THERMIDOR IN LAND USE CONTROL?

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In the summer of 1987, the United States Supreme Court startled the environmental community by its ruling in Nollan v. California Coastal Commission. The Coastal Commission, a California state agency, in 1982 had granted a permit to Patrick and Merilyn Nollan for demolishing their delapidated beachfront bungalow in Ventura County, California, and replacing it with a considerably larger, three-bedroom house. Although the State of California owns all tide and submerged lands seaward of what is called the 'mean high tide' (thus guaranteeing a public right to walk on the wet sand), the Coastal Commission had granted this permit to the Nollans subject to the condition that they cede an additional lateral access easement for the public to pass across the beach area (owned by the Nollans) between the mean high tide on one side, and a seawall closer to their house on the other. The Nollans had objected that this condition amounted to an uncompensated "taking" of their property and so constituted a violation of the takings clause of the fifth amendment of the United States Constitution. After unsuccessfully battling their way through the California courts, the Nollans had appealed to the United States Supreme Court. In 1987, the latter in a landmark opinion sided with plaintiffs and invalidated the access condition on the ground that it indeed violated the Nollans' constitutionally protected property right.

The Coastal Commission, operative since 1972, had risen to national prominence for its assertive approach in matters such as coastal conservation, public access, and energy development. However, over the
years some of the Commission's ventures became highly controversial, thus inducing a movement to curtail or even discontinue the program. For example, in 1981 the California legislature removed the agency's authority to require low and moderate income housing in the coastal zone. In 1982, the new state governor, George Deukmejian, substantially cut the Coastal Commission's budget, though he did not succeed in "abolishing" the agency as he had vowed to do in his election campaign. Throughout the 1980s, governor Deukmejian (who was reelected in 1986) remained extremely hostile toward the Commission.

At the Coastal Commission's headquarters in San Francisco, the Nollan decision was perceived as another attempt to penalize the agency and restrain its ambitions. But how valid was this view? Before exploring the significance of the supposedly conservative turn in the Supreme Court's jurisprudence of takings, it may be useful to review the historical antecedents of the Coastal Commission and take a closer look at some of the agency's actions through the 1970's and 1980's.

Quiet Revolution

In 1971 the Council on Environmental Quality (CEQ) issued a report bearing the title, The Quiet Revolution in Land Use Control (Bosselman and Callies 1971). The report struck a responsive cord in both academic and professional circles, and since its date of publication it has been among the most frequently cited documents in writings on land use policy. In the

1 For this agency perspective on the Nollan decision, see the first newspaper reports on the case. E.g., Dimento 1987; N.Y.Times 1987. The political animus against the Coastal Commission most clearly surfaces in the briefs submitted by the representative of the Pacific Legal Foundation who acted as legal counsel for the Nollan family. See Pacific Legal Foundation 1985; Best 1987.
introduction to the report the arrival of the so-called 'quiet revolution' was announced in the following sentences:

This country is in the midst of a revolution in the way we regulate the use of our land. It is a peaceful revolution, conducted entirely within the law. It is a quiet revolution, and its supporters include both conservatives and liberals. It is a disorganized revolution, with no central cadre of leaders, but it is a revolution nonetheless.

The metaphor of revolution continued when the villain of the plot was introduced:

The ancien regime being overthrown is the feudal system under which the entire pattern of land development has been controlled by thousands of individual local governments, each seeking to maximize its tax base and minimize its social problems, and caring less what happens to all others.

The essential features of this revolutionary movement were described thus:

The tools of the revolution are new laws taking a wide variety of forms but each sharing a common theme—the need to provide some degree of state or regional participation in the major decisions that affect the use of our increasingly limited supply of land.

In their diagnosis of the modern ills of land use governance in the United States, the authors of the report singled out (1) the nearly exclusive reliance on zoning and (2) the parochial nature of this instrument:

The real problem is the structure of zoning itself, with its emphasis on very local control of land use by a dizzying multiplicity of local jurisdictions... It has become increasingly apparent that the local zoning ordinance, virtually the sole means of land use control in the United States for over half a century, has proved woefully inadequate to combat a host of problems of statewide significance, social problems as well as problems involving environmental pollution and destruction of vital ecological systems, which threaten our very existence.

The conventional system of land use governance, as it had been shaped in the early decades of the present century, also included master planning and subdivision control. But neither of these secondary instruments of
land use control, according to the CEQ-report, had succeeded in transcending the pervasive localism that accounted for the failure of zoning.

The bulk of The Quiet Revolution consisted of a review of nine innovative public programs of land use control in nine different states. The earliest of these programs dated from 1961, but most of them had been instituted only in the latter half of the 1960s. Though widely differing in scope and technique, all nine programs equally departed from the conventional mode of local growth management and control: they shared, in the words of the report, "a regional and land resource orientation that attempts to preserve and protect a vital resource--land--for the use of the region as a whole." Precisely this is the way in which they were said to "quietly revolutionize our land regulatory systems." A new breed of administrative organizations had been established to implement these revolutionary programs. The CEQ-report discussed the records of agencies such as the San Francisco Bay Conservation and Development Commission, the Twin Cities Metropolitan Council, and the New England River Basins Commission. While the California Coastal Commission was not listed (it did not exist at the time the report came out), that agency undoubtedly did incorporate all the essential features of the new breed reported in The Quiet Revolution.

The nation-wide movement for land use reform, according to some observers, showed signs of exhaustion in the second half of the 1970s (see, e.g., Rosenbaum 1976). The environmental impulse that had lent vigor to the movement earlier now was subsiding. Other social issues, notably energy, unemployment and inflation, seemed to have overtaken land use reform. Legislators had been debating different versions of a national land use bill since 1970, but in 1974 Congress failed to pass the National Land
Use Policy and Planning Assistance Act. After 1974, no further attempt was made to revive a national land use bill (Lyday 1976; Plotkin 1987).

Yet the revolution was far from spent. The new land use agencies continued to produce plans, develop programs, and exercise controls (cf. Healy and Rosenberg 1979 and de Neufville 1981). In California, the Coastal Commission throughout the 1970s remained highly active and visible. In fact, it was only because of this that the agency in the early 1980s suffered the aforementioned setbacks at the hands of the legislature and the governor. Even after these defeats, the Commission did not back down. On the contrary, it pursued the goals of its mandate and carried out its mission as vigorously as ever. And nowhere more markedly than with respect to 'coastal access.'

Access Shall Always Be Attainable

After California gained statehood in 1850, thousands of acres of public tidelands were sold into private hands. This practice generated typical abuses: monopolization of lands and wharves on the frontage of navigable waters, extortion practiced by tideland grantees, outright exclusion of the public from tidelands. To remedy these abuses and safeguard the public trust, the Constitutional Convention of 1879 adopted article X, section 4, providing that "(n)o individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purpose..."

Furthermore, section 4 also declared that "the Legislature shall enact such laws as will give the most liberal construction to this provision, so that
access to the navigable waters of this State shall be always attainable for the people thereof."

The precise scope of this 'constitutional right of access' has been a matter of political and legal dispute ever since 1879. The appearance of the Coastal Commission in 1972 only raised the stakes (Johnson 1981; Hoff 1981). The concern for public access to the coast has been of central importance in the life of the Commission from its very inception. Back in 1971, a movement to "Save Our Coast" was organized by the Coastal Alliance, a loose federation of groups interested in coastal preservation. After the California legislature had failed to enact coastal protective bills for a number of successive years, the Alliance in 1972 launched a campaign to pass the California Coastal Zone Conservation Act by way of initiative legislation. In November 1972, the California electorate approved Proposition 20, thereby creating the California Coastal Zone Conservation Commission (CCZCC). In 1976, the California legislature provided a permanent footing for the temporary CCZCC, renaming the agency into California Coastal Commission.

The agenda of the Coastal Alliance was by no means exclusively 'conservationist.' One of the founding members of the Alliance was COAAST: Californians Organized to Acquire Access to State Tidelands. Bil Kortum, the prime mover of COAAST, was the first president of the Coastal Alliance. The success of Proposition 20 itself has been attributed to this explicit concern for public access: "The 'Yes-on-20' campaign emphasized public-access problems, and the access issue probably was the key one for most voters." This view was based on a close reading of public opinion polls held during the campaign, as well as on the personal conviction of

2 Jonathan Hoff, incidentally, is the founder of PACE; see the text of the section on "Equality of Access," infra.
campaign manager Janet Adams who "felt that the overriding issue was access" (Duddleson 1978: 13, 212).

The legislative mandate reflected this concern for 'public access' in a number of ways. The California Coastal Zone Conservation Act of 1972 had authorized the temporary CCZCC to make a study of "the ecological planning principles and assumptions needed to ensure conservation of coastal resources," and to prepare, based on that study, "a comprehensive, coordinated, enforceable plan for the orderly, long-range conservation and management of the natural resources of the coastal zone." This Coastal Plan had to be submitted to the legislature no later than December 1, 1975. In addition to these planning duties, CCZCC was given a regulatory task to ensure that any development occurring in the permit area during the study and planning period would be consistent with the objectives of the Coastal Act.

The 1972 Coastal Act listed a number of elements the Coastal Plan had to include. One of these was "a public access element" intended to guarantee "the maximum visual and physical use and enjoyment of the coastal zone by the public." The Coastal Act also prescribed that all development permits issued by CCZCC would be subject to reasonable terms and conditions in order to ensure, among other things, that "access to publicly owned or used beaches, recreation areas, and national reserves is increased to the maximum extent possible by appropriate dedication."

Both in the exercise of its planning duties and in its regulatory work, CCZCC took these legislative instructions seriously. Permits allowing new development were routinely required to provide for public access, depending on local circumstances and on the nature of the project. The Commission's regulatory experience can be retraced in the Coastal Plan which CCZCC delivered at the close of 1975. The section of the Coastal Plan devoted to
"Public Access to the Coast" presented the rationale of the strict access policies CCZCC had elaborated over the previous years. The legal rights of public access to the coast, according to the Commission, were protected by the California Constitution, recognized by the courts of California, and acquired through historic use and custom. To put these rights into effect, the Commission had consistently required, and now proposed in its Coastal Plan, that in new developments public accessways to the coastline be provided, both from the nearest public road to the shoreline and along the coast. To this end a deed restriction covering the reserved accessway could be recorded, or the fee title or an easement for the reserved accessway could be dedicated to a public agency. However, dedicated accessways were not required to be opened to public use until a public agency or private association agreed to accept responsibility for maintenance and liability for the accessway.

There was another restrictive condition affecting the access policies of CCZCC. In its Coastal Plan, the Commission identified a number of instances in which it considered it "inappropriate" to demand public access: where (1) adequate access existed nearby, or (2) the topography made access dangerous, or (3) the proposed development was too small to include an accessway, or (4) the coastal resources were too fragile to accommodate general public use, or (5) public safety or military security precluded public use, or (6) the public accessway would adversely affect agricultural uses. Instead of requiring access, the Commission in such cases wanted the project sponsor to pay 'in lieu fees' to a fund for the acquisition, maintenance, and operation of public access at a suitable location elsewhere.
Equality of Access

The access policies of CCZCC also expressed a concern for what the agency habitually referred to as "the less affluent" or "low and moderate income people." This social concern was intertwined with the career of a citizens group called PACE: People, Access, Coastal Environment. PACE was not part of the original core of the Coastal Alliance, but grew out of the Lake Merced Coastal Preservation Council and the Coastal Heritage Foundation, two organizations that had been founded with $100,000 from the 1974 out-of-court settlement of a suit between three San Francisco High School students and a large development firm. Jonathan Hoff, one of the students, in August 1975 decided to withdraw for a year from the University of California, Berkeley, to help found and direct the new organization. In fact, PACE grew into a union of a great many small community groups based throughout the state. In a study that made use of interviews with Hoff the character of the organization was described thus:

PACE saw itself as pushing "people" issues, rather than "ecological" issues, the latter already being a major concern of other environmental organizations [such as Sierra Club, Audubon Society, Friends of the Earth and their like]. Consequently PACE adopted coastal access as its major issue and worked to organize at the community level, promoting itself as a "hardline," steadfast environmental organization. This strategy was adopted so that PACE, with its uncompromising positions, could force the other environmental groups to "stay honest" and perhaps less likely to compromise (Squire and Scott 1984: 5).

PACE organized local workshops on coastal problems, monitored the activities of CCZCC, lobbied the legislature in Sacramento, and remained active also after the latter had established a successor agency to CCZCC in 1976.

The Coastal Commission turned out to be quite sensitive to these 'people' issues. In 1974, for example, in deciding on a permit application
to build a warehouse for a marine boiler plant in San Diego, the Commission clearly explicated its philosophy. The area of this permit application was a largely-Chicano, primarily low-income residential area near the shores of San Diego Bay. It had been zoned for industry for many years, but it housed approximately 2-3000 people, who were trying to upgrade and improve their neighborhood. The coastal zone, the Commission stated, contains many natural resources deserving of protection under the Coastal Act. Next came these crucial considerations: "It also contains man-made resources--such as low-income neighborhoods near the shoreline--that are just as threatened as many of the natural resources, and are deserving of similar protection under the Coastal Act." The Commission found this even "one of the prime reasons for the Coastal Act." Without special protection of these low-income neighborhoods, "the forces of the market place would not only destroy natural resources but could make it virtually impossible for people of moderate means to enjoy the amenities of homes in the coastal zone." The Commission urged the City of San Diego to plan either for continued residential use of the area or, if industrial use were to be the future direction, for an orderly process of relocating the residents of the area.

The Coastal Commission in 1975 in a variety of permit cases strengthened and further elaborated its position with respect to low and moderate income housing. It repeatedly denied applications for the demolition of single-family residencies and the construction of apartment buildings in their place in Venice. In another series of decisions, it refused to allow

3 The case was extensively discussed, and its significance emphasized, in the agency's annual report. See California Coastal Zone Conservation Commission 1975.

4 The references to and citations from cases are based on "Appeal Summaries" and "Staff Recommendations." The Coastal Commission did not issue written opinions. Instead it accepted, rejected or amended the "Staff Recommendation" or "Appeal Summary" prepared by its own staff for each individual case.
conversion of apartment buildings into condominiums. The extent of the agency's commitment to this cause can also be judged from the case of a 100-unit apartment building for the elderly in Santa Monica. Back in 1960, the Santa Monica Redevelopment Agency had acquired a particular area for urban renewal. By the time CCZCC came into being, one redevelopment project, consisting of high-rise structures of moderately high-income residencies, had been completed and was occupied. In November, 1973, the Coastal Commission had denied an application to permit further construction in the redevelopment area. The denial was based, among other things, on a lack of housing for low income residents of that community, particularly those displaced by the original 1961 relocation. Subsequently the Santa Monica Redevelopment Agency agreed to the conditions imposed by CCZCC and arranged for construction of a 100-unit apartment building specially for elderly low-income people.

In the interpretation of the Coastal Commission, the commitment to protect or require low and moderate income housing was directly linked to the statutory mandate regarding public access. This position was most clearly expressed in a permit decision of 1975 in which CCZCC conditionally approved the construction by the State Department of Transportation of 6.4 miles of freeway near Eureka. The Commission held that

(under the provisions of the Coastal Act, access to the coastal zone resources must be provided for all people. The exclusion of the less affluent from visiting and living on the coast is a fundamental concern of this Commission. Public actions such as this freeway construction must not further reduce opportunities of low and moderate income people to live in coastal communities.

On similar grounds the Commission refused to have a motel demolished to make room for a condominium complex. It declared that "motels such as that occupying the subject parcel provide effective access for the public to the coast."
This peculiar interpretation of public access, and its various implications, were systematically discussed in the Coastal Plan of 1975. The Plan's element on "Public Access to the Coast" had a special section called "Equality of Access." In it the Coastal Commission proposed policies to provide lower-cost tourist facilities in the nearcoast area, and to increase coastal access for low- and moderate-income persons. The latter policy specifically meant to avoid decreasing low- and moderate-income housing opportunities, to provide new low- and moderate-income housing, and to regulate condominium conversions.

Zealous Administrators

The Coastal Act of 1976 restated and reinforced the importance of coastal access, though different from the 1972 Coastal Act the legislature now expressly stated that access requirements should not interfere with the rights of private property owners. The new Coastal Act held the legislative mandate on this point to be the following: "Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners." Of course, strictly speaking the last part of this clause was redundant, since constitutional rights are always binding on statutory provisions, not just when legislatures say so. But the explicitness of the Coastal Act indicated the controversial character these access policies had assumed in just a few years time.

Yet apart from this emphasis on private property rights, the section on public access in the new Coastal Act essentially followed the philosophy of coastal access that had been put forward in the 1975 Coastal Plan. The
Coastal Act started by saying that development along the coast was not to interfere with vested public rights of access to the sea. The following regulatory task was formulated, including the restrictions that had been first systematically presented in the Coastal Plan: "Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected." In addition, the Coastal Act formalized the policy that had been devised by CCZCC and proposed in the Coastal Plan: "Dedicated accessways shall not be required to be opened to public use until a public agency or a private association agrees to accept responsibility for maintenance and liability of the accessway."

It was only natural, then, that the reconstituted Coastal Commission after 1976 turned out as zealous about coastal access as its predecessor, CCZCC. By the end of 1980, according to one of its own reports (California Coastal Commission 1981), the Commission had significantly increased the amount of coastline available for public access and recreational use. Since 1973, over 320 public accessways had been opened for public use, both from nearby public roads down to the beach and along the shore. At the same time, some 200 additional access easements had been offered but were still closed to public use because a sponsor was lacking. New public access signs had been posted to guide visitors to the beach. Substantial sums of new state and federal funds had become available for the acquisition and development of access facilities. In this context the Commission also referred to an internal study of innovative funding and management techniques which sought greater reliance on the private sector and on
volunteer programs for the operation and maintenance of coastal access facilities.

The Coastal Commission in the same report offered the following examples of cases where the agency itself had directly contributed to new public access and recreational opportunities:

An accessway easement in Malibu has opened a small sandy beach for public day use. The accessway dedication was part of a permit condition to allow construction of a restaurant next door to the beach. Coastal access in Malibu is a controversial issue, since only 81/2 miles of its 27-mile shore is available to the public. This accessway was the site of the first official posting of a coastal accessway.

Three-quarters of a mile of San Francisco’s beach front will be opened in mid-1981 to public access. The stretch of beach will tie together ten miles of publicly controlled shoreline from the Golden Gate through Thornton Beach in Daly City. Formerly part of the Olympic Club’s holdings, the beach will be legally open to the public under an agreement with the National Parks Service (NPS). The Coastal Commission required the Club to offer to dedicate the beach easement as a condition to a 1977 permit to construct additional Club facilities. The agreement with the NPS will involve the Golden Gate Recreation Area (GGNRA) staff in maintaining and improving the accessway.

At Newport Beach in San Diego County, where parking at the beaches is a problem during weekends, a permit condition provides for a shuttle-bus service to four beaches from a downtown bank. The permit to build a bank and neighboring condominiums established the free shuttle which runs every thirty minutes between the bank and the beaches, over a mile away.

The new Coastal Act also included the notion of equality of access. It was now statutorily determined that lower cost visitor and recreational facilities as well as housing opportunities for persons of low and moderate income should be “protected, encouraged, and, where feasible, provided.” Thus equality of access, as invented by CCZCC, had found its way from the 1975 Coastal Plan into the 1976 Coastal Act, and hence it was to be one of the principles guiding the policies of the new Coastal Commission. And indeed, the Commission, in the years after 1976, openly and self-
consciously professed a radically inclusionary conception of coastal access.

In the aforementioned report, issued by the agency early in 1981, the Coastal Commission referred to housing opportunities as "a type of access" and held that "in the absence of state policies, affordable housing near the coast would not be available to citizens of every economic segment." In this vein, by the end of 1980 over 6000 affordable housing units had been required by decisions on permits and local planning programs. (Of these, the Commission admitted, only 900 had been actually constructed and only 400 were actually occupied, though in addition, the Commission reported, agreements for the construction of over 1600 affordable units had been executed.)

Communities such as Pacifica and Long Beach, the Coastal Commission pointed out, traditionally housed and employed many persons of "feeble" incomes. The new local coastal plans these communities had to come up with under the Coastal Act emphasized protection of housing for the less affluent. These plans, the Commission noted with much approval, encouraged restoration of older homes, required replacement of demolished houses, and limited condominium conversions. To increase the availability of affordable housing, the Commission had employed a variety of techniques (e.g., density bonuses) to encourage a greater concentration of houses in areas that could handle a larger population. Rancho Palos Verdes, for example, offered sites for 200 affordable housing units under its local coastal plan.

By the early 1980s, the Coastal Commission required as a matter of strict policy that new residential projects of five or more units included a percentage of low and moderate cost units. Criticism of the expensive nature of this policy the Commission rejected: "Experience has shown that inclusionary housing—affordable spaces within a larger, more expensive
complex—is in most cases economically feasible for the developer within the coastal zone." The local coastal plan of Carpenteria, for example, required that, where feasible, 20 percent of new multi-family homes be affordable to persons of low and moderate income.

A last instance of its equality of access policy the Coastal Commission mentioned in this report was San Pedro, where increased port-related job opportunities had caused a sharp drop in the low and moderate income housing supply. In response, the Commission stated, it had approved a luxury condominium project with a condition that the applicant dedicate one acre of land to the Los Angeles Housing Authority for the construction of affordable housing.

Abuse, Excess, Bureaucratic Bungling

Yet while the Coastal Commission thus underlined its accomplishments, precisely these access and affordable housing policies were becoming more and more controversial. The most strident criticism of the Commission's record is to be found in a book entitled The Taking, written in 1981 by a trial attorney and a private urban planning consultant (Gughemetti and Wheeler 1981). The authors, mixing histories of outraged permit applicants with those of desperate local planning officials, depicted the Coastal Commission as a bad case of "abuse, excess and bureaucratic bungling." They summed up their none too subtle judgment thus: "In the name of 'saving the coast,' radical bureaucrats, without restraint or accountability, had built their own system of dictatorial policy.

5 For trenchant criticism of CCZCC and the Coastal Plan, see the various contributions in Bardach 1976.
Extortion, misrepresentation, abuse of constitutional rights and social engineering followed as the natural aftermath.  

The Coastal Commission got entangled in a notorious dispute over access concerning Sea Ranch, a planned residential community on a 10-mile stretch of the rugged California coast 110 miles north of San Francisco. In 1963, Oceanic, Inc., bought what was then a 5200-acre sheep ranch and projected some 5000 houses on it. When Oceanic in 1968 sought subdivision and zoning approvals from Sonoma County, citizens unsuccessfully protested the loss of public access to the 10 miles of Sea Ranch-shoreline. In fact, that defeat mobilized Bil Kortum of Petaluma to organize the aforementioned citizens group called COAAS (Californians Organized to Acquire Access to State Tidelands). As Kortum subsequently became the Coastal Alliance's first chairman, one might say that Sea Ranch was instrumental in bringing about the Coastal Commission!  

By the time Proposition 20 was approved in 1972, 1700 lots had been sold and about 300 houses built. Long and bitter negotiations evolved between the Coastal Commission, Oceanic, the Sea Ranch Association (representing the homeowners), and individual lotowners seeking a building permit. Eventually the total buildout of the Sea Ranch subdivision was reduced by half from 5200 down to 2400 residential units. Half a dozen lawsuits were brought against the Coastal Commission, but the latter came out victorious in all of them. Main bone of contention was the requirement the Commission imposed on the Sea Ranch Association to go along with the creation of five public accessways and a 3-mile bluff-top trail before the Commission would grant individual building permits. In the end, the Sea  

6 A more reasonable and more balanced assessment of the Coastal Commission was expressed in an editorial in the L.A.Times at about the same time: "...the commission has done as well as any body of humans could at the impossible task of balancing private rights and public rights without some loss of one or the other" (L.A.Times 1981: 46-7).
Ranch controversy was settled in 1981 by a legislative compromise. The Sea Ranch Association was payed $500,000 out of the newly created state Energy and Resources Fund in exchange for the five accessways and the trail demanded by the Commission. The agreement also exempted the remaining single-family lots at the Sea Ranch from the entire coastal development process in exchange for view easements sought by the Commission.

Some students of the Sea Ranch controversy have emphasized the plight of the hundreds of unfortunate lotowners who were caught in the squeeze for almost ten years: these individuals could only watch interest rates and inflation soar, and meanwhile were denied the right to build (Babcock and Siemon 1985: 235-254). These critics blamed the Coastal Commission and saw the 1981 legislative compromise as a sure sign of the Commission's administrative defeat and loss of political support: "The zealfulness of the Commission administrators, their indifference to fair play, and their use of what amounted to extortion against lotowners finally caught up with them and the legislature turned on them."

Criticism of the Coastal Commission indeed had been mounting in the late 1970s not only among those dependent on coastal development permits, but in legislative chambers as well. Year after year bills were introduced to amend the Coastal Act, or even to abolish the Commission. In 1979, legislation was passed obliging the Commission to designate specific areas where a coastal permit would no longer be required. By the end of 1980, the Commission accordingly had designated over 100,000 acres. In addition, the legislature exempted from coastal permit requirements the rebuilding of structures destroyed by natural disaster. In 1980, the legislature further amended the Coastal Act to prohibit the Commission from establishing overnight room rates for low and moderate income persons. In 1981, the legislature altogether removed the authority of the Commission to regulate
affordable housing and reserved that power exclusively for local government.

Yet the suggestion that legislative support for the Coastal Commission had completely eroded was mistaken. True, the legislature in Sacramento deliberately did curb the powers of the Commission. And true, George Deukmejian, a long-term opponent of the Commission who was elected state governor in 1982 and won a second term in 1986, over the years forced through substantial reductions of the agency's budget: in 1980, the Commission employed 212 persons; by 1989, this number was down to 110.7 "The death of a thousand cuts" this was called by Commission chairman Michael Wornum. And true, on the whole these developments had a demoralizing effect on the agency (Rubin 1989; Jarvis 1989).

In the same years, however, the Coastal Commission's mandate in other ways was significantly strengthened. Particularly with respect to coastal access, new impulses were given and additional resources made available. Three companion bills that were passed in 1979 officially established the so-called Coastal Access Program, a joint project of the Coastal Commission and its sister agency, the Coastal Conservancy, designed to facilitate the opening of new coastal accessways.

The State Coastal Conservancy had been created in 1976 and given a responsibility for acquisition and restoration as a necessary adjunct to the planning and regulatory authority of the Coastal Commission. Among other things, the Conservancy provided grants and technical assistance to local governments and citizens' groups to acquire, develop and operate accessways. The new 1979 legislation made the Coastal Commission and the Coastal Conservancy jointly responsible for coordinating all local, state

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7 Though part of this reduction was due to the phasing out of the six regional coastal commissions, as prescribed in the 1976 Coastal Act.
and federal efforts to implement coastal access policies. Throughout the 1980s, the Coastal Access Program remained a central preoccupation of the officials of both agencies. And consequently the Coastal Commission's treatment of individual permit applications, such as the one submitted by the Nollan family in 1982, increasingly came to be determined by the broader policies elaborated in that context.

**Maximum Coastal Access**

The Coastal Commission and the Coastal Conservancy since 1979 have jointly administered the Coastal Access Program, and in that function have vigorously implemented the renewed legislative mandate "to maximize coastal access." In general, two methods have been employed. First, considerable public funds were made available to the Conservancy for acquisition and development of shoreline lands. When established in 1976, the Conservancy already had been allocated $10 million as part of a $290 million bond issue intended for coastal and wetland acquisition. In 1980 another state bond issue of $285 million was passed, with $90 million allocated for use by the Conservancy. And in 1984 two more bond measures were approved totalling $455 million for parks, recreation and habitat enhancement, with $80 million to be used by the Conservancy. As of 1986, approximately 46 percent of the 1,072-mile California coast was publicly owned and accessible, while the remaining 54 percent was owned privately or was held by federal, state or local government and was not open to the public. The Department of Parks and Recreation alone at that time managed some 250 miles of coast, distributed among more than 100 coastal units (Heiman 1986: 109, 119).

The second method used to secure coastal access was implied in the regulatory powers of the Coastal Commission. The latter was authorized to
grant development permits subject to certain conditions, and landowners in exchange for receiving such a permit could be required to submit deed restrictions or dedications giving the public the right to cross private property in order to reach the shoreline. As was discussed previously, lands thus 'dedicated' could be actually opened to the public only after an agency or private party had accepted responsibility for their management.

An integral part of the Coastal Access Program was the promulgation of 'guidelines,' 'standards' and 'recommendations' of coastal access as these had been elaborated and, already in 1979 and 1980, formalized in concert by the Coastal Commission and the Coastal Conservancy (California Coastal Commission 1979; California Coastal Commission and State Coastal Conservancy 1980). Lateral access (i.e., access along the ocean, parallel to the shore) was to be provided through deed restrictions or dedications of a 25-foot wide easement extending inland from the mean high tide line. Vertical access (i.e., access from the nearest public road or area to the shoreline) as a rule meant a 10-foot wide path allowing pedestrian access to the water. Under normal conditions, where public safety was not threatened, lateral accessways could not come closer than 10 feet away from existing single family homes; for vertical accessways, that distance was 5 feet. In rural areas, the standard of the maximum distance between vertical accessways was one-half mile. In urban areas, the standard was stricter: up to one accessway per six residential units, or every 500 feet.

Of course, access requirements as imposed by the Coastal Commission were also dependent on the outcome of the local coastal planning process, and hence were to a large extent determined by local circumstances including topography, specific recreational needs or opportunities, the nature of the proposed development, the adequacy of existing access facilities, and the need to protect the landowner's right to privacy. Apart from this type of
pathways, coastal access took many forms: bike trails, parking lots, transportation services, scenic vistas et cetera. Depending on the size and location of a project, landowners might be asked to provide a variety of access easements or services. As the Manager of the Coastal Access Program, Don Neuwirth, declared in an interview in July 1982, although most permit applicants would pay a fee rather than provide direct public access across their property, the Commission generally discouraged the practice as frustrating the intent of its Coastal Access Program (Heiman 1986: 112).

From the passage of Proposition 20 in 1972 till the end of 1985, the Coastal Commission granted a total of some 2,000 permits with lateral or vertical access conditions attached. (This total represents only approximately 2 percent of all coastal permits approved in that period.) Of these 2,000 permits, however, only about one third had found sponsors for maintenance and liability and thus could be opened to public use under the rules of the Coastal Access Program. In its first fourteen years (1973-1986), then, the Commission secured 52.64 miles of vertical and lateral access that otherwise would have remained in the hands of private landowners.8

These two methods of providing 'maximum coastal access' intersected in the experiments the Coastal Commission and the Coastal Conservancy carried out with new ways of developing and managing accessways. The Commission and the Conservancy jointly issued two reports, "Innovative Management and Funding Techniques for Coastal Accessways" in 1981, and "The Affordable Coast: A Citizen Action Guide to California Coastal Accessway Management" in 1982. As recorded in a study published in 1986 by the Institute of Governmental Studies (Heiman 1986: 117-8), these experiments with coastal

8 These figures are presented in California Coastal Commission and State Coastal Conservancy 1987: 17.
access included a coastal trail and handicapped access at Stillwater Cove in Sonoma County; improved access to Bolsa Chica State Beach in Huntington Beach; nature-observation trails in Arcata Marsh in Humboldt County; and a coastal stairway in Del Norte County. The Conservancy helped Mendocino County acquire 12 acres of developed gardens and a 5-acre headland easement. In the San Francisco Bay Area the Conservancy cooperated closely with the San Francisco Bay Conservation and Development Commission (BCDC) on access projects for park and trail development along the bayshore. Other notable projects included bluff-top parking and stairs to a popular Santa Barbara surfing and sunbathing beach, the start of a comprehensive accessway effort in Santa Cruz, and the installation of stairways and access paths to the coast in many other areas. All along the coast improved access accompanied waterfront restoration, open space preservation, lot consolidation, and other activities undertaken by the Conservancy. By the end of 1983 in this way some $4 million in access grants had been funded by the Conservancy.

Funds were also specifically made available to nonprofit organizations and land trusts to help them assume responsibility for accessway maintenance and protection. Thus a multitude of local nonprofit organizations, but also private organizations of statewide and national scope such as the Nature Conservancy and the Trust for Public Land, became officially sponsors of some public access dedication required under the Coastal Commission's permit system.

In addition, much was done to inform the public about the opportunities for coastal recreation, and to encourage private and public support for providing accessways. On behalf of the Coastal Commission, the University of California Press in 1981 published the California Coastal Access Guide, a 240-page handbook listing and describing all open public accessways,
beaches, parks, and recreational areas along the coast, including addresses, phone numbers, transit information, hours of use, and descriptions of facilities and type of environment for each site. The Guide is divided into sections for each county and local area, with accompanying maps that locate each accessway. The book was a bestseller, and the publisher issued expanded editions in 1982 and again in 1983.

These, then, were the policies of the Coastal Commission for securing maximum coastal access in California. In 1987, these very policies became the subject of the judicial scrutiny of the nation's highest court.

Scalia v. Brennan

Nollan v. California Coastal Commission, which the U.S. Supreme Court handed down on June 26, 1987, was an unusually tangled case. Justice Scalia wrote the majority opinion, in which he was joined by Chief Justice Rehnquist and the Justices White, Powell and O'Connor. Justice Brennan filed a lengthy dissenting opinion, in which Justice Marshall joined. Justice Blackmun filed another dissenting opinion. Justice Stevens filed a third dissenting opinion, in which Justice Blackmun joined. Brennan's dissent ranged widely and was extremely critical of the majority opinion, calling the latter "an aberration" and expressing the hope "that a broader vision ultimately prevails."

Justice Scalia, and thus the majority, in Nollan held that the lateral access condition did not "substantially advance" the otherwise "legitimate state interests" that the Coastal Commission had presented as the rationale of its policies. Scalia found a "lack of nexus between the condition and the original purpose of the building restriction." That purpose thus converted "to something other than it was": "The purpose then becomes,
quite simply, the obtaining of an easement to serve some valid governmental purpose, but without payment of compensation." According to Scalia, "unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but 'an out-and-out plan of extortion.'"

But what about the Coastal Commission's contention that the Nollans' new house interfered with "visual access" to the public beach, and so created a "psychological barrier" to "access"? The Commission claimed, on this ground, that the requirement of providing lateral access on the beach was directly related to one of the central objectives of its regulatory authority, and hence a legitimate exercise of the latter. Scalia, however, rejected this argument as merely "a play on the word 'access.'" In fact, he found the argument specious: "It is quite impossible to understand how a requirement that people already on the public beaches be able to walk across the Nollans' property reduces any obstacles to viewing the beach created by the new house. It is also impossible to understand how it lowers any 'psychological barrier' to using the public beaches, or how it helps to remedy any additional congestion on them caused by construction of the Nollans' new house."

The position defended by Justice Brennan in his dissent was the extreme opposite of that of Justice Scalia. Brennan was appalled, first, by Scalia's newly introduced nexus test of takings and, second, by its application in this particular case. According to Brennan, the majority here "imposes a standard of precision for the exercise of a State's police power that has been discredited for the better part of this century." But also, Brennan thought, the lateral access in this case required by the Coastal Commission directly did respond to the burden created by the Nollans' new house, and so clearly satisfied even this strict nexus test
("the Court's cramped standard," Brennan called it). In addition, Brennan found Scalia's arguments at fault with the settled interpretation of the constitutional protections invoked in this case. According to Brennan, "a review of those factors deemed most significant in [the Court's traditional] takings analysis makes clear that the Commission's action implicates none of the concerns underlying the Takings Clause." Hence landowners could make no claim that their reasonable expectations were being disrupted by conditions regularly attached by the Commission to the permit approvals granted to these landowners. And thus, Brennan concluded, the Court had no ground for striking down a regulation that represented the Commission's "eminently reasonable effort" to respond to intensified development along the California coast.

All three of Brennan's counterpoints feed on a conception of the Coastal Commission's administrative task and responsibility that is activist and responsive, and therefore fundamentally at odds with the more limited and much stricter view of the agency's mandate relied on by Scalia. Indeed, the Commission could not have wished for a better advocate than Justice Brennan to defend its record, that is, to defend the assertive mission the agency has pursued ever since 1972. Here is Brennan's glowing appraisal, and the crux of his dispute with Scalia:

The Commission has sought to discharge its responsibilities in a flexible manner. It has sought to balance private and public interests and to accept tradeoffs: to permit development that reduces access in some ways as long as other means of access are enhanced. In this case, it has determined that the Nollans' burden on access would be offset by a deed restriction that formalizes the public's right to pass along the shore. In its informed judgment, such a tradeoff would preserve the net amount of public access to the coastline. The Court's insistence on a precise fit between the forms of burden and condition on each individual parcel along the California coast would penalize the Commission for its flexibility, hampering the ability to fulfill its public trust mandate.
For Scalia, of course, whether or not a public authority operates in a "flexible," "balanced," "informed" manner, a taking is a taking.

So Brennan essentially judged the legitimacy of the permit as granted by the Coastal Commission to the Nollans not by abstract legal-constitutional standards, but by the concrete policies the Commission itself had devised and elaborated since 1979 in the context of its Coastal Access Program. The Nollan house was located on Faria Beach, a tract of land in northern Ventura County along which the Commission had similarly required lateral access conditions from 43 out of 60 coastal development applicants. Of the 17 permits not so conditioned, 14 had been approved when the Commission did not yet have its administrative regulations in place, while the remaining 3 had not involved shorefront property.

It is clear, then, that there was a coherent practice of imposing lateral access conditions on coastal development permits in the area of the Nollan property, i.e., Faria Beach. In general, as was pointed out above, the Coastal Commission's Access Program supplied the rule that lateral access was to be provided through 25-foot wide easements extending inland from the mean high tide mark. But the Commission's own Guidelines acknowledged the need to adapt this rule to local needs and circumstances in order to minimize conflicts between public and private uses resulting from these very access provisions. Brennan cited the Guidelines stating that on occasion less than the normal 25-foot wide accessway along the dry sand could be required when this might be necessary to "protect the privacy rights of adjacent property owners." Brennan also cited the criteria, listed in the Guidelines, under which the type of public use permitted in access areas could be restricted to "pass and repass":

"Where topographic constraints of the site make use of the beach dangerous, where habitat values of the shoreline would be adversely impacted by public use of the shoreline or where the accessway may encroach closer than 20 feet to
a residential structure, the accessway may be limited to the right of the public to pass and repass along the access area. For the purposes of these guidelines, pass and repass is defined as the right to walk and run along the shoreline. This would provide for public access along the shoreline but would not allow for any additional use of the accessway. Because this severely limits the public's ability to enjoy the adjacent state owned tidelands by restricting the potential use of the access areas, this form of access dedication should be used only where necessary to protect the habitat values of the site, where topographic constraints warrant the restriction, or where it is necessary to protect the privacy of the landowner."

In the case of the Nollan permit, the Coastal Commission, applying precisely this policy, had restricted the width of the area of passage to 10 feet, as this was, at its widest, the distance between the Nollans' seawall and the mean high tide line; and also the Commission, accommodating the need to provide access to the need to protect the Nollans' privacy, had chosen the least intrusive use of the property: a mere right to pass and repass.

The same criteria foreclosed the imposition of vertical instead of lateral access. That portion of Faria Beach on which the beachfront property of the Nollans is located is adjoined by two publicly accessible beaches: Faria County Park, an oceanside public park with a public beach and recreation area, a quarter-mile to the north of the Nollan house; and an area known as 'the Cove' that separates two built-out sections of Faria Beach, 1,800 feet to the south. 'The Cove' is owned by the Faria Beach Homeowners' Association, and is open to the public under the usual restrictions: "no jet skis; no fires; keep dogs on leash; please take your garbage with you." The Guidelines implied that these two points of access to the shoreline ('the Cove' and Faria County Park) provided sufficient vertical access for the entire Faria Beach area. Ironically, requiring vertical access of the Nollans (and of all other Faria Beach homeowners applying for a coastal development permit) most likely would have passed
the constitutional takings test (also under the new nexus doctrine of the Nollan Court), but was disallowed by the Coastal Commission's policies since it was deemed too intrusive of the homeowners' privacy.

Thermidor in Land Use Control?

For Justice Brennan, then, the constitutionality of granting coastal development permits in exchange for access dedications largely depended on the quality of the policies the Coastal Commission had incorporated in its Coastal Access Program. For Justice Scalia, on the other hand, that program was utterly irrelevant in this context. The Commission may well be right, Scalia stated, that the public interest will be served by a continuous strip of publicly accessible beach along the coast, "but that does not establish that the Nollans (and other coastal residents) alone can be compelled to contribute to its realization." Therefore, Scalia concluded his opinion, "California is free to advance its 'comprehensive program,' if it wishes, by using its power of eminent domain for this 'public purpose'...; but if it wants an easement across the Nollans' property, it must pay for it."

What does all this imply for the new breed of land use agencies of which the California Coastal Commission is but a specimen? Is the judiciary operating on a thermidorean scheme? Indeed, that is what Nollan seems to signal. But even on this point, i.e., "What exactly does the Court say in Nollan?," Brennan and Scalia fundamentally disagreed. On the reasonable assumption that its action was justified under the normal standard of review for determining legitimate exercises of a state's police power, the Commission in defending its position in court had not thought it necessary to specify the particular threat to lateral access created by the Nollans'
new house. But in light of the Court's novel, more demanding standard, Brennan contended, the Commission in the future could easily demonstrate how certain provisions for access directly responded to particular types of burden on access created by new development. Thus the Commission, according to Brennan, "should have little problem presenting its finding in a way that avoids a takings problem."

Not so, Scalia replied immediately: "We view the Fifth Amendment's property clause to be more than a pleading requirement, and compliance with it to be more than an exercise in cleverness and imagination." According to Scalia, Nollan nicely fitted in the Court's settled jurisprudence of takings that identified the condition under which property rights might be abridged through the police power as a "substantial advancing of a legitimate State interest." Then Scalia sounded this warning: "We are inclined to be particularly careful about the adjective [i.e., 'substantial'] where the actual conveyance of property is made a condition to the lifting of a land use restriction, since in that context there is heightened risk that the purpose is avoidance of the compensation requirement, rather than the stated police power objective."

Perhaps the most astonishing feature of the Nollan decision is the fact that one of the four dissenting justices, Justice Stevens, was quick to notice this ambiguity as well as the confusion that he thought would result from the majority holding. Stevens was dismayed about the effect of Nollan in combination with that of First English Evangelical Lutheran Church v. Los Angeles County, another landmark takings case (in which Stevens also had filed a dissent). First English had been handed down by the U.S. Supreme Court on June 9, 1987, just seventeen days prior to the Nollan decision. In First English, according to Stevens, a six member majority of
the Court had embraced a "brand new constitutional rule" that made governments liable for so-called "temporary takings." Prior to First English, courts generally did not require the government to provide financial compensation to a property owner for losses stemming from an ordinance that was declared unconstitutional. The only remedy available to a landowner for a regulatory taking had been the invalidation of the unconstitutional regulation. But First English changed all that. The Court announced a new rule of liability that allowed the recovery of damages for the period from the imposition of an invalid regulation to the time of its repeal or amendment. As phrased by Chief Justice Rehnquist, who wrote for the majority: "We merely hold that where the government's activities have already worked a taking of all use of the property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective."

Justice Stevens was concerned with the new remedy made available by First English given the uncertainties inherent in the Court's takings jurisprudence. The effects of the new rule of liability, Stevens wrote in his dissent in Nollan, would be particularly unsettling for land use authorities and other practitioners of land use law:

Intelligent, well-informed public officials may in good faith disagree about the validity of specific types of land use regulation. Even the wisest lawyers would have to acknowledge great uncertainty about the scope of this Court's takings jurisprudence. Yet, because of the Court's remarkable ruling in First English, local governments and officials must pay the price for the necessarily vague standards in this area of the law.

"Mistakes" such as the one made by the Coastal Commission in the Nollan case, Justice Stevens pointed out, should now "automatically give rise to

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Ironically, the "brand new rule" had been first devised by Justice Brennan in his dissent in San Diego Gas & Electric Co. v. San Diego, a case which the U.S. Supreme Court had decided in 1981.
pecuniary liability for a 'temporary taking.'" And this, in turn, would have an "unprecedented chilling effect on public officials charged with the responsibility for drafting and implementing regulations designed to protect the environment and the public welfare."

Justice Stevens wholeheartedly expressed his support for Justice Brennan's dissent in \textit{Nollan}: "The public interest is served by encouraging state agencies to exercise considerable flexibility in responding to private desires for development in a way that threatens the preservation of public resources." But the Court's new jurisprudence of takings, Stevens claimed, would have the completely opposite result: in his dissent in First English he had predicted a "litigation explosion"; in his dissent in \textit{Nollan} he warned that, because of the aforementioned uncertainties and vague standards, planning authorities would be "left guessing about how the Court will react to the next case, and the one after that."

\textbf{Mixed Signals}

The \textit{Nollan} decision (in combination with \textit{First English}) presents two questions: (1) "What exactly is the Court's new jurisprudence of takings?"; and (2) "How will this new jurisprudence affect the new land use agencies?"

Not surprisingly, the law review commentaries on \textit{Nollan} reflect the diversity of the Supreme Court.\textsuperscript{10} Two different strands can be recognized. There are those that claim that the Supreme Court in \textit{Nollan} introduced a radically new doctrine of unconstitutional conditions in land use law. These commentators generally support the views and arguments of Justice Scalia. The most eloquent spokesman for this position is Richard A.

\textsuperscript{10} A computer search for law review articles about the \textit{Nollan} case in the LegalTrac database conducted in early 1989 produced 49 references--and the list appeared not nearly complete!
Epstein of the University of Chicago Law School (Epstein 1987). For Epstein the Scalia opinion "did not go far enough," and should be read broadly to dissolve remaining ambiguities. Hence Epstein argued for stricter limitations on legitimate state powers than Scalia was willing to allow in *Nollan*.

At the other end of the spectrum is Joseph L. Sax of the University of California, Berkeley, Law School (Sax 1987). According to Sax, *Nollan* will have some importance in bringing California land use practices closer to the national mainstream, but the broader significance of the case he estimates as "not much":

Though the Court says that it will factually examine cases to assure that government is using its power substantially to advance a legitimate state interest, it makes clear that it continues to hold a very broad view of state regulatory authority. The majority explicitly reiterates the authority to regulate, without compensation, for historic preservation, for open space, and for environmental protection, reaffirming decisions that had very broadly granted such powers to government.

Harvard Law School professor Frank Michelman has also argued that the heightened judicial scrutiny of land use regulation on display in *Nollan* can be read very narrowly (Michelman 1988). "On examination," Michelman writes, "there appears to be less than first meets the eye in these apparent doctrinal turns."

In between the broad interpretation of *Nollan* as argued by Epstein and the narrow readings of the case as offered by Sax and Michelman, the academic legal literature offers a score of alternative theses and theories about the merits of the Supreme Court's current takings jurisprudence. The only safe conclusion seems to be that, for the time being, the law regarding regulatory takings is in flux. This conclusion is confirmed by a

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11 Just for a small sample, see the ten contributions to the conference, "The Jurisprudence of Takings," that were published in 1988 in the *Columbia Law Review*. See Fischel 1988.
recent survey of the aftermath of Nollan in the lower courts (Lemon, Feinland and Deihl 1989). The authors of this survey summarize their findings under three points: (1) "(W)hile some courts have been reading Nollan as heightening the standard of review of government regulations affecting property, most do not see the Nexus Test as calling for heightened scrutiny"; (2) "(A) number of courts have failed to apply the Nexus Test because they see the Nollan holding as a narrow one"; and (3) "(O)n the whole, courts are continuing the trend toward ad hoc balancing in fifth amendment jurisprudence."12

This brings us to the second question: "How have land use agencies responded to this legal uncertainty?" Recent research provides some insight (Goldstein and Buccino 1989). From a series of interviews with local planners and government attorneys in ten California coastal cities and counties, as well as staff members of related professional organizations, the impact of the Nollan and First English decisions appears limited. The prevailing tone among the respondents was a cautious "business as usual." The practical effect of the Supreme Court's 1987 rulings is that land use authorities are providing more detailed documentation to justify the regulation of private land. They are being careful to establish the "nexus" between development burdens and permit exactions. These actions follow the reasoning of Justice Brennan's dissent in Nollan. At the same time, and contrary to the prediction of Justice Stevens in his First English dissent, an explosion of takings claims has yet to materialize. In the ten cities and counties where these planners and attorneys were

12 The Supreme Court itself since Nollan has dealt with only one takings case, Pennell v. City of San Jose, which was decided in 1988. In Pennell a majority of six Justices found the nexus test not applicable to a rent control ordinance because the takings complaint was considered premature. Justice Scalia, however, strongly dissented.
interviewed, "there was only one instance where a permit condition was withdrawn because of the potential for a Nollan challenge."

And what about the California Coastal Commission itself? Initially, Commission chairman Michael Wornum strongly voiced his commitment to preserving coastal access. Asked to comment on the Supreme Court’s rejection of the permit conditions in the Nollan case, Wornum stated: "It is a narrow decision. We are confident that in most cases we can continue to protect the rights of the public to get to the beach" (Goldstein and Buccino 1989: 68). However, in the real world things worked out a little differently. As was reported in the same study:

The difficulty of creating the documentation for the Nollan "nexus" requirement has had a significant impact on the Coastal Commission's access program. Out of approximately 200 shoreline permits that the Coastal Commission approved between August 1987 and August 1988, only 30 required the permittee to dedicate an easement for public access. Prior to Nollan, most of these approvals would have contained access conditions...

For the Coastal Commission, the combined effect of Nollan and of governor Deukmejian's disfavor proved disheartening. These circumstances forced the agency, in the late 1980s, to settle for a holding strategy. Meanwhile, in November 1990, former San Diego mayor Pete Wilson won the California gubernatorial elections. Wilson is on record as much more supportive of the Coastal Commission's policies than his predecessor. But until the new governor has started work in Sacramento, it is unlikely that the Commission will resume, in whatever form, its assertive mission in maximizing coastal access.
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