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GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-1108
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Warren J. Abbott	:	
Assistant Attorney General	:	
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SUBJECT: LEGAL LANDWARD AND SEAWARD BOUNDARIES—The legal boundaries of the coastal zone on the landward and seaward side are defined. A county may, but is not required to include within its local coastal program ungranted tide and submerged lands lying within the unincorporated areas of the county.

The Honorable John A. Drummond, County Counsel, County of Mendocino, has requested an opinion on questions relating to the boundaries of the coastal zone under the California Coastal Commission Act of 1976, which we have rephrased as follows:

1. What are the legal landward and seaward boundaries of the coastal zone?
2. Must a local coastal program prepared pursuant to the California Coastal Act include those areas of tide and, submerged lands located within unincorporated areas of the county?

CONCLUSIONS

1. The legal boundaries of the coastal zone under the California Coastal Act of 1976 are, on the landward side, the line designated on maps, identified in section 17 of Statutes 1976, chapter 1330, as modified by the California Coastal Commission pursuant to Public Resources Code section 30103(b) and as modified by the Legislature in Public Resources Code section 30103.5 and chapters 1109 and 1128, Statutes of 1979. On the seaward side, the boundary of the coastal zone is the seaward boundary of the State of California contained in article XII of the California Constitution of 1849 as amplified by Government Code section 170.

2. A county may, but is not required to include within its local coastal program adopted pursuant to the California Coastal Act of 1976 ungranted tide and submerged lands lying within the unincorporated areas of the county. Any tide and submerged lands granted in trust by the Legislature to that county, however, must be included within its local coastal program.

ANALYSIS

The California Coastal Act of 1976 (Coastal Act) (Pub. Resources Code, § 30000 *et seq.*)¹ created the California Coastal Commission (commission) and, on a temporary basis, six regional coastal commissions (regional commissions). (§ 30300.) The commission is the successor to the California Coastal Zone Conservation Commission established by an initiative act, the California Coastal Zone Conservation Act of 1972. (§ 30331.)

The Coastal Act is essentially a land use planning mechanism for the coastal zone of the state (as described in §§ 30103, 30103.5 and as modified by § 30150 *et seq.*, eff. Jan. 1, 1980). This is to be accomplished by the preparation of local coastal programs by local governments (cities or counties) or, upon request, by the commission, which programs in turn are ultimately to be certified by the commission. (§ 30500 *et seq.*) Development within the coastal zone is to be subject to and consistent with that land planning and the criteria specified in the Coastal Act. (§§ 30200–30264.)

1. The Boundaries of the Coastal Zone

The first question presented seeks legal clarification of the boundaries of the coastal zone over which the commission and regional commissions have jurisdiction.

¹ All unidentified code section references are to the Public Resources Code.

Section 30103 provides:

“(a) ‘Coastal zone’ means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975–76 Regular Session enacting this division, extending seaward to the state’s outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, nor any area contiguous thereto, including any river, stream tributary, creek, or flood control or drainage channel flowing into such area.

“(b) The commission shall, within 60 days after its first meeting, prepare and adopt a detailed map, on a scale of one inch equals 24,000 inches for the coastal zone and shall file a copy of such map with the county clerk of each coastal county. The purpose of this provision is to provide greater detail than is provided by the maps identified in Section 17 of that chapter of the Statutes of the 1975–76 Regular Session enacting this division. The commission may adjust the inland boundary of the coastal zone the minimum landward distance necessary, but in no event more than 100 yards, or the minimum distance seaward necessary, but in no event more than 200 yards, to avoid bisecting any single lot or parcel or to conform it to readily identifiable natural or manmade features.”

Section 17 of the referenced statutes (Stats. 1976, ch. 1330), as amended by Statutes 1976, chapter 1331, section 29 provides:

“The coastal zone, as generally defined in Section 30103 of the Public Resources Code, shall include the land and water areas as shown on the map prepared by the California Coastal Zone Conservation Commission entitled ‘California Coastal Zone’ dated August 11, 1976, and on file with the Secretary of State.”

The maps referred to in section 17² consist of 21 sheets of cartographic maps (U.S.G.S. topographic maps) on a scale of 1/62,500 (1 inch equals one mile) on which a line has been drawn on the land. Pursuant to subdivision (b) of section 30103, the commission staff prepared and the commission approved and filed a series of maps on a scale of 1/24,000 (1 inch equals 2000 feet) (also U.S.G.S. topographic maps) consisting of a total of 161 maps. The commission staff has informed us that the line drawn on the latter maps is a transformation of the line on the section 17 maps using the seaward edge of the line when pertinent and with minor adjustments to follow such features as streets and property lot lines. Subsequent to the approval and filing of these maps, the commission has made one adjustment to the landward boundary as authorized by the last sentence of subdivision (b) of section 30103 and pursuant to its regulations. (Cal. Admin. Code, tit. 14, §§ 13250.0–13259.)

Since the drawing and approval of the commission's maps, the Legislature has made several changes in the landward boundaries of the Coastal Zone. Statutes 1978, chapter 213, section 2 added section 30103.5 as follows:

“(a) Notwithstanding map number 138 adopted pursuant to Section 17 of Chapter 1330 of the Statutes of 1976, as amended by Section 29 of Chapter 1331 of the Statutes of 1976, the inland boundary of the coastal zone in Los Angeles County in the vicinity of Los Angeles International Airport shall be the Pershing Drive built after January 1, 1970, rather than the Pershing Drive built prior to that date.

“(b) Notwithstanding map number 149 adopted pursuant to Sec. non 17 of Chapter 1330 of the Statutes of 1976, as amended by Section 29 of Chapter 1331 of the Statutes of 1976, the inland boundary of the coastal zone in the area of the City of San Juan Capistrano in Orange County shall exclude all portions of the City of San Juan Capistrano and shall follow Camino Capistrano and Via Serra and generally an extension of Via Serra to the point where it joins the existing coastal zone boundary.”

The 1979 session of the Legislature made more changes. Chapter 1128, Statutes 1979 made a change to the coastal zone in San Diego County.³ Chapter 1109, Statutes 1979 added a

² The staff of the commission has indicated that these maps were never adopted by the predecessor to the commission, but were prepared by the staff to assist the Assembly Committee on Resources, Land Use and Energy which was then considering the bill which ultimately became the Coastal Act.

³ Chapter 1128, section 1 added section 30174 as follows:

“Notwithstanding the maps adopted pursuant to Section 17 of Chapter 1330 of the

new chapter 2.5 (§§ 30150–30170) to the Coastal Act entitled “Revisions to the Coastal Zone Boundary.” These sections consist of a series of detailed changes to the landward side of the boundary as delineated on the section 17 maps and the commission’s detailed maps, both deleting and adding areas to the Coastal Zone in nine counties. This has been done by adopting 35 new maps in new section 30150:

“Notwithstanding the maps adopted pursuant to Section 17 of Chapter 1330 of the Statutes of 1976, as amended by Section 29 of Chapter 1331 of the Statutes of 1976, the inland boundary of the coastal zone, as shown on the detailed coastal maps adopted by the commission on March 1, 1977, is amended by maps 1 to 35, inclusive, dated September 12, 1979, and filed on September 14, 1979, with the office of the Secretary of State and which ‘are on file in the office of the commission. Maps 1 to 35, inclusive, are hereby adopted by reference.

“The areas deleted and added to the coastal zone are specifically shown on maps 1 to 35, inclusive, adopted by this section, and are generally described in this chapter.”

From the above, it is readily apparent that the landward boundary of the coastal zone is the line as depicted on the section 17 maps as modified by the commission under subdivision (b) of section 30103 and as modified by section 30103.5 and by chapters 1228 and 1109, Statutes of 1979. Although subdivision (a) of section 30103 provides that the coastal zone extends “. . . inland generally 1,000 yards from the mean high tide line of the sea,” and “[i]n significant coastal estuarine, habitat, and recreational areas it extends inland

Statutes of 1976, as amended by Section 29 of Chapter 1331 of the Statutes of 1976, the inland boundary of the coastal zone, as shown on detailed coastal map 157 adopted by the commission on March 1, 1977, shall be amended to conform to the inland boundary shown on map A which is hereby adopted by reference and which shall be filed in the office of the Secretary of State and the commission on the date of enactment of this section.

“The areas deleted and added to the coastal zone which are specifically shown on map A are in the County of San Diego and are generally described as follows:

“(a) In the vicinity of the intersection of Del Mar Heights Road and the San Diego Freeway, approximately 250 acres are excluded as specifically shown on map A.

“(b) In the vicinity of the intersection of Carmel Valley Road and the San Diego Freeway, approximately 45 acres are added as specifically shown on map A.

“(c) Near the head of the south branch of Los Penasquitos Canyon, the boundary is moved seaward to the five-mile limit as described in Section 30103 and as specifically shown on map A.”

to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards,” we conclude that the Legislature clearly intended and did define the landward boundary to be the line depicted on the section 17 maps as subsequently modified by the commission and the Legislature. The quoted words are merely descriptive of the rationale used by the Legislature in drawing the particular line on the maps.⁴

Neither the section 17 maps nor the commission’s detailed maps depict the seaward boundary of the coastal zone. Here the descriptive language of subdivision (a) of section 30103 does come into play. As regards the seaward boundary it provides that the coastal zone is that land and water area of the state between Oregon and Mexico “ . . . extending seaward to the state’s outer limit of jurisdiction, including all offshore islands.” Although there is authority that a state may control the activities of its citizens beyond the boundaries of the state (*Skiriotes v. Florida* (1941) 313 U.S. 69, 76; *Toomer v. Witsell* (1948) 334 U.S. 385, 393; 34 Ops. Cal. Atty. Gen. 260, 263–264 (1959)), since the Coastal Act deals with land use planning, we believe the Legislature intended to limit the coastal zone to the territory within the boundaries of the State of California.

The boundaries of the state are those stated in the Constitution of 1849 as modified pursuant to statute. (Cal. Const., art. III, § 2.) Article XII of the California Constitution of 1849 provided:

“The Boundary of the State of California shall be as follows:

““Commencing at the point of intersection of 42d degree of north latitude with the 120th degree of longitude west from Greenwich, and running south on the line of said 120th degree of west longitude until it intersects the 39th degree of north latitude; thence running in a straight line in a south easterly direction to the River Colorado, at a point where it intersects the 35th degree of north latitude; thence down the middle of the channel of said river, to the boundary line between the United States and Mexico, as established by the Treaty of May 30th, 1848; thence running west and along said boundary line *to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific Coast to the 42d degree of north latitude, thence on the line of said 42d degree of north latitude to the place of beginning. Also all the islands, harbors, and bays, along and adjacent to*

⁴ The coastal zone, of course, excludes the area of jurisdiction of the San Francisco Bay Conservation and Development Commission as specified in the last sentence of section 30103(a). That area is defined in Government Code section 66610.

the Pacific Coast.” (Emphasis added.)

Congress approved the Constitution of 1849, and inferentially the boundary when it admitted California to the union. (Act of Admission, September 9, 1850; 9 Stat. 452; *United States v. Florida* (1960) 363 U.S. 121, 127–128.) The Legislature has sought to give greater precision to the seaward boundary through Government Code section 170.⁵

It should be noted that the seaward boundary as set forth in the Constitution of 1849, that is the political boundary of the state, may be and is different from the boundary of lands granted to the State by the Congress by the Submerged Lands Act of 1953. (67 Stat. 29; 42 U.S.C. §§ 1301–1315.) That Act, which had its impetus in *United States v. California* (1947) 332 U.S. 19, granted to the coastal states certain submerged lands. The United States Supreme Court in the second *United States v. California* (1965) 381 U.S. 139, determined that the seaward boundary of that congressional grant should be measured in the context of international law and the territorial sea, particularly the 1958 Geneva Convention on the Territorial Sea of the Contiguous Zone. (15 U.S.T. 1606; *United States v. California II*, *supra* at 161–167.) That decision, delineating ownership and jurisdiction over the submerged lands of California as between the United States and the State of California, does not purport to alter the political boundaries of the state. (*People v. Foretich*

⁵ Government Code section 170 provides:

“To give greater precision to the boundary of the State of California as defined in Article XXI of the Constitution [of 1879], it is hereby declared that the part of the boundary which is described as ‘running in a northwesterly direction and following the direction of the Pacific Coast to the forty-second degree of north latitude,’ and as ‘including all the islands, harbors, and bays along and adjacent to the coast,’ runs and has in the past run three English nautical miles oceanward of lines drawn along the outer sides of the outermost of the islands, reefs and rocks along and adjacent to the mainland and across intervening waters; and where there are harbors, but no such outlying islands, reefs and rocks, it runs and in the past has run three English nautical miles oceanward of lines drawn in front of the harbors along the outermost works and installations thereof, and, in the case of all bays (including inlets and estuaries) three English nautical miles from lines drawn from headland to headland across the mouth of each bay, inlet and estuary, regardless of the length of the lines.

“Where there are not outlying islands, reefs or rocks and no harbors or bays or inlets or estuaries, the boundary runs and has in the past run three English nautical miles oceanward of the lowest low-water mark on the shore.”

The question of whether Government Code section 170 properly interprets the seaward boundary of article XII of the Constitution of 1849 is currently before the California Supreme Court in *People v. Weeren*, Crim. No. 21078. The same section is indirectly in issue in *M.G.R.S., Inc. v. California State Board of Equalization* 2d Civ. No. 56238, Court of Appeal, Second Appellate District. We express no opinion on that question.

(1970) 14 Cal. App. 3d Supp. 6, 13.) Thus, the Submerged Lands Act boundary and the California political boundary may differ. Indeed, under the Submerged Lands Act, the seaward boundary for purposes of state ownership of the submerged lands in Santa Monica Bay is three miles from the coast and within the Bay. (*United States v. California II, supra*, 381 U.S. at 169–170.) For purposes of the constitutional boundary, however, that line is three miles seaward of the line drawn between the headlands of the Santa Monica Bay. (*People v. Foretich, supra*; *People v. Stralla* (1939) 14 Cal. 2d 617; and see *United States v. Carrillo* (1935) 13 F. Supp. 121 (San Pedro Bay).)

2. Tide and Submerged Lands-Local Coastal Programs

As indicated above, one of the mechanisms for accomplishing the land use planning objectives of the Coastal Act is the preparation of local coastal programs⁶ by cities and counties with ultimate certification by the commission. Section 30500 (a) provides in part:

“Each local government lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction. . . .”

The second question presented is whether the local coastal program of a county must include and address that portion of the county lying seaward of the ordinary high tide line that is tide and submerged lands within unincorporated areas of the county. We conclude that if such tide and submerged lands have not been granted in trust by the Legislature to the county, the county’s local coastal program may, but is not required to deal with those tide and submerged lands. If such lands have been granted to the County in trust, however, the county’s local coastal program must include those lands.

Tide and submerged lands, that is those lying below the ordinary high water mark are owned by the state by virtue of its sovereignty, and are held in trust for purposes of commerce, navigation and fisheries. (*Pollard’s Lessee v. Hagan, et al.* (1845) 44 U.S. (3 How.) 212, 229; *Mallon v. City of Long Beach* (1955) 44 Cal. 2d 199, 205.) That portion of submerged lands lying seaward of the coastline, as defined, to the three-mile limit was confirmed or granted to the state by the Submerged Lands Act of 1953, *supra*. (*United States v. California II, supra*.) From time to time, the Legislature has granted tide and submerged lands in trust to local governments. (See, e.g., Stats. 1959, ch. 497.) As to those

⁶ Section 30108.6 provides:

“‘Local coastal program’ means a local government’s land use plans, zoning ordinances, zoning district maps, and implementing actions which, when taken together, meet the requirements of, and implement the provisions and policies of, this division at the local level.”

granted lands, the local government, grantee has control, subject to the trusts upon which they were granted, (*Mallon v. City of Long Beach, supra*; *People v. City of Long Beach* (1959) 51 Cal. 2d 875, 880.)

As to the ungranted tide and submerged lands, jurisdiction and control is vested in the State Lands Commission (§§ 6216, 6301.), and the Coastal Act makes no change in that authority. (§ 30416(b).) The State Lands Commission has adopted a series of regulations relating to development on lands under its jurisdiction lying within the coastal zone. (Cal. Admin. Code, tit. 2, § 2500 *et seq.*) Local zoning and planning ordinances would, as a general proposition be preempted by the state as to such lands. (*Monterey Oil Co. v. City Court* (1953) 120 Cal. App. 2d 31 and *Id.* (1953) 120 Cal. App. 2d 41; 54 Ops. Cal. Atty. Gen. 158, 160–163 (1971).) Thus, although section 30500(a) requires each local government to prepare a local coastal program “. . . for that portion of the coastal zone within its jurisdiction,” we do not believe the Legislature intended to mandate a program for large areas of ungranted tide and submerged lands over which the local government would have no planning authority.

Furthermore, the consequences of certification of a local control program by the commission clearly denotes a legislative intent to treat tide and submerged lands differently. Section 30519 provides:

“Except for appeals to the commission, as provided in Section 30603, 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 30600) shall no longer be exercised by the regional commission or by the commission where there is no regional commission over any new development proposed within the area to which such certified local coastal program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing such local coastal program or any portion thereof.

“(b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone, nor shall it apply to any development proposed or undertaken within ports covered by Chapter 8 (commencing with Section 30700) or within any state university or college within the coastal zone; however, this section shall apply to any development proposed or undertaken by a port or harbor district or authority on lands or waters granted by the Legislature to a local government whose certified local coastal program includes the specific development plans for such district or

authority.”

As to ungranted tide and submerged lands, upon certification of the county’s local coastal program, the commission will retain development permit authority under chapter 7, while as to other portions of the coastal zone within the unincorporated area of the county, the commission’s permit authority will be on a limited appeals basis only. (§ 30603.) Consequently we conclude that the local coastal program may, but need not include or deal with ungranted tide or submerged lands lying within the unincorporated areas of the county.⁷

In contrast, as noted, the jurisdiction and responsibilities of the local government over granted and tide submerged lands are substantially different. Development and control of such tide and submerged lands have not been preempted by the state. (*Cf. Higgins v. City of Santa Monica* (1964) 62 Cal. 2d 24; 54 Ops. Cal. Atty. Gen. 135, 162, *supra*.) Section 30416 sets forth the responsibilities of the State Lands Commission under the Coastal Act, and subdivision (d) of that section provides that development on granted tide and submerged lands is subject to the regulatory controls of chapters 7 (development controls) and 8 (ports) of the Coastal Act.⁸ Further, subdivision (b) of section 30519, *supra*, removes the permit authority of the commission, except for limited appeals, from development on granted tide and submerged lands if the certified local coastal program includes the specific development plans for the grantee. From all these authorities, we discern a legislative intent that the counties to which tide and submerged lands have been granted in trust retain control and jurisdiction over such lands under the Coastal Act subject to their statutory trust. Since the basic statutory requirement is that each coastal county prepare a local coastal program “for that portion of the coastal zone within its jurisdiction,” we see no reason to exclude therefrom tide and submerged lands granted to that county.

⁷ The staff of the commission has informed us that those local coastal programs being prepared by the staff pursuant to request of the local government under section 30500 (a) do not and will not cover areas of ungranted tide and submerged lands.

⁸ Section 30416(d) provides:

“(d) Nothing in this division shall amend or alter the terms and conditions in any legislative grant of lands, in trust, to any local government, port governing body, or special district, provided, however, that any development on such granted lands shall, in addition to the terms and conditions of such grant, be subject to the regulatory controls provided by Chapter 7 (commencing with Section 30600) and 8 (commencing with Section 30700).”