

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 80-401
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of	:	<u>August 26, 1980</u>
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SUBJECT: CONSTITUTIONALITY AND IMPLEMENTATION OF SUBDIVISION (f) OF PUBLIC RESOURCES CODE 30170—The provisions of subdivision (f) of Public Resources Code section 30170 concerning the adoption of a local coastal program by the California Coastal Commission are constitutional. In the implementation of subdivision (f) of Public Resources Code section 30170, the affected local government may be prohibited from issuing any permit for development within the area specified in the statute and a permit from the regional commission or California Coastal Commission may continue to be required for such development until the local government amends its land use plans, zoning ordinances, and zoning district maps to conform to the duly adopted local coastal program.

The Honorable Robert C. Frazee, Assemblyman, 77th District, has requested an opinion on questions we have phrased as follows:

1. Are the provisions of subdivision (f) of Public Resources Code section 30170 concerning the adoption of a local coastal program by the California Coastal Commission constitutional?

2. In the implementation of subdivision (f) of Public Resources Code section 30170, what consequences may result if the affected local government refuses to amend its land use plans, zoning ordinances, and zoning district maps to conform to the duly adopted local coastal program?

CONCLUSIONS

1. The provisions of subdivision (f) of Public Resources Code section 30170 concerning the adoption of a local coastal program by the California Coastal Commission are constitutional.

2. In the implementation of subdivision (f) of Public Resources Code section 30170, the affected local government may be prohibited from issuing any permit for development within the area specified in the statute and a permit from the regional commission or California Coastal Commission may continue to be required for such development until the local government amends its land use plans, zoning ordinances, and zoning district maps to conform to the duly adopted local coastal program.

ANALYSIS

Under the California Coastal Act of 1976 (Public Resources Code §§ 30000–30900)¹ (hereinafter “Act”), it is the general responsibility of a county or city located in the state’s “coastal zone” to prepare a “local coastal program” (hereinafter “LCP”). Subdivision (a) of section 30500 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. However, any such local government may request the commission to prepare a local coastal program, or a portion thereof for the local government”²

As recognized by section 30500, the California Coastal Commission (hereinafter “Commission”) may prepare the LCP at the request of a city or county.

The Legislature has also directed the Commission to prepare, as well as approve and adopt, an LCP in certain circumstances. Subdivision (f) of section 30170, the statute under

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

² A “local government” is defined as “any chartered or general law city, chartered or general law county, or any city and county” (§ 30109), and the “commission” is the California Coastal Commission. (§ 30105, subd. (a).)

consideration herein, provides:

“On or before October 1, 1980 the commission shall, after public hearing and in consultation with the City of Carlsbad, prepare, approve, and adopt a local coastal program for the following parcels in the vicinity of Batiquitos Lagoon within the City of Carlsbad: lands owned by Rancho La Costa, a registered limited partnership, land (consisting of approximately 80 acres) owned by Standard Pacific of San Diego, Inc., that were conveyed by Rancho La Costa on October 8, 1977, and lands owned by the Occidental Petroleum Company. Such parcels shall be determined by ownership as of September 12, 1979. As used in this subdivision, “parcels” means the parcels identified in this paragraph. The local coastal program required by this subdivision shall include all of the following elements:

“(1) Protection of agricultural land uses to the extent feasible.

“(2) Minimization of adverse impact from sedimentation.

“(3) Protection of feasible public recreational opportunities.

“(4) Provision for economically feasible development consistent with the three elements specified in this subdivision.

“The local coastal program required by this subdivision shall, after adoption by the commission be deemed certified and shall for all purposes of this division constitute certified local coastal program segments for those parcels in the City of Carlsbad. The segments of the city’s local coastal program for those parcels may be amended pursuant to the provisions of this division relating to the amendment of local coastal programs.

“If the commission fails to adopt such a local coastal program within the time limits specified in this subdivision, those parcels shall be excluded from the coastal zone and shall no longer be subject to the provisions of this division. It is the intent of the Legislature in enacting this subdivision that a procedure to expedite the preparation and adoption of a local coastal program for those parcels be established so that the public and affected property owners know as soon as possible what the permissible uses of such lands are.”

In effect, subdivision (f) of section 30170 constitutes a conditional change of the coastal zone boundary of the state. As we recently pointed out in 63 Ops. Cal. Atty. Gen.

107, 108–111 (1980), the Legislature has on several occasions modified the landward boundary of the coastal zone. Here, the coastal zone boundary will be changed unless the Commission timely prepares and adopts an LCP for the area in question. The stated purpose of the legislation is “so that the public and affected property owners know as soon as possible what the permissible uses of such lands are.” (§ 30170, subd. (f).)³

An LCP is defined in section 30108.6 as “a local government’s (a) land use plans, (b) zoning ordinances, (c) zoning district maps and (d) within sensitive coastal resource 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.” Section 30108.5 defines a “land use plan” as “the relevant portions of a local government’s general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions.”

A “local coastal element” is defined in section 30108.55 as “that portion of a general plan applicable to the coastal zone which may be prepared by local government pursuant to subdivision (k) of Section 65303 of the Government Code, as such local government deems appropriate.”⁴

The first question presented for analysis is whether the Legislature’s grant of authority to the Commission to adopt an LCP under subdivision (f) of section 30170 is constitutional. In particular, the California Constitution prohibits or restricts certain acts by the Legislature, and arguably three of these provisions are applicable here.

First, section 5 of article XI of the Constitution provides that city charters “with respect to municipal affairs shall supersede all laws inconsistent therewith.”⁵

Has the Legislature by the enactment of section 30170, subdivision (f), invalidly intruded into an area of exclusively local concern? We believe not.

³ Under the general statutory scheme the Commission has until June 1, 1981, to certify an LCP prepared by it at the request of a local government. (§ 30501, subd. (b).)

⁴ Government Code section 65303, subdivision (k), authorizes the inclusion in a general plan of any “additional elements dealing with other subjects which in the judgment of the planning agency relate to the physical development of the county or city.”

⁵ Section 7 of the same article provides that a “city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” The Constitution thus distinguishes between general law cities, the ordinances of which must not be in conflict with state laws, and charter cities, the ordinances of which supersede inconsistent state laws involving “municipal affairs.”

The issue of whether land use planning, zoning ordinances, and the issuance of building permits are exclusively “municipal affairs” over which charter cities have plenary power has been discussed by the courts on numerous occasions. *Lindell Co. v. Board of Permit Appeals* (1943) 23 Cal. 2d 303, 310–311; *Brougher v. Board of Public Works* (1928) 205 Cal. 426, 432–439; *Fletcher v. Porter* (1962) 203 Cal. App. 2d 313, 320; and *O’Loane v. O’Rourke* (1965) 231 Cal. App. 2d 774, 783, contain language, although dicta except in *Brougher*, that would support such an argument. The actual holdings of these cases, however, merely pertain to the method or manner of enacting ordinances and do not stand for the proposition that planning and zoning are exclusively municipal affairs. (See *CREED v. California Coastal Zone Conservation Com.*, *supra*, 43 Cal. App. 3d 306, 323.)

Indeed, such an argument is no longer viable. In *People ex rel. Younger v. County of El Dorado* (1971) 5 Cal. 3d 480, 498, footnote 20, the Supreme Court pointed out that land use planning and environmental control often present problems of regional, state, and even world-wide concern. The court rejected the municipal affairs argument with regard to planning and zoning by stating, “problems which exhibit exclusively local characteristics at certain times in the life of a community, acquire larger dimensions and changed characteristics at others. When the effects of change are felt beyond the point of its immediate impact, it is fatuous to expect that controlling such change remains a local problem to be solved by local methods.” (*Id.*, at pp. 497–498, fns. omitted.)

CREED v. California Coastal Zone Conservation Com., *supra*, 43 Cal. App. 3d 306, considered the precise question at issue with regard to the Commission’s predecessor, the California Coastal Zone Conservation Commission established under the California Coastal Zone Conservation Act of 1972. After lengthy analysis, the court held that the state’s right to regulate land use within the coastal zone was not precluded by the “municipal affairs” constitutional provision. (*Id.*, at 320–324.)

We thus conclude that section 30170, subdivision (f), involves matters of statewide interest in setting the boundary of the state’s coastal zone and establishing the appropriate uses for this portion of a “delicately balanced eco-system” in order to preserve and protect it for present and succeeding generations. (See *CEEED v. California Coastal Zone Conservation Com.*, *supra*, 43 Cal. 3d 306, 311.)

We next consider whether subdivision (f) of section 30170 may be considered “special legislation” that is invalid under subdivision (b) of section 16 of article IV of the Constitution. Subdivision (b) provides: “A local or special statute is invalid in any case if a general statute can be made applicable.”

The meaning of this constitutional provision has been defined by the courts on only broad generalities. In the most recent case, *Durham v. City of Los Angeles* (1979) 91 Cal.

App. 3d 567, 575, the court quoted *Russell v. Carleson* (1973) 36 Cal. App. 3d 334, 342, in stating that the provision is “substantially the equivalent of the equal protection clause of the Fourteenth Amendment, and evoke[s] substantially the same standards as those prescribed by the federal

The *Russell* case described the guarantees of the equal protection clause as requiring:

“‘recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.’ (*Purdy & Fitzpatrick v. State of California* (1969) 71 Cal. 2d 566, 578.) ‘[T]he legislature is vested with wide discretion in making the classification and . . . its decision as to what is a sufficient distinction to warrant the classification will not be overthrown by the courts unless it is palpably arbitrary and beyond rational doubt erroneous. [Citation.] . . . Only invidious discrimination offends the equal protection clause [citation]; the Legislature need not treat similar evils identically or legislate as to all phases of a field at once [citation]; legislative classification is permissible when it is based upon some distinction reasonably justifying differentiation in treatment [citations]; a classification is not void because it does not embrace within it every other class which might be included [citation]’” (*People v. Agnir, supra*, 257 Cal. App. 2d at p. 604.) “A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.” [Citation.]’ (*Dandridge v. Williams* (1970) 397 U.S. 471, 485.) (See also *Allied Stores of Ohio v. Bowers* (1959) 358 U.S. 522, 527–528; *In re Ricky H., supra*, 2 Cal. 3d at p. 522.)

“Similarly, the California Supreme Court has declared: ‘The Legislature is not bound, in order to adopt a constitutionally valid statute, to extend it to all cases which might possibly be reached, but is free to recognize degrees of harm and to confine its regulation to those classes of cases in which the need is deemed to be the most evident.’ (*Board of Education v. Watson* (1966) 63 Cal. 2d 829, 833.) ‘In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect.’ (*Dandridge v. Williams, supra*, 397 U.S. at p. 48 5.) ‘[T]he Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all.’ (*Id.*, at pp. 416–487.) ‘A legislature may address a problem one step at a time,’ or even “select one phase of one field and apply a remedy there, neglecting the others.” [Citation.]’ (36 Cal. App. 3d 334, 343–344.)

Similar language is found in the recent case of *Heztz v. County of Sacramento* (1978) 87 Cal. App. 3d 754, 758, in which the Court of Appeal concluded that a law would meet the constitutional provision concerning special legislation

“if it relates to and acts uniformly upon the whole of any single class of individuals or objects, and the classification is founded upon some natural, intrinsic or constitutional distinction. [Citations.] If good ground for the classification exists, such classification is not void because it does not embrace within it every other class which might be included.’ (*Powers Farms v. Consolidated Irr. Dist.* (1941) 19 Cal. 2d 123, 131 [quoting *Heron v. Riley* (1930) 209 Cal. 507, 518].)”

In practice, the courts have approved a statutory classification of counties by population in such a manner that only one county would be in each class (*County of Madera v. Gendron* (1963) 59 Cal. 2d 798, 801), a statutory classification that has focused upon one hospital district (*Corona Etc., Hosp. Dist. v. Superior Court* (1964) 61 Cal. 2d 846, 853), and a statutory classification that has application to only one judicial district; (*Binns v. Hite* (1964) 61 Cal. 2d 107, 112.)

Since the constitutional provision prohibits a local or special statute⁶ only where “a general law may be made applicable,” the courts have upheld local and special laws if they were necessary to solve the “unique” problems presented. (*See Los Angeles Co. F.C. Dist. v. Hamilton* (1917) 177 Cal. 119, 130; *People v. Sacramento Drainage Dist.* (1909) 155 Cal. 373, 382; *South Santa Clara Valley Water Conservation Dist. v. Santa Clara Valley Water Dist.* (1978) 76 Cal. App. 3d 852, 857–858.)

In the recent Santa Clara case, for example, the court noted that the water district in question could have been formed under a general law, but that the general law was permissive only and required a vote by the qualified electors of the proposed district. The court upheld the special legislation forming the district, since voluntary formation “was likely never to be.” (76 Cal. App. 3d 852, 858.)

Here, the Legislature has determined that an LCP for the area under consideration must be prepared and adopted by the Commission on or before October 1, 1980, “so that

⁶ A “local” law is one that relates to a portion only of the people or their property (see *Earle v. S.F. Board of Education* (1880) 55 Cal. 489, 491; *Matter of Application of Mateolo* (1914) 25 Cal. App. 92, 95), while a “special” law treats differently “a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law.” (*City of Pasadena v. Stimson* (1891) 91 Cal. 238, 251–252.)

the public and affected property owners know as soon as possible what the permissible uses of such lands are”; af the deadline is not met, the area will be excluded from the state’s coastal zone. (§ 30170, subd. (f).)

Such a basis for this legislation does not appear to be a capricious or palpably arbitrary decision by the Legislature. Changing the date of when an LCP must be adopted for a specific area, otherwise excluding the area from the coastal zone, appears to be within the Legislature’s prerogative under the broad guidelines recently specified by the courts. While there may be uncertainty as to the parameters of the “special legislation” constitutional prohibition, we believe that a court today would uphold subdivision (f) of section 30170 against a claim that it violates article IV, section 16, subdivision (b).

Thirdly, section 1 of article IV of the Constitution states “The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum.” As was stated by the Court of Appeal in *CEEED v. California Coastal Zone Conservation Com.*, *supra*, 43 Cal. App. 3d 306, 325, “The constitutional doctrine prohibiting delegation of legislative power rests on the premise that the Legislature may not abdicate its responsibility to resolve the ‘truly fundamental issues’ by delegating that function to others or by failing to provide adequate directions for the implementation of its declared policies. [Citation.]”

Hence, in connection with the Commission’s statutory duties, the Legislature may only delegate to it those functions that carry out the Legislature’s policy decisions under adequate safeguards. (See *People ex rel. Younger v. County of El Dorado*, *supra*, 5 Cal. 3d 480, 507; *Kugler v. Yocum* (1968) 69 Cal. 2d 371, 375–377.)

We believe that subdivision (f) of section 30170 meets this constitutional requirement. A legislative policy decision has been made to include certain parcels of land within the “coastal zone” of the state if an LCP is timely adopted by the Commission. The standards for the LCP are specified in the statute as including: (1) the protection of agricultural land uses to the extent feasible, (2) the minimization of adverse impact from sedimentation, (3) the protection of feasible public recreational opportunities, and (4) the provision for economically feasible development. The statute requires that a public hearing be held and that the LCP be prepared, approved, and adopted in consultation with the City of Carlsbad. It also provides that the LCP may be subsequently amended in the same manner as other LCPs under the statutory scheme.

The Commission thus has not been given arbitrary, uncontrolled or unguided discretion in formulating an LCP for the area in question. The “objective sought to be achieved” appears “depicted with remarkable clarity.” (See *People ex rel. S.F. Bay Etc.*,

Com. v. Town of Emeryville (1963) 69 Cal. 2d 533, 544.) The fact that the Commission may be empowered “to exercise a judgment of a high order in implementing legislative policy does not confer unrestricted powers.” (*CEEED v. California Coastal Zone Conservation Com.*, *supra*, 43 Cal. App. 3d 306, 327.)

We note that standards for the issuance of building and land use permits couched in terms of the “general health, safety, and welfare” of the public have been upheld against charges that they conferred unbridled discretion on the administrative body or were unconstitutionally vague. (See *City & County of S.F. v. Superior Court* (1959) 53 Cal. 2d 236, 250; *City of Santa Clara v. Santa Clara Unified Sch. Distr.* (1971) 22 Cal. App. 3d 152, 163; *Garavatti v. Fairfax Planning Com.* (1971) 22 Cal. App. 3d 145, 150; *Mitcheltree v. City of Los Angeles* (1971) 17 Cal. App. 3d 791, 797; *Van Sicklen v. Browne* (1971) 15 Cal. App. 3d 122, 126–127; *Candlestick Properties, Inc. v. San Francisco Bay Conservation Etc., Com.* (1970) 11 Cal. App. 3d 557, 568; *Stoddard v. Edelman* (1970) 4 Cal. App. 3d 544, 548.)

We have little difficulty, therefore, in concluding that subdivision (f) of section 30170 carries out the Legislature’s policy decisions with adequate standards and safeguards so as to withstand constitutional attack under section 1 of article IV.

We know of no other constitutional provision that necessitates discussion concerning the validity of subdivision (f) of section 30170. We therefore conclude with regard to the first question that the Commission may constitutionally adopt an LCP for the parcels specified in subdivision (f) of section 30170.

The second question concerns the procedures for implementing the LCP, once it is adopted by the Commission. Specifically, we are asked what action the Commission may take if the City of Carlsbad does not amend its land use plans, zoning ordinances, and zoning district maps, and take the other necessary actions to implement the Commission’s adopted LCP.

We have no doubt that the Legislature could authorize the Commission to enforce through judicial or other means the implementing actions necessary to effectuate the statute. (See *People ex rel. Younger v. County of El Dorado*, *supra*, 5 Cal. 3d 480, 491–492.) It is apparent, however, that the Legislature intended for a different procedure to be followed should an LCP not be effectively implemented by a local government.

We note first that although an LCP is defined as a local government’s land use plans, zoning ordinances, and zoning district maps (§ 30108.6), the Legislature has distinguished between the certification of an LCP and its effective implementation. (See §§ 30108.4, 30108.6, 30518, 30519.) Manifestly, amendments to existing land use plans, zoning

ordinances, and zoning district maps so as to implement a certified LCP are the necessary responsibility of the local government, not the Commission.

In essence, the provisions of subdivision (f) of section 30170 are directed to the Commission in terms of the consequences of any “inaction.” If the Commission fails to adopt an LCP by October 1, 1980, the parcels specified in the statute are excluded from the coastal zone. Once the LCP is timely adopted, the City of Carlsbad must implement it or face the consequences specified in other provisions of the statutory scheme.

The primary impetus for the City of Carlsbad to amend its existing land use plans, zoning ordinances, and zoning district maps so as to conform to the duly adopted LCP is found in section 30519. Essentially, the statute provides: that “the development review authority over any new development proposed within the area to which such certified local coastal program, or any portion thereof, applies” will not be transferred to the city from the regional commission until “all implementing actions within the area affected have become effective.” Consequently, in order to obtain complete control of development within the area specified in subdivision (f) of section 30170, the City of Carlsbad must implement the certified LCP segment.

Section 30518 complements section 30519 by providing generally that until “all implementing devices become effective,” the Commission may “(a) Prohibit or otherwise restrict, by regulation, the affected local government from issuing any permit or any type of entitlement for use for any development with the coastal zone, or any portion thereof, of such local government” or “(b) By regulation, extend the permit requirements of Chapter 7 (commencing with Section 30600) by requiring a permit from the commission for any development within any area of the coastal zone under the jurisdiction of the affected local government.”

Accordingly, in answer to the second question, we conclude that in the implementation of subdivision (f) of section 30170, the City of Carlsbad may be prohibited from issuing any permit for development within the area specified in the statute and a permit from the regional commission or the Commission may continue to be required for such development until the city amends its land use plans, zoning ordinances, and zoning district maps to conform to the duly adopted LCP.
