

MEMORANDUM OF LAW

DATE: May 15, 1989

TO: George I. Loveland, Park and Recreation
Department Director
FROM: City Attorney
SUBJECT: California Coastal Commission Jurisdiction Over
South Mission Beach Park Gates

This responds to your memorandum request of April 28, 1989 concerning the jurisdiction of the California Coastal Commission to dictate hours of vehicle access restriction at the parking lots at South Mission Beach and Mission Point Park. You also ask whether the City Council has any discretion to modify the hours specified by the California Coastal Commission permit.

We conclude that the California Coastal Commission has the jurisdiction and authority to dictate hours of vehicle access pertaining to the parking lots so long as a structure is involved which requires a coastal permit. Conversely, to the extent that a structure is not involved, then the Coastal Commission would not have jurisdiction relative to parking restrictions within the parking lots.

As we understand the situation, gates were installed which are closed at particular hours to prevent vehicle access to these parking lots. The placement of such gates did not limit pedestrian access. We must therefore assume that the maintenance of these gates is central to the success of any noise and nuisance abatement desired by the City Council, as related to vehicle access.

To respond to your questions, we refer to the provisions of the California Coastal Act as contained within Sections 30000, et seq., of the Public Resources Code. (Citations hereafter are to the Public Resources Code.) Section 30600 provides that any person wishing to perform or undertake any development in the coastal zone shall obtain a coastal development permit. The term "person" includes a charter city under the provisions of Section 30109 and 30111. The term "development" is defined by Section 30106 to refer to the placement or erection of any solid material or structure, and includes piping, flumes, conduits, and similar structures. Moreover, the term "development" includes changes in the intensity of the use of access to water.

It is clear, then, that the placement of the gates is viewed by the California Coastal Commission as a "development" which

requires a permit. The City applied for such a permit, and the Coastal Commission's letter of October 28, 1988 concluded that a permit was required for the gates and signage at the parking lots. By letter of January 24, 1989, the Commission further indicated its concerns regarding the closure of the parking lots to vehicular access during certain hours.

Under the expansive definition of "development," we conclude that there is both statutory and administrative authority for the California Coastal Commission's conditions associated with issuance of a permit for installation of gates which, in turn, assists the City in regulating access based upon hours of operation.

The conditions of such a permit are rationally related to the legislative finding contained in Section 30001.5(c), to maximize public access and recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights. Article X, section 4 of the California Constitution governs rights of public access to beaches and shorelines.

So long as the issue involves the operation of the gates and the controlling of intensity of use, the requirements imposed by the California Coastal Commission will be applicable regarding hours of closure. We do note, however, that in proper circumstances public nuisances can be abated. See San Diego Municipal Code section 54.0301 et seq.

One further option is presented: that is, of course, to seek judicial review of the California Coastal Commission decision. This is permitted by the California Coastal Act. See Section 30801.

If you should have any further questions in this regard, we shall be pleased to respond further.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

RH:mb:263.2:(043.2)

cc Coleman Conrad

Greg Konar

Terri Carroll

Thomas F. Steinke

ML-89-47