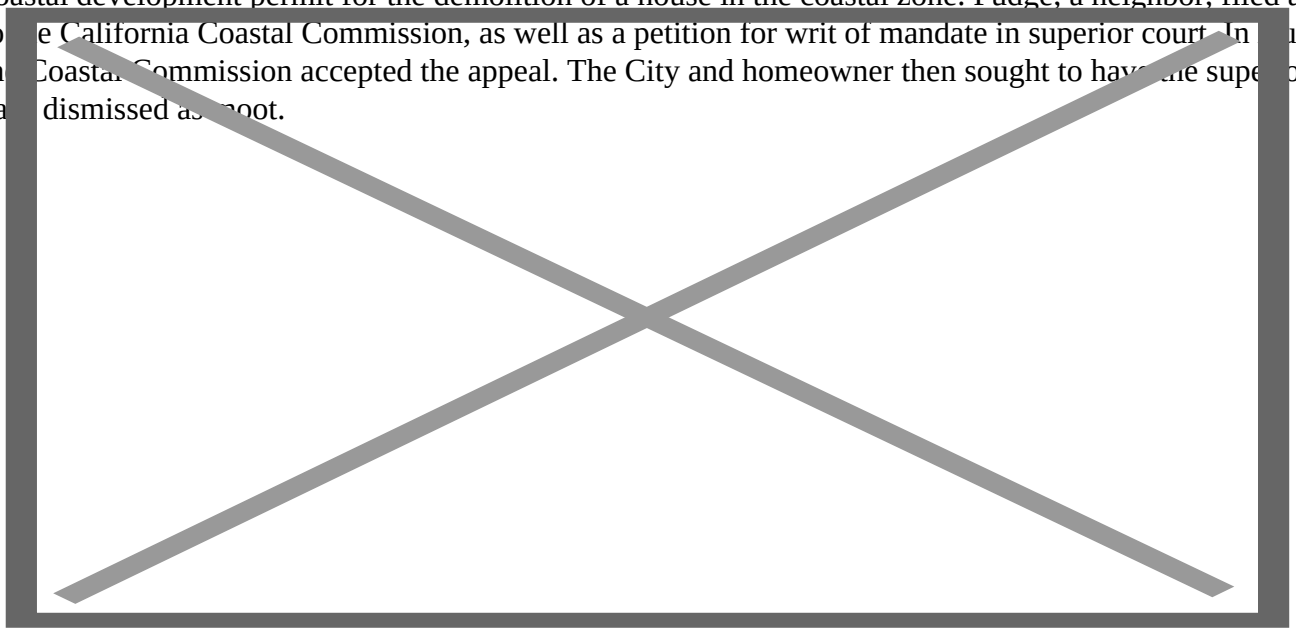
Blogs
March 15, 2019
California Land Use & Development Law Report

Coastal Development Permit Cannot Be Challenged in Court Until After Coastal Commission Decides an Appeal

A court challenge to a local agency's decision to grant a coastal development permit becomes moot when the Coastal Commission accepts an appeal of the decision, the California court of appeal ruled in *Fudge v. City of Laguna Beach*, No. G05571 (4th Dist., Feb. 13, 2019). In 2017, the Laguna Beach City Council approved a coastal development permit for the demolition of a house in the coastal zone. Fudge, a neighbor, filed an appeal to the California Coastal Commission, as well as a petition for writ of mandate in superior court. In August 2017, the Coastal Commission accepted the appeal. The City and homeowner then sought to have the superior court case dismissed as moot.



Under the Coastal Act, local coastal governmental entities must develop local coastal programs in consultation with the Coastal Commission. After the Commission certifies a local coastal program, the local agency has responsibility for issuing coastal development permits within its jurisdiction. An aggrieved party may appeal a local government's decision on a coastal development permit to the Coastal Commission. If the Coastal Commission accepts the appeal, it hears the appeal de novo. Fudge argued that his case was not moot because the Coastal Commission would not hear his appeal in the same manner as the matter was originally decided by the City. Fudge reasoned that CEQA applied to the to the City's issuance of the coastal development permit, whereas the Coastal Act applied to the Coastal Commission's appeal hearing. The court ruled that the Coastal Commission's appeal hearing is truly de novo and, when the Coastal Commission accepts an appeal, it nullifies the local agency's decision to issue the coastal development permit. The court explained that the crux of Fudge's argument—that an appeal hearing is not "in the same manner" as the original decision on a permit application—relied on a phrase in an old California Supreme Court case that had not been followed in subsequent cases interpreting when an appeal is de novo. The court noted that the Coastal Commission reviews local coastal programs under a certified regulatory program that is the "functional equivalent" of CEQA review. Thus, it did not matter that the CEQA rules and procedures (for the local agency's decision) were different from the Coastal Act rules and procedures (for the Coastal Commission's appeal hearing). Finally, the court explained, its conclusion was consistent with the statutory structure, under which the Coastal Act takes precedence over

CEQA. This case reaffirms earlier cases concluding that when the Coastal Commission accepts an appeal of a local agency's issuance of a coastal development permit, the local agency's decision becomes a nullity; any pending case challenging the local agency's decision then becomes moot, and a new case may be brought later to challenge the Coastal Commission's decision on the appeal. An alternative conclusion, the court said, would give project opponents "an inexplicable two bites at the apple" (by allowing them to attack the local agency's original decision in civil court and simultaneously attack the same decision in Coastal Commission proceedings) and would "undermine the ability of the Commission to implement uniform policies governing coastal development."

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