CALIFORNIA COASTAL COMMISSION
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November 8, 2010

Gerald M. Sato
Deputy City Attorney
City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012

Subject: Imposition of an ordinance establishing a beach curfew without the required coastal development permit

Dear Mr. Sato:

I am writing this letter in response to your October 1, 2010 letter to reiterate what my staff has already expressed regarding our desire to work with the City of Los Angeles to reach an amicable resolution to the issue of the City's imposition of a City beach curfew (via LAMC Section 63.44(B)(14)(b)) without the required coastal development permit. As you know, Commission staff has offered to work with the City to process the required coastal development permit in order to address the City's public safety and/or other concerns while still protecting and preserving public access to public beaches, as required by the Coastal Act. Instead, the City's position, as expressed in your letter, is to dispute the applicability of the Coastal Act in this matter.

You assert in your October 1 letter that imposition of the subject beach curfew ordinance does not require a coastal development permit because an ordinance is not development pursuant to the Coastal Act. You claim that "'development' in the Coastal Act always refers to "physical structures and things: buildings, walls, fences, etc." Thus, you argue that in reviewing the beach curfew ordinance, which you assert does not constitute development, through the coastal development permit process, the Coastal Commission would be acting as "super legislature or court," inconsistent with the separation of powers defined by the Constitution of the State of California.

Contrary to the assertions in your October 1 letter, the term "development" in the Coastal Act is not limited to physical structures. The Court of Appeals has repeatedly rejected similar claims, most recently earlier this year. See Gualala Festivals Committee v. California Coastal Comm'n (2010) 183 Cal.App.4th 60, 68, review denied (June 9, 2010). "Development" is broadly defined by Section 30106 of the Coastal Act as:

> ***"Development" means, on 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 the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, 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 harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....*[underlining added]**

Consistent with this definition, the Coastal Commission routinely regulates development that does not involve physical structures, as it is clearly authorized to do, and the courts have routinely upheld this. See, e.g., California Coastal Comm'n v. Quanta Investment Co. (1980) 113 Cal.App.3d 579 (affirming the Commission's jurisdiction over conversion of an apartment complex into a stock cooperative); La Fe, Inc. v. County of Los Angeles (1999) 73 Cal. App. 4th 231 (affirming the Commission's jurisdiction over lot line adjustments); Gualala Festivals Committee, supra (affirming the Commission's jurisdiction over a proposed fireworks display). As a change in intensity of use of land and access to water, a beach curfew ordinance restricting public access certainly is development pursuant to the Coastal Act, and therefore, requires a coastal development permit. Our letter dated September 17, 2010, and its attachments documented some of the Commission's long history of reviewing access restrictions such as beach curfew ordinances.

Imposition of the beach curfew ordinance clearly constitutes development since it restricts public access to the sea. Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. The subject beach curfew ordinance lacks the required coastal development permit. Thus, far from acting as a "super-legislature or court," in notifying the City that its beach curfew ordinance requires a coastal development permit, the Commission is seeking to ensure protection of coastal resources by administering the permit program that state law requires it to implement. Nor do we agree with your contention that if the Commission were able to review the laws of charter cities, it would create a separation of power problem. Indeed, the fundamental structure of the Coastal Act (honored in countless cases over more than 30 years) gives the Commission review authority over local governments' general plans and zoning ordinances. See Chapter 6 of the Coastal Act (Cal. Pub. Res. Code ("PRC") §§ 30500 *et seq.*), and in particular sections 30512, 30513, and 30514 ("ordinances, regulations, and other actions may be amended by the

appropriate local government, but no such amendment shall take effect until it has been certified by the commission"), and PRC sections 30108.6 and 30108.5.[1]

Since imposition of the beach curfew ordinance is properly subject to the permit requirements of the Coastal Act, as explained in the previous paragraph, it is unnecessary for the Commission to address this matter through the judicial or political process, avenues to resolution of this issue that your letter suggests the Commission consider. As you know from our prior communications, we are more than willing to work with you via the coastal development permit process to analyze the situation regarding what would be approvable under the relevant Coastal Act provisions. Furthermore, as explained herein, the Commission certainly has the statutory right and responsibility to enforce the permit requirements of the Coastal Act.

You assert in your letter that the Commission is requiring the City to obtain a coastal development permit for development the City has undertaken because the City and Commission are engaged in litigation over the issue of overnight parking districts in Venice. Although it is altogether unfortunate in terms of both of our staffs' time and resources that the permit process did not resolve that issue, despite both of our staffs agreeing to a proposed resolution of the matter, I assure you that the Commission staff's investigation of the instant matter is independent of the Venice overnight parking district dispute and is not intended, as you put it, to "harass the City into abandoning its litigation against the Commission." Again, our September 17, 2010 letter demonstrates the Commission's historical focus on access restrictions such as beach curfew ordinances.

We cannot stress enough that the significance of the coastal resource affected by the subject beach curfew ordinance warrants a considerable effort by our agencies to work together to reach a mutually acceptable solution. Protection of public access in the Coastal Zone is among the highest priority policies of the Coastal Act; the Commission and local governments are mandated under Section 30210 of the Coastal Act to ensure that "...maximum access...and recreational opportunities shall be provided for all people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." As the population in coastal regions continues to grow, beaches and coastal parklands have become more popular and vital everywhere as visitor destinations for recreational use throughout the day, night, and year. Increasingly, coastal communities have experienced an intensification of conflicts between residents and visitors resulting in imposition of a variety of restrictions on public access to or use of public beaches and coastal public recreation areas. The contemporary situation demands the Commission take special care to address local actions pertaining to beach access.

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[1] Similar arguments were also raised with respect to the Commission's predecessor's permitting authority (that it was an "invalid state intrusion into municipal affairs of chartered cities") after the passage of Proposition 20 (the predecessor to the Coastal Act) in 1972, and the courts rejected those arguments as well. See CEEED v. California Coastal Zoe Conservation Comm'n (1974) 43 Cal.App.3d 306, 320-324.

As you are no doubt aware, use of public beach access opportunities along a heavily urbanized coastline such as Los Angeles by its many residents (and visitors) for their recreational needs is intense. Any potential infringement upon these opportunities must be considered as a potentially serious threat to public access to the coast and addressed accordingly. We believe that through the coastal development permit process, the City's concerns can be addressed, and hours of use may be legally established for City beaches consistent with Coastal Act provisions. Should the City decide to pursue the coastal development permit route, Commission staff is immediately available for consultation. However, should the City take the position that no further action is required, or otherwise ignore the coastal development permit requirements of the Coastal Act, Commission staff will have no choice but to pursue formal enforcement action to resolve this matter. Please note that although we strongly prefer to resolve this matter through the coastal development permit process, Coastal Act Section 30809 states that if the Executive Director of the Commission determines that any person (defined in PRC section 30111 to include a "local government") or government agency has undertaken, or is threatening to undertake, any activity that requires a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission itself may also issue a cease and desist order.

We remain hopeful that an amicable resolution to this matter can be achieved and are committed to working with City staff to that end. I respectfully request your reply by November 23, 2010 with an indication of how the City intends to proceed. If you have any questions in the interim, please do not hesitate to contact Andrew Willis at (562) 590-5071 or me at (415) 590-5202.

Sincerely,

PETER DOUGLAS
Executive Director

cc: John Ainsworth, Deputy Director, CCC
Lisa Haage, Chief of Enforcement, CCC
N. Patrick Veesart, Enforcement Supervisor, Southern Districts, CCC
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