

# ESHA REGULATION UNDER THE COASTAL ACT



Coastal Commission  
ESHA Workshop  
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# SECTION 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

# OVERVIEW

- **What Legal Principles Govern ESHA Designation?**
- **What Are the Consequences of ESHA Designation?**

# What Legal Principles Govern ESHA Designation?

# WHO DESIGNATES ESHA?

- If No LCP, Commission Designates ESHA
- If LCP, the LCP Policies Generally Control
  - LCPs map ESHA to varying degrees
  - LCPs may be more protective than Coastal Act

# SUBSTANTIAL EVIDENCE MUST SUPPORT DESIGNATION

- Evidence can take many forms
- Dispute among experts does not negate substantial evidence
- Refusal to designate ESHA must also be supported by substantial evidence

# ABSENCE OF SPECIES IS NOT DETERMINATIVE

*McAllister v. California Coastal Com'n* (2008)  
169 Cal.App.4th 912

“[T]he record supports a finding that the failure to observe butterflies during surveys at the site does not, standing alone, mean that the area is not butterfly habitat or potential habitat.”



# DEGRADED STATUS IS NOT DETERMINATIVE

- *McAllister*. Allowing destruction of plants to preclude ESHA designation “would . . . encourag[e] the covert destruction of developmentally desirable areas in habitat areas to render them subject to less restrictive habitat policies.”
- Rule re unpermitted development
- *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472: degraded upland was ESHA

# OTHER CONSIDERATIONS

- **Rarity of habitat supports designation**
- **Habitat resources do not need to be unique to the Coastal Zone**
- **Habitat dominated by non-native species can still be ESHA**

# Legal Effects of ESHA Designation

# SECTION 30240

- (1) Only resource dependent uses, and
- (2) No significant disruption of habitat values, and
- (3) Limits on development around ESHA

# RESOURCE-DEPENDENT USES

- “Resource dependent uses” include:
  - nature trails or public accessways
  - research or education
  - restoration or wildlife management
- Residential development not resource dependent, regardless of mitigation

# NO “SIGNIFICANT DISRUPTION OF HABITAT VALUES”

*Bolsa Chica Land Trust v. Superior Court*  
(1999) 71 Cal.App.4th 493

- “The Coastal Act does not permit destruction of an environmentally sensitive habitat area [] simply because the destruction is mitigated offsite.”
- ESHAs, “whether they are pristine and growing or fouled and threatened, receive uniform treatment”

# DEVELOPMENT AROUND ESHA

- **30240(b): Development adjacent to ESHA**  
“shall be sited and designed to prevent impacts which would significantly degrade those areas”
- **The Commission and LCPs generally require buffers around ESHA**

# NARROW EXCEPTIONS

- Section 30007.5 allows resolution of conflicting policies “in a manner which on balance is the most protective of significant coastal resources.”
- May “limit application of the resource protection policies to the extent necessary to allow a property owner a constitutionally reasonable economic use of his or her property.” *McAllister* (Section 30010)



# TAKE-HOME POINTS

- ESHA designation is site specific and must be based on evidence
- Area may be ESHA despite degraded status, lack of target species, and presence of non-natives

# TAKE-HOME POINTS

- All ESHA receives uniform protection
- Development must be resource dependent and not significantly disrupt habitat
- ESHA may not be destroyed but mitigated
- ESHA is protected by restricting development in and around ESHA
- Courts have vigorously guarded ESHA protections

# RELEVANT AUTHORITY

- *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493 (ESHA must be protected in place; degraded ESHA is protected equally; applicability of balancing provision (30007.5); overlap between ESHA and wetland protections)
- *McAllister v. California Coastal Com'n* (2008) 169 Cal.App.4th 912 (must interpret LCP ESHA policies to conform with 30240; relevance of degraded habitat and other factors in designating ESHA; meaning of “resource dependent use”; applicability of balancing provision (30007.5) and “takings” provision (30010))

# RELEVANT AUTHORITY

- *Sierra Club v. Cal. Coastal Com'n* (1993) 12 Cal.App.4th 602 (“*Pygmy Forest*”) (decision to not designate ESHA not supported by substantial evidence; discussing factors relevant to ESHA designation; “takings” concerns in ESHA designation (30010); applicability of balancing provision (30007.5))
  
- *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472 (protection of degraded ESHA; loss of habitat not justified by mitigation and project benefits)

# RELEVANT AUTHORITY

- *LT-WR, L.L.C. v. Cal. Coastal Com'n* (2007) 152 Cal.App.4th 770 (Commission authority to designate ESHA where no LCP; substantial evidence standard)
- *Ross v. Cal. Coastal Com'n* (2011) 199 Cal.App.4th 900 (ESHA buffers; interpretation of ESHA policies in LCP)
- *Security National Guarantee, Inc. v. Cal. Coastal Com'n* (2008) 159 Cal.App.4th 402 (limits on Commission's ability to designate ESHA if certified LCP contains clear language)