

Coastal Commission Regulations Do Not Preempt Provisions of a Certified Local Coastal Program Authorizing the Issuance of Development Permits

02.25.2020

OF RELATED INTEREST

Under the Coastal Act, a local government maintains authority to approve development projects within the coastal zone in accordance with a certified Local Coastal Program (LCP). In *Citizens for South Bay Coastal Access v. City of San Diego*, the Court of Appeal affirmed this local authority by holding that the Coastal Commission's regulations do not preempt provisions of a certified LCP that authorize the issuance of coastal development permits (CDPs).

In *Citizens*, the City of San Diego approved a project to acquire and rehabilitate a motel in the city's coastal zone to provide transitional housing for homeless residents. The city determined that it was not required to issue a CDP for the project because the improvement would decrease the intensity of the use of the premises. Under the city's LCP, a CDP was not necessary for improvements to existing structures, unless the improvement resulted in "an intensification of use" of the facility. In contrast, provisions of the Coastal Act and regulations adopted by the Coastal Commission require a CDP whenever an improvement to an existing structure resulted in any type of change in the use of the property. A resident group sued the city, contending that the city's LCP conflicted with and was preempted by the Coastal Act and the Commission's regulations. The group argued that the city could not rely on its own LCP, and needed to issue a CDP according to the Commission's regulations.

The Court of Appeal held that neither the Coastal Act nor the Commission's regulations preempted the relevant provisions of the city's LCP. Under the Coastal Act, the Commission maintains authority to issue CDPs for projects in the coastal zone unless and until the Commission certifies a local government's LCP. Once the Commission certifies an LCP, permitting authority is delegated to the local government, and a local government must consider CDPs for coastal projects as provided in its certified LCP. The Commission's regulations only apply

Land Use Planning & Zoning
(Litigation)

to the Commission's original authority to issue CDPs, and cannot control a local government's CDP decisions after an LCP has been certified.

If you have any questions about the Coastal Act or other land use regulations, please contact **Marvin E. Bonilla** or any other attorney in our **Land Use Planning and Zoning Department**.