

The California Supreme Court today issued its long-awaited [decision in \*Lynch v. California Coastal Commission\*](#), rejecting a lawsuit brought by San Diego beachfront homeowners claiming that permit conditions imposed by the Coastal Commission triggered a compensable taking of their private property rights. Writing for a unanimous Court, Justice Carol Corrigan concluded that the homeowners had forfeited their right to challenge the constitutionality of the permit conditions when they accepted the permit and proceeded to build the coastal protection structure authorized by the Commission.



Rebuilt seawall shown in 2012, courtesy of the LA Times

My fellow Legal Planet colleagues and I have previously detailed the factual and procedural history of the *Lynch* case that culminated in today's opinion. [I blogged on that history on the eve of the Court's oral arguments in the case last May](#) and [summarized those arguments immediately thereafter](#). Briefly, the *Lynch* homeowners sought a coastal development permit from the Coastal Commission to rebuild a seawall along their shorefront properties that had been severely damaged by coastal storms. The Commission granted the permit, but limited its term to 20 years and directed the homeowners to seek a new coastal permit if they wished to retain the reconstructed seawall after that time. The homeowners sued the Commission, claiming that limiting the permit to only 20 years represented an unconstitutional regulatory taking of their private property rights by the Commission for which monetary compensation and invalidation of the condition were required.

Justice Corrigan's opinion finds that the homeowners can't have it both ways, and that by accepting the benefits conferred under the coastal permit, they forfeited their right to contest the constitutionality of the challenged permit conditions:

“[Plaintiffs] went forward with construction before obtaining a judicial determination on their objections. By accepting the benefits of the permit and building the seawall, plaintiffs effectively forfeited the right to maintain their otherwise timely objections. In general, permit holders are obliged to accept the burdens of a permit along with its benefits...Plaintiffs obtained all the benefits of their permit when they built the seawall. They cannot now be heard to complain of its burdens.”

The Supreme Court's decision on this important procedural issue is undoubtedly correct. As the justices' opinion in *Lynch* notes, a contrary holding would result in tremendous uncertainty for property owners, regulatory agencies and lower courts alike. And there's a basic issue of fairness involved: the *Lynch* homeowners shouldn't be allowed to have it both ways, challenging the terms of a permit at the same time that they enjoy the economic and personal benefits the permit confers.

Nevertheless—and as I noted in my earlier post—it's unfortunate that the Supreme Court didn't go beyond its procedural ruling to also address the substantive merits (or lack thereof) of the *Lynch* plaintiffs' regulatory takings claim. The Coastal Commission imposed the contested 20-year permit term in light of its quite rational concerns about the long-term effects of intensifying coastal storms and projected sea level rise on the California coast. A key aspect of any effective climate change adaptation strategy is maintaining the flexibility to re-address and adjust land use decisions in light of changing ecological circumstances and increased knowledge about the on-the-ground projected impacts of climate change. A definitive California Supreme Court decision on the *Lynch* homeowners' takings challenge to the *Lynch* permit condition would have provided not only the Coastal Commission but other state and local regulatory agencies with important, welcome guidance on the legal validity of such regulatory adaptation strategies.

But for now, that judicial resolution will have to wait.

Nevertheless, the California Supreme Court deserves kudos for a thoughtful and correct resolution of the forfeiture issue in *Lynch*, and the Coastal Commission for a much-deserved litigation win.