Blogs
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Coastal Commission Has De Novo Authority Over Issuance of Coastal Development Permits

The court upheld the authority of the California Coastal Commission to decide appeals of coastal development permits under a de novo standard of review.

Cave Landing LLC v. California Coastal Commission, 94 Cal. App. 5th 654 (2023).

The McCarthys owned a parcel in the coastal zone of San Luis Obispo County that was subject to an easement granted to the county for a hiking trail. The easement provided that it could be relocated "to a location on Grantor's property that Grantor and Grantee shall reasonably agree."

Pursuant to the Coastal Act, once the Coastal Commission approves a local agency's local coastal program, all actions implementing the program are delegated to the local government. Developers must obtain coastal development permits which, in jurisdictions with approved local coastal programs, are decided by the local agency, subject to appeal to the Commission. San Luis Obispo County had an approved local coastal program.

In 2013, without a coastal development permit, the McCarthys blocked access to the county hiking trail by installing fences and gates. In 2014, the Commission issued a cease-and-desist order prohibiting the McCarthys from undertaking any activity that discourages or prevents public use of the trail. The order stated that it remained in effect unless rescinded. The McCarthys did not challenge the order in court.

In 2016, the McCarthys, joined by their neighbor as co-applicant, applied for a coastal development permit to move the trail over to the neighbor's parcel. They proposed that the new trail would be constructed and dedicated to the county, then the county would quitclaim the existing easement back to the McCarthys. The county approved a coastal development permit for the project, which was appealed to the Commission.

The Commission denied the permit. It relied on a staff report that described how the project would interfere with public views, be located within an archaeological sensitive area, involve grading of 1,260 cubic yards that would

materially change the area's scenic rural character, and would be undertaken in a geologically unstable area. The staff report also concluded the McCarthys had no legal right to move the trail, citing the language in the easement that limited relocation to areas within the McCarthy parcel, and the Commission's cease-and-desist order. The McCarthys sought a writ to vacate the Commission's denial and approve the permit.

The appellate court first rejected the McCarthys' interpretation of the easement language, under which relocation to any property owned by "Grantor" would have been permitted. The court noted that the easement referred only to the McCarthy parcel. The court next dismissed the argument that only the county, and not the Commission, was a party to the easement, since the Commission has ultimate authority regarding compliance with the Coastal Act.

The McCarthys also noted that the cease-and-desist order prohibited them only from engaging in further development "unless authorized pursuant to the Coastal Act," and argued their development was authorized when the County granted a coastal development permit. They relied on Public Resources Code section 30519(a), which states that after a local coastal program is effective, the development review authority shall no longer be exercised by the Commission and shall be delegated to the local government. The appellate court pointed out that the McCarthys ignored the first phrase of section 30519(a), which states "except for appeals to the Commission." The court confirmed that the Commission has de novo review authority under sections 30621(a) and 30625(a) and upheld the denial of the McCarthy's writ.

Authors

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