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9

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 **LA COSTA BEACH HOMEOWNERS'**
13 **ASSOCIATION, a California Corporation,**
14 **RICHARD ZIMAN, an individual, DAPHNA**
15 **ZIMAN, an individual, HELEN ZOLOTH, an**
16 **individual, ART ZOLOTH, an individual, FREDDIE**
17 **FIELDS, an individual, CORRINA FIELDS, an**
18 **individual, PEG YORKIN, an individual, BUDGE**
19 **OFFER, an individual, JERRY MONKARSH, an**
20 **individual, VIRGINIA MANCINI, an individual,**
21 **RYAN O'NEAL, an individual, AARON SPELLING,**
22 **an individual, CANDY SPELLING, an individual,**
23 **NANCY HAYES, an individual, and LOU ADLER,**
24 **an individual,**

Petitioners,

v.

25 **CALIFORNIA COASTAL COMMISSION, a**
26 **California state agency, and DOES 1 through 50,**
27 **inclusive,**

Respondents.

28 **GAMMA FAMILY TRUST, BROAD REVOCABLE**
TRUST and NANCY M. DALY LIVING TRUST,

Real Parties-in-interest.

Case No.: BS063276

Assigned to Hon. David Yaffe

RESPONDENT'S OPPOSITION
TO WRIT OF MANDATE

Action Filed: May 12, 2000

Department: 86
Hearing Date: April 10, 2001
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Trial Date: None Set
Disc. Cut-Off: None Set
Motion Cut-Off: None Set

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INTRODUCTION

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The primary issue in this case is securing public access to a significant stretch of view corridor along the Malibu section of Pacific Coast Highway, and affording the public vertical access to the California coast in an area where there is hardly any access at all. The California Coastal Act (Public Resources Code §§ 30000, et seq.), provides that the scenic and visual qualities of the coastal area throughout California shall be protected as a resource, and that maximum public access and recreational opportunities shall be provided along the coast for all of the people.

Although the California Coastal Commission ("Coastal Commission") endeavors to provide both visual and public access to all of the beaches along the 26 mile Malibu shoreline, the residents of Malibu repeatedly present a challenge. Here, the residents of the La Costa Beach section of Malibu voice their opposition to public access in terms of traffic safety. Wherever open accessway is proposed in Malibu, traffic safety becomes the overriding issue.

Here, Real Parties-in-Interest Gamma Family Trust ("Gamma"), Broad Revocable Trust ("Broad") and the Nancy M. Daly Living Trust ("Daly") (collectively "Real Parties") have each obtained Coastal Development Permits ("CDP") for residential development in the City of Malibu.^{1/} The three project sites are beachfront lots located on the seaward side of Pacific Coast Highway in the Carbon Beach area in Malibu. All three projects were previously approved by the Commission with special conditions requiring the provision of a public view corridor on each project site to maintain public visual access along the coast. The Real Parties, however, proposed off-site mitigation alternatives that would delete the public view corridor conditions (with a combined width of 80 ft.) imposed by the Coastal Commission on each of the three project sites.

As mitigation for the loss of public views that will result from the removal of the public

1. Although Gamma, Broad and Daly have obtained CDPs in the manner provided by law, in their Opening Brief, Petitioners, many of whom are wealthy, privileged and prominent in their own right, characterize these Real Parties as privileged individuals who have been allowed to circumvent the laws of the state to obtain development approval. This sensationalistic allegation is both absurd and totally void of factual support.

1 view corridors condition on each project site, the Real Parties will secure public views and public
 2 access across a separate 80 ft. wide undeveloped beachfront parcel on the adjacent La Costa
 3 Beach. The proposed off-site mitigation parcel will be deed restricted to provide for public
 4 views and public access to the ocean from Pacific Coast Highway across the entire width of the
 5 parcel, and ownership of the parcel will be transferred to the California Coastal Conservancy or
 6 other appropriate public agency. The mitigation parcel is the same width (80 ft.) as the combined
 7 width of the three separate public view corridors previously required by the Commission [CDP
 8 4-99-146 (Gamma) provided for a 24 ft. wide view corridor, CDP 4-99-185 (Broad) provided for
 9 a 20 ft. wide view corridor, and CDP 4-99-266 (Daly) provided for a 36 ft. wide view corridor)].
 10 Even more attractive, however, is that the proposed mitigation site will offer a continuous,
 11 uninterrupted stretch of visual and vertical access where there currently is none.

12 The proposed mitigation site on La Costa Beach is immediately east of Carbon Beach.²
 13 Both Carbon Beach and La Costa Beach are characterized as built-out beachfront areas of Malibu
 14 consisting of residential development that at best provides choppy and inconsistent views along
 15 that area of the coast. The proposed mitigation site, which was previously threatened with
 16 development, will provide coastal access within the vicinity of Carbon Beach (the original
 17 subject site) and will secure coastal access for the public for years to come.

18 The proposed mitigation site was purchased by the Real Parties for approximately
 19 \$1,000,000. With this in mind, the Commission fashioned a commonly used mechanism, i.e. an
 20 in lieu fee, to ensure that in the event that the intended public coastal access via the mitigation
 21 site is successfully challenged, the Real Parties would be required to pay at least \$1,000,000 (the
 22 approximate dollar for dollar amount of the proposed mitigation parcel) to the California Coastal
 23 Conservancy for the purchase or opening of other public accessways in the Malibu area.

24 Petitioners, all residents of La Costa Beach, contend that, in approving the off-site
 25 mitigation parcel, the Coastal Commission failed to fully comply with the Environmental Impact
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27 2. Petitioners' contention that the Commission failed to make any findings regarding the
 28 proximity of the off-site view corridor assumes a duty that is not required in the Coastal Act.

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Report ("EIR") or equivalent analysis required under the Coastal Act and the California Environmental Quality Act ("CEQA"). Petitioners' position, however, is without merit. As a certified regulatory agency, the Coastal Commission is required only to utilize its own environmental analysis of the proposed mitigation site, which is recognized as the functional equivalent of an EIR. The analysis provided in the Commission's adopted Revised Findings contain all the required elements of an EIR and, as a certified regulatory program, fully satisfies the Coastal Commission's CEQA obligation.

Substantial evidence supports the Commission's approval of the off-site mitigation parcel in this action. Furthermore, it is settled beyond reasonable argument that the court reviews the Coastal Commission's quasi-judicial permit decisions under the substantial evidence test. Under this test, a court must indulge in all reasonable inferences in support of the Commission's findings and may not disregard or overturn the Commission's factual findings simply because it considers a contrary finding would have been equally or more reasonable. In the end, the Coastal Commission's decision is presumed to be supported by substantial evidence that was before it and the burden is on the challenger to show that there is no substantial evidence to support the Commission's findings.

Here, Petitioners argue that the Coastal Commission has a higher duty of review than provided in the Coastal Act, and allege further that there is no evidence in the findings to justify the Commission's decision. The Commission will demonstrate, however, that it has clearly met its burden under the Coastal Act, and that substantial evidence indeed supports its decision. This being the case, Petitioners' writ of mandate action must be denied.

STANDARD OF REVIEW

The standard of review for the Coastal Commission's decision is the substantial evidence test. (*Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 502-503, citing *Sierra Club v. California Coastal Commission* (1993) 19 Cal.App.4th 547, 556-557.) Under the substantial evidence test, the court must indulge in all reasonable inferences in support of the

1 agency's findings. (*Burako v. Munro* (1959) 174 Cal.App.2d 688, 692.) The court may not
2 disregard or overturn a finding of fact of an administrative agency simply because it considers
3 that a contrary finding would have been equally or more reasonable. (*Boreta Enterprises, Inc. v.*
4 *Department of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 94.) The court may only overturn the
5 factual findings of the agency if the evidence is insufficient as a matter of law to sustain the
6 findings. (*Barrie v. California Coastal Com.* (1987) 196 Cal.App.3d 8, 14.) Put another way, a
7 court may only reverse an agency's decision if, based upon the evidence before the agency, a
8 reasonable person could not reach the conclusion reached by the agency. (*Bolsa Chica Land*
9 *Trust v. Superior Court, supra*, 71 Cal.App.4th 493.).

10 An administrative agency's decision is presumed to be supported by substantial evidence
11 and the burden is on the petitioner to show there is no substantial evidence whatsoever to support
12 the findings of the agency. (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195
13 Cal.App.3d 1331, 1341.) Substantial evidence has been defined as relevant evidence that a
14 reasonable mind might accept as adequate support for a conclusion. (*Id.* at 1340.) In
15 determining whether the Coastal Commission's decision is supported by substantial evidence,
16 any reasonable doubts must be resolved in favor of the Commission. (*Paoli v. California*
17 *Coastal Com.* (1986) 178 Cal.App.3d 544, 550; *City of San Diego v. California Coastal Com.*
18 (1981) 119 Cal.App.3d 228, 232.) The Commission is the sole arbiter of the evidence and sole
19 judge of the credibility of the witnesses. (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970-
20 971.)

21 Substantial evidence upon which a decision of the Commission may be based includes
22 opinion evidence of experts, oral presentations at the public hearing, photographic evidence, and
23 written materials prepared by staff. (*Whaler's Village Club v. California Coastal Com.* (1985)
24 173 Cal.App.3d. 240, 261; *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472;
25 *Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Com.* (1976) 55
26 Cal.App.3d 525, 532, 536.)

27 Accordingly, in this litigation, Petitioners here have the burden to show that there is no
28 substantial evidence whatsoever to support the Coastal Commission's findings. However, as the

1 Coastal Commission establishes in the following argument, Petitioners have failed to meet their
2 burden.

3 **STATEMENT OF FACTS**

4
5 Coastal Development Permits 4-99-146 (Gamma) [*Note: Gamma Family Trust was*
6 *previously approved under the name Saban/Alpha Family Trust*], 4-99-185 (Broad), and 4-99-
7 266 (Daly) were previously approved by the Coastal Commission with special conditions
8 requiring the provision of a 20% public view corridor on each project site. [9 Administrative
9 Record 591³; 31 AR 1874; 49 AR 3386.] The purpose of the required public view corridors was
10 to provide unobstructed public views of the beach and ocean from Pacific Coast Highway over a
11 portion of each project site to mitigate the adverse effects to public views that result from new
12 development along the coast. [13 AR 1104.] The three project sites are beachfront lots located
13 on the seaward side of Pacific Coast Highway in the Carbon Beach area of Malibu. [11 AR 689.]
14 The combined projects involve the demolition of six existing single family residences to be
15 replaced by three newly constructed single family residences. [13 AR 1095.]

16 On April 12, 2000, each of the three Real Parties appeared before the Coastal
17 Commission requesting permit amendments deleting the special conditions requiring the
18 provision of a public view corridor over 20% of the lot width. [12 AR 1008.] The proposed
19 amendments provided for off-site mitigation of the required public view corridor on each site,
20 that involved purchasing and deed restricting an entire 80 ft. wide undeveloped parcel located at
21 21704 Pacific Coast Highway for public views, and public access to and along the ocean. [Id.]
22 The proposed mitigation site would be deed restricted to provide for public views and public
23 access to the ocean from Pacific Coast Highway across the entire 80 ft. wide parcel. [13 AR
24 1101.] Ownership of the parcel would be transferred to the California Coastal Conservancy or
25 other appropriate public agency. [Id.]

26 The proposed offsite mitigation parcel is the same width (80 ft.) as the combined width
27

28 3. Hereafter, Administrative Record will be cited as [volume AR page].

1 of the three separate public view corridors previously required by the Commission [CDP 4-99-
 2 146 (Gamma) provided for a 24 ft. wide view corridor; CDP 4-99-185 (Broad) provided for a 20
 3 ft. wide view corridor; and CDP 4-99-266 (Daly) provided for a 36 ft. wide view corridor]. [Id.]
 4 Coastal Development Permits 4-99-185 and 4-99-266 specifically provided that the applicants
 5 may obtain an amendment to the coastal permit to delete the required public view corridor on site
 6 if the applicants provided for offsite mitigation consisting of both a public view corridor and a
 7 public vertical accessway across another parcel in the vicinity of Carbon Beach. [31 AR 1880; 49
 8 AR 3400.] Although CDP 4-99-146 (Gamma) did not specifically include the above referenced
 9 language as part of its Special Condition which required the provision of a public view corridor
 10 on site, the proposed provision of public views and public access at an offsite location is
 11 generally consistent with the Coastal Act's intent to protect and provide public views along the
 12 coast and with Commission's previous actions regarding CDPs 4-99-185 and 4-99-266. [13 AR
 13 1105.]

14 The Administrative Record provides clear evidence that each Party fully complied with
 15 public notice requirements advising the public of the hearing on the proposed amendment to
 16 allow for off-site mitigation at the La Costa Beach parcel. [12 AR 897, 898; 32 AR 1928; 50 AR
 17 3485.] In fact, in response to the posted notices, several residents wrote letters expressing the
 18 same opinion *verbatim*. [11 AR 815-896.] While none of the written comments were in favor
 19 of the amendment providing for off-site mitigation at the La Costa parcel, since authors of the
 20 letters were primarily La Costa beach residents, the common sentiment was not surprising.
 21 While their opposition is couched in terms of "safety" with regard to this particular parcel,
 22 excessive speed clearly is a concern throughout the *entire* 26 mile Malibu stretch of Pacific Coast
 23 Highway.⁴ However, eliminating the public's right to coastal access when local traffic
 24 regulations appear to be the problem would be unreasonably restrictive (*lack nexus argument*)

26 4. Some residents, however, were more candid about their true (and sometimes
 27 irrational) concerns such as "forced trespass", someone "urinating on the side of their house [11
 28 AR 845, 846], "property devaluation" [11 AR 853] and have pledged to "...do everything
 possible to maintain our surroundings as they now exist". [11 AR 891.]

1 and over reaching.

2 In an abundance of caution, and to ensure that the public would still have a means for
3 gaining access to the Malibu coast should the proposed La Costa Beach mitigation parcel be
4 precluded from opening to public access, either visually, or physically, or both, the Coastal
5 Commission and the Real Parties agreed to further amend the CDPs previously approved by the
6 Commission by inserting an "in lieu of fee" in an amount constituting a dollar for dollar match of
7 the La Costa Beach parcel's purchase price or sales price. [12 AR 1013-1015, 1049.] Thus, in
8 the event that litigation precludes the parcel from being opened to public or dedicated to the
9 California Coastal Conservancy, the Commission, in order to ensure that adverse effects resulting
10 from the loss of the previously required public view corridors are adequately mitigated, it would
11 be necessary for the applicants to pay at least \$1,000,000 (the approximate value of the proposed
12 mitigation parcel) to the California Coastal Conservancy for use to open or obtain other public
13 accessways in the Malibu area. Therefore, in the event that litigation precludes the parcel from
14 being opened to public access, either visually or physically or both, the deed to the parcel and the
15 deed restriction will be returned to the applicants by the escrow agent and the applicants shall
16 pay to the California Coastal Conservancy the greater of \$1,000,000 or, in the event the
17 applicants sell the parcel within one year of the return of the deed, the net sales proceeds; this
18 money shall be used to open public accessways in Malibu or to obtain public access in Malibu.
19 [13 AR 1109.]

20 Consistent with their letters, some of the same residents of La Costa Beach reiterated
21 their opposition to public access via the proposed La Costa Beach parcel. [12 AR 1020-1044.]
22 However, contrary to Petitioners' conclusory assertions, the record also provides substantial
23 evidence of objective testimony acknowledging the benefit of increased public coastal access that
24 will result from this mitigation approach, [12 AR 1019, 1020.], the unique opportunity to gain an
25 actual view corridor in this area of Pacific Coast Highway, [12 AR 1053], and the opinion that
26 having an 80-foot unobstructed view corridor and public access is preferable to 20-foot view
27 corridors only, without public access. [12 AR 1055.] Finally, there is testimony from Mark
28 Baylor, a representative of the California Coastal Conservancy ("Conservancy"), indicating that

1 any true concerns regarding public safety and traffic will be addressed prior to the site being
 2 opened to the public. [12 AR 1058-1062.] Mr. Baylor provided concrete evidence that the site
 3 will not be opened immediately upon transfer. [12 AR 1060.] In fact, the testimony clearly states
 4 that the Conservancy will not open the site until an access management plan has been written for
 5 this specific site, which will probably include public access improvements. [12 AR 1058.]

6 Following presentation of the evidence, the Commission unanimously approved the
 7 proposed amendment to allow for off-site mitigation at the La Costa Beach parcel, as well as the
 8 "in lieu fee" oral modification. [13 AR 1070, 1071.] On May 25, 2000, Commission staff issued
 9 Revised Findings in support of the Commission's decision on April 12, 2000. [13 AR 1096.] On
 10 June 13, 2000, the Commission adopted the Revised Findings, [13 AR 1123.]

11 On or about May 12, 2000, Petitioners filed the instant writ of mandate action.
 12 Respondent Coastal Commission was served with said petition on or about May 16, 2000.

13
 14 **THE COASTAL ACT OF 1976**

15
 16 The Coastal Act of 1976 (Pub. Res. Code § 30000 et seq.) is the legislative continuation
 17 of Proposition 20, the initiative that created the California Coastal Zone Conservation
 18 Commission. Both the proposition and the Act sought to avoid deleterious consequences of
 19 development on coastal resources. (*Pacific Legal Foundation v. California Coastal Com.* (1982)
 20 33 Cal.3d 158, 163; *CEED V. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d
 21 315, 321.) The Supreme Court describes the Coastal Act as a comprehensive scheme to govern
 22 land use planning for the entire coastal zone of California. (*Yost v. Thomas* (1984) 36 Cal.3d
 23 561, 565.)

24 The act's stated goals are protection of the coastline and its resources and maximization
 25 of public access. (*Landgate, Inc. v. California Coastal Com.* (1998) 17 Cal.4th 1006, 1024-25;
 26 *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 571; Pub. Res. Code §
 27 30001.5, 30512, 30513.) It further provides that the scenic and visual qualities of coastal areas
 28 shall be considered and protected as a resource of public importance. (Pub. Res. Code §30251.)

1 The act is liberally construed to accomplish its purposes and objectives. (Pub. Res. Code §
2 30009.)

3 **ARGUMENT**

4 **I.**

5 **RESPONDENT'S FINDINGS AND DECISION ARE CONSISTENT WITH THE**
6 **REQUIREMENTS OF THE COASTAL ACT**

7 In their attempt to impose some greater duty on the Commission than is required by the
8 Coastal Act, Petitioners assert that the Commission's finding about public safety of the La Costa
9 mitigation site were not supported by the evidence; that the Commission failed to make any
10 finding regarding the suitability of the site for public use; and that the Commission failed to
11 make findings or present evidence that the use of the La Costa site mitigates the visual impacts of
12 the Real Parties' construction on Carbon Beach. [Petitioners' Opening Brief ("POB"), P.7 lines
13 17-22.] Petitioners' assertions are without merit. Furthermore, Petitioner's contention that the
14 Commission must make specific and detailed analysis of the mitigation site's impact on public
15 safety is clearly erroneous as it has no measurable standard. From a practical standpoint, and
16 balancing the Coastal Act's overriding mandate to maintain and secure maximum public access
17 along the coast, how safe (or unsafe) must a parcel be before the Commission can approve
18 opening a Coastal accessway? Here, Petitioners clearly miss the point. The policies of the
19 Coastal Act do not impose the duties of a safety commission or a possessor of property on the
20 Coastal Commission. Here, the record provides that analyses of required public access
21 improvements and access management plans for a specific cite does not rest with a regulatory
22 agency such as the Coastal Commission [12 AR 1058-1060.], but with the agency that would
23 ultimately come into possession of this particular property. [Id.]

24 **A. Evidence Before the Commission Supported that the La Costa Mitigation Site**
25 **Would Be Safe For Public Access.**

26 Notwithstanding the increased duty that Petitioners attempt to impose, the record here
27 reflects that evidence supporting that the La Costa Beach site would provide reasonably safe
28 public access was considered by the Commission. That evidence was presented at the April 12,