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IS THE CALIFORNIA COASTAL COMMISSION SCAMMING THE CALIFORNIA LEGISLATURE?

By Ronald A. Zumbrun*

Recently California's government has not had a good record concerning truthful communications with the public. Is it possible that the Coastal Commission is successfully misleading the Legislature on pending legislation relating to its purported interest in protecting the coast? Could it really be a disguised means to create a new source of funds for the Commission during these economic times at the expense of property owners in the coastal zone?

AB 226, authored by Assemblymember Ruskin and co-authored by Assemblymember Saldaña, has passed the Assembly and is scheduled in the Senate Judiciary Committee for a July 7, 2009 hearing. It provides that in addition to other penalties imposed for violating the California Coastal Act, a person, including a landowner, is subject to an administrative civil penalty that may be imposed by the Commission in an amount not less than \$5,000 and not to exceed \$50,000 *for each violation*. This would allow the Commission to bypass the courts and record a lien on the property in the amount of the penalty.

All funds thus derived would be deposited in the Coastal Act Services Fund for the purpose of carrying out the

enforcement activity. Presently all penalties are deposited in the Violation Remediation Account of the Coastal Conservancy Fund. In other words, the money now would go to the Coastal Commission instead of the Coastal Conservancy and would provide it with a new bonanza source of funds – a bonus provided by landowners. What a solution to the current budget problems.

The author's message states that as California's most significant land use regulator, the Commission lacks one of the most significant enforcement tools. "All other boards, agencies, commissions, departments, districts and local agencies have administrative civil penalty authority." The author even implies that the Coastal Commission is limited to issuing cease and desist orders. The author additionally contends that "the CCC is handicapped by its current reliance on the Attorney General to bring action for civil penalties. This is a time-consuming and resource-intensive process." Since the Attorney General presently must represent the Commission in court, "the Commission can only process a small percentage of all violations given its limited resources." "Further, court-imposed penalties have a limited deterrent effect on would-be-violators."

Let's compare this sad story to what really goes on with the Commission. First, any disturbance imposed on the coastal area without a permit constitutes a violation of the Coastal Act. This even includes sunbathing using a portable sun umbrella on your private property above the public beach in Newport Beach, California, or replacing rotten planks on a landing midway down a stairway to the beach.

In fact, the Coastal Commission already has strong statutory enforcement authority. Public Resources Code section 30820 provides for civil liability for any violations of the Coastal Act. Civil liability may be imposed by the superior court in an amount that shall not exceed \$30,000 and shall not be less than \$500. For intentional violations the penalty is \$1,000 or not more than \$15,000 *per day* for each day in which the violation persists. Punitive damages are also authorized when a person has intentionally and knowingly violated the Act.

How about the real world of Coastal Commission enforcement? The case of Kathleen Kenny, which is featured in the *Sins of Commission* documentary (see my Feb. 9, 2009 *Daily Recorder* Viewpoint or www.sinsofcommission.com), unfortunately is a classic. She was fined by the Commission for building a 742-square-foot cottage on an existing developed pad in Topanga Canyon. The California Attorney General's Office, representing the Coastal Commission, imposed the fines and served a lawsuit against Ms. Kenny, not coincidentally the same day that a County of Los Angeles building inspector, Grant Lawseth, and two sheriff's deputies showed up at her front door with a search warrant.

The building inspector was miffed when Ms. Kenny later published an 8-page newsletter to 3,000 Topanga Canyon residents alleging that Lawseth sought bribes in exchange for Building Department approval. In an amazing turn of events, a federal jury in 1997 found that Mr. Lawseth

had engaged in a controversial practice of racketeering and awarded damages to Ms. Kenny under the Federal Racketeering and Corrupt Organization statutes.

Despite Ms. Kenny's subsequent death and the astonishing jury verdict, the Coastal Commission's fine is still on the books against her partner, Arthur Starz, and now exceeds over \$2 million.

In another example, according to a May 20, 2002 Coastal Commission press release, a former property owner in Asilomar Dunes agreed to pay a penalty of \$25,000 for grading environmentally sensitive habitat areas. The Commission's enforcement staff was to ensure that the new owner of the property properly restores the site. As an added insult the Commission designated the use of the \$25,000 to facilitate the opening and development of a trail across the property and possibly adjacent areas.

The most illustrative use of the Commission's current enforcement powers is the long-running dispute over coastal access next to music producer David Geffen's Malibu home. Mr. Geffen finally capitulated by paying \$300,000 to the Coastal Commission, thereby stopping the \$1,000 per day fine from accumulating.

One opponent of AB 226 is the Seacoast Preservation Association, headquartered in Encinitas, California, which has done so much to protect the coast. They oppose enabling the Coastal Commission "to unilaterally declare a violation of the Coastal Act on any property, unilaterally assessing a fine, unilaterally imposing a lien and ultimately foreclosing property without any external checks or balances."

The Seacoast Preservation Association does not believe that the Coastal Commission should be empowered to bypass the courts and "to act as prosecutor, judge, jury and executioner for coastal property owned throughout our entire state." This "would set a dangerous precedent for the state and devastate coastal home values."

As the author of AB 226 points out, the deposit of all penalties in the Coastal Act Services Fund could now be used by the Commission to further its enforcement activities. This is the creation of a new source of funds for the Commission from the fines or penalties imposed by the Commission itself. While it may solve the suggested "budgeting problem," I don't believe our Legislature could be scammed that much by the Commission's outlandish arguments.

This is not the only effort by the Coastal Commission to extort penalties from property owners. AB 291, now pending in the Senate Appropriations Committee, would require that if a person applying for a coastal development permit has a record of unresolved violations of the Coastal Act, that person would be ineligible to submit an application for a permit until the violations have been resolved.

Opponents argue that AB 291 imposes a "guilty until proven innocent" approach. Worse, it allows the Coastal Commission to deny permits for emergency repairs or any other permits. The list of unfair extortive tactics is endless. These combined bills, AB 226 and AB 291, mean that the Commission can bypass the courts, impose a penalty and place a lien on the involved property. In the future, paying off the lien would be a prerequisite in order to obtain a permit for any purpose. This is a dangerous bill that fully illustrates the unseemly appetite for abusive power sought by the tyrannical Commission.

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