



Appealing to Itself:

Land Use, Permitting, and the California Coastal Commission

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The California Coastal Commission is an independent, quasi-judicial state agency that regulates development within California's 1.5-million-acre coastal zone, an area that is home to roughly half of all Californians. Although building decisions within this zone are generally the purview of local governments, for many permits, any two commissioners can appeal the local approval to the whole commission for consideration. This practice presents a conflict of interest and an opportunity for the commission to abuse its authority when selecting individual land use permits to appeal and overrule unilaterally.

Although the commission finds a substantial issue with fewer than half of the permits appealed by noncommissioners,

it almost always finds a substantial issue with the permits it appeals to itself. Such a finding allows the commission to take full control of a local permit's fate without any time constraint on when it must issue a final decision, leading to delays and increased costs for property owners—if not total denial of the project—often after years of work, tens or hundreds of thousands of dollars in permitting fees and compliance costs, and prior approval from the local government.

This research in brief explores the California Coastal Commission's expanding role in regulating land use within the coastal zone through its permit appeals process.

About the California Coastal Commission

In 1972, voters approved Proposition 20 to create the California Coastal Commission for a term of just four years. In 1976, the California State Legislature made the commission permanent by passing the California Coastal Act (the Coastal Act), which provides guidelines for the overall development of land along the state's coast. The commission's stated mission is "protecting and enhancing California's coast and ocean for present and future generations" with "careful planning and regulation of environmentally-sustainable development, rigorous use of science, strong public participation, education, and effective intergovernmental coordination."¹

Together with coastal cities and counties, the commission has jurisdiction over California's coastal zone. The zone consists of the 1,127 miles of shoreline from the southern border of Oregon to the northern border of Mexico. It extends outward to the state's seaward boundary, three miles into the ocean. Its inland boundary varies from several hundred feet in urban areas to up to five miles in certain rural areas.² In total, the zone covers an estimated 1.5 million acres.³ That means about 19,079,000 coastal residents, or 49 percent of Californians, lived in areas under the commission's jurisdiction as of 2019.⁴ This jurisdiction does not include the San Francisco Bay Area and its roughly 340

miles of public shoreline,⁵ which is under the jurisdiction of the San Francisco Bay Conservation and Development Commission.⁶

The California Coastal Commission has 12 voting members and three nonvoting members. Of the 12 voting members, four each are appointed by the state's governor, Senate Rules Committee, and speaker of the Assembly. Six of

Local Coastal Programs

The Coastal Act directs local governments to create local coastal programs (LCPs) to carry out the provisions of the Coastal Act at the local level. LCPs are land use planning documents that regulate development, coastal resource protection, and land and water use under a coastal city or county's jurisdiction. They consist of a local government's land use and implementation plans with zoning ordinances and maps.⁹ The commission approves every LCP and all LCP amendments.

Development in the Coastal Zone

The Permitting Process

When individuals want to modify their property in an area covered by an LCP, they must apply for a coastal development permit (CDP) from the local government in whose jurisdiction the development is intended to take place.

Development activities that require a permit include constructing buildings, dividing land, and anything else that alters the use of land or public access to coastal waters.¹² The commission has stretched this already broad definition even further.¹³ Under the commission's interpretation of the Coastal Act, activities such as closing a gate on a property or putting on a fireworks show have been deemed development activities requiring a permit.¹⁴

All development activities must comply with the local regulations set forth in the LCP to be approved. Permits can be either denied, approved with special conditions, or approved without special conditions. Breaking ground without obtaining a permit can result in enforcement actions such as cease-and-desist orders and civil monetary penalties.¹⁵

After a local government approves and issues a CDP, the commission is notified of the local government's decision. In 2023, local governments in the coastal zone issued 1,261 CDPs.¹⁶

The Appeals Process

Even after a city or county issues a permit, that issuance can be appealed and reversed by the California Coastal Commission. Under the Coastal Act, "any locally-approved development project between the first public road and the sea; within 300 feet of a beach or the mean high tideline where there is no beach; within 300 feet of a coastal bluff edge; within 100 feet

the commission's voting members are locally elected officials and the other six are appointed from the general public.⁷ The commissioners also appoint an executive director of the commission.⁸ The California Natural Resources Agency, California State Transportation Agency, and California State Lands Commission each contribute one nonvoting member.

However, the responsibility for issuing most development permits within the area covered by an LCP falls on the local government.¹⁰

Today, there are 76 LCPs (15 counties and 61 cities). Many are subdivided, resulting in 126 LCP segments in total (see figure 1).¹¹ Under the Coastal Act, LCPs are implemented at the local level with a limited permitting and reviewing, or appellate, role for the commission.

of a wetland, estuary, or stream; or on tidelands, submerged lands, or public trust lands is appealable to the commission."¹⁷

Any applicant or person who participates in the local permitting process, such as those who may be aggrieved by a local government's decision on a permit, can be an appellant. Alternatively, any two commissioners or the executive director of the commission can appeal any local permitting decision to the commission for the whole body to consider.¹⁸

When reviewing individual permit appeals, the commission's role ostensibly is limited to determining whether the development complies with the local government's LCP.¹⁹

Once a permitting decision is appealed, the commission has 49 days to hold a public hearing on the issues raised by the appeal to determine whether there is a substantial issue with respect to the LCP or the Coastal Act. The permit applicant may waive the 49-day requirement if more time could help clarify any issues, reveal more relevant information, or result in a more convenient hearing location, freeing the commission of any time constraint.

At this initial public hearing, the commission's staff (consisting of the executive director, deputy director, analysts, and others) recommends whether commissioners should find a substantial issue with the permit. If the staff does not recommend a finding of substantial issue, commissioners can hear testimony and public comment and then vote on whether the permit raises a substantial issue. If the commission votes that the permit does not raise a substantial issue, then the local government's decision to grant the permit is final.²⁰

If the staff does recommend a finding of substantial issue, then the commission automatically concurs unless three or more commissioners want first to hear a discussion

Figure 1. Cities and Counties in the California Coastal Zone



Source: California Coastal Commission, "Local Coastal Program Information," accessed September 16, 2024, https://documents.coastal.ca.gov/assets/lcp/DOCS/Slide_Cities_and_Counties_in_CZ.pdf.

on the question. If no discussion is called for, then all public testimony and comment are deferred to a future hearing.²¹ In commission meetings from 2020 through 2024, the staff recommended that the commission find substantial issue in 109 appeals. In 108 of those appeals, or 99 percent, the commission automatically found substantial issue without first hearing any discussion, testimony, or public comment on the question.²²

When a substantial issue is found, a new hearing, called a *de novo* hearing, is triggered. The commission takes full juris-

diction over the permit application with no deference to the local government's previous decision. In this phase, "all issues relating to conformance with LCP and Coastal Act public access and recreation policies are appropriate for consideration."²³ In other words, the permit application starts from scratch. After a *de novo* hearing, the commission votes either to deny the project or to approve it with special conditions, in which case it issues a new permit. It takes the commission, on average, six to eight months to reach a final decision on an appeal from start to finish.²⁴

Shear Development Co., LLC v. California Coastal Commission

The example of Shear Development Co., LLC, illustrates the permitting and appeals process.²⁵ In 2003, Shear Development purchased eight lots in a residential neighborhood in Los Osos, California. Shear Development sought to build houses in two stages, a plan San Luis Obispo County approved in 2004. After completing the first four houses, Shear Development applied for a permit to build three more in 2017. The county again approved.

But even after the county determined that Shear Development’s plans complied with its LCP, the commission intervened, citing concerns about the project’s access to water and wastewater, as well as its location in an environmentally sensitive habitat area. The commission appealed the county’s decision to itself and ultimately denied the permits, claiming the project did not conform to the LCP.

Shear Development challenged the commission’s denial in state court, arguing that the commission overstepped its authority by incorrectly applying the county’s LCP to create jurisdiction. Shear Development claimed that the commission’s actions were an abuse of discretion and lacked substantial evidence. The state courts dismissed Shear Development’s lawsuit, deferring to the commission’s interpretation of the LCP and upholding the commission’s decision to deny the permits.

Represented by Pacific Legal Foundation, Shear Development’s case will be heard by the California Supreme Court to decide whether the commission’s permit denial was unlawful, whether the commission exceeded its authority under the Coastal Act, and whether an agency like the commission can resolve questions of statutory interpretation instead of courts.²⁶

Finding Substantial Issue

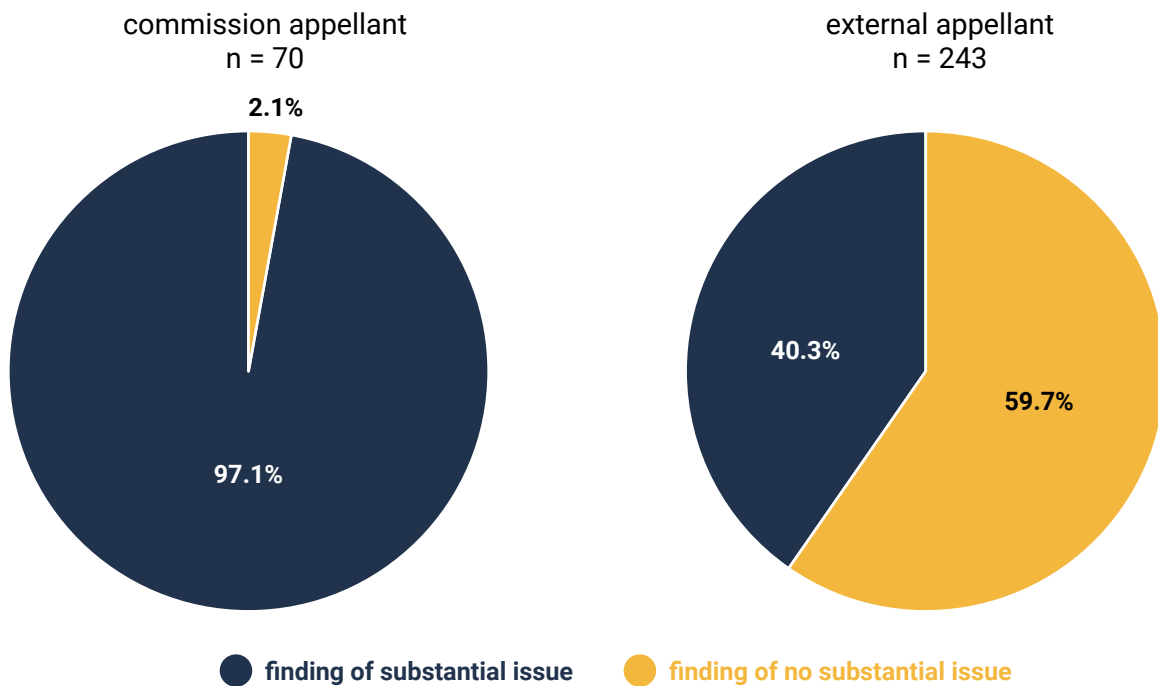
Shear Development’s experience with the commission is not unique. The commission frequently finds substantial issue with the local permitting decisions it appeals to itself. In doing so, the commission can reopen the permit application process, demanding revised plans and additional environmental reviews and imposing new, burdensome conditions on the permit applicant.

The commission’s public data portal contains information about appeals of local permitting decisions. From January 2016 through April 2024 (the last month in which data were available at the time of collection), there were 572 appeals brought before

the commission.²⁷ In the vast majority of these appeals—419, or 73 percent—a permit was initially approved with special conditions at the local level. In another 97, or 17 percent, a permit was approved without special conditions. Local jurisdictions denied 11 permits; the permit applicants appealed all 11 denials. The final 45 appeals do not include appellant information.

Of the appeals with a hearing date listed, the commission held a hearing 148 days after an appeal was filed, on average. Permit applicants who did not waive the 49-day window within which the commission must hold a public hearing had to wait an average of

Figure 2. Finding of Substantial Issue by Appellant, January 2016–April 2024



Source: California Coastal Commission, Public Data Portal (database), accessed September 16, 2024, <https://www.coastal.ca.gov/PDP/>.

55 days, six days longer than the required time. The 14 percent of applicants who waived the 49-day requirement had to wait an average of 358 days for the commission to hold its first hearing.

Appeals that did not have information on either the substantial issue determination or the appellant are not included in this sample, nor are those considered frivolous, suspended, or withdrawn. The 11 appeals where the applicant was the appellant are also not included, leaving 313 appeals.

Of the remaining 313, a commissioner (or the commission's executive director) was an appellant in 70 appeals, or 22.4 percent of the sample. The commission found substantial issue in 68 of the 70 appeals brought by itself—or 97.1 percent. By comparison, the commission found substantial issue in 98 of the 243 appeals brought by all other appellants—or 40.3 percent (see figure 2). Commissioners find substantial issue with almost all the permits they appeal to the commission. But just two out of five appealed by outsiders meet the same fate.

Implications for Coastal Housing

The commission's appealing of local decision-making has implications for housing and land use on the California coast. California has a severe housing shortage, and the crisis is amplified in the coastal zone.²⁹

According to a study by the American Enterprise Institute, four out of the five least affordable metro areas for first-time homebuyers in the United States are in California, and two are in the coastal zone.³⁰ A study by economists at the University of California, Los Angeles, found that Coastal Act regulations carried out by the commission caused coastal home prices to increase by an average of 25 percent more than non-coastal home prices from 1970 to 2000.³¹

Regulations and rising home prices have created a problem of exclusivity in the coastal zone. A report by the state's

Conclusion

The Coastal Act gives local governments the authority to make land use decisions in the coastal zone. The California Coastal Commission was intended to play a limited and deferential appellate role. On appeals of local development decisions, the act limits the commission to ensuring that local governments respect their local coastal programs—which the commission certifies ahead of time—not to use the appeals process to replace local decision-making with its own.

In reality, the commission is using the appeals process to subvert LCPs. Furthermore, due process issues arise when the commission appeals permits to itself, almost always finding a reason to unilaterally halt the projects and create costly delays for landowners. Legal experts argue that the commission violates the law by using individual appeals to alter or overrule LCPs instead of formally amending them.³⁵ Economic evidence

This process allows the commission to identify and reverse local government decisions by itself—serving as both prosecutor and jury. Two commissioners can add substantial delays and costs to a project by taking its locally approved permit through a longer and more complicated process with fewer due process protections for the applicant. With no time constraint at the *de novo* stage of the process, it took the commission, on average, 330 days to deny an appealed permit, whereas an approval with special conditions took an average of 511 days, according to available data from 110 appeals. In one example, the commission ultimately approved a permit 1,525 days after receiving the appeal.²⁸

Commissioners' ability to pick permits to appeal to the very agency of which they are members creates problems of independence, neutrality, and due process. Commissioners can overrule local governments and change the terms of their LCPs after the fact.

Legislative Analyst's Office finds that lower-income households were moving away from California's coast as coastal cities were building minimal housing between 2011 and 2013.³² Another report by the Legislative Analyst's Office finds this trend continuing in 2022, as limited housing along the state's coast pushed people further inland and increased both housing demand and prices throughout California.³³

Delays caused by the commission's appeals process constitute another cost for property owners. For example, a \$750,000 project, on average, can cost a developer roughly \$670 each day the job is delayed.³⁴ The average wait of 148 days for an initial appeal hearing equates to nearly \$100,000 in delay costs for just one project. With 572 appeals over 8.5 years, delays may have cost property owners nearly \$57 million.

shows that these actions increase the cost of housing across the coastal zone.

The California Supreme Court has agreed to hear arguments in the *Shear* case. A ruling in *Shear Development's* favor would reassert the Coastal Act's original goal of facilitating local control with limited commission oversight over local development decisions. Also, adding a time limit for *de novo* review of permit appeals, as there is for an initial substantial issue hearing, would help prevent the commission from sitting on permits for months or years before deciding whether a landowner's project can continue, which would reduce the costly delays imposed on property owners. Lastly, amending the Coastal Act to provide for judicial review of the commission's substantial issue determinations would add a check on the commission's actions, especially on actions concerning permits appealed by commissioners to the commission.

Notes

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