Insights

California Trial Court Clarifies When Coastal Property Owners Are Entitled to Seawall Protection Under the Coastal Act

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Nossaman eAlert

In a recent California trial court decision, *Casa Mira Homeowners Association v. California Coastal Commission (Casa Mira)*, the court added another significant page in the decades-long debate over which coastal properties are entitled to shoreline protective structures from the assumed effects of coastal erosion. While a California statute–Public Resources Code Section 30235–provides for the clear, mandatory protection for certain properties as long as they are "existing structures," the temporal determination of when structures are considered "existing" has been the subject of much debate.

As explained below, the San Mateo County Superior Court in *Casa Mira* recently ruled the California Coastal Commission's (Commission) proverbial line in the sand over whose property is entitled to protection was unreasonable and failed to properly balance the consideration between beach access and private property rights. The court stated the Commission's position that "all structures along the coast that become endangered or unstable due to erosion should be allowed to collapse" is unreasonable and "contrary to the stated purpose of the Coastal Act." Instead, the court ruled "it is clear that the [Coastal Act] supports people protecting their existing structures from the danger of property damage due to subsequent erosion."

The case largely turned on the statutory interpretation of a provision of the Coastal Act (Pub. Resources Code, section 30000 et seq.). The Coastal Act, which went into effect on January 1, 1977, provides a set of coastal policies to guide land use decisions along the California coast, and established the Commission to oversee and implement the Act along the majority of California's coast. One of the most contested and litigated issues under the Coastal Act has been the Commission's denial of CDPs for seawalls or revetments. These are shoreline protective devices that generally run parallel to the shoreline and are designed to protect structures, habitat or other human activity from coastal erosion. As relevant here, the Commission maintains exclusive jurisdiction over CDPs for shoreline protective devices located seaward of the mean high tide line. Section 30235 of the Coastal Act states that revetments, seawalls and other shoreline protective devices "***shall be permitted*** when required to serve coastal-dependent uses or to protect ***existing structures*** or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply." (Emphasis added.) Most of the debate over the foregoing provision has been over whether the term "existing structures" means structures existing at the time of the seawall CDP application or is limited to structures that existed before the adoption of the Coastal Act on January 1, 1977.

The consequences for this interpretive dispute can be drastic for coastal property owners who require shoreline protection for the existing structures on their properties. The Commission's current interpretation of "existing structures" would foreclose approval of CDPs for seawalls for buildings built after January 1, 1977, leaving them unprotected. For the first 38 years of the Coastal Act, however, the Commission consistently interpreted "existing structures" as being those that were in existence at the time the Commission acted on a CDP application.

While the Commission maintained that interpretation of Section 30235 for almost four decades, in 2015 the Commission pivoted to a more restrictive definition. In its 2015 Sea Level Policy Guidance ("2015 Guidance"), the Commission stated going forward, it would maintain that "structures built after 1976 pursuant to a [CDP] are not 'existing.'" (Sea Level Policy Guidance, at p. 166.) Since the release of the 2015 Guidance, the Commission has held fast to the guidance and used its new interpretation of Section 30235 as a basis to deny CDP applications for seawalls. In July of this year, the issue of the proper interpretation of "existing structures" came to a head again in *Casa Mira*, where the trial court ruled the Commission's restrictive interpretation was improper.

In *Casa Mira*, the homeowners association applied for a CDP to construct a 257-foot seawall to protect a collapsing bluff that threatened ten townhomes, an apartment building, a sewer line and a section of the California Coastal Trail. In 2016, the Commission granted an emergency CDP for Casa Mira for a rip-rap (rock pile) revetment in response to erosion from a severe winter storm, and then followed up with a regular application for a CDP to build a permanent concrete seawall. The Commission determined only the apartment building and Coastal Trail were entitled to seawall protection and thus it approved only a 50-foot section of the seawall, but denied the rest of the sought after shoreline protection. The Commission reasoned because the Casa Mira townhomes and sewer line were not built until 1984, they were not considered "existing structures" entitled to the seemingly mandatory seawall protection provided in Coastal Act section 30235.

Casa Mira argued the Commission's limited "approval" of the 50-foot seawall amounted to an effective denial of its CDP application because it would leave the townhomes and sewer line without protection. It contended the proper interpretation of the term "existing" in section 30235 is "existing at the time of the CDP application," and thus, Casa Mira was entitled to approval of its CDP for the 257-foot seawall.

In contrast, the Commission argued the mandate to approve CDPs for "existing structures" only applied to those structures that were existing prior to 1976. Because the language of section 30235 does not specifically define what "existing" means, the Commission argued its agency interpretation should be granted deference by the court. Even if the court limited its review to the plain language of the statue, the Commission contended "existing" should be interpreted as existing "at the time the word was used," in the statute—1977.

Addressing the parties' arguments, the court determined the language of section 30235 was unambiguous, and thus, the disputed term—"existing structures"—must be interpreted in its "ordinary, general, common sense meaning." Under such an ordinary interpretation, the court ruled "it is clear that the statute supports people protecting their existing structures from the danger of property damage due to erosion." The court stated the Commission's interpretation that would effectively mandate a policy of allowing all sea-side homes and buildings built after 1976 to fall into the ocean was "unreasonable" and contrary to the Coastal Act's purpose.

While the court's holding is limited to its conclusion that existing under section 30235 means existing as of the time of the application, the court did also address various additional aspects of the parties' arguments. First, the court ruled even if the statute was ambiguous, there is no legislative history available to support the Commission's restrictive interpretation. The court reminded the Commission that on this legal issue, the court, not the agency, had the final say on the statute's interpretation. Second, the court recognized ***a different*** Coastal Act provision, section 30253, prevents ***new development*** that would require a seawall to be built at the same time as the house. However, it pointed out in contrast to section 30253, Coastal Act Section 30235 applies only to ***existing development***. If a structure has already been permitted and developed and then later erosion necessitates the need for a shoreline protection, then, absent a waiver of future shoreline protection, Section 30235 would allow such seawall construction. The court emphasized the Commission's interpretation of "existing structures" as only applying to pre-1977 seawalls amounted to an unbalanced consideration of value of creating sandy beach without weighing and considering the "protection and enjoyment of nature *and* enjoyment of private property."

The Commission has authorized an appeal of the decision in *Casa Mira*. The ultimate resolution of this issue, either by the Court of Appeal, or possibly, the California Supreme Court, will be very consequential to coastal homeowners whose existing homes are threatened by coastal erosion and in need of the shoreline protection that section 30235, by its terms, seemingly guarantees.