

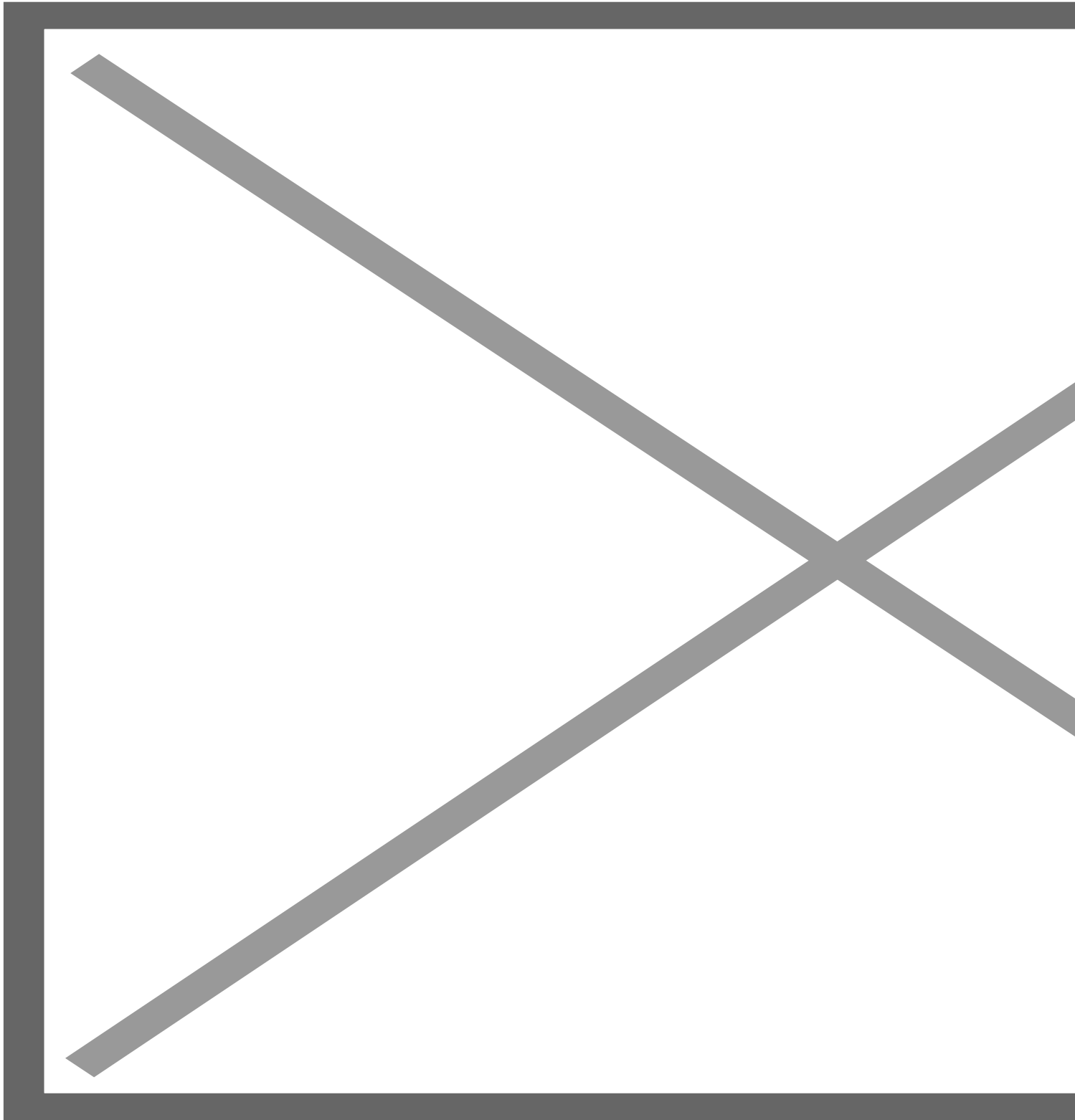
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California Land Use & Development Law Report

## **Action to Invalidate Building Permit Barred by Failure to File Timely Challenge to Underlying Site Development Permit**

In [\*Citizens for Beach Rights v. City of San Diego\*](#), 10 Cal.App.5th 1301 (2017), the court of appeal held that a challenge to issuance of a building permit necessarily included a challenge to the validity of the underlying site development permit, which was barred by the 90-day statute of limitations in Government Code section 65009.



**Background** In 2006, the City of San Diego obtained a site development permit (SDP) to build a new lifeguard station on Mission Beach. Under the City's municipal code, the SDP was required in order for a building permit to issue for the project. The SDP stated that failure to "utilize[]" the permit within 36 months would automatically void the permit. Over the ensuing years, the City worked to obtain funding for the station and secure a coastal development permit from the California Coastal Commission. Due to the late 2000s economic downturn, the City was not able to secure funding for the project until 2015. The City issued a building permit for the lifeguard station on April 20, 2015. Over four months later, on August 26, 2015, Citizens for Beach

Rights sought a writ of mandate and injunction to stop construction. The group argued that the SDP had expired automatically because it had not been utilized within 36 months of its issuance. The trial court agreed and enjoined the construction. **Challenge to the Building Permit Was Predicated on Invalidity of the Site Development Permit** The City contended that its issuance of the building permit necessarily included a decision that the SDP remained valid, and that any challenge to that decision had to be brought within 90 days under Government Code section 65009(c)(1). The court of appeal agreed. The purpose of Citizens' lawsuit, it reasoned, was to stop construction by challenging the City's decision, when it issued the building permit, that the SDP remained valid. That decision was required under the City's municipal code; i.e., without a valid SDP, the building permit could not have been lawfully approved. Because Citizens' suit was filed more than 90 days after the City decided that the SDP remained valid and because the building permit was based on that decision, the suit was time-barred. **The SDP Was Valid Because Utilization of the SDP Included the Pursuit of Funding and Other Permits** The court of appeal also found that San Diego's municipal code permitted utilization to be defined by standards developed by the City Manager, and that uncontested evidence demonstrated the City's policy was to treat the pursuit of funding and other permits as "utilization." Although one condition of the SDP was that "construction, grading or demolition" must begin within 36 months, that requirement needed to be harmonized with the municipal code and other parts of the SDP, which required the City to obtain other permits first. Because the City had sought funding and had continuously pursued the SDP within 36 months of the SDP's issuance, the SDP was valid at the time the building permit was issued in 2015.

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