

Coastal Commission

Respect for Private Property Rights, Access to Commission Critical

Summary

Background

History

Permitting development along the coast of California has been fraught with controversy. Beginning in the late 1960s numerous development projects were proposed and sited along California's coastline: a nuclear power plant in Bodega Bay, other power plants in other parts of the state and one vacation home development in far north Sonoma County, Sea Ranch. In response to these proposed developments, California's emerging environmental movement sought to regulate development along the coast. After the California Legislature was unable to pass legislation, Proposition 20, the Coastal Initiative, was placed and passed on the 1972 ballot, creating the California Coastal Commission. In 1976, the Legislature passed the California Coastal Act, making the California Coastal Commission permanent.

The commission is responsible for regulating land use and coastal access in a narrow strip of land along the California coast. The commission's jurisdiction represents only 1% of land in California; however, this 1% includes some of the most expensive and desirable communities in the state, including La Jolla, Santa Monica, Malibu, Carmel-by-the-Sea, and Marin County.

Commission Makeup

The Coastal Commission consists of 12 voting members. Although all commissioners are appointed—by the Governor, Assembly Speaker and the Senate Rules Committee, with each receiving an equal share of appointments—there are requirements on who may be appointed. Six of the commissioners must be local elected officials from coastal districts, while the remaining six are appointed from the general public. The Secretaries of the Natural Resources and Transportation agencies and the Chair of the State Lands Commission serve as nonvoting members.

Commission Authority

One of the main goals of the California Coastal Act is to “protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.” In order to achieve these goals, the California Coastal Commission is granted permitting authority over a wide range of activities affecting land use, resources, the marine environment, recreation, and public access; it also has authority to levy fines and seek punitive damages (see below). Because of these far-reaching goals, and powerful tools with regards to land use, the commission can impose significant delays and modifications on proposed projects. Furthermore, the Coastal Commission is responsible for approving local coastal plans (LCPs) for all local governments along the coast.

According to the California Coastal Commission, generally, any “development” activity in the coastal zone requires a Coastal Development Permit from the Coastal Commission or local government with a certified LCP. The width of the coastal zone varies, but it can extend up to five miles inland from the shore, including private and public property, and three miles out to sea. “Development” is broadly defined by the Coastal Act. Examples of development include, but are not limited to:

- Demolition, construction, replacement, or changes to the size of a structure;
- Grading, removal of, or placement of rock, soil or other materials;
- Clearing of vegetation in, or that provides, sensitive habitat;
- Impeding access to the beach or public recreational trails;
- Altering property lines, such as through a lot line adjustment or subdivision;
- Changing the intensity of use of land, such as using a family home as a commercial wedding venue;
- Repair or maintenance that could result in environmental impacts.

Because of this wide-ranging list of activities, the Coastal Commission receives approximately 1,000 permit applications per year (0.9 permits per 1 mile of coastline). Of the permits received, approximately 800 are approved (without controversy), according to researchers at Stanford University. While outright denial of a permit application is rare with the commission, most of the approved permits come with conditions. The Stanford research further concludes that, “[b]efore an application reaches the hearing (before the

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Commission), the staff makes “extraordinary efforts” to negotiate each permit to obtain concessions, such as public access and easement or in architectural designs.” Because of these concessions, approximately 10% of the permits end up being litigated in the courts.

Recent Commission Activities

In reviewing Coastal Commission agendas for 2016, the commission met in closed session to review and discuss approximately 98 litigation matters—some may be discussions on the same case, but under California Government Code 11126(e)(2)(A), the commission does not report individual cases.

Although numerous high-profile cases have been in the news recently, such as the Martin’s Beach access case, Banning Ranch development proposal, or the SeaWorld case, many of the other matters are simply property owners who are seeking redress from the concessions required by the commission staff.

- **The Banning Ranch in Newport Beach:** The developer’s plans call for 895 dwellings, 45,000 square feet of shopping and retail space, a 20-bed hostel and a 75-room resort. The company also would spend about \$55 million to restore much of the remainder of the land as a public park. Commission staff countered with a proposal of 500 homes and much more land for animals and habitat. The commission denied the developer’s plan.

- **Martin’s Beach access:** The controversy over Martin’s Beach began in 2010, when the new owner closed a gate at the top of a private road that provides the only access to the cove from Highway 1. The previous owners, the Deeney family, had allowed the public to visit the beach for decades—advertising the spot with a billboard and operating a store and restrooms—in exchange for a modest parking fee. In 2014, state Senator Jerry Hill (D-San Mateo) authored legislation requiring the commission, which holds California’s tidal lands in trust for the benefit of the public, to negotiate the purchase of an easement allowing the public to return. Hill gave the commission the option, if negotiations failed, of using its power of condemnation to force the owner to sell. The commission subsequently revealed that it could not use its land-acquisition fund for the purpose of eminent domain. Meanwhile, two lawsuits by surfers continue to wend their way through the courts. The owner also has a lawsuit against the County of San Mateo and the Coastal Commission.

- **SeaWorld:** The Coastal Commission in October 2015 approved a project to expand orca tanks at the San Diego theme park, but only under the condition that the practice of breeding killer whales be stopped. SeaWorld executives called the condition an overreach, contended that animal welfare is governed by federal and state laws that do not fall within the jurisdiction of the commission’s board, and sued the commission. However the operator of SeaWorld San Diego dropped the lawsuit. The theme park had been under attack by animal rights advocates for its orca breeding program, resulting in unfavorable media attention.

Early in 2016, the commission dismissed its executive director of four-and-a-half years, setting off a hailstorm of protest from environmental and coastal advocates. Commissioners came under intense scrutiny for the dismissal. They were unable to counter attacks by the environmentalists on the reasons for dismissal because it was a personnel matter and therefore had to be handled in closed session.

2016 Legislation

The backlash from the dismissal of the executive director spawned numerous legislative measures 2016 regarding the Coastal Commission:

- **AB 1871 (Waldron; R-Escondido)** would have limited the growth-inducing impacts the commission may consider in its review of a coastal development permit for a water supply project. Never heard in Assembly Natural Resources Committee.

- **AB 2002 (M. Stone; D-Scotts Valley)** would have required anyone representing more than one client per year who earns \$2,000 in a calendar month to communicate with Coastal Commission members to conform to lobbyist registration requirements of the Political Reform Act. This bill was unnecessary and duplicative of strict lobbying disclosure and communication requirements in the Coastal Act that already impose severe penalties for noncompliance. Failed passage in Senate.

- **AB 2171 (Jones; R-Santee)** would have authorized an applicant for a coastal development permit to file an appeal of any appealable action on a coastal development or claim for exemption for any development proposed to be located in an area subject to a certified local coastal program directly to a superior court, in lieu of filing an appeal with the Coastal Commission. Failed passage in Assembly Natural Resources.

- **AB 2648 (Jones; R-Santee)** would have required commission staff members to maintain records and

disclose any communications with an interested person pertaining to a matter before the commission by including specific information about the communication in staff reports provided to commission members. Failed passage in Assembly Natural Resources.

• **SB 1190 (Jackson D-Santa Barbara)** would have banned all *ex parte* communications with commissioners. Before the early 1990s, the law was silent on *ex parte* communications at the Coastal Commission. The Coastal Act was then amended to explicitly allow commissioners to engage in *ex parte* communications as long as they disclose them and give written materials provided to them to commission staff. Commissioners are free to speak with anyone on any side of an issue and they often do. In addition, applicants are required to provide written disclosures to the commission of anyone who receives compensation to communicate with the commissioners or staff. Commissioners also are required to complete annual economic interest statements in conformance with state law. By eliminating *ex parte* communications, this legislation would have severely weakened commissioners' ability to understand an issue more deeply and placed a greater reliance on staff reports. Failed passage in Assembly.

Expected Activity in 2017

Expect more legislation reforming aspects of the Coastal Act. The question of *ex parte* remains on the table as a controversial issue ripe for more discussion in the coming session. There will likely be some attempts to change the forms that commissioners use to report *ex parte* contacts, limit *ex parte* contacts, inclusion of environmental justice issues as a condition of permits, and some changes to the appeals process.

CalChamber Position

The California Chamber of Commerce supports a balanced approach to development in coastal areas of the state. However, private property rights should be respected. Homeowners and businesses should not be required to give up property rights or lands as a condition for a permit from the Coastal Commission.

Access to public decision makers is critical. All participants before the Coastal Commission should continue to have equal access to commissioners to share information about proposals.

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