

California Court of Appeal Issues Rare Interpretation of Policy Designed to Mitigate the Effects of Coastal Erosion

Key Points

- In *Martin v. California Coastal Commission*, the Court of Appeal issued a rare opinion discussing local policies that are designed to manage and mitigate coastal bluff erosion.
- The court upheld a permit condition that required a new home to be set back 79 feet from the edge of a coastal bluff.
- The court reaffirmed that the policy at issue requires new development to be reasonably safe from failure and erosion over the entirety of the development's lifetime.

Since the adoption of the California Coastal Act in 1976, coastal cities and counties have implemented a broad range of policies to manage and mitigate coastal erosion. However, there are only a handful of published California court opinions that discuss the implementation and legal validity of these policies. When the California Court of Appeal published one of these rare opinions earlier this month, it quickly caught the attention of Coastal Act experts.

In *Martin v. California Coastal Commission* (Cal. Ct. App., June 23, 2021, No. D076956; 2021 WL 3021356), property owners in Encinitas challenged a coastal development permit condition that required a new, blufftop house to be set back 79 feet from the edge of the coastal bluff to mitigate the effects of erosion (the condition was authorized by Encinitas' local coastal program). The Court of Appeal affirmed that the condition was valid, and the court approved methodology that found erosion would occur at a rate of 0.52 feet per year (39 feet over 75 years). The court's opinion is consistent with its prior ruling in *Lindstrom v. California Coastal Com.* (2019) 40 Cal.App.5th 73, where the court approved a setback of 60 to 62 feet from the edge of the bluff at another property in Encinitas. In both opinions, the court emphasized that Encinitas' local coastal program requires new development to be "reasonably safe from failure and erosion over its lifetime," and not just at the time of its construction. (See Encinitas Mun. Code, § 30.34.020D.)

The Court of Appeal published the *Martin* decision at the request of the California Coastal Commission. In their letter requesting publication, the Coastal Commission noted that the opinion "involves a legal issue of continuing public interest – specifically,



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the protection of coastal bluffs from the harmful effects of blufftop development, and the protection of people and property from the dangers of coastal erosion.” Coastal erosion continues to be an issue of ongoing concern throughout California, and we will likely see other published decisions involving similar topics over the next few years.

If you have any questions about the California Coastal Act or coastal development permits, please reach out to any member of [Hanson Bridgett's Land Use Practice](#).

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