

OFFICE OF THE
COUNTY COUNSEL



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COUNTY OF SANTA CRUZ

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SAMUEL TORRES, JR.
CHIEF ASSISTANTS

Agenda: May 19, 1998

May 7, 1998

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

**RE: Amendment of Local Coastal Plan and Section 13.20.150(b)(1) of the
Santa Cruz County Ordinance Relating to Exemptions for Coastal
Development Projects by State and Local Public Agencies**

Dear Members of the Board:

On January 13, 1998, your board declined to take jurisdiction of an appeal filed by the Soquel Creek County Water District challenging certain conditions attached to their water storage tank replacement project (Application Number 97-0079). The District's project had originally been approved by the County's Zoning Administrator on September 11, 1997, and subsequently appealed by the District to the Planning Commission which voted to uphold the Zoning Administrator's decision. Following your board's action, the District appealed the matter to the Coastal Commission which acted on March 11, 1998, to deny the appeal.

One argument raised by the District throughout its appeal was its contention that Section 13.20.150 of the Santa Cruz County Code exempted the District from having to obtain a coastal development permit. Section 13.20.150 states as follows:

"Except as specifically exempted by state and 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 land use plan and all ordinances to which such development would be subject to if it were privately originated.” (Emphasis added)

The District maintains that the highlighted language should be interpreted to include the exemption provisions contained in Government Code Section 5309 1. While Section 53091 generally exempts water storage and transmission projects from local building and zoning regulations, the regulatory requirements derived from a local coastal program certified by the California Coastal Commission are not included.¹

The County has consistently interpreted Section 13.20.150(b)(1) as exempting only the projects of public agencies which are specifically exempted by the California Coastal Act or Federal law. The County has required projects of school districts, water districts, cities, states agencies and other public projects, that are otherwise exempt from County building and zoning ordinances under state law, to obtain coastal develop permits from the County, and they have all done so.

The California Coastal Commission, which is the state agency specifically designated with the authority to interpret the provisions of the California Coastal Act, agrees that Government Code Section 13.20.150(b)(1) does not provide an exemption from Local Coastal Program regulations to agencies that are exempt from building and zoning regulations under Government Code section 5309 1.

An amendment to Section 13.20.150(b)(1) is proposed in order to address this situation. The attached draft amendment provides that exemptions from our County’s Local Coastal Program regulations would be limited to those specifically authorized by the California Coastal Act or by federal law. This change would affirm the nonapplicability of the exemption provisions of Government Code Section 53091, and, as previously stated, would conform to the County’s and the Coastal Commission’s existing interpretation of this section.

IT IS THEREFORE RECOMMENDED that your Board:

1. Approve in concept the attached ordinance amending section (b)(l) of

¹ See attached letter of Assistant County Counsel Rahn Garcia to the Santa Cruz County Board of Supervisors dated December 30, 1997.

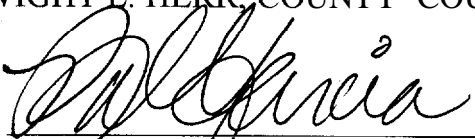
Section 13.20.150 of the County Code affirming that the exemption from the Local Coastal Program regulations authorized for public entities incorporates only those exemptions specified by the California Coastal Act or Federal law.

2. Adopt the attached Resolution of Intention to amend the Santa Cruz County General Plan/Local Coastal Program by amending Section 13.20.150(b)(1) of the County Code.

3. Direct the Planning Department and County Counsel to prepare and process an amendment to the County's General Plan/Local Coastal Program in accordance with the requirements of Chapter 13.03 of the County Code.

Very truly yours,

DWIGHT L. HERR, COUNTY COUNSEL

By 

RAHN GARCIA

Assistant County Counsel

RECOMMENDED:



SUSAN A. MAURIELLO

County Administrative Officer

cc: County Administrative Officer
Coastal Commission
Robert E. Bosso, Esq.

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DEBORAH STEEN
SAMUEL TORRES, JR.
CHIEF 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

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.)

'Other 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.3d 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 projects* within the Coastal Zone are expressly exempted from the LCP jurisdiction. of the County by statute. 155

CONCLUSION

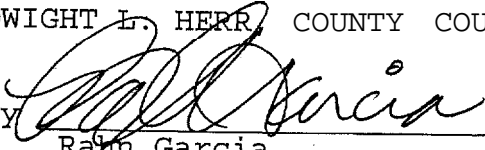
The County acknowledges that if the District's storage tank replacement project had been located outside of the Coastal Zone, Government Code Section 53091 would exempt it from all of the County's building and zoning regulations. However, since the District's project lies within the Coastal Zone, it 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.'

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


Ramon 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).

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

'Because 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).

LAW OFFICES

BOSSO, WILLIAMS, LEVIN, SACHS & BOOK

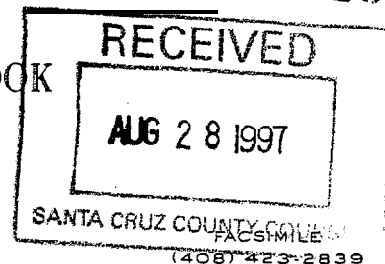
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August 28, 1997

VIA HAND-DELIVERY

Planning Commission
County of Santa Cruz
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Re: Appeal from Conditions of Coastal Permit
Appellant: Soquel Creek Water District (Applicant)
Project: Vista Del Mar Reservoir Replacement Project, App. #97-0079

Dear Commissioners:

This office represents the Soquel Creek Water District, applicant for the above-referenced project. The District appeals from the August 15, 1997 decision of the Zoning Administrator granting 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. We submit that the project is exempt from County building and zoning regulations pursuant to Government Code section 53091, and that 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

EXHIBIT **A** Page 1 of 5

Planning Commission

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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 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.

We respectfully submit that Government Code section 53091 prohibits the County from imposing these types of conditions on the District.

D. Exemption of Water District from Zonine 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,

Planning Commission

August 28, 1997

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storage, or transmission of water . . .” This section contains a similar exemption from building regulations. County Counsel has taken the position that the District must obtain a coastal development permit for the installation of the replacement tank and associated improvements because the Coastal Act is a state-wide, rather than local, requirement. County Counsel has further expressed the opinion that all County building and zoning regulations should apply to the project because these regulations are normally part of the coastal development permit process. We disagree with this analysis.

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 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,

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1014.

E. Liberal Interpretation of Section 53091

Under the most liberal interpretation of the County's powers under Section 5309 1, 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.

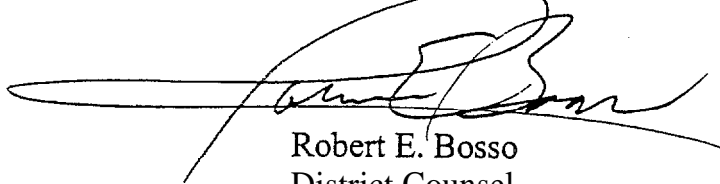
Where two statutes can be interpreted to either conflict with each other or be consistent, the interpretation that renders them consistent should be adopted. (City of Chula Vista v. Superior Court (1982) 133 Cal. App. 3d 472, 490 n.13 ("Statutes should be construed in harmony with other enactments relating 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 5309 1 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 5309 1 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 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.

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Page 5

• We respectfully submit that the Zoning Administrator's approval of the project must be modified to delete the above-referenced conditions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert E. Bosso", written over a horizontal line.

Robert E. Bosso
District Counsel

cc: Client
Dwight L. Herr, County Counsel

COUNTY OF SANTA CRUZ PLANNING COMMISSION MINUTES

DATE: November 12, 1997

PLACE: Board of Supervisors Chambers, Room 525
County Government Center, 701 Ocean Street, Santa Cruz, CA

COMMISSIONERS PRESENT: ROBERT BREMNER, DENISE HOLBERT (CHAIRPERSON),
LEO RUTH, RENEE SHEPHERD, DALE SKILLICORN

STAFF MEMBERS PRESENT: TOM BURNS (Acting Planning Director),-MARTIN
JACOBSON, JOAN VAN DER HOEVEN, ROBERT STAKEM
& KIM TSCHANTZ

COUNTY COUNSEL PRESENT: RAHN GARCIA

All legal requirements for items set for public hearing on the Santa Cruz County Planning Commission agenda for this meeting have been fulfilled before the hearing including publication, mailing and posting as applicable.

- A. ROLL CALL:
Commissioners Bremner, Holbert, Ruth, Shepherd and Skillicorn present at 9:00 a.m.
- B. PLANNING DIRECTOR'S REPORT: Discussed ordinance changes and their 'status;
residential and commercial non-conforming uses.
Reviews status of timber lands, zoning and
location. Noted that interim timber ordinances was
passed by the Board of Supervisors. Conflict of
interest statement for Commissioners is being
developed.
- C. COUNTY COUNSEL'S REPORT: N o n e .
- D. ADDITIONS AND CORRECTIONS
TO THE AGENDA: None
- E. ORAL COMMUNICATIONS: None.
- F. CONSENT ITEMS:

ITEM F- 1

PROPOSAL TO ALLOW PRODUCTION CAPACITY AT THE RMC LONESTAR CEMENT PLANT TO EXCEED THE ANNUAL PRODUCTION LIMIT FOR THIS YEAR, BY NOT MORE THAN 5%.

MOTION

COMMISSIONER BREMNER MOVED TO APPROVE STAFF RECOMMENDATIONS. SECONDED BY COMMISSIONER SKILLICORN.

VOICE VOTE

MOTION CARRIED AND SO ORDERED. PASSED 5-0.

G. CONTINUED ITEMS:

ITEM G- 1

CONTINUED CONSIDERATION OF PROPOSAL TO CONTINUED CONSIDERATION OF PROPOSAL TO STOCKPILE APPROXIMATELY 1.25 MILLION CUBIC YARDS OF EARTH FOR A PERIOD OF 20 YEARS TO FACILITATE THE PLANNED EXPANSION OF THE BUENA VISTA LANDFILL ON THE OPPOSITE SIDE OF BUENA VISTA DRIVE, AND TO REZONE THE PROPERTY FROM THE "CA-O" (COMMERCIAL AGRICULTURE WITH AN OPEN SPACE EASEMENT CONTRACT) TO THE "CA" (COMMERCIAL AGRICULTURE) ZONE DISTRICT. REQUIRES A REZONING INTERMITTENT STREAMS. PROPERTY LOCATED ON THE WEST SIDE OF BUENA VISTA DRIVE OPPOSITE ITS INTERSECTION WITH HARKINS SLOUGH ROAD, SAN ANDREAS PLANNING AREA.

APPLICANT: COUNTY OF SANTA CRUZ PUBLIC WORKS DEPT.

OWNER: JOHN JR. & VIOLET ROCHA

APPLICATION #: 97-0309

APN(S): 046-121-03

PLAN AREA: SAN ANDREAS

ZONING: CA-O

GENERAL PLAN: AG

SUPERVISORIAL DISTRICT: 2

PROJECT PLANNER: KIM TSCHANTZ

MOTION

COMMISSIONER RUTH MOVED TO CONTINUE TO DECEMBER 10, 1997 AS RECOMMENDED BY STAFF. SECONDED BY COMMISSIONER SKILLICORN.

VOICE VOTE

MOTION CARRIED AND SO ORDERED. PASSED 5-0.

ITEM G-2 (Continued at 10:40am)

CONTINUED CONSIDERATION OF PROPOSAL TO PUBLIC HEARING TO CONSIDER AN APPEAL OF THE ZONING ADMINISTRATOR'S DECISION ON A PROPOSAL TO REMOVE AN EXISTING 3000,000 GALLON WATER TANK, ASSOCIATED PRESSURE TANK, CONCRETE PAD AND EQUIPMENT BUILDING AND TO BUILD A NEW 5000,000 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 SOUTH EAST SIDE OF VISTA DEL MAR, (612 VISTA DEL-MAR), APPROXIMATELY 1/4 MILE SOUTH EAST OF THE INTERSECTION WITH ALTA DRIVE.

APPLICANT/OWNER: SOQUEL CREEK WATER DISTRICT ATTN: JEFFERY GAILEY
APPLICATION #: 97-0079 APN(S): 044-23 1-40
SUPERVISORIAL DISTRICT: 2
PROJECT PLANNER: JOAN VAN DER HOEVEN

JOAN VAN DER HOEVEN gave staff presentation, showed slides of project site and gave recommendation for action.

PUBLIC HEARING OPENED

BOB BOSSO (appellant), discussed issues of the appeal. Government Code says Water Districts are exempt from local building and zoning regulations.

COMMISSIONER RUTH questioned if other permits been issued in the past.

BOB BOSSO implementing ordinances have not been applied in the past.

COMMISSIONER SKILLICORN questioned if Coastal Commission staff has commented.

JOAN VAN DER HOEVEN stated that Coastal Commission will comment if item goes to the Board of Supervisors.

PUBLIC HEARING CLOSED

RAHN GARCIA disagreed with Bob Bosso interpretation of County Code. Stands by his letter of July 16, 1997. County acts as an agent of the State to enforce Coastal regulation.

COMMISSIONER SKILLICORN stated that Mr. Bosso makes good arguments. Takes County

Counsels evaluation on topic.

COMMISSIONER RUTH shares with Commissioner Skillicorn position on issue of permits.
Engineered plans are appropriate.

MOTION

COMMISSIONER RUTH MOVED TO APPROVE STAFF RECOMMENDATION TO DENY APPEAL. SECONDED BY COMMISSIONER BREMNER.

VOICE VOTE

MOTION CARRIED AND SO ORDERED. PASSED 5-0

H. SCHEDULED ITEMS:

ITEM H-1

PUBLIC HEARING TO CONSIDER PROPOSAL TO SPLIT A 7.03 ACRE PARCEL INTO TWO LOTS OF 3.37 ACRES AND 3.66 ACRES. REQUIRES A MINOR LAND DIVISION. PROPERTY LOCATED ON THE EAST SIDE OF RODEO GULCH ROAD (2750 Rodeo Gulch Road), NORTH OF THE INTERSECTION OF PONZA LANE.

APPLICANT/OWNER: REIJO OLAVI & MANIJEH KOSKI
APPLICATION: #96-0782 APN(S): 102-03 1-08
PLAN AREA: SUMMIT ZONING: RA
GENERAL PLAN: R-R SUPERVISORIAL DISTRICT: 1
PROJECT PLANNER: JOAN VAN DER HOEVEN

JOAN VAN DER HOEVEN gave staff presentation, discussed development constraints, showed slides and gave staff recommendation for action.

COMMISSIONER BREMNER questioned about mitigation measures.

MARTIN JACOBSON responded to questions.

PUBLIC HEARING OPENED

REIJO KOSKI (applicant), raised concerns about location of building envelope. Wants envelope extended to the south.

BOB DE WITT (civil engineer), stated that he is available to answer questions regarding map and drainage channel.

COMMISSIONER BREMNER questioned about intermittent stream.

KIM TSCHANTZ stated that the mitigation was added to preserve the channel to feed riparian corridor. Second building envelope could not be accessed because of 30% slopes.

BOB DE WITT drainage channel is actually an erosion gully. Preservation of gully is not necessary.

JIM MC KENNA (erosion control specialist), the feature is an erosion gully not a natural drainage channel; not a long-term stable channel.

COMMISSIONER HOLBERT asked if Commission can, change mitigations.

KIM TSCHANTZ responded that to remove mitigation, item would need to return to Environmental Review.

SHEILA KOSKI spoke in favor of the building envelopes but would agree to either building site.

BILL STEVENS opposed to land division based on parcel sizes. Wants low density housing. Gully has been there since 1978. Significant volume of water comes through gully. Previous owner removed willow to plant apple orchard.

ANTHONY SILVERIA wants new home to have greater setbacks than provided for by zoning. In support of land division.

BOB DE WITT stated that the set back proposed would eliminate the building envelope.

REIJO KOSKI expressed consideration for the neighbors concerns. Building envelope established by soils engineer. Opposed to 190 foot setback; would leave no building envelope.

SHEILA KOSKI stated that the 190 foot setback is unreasonable.

PUBLIC HEARING CLOSED

COMMISSIONER HOLBERT willing to move staff recommendation; request for 190 foot setback is unreasonable.

COMMISSIONER BREMNER project is consistent with the rural matrix. Wants building envelope modified. Recommends approval of land division but wants revised building envelope.

MOTION

COMMISSIONER BREMNER MOVED TO APPROVE WITH AMENDED CONDITION;
MODIFIED BUILDING ENVELOPE; LANDSCAPE PLAN FOR NORTH SIDE; AND
RENUMBER MITIGATION MEASURES. SECONDED BY COMMISSIONER SKILLICORN.

VOICE VOTE

MOTION CARRIED AND SO ORDERED. PASSED 5-O.

BREAK 10:25 am
RETURN 10:40 am

ITEM H-2

APPEAL OF THE ZONING ADMINISTRATOR'S DECISION ON A PROPOSAL TO OPERATE A
BED AND BREAKFAST IN-N (TWO GUEST ROOMS) WITHIN AN EXISTING SINGLE-FAMILY
DWELLING. REQUIRES A COMMERCIAL DEVELOPMENT PERMIT, PROPERTY LOCATED
ON THE WEST SIDE OF MARTIN DRIVE (212 MARTIN DRIVE), ABOUT 100 FEET SOUTH
OF APTOS BEACH DRIVE.

APPLICANT: TOM O'BRIEN

APPLICATION: #97-0248

PLAN AREA: APTOS

GENERAL PLAN: R-UM

PROJECT PLANNER: ROBERT STAKEM

OWNER: BURTON & FREYA SONENSTEIN

APN(S): 042-232-4 1

ZONING: R-1-4

SUPERVISORIAL DISTRICT: 2

ROBERT STAKEM gave staff presentation, discussed issues of the appeal, showed slides of project
site, and gave staff recommendation for action.

PUBLIC HEARING OPENED

MARC EYMARD (representing applicant), stated that twenty-four house holds are opposed to project.
Concern over precedent of use. Not an appropriate location of a bed and breakfast inn. Neighborhood
character is the key. This use is not consistent with neighborhood character. Integrity of neighborhood
will change with this use.

BURT SONENSTEIN (owner), purchased house to be his home. Will be spending more time there and
will retire there. Project meets all codes and licensing requirements. Property is apart from adjacent
homes. House is on 3 building lots. Low impact use. Other uses would be more adverse to the
neighborhood. Rental would impact area. Commercial rental of property is not proposed.

MARK LAWSON stated that the appeal was necessary because staff interpreted ordinance wrong. This is a precedent setting action. Other properties could do the same thing.

PETER CAMP likes residential nature of area; objects to commercialize area,

CAROL HANNA filed original complaint against use. Whole street used to be blocked. "Readings" occurred on site. Lots of "drive-bys" in the area. A lot of cars and activity in the area.

BURT SONENSTEIN stated that three more letters will be coming in the support to the projects. Precedence is not an issue, it has unique character.

MARC EYMARD operation is unique, owner does not live on-site; operator is off-site. Caretaker lives on site. Commercial business is inappropriate and not low intensity. Strangers in area are a threat.

PUBLIC HEARING CLOSED

COMMISSIONER SKILLICORN expressed hope that the neighbors don't have big parties in the area: it happens.

COMMISSIONER RUTH stated that this is a difficult decision to make. Other uses would be more detrimental. On-site parking will limit impacts. Does not want a sign identifying use. Existing sign will identify site.

COMMISSIONER BREMNER lower impact than a rental. Neighbors could have unlimited parties. A large family could have a greater impact than the use. Care taker is operator. Wants permit reviewed in one year.

COMMISSIONER SHEPHERD agrees with return to consent agenda in one year. Drive-bys should be limited. Never had problems with use in the past.

MOTION

COMMISSIONER RUTH MOVED TO DENY APPEAL-BUT AMEND CONDITIONS TO DELETE SIGN AND TO RETURN TO PLANNING COMMISSION ON CONSENT WITH A REPORT BACK IN ONE YEAR. SECONDED BY COMMISSIONER SHEPHERD.

VOICE VOTE

MOTION CARRIED AND SO ORDERED. PASSED 5-0.

PLEASE NOTE: THESE MINUTES HAVE NOT BEEN APPROVED BY THE PLANNING
COMMISSION AS OF NOVEMBER 12, 1997..



JENICE SANTANA
PLANNING DEPARTMENT

ORDINANCE NO. ____

**ORDINANCE AMENDING SUBSECTION (b)(1) OF SECTION
13.20.150 OF THE SANTA CRUZ COUNTY CODE RELATING
TO EXEMPTIONS FOR COASTAL DEVELOPMENT PROJECTS
PROPOSED BY STATE AND LOCAL PUBLIC AGENCIES
UNDER THE COUNTY'S LOCAL COASTAL PLAN**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Subsection (b)(1) of Section 13.20.150 of the Santa Cruz County Code is hereby amended to read as follows:

(b) State and Local Public Agencies.

- (1) General. Except as specifically exempted by State the California Coastal Act 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.

SECTION II

This ordinance is intended to be declaratory of existing law. The ordinance would exclude the exemption provisions authorized by Government Code Section 53091 from application under Section 13.20.150(b)(1) of the Santa Cruz County Code, while recognizing those exemptions authorized by the California Coastal Act or Federal law.

SECTION III

This ordinance shall take effect on the 31 st day after the date of final passage.

PASSED AND ADOPTED this ____ day of _____, 1998, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES:	SUPERVISORS
NOES:	SUPERVISORS
ABSENT:	SUPERVISORS
ABSTAIN:	SUPERVISORS

COASTLOR.WPD

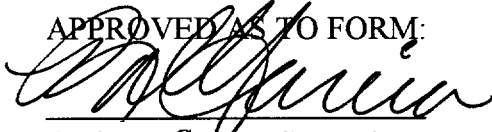
**ORDINANCE AMENDING SUBSECTION (b)(1) OF SECTION 13.20.150 OF THE
SANTA CRUZ COUNTY CODE RELATING TO EXEMPTIONS FOR COASTAL
DEVELOPMENT PROJECTS PROPOSED BY STATE AND LOCAL PUBLIC
AGENCIES UNDER THE COUNTY'S LOCAL COASTAL PLAN**

Page Two

Chairperson of the Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:



Asst. County Counsel

cc: CAO
Planning Department
Coastal Commission

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO.

On the motion of Supervisor
Duly seconded by Supervisor
The following resolution is adopted

RESOLUTION OF INTENTION TO AMEND THE SANTA CRUZ COUNTY LOCAL
COASTAL PROGRAM BY AMENDING SUBSECTION (b)(1) OF SECTION
13.20.150 OF THE SANTA CRUZ COUNTY CODE TO INCORPORATE ONLY
THOSE EXEMPTIONS SPECIFICALLY SET FORTH IN THE CALIFORNIA
COASTAL ACT AND FEDERAL LAW

WHEREAS, Subsection (b)(1) of Section 13.20.150 of the Santa Cruz County Code currently relieves state and local public agencies from having to obtain a coastal development permit for projects located in the Coastal Zone, if the development is exempted by "State or Federal law"; and

WHEREAS, this provision establishes a limited exemption from Santa Cruz County's Local Coastal Program regulations for coastal development projects proposed by state and local public entities; and

WHEREAS, the County of Santa Cruz has consistently interpreted Subsection (b)(1) of Section 13.20.150 of the Santa Cruz County Code to incorporate only those exemptions expressly provided by the California Coastal Act or Federal law; and

WHEREAS, an amendment revising Subsection (b)(1) of Section 13.20.150 to expressly incorporate only those exemptions set forth in the California Coastal Act and Federal law would be declaratory of existing law; and

WHEREAS, Section 13.03.060(b) of the Santa Cruz County Code authorizes the Board of Supervisors to initiate an amendment of the Local Coastal Program by adopting a Resolution of Intention.

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors of the County of Santa Cruz, State of California approves in concept an amendment of Subsection (b)(1) of Section 13.20.150 of the Santa Cruz County Code Subsection to incorporate only those exemptions expressly provided by the California Coastal Act or Federal law.

BE IT FURTHER RESOLVED that the Santa Cruz County Planning Commission is hereby directed to schedule a public hearing to consider the amendment of the County Code and the General Plan/Local Coastal Program, and thereafter forward its recommendation to the Board of Supervisors.

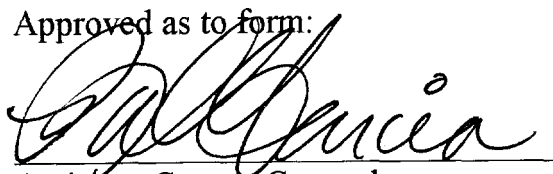
PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this ____ day of May, 1998, by the following vote:

AYES:	SUPERVISORS
NOES:	SUPERVISORS
ABSENT:	SUPERVISORS
ABSTAIN:	SUPERVISORS

Chairperson of the
Board of Supervisors

ATTEST: _____
Clerk of the Board

Approved as to form:


Assistant County Counsel

DISTRIBUTION: CAO
Planning Commission
Coastal Commission