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THE CITY OF IMPERIAL BEACH

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FROM: Steve Haskins DEPARTMENT: City Council

FAX NUMBER: 557-4025

FAX TO: County of San Diego
(Company Name, Branch of Government, etc.)

ATTENTION: Adrienne Brodeur/Leon Williams' office

RE: Prop "P"

ADDITIONAL INFORMATION/MESSAGE:

THE CITY OF
IMPERIAL
BEACH

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PRESS RELEASE FOR IMMEDIATE RELEASE

February 10, 1993

There has been an ongoing discussion between the City of Imperial Beach and the Staff of the California Coastal Commission regarding the need for Commission review and approval of Proposition "P," the height and density limitation measure which was passed by the Voters of Imperial Beach by a 3 to 1 margin in the November 1992 election. The City Attorney has taken the position that Proposition "P" need not be reviewed by the Commission, and is supported in this view by the City Attorneys of Del Mar, Coronado, Encinitas, Oceanside, Chula Vista, San Diego, National City and Solana Beach. In addition, the City Attorneys of numerous other California coastal cities have expressed their support for this position. Coastal Commission Staff, however, believes the measure must be reviewed and approved by the Commission.

The Executive Director of the Coastal Commission recently requested that the City of Imperial Beach submit Proposition "P" to the Coastal Commission for review and approval, with the understanding that the Coastal Commission will review the matter expeditiously as an urgency measure pursuant to the Coastal Act, Section 30514(c).

In an effort to continue amicable intergovernmental relations between the two entities, and in light of the Commission's willingness to apply the expedited procedure to its review, the City Council has agreed to submit Proposition "P" to the Coastal Commission for expeditious review and approval under §30514(c), rather than bring an action for judicial determination. The City will continue to enforce Proposition "P" as of its effective date of December 12, 1992 pursuant to the City Attorney's ruling.

Therefore, Council will act to set a public hearing for transmittal of Proposition "P" to the Coastal Commission for expeditious review by the Executive Director. A public hearing will be scheduled for March 3, 1993.

The City Council
City of Imperial Beach

CITY OF IMPERIAL BEACH

PROPOSITION "P"

The Height and Density Limitation Passed By City Voters

In the General Municipal Election held on November 3, 1992, Proposition "P" was passed by 71.8 percent of the 6,685 registered voters of the City of Imperial Beach who voted on the initiative. On December 2, 1992, the City Council passed, approved, and adopted Resolution No. 92-4180 and City Ordinance No. 92-864, certifying the results of the November 3, 1992, General Municipal Election and establishing Proposition "P" as a City Ordinance. Proposition "P" took effect as City Ordinance No. 92-864 on December 12, 1992.

Prop "P" temporarily adds sections to the Municipal Code with regard to density, height, and lot consolidations which affect the multi-family zones and the "Seacoast District Specific Plan Area". Specifically, Prop "P" limits the density for all new multi-family residential development in the City of Imperial Beach to a maximum of up to one dwelling unit for each 2,000 square feet of building site area. Prop "P" also limits the maximum permitted height of residential structures to thirty (30) feet in height, as measured from grade level.

Prior to the effective date of Prop "P", the maximum permitted density for multi-family residential development was one dwelling unit for each 1,000 square feet of building site area and the maximum permitted height of residential structures was forty (40) feet in height.

Prop "P" also states that no lots which are combined or consolidated shall be allowed to yield a greater density of residential units than such lots would have yielded prior to the combining or consolidation of such lots.

The purpose of Prop "P" is to protect the public health, safety and welfare of residents of the City of Imperial Beach by limiting the height and density of new multi-family residential development on an interim basis to allow for the orderly amendment and updating of the Imperial Beach General Plan and Local Coastal Plan without the pressure of high density residential growth affecting the amendment process. As an interim ordinance, Prop "P" will be in effect until a new General Plan and Local Coastal Program for the City of Imperial Beach have been approved and accepted by all necessary governmental entities, or for two years from the effective date of the ordinance, whichever comes first.

The City has already started work towards completing a comprehensive amendment to the General Plan and Local Coastal Program and expects to complete this process by the end of 1993.

NOTICE

TO ALL RENTAL AND BUSINESS OWNERS AND MANAGERS

Business Certificate renewals have been mailed. Payment is due by the end of January. A business certificate is necessary on any residential rental property or for any business

If you have not received a renewal notice, are initiating a new business activity or residential rental, or have questions about

STATE OF CALIFORNIA—THE RESOURCES AGENCY PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

January 29, 1993

Mayor Mike Bixler
City of Imperial Beach
825 Imperial Beach Blvd
Imperial Beach, CA 91932

Dear Mayor Bixler:

I am writing to reiterate our position that the City of Imperial Beach should submit Proposition P to the Coastal Commission for certification as an LCP amendment prior to enforcing it as a legal standard in the coastal zone. This interim ordinance purports to amend standards in the LCP certified by the Commission including density, height limits and lot consolidation provisions within the multi-family residential areas and Seacoast District Specific Plan Area. Thus, it requires an LCP amendment in order to have any legal force and effect in the coastal zone. This view is consistent with that of the Attorney General's office, which is reflected in the attached informal opinion letter.

I understand that the City has relied on Proposition P to prevent one or more landowners in Imperial Beach who have valid coastal development permits and who have commenced construction from undertaking the development authorized by the permit. I do not believe that it is in the interest of either the City or the Coastal Commission to litigate this issue. In this era of limited governmental resources, it would, in my opinion, be a waste of public funds for the City to pursue protracted legal action on this issue. The City could avoid potential liability for using an uncertified and thus legally invalid LCP amendment to block lawfully approved development in the coastal zone by submitting an LCP amendment to the Commission.

I understand that Deborah Lee and Laurinda Owens of the Commission's San Diego Area Office will be contacting the City's Planning Department separately to discuss the possibility of expeditious processing and review of Proposition P by the Commission under Public Resources Code section 30514(c). I strongly urge the City to work with our staff to submit this measure for certification by the Commission.

Very truly yours,

Peter Douglas

PETER M. DOUGLAS
Executive Director

Enclosure

cc: Councilmembers:
Jay Robbins
Diane Rose
Steve Haskins
Marti Goethe
Ronald Jack, City Manager
Lynn McDougal, City Attorney
Commissioners

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE

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OAKLAND, CA 94612
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December 9, 1992

Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

RE: The Effect of Urgency Ordinances in the Coastal Zone

Dear Mr. Douglas:

You asked for an informal Attorney General's opinion on the following question:

> "Where a local government with a certified Local Coastal Program (LCP) enacts an urgency interim ordinance pursuant to section 65858 of the Government Code, is it necessary for the local government to submit the urgency interim ordinance to the Coastal Commission as an amendment to its Local Coastal Program, pursuant to section 30514 of the Public Resources Code, in order for the ordinance to take effect in the coastal zone?"

Our answer is that such an urgency interim ordinance may only take effect to prohibit uses in the coastal zone without prior Coastal Commission review and approval where such an ordinance would not be in conflict with the Act. In all other instances, a local government may not prohibit the uses identified in the Local Coastal Program until the ordinance is submitted to the Coastal Commission and approved pursuant to Public Resources Code section 30514. The analysis supporting this opinion is provided below.

State Planning and Zoning Law

State Planning and Zoning Law requires each county and city in California to adopt a comprehensive, long-term general plan for the physical development of the county or city. (Gov. Code, § 65300.) This plan consists of a statement of development policies and includes diagrams and text setting forth objectives, principles, standards, and plan proposals. (Gov. Code, § 65302.) The general plan must contain certain elements required by state law, including a land use element, housing element, conservation

element and open space element, and may contain other elements at the option of the city or county. (Ibid.) All the elements of the general plan must be consistent with one another. (Gov. Code, § 65300.5; Sierra Club v. Board of Supervisors (1981) 126 Cal.App.3d 698.)

The general plan of a county or city is implemented by ordinances and regulations concerning zoning, subdivisions and building permits. For example, a zoning ordinance may divide a city into districts and prescribe the permitted uses within each district. A building ordinance may establish a building permit requirement and set the standards for building construction. Counties and general law cities are specifically authorized to adopt such ordinances and regulations by Government Code section 65800. Charter law cities adopt ordinances and regulations pursuant to the authority and procedures established in their respective charters. (See Gov. Code, § 65803.) In general, zoning ordinances must be consistent with the general plan in effect at the time the ordinance is adopted, although this requirement is not always applicable to charter cities. (Gov. Code, § 65860; Lesher Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531; c.f. Mira Development Corp. v. City of San Diego (1988) 205 Cal.App.3d 1201 (the ordinances of charter cities do not need to be consistent with the city's general plan unless this is required by the city charter or adopted ordinance).)

Urgency Ordinances

An exception to the usual rules for the preparation and adoption of zoning ordinances is provided in Government Code section 65858. This section authorizes general law cities and counties to sidestep the general plan consistency requirements set out above, as well as the procedural requirements for the adoption of ordinances, and to adopt urgency or interim ordinances in specified instances. In relevant part, this section states:

> "(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 within a reasonable time...
>
> "(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 a threat to public health, safety, or welfare."

The effect of this statute is to allow local governments to bypass their existing ordinances and general plans, and prohibit otherwise authorized uses, in instances where they are contemplating a change in the applicable general plan or ordinance and find that continued development under the existing plan or ordinance would present an immediate threat to the local health, safety, or welfare.

Reflecting their status as ordinances only meant to prohibit uses while alternative plans and zoning proposals are being studied, ordinances adopted under Section 65858 are of limited duration. Any such ordinance may only be adopted for an initial 45 day period. (Gov. Code, § 65858(a) and (b).) Thereafter, the ordinance can be extended, but in no event may the duration of such an ordinance exceed two years. (Ibid; Bank of the Orient v. Town of Tiburon (1990) 220 Cal.App.3d 992.)

Experience with these ordinances, as well as a position paper on the subject of interim ordinances prepared by the League of California Cities in 1988, suggests that interim ordinances come in two general forms. First, there are ordinances that temporarily prohibit the issuance of certain types of permits.[1] Such ordinances merely attempt to maintain the status quo by preventing new uses while the government entity considers alternative plans or ordinances. Second, there is another kind of urgency ordinance which is described by the League of Cities as follows:

> "an "interim regulation" type ordinance, which temporarily allows development permits to be issued so long as they would not be incompatible with the regulatory revisions under consideration." (Coastal Cities Legal Committee Position Paper, p. 3.)

In essence, these latter ordinances do not seek merely to maintain the status quo by prohibiting development; rather, they allow the continued issuance of development permits so long as

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1. Interim ordinances typically deal with a wide variety of development related permits or authorizations, including building permits, sewer connections, subdivision maps and use permits.

these permits are consistent with the alternative zoning proposals or general plan provisions under study.[2]

The California Coastal Act

The California Coastal Act of 1976 (Pub. Resources Code, § 30000, et seq.) applies additional policy and procedural requirements to this local government planning framework when dealing with development in the coastal zone, a narrow strip of area that extends along the coast and is defined in Public Resources Code section 30103. Premised on the Legislature's findings regarding the unique role that the coastal zone serves in the environment, economy and social well-being of the state, the Coastal Act establishes policies reflecting statewide interests against which development proposals for the coastal zone must be measured. A number of these policies place restrictions on development in the coastal zone to protect fragile coastal resources, such as wetlands and environmentally sensitive habitat areas. (Pub. Resources Code, §§ 30233 and 30240.)

Another express purpose of the Coastal Act is to assure priority for coastal-dependant and coastal-related development on the coast. (Yost v. Thomas (1984) 36 Cal.3d 561, 566, citing Pub. Resources Code, § 30001.5.) Reflecting this purpose, many policies in the Act establish priorities among uses in the coastal zone with the goal of promoting uses that have a special relationship to the coast, such as coastal agriculture (see Pub. Resources Code, § 30241), recreation (see Pub. Resources Code, § 30220), or coastal-dependant industrial uses (see Pub. Resources Code, § 30260). As an example, the Act provides that:

> "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-dependant industry." (Pub. Resources Code, § 30222.)

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2. Several urgency ordinances have been brought to our attention that substantially rewrite the standards and procedures applicable to the issuance of permits during the term of the ordinance. Whether such ordinances qualify as urgency "ordinances prohibiting use" within the meaning of Section 65858 is beyond the scope of this opinion. See Silvera v. City of South Lake Tahoe (1970) 3 Cal.App.3d 554; c.f Anderson v. City Council of Pleasant Hill (1964) 229 Cal.App.2d 79.

Two related means are provided for implementing Coastal Act policies. First, most new development in the coastal zone is now subject to a coastal development permit requirement. (Pub. Resources Code, § 30600.) Second, to ensure planned and coordinated development in the coastal zone consistent with the policies in the Act, all local governments, including charter cities, are required to prepare a local coastal program ("LCP") covering the territory within their boundaries in the coastal zone. (Pub. Resources Code, §§ 30109, 30500.) These LCPs must consist of a land use plan ("LUP"), zoning ordinances, zoning district maps and other provisions which taken together meet the requirements of and implement the policies of the Act at the local level. (Pub. Resources Code, § 30108.6.)

Local governments are entrusted with the primary responsibility for creating their LCPs. (Pub. Resources Code, § 30500; Yost v. Thomas, supra, 36 Cal.3d at 572.) In addition, the Coastal Commission ("Commission") was established to review these LCPs and certify that they meet the requirements of the Act before they go into effect. While the LCPs are in preparation, the Commission also is entrusted with the responsibility for issuing coastal development permits.[3] (Pub. Resources Code, § 30600.) After the LCP is certified, the local government assumes this permit function, subject to the Commission's limited original jurisdiction and appellate review authority. (Pub. Resources Code, §§ 30600, 30601 and 30603.)

After the local government has submitted an LUP for certification, the Commission must hold a hearing and has 90 days to certify or refuse certification of the plan. (Pub. Resources Code, § 30512.) Zoning ordinances and other implementing actions also are subject to hearing requirements and, unless they are rejected, go into effect within 60 days after submittal to the Commission. (Pub. Resources Code, § 30513.)

The Coastal Act also provides the Commission with the authority to review any amendments that might be made to the LCP, and no such amendment will be effective until the Commission certifies that it too is consistent with the requirements of and implements the policies of the Act. (Pub. Resources Code, § 30514(a).) What constitutes an amendment to the certified LCP is not dependant on the particular name given to the local government action. Rather, amendments to the LCP include, but are not limited to, "any action by the local government which authorizes a use of a parcel of land other than that designated in the certified local coastal program as a permitted use of such

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3. In certain instances not relevant to this opinion local governments may acquire the authority to issue coastal permits before the completion of an LCP. Public Resources Code, § 30600(b).

parcel." (Emphasis added.) (Pub. Resources Code, § 30514(d).) Thus, in a previous opinion this Office determined that an initiative seeking to prohibit specified uses in the coastal zone constituted an amendment to the LCP for purposes of section 30514. (70 Ops.Cal.Atty.Gen. 220, 225-226.)

In most instances, the Commission's decisions on LCP amendments also are subject to public hearing requirements and the applicable 60 or 90 day time limit, depending on whether the amendment is to the LUP, an ordinance or other implementing action. (Pub. Resources Code, § 30514(c).) The Commission also is required, however, to establish procedures whereby proposed amendments to a certified LCP, except amendments that allow changes in uses, may be reviewed and designated by the executive director as being minor in nature or as requiring rapid and expeditious action. (Ibid.) No hearing is required for such amendments and they may take effect within 10 days after their designation by the executive director. (Ibid.)

The Coastal Act ties the coastal planning process to the more general planning process set out in Planning and Zoning Law by defining the LUP as the "...relevant portion of a local government's general plan, or local coastal element..." (Pub. Resources Code, § 30108.5.) Similarly, the term "local coastal element" is defined in the Act to mean:

> "...that portion of a general plan applicable to the coastal zone which may be prepared by the local government pursuant to this division, or any additional elements of the local government's general plan prepared pursuant to Section 65303 of the Government Code, as the local government deems appropriate." (Pub. Resources Code, § 30108.55.)

This relationship between the LCP and general plan also was cited by the California Supreme Court in Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d [illegible] adoption, the LCP becomes part of the local government's general plan and is vested with the same "constitutional" authority").

In practical terms, placement of the LUP in the general plan serves to safeguard against inconsistencies in the coastal and local government planning and permitting processes. For instance, given the internal consistency requirements of Government Code section 65300.5, it follows that all elements of the general plan have to be consistent with the LUP. Additionally, all permit and ordinance decisions by the local government that require a finding of consistency with the general plan as a prerequisite to approval, including subdivision map (Gov. Code, § 66473.5.) or zoning ordinance (Gov. Code, § 65803) approval, also will have to be consistent with the LUP.

Discussion

Your opinion request concerns how the coastal planning process described above relates to the ability of general law cities and counties to prohibit uses by adopting urgency interim ordinances pursuant to Government Code section 65858. There are no reported decisions on this issue and therefore our answer to this question is dependant on the application of the standard rules of statutory construction. Fundamental among these rules are those which counsel that the aim of such construction should be the ascertainment of legislative intent so that the purpose of the law may be effectuated. (People ex rel. Younger v. Superior Court (1976) 16 Cal.3d 30, 40, citing Merrill v. Department of Motor Vehicles (1969) 71 Cal.2d 907, 918.) Statutes also should be construed with reference to the entire statutory system of which they form a part so that all may be harmonized and have effect. (Ibid.) Where there is a conflict between two statutes, a special act will be considered an exception to the general statute, regardless of when the respective statutes were adopted. (Agricultural Labor Relations Board v. Superior Court (1976) 16 Cal.3d 392, 420, citing Code of Civ. Proc., § 1859 and In re Williamson (1954) 43 Cal.2d 651, 654.) Finally, statutes should be interpreted to avoid absurd results not intended by the legislature. (Select Base Materials v. Board of Equal. (1959) 51 Cal.2d 640, 645)

Applying these rules to the statutes in question, the determination of the Legislature's intent in this matter is facilitated by the fact that the Legislature has provided several clear articulations of the relationship between the Coastal Act and other local government authority. First, Public Resources Code section 30005, describes the bearing that the Act has on the authority of local governments to regulate uses in the coastal zone pursuant to their other powers as follows:

> "No provision of this division 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."

Thus, the Legislature clearly intends that local governments should retain the authority to regulate land or water uses in the

coastal zone where this is necessary to protect coastal resources; however, this authority only exists where the regulations are not in conflict with the Coastal Act.

Second, as described above, Public Resources Code section 30514(a), proscribes that:

> "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." (Emphasis added.)

For purposes of this section, an amendment to the certified local coastal program includes, but is not limited to, "any action by the local government which authorizes a use of a parcel other than that designated in the certified local coastal program as a permitted use of such parcel." (Emphasis added.) (Pub. Resources Code, § 30514(d).) As noted above, this broad definition of what constitutes an amendment to an LCP also applies to local government acts that prohibit specified uses. (70 Ops.Cal.Atty.Gen. 220, 225-226.) Finally, where proposed amendments to an LCP requires "rapid or expeditious action," such as would be the case in situations involving urgency interim ordinances, the Coastal Act directs the Commission to adopt regulations authorizing the executive director to act promptly on these amendments, and they will take effect within 10 days after the executive director's decision. (Pub. Resources Code, § 30514(c).)

We think this direction from the Legislature in the express provisions of the Coastal Act provides a clear statement of the Legislature's intent. Local governments exercising their authority under Government Code section 65858 (and for that matter, charter law cities acting under their city charters) retain the power to adopt urgency interim ordinances without Coastal Commission review, except where this would conflict, either substantively or procedurally, with the Coastal Act. In all other instances where a local government acts to change the standards applicable to uses in the coastal zone or to prohibit specified uses in the coastal zone altogether, such acts, including urgency interim ordinances, will not be effective until they are certified by the Coastal Commission. The Legislature also has recognized that in certain situations, ordinances will require speedy action by the Commission and has therefore authorized the Commission to adopt regulations providing for expeditious certification of these ordinances.[4]

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4. The Commission has adopted the required regulations. See Cal. Code of Regs., § 13554.

There are several situations in which it may be said that adoption of an urgency interim ordinance is not in conflict with the Coastal Act. As an illustration, Public Resources Code section 30610 provides that certain developments are excluded from coastal permit requirements, including, in specified instances, the replacement of structures, other than public works facilities, destroyed by a natural disaster. (Pub. Resources Code, § 30610(g).) Given this exclusion, an urgency ordinance prohibiting construction of replacement structures in the area of a natural disaster, pending a review of the applicable zoning ordinances to see if they should be amended to diminish the likelihood of a similar future disaster, would not conflict with the Act and would not necessitate review by the Coastal Commission before it goes into effect.

It also is our opinion that an urgency interim ordinance that prohibits all new uses within the local government's entire coastal zone jurisdiction, such as a temporary moratorium on all new building permits and land divisions, may be said not to conflict with the Act and would not need certification by the Coastal Commission to be effective. An ordinance that prohibits all new uses merely to maintain the status quo would not conflict with the Act because the Act, while it promotes certain uses, does not mandate that new development must occur, or must proceed according to a specific timetable. Rather, the Act requires that where development occurs it must be subject to coastal planning and permit requirements to ensure both that its potential impacts on coastal resources are addressed and that the new use is consistent with the priorities established by the Act. An urgency interim ordinance maintaining the status quo for a limited period of time does not conflict with these objectives.

Conversely, ordinances which selectively prohibit either certain types of uses or uses in portions of the local government's coastal zone jurisdiction, while authorizing the approval of other uses, do require review for consistency with the Coastal Act and are not effective until certified by the Commission. As discussed above, the Act encourages identified coastal-related or dependant uses, including agricultural, industrial and recreational uses. The LCP process safeguards the state's interest in protecting and advancing these uses by ensuring that all land use designations in the coastal zone are consistent with these priorities. Ordinances that alter the priorities of use established in certified LCPs have the effect of bypassing this LCP process and create the risk that development during the term of the urgency interim ordinance will result in the commitment of coastal resources to non-priority uses. Thus, an urgency ordinance that prohibits new visitor-serving or industrial uses in the face of a water shortage, while continuing to allow new subdivisions and residential development, would have the effect of allocating limited coastal water

resources to residential use at the expense of uses assigned a priority under the Act. (E.g., Pub. Resources Code, §§ 30222 and 30260.) Such a result would be antithetical to the goals of the Legislature in adopting the Coastal Act.

Similarly, urgency interim ordinances changing the standards applicable to development in the coastal zone may be inconsistent with the requirements of the Act and therefore require review and certification by the Commission before they go into effect. The Act contains numerous policies relating to the siting and design of developments in the coastal zone. As an example, Public Resources Code section 30250 generally requires that new residential, commercial, or industrial development, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it. An "interim regulation" type ordinance which temporarily allows the issuance of development permits while significantly reducing the residential densities applicable to properties adjacent to developed areas may be inconsistent with Section 30250's preference for locating new residential development in or adjacent to such areas. As an additional illustration of this point, Section 30251 requires new development to protect views to and along the coast. An urgency interim ordinance encouraging the clustering of development, or changing building setbacks or height and bulk standards, may run afoul of this section's view preservation goals. For these reasons, interim ordinances which purport to allow development according to standards that differ from those found in the LCP may not go into effect until certified by the Commission.

Several arguments have been advanced to support the contention that urgency ordinances should be permitted to go into effect without prior Commission review and certification, however, none of these arguments are persuasive.

It has been suggested that the Legislature in adopting Government Code section 65858 intended to exempt urgency ordinances from the process established for the review and certification of LCP amendments. This argument hinges on the language in the section stating that an urgency ordinance may be adopted "without following the procedures otherwise required prior to the adoption of a zoning ordinance." (Ibid.) The assertion is that the LCP amendment process is simply one of the procedures otherwise required for the adoption of a zoning ordinance and therefore is not applicable to urgency ordinances.

Such an argument overlooks the fact that Section 65858 was initially adopted before the Coastal Act. Additionally, there is

no evidence that the Legislature intended such a result.[5] Moreover, it also fails to consider that the Legislature specifically addressed the relationship between local government authority and the requirements of the Act and determined that local government controls may only be enforced when they are not in conflict with the Act. (Pub. Resources Code, § 30005(a).) Thus, the specific requirements of the Act, including the LCP amendment process, are controlling over the more general direction provided in Section 65858. (See Agricultural Labor Relations Board v. Superior Court, supra, 16 Cal.3d 392, 420, citing Section 1166.3(b) in the Agricultural Labor Relations Act ("if any other act of the legislature shall conflict with the provisions of this part, this part shall prevail"), as controlling over the general criminal trespass provisions of Penal Code, § 602.)

It also is argued that the statutes should be interpreted to avoid absurd results and that it would be absurd to allow local governments to prohibit uses in all areas of the city or county except the coastal zone. However, the result in this situation, different treatment of development depending on whether it is in or out of the coastal zone, is not absurd, but is exactly what the Legislature intended. The whole point of the Coastal Act is to ensure that development in the coastal zone is carried out in accordance with state goals and policies. These goals and policies are premised on the Legislature's express recognition that the coastal zone is a unique area that requires different consideration than the rest of the state. In order to ensure that these goals and policies are weighed in the permitting process for new development in the coastal zone, the Legislature requires that the standards and land use designations applicable to such development must be reviewed and certified by the Coastal Commission before they go into effect.

It also is significant that the Legislature has expressly considered that certain amendments to LCPs, like urgency interim ordinances, may require expedited or rapid certification. (Pub. Resources Code, § 30514(c).) The Commission is directed to adopt regulations authorizing the executive director to act on these ordinances, and, in such instances, the ordinances will take effect in 10 days. (Ibid.) This provides the Commission with the

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5. The argument also fails to consider that Government Code section 65858 applies only to general law cities and counties unless charter cities choose to comply with this section. See Government Code, § 65803. Thus, we are asked to reach the anomalous conclusion that the legislature intended to provide an exemption from LCP procedures in a statute which may not be applicable to all local governments in the coastal zone.

ability to quickly act on urgency ordinances which are necessary to respond to changed circumstances.

Conclusion

For these reasons we conclude that an urgency interim ordinance may only take effect to prohibit uses in the coastal zone without prior review and approval by the Coastal Commission where such an ordinance would not be in conflict with the Act. In all other instances, a local government may not prohibit the uses identified in the Local Coastal Program until the ordinance is submitted to the Coastal Commission and approved pursuant to Public Resources Code section 30514.

Please let us know if you have any questions or comments on this opinion.

Sincerely,

DANIEL E. LUNGREN
Attorney General

J. MATTHEW RODRIQUES
Deputy Attorney General

cc: Ralph Faust
Jan Stevens
James Patterson

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Office of the City Attorney

City of Pacifica

170 Santa Maria Avenue
Pacifica, California 94044

Scenic Pacifica

January 21, 1993

J. Matthew Rodriguez
Deputy Attorney General
2101 Webster Street, 12th floor
Oakland, CA 94612

Re: December 9, 1992 Opinion to Peter Douglas, California Coastal Commission Regarding Interim Ordinances

Dear Mr. Rodriguez:

I am writing in reference to your December 9, 1992 opinion letter to Peter Douglas, Executive Director of the California Coastal Commission, regarding the effect of interim ordinances in the coastal zone.

I am concerned that City Attorneys were not notified by the Attorney General's office that this issue was being considered. I share the view that this opinion has a significant impact on coastal cities. Although I understand it was an informal opinion, California coastal cities should have been given the opportunity to provide some input regarding your opinion.

This is especially true since the League of California Cities Coastal Cities Committee was directly involved with the Attorney General's office concerning this precise issue. I was involved in an issue originating with the City of Morro Bay regarding interim ordinances. The League had a very constructive dialogue with the Attorney General's office and the Coastal Commission regarding this matter.

This issue is of great practical importance to coastal cities as well. Interim ordinances by their very nature are temporary. If the Attorney General is of the opinion that such ordinances must be approved by the Coastal Commission prior to becoming effective, an insurmountable hurdle may be placed in the path of such ordinances. For example, I understand that in the Imperial Beach situation, the Coastal Commission has declined to expedite processing of the necessary LCP amendment. The estimated time for processing the amendment is six to nine months. In many cases, by the time the processing has been completed, the interim ordinance will have expired, thereby for all intents and purposes the interim ordinance will be nullified.

Due to these and other substantive issues, I urge you to reconsider your opinion after input from affected cities. I understand that the League of California Cities intends to re-authorize the Coastal Cities Committee. We will contact you when this occurs, with a view to further communication on this issue.

I appreciate your thoughtful consideration of the legal issues involved in this matter. However, for the record I must express my strong disagreement with the conclusions drawn in your opinion.

Very truly yours,

Susan M. Schectman

SUSAN M. SCHECTMAN
City Attorney

SMS:fd

cc: JoAnne Speers
League of California Cities

Susan R. Todd
City of Imperial Beach

CITY OF
CHULA VISTA
OFFICE OF THE CITY ATTORNEY

January 5, 1993

J. Matthew Rodriguez
Deputy Attorney General
2101 Webster Street, 12th Floor
Oakland, Ca. 94612

Re: December 9, 1992 Opinion to Peter Douglas Regarding the Effect of Urgency Ordinances in the Coastal Zone

Dear Mr. Rodriguez:

I am writing to you in my capacity as President for the San Diego - Imperial Counties City Attorneys' Association regarding your December 9, 1992 opinion letter to Peter Douglas, Executive Director of the California Coastal Commission, regarding the effect of interim ordinances in the coastal zone.

It is the position of the five coastal city attorneys in the Association that interim ordinances pursuant to Government Code Section 65858 are not subject to Coastal Commission process, as they are not amendments to a city's local coastal program.

We would appreciate your office's reconsideration of this matter as interim ordinances do not permanently change land use restrictions, but temporarily allow development permits to be issued as long as they are not incompatible with the regulatory revisions under consideration for the duration of the interim measure. Local governments need the flexibility to respond promptly to changed circumstances with effective land use amendments. Local governments must also have the authority to suspend or modify uses pending study of the effects of an ordinance or regulation. The ultimate amendment of the LCP or LUP, if any, is the proper subject of Coastal Commission review, not the temporary measure.

276 FOURTH AVE/CHULA VISTA, CALIFORNIA 91910/(619) 691-5037

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Additionally, we are concerned that we were not notified by the Attorney General's office that this issue was being considered. We believe this opinion has a significant impact on all coastal cities, and we should have been given the opportunity to provide comments and input regarding the effect of interim ordinances in the coastal zone.

Thank you for your consideration in this matter.

Very truly yours,

Bruce M. Boogaard
San Diego and Imperial Counties
City Attorneys Association
President

BMB:lgk
F:home\attorney\rodrigus

cc: League of California Cities:
Joanne Speers
Don Benninghoven

Dan Hentschke
Roger Krauel
Lynn McDougal
George Eiser