

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 80-105
	:	
of	:	<u>August 21, 1980</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Edmund E. White	:	
Deputy Attorney General	:	
	:	

SUBJECT: COASTAL ACT (1976)—The Legislature, with the passage of the Coastal Act of 1976, has delegated to the California Coastal Commission, and regional commissions during their existence, discretion to prohibit development in a flood plain only if such prohibition will minimize risk to life and property in an area of high flood hazard and the proposed development itself is in the high flood hazard area.

The Honorable Robert C. Frazee, Assemblyman, Seventy-Sixth District has requested an opinion on the following question:

Has the Legislature, with the passage of the Coastal Act of 1976, delegated to the California Coastal Commission discretionary power to prohibit development in a flood plain even though such development does not pose a risk to life and property, and is not in a high flood hazard area?

CONCLUSION

The Legislature, with the passage of the Coastal Act of 1976, has delegated to the California Coastal Commission, and regional commissions during their existence,

discretion to prohibit development in a flood plain only if such prohibition will minimize risk to life and property in an area of high flood hazard and the proposed development itself is in the high flood hazard area.

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 use planning and the criteria specified in the Coastal Act. (§§ 30200–30264.)

As pertinent here, the commission has two primary functions. The first is to assist the local governments and regional commissions in the preparation of the local coastal programs (§ 30500), to be followed by certification of those programs by the commission. (§§ 30500–30522.) The second function relates to controls over development within the coastal zone. All development, as defined (§ 30106), is to be pursuant to a permit system, both before and after certification of the local coastal programs. (§ 30600(a).) Prior to certification, the permit must be obtained from the local government, if it chooses to exercise that power, or from a regional commission. (§ 30600(b) and (c).) With limited exceptions (§ 30519(b)), after certification, a coastal development permit must be obtained from the local government. (§ 30600(d).) In either event, an appeal from the granting or denying of a permit may be taken to the commission. (§§ 30602–30603.)

Prior to certification, permits are to be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the policy provisions of chapter 3 (§§ 30200 *et seq.*) and will not prejudice the ability of the local government to prepare the requisite local coastal program. (§ 30604(a).) After certification of the local coastal programs, a coastal development permit is to be issued if the issuing agency, or the commission on appeal, finds that the proposed development is

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

in conformity with the certified local coastal program. (§ 30604(b).)

The question presented relates to the duties and power of the commission (and regional commissions) in the permit procedure, and more particularly to whether the statutory standards for approval of a development permit allow the commission discretion to deny such a permit for land located in a flood plain.² In turn, this requires an examination of the policy provisions of chapter 3 (§ 30200 *et seq.*) as they relate to flood hazards and flood plains. We are asked to assume that the particular proposed development in question will not pose a risk to life or property and is not located in a high flood hazard area.³

There are two sections of chapter 3 that are pertinent to flood plain matters. Section 30236 provides:

“Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.”

Section 30253 provides:

“New development shall:

“(1) *Minimize risks to life and property in areas of high geologic, flood and fire hazard.*

“(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and

² The question as presented limited the development in a flood plain to “commercial” development. We do not in this opinion distinguish between types of development insofar as the commission’s authority to regulate development in a flood plain is concerned.

³ We do note, however, that in the background information provided, the particular proposed development giving rise to the opinion request did raise a factual question as to whether the land was in a high flood hazard area and whether the development would pose a risk to life or property. By making the assumptions requested, we do not express an opinion as to whether the assumption is applicable to the background factual situation or any other factual situation.

cliffs.

“(3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.

“(4) Minimize energy consumption and vehicle miles traveled.

“(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.” (Emphasis added.)

There is ample authority that the police power of government extends to the regulation of development in flood plains, both in California (*Turner v. County of Del Norte* (1972), 24 Cal. App. 3d 311, 314–315; see also *Helix Land Co. v. City of San Diego* (1978) 82 Cal. App. 3d 932, 945; comment, *Flood Plain Zoning in California-Open Space by Another Name: Policy and Practicality* (1973) 10 San Diego L. Rev. 381) and in other states. (See *County of Ramsey v. Stevens* (Minn. 1979) 283 N.W. 2d 918, 924–925; *Krabl v. Nine Mile Creek Watershed Dist.* (Minn. 1979) 283 N.W. 2d 538, 542–543; *Lovequist v. Conservation Commission of Town of Dennis* (Mass. 1979) 393 N.E. 2d 858; see also Dunham, *Flood Control Via the Police Power* (1959) 107 U. Pa. L. Rev. 10,8.) In California, this power has essentially been delegated to local government. (51 Ops. Cal. Atty. Gen. 207 (1968)), through the basic zoning authority (Gov. Code, § 65850); the Cobey-Alquist Flood Plain Management Act (Wat. Code, § 8400 *et seq.*) which require each city and county, among other agencies, to establish flood plain regulations; and in the Open-Space Lands Law (Gov. Code, § 65560 *et seq.*) which requires each city and county to prepare and adopt a basic open-space plan. The definition of “open-space” includes “. . . areas which require special management or regulation because of hazardous or special conditions such as . . . flood plains . . .” (Gov. Code, § 65560(b) (4).)

From the legislative history of the Coastal Act, it appears that the delegation to the commission and regional commissions of the power to manage or regulate flood plain development is less broad than that granted to local governments. The former Coastal Zone Conservation Commission adopted and presented to the Legislature a “California Coastal Plan” as required by the 1972 Initiative Act. (§ 30002.) That plan discussed the necessity to restrict development in flood hazard areas and recommended extensive regulation of flood plains. (Cal. Coastal Plan, p. 84.)⁴

⁴ The policy recommended by the Coastal Plan as respects flood-hazard areas was:

“64. Restrict Development in Flood-Hazard Areas.

“To avoid the need for new flood control works and inferences with natural

The legislation introduced in 1976 to effectuate the California Coastal Plan (Sen. Bill No. 1579), in addition to a channelization section similar in scope to section 30236, *supra*, contained a proposed section 30209(a), which provided in part:

“ . . . Before development that could adversely affect coastal water resources is allowed, impervious surface limitations, floodplain zoning, and other development standards designed to protect groundwater and surface drainage areas shall be established.” (Emphasis added.)

That bill also contained a proposed section 30247:

“Only new or expanded developments that can sustain periodic flooding and that will not create public burdens by aggravating the flood problem, impeding floodwater storage capacity, or increasing pressure for new flood control projects may be allowed in presently unprotected flood hazard areas subject to inundation by a 100–year flood.”

The final version of what became the Coastal Act (Stats. 1976, chs. 1330, 1331), was substantially different from Senate Bill No. 1576 as introduced, and the two sections dealing with flood plain regulation (§§ 30236, 30253(1)) are set out above. From this, one might conclude that the commission and regional commissions do not have flood plain zoning authority, that being left to local government. We believe, however, that the

watershed processes that would adversely affect coastal resources such as sand supply and anadromous fisheries, development in flood-hazard areas shall be regulated as follows:

“a. Criteria for New Developments in Unprotected Flood-Hazard Areas. Only new developments that can sustain periodic flooding and that will not create public burdens by aggravating the flood problem, impeding floodwater storage capacity, or increasing pressure for new flood control projects shall be allowed in presently unprotected flood-hazard areas (those subject to inundation by a 100–year flood), consistent with the existing Federal insurance program. Examples of permissible uses include agriculture and recreation, with necessary incidental structures.

“b. Restrict Use of Flood-Hazard Areas during Flood-Prone Periods. During flood-prone periods, flood-hazard areas shall not be used for log decks or storage of materials that can be carried downstream by flood waters unless mitigation (such as anchoring devices or berms) is adequate.

“c. Review Inland Flood-Hazard Area Projects That Could Affect Coastal Zone. It is recommended that the Legislature establish procedures to ensure opportunities for public review of proposed inland flood-hazard area projects that could adversely affect lives and property in the coastal zone. (See also Coastal Land Environment section on Coastal Streams and Watershed Management.)”

commissions do have substantial flood plain regulation authority in the two cited sections, which may be summarized as follows:

1. If the proposed development constitutes a channelization, dam or other substantial alteration of rivers or streams, it may only be approved by the regional commissions or the commission if it meets the standards of section 30236.

2. The regional commissions or the commission may approve a permit if it finds first that the development is in conformity with the standards of chapter 3, which include section 30253(1), that is that the development will minimize risk to life and property in a high flood hazard area. (§ 30604(a).)

However, section 30236, *supra*, is limited in application to “channelizations, dams, or other substantial alterations of rivers and streams. . . .” The language of that section clearly reflects a legislative policy with respect to protecting “existing structures in the flood plain” without necessarily limiting the area of regulatory activity to the flood plain itself.

Section 30253, on the other hand, relates to “new development” and requires that such new development “minimize risks to life and property *in areas of high . . . flood . . . hazard.*” (Emphasis added.)

We find no other language pertinent to the inquiry. The phrase “in the areas of” is singularly inappropriate to describe areas adjacent to a flood plain or to areas “affecting” flood plains. The emphasis appears to be not merely on flood plain but more limitedly upon areas of high flood hazard, which description may not include all flood plans.

We deem this factor to be critical in the resolution of the issue presented since our primary objective is to ascertain and give effect to legislative intent. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 163; *Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645; *Steilberg v. Lackner* (1977) 69 Cal. App. 3d 780, 785.)

In determining the legislative intent, one turns first to the words used in the statute. (*Moyer v. Workman’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230; *Steilberg v. Lackner, supra*, 69 Cal. App. 3d at p. 785) One is required to give effect to the statutes according to the usual ordinary import of the language, significance being given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. (*Moyer v. Workman’s Comp. Appeals Bd., supra*, 10 Cal. 3d at p. 230; *Steilberg v. Lackner, supra*, 69 Cal. App. 3d at P. 785.)

As we have noted the original bill (Sen. Bill 1579 in the 1976 regular session) contained a provision which would have added section 30247 to the Coastal Act. That section (p. 6, *supra*, makes it clear that the new developments it was concerned about were those which “can sustain periodic flooding,” i.e., developments within the flood plain.

Accordingly, it is concluded that the Legislature, with the passage of the Coastal Act of 1976, has delegated to the California Coastal Commission, and regional commissions during their existence, discretion to prohibit development in a flood plain only if such prohibition will minimize risk to life and property in an area of high flood hazard and the proposed development itself is in the high flood hazard area.
