



1 Petitioner Friends of Trafalgar Canyon respectfully petitions this Court for relief afforded  
2 pursuant to Code of Civil Procedure Sections 1094.5, and alleges as set forth below.

3  
4 **Introduction**

5 1. This action challenges the legality of the February 8, 2024, approval granted by  
6 Respondent Coastal Commission of a coastal development permit for development of a new  
7 proposed residential development at 217 Vista Marina in the City of San Clemente (City).

8 2. Graham Property Management, LLC (GPM) applied for a coastal development  
9 permit (CDP) to construct a new residence (Project), notwithstanding that the Project was sited  
10 within Trafalgar Canyon, a coastal canyon explicitly protected from development, and that the  
11 canyon contains extensive environmentally sensitive habitat areas (ESHA).

12 3. The Commission initially voted unanimously in June 2019 to deny approval of the  
13 Project for the following reasons: (1) GPM has not obtained a variance from the City of San  
14 Clemente for the siting of the Project within the protected coastal canyon and nothing requires  
15 the Commission to approve a CDP ahead of the local agency; (2) the Commission determined  
16 that approval solely on a takings exception was premature; (3) the Coastal Act requires the  
17 Commission to deny projects that are inconsistent with the Coastal Act's Chapter 3 policies  
18 governing geology, visual resources, and ESHA; and (4) the Project was inconsistent with  
19 implementing policies in the City's Coastal Land Use Plan (LUP), including provisions that  
20 specifically prohibit new development within 15 feet of a canyon edge and within 100 feet of  
21 ESHA.

22 4. However, following a Superior Court challenge by the Project proponent,<sup>1</sup> which the  
23 Court granted on purely procedural grounds, the Commission reversed course and approved the  
24 Project. The applicant still had not obtained, or even sought, the variance from the City required  
25 for development within the coastal canyon. And only minor changes were made to the Project  
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<sup>1</sup> Orange County Superior Court *Graham Property Management LLC v. California Coastal*  
28 *Commission*, Orange County Superior Court case no. 30-2019-01086776-CU-WM-CJC (GPM's  
Writ Petition)





1 vegetation. (AR 1507.) In 2018, GPM applied to the Commission for a CDP to construct a  
2 new three-story, 5,165 square-foot residence, 1,239 square-foot garage, and 1,931 square-  
3 foot terrace/deck.

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5  
6 Development would also involve geotechnical stabilization of the building pad, retaining and  
7 heat barrier walls into the canyon around the residence, and a cul-de-sac with a driveway.  
8 (AR 1495.)

9  
10 In its application submittal, GPM provided documentation that the Project would require no  
11 local discretionary approvals. (AR 12, 151.) This included a form statement that the Project  
12 “needs no local permits other than building permits” and an In-Concept Review Approval  
13 letter from the City. (AR 151–154.) The letter stated, “current plans show the structure to  
14 meet the 15- foot setback from the lower canyon edge and that [it] conforms to site  
15 development standards, including height.” (AR 151.) Based on this representation,  
16 Commission staff accepted the application for filing. (AR 1.)

17  
18 On May 31, 2019, after reviewing the project and working with GPM on possible  
19 modifications to lessen its impacts on coastal resources, Commission staff issued a Staff  
20 Report for a Commission hearing on June 12–14, 2019. (AR 162–207.) It concluded that the  
21 proposed residence is entirely within a coastal canyon on extensive ESHA, is inconsistent  
22 with several Chapter 3 policies in the Coastal Act, and would cause significant impacts to the  
23 coastal canyon and ESHA. (AR 162–207.) Specifically, Commission staff concluded:

24 • “the project does not minimize risk to life and property in areas of high geologic hazards  
25 but for the construction of a protective device (deepened caisson foundation) that would  
26 substantially alter natural landforms along bluffs and cliffs, contrary to the requirements of  
27 Coastal Act section 30253(b).” (AR 164, 176–183.)  
28

1 • “the proposed development footprint would provide a zero buffer area from the majority of  
2 existing surrounding ESHA . . . . inconsistent with Coastal Act section 30240(b)” and “poses  
3 potential significant impacts to ESHA vegetation which would significantly degrade habitat  
4 and would not be compatible with the continuance of those habitat areas[.]” (AR 164, 183–  
5 189.)

6  
7 • “Because of its location near the mouth of the Trafalgar Canyon within the canyon slope,  
8 the project would be highly visible from public vantage points, including the public trail,”  
9 which is “not compatible with the character of the surrounding area in relation to lack of  
10 development on the canyon face/slope, inconsistent with Section 30251 of the Coastal Act  
11 and LUP Policy VIS-1.” (AR 192–194.)

12  
13 • “the project is inconsistent with certified Land Use Plan policies that prohibit residential  
14 development on a coastal canyon slope, that require a development setback from the canyon  
15 edge or from native vegetation, and that require development to be safely sited.” (AR 164,  
16 176–187.)

17 Accordingly, “the Coastal Act directs that the project should be denied.” (AR 197–198.)  
18 Commission staff nevertheless recommended approval, solely on a takings exception. (AR  
19 198-202.) Staff concluded that denial could be deemed a “final and authoritative decision  
20 about the use of the subject property” and constitute a taking, which would allow approval  
21 despite the project’s impacts and Coastal Act inconsistencies. (AR 198–202.)  
22

23 On June 7, 2019, after reviewing this Staff Report and accompanying project materials, the  
24 City notified the Commission by email that any Commission approval of the CDP “would  
25 result in new development that encroaches into the coastal canyon and therefore requires  
26 City of San Clemente variance approval to permit encroachment into the coastal canyon  
27 prior to issuance of City permits.” (AR 563.) As the City explained: “[t]he Approval-in-  
28 Concept letter issued to the applicant includes a condition in Attachment 1 that new

1 development shall not encroach into coastal canyons and shall be set back in compliance  
2 with San Clemente Municipal Code section 17.56.050(D)(2).” (AR 563.) The proposed  
3 residence did not satisfy this condition.  
4

5 On June 14, 2019, the Commission held a hearing on the project. Following presentations  
6 and public comment, the Commission concurred with staff that the project was inconsistent  
7 with the Coastal Act’s geologic hazards, visual resources, and ESHA policies. (AR 1479–  
8 1482.) But the Commission disagreed with staff’s approval recommendation on a takings  
9 exception—instead affirmatively concluding that approval at this stage would be premature.  
10 (*Ibid.*)  
11

12 13. Real Party in Interest Graham Property Management then sued the Coastal  
13 Commission in the GPM Writ Petition case. The petition alleged the Coastal Commission  
14 abused its discretion in denying approval of the Project in June 2019. GPM sought damages for  
15 taking of property without compensation and for violation of civil rights.

16 14. As the Commission itself stated in Court, “A redesigned, scaled down residence  
17 could still lessen the *degree* to which it significantly impacts coastal resources.” (Opposition to  
18 Petition for Writ of Mandate in the GPM Writ Petition case, p. 26.)

19 15. With regard to the need for City of San Clemente approval as the local agency prior  
20 to the Commission’s approval of a CDP, the Commission’s Opposition brief stated:

21  
22 Approval of Graham Property Management’s (GPM’s) project would require two  
23 exceptional government actions. First, the City of San Clemente (City) would need to  
24 approve a local variance from applicable City land use regulations. GPM has not obtained  
25 this City variance. Second, the Commission would need to approve the CDP on a  
26 “takings” exception from applicable Coastal Act policies, upon a determination that  
27 approval is necessary to avoid a taking of private property. The Commission could not  
28 reach this determination, in part because the City had not granted a local variance.

1 The explanation in the Revised Findings that GPM’s project required City review for a  
2 variance accurately reflected the facts. With certain exceptions not relevant here, the  
3 Commission requires applicants to first obtain all required local approvals. The lack of  
4 prior local review for a variance was one reason the Commission determined that  
5 approval solely on a takings exception was premature. The Commission could not find  
6 that project approval was necessary at this stage before it went through the City’s local  
7 review process below. Nothing requires the Commission to prematurely approve a CDP  
8 ahead of the local agency—or allows an applicant to sidestep this step-by-step process.

9 As Commissioner Brownsey explained: “[T]his project did not align with respect to  
10 Chapter 3 on visual, on geological stability, certainly on hazard. And the fact for me was  
11 that the City of San Clemente, in their LCP has a ban on development in coastal canyons.  
12 . . . [B]efore I feel that I can consider this permit, I believe that this permit has to go  
13 through the full process w]ith full notification, through the local entity in order to  
14 examine all these issues.” Likewise, Commissioner Howell explained: “If we’re going to  
15 be partnering with local government, we should give them an opportunity to have input  
16 from their citizens, and make their own approvals before things end up in front of us.”  
17 Before the hearing, Commissioners Uranga, Brownsey, and Howell filed ex parte  
18 disclosure forms detailing their communications with members of a community group.  
19 (AR 1379–1384.) At the hearing, these Commissioners again disclosed that they had  
20 communications, and that their disclosure forms were on file. (AR 1468–1469, 1478–  
21 1479.) Commissioner Howell also disclosed that he had a recent communication with the  
22 City. (AR 1468–1469.) 1 Commissioners Escalante, Faustinos, and Padilla all agreed,  
23 respectively stating: “I completely echo [Commissioner Brownsey] and Commissioner  
24 Howell’s frustration with this even being here before us,” “I think this is something really  
25 needs to go through a step process,” and “this is highly problematic from a standard of  
26 review standpoint.” (AR 1480–1482. Unanimously, the Commission voted to deny the  
27 CDP—concurring with staff’s determinations that the Project would significantly impact  
28 geology, visual resources, and ESHA, but disagreeing with the recommendation to  
Commission staff then drafted proposed Revised Findings reflecting this decision. (AR



1 1495–1544.) At its December 2019 hearing, the Commission held a public hearing and  
2 unanimously adopted the Revised Findings as reflecting its decision. (AR 1495.) The  
3 Revised Findings retained the original findings on the project’s inconsistencies with the  
4 Coastal Act’s geology, visual resources, and ESHA policies, and various implementing  
5 LUP policies. (AR 1509–1522.) The Revised Findings then reflected the Commission’s  
6 determination that approval is premature on a takings exception when it had not  
7 undergone the prerequisite City review process below. Therefore, the CDP was denied,  
8 without prejudice, on undisputed findings that the project would be inconsistent with the  
9 Chapter 3 policies of the Coastal Act.

10 Before certification of an LCP, the Commission issues CDPs. (§ 30600, subd. (c); Cal.  
11 Code Regs, [C.C.R.] tit. 14, §§ 13050, 13052.) Unless the Executive Director grants a  
12 waiver, applicants must first obtain all local discretionary approvals, such as a variance,  
13 through the local agency’s public land use process. (14 C.C.R., §§ 13052, 15053; see  
14 Gov. Code § 65906.) The standard for issuance of a CDP is conformity with the Coastal  
15 Act’s Chapter 3 policies and, if certified as here, guided by the City LUP. (§ 30604,  
16 subds. (a),(b).)

17 Second, a CDP for this project can only be approved on a takings exception. The  
18 Commission would need to determine that, despite its many inconsistencies with Coastal  
19 Act policies, the project must be approved to avoid an unconstitutional taking of private  
20 property. (§ 30010; AR 1497, 1531–1533.) This is an approval action of last resort—it  
21 can occur only after the project is vetted by the local agency and Commission for any and  
22 all feasible modifications

23 A city may approve a variance “only when, because of special circumstances applicable  
24 to the property, including size, shape, topography, location or surroundings, the strict  
25 application of the zoning ordinance deprives such property of privileges enjoyed by other  
26 property in the vicinity and under identical zoning classification.” (Gov. Code § 65906.)  
27 If granted, the city must impose conditions of approval that assure it does not “constitute  
28 a grant of special privileges inconsistent with the limitations upon other properties in the

1 vicinity and zone[.]” (Ibid.) The City’s ordinances require the Planning Commission,  
2 after environmental review, public review, and a hearing, to make specified findings—  
3 including that the variance will not be detrimental to public safety, is necessary for the  
4 preservation of a substantial property right, and is consistent with the City’s General  
5 Plan. (See City of San Clemente Municipal Code, § 17.16.080.)

6  
7 16. On December 14, 2022, the Orange County Superior Court granted Graham  
8 Property’s writ. Significantly, the Court did not side with Graham against any of the  
9 Commission’s objections to the Project on substantive, environmental grounds. The Court  
10 found for Graham on merely procedural grounds related to disclosure of ex parte  
11 communications. The Court directed the Commission to consider the CDP application in a new  
12 hearing. The Court’s Order stated:

13  
14 A writ of mandate shall issue from this Court directing Respondent California Coastal  
15 Commission to (1) at the first Respondent Commission hearing scheduled at least 30  
16 days after receipt of this Writ, set aside and vacate Respondent’s decision made on June  
17 14, 2019 to deny Coastal Development Permit Application No. 5-18-0930 to construct a  
18 single-family residence at 217 Vista Marina, San Clemente, (2) not later than 125 days  
19 following the action to set aside and vacate the June 14, 2019 decision, Respondent  
20 shall hold a new hearing on Coastal Development Permit Application No. 5-18-0930;  
21 and approve, conditionally approve, or deny Coastal Development Permit Application  
22 No. 5-18-0930 based upon the evidence presented at such hearing.

23  
24 17. With Petitioner GPM’s consent, the Commission continued the CDP hearing  
25 required by the Writ several times and then held the hearing on February 8, 2024.

26 18. On February 6, 2024, Adam Atamian, the City of San Clemente’s Community  
27 Development Director, wrote to Wayne Eggleston the following email message:  
28

1 While the CCC staff report unfortunately describes the Variance permit-approval  
2 process using terms like “simply”, this process would include a thorough review of the  
3 proposed development and it’s environmental impacts. Approval of such a Variance  
4 request is dependent upon a determination by the Planning Commission at a duly-  
5 noticed public hearing. The City’s Municipal Code does not provide for a streamlined  
6 or “simple” Variance permit process.

7 19. Mr. Eggleston read this email to the Commission at the hearing on February 8, 2024.

8 20. Pasted below for reference is an aerial photograph which accurately depicts (in blue  
9 lines) the limits of all other development at the edges of Trafalgar Canyon, and (in red lines) the  
10 proposed location of the Project in the middle of the otherwise completely undeveloped canyon:  
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21 21. Despite the Commission’s finding that the Project violated the Coastal Act because,  
22 among other reasons, it was located entirely in a coastal canyon, endangered ESHA, and was not  
23 finally approved by the City, the Commission approved the Project to avoid a potential claim of  
24 unconstitutional taking of private property.

25 22. There could be no unconstitutional taking here because the Project applicant could  
26 have had no reasonable investment backed expectations of being able to build given that for  
27 decades before this purchase it was illegal to build in a coastal canyon and any reasonable visual  
28 inspection would have shown that the Project lot was, as the Commission here found it to be, in

1 the middle of a coastal canyon between two well-defined canyon edges, against which all other  
2 development had been obviously limited.

3  
4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**  
5 **AND INADEQUATE REMEDIES AT LAW**  
6

7 23. Petitioner objected to the Project in the administrative process by submitting letters  
8 and providing testimony at the public meetings and hearings regarding the Project. Petitioner  
9 and/or other individuals raised each of the legal deficiencies asserted in this Petition orally or in  
10 writing during the Respondent's administrative review process.

11 24. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law  
12 unless this Court grants the requested writ of mandate and injunctive relief.

13 25. In the absence of such remedies, the Commission's approval of the Project would  
14 form the basis for a development project that would proceed in violation of state law.

15 26. Petitioner complied with Public Resources Code section 21167.7 by filing a copy of  
16 this Petition with the California Attorney General. A copy of that notice is attached as Exhibit  
17 A.

18 27. Petitioner submitted a notice of commencement of this action to the Coastal  
19 Commission prior to filing this Petition. A copy of that notice is attached as Exhibit B.

20 28. Petitioner elects to prepare the administrative record. A copy of that election is  
21 attached as Exhibit C.

22 29. Petitioner requests a hearing of this matter as soon as is convenient for the Court.

23 **FIRST CAUSE OF ACTION**

24 **(Violation of Coastal Act, Public Resources Code Section 30000 et seq)**

25 30. Petitioner realleges and incorporates herein by reference the allegations of  
26 preceding paragraphs.  
27  
28

1 31. Pursuant to the Coastal Act, Respondent Commission is charged with following the  
2 requirements and policies of the Coastal Act. Respondent failed in its responsibility as described  
3 herein.

4 32. Because the City of San Clemente does not have a certified LCP, the Commission  
5 issues CDPs for San Clemente. (Pub. Resources Code § 30600, subd. (c); Cal. Code Regs,  
6 [C.C.R.] tit. 14, §§ 13050, 13052.) Applicants for CDPs in San Clemente must first obtain all  
7 local discretionary approvals, such as a variance, through San Clemente’s land use process. (14  
8 C.C.R., §§ 13052, 15053; see Gov. Code § 65906.)

9 33. Based upon mistaken information including but not limited to the erroneous premise  
10 that the Project was not located in a coastal canyon, the Project applicant obtained an approval  
11 in concept from the City of San Clemente. But the Project applicant did not at any time obtain a  
12 final approval from the City of San Clemente in the form of a variance for locating the Project in  
13 a coastal canyon in violation of City municipal code requirements prohibiting siting of  
14 development in a coastal canyon.  
15

16 34. Both the City and the Commission staff acknowledged that the Project’s proposed  
17 siting within Trafalgar Canyon requires a City variance. Therefore, City of San Clemente  
18 approval of a variance for siting the Project in a coastal canyon was a necessary prerequisite to  
19 the Commission’s review of an application for a Coastal Development Permit. (14 Cal.Code  
20 C.C.R. § 13052 subd. (e).) However, the Commission proceeded with review and approval of  
21 the CDP without the Project applicant having first obtained final approval from the City of San  
22 Clemente of a variance for siting the Project in a coastal canyon. The Commission’s approval  
23 was procedurally and substantively in violation of the Coastal Act.  
24

25 **SECOND CAUSE OF ACTION**

26 **(Violation of Coastal Act, Public Resources Code Section 30000 et seq)**

27 35. Petitioner realleges and incorporates herein by reference the allegations of  
28 preceding paragraphs.

1           36. Section 30251 of the Coastal Act states that “The scenic and visual qualities of coastal  
2 areas shall be considered and protected as a resource of public importance. Permitted  
3 development shall be sited and designed to protect views to and along the ocean and scenic coastal  
4 areas, [and] to minimize the alteration of natural land forms. . .”

5  
6           37. Approval of the Project is contrary to the requirement of section 30251 of the Coastal  
7 Act to site and design development to minimize alteration of natural land forms, preserve open  
8 space in coastal canyons, and protect coastal canyon visual resources. The project would be sited  
9 within a coastal canyon, requiring alteration of its landforms to accommodate the project design.

10           38. The Project violated Section 30253 of the Coastal Act by siting development in a  
11 coastal canyon. Section 30253 of the Coastal Act states, in pertinent part: “New development  
12 shall do all of the following: Minimize risks to life and property in areas of high geologic, flood,  
13 and fire hazard....Assure stability and structural integrity, and neither create nor contribute  
14 significantly to erosion, geologic instability, or destruction of the site or surrounding area or in  
15 any way require the construction of protective devices that would substantially alter natural  
16 landforms along bluffs and cliffs.

17           39. Section 30107.5 provides: “ ‘Environmentally sensitive area’ means an area in which  
18 plant or animal life or their habitats are either rare or especially valuable because of their special  
19 nature or role in an ecosystem and which could be easily disturbed or degraded by human activities  
20 and developments.”

21           40. Section 30240 requires that “environmentally sensitive habitat areas shall be protected  
22 against any significant disruption of habitat values, and only uses dependent on those resources  
23 shall be allowed within those areas.”

24           41. Section 30250 of the Coastal Act further provides in relevant part that “New  
25 residential . . . development . . . shall be located . . . where it will not have significant adverse  
26 effects, either individually or cumulatively, on coastal resources.”

27           42. The project is proposed in Trafalgar Canyon, a coastal canyon that contains ESHA. It  
28 is ESHA because of the presence of endangered Giant Ryegrass and Lemonade Berry. Biological

1 resource experts at Land Protection Partners opined that ESHA exists on site. Coastal staff held  
2 a similar opinion, and that the ESHA stands would be much bigger if there had not been illegal  
3 clearing by GPM. Practically the entire site would be within the buffer area for this ESHA.  
4 Trafalgar Canyon is clearly designated in the Land Use Plan. (LUP 4-3 [“There are nine coastal  
5 canyons in San Clemente, including the two Marblehead Coastal Canyons, Palizada Canyon,  
6 Trafalgar Canyon, Toledo Canyon, Lobos Marinos Canyon, Riviera Canyon, Montalvo Canyon,  
7 and Calafia Canyon.”])

8  
9 43. One of the primary objectives of the Coastal Act is the preservation, protection, and  
10 enhancement of coastal resources, including land and marine habitats. (Pub. Resources Code §  
11 30001.5, subd. (a).) Thus, rare and most ecologically important habitats are protected from  
12 development. Section 30107.5 of the Coastal Act defines “environmentally sensitive area” as an  
13 “area in which plant or animal life or their habitats are either rare or especially valuable because  
14 of their special nature or role in an ecosystem and *which could be easily disturbed or degraded by*  
15 *human activities and developments.*” (*Id.*, emphasis added.) To that end, Public Resources Code  
16 Section 30240 mandates:

17 Environmentally sensitive habitat areas shall be protected against any significant  
18 disruption of habitat values, and only uses dependent on those resources shall be  
19 allowed within those areas.

20 44. Single family residences such as the applicant’s proposed Project do not have  
21 to be located within ESHAs to function so they are not a use dependent on ESHA resources.  
22 Therefore the Project violates section 30240. The Project is new residential development  
23 that has significant adverse effects on coastal resources. Therefore the Project violates  
24 section 30250.

25 45. The Commission erred in overlooking the need to examine the reasonable  
26 economic expectations at the time of purchase. GPM and the Pianas did not have, and could not  
27 have had, any reasonable economic expectation at the time of purchase of being able to develop  
28 the property with the proposed house. Approval of such a proposal would require the

1 extraordinary relief of a variance proceeding and a reliance on section 30010 of the Public  
2 Resources Code. Therefore, the purchase of the property was highly speculative without any  
3 reasonable expectation of being able to develop it with a house.

4 46. There is no valid authorization for the Coastal Commission to approve the  
5 project despite its violations of the Coastal Act. The Commission relied on the provisions  
6 of Coastal Act section 30010 to approve the Project.

7 47. However, the last sentence of section 30010 provides that the section “is not  
8 intended to increase...the rights of any owner of property under the Constitution of the  
9 State of California or the United States.” This means that the Commission can properly  
10 rely on 30010 only where denial of the permit actually causes a Constitutional violation  
11 under controlling California or US Constitutional case law, not where such a violation *may*  
12 occur.

13 48. The property owner at the time he purchased the property did not have a  
14 reasonable economic expectation that he could build on the property.

15 49. The reasonable economic expectations of a purchaser at time of purchase is a  
16 requirement of any regulatory takings claim. The Commission’s reliance on its purported  
17 first doctrine— categorical taking that looks only to deprivation of all economic use  
18 property without regard to expectations at time of purchase—is erroneous as a matter of  
19 law. There is clear evidence that no reasonable purchaser in 2017 could have expected to  
20 be able to build on this lot. The Commission made no findings necessary to support its  
21 decision that a takings could occur. No facts in the record support such a conclusion.

22 50. The Commission erred in overlooking the need to examine the reasonable economic  
23 expectations at the time of purchase. GPM and the Pianas did not have, and could not have had,  
24 any reasonable economic expectation at the time of purchase of being able to develop the  
25 property with the proposed house. Approval of such a proposal would require the extraordinary  
26 relief of a variance proceeding and a reliance on section 30010 of the Public Resources Code.  
27 Therefore, the purchase of the property was highly speculative without any reasonable  
28 expectation of being able to develop it with a large, obtrusive residential manor.





1 independent duties under CEQA for conducting environmental review of projects it approves.  
2 The Commission is a regulatory agency certified by the Secretary of Resources pursuant to  
3 Public Resources Code section 21080.5. As a result, the Commission is entitled to rely upon the  
4 “functional equivalent” of an Environmental Impact Report (EIR) instead of preparing a full  
5 EIR for a project that may significantly affect the environment. The Commission also is exempt  
6 from various procedural requirements (see section 21080.5(c)). However, the Commission still  
7 must assure an adequate analysis of environmental impacts, including public participation (see  
8 section 21080.5(d)(2)(F) and §21080.5(d)(3)(B)). The Commission shall not approve a project  
9 as proposed with adverse impacts if there are feasible alternatives or feasible mitigation  
10 measures that would substantially lessen any significant adverse impact which the project may  
11 have on the environment (Section 21080.5(d)(2)(A)). Substantial evidence was submitted in  
12 comments by Petitioner and others, supporting the conclusion that the development as  
13 authorized by the granting of the coastal development permit may have significant effects on the  
14 environment that have not been evaluated and mitigated to less than significant levels, and that  
15 there were feasible alternatives to the Project, including, among others: reducing the size of the  
16 approved development or denying the proposed development at the coastal canyon site.

18 58. Feasible project alternative and feasible mitigation measures that would result in  
19 decreasing the adverse environmental impacts of the development project were not properly  
20 considered by the Commission prior to project approval.

21 59. Petitioner, by and through its members, will suffer irreparable harm if the relief  
22 requested herein is not granted and the Project as approved is commenced in the absence of an  
23 adequate analysis of environmental impacts alternative and mitigation measures, and absent  
24 compliance with all other applicable provisions of CEQA.

25 60. Respondent is charged with the responsibility of following the CEQA process in the  
26 assessment and approval of a "project", as defined in Section 21065. Respondent failed to  
27 evaluate the significant adverse environmental impacts of the Project on the local community  
28 and the public and approved the Project even though there were feasible alternatives and

1 mitigation measures. At the final hearing of the Project, one Commissioner asked if the house  
2 could be made smaller to mitigate ESHA impact issues, but was told no matter what reduction in  
3 size occurred, there would still be an impact on ESHA. By this non-sequitur – that since some  
4 minor ESHA impact was inevitable, the Commission must rubber-stamp major ESHA impact –  
5 no further reduction in size or other mitigation was required by the Commission. By such action,  
6 Respondent violated CEQA.

7  
8 61. No overriding benefits of the project that make its damaging impacts acceptable can  
9 be substantiated as is required by Public Resources Code section 21081 before a project with  
10 significant impacts may be approved, nor are any such benefits alleged in the Staff Report or  
11 elsewhere. To the extent the Staff Report claims it is legally infeasible to deny the project, this  
12 claim is indefensible because, as the Commission correctly argued in Court, denial of the Project  
13 would not be a taking. Furthermore, the Commission did not exhaust the possibility of itself  
14 compensating the property owner in the very unlikely event that denial were eventually  
15 determined to be a taking.

16 62. The Commission’s own legal counsel in legal proceedings prior to the 2024 approval  
17 clearly stated “*The Commission’s Denial Was Proper Under the Coastal Act and Did Not*  
18 *Constitute a Taking of Private Property.*” (Commission Opposition to Petition for Writ of  
19 Mandate in GPM’s Writ Petition, p. 25, emphasis added.)

20 63. The Attorney General stated “A redesigned, scaled down residence could still lessen  
21 the *degree* to which it significantly impacts coastal resources.” (Opposition, p. 26.) Rather than  
22 significantly redesigning and scaling down the residence proposed, the project proponent made  
23 changes that resulted in small reductions in overall project size and impacts. The proponent’s  
24 begrudging redesign does not ensure protection of coastal resources from significant impacts.  
25 There was no showing that further reduction in the project size is infeasible as required by  
26 CEQA. Therefore, the project could not legally be approved.  
27  
28

1 **WHEREFORE, Petitioner prays:**

2 A. That the Court issue a peremptory Writ of Mandate, commanding Respondent  
3 Commission to rescind the coastal development permit issued to Real Parties in Interest to  
4 commence Project construction, to refrain from considering the Project for any new CDP until it  
5 obtains a coastal canyon variance from the City, and to refrain from granting the Project any  
6 new CDP until the Commission complies with CEQA and the Coastal Act;

7  
8 B. For a permanent injunction enjoining Real Parties in Interest, their agents, employees,  
9 officers and representatives from undertaking any and all activities on the project site including  
10 the alteration of the current conditions on the project site, any and all pre-construction and  
11 construction activities related to the development project; from issuing any authorizations,  
12 permits or entitlements for; from entering into any contracts for; and for taking any other action  
13 to implement in any way the pre-construction and construction activities that would affect the  
14 environmental integrity of the affected project site, until there is compliance with the Coastal  
15 Act and CEQA;

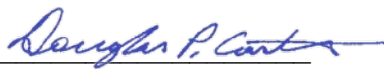
16 C. For costs of the suit;

17 D. For attorney's fees pursuant to the Code of Civil Procedure section 1021.5; and

18 E. For such other and further relief as the Court deems just and proper.

19  
20 DATED: March 7, 2024

Respectfully Submitted,  
CARSTENS, BLACK, & MINTEER, LLP

21  
22 By:   
23 Douglas Carstens  
24 Attorneys for Petitioner  
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1 VERIFICATION

2  
3 I, Steffen McKernan, declare as follows:

4 I have read the foregoing Petition for Writ of Mandate and know the contents thereof. I  
5 am an authorized representative of Friends of Trafalgar Canyon, a party to this action. The  
6 matters stated in the foregoing document are true of my own knowledge, except as to those  
7 matters which are stated on information and belief, and as to those matters, I believe them to be  
8 true.

9 I declare under penalty of perjury and under the laws of the State of California that the  
10 foregoing is true and correct and this verification was executed this 6<sup>th</sup> day of March 2024.

11 **Steffen**  
12 **McKernan**

Digitally signed by Steffen McKernan  
DN: cn=Steffen McKernan, o, ou,  
email=sk@alumni.princeton.edu, c=US  
Date: 2024.03.06 14:31:13 -08'00'

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# EXHIBIT A



Main Office Phone:  
310 - 798-2400  
Direct Dial:  
310-798-2400 Ext. 1

Carstens, Black & Minter LLP  
2200 Pacific Coast Highway, Suite 318  
Hermosa Beach, CA 90254  
[www.cbcearthlaw.com](http://www.cbcearthlaw.com)

Douglas P. Carstens  
Email Address:  
[dpc@cbcearthlaw.com](mailto:dpc@cbcearthlaw.com)

March 7, 2024

By Electronic Mail  
California Attorney General  
[CEQA@doj.ca.gov](mailto:CEQA@doj.ca.gov)

Re: Challenge under the California Environmental Quality Act to  
the approval of the residential development project at 217 Vista Marina,  
San Clemente, California

Honorable Attorney General Bonta:

Please find enclosed a copy of the Petition for Writ of Mandate filed to challenge  
the actions of the California Coastal Commission in violation of the Coastal Act and  
failure to comply with the California Environmental Quality Act ("CEQA").

This Petition is being provided pursuant to the notice provisions of the Public  
Resources Code. Please contact me if you have any questions.

Sincerely,

Douglas P. Carstens

Enclosure

**PROOF OF SERVICE**

I am employed by Carstens, Black & Minter LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254. On March 7, 2024 I served the within documents:

**LETTER TO THE CA ATTORNEY GENERAL REGARDING  
PETITION FOR WRIT OF MANDATE**

VIA ELECTRONIC MAIL.

Based on Public Resources Code 21167 of CEQA, I caused the above-referenced document to be sent to the CA Attorney General at the following electronic address: CEQA@doj.ca.gov

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 7, 2024, at Hermosa Beach, California 90254.

Sarah Bloss  
Sarah Bloss

**SERVICE LIST**

CEQA Coordinator  
Office of the CA Attorney General  
CEQA@doj.ca.gov



# EXHIBIT B



Main Office Phone:  
310 - 798-2400  
Direct Dial:  
310-798-2400 Ext. 7

Carstens, Black & Minter LLP  
2200 Pacific Coast Highway, Suite 318  
Hermosa Beach, CA 90254  
[www.cbcearthlaw.com](http://www.cbcearthlaw.com)

Douglas P. Carstens  
Email Address:  
[dpc@cbcearthlaw.com](mailto:dpc@cbcearthlaw.com)

March 7, 2024

*By U.S. Mail*  
Dr. Caryl Hart, Chair  
California Coastal Commission  
455 Market Street, Suite 300  
San Francisco, CA 94105

Re: Challenge under the California Environmental Quality Act to  
the approval of the residential development project at 217 Vista Marina, San  
Clemente, California

Dear Dr. Hart,

Please take notice that this firm will be filing a Petition for Writ of Mandate  
challenging the California Coastal Commission's actions to approve the permit for  
development of a new residential project at 217 Vista Marina in the city of San Clemente,  
California.

Please contact the undersigned if you have any questions.

Sincerely,

Douglas P. Carstens

March 7, 2024

Page 2

## **PROOF OF SERVICE**

I am employed by Carstens, Black & Minter LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA 90254. On March 7, 2024, I served the within documents:

### **LETTER TO DR. CARYL HART**

VIA UNITED STATES MAIL. I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 7, 2024 at Hermosa Beach, California 90254.

/s/ Sarah Bloss  
Sarah Bloss

#### **SERVICE LIST**

Dr. Caryl Hart, Chair  
California Coastal Commission  
455 Market Street, Suite 300  
San Francisco, CA 94105

# EXHIBIT C

CARSTENS, BLACK & MINTEER, LLP  
Douglas P. Carstens, SBN: 193439; [dpc@cbcearthlaw.com](mailto:dpc@cbcearthlaw.com)  
Michelle N. Black, SBN:261962; [mnb@cbcearthlaw.com](mailto:mnb@cbcearthlaw.com)  
Sunjana Supekar, SBN: 328663; [sss@cbcearthlaw.com](mailto:sss@cbcearthlaw.com)  
2200 Pacific Coast Highway, Suite 318  
Hermosa Beach, CA 90254  
Telephone: 310.798.2400  
Fax: 310.798.2402

Attorneys for Petitioner  
FRIENDS OF TRAFALGAR CANYON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE CITY OF ORANGE**

FRIENDS OF TRAFALGAR CANYON, an )  
unincorporated association, )  
 )  
Petitioner, )  
v. )  
 )  
CALIFORNIA COASTAL COMMISSION, )  
and DOES 1-10, inclusive )  
 )  
Respondent; )  
 )  
 )  
GRAHAM PROPERTY MANAGEMENT, a )  
corporation; and THOMAS PIANA, an )  
individual and DOES 11-20, inclusive, )  
 )  
Real Parties in Interest. )

CASE NO.:

**NOTICE OF ELECTION TO PREPARE  
ADMINISTRATIVE RECORD AND  
NOTICE OF ALTERNATIVE DISPUTE  
RESOLUTION INFORMATION PACKET**

(California Coastal Act; California  
Environmental Quality Act)

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PLEASE TAKE NOTICE:

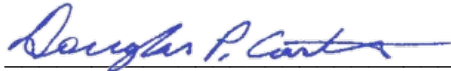
1. Pursuant to Public Resources Code section 21167.6, Petitioner Friends of Trafalgar Canyon hereby elects to prepare the administrative record in this matter. This notice also serves as a request for documents pursuant to the Public Records Act.

2. In accordance with California Rules of Court Rule 3.221, subd. (c), Petitioner hereby serves the Alternative Dispute Resolution information package provided by the Superior Court of the County of Orange, located on the Court's website at <https://www.occourts.org/system/files/11200.pdf>. This document is attached as Exhibit A.

DATE: March 7, 2024

Respectfully Submitted,

CARSTENS, BLACK & MINTEER LLP

By:   
\_\_\_\_\_  
Douglas Carstens  
Attorneys for Petitioner

# EXHIBIT A

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

ALTERNATIVE DISPUTE RESOLUTION (ADR)  
INFORMATION PACKAGE

NOTICE TO PLAINTIFF(S) AND/OR CROSS-COMPLAINANT(S):

Rule 3.221(c) of the California Rules of Court requires you to serve a copy of the ADR Information Package along with the complaint and/or cross-complaint.

California Rules of Court – Rule 3.221  
Information about Alternative Dispute Resolution (ADR)

(a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR Information Package that includes, at a minimum, all of the following:

- (1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.
- (2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.
- (3) Information about the availability of local dispute resolution programs funded under the Dispute Resolutions Program Act (DRPA), in counties that are participating in the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.
- (4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) A court may make the ADR Information Package available on its website as long as paper copies are also made available in the clerk's office.

(c) The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action along with the cross-complaint.



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE

ADR Information

Introduction.

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts and others offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. ADR is usually less formal, less expensive, and less time-consuming than a trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved.

BENEFITS OF ADR.

Using ADR may have a variety of benefits, depending on the type of ADR process used and the circumstances of the particular case. Some potential benefits of ADR are summarized below.

**Save Time.** A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.

**Save Money.** When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.

**Increase Control Over the Process and the Outcome.** In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

**Preserve Relationships.** ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.

**Increase Satisfaction.** In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

**Improve Attorney-Client Relationships.** Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

DISADVANTAGES OF ADR.

ADR may not be suitable for every dispute.

**Loss of protections.** If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.

Less discovery. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

Additional costs. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Effect of delays if the dispute is not resolved. Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

#### TYPES OF ADR IN CIVIL CASES.

The most commonly used ADR processes are arbitration, mediation, neutral evaluation and settlement conferences.

Arbitration. In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision. Nonbinding arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate. Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate. If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Mediation. In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate. Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate. Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Neutral Evaluation. In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is

often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate. Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate. Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences. Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

#### ADDITIONAL INFORMATION.

In addition to mediation, arbitration, neutral evaluation, and settlement conferences, there are other types of ADR, including conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, at 1-800-852-5210
- Contact the Orange County Bar Association at (949) 440-6700
- Look in the telephone directories under "Arbitrators" or "Mediators"

Low cost mediation services are provided under the Orange County Dispute Resolution Program Act (DRPA). For information regarding DRPA, contact:

- OC Human Relations (714) 480-6575, mediator@ochumanrelations.org
- Waymakers (949) 250-4058

For information on the Superior Court of California, County of Orange court ordered arbitration program, refer to Local Rule 360.

The Orange County Superior Court offers programs for Civil Mediation and Early Neutral Evaluation (ENE). For the Civil Mediation program, mediators on the Court's panel have agreed to accept a fee of \$300 for up to the first two hours of a mediation session. For the ENE program, members of the Court's panel have agreed to accept a fee of \$300 for up to three hours of an ENE session. Additional information on the Orange County Superior Court Civil Mediation and Early Neutral Evaluation (ENE) programs is available on the Court's website at [www.occourts.org](http://www.occourts.org).

