Wetlands Regulation Under the Coastal Act

Coastal Commission
Wetlands Workshop
April 13, 2016
“Wetland” Is Defined Broadly

- Statute: Section 30121
- Regulations: Section 13577(b)
- 1981 Statewide Interpretive Guidelines
- LCP definitions may be more protective
COASTAL ACT SECTION 30233

1) Only certain uses allowed in wetlands

2) Allowed uses are permitted only if there is no feasible less damaging alternative

3) Mitigation is required for all impacts
ALLOWED USES OF WETLANDS

- Only designated uses allowed

- Other uses not allowed, regardless of mitigation (See Bolsa Chica Land Trust v. Superior Court)
LEAST DAMAGING ALTERNATIVE

- Designated uses allowed only where there is no feasible less environmentally damaging alternative
- Must analyze alternative layouts or locations
- Courts have upheld denial of permits where applicants failed to consider feasible alternatives
  - City of Chula Vista v. Superior Court
  - City of San Diego v. Cal. Coastal Commission
Impacts Must Be Mitigated

- Full mitigation = no net loss of wetland acreage or function

- Prioritization of mitigation: avoidance first

- Mitigation must be certain and specific
ALL WETLANDS PROTECTED EQUALLY

- Disturbed wetlands receive equal protection: *Kirkorowicz v. Cal. Coastal Commission; Dunn v. County of Santa Barbara*

- Human-created wetlands generally receive equal protection: *Yamagiwa v. City of Half Moon Bay*
RELATIONSHIP OF WETLAND AND ESHA PROTECTIONS

- Many wetlands are also ESHA

- Section 30233 allows uses not permitted in ESHA; more specific provisions of 30233, rather than general provisions of 30240, govern wetland development: Bolsa Chica Land Trust v. Superior Court

- ESHA protections still apply if they do not conflict with wetlands provisions
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RELEVANT AUTHORITY


- *Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281 (disturbed wetlands receive equal protection; definition of “wetlands”)


- *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472 (housing and hotels not allowed uses of wetlands; discussing alternatives, mitigation issues)
RELEVANT AUTHORITY

