

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

DEANE EARL ROSS, as Co-Trustee, etc.,
et al.,

Plaintiffs and Appellants,

v.

CALIFORNIA COASTAL COMMISSION
et al.,

Defendants and Appellants;

MALIBU BAY COMPANY,

Real Party in Interest and Appellant.

B225796

(Los Angeles County
Super. Ct. No. BS118974)

ORDERS MODIFYING OPINION
FILED SEPTEMBER 9, 2011, AND
DENYING REHEARING PETITION

[NO CHANGE IN JUDGMENT]

1. On page 42, line, 9, before “footnote” delete “the” and insert after “footnote,” “8, *ante*.”
2. On page 44, in footnote 9, delete “Section 13530” and insert in its place, “California Code of Regulations, title 14, section 13530.”
3. On page 44, in footnote 9, delete, “(Cal. Code Regs., tit. 14, § 11350.)” at the end of the footnote.
4. On page 48, insert the following after the conclusion of the first paragraph:

* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of part III (E-H).

In addition, plaintiffs argue the commission violated Public Resources Code section 21080.5, subdivision (d)(3)(B) and California Code of Regulations, title 14, section 13532 because the staff report and addendum were not made available for a reasonable time for public review and comment. As noted (fn. 8, *ante*), Public Resources Code section 21080.5, subdivision (d)(3)(B) requires that the environmental documentation used in a certified regulatory program (in this case the staff report) must “be available for a reasonable time for review and comment” by other public agencies and the general public. In addition, the commission regulation in California Code of Regulations, title 14, section 13532 requires it to distribute the staff report to the interested parties “within a reasonable time but in no event less than 7 calendar days prior” to the scheduled public hearing.

As discussed previously while synthesizing the trial court’s California Environmental Quality Act analysis (see p. 19, *ante*), the trial court ruled the words “reasonableness” and “at least” in California Code of Regulations, title 14, section 13532 permitted it to make a case-by-case determination as to the reasonableness of the notice. The trial court found the 13-day comment period was not reasonable because: the issues concerned a zoning amendment that affected more than the subject property; the issues were biological in nature; and the commission released the staff report addendum just 2 days before the hearing. Plaintiffs contend the evidence supports the trial court’s ruling that the 13-day review period was unreasonable. In addition, plaintiffs argue the 13-day review period was not reasonable because the staff report discussed or referenced numerous biological reports and other documents, many of which had not previously been made available to the public.

We disagree. The secretary is authorized to determine whether a regulatory program satisfies the “reasonable time for review and comment” requirement of Public Resources Code section 21080.5, subdivision (d)(3)(B). As we previously explained, plaintiffs may not now challenge the secretary’s determination as to the “reasonable time for review and comment” under Public Resources Code section 21080.5, subdivision (d)(3)(B). This is because plaintiffs, or anybody else, were obligated to challenge the

secretary's certification of the commission's regulatory program within 30 days from the date it was certified. Since the secretary certified the commission's regulatory program in 1979, plaintiff's challenge is untimely. (Pub. Resources Code § 21080.5, subd. (h); *Elk County Water District v. Department of Forestry & Fire Protection*, *supra*, 53 Cal.App.4th at p. 10; *Laupheimer v. State of California*, *supra*, 200 Cal.App.3d at pp. 458-459.)

We also respectfully disagree with the trial court's reasonableness ruling. We are required to defer to the commission's interpretation of its own regulations. Courts must defer to an administrative agency's interpretation of a statute or regulation involving its area of expertise unless the challenged construction contradicts the clear language and purpose of the interpreted provision. (*Reddell v. California Coastal Com.* (2009) 180 Cal.App.4th 956, 968; *Alberstone v. California Coastal Com.*, *supra*, 169 Cal.App.4th at p. 866; *Divers' Environmental Conservation Organization v. State Water Resources Control Bd.* (2006) 145 Cal.App.4th 246, 252.) In addition, a case-by-case determination of reasonableness under California Code of Regulations, title 14, section 13532 without deference to the agency's interpretation would create unwarranted uncertainty in connection with many local coastal program amendment approvals. Such would allow a party to challenge a commission action based on the alleged failure to circulate the staff report within a reasonable time period.

We conclude the staff report was available for a reasonable time for review and comment. The 13-day review period is nearly twice the period required by California Code of Regulations, title 14, section 13532. And there is no evidence the public did not have adequate time to comment on the staff report. As noted, the trial court found there was no evidence that plaintiffs or other members of the public were prejudiced by the 13-day review period for the staff report. Although the addendum was issued only two days before the commission's public hearing, the addendum is not subject to the notice requirement under Code of Regulations, title 14, section 13532. In the addendum, the commission: responded to public comments; recommended modification of the view

corridors in response to public comments; and discussed additional biological information specific to the subject property's proposed subdivision.

In addition, the staff report was available for a reasonable time given the ample public notice provided by the earlier stages of the local coastal program amendment process. The commission regulations require the city to make the proposed local coastal program amendment and relevant studies or documents available for public review at least six weeks prior to the city's action. (Cal. Code Regs., tit. 14, § 13515, subd. (c).) The city must then summarize significant public comments and its response to the comments as part of the local coastal program amendment submittal to the commission. (Cal. Code Regs., tit. 14, § 13552.) Also, the city provided the public opportunities to comment on the proposed local coastal program amendment and mitigated negative declaration at three city public meetings. Thus, the staff report was the culmination of a process that allowed for public review and input on the local coastal program amendment at earlier stages.

5. The rehearing petition is denied.

TURNER, P.J.

KRIEGLER, J.

KUMAR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.