



to leaves, lawn, and tree clippings. The Board was asked to decide whether green waste can be mulched or composted to cover, at the end of each day of operation at a refuse landfill, an exposed deposit of solid waste ("refuse cell"). Uncontaminated soil is the material typically used to cover a refuse cell. The use of green waste as cover was developed by the Los Angeles County Department of Sanitation in order to extend the longevity of a given landfill. That is, green waste contributes approximately 12% of the waste stream deposited at County landfills; under this proposed program, Scholl Canyon's capacity would be increased by the total volume of green waste removed from the refuse cell and used as cover in lieu of fresh soil.

However, an experimental study of green waste as cover indicated that it is not a suitable cover under present standards. Green waste is not fire-retardant, and it may provide an unsafe nesting and breeding ground for flies and other disease-carrying insects. However, the mayor of Glendale attended the meeting and stated that the City of Glendale would welcome the experimental green waste cover project, as the city believes the project is a necessary step towards progressive soil waste management. The Board was scheduled to vote on the proposal at its September meeting.

At the August 31 meeting, the Board also discussed its public awareness activities. Ray McNally and Associates presently advise and aid CWMB in the design of these activities. CWMB airs public awareness messages on radio, and Board Chair John Gallagher has been a guest on several media talk shows conducted by various radio stations throughout the state. CWMB plans to distribute several thousand bags displaying public awareness messages at the next Los Angeles County Fair. The Board has also sponsored a series of six very successful and well-attended workshops on recycling and source reduction.

FUTURE MEETINGS:

To be announced.

COASTAL COMMISSION

Director: Peter Douglas
Chairperson: Michael Wornum
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The California Coastal Commission was established by the California Coastal Act of 1976 to regulate conservation and development in the coastal zone. The coastal zone, as defined in the

Coastal Act, extends three miles seaward and generally 1,000 yards inland. This zone determines the geographical jurisdiction of the Commission. The Commission has authority to control development in state tidelands, public trust lands within the coastal zone and other areas of the coastal strip where control has not been returned to the local government.

The Commission is also designated the state management agency for the purpose of administering the Federal Coastal Zone Management Act (CZMA) in California. Under this federal statute, the Commission has authority to review oil exploration and development in the three mile state coastal zone, as well as federally sanctioned oil activities beyond the three mile zone which directly affect the coastal zone. The Commission determines whether these activities are 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. After certification of an LCP, the Commission's regulatory authority is transferred to the local government subject to limited appeal to the Commission. There are 69 county and city local coastal programs.

The Commission is composed of fifteen members: twelve are voting members and are appointed by the Governor, the Senate Rules Committee and the Speaker of the Assembly. Each appoints two public members and two locally elected officials of coastal districts. The three remaining nonvoting members are the Secretaries of the Resources Agency and the Business and Transportation Agency, and the Chair of the State Lands Commission.

MAJOR PROJECTS:

Marine Review Committee Releases San Onofre Study. On September 6, the Commission's Marine Review Committee

presented the results of a fifteen-year \$46 million study of the effects of the San Onofre nuclear power station on the environment. The Committee, a team of three biologists, was appointed by the Commission in 1974 to conduct an independent review of the plant's impact on the ocean and to make specific recommendations to reduce future harmful effects.

The Committee concluded that some environmental damage had occurred, including a loss of twenty tons of fish and fish eggs per year into the plant's water intake system, and a 16% reduction in the amount of natural light in the water as a result of sediment stirred up by the plant's water discharge system. The reduced light was found to harm specific fish species as well as offshore kelp beds. The Committee also found that no significant harm had been done to plankton or most types of bottom-dwelling fish, and that no elevation in radioactivity level or heavy metal concentration had occurred.

The Committee made only a few major recommendations, including (1) construction of artificial reefs to reduce the effects of the discharge system; (2) upgrading the plant's water-cooling system to keep fish out of the intake pipes; (3) a reduction in the volume of water taken in by the plant at peak operation times; (4) modification of the schedule of plant operation around fish-hatching periods; and (5) commencement of work to restore damaged local wetlands.

The Commission was scheduled to vote on whether to approve the Committee's recommendations at its November 14 meeting. The cost of implementing all of the Committee's recommendations has been estimated at approximately \$30 million.

Sea Otter Relocation Project Continues Despite Setbacks. On September 12, the Commission conducted a public hearing on the status of a two-year project to establish a colony for over 100 sea otters on San Nicolas Island in the Channel Islands off the coast of Santa Barbara. (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 108-09 for background information.) The project was initially designed to remove substantial numbers of the otters out of heavily-traveled sealanes in the event of an oil spill and is sponsored by state and federal wildlife agencies. As of July 20, of the 107 otters which had been flown to the island, eight have died, two are suspected of having died, seventeen have remained on the island, twenty have returned to the mainland, and the rest are unaccount-



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ed for. Despite the disappointing early results, officials hope to continue the \$1 million per year effort because of the potential for eventual success and because of the project's research value.

LEGISLATION:

AB 761 (Frazee), which requires the San Diego Association of Governments, in consultation with the Coastal Commission, to develop a San Diego and Orange Counties Shoreline Preservation Strategy, was signed by the Governor on September 19 (Chapter 517, Statutes of 1989).

AB 2000 (Farr) enacts the California Ocean Resources Management Act of 1990, to establish a coordinated program of ocean resources planning and management. This bill establishes the Ocean Resources Task Force and requires it to report to the Governor and the legislature by January 1, 1992, regarding existing ocean resources management activities and impacts. This bill was signed by the Governor on October 1 (Chapter 1215, Statutes of 1989).

SJR 32 (Kopp) urges Congress and the appropriate federal agencies to take expeditious legislative and regulatory action to prevent future oil tanker spills from occurring, and recommends to Congress and the U.S. Coast Guard specified personnel, equipment, and other measures to prevent such accidents. This resolution was chaptered on September 5 (Chapter 135, Resolutions of 1989).

AB 1000 (Hayden) would require the Coastal Commission, in reviewing an application for a coastal development permit, to consider any potential impact on water quality or marine resources and, under specified circumstances, to incorporate into the permit conditions to mitigate adverse effects. This bill is a two-year bill pending in the Senate Rules Committee.

AJR 22 (Farr) would memorialize the President and Congress to amend the Submerged Lands Act to extend the ocean boundaries of coastal states from three to twelve geographical miles offshore. This resolution is pending in the Assembly Ways and Means Committee.

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 106-07:

AJR 2 (Peace), which requests the President, Congress, the U.S. Department of the Interior, and the U.S. Department of Defense to halt Lease Sale 95 off the coast of San Diego County, was chaptered on September 21 (Chapter 159, Resolutions of 1989).

SB 204 (Stirling), which extends the termination date of a program of research

on the artificial propagation and distribution of adversely affected marine fish species from January 1, 1990, to January 1, 1993, was signed by the Governor on July 28 (Chapter 243, Statutes of 1989).

SB 332 (McCorquodale) would have revised the Commission's procedures for certification of land use plans (LUPs) or proposed LUPs by deleting the current requirement for identifying substantial issues for conformity with the policies of the California Coastal Act of 1976, and for holding a public hearing on those issues. This bill was vetoed by the Governor on September 22.

AB 874 (Farr) would have amended sections 30235 and 30253 of the Public Resources Code to require the Commission to thoroughly evaluate nonstructural methods of shoreline protection, make a feasibility determination prior to granting any structure permits, and prohibit new developments from requiring construction of protective services that significantly adversely affect shoreline processes or substantially alter natural landforms. This bill was vetoed by the Governor on September 12.

AB 431 (Hansen) increases from \$50,000 to \$100,000 the amount the State Coastal Conservancy is authorized to provide for the cost of preparing local coastal restorations and resource enhancement plans. This bill was signed by the Governor on August 30 (Chapter 280, Statutes of 1989).

SB 467 (Davis), as amended August 21, would have authorized the Coastal Commission and the executive director of the Commission until January 1, 1996, to issue cease and desist orders if it is determined that any person or governmental agency has undertaken, or is threatening to undertake, any activity that may require a permit from the Commission without securing a permit or that may be inconsistent with any permit previously issued by the Commission. This bill was vetoed by the Governor on September 22.

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: *AB 1735 (Friedman)*, which would prohibit a Commission member and any interested person from conducting an ex parte communication, require a Commission member to report such communication, and provide that any Commission member who knowingly commits an ex parte communication violation would be subject to a civil fine not exceeding \$7500; *SB 1260 (Bergeson)*, which was substantially amended on September 15 and no longer pertains to the Coastal Commis-

sion; *SB 1499 (Roberti)*, which would require the Commission to conduct a study on various options and mechanisms which may be used to deal with low- and moderate-income housing units in the coastal zone of southern California; *SB 1500 (Hart)*, which would prohibit any new development within an existing wetlands area if the development would cause degradation or destruction to the wetlands; *AB 2072 (Friedman)*, which would require any alternate Commission member to be a county supervisor or city councilperson from the same region as the person making the appointment; *AB 36 (Hauser)*, which would prohibit the State Lands Commission from leasing all state-owned tide and submerged lands situated in Mendocino and Humboldt counties for oil and gas purposes until January 1, 1995; *AB 145 (Costa)*, which, as amended June 26, would enact the California Wildlife, Park, Recreation, Coastal, History, and Museum Bond Act of 1990; *AB 206 (Allen)*, which would include the recreation fishing industry within the scope of a program which provides funds to address the impacts of oil and gas exploration or development; and *AB 678 (Frizzelle)*, which would change the LCP requirements to include drainage channels or drainage ditches within the provision requiring channelizations, dams, or other substantial alterations of rivers or streams.

LITIGATION:

In *Rosasco Holdings, Inc., et al. v. State of California, California Coastal Commission, et al.*, No. B035188 (July 26, 1989), the Second District Court of Appeal affirmed a trial court judgment that the boundary of the coastal zone established by maps predominates over verbal boundary descriptions. Also affirmed was the trial court's ruling that landowners must comply with Code of Civil Procedure section 1094.5, requiring timely petition for administrative mandamus to invalidate assertedly improper conditions on property development. The court of appeal also upheld the trial court's determination that the Coastal Commission is not a "person" for purposes of federal civil rights violations. However, the trial court's ruling that acceptance of a permit and compliance with its conditions does not constitute a waiver of the right to attach those conditions was reversed on appeal.

Appellants own substantial acreage in the Malibu-Santa Monica Mountains area of Los Angeles County. Their complaint alleged that their properties had



been wrongfully included in the coastal zone under the Commission's jurisdiction, and that the conditions imposed by the Commission regarding development of the property were improper and excessive. Appellants further pressed a civil rights claim pursuant to 42 U.S.C. section 1983.

Regarding the boundaries of the coastal zone, appellants argued that their properties should be excluded from the coastal zone as defined in Public Resources Code section 30103, as being beyond "the first major ridgeline paralleling the sea." The trial court's interpretation of the applicable statutory language and maps incorporated therein revealed that the legislature had intended the maps to define the coastal zone and had declined to amend the maps despite introduction of legislation specifically designed to do so. The court of appeal affirmed, adding that the plain language of the statute referred to the coastal zone as generally described by words and specifically defined by the maps, and noting a well-established rule of statutory construction which dictates that the specific must control the general.

On the issue of the conditions imposed by the Commission, the trial court sustained the Commission's demurrer without leave to amend on the ground that Code of Civil Procedure section 1094.5 required filing of a petition for writ of mandate within sixty days of the Commission's decision. However, the trial court overruled the demurrer interposed by the Commission on the ground that petitioners' acceptance of the permits and compliance with the conditions imposed constituted a waiver of the right to attack those conditions. The Second District affirmed the trial court's action with respect to the first demurrer, but reversed on the issue of acceptance as waiver. Basing its decision on *County of Imperial v. McDougal*, 19 Cal. 3d 505 (1977), and *Pfeiffer v. City of La Mesa*, 69 Cal. App. 3d 74 (1977), the appellate court held that a landowner may not challenge a condition imposed upon the granting of a permit after acquiescence in the condition by either specifically agreeing to the condition, or failing to challenge its validity and accepting the benefits afforded by the permit.

Finally, the court of appeal affirmed the trial court's determination that the Commission is an arm of the state for Eleventh Amendment purposes and that neither a state nor its officials acting in their official capacities are "persons" under section 1983 of the federal civil right statutes. Both, therefore, are im-

mune from liability under that section.

RECENT MEETINGS:

At its September 12 meeting, the Commission voted to allow Pepperdine University to triple the size of its Malibu area campus. The 7-5 decision of the Commission followed staff's recommendation to restrict the seaside university's expansion to existing graded areas. The expansion will allow Pepperdine to double its student enrollment by the end of the century.

FUTURE MEETINGS:

To be announced.

DEPARTMENT OF FISH AND GAME

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The Department of Fish and Game (DFG) manages California's fish and wildlife resources. Created in 1951 as part of the state Resources Agency, DFG regulates recreational activities such as sport fishing, hunting, guide services and hunting club operations. The Department also controls commercial fishing, fish processing, trapping, mining and game-bird breeding.

In addition, DFG serves an informational function. The Department procures and evaluates biological data to monitor the health of wildlife populations and habitats. The Department uses this information to formulate proposed legislation as well as the regulations which are presented to the Fish and Game Commission.

The Fish and Game Commission (FGC) is the policymaking board of DFG. The five-member body promulgates policies and regulations consistent with the powers and obligations conferred by state legislation. Each member is appointed to a six-year term.

As part of the management of wildlife resources, DFG maintains fish hatcheries for recreational fishing, sustains game and waterfowl populations and protects land and water habitats. DFG manages 100 million acres of land, 5,000 lakes, 30,000 miles of streams and rivers and 1,100 miles of coastline. Over 1,100 species and subspecies of birds and mammals and 175 species and subspecies of fish, amphibians and reptiles are under DFG's protection.

The Department's revenues come from several sources, the largest of which is the sale of hunting and fishing licenses

and commercial fishing privilege taxes. Federal taxes on fish and game equipment, court fines on fish and game law violators, state contributions and public donations provide the remaining funds. Some of the state revenues come from the Environmental Protection Program through the sale of personalized automobile license plates.

DFG contains an independent Wildlife Conservation Board which has separate funding and authority. Only some of its activities relate to the Department. It is primarily concerned with the creation of recreation areas in order to restore, protect and preserve wildlife.

MAJOR PROJECTS:

Commission Lists Desert Tortoise as Threatened. In November 1987, FGC approved the desert tortoise for "candidate species" status, thus triggering a one-year period for DFG to study the proposed listing. At its February 1989 meeting, FGC decided to postpone its decision to list the species until the June meeting, citing voluminous amounts of written public comment as the reason for the delay. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 108 and Vol. 9, No. 2 (Spring 1989) pp. 102-03 for background information.) At its June meeting, FGC agreed to amend section 670.5, Title 14 of the California Code of Regulations (CCR), to add the tortoise to the threatened species list.

It is estimated that the desert tortoise population has declined between 30-70% in the western Mojave Desert over the past seven years. Reasons for the decline of this species include respiratory disease and attacks by raven which prey on tortoise eggs and young tortoises before the protective shell hardens. Increased human presence in the desert habitat is also believed to have raised the species' level of stress, making them more susceptible to respiratory disease. The tortoise is an "indicator species"—that is, its decline has a ripple effect felt throughout the desert habitat. Preservation of this species will benefit the numerous populations that prey upon it, as well as those that utilize the tortoise burrows for dwelling.

On another front, the federal Bureau of Land Management (BLM) on September 12 announced a temporary emergency quarantine of 37,700 acres in the western Mojave Desert to protect the desert tortoise. The quarantine will prohibit access to this area without Bureau permission. The BLM quarantined only 37,700 of the 65,000 acres originally proposed, in the hopes that this will allow