

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

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Hearing Impaired: (415) 904-5200



W13C

RECORD PACKET COPY

Filed: 1/26/98
49th day: 03/16/98
180th day: 07/25/98
Staff: RH/DSL
Staff Report: 2/23/98
Hearing Date: 3/11/98
Commission Action:

STAFF REPORT: APPEALSUBSTANTIAL ISSUE DETERMINATION

LOCAL GOVERNMENT: Santa Cruz County

DECISION: Approval with conditions (see Exhibit 2)

APPEAL NO.: A-3-SCO-98-005

APPLICANT: Soquel Creek Water District AGENT: Robert Bosso

APPELLANTS: Soquel Creek Water District (see Exhibit 4)

PROJECT LOCATION: 612 Vista Del Mar, Aptos (APN 044-231-02, -27, -38, -40) (see Exhibit 1)

PROJECT DESCRIPTION: Remove existing 300,000 gallon water tank, associated pressure tank, concrete pad and equipment building; install new 500,000 gallon water tank on a graded pad supported by a 10 foot high retaining wall. (see Exhibit 3)

SUBSTANTIVE FILE DOCUMENTS: Santa Cruz County permit file (97-0079); Santa Cruz County Local Coastal Program consisting of 1994 *General Plan and Local Coastal Program* and portions of the County Code.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed. The appellants are challenging Santa Cruz County's ability to condition coastal permits. This authority is found in the Coastal Act and is reflected in the County's local coastal program, and there is no authority to give special treatment to the Water District.

TABLE OF CONTENTS

I. APPELLANTS' CONTENTIONS.....	2
II. LOCAL GOVERNMENT ACTION.....	2
III. APPEAL PROCEDURES.....	3
IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE.....	4
V. RECOMMENDED FINDINGS AND DECLARATIONS.....	4
A. BACKGROUND.....	4
B. ANALYSIS OF CONSISTENCY WITH LCP.....	4
EXHIBITS	
1. LOCATION MAP	
2. COUNTY PERMIT FINDINGS AND CONDITIONS	
3. PROPOSED PROJECT PLANS	
4. APPELLANT'S CONTENTIONS	
5. COUNTY COUNSEL ANALYSIS	

I. APPELLANT'S CONTENTIONS

The applicant is also the appellant, who does "respectfully submit that Government Code section 53091 prohibits the County from imposing conditions on the District that arise out of general zoning and building regulations." The proposed project involves water facilities which are exempt. Thus, the appellant contends that the following conditions are not appropriately included in the project approval "under section 53091 because they are general County zoning requirements: Condition I.B (obtain a grading permit), I.C (meet requirements and pay fees of the Aptos-La Selva Fire Protection District), I.D. (obtain plan review from geotechnical engineer), I.E. (meet requirements and pay fees of Zone 6 Santa Cruz County Flood Control and Water Conservation District), II.C (final inspection from project geologist), and III.B (pay the cost of future inspections that reveal non-compliance)." The full text of the appeal is included in Exhibit A.

II. LOCAL GOVERNMENT ACTION

The Santa Cruz County Zoning Administrator approved a coastal permit for the proposed project with 12 conditions on September 11, 1997 (see Exhibit 2). The applicant appealed the matter to the Planning Commission, which removed one condition on November 12, 1997. The applicant then appealed that decision to the Board of Supervisors, who upheld the Planning Commission's decision on January 13, 1998. The County's final action was received by the Coastal Commission on January 14, 1998 triggering an appeal period running from January 15-29, 1998.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea. Furthermore, developments approved by counties may be appealed if they are not the designated "principal permitted use" under the certified LCP. This project is appealable because public structures and facilities are shown as conditional uses in R-1 zoning district in which the subject property is located. The statement on the County approval that the permit is not appealable is in error. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by a city or county (Coastal Act Section 30603(a)).

For projects not located between the sea and the first public road paralleling the sea, which is the case for this project, the grounds for an appeal shall be limited to an allegation that the development does not conform to the certified LCP (Coastal Act Section 30603(b)(1)). For projects located between the sea and the first public road paralleling the sea, the grounds for appeal to the Coastal Commission can also include an allegation that the development does not conform to the public access and recreation policies of the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue," and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue," which is the case here, or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal was filed, pursuant to Coastal Act Section 30603.

MOTION: Staff recommends a "YES" vote on the following motion:

I move that the Commission determine that Appeal No. A-3-SCO-98-005 raises **no** substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

VI. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description and Location

The Soquel Creek Water District wishes to remove an existing 300,000 gallon water tank, associated pressure tank, concrete pad and equipment building and install a new 500,000 gallon water tank on a graded pad supported by a 10 foot high retaining wall (see Exhibit 3). The project site is 612 Vista del Mar, near the intersection with Alta Drive in the Aptos area of Santa Cruz County (see Exhibit 1). The half-acre site is zoned "R-1-10" and is designated "Residential Urban Low" in the *General Plan and Local Coastal Program*.

B. Analysis of Consistency with LCP

1. Appellant's Contentions:

The applicant is also the appellant, who does "respectfully submit that Government Code section 53091 prohibits the County from imposing conditions on the District that arise out of general zoning and building regulations." The proposed project involves water facilities which are exempt. Thus, the appellant contends that the following conditions are not appropriately included in the project approval "under section 53091 because they are general County zoning requirements: Condition I.B (obtain a grading permit), I.C (meet requirements and pay fees of the Aptos-La Selva Fire Protection District), I.D. (obtain plan review from geotechnical engineer), I.E. (meet requirements and pay fees of Zone 6 Santa Cruz County Flood Control and Water Conservation District), II.C (final inspection from project geologist), and III.B (pay the cost of future inspections that reveal non-compliance)." The full text of the appeal is included in Exhibit 4. The text is the same as went to the Board of Supervisors.

2. Local Government Action:

The County approved the project with 11 conditions including five of the six enumerated in the appellant's contentions (see Exhibit 2). The County findings briefly note that the project as conditioned is consistent with the LCP designations and applicable Code sections. The County staff report includes an analysis by County Counsel justifying the County's ability to condition the permit (see Exhibit 5). The County staff report lists the County Code Chapters that are the basis for imposing the contended conditions.

3. Relevant Local Coastal Program Provisions

The Zoning Map shows the site in the "R-1-10" district, and the ordinance allows public facilities and structures in that district.

County Code Section 13.20.150(b)(1) provides:

Except as specifically exempted by State or Federal law, all development in the Coastal Zone that is proposed by state or local public agencies shall be subject to the policies, requirements, standards and conditions of the General Plan and Local Coastal Plan and all ordinances to which such development would be subject to if it were privately originated.

Section 12.01.070(a) provides, "Prior to issuance of a building permit, the following actions shall be completed....:

(3) All applicable fees shall be paid including those for building and zoning and energy plan-checks, building permit, Environmental Health and Public Works permits, park dedication, roadside improvement, transportation improvement zones, and drainage fees."

Section 13.10.324.1(a) provides,

All regulations of the local fire department or County Fire Marshall shall be met to ensure adequate road access and water availability for fire protection. A letter indicating all fire department requirements shall be submitted with the project application.

Section 16.20.040 provides in part: "APPROVAL REQUIRED. Except as exempted by Section 16.20.050 of this chapter, no person shall do, cause, permit, aid, abet, suffer, or furnish equipment or labor for any grading until a grading approval has been obtained for the project."

Section 16.20.060 provides in part, "APPLICATION. Applications for approvals granted pursuant to this Chapter shall be made in accordance with the requirements of Chapter 18.10 and shall include the following:...

(c) Plans and Specifications....The plans shall include but not be limited to the following information,...

14. When required by the Planning Director, each application for a grading approval shall be accompanied by supporting data consisting of a soil engineering report and/or engineering geology report... The engineering geology report shall include an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinions and recommendations covering the adequacy of sites to be developed by the proposed grading. Recommendations included in the reports and approved by the Planning Director shall be incorporated in the grading plans and specifications."

Section 16.20.200 provides in part, "INSPECTION AND COMPLIANCE. The Planning Director shall conduct inspections to insure compliance with this chapter.

(a) Inspection. The following inspections shall be performed by the Planning Director....

3. Final Inspection: To determine compliance with plans and specifications."

4. Substantial Issue Analysis

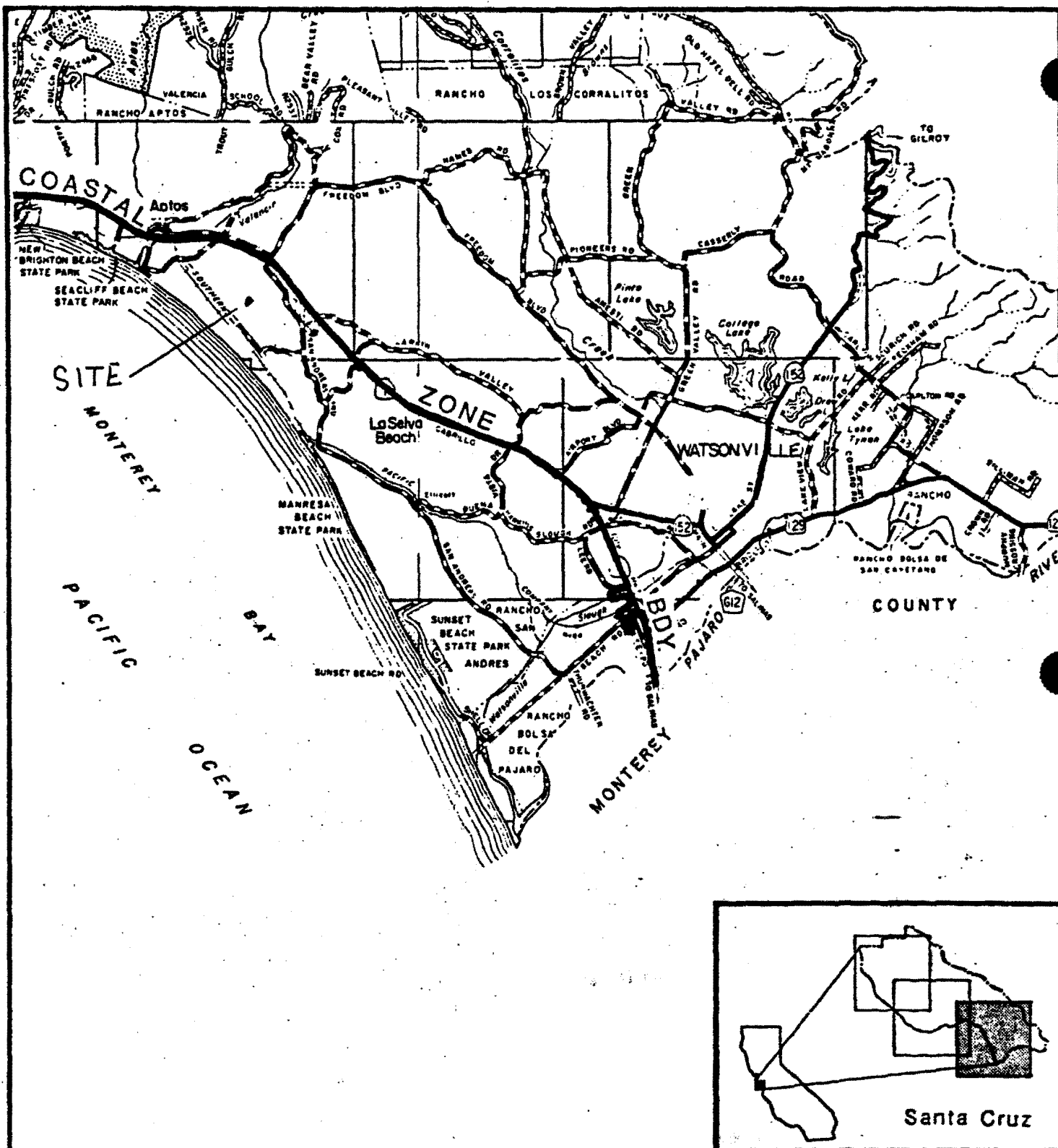
This appeal involves a challenge to the County's authority to condition coastal permits for special districts. The appellant is objecting to five of the 11 conditions that the County imposed. (The appeal text (see Exhibit A) notes a sixth objectionable condition (III.B.), which has already been removed by the County.)

Santa Cruz County has a fully certified local coastal program, certified in 1983 pursuant to Public Resources Code 30000 et. seq. Coastal Act Section 30600(a), with few exceptions, clearly requires new development in the coastal zone to obtain a coastal permit. The proposed project fits the description of new development as stated in PRC Section 30106 and does not fall into any of the categories of exempt development specified in PRC 30610 and Title 14 of the California Code of Regulations, Section 13253 (Improvements to Structures) or Section 13252 (Repair and Maintenance). Finally, the project is not exempt under PRC 25500 as provided in PRC 30600. The site of the project is not located within an area of the Commission's retained jurisdiction (PRC 30519b), but is within the coastal zone of Santa Cruz County. It is, therefore, the responsibility of the County to issue the coastal permit required for this project.

The standard of review for a coastal permit is the certified Santa Cruz County Local Coastal Program (LCP). It should be noted that there is no exception in either the statute or the regulations which provides that only certain portions of a certified plan may be used in the analysis of a public works project. In summary all relevant policies, ordinance, etc. of a certified LCP are appropriate to apply in the consideration (and conditioning) of a coastal permit.

Condition I.B (obtain a grading permit) is authorized by County Code Section 16.20.040. The referenced exemptions of Section 16.20.050 do not cover water tanks. Condition I.C (meet requirements and pay fees of the Aptos-La Selva Fire Protection District) is authorized by Section 13.10.324.1(a). Condition I.D. (obtain plan review from geotechnical engineer) is authorized by Section 16.20.060(c)(14). Condition I.E. (meet requirements and pay fees of Zone 6 Santa Cruz County Flood Control and Water Conservation District) is authorized by Section 12.01.070(a)(3). Condition II.C (final inspection from project geologist) is authorized by Section 16.20.200(a)(3). All of these sections of the County Code are contained in the Coastal Implementation Plan, which has been certified by the Coastal Commission as consistent with and adequate to carry out the land use plan.

Since the County is implementing a State law (the California Coastal Act) as authorized by PRC Section 30519, it has full authority to conditionally approve a coastal permit. County Counsel's analysis elaborates on this point and is incorporated into these findings by reference (see Exhibit 5). Therefore, no substantial issue is raised by the appellant's contentions and the County action stands.





COUNTY OF SANTA CRUZ

Planning Department

PERMIT

Owner Jeffery Gailey
Address PO Box 158
Soquel, CA 95073

Permit Number 97-0079
Parcel Number(s) 044-231-02,27,38,40

PROJECT DESCRIPTION AND LOCATION

Proposal to remove an existing 300,000 gallon water tank, associated pressure tank, concrete pad and equipment building and to build a new 500,000 gallon tank on a graded pad supported by a 10 foot high retaining wall. Requires a Coastal Zone Permit, a Development Permit for a fence exceeding 6 feet in height in the required side yard, and a Grading Permit to move approximately 713 cubic yards of earth. Property located on the southeast side of Vista Del Mar, 612 Vista del Mar, approximately 1/4 mile southeast of southeast of the intersection with Alta Drive. SUBJECT TO ATTACHED CONDITIONS.

Approval Date: 8/15/97
Exp. Date (if not exercised): 8/29/99
Denied by: _____

Effective Date: 8/29/97
Coastal Appeal Exp. Date: Call Coastal Comm.
Denial Date: _____

X This project requires a coastal zone permit which is not appealable to the California Coastal Commission. It may be appealed to the Planning Commission. The appeal must be filed within 10 working days of action by the decision body.

X This project requires a Coastal Zone Permit, the approval of which is appealable to the California Coastal Commission. (Grounds for appeal are listed in the County Code Section 13.20.110.) The appeal must be filed with the Coastal Commission within 10 working days of receipt by the Coastal Commission of notice of local action. Approval or denial of the Coastal Zone Permit is appealable. The appeal must be filed within 10 working days of action by the decision body.

This permit cannot be exercised until after the Coastal Commission appeal period. That appeal period ends on the above indicated date. Permittee is to contact Coastal staff at the end of the above appeal period prior to commencing any work.

A Building Permit must be obtained (if required) and construction must be initiated prior to the expiration date in order to exercise this permit. **THIS PERMIT IS NOT A BUILDING PERMIT.**

By signing this permit below, the owner agrees to accept the terms and conditions of this permit and to accept responsibility for payment of the County's costs for inspections and all other actions related to noncompliance with the permit conditions. This permit shall be null and void in the absence of the owner's signature below.

Signature of Owner/Agent

Date

Staff Planner

Date

Distribution: Applicant, File, Clerical, Coastal Commission

EXHIBIT NO. 2

APPLICATION NO.
A-3-SC0-98-5

County Approval

COASTAL ZONE PERMIT FINDINGS

1. THAT THE PROJECT IS A USE ALLOWED IN ONE OF THE BASIC ZONE DISTRICTS, OTHER THAN THE SPECIAL USE (SU) DISTRICT, LISTED IN SECTION 13.10.170(d) AS CONSISTENT WITH THE LUP DESIGNATION.

The proposed project is an allowed use within the "R-1-10" zone district and is consistent with the "Residential Urban Low" Land Use Plan designation of the General Plan.

2. THAT THE PROJECT DOES NOT CONFLICT WITH ANY EXISTING EASEMENT OR DEVELOPMENT RESTRICTIONS SUCH AS PUBLIC ACCESS, UTILITY, OR OPEN SPACE EASEMENTS.

The subject property is not affected by any development restrictions that would hinder development of the proposed project.

3. THAT THE PROJECT IS CONSISTENT WITH THE DESIGN CRITERIA AND SPECIAL USE STANDARDS AND CONDITIONS OF THIS CHAPTER PURSUANT TO SECTION 13.20.130 ET SEQ.

The proposed project is consistent with all applicable regulations under County Code Section 13.20.130 for development within the coastal zone. The structure follows the natural topography of the site as much as possible. The proposed project will be visually compatible with the character of the area, given additional landscape buffering, replacement fencing, and the light green color of the water tank. These design characteristics will minimize impacts on the site and the surrounding neighborhood.

4. THAT THE PROJECT CONFORMS WITH THE PUBLIC ACCESS, RECREATION, AND VISITOR-SERVING POLICIES, STANDARDS AND MAPS OF THE LOCAL COASTAL PROGRAM LAND USE PLAN, SPECIFICALLY CHAPTERS 2 AND 7, AND, AS TO ANY DEVELOPMENT BETWEEN AND NEAREST PUBLIC ROAD AND THE SEA OR THE SHORELINE OF ANY BODY OF WATER LOCATED WITHIN THE COASTAL ZONE, SUCH DEVELOPMENT IS IN CONFORMITY WITH THE PUBLIC ACCESS AND PUBLIC RECREATION POLICIES OF CHAPTER 3 OF THE COASTAL ACT COMMENCING WITH SECTION 30200.

The proposed project is not subject to the public access requirements given the location of the property beyond the first public road and the sea. In addition, the property is not designated for public recreation or visitor serving facility requirements.

5. THAT THE PROPOSED DEVELOPMENT IS IN CONFORMITY WITH THE CERTIFIED LOCAL COASTAL PROGRAM.

The proposed project conforms to the "Residential Urban Low" land use plan designation of the Local Coastal Program and is consistent with the development standards applicable to parcels within the Coastal Zone.

CALIFORNIA COASTAL COMMISSION
EXHIBIT 2 cont

A-3-98-5

DEVELOPMENT PERMIT FINDINGS:

1. THAT THE PROPOSED LOCATION OF THE PROJECT AND THE CONDITIONS UNDER WHICH IT WOULD BE OPERATED OR MAINTAINED WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY, OR WELFARE OF PERSONS RESIDING OR WORKING IN THE NEIGHBORHOOD OR THE GENERAL PUBLIC, OR BE MATERIALLY INJURIOUS TO PROPERTIES OR IMPROVEMENTS IN THE VICINITY.

The location of the proposed project will not be materially detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, or be materially injurious to properties or improvements in the vicinity in that the proposed project complies with all development regulations applicable to the site.

2. THAT THE PROPOSED LOCATION OF THE PROJECT AND THE CONDITIONS UNDER WHICH IT WOULD BE OPERATED OR MAINTAINED WILL BE CONSISTENT WITH ALL PERTINENT COUNTY ORDINANCES AND THE PURPOSE OF THE ZONE DISTRICT IN WHICH THE SITE IS LOCATED.

The proposed project is an allowed use within the "R-1-10" zone district and the location of the project complies with the applicable regulations of the "R-1-10" zone district under County Code Section 13.10.323. Particularly, the proposed project complies with the maximum 30 percent lot coverage on site, required setbacks, maximum 28 foot height and required parking standards.

3. THAT THE PROPOSED USE IS CONSISTENT WITH ALL ELEMENTS OF THE COUNTY GENERAL PLAN AND WITH ANY SPECIFIC PLAN WHICH HAS BEEN ADOPTED FOR THE AREA.

The proposed project is consistent with the "Residential Urban Low" General Plan Land Use Plan designation.

4. THAT THE PROPOSED USE WILL NOT OVERLOAD UTILITIES AND WILL NOT GENERATE MORE THAN THE ACCEPTABLE LEVEL OF TRAFFIC ON THE STREETS IN THE VICINITY.

The proposed use will not overload utilities or generate more than the acceptable level of traffic expected for the proposed water tank.

5. THAT THE PROPOSED PROJECT WILL COMPLEMENT AND HARMONIZE WITH THE EXISTING AND PROPOSED LAND USES IN THE VICINITY AND WILL BE COMPATIBLE WITH THE PHYSICAL DESIGN ASPECTS, LAND USE INTENSITIES, AND DWELLING UNIT DENSITIES OF THE NEIGHBORHOOD.

The proposed project will complement and harmonize with the existing use of the property and surrounding uses. The proposed structure will be compatible with the character of the area given the utilization of natural earth tone materials and colors, additional landscaping and up to seven foot high fencing.

CONDITIONS OF APPROVAL

Coastal Zone Permit No. 97-0079

Applicant and Property Owner: Soquel Creek Water District
Assessor's Parcel No. 044-231-02,-27,-38,-40.
Property location and address: 612 Vista del Mar
Aptos Planning Area

EXHIBITS:

- A. Architectural Plans prepared by Soquel Creek Water District dated January, 1997.
-

I. This permit authorizes the construction of a 500,000 gallon water tank, electrical control building of 120 square feet, maintenance access driveway, and seven foot chain link perimeter fencing. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/ owner shall:

- A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
- B. Obtain a Grading Permit from the County of Santa Cruz Planning Department. This requires submittal of a grading permit application to the zoning counter of the Planning Department, including two copies of complete grading, drainage, and erosion control plans in conformance with minimum County standards. The permit fee in effect at the time of submittal shall be paid. Engineered plans may be required for this project. All requirements of the approved Grading Permit are, by reference, hereby incorporated into the conditions of this permit.

No land clearing, grading or excavating shall take place between October 15 and April 15 unless a separate winter erosion-control plan is approved by the Planning Director.

- C. Meet all requirements and pay the appropriate plan check fee of the Aptos/La Selva Fire Protection District as stated in their letter/memorandum dated 4/18/97.
- D. Follow all recommendations of the geotechnical/geologic report prepared by Haro, Kasunich & Assoc. for this project dated 3/97, regarding the construction and other improvements on the site. All pertinent geotechnical/geologic report recommendations shall be included in the construction drawings submitted to the County for a Building Permit. All recommendations contained in the

6.

CALIFORNIA COASTAL COMMISSION
EXHIBIT 2 cont.

A-3-98-5

Applicant: Soquel Creek Water District
Development Permit No. 97-0079
APN: 044-231-02,-27,-38,-40.

Conditions of Approval

County acceptance letter dated 5/01/97 shall be incorporated into the final design. A plan review letter from the geotechnical engineer/project geologist shall be submitted with the plans stating that the plans have been reviewed and found to be in compliance with the recommendations of the geotechnical/geologic report.

- E. Meet all requirements of the Department of Public Works and pay all fees for Zone 6 Santa Cruz County Flood Control and Water Conservation District including plan check and permit processing fees as stated in their memorandum dated 4/14/97.
 - F. Obtain an Encroachment Permit from the Department of Public Works, as necessary, for any work performed in the public right-of-way. All work shall be consistent with the Department of Public Works Design Criteria.
 - G. Record an Affidavit to combine APNs 044-231-02, 27, 38 & 40 as one parcel.
- II. All construction shall be performed in accordance with the approved plans. The applicant/owner shall meet the following conditions:
- A. All site improvements shown on the final approved plans shall be installed.
 - B. All work adjacent to or within a County road shall be subject to the provisions of Chapter 9.70 of the County Code, including obtaining an encroachment permit where required. Where feasible, all improvements adjacent to or affecting a County road shall be coordinated with any planned County-sponsored construction on that road.
 - C. The soils engineer/project geologist shall submit a letter to the Planning Department verifying that all construction has been performed according to the recommendations of the accepted geotechnical report. A copy of the letter shall be kept in the project file for future reference.

III. Operational Conditions.

- A. All landscaping and fencing shall be permanently maintained.
- B. ~~In-the-event-that-future-County-inspections-of-the-subject-property-disclose-noncompliance-with-any-Conditions-of-this-approval-or-any-violation-of-the-County-Code,-the-owner-shall-pay-to-the-County-the-full-cost-of-such-County-inspections,-including-any-follow-up-inspections-and/or-necessary-enforcement-actions,-up-to-and-including-permit-revocation-~~

Minor variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

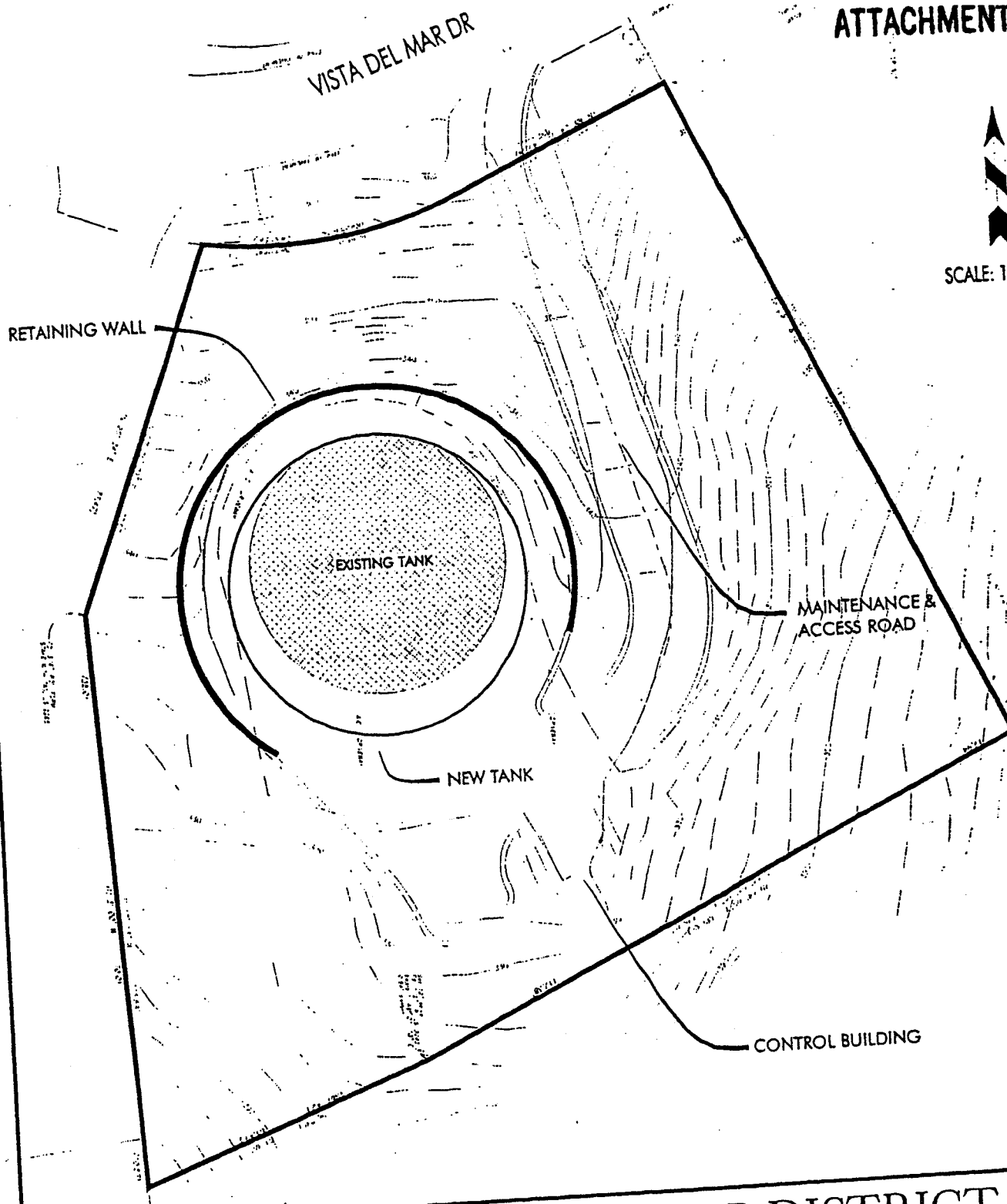
7.

PLEASE NOTE: THIS PERMIT EXPIRES TWO YEARS FROM DATE OF APPROVAL UNLESS YOU COMMENCE CONSTRUCTION.

CALIFORNIA COASTAL COMMISSION
EXHIBIT 2

cont.

A-3-98-5



SCALE: 1"=30'

SOQUEL CREEK WATER DISTRICT
P.O. BOX 158 SOQUEL, CALIFORNIA 95073

VISTA DEL MAR RESERVOIR SITE PLAN

BY: EOL

DATE 04/10/07

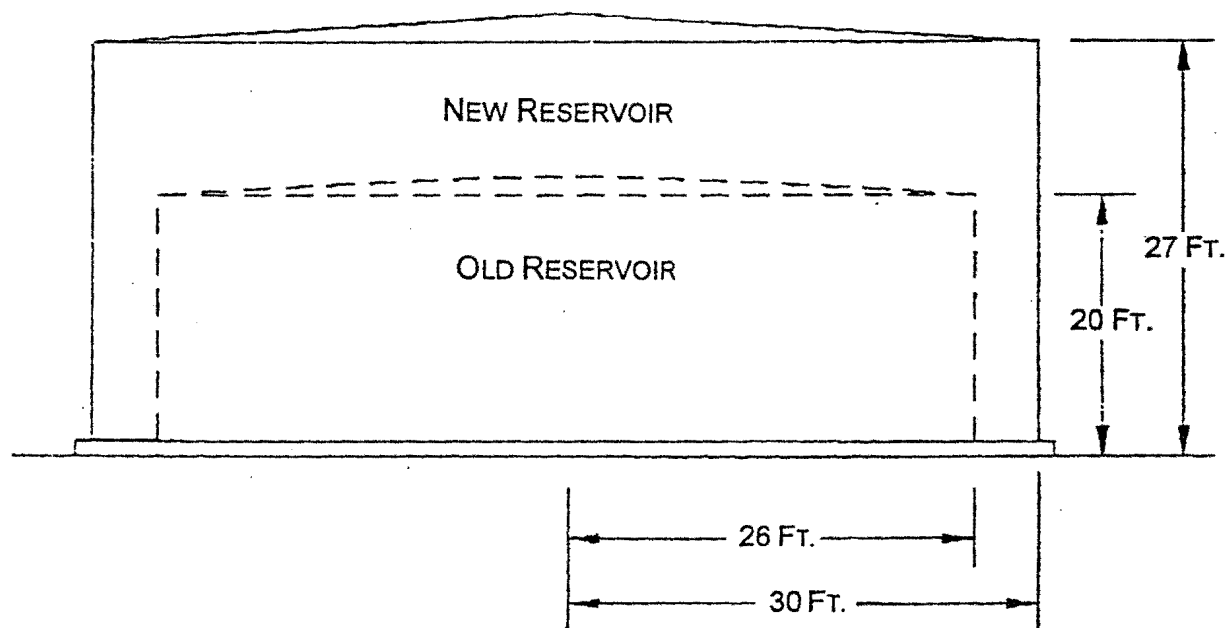
SCALE 1"=30'

APPROVED:

EXHIBIT NO. 3

APPLICATION NO.
A-3-SC0-98-5

Plans



SOQUEL CREEK WATER DISTRICT

P.O. BOX 158 SOQUEL, CALIFORNIA 95073

TANK PROFILE

CALIFORNIA COASTAL COMMISSION
EXHIBIT 3 *cont.*

A-3-98-5

EXHIBIT C

Attachment to Appeal

The District appeals from the November 12, 1997 decision of the Planning Commission, which denied the District's appeal from the August 15, 1997 decision of the Zoning Administrator.¹ The Zoning Administrator granted the District's application for a coastal development permit for replacement of a water storage reservoir subject to numerous conditions invoking local zoning and building regulations. The basis for the appeal is that several of the conditions imposed on the project approval are not in conformity with the LCP in that the LCP recognizes an exemption from local zoning and building regulations for projects that are otherwise exempted from such regulations by state or federal law. We submit that, pursuant to Government Code section 53091, the project is exempt from conditions arising out of general zoning and building law imposed under the guise of the LCP. Any condition that purports to impose such regulations on the District must be stricken.

A. The Project

The District is seeking to replace its existing 300,000 gallon redwood water tank located off of Vista Del Mar with a 500,000 gallon welded steel water tank, to construct a 120 square-foot electrical control building, to improve the driveway and parking area, to install a six-foot chain link perimeter fence, and to add landscaping. The new tank will be placed in the same location as the existing tank, except that it will encompass a larger area. The project is designed to enhance fire protection capability, to improve service to residents in the area, and to improve water quality. The project site is a residential area within the Coastal Zone.

B. Procedural Overview

The District is the lead agency for the project. The District approved the project on a negative declaration following public hearings in April and May. The County then advised the District that it would have to obtain a coastal development permit for the project. The District applied for a coastal development permit, even though state law specifically exempts county water districts from local zoning and building regulations for the construction of certain types of facilities, because the County asserted that it was acting as an arm of the State with respect to issuing coastal development permits. After making the application, the

¹The District appealed the Planning Commission's decision to the Board of Supervisors; however, on January 12, 1998, the Board declined to take jurisdiction. This rendered the Planning Commission decision final.

EXHIBIT NO. 4
APPLICATION NO.
A-3-98-5
Appellant's Contentions

County took the position that all County zoning and building regulations apply to the project because the Local Coastal Program incorporates by reference all such regulations.

The District appeared at the hearing before the Zoning Administrator on August 15, 1997 and objected to the proposed conditions on the requested coastal permit. The Zoning Administrator approved the permit with the proposed conditions, including: obtaining a grading permit; getting approval of a winter erosion-control plan for any grading scheduled to occur between October 15 and April 15; meeting all requirements and paying the plan check fee of the Aptos/La Selva Fire Protection District; having a geotechnical report prepared and submitting a plan review letter from the geotechnical engineer; meeting all requirements of Public Works and paying all fees for Zone 6 Santa Cruz County Flood Control and Water Conservation District; and paying for any County inspections that reveal noncompliance with conditions.

The District appealed to the Planning Commission. On November 12, 1997, the Planning Commission denied the District's appeal. The Board of Supervisors declined to take jurisdiction.

C. Exemption of Water District from Zoning Regulations

We respectfully submit that Government Code section 53091 prohibits the County from imposing conditions on the District that arise out of general zoning and building regulations. Government Code section 53091 provides that "[z]oning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, or transmission of water . . ." This section contains a similar exemption from building regulations.

County Code section 13.20.150(b)(1), which is part of the Local Coastal Plan, provides:

"Except as specifically exempted by State or Federal law, all development in the Coastal Zone that is proposed by state or local public agencies shall be subject to the policies, requirements, standards and conditions of the General Plan and Local Coastal Plan Land Use Plan and all ordinances to which such development would be subject to if it were privately originated." (emphasis added).

In this case, state law (i.e. Gov. C. §53091) provides an express exemption from local policies, requirements, standards, and conditions for construction of water storage facilities

CALIFORNIA COASTAL COMMISSION
EXHIBIT 4 cont

A-3-98-5

by a county water district. The Local Coastal Plan, which has the effect of state law, is consistent with this exemption because it recognizes exceptions allowed by state law. Read together, the two provisions mean that local zoning and building regulations (even though they may be part of the LCP) do not apply to a water district's construction of water storage facilities.

Moreover, if the County were able to impose its entire set of zoning and building regulations on a water district simply because the project is located within the Coastal Zone, it would frustrate both the language and the purposes of Section 53091. The purpose of section 53091 is to "assure the imperative of efficient and economical delivery of water to customers" by recognizing that facilities directly and immediately used to produce, generate, store or transmit water "must be geographically located at the unfettered discretion of a water district." City of Lafayette v. East Bay Municipal Utility Dist. (1993) 16 Cal. App. 4th 1005, 1014.

D. Liberal Interpretation of Section 53091

Under the most liberal interpretation of the County's powers under Section 53091, the County may require the District to obtain a coastal permit by complying only with those zoning and building regulations that are unique to the Coastal Zone. For example, the design criteria for coastal zone developments set forth in Section 13.20.130(b) of the County Code may apply. The County may not, however, bootstrap all of the local zoning and building regulations under the guise of requiring a coastal permit. This would be inconsistent with Section 53091, and would effectively nullify that section and the exception recognized in Section 13.20.150(b)(1), which is part of the LCP.

Where two statutes can be interpreted to either conflict with each other or be consistent, the interpretation that renders them consistent should be adopted. (City of Chula Vista v. Superior Court (1982) 133 Cal. App. 3d 472, 490 n.13 ("Statutes should be construed in harmony with other enactments relating to the same general subject"); O'Brien v. Dudenhoeffer (1993) 16 Cal. App. 4th 327, 332). In this case, the only consistent interpretation of Section 53091 and Section 13.20.150(b)(1) is that the County must limit the conditions on the coastal permit to those requirements of the LCP that are unique to the LCP (i.e. are not also part of the County's general zoning and building regulations).

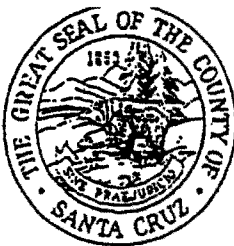
The following conditions are not appropriate under section 53091 because they are general County zoning requirements: Conditions I.B (obtain a grading permit), I.C (meet requirements and pay fees of the Aptos-La Selva Fire Protection District), I.D (obtain plan review from geotechnical engineer), I.E (meet requirements and pay fees of Zone 6 Santa

CALIFORNIA COASTAL COMMISSION
EXHIBIT 4 cont
A-3-78-5

Cruz County Flood Control and Water Conservation District), II.C (final inspection from project geologist), and III.B (pay the costs of future inspections that reveal non-compliance). Accordingly, these conditions should not have been included as part of the project's approval, and violate the LCP.

EXHIBIT 4 A-3-98-5
COURTIAL COMMISSION

OFFICE OF THE
COUNTY COUNSEL



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DANA McRAE

ASSISTANTS

January 13, 1998

December 30, 1997

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

RE: Jurisdictional Hearing Regarding Application
#97-0079 by the Soquel Creek County Water District

Dear Members of the Board:

On August 15, 1997, the Zoning Administrator approved Application #97-0079 submitted by the Soquel Creek County Water District to remove an existing 300,000 gallon water tank, associated pressure tank, concrete pad, and equipment building, and build a new 500,000 gallon water tank on a graded pad supported by a 10 foot high retaining wall. The project required a Coastal Zone Permit, Site Standard Review for a fence exceeding seven feet in the required side yard, and a grading permit to move approximately 713 cubic yards of earth.

The applicant appealed the Zoning Administrator's approval (See letter of Robert E. Bosso, District Counsel, dated August 28, 1997, attached hereto as Exhibit "A"), which was heard by the Planning Commission on November 12, 1997. Soquel Creek County Water District Counsel Robert E. Bosso appeared and contended that the District's project was exempt from County building and zoning regulations pursuant to Government Code Section 53091. District Counsel acknowledged that the Water District was required to obtain a Coastal Permit for the project, however, he challenged the County's authority to condition the project based on certain implementing ordinances adopted as part of the County's Local Coastal Program.

The Planning Commission unanimously voted to deny the Appeal (See

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EXHIBIT NO. 5

APPLICATION NO.

A-3-98-5

Co.Counsel Analysis

Minutes of Santa Cruz County Planning Commission dated November 12, 1997, attached hereto as Exhibit "B")¹. The Water District subsequently appealed the decision of the Planning Commission to your Board, pursuant to Section 18.10.340(c) of the Santa Cruz County Code. See letter of Robert E. Bosso, District Counsel, dated November 21, 1997, included in your Agenda materials.

ANALYSIS

The principal issue presented by this request that your Board take jurisdiction is whether the implementing ordinances adopted as part of the County's Local Coastal Program are "local" building and zoning ordinances for the purposes of the exemption provisions of Government Code Section 53091.² It is the position of this Office that the County's Local Coastal Program, including the ordinances adopted to implement the program³, are established pursuant the California Coastal Act and certified by the California Coastal Commission as part of a comprehensive state-wide scheme to regulate development along the coast of California. As such, the regulatory provisions of the Local Coastal Program challenged by the Water District are not subject to the exception of Section 53091.

¹While the Commission denied the Water District's appeal it did accept the staff's recommendation to delete a condition approved by the Zoning Administrator. Condition III.B. would have required the District to pay for any County inspections that reveal noncompliance with permit conditions or violations of the County Code. Because this condition was derived from a County ordinance not incorporated into the County's Local Coastal Program as an implementing ordinance (See Note 3 below), the staff recommended its deletion.

²Government Code Section 53091 states in pertinent part: "Each local agency shall comply with all applicable building and zoning ordinances of the county or city in which the territory of the local agency is situated...Building ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, or transmission of water, waste water or electrical energy by a local agency. Zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, or transmission of water..."

³Chapter 13.03 of the County Code governs the adoption, certification and administration of the County's Local Coastal Program. Expressly incorporated into the Local Coastal Program as "implementing ordinances" are various sections of the County Code including Chapters 16.20 (Grading Ordinance) and 12.01 (Building Permit Regulations), which contain the specific provisions now challenged by the Water District. Subsection 13.03.050(b)(2) of the County Code.

1. Government Code Section 53091.

Section 53091 generally requires that local agencies comply with city and county land use regulations. In City of Lafayette v. East Bay Mun. Utility Dist. (1993) 16 Cal.App.4th 1005, the appellate court examined the legislative purpose behind Government Code Section 53091:

"Section 53091 is part of a statutory scheme - "Regulation of Local Agencies by Counties and Cities," sections 53090 through 53095 (Stats. 1959, ch. 2110, 1, pp. 4907-4909)-enacted in response to opinions (Citations omitted.) which broadly immunized all state agencies from local regulatory control. (Citations omitted.) Section 53091 evinces a legislative intent to vest in cities and counties control over zoning and building restrictions, thereby strengthening local planning authority. (Citations omitted.) City of Lafayette v. East Bay Mun. Utility Dist., supra, at p.1013-1014.

Superimposed upon this legislative grant of authority to cities and counties to impose zoning and building regulations upon local water districts are two enumerated exceptions: the first under Section 53091, covers facilities for the "production, generation, storage, or transmission of water, waste water, or electrical energy"; the second, under Government Code Section 53096, is a carefully conditioned and qualified exemption for facilities related to storage or transmission of water or electrical energy. Unless exempted, a public agency must abide by the local planning decisions of cities and counties. City of Santa Clara v. Santa Clara Unified Sch. Dist., supra, 22 Cal.App.3d at p.158.

These noted exceptions are strictly construed, because the primary objective of the statutory scheme is to "maintain local control of land use decisions". City of Lafayette v. East Bay Mun. Utility Dist., supra, at p.1017. The obvious intent of the Legislature was to strike a balance between the value of local zoning control by cities and counties and the State's interest in efficient storage and transmission of water. City of Lafayette v. East Bay Mun. Utility Dist., supra, at p.1013-1014. Here however, the Coastal Act presents an additional compelling Statewide interest.

2. The California Coastal Act.

A review of the California Coastal Act is useful in determining how to characterize the regulatory provisions adopted as part of the County's Local Coastal Program (also referred to as LCP). The California Coastal Act of 1976 (Public Resources Code Section 30000 et seq.) is a comprehensive statutory scheme enacted by the Legislature to regulate coastal land use on a statewide basis, and accomplish the following basic purposes:

"(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.

(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.

(c) Maximize public 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 private property owners.

(d) Assure priority/for coastal-dependent and coastal-related development over other development on the coast.

(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." Public Resources Code Section 30001.5

Section 30009 of the Public Resources Code requires that the Coastal Act be liberally construed to accomplish its purposes and objectives.

The Coastal Act requires that every person who proposes to engage in any development activity within the Coastal Zone obtain a coastal development permit. Public Resources Code Section 30600(a). The Coastal Act specifically defines person to include:

"...any federal, state, and local government, or special district or an agency." Public Resources Code Section 30111. (Emphasis added.)

The Act further mandates that "[a]ll public agencies...shall comply with the provisions of this division." Public Resources Code Section 30003. Accordingly, the Soquel Creek County Water District must comply with the coastal development permit requirements of the California Coastal Act.

3. Requirements for a Local Coastal Program.

A certified LCP controls development within that portion of the Coastal Zone covered by the program. 65 Ops.Atty. Gen. 88, at p.90 (1982). The Coastal Act requires that each local government lying within the Coastal Zone prepare a LCP. Public Resources Code Section 30500. Once the State Coastal Commission certifies a LCP, the Commission transfers most of its coastal development

permit issuing authority to the local government:

"...after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30660) shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof. Public Resources Code Section 30519(a) (Emphasis added).

Once the LCP is certified by the State, an application for a coastal development permit must be approved if the local government finds that the proposed development is in conformity with the certified LCP. Public Resources Code Section 30604(b).

A Local Coastal Program is comprised 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, which, when taken together, meet the requirements of, and implement the provisions and policies of, this division at the local level." Public Resources Code Section 30108.6.

On January 13, 1983, the State Coastal Commission certified the County of Santa Cruz's Local Coastal Program and delegated the authority to issue coastal development permits to the County. The County's Local Coastal Program Land Use Plan was incorporated into the County General Plan in 1994. An important element of the County's current LCP, are various regulatory ordinances set forth in County Code Section 13.03.050(b)(2). These ordinances were reviewed and certified by the State Coastal Commission for inclusion as part of the County's LCP.

4. Regulations in a Certified Local Coastal Program are not "Local" for the Purposes of Government Code Section 53091.

The power of a city or county to establish land use regulations derives from the State's Constitution, and is not delegated by statute. Scrutton v. County of Sacramento (1969) 275 Cal.App.2d 412, 417. However, ordinances adopted pursuant to the constitutionally based police power, may not conflict with "general laws" enacted by the State.⁴ The Coastal Act is a

⁴"A county or city may make and enforce within its limits all local police, sanitary, and other ordinances and regulations

general law which supersedes any conflicting planning or zoning regulation enacted by a city or county.⁵ LCP provisions regulating development activities within the Coastal Zone are elements of a statewide plan, and not local in nature. When deciding whether an applicant for a coastal development permit has complied with the requirements of a certified LCP, a city or county is not acting under its "police power" authority, but rather under the statutory authority delegated it by the Coastal Act.

"It is important to note that we do not have here the usual case of a city 'regulating' the sovereign activities of the state. A coastal development permit must be given where the proposed development is in conformity with the certified local coastal program. (§ 30604, subd. (b).) It is the California Coastal Commission, a state body (§ 30300), that certifies local coastal programs (§§ 30512-30513) and may at times actually prepare them (see §§ 30500, 30517.5), while all amendments of local coastal programs must be certified by the commission (§§ 30514). Not only must local coastal programs meet the requirements of state law (see §§ 30512-30513), but the commission has the duty to see that the programs are being implemented in accordance with the provisions of the Act (§ 30519.5). The state's involvement in the creation and implementation of local coastal programs is pervasive."
65 Ops.Atty.Gen. 88 (1982) (Emphasis added.)

Government Code Section 53091 does not provide immunity against city or county ordinances resulting from other comprehensive state statutory schemes. In Modesto Irrigation District v. City of Modesto (1962) 210 Cal.App.2d 652, the Appellate Court ruled that a city ordinance regulating the placement of overhead electrical power transmission lines enacted pursuant to the Subdivision Map Act, was not exempted by Government Code Section 53091.⁶ The Court reasoned that the Legislature could have broadened Section 53091's exemption to apply to the Subdivision

not in conflict with general laws." California Constitution Article XI, § 7 (Emphasis added.)

⁵Other examples of preemptive general laws include the Subdivision Map Act, Morehart v. County of Santa Barbara (1994) 7 Cal.4th 725; the interim ordinance provisions of Government Code Section 65858, Bank of the Orient v. Town of Tiburon (1990) 220 Cal. App.3rd 992; and the statutes regarding community care facilities, Health and Safety Code Sections 1500-1567.8.

⁶Government Code Section 53091 exempts both electrical power and water transmission facilities from local building and zoning ordinances.

Map Act, as well as local building and zoning ordinances. The Court concluded that the Legislature's failure to include the Subdivision Map Act evidenced its intent to require that a local agency transmitting water or power comply with local ordinances enacted pursuant to the Map Act. Modesto Irrigation District v. City of Modesto, supra, 210 Cal.App.2d at 656-657.

Just as the Legislature has been found to have intentionally excluded the Subdivision Map Act from Section 53091, it likewise must be deemed to have intentionally excluded the Coastal Act. The relationship of the County's LCP implementing ordinances to the Coastal Act, is comparable to the ordinances enacted by the City of Modesto pursuant to the Subdivision Map Act.

An LCP is enacted and certified pursuant to state statute, and the Coastal Commission, a state agency, retains jurisdiction to ensure its proper implementation. Amendments to an LCP are not effective unless certified by the Coastal Commission. Public Resources Code Section 30514(a). Even after certification of the LCP, the Coastal Commission retains jurisdiction for certain public works and higher education development projects. Public Resources Code Section 30605. Certain actions taken by a local government on a coastal development permit application may be appealed to the Coastal Commission. Public Resources Code Section 30603. Finally, the Coastal Commission is required to conduct a periodic review of each LCP, to ensure that the program is being effectively implemented. Public Resources Code Section 30519.5. These Coastal Act provisions demonstrate the on-going presence and influence exerted by the State, notwithstanding the authority delegated to local governments. The exemption accorded applicable water transmission facilities by Government Code Section 53091 shields these projects from building and zoning ordinances of local governments, but not those regulations derived from implementation of the Coastal Act.

5. The County's Coastal Regulations Do Not Authorize Exemptions Pursuant to Government Code Section 53091

The Water District's Counsel contends that Government Code Section 53091's exemption against local building and zoning ordinances is authorized by County Code Section 13.20.150(b)(1). This provision of the County's Coastal Regulations states that state and local public agencies shall be subject to the LCP unless "specifically exempted by Federal or State law". However, Section 13.20.150(b)(1) makes no express mention of Section 53091. In addition, Section 53091 does not contain an express exemption applying to projects located within the Coastal Zone. This County Code provision is an acknowledgment that certain

areas⁷ and development projects⁸ within the Coastal Zone are expressly exempted from the LCP jurisdiction of the County by statute.

CONCLUSION

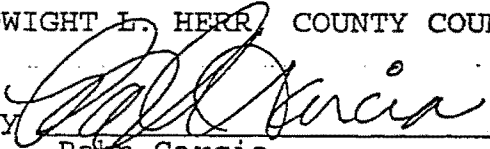
The County acknowledges that if the District's storage tank replacement project had been located outside of the Coastal Zone, Government Code Section 53091 would exempt it from all of the County's building and zoning regulations. However, since the District's project lies within the Coastal Zone, it is the opinion of this Office that the Soquel Creek County Water District must obtain a Coastal Permit from the County and comply with the applicable regulatory provisions of the County's certified Local Coastal Program.⁹

IT IS THEREFORE RECOMMENDED that your Board not take jurisdiction in the matter of Application 97-0079.

Very truly yours,

DWIGHT L. HERR, COUNTY COUNSEL

By


Rahn Garcia
Assistant County Counsel

RECOMMENDED:

SUSAN A. MAURIELLO
County Administrative Officer

Attachments
cc: Robert E. Bosso, District Counsel

⁷Tidelands, submerged lands and public trust lands pursuant to Public Resources Code Section 30519(b).

⁸Based on long range land use development plans reviewed pursuant to Public Resources Code Section 30605.

⁹Because public facilities such as the Water District's project are only an allowed use in an R-1 zone and not a principal permitted use, this Application is appealable to the Coastal Commission pursuant to County Code Section 13.20.122(a)(3).