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OPINION	:	No. 81-1113
of	:	JANUARY 28, 1982
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THE HONORABLE WILLARD A. SHANK, CHIEF ASSISTANT ATTORNEY GENERAL OF CALIFORNIA, CIVIL DIVISION, has requested an opinion on the following question:

Are counties and the state required to obtain a coastal development permit from a city in order to develop public property located within that portion of the coastal zone under the city's jurisdiction, where the city's local coastal program has been certified pursuant to the California Coastal Act of 1976?

CONCLUSION

With certain specified exceptions, counties and the state are required to obtain a coastal development permit from a city in order to develop public property located within that portion of the coastal zone under the city's jurisdiction, where the city's local coastal program has been certified pursuant to the California Coastal Act of 1976.

ANALYSIS

The Legislature has enacted a comprehensive statutory scheme (Pub. Res. Code, §§ 30000-30900)[1/1] recently amended (Stats. 1981, ch. 1173) and known as the California Coastal Act of 1976 (§ 30000; hereafter "Act") to 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 manmade 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 intiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone." (§ 30001.5.)

One of the key aspects of the legislation is the preparation of "local coastal programs" by cities and counties in California's coastal zone.[2] Section 30500, subdivision (a) provides:

> "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, in writing, the commission to prepare a local coastal program, or a portion thereof, for the local government. Each local coastal program prepared

[1] All section references hereafter are to the Public Resources Code unless otherwise indicated.

[2] The inland portion of the coastal zone is approximately the first 1,000 yards from the mean high tide line of the sea, but it may be up to five miles in certain places. (See §§ 30103-30103.5.)

pursuant to this chapter shall contain a specific public accesss component to assure that maximum public access to the coast and public recreation areas is provided."[3]

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." (§ 30108.6.)

In practical terms, the significance of a local coastal program is that "any person wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit" (§ 30600, subd. (a)) and "[a]fter certification of the local coastal program a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program." (§ 30604, subd. (b).)[4] Consequently, certified local coastal programs control development within California's coastal zone.

The question presented for analysis is whether counties and the state must obtain a permit from a city that has a certified local coastal program in order to develop public property located within the city's jurisdiction of the coastal zone. We conclude that a city's certified local coastal program would govern such development and that, with few exceptions, the appropriate agency to issue the permit would be the city.

The issue arises because of the basic principle "'that the state, when creating municipal governments does not cede to them any control of the state's property situated within them.'" (*In Re Means* (1939) 14 Cal.2d 254, 259.) "'How can the city ever have a superior authority to the state over the latter's own property, or in its control and management?'" (*Id.* at 258; see *Hall* v. *City of Taft* (1956) 47 Cal.2d 177, 183-184.)

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[3] A "local government" is defined as "any chartered or general law city, chartered or general law county, or any city and county." (§ 30109.) The "commission" is the California Coastal Commission. (§ 30105, subd. (a).) A county would have jurisdiction over the unincorporated areas within its boundaries, while a city would have jurisdiction over its incorporated territory. (See Gov. Code, § 35440.)

[4] As we shall find, for development within a city's boundaries, the "issuing agency" in almost all cases is the city after certification of its local coastal program. (See § 30519.)

The simple answer is that the Legislature may subject state and county property[5] to city regulation, and in this case has done so in the provisions of the Act.

"The state's immunity from local regulations is merely an extension of the concept of sovereign immunity." (*Board of Trustees* v. *City of Los Angeles* (1975) 49 Cal.App.3d 45, 49.) When the state engages in sovereign activities, "it is not subject to local regulations *unless the Constitution says it is or the Legislature has consented to such regulation*." (*Hall* v. *City of Taft*, *supra*, 47 Cal.2d 177, 183, italics added; see *Board of Trustees* v. *City of Los Angeles*, *supra*, 49 Cal.App.3d 45, 50; *City of Orange* v. *Valenti* (1974) 37 Cal.App.3d 240, 244.)

Put differently, "in the absence of express words to the contrary, neither the state nor its subdivisions are included within the general words of a statute" where "their inclusion would result in an infringement upon sovereign governmental powers." (*City of Los Angeles* v. *City of San Fernando* (1975) 14 Cal.3d 199, 276-277) italics added; accord, *Regents of University of California* v. *Superior Court* (1976) 17 Cal.3d 533, 536; see *Hoyt* v. *Board of Civil Service Commissioners* (1942) 21 Cal.2d 399, 402.)

The Legislature has on occasion consented to the regulation of sovereign activities by a city. (See *Kehoe* v. *City of Berkeley* (1977) 67 Cal.App.3d 666, 672-673; *City of Orange* v. *Valenti*, *supra*, 37 Cal.App.3d 240, 244-245.)

Here, the Legislature has specified in that Act that a coastal development permit must be obtained by every "person." (§ 30600, subd. (a).) Normally, as discussed above, such a generalized term would not include the state or counties while exercising sovereign powers. The Legislature, however, has expressly defined "person" for purposes of the Act as including "any federal, state, local government, or special district or an agency thereof." (§ 30111.)[6]

Accordingly, the Legislature has included the state and counties in the permit application process where the public property to be developed is within the coastal zone. (See *Urban Renewal Agency* v. *California Coastal Zone Conservation Com.* (1975) 15 Cal.3d 577, 584.)

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[5] Since counties are political divisions and agencies of the state, the Legislature may subject county property to the same requirements as state-owned property. (See Cal.Const., art XI, § 1; Gov. Code, 23000; *Younger* v. *Board of Supervisors* (1979) 93 Cal.App.3d 864, 870; *Griffin* v. *Colusa* (1941) 44 Cal.App.3d 915, 920.)

[6] Under the definition of "local government" contained in section 30109, a county would be a "person" under section 30111.

We next consider whether the request for a permit is to be directed to a city where the property is located within the city's jurisdiction and the city has a certified local coastal program. The answer is found in section 30519 made applicable under section 30600, subdivision (d). Section 30519 states:

> "(a) 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 authority." (Italics added.)

Subdivision (a) of section 30519 transfers development review authority to the local government after certification of the local coastal program. Subdivision (b) of the statute provides certain limited exceptions to this transfer of control.

Significantly, the Legislature would not have excluded development located, for example, within a state university or college under subdivision (b), if public property in general was not to be subject to the issuance of permits by the local government under subdivision (a). We must construe section 30519 in a manner that avoids surplusage and renders every word and phrase meaningful. (See *Wells* v. *Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788; *Pacific Legal Foundation* v. *Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 114.)

Moreover, as was stated in *Wildlife Alive* v. *Chickering* (1976) 18 Cal.3d 190, 195, "Under the familiar rule of construction, *expressio unius est exclusio alterius*, where

exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed. [Citations.]" Since certain public property is excluded from the transfer of authority to the local government, other public property is presumed to be covered by subdivision (a) of section 30519.[7]

Having cities issue permits to counties and the state under section 30519 is also consistent with other statutory directives contained in the Act. A statute is to be construed in context and harmonized with the other provisions of the statutory scheme as a whole. (*California Mfgrs. Assn.* v. *Public Utilities Comm.* (1979) 24 Cal.3d 836, 844; *Moyer* v. *Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.)

In section 30003, the Legislature mandates that "[a]ll public agencies . . . shall comply with the provisions of this division." In section 30009, the Legislature directs, "This division shall be liberally construed to accomplish its purposes and objectives."

In section 30005.5, the Legislature recognizes that it has given authority to local governments in section 30519 that would not otherwise be within the scope of the powers of local governments. The statute provides:

> "*Nothing in this division shall be construed to authorize any local government*, or to authorize the commission to require any local government, *to exercise any power it does not already have under the Constitution and laws of his state or that is not specifically delegated pursuant to section 30519*." (Italics added.)

If section 30519 had not been mentioned in section 30005.5, an entirely different analysis and conclusion may well have been necessary. As it is, the various provisions of the Act are consistent with each other.

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

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[7] Although this rule of construction "is inapplicable where its operation would contradict a discernible and contrary legislative intent" (*Wildlife Alive* v. *Chickering*, *supra*, 18 Cal.3d 190, 195), its application is consistent here with the general legislative purposes of the Act. The basic goals of the Act mentioned in section 30001.5 are as applicable to state-owned and county-owned property as to private property.

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. (See §§ 30004, subd. (b); 30519.5.)[8]

Finally, it must be observed that the Legislature has provided an alternative to the provisions of section 30519 with regard to "public works." Under section 30605, after certification of a local coastal program, a plan for public works may be submitted to the California Coastal Commission for approval. Approval under the statute is authorized, however, only if the commission "finds, after full consultation with the affected local governments, that the proposed plan for public works is in conformity with certified local coastal programs in jurisdictions affected by the proposed public works." If the plan is approved, section 30605 states that "any subsequent review by the commission of a specific project contained in such certified plan shall be limited to imposing conditions consistent with Sections 30607 and 30607.1."[9] Hence, under the alternative provisions of section 30605, a local coastal program would still control the proposed public works development, but the California Coastal Commission rather than the local government would actually grant the permit.

In answer to the question presented, therefore, we conclude that with certain limited exceptions specified in subdivision (b) of section 30519 and in section 30605, counties and the state are required to obtain a coastal development permit from a city in order to develop public property located within that portion of the coastal zone under the city's jurisdiction, where the city's local coastal program has been certified pursuant to the provisions of the Act.

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[8] Of course, counties and the state may always seek judicial review of any denial of a coastal development permit by a city. (§ 30802.)

[9] Section 30607 states, "Any permit that is issued or any development or action approved on appeal, pursuant to this chapter, shall be subject to reasonable terms and conditions in order to ensure that such development or action will be in accordance with the provisions of this division." Section 30607.1 deals with mitigation measures for dike and fill developments approved in wetlands areas.