



PACIFIC LEGAL FOUNDATION

April 28, 2009

Honorable Justices Orville Armstrong,
Paul Turner, and Richard Mosk
Court of Appeal, Second Appellate District, Division 5
Ronald Reagan State Building
300 So. Spring St. 2nd Floor
Los Angeles, CA 90013

Re: Request for Certification of *Farr v. California Coastal Commission*,
No. B204874, 2009 WL 946901 (Cal. Ct. App. Apr. 9, 2009)

Dear Honorable Justices:

Pursuant to California Rule of Court 8.1120, Amicus Curiae Pacific Legal Foundation (PLF) respectfully requests that this Court publish its decision in *Farr v. California Coastal Commission et al.*, 2009 WL 946901 (Cal. Ct. App. Apr. 9, 2009).

I

INTEREST OF AMICUS CURIAE PACIFIC LEGAL FOUNDATION

PLF is a nonprofit, tax-exempt corporation organized under the laws of the State of California for the purpose of litigating matters affecting the public interest. For over thirty-five years, PLF has been litigating in support of property rights. *See, e.g., Kelo v. City of New London*, 545 U.S. 469 (2005); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302. (2002); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

Through its Coastal Land Rights Project, PLF participates in litigation against coastal land use agencies, like the California Coastal Commission, in order to advance the property rights of coastal landowners. For example, PLF attorneys successfully represented coastal landowners in the landmark property rights case of *Nollan v. California Coastal Comm'n*, 483 U.S. 825. Since *Nollan*, PLF attorneys have continued to litigate for property owners seeking to ensure the Coastal Commission in particular does not overstep its statutory and constitutional bounds. *See Burke v. California Coastal Comm'n*, 168 Cal. App. 4th 1098 (2008); *Douda v. California Coastal Comm'n*, 159 Cal. App. 4th 1181 (2008); *Feduniak v. California Coastal Comm'n*, 148 Cal. App. 4th 1346

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(2007); *Benson v. California Coastal Comm'n*, 139 Cal. App. 4th 348 (2006); *Schneider v. California Coastal Comm'n*, 140 Cal. App. 4th 1339 (2006).

The decision in this case clarifies important and unsettled questions of law concerning the scope of the Commission's power to "protect views to and along the ocean." PLF has substantial expertise in the scope and interpretation of the Coastal Act (Pub. Res. Code § 30000, *et seq.*), and it represents the views of thousands of supporters, including property owners whose ability to develop, use, and enjoy their land often depends upon the Commission's consideration of the "views" provision. Given the frequency with which this issue arises and the added clarity that the *Farr* decision provides, it is PLF's considered view that this Court should publish it.

II

THE OPINION MEETS THE STANDARD FOR CERTIFICATION

Under Rule 8.1105(c), an appellate opinion "should be certified" for publication if it meets any one of nine criteria. The decision in this case satisfies at least two of the listed criteria.

A. The Opinion Clarifies an Important Provision of the Coastal Act

First, the Court's opinion "[a]dvances a new interpretation, clarification, criticism, or construction of a provision of a . . . statute"—namely, the "views" provision of the Coastal Act. Cal. Ct. R. 8.1105(c)(4). Under the Coastal Act, the Commission must consider and protect "scenic and visual qualities" in the coastal zone when reviewing a development permit application. Pub. Res. Code § 30251. And "[p]ermitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas." *Id.* This Court's decision clarifies the scope of this provision.

Does Section 30251 protect "every view . . . from every intrusion," Opinion at 5, such that the Commission must deny a permit for development that would restrict, however slight, ocean and scenic views? This Court carefully construed Section 30251 and concluded it does not give the Commission such sweeping authority. The Court held that the Legislature never "intended that permits be denied for all projects which infringed in any way, no matter how minimal, on any view, no matter how limited, for anyone, from any vantage point, no matter the proximity of unlimited and expansive views." *Id.* Instead, the opinion sets out the proper method for applying Section 30251's "views" mandate: The Commission must simply "consider" and, *where feasible*, "protect" views impacted by a development. *Id.* at 5-6.

The Court's decision is the latest in a series of appellate decisions construing Section 30251. But it is the *first* to consider, in such plain terms, the reach of the "views" provision when impacts are minimal and an alternative siting for the proposed development is infeasible. *See, e.g., Douda v. California Coastal Comm'n*, 159 Cal. App. 4th at 1199-1200 (whether Section 30351, or other Coastal Act sections, authorizes the Commission to regulate views four and a half miles inland); *LT-WR, L.L.C. v. California Coastal Comm'n*, 152 Cal. App. 4th 770, 797 (2007) (whether the Coastal Act authorizes the Commission to determine that prescriptive rights for public use exist on private property); *Schneider v. California Coastal Comm'n*, 140 Cal. App. 4th at 1345 (whether Section 30251 protects views "from" the ocean in addition to views from land of the ocean); *Sierra Club v. California Coastal Comm'n*, 35 Cal. 4th 839, 847-48 (2005) (whether the Commission grant or deny permits on the cumulative visual and scenic impacts in the coastal zone of projects outside the coastal zone); *La Costa Beach Homeowners' Ass'n v. California Coastal Comm'n*, 101 Cal. App. 4th 804, 815 (2002) (whether the Commission may mitigate impacts on the coastal beach access by requiring the dedication of offsite beach for public use). Because it adds to the legal literature in this highly contentious area of coastal land use law, and provides guidance on how to construe Section 30251, the decision should be certified for publication.

B. The Opinion Involves a Legal Issue of Continuing Public Interest

The opinion should be certified for another reason: It "[i]nvolves a legal issue of continuing public interest." Cal. Ct. R. 8.1105(c)(6). The proper construction of the Section 30251's "views" provision always will be of continuing public interest as long as the Commission must consider a project's impact on "views"—*i.e.*, as long as there is almost *any* type of activity *anywhere* in the coastal zone.

The Commission reviews, directly or on appeal, innumerable permit applications for coastal development permits involving impacts to views in the coastal zone. The following is a representative list of permits that raise a "views" issue:

- **Moser Development Project Staff Report (2000)**—The Commission considered whether the approved construction of 37 single-family residences and associated drainage facilities was properly "designed to protect public views to and along the ocean and scenic coastal areas." *See* <http://www.coastal.ca.gov/eureka/A-1-HUM-00-16.pdf>.
- **McNamee After-the-Fact-Permit Staff Report (2004)**—The Commission relied upon impact to "views" for its decision to issue a cease-and-desist order against a couple for having beach amenities (tables, benches, a palapa, etc.) on their private yard. *See* <http://www.coastal.ca.gov/legal/Th12-5-2004.pdf>.

- **Stroud Development Project Staff Report (2007)**—The Commission reviewed whether a permit to demolish an existing home and construct a much larger one on an oceanfront lot sufficiently obstructed public coastal views to warrant revocation. <http://documents.coastal.ca.gov/reports/2007/1/Th7b-1-2007.pdf>.
- **Nelson Development Project Staff Report (2007)**—The Commission considered whether the construction of a garage, a retaining wall, and a shed were consistent with the “visual resource protection policies . . . designed to protect views to and along the ocean.” <http://documents.coastal.ca.gov/reports/2007/6/F12c-6-2007.pdf>.

This list contains just a sampling of the permit applications that raise “views” issues. There are countless more. Sometimes, as in this case, the Commission reasonably applies Section 30251’s “views” provision; at other times, it does not. *See, e.g., Schneider*, 140 Cal. App. 4th at 1345 (court rejecting Commission’s attempt to protect occasional boater or kayaker’s view from the ocean to the land).

CONCLUSION

This Court’s opinion satisfies the criteria for certification. The Court’s analysis and decision in this case provide much-needed guidance on an important legal issue of continuing interest to the Commission and coastal landowners. For these reasons, the Court should certify its decision in this case.

Respectfully submitted,



ALISSA J. STRONG
Attorney for
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Letter Brief Re: Request for Certification was filed with the Clerk this 28th day of April, 2009, via Federal Express. I further certify that true copies of the foregoing Letter Brief were served this day via first-class mail, postage prepaid, upon each of the following:

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which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 28th day of April, 2009, at Sacramento, California.


DONNA GREENE