

Coastal Commission

Respect for Private Property Rights, Access to Commission Critical

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 Natural Resources and the Transportation Agency 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; the commission 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 5 miles inland from the shore, including private and public property, and 3 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 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.

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Recent Commission Activities

Although numerous high-profile cases have been in the news recently, such as the Martin's Beach access case, Banning Ranch, or the *Lynch v. California Coastal Commission* case, many of the other matters are simply property owners who are seeking redress from the concessions required by the commission staff.

- ***Lynch v. California Coastal Commission***: The homeowners sought a coastal development permit from the commission to rebuild a seawall along their shore front properties that had been severely damaged by coastal storms. The commission granted the permit, but limited its term to 20 years and told the homeowners to apply for a new coastal permit if they wished to retain the reconstructed seawall after that time. The homeowners went ahead and constructed the seawall but sued the commission, claiming that the permit conditions imposed by the commission triggered a compensable take of their private property rights. The California Supreme Court issued a decision rejecting the lawsuit.

- **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 to negotiate the purchase of an easement allowing the public to return. If negotiations failed, the commission could use 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.

In 2017, Senator Hill authored SB 42, which set up an account funded through the General Fund to purchase a public right-of-way; however, the Governor vetoed the bill. A lawsuit was brought against the current owner, arguing that he was required to obtain a permit from the Coastal Commission before closing the gate. The court ruled against the owner and subsequently, the appellate court ruled that the owner must open the gates. The California Supreme Court declined to hear the case. In a separate case, the San Mateo Superior Court ruled that there was insufficient evidence that the previous owners granted a right of access on the road to Martin's Beach. The proponents plan to appeal.

- **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. The developer sued. Meanwhile, the Banning Ranch Conservancy, a group that wants to buy the property and keep it as open space, sued, saying that the City of Newport Beach suppressed information about sensitive habitat on the property. The California Supreme Court agreed unanimously with the conservancy. It would be difficult for the developer's suit against the commission to go forward since no permit was approved; nothing was taken from the developer.

2017 Legislation

- **AB 250 (Gonzalez-Fletcher; D-San Diego; Chapter 838)** directs the Coastal Commission, State Parks and State Coastal Conservancy to prepare and implement a lower-cost accommodation plan for low- and moderate-income families within or adjacent to the coastal zone. Governor signed.

- **AB 663 (Bloom; D-Santa Monica)** reinstates the Coastal Act affordable housing policies that were repealed in 1981. Never heard in committee. Two-year bill

- **AB 684 (M. Stone; D-Scotts Valley)** requires the Coastal Commission to develop a publicly searchable database for reporting *ex parte* communications with commissioners. All such communications shall be posted seven days before a hearing. Allows for verbal disclosures during the commission hearing owing to technical difficulties. Failed. Held in Assembly Appropriations Committee.

- **AB 1129 (Stone; R-Scotts Valley)** creates an unachievable new standard for seawalls and armoring. Establishes a retroactive compliance date, and grants the Coastal Commission civil penalty authority. Held on Assembly Floor. Two-year bill.

- **AB 1642 (Caballero; D-Salinas)** requires the director of the Coastal Commission to post all written *ex parte* communication disclosures on the commission's internet website. Never heard.

- **SB 42 (Hill; D-San Mateo)** established an account funded by the General Fund to purchase an easement to access to Martin's Beach. Governor vetoed.

Expected Activity in 2018

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. There will likely be some attempts to include environmental justice issues, such as more low-income housing availability and more access requirements, as conditions of permits. Expect more permits with time limits as in *Lynch v. California Coastal Commission*.

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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