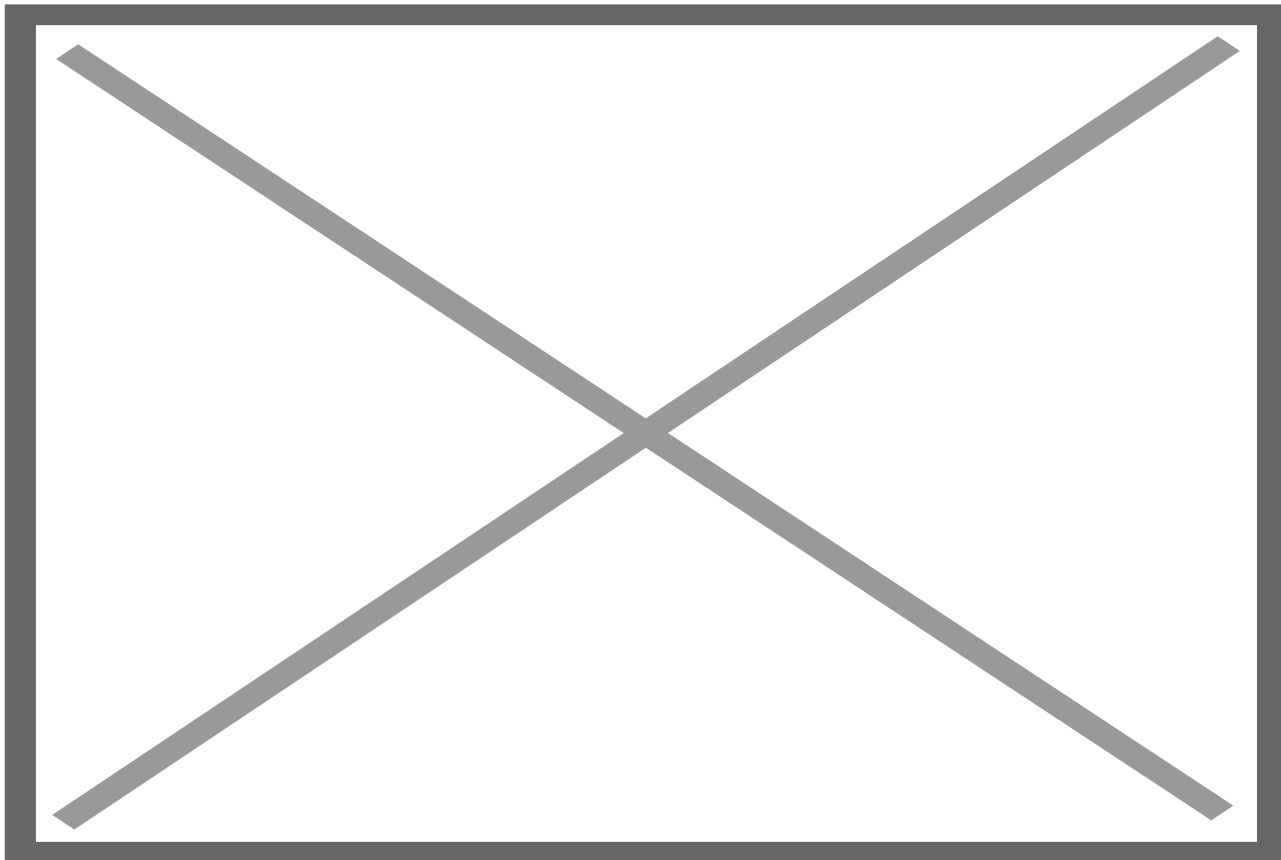


## **Administrative Mandate is the Exclusive Method for Challenging an LCP under the Coastal Act**

An appellate court has held that the sole means of challenging a certified local coastal program (LCP) based on violation of the California Coastal Act is a petition for writ of administrative mandate under Code of Civil Procedure section 1094.5. *Beach and Bluff Conservancy v. City of Solana Beach*, 28 Cal. App. 5th 244 (2018). Under the Coastal Act, local governments must develop an LCP consisting of a land use plan (LUP) and a Local Implementation Plan and submit the plans to the Coastal Commission for certification of consistency with the Act. In this case, the City submitted an amended LUP to the Commission for certification and, after a series of proposed modifications accepted by the City, the Commission certified the LUP.



Petitioner filed an action for declaratory relief and traditional mandate under Code of Civil Procedure 1085, asserting a facial challenge to policies in the amended LUP on the grounds that they conflicted with the Coastal Act and/or violated the takings clause of the Fifth Amendment. The appellate court concluded that petitioner's sole remedy for claims based on the Coastal Act was a petition for writ of administrative mandamus against the Coastal Commission. The court relied on Public Resources Code § 30801, which states that any challenge to a decision or action by the Coastal Commission must be by writ of mandamus under Code of Civil Procedure § 1094.5 filed within 60 days after the final decision of the Commission. The court reasoned that any post-approval facial challenge to a local land use policy is "essentially a challenge to the Commission's quasi-judicial certification decision." That the *City* was acting legislatively when it enacted the LUP did not change the fact that a mandamus proceeding against the *Commission* (with the *City* named as a necessary party) was petitioner's

exclusive method of challenging policies based on inconsistency with the Coastal Act. The court pointed to the established principle that where a statute creates rights and obligations not previously existing under common law, it may also define the exclusive procedure for judicial review based on those rights and obligations. Because the Coastal Act created new rights and obligations regarding the development and management of coastal property, the exclusive method of challenging decisions of the Commission under the Coastal Act was administrative mandamus, notwithstanding common law remedies that might otherwise have been available. Turning to petitioner's constitutional challenge, the court observed that the Commission's review of an LUP is statutorily limited to a determination of consistency with the Coastal Act, and hence section 30801 arguably did not apply to a constitutional challenge to a Commission-certified LUP. The court found it unnecessary to decide this, however, finding that petitioner's constitutional claims were not ripe for adjudication because the Commission and City had not adopted a final, definitive, position regarding how policies would be applied to the petitioner's property. Only then, the court said, could it be determined whether a constitutional violation had occurred. The court added that nothing in its decision precluded any property owner affected by the LUP from later challenging the application any of its policies to the owner's specific property.

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