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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

CHRIS ADAMSKI; COURTNEY ADAMSKI;
EMERSON DEVELOPMENT GROUP, INC.;
VALLEY POINT, LLC; and PIETRO FAMILY
INVESTMENTS, LP,

Petitioners,

v.

CALIFORNIA COASTAL COMMISSION,

Respondent.

No. 20CV002395

**VERIFIED PETITION FOR WRIT
OF ADMINISTRATIVE MANDATE
(CCP § 1094.5)**

1 **INTRODUCTION**

2 1. Petitioners Chris Adamski, Courtney Adamski, Emerson Development Group, Inc.,
3 Valley Point, LLC, and Pietro Family Investments, LP (Petitioners) seek an administrative writ of
4 mandate in this action challenging the California Coastal Commission’s (Commission) unlawful
5 exercise of jurisdiction of Petitioners’ use of real property they own within the Carmel Point
6 community of unincorporated Monterey County (County). The Petitioners purchased the properties
7 at issue to develop personal homes for each of them, and a third to sell and help finance the
8 construction of their residences. Petitioners submitted permit applications to develop the three
9 properties. The plans included subsurface basements, a common feature of homes in the
10 neighborhood. On December 5, 2019, the County approved the permits as consistent with its state-
11 approved local coastal plan after a thorough permitting process. But two local groups appealed the
12 decision to the Coastal Commission, arguing against the inclusion of basements on the permits.
13 Their objections were based on unsubstantiated claims without any evidence that the construction
14 would disturb archeological artifacts. The Commission asserted jurisdiction over the Petitioners’
15 permits and then required that they eliminate planned basements for each house. Further, the
16 Commission unlawfully restricted the Petitioners’ right to grade and excavate the land—conditions
17 which potentially make any development of the properties infeasible—and unconstitutionally
18 conditioned the permits on a demand for a permanent restrictive covenant against Petitioners’
19 properties for the benefit of the state. The actions of the Commission exceeded its statutory
20 jurisdiction and unlawfully infringed on the discretion granted to local governments under the
21 Coastal Act. By this verified petition, Petitioners allege:

22 **PARTIES**

23 2. Petitioners Chris and Courtney Adamski are the founders of a limited liability
24 company, Valley Point, LLC, as well as the founder and owners of Emerson Development Group,
25 Inc.

26 3. Emerson Development Group, Inc. is a business formed and operating in the State
27 of California.

1 **FACTUAL ALLEGATIONS**

2 **The Carmel Area Local Coastal Program**

3 14. On April 14, 1983, the Commission certified the Carmel Area LCP, which
4 encompasses Petitioners' properties.

5 15. The LCP is comprised of both a Land Use Plan (LUP) and Coastal Implementation
6 Plan (CIP).

7 16. Additionally, the Carmel Area is government by the Carmel Coastal Implementation
8 Plan (CCIP).

9 17. Under LUP Policy 2.8.2, new land uses are required to "incorporate all site planning
10 and design features necessary to minimize or avoid impacts to archeological resources."

11 18. LUP Policy 2.8.3.1 requires "the timely identification and evaluation of
12 archeological, historical and paleontological resources . . . during the conceptual design phase of
13 land-use planning or project development."

14 19. If archeological or other cultural sites are discovered on a parcel, LUP Policy 2.8.3.4
15 requires project design to "avoid[] or substantially minimize[] impacts to such cultural sites."

16 20. Since the Carmel Area LCP was adopted and certified by the Commission
17 approximately 96 other homes within Petitioners' neighborhood have been approved by the County
18 with included basements.

19 21. The Coastal Act sets out a division of authority between local governments and the
20 Commission with respect to permitting authority. Once a local government, such as the County
21 here, has adopted an LCP and it has been certified by the Commission, jurisdiction over the issuance
22 of coastal develop permits within the area covered by the LCP is transferred from the Commission
23 to the local government. *See* Pub. Res. Code §§ 30519(a) and 30604(b).

24 22. Where local governments operate under a certified LCP, as here, a determination of
25 whether development approval is appealable to the Commission is made, in the first instance, by
26 the local government under Cal. Code Regs. tit. 14, § 13569.

27 23. Because the Coastal Act seeks to transfer most jurisdiction over the issuance of local
28 governments once an LCP is certified by the Commission, the Coastal Act places strict limitations

1 on the Commission’s ability to exercise of appellate jurisdiction. The Commission has appellate
2 jurisdiction only with respect to enumerated types of development. The Commission asserted
3 Coastal Act section 30603(a)(4) as the purported basis for its authority in this case, which permits
4 an appeal of “development approved by a coastal county that is not designated as the principal
5 permitted use under the zoning ordinance or zoning district map” of a county operating under a
6 certified LCP.

7 **The Petitioners’ Properties**

8 24. In 2015, Chris and Courtney Adamski executed a Memorandum of Understanding
9 (MOU) with Pietro Family Investments. The MOU created a joint venture in which Pietro Family
10 Investments purchased 26324 Valley View Avenue, Carmel-by-the-Sea, California 93923. That
11 property included a single-family residence and three additional attached lots that were
12 undeveloped. The other three lots are 26346 Valley View Avenue, 26307 Isabella Avenue, and
13 26338 Valley View Avenue. 26346 Valley View Avenue was subsequently transferred
14 to/purchased by Chris and Courtney Adamski.

15 25. Under the MOU, the property at 26324 Valley View Avenue was to be redeveloped
16 and sold by Emerson Development Group. The joint venture successfully permitted and
17 redeveloped that property, including a basement, and it was sold in 2017.

18 26. The lot at 26346 Valley View Avenue is to be developed and become a family home
19 for Chris and Courtney Adamski and their four daughters. The lot at 26338 Valley View Avenue
20 is to be developed and become a retirement home for Mike Pietro. The final property, at 26307
21 Isabella Avenue, is to be developed as a joint venture and sold.

22 27. The properties are zoned for medium-density residential, and under CCIP section
23 20.12.040(A), the “first single family dwelling per legal lot of record” constitutes a principal
24 permitted use.

25 28. However, because all three of the properties are within 750 feet of known
26 archeological resources, they require a Coastal Development Permit under CCIP section
27 20.146.090(A).

1 29. Because all construction and permits are to take place under the MOU, all permits
2 for the remaining three lots were submitted to Monterey County by Emerson Development Group.

3 **The County Permit Approval Process**

4 30. On July 25, 2017, Petitioners filed for three Combined Development Permits for the
5 three properties with the Monterey County Resource Management Agency. The combined permits
6 sought to construct a single-family dwelling on each of the three properties, and each plan included
7 a basement on the property.

8 31. 26307 Isabella Avenue was assigned local government permit file number,
9 PLN170611, 26338 Valley View Avenue was assigned local government permit file number
10 PLN170612, and 26346 Valley View Avenue was assigned local government permit number
11 PLN170613.

12 32. PLN170611 seeks a permit to build a split-level 3,397-square-foot single-family
13 dwelling with a 437-square-foot attached garage and a 1,366-square-foot basement, requiring
14 grading of approximately 620 cubic yards, and related improvements.

15 33. PLN170612 seeks a permit to build a 2,285-square-foot single-family dwelling with
16 a 450-square-foot attached garage and a 1,687-square-foot basement, requiring grading of
17 approximately 830 cubic yards, recognition of previously conducted utility trenching, and tree
18 removal.

19 34. PLN170613 seeks a permit to build a 3,028-square-foot single-family dwelling with
20 a 440-square-foot attached garage and a 2,413-square-foot basement, requiring grading of
21 approximately 1,255 cubic yards, and recognition of previously conducted utility trenching.

22 35. The County permit applications were deemed complete on February 8, 2018
23 (PLN170612 and PLN170613) and on April 14, 2018 (PLN170611).

24 36. During the County permit approval process, Petitioners hired three different
25 archeologists, who each conducted surveys of each of the three properties, for a total of nine
26 archeological surveys, none of which identified any evidence of any archeological or cultural
27 resources on any of these sites.
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1 37. In addition, the Petitioners obtained two additional archeological reports for the
2 properties at 26346 Valley View Avenue and 26338 Valley View Avenue, in an area where utility
3 trenching had previously been conducted. These reports also concluded that there were no cultural
4 or archeological resources present on these sites.

5 38. On December 5, 2018, the Monterey County Planning Commission held a hearing
6 and approved the combined permits, subject to certain conditions, by Planning Commission
7 Resolution Nos. 18-047, 18-048, and 18-049.

8 39. Because of certain clerical errors, the Planning Commission issued corrected
9 resolutions on January 3, 2019.

10 40. Two organizations, the Open Monterey Project and Save Carmel Point Cultural
11 Resources (Appellants), appealed the permit approval to the Monterey County Board of
12 Supervisors.

13 41. On April 23, 2019, the Monterey County Board of Supervisors denied the appeal by
14 Appellants and approved the permits for all three properties, along with some minor clarifications
15 to the language of mitigation requirements on the permits.

16 42. The Board of Supervisors found that all three projects were consistent with all
17 applicable laws and regulations controlling development on the parcels, and noted that all three
18 properties constituted infill development within an existing medium-density housing tract.

19 43. Under LUP Policy 2.8.3.3, the Board of Supervisors made a finding that all
20 consulted archeological experts had found no evidence of Native American burial or cultural
21 resources on the parcels. Still, the combined permits included a further condition that both an
22 archeologist and a qualified Native American monitor for archeological resources during
23 construction and all grading and excavation activities.

24 44. Additionally, Petitioners agreed to a further condition requiring the Petitioners to
25 redesign the dwellings if any significant cultural or archeological resources are encountered that
26 could not otherwise be mitigated, as well as requiring that a Conservation Easement over the parcel
27 be recorded, excepting the house and landscaping.

1 45. Additionally, subsequent to the County approvals, Petitioners obtained
2 archeological studies and investigations using ground penetrating radar (GPR) and geoprobing
3 technologies, in which no evidence of any archeological or cultural resources were found.

4 **Commission Administrative Proceedings**

5 46. On or around June 6, 2019, the two Appellant organizations submitted an appeal to
6 the Commission, alleging that the mitigation measures imposed by the County were insufficient to
7 protect archeological resources, and explicitly calling on the Commission to consider potential
8 excavation at “other projects within the surrounding block” and the effects of “future actions with
9 regard to underground development at Carmel Point.” The permits were assigned Commission CDP
10 numbers A-3-MCO-19-0039, A-3-MCO-19-0041, and A-3-MCO-19-0042.

11 47. On or about November 1, 2019, the Commission published a staff report, finding
12 that the Commission had jurisdiction to hear the appeal, and finding that a substantial issue was
13 raised by the Petitioners’ development permits. This finding reversed the County’s approval of the
14 Petitioners’ development permits, and triggered a de novo review by the Commission of the permit
15 application.

16 48. Specifically, the Commission found that the permits were appealable because:
17 1) development within 750 feet of a known archeological resource was a “conditional use”; and
18 2) that because the LCP “does not designate one single principally permitted use . . . all uses within
19 this district are appealable.”

20 49. On November 5, 2019, the Petitioners objected by letter to the exercise of
21 jurisdiction, contending that the Commission lacked authority to review the County approvals.

22 50. The Commission nonetheless assumed jurisdiction over the permits, and, on
23 November 13, 2019, the Commission found that Monterey County’s actions approving the permits
24 raised a substantial issue of conformance with the LCP.

25 51. In advance of the November 13 hearing, Petitioners exercised their right to postpone
26 all de novo portions of the hearing to a later date.

27 52. On or about June 19, 2020, the Commission published a staff report. Although the
28 Commission noted that none of the archeological surveys had identified any archeological

1 resources, it stated that “it is not possible to say with 100% certainty what type of archeological
2 and tribal cultural resources may be found in the soils of these sites, . . .” The staff report continued:
3 “The only way to *ensure* avoidance of these resources . . . would be to prohibit excavation and
4 grading.” (emphasis in original) However, the report recognized that “a complete prohibition on
5 any grading and excavation would require denial of the residential projects, and denial could
6 engender constitutional takings questions.”

7 53. The staff report did not recommend approval of Petitioners’ development permits
8 as submitted. Instead, the report recommended approval of several special conditions for each
9 permit.

10 54. Special Condition 1 required the Petitioners to submit revised plans for each single-
11 family residence to the Executive Director for review and written approval. The Special Condition
12 required that each revised plan comply with the following conditions relevant to this writ action:

- 13 1. “With exception for foundation elements, utility trenching, driveways, minor
14 impervious surfacing, and limited landscaping, all other ground disturbing
15 and/or subsurface elements, including all basements, shall be prohibited.”
- 16 2. “[D]evelopment height shall be limited to 18 feet above average natural grade.”

17 55. Special Condition 7 required that the Petitioners execute and record a permanent
18 deed restriction against each property imposing “the terms and conditions of the permit approvals
19 as covenants, conditions, and restrictions on the use and enjoyment of the property.”

20 56. The Commission held a de novo hearing on the permits on July 9, 2020.

21 57. At the July 9 hearing, Petitioners were represented by attorney Tony Lombardo.
22 During his presentation, Mr. Lombardo noted that the County and Commission had regularly
23 approved basements under the long-existing Commission-certified County LCP. Mr. Lombardo
24 also highlighted that conditioning these permits on the removal of basements was effectively the
25 announcement of a moratorium on all basements within the Carmel area of Monterey County.
26 Finally, Mr. Lombardo pointed out that no LCP policies require avoidance of excavation where
27 there are no identified resources.
28

1 58. During public comments, several speakers urged the Commission to adopt a policy
2 that would effectively prohibit all basements. For example, Christina McGinnis urged the
3 Commission to consider the “larger policy issue that, that the basements should not be built for
4 Carmel Point, any longer”

5 59. Additionally, several other speakers spoke against the staff recommendations,
6 noting that the staff recommendation effectively constituted a completely new interpretation of the
7 LCP and would set an “adverse precedent” that effectively created a “basements moratorium”
8 One speaker, Frank Creede, noted that “Monterey County has been hesitant to move forward on
9 my project, until the outcome of this Coastal Commission agenda item,” because it would establish
10 a new Commission policy that “basements are not allowed on the Carmel Point” and that was at
11 odds with the existing LCP and past practice.

12 60. Commission staff failed to point to any specific evidence of resources on Petitioners’
13 properties. Instead the staff described “[t]his area” as “rich in cultural resources.” The staff urged
14 the Commission to follow “the precautionary principle and eliminate the basements too, so as to
15 ensure avoidance”

16 61. Commission staff did not dispute that all of the archeological surveys and GPR
17 analyses conducted on the Petitioners’ properties had failed to turn up any evidence of archeological
18 or cultural resources, and that no other evidence had been put forward by any other party to establish
19 the existence of archeological resources on the Petitioners’ property.

20 **The Commission’s Final Decision and Conditions**

21 62. During the July 9 hearing, Commissioner Dayna Bochco pointed out that there
22 wasn’t “any evidence whatsoever that there were cultural resources on these properties.”
23 Commissioner Bochco urged the Commission to “do what is demanded by the individual evidence
24 of each property” rather than “go on some general policy that you can’t have a basement.”

25 63. Chair Steve Padilla summarized the staff position as “there isn’t any evidence of
26 resources on the particular site that we know of” but “there’s no way to be 100% certain that we
27 wouldn’t encounter or disrupt any as yet undiscovered resources.” To that summary, Commission
28 staff responded “I think that’s accurate.”

1 64. Commissioner Bochco also stated that “every applicant should have the opportunity
2 to prove or disprove that there are cultural resources.” Chair Padilla responded, “this is one of those
3 where our processes for evaluating this haven’t caught up with the demand yet, and . . . we’re forced
4 to just err on the side of caution.”

5 65. The Commissioners voted 10-1 to approve the staff’s recommendation on all three
6 permits, with Commissioner Bochco as the lone dissenting vote for each.

7 66. The vote approved all three permits, subject to the Commission-required special
8 conditions.

9 **FIRST CAUSE OF ACTION – Lack of Substantial Evidence**
10 **(Writ of Administrative Mandate under CCP § 1094.5)**

11 67. All of the allegations set forth by the preceding paragraphs are realleged and
12 incorporated as if set forth fully herein.

13 68. Monterey County granted CDPs approving the Petitioners’ plans to develop all three
14 properties as designed, including basements, subject to mitigation requirements ensuring that any
15 archeological resources that might be discovered could be mitigated.

16 69. Further, Monterey County found that each archeologist that conducted archeological
17 surveys of the Petitioners’ properties found no substantial evidence of any archeological resources.

18 70. In a de novo review of Petitioners’ permit approvals, the Commission is required to
19 support any findings with “substantial evidence in the light of the whole record.” *Desmond v. Cty.*
20 *of Contra Costa*, 21 Cal. App. 4th 330, 334 (1993).

21 71. The Commission did not put forward any evidence at either hearing that
22 archeological resources existed on any of the Petitioners’ properties.

23 72. The Commission acknowledged that “there isn’t any evidence of resources on the
24 particular site that we know of” and acted “[n]otwithstanding the findings” of the numerous
25 archeological surveys performed on Petitioners’ properties.

26 73. Effectively, instead of finding substantial evidence to support a finding of
27 archeological resources—which would trigger the mitigation requirement under the LCP—the
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1 Commission required Petitioners to prove the nonexistence of archeological resources on the
2 properties.

3 74. By reversing Petitioners’ permits without putting forward any evidence of
4 archeological resources on the Petitioners’ property, the Commission has failed to act in the manner
5 required by law and abused its discretion.

6 **SECOND CAUSE OF ACTION – Lack of Jurisdiction**
7 **(Writ of Administrative Mandate under CCP § 1094.5)**

8 75. All of the allegations set forth by the preceding paragraphs are realleged and
9 incorporated as if set forth fully herein.

10 76. Petitioners’ property is zoned for medium-density residential, and under Monterey
11 County Zoning Coastal Implementation Plan section 20.12.040(A), the “first single family dwelling
12 per legal lot of record” constitutes a principally permitted use.

13 77. Section 20.146.090(A) of the CCIP establishes that any development within 750 feet
14 of a known archeological resource “shall be required to obtain a Coastal Development Permit” but
15 does not convert a principally permitted use into a conditional use.

16 78. Even where a CDP is required, the Commission has jurisdiction only over certain
17 categories of CDPs, as established by Coastal Act section 30603 and Monterey County Zoning
18 Coastal Implementation Plan section 20.86.080.

19 79. Under settled California law, the Commission does not have appellate jurisdiction
20 over development that constitutes a principally permitted use. *DeCicco v. California Coastal*
21 *Comm’n*, 199 Cal. App. 4th 947, 951 (2011).

22 80. Under the Commission’s theory, within any zoning area in which more than one
23 principally permitted use exists all CDPs would be appealable, which is contrary to Coastal Act
24 section 30603(a).

25 81. By exercising appellate authority of Petitioners’ permits, the Commission therefore
26 failed to act in the manner required by law and abused its discretion and/or acted without, or in
27 excess of, its jurisdiction.
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1 **THIRD CAUSE OF ACTION – Unconstitutional Condition**
2 **(Writ of Administrative Mandate under CCP § 1094.5)**

3 82. All of the allegations set forth by the preceding paragraphs are realleged and
4 incorporated as if set forth fully herein.

5 83. Under settled California Law, a restrictive covenant is an interest in property. *S. Cal.*
6 *Edison Co. v. Bourgerie*, 9 Cal. 3d 169, 174–75 (1973).

7 84. Under both the California and United States Constitutions, Petitioners’ property is
8 protected from being taken and/or damaged for public use without the payment of just
9 compensation.

10 85. Under the law of unconstitutional conditions established by *Nollan v. California*
11 *Coastal Commission*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and
12 *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013), an adjudicatory land-
13 use agency such as the Commission may constitutionally impose a condition on property owners’
14 exercise of their property rights only if the condition directly mitigates a public impact arising from
15 the property owners’ exercise of their property rights and the condition is roughly proportionate in
16 both nature and extent to the public impact arising from the property owners’ exercise of their
17 property rights.

18 86. No evidence of archeological resources has been discovered on any of the
19 Petitioners’ parcels, despite 17 separate archeological surveys, including the use of GPR
20 technology.

21 87. Because no party has put forward any evidence of the existence of archeological or
22 cultural resources on the property, no party has put forward evidence that the development of the
23 property as approved will create a public impact on any such resources.

24 88. Further, because the Commission has conditioned the approval of all three permits
25 on the removal of basements and the reduction of almost all grading to the property, the
26 development as approved cannot have an impact on any such resources.

27 89. Moreover, any future development on the properties will require a subsequent CDP,
28 making a restrictive covenant unnecessary. The Commission has failed to show that there is a nexus

1 or rough proportionality between any public impact of the project and the requirement that the
2 Petitioners record a deed restriction incorporating the Commission's required conditions.

3 90. By imposing Special Condition 7, the Commission failed to proceed in a manner
4 required by law by unconstitutionally conditioning the Petitioners' use of their property. *See also*
5 *San Remo Hotel L.P. v. City & Cty. of San Francisco*, 27 Cal. 4th 643 (2002).

6 91. By acting outside of the scope of its constitutional authority in imposing Special
7 Condition 7, the Commission failed to act in the manner required by law and abused its discretion
8 and/or acted without, or in excess of, its jurisdiction.

9 **FOURTH CAUSE OF ACTION**
10 **(Writ of Administrative Mandate under CCP § 1094.5)**

11 92. All of the allegations set forth by the preceding paragraphs are realleged and
12 incorporated as if set forth fully herein.

13 93. The County's determination that the development permits were in conformity with
14 its LCP was made under the authority of sections 30519(a), and 30603 of the Coastal Act, and with
15 reference to section 21.146.090 of the CCIP.

16 94. Any special conditions imposed by the Commission must be consistent with the
17 LCP. *Schneider v. California Coastal Comm'n*, 140 Cal. App. 4th 1339, 1345–48 (2006).

18 95. Special Condition 1 is inconsistent with the LCP.

19 96. By imposing Special Condition 1, the Commission failed to act in the manner
20 required by law, abused its discretion, and/or acted without, or in excess of, its jurisdiction.

21 **RELIEF REQUESTED**

22 WHEREFORE, the Petitioners respectfully request relief as follows:

23 1. That the Court issue a peremptory writ of mandate vacating and setting aside entirely
24 the Commission's actions of July 9, 2020, concerning the appeal from the County's approval of
25 Petitioners' building permits;

26 2. For a permanent injunction restraining the Commission, its agents, employees,
27 officers, and representatives from taking any action to appeal the County's approval of Petitioners'
28 building permits;

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VERIFICATION

I, Chris Adamski, declare as follows:

I have read the foregoing Verified Petition for Writ of Administrative Mandate (CCP § 1094.5) 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 8th day of ~~August~~^{September}, 2020, at Carmel, California.



CHRIS ADAMSKI