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*California Coastal Commission*

*NO FEE REQUIRED*  
*Government Code § 6103*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ORANGE

10 CENTRAL JUSTICE CENTER

11  
12 **Coastal Rights Coalition,**

13  
14 Petitioner and Plaintiff,

15 v.

16 **California Coastal Commission,**

17 Respondent and Defendant.

Case No. 30-2018-00994285-CU-WM-CJC

**ANSWER TO PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY RELIEF**

18 Trial Date: None set  
19 Action Filed: May 22, 2018  
20 Judge: Hon. Walter Schwarm  
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1 Respondent and defendant California Coastal Commission (the “Commission”), for its  
2 answer to petitioner and plaintiff Coastal Rights Coalition’s Petition for Writ of Mandate and  
3 Complaint for Declaratory Relief (“Petition”), admits, denies, and alleges as follows:

4 1. Answering Paragraph 1 of the Petition, the Commission admits that the Petition seeks  
5 a traditional writ of mandate and declaratory relief. Except as expressly admitted, the  
6 Commission denies the remaining allegations in this paragraph.

7 2. Answering Paragraph 2 of the Petition, the Commission admits that the contents of its  
8 staff reports and findings speak for themselves. The Commission affirmatively alleges that it  
9 determines on a case-by-case basis what conditions to impose on a coastal development permit.  
10 Except as expressly admitted, the Commission denies the remaining allegations in this paragraph,  
11 and denies in particular that the so-called “Waiver Rule” exists.

12 3. Answering Paragraph 3 of the Petition, the Commission lacks sufficient knowledge or  
13 information to form a belief as to the truth of the allegations in this paragraph and, on that basis,  
14 denies these allegations.

15 4. Answering Paragraph 4 of the Petition, the Commission denies that the so-called  
16 “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case  
17 basis what conditions to impose on a coastal development permit. The allegations concerning  
18 “piecemeal litigation” constitute legal conclusions for which no response is required. To the  
19 extent that the Court requires a response, the Commission denies these allegations. Except as  
20 expressly admitted, the Commission denies the remaining allegations in this paragraph.

21 5. Answering Paragraph 5 of the Petition, the Commission denies that the so-called  
22 “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case  
23 basis what conditions to impose on a coastal development permit. Except as expressly admitted,  
24 the Commission denies the remaining allegations in this paragraph.

25 6. Answering Paragraph 6 of the Petition, the Commission admits that it is an agency of  
26 the State of California created by the California Coastal Act, Public Resources Code  
27 section 30000, et seq. The Commission alleges that the terms of the California Coastal Act  
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1 defining the Commission's powers and duties speak for themselves. Except as expressly  
2 admitted, the Commission denies the remaining allegations in this paragraph.

3 7. Answering Paragraph 7 of the Petition, the Commission admits that the terms of Code  
4 of Civil Procedure sections 1060 and 1085 speak for themselves and that this Court has  
5 jurisdiction over this action. Except as expressly admitted, the Commission denies the remaining  
6 allegations in this paragraph.

7 8. Answering Paragraph 8 of the Petition, the Commission admits that venue is proper in  
8 this Court, that the Commission considers matters under the Coastal Act and holds meetings on  
9 occasion in Orange County, and that the provisions of Code of Civil Procedure sections 396,  
10 subdivision (a) and 410.10 speak for themselves. Except as expressly admitted, the Commission  
11 denies the remaining allegations in this paragraph.

12 9. Answering Paragraph 9 of the Petition, the Commission lacks sufficient knowledge or  
13 information to form a belief as to the truth of the allegations in the first sentence of this paragraph  
14 concerning CRC's petition to the Office of Administrative Law. The Commission admits that the  
15 contents of Exhibit 2 of the petition speak for themselves. The remaining allegations in this  
16 paragraph constitute legal conclusions for which no response is required. To the extent the Court  
17 requires a response, the Commission denies the remaining allegations in this paragraph.

18 10. Answering Paragraph 10 of the Petition, the Commission admits that the terms of the  
19 Coastal Act concerning coastal development permits and the Commission's powers and duties  
20 speak for themselves.

21 11. Answering Paragraph 11 of the Petition, the Commission affirmatively alleges that it  
22 determines on a case-by-case basis what conditions to impose on a coastal development permit.  
23 The Commission admits that it has decided coastal development permit applications involving  
24 oceanfront development, that in certain cases the Commission's decisions approving such  
25 applications included conditions requiring permit applicants to waive any right they might have  
26 under applicable law to construct shoreline protective devices. The Commission further admits  
27 that in certain cases it has required recordation of deed restrictions that record all of the  
28 conditions of the coastal development permit against the property benefitted by the permit. The

Commission admits that its findings for these permit decisions speak for themselves. Except as expressly admitted, the Commission denies the remaining allegations in this paragraph.

12. Answering Paragraph 12 of the Petition, the Commission affirmatively alleges that it determines on a case-by-case basis what conditions to impose on a coastal development permit. The Commission admits that it has decided coastal development permit applications involving oceanfront development and that in certain cases the Commission's decisions approving such applications included conditions requiring permit applicants to waive any right they might have under applicable law to construct shoreline protective devices. The Commission admits that its findings for these permit decisions speak for themselves. Except as expressly admitted, the Commission denies the remaining allegations in this paragraph.

13. Answering Paragraph 13 of the Petition, the Commission affirmatively alleges that it determines on a case-by-case basis what conditions to impose on a coastal development permit. The Commission admits that it has decided coastal development permit applications involving oceanfront development and that in certain cases the Commission's decisions approving such applications included conditions requiring permit applicants to waive any right they might have under applicable law to construct shoreline protective devices. The Commission admits that in certain other applications involving oceanfront development it has not imposed such a condition. The Commission admits that its findings for these permit decisions speak for themselves. Except as expressly admitted, the Commission denies the remaining allegations in this paragraph and specifically denies the existence of the "rule" alleged in this paragraph.

14. Answering Paragraph 14 of the Petition, the Commission affirmatively alleges that it determines on a case-by-case basis what conditions to impose on a coastal development permit. The Commission admits that it has decided coastal development permit applications involving oceanfront development and that in certain cases the Commission's decisions approving such applications included conditions requiring permit applicants to waive any right they might have under applicable law to construct shoreline protective devices. The Commission admits that its findings for these permit decisions speak for themselves. Except as expressly admitted, the



Commission denies the remaining allegations in this paragraph and specifically denies the existence of the “rule” alleged in this paragraph.

15. Answering Paragraph 15 of the Petition, the Commission affirmatively alleges that it determines on a case-by-case basis what conditions to impose on a coastal development permit. The Commission admits that it has decided coastal development permit applications involving oceanfront development and that in certain cases the Commission’s decisions approving such applications included conditions requiring permit applicants to waive any right they might have under applicable law to construct shoreline protective devices. The Commission admits that its findings for these permit decisions speak for themselves. Except as expressly admitted, the Commission denies the remaining allegations in this paragraph and specifically denies the existence of the “rule” alleged in this paragraph.

16. Answering Paragraph 16 of the Petition, the Commission denies that the so-called “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case basis what conditions to impose on a coastal development permit. The Commission admits that it has decided coastal development permit applications involving oceanfront development and that in certain cases the Commission’s decisions approving such applications included conditions requiring permit applicants to waive any right they might have under applicable law to construct shoreline protective devices. The Commission admits that its findings for these permit decisions speak for themselves. The Commission admits that the contents of its Sea Level Rise Policy Guidance speak for themselves. The Commission lacks sufficient information and knowledge to form a basis as to the truth of the allegations in this paragraph concerning the contents of the remaining cited authorities and, on that basis, denies these allegations. Except as expressly admitted, the Commission denies the remaining allegations in this paragraph.

17. Answering Paragraph 17 of the Petition, the Commission admits that the provisions of the cited statutes speak for themselves. Except as expressly admitted, the Commission denies the remaining allegations in this paragraph.

18. Answering Paragraph 18 of the Petition (and its subparagraphs), the Commission denies that the so-called “Waiver Rule” exists. The Commission affirmatively alleges that it

1 determines on a case-by-case basis what conditions to impose on a coastal development permit.  
2 The Commission admits that the contents of the cited authorities speak for themselves. Except as  
3 expressly admitted, the Commission denies the remaining allegations in this paragraph.

4 19. Answering Paragraph 19 of the Petition, the Commission denies that the so-called  
5 “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case  
6 basis what conditions to impose on a coastal development permit. The Commission admits that  
7 the contents of the cited authorities speak for themselves. Except as expressly admitted, the  
8 Commission denies the remaining allegations in this paragraph.

9 20. Answering Paragraph 20 of the Petition (and its subparagraphs), the Commission  
10 denies that the so-called “Waiver Rule” exists. The Commission affirmatively alleges that it  
11 determines on a case-by-case basis what conditions to impose on a coastal development permit.  
12 The Commission admits that the contents of the cited authorities speak for themselves. Except as  
13 expressly admitted, the Commission denies the remaining allegations in this paragraph.

14 21. Answering Paragraph 21 of the Petition, the Commission denies that the so-called  
15 “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case  
16 basis what conditions to impose on a coastal development permit. The Commission admits that  
17 the contents of the cited authorities speak for themselves. Except as expressly admitted, the  
18 remaining allegations constitute legal conclusions for which no response is required. To the  
19 extent that the Court requires a response, the Commission denies these allegations.

20 22. Answering Paragraph 22 of the Petition, the Commission denies that the so-called  
21 “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case  
22 basis what conditions to impose on a coastal development permit. Except as expressly admitted,  
23 the remaining allegations constitute legal conclusions for which no response is required. To the  
24 extent that the Court requires a response, the Commission denies these allegations.

25 23. Answering Paragraph 23 of the Petition, the Commission incorporates by reference its  
26 admissions, denials, and allegations in response to Paragraphs 1 through 22, inclusive, of the  
27 Petition.  
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1           24. Answering Paragraph 24 of the Petition, the Commission denies that the so-called  
2 “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case  
3 basis what conditions to impose on a coastal development permit. The Commission admits that  
4 the contents of the Administrative Procedures Act speak for themselves. Except as expressly  
5 admitted, the Commission denies the remaining allegations in this paragraph.

6           25. Answering Paragraph 25 of the Petition, the Commission admits that the contents of  
7 the Administrative Procedures Act and the cited statute speak for themselves. Except as expressly  
8 admitted, the Commission denies the remaining allegations in this paragraph.

9           26. Answering Paragraph 26 of the Petition, the Commission denies that the so-called  
10 “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case  
11 basis what conditions to impose on a coastal development permit. The Commission admits that  
12 the contents of the Administrative Procedures Act speak for themselves. Except as expressly  
13 admitted, the Commission denies the remaining allegations in this paragraph.

14           27. Answering Paragraph 27 of the Petition, the Commission denies that the so-called  
15 “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case  
16 basis what conditions to impose on a coastal development permit. The Commission admits that  
17 the contents of the Administrative Procedures Act speak for themselves. Except as expressly  
18 admitted, the Commission denies the remaining allegations in this paragraph.

19           28. Answering Paragraph 28 of the Petition, the Commission denies that the so-called  
20 “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case  
21 basis what conditions to impose on a coastal development permit. The Commission admits that  
22 the contents of the cited statutes speak for themselves. Except as expressly admitted, the  
23 Commission denies the remaining allegations in this paragraph.

24           29. Answering Paragraph 29 of the Petition, the allegations about Petitioner in this  
25 paragraph constitute legal conclusions for which no response is required. To the extent the Court  
26 requires a response, the Commission denies these allegations. Except as expressly admitted, the  
27 Commission denies the remaining allegations in this paragraph.

1       30. Answering Paragraph 30 of the Petition, the Commission denies that the so-called  
2 “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case  
3 basis what conditions to impose on a coastal development permit. Except as expressly admitted,  
4 the Commission denies the remaining allegations in this paragraph.

5       31. Answering Paragraph 31 of the Petition, the Commission denies that the so-called  
6 “Waiver Rule” exists. The Commission affirmatively alleges that it determines on a case-by-case  
7 basis what conditions to impose on a coastal development permit. Except as expressly admitted,  
8 the Commission denies the remaining allegations in this paragraph.

9       32. Answering Paragraph 32 of the Petition, the Commission denies the allegations in this  
10 paragraph and denies in particular that the so-called “Waiver Rule” exists.

11       33. Answering Paragraph 33 of the Petition, the Commission incorporates by reference its  
12 admissions, denials, and allegations in response to Paragraphs 1 through 32, inclusive, of the  
13 Petition.

14       34. Answering Paragraph 34 of the Petition, the Commission denies that the so-called  
15 “Waiver Rule” exists. The remaining allegations in this paragraph constitute legal conclusions for  
16 which no response is required. To the extent that the Court requires a response, the Commission  
17 denies these allegations.

18       35. Answering Paragraph 35 of the Petition, the Commission denies the allegations in this  
19 paragraph and denies in particular that the so-called “Waiver Rule” exists.

20       36. Answering Paragraph 36 of the Petition, the Commission admits that it is obligated to  
21 comply with California law. Except as expressly admitted, the Commission denies the remaining  
22 allegations in this paragraph.

23       37. Answering Paragraph 37 of the Petition, the Commission lacks sufficient knowledge  
24 or information to form a belief as to the truth of the allegations in this paragraph concerning  
25 Petitioner’s membership and, on that basis, denies these allegations. Except as expressly  
26 admitted, the Commission denies the remaining allegations in this paragraph.



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1 **Seventh Affirmative Defense**

2 **(Exclusive Remedy)**

3 The claims asserted in the Petition are barred in that judicial review under Code of Civil  
4 Procedure section 1094.5 constitutes the exclusive remedy for review of the Commission's  
5 administrative decisions and/or constitutes an adequate remedy at law.

6 **Eighth Affirmative Defense**

7 **(No Justiciable Controversy)**

8 The claim for declaratory relief asserted in the Petition is barred in that Petitioner fails to  
9 allege a justiciable controversy.

10 **Ninth Affirmative Defense**

11 **(Declaratory Relief Unavailable)**

12 The claim for declaratory relief asserted in the Petition is barred in that an action for  
13 declaratory relief is unavailable as a matter of law as a means to review administrative decisions.

14 **Tenth Affirmative Defense**

15 **(Waiver/Estoppel)**

16 The claims asserted in the Petition are barred by the doctrines of waiver and estoppel.

17 **Eleventh Affirmative Defense**

18 **(No Right to Attorneys' Fees)**

19 The Petition fails to state a factual or legal basis to support its claim for attorneys' fees  
20 under Code of Civil Procedure section 1021.5.

21 **Twelfth Affirmative Defense**

22 **(Additional Defenses)**

23 The Commission reserves the right to rely upon and assert additional defenses as may  
24 subsequently become apparent.

25 **PRAYER**

26 WHEREFORE, the Commission prays for judgment as follows:

- 27 1. That Petitioner take nothing by the Petition;



- 1           2.    That the Court enter judgment in favor of the Commission;  
2           3.    That the Commission recover its costs of suit;  
3           4.    For such other and further relief as the Court deems just and proper.

4   Dated: August 28, 2018

Respectfully Submitted,

XAVIER BECERRA  
Attorney General of California  
CHRISTINA BULL ARNDT  
Supervising Deputy Attorney General



ANDREW M. VOGEL  
Deputy Attorney General  
*Attorneys for Respondent and Defendant  
California Coastal Commission*

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**DECLARATION OF SERVICE BY E-MAIL**

Case Name: ***Coastal Rights Coalition v. California Coastal Commission***  
Case No.: **Orange County Superior Court No. 30-2018-00994285-CU-WM-CJC**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On August 28, 2018, I served the attached ANSWER TO PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF by transmitting a true copy via electronic mail, without any error or electronic notice of error in transmission, addressed as follows:

Lawrence G. Salzman  
Damien Schiff  
Pacific Legal Foundation  
930 G Street  
Sacramento, California 95814  
E-mail Address: [LSalzman@pacificlegal.org](mailto:LSalzman@pacificlegal.org)  
*Attorneys for Petitioner and Plaintiff*  
*Coastal Rights Coalition*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 28, 2018, at Los Angeles, California

\_\_\_\_\_  
Andrew Vogel  
Declarant

\_\_\_\_\_  
/s/ Andrew Vogel  
Signature