

The necessity for rule changes arises from the fact that the current generation of regulations dates from an era of large, utility-sponsored, oil, coal, and nuclear powerplant projects. The original regulations did not contemplate either small independent projects, many using alternative technologies, or the type of analyses now required under the California Environmental Quality Act. The proposed amendments reflect the evolution of electrical generating technology, increased environmental concerns, the growth of a non-utility electrical generating sector, and the Commission's desire to streamline the siting process.

The proposed regulations would amend CEC's existing rules of practice and procedure to clarify the roles of the presiding CEC member and the hearing officer in a siting case, as well as to provide more specific guidance regarding intervention, the submission of documents, and the formal record.

CEC's siting regulations would be amended to, among other things, update definitions pertaining to site certification, establish a procedure for Commission review of post-certification project changes, and clarify issues relating to informational hearings and the role of Native American governments in siting matters.

CEC Adopts Regulatory Standards for Fenestration Product Certification. On October 7, CEC approved new sections 10-111 and 10-112, Title 24 of the CCR, relating to certification and labeling of U-values (thermal conductivity ratings) for fenestration products (windows). [12:4 CRLR 200] The regulations have been submitted to the Building Standards Commission (BSC) for approval.

Calstart Contract. As previously reported, last May the Calstart consortium received federal funds to begin electric vehicle production in California, and concurrently received a \$2 million pledge from CEC. [12:4 CRLR 200] At this writing, no contract between CEC and Calstart has been signed.

LEGISLATION

According to CEC officials, the Commission plans three major legislative efforts in 1993:

- In response to the newly-enacted National Energy Act (Pub. L. No. 102-486), CEC will propose a bill revising tax credits for low-emission vehicles.

- CEC also plans to propose a bill deleting an obsolete bio-mass program that has been unfunded since 1978.

- Finally, CEC plans to propose a bill that would implement new transportation-related research and development programs ("Opportunity Technologies") authorized in the state's 1992-93 budget.

At this writing, no authors have been named for any of the proposed bills.

FUTURE MEETINGS

CEC meets every other Wednesday in Sacramento.

FISH AND GAME COMMISSION

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The Fish and Game Commission (FGC), created in section 20 of Article IV of the California Constitution, is the policymaking board of the Department of Fish and Game (DFG). The five-member body promulgates policies and regulations consistent with the powers and obligations conferred by state legislation in Fish and Game Code section 101 *et seq.* Each member is appointed by the Governor to a six-year term. Whereas the original charter of FGC was to "provide for reasonably structured taking of California's fish and game," FGC is now responsible for determining hunting and fishing season dates and regulations, setting license fees for fish and game taking, listing endangered and threatened species, granting permits to conduct otherwise prohibited activities (*e.g.*, scientific taking of protected species for research), and acquiring and maintaining lands needed for habitat conservation. FGC's regulations are codified in Division 1, Title 14 of the California Code of Regulations (CCR).

Created in 1951 pursuant to Fish and Game Code section 700 *et seq.*, DFG manages California's fish and wildlife resources (both animal and plant) under the direction of FGC. As part of the state Resources Agency, DFG regulates recreational activities such as sport fishing, hunting, guide services, and hunting club operations. The Department also controls commercial fishing, fish processing, trapping, mining, and gamebird breeding.

In addition, DFG serves an informational function. The Department procures and evaluates biological data to monitor the health of wildlife populations and hab-