

Conditions for Coastal Development Approvals Must Be Reasonably Tailored to Accomplish Their Intended Purpose

The Fourth District Court of Appeal held that that while most of the California Coastal Commission's conditions were removed from the permit, the Commission's conditions were not overbroad, and the Commission's conditions were not arbitrary. *California Coastal Commission v. Encinitas*, 2019 WL 6888819 (4th Dist. Cal. 11/29/19).



Plaintiff sought

a coastal development permit to construct a blufftop home. The City of Encinitas's approval of the permit was appealed to the California Coastal Commission. The Coastal Commission agreed to allow the construction to go forward only upon compliance with several special conditions, including (1) the home was to be set back 60 to 62 feet from the edge of the bluff, instead of the 40-foot setback approved by the City; (2) the Plaintiff waived any right to construct a shoreline protective device, such as a seawall, to protect the home from damage or destruction from natural hazards at any time in the future; and (3) the Plaintiff agreed to remove the home from the parcel if any government agency ordered that it not be occupied due to a natural hazard. Plaintiff filed a petition for writ of mandate challenging the conditions imposed by the Commission. On appeal, the court held that the Coastal Commission did not abuse its discretion in requiring a 60 to 62 foot setback. The Coastal Commission reasonably concluded that to meet the requirement in the City's Local Coastal Program (LCP) that the proposed structure be safe from bluff failure and erosion over the course of 75 years, a minimum 60 to 62 foot setback was required. The Commission further did not abuse its discretion in requiring Plaintiff to waive any right to construct a shoreline protective device to protect the home from future damage or destruction; the court noted that such waiver simply enforced the City's LCP's prohibition on armoring for new development.

The court found, however, that the condition requiring the Plaintiff to remove the home from the parcel "if any government agency orders that it not be occupied due to a natural hazard," was unreasonably overbroad and could lead to improper implementation. The court directed that the condition be deleted unless revised to clarify that removal was required only if a government agency with legal jurisdiction issued a final order, after any appeal or writ proceedings, determining that the structures were currently and permanently unsafe for occupancy due to bluff failure or erosion of the bluff, and that there were no measures that could make the structures suitable for habitation without the use of bluff or shoreline protective devices. Under this decision, the Coastal Commission retains broad discretion to impose conditions ensuring safe coastal development in accordance with the California Coastal Act and regional LCPs, but such conditions must be appropriately tailored to accomplish their intended purpose.

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