

Ruling gives partial win for bluff-top homeowners

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December 16, 2016

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A San Diego Superior Court judge recently rules in favor of bluff-top property owners in two provisions that were part of a lawsuit challenging Solana Beach regulations pertaining to seawalls. He denied five other claims.

Photo by Bianca Kaplanek

SOLANA BEACH — A San Diego Superior Court judge on Dec. 9 ruled that Solana Beach is violating the California Coastal Act by prohibiting bluff-top homeowners from building new seawalls to protect structures adjacent to their homes and restricting the ability to repair damaged beach staircases.

But Judge Timothy M. Casserly sided with the city and environmentalists by upholding required expiration dates on permits for existing seawalls under certain conditions and prohibiting bluff retention devices for new development.

He also ruled that public access on private beach stairways must be a required condition for future development permits.

The provisions were part of the city's Local Coastal Plan Land Use Plan, adopted in 2013.

An LCP, which regulates development in the coastal zone, is required by the California Coastal Act of 1976 to ensure coastal areas do not prohibit public access to beaches.

Each LCP contains an LUP, or ground rules for future development and protection of coastal resources.

Solana Beach is unique in that the entire city, including the area east of Interstate 5, is considered the coastal zone. It is the only city in San Diego County without an approved LCP.

With the approved document all coastal development permit authority would transfer from the Coastal Commission to Solana Beach.

Following the 2013 LUP adoption, the Beach & Bluff Conservancy, a nonprofit organization that represents coastal landowners in Solana Beach, sued the city.

They say the restrictions on seawalls violated their rights to protect their property. Environmental groups say the bluff retention devices prevent erosion and the natural creation of new beaches.

Larry Salzman, principal attorney with Pacific Legal Foundation, which is representing the Beach & Bluff Conservancy, described the ruling as an important and partial win for property rights.

“The ruling affirms the fact that the Constitution and the Coastal Act protect the rights of coastal property owners to use and protect their property, so long as doing so does not harm the public,” he said. “If government wants to take private property for public use, or force property owners to abandon their property, it must compensate them.”

“It is gratifying that the ruling has upheld some core rights of property owners against government abuse,” he added. “Meanwhile, Beach & Bluff Conservancy is considering whether to appeal the portions of the ruling that sided with the city.”

Solana Beach resident Jim Jaffee is a Surfrider Foundation member who worked with a stakeholder group for years to help create the LCP.

“We see Judge Casserly’s ruling to uphold five major provisions of the seven provisions challenged as a huge vindication of the efforts by the city, Coastal Commission and Surfrider Foundation San Diego County Chapter to deal with the debilitating impacts of seawalls and development on beach access and recreation,” he said.

“Essentially, the judge agreed with us that seawall impacts must be mitigated and that new development must not require seawalls,” Jaffee added. “The judge also found that if private stairways down to public beaches are redeveloped they must be converted for public use.”

“We believe it is time for the Beach & Bluff Conservancy and the Pacific Legal Foundation to cease the costly lawsuits that obstruct the city’s 16-year effort to move forward on its Local Coastal Program,” he said.

Jaffe said his group is considering their options on the two provisions the judge reversed, adding that they should not be an obstacle to the implementation of the completed LCP.

Jon Corn, also an attorney with Pacific Legal Foundation, said his clients are pleased with the ruling on two claims.

“A few we lost and a few we may take up at a later date,” he said. “The ones we won were not small victories.

“We are putting together a conference call with the city, the Coastal Commission and Surfrider to discuss what our next steps are. I would image they would appeal.”

He said the litigation does not prevent the city from moving forward with the LCP.

“They could and should finish it,” he said. “I don’t know why they wouldn’t.”

At press time, David Winkler, a bluff-top homeowner and attorney who was also part of the stakeholder group working on the LCP, said he hadn’t read the ruling so preferred not to comment yet.

Solana Beach officials did not respond to requests for comment.

This article has been corrected since its original posting. The article incorrectly identified Jim Jaffe as an attorney. He is not.

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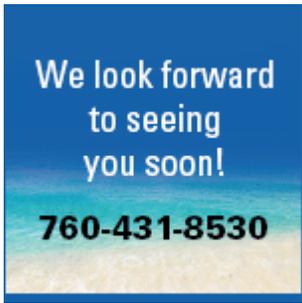
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