



CALIFORNIA ASSOCIATION OF REALTORS®

November 6, 2014

Via Overnight Delivery

The Honorable Chief Justice Tani Cantil-Sakauye
And Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-7303

2014 OFFICERS

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Re: *Lynch, et al. v. California Coastal Commission* (Case No. S221980)
Fourth Appellate District Case No. D064120
Superior Court of San Diego County, Case No. 37-2011-00058666-CU-
WM-NC

**Letter brief of California Association of REALTORS®, as *amicus curiae*,
In Support of the Petition for Review**

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The California Association of REALTORS® ("C.A.R.") respectfully files this letter as *amicus curiae* pursuant to Rule 8.500(g) of the California Rules of Court in support of the Petition for Review in the above-referenced case.

I. Nature of C.A.R.'s Interest

C.A.R. is a voluntary trade association whose membership consists of approximately one hundred sixty thousand (160,000) persons licensed by the State of California as real estate brokers and salespersons, and the local Associations of REALTORS® to which those members belong. Members of C.A.R. assist the public in buying, selling, leasing, financing, and managing residential and commercial real estate. C.A.R. advocates for the real estate industry by bringing the perspective of the industry as a whole rather than the singular perspective of a particular constituent or litigant. "The purpose of [C.A.R.] is to serve its membership ... and through collective action, to promote the preservation of real property rights."¹ C.A.R. also educates its members on

¹ C.A.R. Mission Statement, available at <http://www.car.org/aboutus/mission/>.



REALTOR® is a federally registered collective membership mark which identifies a real estate professional who is a Member of the NATIONAL ASSOCIATION OF REALTORS® and subscribes to its strict Code of Ethics.



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the numerous disclosure laws governing real estate transactions in California, and provides risk management training to help its members avoid professional liability claims and lawsuits.

The Court of Appeal's decision in the above-referenced case—which upheld the Coastal Commission's conditional permit and expanded the breadth of the Commission's permit powers, while also finding a waiver of the property owners' rights to contest the permit in court—will negatively impact the marketability and values of thousands of properties in California and also serve to increase the length, complexity, and expense of real estate sale and lease transactions in this State. Therefore, the ultimate disposition of this case is of paramount concern to C.A.R. members and the consumer clients whom they serve.

C.A.R. has read the Petition for Review, and the *amici curiae* letter briefs of Beach and Bluff Conservancy, et al., and Sherman L. Stacey. Rather than restating the arguments and points already covered therein, C.A.R. will describe some additional concerns that are pertinent to its members, California homeowners, and the public in general. C.A.R. agrees with Petitioners that review is needed in order to “settle an important question of law”² and submits the below comments and information to help explain why this case is so important.

II. This Court Should Grant Review so that Properties, Homeowners, and Real Estate Professionals Are Not Increasingly Placed into Limbo and Litigation.

If the *Lynch* decision is permitted to stand, it is possible that trial courts might conclude that other permit agencies are well within their rights to construct similar onerous conditions during the permit process. If this were to happen, numerous costly complications could arise whenever a property owner seeks a permit for a plumbing or electrical project, or other significant work to the property.

For example, imagine that a homeowner needs to perform a fairly common and expensive repair—replacement of the property's roof. Now imagine that the homeowner applies for a permit with the city's building and safety department and is granted the permit; however, the permit states that the city's building inspector can re-inspect the new roof every 5 years. During each of these 5-year checks, the city has the option of reevaluating its initial decision and can require the homeowner to make major adjustments to the roof's materials, or

² California Rule of Court 8.500(b)(1).

to its slope or style. The risk of having to spend future additional time and monies on an already costly, newly-installed roof is undesirable to the homeowner; but considering the health and safety of the family member residents, the need to protect the property's interior and items of personal property from damage, and due to insurance requirements and other financial and practical reasons, the most pressing concern for the homeowner is to protect the home from wind, rain, and other elements. The homeowner cannot afford to postpone this important repair until all of his objections are resolved in court. Like the Petitioners in this case, the wisest choice for the homeowner is to proceed with filing a timely action challenging the validity of the city's permit conditions, and installing the new roof.

But until the legal validity of the city's 5-year roof re-inspection requirement is finally resolved, the homeowner must live with the uncertainty of not knowing whether money must be budgeted for further roof modifications. If the homeowner decides to sell or rent out the home, the parties will need to assess the risks of possible temporary relocation due to disruptive roof work, and the appropriate dollar value for taking on such risk. It is likely that the issue would become a "deal killer" as to many prospective purchasers or tenants.³ Accordingly, the property is essentially in a state of limbo and, to make matters worse, in the later lawsuit a court relying upon *Lynch* could eventually determine that the homeowner's challenge against the city has been waived.⁴

Unfortunately, the Court of Appeal's decision presented many new uncertainties to property owners and members of the public in general. Such uncertainties could dissuade California homeowners from building, or making necessary repairs or improvements to their properties. Uncertainties created by the Court of Appeal's decision could also encourage more vigorous actions by permit agencies, who now may feel more confident in placing unwarranted demands and conditions upon property owners during the permit process.

³ This assumes, in the context of renting the property, that it could possibly be held to be tenantable under the laws regarding a landlord's implied warranty of habitability.

⁴ Regarding the issue of waiver of the homeowners' rights to challenge the Coastal Commission's permit, C.A.R. agrees with the no-waiver assertions contained in Petitioners' and amici's briefs and notes (as *Amici Beach and Bluff Conservancy et. al.* similarly did in their October 31, 2014 letter in support of review) that the U.S. Supreme Court in *Nollan v. California Coastal Com'n* (1987) 483 U.S. 825, 829-30 did not consider the appellants to have waived their rights to judicial review where they proceeded to satisfy conditions of a coastal development permit while judicial proceedings were pending. In *Nollan*, the Coastal Commission had raised the issue of waiver in seeking to dismiss the appeal, which motion was cursorily rejected by the U.S. Supreme Court.

Further examples of uncertainties created by the *Lynch* decision are pointed out in the *amicus* brief filed by the Beach and Bluff Conservancy et al., which asked: What bank would issue a 30-year mortgage to purchase a house protected by a seawall permitted for only 20 years? What insurance company would offer a homeowners' policy to a bluff-top home without the security of a permanent seawall? And what young family would *want* to purchase such a house?⁵ To these questions, C.A.R. would add: How will a listing agent describe and market a property on the Multiple Listing Service when there are permits containing complicated, future unknowns? After an offer to purchase is accepted, will the buyer be able to timely complete all investigations, reviews and approvals of reports, disclosures and information from the seller, when a permit is involved?⁶ Will prospective purchasers routinely need to hire attorneys to counsel them on permits relating to the property? When negotiating a purchase price, how will sellers and buyers, and their respective real estate representatives, assign a dollar value to future risks associated with a permit? Will sellers have to buy supplemental insurance, if it is even available, to cover the risk of inadequate disclosure? While there may be answers and solutions to all of the above, it is very likely that real estate transactions could become more complicated and expensive, eventually resulting in higher costs to real estate consumers.

Even under a more conservative analysis regarding the scope and application of the Court of Appeal's decision (i.e., examining only the estimated number of properties affected by California Coastal Commission permits versus other kinds of permits), the number of potentially affected properties and persons is large. Last year, there were 449,262 home sales in California.⁷ Of those sales, C.A.R. estimates that at least 6.4% of those sales, or 28,680 properties, were located in coastal cities or areas.⁸ While all properties located in coastal cities are not beachfront and subject to seawall and stairway permit limitations, the 28,680 annual sales figure nevertheless indicates there is a large number of coastal property sales which could be directly affected by *Lynch*'s endorsement of the Coastal Commission permit. Furthermore, the Coastal Commission's permit conditions regarding a 20-year limitation on the seawall and restrictions on

⁵ Letter brief of Beach and Bluff Conservancy, et al., October 31, 2014, at p. 6.

⁶ C.A.R. oversees development and publication of standard forms used throughout the State, including the C.A.R. Residential Purchase Agreement ("RPA"). Although parties can negotiate the length of time for the buyer to complete buyer investigations, given most parties' desire to complete transactions within 30 – 60 days, the default buyer investigation period is 17 days.

⁷ Calculated using 2013 monthly sales figures from Data Quick, available at http://dqnews.com/Articles/2013/2013_archive.aspx.

⁸ Computed by C.A.R. using 2013 home sales in coastal cities, as listed on the attachment, taken from Data Quick sales figures for individual city/area, available at <http://www.dqnews.com/Charts/Annual-Charts/CA-City-Charts/ZIPCAR13.aspx>.

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rebuilding the stairway arguably affect many properties other than just those located on the beach, since such seawall and stairway limitations are likely to affect consumers' purchase and leasing decisions, and overall property values, within the surrounding community as well.

III. Conclusion

The Court of Appeal's decision generates numerous substantial and negative consequences which are damaging to C.A.R. members, homeowners, real estate sellers and buyers, and the public at large. As described above, the current decision impedes upon California homeowners' valued and valuable private property rights, is likely to diminish property values, and is detrimental to important goals shared by C.A.R. members and the public, namely, efficient and cost effective real estate transactions with minimal litigation. Accordingly, C.A.R. urges this High Court to grant the Petition for Review.

Respectfully submitted,

June Babiracki Barlow, Vice President and General Counsel, SBN 093472
Jenny Y. Li, Senior Counsel, SBN 158801
David Radmore, Staff Attorney, SBN 274231

By:  _____
Jenny Y. Li

Attorneys for the California Association of REALTORS[®], *amicus curiae*

cc: Superior Court Clerk, San Diego County Superior Court
Clerk, Court of Appeal, Fourth Appellate District

2013 Annual Home Sales (existing and new home sales)

County	City	Sales
Humboldt	ARCATA	110
Humboldt	BAYSIDE	12
Humboldt	BLUE LAKE	10
Humboldt	LOLETA	10
Humboldt	MCKINLEYVILLE	193
Humboldt	TRINIDAD	16
Los Angeles	HERMOSA BEACH	256
Los Angeles	LONG BEACH	3,874
Los Angeles	MALIBU	356
Los Angeles	MANHATTAN BEACH	522
Los Angeles	MARINA DEL REY	352
Los Angeles	PACIFIC PALISADES	445
Los Angeles	REDONDO BEACH	1,028
Los Angeles	SANTA MONICA	755
Los Angeles	VENICE	306
Marin	CORTE MADERA	158
Marin	DILLON BEACH	25
Marin	SAUSALITO	162
Marin	STINSON BEACH	35
Monterey	CARMEL	375
Monterey	CASTROVILLE	25
Monterey	PACIFIC GROVE	215
Monterey	PEBBLE BEACH	136
Monterey	SEASIDE	228
Orange	CAPISTRANO BEACH	108
Orange	CORONA DEL MAR	288
Orange	DANA POINT	570
Orange	HUNTINGTON BEACH	2,195
Orange	LAGUNA BEACH	497
Orange	NEWPORT BEACH	1,026
Orange	SAN CLEMENTE	1,039
Orange	SAN JUAN CAPISTRANO	509
Orange	SEAL BEACH	173
Orange	SUNSET BEACH	11
San Diego	CARDIFF BY THE SEA	141
San Diego	CARLSBAD	2,250
San Diego	CORONADO	341
San Diego	DEL MAR	309
San Diego	DESCANSO	29
San Diego	ENCINITAS	729
San Diego	IMPERIAL BEACH	217
San Diego	LA JOLLA	867
San Diego	OCEANSIDE	2,835
San Diego	SOLANA BEACH	364

Source: "California Home Sale Activity by City—Home Sales Recorded in the Year 2013" DQNews.com;
<http://www.dqnews.com/Charts/Annual-Charts/CA-City-Charts/ZIPCAR13.aspx>; compiled by C.A.R.

San Luis Obispo	AVILA BEACH	31
San Luis Obispo	CAMBRIA	179
San Luis Obispo	CAYUCOS	53
San Luis Obispo	GROVER BEACH	200
San Luis Obispo	MORRO BAY	196
San Luis Obispo	PISMO BEACH	212
San Mateo	EL GRANADA	13
San Mateo	HALF MOON BAY	233
San Mateo	MONTARA	49
San Mateo	MOSS BEACH	28
San Mateo	PACIFICA	414
Santa Barbara	CARPINTERIA	227
Santa Barbara	SANTA BARBARA	1,382
Santa Barbara	SUMMERLAND	19
Santa Cruz	CAPITOLA	167
Santa Cruz	SANTA CRUZ	856
Ventura	PORT HUENEME	319
Total Coastal		28680
% to Total CA Sales		6.4%

Source: "California Home Sale Activity by City—Home Sales Recorded in the Year 2013" DQNews.com;
<http://www.dqnews.com/Charts/Annual-Charts/CA-City-Charts/ZIPCAR13.aspx>; compiled by C.A.R.

PROOF OF SERVICE BY MAIL

I, **Patricia Sellers**, am employed in the City and County of Los Angeles, and over the age of eighteen years. I am not a party to the within action. My business address is: 525 South Virgil Avenue, Los Angeles, California, 90020.

On November 6, 2014, I served the within *amicus curiae* letter brief, addressed to the California Supreme Court from the California Association of REALTORS® regarding:

**Letter Brief of California Association of REALTORS®, as *amicus curiae*,
In Support of the Petition for Review**

on interested parties in this action by placing one true copy thereof in a sealed envelope, postage thereon fully prepaid, in the United States Postal Service, addressed as follows:

Clerk of the Court
California Court of Appeal
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, California 92101-8189

Clerk of the Court
California Supreme Court
San Francisco Office
350 McAllister Street
San Francisco, California 94102-7303

Clerk of the Court
San Diego County Superior Court
325 South Melrose Drive
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I am readily familiar with this company's practice for collection and processing envelopes for mailing. On the same day that envelopes are placed for collection and mailing, they are deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 6, 2014 at Los Angeles, California.


Patricia Sellers