

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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November 13, 2009

Mr. Ken Frank  
City Manager/  
City of Laguna Beach  
505 Forest Avenue  
Laguna Beach, CA 92651

Subject: City Council Adoption of Ordinance to Allow Closure of Beaches/Parks

Dear Mr. Frank:

This letter is in response to the action taken by the Laguna Beach City Council on November 2, 2009, to adopt an ordinance requiring closure of all City beaches and parks to public use between the hours of 1 am to 5 am. The ordinance would allow no person to enter, remain or stay on any City beach or in any City park at any time when such park is closed to public use. An exception is included indicating the provisions of the ordinance shall not apply to walking, jogging, scuba diving or fishing on the wet sand of all beaches. Individuals may go to or come from the wet sand for one of the mentioned purposes during the hours of closure by the most direct route available at any given location.

As indicated in our phone conversation on November 6, 2009, when public agencies initiate and institute such actions designed and intended to place a limitation on public access to beaches, ocean waters and coastal parks, before they can go into effect, such limitations must be reviewed under the policies of the Coastal Act and, where applicable, related public access policies of a certified LCP, through a coastal development permit. In the absence of such Coastal Act review, such restrictions on the public rights of access constitute a violation of law exposing the responsible agency to possible enforcement actions.

The Coastal Act defines "development" (PRC Section 30106) requiring a coastal permit from either the Coastal Commission or local government where a certified Local Coastal Program is in place to include "...change in the ... intensity of use of land...[or] change in the intensity of use of water, or of access thereto..." In addition, the Coastal Commission, in partnership with local government, is mandated under the Coastal Act (PRC Section 30210) to ensure that "...maximum access ... and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse."

In this particular case, the closure of beaches and parks within the City's coastal permit jurisdiction would require a coastal development permit from the City. Closure of beaches/parks within the Commission's area of original jurisdiction would require a coastal development permit from the Commission. The exception provided in the City's draft ordinance to allow direct access to wet sand for limited activities, does not obviate the need to obtain a coastal development permit from the Commission for implementation of the ordinance affecting access to State tidelands or public trust lands, or for the City to

process a coastal development permit for the limitations on access within its permit jurisdiction.

Due to ambulatory changes to the mean high tide line which is the jurisdictional boundary, the areas affected by the ordinance may be partially or entirely within the original jurisdiction of the Commission. Section 30601.3 of the Coastal Act authorizes the Commission to process a consolidated coastal development permit application when requested by the local government and the applicant and approved by the Executive Director, for projects that would otherwise require coastal development permits from both the Commission and from a local government with a certified LCP. The policies of Chapter 3 of the Coastal Act provide the legal standard of review for a consolidated coastal development permit application submitted pursuant to Section 30601.3, with the local government's certified LCP used as guidance. In this particular case, the City, which is also the permit applicant, may request the Commission to process a consolidated permit application and we would concur with that process.

We recognize the Coastal Act is not the exclusive law governing public access and use of beaches, parks and other coastal public places. In addition, in limited cases, declarations of nuisance and or emergency responses may be necessary and may not be subject to coastal permit requirements. The Commission has reviewed beach curfews which have been problematic in the past; however working together with the local government, we have been able to achieve a positive resolution of the matter. For example, when unruly or even criminal conduct occurred in a particular area (e.g., beach parking lots, particular beach areas), we were able to work with the appropriate law enforcement officials to focus the closure area and avoid an unnecessary far broader closure of an entire beach.

The Coastal Commission, local government, and the State Lands Commission share common goals in protecting public beach access while ensuring public safety. The City could also process the new ordinance as an amendment to City's certified LCP which, if approved by the Commission, could establish a standard of review for the subsequent coastal development permit issued by the City. However, any actions that limit or modify the public's ability to gain access to State tidelands or public trust lands within the Commission's area of original jurisdiction would require a coastal development permit from the Commission.

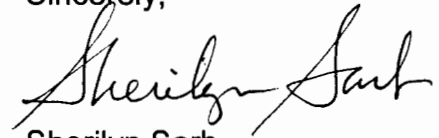
In conclusion, it is the position of Commission staff that implementation of the beach curfew ordinance qualifies as development under the Coastal Act and therefore requires a coastal development permit. Commission staff believes the most efficient way to handle this matter would be for the City to submit a consolidated coastal development permit application to the Commission. If the City disagrees with this determination that a coastal development permit is required, please explain the basis for the City's conclusion. For example, is it the City's position that the beach closure does not qualify as development, or does the City believe that the closure, although development, is somehow exempt from Coastal Act permitting requirements? We would appreciate a written response regarding

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the City position and how you plan to proceed as soon as possible and prior to the ordinance going into effect.

Please be advised, Commission staff views any City action to implement the ordinance without benefit of a coastal development permit to be unpermitted development. Please don't hesitate to call me with any questions or concerns regarding what we view as a very important matter affecting coastal access.

Sincerely,

A handwritten signature in cursive script that reads "Sherilyn Sarb".

Sherilyn Sarb  
Deputy Director,  
Orange County

cc: Teresa Henry, CCC  
Karl Schwing, CCC  
Chris Pederson, CCC  
John Montgomery, City of Laguna Beach  
Ann Larson, City of Laguna Beach  
John Pietig, City of Laguna Beach