

1 JEREMY TALCOTT, No. 311490
JTalcott@pacifical.org
2 Pacific Legal Foundation
555 Capitol Mall, Suite 1290
3 Sacramento, California 95814
Telephone: (916) 419-7111
4 Facsimile: (916) 419-7747

5 JOHANNA B. TALCOTT, No. 311491
JoTalcott@pacifical.org
6 Pacific Legal Foundation
4440 PGA Blvd., Suite 307
7 Palm Beach Gardens, Florida 33410
Telephone: (561) 691-5000
8 Facsimile: (916) 419-7747

9 *Attorneys for Plaintiffs*

10
11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF ORANGE
13

14 JOHN SEIDENSTICKER and MARCELLA
SEIDENSTICKER,
15
16 Petitioners and Plaintiffs,
17 v.
18 CALIFORNIA COASTAL COMMISSION and
DOES 1 through 20, inclusive,
19 Respondents and Defendants.
20

No. _____
**VERIFIED PETITION FOR
WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**
(C.C.P. §§ 526, 1060, 1094.5;
Pub. Res. Code §§ 30801, 30803)

21 1. By this verified Petition and Complaint, Petitioners and Plaintiffs John Seidensticker
22 and Marcella Seidensticker (“Petitioners” or “the Seidenstickers”) challenge the California Coastal
23 Commission’s (“Commission”) unlawful actions in connection with Coastal Development Permit
24 Application No. A-5-DPT-23-0004 for the demolition and reconstruction of a single-family
25 residence at 35697 Beach Road, Dana Point, Orange County. Petitioners allege as follows:

26 **PARTIES**

27 2. Petitioners and Plaintiffs John Seidensticker and Marcella Seidensticker are the
28 owners of the real property located at 35697 Beach Road, Dana Point, California 92624 (APN: 691-

1 162-25) (“the Property”).

2 3. Respondent and Defendant California Coastal Commission is a state agency charged
3 with administration of the California Coastal Act of 1976, Public Resources Code §30000, *et seq.*
4 (“Coastal Act”), and, on appeal from a project in the City of Dana Point, the City’s Local Coastal
5 Program (“LCP”). The Commission issued the administrative decision challenged herein. The
6 Commission may sue and be sued under Coastal Act §30334.4.

7 **JURISDICTION AND VENUE**

8 4. This Court has jurisdiction over the claims in this action pursuant to Code of Civil
9 Procedure §§ 526, 1060, and 1094.5, and Public Resources Code § 30801.

10 5. Venue is proper in this Court because the real property that is the subject of this
11 lawsuit is located in the County of Orange.

12 6. Petitioners have exhausted all non-futile administrative remedies and have timely
13 filed this Petition and Complaint within 60 days of the Commission’s final decision on March 11,
14 2026. Public Resources Code § 30801.

15 7. Petitioners have no plain, speedy, or adequate remedy available in the normal course
16 of law other than mandamus, declaratory, and injunctive relief.

17 **GENERAL ALLEGATIONS**

18 ***The Property and Existing Development***

19 8. The Property is a 2,476 square-foot beachfront lot located at 35697 Beach Road in
20 the Capistrano Beach area of Dana Point, Orange County. The Property extends from Beach Road
21 seaward to the ambulatory mean high tide line (“MHTL”). It is currently developed with an 892
22 square-foot, single-story, single-family residence.

23 9. The Property includes a seawall and riprap that were constructed prior to the
24 enactment of the Coastal Act in 1976. These protective structures serve the Property and adjacent
25 properties along Beach Road.

26 10. The Property is located within an established row of residential development along
27 Beach Road, a private road serving the Capistrano Bay community. Landward of Beach Road are
28 railroad tracks, the California Coastal Trail, Pacific Coast Highway, and a coastal bluff supporting

1 additional development.

2 11. The Property is designated as “Residential 0-3.5” in the City’s certified Land Use
3 Element and “Residential Beach Road 12” in the certified Implementation Plan. It is within the
4 “Floodplain Overlay District (FP-3)” and the “Coastal Overlay District” in the appeal jurisdiction
5 of the Commission.

6 ***The Proposed Project and City Approval***

7 12. Petitioners submitted a Coastal Development Permit (“CDP”) application to the City
8 of Dana Point (“City”) to demolish the existing residence and construct a new 2,710 square-foot,
9 two-story, 36-foot-tall single-family residence above a 1,258 square-foot lower-level enclosed
10 garage with breakaway walls (3,968 square feet total), supported by a caisson foundation consisting
11 of nine concrete and steel caissons designed to elevate the residence above the future base flood
12 elevation (“FBFE”) of +23 feet NAVD88. No new shoreline armoring was proposed.

13 13. The City approved the project as CDP No. 20-0006, finding it consistent with the
14 certified LCP and applicable Chapter 3 policies of the Coastal Act.

15 ***The Appeal and Commission’s Failure to Act Timely***

16 14. The City’s approval was appealed to the Commission. The appeal was filed on or
17 about February 7, 2023.

18 15. Public Resources Code section 30621, subdivision (a), requires that “[a] hearing on
19 any coastal development permit application or an appeal shall be set no later than 49 working days
20 after the date on which the application or appeal is filed with the commission.” Section 30622
21 requires the Commission to “act upon the coastal development permit application or an appeal
22 within 21 days after the conclusion of the hearing pursuant to Section 30621.” Under section 30625,
23 subdivision (a), if no action is taken within that time, the decision of the local government becomes
24 final unless the time limit is waived by the applicant.

25 16. The Commission found Substantial Issue on April 12, 2023. The Commission
26 initially scheduled a de novo hearing on the merits for February 5th, 2026, but the Seidenstickers
27 were unavailable because of pre-planned travel. They requested postponement of the hearing,
28 which was delayed one month and held on March 11, 2026, over three years after the appeal was

1 filed, and far in excess of the 49 working day period prescribed by section 30621. Petitioners did
2 not waive the 49 working day time limit.

3 ***The Commission's Conditional Approval and Challenged Special Conditions***

4 17. At the March 11, 2026, de novo hearing, Commission staff recommended approval
5 of the project subject to fifteen special conditions. The Commission adopted the staff
6 recommendation without modification.

7 18. **Special Condition 1 (Final Revised Plans)** requires that, prior to issuance of the
8 CDP, Petitioners submit entirely new plans reflecting at least nine enumerated sub-conditions,
9 including new caisson treatment designs (Subpart B), conversion of the proposed enclosed garage
10 to an open carport (Subpart C), revised utility plans (Subpart D), new landscaping and lighting
11 plans (Subparts E and F), a construction staging plan (Subpart H), and a certified engineer's
12 removal plan with cost estimate (Subpart I). These plans were not before the Commission at
13 hearing, were not noticed to the public, and their content will be determined through post-hearing
14 negotiations between Petitioners and the Executive Director.

15 19. **Special Condition 1(C)** specifically requires elimination of the Petitioners'
16 proposed enclosed garage with breakaway walls and its replacement with an open carport. The
17 Commission's staff report acknowledges that Petitioners do not agree with this recommendation
18 and have argued that the certified LCP requires breakaway walls at the garage level.

19 20. **Special Condition 5 (MHTL Surveys and Monitoring)** requires Petitioners to
20 fund a pre-issuance MHTL survey and recurring surveys every five years in perpetuity for the life
21 of the structure, at Petitioners' expense.

22 21. **Special Condition 6 (Waiver of Rights to Future Shoreline Protective Devices)**
23 requires that, by acceptance of the permit, Petitioners permanently and perpetually waive, on behalf
24 of themselves and all successors and assigns, any and all rights to construct shoreline protective
25 devices to protect the development—including in the event the structure is "threatened with damage
26 or destruction from waves, erosion, storm conditions, liquefaction, or other coastal hazards."

27 22. **Special Condition 7 (Development Removal)** requires Petitioners to "promptly
28 remove all or a portion of the development" upon the occurrence of triggering events, including:

1 (A) a “final order” from “the City or any other government agency with legal jurisdiction”
2 determining that the structures are “currently and permanently unsafe,” that essential services “can
3 no longer feasibly be maintained,” or that removal is required pursuant to “LCP policies for sea
4 level rise adaptation planning”; (C) a determination through MHTL monitoring that any portion of
5 the development is located on public trust lands; and (D) a “final order” by the Executive Director,
6 the City, or “any other government agency with legal jurisdiction” determining that the existing
7 pre-Coastal Act seawall is no longer needed by adjacent properties or its functioning has
8 diminished.

9 ***Petitioners’ Objections***

10 23. Petitioners, both directly and through counsel at Pacific Legal Foundation, objected
11 to the challenged conditions at the March 11, 2026, hearing and in writing, identifying the
12 constitutional and statutory deficiencies of the proposed conditions.

13 24. The Commission adopted the staff recommendation without modification.

14 ***The Nature of the MHTL and the Arbitrariness of the Five-Year Survey Regime***

15 25. The MHTL is determined by two distinct concepts. The mean high water (“MHW”)
16 tidal datum elevation is a vertical elevation calculated by NOAA from tidal observations over a
17 National Tidal Datum Epoch. The MHW datum changes approximately every 18.6 years,
18 corresponding to the lunar nodal cycle. Between epochs, the MHW elevation is a fixed number.

19 26. The MHTL intersection point is the physical location on the beach where a
20 horizontal line drawn at the MHW elevation intersects the existing beach profile. This intersection
21 point changes constantly in response to wave action, storm events, seasonal sand transport, tidal
22 cycles, and accretion. A single storm event can move the intersection point substantially landward;
23 natural accretion can move it substantially seaward in weeks. It is not a boundary that migrates only
24 landward.

25 27. The existing seawall prevents erosion of the beach profile landward of the wall,
26 meaning the MHTL intersection point cannot migrate landward past the seawall face. The
27 Commission’s projections of landward migration assume a hypothetical scenario in which the
28 seawall has been removed, which is not the project before the Commission.

1 of law. The Commission’s interpretation of section 30621 as permitting indefinite delay
2 after an initial “opening” of a hearing within 49 working days, is an unreasonable
3 construction of the Coastal Act. The primary case supporting this construction,
4 *Coronado Yacht Club v. California Coastal Commission*, 13 Cal. App. 4th 860 (1993),
5 still suggests that the Commission is required to act “in a timely fashion that will
6 guarantee its timely action on the appeal consistent with the implied legislative intent to
7 avoid bureaucratic delay.” *Id.* at 871. Even under *Coronado Yacht Club*’s own
8 framework, a three-year delay is not “timely” and represents precisely the bureaucratic
9 delay the statute was designed to prevent.

10 b. **Procedural due process — conditional approval.** The Commission’s conditional
11 “approval” violates procedural due process by requiring submission of entirely new
12 plans as a precondition to permit issuance—plans that were not before the Commission
13 at hearing, not noticed to the public, and whose content will be determined through post-
14 hearing negotiations with the Executive Director. Combined with the Coastal Act’s 60-
15 day statute of limitations for judicial review (Pub. Res. Code § 30801), this structure
16 deprives Petitioners of notice and a meaningful opportunity to be heard on the actual
17 terms of their permit.

18 c. **Unconstitutional conditions — shoreline protection waiver.** Special Condition 6
19 requires a permanent, perpetual waiver of all rights to construct shoreline protective
20 devices, including rights that may exist under Coastal Act section 30235. The staff
21 report contains no individualized determination that this exaction bears an essential
22 nexus to a legitimate governmental interest or is roughly proportional to the projected
23 impact of the proposed development, as required by *Nollan v. California Coastal*
24 *Commission*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and
25 *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013).

26 d. **Regulatory taking — mandatory removal.** Special Conditions 5, 6, and 7 operate
27 sequentially to effect an uncompensated regulatory taking: the Commission prohibits
28 shoreline protection (Condition 6), requires demolition when the unprotected shoreline

1 erodes and the MHTL migrates landward (Condition 7), and claims the expanded beach
2 as public trust land. If removal is triggered, Petitioners lose all economically viable use
3 of their improvements. The perpetual five-year MHTL monitoring obligation under
4 Special Condition 5 is not found in the certified LCP and constitutes an unauthorized
5 exaction.

6 e. **Vagueness and arbitrary action — removal triggers.** The triggering conditions for
7 development removal under Special Condition 7 are unconstitutionally vague: the terms
8 “currently and permanently unsafe,” “can no longer feasibly be maintained,” and “any
9 other government agency with legal jurisdiction” are not objectively defined. No
10 procedural safeguards, independent engineering assessments, or appeal mechanisms are
11 provided. The five-year MHTL survey regime is arbitrary, capturing a snapshot of a
12 constantly changing intersection point with no rational relationship to the 18.6-year
13 lunar nodal cycle on which the MHW tidal datum is recalculated.

14 f. **Inconsistency with certified LCP — carport requirement.** Special Condition 1(C)
15 requires elimination of the proposed enclosed garage with breakaway walls and its
16 replacement with an open carport. If the certified Dana Point LCP requires breakaway
17 walls, the Commission may not override that requirement based on staff’s preference.
18 *Schneider v. Cal. Coastal Comm’n*, 140 Cal. App. 4th 1339, 1345–48 (2006). The staff’s
19 rationale rests on speculative future scenarios unsupported by substantial evidence of
20 project-specific impacts.

21 g. **Exceeding statutory authority — extra-LCP conditions.** The challenged conditions
22 do not implement the certified Dana Point LCP. They impose new policy instruments
23 beyond any standard in the certified program, including a permanent waiver of shoreline
24 protection rights, automatic removal under future adaptation policies that do not yet
25 exist, perpetual MHTL monitoring, and neighborhood-based seawall demolition
26 triggers. These are legislative policy choices that must be made through amendment of
27 the LCP, not imposition through individual permit appeals. Petitioners’ project complies
28 with every applicable standard in the existing certified LCP.

1 h. **Lack of substantial evidence.** The challenged conditions rest on speculative, scenario-
 2 based sea level rise modeling that assumes removal of the existing seawall—a condition
 3 that does not exist. The staff engineer’s own memorandum acknowledges significant
 4 uncertainty and concludes that the design flood elevation represents “a reasonable effort
 5 to minimize the risk from flooding.” Actual observed sea level rise rates from NOAA
 6 tide gauges in Southern California are significantly lower than the projections on which
 7 the conditions are premised. The conditions are not supported by substantial evidence.

8 32. If the Commission’s decision is not invalid for the foregoing reasons, it is invalid
 9 and should be set aside because Petitioners were denied a fair hearing, including because the
 10 Commission’s conditional “approval” deprived them of a meaningful opportunity to challenge the
 11 actual terms of the permit within the statutory limitations period.

12 **SECOND CAUSE OF ACTION**
 13 **FOR DECLARATORY AND INJUNCTIVE RELIEF (C.C.P. §§ 526, 1060)**

14 33. Petitioners reallege and incorporate by reference herein the preceding paragraphs
 15 in their entirety.

16 34. Under section 1060 of the Code of Civil Procedure, “[a]ny person . . . who desires
 17 a declaration of his or her rights or duties with respect to another, . . . in cases of actual controversy
 18 relating to the legal rights and duties of the respective parties, [may] bring an original action . . . in
 19 the superior court for a declaration of his or her rights and duties.”

20 35. There is an actual and present controversy between the parties regarding the
 21 Commission’s jurisdiction, the constitutionality of the challenged conditions, and Petitioners’
 22 rights under the United States and California Constitutions.

23 ***Loss of Jurisdiction Under Section 30621***

24 36. Petitioners seek a judicial declaration that the Commission lost jurisdiction over the
 25 appeal by failing to act within the 49 working day period required by Public Resources Code section
 26 30621, and that the City of Dana Point’s original approval of CDP No. 20-0006 became final by
 27 operation of Public Resources Code section 30625, subdivision (a).

28 ***Violation of the Right to Protect Property — California Constitution Article I, Section 1***

1 37. Article I, Section 1 of the California Constitution guarantees every person the
2 inalienable right to “acquir[e], possess[], and protect[] property.” Special Condition 6 conditions
3 permit approval on the permanent, perpetual waiver of the right to protect Petitioners’ home from
4 foreseeable coastal hazards. This extracts a surrender of a core constitutional right as the price of
5 development approval and is unconstitutional.

6 ***Violation of Coastal Act Section 30235 — Right to Protect Existing Structures***

7 38. Coastal Act section 30235 provides that shoreline protective devices “shall be
8 permitted when required . . . to protect existing structures . . . in danger from erosion.” Once
9 Petitioners’ home is lawfully constructed under a valid CDP, it is an existing structure entitled to
10 the protections of section 30235. The Commission may not condition the permit on the permanent
11 waiver of a right the Coastal Act itself affirmatively grants. Petitioners seek a declaration that
12 Special Condition 6 is unlawful.

13 ***Unconstitutional Conditions — Nollan/Dolan/Koontz***

14 39. The unconstitutional conditions doctrine prohibits the government from requiring a
15 person to give up a constitutional right in exchange for a discretionary benefit where the exaction
16 lacks an essential nexus to a legitimate state interest and is not roughly proportional to the projected
17 impact of the proposed development. Special Condition 6 extracts a permanent waiver of shoreline
18 protection rights untethered to any project-specific impact. Petitioners seek a declaration that
19 Special Condition 6 violates the unconstitutional conditions doctrine.

20 ***Regulatory Taking — Fifth Amendment and Article I, Section 19***

21 40. The Fifth Amendment to the United States Constitution and Article I, Section 19 of
22 the California Constitution prohibit the taking of private property for public use without just
23 compensation. Special Conditions 5, 6, and 7 operate sequentially to accomplish through regulatory
24 conditions what the government could not accomplish through eminent domain without payment
25 of just compensation. Petitioners seek a declaration that the challenged conditions effect an
26 unconstitutional taking of private property.

27 ***Procedural Due Process — Conditional Approval and Statute of Limitations***

1 doctrine under the Fifth and Fourteenth Amendments to the United States Constitution;

2 6. A declaration that Special Conditions 5, 6, and 7, individually and in combination,
3 effect an unconstitutional taking of private property without just compensation;

4 7. A declaration that Special Condition 6 is unlawful as applied to Petitioners' lawfully
5 permitted development because it compels the waiver of rights under Coastal Act section 30235;

6 8. A declaration that the removal conditions in Special Condition 7 are
7 unconstitutionally vague;

8 9. A preliminary and permanent injunction restraining the Commission, its agents,
9 employees, officers, and representatives from enforcing the challenged special conditions;

10 10. Costs of suit and reasonable attorneys' fees;

11 11. Such other and further relief as the Court may deem just and proper.

12 DATED: May 7, 2026.

13 Respectfully submitted,

14 JEREMY TALCOTT
15 JOHANNA B. TALCOTT

16 By /s/ Jeremy Talcott
17 JEREMY TALCOTT

18 *Attorneys for Plaintiffs*

19

20

21

22

23

24

25

26

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

Verification

I am authorized to make this Verification on behalf of Petitioners and Plaintiffs in this action. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know its contents. The factual matters stated therein are true of my own knowledge, except as to those matters stated on information and belief, and as to those matters, 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.

Executed on May 7, 2026, at Orange County, California.

DocuSigned by:

6B831E59AAA346C.....
John Seidensticker