date requiring WRCB to vacate its Order, and to require an environmental impact report (EIR) for the proposed expansion of the landfill; alternatively, Browning Ferris seeks money damages based on a regulatory taking of property theory. Following a December 8 hearing, the superior court issued a tentative decision upholding WRCB's order on December 10; WRCB filed a proposed statement of decision and proposed judgment on December 17.

County of Sacramento, et al. v. State Water Resources Control Board; City of San Jose v. State Water Resources Control Board; City of Sunnyvale v. State Water Resources Control Board; Simpson Paper Company v. State Water Resources Control Board; and ***City of Stockton v. State Water Resources Control Board*** are coordinated actions pending in Sacramento County Superior Court, concerning the April 1991 adoption by WRCB of two statewide water quality control plans which established water quality standards for 68 priority pollutants affecting California's inland surface waters and its bays and estuaries *[11:3 CRLR 177–78]*; the petitioners contend that these plans are unduly stringent and were not developed in compliance with applicable laws. On October 15, Sacramento County Superior Court Judge James Long issued a tentative decision in which he ruled that the plans are invalid because WRCB failed to comply with the Administrative Procedure Act, the California Environmental Quality Act, and the Porter-Cologne Water Quality Act. On November 15, the court granted WRCB's motion for an extension of time to file objections to the tentative decision.

RECENT MEETINGS

At its September 23 meeting, WRCB approved an amendment to the Water Quality Control Plan for the Santa Ana River Basin which revised requirements and exemption criteria for use of septic tank-subsurface disposal systems on lots smaller than one-half acre. WRCB also adopted a resolution of the North Coast Regional Water Quality Board for a policy to implement the Water Quality Control Plan for the North Coast Basin by allowing an additional waiver category for waste discharge requirements for specific discharges resulting from thermal on-site treatment of soils contaminated with petroleum hydrocarbons.

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).

In early December, Governor Wilson appointed Eureka Mayor Nancy Flemming to the Commission. Flemming, who will continue to serve as mayor of Eureka, previously served as an alternate to former Coastal Commissioner Bonnie Neely; Neely was moved to the Board of Forestry.

MAJOR PROJECTS

Commission Maintains That Unapproved Beach Curfews Violate the Coastal Act. At its October meeting, the Commission struck down the City of Long Beach's 10:00 p.m.–5:00 a.m. beach curfew, finding that the ban violates the public's right to beach access. The Commission ordered Long Beach to lift the curfew and make the beach accessible to the public 24 hours a day by January. According to city officials, Long Beach has closed its beach from midnight to 5:00

a.m. since at least the mid-1950s. However, after the murder of a man in the Belmont Shore community on Memorial Day, Councilmember Douglas Drummond persuaded the Long Beach City Council to expand the beach's curfew and reduce parking lot hours to deter crime.

The City of Coronado, which in July began closing a half-mile stretch of beach between 11:00 p.m. and 4:00 a.m., is awaiting the Commission's decision on its request to retain the curfew. At its November meeting, the Commission asked its staff, which had recommended that the Commission deny Coronado's request, to try to negotiate a compromise with the city. According to Coronado police chief Jack Drown, the city chose to close a portion of its beach because of increasing violence and unruliness, particularly near fire rings where groups of people tend to congregate; in addition to imposing the curfew, the city removed ten of the eighteen fire rings on that stretch of beach. Drown said he thinks the city has the right to close the beach in the interest of public safety, in spite of the Commission's position. The Commission does not oppose beach closures in the event of major public safety problems, such as riots, but opposes long-term nightly closures. At the November meeting, Commissioner Jane Yokoyama advocated keeping beaches open at all times; however, some commissioners expressed sympathy for the public safety concerns of Coronado and other beach cities. At this writing, the Commission is expected to take action on Coronado's curfew at its February meeting.

The Commission has warned 73 oceanfront cities and counties—including Newport Beach, Huntington Beach, and Seal Beach—that beach curfews are illegal without Commission approval. Under the Coastal Act, a coastal permit is required when, among other things, "a change in the intensity of the use of water, or of access" is being considered. However, if a local government takes an action to close a public facility pursuant to a legally approved declaration of public nuisance, no Commission approval is required. At issue is the growing trend among local governments to limit beach access without state oversight. According to Commission Executive Director Peter Douglas, when a local government acts to impose a long-term restriction on the use of a beach or coastal area, the Commission is authorized to review that action. Beach city officials maintain, however, that such authority is a proper exercise of police power. To date, the Commission has not taken any enforcement action against cities with illegal curfews.

In response to the Commission's warnings, Senator Marian Bergeson retorted that the agency's action is "unwise" and constitutes "a threat to local democracy." Bergeson is expected to introduce legislation during 1994 to clarify the rights of cities and counties to impose beach restrictions.

Commission Responds to Southern California Wildfires. On November 6, the Commission established a field office in Malibu to assist victims of the devastating wildfires which destroyed over 250 homes in the coastal zone areas of Laguna Beach and Malibu in late October and early November. Consistent with PRC section 30610(g), the Commission announced the suspension of its coastal development permit process for the rebuilding of homes; section 30610(g) exempts from the permit process "[t]he replacement of any structure, other than a public works facility, destroyed by a disaster," and permits the rebuilt structure to exceed the floor area, height, or bulk of the destroyed structure by up to 10%. The Commission also began issuing emergency permits for other fire-related activities, including grading, erosion control, and the placement of temporary structures needed to aid in the area's recovery.

Commission Revises Enforcement Program Policy. In March 1993, the Commission and staff implemented a new procedure for dealing with "after-the-fact" (ATF) permit applications—that is, coastal development permit applications filed after a significant unpermitted violation has occurred. Under the March procedure, staff would review the ATF application and make a series of three recommendations: (1) that the Commission approve those portions of the unpermitted or proposed development that are consistent with the Coastal Act, subject to appropriate conditions; (2) that the Commission deny those portions of the development or proposal that are inconsistent with the Act; and (3) that the Commission issue a restoration order for the portion of the unpermitted development which was denied. In this way, the Commission could partially approve and deny a single ATF permit application involving a significant violation.

The Commission considered its first ATF permit application at its November meeting in San Diego. The Executive Director and Commission determined that the procedure calling for three recommendations of action did not achieve the clarity of action that had been envisioned in March. Staff had recommended the change due to a litigation need for clear findings concerning the ATF development requests that were determined to be inconsistent with the Coastal Act. However, after discussion with staff from the Attorney General's Office, Commission staff determined that the procedure calling for three recommendations could be changed to a simpler procedure.

At a December 15 enforcement workshop, the Commission endorsed staff's recommendation that the Commission utilize a compound resolution in those instances where the Commission approves a portion of an ATF permit application and disallows a portion of the ATF permit application because it determines that the latter portion is inconsistent with Chapter 3 of the Coastal Act. The resolution would specifically state those portions of the project that could be approved and those portions of the project that were rejected due to inconsistency with Chapter 3 of the Act. The compound resolution would include findings of fact that support both the action of consistency and the action to disallow a portion of the proposed permit request. After the Commission has acted on such an ATF permit application, it may consider issuing a restoration order to resolve the disallowed portion of the proposed permit application if it finds that development (1) has occurred without a permit, (2) is inconsistent with the Coastal Act, and (3) is causing continuing resource damage.

Enforcement Actions. At its November meeting, the Commission approved staff's recommendation to issue a cease and desist order to Madalon Witter and Douglas Richardson, owners of approximately 42 acres located in an incorporated area of Los Angeles County. According to staff's report, the owners conducted unpermitted grading, removal of major vegetation, subdivision, placement of solid materials, and erection of structures, including at least 18 trailers and/or mobile homes, power transmission and distribution lines, telephone lines, buildings, roads, pipes, septic systems, livestock corrals, abandoned vehicles, trash, and construction materials and equipment. To resolve the violations, the owners must obtain Commission approval of a coastal development permit authorizing development ATF, or restore the site to its pre-developed state in accordance with an approved coastal development permit. At the November meeting, Richardson maintained that some of the trailers are located on an easement owned by the federal government, and that prior owners, who maintained a tree farm on the property, had installed the telephone lines, pipes, and water wells. Because Commission staff obtained a warrant and conducted a site

investigation on the property in Richardson's absence, he also claimed that he was not given a fair opportunity to resolve facts in dispute before the Commission acted on staff's recommendation to issue the order. Because these issues would be brought out in the ATF application process, the Commission approved staff's recommendation to issue the order.

Also at the November meeting, the Commission considered staff's recommendation that it issue a cease and desist order to eighteen owners of properties along Sequit Drive in Los Angeles County. According to staff's report, the owners widened and paved an existing road without obtaining a coastal development permit. The unpermitted road improvements have increased runoff and erosion, which have had adverse impacts on an adjacent stream. In addition, there is evidence that fill and other debris have been disposed of in the stream, and that widened portions of the road encroach into riparian oak habitat. The stream runs through Solstice Canyon, which is listed as a sensitive environmental resource and a significant watershed in the Malibu/Santa Monica Mountains segment of Los Angeles County's land use plan. To resolve the violation, the owners must either obtain Commission approval of a coastal development permit authorizing development after-the-fact or obtain Commission approval of a coastal development permit authorizing restoration of the properties to their pre-violation state. At the hearing, property owner Matthew Haines stated that he and other owners believed that the County of Los Angeles owned the road, which is described as a "dedicated but non-maintained road"; however, Commission staff pointed out that the property owners—not the County—widened the road. Haines also argued that some of the owners had already participated in the coastal development permit application process; however, Ralph Faust, Jr., chief counsel for the Commission, stated that the development could not be approved by the Commission unless all of the property owners cooperated. Commissioner Yokoyama expressed concern that a cease and desist order would be inappropriate for owners who had cooperated in the permit application process. Because Executive Director Peter Douglas thought there may be a legal way to bring Los Angeles County into the permit process, the Commission voted 8–3 for a motion to continue since staff was not prepared to adequately address all of the issues involved.

$7 Billion Playa Vista Development Project Receives Initial Approval. On September 21, the Los Angeles City Council approved the first phase of the $7 billion Playa Vista development project, which will encompass 1,087 acres south of Marina del Rey and stretch from the Ballona Channel entrance to the Santa Monica Bay on the western boundary to Highway 405 on the eastern boundary. The Playa Vista project is one of the largest development projects ever considered for Los Angeles. Upon completion, Playa Vista would be a community for 29,000 residents, with five million square feet of office space and 595,000 square feet of retail space; the project would also contain a yacht harbor capable of docking up to 840 boats. Over the years, opposition to the project has come from numerous environmental groups, some of which convinced the project developer to spend $10 million to restore the 270-acre Ballona Wetlands on the Playa Vista property and promise to never develop on the wetlands.

In 1984, the Coastal Commission initially approved a land use plan for the area, which required construction of a controversial four-lane freeway bypass next to a residential area in Marina del Rey prior to further development. At this writing, the Commission has not granted final approval to the Playa Vista project.

Commission Approves SWEPI/Unocal Petition for Waterflood Program. At its November meeting, the Commission approved an application for a coastal development permit filed by Shell Western Exploration & Production, Inc. (SWEPI) and Unocal for a joint secondary oil and gas recovery "waterflood" program affecting offshore oil platforms Eva and Emmy, which are located in state waters near Huntington Beach. Originally submitted at the September meeting, the application was withdrawn after several Commissioners objected to the environmental impact of the project. *[13:4 CRLR 173]*

The waterflood program involves the injection of treated water into oil wells located in the Huntington Beach Offshore Oil Field. The injected fluids will enable SWEPI and Unocal to recover additional, otherwise unrecoverable oil and gas from production wells located at oil platforms Emmy (owned by SWEPI) and Eva (owned by Unocal). The waterflooding will result in production of an additional 45 million barrels of oil from Emmy and Eva over the project's thirty-year life, and increased production rates of 5,000 barrels of oil per day (BOPD) at Emmy and 4,200 BOPD at Eva. Currently, Emmy and Eva each produce approximately 1,500 BOPD.

Representatives from SWEPI/Unocal addressed the Commission's two environmental concerns—the increased potential for oil spills, and the disposal of the wastes generated from the drilling of the new wells (20 new wells are to be drilled at Emmy and 22 new wells at Eva). Under the new plan, the Coastal Commission's Executive Director or his/her designated representatives may conduct surprise oil spill drills each year at Emmy or Eva over the thirty-year life of the project. The purpose of the surprise drills is to require SWEPI and Unocal to demonstrate their ability to respond in a successful manner to an oil spill. If the Executive Director determines that SWEPI or Unocal fail the annual drill, the Executive Director may call a second surprise drill. Prior to calling the second drill, Commission staff must identify those aspects of the first drill which were not successfully completed and inform SWEPI or Unocal, as the case may be, of its recommendations, if any, for improvement. The Executive Director may suspend platform operations until a surprise drill is passed; the Executive Director must call a surprise drill as soon as reasonably possible but no later than thirty days after the suspension is issued unless additional time is requested by the platform operators.

With regard to disposal of wastes resulting from new drilling, SWEPI and Unocal promised they would abide by State Lands Commission (SLC) requirements for disposal of their respective drilling muds and cuttings generated during the waterflood process. Thus, the Commission incorporated SLC's requirements into its permit.

Commission Issues Seawater Desalination Report. In October, Commission staff issued a final report entitled *Seawater Desalination in California* as part of an informational package. *[13:1 CRLR 114]* With population growth and the recent six-year drought contributing to an increase in Californians' concerns about water scarcity, several communities and industries in California have proposed constructing desalination plants to convert saline water (*e.g.*, seawater, brackish water, or treated wastewater) into fresh water. Because all or portions of seawater desalination plants will be located in the coastal zone, the facilities will be subject to Coastal Act requirements and the jurisdiction of the Commission.

The report, which was prepared by staff from the Commission's Energy and Ocean Resources and Technical Services divisions, provides background technical and policy information on desalination; the document was reviewed by the Coastal Commission but has not been adopted as a policy document. The report provides the Coastal Commission, local governments, state and federal agencies, and the

public with a brief description of two desalination technologies (reverse osmosis and distillation); the status of seawater desalination in California; Coastal Act issues that pertain to the siting and construction of desalination plants in the coastal zone; the permitting process for desalination plants; and recommendations.

Existing seawater desalination plants in California which have been approved (in full or in part) by the Coastal Commission include the Chevron Gaviota Oil and Gas Processing Plant, the City of Morro Bay Plant, the City of Santa Barbara Plant, and the Southern California Edison Santa Catalina Island Plant. Proposed projects include the San Diego County Water Authority Plant (with a capacity of 10–30 million gallons per day); the City of Buenaventura Plant (5–7 million gallons per day), and the Metropolitan Water District of Southern California Plant (5 million gallons per day).

LEGISLATION

SB 158 (Thompson), as amended September 9, 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. F&I]*

SB 473 (Mello), as introduced February 25, would enact the Coastal and Riparian Resources Bond Act of 1994 which, if adopted, would authorize, for purposes of financing a specified coastal and riparian resources program, the issuance, pursuant to the State General Obligation Bond Law, of bonds in the amount of $263 million. The bill would provide for submission of the bond act to the voters at the June 7, 1994, direct primary election in accordance with specified law. *[S. Appr]*

LITIGATION

On October 14 in ***Sierra Club v. California Coastal Commission (City of Carlsbad)***, 19 Cal. App. 4th 547, the Fourth District Court of Appeal upheld the Commission's approval of the Batiquitos Lagoon restoration project, although it would adversely impact the Lagoon's existing bird habitat. In 1987, the Commission approved a permit for dredging in the Port of Los Angeles. In order to mitigate impacts of the dredging, the Commission required the Port of Los Angeles to engage in offsite mitigation. To satisfy this requirement, the Port entered into a memorandum of understanding with the City of Carlsbad, the U.S. Fish and Wildlife Service, the State Lands Commission, and the National Marine Fisheries Service, under which it agreed to contribute $15 million to the proposed restoration of Batiquitos Lagoon in San Diego County; as a coastal wetland, the Lagoon provides wildlife habitat for many resident and migratory species (including endangered species). Prior to development around and over the Lagoon, Batiquitos was a fully tidal system, nourished daily by infusions of water; the Lagoon is now filled with water only seasonally, when tributary streams flow, as tidal inflows have largely stopped.

The City of Carlsbad, lead agency for the restoration project, prepared an environmental impact report that contained four main alternative restoration plans. In March 1991, the Commission approved "Mitigated Alternative A," which called for massive dredging of 3.7 million cubic yards of the Lagoon. The Sierra Club immediately filed a lawsuit challenging the action, and the U.S. Environmental Protection Agency registered concerns about the project. Thus, Carlsbad amended its permit application in favor of "Mitigated Alternative B," which reduced total dredging by 600,000 cubic yards and provided for gentler side slopes, a gently sloping lagoon bottom, and a meandering channel rather than the straight channel called for in Mitigated Alternative A. The Coastal Commission eventually approved Mitigated Alternative B, finding it would have short-term impacts during project construction but no significant long-term impacts. In approving this alternative, the Commission made findings that the proposed creation of marine tidal habitat would be accomplished by the loss of existing shallow subtidal open water area and nontidal flats that currently provide habitat value for avian populations that inhabit the Lagoon. *[11:4 CRLR 176; 11:3 CRLR 166; 11:2 CRLR 151–53]* The Sierra Club and the Buena Vista Audubon Society persisted in their petition for a writ of mandate; the trial court denied the petition. *[12:4 CRLR 194]*

On appeal, the Fourth District Court of Appeal affirmed. Public Resources Code section 30233 provides that the "diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted...where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects...." The Commission found that there were no feasible less environmentally damaging alternatives to Alternative B; the Fourth District found that finding to be supported by substantial evidence. Experts had indicated that full tidal flushing by a large tidal prism was necessary, and Alternative B provided sufficient tidal prism with the least environmental damage. In reviewing the whole record on a substantial evidence basis, the court found that the Commission acted reasonably in selecting Alternative B among other alternatives which would fail to produce sufficient full tidal flushing or cause greater disturbance of existing habitat. To the extent this policy conflicts with the restriction on dredging, the court found that PRC section 30007.5 authorizes the Commission to resolve the conflict in favor of long-term protection of the Lagoon. The Sierra Club intends to seek California Supreme Court review of the Fourth District's decision.

In December, the Fair Political Practices Commission (FPPC) accused convicted racketeer Mark Nathanson of failing to report $208,000 in bribery income on financial disclosure forms he was required to file while a member of the Coastal Commission. *[13:4 CRLR 174–75; 13:1 CRLR 113; 12:2&3 CRLR 224]* The accusation also claims that Nathanson's bribes amounted to a financial interest in construction projects that were before the Commission for approval. By voting on those projects, the FPPC contends that Nathanson broke other laws that require public officials to disqualify themselves from making decisions that affect their economic interests. Nathanson had fifteen days from the filing of the accusation to notify the FPPC on whether he intends to contest the action. If the FPPC finds that the facts presented in the accusation are true, Nathanson could be liable for fines far in excess of the $208,000 he allegedly extorted. The former Beverly Hills real estate broker has already admitted that he solicited $975,000 in bribes from a dozen people seeking permits before the Commission, and is serving a 57-month sentence in federal prison for extortion.

RECENT MEETINGS

At its October meeting, Commission staff reported on the tankering activities of Chevron from the Point Arguello oil project off Santa Barbara to Los Angeles. *[13:4 CRLR 171; 13:2&3 CRLR 183–84]* In the month of October, Chevron sent two oil tanker shipments from Point Arguello. Under its coastal permit, Chevron will be

allowed to continue tankering shipments (about one tanker trip per week) until January 1, 1996. After that date, Chevron and the other offshore oil producers near Santa Barbara (Texaco and Exxon) will have to ship the oil by pipeline. From a group of pipeline alternatives (including construction of a new pipeline), the oil producers have selected the existing All American Pipeline Company (AAPC); Commission staff reported that the implementation of the AAPC alternative would require connecting a final segment of pipeline to the refineries in Los Angeles. The oil producers are still analyzing the construction cost of this additional section of pipeline.

At its November 16 meeting in San Diego, the Commission voted 6–0 to adopt revised findings and conditions in support of its April 1993 approval of a permit for an 83-lot residential subdivision, a golf course, habitat preserves, parks, and trails in Rancho Palos Verdes. *[13:2&3 CRLR 184]* The major issue facing the Commission was the project's conformance with the provisions of the City of Rancho Palos Verdes' LCP and the public access and recreation policies of the Coastal Act. These issues were complicated by the presence of a threatened species, the California gnatcatcher, and extensive testimony regarding the history of public use of the property. The Commission heard evidence regarding the economic viability of the project, the design constraints of a championship-level public golf course, the extent of public rights on the property, and the value and location of the habitat on the property. In adopting its revised findings, the Commission also took note of the applicants' plans to provide public access and amenities, to restore twenty acres of vegetation on the adjoining county-owned Shoreline Park, protect existing public access on that park, and restore ten acres of a 95-acre publicly dedicated landslide area just inland of the coastal zone. Environmentalists at the meeting stated that the Commission approved the permit without fully examining the environmental and public access aspects that were part of the record.

At its November 18 meeting, the Commission approved a controversial coastal development permit, with special conditions, to establish a temporary 1.41-acre marine mammal reserve encompassing Seal Rock in La Jolla and the surrounding open waters extending easterly to the toe of the coastal bluffs, including a small part of Shell Beach. Commission staff recommended that the Commission deny the permit, contending that the proposed development interferes with the public's right of access to the sea; the Seal Rock area does not qualify for ecological reserve status for harbor seals because they are neither endangered nor threatened and do not depend upon habitat of Seal Rock for their survival; and other less restrictive alternatives are available to discourage public disturbance of seals when they "haul out" onto the rock. However, based on expert testimony that the area may be a rookery and the public's presence may adversely impact seals during breeding season, the permit prohibits swimming, body surfing, snorkeling, scuba diving, tidepool viewing, and other recreational activities within the reserve area during a five-year period. Permit conditions require the City of San Diego to submit annual monitoring reports, including results of studies on the behavior and breeding habits of the harbor seals and whether a rookery exists within the limits of the proposed marine reserve; obtain approval from the State Lands Commission that the proposed five-year marine mammal reserve is consistent with applicable tidelands grants and the public trust; and submit plans indicating the proposed reserve area does not include any sandy beach areas and is confined solely to open coastal waters and offshore areas.

At its November 19 meeting, the Commission conditionally approved the City of Dana Point's permit application to remove 44,000 tons of debris resulting from a February 1993 landslide that covered a 300-foot stretch of Pacific Coast Highway, and build a caisson retaining wall 300 feet long and 25 feet high to prevent additional landslide material from falling onto the highway. In addition to the highway blockage in Dana Point, the landslide also damaged five homes in San Clemente. Resolution of the problem thus involved two separate planning processes and jurisdictions. For the landslide portion within the City of Dana Point, the City issued a coastal development permit, which was subsequently appealed to the Coastal Commission. For the landslide portion within the City of San Clemente, the City of Dana Point applied directly to the Coastal Commission for a coastal development permit because the City of San Clemente does not have a certified LCP.

Also at its November meeting, the Commission considered a petition for rulemaking filed by San Diego resident Charles Hill. The petition asked the Commission to adopt regulations which would prohibit the discharge of toxic substances or waste from storage tanks at energy facilities (*e.g.*, gas stations) within the coastal zone, require the Commission to assess damage to the coastal zone caused by leaking storage tanks, and calculate the liability owed to the state of California by leaking storage tank owners who have declared bankruptcy. The Commission denied Hill's petition, simultaneously asserting that it lacks authority to adopt the proposed regulations because the discharge of liquid waste that will or could affect the quality of the surface or underground water resources of the state is primarily within the jurisdiction of the Water Resources Control Board, and that the proposed regulations would duplicate existing Coastal Commission authority already contained in the Coastal Act and the Commission's regulations. The Commission also stated that it lacks the financial resources necessary to administer the proposed regulations.

At its December 16 meeting, the Commission postponed a final ruling on a proposed project to build a state-of-the-art seawall to protect six blufftop homes in Encinitas, saying it wanted more property owners involved and a more comprehensive plan developed to protect both the upper and lower portions of the 100-foot-high bluff. Although the Commission and its planning staff acknowledged the needs of property owners to protect their homes, they expressed reluctance to approve discontiguous walls with several end points, which can do more damage to a bluff than having no seawall at all.

FUTURE MEETINGS

May 10–13 in Los Angeles.
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

Executive Director:
Robert R. Treanor
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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