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19 Attorneys for Petitioners MARK I. & BELLA GREENE

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21 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
22 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**  
23

24 MARK I. GREENE and BELLA GREENE,

25 Petitioners,

26 vs.

27 CALIFORNIA COASTAL COMMISSION,

28 Respondent.

Case No.: BS165764

**PETITIONERS' BRIEF ON REMEDY**

Dept: 85  
Judge: The Honorable James. C.  
Chalfant  
Trial Date: July 26, 2018  
Time: 9:30 a.m.  
Action Filed: May 5, 2017

Hearing on Order to Show Cause re: Judgment  
scheduled for September 13, 2018 at 9:30 a.m.

1 **INTRODUCTION**

2 Pursuant to this Court’s request for further briefing at the July 26 hearing on the Petition  
3 for Writ of Administrative Mandate, Petitioners Mark and Bella Greene (the Greenes) submit this  
4 brief on the proper remedy following this Court’s findings. At issue is how the Court should  
5 proceed based on the fact that Respondent California Coastal Commission (the Commission) was  
6 not clear as to which justifications it relied on to impose Special Condition 1 on the Greenes’  
7 coastal development permit.

8 Special Condition 1 requires the Greenes to submit new development plans for their home  
9 with a smaller footprint. In its tentative order on the Petition, this Court held that the Commission’s  
10 concerns about sea level rise and flooding did not justify that condition. On the other hand, the  
11 Court held that substantial evidence could justify the Commission’s concerns about privatization  
12 of the public beach, maintenance, and avoiding privacy conflicts among the Greenes and the  
13 public. Because it is not clear from the record which justifications were relied on by the  
14 Commission, and whether the final decision to impose Special Condition 1 rested on substantial  
15 evidence, this Court should remand the case to the Commission for further proceedings consistent  
16 with this Court’s ruling.

17 **ARGUMENT**

18 This Court should remand the case back to the Commission because the Commission failed  
19 to clearly articulate its reasons for imposing Special Condition 1. California Code of Civil  
20 Procedure § 1094.5 requires “that the agency which renders the challenged decision must set forth  
21 findings to bridge the analytic gap between the raw evidence and ultimate decision or order.”  
22 *Topanga Ass’n for a Scenic Cmty. v. Cty. of Los Angeles*, 11 Cal. 3d 506, 515, 522 P.2d 12, 17  
23 (1974); *see also* Petitioners’ Reply Brief in Support of Petition at 10. If a court is unable to “discern  
24 the analytic route” an agency “traveled from evidence to action,” then the proper course of action  
25 is to set aside the decision and remand to the agency. *W. Chandler Boulevard Neighborhood Ass’n*  
26 *v. City of Los Angeles*, 198 Cal. App. 4th 1506, 1522, 130 Cal. Rptr. 3d 360, 373 (2011).

27 ///

1           Requiring agencies to issue clear findings in support of their decisions is crucial to the rule  
2 of law. While administrative agencies may be vested with broad authority, agency decisions must  
3 be clear, able to be understood, and include findings that allow for effective judicial review. In  
4 short, a “findings requirement serves to conduce the administrative body to draw legally relevant  
5 sub-conclusions supportive of its ultimate decision; the intended effect is to facilitate orderly  
6 analysis and minimize the likelihood that the agency will randomly leap from evidence to  
7 conclusions.” *Topanga Ass’n for a Scenic Cmty.*, 11 Cal. 3d at 516. In turn, this enables “the  
8 reviewing court to trace and examine the agency’s mode of analysis.” *Id.*

9           Although an agency is not required to issue formal findings of fact analogous to those  
10 issued by a court, an agency is still required to issue discernable findings in support of its decision.  
11 *Hadley v. City of Ontario*, 43 Cal. App. 3d 121, 128, 117 Cal. Rptr. 513, 518 (1974). And “*where*  
12 *the action of the administrative agency may be on any one of several bases, failure to make findings*  
13 *is prejudicial* and a writ of mandate will issue to require the agency to *hold a new hearing with*  
14 *appropriate findings.*” *Id.* at 128–29 (all emphasis added).

15           Here, this Court determined that there are several justifications that the Commission could  
16 have relied on to impose Special Condition 1. It also determined that some of those justifications,  
17 based on sea level rise, are not supported by substantial evidence. Unfortunately, the Commission  
18 failed in its deliberations to provide adequate findings in support of its decision to impose the  
19 Special Condition. Without clear findings, it is impossible for this Court or the Greenes to discern  
20 whether the Commission acted in accordance with law when it imposed Special Condition 1.

21           The Commission’s March 9, 2017, decision contains no findings as to the reasoning for  
22 imposing Special Condition 1. The only record of the Commissioners’ thinking is the discussion  
23 on this issue at the hearing. But that discussion does not provide any clarity, as multiple  
24 Commissioners cited various reasons for supporting Special Condition 1, while four other  
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26  
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1 Commissioners voted in favor of Commissioner Howell’s motion to remove Special Condition 1.  
2 See AR000727–755.<sup>1</sup>

3 At best, the Commissioners’ statements at the hearing support the conclusion that the  
4 imposition of Special Condition 1 was based primarily on concerns over sea level rise. Several  
5 Commissioners specifically stated that they were concerned about sea level rise, and indicated that  
6 their votes were based on that concern. For example, Commissioner Vargas stated that “when I  
7 first kind of started contemplating this project I thought about this in terms of sea level rise and  
8 how you know, we’re going to have to make tough decisions . . . .” AR000747. Similarly,  
9 Commissioner Brownsey stated that “we must pay attention to sea level rise” when the  
10 Commission makes decisions. AR000743.

11 Commissioner Turnball-Sanders was the most clear about her motivations. She stated that  
12 “we’ve got to think more strategically about sea level rise and policies for the future and for that  
13 reason I’m going to be supporting the motion” of the staff to approve the permit with Special  
14 Condition 1. AR000748. In an attempt to understand the evidence about sea level rise, she asked  
15 the Commission staff about the projected rise in sea level. *Id.* In response, the Commission staff  
16 member incorrectly stated that “we didn’t receive from the applicant enough information to say  
17 how close to the house the wave up rush would get.” *Id.* In fact, the Greenes submitted an expert  
18 study that provides that the shoreline is estimated to move between 75 feet to 150 feet over the life  
19 of the development and, because the house is more than 550 feet from current mean high-tide line,  
20 it is unlikely that wave runup will reach the site.

21 All three Commissioners voted to impose Special Condition 1. AR000751–52. It is  
22 possible these Commissioners would have still voted to impose Special Condition 1 even if they  
23 knew that the sea level rise justification was not supported by substantial evidence. But this Court  
24 should not speculate about what the Commission might have done under different circumstances.  
25 California Code of Civil Procedure Section 1094.5 “leaves no room for the conclusion that the

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27 <sup>1</sup> Because the court returned the administrative record, the transcript of the Commission hearing is  
28 attached hereto as exhibit 1.

1 Legislature would have been content to have a reviewing court speculate as to the administrative  
2 agency’s basis for decision.” *Topanga Ass’n for a Scenic Cmty.*, 11 Cal. 3d at 515.

3 Moreover, it is irrelevant that some other Commissioners might have had different  
4 justifications for imposing Special Condition 1. While an agency’s decision will be upheld if one  
5 of several clearly stated findings is supported by substantial evidence, that is not the case here. *See*  
6 *Sinaiko v. Superior Court*, 122 Cal. App. 4th 1133, 1145–46, 19 Cal. Rptr. 3d 371 (2004)  
7 (comparing and contrasting situations when an agency decision with multiple justifications should  
8 be remanded). This is not a situation where the Commission has clearly made several different  
9 findings in support of its decision, and one superfluous finding is not supported by substantial  
10 evidence. *See, e.g., Desmond v. County of Contra Costa*, 21 Cal. App. 4th 330, 25 Cal. Rptr. 2d  
11 842 (1993).<sup>2</sup> Instead, it is unclear whether the Commission would have altered its decision had it  
12 known that sea level rise does not justify the imposition of Special Condition 1. *See W. Chandler*  
13 *Boulevard Neighborhood Ass’n*, 198 Cal. App. 4th at 1522 (“On this record, however, we cannot  
14 discern the analytic route the city council traveled from evidence to action.”). In fact, it appears  
15 that the issue of sea level rise was the crucial justification for imposing Special Condition 1. *See*  
16 AR000743 (Commissioner Brownsey’s statements in support of Special Condition 1); AR000747  
17 (Commissioner Vargas); AR000748 (Commissioner Turnball-Sanders).

18 As a result, this is not a case where the Court can presume the Commission’s findings.  
19 Although a finding may be implied from an agency’s decision where it is the only finding that  
20 could have been made, “[t]his rule of presumed findings will obviously not apply where the  
21 decision might be based on one or more of several theories, each relating to different factual  
22 considerations.” *Mahoney v. San Francisco City etc. Employees’ Ret. Bd.*, 30 Cal. App. 3d 1, 5,  
23 106 Cal. Rptr. 94, 96 (1973). When, like here, there are several different justifications but no  
24 clearly stated findings, “a reviewing court is unable to ‘determine whether there is sufficient  
25 evidence to support’ the presumed findings, or if the decision is ‘based upon a proper principle.’”

26 \_\_\_\_\_  
27 <sup>2</sup> In *Desmond* the Board of Supervisors issued written findings to support its decision, which  
28 allowed the court to effectively review the Board’s decision. *Desmond v. Cty. of Contra Costa*, 21  
Cal. App. 4th 330, 333, 25 Cal. Rptr. 2d 842, 844 (1993).

1 *Id.* (quoting *Swars v. Council of City of Vallejo*, 33 Cal. 2d 867, 871, 206 P.2d 355 (1949)).  
2 Therefore, this Court should not speculate as to the motivations of the Commissioners, and should  
3 instead remand to the Commission to make a decision based on the appropriate considerations.  
4 *Topanga Ass'n for a Scenic Cmty.*, 11 Cal. 3d at 515.


5 **CONCLUSION**

6 The Commission's failure to issue clear findings in support of imposing Special Condition  
7 1 undermines this Court's effective review of that condition. To guarantee that the Greens receive  
8 fair consideration of their coastal development permit application, and to ensure that the  
9 Commission's decisions are in accordance with law, this Court should set aside the Commission's  
10 permitting decision and remand the matter to the Commission for further proceedings consistent  
11 with the Court's ruling on the Petition for Writ of Administrative Mandate.

12  
13 Dated: September 2, 2018.

Respectfully submitted,

14 Lawrence G. Salzman  
15 Jeffrey W. McCoy  
16 Joshua P. Thompson  
17 David R. Greene

18 By:   
19 Jeffrey W. McCoy  
20 Attorneys for Petitioners

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**DECLARATION 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 September 5, 2018, a true and correct copy of **PETITIONERS' BRIEF ON REMEDY** was 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, was then sealed and delivered via FedEx in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 5th day of September, 2018, at Sacramento, California.

  
IZA A. RODRIGUEZ

# **Exhibit 1**



**TRANSCRIPTION OF RECORDED  
MEETING OF CALIFORNIA COASTAL COMMISSION**

**Item No. 18e  
Application No. 5-16-0757**

**Greene, Playa Del Rey, Los Angeles**

**March 9, 2017**

**Perfect Touch Transcription**

5075 Lyle Drive  
San Diego, California 92105  
(619) 459-4582

**000727**

1 HUDSON: Okay. Thank you. So we're moving along quickly then. That brings us  
2 to Item 18E, that's the Greene application. So Item 18E is a Coastal Development Permit  
3 Application by Mark and Bella Greene, and if we could bring up the PowerPoint presentation for  
4 this, please? This is for the... for a 1,190 square foot addition to an existing 2,410 square foot  
5 residence consisting of a 460 square foot first floor addition, a 325 square foot second floor  
6 addition with a second-floor deck, and a 405 square foot third floor loft mezzanine addition that  
7 would increase the height of the approximately 19 foot high two-story structure to 37 feet. The  
8 project site is located on a beachfront lot at 6517 Ocean Front Walk in a residential  
9 neighborhood in Playa Del Rey in the City of Los Angeles. The project site abuts Ocean Front  
10 Walk, which is the city's 12-foot wide designated corridor for locating an improved surfaced  
11 walkway for public access. And as you can see on this slide here, it's shown by the two white  
12 lines and that de... demarcates Ocean Front Walk, which would be located directly seaward at  
13 the private property lines. And I would just note that Ocean Front Walk is completely public. It  
14 is located on the city... city owned public sandy beach area. It is not on private property. The  
15 primary issue raised by this application involves the provision of an adequate setback for new  
16 development from the area of the public sandy beach and the dedicated location for the Ocean  
17 Front Walk public way, which I would note also constitutes the route for the California Coastal  
18 Trail along this section of the coast.

19 As shown on this slide the proposed additions would extend the structure approximately  
20 15 feet further seaward. So that the residence would only be set back from the property line,  
21 sandy beach, and the designated location for Ocean Front Walk by only 18 inches on the ground  
22 floor. While the second floor deck would have no setback at all. Here you can see that the new  
23 additions are shown in this darker blue color, while the existing structure is shown in the lighter  
24 green. You can see the property line as shown in red, and how the... the structure would have  
25 very little to no setback from Ocean Front Walk. Now the City of Los Angeles allows  
26 development including habitable structures to reduce the normally required 15-foot rear yard  
27 setback to be reduced to as little as one foot from the rear seaward property line. Which was the  
28 case here where the city authorized a reduction in the rear year setback for the proposed

1 improvements of only 18 inches on the ground floor and no set... I'm sorry, no setback on the  
2 second, and just note that such reductions to property line setbacks for beachfront development  
3 are only allowed by the city when it's a beachfront residence in this area. They do not allow for  
4 these setbacks for other residential properties where you may have two residential properties that  
5 abut each other with a rear yard setback. In those cases, the city would require the full 15-foot  
6 setback. So staff believes that there's a... a clear prioritization here by the city where they're  
7 placing a greater value on those private setbacks where you have a private lot backing up to  
8 another private lot, to the detriment of the setbacks from public land and public beach areas.  
9 Now I would note, that in past permit actions the Commission has not required a greater setback  
10 than what the city has allowed and you'll be hearing from the... the applicant's representative  
11 today who'll point to that and say that there is past precedent where we have allowed these  
12 smaller setbacks.

13           However, I would just note that the previous pattern of development has resulted  
14 inadequate setbacks and in that pattern of development where private and public spaces without  
15 that adequate setback can result in the appearance that these areas are actually private rather than  
16 dedicated for public use. And this is especially important in an area such as Ocean Front Walk.  
17 Moreover, that provision of only a one-foot setback between the private structure and the public  
18 area of the sandy beach would be where Ocean Front would be located, would not allow for even  
19 adequate space on the applicant's own property for construction of the proposed additions to the  
20 residence. Nor would it allow for even normal repair and maintenance activities for the structure  
21 to occur without encroaching into Ocean Front Walk. Further, that lack of an adequate setback  
22 between private beachfront development and public access way such as Ocean Front Walk, can  
23 result in potential conflicts between users of private property and public access ways and could  
24 result in the loss of public access in this area, or at the very least, pressure by private property  
25 owners, which the Commission has observed in past actions to relocate the planned trail or  
26 public access way further seaward away from the homes. And this is typically due to privacy  
27 and security concerns by private residents. In fact, as you can see in this aerial photograph of the  
28 subject site and the surrounding area, there are already numerous encroachments by private

1 property owners onto the public beach and specifically within the Ocean Front Walk Corridor;  
2 that area where you see the two white lines. These encroachments which occur on areas of the  
3 beach both where the concrete walk has already been constructed in cases where the city has  
4 required construction to occur, as well as areas that remain sandy beach. They typically involve  
5 placement of private yard furniture and landscaping, as well as construction of privacy walls,  
6 concrete planters and fences. In fact, in the cases where the city does require a property owner to  
7 actually construct the concrete path for Ocean Front Walk is a condition of approval for new  
8 development, the city typically allows private property owners, as shown in this photograph of a  
9 nearby neighboring residence at 6415 Ocean Front Walk pursuant to the city's separate, local  
10 encroachment permit, they allow the private property owner to use the improved Ocean Front  
11 Walk area as private property until such undetermined and unidentified time that the city  
12 officially opens that segment of Ocean Front Walk. As a result, the private property owners are  
13 effectively using public beach as they own private back yards pursuant to the city's actions. And,  
14 I'm sorry, on this slide, what I'd like to show is just this is the improved Ocean Front Walk, that's  
15 the concrete walkway, but you see the series of small little footwalls that have been installed.  
16 One of them is actually a planter. This is just one example. In other areas, you'll see furniture,  
17 you'll see landscaping, planters. There are violations involving fencing. So we do believe this is  
18 an issue.

19 I would also note that the Commission's Enforcement Division has expended  
20 considerable resources and staff time to resolve several violations in this same area involving  
21 encroachments by private property owners into the Ocean Front Walk area, including some of  
22 the residential properties you can see here on this slide. As well as the Commission's issuance of  
23 a Restoration Order in 2002 to remove private encroachments on the beach in nearby Venice,  
24 which is down coast, which involved placement of landscaping and fencing within the Ocean  
25 Front Walk Corridor. Now to avoid these potential encroachments by private property owners  
26 onto public beach land and avoid those potential conflicts that can occur between private  
27 property owners and public beach users, your staff believes that it is absolutely critical that new  
28 development be sided and designed with an adequate setback from areas designated for public

1 access and recreation. I would further note that even if private development does not physically  
2 encroach into the public walk, as is the case in this application, in order to avoid the appearance  
3 of such public areas are actually private; it is still necessary to provide some setback or buffer for  
4 these areas from private development. Now the applicant has submitted a wave up rush and  
5 engineering analysis prepared by their engineering consultant indicating that the structure is  
6 expected to be safe from wave caused erosion its... over its expected life accounting for  
7 expected sea level rise. However staff would note that although the proposed structural  
8 improvements are expected to be safe from an engineering perspective from the effects of sea  
9 level rise, sea level rise is still expected to adversely impact public access and recreational  
10 opportunities on the beach directly seaward of the site over time as the currently, relatively wide  
11 beach that you see in this photo continues to narrow due to rising ocean levels. Which  
12 eventually will result in less beach area available for public access and use by the public for  
13 recreation. More to the point, as that beach continues to narrow, the potential for conflicts that  
14 we're discussing here between the public beach user and private property owners would be  
15 expected to increase, making it even more important that new development that we approve now  
16 should be cited to provide an adequate setback and buffer from Ocean Front Walk with the future  
17 in mind.

18 Therefore in order to ensure that the area of the beach designated for the future location  
19 of Ocean Front Walk is preserved for such use while minimizing the potential for conflict  
20 between members of the public and private property owners, Special Condition One requires the  
21 applicants submit revised plans showing a rear seaward setback of at least five feet for all levels  
22 of the structure. That includes decks to provide the minimum necessary buffer between the  
23 public and private spaces and to allow for the applicants to carry out normal maintenance of the  
24 structure without adversely impacting public access. Now the applicants have indicated that they  
25 clearly oppose this condition. And in closing, I would just note that the city's normal required  
26 rear yard setback for residential development in this area would typically be 15 feet. And that  
27 larger setback may be more appropriate in these beachfront areas than the five-foot setback that  
28 staff is recommending here. Now I would also like to acknowledge and you'll be hearing from

1 the applicant's consultant about this as well today, that they consider this to be a departure from  
2 how staff has treated these types of projects in the past. And that's true. Based on the city's  
3 approval of these types of projects with only that one-foot setback, in the past the Commission  
4 staff has not recommended larger setbacks. However, we do believe that we have the  
5 responsibility to continually evaluate new development proposals and how development patterns  
6 have functioned over time. And in this case, we believe that now is the appropriate time to re-  
7 evaluate our practice on these setbacks. Given that development pattern we just do not believe  
8 this is working adequately. And particularly given our emphasis on sea level rise and how we  
9 expect that this beach will change over time, we think that this issue is... is more appropriate to  
10 address today than ever before. Now granted, ideally this issue would be addressed through the  
11 city's LCP. However in the interim, given that the city is not currently working on this segment  
12 of their... of their local coastal program, your staff believes that the requirement to provide for  
13 this relatively small, five-foot setback for new residential development is both very conservative  
14 and a very small, incremental approach. And we intend to continue looking at this issue in the  
15 future to determine if larger setbacks would be appropriate. But we believe that this is the  
16 appropriate approach given that we do not have an LCP before us and where we could look at  
17 changing the city zoning practices. So thus, staff is recommending approval of this application  
18 with several special conditions, primarily including that Special Condition One I mentioned that  
19 requires the five-foot setback for new development from... from the public beach and from  
20 Ocean Front Walk. And we believe that, that change to the project is necessary to ensure that  
21 this project will be consistent with the chapter three policies of the Coastal Act. Now the  
22 resolution to accomplish this is on page five of your staff reports and that concludes my  
23 presentation. I am available for any questions.

24 BOCHCO: All right, thank you. Do I have any ex parte's on this matter?  
25 Commissioner Howell?

26 HOWELL: No.

27 BOCHCO: Commissioner Vargas?  
28

1 VARGAS: Yeah. I had a phone call this morning at 8:00... around... a little before  
2 8:30 a.m. with Don Schmitz, representative of the applicant where we discussed the applicant's  
3 strong feelings that a... a larger setback would be adequate and... and tradition... and common  
4 with other properties that have been approved in this specific area. That was really the... the gist  
5 of the conversation. Thanks.

6 BOCHCO: Commissioner Howell?

7 HOWELL: Thank you Chair Bochco. I had a 10-minute conversation with Don  
8 Schmitz as well at 10:00 a.m. this morning where he emphasized the applicant's opposition to the  
9 one-foot... no, five-foot setback.

10 BOCHCO: Commissioner Uranga?

11 URANGA: I too, had a conversation with Don Schmitz, but it took place last week  
12 and my ex parte on file.

13 BOCHCO: All right.

14 URANGA: Similar conversation dealing with the setback.

15 BOCHCO: Thank you. All right. I have Mr. Schmitz and Mr. Greene. Mr.  
16 Schmitz are you speaking for Mr. Greene as well?

17 SCHMITZ: I am.

18 BOCHCO: All right.

19 SCHMITZ: He's just filled out a speaker slip in case you need to ask him anything  
20 personally.

21 BOCHCO: All right. And how many minutes would you like, Mr. Schmitz?

22 SCHMITZ: I'm sure I'll need that 15, Chair Bochco.

23 BOCHCO: Fifteen?

24 SCHMITZ: Fifteen, yes, please. A lot of ground to cover. Fifty years worth  
25 actually.

26 BOCHCO: Fifty years.

27 SCHMITZ: Commissioners, Don Schmitz on behalf of the applicants. I want to... I  
28 think you'll see that the characterization by your Staff in the presentation, Bad City, did wrong is

1 not entirely accurate. If, in fact you change direction, you're going to be changing direction of 40  
2 years of Coastal Commission findings along this particular stretch of beach. Now it is in fact, a  
3 very large, sandy beach area. It's located just down coast from Ballona Lagoon. This is a 1962  
4 historical photograph. You can see they were already beginning to develop this beach area and  
5 very importantly in 1964 the city council adopted an ordinance establishing a one-foot setback in  
6 this area. It is in my mind somewhat misleading to say that the normal setback is 15 feet because  
7 the city council took the legislative action to establish a specific setback of one foot for this  
8 block located coincidentally the very same block that my clients are proposing their duplex minor  
9 addition and remodel. That's 50 years ago, Commissioners. And subsequently to that in 1969  
10 they passed the same ordinance for two more of the blocks located... whoops... further up coast,  
11 as you can see, between 62nd... touchy button there... and through 64th Avenue. This wasn't  
12 something that just staff did or just sort of slipped through the cracks. This was an official  
13 legislative action of the City of Los Angeles. This is a historical photograph from 1971. This is  
14 something you don't see very often. In 1976 Coast Development Permit from the California  
15 Coastal Conservation Commission; this is pre-Coastal Act. It's been kind of fun going through  
16 the records on this. And in fact, they approved the project... oh, and you all have handouts of all  
17 of this. This is a 1980's photograph.

18 1981, again, the Coastal Commission approves another project located right there. These  
19 are both one-foot setbacks and each time you did this, you found it consistent with the Access  
20 and Visual Protection Standards of the Coastal Act. In 1982, another Coastal Development  
21 permit located right there, one-foot setback. In 1984, I believe that this one... I'd have to check  
22 my notes, is a waiver. A number of these are waivers. Do you know what a waiver is,  
23 Commissioners? A waiver is when the Executive Director says there's no significant issues here.  
24 You don't even need to have a Coastal Development permit. It's reported to the Commission in  
25 the Executive Director's packet and you move along your way. In fact, all of the Coastal  
26 Development permits or clearances during this period of time are either administrative permits or  
27 waivers. And that was located in the 62nd to 63rd block. In 1987, another Coastal Development  
28 permit, one-foot setback just off of 63rd Avenue. 1987.... In 1989, Coastal Development



1 Permits Y2... now this... this is really important. That was located right there. Because in 1989  
2 the city council said oops, we left one of the blocks out and so they passed another ordinance  
3 specifically amending their zoning code. This isn't something that just slipped through the  
4 cracks. This was land use planning and they took that legislative action. They notified the  
5 California Coastal Commission that they were adopting this and then in fact, the Coastal  
6 Commission approved another Coastal Development permit in that block and made the reference  
7 to the ordinance and said, now it's okay to have that one-foot setback and it's consistent with  
8 §§30251 and 30250, the Coastal Act and it's an appropriate project. And it was allowed to  
9 proceed. Located right there. 1988 and you know I want to point out that there seems to be a  
10 propensity sometimes in these matters when you look at really old permits, well that was then  
11 and this is now. And I think you're going to see there's some very recent history in regards to  
12 this as well. 1989 and in the findings from the staff report. The proposed amendment reflects a  
13 recent LA County or Los Angeles city ordinance changing the front setback for the whole block  
14 along Ocean Front Walk between 64th and 65th Street from 15 feet to one foot and then the  
15 California Coastal Commission approved that project located right there. So let's move forward  
16 into more recent times; 1994, 2006. Here's one from 2009 consent calendar item approval from  
17 the California Coastal Commission making the specific findings of Ocean Front Walk being  
18 there, the width of it, the future of it, everything involved and approving a one-foot setback  
19 located right there.

20 Again 2010, made the findings consistent with the Coastal Act and I'm going to blink that  
21 back again. As you can see, this is immediately adjacent to my client's project which is before  
22 you today. And you made the findings in 2010 that the one-foot setback was consistent with all  
23 of the relevant sections of chapter three of the Coastal Act. Moving forward this is the Landis  
24 application. This is located two parcels away from the subject application, which is before you  
25 today. "The proposed sliding glass doors of the addition will be one foot away from the  
26 proposed future boardwalk" consistent with the ordinance. "A seaward addition of this size in  
27 this area will not negatively impact public coastal views as the development will stay behind the  
28 one-foot setback line." Those were the adopted findings of the California Coastal Commission a

1 little over two years ago. It's still under construction, they're just finalizing it right now. This is  
2 not ancient history. So this begs the question; how can you with... how can you make the  
3 findings today, two years later when you have repeatedly made the findings in the other  
4 direction? It's inconsistent. Moving forward this is just... it shows the development... there...  
5 there's the location of... of the referenced permit and there you see it highlighted, 2014. So... so  
6 what do we have today? This is the Ocean Front Walk, which was planned by the City of Los  
7 Angeles before the California Coastal Commission existed. Back in the 1960's I believe is when  
8 it was dedicated. It's a very large beach. It has a beautiful bike path, paved bike path on it and  
9 the beach is 300 feet to the bike path from the subject property, 600 feet to the mean high tide  
10 line. The City of Los Angeles once again, issued the Coastal Development permit. This is a  
11 dual permit jurisdiction for the instant application, which is before you today. They approved it.  
12 They made the findings as they have many times. As you have Commissioners, many times that  
13 the project is subject to the limitations of the one-foot building line, and does not propose any  
14 permanent structures in the right-of-way of Ocean Front Walk. As proposed the project will not  
15 conflict with any public access or public recreations policies of the Coastal Act. They're the  
16 same findings that you adopted repeatedly. Oh and by the way, people having decks and  
17 furniture in Ocean Front Walk is because the city has given and you have given on the Landis  
18 permit that I showed you, the findings are right there. That you can temporarily... it's called an  
19 R Permit because it can be removed. You can have a temporary deck and... and lawn furniture  
20 out there and when we... they move forward, they being the City of Los Angeles to improve  
21 Ocean Front Walk, that's all got to come out. And you adopted findings with staff  
22 recommendations of approval that, that was appropriate.

23 And so the city found this project consistent with §§30250, 30251, 30252 and 30253, just  
24 as you have over and over before. We have in fact submitted a wave uprush study and the wave  
25 uprush study specifies that in 50 years there has never been, and that's as far back as the record  
26 keeping goes, any wave uprush over this massive beach. That it's 600 feet wide in this area and  
27 the project will not impact coastal resources taking into account sea level rise. Now  
28 Commissioners, I testified and I was there at the hearing in Chula Vista when you adopted the

1 statewide interpretive guidelines for sea level rise. You said it was a guide, but do the following  
2 and that's what applicants will be in a good posture if they follow those guidelines for proposing  
3 development. And that's what we've done. We've taken into account sea level rise. And the  
4 extra four feet that your staff is recommending that you burden the application on, taking into  
5 account the width of the beach is 0.6% from the edge of the development to the mean high tide  
6 line. Every inch of this small lot is extremely valuable to the property owner, but it is  
7 inconsequential, this additional setback as it pertains to setbacks from the mean high tide line.  
8 So now staff is proposing Special Condition Number 1; five foot. They want that setback. I've  
9 got to move fast because I'm going to lose time here. You can see that 70% of the structures on  
10 these five blocks of development have a one-foot setback. As my grandmother would say, boy  
11 the horse has left the barn. That pattern of development has been established already and it's  
12 been established. All these green blobs here are projects that you approved. Setting back, putting  
13 the burden on this individual property owner to set it back would change absolutely nothing  
14 within the context of this community. And I'll just move quickly here because, again, I'm very  
15 short on time. But you can see we put... given you and delineated all these setbacks that you  
16 have on block after block. These are all Coastal Commission approved projects and here's one  
17 section where Ocean Front Walk was actually approved and permitted and improved. And that's  
18 what it's going to look like going forward into the future.

19         This is the instant application before you today, two houses up is the one that you  
20 approved two years ago with the same setback that we have brought forward to you today. It is  
21 585 feet; this is a picture. It's actually a little bit further to the mean high tide line looking back  
22 across to the beach to the subject duplex. I ask you, is a one foot or a four-foot setback from in  
23 this area going to make a difference from the public resources? Clearly, it's not going to do that.  
24 This is taken from the bike path, 273 feet away. Again, it's a massive beach. So... and then the  
25 last block, they're all built essentially up to the property line and most of that development  
26 predates the Coastal Act and... and everything else. So precedent; this is a... a legal term. This  
27 is... in an attorney's letter. Now, I don't threaten this Commission legally. First of all, I'm a mild  
28 mannered land use planner, but second of all, I don't poke a bear. But I do know that there's a lot

1 of Commissioners up here that truly understand the importance of precedent because when I was  
2 sitting on this side of the desk, presenting projects to you when I was a Coastal Staff Analyst, we  
3 were very careful not to set precedent unless in fact, we could defend the findings under the  
4 Coastal Act. Now I have 50 years of permitting and ordinances along this section of the beach  
5 establishing one-foot property line setback. I have 40 years of Coastal Commission actions  
6 where this Coastal Commission has said it's just fine under §30251 of the Coastal Act in  
7 protection of public views. Under §30250 and... and the access policies and everything else, it's  
8 just fine. Keep on doing that. And so what's happened now? I listened with great interest when  
9 your staff talking about Venice and the City of Los Angeles told you how hard they were  
10 working with the city to coordinate things to make the right findings. What has happened here is  
11 there was no communication to the Planning Director, Vince Bertoni. There was no  
12 communication to the city planner that was processing that. There was certainly no  
13 communication to the councilman's office. Mr. (Bonds) heard nothing about this. But my  
14 applicant... by the way, his architect, Mr. Appel, his family owns that project immediately  
15 adjacent that a couple years ago you allowed to be developed into a one-foot setback from Ocean  
16 Front Walk. So he spends tens of thousands of dollars, hires an architect, following the rules, not  
17 something the bad City of Los Angeles, something that the Coastal Commission has been  
18 allowing and making the findings for, for 40 years that is consistent with the Coastal Act. And  
19 designs it concisely and explicitly consistent with what you as a Commission... forget staff.  
20 Staffs been saying this for decades as well, but you as the Commission has been saying is  
21 entirely appropriate. And then midstream, we're told no, we don't think that's a... that's okay  
22 anymore. Land use planning is an evolution and we're changing the rules. Now I've sat in the  
23 audience Commissioners, and I listen to you while you're putting together your strategic  
24 planning saying it was a new day. And how there was going to be a cooperative approach  
25 working with local jurisdictions on land use planning. And yes, like LCPs. And staff is right.  
26 The way to handle this is with an LCP and if you have a different perspective then that's how you  
27 should go about doing it. But I don't see how you can with a straight face adopt findings after 40  
28 years of saying for 70% of the existing development in this area, 40 years going back to the

1 original Prop 20 Commission that now, now it's not consistent with the chapter three policies of  
2 the Coastal Act.

3 BOCHCO: Thank you very much.

4 SCHMITZ: Thank you.

5 BOCHCO: Ms. Rudisill?

6 RUDISILL: I have nothing.

7 BOCHCO: No? Okay. I don't have any other speaker cards so bring it back to  
8 staff.

9 HUDSON: Okay. Thank you. I would like to make a few responses. Just start off  
10 by responding to Mr. Schmitz's comment that Commission staff has allowed encroachments  
11 including these patio furniture and whatnot consistently. You know I don't doubt that there have  
12 been some permits where we have... where we may have had a condition that mirrored in the  
13 past, when we allowed for these one-foot setbacks, a condition mirroring the city's requirement  
14 for how these segments would work. How the land would be used for private uses and then  
15 eventually turned into public once the city was able to officially open up Ocean Front Walk. But  
16 that was based on this reliance on the city's process. And that's what we're re-evaluating here.  
17 That's what this discussion is about. And just... just to note that the way this is working out  
18 there is that Ocean Front Walk is being constructed segment by segment pursuant to this process.  
19 One house at a time as new development proposals come, in where you have these existing  
20 houses, even ones that have inadequate setbacks. As these structures reach the end of their life,  
21 they're redeveloped and then at that time, that's when we have to re-evaluate these.

22 At that time the city has been requiring that Ocean... the improvements, the flat, concrete  
23 walkway for Ocean Front Walk be constructed. That's when they've been issuing these  
24 encroachment permits for open-ended... just to mention too. Don had mentioned in his  
25 statement that the normal setback really is misleading to say that it's 15 feet because the city  
26 council passed an ordinance allowing for only a one-foot setback. Well it's true that the city's  
27 zone... the uncertified Zoning Code includes a provision, but that provision is still an exception,  
28 the zoning for this area this 15 feet for all residential lots. But what was passed in that ordinance

1 is a specific provision in the City Zoning Code that says in this area on these beach lots, not for  
2 any of the inland areas just the beach lots, the normally required 15-foot setback can be reduced  
3 to one foot. Now that... that's how the city approaches this. That is not our standard of review.  
4 We often rely on local zoning to give us guidance but we are not bound by that. And just  
5 acknowledge... you know it's unfortunate when someone is... feels singled out or to be the first  
6 one in the door when a change is being made. And that's true. And I wish it wasn't the case for  
7 this applicant, but it's always difficult to make a change. And if now is not the right time to  
8 make a change, then when is the right time? When do we start? There always has to be  
9 someone who will be a first in. And I just note too, this is not a complete redevelopment of the  
10 site. This is an addition to an existing single family residence. There are alternatives here where  
11 you can simply... that's what our Revised Planning Condition does is to set development back  
12 what we consider to be an absolute minimum five-foot setback. As I mentioned as we're  
13 reevaluating what is the appropriate setback, we believe that the likely setback is probably  
14 significantly larger than five feet. We are trying to take a very conservative approach here  
15 understanding and agreeing with Mr. Schmitz that yes, this is a change. There is all this past  
16 precedent. But past precedent doesn't mean that we can simply rely on it.

17 We have to... we have a duty to re-evaluate this development. And as we had that  
18 discussion earlier today about changed circumstances and when are there changed circumstances  
19 on a site? I think this clearly fits that model. One... one issue that's come up that is a changed  
20 circumstance is now we have all this past precedent, we... we can use our eyes and see what is  
21 happening out there and ask the question, is it working? And as Mr. Schmitz asked, why can't  
22 we just keep doing what we've always done? And what has changed? Well what has changed is  
23 that evaluating that development pattern; if we could bring up slide three of the staff  
24 presentation. What we're seeing is just a series of these encroachments. It's a mish-mash of  
25 these encroachments that were allowed by the city, these city encroachment permits. Some may  
26 have been allowed pursuant to our condition. Others are just plain violations and unpermitted.  
27 It's a mix. We're trying to address that issue now and back... we need to set that development  
28 back. And the other issue that... that we're looking at now is we're evaluating sea level rise and

1 how this affects all areas. Yes, this is a wide beach, but the wave up rush study submitted by the  
2 applicant indicates that although the structure will be safe, wave up rush will come much closer  
3 to that residence and Ocean Front Walk in the future. This beach will change into... in the future  
4 and that is how we're approaching these sorts of changes to our direction. We're trying to look  
5 into the future and look forward and address how we want that beach to look in the future going  
6 forward. Now is when we have the development before us, so that is what we're trying to  
7 accomplish here today. So with that, unless Jack, you would like to add any comments?

8       AINSWORTH: Just one... a couple of observations. This... this situation illustrates for  
9 me why without an LCP in place, we have to... we have to deal with each one of these  
10 developments case by case and piecemeal development. It is unfair to the applicant. I  
11 acknowledge that up front. But we have been waiting 35 years for an LCP from the City of LA  
12 and we... you know, Steve is right. He came to me and said look, we should take another look at  
13 this one-foot setback because it's just going to create conflicts in the future. Look, I'm a  
14 pragmatic person will look at that and say yes, that's right. So we compromised here and said,  
15 well rather than a 15 foot, let's go with the five-foot setback here just to allow for some  
16 maintenance, you know, some room for maintenance. So we all have encroachments onto the...  
17 onto Ocean Front Walk there. But again I am sympathetic to the applicant as he's put in a tough  
18 situation here and so we're going to leave this into your hands and your good judgment to make  
19 the call here. Okay? Thank you.

20       BOCHCO: Gee, thanks. All right. Well I'll bring it back to the Commission.  
21 Commissioner Peskin, please. (Unintelligible). Oh, I'm sorry. Commissioner Pestor.

22       PESTOR: I... I'm glad that the Executive Director raised that point about the LCP  
23 and LE... and Land Use Plan because you know, the City of LA does not have a certified LCP  
24 nor certified Land Use Plan and so... although it would be good to look at this in that way and as  
25 you're working with the city on that and confident you'll be doing that. But the only option for  
26 the Commission is to deal with this type of concern on a case-by-case basis. One thing is that  
27 I... I always thought was interesting on people who have beachfront property especially in  
28 Southern California is why wouldn't you want a front yard? I mean why? It make... you're on

1 the ocean, you're on a boardwalk, why would you not want a front yard? Well if you don't have  
2 a front yard setback or you have a one-foot yard setback what happens is the public right of way,  
3 the public Ocean Front Walkway becomes your front yard. You're using a public space for your  
4 front yard and the people that work on your fence or work on your home are going to be using  
5 public space and public lands for doing that. Also I think if people who have spent time on  
6 boardwalks on Southern California beaches where there's not enough setback, what happens is  
7 that people in those homes, their parties spill out onto the boardwalk and you have conflicts with  
8 people who are pedestrians, joggers, bicyclists, people who are rollerblading, there's... there's  
9 collisions, there's conflicts, there's accidents, people are injured. It would be like walking out  
10 from your front door into a street. That's what it's like. And especially with little kids. If they're  
11 coming out of a house with a one-foot setback and they are walking out onto an oceanfront  
12 boardwalk, there are collisions. And anybody-in here that uses a boardwalk has probably had  
13 slid off their bicycle or had those types of accidents because there is no space for people to come  
14 out and look both ways, let alone have a place to entertain their guests. So conditions have  
15 changed. We were talking about this earlier, about how the... how the conditions change and as  
16 you see not only that the conditions are changing in this area as it's developing, people are using  
17 that space as their own front yard. And so that's an example of how okay, you give them one  
18 foot, they're going to take five or 10 feet. They're actually going to use the boardwalk as their  
19 own space. And whether you have that area out there set aside whether it was permitted or not, I  
20 bet if you go along there and those people are having a party or entertaining guests, they're going  
21 to be sitting out on that boardwalk. They're not going to be sitting in their front yard because  
22 they have no front yard. So I think that continuing with the one-foot setback even if that's, had in  
23 the past, why wait for more accidents? Why wait till this is a heavily used boardwalk where  
24 there's going to be injuries? I think we know what is going to happen, so I would move that the  
25 Commission approve Coastal Development Permit application Number 5-16-0757 pursuant to  
26 the staff recommendation and recommend a yes vote.

27 BROWNSEY: Second...

28



1 BOCHCO: Second for Commissioner Brownsey, would you like to speak any  
2 further Commissioner Pestor?  
3 PESTOR: No.  
4 BOCHCO: Commissioner Brownsey?  
5 BROWNSEY: First, Mr. Schmitz, I want to compliment you. I... I... you said you  
6 were a land surveyor?  
7 SCHMITZ: A land use planner.  
8 BROWNSEY: Land use planner. Well I think you missed your career as a lawyer.  
9 That was a very legal presentation and... and I... I enjoyed it. However I think that the... the  
10 issue that was the main point of... of your arguments was that precedence binds us. And... and  
11 what I believe is that precedence informs this body, but it doesn't bind us in terms of our  
12 decisions. If that were true even the Supreme Court in terrible cases like Dred v. Scott couldn't  
13 have broken from precedence to understand that they had made a grievous error in terms of the  
14 equality and the rights of all human beings in our country. So really we are a body that must  
15 respond to not only the facts as we find them at this time, but that this is a body that... prior  
16 commissions can't completely determine what current and future commissions will choose to do  
17 and what... and what they will decide. I think the other issue that you raised was that every inch  
18 of this property is valuable to your client and to the... to the property owner and I totally  
19 understand that. Absolutely. But we have been charged with the responsibility to treat every  
20 inch of the California coast as valuable to the people of the State of California. And in that  
21 charge we must make some very difficult decisions. And as the Executive Director said, it's very  
22 difficult for a property owner when we are making a change in terms of some policies that were  
23 adopted when times were different, when conditions were different. But we must pay attention  
24 to sea level rise. We must pay attention to the fact that our beaches are going to get smaller and  
25 that that space is going to be more precious. We also must pay very close attention I think to the  
26 fact that the property owners who I am sure are all lovely, wonderful people. But they have  
27 asserted ownership over public... public right-of-way because they are in fact, so close to that  
28 property line. It's human nature. We get it. Those cinder block little walls did not look

1 temporary to me. I... I don't think I could up and say excuse me, I don't want step over the wall,  
2 could you remove it on Tuesday, please? So I just think that in these cases the reason that I'm  
3 supporting this staff's recommendation is I do believe that it is time for us to signal to property  
4 owners that these kinds of policies are going to be reevaluated and... and that we are sorry that...  
5 but there's always going to be a first... a first person. So for those reasons I... I support the  
6 motion.

7 BOCHCO: Thank you. Commissioner Luevano?

8 LUEVANO: Thank you, Chair Bochco. I want to just start by acknowledging the  
9 comments of my colleagues of Commissioner Pestor and Commissioner Brownsey because I  
10 full, completely, and wholeheartedly agree with everything that both of you said. However, as a  
11 resident of Los Angeles and someone who's utilized the bike path in this area for over 30 years,  
12 it's... it's a very... it's a very different sort of, it's a very different area than say Venice or any of  
13 the other much denser beach communities. Because as Mr. Schmitz pointed out there's, I think  
14 you said 583 feet of sand between the property lines here and the mean high tide line; in addition  
15 to which, and correct me if I'm wrong, the portion of Ocean Front Walk that runs in this  
16 neighborhood in this... ycah, if that's what you can call it... is essentially it's a road to nowhere.  
17 I mean it's essentially a piece of land that runs in front of these properties. But in my experience  
18 using the bike path, both bikes... bicyclists and pedestrians all use the bike path as their means  
19 of... of, you know, accessing the beach. And I personally have actually... I mean I've been there  
20 millions of times, but I've never been on that stretch in front of those properties. And so I'm  
21 struggling because I agree with what they've said with regard to precedence, what the staff has  
22 found with regard to in a normal situation what might be, you know, a property owner's takeover  
23 of public property and access to the beach because I don't agree with, you know a cinder block  
24 wall being there as a temporary development. It's not temporary at all and nobody should think  
25 that they have ownership rights to that kind of property. However, given that this area is unique.  
26 I mean it's, you know, I mean maybe there are other areas like this, but I mean similar actually in  
27 Marina del Rey on the peninsula where, you know, there's an Ocean Front Walk along the  
28 properties and then you know, several hundred feet before you hit the water. It's just... it... you

1 know, this isn't the way that the public accesses the beach and so I'm inclined not to support the  
2 staff report given that this is a very unique situation. So....

3 SCHMITZ: Through the Chair, Commission Luevano, yes, you're correct. Ocean  
4 Front Walk is essentially a sidewalk for those five blocks of residential development, which you  
5 saw in the aerial photographs. The public street which comes in there is a dead end street, but if  
6 you want to look at general public access; bicycling, walking, jogging, the bike path, which is  
7 almost 300 feet out from the houses comes heading up coast and then curves around and goes up  
8 the large revetment which forms Ballona Lagoon. So that's the... that's the through area. Ocean  
9 Front Walk is essentially a... a sidewalk that starts at one end of those five blocks and ends at the  
10 other end. Oh, and those cinder block walls I believe, are violations.

11 BOCHCO: Okay, thank you.

12 MALE: Madame Chair?

13 BOCHCO: Wait, Commissioner Luevano?

14 LUEVANO: No... that... I mean that's... that's it. That's all.

15 BOCHCO: Okay. Commissioner Luevano? I don't mean Luevano. I mean  
16 Uranga. I'm looking at you and calling her name. I know. You guys look alike. Uranga.

17 URANGA: Change my name I guess?

18 BOCHCO: No. She just needs to grow a mustache.

19 URANGA: No.

20 BOCHCO: No.

21 URANGA: Obviously, there's compelling arguments on both sides of this issue and  
22 they're very strong. Commissioner... Commissioners Brownsey and Pestor made real... real  
23 strong comments about that and... and so did my colleague, my ex, now... Luevano. You know,  
24 but we always have to go back to the... to the same situation that we've always come back  
25 before. It's the fact that LA doesn't have its act together. We always have to go back to that.  
26 And unfortunately I know, that Commissioner Brownsey and Commissioner Pestor are, you  
27 know, at a disadvantage because they... they really haven't heard the... the cries and... and the...  
28 the agony that a lot of these applicants feel when there's precedence about this. And the

1 precedence is the fact that LA has no LCP. We're dealing with that all the freaking time. And  
2 the bottom line is... is that the precedence is already there. You know, I like... I like that poking  
3 the bear analogy you made because that's what... it's not us. It's the bear that's in LA that you  
4 have to keep on poking until they respond. And either put an LCP together or they don't. And,  
5 you know, the... another situation, a very similar situation in Long Beach where we had a private  
6 citizen trying to encroach into public land and... and they're claiming it as theirs and now they  
7 want... now they want to... to buy it. And... but we don't have that option here. It's not  
8 something that they can do. But it doesn't change the... the desire for the owners to get what  
9 they need or get what they want. And there's... and all they want is what everybody else has.  
10 You know, it's keeping up with the Jones' type of thing. And, you know, everybody else has  
11 already infringed and encroached down to that land, why can't they? Why me? What not them?  
12 So if we're going to do anything, let's push it back. You know, what was it two years ago you  
13 said? There was a... there was a Coast Commission permit LA provided to you people. I mean  
14 we should have caught it then. We should have caught it long time ago. We know that LA  
15 doesn't have an LACP. We know that. So why do we keep encouraging them to not get an  
16 LACP when we... when we keep helping them not to have it? So I mean it... it's incumbent  
17 upon us to push back. Now how we going to do that? Probably some penalties or... or forcing  
18 the other neighbors to... to push back their properties because of the required five feet and  
19 have... have them break down that wall? And that way, that way everybody's on an equal level  
20 and equal start to have the same type of... of walkway that everybody else does. So I'm not in  
21 favor of... as well of the other motion only because of that. Because LACP's are there for a  
22 reason. We should not be the judge here. We should not be the ones to make the decisions for  
23 them. They got to do that. They have to get their act together. And it's unfair for us as a  
24 Commission to make these kinds of decisions and have to make these kinds of soapbox speeches  
25 to protect something that the LA should be doing for a long time. So I'm not going to be  
26 supporting... I'm not going to be supporting this... this one.

27 BOCHCO: All right. Thank you. Anyone else need... want to speak? Oh,  
28 Commissioner Vargas.

1           VARGAS:       Thank you. I... yeah, I sympathize with both sides on this. I mean I  
2 understand, you know, and we've... you know, when I first kind of started contemplating this  
3 project I thought about this in terms of sea level rise and how you know, we're going to have to  
4 make tough decisions with, you know, individual homeowners moving forward. But this, you  
5 know, as Commissioner Luevano mentioned if you know this beach, you know, that we're  
6 talking about 600 feet in width, in the width of the beach. It's kind of... it's a silly argument to  
7 say that somebody is going to you know, dig in their beach umbrella right next to somebody...  
8 some of that you know, Ocean Front Walk when you have 599 extra feet in front of it that could  
9 be closer to the ocean. But you know, and... and every time I've ridden my bike down that...  
10 that bike path, I've never seen anybody actually just kind of hanging out there in that... in that  
11 particular area. It's a... it's a paper street so you know we're fighting here to protect something  
12 that doesn't even exist. It could potentially exist, but it doesn't exist now. So I get that and I  
13 understand the arguments of the applicant, but at the same time, I'm hearing our staff talk about  
14 the fact that it's usually been a 15... a 15-foot setback and they're kind of compromising here  
15 with five feet. So we're going around and around and arguing about four feet basically. Between  
16 a one-foot setback or a five-foot setback. And I'm just curious, I don't know if maybe staff can  
17 answer this question for me or maybe the applicant, but how many square feet of the project... of  
18 the applicant's project is... would be affected with that four foot difference? Between a one-foot  
19 setback and a five-foot setback? Is that maybe an applicant question?

20           HUDSON:       It might be an... well it depends on the width of the lot, which I don't  
21 have in front of me. But say the average lot may be 40... 40 feet or 50 feet. So a four-foot  
22 difference would just be the... you just times that out. It would be maybe four or 500 square  
23 feet. I would just comment though that, you know, we're not talking about an area of the beach  
24 width where people will set up umbrellas. It's just about an access way and we're looking down  
25 at the future. You know, this beach will narrow with sea level rise. The bicycle path will be in  
26 danger with sea level rise. We do believe it just increases that pressure on public access. And  
27 we're trying to move development further landward and ensure that there are public access ways  
28 available when this beach narrows.

1           VARGAS:       Okay. I appreciate that and four or 500 feet is a bit, but it's also not,  
2 you know, a massive amount of project, you know, for the... for that entire parcel. Look I... I  
3 can go either way on this. I understand both arguments. I'd be happy to support a motion to  
4 amend this, but... but I'm also willing to go along with the staff's recommendation.

5           BOCHCO:       Vice Chair Turnbull-Sanders.

6           TURNBULL-SANDERS:   I'm having some challenges with this I think, as... as we all  
7 are in... in trying to weigh the... the public's right to have access to the beach and you know,  
8 what private property owners can do with their property. And I guess maybe could staff discuss  
9 any... or just recap again what sea level rise projections were for this area? Was there an  
10 estimated kind of time for the beach retreat?

11          HUDSON:       We don't have that... we didn't receive from the applicant enough  
12 information to say how close to the house the wave up rush would get. What we do know is that  
13 based on other studies which use a wide range of data and... and it depends on what information  
14 you put in, the beach will narrow over time and the applicant has indicated that... that it's  
15 possible over that you expect a 75-year life of a structure that during certain storm activities,  
16 storm waves could get pretty close to that house under certain circumstances and flooding will  
17 occur as well. It's difficult to take that long view approach and determine you know, what...  
18 when this is going to become a problem? Clearly that beach is very wide now and it's not in  
19 danger, but in the future looking forward, we just believe that this is the right direction to... to  
20 move in.

21          TURNBULL-SANDERS:   Thank you. And I... I guess I feel like we need to, you  
22 know, we... we've drafted a sea level rise policy guidance document. The legislature has been  
23 talking about this. The governor has been talking about planning for sea level rise and I'm just  
24 concerned about you know, again there... there is always going to be kind of the first person that  
25 applies for a permit that on a going forward basis now that we have the science and the policy in  
26 place, they may... they may suffer. But I think that we've got to think more strategically about  
27 sea level rise and policies for the future and for that reason I'm going to be supporting the  
28 motion.

1 BOCHCO: Commissioner Howell?

2 HOWELL: Thank you Chair Bochco. I... I absolutely agree with the comments of  
3 my fellow commissioners and if we were actually talking about encroachment into the public  
4 right-of-way then I... I would be supporting the motion. But in fact, we're... we're not. What  
5 we're... and we're actually not talking about sea level rise either. When I read the staff report,  
6 that's not the argument for the five-foot setback. The argument is, is that with the one-foot  
7 setback you're more likely to encroach into the public right-of-way as opposed to a five-foot  
8 setback. I... I would just keep it you know, keep it where it is. If we were next to the bike trail  
9 or if we were next to where the real public right-of-way is, where people really do use it or if we  
10 were in Venice along the boardwalk, I would absolutely be emphatic that we need to keep the  
11 property as far away from it as we can. But anyone that's been there knows how broad the beach  
12 is, how... where the real access is, is the bike lane. Nobody's here. Nobody's... nobody's  
13 walking this. Nobody's setting up their... where would you go? So I, in the interest of moving  
14 forward, I would make an amending motion to remove Special Condition One and allow a one-  
15 foot setback.

16 BOCHCO: All right. Do you want to speak any further to your Motion?

17 HOWELL: I'm sorry, to modify a Special Condition One to allow a one-foot  
18 setback.

19 BOCHCO: Okay. Commissioner Uranga? To your second? Anything further?  
20 Okay Commissioner Cox?

21 COX: Thank you, Madame Chair. The... my understanding is the applicant's  
22 plans provide for an 18-inch setback, is that right?

23 HUDSON: That's... on the first floor an 18-inch setback. Second floor, zero foot  
24 from the deck.

25 COX: How... how does that work on the second floor? Is that something that  
26 normally you would allow an over, an overhang?

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1 HUDSON: I... well... our... what we believe is that it should operate the same on  
2 the first and second floor. What the city has allowed here is that the second floor deck can be  
3 cantilevered and have less of a setback.

4 COX: Zero. Zero setback?

5 HUDSON: Zero-foot setback, second floor for the deck. That structure on the  
6 second floor is still... I think it does have a five-foot setback for (overtalking).

7 AINSWORTH: And for... and just following up on Steve's comments there, for us  
8 it's... it's a practical matter of how do you maintain the house or paint it when you know, in the  
9 future, if you have a zero (unintelligible) from the second floor? You... you're going to have to  
10 encroach out onto the... into the bike path. The other point I wanted to make is that there's been  
11 talk about, well this is a big, wide beach and no one's using this area. This... the sidewalk has  
12 not been developed yet, but there is a plan here. The plan was this area was to be a sidewalk that  
13 would connect down to Del Rey Lagoon Park, which is a public park and it would provide that...  
14 that access from the... from the channel to Del Rey Lagoon Park. So it's not like it's... we're  
15 looking into the future of what this provides as an opportunity for access. Yes right now, there's  
16 no one walking it; one, because it's not complete; and two because there's a bunch of  
17 encroachments in there and no one would feel comfortable walking along that stretch. So I just  
18 wanted to make that point.

19 BOCHCO: Commissioner Cox, you have any more?

20 COX: No, that's fine.

21 BOCHCO: Okay. All right. Well just in interest in moving this all along. I think  
22 there have been very good arguments on both sides. I think that the issue of precedence is  
23 important, but it is not decisive and I think that... one question. Who owns the bike path?

24 HUDSON: City of LA... there is... just a note, there's a bike path further seaward.  
25 Then there's Ocean Front Walk, the... you know, intended to be...

26 BOCHCO: I'm... I'm sorry. I didn't hear you. The city owns the bike path?

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1 HUDSON: The city owns the entire beach seaward of the private property line,  
2 which includes Ocean Front Walk and just to note as some folks have mentioned, there is a bike  
3 path that is separate from Ocean Front Walk. It's located further...

4 BOCHCO: Right. No, we saw that.

5 HUDSON: All owned by the city.

6 BOCHCO: Okay. And there is no opportunity for these owners to buy this as an  
7 easement or whatever and then dedicate, well they don't have anything to give away, so...

8 HUDSON: No. In this area, there is no program for doing that.

9 BOCHCO: All right. Well let's vote. We have a motion...yes Commissioner  
10 Brownsey.

11 BROWNSEY: So we're voting on the modification motion.

12 BOCHCO: Oh, that's right. Sorry.

13 BROWNSEY: So if you do not support the modification, then I... then that would be a  
14 no vote. If you support the modification, it's an aye vote?

15 BOCHCO: Yes, you're correct.

16 BROWNSEY: Okay, okay, thank you.

17 BOCHCO: All right. So the... the maker of the amended motion with the modified  
18 setback is asking for a yes vote and... we should call the roll.

19 MILLER: Commissioner Brownsey?

20 BROWNSEY: No.

21 MILLER: Brownsey, no. Commissioner Cox?

22 COX: Aye.

23 MILLER: Commissioner Cox, yes. Commissioner Groom?

24 GROOM: No.

25 MILLER: Groom, no. Commissioner Howell?

26 HOWELL: Aye.

27 MILLER: Howell yes. Commissioner Luevano?

28 LUEVANO: Yes.

1 MILLER: Luevano, yes. Commissioner Peskin?  
2 PESKIN: No.  
3 MILLER: Peskin, No.  
4 BOCHCO: Oh sorry which was....  
5 MILLER: Commissioner Pestor?  
6 PESTOR: (Unintelligible).  
7 MILLER: Commissioner Pestor?  
8 MALE: Oh, I'm sorry.  
9 BOCHCO: Pestor?  
10 MILLER: Pestor, no. Commissioner Turnbull-Sanders?  
11 TURNBULL-SANDERS: No.  
12 MILLER: Turnbull-Sanders, no. Commissioner Uranga?  
13 URANGA: Aye.  
14 MILLER: Uranga, yes. Commissioner Vargas?  
15 VARGAS: No.  
16 MILLER: Vargas, no. Chair Bochco?  
17 BOCHCO: No.  
18 MILLER: Chair Bochco, no. The vote is four yes, seven no.  
19 BOCHCO: Okay. So the motion did not pass. So we go back to the original  
20 motion. Do we need a roll call for that? Okay. Do you want a roll call, Randy? On the... on  
21 the original motion?  
22 PESTOR: Yes.  
23 BOCHCO: You would. Okay. Could we have a roll call please?  
24 MILLER: Commissioner Cox?  
25 COX: Aye.  
26 MILLER: Cox, yes. Commissioner Groom?  
27 GROOM: We're voting for Mr. Pestor's Motion?  
28 BOCHCO: Correct.

1 GROOM: So the answer... so my vote is no.  
2 BOCHCO: You're voting for staff.  
3 MALE: This is the staff recommendation, the original motion (unintelligible).  
4 BOCHCO: Randy's motion did not pass and now we're voting on the staff's.  
5 BROWNSEY: But he's asking for a yes vote.  
6 FEMALE: He's asking for a yes vote. He's asking for a yes vote.  
7 FEMALE: Was it (overtalking)?  
8 BROWNSEY: It's the original motion.  
9 BOCHCO: Your motion is the staff motion?  
10 PESTOR: Yeah, my motion is the...  
11 BOCHCO: I'm sorry. I've... I've got two motions... yes, you're right.  
12 PESTOR: Yeah. The first motion failed, so the original motion is to... that the  
13 Commission approve the Coastal Development Permit...  
14 BOCHCO: As per staff?  
15 PESTOR: ... application pursuant to the staff recommendation and I asked for a  
16 yes vote.  
17 GROOM: I'm voting yes. Sorry. I got... I got confused.  
18 MILLER: Groom, yes. Commissioner Howell?  
19 HOWELL: Aye.  
20 MILLER: Howell yes. Commissioner Luevano?  
21 LUEVANO: Yes.  
22 MILLER: Luevano, yes. Commissioner Peskin?  
23 PESKIN: Aye.  
24 MILLER: Peskin, yes. Commissioner Pestor?  
25 PESTOR: Yes.  
26 FEMALE: Pestor, yes. Commissioner Turnbull-Sanders?  
27 TURNBULL-SANDERS: Yes.  
28 MILLER: Turnbull-Sanders, yes. Commissioner Uranga?

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URANGA: Aye.  
MILLER: Uranga, yes. Commissioner Vargas?  
VARGAS: Yes.  
MILLER: Vargas, yes. Commissioner Brownsey?  
BROWNSEY: Yes.  
MILLER: Brownsey, yes. Chair Bochco?  
BOCHCO: Yes.  
MILLER: The vote is unanimous.  
BOCHCO: All right. So we... the motion passes.

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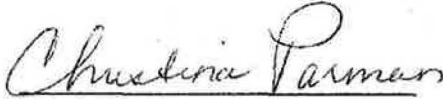
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Executed this 27<sup>th</sup> day of November 2017.



Christina Parman