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Project Title:	Redondo Beach Energy Project
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Document Title:	Additional Case Law on Coastal Commission Memo
Description:	Provides additional case law to support conclusion the Redondo Emergency Ordinance is effective without Coastal Commission approval
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Building a Better Redondo
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10 Feb 14

Subject: Case 12-AFC-03, Additional Case Law pertaining to Coastal Commission Memo
To: CEC Staff, CEC Commissioners, Coastal Commission

I previously submitted evidence that the Redondo Beach Emergency Ordinance prohibiting the construction of power generation and storage facilities in the Redondo Beach coastal zone did not require Coastal Commission approval in order to be effective. That submission relied only on *Yost v. Thomas* (1984) which concluded:

“A local government can amend a certified LCP or LUP (§ 30514). An amendment which authorizes a use designated as a permitted use in the LCP does not require certification by the Commission; an amendment which authorizes a use other than that designated in the LCP as a permitted use does require certification by the Commission (§ 30514, subd. (d)).”

In this present case, the City Council has not approved a new use. It merely restricts and use permitted under the certified LUP. Therefore, the emergency ordinance does not require Coastal Commission approval to be effective.

There is another pertinent case, *Conway v. City of Imperial Beach* (1997). This case centered around the determination of whether an emergency ordinance required approval of the ordinance in order for it to be certified and effective. The original Court and the Court of Appeals both strongly upheld that a City can adopt urgency ordinances that do not conflict with the Coastal Act. The finding referred by to the *Yost* case.

“Thus, the express provisions of the Coastal Act provide a clear statement of the legislative intent that local governments retain powers to act in ways "not in conflict" with the Coastal Act, and that acts by local governments which do *not* "authorize" the use of a parcel of land other than a use that is designated" in the LCP need not be construed to be "amendments."”

“Further, local governments exercising their authority under Government Code section 65858 necessarily do so on the basis that "... there is a current and immediate threat to the public ... safety [and] welfare." (*Id.*, subd. (c).) The necessary conclusion is that local governments retain the power to enforce urgency interim ordinances which are not in conflict with the Coastal Act, and that only those amendments "authorize" a use other than that designated in the LCP as a permitted use ... require certification by the Commission...." (*Yost, supra*, 36 Cal.3d at p. 573, fn. 9.)” ...

“As the enactment under Government Code section 65858 did not “authorize” a use other than that designated in the LCP as a permitted use” (*Yost, supra*, 36 Cal.3d at p. 573, fn. 9.), it was not in conflict with the purposes sought to be served by the Coastal Act, and no approval by the Coastal Commission was required prior to enforcement.”

In this case, Redondo’s action is very similar. The emergency ordinance does not authorize any use; it merely prohibits one of the permitted uses. This case supports the conclusion that Redondo’s ordinance does not need Coastal Commission approval to be effective.

The Appeals Court went beyond this simple decision by emphasizing:

“Any other conclusion would lead to the absurd consequences that an attempt to advance the purposes of the Coastal Act, which attempt required expeditious action, could be frustrated by the procedures of the very organization, the Coastal Commission, which is designed to advance the purposes of the Act, and thus the very system designed to protect California's coastal resources would be the means by which they were eviscerated.”

In this case the new power plant is not a coastal dependent use and it would certainly create substantial negative impacts on coastal resources. BBR again maintains that the emergency ordinance does not require the Coastal Commission’s approval to be effective and that the city has the right to limit uses allowed in the approved LUP/LCP, especially when those uses represent a substantial negative impact on the coastal resources of the City.