

DOCKETED

Docket Number:	12-AFC-03
Project Title:	Redondo Beach Energy Project
TN #:	204529
Document Title:	Staff's Record of Conversation with the City of Redondo Beach
Description:	N/A
Filer:	Muoi-Lynn Tran
Organization:	CEC/ Kerry Willis
Submitter Role:	Commission Staff
Submission Date:	5/7/2015 12:40:39 PM
Docketed Date:	5/7/2015



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
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In the Matter of:

***APPLICATION FOR CERTIFICATION FOR THE
REDONDO BEACH ENERGY PROJECT***

Docket No. 12-AFC-03

STAFF'S RECORD OF CONVERSATION WITH THE CITY OF REDONDO BEACH

On May 5, 2015, the Committee for the Redondo Beach Energy Project Application for Certification (Committee) issued a Scheduling Order: Order Regarding the Filing of Record of Conversation. The Committee ordered Energy Commission Staff to file a Record of Conversation of the meeting it held on April 29, 2015, with City of Redondo Beach representatives. The following is Staff's Record of Conversation. The Agenda for the meeting and documents provided by the City of Redondo Beach are attached.

Report of Meeting with the City of Redondo Beach

April 29, 2015 10:00 am—noon

California Energy Commission, Sacramento

Present:

Redondo Beach: Michael Webb, City Attorney, and Jon Welner, Attorney

Energy Commission Staff: Roger Johnson, Eric Knight, Amanda Stennick, Steve Kerr, Shahab Khoshmashrab, Ed Brady, Keith Winstead, and Kerry Willis

At the beginning of the meeting, Kerry Willis, Senior Attorney, discussed the legal framework for the meeting, including a review of Public Resources Code section 25523, and Title 20, California Code of Regulations, section 1710. It was emphasized that since the City of Redondo Beach is a party in these proceedings, the meeting would be strictly an exchange of information, and not a negotiation. Any further discussion would be held during the Preliminary Staff Assessment (PSA) publicly noticed workshop.

Jon Welner for the City of Redondo Beach passed out a packet of materials, all of which either has been docketed or is publicly available. (Please see attached.)

The first item on the agenda was a discussion of the City's Noise Ordinance. The City expressed their intent to hire a noise expert to do a noise assessment and provide expert testimony at the evidentiary hearings. Staff requested that, if possible, they would like to review the protocol in advance. No timeline was discussed for performing the study except that Staff would find it helpful to have the information as soon as practicable so as to consider including the information in the Final Staff Assessment (FSA).

The City asked Noise Staff if they took into account internal noise levels at residences. Staff said they did not, but that it is usually a 10-15 decibel decrease from the outside noise level. Roger Johnson asked the City how they work with the City of Hermosa Beach on noise issues when they are reviewing projects in Redondo Beach. The City will be talking with Hermosa Beach.

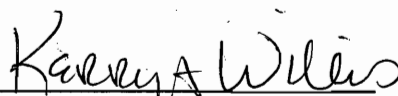
The next agenda item was construction noise. The City provided a copy of the construction noise ordinance. The City had several questions regarding construction noise: overnight construction work, and site preparation before 7:00 a.m. that might be noisy. There are Conditions of Certification that may address these issues and this will be discussed with the applicant at the PSA workshop.

Finally, the City presented a general discussion on the Urgency Ordinance and their plan to move ahead with two permanent ordinances prohibiting thermal power plants and battery facilities in certain parts of the City. The City plans to take these ordinances to its Planning Commission in May and City Council in June.

Roger Johnson explained the override process and reminded the City to file its comments on the PSA, even if just preliminary, before the PSA workshop.

DATED: May 7, 2015

Respectfully submitted,


KERRY A. WILLIS
Senior Attorney

AGENDA

Meeting with the City of Redondo Beach and
Energy Commission Staff
April 29, 2015

Introductions

Legal Framework for meeting: KW

- Public Resources Code §25523
- Title 20, CCR, §1710

Redondo Beach Ordinances: Jon/Mike

(1) Noise ordinance

(2) Construction hours ordinance

(3) Land use (emergency development moratorium and pending zoning ordinances).

Next steps

Materials for
Meeting with the City of Redondo Beach and
Energy Commission Staff
April 29, 2015

- (1) Redondo Beach Noise Ordinance
- (2) Redondo Beach Construction Hours Ordinance
- (3)(a) Urgency Interim Ordinance Imposing Moratorium 12-03-13
- (3)(b) Extension of Urgency Interim Ordinance Imposing Moratorium 01-14-14
- (3)(c) Coastal Commission Letter to CEC 02-05-14
- (3)(d) Letter from City Attorney Michael Webb 03-03-14
- (3)(e) *Yost v. Thomas*
- (3)(f) *Conway v. City of Imperial Beach*

(1) Redondo Beach Noise Ordinance

Title 4 PUBLIC WELFARE, MORALS, AND CONDUCT

Chapter 24 NOISE REGULATION

Note

- * Chapter 24 entitled "Noise Regulation", consisting of Article 1 entitled "General Provisions", consisting of Sections 4-24.101 through 4-24.107, Article 2 entitled "Special Noise Sources", consisting of Sections 4-24.201 through 4-24.206, Article 3 entitled "Construction", consisting of Section 4-24.301, Article 4 entitled "Vehicles", consisting of Sections 4-24.401 and 4-24.402, Article 5 entitled "Amplified Sound", consisting of Sections 4-24.501 through 4-24.507, Article 6 entitled "Train Horns and Whistles", consisting of Section 4-24.601, and Article 7 entitled "General Noise Regulation", consisting of Sections 4-24.701 and 4-24.702, added by Ordinance No. 2129 c.s. effective October 10, 1974, amended in its entirety by Section 1, Ordinance No. 2183 c.s., effective August 11, 1976.

Article 1 General Provisions

4-24.101 Declaration of policy.

In order to control unnecessary, excessive, and annoying sounds emanating from all areas of the City, it is hereby declared to be the policy of the City to prohibit such sound generated from all sources as specified in this chapter.

It is determined that certain noise levels are detrimental to the public health, welfare, and safety and contrary to the public interest; therefore, the Council does ordain and declare that creating, maintaining, or causing, or allowing to create, maintain, or cause, any noise in a manner prohibited by, or not in conformance with, the provisions of this chapter is a public nuisance and shall be punishable as such. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.102 Definitions.

All terminology used in this chapter, not defined in this section, shall be in conformance with the applicable publications of the American National Standards Institute (ANSI) or its successor body. The words and phrases used in this chapter are defined as follows:

- (a) "A-weighted sound level" shall mean the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.
- (b) "Ambient noise level" shall mean the composite of noise from all sources, near and far. In this context, the ambient noise level constitutes the normal or existing level of environmental noise at a given location.
- (c) "Construction" shall mean any site preparation, assembly, erection, or substantial repair, alteration, or similar action, but excluding demolition, for or on public or private rights-of-way, structures, utilities, or similar property.
- (d) "Cumulative period" shall mean an additive period of time composed of individual time segments which may be continuous or interrupted.
- (e) "Decibel (dB)" shall mean a unit for measuring the amplitude of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) microPascals (twenty (20) microNewtons per square meter).
- (f) "Demolition" shall mean any dismantling, intentional destruction, or removal of structures, utilities, public or private right-of-way surfaces, or similar property.
- (g) "Emergency" shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

(h) "Emergency work" shall mean any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

(i) "Fixed noise source" shall mean a stationary device which creates sounds while fixed or motionless, including, but not limited to, residential, agricultural, industrial, and commercial machinery and equipment, pumps, fans, compressors, air-conditioners, and refrigeration equipment.

(j) "Impulsive sound" shall mean a sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

(k) "Intrusive noise" shall mean that noise which intrudes over and above the existing ambient noise at a given location. The relative intrusiveness of a sound depends upon its amplitude, duration, frequency, time of occurrence, and tonal or informational content, as well as the prevailing ambient noise level.

(l) "Land use district" shall mean all the zones established by Section 10-2.300 of Chapter 2 of Title 10 of this Code.

(m) "Licensed" shall mean the issuance of a formal license or a permit by the appropriate jurisdictional authority, or, where no permits or licenses are issued, the sanctioning of the activity by the jurisdiction as noted in public records.

(n) "Mobile noise source" shall mean any noise source other than a fixed noise source.

(o) "Motor vehicle" shall mean any and all self-propelled vehicles as defined in the Vehicle Code of the State, including all on-highway type motor vehicles subject to registration under said Code and all off-highway type motor vehicles subject to identification under said Code.

(p) "Muffler or sound dissipative device" shall mean a device for abating the sound of escaping gases of an internal combustion engine.

(q) "Noise" shall mean any sound which annoys, disturbs, causes, or tends to cause an adverse psychological or physiological effect on humans of normal sensitiveness.

(r) "Noise Control Officer (NCO)" shall be the Chief of Police or his delegated representative. The NCO shall have the lead responsibility for the enforcement of the provisions of this chapter.

(s) "Noise disturbance" shall mean any sound which:

- (1) Endangers or injures the safety or health of humans; or
- (2) Annoys or disturbs a person of normal sensitiveness; or
- (3) Endangers or injures personal or real property.

(t) "Person" shall mean any individual, association, partnership, or corporation and shall include any officer, employee, department, agency, or instrumentality of the State.

(u) "Presumed ambient noise level" shall mean the noise level assumed to be the ambient of any given land use category.

(v) "Public right-of-way" shall mean any street, avenue, boulevard, highway, sidewalk, alley, or similar place which is owned or controlled by a governmental entity.

(w) "Public space (public property)" shall mean any real property, or structure thereon, which is owned or controlled by a governmental entity.

(x) "Pure tone (single tone)" shall mean any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of this chapter, a pure tone shall exist if the one-third (1/3) octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dB for center frequencies of 500 Hz and above, by eight (8) dB for center frequencies between 160 and 400 Hz, and by fifteen (15) dB for center frequencies less than or equal to 125 Hz.

(y) "Real property boundary, property lines, leasehold boundaries" shall mean an imaginary line along the

ground surface and its vertical extension, which line separates the real property or leasehold owned or controlled by one person from that owned or controlled by another person, including intra-building real or leased property divisions.

(z) "Receiving land use district category" shall mean the defined area or region of a generally consistent land use wherein the ambient noise levels are generally similar (within a range of five (5) dBA) Typically, all sites within any given land use district category will be of comparable proximity to major noise sources.

(aa) "Sound" shall mean an oscillation in pressure, particle displacement, particle velocity, or other physical parameter in a medium with internal forces that cause the compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

(ab) "Sound amplifying equipment" shall mean any machine or device for the amplification of the human voice, music, or any other sound, excluding internal automobile sound sources when used and heard only by the occupants of the vehicle in which such sound source is contained, and, as used in this chapter, warning and communication devices on public health and safety vehicles.

(ac) "Sound level" shall mean the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in the American National Standards Institute specifications for sound level meters (ANSI S 1.4-1971, or the latest approved revision thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

(ad) "Sound level meter" shall mean an instrument, including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels, which instrument satisfies the requirements pertinent for type S2A meters in the American National Standard specifications for sound level meters (S 1.4-1971, or the most recent revision thereof).

(ae) "Sound pressure" shall mean the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space as produced by sound energy.

(af) "Sound pressure level" shall mean twenty (20) times the logarithm to the base ten (10) of the ratio of the RMS sound pressure to the reference pressure of twenty (20) microPascals ($20 \times 10^{-6} \text{ N/m}^2$). The sound pressure level is denoted LP or SPL and is expressed in decibels.

(ag) "Sound truck" shall mean any motor vehicle, or any other vehicle, except public health and safety vehicles, regardless of motive power, whether in motion or stationary, having mounted thereon or attached thereto any sound amplifying equipment.

(ah) "Vibration" shall mean the mechanical motion of the earth or ground, buildings, or other types of structures induced by the operation of any mechanical device or equipment located upon or affixed thereto. For the purposes of this chapter, the magnitude of the vibration shall be stated as the acceleration in "g" units (one "g" is equal to 32.2 ft/sec^2 or $9.81 \text{ meters/sec}^2$).

(ai) "Weekday" shall mean any day, Monday through Friday, which is not a legal holiday. (§ 1, Ord. 2183 c.s., eff. August 11, 1976, as amended by § 1(37), Ord. 2844 c.s., eff. November 4, 1999)

Article 2 Noise Measurement Procedure

4-24.201 Investigations.

Upon the receipt of a complaint from a citizen, the Noise Control Officer or his delegated representative, equipped with sound level measurement equipment, shall investigate the complaint. The investigation, at the discretion of the NCO or his delegated representative, shall consist of a measurement and the gathering of data to adequately define the noise problem and shall include, but not be limited to, the following:

- (a) Non-acoustic data.
- (1) The type of the noise source;

- (2) The location of the noise source relative to the complainant's property;
- (3) The time period during which the noise source is considered by the complainant to be intrusive;
- (4) The total duration of the noise produced by the noise source; and
- (5) The date and time of the noise measurement survey.

(b) Actual measurement procedures. Utilizing the A-weighting scale of the sound level meter, the noise level shall be measured at a position or positions along the complainant's property line closest to the noise source or at the location along the boundary line where the noise level is at maximum. In general, the microphone shall be located five (5') feet above the ground, ten (10') feet or more from the nearest reflective surface where possible. However, in those cases where another elevation is deemed appropriate, the latter shall be utilized. If the noise complaint is related to interior noise levels, interior noise measurements shall be made within the affected residential unit or within the commercial or industrial structure, and the alleged violations shall be plotted against the standards set forth in Article 4 of this chapter. The measurement shall be made at a point at least four (4') feet from the wall, ceiling, or floor nearest the noise source with the windows in the normal seasonal configuration. The calibration of the instrument being used shall be performed immediately prior to recording any noise data utilizing an acoustic calibrator. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

Article 3 Exterior Noise Limits

4-24.301 Maximum permissible sound levels by land use categories.

The noise standards for the various categories of land use districts identified shall be the higher of either the presumed or actual measured ambient and shall apply to all such property within a designated category as follows:

Receiving Land Use District Category	Time Period	Presumed Ambient Level (dBA)
Low Density	10:00 p.m. to 7:00 a.m.	45
Residential R-1-A, R-1, R-2, P-D-R, P-U-D Overlay	7:00 a.m. to 10:00 p.m.	50
Medium Density	10:00 p.m. to 7:00 a.m.	50
Residential R-3, R4, P-D-R, P-U-D Overlay	7:00 a.m. to 10:00 p.m.	55
High Density	10:00 p.m. to	55

	7:00 a.m.	
Residential R-5, R-6, P-D-R, P- U-D Overlay, C- I	7:00 a.m. to 10:00 p.m.	60
Commercial NSC,	10:00 p.m. to 7:00 a.m.	60
CSC, GC, P- D-C	7:00 a.m. to 10:00 p.m.	65
Industrial P- D-I	10:00 p.m. to 7:00 a.m.	60
	7:00 a.m. to 10:00 p.m.	65
Industrial P-I	10:00 p.m. to 7:00 a.m.	70
	7:00 a.m. to 10:00 p.m.	70

As indicated above, the presumed ambient levels in the Planned Development Residential (P-D-R) and the Planned Unit Development (P-U-D) Overlay land use districts are categorized so as to be consistent with the actual density of the development. The presumed ambient levels for the Planned Development (P-D) and the Civic Center (C-C) land use districts shall be consistent with those established for the lowest adjacent land use district.

(a) Correction for time characteristics. No person shall operate, or cause to be operated, any source of sound at any location within the City or allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person which causes the noise level when measured on any other property to exceed:

- (1) The noise standard of the receiving land use district for a cumulative period of more than thirty (30) minutes in any hour; or
- (2) The noise standard of the receiving land use district plus five (5) dB for a cumulative period of more than fifteen (15) minutes in any hour; or
- (3) The noise standard of the receiving land use district plus ten (10) dB for a cumulative period of more than five (5) minutes in any hour; or

(4) The noise standard of the receiving land use district plus fifteen (15) dB for a cumulative period of more than one minute in any hour; or

(5) The noise standard of the receiving land use district plus twenty (20) dB for any period of time.

(b) Levels exceeding the noise limit categories. If the measured ambient level exceeds that permissible as set forth in subsections (1), (2), (3), and (4) of subsection (a) of this section, the allowable noise exposure standard shall be increased in five (5) dB increments as appropriate to encompass or reflect such ambient noise level. In the event the ambient noise level exceeds the noise level set forth in subsection (5) of subsection (a) of this section, the maximum allowable noise level shall be increased to reflect the maximum ambient noise level.

(c) Correction for location of noise source. If the measurement location is on a boundary between two (2) different land use district categories, the noise level limit applicable to the lower land use district category, plus five (5) dB shall apply.

(d) Correction for ambient noise levels when alleged offending sources cannot be shut down. If possible, the ambient noise shall be measured at the same location along the property line utilized in subsection (a) of this section with the alleged offending noise source inoperative. If for any reason the alleged offending noise source cannot be shut down, then the ambient noise shall be estimated by performing a measurement in the same general area of the source, but at a sufficient distance such that the offending noise from the source is inaudible. If the difference between the noise levels with the noise source operating and not operating, with the utilization of either of the above-described methods of measure-

ment, is six (6) dB or greater, then the noise measurement of the alleged source can be considered valid.

(e) Correction for character of sound. In the event the alleged offensive noise contains a steady audible tone, such as a whine, screech, or hum, or is a repetitive noise, such as hammering or riveting, the standard limits set forth in this section shall be reduced by five (5) dB. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

Article 4. Interior Noise Standards

4-24.401 Maximum permissible interior dwelling sound levels.

The following noise standards for various categories of land use presented as follows, unless otherwise specifically indicated, shall apply to all such structures within a designated land use district category with the windows in their normal seasonal configuration:

Receiving Land Use Category	Time Interval	Allowable Interior Noise Level (dBA)
Residential	10:00 p.m. to 7:00 a.m.	40
	7:00 a.m. to 10:00 p.m.	45
School	7:00 a.m. to 10:00 p.m.	45
Hospital and designated quiet areas	Any time	40

(a) Correction for time characteristics. No person shall operate, or cause to be operated, any source of sound

at any location within the City or allow the creation of any noise which causes the noise level, when measured inside the receiving structure, to exceed:

- (1) The noise standard for that land use district category as specified for a cumulative period of more than five (5) minutes in any hour; or
- (2) The noise standard plus five (5) dB for a cumulative period of more than one minute in any hour; or
- (3) The noise standard plus ten (10) dB for any period of time. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

Article 5. Specific Prohibitions

4-24.501 Street sales.

Offering for sale, selling anything, or advertising by shouting or outcry within any area of the City, except by a variance issued by the NCO, shall be prohibited. The provisions of this section shall not be construed to prohibit the selling by outcry of merchandise, food, and beverages at licensed sporting events, parades, fairs, circuses, or other similar licensed public entertainment events. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.502 Animals and fowl.

No person shall keep or maintain, or permit the keeping of, upon any premises owned, occupied, or controlled by such person, any animal or fowl otherwise permitted to be kept which, by any sound or outcry, shall result in noise levels at the complainants property line which are audible for more than five (5) minutes in any hour. (§ 1, Ord. 2183 c.s., eff. August 11, 1976, as amended by § 1, Ord. 2478 c.s., eff. October 15, 1987, § 1, Ord. 2528 c.s., eff. February 16, 1989, and § 1, Ord. 2592 c.s., eff. August 16, 1990)

4-24.503 Construction noise.

(a) All construction activity shall be prohibited, except between hours of 7:00 a.m. and 6:00 p.m. on Monday, Tuesday, Wednesday, Thursday, and Friday and between the hours of 9:00 a.m. and 5:00 p.m. on Saturday. No construction activity shall be permitted on Sunday, or the days on which the holidays designated as Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day are observed.

(b) In the case of an emergency, the Building Officer may issue a permit for construction activity for periods during which construction activity is prohibited by subsection (a) of this section. Such permit shall be issued for only the period of the emergency. Where feasible, the Building Officer shall notify the residential occupants within 300 feet of any emergency construction activity of the issuance of any permit authorized by this subsection.

(c) If the Building Officer should determine that the peace, comfort, and tranquility of the occupants of residential property will not be impaired because of the location or nature of the construction activity, the Building Officer may issue a permit for construction activity for periods during which construction activity is prohibited by subsection (a) of this section.

(d) For purposes of this section, "construction activity" shall mean the erection, excavation, demolition, alteration, or repair of any building.

(e) Exemption. This section shall not be applicable to minor repairs or routine maintenance of residential dwelling units. (§ 1, Ord. 2183 c.s., eff. August 11, 1976, as amended by § 2, Ord. 2535 c.s., eff. April 13, 1989, and § 1, Ord. 2608 c.s., eff. January 3, 1991)

4-24.504 Vibration.

The operation or permitting the operation of any device which creates vibration which is above the vibration perception threshold of an individual at or beyond the property boundary of the source if on private property, or at

150 feet (forty-six (46) meters) from the source if on a public space or public right-of-way, shall be prohibited. For the purposes of this section, "vibration perception threshold" shall mean the minimum ground or structure-borne vibrational motion necessary to cause a normal person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or the visual observation of moving objects. The perception threshold shall be presumed to be .001 "g's" in the frequency range from zero to thirty (30) Hz and .003 "g's" in the frequency range between thirty (30) and 100 Hz. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.505 Stationary non-emergency signaling devices.

(a) The sounding or permitting the sounding of any electronically-amplified signal from any stationary bell, chime, siren, whistle, or similar device intended primarily for non-emergency purposes, from any place, for more than ten (10) seconds in any hourly period shall be prohibited.

(b) Houses of religious worship shall be exempt from the provisions of this section.

(c) Sound sources covered by the provisions of this section and not exempted by subsection (b) of this section shall be exempted only by a variance issued by the NCO. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.506 Emergency signaling devices.

(a) The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary emergency signaling device, except for emergency purposes or for testing as provided in subsection (b) of this section, shall be prohibited.

(b) The testing of a stationary emergency signaling device shall not occur before 7:00 a.m. or after 7:00 p.m. Any such testing shall only use the minimum cycle test time. In no case shall such test time exceed sixty (60) seconds. The testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not normally occur more than once in each calendar month. Such testing shall not occur before 7:00 a.m. or after 10:00 p.m. The time limit specified for testing an emergency signaling device shall not apply to the testing of a complete emergency signaling system.

(c) The sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm shall not occur unless such alarm is automatically terminated within fifteen (15) minutes after activation. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.507 Domestic power tools.

(a) The operation or permitting the operation of any mechanical power saw, sander, drill, grinder, lawn or garden tool, or similar tool, or pneumatic or other air-powered tool between 10:00 p.m. and 7:00 a.m. of the following day so as to be audible to the NCO at the complainant's real property line shall be prohibited.

(b) Any pneumatic or other air-powered tool, motor, machinery, pump, or the like shall be properly muffled and maintained in good working order.

(c) It is unlawful to operate any motorized leaf blower within the City during the following hours:

(1) From 5:00 p.m. through 8:00 a.m. on Monday through Friday; and

(2) From 6:00 p.m. through 9:00 a.m. on Saturday.

(d) It is unlawful to operate any motorized leaf blower within the City on Sunday. (§ 1, Ord. 2183 c.s., eff. August 11, 1976, as amended by § 1, Ord. 2450 c.s., eff. November 20, 1986, § 1, Ord. 2478 c.s., eff. October 15, 1987, and § 1, Ord. 3097 c.s., eff. October 18, 2012)

4-24.508 Motor vehicles operating on public rights-of-way.

Motor vehicle noise limits on a public right-of-way are regulated as set forth in Sections 23130 and 23130.5 of the Vehicle Code of the State. Equipment violations which create noise problems are regulated by Sections 27150 and 27151 of said Code. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.509 Refuse collection vehicles.

No person shall operate any refuse collection vehicle between the hours of 7:00 p.m. and 7:00 a.m. the following day in a residential area. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.510 Southern California Edison Company.

The Southern California Edison Company steam plant, bounded by the A.T. & S.F. Railroad, Beryl Street, Harbor Drive, and Herondo Street, shall be allowed to produce a maximum of seventy-two (72) dBA at its property lines until January 1, 1978. Commencing January 1, 1978, said facility shall be required to comply with the provisions of Sections 4-24.301 of Article 3 and 4-24.401 of Article 4 of this chapter. If for any reason it is suspected that Southern

California Edison Company may be in violation of the maximum sound level provided by this section prior to January 1, 1978, monitoring shall be carried out at its property lines. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.511 Oil drilling and pumping sites.

The provisions of this section shall be in addition to the provisions set forth in Chapter 11 of Title 4 (Oil Wells) of this Code.

(a) Pumping phases. Until January 1, 1978, all oil drilling and pumping sites within the City boundaries, while in the pumping phase of operation, shall be allowed to produce a maximum of sixty (60) dBA at their property lines. As of January 1, 1978, all oil drilling and pumping sites within the City boundaries, while in the pumping phase of operation, shall be required to comply with the provisions of Sections 4-24.301 of Article 3 and 4-24.401 of Article 4 of this chapter.

(b) Drilling, rework, or maintenance phases. Until January 1, 1978, all oil drilling, rework, or maintenance sites within the City boundaries, while in the drilling, rework, or maintenance phases of operation, shall be allowed to produce a maximum of sixty-five (65) dBA at their property lines. As of January 1, 1978, all oil drilling and pumping sites within the City boundaries, while in the drilling, rework, or maintenance phases of operation, shall be required to comply with the provisions of Sections 4-24.301 of Article 3 and 4-24.401 of Article 4 of this chapter.

(c) Monitoring. If for any reason it is suspected that any oil drilling and pumping site, while either in the pumping, drilling, rework, or maintenance phases of operation, may be in violation of the provisions of this section prior to January 1, 1978, monitoring shall be carried out at its property lines. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.512 Sound amplifying equipment.

It is unlawful for any person, other than personnel of law enforcement or governmental agencies, to install, use, or operate within the City a loudspeaker or sound amplifying equipment in a fixed or movable position or mounted upon any sound truck for the purpose of giving instructions, directions, talks, addresses, or lectures or transmitting music to any person or assemblage of persons in or upon any street, alley, sidewalk, park, place, or public property without first filing an application for a variance and obtaining approval thereof as set forth in Article 7 of this chapter. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.513 Amplified sounds: Electronic devices.

It is unlawful for any person to permit the transmission of, or cause to be transmitted, any amplified sound on any public street, sidewalk, alley, right-of-way, park, or any other public place or property which sound is clearly audible for a distance in excess of fifty (50') feet from the source of such sound. This section shall not apply to any non-commercial public speaking, public assembly, or other activity for which a permit has been issued. (§ 2, Ord. 2478 c.s., eff. October 15, 1987)

4-24.514 Amplified sounds: Motor vehicles.

It is unlawful for the operator of any motor vehicle to permit the transmission of, or cause to be transmitted, any amplified sound which is clearly audible to other than the occupants of the vehicle. For the purposes of this section, "amplified sound" shall not include horns or any other legal warning devices used on motor vehicles. (§ 2, Ord. 2478 c.s., eff. October 15, 1987)

4-24.515 Pandemoniac vehicles: Defined: Prohibited: Exemptions.

(a) Defined. For the purposes of this section, "pandemoniac motor vehicle" shall mean a motor vehicle of any appearance, performance, or capability, designed, constructed, or operated in such a manner as to create audible noise related to tire friction by accelerating such vehicle.

(b) Prohibited. It is unlawful for any person to operate a pandemoniac motor vehicle on any street or in any other place within the City.

(c) Exemption. This section shall not apply to an area expressly designated by ordinance or resolution as a "raceway" or "dragstrip." (§ 2, Ord. 2478 c.s., eff. October 15, 1987)

4-24.516 Places of public entertainment.

The operation or playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound in any place of public entertainment at a sound level greater than ninety (90) dBA as read by the slow response on a sound level meter at any point which is normally occupied by a customer shall be prohibited, unless a conspicuous and legible sign is located outside such place, near each public entrance, which sign states: "Warning, Sound Levels Within May Cause Permanent Hearing Impairment." (§ 2, Ord. 2478 c.s., eff. October 15, 1987)

Article 6 Special Provisions (Exemptions)

4-24.601 Emergency exceptions.

The provisions of this chapter shall not apply to:

- (a) The emission of sound for the purpose of alerting persons to the existence of an emergency; or
- (b) The emission of sound in the performance of emergency work. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.602 Warning devices.

Warning devices necessary for the protection of the public safety, such as police, fire, and ambulance sirens and train horns, shall be exempted from the provisions of this chapter. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.603 Exemptions from exterior and interior noise standards.

The provisions of Sections 4-24.301 of Article 3 and 4-24.401 of Article 4 of this chapter shall not apply to activities or stationary noise sources covered by the following sections of Article 5 of this chapter:

- (a) 4-24.501--Street sales;
- (b) 4-24.502--Animals and fowl;
- (c) 4-24.505--Stationary non-emergency signaling devices;
- (d) 4-24.506--Emergency signaling devices;
- (e) 4-24.507--Domestic power tools;
- (f) 4-24.508--Motor vehicles operating on public rights-of-way;
- (g) 4-24.509--Refuse collection vehicles;
- (h) 4-24.510--Southern California Edison Company until January 1, 1978;
- (i) 4-24.511--Oil drilling and pumping sites until January 1, 1978; and
- (j) 4-24.512--Sound amplifying equipment.

(§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.604 Exemptions from exterior and interior noise standards: Federal and State preempted activities.

The provisions of Sections 4-24.301 of Article 3 and 4-24.401 of Article 4 of this chapter shall not apply to any activity to the extent regulation thereof has been preempted by State or Federal laws. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

Article 7 Variances

4-24.701 Special variances.

(a) The NCO is authorized to grant a variance for an exception from any provision of this chapter, subject to limitations as to area, noise levels, time limits, and other terms and conditions as the NCO determines are appropriate to protect the public health, safety, and welfare from the noise emanating therefrom. The provisions of this section shall in no way affect the duty to obtain any permit or license required by law for such activities.

(b) Any person seeking a variance pursuant to this section shall file an application with the NCO. The application shall contain information which demonstrates that bringing the source of sound or activity for which the variance is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community, or on other persons. The application shall be accompanied by a fee of Seventy-Five and no/100ths (\$75.00) Dollars, unless, at the discretion of the NCO, the fee shall be waived.

A separate application shall be filed for each noise source; provided, however, several mobile sources under common ownership of several fixed sources on a single property may be combined into one application. Any individual who claims to be adversely affected by the allowance of the variance may file a statement with the NCO containing any information to support his claim. If at any time the NCO finds that a sufficient controversy exists regarding an application, a public hearing may be held.

(c) In determining whether to grant or deny the application, the NCO shall balance the hardship on the applicant, the community, or other persons against the adverse impact on the health, safety, and welfare of the persons affected and property affected and any other adverse impacts. Applicants for variances will be required to submit such information as the NCO may reasonably require. In granting or denying an application, the NCO shall keep on public file a copy of the decision and the reasons for denying or granting the application.

(d) A variance shall be granted by a notice to the applicant containing all the necessary conditions, including the time limits on the permitted activity. The variance shall not become effective until all the conditions are agreed

to by the applicant. Noncompliance with any condition of the variance shall terminate the variance and subject the person holding it to those provisions of this chapter for which the variance was granted.

(e) A variance will not exceed 365 days after the date on which it was granted. Applications for extensions of the time limits specified in variances or for the modification of other substantial conditions shall be treated like applications for initial variances. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.702 Appeals.

Any person aggrieved by the approval or disapproval of a variance, within fifteen (15) days after the date of such approval or disapproval, may appeal the decision of the NCO to the Council. The Council shall hold a hearing thereon, upon notice to the applicant, considering the same criteria presented to the NCO. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

Article 8 Enforcement

4-24.801 Prima facie violations.

Any noise exceeding the noise level limits for a designated receiving land use district category, as specified in Sections 4-24.301 of Article 3 and 4-24.401 of Article 4 of this chapter, or the prohibited actions as specified in Article 5 of this chapter, shall be deemed to be prima facie evidence of a violation of the provisions of this chapter. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.802 Abatement orders.

(a) Except as provided in subsection (b) of this section, and before issuing a notice of violation as provided for in Section 4-24.803 of this article, the NCO responsible for the enforcement of any provision of this chapter may issue an order requiring the abatement of a sound source alleged to be in violation within a reasonable time period according to guidelines which the NCO may prescribe.

(b) An abatement order shall not be issued for any violation which is deemed a misdemeanor or when the NCO has reason to believe there will not be compliance with an abatement order.

(c) No complaint or further action shall be taken in the event the cause of the violation has been removed or when the condition has been abated or fully corrected within the time period specified in the written notice. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.803 Notices of violations.

Except where a person is acting in good faith to comply with an abatement order issued pursuant to Section 4-24.802 of this article, the violation of any provision of this chapter shall be cause for a notice of violation to be issued by the NCO according to procedures which the NCO may prescribe. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.804 Violations: Additional remedies: Injunctions.

As an additional remedy, the operation or maintenance of any device, instrument, vehicle, or machinery in violation of any provision of this chapter, which operation or maintenance causes or creates sound levels or vibrations exceeding the allowable limits as specified in this chapter, shall be deemed and is hereby declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. Additionally, no provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injuries or damages arising from any

violation of this chapter or from other laws. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

4-24.805 Severability.

If any provision of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this chapter shall not be invalidated. (§ 1, Ord. 2183 c.s., eff. August 11, 1976)

View the [mobile version](#).

(2) Redondo Beach Construction Hours Ordinance

[Title 4 PUBLIC WELFARE, MORALS, AND CONDUCT](#)

[Chapter 24 NOISE REGULATION](#)

[Article 5. Specific Prohibitions](#)

[remove highlighting]

4-24.503 Construction noise.

(a) All **construction** activity shall be prohibited, except between hours of 7:00 a.m. and 6:00 p.m. on Monday, Tuesday, Wednesday, Thursday, and Friday and between the hours of 9:00 a.m. and 5:00 p.m. on Saturday. No **construction** activity shall be permitted on Sunday, or the days on which the holidays designated as Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day are observed.

(b) In the case of an emergency, the Building Officer may issue a permit for **construction** activity for periods during which **construction** activity is prohibited by subsection (a) of this section. Such permit shall be issued for only the period of the emergency. Where feasible, the Building Officer shall notify the residential occupants within 300 feet of any emergency **construction** activity of the issuance of any permit authorized by this subsection.

(c) If the Building Officer should determine that the peace, comfort, and tranquility of the occupants of residential property will not be impaired because of the location or nature of the **construction** activity, the Building Officer may issue a permit for **construction** activity for periods during which **construction** activity is prohibited by subsection (a) of this section.

(d) For purposes of this section, "**construction** activity" shall mean the erection, excavation, demolition, alteration, or repair of any building.

(e) Exemption. This section shall not be applicable to minor repairs or routine maintenance of residential dwelling units. (§ 1, Ord. 2183 c.s., eff. August 11, 1976, as amended by § 2, Ord. 2535 c.s., eff. April 13, 1989, and § 1, Ord. 2608 c.s., eff. January 3, 1991)

View the [mobile version](#).

[Title 9 BUILDING REGULATIONS](#)

[Chapter 1 BUILDING CODE](#)

[remove highlighting]

9-1.12 Construction noise.

(a) All **construction** activity shall be prohibited, except between hours of 7:00 a.m. and 6:00 p.m. on Monday, Tuesday, Wednesday, Thursday, and Friday and between the hours of 9:00 a.m. and 5:00 p.m. on Saturday. No **construction** activity shall be permitted on Sundays, or the days on which the holidays designated as Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day are observed.

(b) In the case of an emergency, the Building Officer may issue a permit for **construction** activity for periods during which **construction** activity is prohibited by subsection (a) of this section. Such permit shall be issued for only the period of the emergency. Where feasible, the Building Officer shall notify the residential occupants within 300 feet of any emergency **construction** activity of the issuance of any permit authorized by this subsection.

(c) If the Building Officer should determine that the peace, comfort, and tranquility of the occupants of residential property will not be impaired because of the location or nature of the **construction** activity, the Building Officer may issue a permit for **construction** activity for periods during which **construction** activity is prohibited by subsection (a) of this section.

(d) For purposes of this section, "**construction activity**" shall mean the erection, excavation, demolition, alteration, or repair of any building.

(e) Exemption. This section shall not be applicable to minor repairs or routine maintenance of residential dwelling units. (§ 17, Ord. 3009 c.s., eff. December 6, 2007)

View the [mobile version](#).

**(3)(a) Urgency Interim Ordinance Imposing Moratorium
12-03-13**

URGENCY ORDINANCE NO. 3116-13

AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, IMPOSING A MORATORIUM ON DEVELOPMENT OF ELECTRICAL GENERATING FACILITIES IN THE COASTAL ZONE AND DECLARING THE URGENCY THEREOF

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, DOES HEREBY FIND AS FOLLOWS:

WHEREAS, the AES Power Plant was built within the City of Redondo Beach prior to the enactment of the California Coastal Act in 1976, at a time when large electrical generation plants were commonly located near the ocean in order to allow the use of ocean water for cooling of the generating facilities; and

WHEREAS, the California Coastal Act was enacted to protect and preserve the California Coastal Zone as an environmental, recreational and economic resource for the benefit of all Californians; and

WHEREAS, under the California Coastal Act industrial uses, including electrical power generating facilities, are a disfavored use and are encouraged only where the use is coastal dependent, meaning that the use requires a location on or near the ocean in order to be able to function, or where the use is directly supportive of other coastal-related uses, such as fishing or boating; and

WHEREAS, it is necessary to phase out existing land uses that do not conform to the development policies and priorities of the Coastal Act in order to achieve the purposes of the Coastal Act and to maximize long-term beneficial use of the Coastal Zone; and

WHEREAS, the AES Power Plant is located in the coastal zone of the City and is incompatible with other existing and permitted uses in the Harbor-Pier area and adjoining areas of the City, and the AES Power Plant is a source of major visual blight, noise and air pollution that has discouraged economically beneficial new development and redevelopment for higher priority coastal uses in the City's coastal zone and in the Harbor-Pier area in particular; and

WHEREAS, the City is now undertaking major efforts to encourage redevelopment and revitalization of the Harbor/Pier area of the City's coastal zone for the benefit of City residents, visitors and businesses; and

WHEREAS, on May 4, 2010 the State Water Resources Control Board adopted Resolution No. 2010-0020, generally requiring that the use of existing

power plant cooling systems that rely on natural ocean waters be terminated throughout the State of California by 2020; and

WHEREAS, on October 11, 2012, citizens of the City of Redondo Beach qualified an initiative measure, subsequently designated as Measure A, for the March 5, 2013 municipal election ballot. Measure A, if enacted, would have required termination of all electrical power generating on the AES property by December 31, 2020, and removal of all electrical generating facilities by December 31, 2022. Measure A further substantially limited future redevelopment of the AES property for other economically beneficial uses and required that 60-70% of the property be reserved for open space and public recreational uses; and

WHEREAS, public discussion and debate of Measure A confirmed that the great majority of residents, businesses and property owners in Redondo Beach believe that use of the AES property for electrical generating purposes is inconsistent with the policies of the California Coastal Act, economically damaging to the City as a whole and harmful to the public health, welfare and safety, and that such use should not be continued. Public discussion and debate also confirmed that the majority of residents, business and property owners in the City believe that the owners of the AES property should be treated fairly and should be allowed the opportunity to redevelop the AES property in an economically beneficial manner, consistent with the policies of the California Coastal Act and with the overriding purposes of the City's General Plan and certified Local Coastal Program.

WHEREAS, on November 20, 2012 AES filed an application with the California Energy Commission for approval of plans to substantially reconstruct the existing AES Power Plant and continue its operations on the AES property for the foreseeable future; and

WHEREAS, the reconstructed AES Power Plant would not be a coastal dependent facility within the meaning of the Coastal Act, and would therefore be inconsistent with the development policies and priorities of the Coastal Act; and

WHEREAS, existing plans and studies have shown that continued use of the AES property for electrical generating facilities is not necessary to guarantee an adequate supply of electricity for the State of California; and

WHEREAS, notwithstanding the plant modifications now proposed by AES, continued operation of electrical generating facilities on the AES property would continue to be incompatible with existing and other permitted uses of property in the surrounding area; would continue to be a source of visual blight, noise and air pollution; and would continue to discourage economically beneficial new development for public recreational uses, visitor-serving commercial uses and other beneficial uses in the City's coastal zone; and

WHEREAS, on March 5, 2012, Measure A failed to pass by a vote of 6,553 votes against versus 6,295 votes in favor; and

WHEREAS, in order to protect the public health, safety and welfare, it is now necessary for the City to undertake action to review and revise applicable provisions of the City's General Plan, certified Local Coastal Program and the Harbor/Civic Center Specific Plan in order to provide for elimination, within a reasonable time, of electrical generating facilities in the City's coastal zone and replacement of electrical generating facilities on the AES property with alternate uses that are consistent with the policies of the California Coastal Act and overriding purposes of the City's certified Local Coastal Program, and which will also provide for reasonable economically beneficial use of the property by the owner or owners; and

WHEREAS, an application for approval of any new electrical generating facilities or modified electrical generating facilities in the City's coastal zone poses an immediate threat to the public health, safety, and welfare, in that approval of such application would serve to perpetuate and extend unnecessary noise, air pollution and visual and economic blight of the City's coastal zone to the detriment of the public health, safety and welfare, and would prevent implementation of the statewide policies of the California Coastal Act and overriding policies of the City's General Plan and certified Local Coastal Program; and

WHEREAS, Government Code § 65858 provides that a city council may adopt by a four fifths vote as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a general plan or zoning measures that the city is considering or studying or intends to study within a reasonable time; and

WHEREAS, City planning staff have fully evaluated the potential environmental effects of adoption of the interim ordinance temporarily barring discretionary approvals for new or modified electrical generating facilities in the City's coastal zone, and the City Council has, concurrently with consideration of this ordinance, approved a negative declaration certifying that the interim ordinance would not cause any significant environmental effects within the meaning of the California Environmental Quality Act.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. There is hereby imposed a moratorium on the approval of any conditional use permit, coastal development permit or any other discretionary City permit or approval for the construction, expansion, replacement, modification or alteration of any facilities for the on-site generation of electricity on any

property located within the coastal zone, as designated by the California Coastal Act, within the City of Redondo Beach.

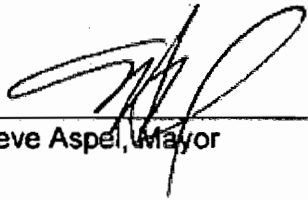
Section 2. It is the intent of the City Council that any proposal for new or modified non-coastal dependent electrical generating facilities within the City's coastal zone during the period of the moratorium shall be considered inconsistent with this Ordinance and with the City's land use policies and zoning regulations for all purposes, and by all agencies charged with reviewing any application for such use.

SECTION 3. This Ordinance shall be of no further force and effect 45 days from its date of adoption unless timely extended by further action of the City Council.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 5. The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute of the passage and adoption thereof in the records and proceedings of the City Council at which the same is passed and adopted. This ordinance shall be published by one insertion in the Easy Reader, the official newspaper of said City, and the same shall go into effect and be in full force and operation immediately.

PASSED, APPROVED, AND ADOPTED this 3rd day of December, 2013.



Steve Aspel, Mayor

ATTEST:

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF REDONDO BEACH)

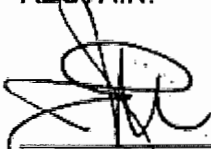
I, Eleanor Manzano, City Clerk of the City of Redondo Beach, California, do hereby certify that the foregoing Urgency Interim Ordinance No.3116-13 was duly introduced, approved and adopted at a regular meeting of the City Council held on the 3rd day of December, 2013, by the following vote:

AYES: GINSBURG, BRAND, AUST, SAMMARCO, KILROY

NOES: NONE

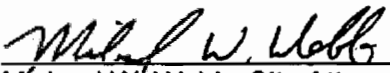
ABSENT: NONE

ABSTAIN: NONE

bce


Eleanor Manzano, City Clerk


APPROVED AS TO FORM:



Michael W. Webb, City Attorney

This is certified to be a true and correct copy of the original on file in this office.

DATED: 3.3.14

ATTEST: 

City Clerk of the City of Redondo Beach, State of California

**(3)(b) Extension of Urgency Interim Ordinance Imposing
Moratorium 01-14-14**

URGENCY ORDINANCE NO. 3120-14

**AN EXTENSION OF AN URGENCY INTERIM
ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF REDONDO BEACH, CALIFORNIA, IMPOSING A
MORATORIUM ON DEVELOPMENT OF
ELECTRICAL GENERATING FACILITIES IN THE
COASTAL ZONE**

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, DOES HEREBY FIND AS FOLLOWS:

WHEREAS, the AES Power Plant was built within the City of Redondo Beach prior to the enactment of the California Coastal Act in 1976, at a time when large electrical generation plants were commonly located near the ocean in order to allow the use of ocean water for cooling of the generating facilities; and

WHEREAS, the California Coastal Act was enacted to protect and preserve the California Coastal Zone as an environmental, recreational and economic resource for the benefit of all Californians; and

WHEREAS, under the California Coastal Act industrial uses, including electrical power generating facilities, are a disfavored use and are encouraged only where the use is coastal dependent, meaning that the use requires a location on or near the ocean in order to be able to function, or where the use is directly supportive of other coastal-related uses, such as fishing or boating; and

WHEREAS, it is necessary to phase out existing land uses that do not conform to the development policies and priorities of the Coastal Act in order to achieve the purposes of the Coastal Act and to maximize long-term beneficial use of the Coastal Zone; and

WHEREAS, the AES Power Plant is located in the coastal zone of the City and is incompatible with other existing and permitted uses in the Harbor-Pier area and adjoining areas of the City, and the AES Power Plant is a source of major visual blight, noise and air pollution that has discouraged economically beneficial new development and redevelopment for higher priority coastal uses in the City's coastal zone and in the Harbor-Pier area in particular; and

WHEREAS, the City is now undertaking major efforts to encourage redevelopment and revitalization of the Harbor/Pier area of the City's coastal zone for the benefit of City residents, visitors and businesses; and

WHEREAS, on May 4, 2010 the State Water Resources Control Board adopted Resolution No. 2010-0020, generally requiring that the use of existing

power plant cooling systems that rely on natural ocean waters be terminated throughout the State of California by 2020; and

WHEREAS, on October 11, 2012, citizens of the City of Redondo Beach qualified an initiative measure, subsequently designated as Measure A, for the March 5, 2013 municipal election ballot. Measure A, if enacted, would have required termination of all electrical power generating on the AES property by December 31, 2020, and removal of all electrical generating facilities by December 31, 2022. Measure A further substantially limited future redevelopment of the AES property for other economically beneficial uses and required that 60-70% of the property be reserved for open space and public recreational uses; and

WHEREAS, public discussion and debate of Measure A confirmed that the great majority of residents, businesses and property owners in Redondo Beach believe that use of the AES property for electrical generating purposes is inconsistent with the policies of the California Coastal Act, economically damaging to the City as a whole and harmful to the public health, welfare and safety, and that such use should not be continued. Public discussion and debate also confirmed that the majority of residents, business and property owners in the City believe that the owners of the AES property should be treated fairly and should be allowed the opportunity to redevelop the AES property in an economically beneficial manner, consistent with the policies of the California Coastal Act and with the overriding purposes of the City's General Plan and certified Local Coastal Program.

WHEREAS, on November 20, 2012 AES filed an application with the California Energy Commission for approval of plans to substantially reconstruct the existing AES Power Plant and continue its operations on the AES property for the foreseeable future; and

WHEREAS, the reconstructed AES Power Plant would not be a coastal, dependent facility within the meaning of the Coastal Act, and would therefore be inconsistent with the development policies and priorities of the Coastal Act; and

WHEREAS, existing plans and studies have shown that continued use of the AES property for electrical generating facilities is not necessary to guarantee an adequate supply of electricity for the State of California; and

WHEREAS, notwithstanding the plant modifications now proposed by AES, continued operation of electrical generating facilities on the AES property would continue to be incompatible with existing and other permitted uses of property in the surrounding area; would continue to be a source of visual blight, noise and air pollution; and would continue to discourage economically beneficial new development for public recreational uses, visitor-serving commercial uses and other beneficial uses in the City's coastal zone; and

WHEREAS, on March 5, 2012, Measure A failed to pass by a vote of 6,553 votes against versus 6,295 votes in favor; and

WHEREAS, in order to protect the public health, safety and welfare, it is now necessary for the City to undertake action to review and revise applicable provisions of the City's General Plan, certified Local Coastal Program and the Harbor/Civic Center Specific Plan in order to provide for elimination, within a reasonable time, of electrical generating facilities in the City's coastal zone and replacement of electrical generating facilities on the AES property with alternate uses that are consistent with the policies of the California Coastal Act and overriding purposes of the City's certified Local Coastal Program, and which will also provide for reasonable economically beneficial use of the property by the owner or owners; and

WHEREAS, an application for approval of any new electrical generating facilities or modified electrical generating facilities in the City's coastal zone poses an immediate threat to the public health, safety, and welfare, in that approval of such application would serve to perpetuate and extend unnecessary noise, air pollution and visual and economic blight of the City's coastal zone to the detriment of the public health, safety and welfare, and would prevent implementation of the statewide policies of the California Coastal Act and overriding policies of the City's General Plan and certified Local Coastal Program; and

WHEREAS, Government Code § 65858 provides that a city council may adopt by a four fifths vote as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a general plan or zoning measures that the city is considering or studying or intends to study within a reasonable time; and

WHEREAS, on December 3, 2013, at a duly noticed public hearing, the City Council adopted Urgency Interim Ordinance No. 3116-13, imposing a 45-day moratorium on the approval of any conditional use permit, coastal development permit, or any other discretionary City permit or approval for the construction, expansion, replacement, modification or alteration of any facilities for the on-site generation of electricity on any property located within the coastal zone, as designated by the California Coastal Act, within the City of Redondo Beach; and

WHEREAS, prior to adoption of Urgency Interim Ordinance No. 3116-13, City planning staff fully evaluated the potential environmental effects of adoption of the interim ordinance, and any extensions thereof, temporarily barring discretionary approvals for new or modified electrical generating facilities in the City's coastal zone, and the City Council, concurrently with its consideration of the ordinance, approved a negative declaration certifying that the interim

ordinance would not have any significant environmental effects within the meaning of the California Environmental Quality Act (CEQA); and

WHEREAS, Urgency Interim Ordinance No. 3116-13 expires on January 17, 2014; and

WHEREAS, at least ten days prior to the expiration of an interim ordinance, Government Code § 65858(d) requires the city council to issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance; and

WHEREAS, on December 26, 2013, at a duly noticed public hearing, the City Council unanimously voted to issue a Moratorium Status Report describing such measures; and

WHEREAS, Government Code § 65858 provides that a city council, after notice and a public hearing, may by a four fifths vote extend the interim ordinance for 22 months and 15 days; and

WHEREAS, notice of a public hearing on the extension of Urgency Interim Ordinance No. 3116-13 was published in the Easy Reader on January 2, 2014 in compliance with Government Code §§ 65858(b) and 65090; and

WHEREAS, a public hearing to consider the extension of Urgency Interim Ordinance No. 3116-13 was held by the City Council on January 14, 2014; and

WHEREAS, City planning staff have fully evaluated the potential environmental effects of extension of the interim ordinance pursuant to the Initial Environmental Study and Negative Declaration approved and adopted on December 3, 2013 and the City Council has, concurrently with its consideration of the extension, determined that no further environmental review is required under CEQA.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDONDO BEACH, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. There is hereby imposed a moratorium on the approval of any conditional use permit, coastal development permit or any other discretionary City permit or approval for the construction, expansion, replacement, modification or alteration of any facilities for the on-site generation of electricity on any property located within the coastal zone, as designated by the California Coastal Act, within the City of Redondo Beach.

SECTION 2. It is the intent of the City Council that any proposal for new or modified non-coastal dependent electrical generating facilities within the City's coastal zone during the period of the moratorium shall be considered inconsistent

with this Ordinance and with the City's land use policies and zoning regulations for all purposes, and by all agencies charged with reviewing any application for such use.


SECTION 3. This Ordinance shall be of no further force and effect 22 months and 15 days from its date of adoption.

SECTION 4. The City Council hereby finds that the above recitals are true and correct and incorporates the recitals herein by reference as if set forth in full.

SECTION 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 6. The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute of the passage and adoption thereof in the records and proceedings of the City Council at which the same is passed and adopted. This ordinance shall be published by one insertion in the Easy Reader, the official newspaper of said City, and the same shall go into effect and be in full force and operation immediately.

PASSED, APPROVED, AND ADOPTED this 14th day of January, 2014.



Steve Aspel, Mayor

ATTEST:

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF REDONDO BEACH)

I, Eleanor Manzano, City Clerk of the City of Redondo Beach, California, do hereby certify that the foregoing Urgency Interim Ordinance No. 3120-14 was duly introduced, approved and adopted at a regular meeting of the City Council held on the 14th day of January, 2014, by the following vote:

AYES: GINSBURG, BRAND, AUST, SAMMARCO, KILROY

NOES: NONE


ABSENT: NONE

ABSTAIN: NONE



Eleanor Manzano, City Clerk


APPROVED AS TO FORM:



Michael W. Webb, City Attorney

This is certified to be a true and correct copy of the original on file in this office.

DATED: 2.3.14

ATTES 

City Clerk of the City of Redondo Beach, State of California

(3)(c) Coastal Commission Letter to CEC 02-05-14

DOCKETED

Docket Number: 12-AFC-03

Project Title: Redondo Beach Energy Project

TN #: 201639

Document Title: Comment Letter Regarding CEC Review of Proposed Project

Description: N/A

Filer: Teraja Golston

Organization: California Coastal Commission

Submitter Role: Public Agency

Submission Date: 2/5/2014 1:29:51 PM

Docketed Date: 2/5/2014

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



February 5, 2014

Ms. Pat Kelly
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

VIA EMAIL: patricia.kelly@energy.ca.gov

RE: Comments on California Energy Commission Application for Certification (AFC) review of AES Southland LLC's proposed Redondo Beach Energy Project (#12-AFC-03)

Dear Ms. Kelly:

We are providing some initial comments on the above-referenced AFC review. Based on recent documentation provided in the AFC process, our comments at this time are limited to two issue areas – the potential presence of wetlands at the project site and the status of a recent urgency ordinance adopted by the City of Redondo Beach regarding power plants in the coastal zone. We plan to conduct a more thorough review later in your AFC process and provide a report from the Coastal Commission after Energy Commission staff issues its Preliminary Staff Assessment for the proposed project.¹

Wetlands

Coastal Commission staff reviewed several documents provided by AES, including biological information provided in the AFC application materials, Wetland Data Sheets, and a jurisdictional determination request to the Corps of Engineers. Additionally, on January 22, 2014, Coastal Commission staff ecologist, Dr. Jonna Engel, conducted a site visit at the proposed project site along with Energy Commission staff, Department of Fish and Wildlife biologists, and representatives from AES and CH2M Hill.

The site includes several areas that formerly held fuel oil storage tanks and their containment berms, and several pit areas that are, or were, used for various purposes. During the site visit, Dr. Engel observed wetland characteristics in several of these areas, including the entire containment areas of Former Tanks 1 through 3 and the Constructed Pit, and all or most of the containment area of Former Tank 4 (names of these areas are from Figure 2 of the January 31, 2013 jurisdictional determination request). Observed characteristics included ponding, secondary hydrology characteristics, and wetland vegetation. Based on information in the above-referenced materials and on site visit observations, we have determined that these areas include approximately five to six acres of Coastal Commission-jurisdictional wetlands.

¹ Pursuant to the Warren-Alquist Act, the CEC has sole permitting authority for locating or modifying power plants with a greater than 50-megawatt capacity, including those located in the coastal zone. Nevertheless, section 30413(d) of the Coastal Act expressly authorizes the Coastal Commission to participate in the CEC's proceedings and provide findings with respect to specific measures needed to bring a power plant project located within the coastal zone into conformity with Coastal Act and LCP policies.

We understand AES may want to conduct a delineation to better identify wetland areas in the Tank 4 area or elsewhere. Dr. Engel has provided AES with a guidance document that describes the recommended procedures for conducting the necessary delineation.

Status and Applicability of Urgency Ordinance #3120-14

We understand Energy Commission staff is reviewing the status and applicability of an urgency ordinance adopted by the City of Redondo Beach in response to this proposed project. As described below, it is Commission staff's position that the ordinance is not effective until approved by the Coastal Commission.

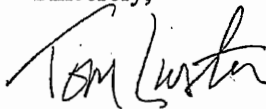
Background: On January 14, 2014, the City of Redondo Beach adopted a temporary urgency ordinance meant to prevent construction of power plants within the City's coastal zone for a period of approximately two years.² The ordinance, adopted pursuant to Government Code Section 65858, "imposes a moratorium on the approval of any conditional use permit, coastal development permit or any other discretionary City permit or approval for the construction, expansion, replacement, modification or alteration of any facilities for the on-site generation of electricity on any property located within the coastal zone." It further states that any proposal to build or modify a non-coastal dependent electrical generating facility in the coastal zone is to be considered inconsistent with the City's land use policies and zoning regulations. In the accompanying Administrative Report, the City states that "[a]lthough the moratorium in this case would affect land in the City's coastal zone, Coastal Commission certification is not required to make the moratorium effective." The City does not state the basis for this conclusion.

We have determined that the City's ordinance is not effective unless approved by the Coastal Commission. Coastal Act Section 30514(a) requires that all local implementing ordinances that would amend provisions of a certified Local Coastal Program (LCP) are to take effect only after approval by the Commission. This ordinance would amend the City's certified LCP; therefore it is subject to Commission approval. Specifically, the City's ordinance selectively prohibits a type of use that is currently allowed under the LCP, creating a conflict with the LCP. This conflict represents a proposed amendment to the LCP that is subject to review and approval by the Commission before it can become effective.

Conclusion

Thank you for this opportunity to comment. As noted above, we will provide a more thorough review later in the AFC process. Please feel free to contact me if you have questions.

Sincerely,



Tom Luster
Senior Environmental Scientist
Energy, Ocean Resources, and Federal Consistency Division

² The full ordinance is available at:
<http://redondo.siretechnologies.com/sirepub/cache/16/cerzsbvsnon0bv5lnd4vz1hh/2908501292014030751533.PDF>

(3)(d) Letter from City Attorney Michael Webb 03-03-14

DOCKETED

Docket Number: 12-AFC-03

Project Title: Redondo Beach Energy Project

TN #: 201825

Document Title: Letter from City Attorney Michael Webb 03-03-14

Description: Response to Coastal Commission Letter of February 5, 2014

Filer: Jon Welner

Organization: City of Redondo Beach (outside counsel)

Submitter Role: Intervenor

Submission Date: 3/3/2014 5:00:55 PM

Docketed Date: 3/3/2014



Office of
Michael W. Webb
City Attorney

415 Diamond Street, P.O. Box 270
Redondo Beach, California 90277-0270
www.redondo.org

tel 310 318-0655
fax 310 372-3886

March 3, 2014

Ms. Patricia Kelly
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Coastal Commission's February 5, 2014 Letter

Dear Ms. Kelley:

On February 5, 2014, Mr. Tom Luster, Senior Environmental Scientist of the California Coastal Commission ("Commission"), submitted a letter to you opining that Redondo Beach's moratorium ordinance¹ "is not effective unless approved by Coastal Commission." As explained below, the view expressed by Mr. Luster is incorrect. No approval by the Coastal Commission is required.

ANALYSIS

I. Coastal Commission Approval Is Only Required For The Addition Of Uses Not Designated In An LCP—Not For The Restriction Of Uses.

The City of Redondo Beach ("City") is disappointed in the Commission's opinion, and is surprised by its position given case law directly on point. The Commission sent a similar letter to the City of Imperial Beach on January 29, 1993, which also stated that its moratorium ordinance would not be effective unless approved by the Coastal Commission. Fortunately for the citizens of Imperial Beach and Redondo Beach, the California Court of Appeal disagreed with the Commission, and upheld the Imperial Beach moratorium

¹ The City initially adopted a 45-day moratorium ordinance pursuant to Government Code § 65858 on December 3, 2013 (Redondo Beach Ordinance 3116-13), which was later extended for 22 months and 15 days (Redondo Beach Ordinance 3120-14). These ordinances state, in part: "There is hereby imposed a moratorium on the approval of any conditional use permit, coastal development permit or any other discretionary City permit or approval for the construction, expansion, replacement, modification or alteration of any facilities for the on-site generation of electricity on any property located within the coastal zone... It is the intent of the City Council that any proposal for new or modified non-coastal dependent electrical generating facilities within the City's coastal zone during the period of the moratorium shall be considered inconsistent with this Ordinance and with the City's land use policies and zoning regulations for all purposes, and by all agencies charged with reviewing any application for such use." (Available online at: <http://laserweb.redondo.org/WebLink/Welcome.aspx>.)

Ms. Pat Kelly
California Energy Commission
March 3, 2014
Page 2

ordinance *without* the Commission's approval/certification. (See *Conway v. City of Imperial Beach* (1997) 52 Cal.App.4th 78.) The City believes the Commission's opinion is plainly incorrect, given the express language of the Coastal Act itself and in light of published opinions from the California Court of Appeal and the California Supreme Court.

The Commission's letter reasoned that certification by the Commission was required because "...the City's ordinance selectively prohibits a type of use that is currently allowed under the LCP, creating a conflict with the LCP." Contrary to the Commission's assertion, an amendment to a certified Local Coastal Program is statutorily defined as including "but is not limited to, any action by a local government *that authorizes the use* of a parcel of land other than a use designated in the certified local coastal program as a permitted use of the parcel." (Pub. Res. Code § 30514(e).) The City's moratorium ordinance does not authorize any use; rather, it temporarily prohibits the City from approving a specified use. (Ordinances 3116-13 and 3120-14, Sections 1 and 2.) Moreover, because the Warren-Alquist Act gives the CEC exclusive jurisdiction over the licensing of power plants, the moratorium ordinance does not actually prohibit the CEC from certifying a new or modified power plant; it merely requires the CEC to make the override findings under Pub. Res. Code § 25525.

Pub. Res. Code § 30005 expressly recognizes that the Coastal Act shall not be interpreted to limit "the power of a city...to adopt and enforce additional regulations, not in conflict with this act, *imposing further conditions, restrictions, or limitations* with respect to any *land or water use* or other activity which might adversely affect the resources of the coastal zone." As the California Supreme Court noted: "...*once an LCP has been approved by the Commission*, a local government has discretion to choose what action to take to implement its LCP: *it can decide to be more restrictive with respect to any parcel of land...*" (*Yost v. Thomas* (1984) 36 Cal.3d 561, 572-573; Pub. Res. Code § 30005.)

The precise argument Coastal Commission raises in their February 5, 2014 letter was expressly rejected by the California Court of Appeal in *Conway v. City of Imperial Beach* (1997) 52 Cal.App.4th 78, 84-90.² In *Conway* the City adopted a moratorium ordinance pursuant to Government Code § 65858 to temporarily reduce height limits and density within portions of the City's certified Local Coastal Program. Coastal Commission sent a letter which stated that the moratorium "...must be submitted for certification prior to becoming

² In recent communications with City regarding this issue, the Commission has cited two opinions by the California Attorney General ("AG") that were issued prior to *Conway* (70 Ops.Cal.Atty.Gen 220 (1987) and an informal opinion dated December 9, 1992). These opinions carry no weight after the *Conway* decision. Tellingly, the Commission has never asked the Attorney General to revisit this issue after *Conway*.

effective.” (*Id.* at 82.) In rejecting this argument the Court of Appeal noted:

...we conclude there is no conflict in this case between section 30514 (or other provisions of the Coastal Act) and Government Code section 65858. As the enactment under Government Code section 65858 did not “authorize a use other than that designated in the LCP as a permitted use,” 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. [¶] 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. [¶] *We hold that an interim ordinance which does not authorize “a use other than that designated in the LCP as a permitted use” need not be certified by the Coastal Commissions prior to implementation and enforcement.* (*Id.* at 89; Internal cites and footnotes omitted.)

II. The Moratorium Ordinances Further The Purpose Of The Coastal Act By Prohibiting A Use That Is No Longer Coastal Dependent.

As the California Energy Commission (“CEC”) is aware, on May 4, 2010 the State Water Resources Control Board (“SWRCB”) adopted Resolution No. 2010-0020, generally requiring that the use of existing power plant cooling systems that rely on natural ocean water be terminated throughout the State of California by 2020. Two years later, on November 20, 2012, AES Southland Development, LLC (“AES”) filed an application to substantially reconstruct the Redondo Beach AES Power Plant on November 20, 2012. The CEC determined the application was deemed complete on August 27, 2013.

The proposed AES power plant can no longer be considered a coastal dependent or coastal related facility under the Coastal Act. (See Pub. Res. Code §§ 30101, 30101.3.) The City’s current LCP provisions related to the AES site were drafted before SWRCB’s resolution and AES’s current proposal to construct a non-coastal dependent facility. This is the exact situation moratorium ordinances were designed to address. While power plants have historically been coastal dependent, the City should not be forced to accept a new non-coastal dependent facility, which is expressly at odds with the priority of uses under the Coastal Act. (See Pub. Res. Code §§ 30001.5(d) [“The Legislature further finds and declares that the basic goals of the state for the coastal zone are to: ... (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.”], 30101,

Ms. Pat Kelly
California Energy Commission
March 3, 2014
Page 4

30255, 30264.)

CONCLUSION

For the foregoing reasons, the moratorium ordinances passed by the City (Ordinances 3116-13 and 3120-14) are currently effective and do not need to be approved by the Coastal Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Webb". The signature is fluid and cursive, written in a professional style.

MICHAEL W. WEBB
City Attorney for Redondo Beach

(3)(e) *Yost v. Thomas*



User Name: Jonathan Welner

Date and Time: Apr 28, 2015 12:48 p.m. EDT

Job Number: 19488702

Document(1)

1. *Yost v. Thomas, 36 Cal. 3d 561*

Client/Matter: 73055-0002

Yost v. Thomas

Supreme Court of California

August 23, 1984

L.A. No. 31775

Reporter

36 Cal. 3d 561; 685 P.2d 1152; 205 Cal. Rptr. 801; 1984 Cal. LEXIS 203

Subsequent History: As Modified August 28, 1984.

Prior History: Superior Court of Santa Barbara County, No. 138092, John W. Holmes, Judge. *

Disposition: The judgment is reversed and the case is remanded to the trial court with directions to issue a peremptory writ of mandate ordering respondents to place the proposed referendum on the ballot for municipal election, provided there has been compliance with the formal filing requirements.

Core Terms

Coastal, local government, referendum, city council, policies, land use plan, coastal zone, hotel, designation, specific plan, legislative act, general plan, visitor-serving, recreational, resources, conformity, planning, zoning, subject to referendum, Residential, voters, open space, implementing, requirements, initiative, provisions, regulation, parcel, acres, zoning ordinance

Case Summary

Procedural Posture

Plaintiff voters appealed from the judgment of the Superior Court of Santa Barbara County (California) that denied, pursuant to the California Coastal Act, *Cal. Pub. Res. Code § 30000 et seq.*, their petition for writ of mandate to compel defendant city clerk to process a petition for referendum in opposition to three measures adopted by the city council to permit rezoning of coastal land that was subject to a state-approved land use plan.

Overview

Pursuant to its obligation under the California Coastal Act, *Cal. Pub. Res. Code § 30000 et seq.*, to adopt a local coastal

plan for property lying within its coastal zone, the city council for Santa Barbara, California, adopted a land use plan (LUP), which was subsequently approved by the California Coastal Commission. Thereafter, the city council adopted three measures that rezoned certain coastal land to permit commercial use by intervenor developer. Plaintiff voters then submitted a petition for a referendum in opposition to the measures, but defendant city clerk refused to process the petition and the superior court denied their petition for writ of mandate upon ruling that, by rezoning, the city council was acting administratively to implement the state-approved LUP and a referendum would thus not be valid. Plaintiffs appealed. In reversing, the court ruled that not all land use decisions made after a LUP was approved were administrative and the Act did not provide preemption or blanket immunity from referendum of such decisions. Rather, the rezoning of land and adoption of a specific plan were legislative decisions that were subject to voter review by referendum.

Outcome

The denial of writ of mandate was reversed because the trial court erred in ruling that the rezoning decision was administrative and that the proposed referendum would be legally invalid under the Act; blanket immunity from referendum was not provided under the Act; and, although the land use decision was made after a local coastal plan had been approved, it was a legislative decision, not administrative, and was thus subject to referendum.

LexisNexis® Headnotes

Governments > Legislation > Initiative & Referendum

Governments > Local Governments > Elections

HNI It is not a city clerk's function to determine whether a proposed referendum will be valid if enacted. These

* Assigned by the Chairperson of the Judicial Council.

questions may involve difficult legal issues that only a court can determine. The right to propose referendum measures cannot properly be impeded by a decision of a ministerial officer, even if supported by the advice of the city attorney, that the subject is not appropriate for submission to the voters.

Environmental Law > Land Use & Zoning > Initiative & Referendum

Governments > Legislation > Initiative & Referendum

Governments > Local Governments > Elections

Real Property Law > Zoning > Initiative & Referendum

HN2 Although certain actions of a city council may be characterized as administrative and therefore not subject to referendum, not all land use decisions made after a coastal plan has been adopted and approved by the California Coastal Commission fall into that category. The California Coastal Act, Cal. Pub. Res. Code § 30000 et seq., does not provide blanket immunity from the voters' referendum power.

Environmental Law > Natural Resources & Public Lands > Coastal Zone Management > Consistency Reviews

Real Property Law > Zoning > Comprehensive Plans

HN3 The California Coastal Act, Cal. Pub. Res. Code § 30000 et seq., was enacted by the legislature as a comprehensive scheme to govern land use planning for the entire coastal zone of California. The legislature found that the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people; that the permanent protection of the state's natural and scenic resources is a paramount concern; that it is necessary to protect the ecological balance of the coastal zone and that existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of the state. Cal. Pub. Res. Code §§ 30001(a) and (d).

Real Property Law > Zoning > Comprehensive Plans

HN4 See Cal. Pub. Res. Code § 30001.5.

Environmental Law > Natural Resources & Public Lands > Coastal Zone Management > Delineation & Identification

Real Property Law > Zoning > General Overview

Real Property Law > Zoning > Comprehensive Plans

Real Property Law > Zoning > Ordinances

Real Property Law > Zoning > Regional & State Planning

HN5 Under the California Coastal Act, Cal. Pub. Res. Code § 30000 et seq., a combination of local land use planning procedures and enforcement to achieve maximum responsiveness to local conditions, accountability, and public accessibility, as well as continued state coastal planning and management through a state coastal commission are relied upon to insure conformity with the provisions of the act. All local governments lying in whole or in part within the coastal zone must prepare and submit to the California Coastal Commission a local coastal plan (LCP), consisting of a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions. The precise content of each LCP is determined by the local government in full consultation with the Commission and must meet the requirements of, and implement the provisions and policies of the act at the local level.

Real Property Law > Zoning > Comprehensive Plans

HN6 The California Coastal Act, Cal. Pub. Res. Code § 30200 et seq., sets forth the specific policies which constitute the standards by which the adequacy of local coastal programs are to be determined. There are specific policies on public access to the sea and shorelines; recreational use; protection of the marine environment; protection of land resources; development; and industrial development.

Governments > Local Governments > Ordinances & Regulations

Real Property Law > Zoning > General Overview

Real Property Law > Zoning > Comprehensive Plans

Real Property Law > Zoning > Ordinances

HN7 Under the California Coastal Act, Cal. Pub. Res. Code § 30000 et seq., a local coastal plan (LCP) may be submitted to the California Coastal Commission all at once or in two phases -- a land use plan (LUP) and zoning ordinances, etc. The Commission will certify a LUP if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of § 30200 et seq. The Commission may only reject zoning ordinances on the grounds that they do not conform, or are inadequate to carry out the provisions of the certified land use plan. A certified LCP and all local implementing ordinances may be amended by a local government, but no such amendment shall take effect until it has been certified by the Commission. For the purposes of § 30514 an amendment of a certified local coastal program includes, but is not limited to, any action by the local government which authorizes a use of a parcel of land other than that designated in the LCP as a permitted use.

Real Property Law > Zoning > Comprehensive Plans

HN8 See Cal. Pub. Res. Code § 30512.2.

Real Property Law > Zoning > Comprehensive Plans

HN9 See Cal. Pub. Res. Code § 30221.

Real Property Law > Zoning > Comprehensive Plans

HN10 See Cal. Pub. Res. Code § 30222.

Real Property Law > Zoning > Comprehensive Plans

HN11 See Cal. Pub. Res. Code § 30210.

Governments > Legislation > General Overview

Governments > Legislation > Initiative & Referendum

Governments > Local Governments > Elections

HN12 The powers of referendum and initiative apply only to legislative acts by a local governing body. Acts of a local governing body which, in a purely local context, would otherwise be legislative and subject to referendum may, however, become administrative in a situation in which the state's system of regulation over a matter of statewide concern is so pervasive as to convert the local legislative body into an administrative agent of the state.

Family Law > Adoption > Disclosures > General Overview

Governments > Legislation > Initiative & Referendum

Governments > Local Governments > Elections

Real Property Law > Zoning > Administrative Procedure

Real Property Law > Zoning > Initiative & Referendum

HN13 The adoption of a general plan is a legislative act. The amendment of a legislative act is itself a legislative act and the amendment of a general plan is thus a legislative act subject to referendum. Similarly, the rezoning of land is a legislative act subject to referendum. The adoption of a specific plan is also to be characterized as a legislative act. Certainly such action is neither administrative nor adjudicative. On the other hand, the elements of a specific plan are similar to those found in general plans or in zoning regulations -- the siting of buildings, uses and roadways; height, bulk and setback limitations; population and building densities; and open space allocation. Cal. Gov't Code § 65451. The statutory procedure for the adoption and amendment of specific plans is substantially similar to that for general plans. Cal. Gov't Code § 65507. It appears therefore that the legislative aspects of a specific plan are similar to those of general plans.

Environmental Law > Natural Resources & Public Lands > Coastal Zone Management > Delineation & Identification

Governments > Legislation > General Overview

Governments > Legislation > Initiative & Referendum

Governments > Local Governments > Elections

Real Property Law > Zoning > Comprehensive Plans

Real Property Law > Zoning > Initiative & Referendum

Real Property Law > Zoning > Regional & State Planning

HN14 Enactment of the California Coastal Act, Cal. Pub. Res. Code § 30000 et seq., was the result of popular recognition that uncontrolled development of the California coastline could not continue. The act sets forth a statement of policies which are binding on local and state agencies in planning further development in the coastal zone. Important sections of the act provide for a coastal access program, developmental controls, and identification of sensitive coastal resource areas. Further, it contains various administrative provisions. There is no doubt that the Coastal Act is an attempt to deal with coastal land use on a statewide basis. In matters of general statewide concern the state may preempt local regulation. However, state regulation of a matter does not necessarily preempt the power of local voters to act through initiative and/or referendum.

Real Property Law > Zoning > Comprehensive Plans

HN15 See Cal. Pub. Res. Code § 30500(a).

Real Property Law > Zoning > Comprehensive Plans

HN16 See Cal. Pub. Res. Code § 30500(c).

Real Property Law > Zoning > Comprehensive Plans

HN17 See Cal. Pub. Res. Code § 30512(c).

Real Property Law > Zoning > Comprehensive Plans

HN18 See Cal. Pub. Res. Code § 30512.2(a).

Real Property Law > Zoning > Comprehensive Plans

Real Property Law > Zoning > Local Planning

HN19 See Cal. Pub. Res. Code § 30513.

Governments > Local Governments > Administrative Boards

Real Property Law > Zoning > Comprehensive Plans

Real Property Law > Zoning > Judicial Review

HN20 The wording of the California Coastal Act, *Cal. Pub. Res. Code § 30000 et seq.*, does not suggest preemption of local planning by the state, rather it points to local discretion and autonomy in planning subject to review for conformity to statewide standards. The California Coastal Commission in approving or disapproving a local coastal plan does not create or originate any land use rules and regulations. It can approve or disapprove but it cannot itself draft any part of the coastal plan. The discretion accorded local governments in establishing, creating and implementing land use plans is most clearly reflected in the language of *§ 30005*.

Real Property Law > Zoning > Comprehensive Plans

HN21 See *Cal. Pub. Res. Code § 30005*.

Real Property Law > Zoning > Comprehensive Plans

Real Property Law > Zoning > Judicial Review

HN22 Under the California Coastal Act, *Cal. Pub. Res. Code § 30000 et seq.*, local governments have discretion to zone one piece of land to fit any of the acceptable uses under the policies of the act, but they also have the discretion to be more restrictive than the act. The Act sets minimum standards and policies with which local governments within the coastal zone must comply; it does not mandate the action to be taken by a local government in implementing local land use controls. The California Coastal Commission performs a judicial function when it reviews a local government's local coastal plan (LCP) -- it determines whether the LCP meets the minimum standards of the act, but once an LCP has been approved by the Commission, a local government has discretion to choose what action to take to implement its LCP: it can decide to be more restrictive with respect to any parcel of land, provided such restrictions do not conflict with the act.

Governments > Legislation > Initiative & Referendum

Governments > Local Governments > Administrative Boards

Governments > Local Governments > Elections

Real Property Law > Zoning > Initiative & Referendum

HN23 The California Coastal Act, *Cal. Pub. Res. Code § 30000 et seq.*, leaves wide discretion to a local government not only to determine the contents of its land use plans, but to choose how to implement these plans. Under such circumstances a city is acting legislatively and its actions are subject to the normal referendum procedure. The Act

does not dictate that a local government must build a hotel and conference center -- that decision is made by the local government. It merely requires local governments to comply with specific policies -- but the decision of whether to build a hotel or whether to designate an area for a park remains with the local government. A local government is acting legislatively in making this decision as well as in implementing it.

Counsel: Francis Sarguis for Plaintiffs and Appellants.

Carter J. Stroud, City Attorney (Alameda), as Amicus Curiae on behalf of Plaintiffs and Appellants.

Schramm & Raddue and Frederick W. Clough for Defendant and Respondent.

Charles J. Post, City Attorney (Hermosa Beach), McCarthy, Bullis & Post, Roger C. Lyon, Jr., City Attorney (Grover City), and Ronald L. Johnson, Chief Deputy City Attorney (San Diego), as Amici Curiae on behalf of Defendant and Respondent.

James W. Brown, Ian M. Guthrie, Mullen, McCaughey & Henzell and Cavalletto, Webster, Mullen & McCaughey for Intervener and Respondent.

Judges: Opinion by Kaus, J., expressing the unanimous view of the court. Bird, C. J., Mosk, J., Broussard, J., Reynoso, J., Grodin, J., and Lucas, J., concurred.

Opinion by: KAUS

Opinion

[*564] [**1153] [***802] (*Ia*) (1a) The issue is whether the California Coastal Act (Coastal Act) (*Pub. Resources Code, § 30000 et seq.*) precludes a referendum on any local land use measure affecting the coastal zone which is adopted by a city council after the California Coastal Commission (Commission) has approved the city's land use plan. We conclude that the Coastal Act does not preclude the referendum.

Appellants, voters of the City of Santa Barbara, circulated a referendum petition in opposition to two resolutions and [*1154] [***803] one ordinance adopted by the City Council of Santa Barbara.¹ (2) (2) (**See fn. 2.**) Respondent

¹ The referendum stated: "Referendum Petition Protesting Adoption of General Plan Amendment 2-81 and Specific Plan No. 1 for Park Plaza Project, and Rezoning an easterly portion of APN 17-010-37, to permit the commercial development of Park Plaza

Thomas, the city clerk, refused to process the petition on advice of the city attorney that the three actions of the city council were not subject to referendum.² Appellants filed a petition for mandate in the superior court, to compel the city clerk to process the petition. The trial court denied the writ on the ground that the proposed referendum would be legally invalid. This appeal followed.

[*565] The referendum petition -- signed by 10,260 voters -- involved 3 planning actions of the city council pertaining to a 32-acre undeveloped tract of coastal land commonly referred to as the "Southern Pacific property." Intervener and respondent Park Plaza Corporation proposes a hotel and conference center development to be built on this tract. The actions by the city council in effect authorized the development. They were: (1) Resolution No. 81-091, adopted July 28, 1981, amending the city's general plan; (2) Resolution No. 81-092, adopted July 28, 1981, adopting a specific plan of development which had previously been approved by the city planning commission; and (3) Ordinance No. 4115, adopted August 4, 1981, changing the zoning of the Southern Pacific property.

The trial court concluded that the three actions were not subject to referendum because the city council was acting administratively to implement a land use plan approved by the Commission. As will appear, we disagree. (1b) **HN2** Although certain actions of a city council may be characterized as "administrative" and therefore not subject to referendum, not all land use decisions made after a coastal plan has been adopted and approved by the Commission fall into that category. The Coastal Act does not provide blanket immunity from the voters' referendum power.

I

The Coastal Act

Hotel-Conference Center on East Cabrillo Boulevard at Punta Gorda Street, Santa Barbara, California. [para.] To the City Council of the City of Santa Barbara: [para.] Pursuant to California Elections Code Section 4051, we the undersigned registered qualified voters of the City of Santa Barbara, hereby present this petition protesting the adoption of the above measures. (If any provision of this Petition is deemed invalid, the remaining provisions shall remain in effect.) [para.] We request that these actions be entirely repealed by you, or be submitted to a vote of the people at a regular city election or at a special election as required by law. [para.] The voters want to decide: A giant hotel convention center with restaurants and shops along Cabrillo Boulevard would dominate East Beach, causing parking and traffic congestion, smog, water and policing problems, employee pressure on limited housing, and loss of mountain views."

² The issue of whether the city clerk exceeded his authority in deciding not to process the referendum has not been raised before us. However, as we stated in *Farley v. Healey* (1967) 67 Cal.2d 325, 327 [62 Cal.Rptr. 26, 431 P.2d 650]: **HNI** "It is not [a city clerk's] function to determine whether a proposed [referendum] will be valid if enacted These questions may involve difficult legal issues that only a court can determine. The right to propose [referendum] measures cannot properly be impeded by a decision of a ministerial officer, even if supported by the advice of the city attorney, that the subject is not appropriate for submission to the voters."

³ All statutory references, unless otherwise indicated, are to the Public Resources Code. All statutory language is from those statutes in effect at the time of the trial court decision.

HN3 The Coastal Act of 1976 (Pub. Resources Code, § 30000 et seq.)³ was enacted by the Legislature as a comprehensive scheme to govern land use planning for the entire coastal zone of California. The Legislature found that "the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people"; that "the permanent protection of the state's natural and scenic resources is a paramount concern"; that "it is necessary to protect the ecological balance of the coastal zone" and that "existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of [**1155] [***804] the people of this state . . ." (§ 30001, subds. (a) and (d)). **HN4** "[The] basic goals of the state for the coastal zone" are to: "(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources. [para.] (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state. [para.] (c) Maximize public [*566] access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of property owners. [para.] (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast. [para.] [and] (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone." (§ 30001.5.)

HN5 A combination of local land use planning procedures and enforcement to achieve maximum responsiveness to local conditions, accountability, and public accessibility, as well as continued state coastal planning and management through a state coastal commission are relied upon to insure

conformity with the provisions of the act (§ 30004, subs. (a) and (b)). Therefore, all local governments lying in whole or in part within the coastal zone had to prepare and submit to the Commission a local coastal plan (LCP) (§ 30500, *subd. (a)*). The LCP consists of a local government's "(a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, . . ." (§ 30108.6.) The precise content of each LCP is determined by the local government in full consultation with the Commission (§ 30500, *subd. (c)*) and must meet the requirements of, and implement the provisions and policies of [the act] at the local level (§ 30108.6).

HN6 *Sections 30200 et seq.* set forth the specific policies which constitute the standards by which the adequacy of local coastal programs are to be determined (§ 30200). There are specific policies on public access to the sea and shorelines (§§ 30210-30214); recreational use (§§ 30220-30224); protection of the marine environment (§§ 30230-30236); protection of land resources (§ 30240 [environmentally sensitive habitats]; § 30241 [agricultural land]; § 30243 [timberlands]; § 30244 [archaeological resources]); development (§§ 30250-30255); and industrial development (§§ 30260-30264).

HN7 The LCP may be submitted to the Commission all at once or in two phases -- a land use plan (LUP) and zoning ordinances, etc. (§ 30511). The Commission will certify a LUP "if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with *Section 30200*) . . ." (§ 30512, *subd. (c)*.) **HN8** "The commission shall require conformance with the policies and requirements of Chapter 3 . . . only to the extent necessary to achieve the basic goals [of the act]." (§ 30512.2.) The Commission may only reject zoning ordinances on the grounds that they do not conform, or are inadequate to carry out the provisions of the certified land use plan (§ 30513). A certified LCP and all local implementing ordinances may be amended by a local government, but [*567] no such amendment shall take effect until it has been certified by the Commission (§ 30514). For the purposes of section 30514 an "amendment of a certified local coastal program" includes, but is not limited to, any action by the local government which authorizes a use of a parcel of land other than that designated in the LCP as a permitted use (§ 30514, *subd. (d)*).

II

Santa Barbara's Land Use Plan

In July 1977, the City of Santa Barbara began preparation of the LUP portion of its LCP. During the preparation of the LUP there were a number of hearings before the planning commission and public hearings before the city council. In September [*1156] [***805] 1980 the LUP was adopted by the council. It was approved and certified by the Commission in January 1981.

The LUP sets forth the following policies relevant to the Southern Pacific (SP) property: "*Policy 4.1* [para.] In order to preserve and encourage visitor-serving commercial uses, appropriate areas along Cabrillo Boulevard . . . shall be designated 'Hotel and Related Commerce I (HRC-I)' and 'Hotel and Related Commerce II (HRC-II).' [para.] HRC-I designation shall include hotels, motels, other appropriate forms of visitor-serving overnight accommodations and ancillary commercial uses directly related to the operation of the hotel/motel. [para.] HRC-II designation shall include all uses allowed in HRC-I and such other visitor-serving uses examples such as, but not limited to, restaurants, cafes, art galleries, and commercial recreation establishments. Uses such as car rentals and gas stations will require a conditional use permit. [para.] . . . [para.] *Policy 4.6* [para.] The 'Southern Pacific Property' (that area roughly bounded by Milpas Street and Punta Gorda Street on the east, Cabrillo Boulevard on the south, the City parcel located at the approximate extension of Garden Street on the west, and the existing Southern Pacific Railroad right-of-way on the north) shall be designated for a mixture of visitor-serving uses and recreational opportunities and planned as an integral unit in order to minimize potential circulation, visual, and other environmental impacts. [para.] *Action* [para.] The City shall require the submittal of a specific plan for the area which would address the problems and opportunities related to the development of this property, including, but not limited to: [para.] (1) Traffic Circulation [para.] (2) Parking [para.] (3) Visual Impacts along Cabrillo Boulevard [para.] (4) Geologic Hazards [para.] (5) Recreational Opportunities [para.] (6) Visitor-Serving Uses [para.] (7) Mixed Uses Consisting of HRC-II and Residential [para.] At the time of review of the Specific Plan, the standards [*568] of review shall include PRC *Sections 30221* and *30222*.⁴ The City shall ensure that recreational and visitor-serving uses on the western portion of the property shall not be precluded by residential uses. The eastern portion of the property shall be designated

⁴ *Section 30221* provides: **HN9** "Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable-future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area."

exclusively for visitor-serving uses, HRC-I. The western portion shall include approximately 11 acres west of the extension of Salspuedes Street. The eastern portion shall include approximately 23 acres east of the extension of Salspuedes Street. [para.] Land uses located on private lands on the western portion of the property north and immediately adjacent to the strip of publicly owned land fronting on Cabrillo Boulevard shall be limited to open space and recreational uses abutted to the north by visitor-serving and/or mixed visitor-serving/residential uses. Residential uses on this portion of the area shall not predominate other priority Coastal Act uses."

The LUP also contained the following policy: "*Policy 3.6* [para.] The City of Santa Barbara shall consider expansion of both public parking and public open space at Palm Park north of the existing alignment of Cabrillo Boulevard." Although this policy appears to reflect a desire to keep the area north of Cabrillo Boulevard -- an area which includes the SP property -- as open space, as early as 1964 the city had contemplated permitting a hotel conference center to be built on the SP property. Therefore, [**1157] [***806] in the recreational section of the LUP it was noted that "[the] Palm Park area inland of Cabrillo Boulevard includes two vacant parcels of 29.58 and 2.27 acres in respective size. It is centrally located along Santa Barbara's waterfront area where the greatest demand for recreational and visitor-serving facilities appears to be concentrated. Because this is one of the last remaining parcels along Santa Barbara's waterfront, maintaining a balance of commercial visitor-serving uses and public recreational uses in keeping with the Santa Barbara character is important. The area is

currently being considered for Hotel/Conference Center/Park /Condominium development." ⁵

[*569] After the LUP was approved by the Commission, intervener and respondent Park Plaza Corporation filed applications with the city for: (1) a general plan amendment; (2) approval of a specific plan; (3) rezoning of the SP property; (4) approval of a tentative subdivision map; (5) parking modifications; and (6) approval of a hotel/conference center development plan for 23 acres of the SP property. Public hearings were held on these applications by the planning commission, after which the commission adopted resolutions recommending to the city council the adoption of the amendment to the general plan, the amendment to the zoning ordinance, and of the specific plan. The city council considered the recommendations at a public hearing and at the conclusion of the hearing approved the general plan amendment, the specific plan, the rezoning, a tentative subdivision map, the parking modification, and a development plan for a 360-room hotel with conference facilities.

The amendment to the general plan changed the circulation element of the general plan in order to reaffirm the existing alignment of Cabrillo Boulevard. ⁶ It also changed land use designations on the SP property. ⁷ The specific plan was a 14-page document covering the 23 acres to be developed, which addressed the problems related to the development of the area. The zoning ordinance changed the zoning of the property from R-1/M-1/C-2 to R-1/R-4. ⁸

Whether the changes to the general plan and the applicable zoning, as well as the specific plan, are subject to referendum, is the crux of this litigation.

Section 30222 provides: *HN10* "The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry."

See also section 30210, which states: *HN11* "In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse."

⁵ This seemingly was an attempt to explain the apparent conflict between the policies stated in Policy 3.6 (open space) and Policy 4.1 (hotel). The city claims that no conflict exists because policy 3.6 does not encompass the SP property. The city asserts it never intended to designate the property as open space. Whatever the merit of this claim, it is clear to us that the description of the Palm Park area north of Cabrillo Boulevard contained in the LUP, includes the SP property.

⁶ The general plan had proposed an alignment of Cabrillo Boulevard to a more inland course; the LUP does not mention the location of Cabrillo Boulevard.

⁷ Parcel A (23 acres) was changed from "Major Public and Institutional Uses -- Park" with a secondary designation of "Hotel and Residential" to "Hotel and Residential." Parcels B and C (11 acres) were changed to add a secondary use of "Hotel and Residential" to "Major Public and Institutional Uses -- Park."

⁸ The R-4 zoning designation permits hotels, motels, multiple residence housing; the M-1 designation permits heavy industrial use and the C-2 designation permits commercial, retail use. The R-1 designation is open space.

III

Discussion

(3) (3) **HN12** The powers of referendum and initiative apply only to legislative acts by a local governing body (*Arnel Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 516, fn. 6 [169 Cal.Rptr. 904, 620 P.2d 565]). Acts of a local governing body which, in a purely local context, would otherwise be legislative and subject to referendum may, however, become administrative "in a situation in which the state's system of regulation over a matter of statewide concern is so pervasive as to convert the local legislative body into an administrative agent of the state" (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 596, fn. 14 [135 Cal. ***1158] Rptr. 41, 557 P.2d [***807] 473, 92 A.L.R.3d 1038]; see *Housing Authority v. Superior Court* (1950) 35 Cal.2d 550 [219 P.2d 457]). Respondents contend that the actions taken by the city council were administrative in nature by virtue of the fact that the council was acting under the authority delegated by the state to implement state coastal land use policies -- that, in effect, the Coastal Act preempts the exercise of the power of referendum.

(4) (4) Absent the Coastal Act the actions taken by the city council are clearly legislative. **HN13** The adoption of a general plan is a legislative act (*O'Loane v. O'Rourke* (1965) 231 Cal.App.2d 774 [42 Cal.Rptr. 283]). "The amendment of a legislative act is itself a legislative act" (*Johnston v. City of Claremont* (1958) 49 Cal.2d 826, 835 [323 P.2d 711]) and the amendment of a general plan is thus a legislative act subject to referendum. (See *Duran v. Cassidy* (1972) 28 Cal.App.3d 574, 583 [104 Cal.Rptr. 793].) Therefore, the amendments to Santa Barbara's general plan were legislative acts normally subject to referendum.

(5) (5) Similarly, the rezoning of land is a legislative act (*Arnel Development Co. v. City of Costa Mesa*, *supra*, 28 Cal.3d 511) subject to referendum (*Johnston v. City of Claremont*, *supra*, 49 Cal.2d 826; *Dwyer v. City Council* (1927) 200 Cal. 505 [253 P. 932]).

(1c) (1c) This leaves the question whether the adoption of a specific plan is to be characterized as a legislative act. We have no doubt that the answer is affirmative. Certainly such action is neither administrative nor adjudicative. (Cf. *Arnel Development Co. v. City of Costa Mesa*, *supra*, 28 Cal.3d at p. 523; *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 613 [156 Cal.Rptr. 718, 596 P.2d 1134].) On the other hand the elements of a specific plan are similar to those found in general plans or in zoning regulations -- the siting of buildings, uses and roadways; height, bulk and setback

limitations; population and building densities; open space allocation (*Gov. Code, § 65451*). The statutory procedure for the adoption and amendment of specific plans is substantially similar to that for general plans (see *Gov. Code, § 65507*). It appears therefore that the legislative aspects of a specific plan are similar to those of general plans. We find support for this decision in *Wheelright v. County of Marin* (1970) 2 Cal.3d 448, 457 [85 Cal.Rptr. 809, 467 P.2d 537] (adoption of a "precise" plan is a legislative act) and [***571] hold that the adoption of a specific plan by the city council was a legislative act subject to referendum.

Intervenors and respondents assert, however, that these normally legislative acts become administrative by virtue of the fact that the Coastal Act establishes a pervasive system of state regulation over a matter of state concern which precludes local referenda on the implementing actions of local governments. The argument is that since the SP property lies in the territory defined as the California coastal zone, and since the Coastal Act requires local governments in the coastal zone to develop local LUPs (§ 30500, *subd. (a)*) which are acceptable to the Commission as conforming with the development and conservation policies of the Coastal Act (§§ 30200-30264), the city council thereafter becomes an agency of the state in enacting all subsequent land use policies in the coastal zone. This analysis is far too simplistic.

HN14 The Coastal Act of 1976 was the result of popular recognition that uncontrolled development of the California coastline could not continue. The act sets forth a statement of policies (§§ 30200-30264) which are binding on local and state agencies in planning further development in the coastal zone. As noted, important sections of the act provide for a coastal access program, developmental controls, and identification of sensitive coastal resource areas (§ 30502). Further, it contains various administrative provisions. (E.g. §§ 30512-30523.) There is no doubt that the Coastal Act is an attempt to deal with coastal land use on a statewide basis.

(6) (6) Nor is it disputed that in matters of general statewide concern the state may preempt local regulation [***1159] [***808] (*Associated Home Builders etc., Inc. v. City of Livermore*, *supra*, 18 Cal.3d 582, 596, fn. 14). However, state regulation of a matter does not necessarily preempt the power of local voters to act through initiative and/or referendum (see *Hughes v. City of Lincoln* (1965) 232 Cal.App.2d 741, 745 [43 Cal.Rptr. 306]; *Norlund v. Thorpe* (1973) 34 Cal.App.3d 672, 675 [110 Cal.Rptr. 246]). (1d) (1d) The question, therefore, is whether the Legislature intended to preempt local planning authority and thereby preempt the power of the voters to act through referendum.

Certainly the act does not explicitly claim to preempt local planning authority, nor does it specifically refer to the referendum and initiative powers. The intent of the Legislature must therefore be implied from the general provisions of the act.

Section 30500, subdivision (a), previously noted, provides that: **HN15** "Each local government lying, in whole or in part within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction." Section 30500, subdivision (c) makes it clear that: **HN16** "The [*572] precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, in full consultation with the commission . . ." **HN17** "The commission shall certify a land use plan, or any amendments thereto, if such commission finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200) . . ." (§ 30512, subd. (c).) **HN18** "The commission's review of a land use plan shall be limited to its administrative determination that the land use plan . . . does, or does not, conform with the [policies of the act] . . . the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan" (§ 30512.2, subd. (a).) **HN19** "The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan." (§ 30513.) **HN20** The wording of these and other sections does not suggest preemption of local planning by the state, rather they point to local discretion and autonomy in planning subject to review for conformity to statewide standards. (7) (7) As was noted in City of Chula Vista v. Superior Court (1982) 133 Cal.App.3d 472, 488 [183 Cal.Rptr. 909], "the Commission in approving or disapproving an LCP does not create or originate any land use rules and regulations. It can approve or disapprove but it cannot itself draft any part of the coastal plan."

(1e) (1e) The discretion accorded local governments in establishing, creating and implementing land use plans is most clearly reflected in the language of section 30005. **HN21** "No provision of this division is a limitation on any of the following: [para.] (a) Except as otherwise limited by state law, on the power of a city or county or city and county

to adopt and enforce additional regulations, not in conflict with this act, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone." (§ 30005, subd. (a).)

(8a) (8a) **HN22** Under the act, local governments, therefore, have discretion to zone one piece of land to fit any of the acceptable uses under the policies of the act, but they also have the discretion to be more restrictive than the act. The Coastal Act sets minimum standards and policies with which local governments within the coastal zone must comply; it does not mandate the action to be taken by a local government in implementing local land use controls. (9) (9) (8b) (8b) The Commission performs a judicial function when it reviews a local government's LCP -- it determines whether the LCP meets the minimum standards of the act (City of Chula Vista v. Superior Court, supra, 133 Cal.App.3d 472, 488), but once an LCP has been approved by the Commission, a local government has discretion to choose what action [*573] to take to implement its LCP: it can decide to be more restrictive with respect to any parcel of [**1160] [***809] land, provided such restrictions do not conflict with the act. ⁹

(1f) (1f) **HN23** The act, therefore, leaves wide discretion to a local government not only to determine the contents of its land use plans, but to choose how to implement these plans. Under such circumstances a city is acting legislatively and its actions are subject to the normal referendum procedure.

We are not persuaded by respondents' assertion that the discretion left to local governments by the act is not significant and that far more discretion was present in Simpson v. Hite (1950) 36 Cal.2d 125 [222 P.2d 225] where we held that a city's selection of a site for a court house pursuant to a declared legislative policy was not a legislative act. This argument fails to acknowledge that the *only* discretion left to the local government by the Legislature in Simpson was the choice of a site for a municipal and superior court. The board of supervisors had a duty to provide suitable quarters for the courts; they could not choose whether to construct a county hall of administration instead -- or a new jail, a park or museum.

No such tightly circumscribed duty is imposed on local governments by the Coastal Act. The act does not dictate that a local government must build a hotel and conference

⁹ 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)).

center -- that decision is made by the local government. It merely requires local governments to comply with specific policies -- but the decision of whether to build a hotel or whether to designate an area for a park remains with the local government. A local government is acting legislatively in making this decision as well as in implementing it.

Finally we confront respondents' contention that the initiative and referendum processes are ill-suited to the careful preparation and implementation of an LCP in conformity with the policies of the act -- that an alternative program imposed by the initiative process would lack the "full consultation with the commission" required by section 30500, subdivision (c), and that the referendum process could be used by local electors to frustrate any attempt by the governing body to comply with the Coastal Act.

As far as the argument based on the unsuitability of the initiative is concerned, it simply does not apply here because we are concerned with a referendum. (But see Associated Home Builders etc. Inc. v. City of Livermore (1976) 18 Cal.3d 582, 595-596 [135 Cal.Rptr. 41, 557 P.2d 473, 92 [*574] A.L.R.3d 1038].) The referendum under consideration merely seeks to undo a specific implementation of the LUP envisaged by the Santa Barbara City Council. True, if down the road the people exercise their referendum power in such a way as to frustrate any feasible

implementation of the LUP, some way out of the impasse will have to be found. At this point, however, the system is not being put to so severe a test.

IV

Conclusion

We conclude that the Coastal Act does not transform the exercise of legislative power into administrative action by virtue of a Commission certification of a land use plan. The Legislature left wide discretion to local governments to formulate land use plans for the coastal zone and it also left wide discretion to local governments to determine how to implement certified LCPs. Under such circumstances, the City Council of Santa Barbara was acting legislatively when it adopted the two resolutions and the ordinance which are the subject of this appeal. Its action is thus subject to the normal referendum procedure.

The judgment is reversed and the case is remanded to the trial court with directions to issue a peremptory writ of mandate ordering respondents to place the proposed **[**1161] [***810]** referendum on the ballot for municipal election, provided there has been compliance with the formal filing requirements.

(3)(f) *Conway v. City of Imperial Beach*



User Name: Jonathan Welner

Date and Time: Apr 28, 2015 12:44 p.m. EDT

Job Number: 19488518

Document(1)

1. *Conway v. City of Imperial Beach, 52 Cal. App. 4th 78*

Client/Matter: 73055-0002

Conway v. City of Imperial Beach

Court of Appeal of California, Fourth Appellate District, Division One

January 22, 1997, Decided

No. D021204.

Reporter

52 Cal. App. 4th 78; 60 Cal. Rptr. 2d 402; 1997 Cal. App. LEXIS 40; 97 Cal. Daily Op. Service 549; 97 Daily Journal DAR 818

WILLIAM CONWAY, Plaintiff and Appellant, v. CITY OF IMPERIAL BEACH, Defendant and Respondent.

Prior History: [***1] Appeal from a judgment of the Superior Court of San Diego County. Super. Ct. No. 662168. Hon. Judith McConnell, Judge.

Disposition: The judgment is affirmed. Both parties to bear their own costs on appeal.

Core Terms

Coastal, interim ordinance, zone, local government, coastal zone, ordinance, properties, authorize, permitted use, certification, resources, building permit, effective, density, parcel, local coastal program, legislative body, regulations, designated, plans, summary adjudication, zoning ordinance, multifamily, provisions, urgency, development permit, public hearing, requirements, residential, amendments

Case Summary

Procedural Posture

Plaintiff developer sought review of an order of the Superior Court of San Diego County (California) that granted defendant city's motion for summary adjudication, and denied plaintiff's similar motion, in plaintiff's action for declaratory relief, an injunction, damages, and a writ of mandate against defendant after it sought to enforce Imperial Beach, Cal., Interim Ordinance, No. 92-864 (Proposition P).

Overview

Plaintiff developer owned three properties located within the city limits defendant city. The properties were within the coastal zone and subject to the provisions of the Coastal Act of 1976, *Cal. Pub. Res. Code § 30000 et seq.* Plaintiff began development plans for the properties in 1991, applying for development permits from defendant. In response, defendant

advised plaintiff of possible changes to zoning ordinances affecting plaintiff's plans. The following year, Imperial Beach, Cal., Interim Ordinance, No. 92-864 (Proposition P), was passed and plaintiff was unable to obtain permits to commence construction on any the properties. In March of the next year, plaintiff filed suit seeking declaratory relief, injunction, damages for violation of civil rights and a petition for writ of mandate against defendant. A month later, the state coastal commission approved Proposition P as an amendment to defendant's local coastal program. On the parties' motion for summary adjudication, the trial court granted defendant's motion. Plaintiff appealed. On appeal, the court affirmed because defendant was not obligated to obtain commission approval before Proposition P became effective.

Outcome

The court affirmed the order that granted defendant city's motion for summary adjudication and denied plaintiff developer's similar motion because the approval of the state coastal commission was not required prior to implementation and enforcement of the interim ordinance that limited development on plaintiff's properties.

LexisNexis® Headnotes

Environmental Law > Natural Resources & Public Lands > Coastal Zone Management > General Overview

Governments > Local Governments > Ordinances & Regulations

HNI Imperial Beach, Cal., Interim Ordinance, No. 92-864 (Proposition P), enacted under the provisions of *Cal. Gov't Code § 65858*, amends the R-HD zone to limit the height of structures to 30 feet, reduces the density by increasing the number of square feet of land required per unit from 1,000 to 2,000 and prohibits lot combinations which would allow a greater density.

Civil Procedure > Appeals > Standards of Review > General Overview

Civil Procedure > Appeals > Standards of Review > De Novo Review

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > General Overview

HN2 An appellate court conducts independent review of a trial court's determination of questions of law. Interpretation of a statute is a question of law. Further, application of the interpreted statute to undisputed facts is also subject to the appellate court's independent determination.

Governments > Legislation > Interpretation

HN3 To resolve whether a party's interpretation of the relevant statutes is correct, the courts are guided by the canons of statutory construction. In construing a statute, the courts ascertain the intent of the legislature so as to effectuate the purpose of the law. If the terms of a statute provide no definitive answer, then the courts resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. The courts must select the construction that comports most closely with the apparent intent of the legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoiding an interpretation leading to absurd consequences.

Governments > Legislation > Interpretation

HN4 It is a court's duty to construe the true meaning of the statutes at issue and to harmonize them with the entire statutory scheme of which they are a part.

Governments > Legislation > Interpretation

HN5 In situations that involve an apparent conflict between two statutes, the principle of paramount importance is that of harmonious construction, by which a court attempts to give effect to both statutes if possible. If a harmonious construction of the two provisions does exist, the court adopts that harmonizing construction.

Governments > Legislation > Interpretation

HN6 Where the language of a statutory provision is susceptible of two constructions, courts apply the one which will render it reasonable, fair, and harmonious with its manifest purpose.

Governments > Local Governments > Ordinances & Regulations

HN7 See Cal. Gov't Code § 65858.

Environmental Law > Natural Resources & Public Lands > Coastal Zone Management > General Overview

Governments > Local Governments > Ordinances & Regulations

Governments > Public Improvements > General Overview

HN8 The Coastal Act of 1976 (Act), Cal. Pub. Res. Code § 30005 describes the impact of the Act on the authority of local governments to regulate uses in the coastal zone under their own powers. Section 30005 provides the Act does not limit the power of a city or county or city and county to adopt and enforce additional regulations, not in conflict with the Act, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone. In addition, the Act does not limit the power of any city or county or city and county to declare, prohibit, and abate nuisances.

Environmental Law > Natural Resources & Public Lands > Coastal Zone Management > General Overview

Governments > Local Governments > Ordinances & Regulations

Real Property Law > Subdivisions > Local Regulations

HN9 The Coastal Act of 1976 (Act), Cal. Pub. Res. Code § 30514(a) provides a certified local coastal program (LCP) and all local implementing ordinances, regulations, and other actions may be amended by the appropriate local government, but no such amendment takes effect until it has been certified by the commission. An amendment to a certified LCP includes any action by the local government that authorizes the use of a parcel of land other than a use that is designated in the certified local coastal program as a permitted use of the parcel.

Environmental Law > Natural Resources & Public Lands > Coastal Zone Management > General Overview

HN10 The express provisions of the Coastal Act of 1976 (Act), Cal. Pub. Res. Code §§ 30005, 30514 provide a clear statement of the legislative intent that local governments retain powers to act in ways not in conflict with the 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 local coastal program (LCP) need not be construed as amendments.

Environmental Law > Natural Resources & Public Lands > Coastal Zone Management > General Overview

Governments > Local Governments > Ordinances & Regulations

HN11 Local governments retain the power to enforce urgency interim ordinances which are not in conflict with the Coastal Act of 1976 (Act), Cal. Pub. Res. Code § 30000 et seq., and only those amendments authorizing a use other

than that designated in the local coastal program (LCP) as a permitted use require certification by the state coastal commission.

Environmental Law > Natural Resources & Public Lands > Coastal Zone Management > General Overview

Governments > Local Governments > Ordinances & Regulations

HN12 An interim ordinance which does not authorize a use other than that designated in the local coastal program (LCP) as a permitted use need not be certified by the state coastal commission prior to implementation and enforcement.

Counsel: William Conway, in pro. per., Worley, Schwartz, Garfield & Rice and Robert C. Rice for Plaintiff and Appellant.

McDougal, Love, Eckis & Grindle and Lynn R. McDougal for Defendant and Respondent.

Judges: Opinion by Nares, J., with Benke, Acting P. J., and McDonald, J., concurring.

Opinion by: NARES

Opinion

[*80] [*403] NARES, J.

Plaintiff William Conway filed suit for declaratory relief, injunction, damages and writ of mandate against defendant City of Imperial Beach (City). Conway appeals from the judgment entered after City's motion for summary adjudication was granted. After considering the evidence, a statement of undisputed facts, moving papers and argument, the court granted the motion on the ground that City was not obligated to obtain Coastal Commission approval of an

interim ordinance, No. 92-864 (Proposition P), in order for it to be effective.

On appeal, Conway contends the trial court erred in granting summary adjudication in favor of City because Proposition [*402] P, according to the terms of the Coastal Act, was an amendment to City's local coastal program, and therefore City was required to obtain Coastal Commission certification prior to enforcing [*404] the terms of Proposition P. We disagree, and affirm.

FACTUAL BACKGROUND ¹

Conway is the owner of three properties located within the city limits of City. One property is located at 181 Ebony Street (the Ebony property), one at 272 Elm Street (the Elm property) and one at 580 Florida Street (the Florida property). The three properties are also within the coastal zone and [*81] subject to the provisions of the Coastal Act of 1976 (*Pub. Resources Code, ² § 30000 et seq.*) (Coastal Act or the Act). The Coastal Commission has certified City's local coastal program (LCP) for all properties within the coastal zone.

[*403] In 1991, before the passage of Proposition P, Conway's three properties were zoned R-HD, a multifamily zone which permitted a maximum density of one dwelling unit per one thousand square feet of building site area. Conway began development plans for the three properties in 1991, applying to City for development permits. Conway was sent a letter on September 18, 1991, by the city attorney, advising him of possible future changes to zoning ordinances affecting density and height requirements.

Conway thereafter was unable to obtain building permits to commence construction on any of his three properties following the passage of Proposition P. ³ [*404] ⁴

[*405] [*82] Conway timely filed an application for an appeal on the question of whether he had achieved vested

¹ As the facts are undisputed, we abbreviate our recitation thereof.

² All further statutory references are to the Public Resources Code unless otherwise specified.

³ As to the Ebony property, in November 1991, City granted Conway a coastal development permit, a tentative parcel map and a site plan to permit construction of a four-unit apartment project on the Ebony property. The project conformed with existing R-HD zoning regulations. On August 27, 1992, Conway submitted an application for a building permit for the four-unit apartment project. Between August 27, 1992, and December 14, 1992, Conway submitted the Ebony property plans to City. City reviewed and returned the plans to Conway for corrections three different times. After the plans were submitted on December 14, 1992, City refused to continue processing the Ebony property plans because the Ebony project was not in compliance with Proposition P.

As to the Florida property, on December 14, 1991, City approved a site plan, coastal development permit and tentative parcel map for an eight-unit condominium project on Conway's Florida property. The approvals expired December 23, 1992, unless building permits were issued and substantial construction was commenced. The project and property conformed with R-HD zoning ordinances. On

rights on any of his three properties.⁵ After a hearing before City, City ruled Conway had not achieved vested rights on any of the properties because building [**405] permits were never obtained and there had been no substantial expenditures incurred or construction performed in good faith reliance on the issuance of building permits.

On November 5, 1992, City attempted to transmit Proposition P to the Coastal Commission for certification under the "rapid and expeditious" procedure in the Coastal Act. (§ 30514, *subd. (c)*.) The Coastal Commission rejected City's request because it was of the view that Proposition P was not a "minor" amendment qualifying for rapid and expeditious processing, and City was informed it would have to go through the formal amendment certification process. On November 12, 1992, Proposition [***6] P was returned without having been considered.

On December 12, 1992, City determined, without the approval of the Coastal Commission, that Proposition P was effective, and enforcement throughout City began December 14, 1992. Construction and processing on projects City deemed to conflict with Proposition P was halted, and explanatory letters were sent to affected property owners, including Conway.

On January 29, 1993, City received notice from the Coastal Commission that Proposition P must be submitted for certification prior to becoming effective. City, after public hearings, adopted a resolution transmitting Proposition P to the Coastal Commission as an amendment to the LCP. On April 10, 1993, the Coastal Commission, after public hearings on City's application, approved Proposition P (with a minor change) as an amendment to City's LCP.

PROCEDURAL BACKGROUND

On March 11, 1993, Conway filed a complaint for declaratory relief, injunction, damages for violation of civil rights and a petition for writ of mandate against City. The complaint alleged that City's enforcement of [*83] Proposition P without prior certification by the Coastal Commission was in violation of the Coastal [***7] Act and had prevented Conway from securing vested rights by precluding the grant of building permits to Conway to commence substantial construction on his three properties. City filed its answer to the complaint on April 16, 1993, denying Conway's allegations.

On November 12, 1993, Conway and City filed motions for summary adjudication. Conway's motion sought summary adjudication of his first cause of action, for declaratory relief. City's motion sought summary adjudication as to the first cause of action, as well as Conway's fifth (improper initiative) and eighth (injunction) causes of action.

On December 10, 1993, the trial court denied Conway's motion for summary adjudication, and granted City's motion, finding: "The Court interprets the law and the stipulated facts in the manner which supports both the clear intent of the voters in passing Proposition 'P' and the clear intent of the California Legislature in enacting the Coastal Act [citation], and concludes that Defendant ... City of Imperial Beach was not obligated to obtain Coastal Commission approval of the interim Ordinance 92-864 initiative know as Proposition 'P,' as claimed in Plaintiff[s] ... First, Fifth and [***8] Eighth Causes of Action, in order for Proposition 'P' to be effective upon enactment."

STANDARD OF REVIEW

October 15, 1992, Conway applied for a six-month extension of the approvals, which was granted by the planning commission in November 1992. On appeal, however, the extension was denied by City on December 9, 1992.

As to the Elm property, on November 14, 1991, City approved a site plan, coastal development permit and tentative parcel map for a four-unit condominium project on the Elm property. The property and project conformed with R-HD zoning ordinances. The approvals expired January 23, 1993, unless building permits were issued and substantial construction was commenced. On December 11, 1992, Conway sought and was denied a six-month extension by City.

⁴ On August 5, 1992, Proposition P qualified as an initiative ballot measure in the City. Proposition P was titled, "Ordinance of the People of the City of Imperial Beach to Temporarily Amend the Municipal Code to Limit the Density and Building Height, to Prohibit Gaining Greater Density of Residential Units by Lot Consolidations, in the Multi-Family Residential Zones, and Seacoast District Specific Plan Area (SP-1) Until a Comprehensive Amendment to the General Plan and Local Coastal Program Has Been Approved by Necessary Governmental Agencies or Two Years From an Act, Whichever Occurs First." Proposition P applied to all multifamily zoned property within City. On November 3, 1992, City voters approved Proposition P.

HNI Proposition P is an interim ordinance, enacted under the provisions of Government Code section 65858. It amends the R-HD zone to limit the height of structures to 30 feet, reduce the density by increasing the number of square feet of land required per unit from 1,000 to 2,000 and prohibits lot combinations which would allow a greater density. After passage of Proposition P, Conway's Florida, Elm and Ebony properties exceeded the density and height requirements allowable for an R-HD zone.

⁵ Projects with vested rights are exempt from Proposition P (§ 7 of Prop. P).

(I) (1) We have recently set out the applicable standard of review: "[T]he applicable standard of review on appeal in this case is de novo or independent review. There were no credibility issues at trial and the court decided only the limited question of law [we now review]. **HN2** As an appellate court, we 'conduct independent review of the trial court's determination of questions of law.' (*Stratton v. First Nat. Life Ins. Co.* (1989) 210 Cal. App. 3d 1071, 1083 [258 Cal. Rptr. 721].) Interpretation of a statute is a question of law. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal. 3d 692, 699 [170 Cal. Rptr. 817, 621 P.2d 856]; *California Ins. Guarantee Assn. v. Liemsakul* (1987) 193 Cal. App. 3d 433, 438 [238 Cal. Rptr. 346]; *Los Angeles County Safety Police Assn. v. County of Los Angeles* (1987) 192 Cal. App. 3d 1378, 1384 [237 Cal. Rptr. 920].) Further, application of the [**406] interpreted statute to undisputed facts is also subject to our independent determination. (*Rudd v. California Casualty* [***9] *Gen. Ins. Co.* (1990) 219 Cal. App. 3d 948, 951 [268 Cal. Rptr. 624].)" (*Harbor Fumigation, Inc. v. County of San Diego Air Pollution Control Dist.* (1996) 43 Cal. App. 4th 854, 859 [50 Cal. Rptr. 2d 874].)

[*84] APPLICABLE PRINCIPLES

1. Statutory Construction

This case is one of first impression. There are no reported decisions on how the coastal planning process prescribed by the Coastal Act relates to the ability of local governments to adopt urgency interim ordinances under *Government Code section 65858*.⁶ Thus, our resolution of the question before us depends on application of the rules of statutory construction. (2) (2) **HN3** To resolve whether defendant's interpretation of the relevant statutes is correct, we are guided by familiar canons of statutory construction. '[I]n construing a statute, a court [must] ascertain the intent of the Legislature so as to effectuate the purpose of the law.' (*People v. Jenkins* (1995) 10 Cal. 4th 234, 246 [40 Cal. Rptr. 2d 903, 893 P.2d 1224].) ... If ... the terms of a statute provide no definitive answer, then courts may resort to extrinsic sources, including the ostensible objects to be achieved and the [***10] legislative history. (See *Granberry v. Islay Investments* (1995) 9 Cal. 4th 738, 744 [38 Cal. Rptr. 2d 650, 889 P.2d 970].) 'We must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather

than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.' (*People v. Jenkins, supra*, 10 Cal. 4th at p. 246.)" (*People v. Coronado* (1995) 12 Cal. 4th 145, 151 [48 Cal. Rptr. 2d 77, 906 P.2d 1232]; see also *Quintano v. Mercury Casualty Co.* (1995) 11 Cal. 4th 1049, 1060 [48 Cal. Rptr. 2d 1, 906 P.2d 1057].)

[***11] As we have recently stated, "**HN4** it is our duty ... to construe the true meaning of [the statutes at issue] ... and to harmonize [them] with the entire statutory scheme of which [they are] a part. (*Merrill v. Department of Motor Vehicles* (1969) 71 Cal. 2d 907, 917, fn. 15 [80 Cal. Rptr. 89, 458 P.2d 33].)" (*Sea World, Inc. v. County of San Diego* (1994) 27 Cal. App. 4th 1390, 1406 [33 Cal. Rptr. 2d 194], fn. omitted.)

(3) (3) **HN5** In this case, involving an apparent conflict between two statutes, the principle of paramount importance is that of harmonious construction, by which we must attempt to give effect to both statutes if possible: "[O]ur task here is ... to determine whether ... there is any possible construction that [*85] will harmonize two ... provisions of equal dignity. As we demonstrate ..., a harmonious construction of the two provisions does exist and we therefore must adopt that harmonizing construction." (*City and County of San Francisco v. County of San Mateo* (1995) 10 Cal. 4th 554, 570-571, fn. 8 [41 Cal. Rptr. 2d 888, 896 P.2d 181].)

"Moreover, **HN6** where the language of a statutory provision is susceptible of two constructions, courts should [***12] apply the one which will render it reasonable, fair and harmonious with its manifest purpose. (*Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal. 3d 408, 425 [261 Cal. Rptr. 384, 777 P.2d 157].)" (*Doyle v. Fenster* (1996) 47 Cal. App. 4th 1701, 1706 [55 Cal. Rptr. 2d 327]; see also *Harbor Fumigation, Inc. v. County of San Diego Air Pollution Control Dist., supra*, 43 Cal. App. 4th at pp. 859-860.)

[**407] 2. The Coastal Act

In *Yost v. Thomas* (1984) 36 Cal. 3d 561 [205 Cal. Rptr. 801, 685 P.2d 1152] (*Yost*), our Supreme Court described in some detail the Coastal Act and the respective roles of local government and the Coastal Commission in the preparation

⁶ In *CEED v. California Coastal Zone Conservation Com.* (1974) 43 Cal. App. 3d 306 [118 Cal. Rptr. 315], Division Two of this district considered and rejected a challenge to the constitutionality of the Coastal Zone Conservation Act of 1972 (former § 27000 et seq.), now codified as the Coastal Act (§ 30000 et seq.). In so doing, the court noted the permit process established by the Act itself was a type of interim development control, and such interim regulations were specifically authorized under *Government Code section 65858*. (43 Cal. App. 3d at pp. 313-316.)

and certification of a local coastal plan: "The Coastal Act of 1976 (*Pub. Resources Code, § 30000 et seq.*) was enacted by the Legislature as a comprehensive scheme to govern land use planning for the entire coastal zone of California.... '[T]he basic goals of the state for the coastal zone' are to: '(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade [***13] resources.'" (*Id. at pp. 565-566*, fn. omitted; see also *City of Chula Vista v. Superior Ct. (1982) 133 Cal. App. 3d 472, 480-484 [183 Cal. Rptr. 909]*, fn. omitted.)

The court further held the wording of the Coastal Act does not suggest preemption of local planning by the state; rather, under the language of *section 30005*, local governments have the authority to zone land to fit any of the acceptable uses under the policies of the act and have the discretion to be more restrictive than the Act. (*Yost, supra, 36 Cal. 3d at pp. 572-573.*) Specifically, the court stated, "An amendment which authorizes a use designated as a permitted use in the LCP does not require certification by the Commission; ..." (*Id. at p. 573, fn. 9.*)

Two means exist for implementing Coastal Act policies. First, most new development in the coastal zone is subject to a coastal development permit. (§ 30600.) Second, all local governments are required to prepare an LCP covering the territory within their boundaries in the coastal zone. (§ 30109, [*86] 30500.) The LCP's consist of a land-use plan,

zoning ordinances, zoning district maps and other matter which, taken together, meet the [***14] requirements of and implement the policies of the Act. (§ 30108.6.)

Local governments are responsible for creating their LCP's. (§ 30500; *Yost, supra, 36 Cal. 3d at p. 572.*) The Coastal Commission was established to review these LCP's and certify the LCP's meet the requirements of the Act.

The Act also provides an LCP may be amended by a local agency, but the Coastal Commission has the authority to review and certify any amendments to the LCP. No amendment to the LCP will become effective until the Coastal Commission certifies the amendment is consistent with the requirements of and implements the policies of the Act. (§ 30514, *subd. (a).*)

Amendment of an LCP is defined by the Act to include, "but is not limited to, any action by a local government that authorizes the use of a parcel of land other than a use that is designated in the certified local coastal program as a permitted use of the parcel." (§ 30514, *subd. (e).*)

3. Interim Ordinances

Government Code section 65858, set out in full below,⁷ establishes an expeditious means [***408] to "protect the public safety, health and welfare" by establishing procedures for the adoption of interim, limited [***15] duration

⁷ *HN7 Government Code section 65858* provides:

"(a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body, to protect the public safety, health and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

"(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

"(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains a finding that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.

"(d) Ten days prior to the expiration of an interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

"(e) When an interim ordinance has been adopted, every subsequent ordinance adopted pursuant to this section, covering the whole or a part of the same property, shall automatically terminate and be of no further force or effect upon the termination of the first interim ordinance or any extension of the ordinance as provided in this section."

ordinances.

[***16] [*87] DISCUSSION

(4) (4) The issue before us is this: May *Government Code section 65858* and *Public Resources Code sections 30514* be harmonized,⁸ or does *section 30514* prevent acts under *Government Code section 65858* from taking effect prior to review and approval of those acts by the Coastal Commission?

The legislative intent in this matter may be derived from the articulations of the relationship between the Coastal Act and other local government activity. *HN8 Section 30005* describes the impact of the Coastal Act on the authority of local governments to regulate uses in the coastal zone under their own powers:

"No provision of this division [***17] is a limitation on any of the following:

"(a) Except as otherwise limited by state law, on the power of a city or county or city and county to adopt and enforce additional regulations, *not in conflict with this act*, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone.

"(b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances." (Italics added.)

Thus, the Legislature clearly intends that local governments retain authority to regulate land or water uses in the coastal zone when necessary to protect coastal resources. This authority exists so long as the regulations enacted are "not in conflict" with the purposes of the Coastal Act.

Also, *HN9 section 30514, subdivision (a)* provides: "A certified local coastal program and all local implementing ordinances, regulations, and other actions may be amended

by the appropriate local government, but no such amendment shall take effect until it has been certified by the commission."

[*88] For purposes of this section, an amendment to a certified local coastal program [***18] includes, but is not limited to, "any action by the local government that *authorizes the use of a parcel of land other than a use that is designated* in the certified local coastal program as a permitted use of the parcel." (*§ 30514, subd. (e)*, italics added.)

Thus, *HN10* 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."

Conway concedes that an urgency ordinance which imposed a total moratorium on all development "would not, in and of itself, be in conflict with the Coastal Act." He urges, however, that Proposition P constituted a change in the intensity of the permitted uses, rather than complete prohibition thereof, and thus it was an "amendment" requiring Coastal Commission certification before it could become effective.

As City correctly notes, the suggestion that a valid urgency measure may only impose [***409] a total moratorium, rather than merely effecting, [***19] as here, a limitation of an already-permitted use, is without foundation in either law or reason. The single case Conway cites for this proposition does not support it.⁹

[***20] 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

⁸ Conway suggests that in a case of conflict among statutes, we should apply the principle that the latest legislative expression controls, here, the Coastal Act. (See, e.g., *People v. Superior Court (Romero)* (1996) 13 Cal. 4th 497, 526 [53 Cal. Rptr. 2d 789, 917 P.2d 628].) Where there is no irreconcilable conflict, however, we need not apply this principle.

⁹ Conway relies upon *Silvera v. City of South Lake Tahoe* (1970) 3 Cal. App. 3d 554, 558 [83 Cal. Rptr. 698] (*Silvera*), for the proposition that a valid interim ordinance must halt *all* development. That case, however, involved an attempt to positively authorize a formerly prohibited use. There the court held: "... These ordinances do not prohibit; they authorize. They permit a use formerly prohibited--construction of a high-rise permanent building. It is thus obvious that the intent of the city counsel was not to adopt any stopgap temporary measure to prevent a use which might interfere with a comprehensive zoning plan later to be adopted. It could only have been, and it was, an attempt to circumvent the statutory scheme of community development by the misuse of a code section framed to maintain the status quo pending the completion of a comprehensive plan." (*Silvera, supra*, 3 Cal. App. 3d at pp. 556-557.)

Silvera thus did not involve a true "interim" ordinance, but instead involved a "ruse" through which the City of South Lake Tahoe "sought to authorize a high-rise building." (*Silvera, supra*, 3 Cal. App. 3d at p. 558.) The case is thus fully distinguishable from this matter.

the public ... safety [and] welfare." (*Id.*, subd. (c).) The necessary conclusion is that *HNI1* local governments retain the power to enforce urgency interim ordinances which are not in conflict with [*89] 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.*)

Conway and City do not dispute that Proposition P is an effective interim ordinance adopted under authority of *Government Code section 65858*. Proposition P did not change the permitted use of the R-HD zone, but it maintained R-HD as a multifamily residential zone. What Proposition P did accomplish was only a temporary reduction in density and building heights for multifamily residential zones.

In accordance with City's LCP, the permitted uses of property in the coastal zone were not altered. There was no change in the relative composition of residential, industrial or recreational [***21] uses. City, under the authority of *section 30005*, adopted and enforced additional regulations, not in conflict with the act, which imposed further conditions and restrictions on multifamily residences within the coastal zone.

City's action did not conflict with the Coastal Act because Proposition P protected, maintained and enhanced the overall quality of the coastal zone environment. Proposition P did not alter the utilization or conservation of coastal zone resources, impede public access to and along the coastal zone, or interfere with the priorities established for coastal-dependent or coastal-related development.

For the foregoing reasons we conclude there is no conflict in this case between *section 30514* (or other provisions of the

Coastal Act) and *Government Code section 65858*. 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.¹⁰

[***22] Any other conclusion would lead to the absurd consequences that an attempt to advance [***410] the purposes of the Coastal Act, which attempt required [*90] 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.

We hold that *HNI2* an interim ordinance which does 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.*) need not be certified by the Coastal Commission prior to implementation and enforcement. The trial court here correctly concluded that approval of the Coastal Commission was not required prior to implementation and enforcement of Proposition P. In approving and affirming that conclusion, we thus "avoid an interpretation that would lead to absurd consequences." [Citation.]" (*People v. Coronado, supra, 12 Cal. 4th at p. 151.*)

DISPOSITION

The judgment is affirmed. Both parties to bear their own costs on appeal.

Benke, Acting P. J., and McDonald, J., [***23] concurred.

¹⁰ We recognize Conway relies for support upon (1) a formal opinion of the Attorney General (70 Ops.Cal.Atty.Gen. 220 (1987)), and (2) an informal opinion of the Attorney General in the form of a letter dated December 9, 1992, to the Executive Director of the California Coastal Commission (Cal.Atty.Gen., letter opn., No. 92-1215 (Dec. 9, 1992).) The formal opinion, however, does not address the issue of interim regulations of the type before us, and thus is of no value as persuasive precedent. The informal opinion concludes Coastal Commission approval is not required before an interim ordinance may take effect "where such an ordinance would not be in conflict with the Act." (Letter opn., No. 92-1215, *supra*, at p. 1.) As we have concluded there is no conflict between the interim ordinance here and the Act, the opinion supports the conclusion we reach, rather than contradicting it.