

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CITY OF MALIBU et al.,

Plaintiffs and Respondents,

v.

THE CALIFORNIA COASTAL
COMMISSION,

Defendant and Appellant;

SANTA MONICA MOUNTAINS
CONSERVANCY et al.,

Real Parties in Interest
and Appellants.

B234353

(Los Angeles County
Super. Ct. Nos.
BS 121650, BS 121820)

**ORDER MODIFYING OPINION
AND DENYING PETITIONS FOR
REHEARING**

[NO CHANGE IN JUDGMENT]

THE COURT:

The opinion herein, filed on May 10, 2012, is modified as follows:

1. On page 6, in the first full paragraph, add new footnote 2 after the last sentence, before the citation. New footnote 2 reads as follows:

² The Coastal Act also provides that “plans for public works” may be submitted to the Coastal Commission for review: “To promote greater efficiency for the planning of any public works . . . and as an alternative to project-by-project review, plans for public works . . . may be submitted to the commission for review in the same manner prescribed for the review of local coastal programs . . .” (§ 30605.) If a plan for public works is submitted *after* certification of an LCP, the Coastal Commission may approve the plan only if it 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.” (*Ibid.*) Once a public works plan is approved by the Coastal Commission, an agency proposing a public works project pursuant to the plan need only show the project is consistent with the certified public works plan. (§ 30606.)

2. On page 7, under part 4, the first sentence is modified to read:

In 2007, after many months of public hearings, litigation and negotiations, the Conservancy asked the city to amend its local coastal program to add land use policies and development standards, in part to permit the Conservancy to develop four park properties in Malibu.

3. On page 8, the third full paragraph, the first sentence is modified and becomes two sentences. Those sentences should now read, in pertinent part:

The Conservancy, however, did not like Malibu’s LCP amendment, principally because of its prohibition on camping at most parks in Malibu and its requirement for construction of a new road as a prerequisite to many public uses in Ramirez Canyon Park. So, in April 2008, the Conservancy submitted

4. With the addition of new footnote 2 on page 6, former footnote 2 on page 8 becomes footnote 3.

5. On page 9, in the second full paragraph, delete the first two sentences and replace them with the paragraph that follows:

Thus, the overlay district substitutes the land use policies and development standards of the Conservancy for the policies and standards certified for Malibu in 2002; and it does *not* seek a permit to develop a public works project. Various policy differences pervade the LCP amendments proposed by Malibu and by the Conservancy. We describe some of the differences here to emphasize that the Conservancy did not propose a public works project; rather, the Conservancy’s overlay district proposed different land use policies and development standards than those proposed by the city. We do not suggest which policy choices are right or wrong, as that is not what is in dispute here.

The third sentence (and remainder of the original paragraph), which begins with “For example,” becomes a new paragraph.

6. On page 10, the first sentence of the first paragraph is modified to read:

The Conservancy’s proposed overlay district permitted overnight camping not only in Ramirez Canyon Park, but also in Escondido Canyon Park and Corral Canyon Park, designating the campsites as principal permitted uses in parklands and therefore not subject to conditional use permit requirements.

7. Also on page 10, in the second paragraph, change the word “permits” in both the first and second sentences to “permitted.”

8. On page 10, the third paragraph, change the verb in the first sentence from “eliminates” to “eliminated.”

9. On page 11, the entire first full paragraph is modified and new footnote 4 is added at the end of the paragraph. The modified paragraph and new footnote read as follows:

In short, the Conservancy proposed to override Malibu’s local land use plans and policies, certified in 2002, and substitute new ones over the objections of the city, not for the purpose of developing a public works project, but so that, in the future, the Conservancy might obtain approval directly from the Coastal Commission for a public works plan for future development and programs, thus enabling the Conservancy to avoid having to ask the city for coastal development permits. Moreover, the Conservancy’s proposed new land use policies did not change the rules only for its own park properties; the proposed overlay district would have prohibited any fire *outside* any park facility, including backyard fires and barbecues, on any public *or private* property, within 20 feet of any flammable vegetation.⁴

⁴ When the Coastal Commission approved the Conservancy’s proposed LCP amendment, it eliminated the policy prohibiting backyard fires and barbecues, and made a number of other revisions to the Conservancy’s proposed LCP amendment, including adding restrictions on amplified music in Ramirez Canyon Park and limiting vehicle trips for all Ramirez Canyon Park uses to 80 trips per day on Ramirez Canyon Road.

10. On page 11, the third full paragraph is modified to now read:

After public hearings, on June 10, 2009, the Coastal Commission rejected the city's LCP amendment, concluding it was inconsistent with the policies of the Coastal Act, and certified the Conservancy's overlay district as an LCP amendment, with some revisions. Malibu did not seek judicial review of the Coastal Commission's rejection of its proposed LCP amendment.

11. On page 14 of the opinion, in the paragraph before the first full paragraph, add new footnote no. 5 to the last line, which reads: "area included in the LCP that were not anticipated when the LCP was certified." New footnote 5 reads as follows:

⁵ The Coastal Commission and the Conservancy say we should interpret section 30515 as permitting a "person authorized to undertake a public works project" to seek an override that would facilitate a future application to the Commission for approval of a public works plan under section 30605, because this would "streamline" the Coastal Commission's review of important public works projects. That may well be so. But the override provision is an extremely narrow exception to a local government's control over its certified local coastal program, and we have no basis for concluding the Legislature intended the override provision to operate as a device to "streamline" Coastal Commission review of public works projects. Section 30605 merely embodies the legislative intent to empower the Coastal Commission to approve a public works plan if it is in conformity with a certified local coastal program. The Coastal Commission and the Conservancy have always acknowledged the Conservancy's future plans for public parkland improvements did not conform to Malibu's certified LCP.

[END OF MODIFICATIONS]

There is no change in the judgment.

The petitions for rehearing filed by appellants are denied.

BIGELOW, P. J.

FLIER, J.

GRIMES, J.