rior Court, concerns an assessment of civil liability against the City of San Diego by the San Diego RWQCB. Specifically, RWQCB assessed $830,000 in civil liability for the City's failure to report sewage spills in a timely or accurate manner; the City is seeking to stay the assessment of civil liability and rescind the RWQCB's assessment order.

RECENT MEETINGS

At its March meeting, WRCB approved the newly revised Water Quality Control Plan for the Colorado River Regional Water Quality Control Board; the Plan has been submitted to OAL for approval and copies should be available during the summer. The Board also approved a $1.5 million loan to the City of Cloverdale in Sonoma County to expand its wastewater treatment facility; issued a $13 million low-interest loan to the City of Livermore to be used to expand the city's present wastewater treatment facility; approved a $7.04 million loan for construction of sewers and pump stations in the Canyon Lake service area in Riverside County; and approved $450,000 from its Cleanup and Abatement Account for continuing remediation efforts at the Penn Mine facility, an abandoned copper mine near Sacramento, being conducted by the Central Valley Regional Water Quality Control Board (*see* LITIGATION).

At WRCB's April 6–7 meeting, staff reported that the Bay Protection and Toxic Cleanup Program's External Advisory Committee held its first meeting on February 23; the twelve-member committee consists of representatives from the California Association of Sanitation Agencies, Western States Petroleum Association, Los Angeles County Department of Public Works, Port of Long Beach, Bay Planning Coalition, Northern California Marine Association, Lower Cosumnes Resource Conservation District, California Aquaculture Association, San Francisco Department of Public Health, Save San Francisco Bay, Planning and Conservation League, and the general public. The committee will meet quarterly to discuss topics such as toxic hot spot cleanup plans and coordination among program activities. The next meeting is scheduled for May 25 at WRCB, and is open to all interested parties.

FUTURE MEETINGS

For information about upcoming workshops and meetings, contact Maureen Marché 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, 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, 82 (65%) have received certification from the Commission at this writing. In October, the Commission certified the Mendocino County LCP (minus the Town of Mendocino segment).

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 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 March 9, Assembly Speaker Willie Brown appointed Supervisor Sam Karas of Monterey County to a four-year term on the Commission. Karas, a supervisor since 1986 and longtime opponent of offshore oil drilling, will represent the central coast on the Commission.

MAJOR PROJECTS

Commission Compromises on Beach Curfew Issue. Bombarded by complaints from numerous coastal cities, criticism from Governor Wilson, a lawsuit, and several pieces of legislation which would strip it of authority to invalidate a local government's beach curfews, the Commission in February considered a set of guidelines for the imposition of late-night beach curfews in urban beach areas beset by crime problems and—for the first

time in its history—approved narrowly-tailored curfews blocking public access to the beach.

The issue erupted last October, when the Commission invalidated an emergency Long Beach city ordinance prohibiting use of the city's beaches and beach parking lots between 10:00 p.m. and 5:00 a.m. Although the City had expanded its existing midnight–5:00 a.m. curfew in response to the murder of a resident near the beach and amid increasing criminal activity in the beach area, the Commission found that the ban violates the public's right of "maximum access" to the beach which is protected by the Coastal Act. In so ruling, the Commission drew a distinction between occasional beach closures due to serious public safety problems (which are permissible without Commission approval) and routine, long-term nightly closures (which—according to the Commission—are not). The Commission subsequently sent letters to 73 cities and counties along the state's 1,100-mile coastline, including four Orange County communities that have imposed curfews this year in an attempt to curb late-night crime, indicating that such beach closures are illegal without Commission approval. The Commission's position resulted in a contentious dispute between beach cities seeking to deter crime by limiting beach access during late-night hours and the Commission, which is attempting to protect public beach access. *[14:1 CRLR 141–42]*

In January, Senator Marian Bergeson met with Commission representatives twice in an attempt to reach a compromise that would allow beach cities to continue their nightly closures. On January 10, the City of Long Beach filed suit against the Commission, challenging its authority to prevent the City from imposing a nightly curfew in response to crime. The Commission's position was also the subject of criticism from Governor Wilson and a plea from Attorney General Dan Lungren (a Long Beach native) urging the Commission to reconsider its rejection of Long Beach's curfew. Finally, at the end of January, Commission Executive Director Peter Douglas promised that the Commission would consult with local officials from affected beach cities and consider narrowly-tailored beach curfews in appropriate circumstances.

At the Commission's February meeting, Douglas presented a *Proposed Guidance on Actions Limiting Public Access to Beaches and State Waters*. In the Guidance, Douglas noted that "[t]he Commission is acutely aware of the problems fiscally stressed coastal communities face as they try to cope with threats of crime and violence." However, he stated that more and more cities are imposing broad blanket curfews on beaches and beach facilities for reasons which are not clearly related to public safety problems; in imposing restrictions, some cities have simply responded to local pressures and complaints by their own residents and have not fully considered the interests of people outside the local community who have a right to use the beach and have access to ocean waters. The Guidance noted that "in many areas of the coast, law-abiding citizens use the beach at all hours of the night for fishing, swimming, scuba diving, walking and jogging, socializing around a ground fire, camping, boat launching and surfing. Their legal right to do so should only be curtailed in very narrow and compelling circumstances. Unfortunately, contemporary urban communities face serious problems involving criminal acts of violence, vandalism and theft. How we, as a society, respond to this threat is one of the most profound challenges of our time."

Thus, the Guidance set forth three types of beach use restrictions in which Coastal Commission review is not required—public emergencies, a legal declaration of a public nuisance the abatement of which requires a beach closure, and curfews which were enacted and enforced prior to the effective date of the Coastal Act. All other beach use restrictions must be approved by the Commission, and the Guidance set forth several issues which should be carefully considered by the Commission in reviewing each restrictive order on a case-by-case basis. These issues include:

–the sufficiency of the local government's evidentiary findings justifying the closure or curfew ("the key factor is whether the action was taken for actual public safety reasons (*e.g.*, the protection of person or property against injury or damage) or primarily for reasons associated with complaints by community residents about noise, traffic, or diminution of community amenities") and its consideration of alternatives to beach restrictions;

–the hours and duration of the restrictions;

–the actual location of the restriction(s) ("for example, if a public safety problem exists in a limited and defined geographic area, it may not be necessary or appropriate to impose use prohibitions on all similar facilities throughout the jurisdiction"); and

–manner and types of use restricted ("a prohibition on *all* types of uses during times of closure is problematic").

The Guidance also specified that local governments should notify the Commission prior to taking action to restrict beach usage, to enable the Commission to submit comments for consideration; and suggested that local governments apply a "sunset" date to a restrictive ordinance to affirmatively require its reenactment, thereby triggering a regular review with public input to determine whether the facts may warrant a relaxation of the hours of closure.

At its February meeting, the Commission debated the Guidance but did not formally approve it; Douglas suggested that it be circulated to local governments in beach cities for comments, and that the Commission consider it later this year in light of those comments. Until formal Commission approval, however, staff intends to consider each beach curfew or restriction on a case-by-case basis in light of the factors and issues discussed in the Guidance.

Also in February, the Commission approved a scaled-back beach curfew proposal submitted by the City of Coronado. Originally, Coronado proposed a 10:00 p.m.–4:00 a.m. curfew covering roughly half of the City's beaches, removal of all 18 fire rings where people tend to congregate on the beach, and a prohibition on on-street parking along the restricted beach area. *[14:1 CRLR 142]* Utilizing the Guidance, Commission staff and Coronado officials reached a compromise under which the City will restrict only the portion of the beach which is problematic (a one-tenth-mile stretch), remove ten of the 18 fire rings, and prohibit some on-street parking adjacent to the restricted beach area. The decision was not without controversy; although Executive Officer Douglas stated that he is convinced beach crime is a problem in Coronado and that public access is diminished if people are afraid to go to the beach, Commissioner Lily Cervantes was not persuaded, saying, "I do not want to see this Commission base a policy decision on just what the residents want."

At its May meeting, the Commission considered a revised version of the Long Beach curfew. The revised ordinance provides that most beach parking lots will remain open until one hour after sunset and will reopen one hour before sunrise. A number of parking lots will remain open until 10:00 p.m. throughout the year, and two lots will remain open until midnight. The dry sand beach area will be open from one hour before sunrise until 10:00 p.m., and all wet sand area (and access thereto) will be open from one hour before sunrise until midnight. Commission staff recommended approval of the revised curfew

because (1) Long Beach demonstrated that it had adopted the beach use curfew prior to enactment of the Coastal Act; (2) the City submitted adequate evidence of a serious public safety issue; and (3) the hours, duration of restriction, and locations proposed "appeared reasonable." The Commission approved the revised ordinance.

To keep the Commission honest, three legislators introduced bills in late February to restrict its authority to invalidate local beach curfews. SB 1855 (Bergeson), AB 2866 (McDonald), and AB 3439 (Karnette) all would have stated that the Coastal Act does not limit the authority of a local government to adopt and enforce a curfew for any beach or beach parking area within the jurisdiction of the local government. However, all three bills were dropped after Douglas presented the Guidance and the Commission approved the Coronado curfew. Long Beach has also dropped its litigation against the Commission.

Chevron Ceases Tanker Shipments From Point Arguello. On January 20, Chevron asked the Commission to allow short-term tankering of crude oil from the Point Arguello offshore project to Los Angeles refineries beyond February 1, due to damage of a key crude oil pipeline system caused by the January 17 Northridge earthquake. Chevron's tankering permit, which was issued by the Commission in May 1993, allows tankering until January 1, 1996 (at which time all crude must be shipped via pipeline), but requires suspension of tankering on February 1 unless Chevron and the other Point Arguello oil producers had reached an agreement with a pipeline developer for the construction of a major new pipeline. *[13:4 CRLR 171–72; 13:2&3 CRLR 183–84; 13:1 CRLR 113]* Because the Commission denied Chevron's request and Chevron did not reach an agreement with a pipeline construction company by February 1, the company halted its tankering activities on that date.

In late March, Chevron announced a joint venture to build a $150 million pipeline for shipping crude oil from the Bakersfield area to refineries in Los Angeles. The underground pipeline will provide a key link for shipping oil from Chevron's Santa Barbara County offshore oil fields at Point Arguello to the Los Angeles region. The project, a joint venture between Chevron U.S.A. Products Co., Texaco Trading and Transportation, Inc., and Pacific Pipeline System, Inc. (PPSI), will involve the construction of a 130-mile pipeline to carry 110,000 barrels of crude per day from Kern County to refineries in the Los Angeles area; Chevron already has a pipeline in place to carry crude from Point Arguello to Bakersfield. It now faces the challenge of securing all the necessary permits for its new pipeline from municipalities and state agencies—including the Public Utilities Commission—which have jurisdiction over the pipeline and its proposed route.

Washington Sea Lions Transferred to California Despite Commission Rejection. Over the objections of the Coastal Commission and local fishing officials, the National Marine Fisheries Service (NMFS) transported three sea lions from Washington to waters off the Ventura County coastline in late April. The transfer was done in hopes of reducing the sea lions' take of already decimated steelhead trout populations around Ballard Locks in Washington's Puget Sound.

NMFS officials cited their "administrative authority" to move up to ten of the fish-eating animals to southern California, despite the Commission's rejection in February of a request to transfer up to 60 sea lions. Commissioners who opposed the plan argued that moving the sea lions to southern California would not solve the problem because they would probably swim back up north. In a 1989 experiment, six sea lions were moved from Washington to San Miguel Island in the Channel Islands off Santa Barbara, and five returned within a month. *[10:2&3 CRLR 177; 10:1 CRLR 136]* The steelhead population is already depleted, and managers of fisheries in the Northwest fear the fish could become threatened.

Navy Gatling Gun Testing on San Nicolas Island. At its April meeting, the Commission approved the U.S. Navy's proposal to test a new version of its Vulcan Phalanx Gatling gun on the southwestern shore of San Nicolas Island. San Nicolas Island is owned by the Navy and is located south of the Channel Islands National Marine Sanctuary and approximately 70 miles west of Point Mugu. The Phalanx system—which consists of a rapid-fire Gatling gun, a search and track radar, and a fire control system—was designed to protect U.S. Navy ships against antiship missiles. The projectiles consist of armor-piercing tungsten designed to be fired in rapid succession at high velocity towards incoming missiles. The testing, which is scheduled for June, will consist of simulated target flyovers, first with targets in tow with low-flying jets, and later by self-propelled drones; a total of eight live-fire tests, with a maximum duration of two to three minutes, were approved.

According to the Commission staff's report, the marine resources potentially affected by the testing include California sea lions, northern elephant seals, sea otters, and a variety of seabirds. These effects could occur due to a direct hit with marine life, the toxic effects of materials entering the marine system, behavioral effects resulting from the weapon operation or aircraft noise that could increase mortality, and air quality emission impacts to marine life.

The Navy worked with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in its analysis, site selection, and development of mitigation measures. Mitigation measures focus primarily on minimizing impacts (avoidance) and monitoring. This risk to marine resources will be minimized by the timing of the test program, which will be conducted during the time of year when the elephant seals and sea lions are on the beach or at sea. If any marine vertebrates or seabirds are found within 100 meters of the potential impact hazard area, the test will be postponed until the animals have moved out of the area. Both the flight pattern and the projectile area will be limited to the southwestern portion of the island and carefully controlled to avoid environmental degradation, as well as protection of human health and safety.

LEGISLATION

AB 2444 (O'Connell). Existing law creates, until January 1, 2003, the California Coastal Sanctuary which includes all state waters subject to tidal influence from a line parallel to the southernmost boundary of tidelands surrounding the Farallon Islands north to the Oregon border, except for waters in the Sacramento-San Joaquin Delta situated east of the Carquinez Bridges. Existing law prohibits any state agency from entering into any new lease for the extraction of oil or gas from the sanctuary unless the President has found a severe energy supply interruption and has ordered distribution of the Strategic Petroleum Reserve pursuant to specified provisions, the Governor finds that the energy resources of the sanctuary will contribute significantly to the alleviation of that interruption, and the legislature subsequently acts to amend these provisions. As amended April 21, this bill would extend the sanctuary to include all state waters subject to tidal influence, except for waters subject to a lease for the extraction of oil or gas in effect on January 1, 1995, unless the lease is thereafter deeded or otherwise reverts to the state. The bill would delete other provisions which impose similar restrictions on leasing in state waters from the southern boundary of the proposed Monterey Bay National Marine Sanctuary north to a line parallel to the southernmost boundary of tidelands surrounding the Farallon Islands, but which

authorize the State Lands Commission to enter into new leases under specified circumstances.

Existing law authorizes the Commission to lease specified tide and submerged lands if the Commission determines that oil or gas deposits are contained in those lands, those oil or gas deposits are being drained by means of wells upon adjacent lands, and the leasing of the land for oil or gas production is in the best interests of the state. This bill would repeal that provision and would instead authorize the Commission to enter into a lease for the extraction of oil or gas from state-owned tide and submerged lands in the sanctuary if the Commission determines that those deposits are being drained by means of producing wells upon adjacent federal lands and the lease is in the best interest of the state.

Existing law authorizes the Commission to modify the boundaries of existing leases to encompass all of a field partially contained within the existing lease subject to specified conditions. The bill would require, as an additional condition, that prior to January 1, 1995, a lease boundary adjustment request be filed with the Commission and a substantially complete application, as defined, for development is received by the lead agency. *[S. Appr]*

SB 1668 (Mello), as amended April 19, and **AB 3698 (McPherson)**, as amended April 7, would each establish the Monterey Bay State Seashore, consisting of lands extending from Natural Bridges State Beach to Point Joe in Santa Cruz and Monterey counties. *[A. WP&W, S. NR&W]*

AB 3427 (Committee on Natural Resources). The Coastal Act requires amendments to a certified LCP to be submitted to the Commission for approval, and provides for a special procedure with regard to proposed amendments that are designated as minor in nature. As amended April 13, this bill would also specify a special procedure for the designation and approval of amendments that are de minimis, as specified. *[A. Floor]*

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at page 144:

SB 158 (Thompson), as amended September 9, 1993, would enact the California Heritage Lands Bond Act of 1994 which, if adopted, would authorize, for purposes of financing a program for the acquisition, development, rehabilitation, enhancement, restoration, or protection of park, recreational, historical, forest, wildlife, desert, Lake Tahoe, riparian, wetlands, lake, reservoir, and coastal resources, as specified, the issuance, pursuant to the State General Obligation Bond Law, of bonds in an amount of $885 million. The bill would provide for submission of the Bond Act to the voters at the November 8, 1994, general election in accordance with specified law. *[A. W&M]*

SB 473 (Mello), which would have enacted the Coastal and Riparian Resources Bond Act of 1994, died in committee.

LITIGATION

The Second District Court of Appeal excoriated the Commission, the coastal development permit (CDP) process, and Los Angeles County for the "long-term nightmare" suffered by Los Angeles landowner Kenneth Healing in ***Healing v. California Coastal Commission***, 22 Cal. App. 4th 1158 (Feb. 22, 1994).

In 1977, Healing bought a 2.5-acre lot in the Santa Monica Mountains overlooking Tuna Canyon and the Pacific Ocean. Although he planned to build a three-bedroom home for his family, he put his plans on hold for ten years after learning that his property was then within an area which had been designated as an environmentally sensitive habitat area (ESHA), in which no development was being permitted.

By 1987, the designation of Healing's property had changed. In 1982, Los Angeles County submitted an LCP for the Santa Monica Mountains to the Commission, which the Commission rejected as inadequate. However, the Commission certified the LUP portion of the LCP in 1986; by virtue of this certification, Healing's lot was no longer within an ESHA but instead had been placed in a "significant watershed area" where some home construction was being permitted. Because the County did not complete the LCP process to become the certified permitting authority for development within the coastal zone, Healing applied to the Coastal Commission for a CDP in 1987.

In reviewing Healing's application, the Commission realized that—under the LUP segment which had been certified—all development within a significant watershed area had to be approved by an Environmental Review Board (ERB) created by the County; the ERB was supposed to determine whether approval of the CDP would be consistent with the requirements of the not-yet-approved LCP. Additionally, the LUP required the County to develop a "lot retirement program" to deal with property which cannot be developed consistent with the Coastal Act and must be acquired or "retired." Unfortunately for Healing, the County had never created an ERB or a lot retirement program. As the court put it, "[i]f the non-existent ERB found an adverse effect, the LUP required that Healing's lot be 'retired' via one of six methods described in the non-existent lot retirement program." Further complicating this scenario is state law which prohibits the Commission from approving a CDP if it finds the project will prejudice the County's ability to prepare a certifiable LCP. The Commission apparently took the position that, because the County had never created the ERB to determine whether Healing's CDP would impair the County's ability to secure certification of its LCP, it was required to deny Healing's application.

Healing sued in 1990, seeking a writ of mandate, an inverse condemnation ruling that the Commission's denial of the CDP is a taking of his private property for which he is due just compensation, and money damages. Among other things, the Commission argued that Healing's complaint was not ripe for review because it had not really denied the CDP; it was precluded from ruling on it due to the County's failure to establish the ERB. The Commission also contended that the takings issue should be decided on the basis of its administrative record, not de novo to a court on the merits and then—if successful—to a jury on damages. After two years of wrangling, the trial court ruled in the Commission's favor. Healing appealed.

Writing for a unanimous court, Justice Miriam A. Vogel succinctly pierced the vicious circle which had surrounded Healing for 17 years. "The County has been trying since 1982 to obtain certification of its LCP, without success. Meanwhile, along comes poor Healing who, as directed by the Coastal Act, applies to the Coastal Commission for a permit to build his house, only to be told by the Commission that, because the Commission has not approved the County's LCP, the Commission can't say one way or the other whether Healing's house 'could' affect the County's ability to obtain that certification and, as far as the Commission is concerned, its failure to act one way or the other means there has been no denial of a permit which, in turn, means Healing's complaints are not 'ripe' for judicial review—and may never be so."

The court did not hide its disdain for the Commission's conduct in this case. "It is in the nature of our work that we see many virtuoso performances in the theatres of bureaucracy but we confess a sort of perverse admiration for the Commission's role in this case. It has soared beyond both the ridiculous and the sublime and presented a scenario sufficiently extraordinary to relieve us of any obligation to explain why we are reversing the judg-

ment on Healing's mandate petition. To state the Coastal Commission's position is to demonstrate its absurdity."

On the CDP issue, the court remanded the matter to the Commission with instructions to refer the application to the ERB for the ERB's prompt review and recommendations or, if there is still no ERB in existence, to disregard the County's proposed LCP "on the ground the County has abandoned any intent it once might have had to become a permitting authority."

On the takings issue, the Second District also agreed with Healing that "[judicial] review by way of administrative mandate is not an adequate substitute for a court trial of the takings issues raised by an inverse condemnation claim based on the Coastal Commission's denial of a development permit." The court cited two justifications for this ruling. First, the Second District court impliedly found that a takings plaintiff would be denied due process if a trial court were required to determine takings liability based on the Commission's administrative record, "where witnesses are not sworn, testimony is not presented by means of direct or cross-examination but rather by narrative statements, and the Commission does not have the authority to issue subpoenas or compel anyone to attend its hearing." Second, the court recognized the limited nature of the Commission's adjudicatory authority—"the Coastal Commission is not legislatively authorized to consider much of the evidence and many of the issues relevant to an inverse condemnation action....It is not an adjudicatory body authorized to decide issues of constitutional magnitude." Thus, the Second District concluded that the takings issues raised by an inverse condemnation action alleging a regulatory taking arising from the Coastal Commission's denial of a development permit are to be determined in a court trial.

The Commission has petitioned the California Supreme Court for review of the Second District's opinion and, in the alternative, seeks depublication of the decision.

Following a two-day trial in December 1993, Judge Richard C. Hubbell issued a March 17 order requiring the Commission to pay $155,657 in damages for a two-year "taking" of the Malibu property of an elderly couple in ***Landgate, Inc., et al. v. California Coastal Commission***, No. BC-024-391 (Los Angeles County Superior Court). This ruling follows a December 1992 decision by the Second District Court of Appeal which—viewed in hindsight—is a precursor to its *Healing* decision. In *Landgate*, the Commission determined that plaintiffs' predecessor had failed to receive Commission approval for a lot line adjustment which had been previously approved and recorded by Los Angeles County. As a result, the Commission did not view plaintiffs' property as a legal lot and refused to approve any development on the property. The Second District rejected the Commission's position, finding that the Commission has no jurisdiction over the lot line adjustment issue and that the record demonstrated that the Commission was using the "illegal lot reconfiguration" issue "as leverage to exact greater concessions from Landgate." *[13:1 CRLR 115]* On remand, the superior court stated: "By no fault of their own, plaintiffs found themselves caught between the County of Los Angeles which approved the recorded lot line adjustment, and the Commission which refused to recognize the County's action. In the interim, plaintiffs' property had been rendered useless because the Commission did not recognize it as a legal lot and would not approve any development on the vacant site." The court calculated plaintiffs' damages based on two years' worth of lost rate of return (at 10%) plus property taxes paid during the two-year temporary regulatory taking, and additionally awarded plaintiffs interest on the judgment, court costs, and their attorneys' fees.

In ***Transamerica Realty Services, Inc., v. California Coastal Commission***, 23 Cal. App. 4th 1536 (Mar. 31, 1994), the Second District Court of Appeal affirmed a lower court's ruling that a city's approval of a coastal development permit application starts the ten-day appeal period in PRC section 30603(c), not the receipt of notice of action by the Coastal Commission.

Transamerica Realty Services, Inc. owned an 18.33-acre parcel of land in the City of Rancho Palos Verdes. In 1991, Transamerica applied to the City for a CDP in order to develop the property under the City's certified LCP. On May 19, 1992, the City approved the proposed development project. On May 26, the City delivered to the Commission notice of its approval of Transamerica's coastal development permit. On June 5, Save Our Coastline 2000 filed a notice of appeal from the City's permit decision with the Commission. On June 10, the City filed a complete notice of final action with the Commission.

The Commission treated the notice of appeal as having been timely filed and heard the appeal. It approved the CDP, but with conditions. Transamerica filed suit seeking a writ of mandate to compel the Commission to vacate the permit and dismiss the appeal. The trial court agreed with Transamerica and issued the writ, concluding that the Commission lacked subject matter jurisdiction and the appeal was not timely filed. The trial court ruled that the ten-day appeal period was triggered when the City approved the coastal development application on May 19, 1992.

The Second District Court affirmed. PRC section 30603(c) provides that an action taken by a local government on a coastal development permit application becomes final after ten working days, unless an appeal is filed with the Coastal Commission within that time period. Section 13111(b) of the Commission's regulations in Title 14 of the CCR provides that an appeal is allowed if the appeal is received by the Commission within ten working days after *receipt* of the notice of the permit decision by the Commission (emphasis added). The trial court impliedly found, and the Second District agreed, that the Commission's regulation is an improper and unauthorized interpretation of the unambiguous statute of limitations period in PRC section 30603(c); the Second District thus declared that section 13111(b), Title 14 of the CCR, is void "to the extent it allows appeals to be filed...within ten days after receipt of notice of the local government's action by [the Commission's] executive director." At this writing, the Commission's petition for review of the Second District's decision is pending in the California Supreme Court.

At its March 16 meeting, the Commission approved a settlement proposal which would resolve two pending cases, ***Kelly v. California Coastal Commission***, No. 152988 (Marin County Superior Court), and ***California Coastal Commission v. U.S. Dep't of the Interior***, No. CIV-S-92-0702 (N.D. Cal.), by establishing public access rules for Seadrift Beach in Marin County. The matter first came before the Commission in 1983 when beachfront homeowners built a 7,400-foot rock seawall without a coastal development permit; the wall was built under emergency conditions to protect houses which were threatened by storm waves. Although the Marin County Board of Supervisors approved a permit in 1987, the Coastal Commission has never issued a CDP due to strong concerns over public access and public recreation policies which are not being served by the seawall. Under the proposed settlement, the Commission would approve a CDP conditioned upon the establishment of a permanent public easement for access to the beach 60 feet from the top of the seawall or 25 feet from the toe of natural sand dunes. The agreement proposes that the easement area will be closed from 10:00 p.m. to one hour before sunrise; dogs are permitted if they are "under control" of

their owners; minimal public "assemblages" are permitted while rowdy conduct, fires, and littering are prohibited; and surfing and other "non-motorized, water-oriented recreational equipment" are expressly permitted. In order for the settlement to take effect, 75% of the 124 property owners, plus the federal government (which may have an ownership interest in the land upon which the seawall was built, thus precluding the Commission from approving the permit requested by the homeowners) and other state agencies involved in the lawsuits, must agree to it.

On March 3, the Fair Political Practices Commission (FPPC) fined former Coastal Commissioner Mark Nathanson $10,000 for failing to report more than $200,000 in bribes from prominent Hollywood figures in connection with coastal development permits they were seeking. Nathanson is currently serving a 57-month sentence in federal prison for extortion. *[14:1 CRLR 144; 13:4 CRLR 174–75; 13:1 CRLR 113]*

RECENT MEETINGS

At its January meeting, the Commission approved a plan to build the nation's first permanent marine wildlife rescue center specifically designed to protect California's fragile sea otter population and other birds and mammals injured in oil spills. As required by the Oil Spill Prevention and Response Act of 1990 *[10:4 CRLR 155]*, the Department of Fish and Game (DFG) will build the $5 million rescue and rehabilitation center on a site occupied by the Long Marine Lab at UC Santa Cruz.

At its February meeting, the Commission concurred with the federal consistency determination finding that a proposed wastewater treatment plant is consistent with the California Coastal Management Program. The proposed development consists of a 25 million gallon-per-day secondary wastewater treatment plant to be constructed at the San Diego-Tijuana International Border. The treated wastewater will be discharged by a tunneled ocean outfall extending from the plant to a point 3.5 miles offshore in 93 feet of ocean water. The purpose of the development is to protect public health, public beaches and parks, water quality, and the economy of the San Diego-Tijuana region by eliminating the dry-weather flow of untreated sewage from Tijuana, Baja California into the lower Tijuana River Valley in California. Flows of raw sewage crossing the international border from Mexico into the United States through the Tijuana River and its tributaries pose serious threats to public health in both countries and substantial pollution threats to the Tijuana River estuary. Except for minor temporary construction impacts, the Commission agreed that the project will not adversely affect public access to or recreational use of the shoreline, offshore waters, or upland recreational areas in the Tijuana River Valley; instead, the project should improve opportunities for water-oriented access and recreation once dry-weather flows of raw sewage are eliminated.

Also in February, the Commission approved construction of the Hubbs-Sea World marine fish hatchery and research facility adjacent to the Agua Hedionda Lagoon in the City of Carlsbad. The proposed project consists of a 20-foot-high, 20,300-square-foot research and aquaculture facility on a 10.4-acre site owned by San Diego Gas and Electric Company (SDG&E); SDG&E was required to donate the land as part of a CDP condition when SDG&E built the San Onofre Nuclear Generating Station. Hubbs-Sea World Research Institute is a nonprofit corporation that currently conducts its research in a facility adjacent to Sea World at Mission Bay in San Diego. Since 1984, the Institute and San Diego State University have been working jointly as a contractor to DFG's Ocean Resource Enhancement and Hatchery Program to evaluate the feasibility of culturing and releasing juvenile marine fish, principally white seabass, into the ocean. The proposed marine hatchery would replace the Mission Bay facility with a state-of-the-art facility capable of rearing up to 400,000 white seabass at a time. The goal of the project is to replenish depleted wild stocks of white seabass off the coast of southern California. The research is funded by DFG through revenues from sales of sport and commercial fishing licenses.

Also at its February meeting, the Board approved a three-year study that will examine and inventory the environment off the coast of Ventura and Los Angeles counties in the Channel Islands National Marine Sanctuary. The shoreline inventories are designed to provide a database for environmental damage assessment by establishing a record of pre-existing conditions at select sites to be used in the event of an emergency marine oil spill. The $600,000 study will be paid for by Chevron and other Point Arguello oil producers. The study began in March and will last until February 1997.

Also in February, the Commission rejected staff's recommendation and voted 11–0 to approve Hoag Hospital's plans to develop 20 acres around the hospital in the City of Newport Beach. The Hoag Hospital plan calls for development of 19.6 acres of the 20.4-acre lower campus to provide outpatient care facilities for same-day surgeries which do not require an overnight hospital stay. As a condition of CDP, Hoag Hospital agreed to enhance wetlands near UC Irvine in exchange for permission to dredge and fill the Cat-Tail Cove wetlands area, which is the habitat of more than 50 species of birds and animals, including the California gnatcatcher. On April 18, the League for Coastal Protection filed suit against the Commission in San Francisco Superior Court, alleging that approval of Hoag Hospital's CDP violates the Coastal Act, which is designed to protect and preserve wetlands. The lawsuit is pending at this writing.

On an 8–3 vote at its April meeting, the Commission rejected staff's recommendation and dismissed an appeal of a CDP issued to Paul Campbell by Monterey County; Campbell seeks to build a 7,625-square-foot, single-family custom home on a 2.8-acre lot along the Big Sur Coast. The appellants—which included the League of Women Voters of the Monterey Peninsula, the Ventana Chapter of the Sierra Club, the Monterey Peninsula Regional Park District, and Commissioners Gwyn and Giacomini—complained that Campbell's proposed home would be visible from State Scenic Highway 1 (Pacific Coast Highway) along the Big Sur Coast, thereby violating a zoning regulation. The zoning regulation requires that all new development in the Big Sur Coast LUP must be hidden from public view of Highway 1 in order to "maintain the illusion of wildness." The Commission agreed with Monterey County that Campbell's property is in the Otter Cove Exclusion Zone (which is exempt from the view restrictions), concluded there exists no substantial issue for appeal, and dismissed the appeal.

FUTURE MEETINGS

June 7–10 in Monterey.
July 12–15 in Huntington Beach.
August 9–12 in Long Beach.
September 13–16 in Eureka.

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 policy-making board of the Department of Fish