

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BILL LOCKYER
Attorney General
J. MATTHEW RODRIQUEZ
Senior Assistant Attorney General
PATRICIA SHEEHAN PETERSON
Deputy Attorney General
State Bar No. 067122
1515 Clay Street, Suite 2000
Oakland, CA 94612
Telephone: (510) 622-2152
Fax: (510) 622-2170
Attorneys for Respondent State Coastal Conservancy

*- request adm
recd for d. -*

*1 copy copies
for la Costa*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LA COSTA BEACH HOMEOWNERS'
ASSOCIATION, et al.,

Petitioners,

v.

CALIFORNIA STATE COASTAL
CONSERVANCY,

Respondent,

GAMMA FAMILY TRUST, BROAD REVOCABLE
TRUST and NANCY M. DALY LIVING TRUST,

Real Parties-in-Interest.

Case No.: BS063275

REPLY BRIEF OF RESPONDENT
CALIFORNIA STATE COASTAL
CONSERVANCY IN SUPPORT OF
MOTION TO STRIKE PETITION
FOR WRIT OF MANDATE AND
INJUNCTIVE RELIEF AND
PORTIONS THEREOF

Date: 10/5/00
Time: 9:30 a.m.
Dept: 85

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

In its Motion to Strike, the State Coastal Conservancy ("Conservancy") argues (1) that the petition filed in this action should be stricken because it is improperly formulated as a petition for writ of administrative mandamus rather than ordinary mandate, and (2) that the fourth cause of action for injunctive relief should be stricken because injunctive relief is not available to review an administrative decision in lieu of bringing an action in mandate.

Petitioners have opposed the motion to strike the entire petition on the grounds, first, that administrative mandamus is proper because the Conservancy acted quasi-judicially in making findings of fact (Opposition, p. 5.) and constitutional due process requires a hearing when an agency is acting quasi-judicially (Opp., p. 6.); and, second, petitioners have pleaded the elements of a claim for traditional mandate and have stated a cause of action (Opp., p. 8.). As to the issue of striking the fourth cause of action for injunctive relief, petitioners argue that they are seeking "a provisional remedy to insure that effective relief is not made impossible before a trial on the petition can even be held." (Opp., p. 13.)

Petitioners' opposition is unavailing. Just because the Conservancy made findings and made its decision at a public hearing where public opinion was elicited does not transform the essential character of the Conservancy's action from quasi-legislative or administrative to quasi-judicial. As a quasi-legislative or administrative action, ordinary mandate is the proper way to challenge the Conservancy's decision. Whether or not petitioners have pleaded all the elements necessary for a cause of action in ordinary mandate, the petition should be stricken with leave to amend, so that the form of action is proper and the appropriate standard of review is applied. Petitioners' argument that the fourth cause of action should not be stricken, because provisional relief may be appropriate, misstates the cause of action as drafted. The fourth cause of action seeks permanent injunctive relief and omits any mention of provisional relief. Permanent injunctive relief in lieu of review by ordinary mandate is not available.

II. ADMINISTRATIVE MANDATE IS NOT PROPER FOR QUASI-LEGISLATIVE ACTS.

Although the Conservancy made its decision at a public hearing to accept the fee interest in the property at LaCosta Beach pursuant to Coastal Commission permit conditions (Pet., ¶¶ 6,

1 12.), the character of its decision was quasi-legislative, not quasi-judicial. The occurrence of a
2 public hearing with public comment and promulgation of findings does not *ipso facto* transform
3 a quasi-legislative action into a quasi-judicial action. Due process does not require that the
4 Conservancy's quasi-legislative decision be made at a public hearing. Administrative mandamus
5 is proper to review quasi-judicial actions, and ordinary mandate is proper to review quasi-
6 legislative actions. A motion to strike pleadings for review of quasi-legislative decisions which
7 are improperly formulated in administrative mandate rather than ordinary mandate is appropriate.

8 A. The Conservancy Did Not Act Quasi-Judicially.

9 Petitioners argue that the Conservancy acted quasi-judicially. The nature of the action
10 taken by the Conservancy was either quasi-legislative or simply administrative.

11 Classification of an action as quasi-judicial or quasi-legislative requires determination
12 "only [of] the function performed." (20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216,
13 275.) The essence of a quasi-legislative act is political in nature, involving broad considerations
14 of public welfare and not just a resolution of the private rights and interests of property owners
15 immediately affected by the policy. (Wilson v. Hidden Valley Mun. Water Dist. (1967) 256
16 Cal.App.2d 271, 280-281.) Generally, quasi-legislative actions involve "the formulation of a rule
17 to be applied to all future cases, while an adjudicatory act involves the actual application of such
18 a rule to a specific set of existing facts." (Strumsky v. San Diego County Employees Retirement
19 Assn. (1974) 11 Cal.3d 28, n. 35.) However, legislative action is not limited to "rulemaking."
20 (Joint Council of Interns & Residents v. Board of Supervisors (1989) 210 Cal.App.3d 1201,
21 1210.) "Acts constituting a declaration of public purpose, and making provision for ways and
22 means of its accomplishment, may be generally classified as calling for the exercise of legislative
23 power." Reagan v. City of Sausalito (1962) 210 Cal.App.2d 618, 621-622.)

24 In Wilson, *supra*, a group of landowners petitioned to exclude certain property from an
25 irrigation district so that more water would be available for their agricultural pursuits. The court
26 decided that the district board's response to the petitions was quasi-legislative in nature because
27 it involved more than resolution of the private interests of the petitioners; instead it "posed to the
28 board fundamentally political questions" regarding local governmental water policy. In Reagan,

1 *supra*, a resolution of intent to acquire a particular piece of property at Shelter Cove was
2 determined to be a legislative action subject to referendum.

3 Similarly, the Conservancy's decision to acquire the fee interest in the LaCosta Beach
4 property should be characterized as quasi-legislative rather than quasi-judicial. As in Wilson, the
5 Conservancy's action is political in nature, with much broader public impacts than the purported
6 impacts on petitioners. In fact, petitioners admit by implication that the public access issue is
7 much broader than their own individual interests. In paragraph 16, for example, petitioners
8 allege that members of the public will not be able to use this beach safely because of motor and
9 pedestrian traffic problems. Petitioners, as neighbors, would not arrive at the site by vehicle.
10 The public access provided at the site would be for the larger public community.

11 The decision to acquire a specific piece of property at a particular time pursuant to
12 eminent domain powers has long been considered a "political and legislative question and not a
13 judicial one." (Wulzen v. Board of Supervisors (1894) 101 Cal. 15, 21.) Although eminent
14 domain was not being exercised by the Conservancy, its function deciding what property it
15 would acquire and when was exactly the same as that of the city deciding what property it
16 wanted to acquire and when in Wulzen.

17 Similar to Reagan, the Conservancy's resolution to acquire the property is a specific
18 statement of policy to implement the Coastal Commission permit condition. The Conservancy's
19 enabling act sets general policies to acquire coastal lands for public access (E.g., Pub. Resources
20 Code, §§ 31104.1, 31105, 31400.2, 31400.3, 31402.) The Conservancy's resolution to acquire
21 specifically the property at LaCosta Beach is a statement of policy for acquisition of that
22 particular parcel for public access purposes at this particular time. The Conservancy's resolution
23 is then sent to the State Public Works Board to implement the acquisition policy pursuant to the
24 Property Acquisition Law. (Pub. Resources Code, § 31105.) The fact that the Legislature
25 specifically empowered the Conservancy in section 31107.1 to "develop and implement
26 appropriate procedures to ensure that land acquisition . . . and other property transactions . . . are
27 carried out efficiently and equitably" indicates that the Conservancy was delegated the legislative
28 power to establish policies and procedures for property acquisition and was not acting quasi-

1 judicially. (See Hubbs v. People ex rel. Dept. Pub. Wks. (1974) 36 Cal.App.3d 1005, 1009-10.)

2 Alternatively, the Conservancy's action could be viewed simply as an administrative
3 action to "carry out the legislative policies and purposes already declared by the legislative
4 body." (Reagan v. City of Sausalito, *supra*, 86 Cal.App.3d at 622.) The Legislature stated in
5 Public Resources Code section 31104.1 that the Conservancy "shall serve as a repository for
6 lands whose reservation is required to meet the policies and objectives of the California coastal
7 Act." The Coastal Commission decided that the LaCosta Beach property was necessary "to
8 mitigate the public view and public access impacts of the Applications [for coastal development
9 by the real parties] on Carbon Beach, by allowing the applicants to buy and dedicate for public
10 view and access an off-site lot on La Costa Beach." (Opp., ¶ 6.) The Conservancy was only
11 implementing the policy decision made by the Coastal Commission as to the need for public
12 access at that particular site. In no sense was it adjudicating the claimed rights of private
13 parties. Consequently, the Conservancy's action should be viewed simply as an administrative
14 action, implementing the Coastal Commission's decision.

15 In Bright Development v. City of Tracy (1993) 20 Cal.App4th 783, 794-795, the court
16 held that the city's imposition of an undergrounding requirement was an administrative action
17 done ostensibly to implement a city policy and could only be reviewed by ordinary mandate.
18 Whether the Conservancy's action is characterized as quasi-legislative or as administrative, the
19 appropriate judicial review of such a decision would be by ordinary mandate, not administrative
20 mandate. (*Ibid.*)

21 B. Fact-finding in a Public Hearing Is Consistent with Quasi-Legislative Actions.

22 Petitioners allege that the Conservancy made findings of consistency with Coastal Act
23 sections 30210 and 30214 (Opp., ¶ 26.) and with Conservancy interim guidelines (Opp., ¶ 34.),
24 namely, that the objectives of the Coastal Act would be met by acceptance of the offer to
25 dedicate and would provide additional public access to the coast. Because the Conservancy
26 made findings of fact and conducted a hearing at which "evidence was heard and taken on issues
27 including, but not limited to, whether the acceptance of the dedication by the Conservancy was
28 consistent with the Coastal Act, the Conservancy's enabling legislation and interim guidelines,"

1 petitioners argue that the Conservancy acted quasi-judicially by making a decision involving the
2 "determination and application of facts peculiar to an individual case." (Opp., p. 5.)

3 Petitioners argue that "[i]n order to be consistent with the Coastal Act and Conservancy's
4 enabling legislation, the Conservancy had to make the *factual determination* that this specific
5 Lot, 21704 Pacific Coast Highway, Malibu, California, and its specific geographical and
6 topographical characteristics were consistent with the Conservancy's mandate to provide *safe*
7 beach access to the community." (Opp., p. 5.) Petitioners, however, fail to specify any section in
8 either the Coastal Act (Pub. Resources Code, § 30000, *et seq.*) or in the Conservancy's enabling
9 act (Pub. Resources Code, § 31000, *et seq.*) which requires the Conservancy to make findings of
10 consistency with specific sections of the Coastal Act. Petitioners cannot cite statutory
11 requirements that the Conservancy make findings of consistency because none exists. Even if
12 there were such a statutory requirement, however, such a statutory requirement "does not stamp
13 the function with an adjudicative character." (Joint Council of Interns & Residents v. Board of
14 Supervisors, *supra*, 210 Cal.App.3d at 1212.) The Legislature commonly makes findings of fact
15 in passing legislation. That does not render its actions "quasi-judicial."

16 Petitioners also argue that the Conservancy acted quasi-judicially because it held a public
17 hearing involving "primarily . . . the *factual question* of whether the provision of public access at
18 this location was appropriate." (Opp., p. 5.)

19 The California Supreme Court explicitly held in 20th Century Ins. Co. v. Garamendi,
20 *supra*, 8 Cal.4th at 278-279, that a quasi-legislative action, such as the rate rollback at issue in
21 that case, could involve the finding of facts in a hearing where evidence was taken. The court
22 cited with approval to Wilson v. Hidden Valley Mun. Water Dist. (1967) 256 Cal.App.2d 271,
23 279.) "[A]dministrators exercising quasi-legislative powers commonly resort to the [judicial]
24 hearing procedure to uncover, at least in part, the facts necessary to arrive at a sound and fair
25 legislative decision. . . . Hence the presence of certain characteristics common to the judicial
26 process does not change the basically quasi-legislative nature of . . . proceedings." (*Ibid.*)

27 Petitioners' argument that the making of findings and holding of a public hearing where
28 evidence was taken demonstrate a quasi-judicial procedure is wrong. Petitioners do not and

1 cannot cite any relevant judicial authority for their argument.

2 C. A Due Process Hearing Was Not Required.

3 Petitioners argue that a due process hearing was required because the Conservancy
4 "*performed the function of a fact-finder* in determining the suitability of the Lot for the uses for
5 which it was dedicated. In other words, the Conservancy applied its judgment to a particular,
6 existing, set of circumstances and facts in order to make factual determinations regarding the use
7 of the Lot for public beach access." (Opp., p. 6.) Further, petitioners chide the Conservancy for
8 failing to cite any legal authority for its claims that it is not statutorily required to hold a due
9 process hearing. (Opp., pp. 5-6.)

10 As discussed above in section A, the Conservancy's action was principally political in
11 nature and quasi-legislative, because the Conservancy was "[c]onfronted with an issue which
12 impacted the community as a whole." (Joint Council of Interns, *supra*, 210 Cal.App.3d 1210;
13 accord, Wilson v. Hidden Valley Mun. Water Dist., *supra*, 256 Cal.App.2d at 281.)

14 As alleged in the petition, the Coastal Commission approved a coastal permit amendment
15 which affected the property rights and interests of the real parties. (Pet., ¶¶ 6, 7.) Petitioners
16 allege that the Conservancy accepted the dedication. (Pet., ¶¶ 12, 14.) Petitioners allege no
17 adjudication of their individual property rights and interests by the Conservancy's decision;
18 instead, the injury they allege is "that (i) public safety will be severely compromised; and (ii)
19 Applicants will develop their Projects with massive homes (on a public beach) not properly
20 mitigated according to the mandates of the Coastal Act and CEQA." (Pet., ¶ 51.)

21 Petitioners have alleged that public policy relative to public access was at issue in
22 accepting the dedication, but have not alleged that the Conservancy's action did anything other
23 than satisfy "the Commission's [permit] requirement to provide public view and pedestrian
24 access." (Pet., ¶ 12.) Their allegations demonstrate that public access was a political issue and
25 "far more was involved than the resolution simply of the private rights and interests of the
26 petitioners." (Wilson, *supra*, 256 Cal.App.2d at 281.) Consequently, the Conservancy's action
27 was quasi-legislative, and due process does not require a hearing. (See Wulzen v. Board of
28 Supervisors, *supra*, 101 Cal. at 22.)

1 Further, administrative mandamus is not proper where a hearing is not statutorily
2 required. (Code Civ. Proc., § 1094.5(a); Bunnett v. Regents of University of California (1995)
3 35 Cal.App.4th 843, 848; Joint Council of Interns & Residents, *supra*, 210 Cal.App.3d at 1212.)
4 Petitioners have not and cannot cite to any statutory authority requiring the Conservancy to hold
5 an evidentiary hearing in order to act. Since an evidentiary hearing is not statutorily required,
6 ordinary mandate must be used to review an agency's decision. (Bunnett, *supra*, 35 Cal.App.4th
7 at 848.)

8 D. The Petition Should Have Been Brought in Ordinary Mandate.

9 Finally, petitioners argue that the motion to strike should not be granted, because the
10 motion "elevates form over substance." (Opp., p. 7.) Because petitioners have purportedly
11 pleaded sufficient facts to constitute valid claims for ordinary mandate, petitioners maintain that
12 the petition should not be stricken. Notwithstanding how they have pled, petitioners argue that
13 the court "can always issue the proper writ." (Opp., p. 8.)

14 Petitioners argue that ordinary mandamus for a quasi-legislative action and administrative
15 mandamus for quasi-judicial action is "a distinction without a difference" and cite as authority
16 Cadiz Land Company v. Rail Cycle, L.P. (2000) __ Cal.App.4th __, 99 Cal.Rptr.2d 378, 412;
17 Friends of the Old Trees v. Department of Forestry & Fire Protection (1997) 52 Cal.App.4th
18 1383, 1389; Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th
19 182, 192; and Kuhn v. Department of General Services (1994) 22 Cal.App.4th 1627, 1641.

20 The holdings in these cases are not as broad as petitioners assert. In Cadiz Land
21 Company, the court decided that evidence outside the administrative record could only be
22 introduced in both ordinary mandamus and administrative mandamus actions where violations of
23 CEQA are alleged, since both actions require review in light of the administrative record and a
24 finding that the proffered additional evidence could not have reasonably been obtained during the
25 administrative proceedings. In Friends of Old Trees, the court decided that in appellate review of
26 an alleged CEQA violation, the court's review is *de novo* and so a trial court determination to
27 allow additional evidence in an ordinary mandate proceeding could be reconsidered on appeal.
28 Stanislaus Natural Heritage Project also dealt with the issue whether additional evidence should

1 have been introduced in a CEQA action. Each of these cases was dealing with appellate court
2 review standards and the court could compare the result reached in the proceedings below to the
3 outcomes after appellate review, whether or not the trial court treated the litigation as ordinary
4 mandamus or administrative mandamus. In Kuhn, the court found that the appellant's assertion
5 that the action had not been properly litigated as an administrative mandate proceeding was
6 inconsequential, because, upon review of the trial court's finding that the Board had no discretion
7 to revoke the action by the Department of General Services, the trial court had acted improperly
8 as to the administrative mandate proceeding and so relitigation in ordinary mandate would not
9 have produced a different result.

10 The observable similarity of outcomes in some cases, however, does not mean that
11 precedents drawn from administrative mandamus proceedings should be applied to all ordinary
12 mandate actions. (See Balch Enterprises, Inc. v. New Haven Unified School Dist. (1990) 219
13 Cal.App.3d 783, 792.) Balch Enterprises, Inc. follows a "long line of cases," including Stauffer
14 Chemical Co. v. Air Resposuces Board (1982) 128 Cal.App.3d 789, 794 and Sierra Club v. City
15 of Hayward (1981) 28 Cal.3d 840, 848-849, which hold that review by ordinary mandamus is
16 different than administrative mandamus because it is "confined to an examination of the agency
17 proceedings to determine whether the action taken is arbitrary, capricious or entirely lacking in
18 evidentiary support." (*Id.* at 791.) Review of a quasi-legislative decision is "appropriate only by
19 means of ordinary mandate" and "is grounded on the doctrine of the separation of powers."
20 (Brydon v. East Bay Mun. Utility Dist. (1994) 24 Cal.App.3d 178, 196.)

21 The evidentiary standard "entirely lacking in evidentiary support" is not the same as
22 "substantial evidence." Evidentiary support in ordinary mandate may consist of substantial
23 evidence or be something less. The fact that the evidentiary support in many, if not most cases,
24 is substantial does not mean it is an identical standard. The Conservancy's motion to strike
25 should be granted to avoid potential prejudice which could result if the outcomes for the different
26 standards of review, in fact, do not prove to be identical. Although the court has inherent power
27 to treat the petition as if it were brought in ordinary mandate, overruling of this motion to strike
28 would unnecessarily cause further briefing and argument of the same issues, a waste of judicial

1 resources and attorney time.

2 III. INJUNCTIVE RELIEF CANNOT BE PLED IN LIEU OF MANDATE.

3 Petitioners argue that the purported fourth cause of action for injunctive relief seeks "a
4 provisional remedy to insure that effective relief is not made impossible before a trial on the
5 petition can even be held." (Opp., p. 13.) The Opposition misstates the substance of the fourth
6 cause of action which is silent regarding provisional remedies and fails to allege more than the
7 conclusory statement that petitioners "will be greatly or irreparably injured" because public
8 safety will be compromised and houses will be built. (Pet., ¶ 52.) Petitioners fail to allege any
9 facts demonstrating the urgency of their allegation. Petitioners have not alleged any facts
10 indicating, for example, when the State Public Works Board will take title in the name of the
11 State, a precondition for transfer of management to the Conservancy, or when the Conservancy
12 will consider a plan to open the site for public access.

13 Paragraph 4 of the prayer seeks "an injunction from this Court enjoining the Conservancy
14 from (i) accepting the dedication, (ii) transferring title of the Lot to the Conservancy and (iii)
15 opening the Lot for public access." The prayer for relief for the fourth cause of action is
16 substantially the same as the prayer for relief for the first, second and third causes of action,
17 which request a "writ directing the Conservancy to set aside its decision to accept the dedication
18 of the Lot."

19 Injunctive relief is not available to review an administrative decision in lieu of bringing
20 an action in mandate. (See Western States Petroleum Assn. v. Superior Court (1995) 9 Cal.4th
21 559, 567; Langsam v. City of Sausalito (1987) 190 Cal.App.3d 871, 879; Tushner v. Griesinger
22 (1959) 181 Cal.App.2d 599, 606-607.) The fourth cause of action, as drafted, seeks a prohibitory
23 injunction, which effectively would "set aside" the Conservancy's acceptance of the offer to
24 dedicate by preventing the Conservancy from accepting the dedication, having title transferred to
25 it and opening the site for public use. Practically speaking, the relief is the same. The fourth
26 cause of action, therefore, is alternative to review in mandate and must be disallowed. (*Ibid.*)

27 Petitioners argue that the fourth cause of action for injunctive relief is permissible
28 because the court could grant a prohibitory injunction or provisional relief based on its verified

1 petition. Whether or not the allegations are sufficient in the petition for the court to grant such
2 relief, which respondent denies, a prohibitory injunction issuing from a court's consideration of a
3 mandate cause of action is different than a separate cause of action for injunctive relief.
4 Petitioners cite no judicial precedent which allows a cause of action for preliminary and
5 permanent injunctive relief in a mandate action; petitioners' authority involves only the joinder
6 of injunctive relief with a cause of action for damages. (Opp., p. 13.) However, in Board of
7 Supervisors v. California Highway Commission (1976) 57 Cal.App.3d 952, 961, the court stated
8 the general proposition that "a court is without power to interfere with purely legislative action,
9 in the sense that it may not command or prohibit legislative acts. . . ."

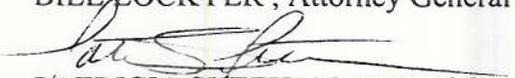
10 A court may issue peremptory relief in a mandate action to prevent violation of a statute,
11 which prescribes a mandatory, ministerial duty, but the court may not command a quasi-
12 legislative body to exercise its discretion in a particular manner. (Monarch Cablevision, Inc. v.
13 City Council (1966) 239 Cal.App.2d 206, 211.) Petitioners have not alleged in the petition facts
14 demonstrating that the Conservancy's decision to accept the dedication "is purely ministerial, and
15 discretion is not involved, and . . . that [petitioners are] clearly entitled to the writ." (*Ibid.*)
16 Consequently, petitioners' request for injunctive relief should be stricken. The petition seeks to
17 compel the Conservancy to act in a particular manner rather than reviewing the Conservancy's
18 administrative proceedings to determine that no evidence at all supports its action. Since
19 discretion is inherent in the Conservancy's action, the appropriate remedy, if the Conservancy
20 were found to have acted improperly, would be a remand to the Conservancy for further
21 proceedings in accordance with applicable law.

22 IV. CONCLUSION

23 For the reasons stated above, the entire petition should be stricken pursuant to Code of
24 Civil Procedure section 436, because it is characterized improperly as an action for
25 administrative mandamus, and the fourth cause of action for injunctive relief should be stricken.

26 Dated: September 27, 2000

BILL LOCKYER, Attorney General

27 
28 PATRICIA SHEEHAN PETERSON, Deputy A.G.
Attorneys for State Coastal Conservancy

DECLARATION OF SERVICE

Case Name: LA COSTA BEACH HOMEOWNERS' ASSOCIATION, et al. v. CALIFORNIA STATE COASTAL CONSERVANCY

Case No. Los Angeles County Superior Court No. BS063275

I declare:

I am employed in the County of Alameda. I am over the age of 18 years and not a party to the within entitled cause; my business address is 1515 Clay Street, 20th Floor, Oakland, California 94612-1413

On September 28, 2000, I served the following document(s):

1. **REPLY BRIEF OF RESPONDENT CALIFORNIA STATE COASTAL CONSERVANCY SUPPORTING DEMURRER TO PETITION FOR WRIT OF MANDATE AND INJUNCTIVE RELIEF**

2. **REPLY BRIEF OF RESPONDENT CALIFORNIA STATE COASTAL CONSERVANCY IN SUPPORT OF MOTION TO STRIKE PETITION FOR WRIT OF MANDATE AND INJUNCTIVE RELIEF AND PORTION THEREOF**

by facsimile and that I caused such documents to be served via facsimile electronic equipment transmission (fax) on the parties in this action by transmitting a true copy to the following fax numbers listed under each addressee below.

PATRICIA L. GLACER, ESQ.
CHRISTENSEN, MILLER, FINK, JACOBS,
GLASER, WEIL & SHAPIRO, LLP

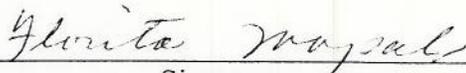
FAX NO. (310) 556-2920

ANDREW CUSHNIR, ESQ.

FAX NO. (310) 772-6635

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on September 28, 2000, at Oakland, California.

FLORITA MAPALO



Signature

1 BILL LOCKYER
 Attorney General
 2 J. MATTHEW RODRIQUEZ
 Senior Assistant Attorney General
 3 PATRICIA SHEEHAN PETERSON
 Deputy Attorney General
 4 State Bar No. 067122
 1515 Clay Street, Suite 2000
 5 Oakland, CA 94612
 Telephone: (510) 622-2152
 6 Fax: (510) 622-2170
 Attorneys for Respondent State Coastal Conservancy

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES

<p>LA COSTA BEACH HOMEOWNERS' ASSOCIATION, et al., Petitioners, v. CALIFORNIA STATE COASTAL CONSERVANCY, Respondent,</p>	<p>GAMMA FAMILY TRUST, BROAD REVOCABLE TRUST and NANCY M. DALY LIVING TRUST, Real Parties-in-Interest.</p>
--	---

Case No.: BS063275
 REPLY BRIEF OF RESPONDENT
 CALIFORNIA STATE COASTAL
 CONSERVANCY SUPPORTING
 DEMURRERTO PETITION FOR
 WRIT OF MANDATE AND
 INJUNCTIVE RELIEF

Date: 10/5/00
 Time: 9:30 a.m.
 Dept: 85

1 I. INTRODUCTION

2 The State Coastal Conservancy ("Conservancy") has demurred to three of the four causes
3 of action alleged in the petition on the grounds that they fail to state facts sufficient to constitute
4 a cause of action: the first cause of action alleging that the Conservancy failed to comply with
5 certain policy provisions of the Coastal Act (Pub. Resources Code, § 30000, *et seq.*); the third
6 cause of action alleging that the Conservancy violated CEQA provisions by accepting the offer to
7 dedicate; and the fourth cause of action seeking injunctive relief separately from the mandate
8 cause of action. The Conservancy did not demur to the second cause of action alleging that the
9 Conservancy abused its discretion by accepting the offer to dedicate, although the Conservancy
10 disputes the allegations of wrongdoing, as well as the veracity of many of the subsidiary
11 allegations.

12 In its Opposition, petitioners argue that the demurrer to the first cause of action should be
13 overruled because the Conservancy is "*independently* charged with the responsibility of
14 implementing the Coastal Act's guidelines and policies." (Opp., p. 10.) Petitioners argue that
15 the demurrer to the third cause of action should be overruled because the Conservancy cannot
16 show at the demurrer stage that the Coastal Commission's CEQA review was determinative as to
17 the Conservancy and that the Conservancy's reliance on categorical exemptions is a question of
18 fact which cannot be decided on demurrer. As to the demurrer to the fourth cause of action,
19 petitioners argue that they have pled properly a cause of action for injunction.

20 Petitioners' arguments are not persuasive. First, no section of the Coastal Act mandates
21 that the Conservancy make findings of compliance with the Coastal Act. Nor does any section of
22 the Conservancy Act mandate that the Conservancy make findings of compliance with Coastal
23 Act policies in sections 30210 or 30214. The Conservancy does not act quasi-judicially.
24 Whether it acts quasi-legislatively, or administratively, to implement legislative directives, the
25 Conservancy has no obligation to make findings. Second, the Conservancy was not required by
26 CEQA to do environmental review; the Coastal Commission was responsible for reviewing the
27 project's environmental effects. Third, a cause of action for injunctive relief cannot be joined
28 with a mandate cause of action, absent a showing not made by petitioners that mandate cannot

1 provide adequate relief.

2
3 II. ALLEGATIONS THAT THE CONSERVANCY VIOLATED THE
4 COASTAL ACT DO NOT STATE A VALID CAUSE OF ACTION.

5 Petitioners allege that the Conservancy made "findings of consistency pursuant to Section
6 30210 of the Coastal Act . . . [which] requires that recreational opportunity be provided in a
7 manner 'consistent with public safety.'" (Pet., ¶ 26(a).) Petitioners also allege that the
8 Conservancy "made findings of consistency with Section 30214(4) of the Coastal Act . . . which
9 require that implementation of public access policies take into account the unique 'facts and
10 circumstances in each case' including the 'topographic and geologic site characteristics' and 'the
11 capacity of the site to sustain use and at what level of intensity.'" (Pet., ¶ 26(b).)

12 The Conservancy maintains that neither the Coastal Act nor the Conservancy Act
13 mandates the Conservancy to make findings of compliance with sections 30210 or 30214 of the
14 Coastal Act in deciding to accept a fee interest in land offered pursuant to a coastal development
15 permit condition. Because petitioners have alleged that the Conservancy did make findings of
16 fact, petitioners argue that the Conservancy was acting quasi-judicially. According to
17 petitioners, "the Conservancy is charged with making "*factual findings*" that any proposed
18 dedication for beach access is consistent, with, among other Coastal Act mandates, the safety
19 policies of Section 30210 and the resource policies of Section 30214." (Opp., p. 11.)

20 Petitioners fail to identify any statutory provision of the Coastal Act which requires the
21 Conservancy to make findings of consistency with Coastal Act policies. Conversely, Coastal Act
22 section 30604(a) explicitly requires the Coastal Commission to issue a coastal development
23 permit if it finds that the proposed development is in conformity with the policies in Chapter 3,
24 which includes sections 30210 and 30214. The Coastal Act provides no authority to the
25 Conservancy to review permit applications.

26 Petitioners argue that the Conservancy has an "independent duty" to determine whether
27 its actions are consistent with the Coastal Act under Conservancy Act sections 31054 and
28 31104.1. (Opp., p. 10.) Petitioners posit that section 31054 vests the Conservancy "with
responsibility for *implementing* programs in the coastal zone *within policies and guidelines*

1 *established pursuant to . . . the Coastal Act.*" (Opp., p. 10.) Petitioners state that this
2 responsibility is further described in section 31104.1:

3 "The conservancy shall serve as a repository for lands whose reservation is *required to*
4 *meet the policies and objectives of the Coastal Act . . . Pursuant to that authority*, the
5 conservancy may accept dedication of . . . interests in lands, including interests *required*
6 *to provide public access to recreation and resources areas in the coastal zone.*"
(Emphasis added.) (Opp., p. 10.)

6 Petitioners contend that these sections must be construed as requiring the Conservancy to
7 determine whether its acceptance of the offer to dedicate is consistent with the Coastal Act and to
8 make factual findings that the dedication itself is consistent with the Coastal Act policies in
9 sections 30210 and 30214. (Opp., p. 11.) Petitioners hypothesize that "if the Conservancy were
10 just a passive administrative vehicle for implementing the Commission's decisions, it would not
11 have been created as an independent agency with powers complementary to the Commission."
12 (*Ibid.*)

13 Petitioners are not entitled to a writ of mandate unless they show that the Conservancy is
14 not performing a duty that petitioners are entitled to have performed. (Motion Picture Studio
15 Teachers & Welfare Workers v. Millan (1996) 51 Cal.App.4th 1190, 1196.) Essentially,
16 petitioners need to show that these sections impose a mandatory duty on the Conservancy to
17 review its actions under the Coastal Act and to make findings. Legislative intent must be
18 ascertained to determine whether these sections are mandatory or directory. (See Morris v.
19 County of Marin (1977) 18 Cal.3d 901, 910.) Statutory construction is a matter of law to be
20 determined by the court. (MacDonald v. State of California (1991) 230 Cal.App.3d 319, 327.)

21 The first rule of statutory construction is to look at the statutory language itself to
22 determine whether the language is clear and leaves no uncertainty as to legislative intent.
23 (DuBois v. Workers' Comp. Appeals Bd. (1993) 5 Cal.4th 382, 387-388.) "In the absence of
24 express language, the intent must be gathered from the terms of the statute construed as a whole,
25 from the nature and character of the act to be done, and from the consequences which would
26 follow the doing or failure to do the particular act at the required time." (McDonald, supra, 230
27 Cal.App.3d at 327.)

28 These sections are directory in nature, rather than mandatory. The language sets goals to

1 acquire lands for public access, but does not describe specifically when or what lands should be
2 acquired. (See Creason v. Department of Health Services (1998) 18 Cal.4th 623, 634-635.) The
3 Legislature's enactment of Public Resources Code section 30610.6 illustrates that the Legislature
4 does specify with particularity the location of lands and uses to be allowed when it intended to
5 mandate specific lands to be acquired in order to settle litigation between the Coastal
6 Commission and The Sea Ranch Association. (See Morris v. County of Marin, *supra*, 18 Cal.3d
7 at 910.)

8 Section 31054 has no clear statement that the Conservancy must review its actions for
9 consistency with the Coastal Act and make findings. In contrast, Coastal Act section 30604
10 explicitly states that the Coastal Commission has permit responsibility and must make findings
11 of consistency with Coastal Act policies. The omission by the Legislature of express
12 requirements for making findings of consistency by the Conservancy even though the Legislature
13 expressly required findings to be made by the Coastal Commission indicates the legislative intent
14 not to require findings to be made by the Conservancy, under the principle of *expressio unius est*
15 *exclusio alterius*. (People v. Drake (1977) 19 Cal.3d 749, 755.)

16 The provision in section 31104.1 that the Conservancy "shall serve as a repository for
17 lands . . . required to meet the policies and objectives of the Coastal Act" appears to set a
18 mandatory duty, but the latter clause "[p]ursuant to that authority, the conservancy may accept
19 dedication of . . . interests in lands, including interests required to provide public access," by
20 substituting the word "may" for "shall" in front of "accept," is describing a discretionary activity.
21 (Hogya v. Superior Court (1977) 75 Cal.App.3d 122, 133.) A reasonable construction is that the
22 Conservancy serves as a holder of coastal lands determined by an unspecified agency to be
23 necessary to meet the public access goals of the Coastal Act. That interpretation also is
24 consistent with section 31350 which vests in the Conservancy "authority to acquire and hold key
25 coastal resource lands which otherwise would be lost to public use."

26 Since section 31351 requires the Conservancy to cooperate with the Coastal Commission,
27 which is the primary agency to which legislative authority has been delegated to plan and
28 determine what uses are appropriate in the coastal zone, a reasonable construction of sections

1 31350 and 31104.1 is that the Coastal Commission is the agency determining which lands are
2 required to meet Coastal Act goals.

3 Although legislative intent is expressed in the Conservancy Act that the Conservancy
4 implement a public access program in the coastal zone (Pub. Resources Code, §§ 31054, 31350
5 and 31400.), the Legislature provided substantial discretion to the Conservancy to decide how
6 implementation of these access goals would be achieved. Sections 31054 and 31104.1 construed
7 in the broader context of the Conservancy Act's discretion, the provisions requiring the
8 Conservancy to cooperate and defer to Coastal Commission determinations regarding coastal
9 planning (e.g., Pub. Resources Code, §§ 31351, 31258.), and the Coastal Act's explicit
10 requirements that the Coastal Commission make findings of consistency with Coastal Act
11 policies when the Commission acts on development permits, all demonstrate that the legislative
12 intent in sections 31054 and 31400.1 was not to require the Conservancy to review its actions for
13 consistency with the Coastal Act and to make findings, as petitioners argue.

14 Petitioners failed to address the Conservancy's argument that the first cause of action
15 would effectively usurp the role of the Coastal Commission in reviewing and approving the
16 amendment of the coastal development permits for real parties. The Coastal Commission has
17 jurisdiction over development permits in Malibu since there is no certified Local Coastal
18 Program. (Pet., ¶ 13; Pub. Resources Code, § 30604.) Those who dispute Coastal Commission
19 determinations are provided a right of judicial review pursuant to Public Resources Code section
20 30801. No other public agency is accorded a right to review the appropriateness of the Coastal
21 Commission's decision absent litigation. If, however, the Conservancy were required to make its
22 own independent findings that the dedication was consistent with Coastal Act policies, the
23 Coastal Commission's determination would not be final. The Conservancy cannot make findings
24 inconsistent with those of the Coastal Commission without usurping its regulatory role to
25 determine appropriate development and uses in the coastal zone. If the Coastal Commission has
26 made an improper decision or findings, that determination should be made by the court, rather
27 than a separate State agency which lacks appellate authority over the Coastal Commission.

28 Further, the demurrer should be sustained because the Conservancy does not act quasi-

1 judicially; its actions properly should be characterized as quasi-legislative because of the political
2 nature of its decision to accept the fee interest in the property being dedicated for public use.
3 (20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216, 275; Wilson v. Hidden Valley Mun.
4 Water Dist. (1967) 256 Cal.App.2d 271, 280-281; Reagan v. City of Sausalito (1962) 210
5 Cal.App.2d 618, 621-622.) The decision to acquire particular property at a given time is
6 inherently a "political and legislative question and not a judicial one." (See Wulzen v. Board of
7 Supervisors (1894) 101 Cal. 15, 21.)

8 Substantial judicial precedent holds that findings are not required when an agency makes
9 a quasi-legislative decision and also that an agency may make findings without jeopardizing the
10 characterization of its action as quasi-legislative. (E.g., 20th Century Ins. Co., *supra*, 8 Cal.4th at
11 278-279; accord, Wilson v. Hidden Valley Mun. Water Dist., *supra*, 256 Cal.App.2d at 279;
12 Joint Council of Interns & Residents v. Board of Supervisors (1989) 210 Cal.App.3d 1202,
13 1212.) The Legislature frequently makes findings when it enacts legislation. No one would
14 suggest that such findings are quasi-judicial; they are intrinsic to the legislative process.

15 Even if the Conservancy's decision to accept the dedication should be characterized as an
16 administrative act to implement legislative policies and purposes declared by the Legislature (see
17 Hubbs v. People ex rel. Dept. Pub. Wks. (1974) 36 Cal.App.3d 1005, 1008-1009), the
18 Conservancy's decision would still not be quasi-judicial, but rather would be considered an
19 executive decision. Findings of fact are not required for executive decisions. Any findings made
20 as part of administrative decision-making would not transform the administrative action into a
21 quasi-judicial action.

22 The Conservancy's demurrer to the first cause of action should be sustained without leave
23 to amend. Petitioners do not and cannot demonstrate any statutory requirement that the
24 Conservancy review its actions for consistency with Coastal Act policies in sections 30210 and
25 30214. Further, the Conservancy acts either quasi-legislatively or administratively, and so due
26 process considerations for quasi-judicial actions are not grounds for requiring the Conservancy to
27 make findings. The fact that the Conservancy has made findings does not transform the nature of
28 its decision-making to quasi-judicial.

1 III. THE CONSERVANCY WAS NOT REQUIRED TO DO CEQA REVIEW.

2 Petitioners have alleged that the Conservancy's decision to accept the dedication violated
3 CEQA because the Conservancy deferred to the Coastal Commission without making its own
4 independent environmental review and failed to consider significant public safety impacts. (Pet.,
5 ¶¶ 41, 42.) Petitioners seek in this cause of action to have the Conservancy reevaluate the project
6 and CEQA analysis completed by the Coastal Commission.

7 Petitioners admit that CEQA review was done by the Coastal Commission during its
8 review of the permit amendment, in that the Coastal Commission has a certified regulatory
9 program. (Pet., ¶ 6; 14 Cal. Code Reg. § 15251(c).) Petitioners argue, however, that the Coastal
10 Commission failed to consider adequately environmental concerns posed by the proposed
11 dedication. (Pet., ¶¶ 6, 10, 11.) Petitioners have exercised their right to judicial review of the
12 Coastal Commission's determination and filed an action for administrative mandate against the
13 Coastal Commission, which currently is pending in Department 86 of the Los Angeles County
14 Superior Court. Petitioners will get relief if the Coastal Commission's action is judge improper.

15 At the Conservancy hearing, petitioners repeated their environmental objections which
16 had been raised before the Coastal Commission to the Conservancy. (Pet, ¶¶ 13, 16.) Petitioners
17 also have sued the Conservancy because it did not reevaluate the environmental data considered
18 by the Coastal Commission.

19 CEQA requires all lead agencies to do environmental analysis of significant
20 environmental impacts for a project. (Pub. Resources Code, § 21100.) Section 15378 of the
21 Guidelines describes "project" as "the whole of an action, which has a potential for resulting in
22 either a direct physical change in the environment, or a reasonably foreseeable indirect physical
23 change in the environment" and includes "(3) an activity involving the issuance . . . of a . . .
24 permit . . . for use by one or more public agencies." The Guidelines further specify in subsection
25 (c): "The term 'project' refers to the activity which is being approved and which may be subject
26 to several discretionary approvals by governmental agencies. The term 'project does not mean
27 each separate governmental approval."

28 The project to which petitioners object in this action involves the permit amendment

1 considered and approved by the Coastal Commission. Petitioners maintain that the Lot was not
2 suitable to be dedicated for public access because of public safety problems related both to traffic
3 and geology/geography. The Coastal Commission approved the permit amendment which
4 resulted in the Lot dedication for public access. The Conservancy, however, has no nexus to the
5 permit approval. The Conservancy has no permit or regulatory authority, and its decision to
6 accept the dedication is totally separate and independent of the Coastal Commission's regulatory
7 authority to impose development conditions.

8 The Conservancy's role is similar to that of Caltrans in Lexington Hills Assn. v. State of
9 California (1988) 200 Cal.App.3d 415, 430. Like Caltrans, the Conservancy has no power to
10 approve the relevant project. The Conservancy is not a responsible agency, because it has no
11 "discretionary approval power over the project." (14 Cal. Code Reg., § 15381.)

12 As stated in the Guidelines, the "project" includes all the related discretionary approvals.
13 (14 Cal. Code Reg., § 15378(c).) CEQA generally does not contemplate multiple environmental
14 analyses for a single project. Where more than one agency could be considered potentially a lead
15 agency, the first agency to act on the project becomes the lead agency and is responsible for the
16 environmental analysis. (Citizens Task Force on Sohio v. Board of Harbor Comrs. (1979) 23
17 Cal.3d 812, 814.) Once an environmental impact report has been done for a project, that
18 "determination shall be final and conclusive on **all persons**, including responsible agencies,
19 unless challenged as provided in Section 21167." (Pub. Resources Code, § 21080.1.)

20 The Conservancy did not challenge the Coastal Commission's environmental analysis
21 judicially, and so the Coastal Commission's environmental analysis is final and conclusive as to
22 the Conservancy as part of the group "all persons." The Conservancy was not required under
23 CEQA to prepare environmental documentation regarding the governmental decision to issue a
24 coastal development permit amendment, because it had no "power to 'approve,' in any relevant
25 sense, the project as . . . defined." (Lexington Hills Assn. v. State of California, supra, 200
26 Cal.App.3d at 430.) Consequently, the demurrer to the third cause of action should be sustained
27 without leave to amend.

28 //

1 IV. A CAUSE OF ACTION FOR INJUNCTIVE RELIEF IS NOT STATED.

2 A cause of action for injunctive relief is not proper where there is an adequate civil
3 remedy in mandamus. (Moore v. Superior Court (1936) 6 Cal.2d 421, 423-424.) Petitioners have
4 not alleged in the petition that mandamus is unavailable to them. (See Heyenga v. City of San
5 Diego (1979) 94 Cal.App.3d 756 (preliminary injunction issued to enjoin punitive transfer of
6 police officer until an administrative appeal could be provided).) Nor have petitioners alleged
7 any special circumstances which render mandamus inadequate. Injunctive relief is not available
8 to review an administrative decision in lieu of bringing an action in mandate. (Moore, supra, 6
9 Cal.2d at 423-424; see Tushner v. Griesinger (1959) 171 Cal.App.2d 599, 606-607; Langsam v.
10 City of Sausalito (1987) 190 Cal.App.3d 871, 879; Western States Petroleum Assn. v. Superior
11 Court (1995) 9 Cal.4th 559, 567.)

12 Petitioners' injunctive relief cause of action procedurally circumvents the review
13 standards established for a mandamus action. The court may fashion injunctive relief for a
14 mandate cause of action. Through injunctive relief, petitioners could impermissibly control the
15 Conservancy's exercise of discretion.

16 Because injunctive relief is not available where petitioners have failed to demonstrate that
17 the civil remedy of mandamus is unavailable or inadequate, the fourth cause of action should be
18 denied without leave to amend. Petitioners are required to bring their action in mandamus,
19 which they have already done as the second cause of action

20 V. CONCLUSION

21 For the reasons discussed above, the Conservancy's demurrer to the first, third and fourth
22 causes of action should be sustained without leave to amend on the grounds that no cause of
23 action has been stated.

24 Dated: September 27, 2000

BILL LOCKYER
Attorney General



PATRICIA SHEEHAN PETERSON
Deputy Attorney General

Attorneys for State Coastal Conservancy

DECLARATION OF SERVICE

Case Name: LA COSTA BEACH HOMEOWNERS' ASSOCIATION, et al. v. CALIFORNIA STATE COASTAL CONSERVANCY

Case No. Los Angeles County Superior Court No. BS063275

I declare:

I am employed in the County of Alameda. I am over the age of 18 years and not a party to the within entitled cause; my business address is 1515 Clay Street, 20th Floor, Oakland, California 94612-1413

On September 28, 2000, I served the following document(s):

1. **REPLY BRIEF OF RESPONDENT CALIFORNIA STATE COASTAL CONSERVANCY SUPPORTING DEMURRER TO PETITION FOR WRIT OF MANDATE AND INJUNCTIVE RELIEF**

2. **REPLY BRIEF OF RESPONDENT CALIFORNIA STATE COASTAL CONSERVANCY IN SUPPORT OF MOTION TO STRIKE PETITION FOR WRIT OF MANDATE AND INJUNCTIVE RELIEF AND PORTION THEREOF**

by facsimile and that I caused such documents to be served via facsimile electronic equipment transmission (fax) on the parties in this action by transmitting a true copy to the following fax numbers listed under each addressee below.

PATRICIA L. GLACER, ESQ.
CHRISTENSEN, MILLER, FINK, JACOBS,
GLASER, WEIL & SHAPIRO, LLP

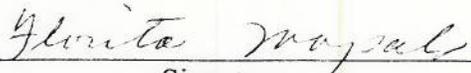
FAX NO. (310) 556-2920

ANDREW CUSHNIR, ESQ.

FAX NO. (310) 772-6635

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on September 28, 2000, at Oakland, California.

FLORITA MAPALO



Signature