

1 J. DAVID BREEMER, No. 215039
Email: jbreemer@pacificlegal.org
2 Pacific Legal Foundation
930 G Street
3 Sacramento, California 95814
Telephone: (916) 419-7111
4 Facsimile: (916) 419-7747

5 Attorney for Petitioners and Plaintiffs

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
7/3/2019 8:35 AM
By: Sarah Sisto, Deputy

6
7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA BARBARA

10
11 JACK WALL and WALL FAMILY TRUST,
12 Petitioners and Plaintiffs,
13 v.
14 CALIFORNIA COASTAL COMMISSION,
15 Respondent and Defendant.

No. 19CV03464

**VERIFIED PETITION FOR
WRIT OF ADMINISTRATIVE
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

16
17 **INTRODUCTION**

18 Jack Wall and the Wall Family Trust (Walls) file this suit against the California Coastal
19 Commission's (Commission) unconstitutional and unlawful denial of a permit for a pool to be used
20 in conjunction with a single-family home located in the Hollister Ranch area of Santa Barbara
21 County. This action is brought pursuant to Code of Civil Procedure (CCP) Sections 1094.5 and
22 1060 and California Public Resources Code Sections 30801 and 30804. All further statutory
23 references are to Public Resources Code Section 30000, *et seq.* (Coastal Act) unless otherwise
24 noted. By this verified petition, Petitioners allege:

25 **BACKGROUND**

26 1. Petitioners own a residentially developed 101-acre parcel of real property, located
27 in Hollister Ranch, in Santa Barbara County. The property is an inland parcel, designated County
28 Assessor Parcel No. 083-670-011. It is located almost a mile from the Pacific shore.

1 2. The Walls applied to Santa Barbara County (County) to build a pool and spa next to
2 their home. The County initially approved the permit, but the Commission subsequently took
3 jurisdiction and denied the permit on the ground that construction of the pool violated the Coastal
4 Act's public access policies and rules. As owners of the land, and applicants for the permit, the
5 Wall Family Trust is an aggrieved person pursuant to Section 30801, and entitled to seek a writ of
6 mandate.

7 3. Respondent and Defendant Commission is the state administrative body authorized
8 under the Public Resources Code to apply the California Coastal Act of 1976, Section 30000, *et seq.*
9 (Coastal Act), consistent with the limits of that Act and the United States Constitution, to certify a
10 local government's Local Coastal Program (LCP) as the operative rules for building in the relevant
11 coastal area, and to apply the rules of a certified LCP when a local permit decision is appealed to
12 the Commission.

13 4. The Commission may sue and be sued under Coastal Act Section 30334.

14 5. The Commission has certified an LCP for Santa Barbara County and the County
15 government has adopted that LCP. The rules of the certified LCP supply the operative building
16 rules in the coastal zone, which encompasses the Walls' property.

17 6. As a local government with an adopted and certified LCP, the County has initial
18 coastal development permit (CDP) jurisdiction. Accordingly, Hollister Ranch coastal permit
19 applicants like the Walls must submit their application to the County, for consideration under the
20 LCP. The County's final decision on a coastal permit may, in some circumstances, be appealed to
21 the Commission. When such an appeal occurs, the Commission may hear the permit issue on a
22 *de novo* basis, by independently applying the LCP standards and Coastal Act rules, as applicable.

23 7. In this case, the Commission appealed the County's approval of the Walls'
24 application for a pool to itself and ultimately denied a permit for the pool on the basis that it
25 interferes with public beach access and conflicts with the public access policies of the County's
26 LCP and Coastal Act.

27 8. The Commission's denial for lack of an adequate (in its view) public access
28 condition violates the unconstitutional conditions doctrine that enforces constitutional protections

1 against uncompensated takings of private property. It is also unlawful because the public access
2 policies the Commission purports to enforce do not apply to the Walls' application. Alternatively,
3 it is illegal and invalid because the Coastal Act and the County's LCP require the Commission to
4 approve permits to Hollister Ranch applicants subject only to a condition requiring payment of a
5 \$5,000 in-lieu fee. The Court should declare the denial unconstitutional and unlawful and issue a
6 writ of mandate compelling the Commission to approve the Walls' permit or, alternatively, issue a
7 writ compelling permit issuance subject only to the condition that the Walls pay a \$5,000 in-lieu
8 fee under Coastal Act Section 30610.8.

9 **FACTUAL ALLEGATIONS**

10 *The Property's Character*

11 9. The property at the heart of this dispute lies in the northern part of Santa Barbara
12 County, California, in a private, 14,500-acre area called Hollister Ranch (Ranch). The Ranch is a
13 working cattle ranch that has been subdivided into 100 acre+ parcels. Some of these parcels are
14 developed with single family homes and accessory agricultural structures (like barns and stables).
15 But many others remain undeveloped. The Pacific Ocean lies along the southwestern boundary of
16 the Ranch.

17 10. The Wall property is designated as Hollister Ranch Parcel No. 36. The parcel lies
18 three-quarters of a mile inland from the beach.

19 11. The Walls' property is not along the shoreline. The title to the Wall parcel does not
20 include any interest in land adjacent to the coast at the Ranch and the Walls have no legal right or
21 ability to allow public access at the Ranch or to grant easements along the coast allowing such use.

22 12. No one has ever used the Wall parcel as a public beach access area.

23 13. Approximately two decades ago, the parcel was lawfully developed with a single
24 family home. Later, a small guesthouse and barn were added.

25 14. In 2018, the Walls applied to the County of Santa Barbara to build a 60 ft. by 16 ft.
26 swimming pool, detached 8 ft. by 12 ft. in-ground spa, associated equipment, and excavation of 89
27 cu. yds. of soil to be exported off site.

28 ///

1 15. The proposed swimming pool and spa would be located adjacent to and to the south
2 and west of the existing residence. The project does not involve the removal of any trees or native
3 vegetation.

4 ***Relevant Legal Background***

5 16. In approximately 1980, the California Legislature adopted an amendment to the
6 Coastal Act designed to address potential public access issues in subdivided, but vacant, coastal
7 areas where individual owners could not grant public access.

8 17. The relevant law, Section 30610.3 of the Coastal Act, created a scheme requiring
9 property owners seeking to build on vacant lots in certain coastal subdivisions to pay an in-lieu
10 public access fee designed to fund the purchase of public access ways.

11 18. Section 30610.3 specifically states, in pertinent part:

12 (a) Whenever the commission determines (1) that public access opportunities
13 through an existing subdivided area, which has less than 75 percent of the
14 subdivided lots built upon, or an area proposed to be subdivided are not adequate
15 to meet the public access requirements of this division and (2) that individual
16 owners of vacant lots in those areas do not have the legal authority to comply with
17 public access requirements as a condition of securing a coastal development permit
18 for the reason that some other person or persons has legal authority, the commission
19 shall implement public access requirements as provided in this section.

20 (b) The commission, on its own motion or at the request of an affected property
21 owner, shall identify an area as meeting the criteria specified in subdivision (a).
22 After an area has been identified, the commission shall, after appropriate public
23 hearings adopt a specific public access program for the area and shall request that
24 the State Coastal Conservancy, established pursuant to Division 21 (commencing
25 with Section 31000), implement the program. The access program shall include,
26 but not be limited to, the identification of specific land areas and view corridors to
27 be used for public access, any facilities or other development deemed appropriate,
28 the commission's recommendations regarding the manner in which public access
will be managed, and the types of permitted public uses. The State Coastal
Conservancy shall, pursuant to its authority, implement the public access program.

(c) The State Coastal Conservancy shall be authorized to expend funds when
appropriated from the Coastal Access Account for the purchase of lands and view
easements and to pay for any development needed to carry out the public access
program specified in subdivision (a). Not more than 5 percent of the amount of
funds necessary to carry out each public access program may be provided as a grant
to the State Coastal Conservancy for its administrative costs incurred in carrying
out the access program.

(d) The State Coastal Conservancy may enter into any agreement it deems
necessary and appropriate with any state or local public agency or with a private
association authorized to perform those functions for the operation and
maintenance of any access facilities acquired or developed pursuant to this section.

1 (e) Every person receiving a coastal development permit or a certificate of
2 exemption for development on any vacant lot within an area designated pursuant to
3 this section shall, prior to the commencement of construction, pay to the
4 commission, for deposit in the Coastal Access Account, an “in-lieu” public access
5 fee. The amount of each fee shall be determined by dividing the cost of acquiring
6 the specified lands and view easements by the total number of lots within the
7 identified area. The proportion of the acquisition cost that can be allocated to lots
8 built upon pursuant to permits that were not subject to public access conditions
9 under this division or the California Coastal Zone Conservation Act of 1972
10 (former Division 18 (commencing with Section 27000)) shall be paid from the
11 Coastal Access Account. An “in-lieu” public access fee may be in the form of an
12 appropriate dedication, in which event the lots to which the dedication can be
13 credited shall not be counted toward the total number of lots used in arriving at the
14 “in-lieu” public access fee share for each remaining lot.

15 19. When Hollister Ranch, the Commission, and Coastal Conservancy could not agree
16 on the specific framework and fee amounts for implementing an in-lieu fee program at the Ranch
17 under Section 30610.3, the parties sought and reached a settlement to avoid further delays in
18 implementation. In 1982, the state Legislature enshrined the compromise into law through
19 enactment of Section 30610.8 of the Act.

20 20. Section 30610.8 provides that one seeking to build on *a vacant lot* in the Ranch can
21 build as soon as they pay a \$5,000 in-lieu public access fee to the Coastal Conservancy.

22 21. Section 30610.8 specifically states:

23 (a) The Legislature hereby finds and declares that a dispute exists at the Hollister
24 Ranch in Santa Barbara County with respect to the implementation of public access
25 policies of this division and that it is in the interest of the state and the property
26 owners at the Hollister Ranch to resolve this dispute in an expeditious manner. The
27 Legislature further finds and declares that public access should be provided in a
28 timely manner and that in order to achieve this goal, while permitting property
owners to commence construction, the provisions of this section are necessary to
promote the public’s welfare.

(b) For purposes of Section 30610.3 and with respect to the Hollister Ranch public
access program, the in-lieu fee shall be five thousand dollars (\$5,000) for each
permit. Upon payment by the applicant for a coastal development permit of this in-
lieu fee to the State Coastal Conservancy for use in implementing the public access
program, the applicant may immediately commence construction if the other
conditions of the coastal development permit, if any, have been met. No condition
may be added to a coastal development permit that was issued prior to the effective
date of this section for any development at the Hollister Ranch.

29 22. The land use rules in the County’s Local Coastal Program—certified by the
30 Commission in 2018 as consistent with the Coastal Act—incorporate Section 30610.3 and Section
30610.8 for certain Ranch permit applicants.

1 23. Land Use Plan Policy 2-15 states:

2 The County shall not issue permits for non-exempt development on the Hollister
3 Ranch unless the Coastal Commission certifies that the requirements of PRC
4 Section 30610.3 have been met by each applicant or that the Commission finds that
access is otherwise provided in a manner consistent with the access policies of the
Coastal Act.

5 24. Gaviota Coast Plan Development Standard REC-3 (Hollister Ranch Public Access)
6 specifically states:

7 In order to mitigate for the potential impacts to public access from the development
8 of Hollister Ranch, a fee consistent with Section 30610.8 of the California Public
9 Resources Code shall be required as a condition of each coastal development permit
issued for development in Hollister Ranch.

10 **THE COUNTY’S APPROVAL AND COMMISSION’S APPEAL**

11 25. On November 15, 2018, Santa Barbara County approved a CDP for the Walls’
12 proposed pool construction, finding that it was consistent with the Commission-certified Local
13 Coastal Program.

14 26. In approving the permit, the County did not require the Walls to pay any public
15 access in-lieu fee, likely because their lot is not “vacant” as required by Coastal Act Section 30610.3
16 and because there is no connection between the Walls’ parcel and public access.

17 27. On December 18, 2018, members of the Commission appealed the County approval
18 to themselves and the rest of the Commission on the basis that it raised a “substantial issue”
19 regarding consistency with public access policies. The appeal is Appeal No. A-4-STB-18-0074.

20 28. The Commission’s appeal documentation alleged that:

21 [T]he approved project is inconsistent with the public access and recreation policies
22 of Chapter 3 of the Coastal Act and the County’s certified LCP. Gaviota Coast Plan
23 Development Standard REC-3 of the County’s certified Land Use Plan specifically
24 requires that a fee consistent with Coastal Act Section 30610.8 is required as a
25 condition of each permit issued for development at Hollister Ranch. The County of
Santa Barbara did not require an in-lieu fee as a condition of the subject coastal
development permit. Therefore, the approved project is inconsistent with Gaviota
Coast Plan Development Standard REC-3.

26 29. On February 7, 2019, the Commission found that a substantial issue justified the
27 exercise of its de novo review. By this vote, the Commission voided the prior County approval of
28 the Walls’ permit.

1 30. The Commission staff subsequently issued a staff report and recommendation
2 related to de novo review of the Walls' pool application, and set the matter for a final de novo
3 Commission hearing on May 9, 2019.

4 31. In its report on de novo review, the staff recommended approval of the Wall permit
5 on the condition that the Walls pay the \$5,000 in-lieu fee established by Coastal Act Section
6 30610.8.

7 32. In so doing, the staff report stated:

8 When Sections 30610.3 and 30610.8 were added to the Coastal Act, the
9 Legislature's intent was to create an in-lieu fee program to allow for development
10 at Hollister Ranch to proceed without applicants having to wait for the final
11 resolution of the actual provision of public access, while simultaneously securing
12 funds for the ultimate goal of providing public access to the Ranch's coastline.

11 33. The staff report further stated:

12 [T]he Legislature's intent in adding Sections 30610.3 and 30610.8 to the Coastal
13 Act was to create an in-lieu fee program to allow for development at Hollister
14 Ranch to proceed without applicants having to wait for the final resolution of the
15 actual provision of public access, while simultaneously securing funds for the
16 ultimate goal of providing public access to the Ranch's coastline.

15 34. With respect to the Walls' pool application, the staff report concluded: "[I]n order
16 for the proposed development to be consistent with the County's certified LCP, the applicant must
17 pay a \$5,000 in-lieu fee prior to obtaining the CDP for the proposed development."

18 ***The Commission's Final Decision and Findings***

19 35. On May 9, 2019, the Commission held a public hearing related to de novo review
20 of the Walls' pool application.

21 36. The Commission heard the staff's recommendation, as outlined in its report.

22 37. The Commission also heard oral statements and considered written testimony from
23 representatives of the Gaviota Coastal Trail Alliance, a group of Santa Barbara County beach access
24 advocates. The Alliance urged the Commission to ignore the in-lieu fee provision in Section
25 30610.8 and deny the Wall permit outright until the Ranch as a whole dedicated actual public access
26 on the Ranch to the public.

27 38. The Commission also heard from its staff attorney, who stated: "[T]he legislature
28 set up this very specific scheme in this very specific place and stated quite explicitly that, upon

1 payment of the \$5,000 fee, individuals would be allowed to build whatever it is they are proposing,
2 immediately”

3 39. The Commission attorney also observed that the in-lieu fee provision in Section
4 30610.8 set “a hard legal line that leaves not a whole lot of flexibility for us to go back and try and
5 get other types of access” from Ranch permit applicants.

6 40. When the Commission closed the public portion of the hearing to consider the issue
7 themselves, one Commissioner began by rejecting the staff attorney’s analysis. She stated that she
8 thought several failed 2018 state legislative bills that sought to alter Coastal Act Section 30510.3
9 and 30610.8 indicated the Commission was “free to do whatever we needed to do” in regard to
10 access at the Ranch (beyond imposing a \$5,000 fee). She further commented that a \$5,000 in-lieu
11 fee is “not realistic” and complained that “they” (apparently referring to the Ranch as a whole) had
12 not provided actual public access.

13 41. A second Commissioner agreed that the body should overlook Section 30610.8,
14 stating that “money is not the same as access, particularly this amount of money and this access for
15 this property.”

16 42. A third Commissioner summed up her view and those of the prior two
17 Commissioners, by stating: “The Commission is signaling we believe that it is the essential
18 elements of the Coastal Act that apply in this particular case, which is that the people of the state
19 of California have access, must have access, *as part of the exchange* between those who must come
20 to us and request permits (Emphasis added.)

21 43. This same Commissioner noted that “[actual] public access to this amazing resource
22 and area has primacy over in-lieu fees” notwithstanding the language in Section 30610.8.

23 44. A final Commissioner echoed other Commissioners in rejecting the staff analysis
24 and application of 30610.8 and stated flatly that the Commission “can’t be continuing to approve
25 [Ranch] projects” without actual access for the public.

26 45. Ultimately, the Commission made an adjudicative decision denying the permit on
27 the ground that it is inconsistent with Santa Barbara Land Use Plan Policy 2-15. Again that
28 provision states:

1 The County shall not issue permits for non-exempt development on the Hollister
2 Ranch unless the Coastal Commission certifies that the requirements of PRC
3 Section 30610.3 have been met by each applicant or that the Commission finds that
access is otherwise provided in a manner consistent with the access policies of the
Coastal Act.

4 46. In reaching its decision and denying the Wall permit, the Commission failed to
5 consider the nature of the Walls' specific project or its lack of impact on public beach access.

6 47. The Commission made no finding that the Walls' project interferes with, or harms,
7 public beach access.

8 48. It made no finding that the Walls have the ability to dedicate a public beach access
9 way on Ranch property along or adjacent to the coast.

10 49. The Commission made no finding that denying the Walls' permit in order to extract
11 actual public beach access from them or other Ranch owners is constitutional or lawful under the
12 Coastal Act.

13 **FIRST CAUSE OF ACTION**

14 **Administrative Mandate (CCP § 1094.5)—Failure to Proceed in** 15 **Accordance with the Law of Unconstitutional Conditions**

16 50. Paragraphs 1 through 49 set forth above are realleged and incorporated herein by
17 this reference.

18 51. The Fifth Amendment to the United States Constitution applies to the states through
19 the Fourteenth Amendment.

20 52. The Takings and Just Compensation Clauses of the Fifth Amendment prohibit the
21 government from taking private property without just compensation. Article I, Section 19(a), of the
22 California Constitution states: "Private property may be taken or damaged for a public use and only
23 when just compensation, ascertained by a jury unless waived, has first been paid to, or into court
24 for, the owner."

25 53. Section 30010 of the Coastal Act prohibits the Commission from making any
26 decision that takes private property without just compensation. The section specifically states:

27 The Legislature hereby finds and declares that this division is not intended, and
28 shall not be construed as authorizing the commission, port governing body, or

1 local government acting pursuant to this division to exercise their power to grant
2 or deny a permit in a manner which will take or damage private property for
3 public use, without the payment of just compensation therefor. This section is not
intended to increase or decrease the rights of any owner of property under the
Constitution of the State of California or the United States.

4 54. The Unconstitutional Conditions Doctrine enforces constitutional just compensation
5 guarantees by ensuring that government agencies do not coerce permit applicants to donate property
6 to the public (for free) to obtain a permit, when appropriation of the property would normally
7 require payment of just compensation. *Koontz v. St. Johns River Water Management Dist.*, 570
8 U.S. 595 (2013).

9 55. The Commission may not deny a permit because of a permit applicant's failure to
10 submit to a permit condition that is unrelated to the impact of the proposed project.

11 56. The Commission may not deny a permit because of an applicant's failure to submit
12 to a permit condition that is disproportionate in nature and extent to the adverse public impacts of
13 the proposed development.

14 57. The Commission did not find and cannot find a link between the impacts of the
15 Walls' pool project and the need for a public access condition. The project located three quarters
16 of a mile from the shore on an inland parcel does not impact or harm or effect public beach access.
17 Therefore, the Commission could not lawfully or constitutionally deny the permit due to the lack
18 of an adequate public access condition.

19 58. The Commission did not find and cannot find that a public access condition is
20 roughly proportional in nature and extent to the impact of the Walls' pool project. There is no
21 reasonable relationship between the Walls' project on an inland parcel and the need for beach
22 access.

23 59. The permit denial is not reasonably related or proportionate to the impacts of the
24 Walls' project, and amounts to a violation of the Unconstitutional Conditions Doctrine as
25 implemented through the Fifth Amendment to the U.S. Constitution and Article I, Section 19, of
26 the California Constitution.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RELIEF REQUESTED

WHEREFORE, Petitioners and Plaintiffs pray for judgment against Respondent and Defendant California Coastal Commission as follows:

1. A judgment that the denial of the Walls’ permit for lack of a public access condition violates the Unconstitutional Conditions Doctrine and is invalid.
2. For a peremptory writ of mandate commanding the Commission to issue a permit to the Walls for their pool project without any public access condition or in-lieu fee.
3. Alternatively, if a public access condition is lawful and constitutional in this case, the Walls request a writ of mandate compelling the Commission to issue the permit subject only to the \$5,000 public access in-lieu fee identified in Coastal Act Section 30610.8.
4. Attorneys’ fees under Code of Civil Procedure Section 1021.5.
5. For such other relief that the Court deems just and proper.

DATED: July 1, 2019.

Respectfully submitted,

s/ J. David Breemer
J. DAVID BREEMER

Attorney for Petitioners and Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Jack Wall, declare as follows:

I have read the foregoing Verified Petition for Writ of Administrative Mandate and Complaint for Declaratory Relief and, except for matters stated on information and belief, the facts stated therein are true on my own knowledge, and as to those matters stated on information and belief, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed this 26 day of JUNE, 2019, at SAN Pedro, California.



JACK WALL