

1 Lawrence G. Salzman (State Bar No. 224727)
Jeffrey W. McCoy (State Bar No. 317377)
2 Joshua P. Thompson (State Bar No. 250955)
PACIFIC LEGAL FOUNDATION
3 930 G Street
Sacramento, California 95814
4 Telephone: (916) 419-7111
Facsimile: (916) 419-7747
5 Email: LSalzman@pacificlegal.org
Email: JMcCoy@pacificlegal.org
6 Email: JThompson@pacificlegal.org

7 David R Greene (State Bar No. 285472)
DIGNITY LAW GROUP, APC
8 14401 Sylvan Street, Suite 100
Van Nuys, California 91401
9 Telephone: (323) 212-5365
Facsimile: (323) 729-3258
10 E-Mail: david@davidgreenelaw.com

11 Attorneys for Petitioners MARK & BELLA GREENE
12

13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

15
16 MARK I. GREENE and BELLA GREENE,
17 Petitioners,

18 vs.

19
20 CALIFORNIA COASTAL COMMISSION,
21 Respondent.

Case No.: BS165764

**VERIFIED FIRST AMENDED PETITION
FOR WRIT OF ADMINISTRATIVE
MANDATE**

(CCP § 1094.5)

**[Filed concurrently with notice of filing
Verified First Amended Petition for Writ of
Mandate]**

Dept: 85
Judge: The Honorable James C. Chalfant
Trial Date: July 24, 2018
Time: 1:30 p.m.
Action Filed: May 5, 2017

22
23
24
25 **INTRODUCTION**

26 1. Petitioners and Plaintiffs Mark and Bella Greene (Greenes) seek an administrative
27 writ of mandate setting aside the California Coastal Commission's (Commission) imposition of
28 two unlawful conditions (Special Conditions 1 and 3) on their permit to remodel their home in the

1 community of Playa del Rey (the Property). The Greens purchased the Property with the plan of
2 retiring from their present home in Pennsylvania to live near their children and grandchildren in
3 Los Angeles. The City of Los Angeles (City) approved a permit for a modest expansion of the
4 property to make the aging duplex structure more livable as a permanent retirement home. Under
5 its authority to issue a "Dual Permit," however, the Coastal Commission imposed conditions in
6 violation of their authority under the Coastal Act and the United States and California
7 Constitutions. By this verified petition and complaint, Petitioners and Plaintiffs allege:

8 **PARTIES**

9 2. Petitioners and Plaintiffs Mark and Bella Greene are joint-owners of the Property
10 at 6517 Ocean Front Walk, Playa Del Rey, California 90293.

11 3. Respondent California Coastal Commission is the state administrative body
12 authorized to enforce the California Coastal Act (Pub. Res. Code § 30000, *et seq.*) consistent with
13 the constitutional rights of private property owners (*id.* § 30001.5(c)). The Commission made its
14 final determination to approve the Greens' Coastal Development Permit (CDP) No. 5-16-0757,
15 subject to the conditions and pursuant to the policies challenged by this action, on March 9, 2017.

16 **JURISDICTION AND VENUE**

17 4. This Court has jurisdiction over this petition for writ of mandate pursuant to Section
18 1094.5 of the Code of Civil Procedure.

19 5. Venue is proper in this Court because the property that is the subject of this
20 litigation is located in the County of Los Angeles. As required by Local Court Rule 2.3(a), this
21 petition for writ of mandate is filed in the Central District.

22 6. The Greens have exhausted all non-futile administrative remedies and timely filed
23 this petition for writ of administrative mandate within 60 days of the Commission's final decision
24 on CDP No. 5-16-0757.

25 7. The Greens have no plain, speedy, or adequate remedy available in the normal
26 course of law other than mandamus and equitable relief.

27 ///

28 ///

1 **FACTUAL ALLEGATIONS**

2 **The Greenes and the Property**

3 8. The Greenes' Property is a 2,410 square-foot residential duplex adjacent to the
4 beach, well over 500 feet from the mean high tide line of the Pacific Ocean.

5 9. The Greenes bought the Property in 2006 as an investment and future retirement
6 home. Between 2006 and the present, the Greenes have rented the Property to their son, David,
7 where he lives with his wife and the Greenes' grandchildren.

8 10. Petitioner and Plaintiff Mark Greene is scheduled to retire from his position as a
9 professor at the University of Pennsylvania in 2018. In anticipation of that event, the Greenes
10 began a permitting process with the City of Los Angeles last year to remodel the property. The
11 remodel proposes to improve the safety and use of the home as a permanent retirement home.

12 11. The Greenes' plans include reinforcing the existing structure to meet more modern
13 standards concerning earthquakes, increasing the interior square footage and exterior deck space,
14 and adding a short staircase and chair glide to allow Bella Greene to avoid the use of stairs and the
15 potential exacerbation of knee problems.

16 **The Los Angeles Ordinance and the City's Permit Approval**

17 12. The City's land-use ordinances applying to the Property allow a residential home
18 to be built up to one foot inland of the rear property line. Los Angeles Ordinance No. 127701, City
19 Planning Commission Case No. 16546-BL. Other homes developed on neighboring parcels to the
20 Greenes' home have a one-foot setback, which is consistent with ordinances adopted to allow for
21 that development. *See* Los Angeles Ordinance No. 164763, Los Angeles Ordinance No. 138322.

22 13. In 2015, the Greenes hired Mark Appel, an architect, to develop plans for a remodel
23 of the Property expanding the ground-level so that it would have a 1.5-foot setback from their rear
24 property line—well-within the space permitted by Los Angeles.

25 14. In, or about, March 2016 the Greenes submitted plans to the City of Los Angeles
26 Planning Department for a remodel that would add 1,190 square feet of total space to the upper
27 and lower units of the Property. Even with the proposed renovation, the Greene's property would
28 retain the smallest profile of all the properties on Ocean Front Walk between 62nd St. and 68th St.

1 The Greenes did not request, and did not need to request, any zoning variances.

2 15. On June 28, 2016, the City approved a permit for the Greenes' proposed remodel,
3 pursuant to its authority to issue permits under Section 30600(b) of the Coastal Act, finding the
4 plans to be consistent with the Coastal Act, its local setback ordinance, and all other applicable
5 requirements. A true and accurate copy of this Permit, as corrected, is attached hereto as "Exhibit 1."

6 16. The City specifically acknowledged its plans for a 12-foot-wide boardwalk, "Ocean
7 Front Walk," on City-owned land that abuts the Property, and which is "designated as a Local
8 Street, but is not improved as a usable pedestrian right-of-way." Exhibit 1 at 7. The boardwalk has
9 been intermittently developed during the past fifty years, but no boardwalk has ever been
10 constructed on the stretch of land abutting the Greenes' Property in Playa del Rey.

11 17. The Greenes have no plans, nor any legal right, to make exclusive use of the public
12 land that abuts their property or to prevent public use of public property.

13 **Commission Administrative Proceedings**

14 18. On January 5, 2017, the California Coastal Commission exercised its authority
15 under Section 30601 of the Coastal Act to review the project under its "Dual Permit Jurisdiction."

16 19. The Commission demanded that the Greenes pay for and present to the Commission
17 "a wave uprush study prepared by an appropriately licensed professional," covering "whether the
18 site and the proposed development could be subject to erosion, wave attack or wave run-up, the
19 frequency of occurrence, consequences and options for siting or designing the project to avoid or
20 minimize impacts over the life of the structure."

21 20. The Greenes hired an experienced engineering firm, GeoSoils, Inc., to complete the
22 requested study. On or about January 10, 2017, the Greenes submitted to the Commission the
23 study, which concluded (among other findings): "The proposed development will neither create
24 nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent
25 area."

26 21. On or about February 23, 2017, the California Coastal Commission published a
27 staff report on the Greenes' Coastal Development Permit application, recommending approval
28 with several special conditions, including the Special Conditions 1 and 3 challenged herein. A true

1 and correct copy of the report is attached hereto as “Exhibit 2.”

2 22. Special Condition 1 is a demand that the Greenes increase the setback of their
3 property to no less than five feet from their rear property line.

4 23. Special Condition 3 is a demand that the Greenes waive their right to build any
5 shoreline protective device to protect their property against future storms, erosion, or other natural
6 hazards—a right they are granted by Public Resources Code § 30235.

7 24. The staff report contained numerous material misrepresentations including a claim
8 that “the normally required rear yard setback for a structure on the subject site is 15 feet.” Exhibit
9 2 at 14. In actual fact, the City’s ordinances provide for a one-foot setback from the seaward
10 property line in this area and both the City and the Commission have previously approved
11 development projects with a one-foot setback from the seaward property line.

12 25. The staff report speculates about how other private property owners in the area may
13 attempt to restrict public access to the beach to justify its imposition of the Special Conditions, but
14 makes no particular findings about the Greenes’ development. Moreover, the staff report ignores
15 the City’s view that the Greene’s development would not impair any plans or public access related
16 to the adjacent Ocean Front Walk boardwalk that has been proposed by the City since the 1960s.
17 Finally, the staff report ignores the existence of a public access path to the beach located 50 feet
18 south of the Greenes’ property, and, except for a reference to the GeoSoils, Inc., study, ignores the
19 public bike path bisecting the beach 300 feet seaward from the Greenes’ property. Exhibit 2 at 14-
20 15.

21 26. Although the staff report noted the findings of the GeoSoils, Inc., study that the
22 proposed development will neither create nor contribute significantly to erosion, geologic
23 instability, or destruction of the site or adjacent area, it nonetheless speculates that the Greenes’
24 Property may be threatened by sea level rise “if something [apparently not now known or
25 identifiable] were to happen that would cause damage to the beach.” Exhibit 2 at 17.

26 27. During the March 9, 2017, hearing on the Greenes’ CDP application, Commission
27 District Manager Steven Hudson read verbatim the staff report and recommended that the
28 Commission adopt the staff report’s recommendation to approve the CDP with all conditions,

1 including the Special Conditions 1 and 3 at issue in this action.

2 28. The Greenes were represented at the hearing by Don Schmitz, a consultant
3 specializing in coastal development. During his presentation, Mr. Schmitz cited the City
4 ordinances that govern the Greenes' property, noting that the City took legislative action to adopt
5 a one-foot setback for the homes along Ocean Front Walk. Mr. Schmitz also cited the multiple
6 instances over the past 50 years in which the City and the Coastal Commission approved
7 development permits in the area with only a one-foot setback. Mr. Schmitz also explained that the
8 Commission had approved a CDP with only a one-foot setback only thirty months before the March
9 9, 2017, hearing. Mr. Schmitz further noted the vast distances from the property line to the ocean
10 and to a bike path that has long-served as the point of public access to the beach in the neighborhood.

11 29. Contrary to the staff report findings, the Geo Soils, Inc., study (relying on the
12 Commission's own projections of future sea-level rises) concluded that the Greenes' proposed
13 development was stable and not at risk in any way contemplated by Coastal Act Section 30253.

14 **The Commission's Final Decision and Conditions**

15 30. During the March 9, 2017, hearing, multiple commissioners raised objections to
16 Special Condition 1. Several commissioners who had actual knowledge of the beach adjacent to the
17 Property noted that the ocean is nearly 550 feet from the property line, that the public accesses the
18 beach through a bike path that is located approximately 300 feet from the Property, and that there is
19 no completed boardwalk for the public to use adjacent to the Property.

20 31. Commissioner Erik Howell made a motion to remove Special Condition 1 on the
21 grounds that the demanded five-foot setback was in direct conflict with City ordinances and past
22 practice by the Commission to approve coastal development permit setbacks of one-foot and even
23 less. The motion was seconded by Commissioner Robert Uranga, but rejected by a full vote of seven
24 to four.

25 32. Subsequently, the Commissioners unanimously approved the Greenes' CDP as
26 recommended in the staff report, imposing nine staff-recommended special conditions on the
27 approval of the Greenes' coastal development permit, including the challenged Special Conditions 1
28 and 3.

1 by the Greenes' proposed development.

2 51. Further, the findings made by the Commission in support of Special Condition 1
3 are entirely speculative and not supported by substantial evidence.

4 52. There is no substantial evidence in the record, for instance, for the Commission's
5 finding that the pattern of development along Ocean Front Walk has resulted in public access
6 conflicts or a loss of public access to the adjacent beach, or that the Greenes' development will
7 adversely affect public access and recreation.

8 53. The Commission lacks substantial evidence for its finding that future sea level rises
9 require the imposition of Special Condition 1.

10 54. The Commission lacks substantial evidence for the finding that coastal hazards
11 exist that could adversely impact the Greenes' proposed development.

12 55. Because the Commission failed to proceed in a manner required by law and abused
13 its discretion in imposing Special Condition 1, the Greenes are entitled to a writ of mandate,
14 pursuant to Code of Civil Procedure § 1094.5, directing the Commission to remove Special
15 Condition 1 from the approval of Coastal Development Permit No. 5-16-0757.

16 **SECOND CAUSE OF ACTION**
17 **(Writ of Mandate under CCP § 1094.5)**
18 **(Special Condition 3)**

19 56. All of the allegations set forth by the preceding paragraphs are realleged and
20 incorporated as if set forth fully herein.

21 57. Article I, § 1, of the California Constitution establishes a right to protect property,
22 including from natural hazards.

23 58. Public Resources Code § 30235 provides:

24 Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other
25 such construction that alters natural shoreline processes shall be permitted when required to
26 serve coastal-dependent uses or to protect existing structures or public beaches in danger
27 from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline
28 sand supply.

///

1 59. Public Resources Code § 30253 provides, in part:

2 New development shall do all of the following:

3 (a) Minimize risks to life and property in areas of high geologic, flood, and fire
4 hazard.

5 (b) Assure stability and structural integrity, and neither create nor contribute
6 significantly to erosion, geologic instability, or destruction of the site or
7 surrounding area or in any way require the construction of protective devices that
8 would substantially alter natural landforms along bluffs and cliffs.

9 60. Under the terms of Public Resources Code § 30235, the Greens have the right to
10 construct shoreline protective devices on the Property if one is required in the future to protect
11 their home from erosion. Public Resources Code § 30253 prohibits only “protective devices that
12 would substantially alter natural landforms along bluffs and cliffs.”

13 61. The Greens’ Property is neither on nor near a bluff or cliff.

14 62. Special Condition 3 demands that the Greens waive their right to shoreline
15 protection or else forgo the otherwise permissible development of their Property. Special
16 Condition 3 states, in relevant part:

17 By acceptance of this Permit, the applicants agree, on behalf of themselves and all
18 successors and assigns, that no shoreline protective device(s) shall ever be
19 constructed to protect the development approved pursuant to Coastal Development
20 Permit No. 5-16-0757 including, but not limited to, the resulting proposed
21 development of a 3,600 sq. ft., 37 ft.-high duplex, including in the event that the
22 development is threatened with damage or destruction from waves, erosion, storm
23 conditions, liquefaction, or other coastal hazards in the future, and as may be
24 exacerbated by sea level rise. By acceptance of this Permit, the applicants hereby
25 waive, on behalf of themselves and all successors and assigns, any right to construct
26 such devices that may exist under applicable law.

27 63. The staff report states that Special Condition 3 is necessary “to put the applicants
28 and future owners on notice that Section 30253 limits their ability to ever construct a protective
device to protect the new development.” Exhibit 2 at 19.

64. Therefore, by the terms of the staff report, the Commission and its staff believe that
the decision to impose Special Condition 3 was not discretionary.

65. The Greens are informed and believe, and thereon allege, that since 2015 the
Commission has enforced a policy to impose shoreline protective device waiver conditions similar

1 to Special Condition 3 on coastal development permits for new residential oceanfront
2 development.

3 66. The Greenes are informed and believe, and thereon allege, that since 2015, the
4 Commission has issued approximately 62 coastal development permits for new residential
5 oceanfront development.

6 67. The Greenes are informed and believe, and thereon allege, that since 2015, the
7 Commission has imposed conditions similar to Special Condition 3 on 55 coastal development
8 permits for new residential oceanfront development.

9 68. The Greenes are informed and believe, and thereon allege, that since 2015, the
10 Commission has issued only approximately seven coastal development permits for new residential
11 oceanfront development that do not contain a condition similar to Special Condition 3.

12 69. The Greenes are informed and believe, and thereon allege, that of those
13 approximately seven permits, three were issued for minor development that did not expand
14 seaward.

15 70. The Greenes are informed and believe, and thereon allege, that the remaining four
16 permits were issued in August 2015, September 2016, October 2016, and October 2017. The
17 August 2015 permit was for a residence in Mission Beach, San Diego, where there is a seawall
18 seaward of a public boardwalk. The permit issued in October 2017 had a condition similar to
19 Special Condition 3 removed as a result of a lawsuit settlement. The Commission and Commission
20 staff never provided explanation why the other two permits departed from policy and did not
21 contain a condition similar to Special Condition 3.

22 71. The Greenes are informed and believe, and thereon allege, that since October 2016
23 the Commission has continued its policy of consistently imposing conditions similar to Special
24 Condition 3 on coastal development permits for new residential oceanfront development. After
25 October 2016, the Commission issued approximately 14 coastal development permits for new
26 residential oceanfront development. Of those 14, the Commission imposed a condition similar to
27 Special Condition 3 on 12 of those permits, including the Greenes. Of the two remaining permits,
28 one was issued in July 2017 for a minor remodel that did not expand seaward, and the other was

1 the aforementioned October 2017 permit that was litigated.

2 72. The Greenes are informed and believe, and thereon allege, that since 2013, the
3 Commission has issued five coastal development permits for new residential oceanfront
4 development in Playa Del Rey. The Commission has imposed conditions similar to Special
5 Condition 3 on all five permits.

6 73. The Greenes property is in Playa Del Rey and the proposed remodel would expand
7 the house seaward.

8 74. Therefore, since at least 2015, the Commission has “consistently” and
9 “unyielding[ly]” imposed conditions similar to Special Condition 3 on property owners in
10 circumstances analogous to the Greenes. *Grier v. Kizer*, 219 Cal. App. 3d 422, 431 (1990),
11 *modified* May 2, 1990, *and disapproved of on other grounds by Tidewater Marine W., Inc. v.*
12 *Bradshaw*, 14 Cal. 4th 557 (1996).

13 75. The Greenes are informed and believe, and thereon allege, that since 2015, the
14 Commission has not removed any condition similar to Special Condition 3 from a coastal
15 development permit for new residential oceanfront development as a result of objection at a
16 Commission hearing.

17 76. Therefore, if the Greenes had objected to Special Condition 3 prior to or at the
18 March 9, 2017 hearing, such objection would have been futile.

19 77. In imposing Special Condition 3, the Commission failed to proceed in a manner
20 required by law, acted in excess of its jurisdiction, and abused its discretion.

21 **Failure to Proceed in a Manner Required By Law**

22 78. The Commission failed to proceed in a manner required by law in imposing Special
23 Condition 3 by requiring the waiver of a right expressly granted by Section 30235 of the Coastal
24 Act.

25 79. The Commission failed to proceed in a manner required by law because no waiver
26 of shoreline protection rights is required by the terms of Public Resources Code §30253(b).

27 80. The Commission failed to proceed in a manner required by law because the
28 Commission’s determination that Public Resources § 30253(b) limits the Greenes’ right to

1 construct a protective device to protect new development is a misapplication of the law.

2 81. Moreover, Special Condition 3 failed to proceed in a manner required by law
3 because it constitutes an unconstitutional condition on the Greenes' use and enjoyment of their
4 property.

5 82. Additionally, by acting outside the scope of its constitutional authority in imposing
6 Special Condition 1, the Commission acted without, or in excess of, its jurisdiction.

7 **Abuse of Discretion**

8 83. The Commission abused its discretion in imposing Special Condition 3 because its
9 findings do not support the condition.

10 84. The Commission's findings do not support its decision to impose Special Condition
11 3 because there is no finding of a nexus between the proposed development and the waiver of the
12 Greenes' rights to a shoreline protective device.

13 85. The Commission's findings do not support its decision to impose Special Condition
14 3 because there is no finding that the Greenes' proposed development will require any substantial
15 alteration to natural landforms along bluffs or cliffs.

16 86. Further, findings made by the Commission in support of Special Condition 3 lack
17 substantial evidence. For instance, the record lacks substantial evidence to support the
18 Commission's finding that a future shoreline protective device will affect public access and
19 recreation.

20 87. Because the Commission failed to proceed in a manner required by law and abused
21 its discretion in imposing Special Condition 3, the Greenes are entitled to a writ of mandate,
22 pursuant to Code of Civil Procedure § 1094.5, directing and commanding the Commission to
23 remove Special Condition 3 from the approval of Coastal Development Permit No. 5-16-0757.

24 **RELIEF REQUESTED**

25 WHEREFORE, the Greenes respectfully request relief as follows:

- 26 1. Issuance of a writ of mandate directing and commanding the Commission to
27 removes Special Condition 1 from the approval of Coastal Development Permit no. 5-16-0757;

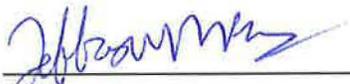
28 ///

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

- 2. Issuance of a writ of mandate directing and commanding the Commission to remove Special Condition 3 from the approval of Coastal Development Permit no. 5-16-0757;
- 3. For an award of attorneys' fees pursuant to Code of Civil Procedure 1021.5 and costs; and
- 4. For any other relief that the Court determines to be warranted.

Dated March 8, 2018.

PACIFIC LEGAL FOUNDATION

By: 
Jeffrey W. McCoy
Attorney for Petitioners

VERIFICATION

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

I, Mark I. Greene, declare as follows:

1. I am a joint owner of the Property at issue and am authorized to make this verification on its behalf.

2. I have read the foregoing Verified First Amended Petition for Writ of Administrative Mandate and, except for matters stated on information and belief, the facts stated therein are true on my own knowledge. 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 7 day of March, 2018.


DR. MARK I. GREENE

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

CERTIFICATE OF SERVICE

I, Iza A. Rodriguez, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

On March 8, 2018, true and correct copy of **VERIFIED FIRST AMENDED PETITION FOR WRIT OF ADMINISTRATIVE MANDATE** were placed in an envelope addressed to:

Erica B. Lee
Deputy Attorney General
Andrew M. Vogel
Deputy Attorney General
Land Law Section
California Department of Justice
300 S. Spring Street
Los Angeles, CA 90013

which envelope, with postage thereon fully prepaid, were then sealed and delivered to FedEx in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed the 8th day of March, 2018, at Sacramento, California.


IZA A. RODRIGUEZ