

5-15-1975

The California Coastal Zone Conservation Act of 1972: An Overview and Recent Developments

Bruce Tester

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/plr>



Part of the [Administrative Law Commons](#), [Environmental Law Commons](#), and the [Land Use Law Commons](#)

Recommended Citation

Bruce Tester *The California Coastal Zone Conservation Act of 1972: An Overview and Recent Developments*, 2 Pepp. L. Rev. Iss. 3 (1975)

Available at: <https://digitalcommons.pepperdine.edu/plr/vol2/iss3/7>

This Symposium is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

The California Coastal Zone Conservation Act of 1972: An Overview and Recent Developments

By BRUCE TESTER*

The California Coastal Zone Conservation Act of 1972 was added by an initiative act (Proposition 20) approved by the voters November 7, 1972. Section 1 of Proposition 20 added Division 18 (Sections 27000 through 27650) to the Public Resources Code.¹ Division 18 establishes the California Coastal Zone Conservation Commission and six regional Commissions² which are commanded by the Act

* Associate with the law firm of Gibson, Dunn & Crutcher, Newport Beach, California; Captain, USMC, 1963-1968; B.S. Iowa State University, 1963; M.B.A. Stanford Graduate School of Business, 1972; J.D. Stanford University, 1972.

1. The Commission has adopted regulations which are published at 14 Cal. Adm. Code, Div. 5.5. Certain policies have been adopted by the commissions which are not contained in the regulations, and it is therefore advisable to contact the appropriate Regional Commission staff early in the planning process.

There are various publications which cover activities of the commissions. The *State Coastal Report* published by California Research, Sacramento, reports on the Commission, and *The Coastline Letter* published by the University of Southern California Sea Grant Program reports on both the South Coast Regional Commission and the Commission.

2. The California Coastal Zone Conservation Commission will be re-

to prepare and submit to the legislature for adoption and implementation the California Coastal Zone Conservation Plan (the "Plan") and to administer an interim permit procedure in a permit area while the Plan is being adopted. The other four sections of Proposition 20 added a section to the Business and Professions Code requiring that certain tentative subdivision maps be provided to the Commission,³ provided that the provisions of the Act are severable so that the invalidity of one section does not affect the validity of another, appropriated funds for operation of the coastal commissions, and provided that the legislature could amend the Act by a two-thirds vote to better achieve the objectives set forth in the Act.

I. ESTABLISHMENT OF COMMISSIONS

A. *Structure and Membership*

The Act created a two-tiered structure consisting of the Commission and six Regional Commissions. The Commission consists of six representatives from the Regional Commissions selected by each Regional Commission from among its members plus six representatives of the public who may not be members of a Regional Commission.⁴ The six Regional Commissions consist of from 12 to 16 members. The statutory formula for Regional Commission membership varies but typically there are representatives from the board of supervisors of each county under the Regional Commission's jurisdiction, from the city council of a city within each such county, from an organization such as the local association of governments plus six to eight representatives of the public.⁵ Public representatives to the commissions are appointed equally (in most instances) by the Governor, the Senate Rules Committee and the Speaker of the Assembly.⁶ Each appointee of the Governor is subject to confirmation by the State Senate.⁷ Other members of the commissions are selected by the organizations which they represent in accordance with Public Resources Code Section 27202.

Each public member of the commissions is required to be a person who, as a result of his training, experience, and attainments, is

ferred to in this article as the Commission, and the regional commissions will be referred to as the Regional Commissions. Both the Commission and Regional Commissions will be collectively referred to as the commissions.

3. CAL. BUS. & PROF. CODE § 11528.2 (West Supp. 1974).

4. CAL. PUB. RESOURCES CODE § 27201 (West Supp. 1974).

5. CAL. PUB. RESOURCES CODE § 27201 (West Supp. 1974).

6. CAL. PUB. RESOURCES CODE § 27202 (West Supp. 1974).

7. CAL. PUB. RESOURCES CODE § 27221 (West Supp. 1974).

"exceptionally well qualified" with respect to environmental trends, use of coastal resources and responsiveness to the various needs of the state.⁸

One who is a member of a commission because he holds a specified office (e.g. a county supervisor) loses his membership in a commission at the time his term of office ceases. The vacancy which occurs is then filled in the same manner in which the original member was selected or appointed.⁹

The commissions are required to meet no less than once a month at a place convenient and open to the public. No decision on a permit application or on adoption of any part of the Plan may be made without a prior public hearing.¹⁰

Members are reimbursed for actual and necessary expenses incurred in the performance of their duties and receive \$50 for each full day of attending meetings of a commission.¹¹

B. Conflicts of Interest

Members and employees of the commissions are subject to strict conflicts of interest statutes, and violations of those provisions may result in a fine of up to \$10,000 or imprisonment in the state prison for not more than two years or both for each such offense.¹² No member or employee of a commission and no former member or employee of a commission during the year following termination of such membership or employment may appear or act in any capacity whatsoever, except as a representative of the state or political subdivision thereof, in connection with any proceeding, hearing, application, request for ruling or other official determination, judicial or otherwise, in which the Plan or any commission is involved in any official capacity. Furthermore, a partner, employer or employee of a member or employee of a commission is under similar restrictions.¹³

Almost any direct financial interest in a matter before a commission will preclude a commission member or employee from partici-

8. CAL. PUB. RESOURCES CODE § 27220 (West Supp. 1974).

9. CAL. PUB. RESOURCES CODE § 27222 (West Supp. 1974).

10. CAL. PUB. RESOURCES CODE § 27224 (West Supp. 1974).

11. CAL. PUB. RESOURCES CODE § 27223 (West Supp. 1974).

12. CAL. PUB. RESOURCES CODE §§ 27230-27234 (West Supp. 1974).

13. CAL. PUB. RESOURCES CODE § 27230 (West Supp. 1974).

pating in any official capacity. In addition, a member or employee may not participate if any of the following have a financial interest in the matter—a spouse, child, partner, any organization in which he serves or has served within two years prior to his selection or appointment to a commission or any organization in which he has any arrangement or understanding concerning prospective partnership or employment or with which he is negotiating for such prospective partnership or employment.¹⁴

When a member or employee of a commission believes that he has a conflict of interest which is not financial or which is financial but not substantial, he may advise the Commission in advance of the facts, make full public disclosure, and ask the Commission for a written determination that the contemplated action will not adversely affect the integrity of the Commission or any Regional Commission. Such a determination requires the affirmative vote of two-thirds of the members of the Commission.¹⁵ The conflicts of interest provisions do not prevent participation in a commission matter by a member of a commission who is also a member or employee of another public agency.¹⁶

II. POWERS AND DUTIES OF COMMISSIONS

Section 27240 of the Public Resources Code empowers the commissions to accept grants, contributions and appropriations, to contract for professional services if such services cannot satisfactorily be performed by its employees, to sue and be sued and to obtain any remedy to restrain violations of the provisions of the Act. In connection with such suits, the state Attorney General is required to provide necessary legal representation. Section 27240 of the Public Resources Code also grants the Commission and each Regional Commission the broad power to “adopt any regulations or take any action it deems reasonable and necessary to carry out the provisions of [the Act], but no regulations shall be adopted without a prior public hearing.”

The commissions may use the advice and services of all federal, state and local agencies; and any federally recognized regional planning agency must provide staff assistance “insofar as its resources permit.”¹⁷

14. CAL. PUB. RESOURCES CODE § 27231 (West Supp. 1974).

15. CAL. PUB. RESOURCES CODE § 27232 (West Supp. 1974).

16. CAL. PUB. RESOURCES CODE § 27233 (West Supp. 1974). The conflict of interest section of the Act and its relationship to the California Governmental Conflict of Interests Act (CAL. GOVT. CODE § 3600 *et. seq.*) are discussed in detail at 57 Ops. Cal. Att’y Gen. 523 (1974).

17. CAL. PUB. RESOURCES CODE § 27241 (West Supp. 1974).

Each commission elects a chairman and appoints an executive director, both of whom are exempt from civil service.¹⁸ The Attorney General has opined that most commission employees are subject to state civil service.¹⁹

III. INTERIM PERMIT PROCEDURES

A. *The Statutory Scheme*

The Act declares that it is necessary to assure that any development which occurs in the permit area while the Plan is being formulated be consistent with the objectives of the Act.²⁰ Accordingly, the commissions are given interim permit control while the Plan is being developed. Most simply stated, after February 1, 1973, no "person" may perform any "development" in the "permit area" without a permit from the appropriate Regional Commission.²¹ The term "person" includes any individual, organization, partnership and corporation, including any utility and any agency of federal,²² state and local government.²³ "Development" is very broadly defined and includes:

"[O]n land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision of land pursuant to the Subdivision Map Act and any other division of land, including lot splits; change in the intensity of use of water, ecology related thereto, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility, and the removal or logging of major vegetation. As used in this section, 'structure' includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line."²⁴

The "permit area" includes the area between the seaward limit

18. CAL. PUB. RESOURCES CODE § 27243 (West Supp. 1974).

19. 56 Ops. Cal. Att'y Gen. 353 (1973).

20. CAL. PUB. RESOURCES CODE § 27001(c) (West Supp. 1974).

21. CAL. PUB. RESOURCES CODE § 27400 (West Supp. 1974).

22. But see 57 Ops. Cal. Att'y Gen. 42 (1974) where it is concluded that the permit requirements could rarely be applied to development carried out by the United States on federally-owned or leased land.

23. CAL. PUB. RESOURCES CODE § 27105 (West Supp. 1974).

24. CAL. PUB. RESOURCES CODE § 27103 (West Supp. 1974).

of the jurisdiction of the state and 1,000 yards landward from the mean high tide line of the "sea".²⁵ The term "sea" includes not only the Pacific Ocean but also all the harbors, bays, channels, estuaries, salt marshes, sloughs and other areas subject to tidal action through a connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks and flood control and drainage channels.²⁶ Each Regional Commission is required to adopt a map delineating the permit area and to file the map in the office of the county clerk in each county within its region.²⁷

B. Permit Area Inclusions and Exclusions

There are certain additional inclusions and exclusions to the "permit area". If any portion of any body of water not subject to tidal action is partially within the permit area, the entire body of water together with the strip of land 1,000 feet wide surrounding it is included in the permit area, except that this provision does not apply to any river, stream, tributary, creek or flood control or drainage channel when a portion of it lies within the permit area. The area of jurisdiction of the San Francisco Bay Conservation and Development Commission together with certain contiguous areas are excluded from the permit area.²⁸

A city or county may request exclusion of commercial, industrial or residential areas (zoned four or more dwelling units per acre) and urban land areas which on or before January 1, 1972, were "stabilized". "Stabilized" means that 80% of the lots were built up to the maximum intensity of use permitted by the applicable zoning regulations existing on January 1, 1972. Any such exclusion granted will be subject to conditions as to density, height and nature of use. There can be no "stabilization exclusion" for tidal and submerged lands or beaches and lots immediately adjacent to the inland extent of any beach or mean high tide line where there is no beach.²⁹ Such exclusions may be revoked at any time by a Regional Commission after public hearing.³⁰

C. Issuance of Permits

A Regional Commission may not issue a permit unless it has found that the development will not have any substantial adverse

25. CAL. PUB. RESOURCES CODE § 27104 (West Supp. 1974).
26. CAL. PUB. RESOURCES CODE § 27106 (West Supp. 1974).
27. CAL. PUB. RESOURCES CODE § 27104(d) (West Supp. 1974).
28. CAL. PUB. RESOURCES CODE § 27104 (West Supp. 1974).
29. CAL. PUB. RESOURCES CODE § 27104(c) (West Supp. 1974). *See also*
14 CAL. ADM. CODE, Div. 5.5, §§ 13800-13806.
30. CAL. PUB. RESOURCES CODE § 27104(c) (West Supp. 1974). *See also*
14 CAL. ADM. CODE, Div. 5.5 §§ 13800-13806.

environmental or ecological effect and that the development is consistent with the findings and declarations set forth in Public Resources Code Section 27001 and the objectives set forth in Section 27302. The applicant has the burden of proof on all issues.³¹

In most instances, a permit may be issued with the affirmative vote of a majority of the total *authorized* membership of a commission,³² each absent or abstaining commissioner thereby constituting a negative vote. This high voting requirement creates a particular hardship on applicants in those situations where a meeting is poorly attended. However, permit applications will be continued to the next scheduled meeting for voting,³³ and a commissioner may vote on an application even if he was absent from the hearing on the application if he familiarizes himself with the pertinent materials and presentation at the hearing and so declares prior to voting.³⁴ This provision is of little help if the next meeting is also poorly attended.

Permits for certain developments require the affirmative vote of two-thirds of the total authorized membership of a commission. Those developments include dredging, filling or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon; any development which would reduce the size of any beach or other area usable for public recreation; any development which would reduce or impose restrictions on public access to tidal and submerged lands, beaches and the mean high tide line where there is no beach; any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast; and any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential commercial and sport fisheries or agricultural uses of land which are existing on the effective date of the Act.³⁵

All permits are required to be subject to reasonable terms and conditions to insure that access to publicly-owned or used beaches, recreation areas and natural reserves is increased to the maximum

31. CAL. PUB. RESOURCES CODE § 27402 (West Supp. 1974).

32. CAL. PUB. RESOURCES CODE § 27400 (West Supp. 1974).

33. 14 CAL. ADM. CODE, Div. 5.5, § 13341.

34. 14 CAL. ADM. CODE, Div. 5.5, § 13347.

35. CAL. PUB. RESOURCES CODE § 27401 (West Supp. 1974).

extent possible by appropriate dedication; that adequate and properly located public recreation areas and wildlife preserves are reserved; that provisions are made for solid and liquid waste treatment, disposition and management which will minimize adverse effects upon coastal zone resources; and that alterations to existing land forms and vegetation and construction of structures will cause minimum adverse effect to scenic resources and minimum danger of floods, landslides, erosion, siltation or failure in the event of earthquakes.³⁶

IV. EXEMPTIONS

A. *The Vested Rights Exemption*

Public Resources Code Sections 27404 and 27405 established certain situations in which a permit to perform development in the permit area is not required. Section 27404 grants an exemption from the permit requirements for one who obtained vested rights, but in the early days following adoption of Proposition 20 there was considerable confusion concerning the date upon which the vested rights had to be acquired in order to qualify for the exemption. Section 27404, as initially adopted, basically provided that no person who had obtained a vested right under a building permit issued "prior to the effective date of this provision" would be required to secure a permit from the Regional Commission. The second sentence of Section 27404 deemed that one had vested rights if, prior to April 1, 1972, he had in good faith and in reliance upon a building permit diligently commenced construction and performed substantial work on the development. However, Section 27400 by its terms required a permit "to perform any development" on or after February 1, 1973, and Regional Commissions were not scheduled for initial meetings until February 1, 1973. The California Attorney General released opinions on February 19, 1973,³⁷ and May 16, 1973,³⁸ in which he concluded that one could obtain a vested right to complete a development if he had performed substantial work and incurred substantial liabilities under a validly issued building permit by November 7, 1972, and if such work was performed in good faith and not with an intent to evade the permit requirements of the Act. In the meantime, Section 27404 was amended as of April 18, 1973,³⁹ to make it clear that vested rights could be acquired by reliance upon a building permit issued prior

36. CAL. PUB. RESOURCES CODE § 27403 (West Supp. 1974).

37. 56 Ops. Cal. Att'y Gen. 72 (1973).

38. 56 Ops. Cal. Att'y Gen. 200 (1973).

39. CAL. STATS., c.28.

to November 8, 1972. However, if vested rights could not be acquired under a permit issued after November 8, 1972, but before February 1, 1973, the effect would be to place a moratorium upon all new construction in the coastal zone for a period of time.

The issue was finally laid to rest on August 22, 1973, by the decision in *San Diego Coast Regional Commission v. See the Sea, Ltd.*⁴⁰ The California Supreme Court concluded in that case that "the Act requires a coastal permit for construction commenced after 1 February, 1973, but does not require one for builders performing substantial lawful construction of their projects prior thereto."⁴¹ Despite the decision of the Supreme Court in *See the Sea*, there are a number of cases still being actively litigated in which developers are asserting and commissions are denying a vested rights exemption.⁴² Most of these cases appear to involve situations in which there are questions as to whether the developer was acting in good faith, whether substantial lawful construction was undertaken prior to February 1, 1973, or whether subsequent phases of a development are exempted because earlier related phases were commenced prior to February 1, 1973.

The Commission regulations require that any person who claims that a development is exempt from permit requirements file a claim of exemption with the appropriate Regional Commission before commencing construction.⁴³ This requirement does not appear in the Act but has been upheld by the California Supreme Court in *State of California v. Superior Court of Orange County; Veta Company, Real Party in Interest*.⁴⁴

Since the *See the Sea* case, there have been two other appellate decisions on vested rights claims. In *Environmental Coalition of Orange County, Inc., v. Avco Community Developers, Inc.*,⁴⁵ the court found that the developer had vested rights to complete a development without obtaining a permit where substantial work had been performed under *grading* permits issued prior to February 1, 1973. However, the appellate court let stand a trial court

40. 9 Cal. 3d 888, 109 Cal. Rptr. 377, 513 P.2d 129 (1973).

41. *Id.* at 890, 109 Cal. Rptr. at 378, 513 P.2d at 130.

42. *See State Coastal Report*, Vol. II, No. 5 (Sept. 1974).

43. 14 CAL. ADM. CODE, Div. 5.5, §§ 13700-13707.

44. 12 Cal. 3d 237, 249-50, 115 Cal. Rptr. 497, 505, 524 P.2d 1281, 1289 (1974).

45. 40 Cal. App. 3d 513, 115 Cal. Rptr. 59 (1974).

preliminary injunction restraining completion of other related projects which were covered by the applicable planned community regulations but not by the grading permits. A trial on the merits was ordered as to defendant's contention that its grading and other work on the projects as to which it had vested rights had given it vested rights to complete all projects covered by the planned community regulation.

In *California Central Coast Regional Commission v. McKeon Construction Co.*,⁴⁶ the trial court had denied injunctive relief to a Regional Commission which sought to restrain a developer from proceeding with a development in the permit area. The developer had not obtained a building permit prior to February 1, 1973, but in another related action by the developer against a city, a court had ordered issuance of building permits as of July, 1972, and had held that the developer need not comply with the permit requirements of the Act. The Court of Appeal reversed the trial court despite the decision in the related case and held that the permit must actually have been issued prior to February 1, 1973. Since the Regional Commission had not been a party to the developer's other action against the city, the court reasoned that the Regional Commission was not bound by the decision in that case.

B. Other Exemptions

In addition to the vested rights exemption, the Act also provided that no permit would be required for repairs and improvements not in excess of \$7,500 to existing single-family residences (except that the Commission is required to specify by regulation those classes of development which involve a risk of adverse environmental effect and may require that a permit be obtained). The Act also exempted maintenance dredging of existing navigational channels or the moving of dredged material from such channels to a disposal area outside the permit area, pursuant to a permit from the United States Army Corps of Engineers.⁴⁷ A 1973 amendment⁴⁸ added a new subsection (c) to Section 27405 which considerably expanded upon the two provisions of the initial Act. Subsection (c) now exempts from the permit requirements "repair or maintenance activities of any sort; provided, that such activities do not result in an addition to, or enlargement or expansion of, the object of such repair

46. 38 Cal. App. 3d 154, 112 Cal. Rptr. 903 (1974), *mod. on den. reh'g*. 38 Cal. App. 3d 1015a. The modification requires several changes in the case summary and headnotes.

47. CAL. PUB. RESOURCES CODE § 27405 (West Supp. 1974).

48. CAL. STATS., c. 1914, § 6.

or maintenance activities."⁴⁹

C. *Emergency and Administrative Permits*

Section 27422 of the Act as supplemented by Regulation Sections 13010 and 13400 through 13484⁵⁰ authorizes a Regional Commission executive director to issue emergency permits and to issue administrative permits for repairs or improvements to existing structures not in excess of \$25,000 and for other developments not in excess of \$10,000. An "emergency" is "a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services."⁵¹ Application for an emergency permit should be made to the executive director by letter if time allows, and by telephone or in person if time does not allow.⁵² The executive director is required to verify the facts and consult with the Regional Commission chairman (or in his absence the vice-chairman).⁵³ He may then issue an emergency permit upon reasonable terms and conditions if he finds that an emergency exists and requires action more quickly than permitted by the procedures for administrative permits or for ordinary permits and that the work proposed would be consistent with the policies of the Act.⁵⁴ Finally, the applicant must provide certain documentation within five days after receiving the emergency permit,⁵⁵ and the executive director must provide a written report concerning issuance of the permit to the Regional Commission.

The main reason for the availability of administrative permits appears to be to lighten the workload of the commission members by providing for an expedited method of handling minor developments which are not likely to have a significant effect on coastal resources. The executive director may return any application that he does not believe qualifies for an administrative permit under Public Resources Code Section 27422.⁵⁶ The executive director may

49. CAL. PUB. RESOURCES CODE § 27405(c) (West Supp. 1974), as amended CAL. STATS., c. 1914, § 6.

50. 14 CAL. ADM. CODE, Div. 5.5, §§ 13010, 13400-13484.

51. 14 CAL. ADM. CODE, Div. 5.5, § 13010.

52. 14 CAL. ADM. CODE, Div. 5.5, § 13470.

53. 14 CAL. ADM. CODE, Div. 5.5, § 13481.

54. 14 CAL. ADM. CODE, Div. 5.5, § 13482.

55. 14 CAL. ADM. CODE, Div. 5.5, § 13483.

56. 14 CAL. ADM. CODE, Div. 5.5, § 13430.

file an application for an administrative permit which complies with the criteria set forth in Section 27422 but refuse to grant the administrative permit.⁵⁷ In either event, the applicant may then file an application and go through the normal permit procedures.⁵⁸ Even if granted, an administrative permit is not effective until after reasonable public notice and adequate time for review of the issuance has been provided at the first meeting following the issuance of an administrative permit. Any two members of a Regional Commission may request that the issuance not be effective and the application will be set for a public hearing.⁵⁹

D. Permit Procedures and Hearings

Detailed regulations concerning permit procedures and hearings appear at Regulation Sections 13200 through 13352.⁶⁰ Only the major provisions will be covered in this article. A permit application may not be filed with a Regional Commission until all governmental agencies from which a permit is required have granted at a minimum their approval in concept of the development (except in certain instances).⁶¹ The applicant must use the application form provided by the Commission, and the application must contain detailed information and exhibits as to the development. As a practical matter, applicants receive very little time at the hearing to make their presentation, so the application should be as complete and readable as possible so that each commissioner will hopefully be fully briefed before the hearing. The applicant must state his legal interest in the property to be developed and must sign the application under penalty of perjury. The application must be accompanied by the appropriate fee⁶² and the Commission may require the applicant to reimburse it for any reasonable expenses incurred in consideration of the permit application.⁶³

A hearing must be set at no less than 21 nor more than 90 days after the date on which the application is filed.⁶⁴ However, an application is not deemed filed until it has been received and found in proper order.⁶⁵ The executive director must prepare a summary

57. 14 CAL. ADM. CODE, Div. 5.5, § 13431.

58. 14 CAL. ADM. CODE, Div. 5.5, § 13432.

59. CAL. PUB. RESOURCES CODE § 27422 (West Supp. 1974).

60. 14 CAL. ADM. CODE, Div. 5.5, §§ 13200-13352.

61. 14 CAL. ADM. CODE, Div. 5.5, § 13210.

62. Fees have been increased as of January 25, 1975, and vary depending upon type and size of project from \$25 to \$2,500.

63. 14 CAL. ADM. CODE, Div. 5.5, § 13260.

64. CAL. PUB. RESOURCES CODE § 27420(b) (West Supp. 1974).

65. 14 CAL. ADM. CODE, Div. 5.5, § 13273.

of each application and may include staff comments on the proposed development, including a staff recommendation as to whether the permit should be granted or denied.⁶⁶ The hearing need not be conducted according to technical rules relating to evidence and witnesses.⁶⁷ Proceedings with regard to permits must be recorded by stenographic or electronic means.⁶⁸ A Regional Commission must act upon an application for a permit within 60 days after the conclusion of the hearing, and such action shall become final after the tenth working day unless an appeal is filed within that time.⁶⁹

The regulations provide that a Regional Commission will normally vote on a permit application at the next regular Commission meeting following the public hearing concerning the permit application; but in certain circumstances a Regional Commission may, and often does, vote upon an application at the same meeting during which the public hearing on the application is held.⁷⁰

The executive director of a Regional Commission may place on a consent calendar those permit applications which are, in his opinion, *de minimis* with respect to the purposes and objectives of the Act. The consent calendar is taken up as a single matter, but members of the public may present testimony and evidence concerning any item on the consent calendar. In addition, any three commissioners may object to an item on the consent calendar and request that it be removed from the consent calendar and processed as a single permit application.⁷¹

V. APPEAL TO THE COMMISSION

An applicant or any person aggrieved by approval of a permit by a Regional Commission may appeal to the Commission.⁷² An applicant may also appeal conditions placed on the issuance of a permit.⁷³ A person other than an applicant is "aggrieved" only if he or his representative opposed the application at the Regional Commission hearing or he was unable to do so for a good cause.⁷⁴

66. 14 CAL. ADM. CODE, Div. 5.5, § 13280.

67. 14 CAL. ADM. CODE, Div. 5.5, § 13301.

68. 14 CAL. ADM. CODE, Div. 5.5, § 13302(c).

69. CAL. PUB. RESOURCES CODE § 27420(c) (West Supp. 1974).

70. 14 CAL. ADM. CODE, Div. 5.5, § 13273.

71. 14 CAL. ADM. CODE, Div. 5.5, §§ 13350-13352.

72. CAL. PUB. RESOURCES CODE § 27423 (West Supp. 1974).

73. 14 CAL. ADM. CODE, Div. 5.5, § 13900.

The Commission may affirm, reverse or modify the decision, but if the Commission fails to act within 60 days after notice of appeal has been filed, the Regional Commission's decision becomes final.⁷⁵ The Commission may decline to hear appeals that it determines raise no substantial issues. Appeals which it hears are scheduled for a *de novo* public hearing and are decided in the same manner and by the same vote as provided for decisions by the Regional Commissions.⁷⁶

VI. JUDICIAL ACTIONS

The Act provides for actions to review the commissions' decisions by the filing of a petition for writ of mandamus,⁷⁷ actions for declaratory and equitable relief to restrain violations of the Act,⁷⁸ actions for civil penalties for violating the Act⁷⁹ and costs and attorneys fees for the prevailing party.⁸⁰ Section 27427 of the Public Resources Code specifically provides that the remedies provided for in the Act are not exclusive but are in addition to any other remedies available at law.

Any person, including an applicant for a permit, aggrieved by a decision or action of the Commission or a Regional Commission has a right to judicial review by filing a petition for a writ of mandate in accordance with California Code of Civil Procedure Sections 1084 and following. The petition for a writ of mandate must be filed within 60 days after the decision or action has become final.⁸¹

A leading case in the area of attack by a plaintiff on actions of a commission is *State of California v. Superior Court of Orange County; Veta Company, Real Party in Interest*.⁸² Veta had been granted a permit to develop certain land by the Regional Commission, but the permit was denied on appeal to the Commission. Veta then filed an action against the Commission and others for administrative mandamus review of the Commission action, "traditional" mandamus, declaratory relief, injunction, damages and inverse condemnation. The Commission's demurrers were overruled and Veta's motion to compel answers to its interrogatories was granted. The Commission sought and received from the Supreme

74. 14 CAL. ADM. CODE, Div. 5.5, § 13903.

75. CAL. PUB. RESOURCES CODE § 27423(b) (West Supp. 1974).

76. CAL. PUB. RESOURCES CODE § 27423 (West Supp. 1974).

77. CAL. PUB. RESOURCES CODE § 27424 (West Supp. 1974).

78. CAL. PUB. RESOURCES CODE § 27425 (West Supp. 1974).

79. CAL. PUB. RESOURCES CODE § 27426 (West Supp. 1974).

80. CAL. PUB. RESOURCES CODE § 27428 (West Supp. 1974).

81. CAL. PUB. RESOURCES CODE § 27424 (West Supp. 1974).

82. 12 Cal. 3d 237, 115 Cal. Rptr. 497, 524 P.2d 1281 (1974).

Court a prerogative writ to review the rulings on the pleadings. The Supreme Court's ruling gives considerable guidance to future actions by aggrieved applicants.

The Court held that neither the Commission nor the Commission employees were liable for injury caused by refusal to issue a permit since the Commission and its employees were authorized to determine whether the permit should be issued (citing Government Code Sections 818.4 and 821.2).⁸³ The court held further that the remedy of "traditional" mandamus provided by Code of Civil Procedure Section 1085 may be employed to compel performance of a duty which is purely ministerial in character but cannot be applied to compel the issuance of discretionary permits such as those issued by the Commission.⁸⁴ Veta had also prayed for "traditional" mandamus to compel the Commission to affirm as final the permit issued by the Regional Commission. In that regard, Veta argued that the appeal of the Regional Commission's action was not timely filed and that the Commission was therefore without jurisdiction. The Court found that the appropriate remedy to review the Commission's conduct purportedly in excess of its jurisdiction was also administrative mandamus under Code of Civil Procedure Section 1094.5.⁸⁵ The Court held further that since Veta had not applied to the Commission for a vested rights exemption Veta could not seek to compel the Commission to approve its claim of exemption by "traditional" mandamus.⁸⁶

Since Veta had not sought and been denied an exemption, there was no "actual controversy" so that an action for declaratory relief could not be stated.⁸⁷ The Court stated that, in any event, an action for declaratory relief is not appropriate to review an administrative decision such as the Commission's denial of a permit. Declaratory relief is appropriate, however, to determine whether the Act is "facially unconstitutional,"⁸⁸ and the Commission's demurrer to a cause of action to enjoin the Commission from expending public funds to administer the Act was properly overruled.⁸⁹

83. *Id.* at 245-247, 115 Cal. Rptr. at 502-503, 524 P.2d at 1286-1287.

84. *Id.* at 247, 115 Cal. Rptr. at 503, 524 P.2d at 1287.

85. *Id.* at 248, 115 Cal. Rptr. at 504, 524 P.2d at 1288.

86. *Id.*

87. *Id.* at 249, 115 Cal. Rptr. at 505, 524 P.2d at 1289.

88. *Id.* at 251, 115 Cal. Rptr. at 506, 524 P.2d at 1290.

89. *Id.* at 252, 115 Cal. Rptr. 506-507, 524 P.2d at 1290-1291.

The Court found that the Commission is empowered to adopt regulations which require persons to seek a determination by the Commission of a contention of vested rights before performing development without a permit. Applying for such an exemption is a prerequisite to seeking a declaration from the courts as to an existence of such rights, and such a procedure is appropriate so long as judicial review of the Commission's determination is provided.⁹⁰

The Court held further that the Commission's denial of a permit could not constitute the basis for an action for inverse condemnation for an invasion and appropriation of Veta's vested rights. Veta had itself failed to seek a vested rights exemption and had invoked application of the permit provision of the Act by applying to the Commission for a permit.⁹¹ Even assuming that the Commission's denial of a permit was based on the ground that the lands would remain undeveloped and devoted to public use as open-space lands, such denial would not amount *at this time* to a taking of property for public use without compensation and thus would not support a cause of action in inverse condemnation. The Court noted that the requirement for a permit is strictly an interim measure to assure that developments in the coastal zone are consistent with the objectives of the Act while the Plan is being developed, since by its own terms, the Act and its permit requirements are repealed on the 91st day after final adjournment of the 1976 Regular Session of the Legislature (Section 27650).⁹²

The Court also held that it was an error to overrule the agency's objections to interrogatories to the extent that they sought to determine what material the agency's members read and relied upon in reaching the determination and to the extent that the interrogatories sought to probe the mental processes of agency members.⁹³

The Court pointed out in *Veta* that in an administrative mandamus review of an administrative agency's determination, the trial court is confined to the record before the agency unless the petitioner can show that he possesses evidence not presented to the agency which he could not have produced in the exercise of reasonable diligence, or unless relevant evidence was improperly excluded

90. *Id.* at 249-250, 115 Cal. Rptr. at 504-506, 524 P.2d at 1288-1289.

91. *Id.* at 251, 115 Cal. Rptr. at 506, 524 P.2d at 1290.

92. *Id.* at 252-255, 115 Cal Rptr. at 507-509, 524 P.2d at 1291-1293. It should be noted that the automatic repeal date has been extended to January 1, 1977 by CAL. PUB. RESOURCES CODE § 27650 *as amended Cal. Stats.* c.897.

93. *Id.* at 258, 115 Cal. Rptr. at 511, 524 P.2d at 1295.

in the administrative hearing. This rule applies whether the "independent judgment test" or the "substantial evidence test" is employed to review the agency's determination.⁹⁴

In *Trans-Century Properties, Inc. v. The State of California*,⁹⁵ the appellate court held that the trial court was not limited in its review of a Commission decision to a determination whether the decision was supported by substantial evidence. A trial court is authorized to make an independent judgment on the evidence presented to the Commission where the Commission had denied a developer's claim to vested rights. The Court found that the defendant's right was "fundamental" in that it "derives from the constitutional guarantee that property may not be taken without due process of law."⁹⁶ Of course, an applicant's chances of overturning a Commission decision are often increased if he can persuade the court to make an independent judgment on the evidence, so this case was welcomed by coastal property owners.

*CEED v. California Coastal Zone Conservation Commission*⁹⁷ involved a suit which was filed for a declaration that the Act was unconstitutional on the grounds that (1) enactment of the measure by the initiative process violated due process rights of affected property owners; (2) the Act constitutes an invalid state intrusion into municipal affairs of chartered cities; (3) the Act constitutes an unlawful taking of private property for public purposes without just compensation; (4) the Act unlawfully delegates legislative power to the Commission; (5) the Act fails to assure procedural due process to permit applicants; and (6) the Act infringes upon the fundamental right to travel. The trial court rejected each of the plaintiff's arguments and was upheld by the Court of Appeal.

Section 27428 of the Act provides that any person who prevails in a civil action brought to enjoin the violation of the Act or to recover civil penalties shall be awarded his costs, including reasonable attorneys' fees. There was doubt as to whether or not this section should be construed to allow reasonable attorneys' fees to

94. *Id.* at 256-257, 115 Cal. Rptr. at 509-510, 524 P.2d at 1293-1294.

95. 41 Cal. App. 3d 835, — Cal. Rptr. — (1974).

96. *Id.* at 844, — Cal. Rptr. at —. See also *Strumsky v. San Diego County Employees Retirement Assn.*, 11 Cal. 3d 28, 34, 112 Cal. Rptr. 805, 809, 520 P.2d 29, 33 (1974).

97. 43 Cal. App. 3d 306, — Cal. Rptr. — (1974).

a prevailing defendant developer.⁹⁸ The problem was recently considered in *Great Lakes Properties, Inc. v. The City of El Segundo*,⁹⁹ and the court determined that successful defendants and cross-defendants in an action for injunctive relief under the Act were properly awarded attorneys' fees by the trial court.

The previous paragraphs point out that any person aggrieved by the decision of a commission has a right to judicial review by filing a petition for writ of mandate. In addition to that right, any person may maintain an action for declaratory and equitable relief to restrain violation of the Act, and no bond is required.¹⁰⁰ Furthermore, any person may maintain an action for the recovery of civil penalties provided for by the Act against any person who violates a provision of the Act or performs any development in violation of the Act. Section 27500 provides that any person who violates any provision of the Act is subject to a civil fine not to exceed \$10,000. Section 27501 provides that, in addition, any person who performs any development in violation of the Act is subject to a civil fine not to exceed \$500 per day for each day in which such violation persists.

VII. THE PLANNING PROCEDURE

Up to the present time the actions of the commissions in granting and denying permits has received more publicity than the planning being done by the various commissions, but the planning functions of the commissions may have a far greater impact in the long run than the interim permit procedures have had.

A stated objective of the Act is the preparation of a "comprehensive, coordinated, enforceable plan for the orderly, long-range conservation and management of the natural resources of the coastal zone, to be known as the California Coastal Zone Conservation Plan."¹⁰¹ The Commission is directed by Section 27300 to "prepare, adopt, and submit [the Plan] to the legislature for implementation" Each Regional Commission is commanded to adopt and submit its conclusions and recommendations to the Commission no later than April 1, 1975, and the Commission must then adopt the Plan and submit it to the legislature "for its adoption and implementation" by December 1, 1975.¹⁰²

98. *See Enforcing the Coastal Act—Citizens' Suits and Attorneys' Fees*, CALIF. ST. B.J., p. 236 (May/June 1974).

99. 42 Cal. App. 3d 639, — Cal. Rptr. —, accepted for hearing on Cal. Sup. Ct.'s own motion, Jan. 27, 1975.

100. CAL. PUB. RESOURCES CODE § 27425 (West Supp. 1974).

101. CAL. PUB. RESOURCES CODE § 27001(b) (West Supp. 1974).

102. CAL. PUB. RESOURCES CODE § 27320 (West Supp. 1974).

The Plan covers the entire "coastal zone" and not just the 1,000-yard permit area. The "coastal zone" is the

land and water area of the State of California . . . extending seaward to the outer limits of state jurisdiction . . . and extending inland to the highest elevation of the nearest coastal mountain range,¹⁰³ except that in Los Angeles, Orange and San Diego Counties, the inland boundary of the coastal zone shall be the highest elevation of the nearest coastal mountain range or five miles from the mean high tide line, whichever is the shorter distance.¹⁰⁴

There are nine elements of the Plan which are in various stages of development. The elements are (1) Marine Environment, (2) Geology, (3) Coastal Land Environment, (4) Appearance and Design, (5) Recreation, (6) Energy, (7) Transportation, (8) Intensity of Development, and (9) Powers, Funding and Government. Each adopted element consists of findings, policies and regional amplification supplied by the Regional Commissions. The various elements of the Plan are quite lengthy, and summarizing the elements is generally beyond the scope of this article. However, summaries of the various elements are available from the Regional Commissions, and most public libraries have complete copies of each element.

The future of the Plan is difficult to predict. The Powers, Funding and Government Element is now in the final stages of drafting at the Regional Commission level, and the Commission's first draft will be published in March of 1975. Once the Powers, Funding and Government Element and the Plan have been finalized, the Commission may draft and prepare a bill to adopt and implement the Plan or the administration may do so. Individual legislators are expected to offer bills relating to some of the major policies contained in the Plan. Environmentalists, developers, land owners and other interested parties will undoubtedly lobby extensively for a bill which best serves their own personal interests. Commission planners expect that the enacting statute will contain little detail but will state findings and policies and will establish a successor coastal agency with permit powers to implement and amend the Plan. However, until final action on the yet-to-be-proposed bill, no one is predicting the final shape or content.

103. See 56 Ops. Cal. Att'y Gen. 453 (1973) as to what constitutes "the nearest coastal mountain range."

104. CAL. PUB. RESOURCES CODE § 27100 (West Supp. 1974).

VIII. CONCLUSION

The permit and planning authority granted to the commissions by the Act is rapidly coming to an end. Forces opposed to and supportive of the concept of a coastal plan and agency have had several years to prepare for the "showdown" on adoption and implementation of the Plan during the upcoming 1976 legislative session. Initial drafts of the Powers, Funding and Government Element indicate that the final Plan may, if implemented, install a successor coastal agency with similar permit powers over most of the same coastal areas. If that occurs, a system very similar to that described in this article may become a permanent feature of coastal land development in California.