CITY OF GOLETA

July 12, 2012

The Honorable Tani Gorre Cantil-Sakauye, Chief Justice
and the Honorable Associate Justices of the
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *City of Malibu v. California Coastal Commission*, No. S203352
Opposition to Request for Depublication

To the Chief Justice and Associate Justices:

I am writing on behalf of the League of California Cities (the "League"), pursuant to Rule of Court 8.1125(b), to oppose the requests of the California Coastal Commission and the California Department of Transportation (collectively referred to herein as the "Commission") for depublication of the Second District Court of Appeal decision in *City of Malibu. v. California Coastal Commission* (2012) 206 Cal.App.4th 549 (No. S203352; the "Opinion"). The League is an association of 469 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the State. The committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide or nationwide significance. The committee has identified this case as being of such significance.

The League is particularly interested in the continued publication of the Opinion because it is the only decision to address the contours of Public Resources Code section 30515, which is part of the California Coastal Act (the "Coastal Act") [Pub. Resources Code, §§ 30000 et seq.[1]]. The Opinion meets the standards for publication set forth in Rule 8.1105(c): The Court applies section 30515 to purported unilateral amendments by the Coastal Commission to a certified Local Coastal Program ("LCP") to

[1] All statutory references are to the California Public Resources Code unless otherwise specified.

accommodate a proposed public works plan, rather than a public works project or energy facility. Cal. Rules of Court Rule 8.1105(c)(2) ("Applies an existing rule of law to a set of facts significantly different from those stated in published opinions"). The Court also explains the relationship between the narrow exception in section 30515 to the general rule in section 30514 that amendments to a certified LCP must be initiated by the local government. Rule 8.1105(c)((3) ("...explains...with reasons given, an existing rule of law"). The Opinion relies heavily on quotation from and citations to the Coastal Act to explain the respective roles of the Coastal Commission and the local jurisdiction before and after certification of an LCP, thereby clarifying the statute and making a significant contribution to the legal literature interpreting the Coastal Act. (Rule 8.1105(c)(4),(7).) The implementation of the Coastal Act by local government through certified LCPs is a matter of continuing public interest. (Rule 8.1105(c)(6).) For these reasons, the League submits that the Court of Appeal properly certified its Opinion for publication.

California cities serve two functions. Primarily, cities govern municipal affairs with authority derived from the California Constitution and applicable general state laws. [Cal Const. art. XI, § 7; *Long v City of Fresno* (1964) 225 CA2d 59, 65.] Cities also implement statewide policies with authority delegated by the Legislature. There are many statutory schemes that allocate authority between local government and a state agency in areas such as housing law [see Gov.t Code, § 65585 (providing for state review of local housing elements to determine consistency with state housing policy)]; solid waste reduction [see Pub. Resources Code, §§ 40000, et seq. (California Integrated Waste Management Act requiring plans and programs to reduce solid waste)]; the National Pollution Discharge Elimination System program [see Wat. Code, §§ 13370-13389 (State Water Resources Control Board administers federal Clean Water Act, issuing permits to cities for, among other things, stormwater management)]; and traffic congestion management [see Gov. Code, § 65088, et seq. (Requiring cities to establish congestion management programs to meet and maintain state and regional levels of service)].

The state's coastal policies are set forth in Chapter 3 of the Coastal Act. As the Court of Appeal explains in the Opinion, the Coastal Act implements statewide coastal policies through coastal development permits. The Coastal Act requires every local government within the Coastal Zone to adopt an LCP to implement the state's coastal policies. An LCP is a local planning document that contains land use policies and implementing ordinances which, taken together, implement the Coastal Act policies. The Coastal Act leaves to local government to determine the precise content of the LCP. In this way, the Legislature struck a balance between the local government's interest in defining community character through land use regulation and the state's interest in promoting

public access and preserving sensitive coastal resources. The Coastal Commission is charged with certifying that the LCP adopted by the local government conforms with statewide policies.

Once an LCP is adopted by the local government,[2] the Coastal Commission is given two primary authorities: to certify the LCP and to consider appeals of a limited category of permits within its jurisdiction defined by the Coastal Act. The fact that local land use policies and implementing ordinances have been certified as consistent with the statewide policies set forth in the Coastal Act ensures that all future development lawfully authorized by a locally-issued coastal development permit will be consistent with the Act's policy goals.

In this case, the Coastal Commission exceeded its jurisdiction established by the Legislature and insinuated itself into the authority expressly reserved by the Coastal Act for local decision making regarding the precise content of a LCP and the amendment of a certified LCP. The City of Malibu considered numerous requests for amendments to its certified Local Coastal Plan put forward by the Santa Monica Mountains Conservancy and Mountains Recreation and Conservation Authority (collectively the Conservancy.) The effect of the changes was to create an overlay district with special rules for Conservancy property. Malibu approved most -- but not all -- of the requested changes, finding some requests were not necessary to achieve the purposes of the Coastal Act and were inconsistent with the interests of the community. The Conservancy appealed the decision to the Coastal Commission. The Commission disregarded the carefully balanced and reasoned decision of the Malibu City Council and granted the Conservancy all of its requested amendments.

In the litigation that followed, the Commission and the Conservancy argued that, despite the plain language of the Coastal Act, the Commission has unfettered ability to approve any change to a LCP, notwithstanding the objections of the local jurisdiction, so long as the request is made by a person who is authorized to undertake a public work project. In this case, not only was no public work project proposed, there was no project. The application was merely for creation of an overlay district or plan.

The Second District Court of Appeal, in a unanimous and thoughtful decision, simply applied the language of the Coastal Act to determine that the Commission exceeded its jurisdiction. The Court recited the clear legislative intent expressly set forth in the

[2] Prior to certification of an LCP, the Coastal Commission issues coastal development permits if the proposed development is consistent with the policies in Chapter 3 of the Coastal Act. After certification, permitting authority is vested in the local government.

Coastal Act that it is the local jurisdiction which is given the authority to make changes to its certified LCP. The Commission is given limited review over local decisions only to determine if the changes are consistent with the Coastal Act and then only to the extent needed to meet basic state goals. Section 30515 creates a narrow exception for certain public works projects which extend beyond the local jurisdiction. The Court correctly determined that the public works project exception of section 30515 does not apply to the Conservancy's overlay plan.

Ironically, the Department of Transportation supports the request for depublication to preserve the public works project exception which the Court expressly and explicitly recognized and validated. The decision recognized that the public works project exception does apply to requests which are for public works projects. This is the Department's stated interest. Indeed, the decision upholds and is protective of the interest and position the Department advanced in its letter.

The Court properly certified the Opinion for publication. The Coastal Commission argues that the decision was wrongly decided. That is not the issue or standard for publication. That is an issue for review. The League believes that the decision was properly decided and the statute correctly interpreted. But we also recognize that is not the standard for publication. Rule of Court 8.1105 sets forth the standards for certification, which, as discussed above, are clearly met by the Opinion.

The Coastal Commission states that its motivation for requesting depublication is so that it can ignore the decision of the Court and continue its practice of ignoring the legislatively narrow language of the public works exception, continuing to overrule locally reasoned decisions in support of a variety of agencies regardless of the purpose of the request. There are no prior court decisions which interpret the public works exception of section 30515. The Commission's interpretation has been the only rule of law on this subject. The Opinion, for the first time, explains the meaning of section 30515 while criticizing the Coastal Commission's practice which ignored the language of the statute. The Opinion's construction of section 30515 is important because it is the only objective authority available to local jurisdictions to check attempts by the Coastal Commission to usurp the authority vested in them by the Coastal Act to control the precise content of their local coastal plans. If the Opinion is depublished, cities will be deprived of its guidance and the Coastal Commission will persist in its position that wrongly extends its jurisdiction beyond that granted by the statute.

The Coastal Commission's statement that, if the Opinion is depublished, it intends to continue to override local authority based on the faulty interpretation advanced in this case, makes this a classic situation of a decision that must remain published to address

a continuing and important public interest. If the Commission persists it its misapplication of the public works exception, litigation must necessarily follow in its wake. The parties and the courts will be searching for authority to guide them. If the Opinion is depublished, those future litigants and judges would be deprived of the benefits of the efforts involved in this case. The courts would unnecessarily be clogged by the wasteful redundancy of retrying this same issue time after time. The public would be burdened by the repeated litigation as taxpayers would foot the bill for the courts, attorneys for the local jurisdictions and the Commission, and public applicants all plow the same ground already worked to harvest in the instant case.

For the foregoing reasons, the League respectfully submits that the Opinion was properly certified for publication as it meets the standards for publication. We therefore urge this Court to deny the requests to depublish the decision.

Sincerely

Tim W. Giles
City Attorney

C Patrick Whitnell, League General Counsel
See Proof of Service

PROOF OF SERVICE

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 130 Cremona Drive, Suite B, Goleta, CA 93117.

On July 12, 2012, I served the foregoing document described as: **OPPOSITION TO DEPUBLICATION REQUEST** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

The Honorable Tani Gorre Cantil-Sakauye,
Chief Justice and the Honorable Associate
Justices of the Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

SEE ATTACHED SERVICE LIST

BY U.S. MAIL, I caused such envelope to be deposited in the mail, with postage thereon fully prepaid, at Goleta, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in the affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on July 12, 2012 at Goleta, California.

Ashley Flores

City of Malibu vs. The California Coastal Commission

Supreme Court Case No: S203352

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