

# ANGEL LAW

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## *Angel Law*

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## ***ANGEL LAW LITIGATION NEWS FOR CLIENTS AND FRIENDS***

Angel Law is pleased to announce a court victory on two important statewide coastal issues in the continuing struggle for effective public participation in California Coastal Commission decisions. On November 30, 2009, Judge James C. Chalfant of the Los Angeles County Superior Court decided in favor of our clients, William and Steve Littlejohn, in their case against the Coastal Commission and an applicant for a coastal development permit (CDP) for a large single-family residence in Malibu Colony, located adjacent to the wetlands of Malibu Lagoon, a mapped environmentally sensitive habitat area (ESHA).

In ordering the Coastal Commission to void the CDP, Judge Chalfant decided two issues of great importance to environmental activists. First, Judge Chalfant ruled that the California Environmental

Quality Act (CEQA) requires the Coastal Commission to circulate its CDP staff reports (which are deemed the functional equivalent of environmental impact reports) at least 30 days in advance of Commission hearings. Judge Chalfant made clear that the Coastal Commission's existing practice, which is to release its staff reports only about 15 days before its monthly meetings, violates CEQA. In forcing the Coastal Commission to give the public more time to review Commission staff reports, the Littlejohn decision substantially ameliorates the public's ability to provide comment or muster expert testimony for hearings on controversial projects.

Second, Judge Chalfant enforced the Coastal Commission's duty to consult with other state agencies at the Commission's de novo CDP review level. Judge Chalfant held that the Coastal Commission cannot satisfy its duty to consult with the Department of Fish and Game (DFG) by simply relying on the product of previous DFG consultation undertaken by the local government when it approves a

CDP in the first instance. Instead, the Coastal Commission now must itself independently consult with DFG where: (1) new questions within DFG's expertise or responsibilities as trustee or responsible agency have arisen after consultation with local government, or (2) DFG's comments to local government are ambiguous, in need of clarification or otherwise useful to address a CDP applicant's disputed interpretation of DFG comments or policies. The Littlejohn decision should provide the Coastal Commission and the public with the most up-to-date scientific information available while making sure trustee and responsible agencies are given an effective advisory role in Coastal Commission

decisions that affect sensitive coastal resources.



*Osprey in Monterey Cypress tree habitat extending into the space the project would occupy. Added buffer and preservation of this important roosting and sheltering habitat for the Malibu Lagoon wetlands' bird community was key to the Littlejohns' decision to challenge the Coastal Commission's approval of the project.*

## Practical Pointers for Public Commentators Before the Coastal Commission:

► When a Coastal Commission staff report is not being made available for public review for at least 30 days before the Coastal Commission hearing on a project, and you need more time to prepare your comments or find experts to assist you with your comments, write the Coastal Commission or the regional office staff to object to the curtailment of the CEQA-mandated 30-day comment period. State that under Public Resources Code section 21091 (part of CEQA), the Coastal

Commission must circulate its staff report on CDP applications (or, for that matter, local coastal programs or local coastal program amendments) for at least 30 days. Request a continuance of the hearing so the Coastal Commission can provide the full 30-day comment period.

► When circumstances suggest that consultation between Coastal Commission staff and DFG, a Regional Water Quality Control

Board or another state agency is relevant to the Coastal Commission's performance of its duties under the Coastal Act or the applicable local coastal program, and you believe consultation would be helpful, write Coastal Commission staff and request consultation. State that under Public Resources Code section 21081.5, subdivision (d) (part of CEQA), the Coastal Commission has a duty to consult with all public agencies that have jurisdiction, by law, with respect to the project under review. Work with the state agency you want Coastal Commission staff to consult with ahead of the consultation.



*Osprey in the company of Great Egrets in the Monterey Cypress tree habitat.*

If you have any questions or would like to obtain a copy of Judge Chalfant's decision, please do not hesitate to contact Jeff El-Hajj ([jelhajj@angellaw.com](mailto:jelhajj@angellaw.com)) or Frank P. Angel ([fangel@angellaw.com](mailto:fangel@angellaw.com)) at Angel Law.