



## NEWS ALERT

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### COASTAL COMMISSION COMMISSION LOSES ANOTHER

The residents of Bay Island in Newport Harbor have won an important battle against the California Coastal Commission. They defeated an attempt by the Commission to take property rights from Bay Island and from the City of Newport Beach in violation of a previous court decision and of the California Coastal Act. This victory is an important part of teaching the Commission and its staff that they are not above the law or above private property rights in California.

Bay Island is a private community in Newport Harbor. It is accessed by a bridge over land owned by the City of Newport Beach. Bay Island received an easement from the East Newport Town Company in 1927 “to construct, maintain, repair and replace a bridge for pedestrian and/or automobile travel” connecting the island to the peninsula. In 1928 the City of Newport Beach obtained a judgment from the Superior Court confirming that the City owned the land under the bridge and the bridge was in a “private” easement for the use of Bay Island residents to access their land. The current bridge used for access to the island has been in place since 1956.

Then in 2009 the Commission refused to give Bay Island residents the right to rebuild their bridge unless they opened the bridge to public traffic. Bay Island had applied to the Commission for a coastal development permit in order to rebuild the bridge. The Commission conditioned the permit on a grant of access to the public. The Commission took this action over the objection of Bay Island and over the objection of the City of Newport Beach. The City explained it objected because the condition expanded an existing easement and opened the City to potential liability to the public for access across public lands. Commission staff pooh-poohed the argument and the Commission effectively ordered that the bridge be opened to the public or not be rebuilt.

The Bay Island Community sued the Coastal Commission over this issue. The City joined Bay Island in the suit as a “friend of the court” seeking to protect its property interests as well. Bay Island and the City lost the case in the Superior Court, but appealed to the Court of Appeal.

The Court of Appeal has just issued a decision in which it agrees with Bay Island and the City and overturns the decision of the Coastal Commission. The Court of Appeal told the Commission that it cannot choose to ignore the specific language of a court judgment designating property as “private” and simply take a right of access for the public without authority under the law. Then, in an unusual step, the Court of Appeal simply struck out the offending conditions requiring access for the public and upheld the rest of the permit allowing Bay Island to rebuild its bridge. This fact is important because typically a court will send a decision back to an agency like the Commission to reconsider its choices when the court finds part of the decision illegal. By taking this action, the Court of Appeal denied the Commission the opportunity to find other ways and excuses to prevent Bay Island from rebuilding its 56 year old bridge.

Every decision by a court, and more particularly, a Court of Appeal, in which the Commission is kept from overextending its power and abusing other people's rights is important. This specific decision is "not for publication" so it does not carry binding authority on other courts. It is, however, a clear statement to the Commission that it cannot abuse its power at the expense of other individuals and entities. The residents of Bay Island and the City should be applauded for their courage in taking on the Coastal Commission and adding one stone to the wall that keeps the Commission in its proper role under California law.