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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

12 **FRANK MANCUSO, SR., an individual,**
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Petitioner,

v.

**CALIFORNIA STATE COASTAL
CONSERVANCY, an agency of the State of
California, CALIFORNIA STATE COASTAL
CONSERVANCY BOARD, the governing body of
the California State Coastal Conservancy, the
CALIFORNIA DEPARTMENT OF GENERAL
SERVICES, an agency of the State of California,
THE MOUNTAINS RECREATION AND
CONSERVATION AUTHORITY, an agency of the
State of California and DOES 1 through 100,**

Respondents.

BS 040197
(Petition assigned to Judge
O'Brien)

**STATE COASTAL
CONSERVANCY,
DEPARTMENT OF
GENERAL SERVICES AND
MOUNTAIN RECREATION
AND CONSERVATION
OBJECTIONS TO
PROPOSED STATEMENT OF
DECISION, PROPOSED
ORDER AND PROPOSED
JUDGMENT SUBMITTED BY
PETITIONER**

Hearing: Sept. 23, 1997
Time: 9:30 A.M.
Dept.: 85

The State Coastal Conservancy (hereinafter "Conservancy"), the Department of
General Services (hereinafter "Department") and the Mountains Recreation and
Conservation Authority (hereinafter "MRCA") hereby object to the Proposed Statement of
Decision, Proposed Order and Proposed Judgment submitted by petitioner on the
following grounds.

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1 evidentiary record; is inconsistent with the Court's statements during oral argument; and
2 is contrary to the Court's September 23, 1997 Minute Order.

3 To begin with, PSD Paragraph (1) misstates the requirements of section 31107.1
4 by deleting the adjective "property" before the word "transaction" on line 10 page 1 of the
5 PSD. Contrary to the implication in the PSD, section 31107.1 does not apply to any
6 transaction but only to "property transactions."

7 Second, nowhere in the Court's Minute Order is there a conclusion that the
8 Conservancy and the Department "have failed to comply with the mandatory, ministerial
9 obligation imposed upon them by Section 31107.1." Quite apart from the fact that an
10 obligation to develop unspecified procedures can in no sense be described as "ministerial",
11 such a conclusion is contrary to the evidentiary record before the Court. That record
12 demonstrates that the Conservancy and the Department developed and implemented
13 internal operating procedures for property transactions such as acquisitions, acceptance of
14 gift donations and disposition of property pursuant to section 31107.1. (See, the
15 Memorandum of Understanding attached as Exhibit 11 to the administrative record
16 submitted by the petitioner at page 038.) The record also demonstrates that there are
17 specific notice procedures with respect to the disposition of property set forth in the
18 memorandum of understanding. (Id. at 044-045.)

19 What the record does not disclose, is Respondents' developed internal operating
20 procedure with respect to notice for property transactions other than the disposition of
21 property. Respondents understand the Court's Minute Order to be addressing that issue.
22 In this regard, though Respondents' internal operating procedure is to follow the specific
23 notice requirements imposed on it by statute and the Constitution with respect to any
24 particular property transaction, Respondents could comply with an order to formally and
25 publicly articulate that fact.

26 In point of fact, any other interpretation of the language in the Court's Minute
27 Order would have the Court find that the Legislature imposed a "ministerial" duty upon
28 the Conservancy and the Department to develop internal operating notice procedures

1 greater than those otherwise required by law without setting forth the specific
2 requirements for such a procedure. A requirement of that nature is hardly ministerial.
3 Rather, it would be a discretionary legislative act which, under the rule discussed in Sklar
4 v. Franchise Tax Board (1986) 185 Cal.App.3d 616, 625, cannot be compelled.

5 Simply put, if petitioner's language were adopted, Respondents would have no
6 idea what type of notice procedures would satisfy the command of the peremptory writ
7 and the Court would have no standard by which to judge whether the procedures adopted
8 by respondents were sufficient other than its own notion of what was "proper". Such a
9 result would have the Court substituting its judgment for that of Respondents on a matter
10 left by the Legislature to their discretion. For example, section 31107.1 speaks of
11 "proper notice". On what basis could the Court find that an agency's use of existing
12 statutory and constitutional notice requirements for its internal operating procedures was
13 not "proper"?

14 Finally, the statement in paragraph (1) of the PSD is also inconsistent with the
15 Court's comments during oral argument. In this regard, after respondents' counsel
16 confirmed the Court's understanding that procedures had been adopted pursuant to section
17 31107.1, the Court indicated at oral argument that it could not discern from the record the
18 totality of the procedures respondents had developed to comply with that section. As a
19 result, in its Minute Order, the Court directed the Conservancy and the Department to
20 "formally and publicly articulate the procedures ... [which had been] ... developed to
21 comply with Public Resources Code section 31107.1."

22 2. Paragraph (2) of the PSD is ambiguous, in that it fails to refer to any specific
23 cause of action, and is, in any event, inconsistent with the Court's Minute Order.

24 On the assumption this paragraph is referencing the First and Second Causes of
25 Action, the Court did not find that the First and Second Causes of Action of the First
26 Amended Petition had been mooted or anything of that nature. Instead, the Court's
27 Minute Order specifically states that the First and the Second Cause of Action "are
28 denied." The only cause of action the Court found moot was the Fourth Cause of Action.

1 **PROPOSED JUDGMENT**

2 Petitioner has served two different proposed judgments on Respondents. The
3 first was served on October 1, 1997 at 11:17 A.M. It is in all respects identical to the
4 Proposed Order served on September 30, 1997 except that it is styled a proposed
5 judgment. Respondents object to this proposed judgment on the same grounds as they
6 object to the Proposed Order.

7 The second Proposed Judgment was served on October 1, 1997 at 2:52 P.M.
8 This proposed judgment is identical to the first Proposed Judgment except that it adds an
9 additional concluding paragraph awarding Petitioner its costs of suit. This paragraph is
10 not only inconsistent with the Court's Minute Order but it makes the Proposed Judgment
11 internally inconsistent.

12 The Court's Minute Order specifically requires that the Proposed Judgment leave
13 the relief requested in paragraphs E and F of the Prayer to the First Amended Petition
14 open. Paragraph E seeks attorney fees and Paragraph F of the prayer seeks Petitioner's
15 costs of suit. Thus, the Proposed Judgment cannot provide for an award of costs of suit.
16 This appears to be especially the case where, as here, the preceding paragraph of the
17 Proposed Judgment declares that the relief requested in paragraphs E and F of the prayer
18 remain open.

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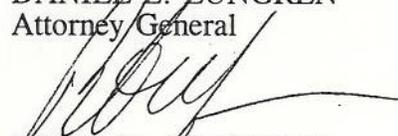
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CONCLUSION

For all the foregoing reasons, it is, therefore, respectfully requested that the Court reject Petitioner's proposed Statement of Decision, Order and Judgments and either prepare its own Statement of Decision and Judgment or permit Respondents the opportunity to prepare these documents.

DATED: 10/6/97

DANIEL E. LUNGREN
Attorney General

PETER H. KAUFMAN
Supervising Deputy Attorney General
Attorneys for Respondents

DECLARATION OF SERVICE

Case Name: *Mancuso v. Ca. State Coastal Conservancy, et al.*
L.A. Superior Court, Central Dist. No.: BS 040197

I declare:

I am employed in the County of San Diego, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, California 92186-5266.

On October 06, 1997, I served the attached

STATE COASTAL CONSERVANCY, DEPARTMENT OF GENERAL SERVICES AND MOUNTAIN RECREATION AND CONSERVATION OBJECTIONS TO PROPOSED STATEMENT OF DECISION, PROPOSED JUDGMENT SUBMITTED BY PETITIONER

via telefacsimile and by placing a true copy thereof enclosed in a United Parcel Service Next Day Air sealed envelope thereon fully prepaid at San Diego, California, addressed as follows:

IRELL & MANELLA LLP
Allan J. Abshez, Esq.
Michael S. Lowe, Esq.
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067-4276
Telefacsimile (213) 229-0515

Attorneys for Petitioner Frank Mancuso, Sr.

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on October 06, 1997 at San Diego, California.

J. JASON MURRAY



Signature