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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

RICHARD S. KOHN, Plaintiff and Appellant, v. CALIFORNIA COASTAL COMMISSION et al., Defendants and Respondents.	A148706 (Marin County Super. Ct. No. CIV1504651)

Plaintiff Richard Kohn appeals from a denial of injunctive and declaratory relief in the Superior Court of Marin County to stop the defendants—the California Coastal Commission (the Commission), the County of Marin, and the Marin County Community Development Agency—from considering regulatory takings issues when evaluating and granting coastal development permits (CDPs), among other claims. The court denied relief and concluded the Commission rightfully exercised its authority to consider takings issues. Kohn now appeals on grounds similar to those stated in his suit in superior court. We affirm.

I. BACKGROUND

The Commission considers whether denial of a CDP may result in a regulatory taking when evaluating permit applications, allowing case-by-case exceptions to conform with the California Coastal Act (Coastal Act or Act) if a denial would result in a taking. Kohn, a resident and taxpayer of Marin County, argues the Commission's practice violates the Coastal Act, the California Constitution, and the Administrative Procedure Act (APA), among other claims. In 2015, he filed a petition with the Office of

Administrative Law stating the Commission acted unlawfully by considering whether its possible denial of a permit could result in a taking. The Office subsequently declined the petition. Later that year, Kohn filed a petition with the Commission asking it to stop considering takings issues when making permit decisions. The Commission heard and denied that petition at a public hearing.

Kohn next filed a similar petition in Marin County Superior Court. He added the Marin County Community Development Agency and Marin County as defendants and real parties in interest. Arguing that the Commission violated the judicial powers and separation of powers clauses of the California Constitution, as well as the Coastal Act, he sought a writ of traditional mandate ordering the Commission to rescind its takings policy, together with declaratory and injunctive relief to prevent the Commission and local governments from considering takings issues in permitting decisions. He also argued that local governments lack authority to adjudicate constitutional takings questions. (See Cal. Const., art. VI, § 1; *id.*, art. III, § 3.) Finally, he contended the Commission violated the APA. (Gov. Code, § 11340 et seq.)

The superior court denied the petition. It decided the Commission did not exceed its executive branch authority when considering whether its permit decisionmaking may result in a taking. The court determined the Commission acted "consistent with the express directive in [the Coastal Act], and [its actions did] not constitute an impermissible exercise of judicial authority." It also concluded the consideration of possible takings "[was] not an unconstitutional violation of its 'separation of powers' authority" and the local governments "did not exceed their jurisdictional authority." Finally, the court decided the policy "[did] not amount to an 'underground regulation' subject to the [APA]'s formal rule-making process." After entry of judgment in favor of the defendants, Kohn filed this timely appeal.

II. DISCUSSION

A. Standard of Review

We review the trial court's decision de novo because this appeal involves only questions of law, and there are no disputed facts. (See *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799 ["[w]hen the decisive facts are undisputed, we are confronted with a question of law and are not bound by the findings of the trial court"].)

B. Takings, the Coastal Act, and the Coastal Commission

"[T]he takings clauses of the state and federal Constitutions guarantee property owners 'just compensation' when their property is 'taken for public use.' " (*Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 770 [referencing Cal. Const., art. I, § 19; U.S. Const., 5th Amend.].) "[T]he Takings Clause 'does not prohibit the taking of private property, but instead places a condition on the [taking of private property].' [Citation.] . . . [I]t 'is designed . . . to secure *compensation* in the event of otherwise proper interference amounting to a taking.' " (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 536-537 (*Lingle*).) There are " 'two discrete categories of regulatory action' that constitute a taking." (*Kavanau, supra,* at p. 774, citing *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1015.) The first is a "permanent physical invasion of property." (*Kavanau, supra,* at p. 774.) The second category is a "regulation that deprives a property owner of 'all economically beneficial or productive use of land.' " (*Ibid.,* citing *Lucas, supra,* at p. 1015.) A regulation that does not fall into either of these categories may nevertheless effect a taking based on a balancing of various " 'factors,' " including "(1) '[t]he economic impact of the regulation on the claimant'; (2) 'the extent to which the regulation has interfered with distinct investment-backed expectations'; and (3) 'the character of the governmental action.' " (*Kavanau, supra,* at p. 775, citing *Penn Central Transportation Co. v. New York City* (1978) 438 U.S. 104, 124.)

The Commission holds "the primary responsibility for the implementation of the [Coastal Act]." (Pub. Resources Code, § 30330.)[1] It performs quasi-legislative, quasi-judicial, and traditional executive functions. (See *Marine Forests Society v. California Coastal Com.* (2005) 36 Cal.4th 1, 46.) The Coastal Act of 1976 is a "comprehensive scheme to govern land use planning for the entire coastal zone of California." (*Yost v. Thomas* (1984) 36 Cal.3d 561, 565.) " 'The Legislature found that "the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people"; that "the permanent protection of the state's natural and scenic resources is a paramount concern"; that "it is necessary to protect the ecological balance of the coastal zone" and that "existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state." (§ 30001, subds. (a) and (d).)' " (*San Mateo County Coastal Landowners' Assn. v. County of San Mateo* (1995) 38 Cal.App.4th 523, 534.)

Under the Coastal Act, with the exception of certain emergency work, any person "wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit." (§ 30600, subd. (a).) The Act also requires local governments within the coastal zone to develop local coastal programs, which contain land use and implementation plans. (§§ 30500, 30600.5.) Local governments assume permitting authority, subject to Commission review, after the Commission certifies each plan. (§§ 30519, 30603, 30604.) Permits must meet the standards of these plans. (§ 30600.5, subd. (c).)

The Commission allows case-by-case exceptions to Act or local plan requirements in order to avoid denying a permit that could deprive coastal landowners of "all economically beneficial or productive use of land" (*Lucas v. South Carolina Coastal Council*, *supra*, 505 U.S. at p. 1015) or their "distinct investment-backed expectations."

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[1] All statutory references hereinafter are to the Public Resources Code, unless otherwise specified.

(*Penn Central Transportation Co. v. New York City, supra*, 438 U.S. at p. 124.) Although the Commission typically denies a permit if the proposed development violates plan standards, it may "approve[] [a project with otherwise impermissible development] with conditions that mitigate impacts on the habitat areas to a level of insignificance" to avoid a regulatory taking. (*McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 939 (*McAllister*).) For example, it may approve a permit allowing limited development in an area consisting entirely of environmentally sensitive habitat areas, a situation in which residential development generally is prohibited. (See *id.* at pp. 928-929; § 30240, subd. (a).)

The Commission bases this policy on its interpretation of section 30010 of the Act. The trial court properly concluded that, in carrying out a policy of considering takings-avoidance as part of its permit decisionmaking, the Coastal Commission acted in a manner consistent with section 30010. The plain statutory language, the court concluded, allows the Commission to assess the possibility of a future takings claim when evaluating a permit decision. (See *McAllister*, *supra*, 169 Cal.App.4th at p. 939.)

Section 30010 states: "The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission . . . or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States." This provision "merely restates the limitations imposed by the takings clauses" (*Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 253) and "establish[es] a narrow exception to strict compliance . . . based on constitutional considerations." (*McAllister*, *supra*, 169 Cal.App.4th at p. 939.)

To aid its considerations, the Commission sometimes relies on a handout entitled Takings Information (included in the administrative record in this case), which describes the Commission's understanding of takings jurisprudence and lists information the Commission may use in order to determine if its denial of a permit may result in a taking.

This includes information to determine the nature of the applicant's property interest, such as changes in land use designation since the time of purchase, property restrictions, purchase price, and fair market value. Kohn challenges no specific applications of this policy or individual uses of this handout.

C. Kohn Established Standing

The court properly concluded Kohn had standing to sue. Under the broadly permissive standards of standing that apply under the California Code of Civil Procedure, he had "public interest standing" as a citizen and county resident to challenge the allegedly unconstitutional manner in which the Commission performed its statutory duty specified in the Coastal Act. (See *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166-167 ["public interest standing . . . is meant to give citizens an opportunity to ensure the enforcement of public rights and duties"].)

Kohn may also sue because he is both a taxpayer and citizen liable for taxes in Marin County. Code of Civil Procedure section 526a allows an individual to challenge allegedly illegal policies of a municipality in which he or she pays taxes or is assessed and liable for taxes. This right also extends to actions against state agencies and officials. (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 268.) "[Code Civ. Proc.] section 526a provides a mechanism for controlling illegal, injurious, or wasteful actions by [these] officials." (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1249.) California is "very liberal in the application of the rule permitting taxpayers to bring a suit to prevent the illegal conduct of [public] officials." (*Crowe v. Boyle* (1920) 184 Cal. 117, 152.) For example, in *Blair*, taxpayers established standing because they were "dedicated adversaries" opposed to the illegal expenditure of funds by county officials. (*Blair*, at p. 270.) "[S]ection 526a makes plaintiffs eligible to seek a range of remedies beyond mandamus." (*Weatherford*, at p. 1249.) This includes declaratory and injunctive relief. (*Ibid.*) "[I]f an action meets the requirements of section 526a, it presents a true case or controversy." (*Blair*, at p. 269.) Kohn meets these criteria and may sue.

D. Appellant's Petition is Not Ripe

While Kohn has standing to sue, that does not mean the controversy he presents is ripe for judicial decision. "[A] basic prerequisite to judicial review of administrative acts is the existence of a ripe controversy." (*Pacific Legal Foundation v. California Coastal Com*. (1982) 33 Cal.3d 158, 169 (*Pacific Legal Foundation*).) A dispute is generally ripe " 'when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.' " (*Id.* at p. 171.) "The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions." (*Id*. at p. 170.) This policy prevents courts " 'from entangling themselves in abstract disagreements over administrative policies, and . . . [protects] agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way.' " (*Id.* at p. 171.)

A panel in this Division recently applied a "two-pronged" analysis to determine whether a controversy is ripe in the context of a request for declaratory relief. (*Communities for a Better Environment v. State Energy Resources Conservation & Development Com.* (2017) 19 Cal.App.5th 725, 733, referencing *Pacific Legal Foundation, supra*, 33 Cal.3d at pp. 171-173.) First, the court considers " 'whether the dispute is sufficiently concrete to make declaratory relief appropriate.' " (*Communities for a Better Environment, supra,* at p. 733.) " '[C]ourts will decline to adjudicate a dispute if "the abstract posture of [the] proceeding makes it difficult to evaluate . . . the issues" [citation], if the court is asked to speculate on the resolution of hypothetical situations [citation], or if the case presents a "contrived inquiry." ' " (*Id.* at pp. 733-734.) Second, the court evaluates " 'whether the withholding of judicial consideration will result in a hardship to the parties.' " (*Id.* at p. 733.) " '[T]he courts will not intervene merely to settle a difference of opinion; there must be an imminent and significant hardship inherent in further delay.' " (*Id.* at p. 734.)

Kohn's claim fails the test of *Communities for a Better Environment v. State Energy Resources Conservation & Development Com., supra,* 19 Cal.App.5th 725. The dispute he proposes to have us decide is not yet concrete. He does not base his challenge

on a specific permit or controversy. Unlike the situation in *McAllister*, where the court considered a ripe appeal arising from a challenge to a specific permit granted by the Commission (*McAllister, supra,* 169 Cal.App.4th at p. 918), Kohn's challenge arises from his general disagreement with Coastal Commission policies. What we see here is similar to the scenario in *Pacific Legal Foundation*, where our Supreme Court decided a case was not ripe when a plaintiff "did not challenge any individual permit condition . . . [and] attacked the general . . . policies of the Commission." (*Pacific Legal Foundation, supra,* 33 Cal.3d at p. 163.) Because Kohn's petition would require this court to resolve a hypothetical inquiry, and because no party will suffer any demonstrated hardship if we decline to decide it, we conclude the petition is unripe. The question Kohn presents must await decision " 'on an adequate record in an appropriate case.' " (*People v. Guerra* (1984) 37 Cal.3d 385, 429.)

E. The Commission Properly Exercises Its Powers

Even if this appeal presented a ripe dispute, we would find no error. In our view, the trial court properly determined the Commission's policy does not constitute an impermissible exercise of judicial authority and does not exceed its executive branch authority. The separation of powers clause states "[t]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const., art. III, § 3.) The judicial powers clause states "[t]he judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts, all of which are courts of record." (Cal. Const., art. VI, § 1.) Together, these clauses restrain the powers of the executive and legislative branches, but they do not prevent agencies from evaluating constitutional issues in the provisional manner that the Commission does.

"The fact that an administrative officer exercises judgment and discretion in the performance of his or her duties does not make these actions or powers judicial in nature." (7 Witkin, Summary of Cal. Law (11th ed. 2017) Constitutional Law, § 158, p. 280.) This aligns with our Supreme Court's view that "executive officials may take into account constitutional considerations in making discretionary decisions within their

authorized sphere of action." (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1068.) No " ' "set formula' ' " exists to determine if an agency decision results in a taking. (*Lingle*, *supra*, 544 U.S. at pp. 538-539.) "So long as the scope of an agency's powers is properly defined and limited by the Legislature and the exercise of those powers is subject to appropriate judicial review, the exercise of limited . . . judicial powers by an administrative agency does not offend the Constitution." (*California Radioactive Materials Management Forum v. Department of Health Services* (1993) 15 Cal.App.4th 841, 870, disapproved on another point in *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 305, fn. 5.)

Here, the Legislature clearly defined the Commission's role in evaluating permits broadly and in the context of a taking. (See *McAllister*, *supra*, 169 Cal.App.4th at p. 939.) The fact a governmental agency takes legal issues into account in decisionmaking does not mean it exercises judicial power. It is well-recognized, to pick one obvious example, that an agency exercising its discretion to file a lawsuit or to pursue administrative enforcement—judgments that necessarily have some legal component—does not usurp judicial power in doing so. (See *People ex rel. Lockyer v. Sun Pacific Farming Co.* (2000) 77 Cal.App.4th 619, 636-637.) We think it abundantly clear that what the Commission does in considering potential taking violations in the course of its permitting process—as one of many relevant issues—does not violate the judicial powers clause. The constitutional character of a legal issue taken into account by the Commission makes no difference. Judicial officers always have the final word on matters of law, especially on constitutional issues, but as members of the judiciary we are not alone in working with the state and federal constitutions.[2] Kohn's apparent view of

[2] See Shaw, *State Administrative Constitutionalism* (2016) 69 Ark. L.Rev. 527, 528, fns. omitted ("State administrative agencies may engage in interpretive work with constitutional dimensions in a range of settings: state land use bodies work against the backdrop of takings limitations; state agencies administering benefits programs encounter questions of due process; First Amendment principles infuse the work of many state regulatory bodies, from those involved with licensing to regulators of campaign

administrative decisionmaking and judicial decisionmaking as two hermetically sealed realms, with any sort of consideration of constitutional issues reserved *exclusively* for courts, at every stage of decisionmaking, is contrary to basic principles of administrative law.

What appellant invites us to do is deviate from established law recognizing "the constitutional propriety of an administrative agency's performance of [quasi-judicial] functions." (*Marine Forests Society v. California Coastal Com.*, *supra*, 36 Cal.4th at p. 26.) Now, to be sure, because the Commission makes no decision, and neither provides nor withholds any remedy, *based on a conclusion that something definitely does or does not constitute a taking*—rather, it provisionally considers the *possibility* of a taking violation as one of a number of criteria relevant to permitting—we think it is open to question whether what the Commission does may be fairly characterized as making any kind of "decision" *on a constitutional issue* at all. But assuming without deciding that the practice Kohn challenges here may be fairly characterized as quasi-judicial decisionmaking, we think the Commission's takings avoidance practice is fully consonant with settled law.

An administrative agency that has not been expressly "authorized by the Constitution to exercise judicial powers" may nevertheless perform some adjudicative functions if it satisfies certain criteria. (*McHugh v. Santa Monica Rent Control Board* (1989) 49 Cal.3d 348, 355-356, 359, 372-374.) First, the agency activity in question must be "authorized by statute or legislation and [be] reasonably necessary to effectuate the administrative agency's primary, legitimate regulatory purposes." (*Id.* at p. 372, italics omitted.) Second, the " 'essential' judicial power (i.e., the power to make enforceable, binding judgments) [must remain] ultimately in the courts, through review of agency determinations." (*Ibid*., italics omitted.) In applying the first of these criteria, the court will "closely scrutinize the agency's asserted regulatory purposes in order to

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finance . . .; and all state agencies must contend with structural constitutional principles—primarily federalism and the separation of powers").

ascertain whether the [agency action] is merely incidental to a proper, primary regulatory purpose, or whether it is in reality an attempt to transfer determination of traditional common law claims." (*Id.* at p. 374.)

Here, the Act authorizes the Commission's evaluation of takings considerations when making permitting decisions. As discussed above, the Legislature granted the Commission the ability to consider potential takings in permit decisionmaking (*McAllister*, *supra*, 169 Cal.App.4th at p. 939) and enabled it either to deny a permit or grant a permit with conditions to avoid a takings claim (see *id.*; § 30010). In addition, "the [Act authorizes the] Commission . . . to make and enforce rules and decide whether to grant permits." (*Healing v. California Coastal Com.* (1994) 22 Cal.App.4th 1158, 1178.) Under that statutorily conferred authority, the takings avoidance practice at issue here is both reasonably necessary and incidental to one of the Commission's primary and legitimate purposes, specifically, by helping to implement the "basic goals" of the Act, which include "protect[ing], maintain[ing], . . . enhanc[ing] and restor[ing] the overall quality of the coastal zone." (§ 30001.5, subd. (a).)

What ends all discussion of the issue Kohn raises here is that, at the conclusion of the Commission's decisionmaking process, the power to decide any takings issues that may have played a role in a given permit-granting decision remains, ultimately, with the courts. Our Supreme Court has been clear that the permissibility of an agency's determination of a taking is dependent upon the availability of judicial review. "Administrative adjudication in the course of exercising an administrative agency's regulatory power, *if subject to judicial review*, does not deny participants their right to judicial determination of their rights." (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 15, italics added; see also *Healing v. California Coastal Com.*, *supra*, 22 Cal.App.4th at p. 1178.) It is undeniable that there is such review here. If the Commission were deciding constitutional issues and doing so in an unreviewable manner, that would be another matter altogether. But it is not what we see happening here. Kohn may have come to court prematurely, but in a case presenting a justiciable controversy on a concrete record framing a specific dispute, the Commission's treatment of the issue of

constitutional taking will be subject to judicial review—de novo—to the extent proper objection preserving the issue has been raised.

Granted, as Kohn correctly notes, "an administrative agency is not competent to decide whether its own action constitutes a taking." (*Hensler v. City of Glendale, supra,* 8 Cal.4th at p. 16.) But this does not mean that the Commission cannot consider takings issues as part of its decisionmaking at all. It simply means property owners are "entitled to a judicial determination of whether the agency action constitutes a taking" (*id.* at p. 15), which is assured here via judicial review.[3] Notably, nearly 45 years ago, our Supreme Court rejected an argument that the Commission's predecessor agency, the Coastal Zone Conservation Commission, "has no power to determine whether a developer has acquired a vested right to develop its property without a permit, because that power is not expressly granted to the Commission by the Act and that, since the concept of vested rights has its roots in the Constitution, only courts may determine whether a developer has acquired a vested right." (*State v. Superior Court* (1974) 12 Cal.3d 237, 249-250.) Similarly, here, we reject Kohn's suggestion—which goes even further than the argument advanced in *State v. Superior Court*—that only courts can "consider" the potential for takings.

[3] The available judicial remedy is not limited to review of the administrative record of an agency's resolution of a takings issue but may instead involve litigating the taking claim in court if the procedures employed by the agency are not adequate. (See *Hensler v. City of Glendale, supra,* 8 Cal.4th at p. 16; *Healing v. California Coastal Com., supra,* 22 Cal.App.4th at p. 1170.)

F. The Commission's Policy is Not an Underground Regulation

In addition to his separation of powers and usurpation of judicial power arguments under the California Constitution, Kohn makes the statutory argument that the Commission's takings-avoidance policy is an invalid regulation promulgated without complying with the APA (i.e., it is an invalid "underground" regulation). (*See Modesto City Schools v. Education Audits Appeal Panel* (2004) 123 Cal.App.4th 1365, 1381.) The APA states "[n]o state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation . . . unless [it] . . . has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter." (Gov. Code, § 11340.5, subd. (a).) "Regulation" includes "rule[s], regulation[s], order[s], or standard[s] of general application." (*Id.*, § 11342.600.)

An agency policy is a regulation subject to the APA if it meets two conditions. First, "the agency must intend its rule to apply generally, rather than in a specific case." (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.) "The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided." (*Ibid.*) "Second, the rule must 'implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure.' " (*Ibid.*)

The court properly concluded the Commission's consideration of possible takings was not an underground regulation subject to the APA's formal rule-making process because it did not meet both prongs of the *Tidewater* test. The policy does not satisfy the first prong because it is not a rule or standard of general application. (See *Tidewater Marine Western, Inc. v. Bradshaw*, *supra*, 14 Cal.4th at p. 571.) Instead, the Commission's application of the policy depends on a case-specific exercise of discretion. Determining whether a regulatory taking occurred "cannot be disposed of by general propositions" (*Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, 416) and "has proved to be a problem of considerable difficulty." (*Penn Central Transportation Co. v. New York City*, *supra*, 438 U.S. at p. 123.) The Commission's rule does not "declare[]

how a certain class of cases will be decided" (*Tidewater*, at p. 571) because there is no " ' "set formula" ' for evaluating regulatory takings claims." (*Lingle*, *supra*, 544 U.S. at p. 538.) The policy is not "conclusive and binding." (*Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 334.) Instead, the Commission engages in a case-by-case analysis based on a number of factors, some of which are listed in the Takings Information handout. (*Ibid.*)

Because one prong of this two-part test is not met, we need not address the other. Accordingly, we conclude that the court correctly decided the Commission's policy was not an underground regulation.[4]

III. DISPOSITION

The trial court's decision is affirmed.

[4] Kohn makes a variety of other arguments, none of which warrants discussion beyond noting that we see no merit to any of them.

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Streeter, Acting P.J.

We concur:

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Reardon, J.

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Smith, J.*

* Judge of the Superior Court of California, County of Alameda, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.