

CALIFORNIA COASTAL COMMISSION

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October 17, 2002

By Telecopy and Mail

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RE: Coastal Development Permits in the City of Malibu

Dear Ms. Hogin:

We received your letter dated October 11, 2002, informing us that the City deems the Local Coastal Plan for the City of Malibu (Malibu LCP) to be "suspended and not in effect" because a referendum petition regarding the LCP was submitted to the City by a group of Malibu residents pursuant to Elections Code section 9237. After consulting with the Attorney General's office and considering your position based on our conversation last Wednesday and your October 11, 2002 letter to the City Council, we have concluded that your interpretations of the State Elections Code and the Coastal Act are incorrect and that the City lacks authority to suspend implementation of the Malibu LCP. (Public Resources Code section 30166.5.)

Elections Code section 9237 applies solely to legislative enactments *adopted by a City*. As you pointed out in your letter to me, the Malibu LCP was adopted by the California Coastal Commission, and not by the City. A referendum can only be brought where a legislative act of the city is involved; it is not applicable to either administrative or executive actions of the legislative body of the city. (*City of San Diego v. Dunkl* (2001) 86 Cal.App.4th 384; *Martin v. Smith* (1960) 184 Cal.App.2d 571, 575.) Acts which are deemed to be administrative or executive are those which are necessary to carry out legislative policies and purposes already declared by the legislative body or by some power superior to it. (*City of San Diego v. Dunkl, supra*, 86 Cal.App.4th at p. 399.)

Moreover, the electors of a city can only propose such legislative action as the legislative body of the city has the power to enact. (See, e.g., *Blotter v. Farrell* (1954) 42 Cal.2d 804, 810; Attorney General Opinion No. 87-405, September 10, 1987.) Cities have only those powers which are granted to them by the Constitution or the laws of this State. Their authority to plan and regulate land uses in the coastal zone is defined and limited by the Planning and Zoning Laws and by the Coastal Act. (Attorney General Opinion No. 87-405, September 10, 1987.)

As you know, the Commission was mandated by the Coastal Act to adopt an LCP that applies to the City of Malibu by September 15, 2002 (Public Resources Code section 30166.5). Voters of the City of Malibu cannot rescind the actions of the Coastal Commission, a state agency, through a referendum. Accordingly, a referendum under Elections Code Section 9237, that seeks rescission of the LCP by the legislative body or the voters *of the City*, is not valid and will have no force or effect. While City voters cannot by referendum rescind the Commission-adopted LCP, they can seek to amend the LCP by local initiative. The Coastal Act sets forth a process for the City to seek to amend

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the Malibu LCP (see Public Resources Code section 30514). As noted, voters of Malibu could also propose such amendments through a local initiative, or seek to rescind, pursuant to referendum, future amendments adopted by the City Council. (*Yost v. Thomas* (1984) 36 Cal.3d 561.) Of course, all amendments, whether proposed by the City or by city voters, are subject to review, approval and certification by the Coastal Commission. (Attorney General Opinion No. 87-405, September 10, 1987; *San Mateo County Coastal Landowners' Assoc. v. County of San Mateo* (1995) 38 Cal.App.4th 523, 540.)

The City's manager, Katie Lichtig, has informed us that City staff has been directed not to file any applications for coastal development permits. In addition, she indicated that City staff is informing people who wish to obtain a coastal development permit for development in the City that the Coastal Commission should now issue such permits. This advice is erroneous and should not be given. There is no legal authority for the City of Malibu's position that jurisdiction to issue coastal development permits has now been returned to the Coastal Commission. In fact, Public Resources Code section 30166.5 specifically requires that the City assume coastal development permitting authority immediately after the LCP has been adopted by the Commission. As of September 13, 2002, the Coastal Commission no longer has any authority to issue coastal development permits in the City of Malibu, except on appeal or in areas of original jurisdiction. The Coastal Act makes no provision for the return to the Commission of coastal development permit issuing authority. Accordingly, there is no legal basis for the Coastal Commission to accept or act upon new applications for coastal development permits (other than those in areas of original permit jurisdiction) in the City of Malibu. Both the Coastal Commission and the City of Malibu have a responsibility to comply with state law. Because the Commission has adopted the LCP, Public Resources Code section 30166.5 assigns to the City the responsibility to act on new coastal development permit applications. To do otherwise would impose unwarranted hardships on permit applicants, members of the public and residents of the City of Malibu.

I look forward to further discussions with you and to working with you on the implementation of the Malibu LCP.

Sincerely,

RALPH FAUST
Chief Counsel

cc: Mayor Jeff Jennings
Katie Lichtig
Hon. Fran Pavley
Hon. Sheila Kuehl
Commissioners
Peter Douglas