



# PACIFIC LEGAL FOUNDATION

## Litigation Backgrounder

California Coastal Commission Rules  
Threaten Safety and Value of Coastal Mobilehomes:  
Capistrano Shores Mobilehome Park (San Clemente, California)  
Resident Pushes Back Against Coastal Commission Overreach  
(Capistrano Shores Property, LLC v. California Coastal Commission)

It shouldn't require a team of lawyers, tens of thousands of dollars in legal expense, and years of fighting just to replace an aging mobilehome within a mobilehome park with a new, substantially identical home. But that's what it has come to when coastal property owners try to make even the simplest changes to their land in California.

Eric Wills and his family own a modest beachfront mobilehome on Space 12 in the Capistrano Shores Mobilehome Park in San Clemente, California. In 2014, the Wills sought to replace their roughly 40-year-old mobilehome with a slightly smaller (1,228 sq. ft.) new one. The process for replacing mobilehomes is simple: the jacks supporting the old home are removed and the mobilehome is driven away. The new mobilehome is rolled in, new supporting jacks are installed, and the house is bolted together. The entire process takes less than one week.

The California Coastal Commission (Commission), however, insisted that the replacement of the Wills' mobilehome required a costly and time-consuming Coastal Development Permit – a process that can take years and tens of thousands of dollars.

The Commission conditionally approved the replacement of the Wills' mobilehome – but with a shocking condition: the Wills must forever waive any right they have to repair or maintain a seawall that protects their beachfront property

from erosion and other natural hazards. This outrageous condition puts the security and value of the Wills' home at risk, in violation of California's Coastal Act and the California and U.S. Constitutions.

That's why the Wills have joined with Pacific Legal Foundation – the nation's leading public interest property rights law firm – in a case filed in California State Superior Court (Orange County) to set aside the Commission's unlawful condition. A victory in the Wills' case will not only protect their property, but the property of other residents of Capistrano Shores and dozens of coastal mobilehome parks throughout California.

### Capistrano Shores: The Wills Family's Slice of the California Dream

Capistrano Shores Mobilehome Park is located on about eight acres of beachfront land in San Clemente, the southernmost city in Orange County, California. Constructed in 1960, the park includes 90 well-maintained mobilehomes – some occupied by retirees and other year-round residents while others are used as vacation homes.

The Wills family first began leasing space at Capistrano Shores in 2001. Eric and his wife, Rebecca, would pack up the kids and spend weekends there as a getaway from their home in Yorba Linda. At the time, the park was in decline. An absentee owner held title to the land beneath the mobilehomes and an ineffective rental company had managed the property for years – but it was perfect for a young family eager to spend time at the water.

In 2008, after the original owner of the park's land passed away, the homeowners got together and acquired the property – putting the residents, rather than a distant investor, in control of the park's destiny. Today, the park (including the seawall which runs the entire length of the park, protecting it from erosion and other natural hazards) is owned by Capistrano Shores, Inc., a nonprofit, for the benefit of all the park's residents. The effect of the change was dramatic: a new management company was installed, deferred maintenance was done, and many mobilehomes were refurbished or replaced – the market price of homes nearly doubled in a few short years. Each resident's investment is now substantial, with home prices at Capistrano Shores averaging around two million dollars.

The home that the Wills acquired on Space 12 was placed there in 1977. By 2014, its electrical and plumbing systems had become degraded, there was extensive mold, and it made sense to buy a new home rather than patch up the old

one. The Wills weren't looking for a larger home, or to modify their lot, or place it closer to the water, or improve or even touch the seawall that protected it – all they wanted was a newer version of what their family had enjoyed.

### Coastal Commission Ruling Threatens the Security and Value of Property

Expecting the replacement of their mobilehome to be easy, as similar replacements have been for so many previous residents, the Wills purchased a new home at a cost of roughly \$120,000. Instead of moving in, however, they were forced to park it on a storage lot for nearly a year and hire a lawyer to represent them before the Coastal Commission as the agency delayed approval of the installation of their new mobilehome.

The approval that was ultimately granted in 2015 required the Wills to waive “any rights to shoreline protection that may exist” under state law “to protect the proposed new mobilehome on Unit Space #12.” This demand is a direct assault on the future security and value of the Wills’ property – and takes away rights granted to them by California’s legislature through the Coastal Act. Over the long-term, most beachfront property is subject to erosion and damage – rendering a huge investment worthless – unless it can be protected.

However, the California Constitution (Art. I, Sec. 1) guarantees all property owners the right to protect their property. That is why the Coastal Act provides that “seawalls, . . . retaining walls, and other such construction . . . shall be permitted when required to . . . protect” property from erosion and storms.<sup>1</sup> The Commission has authority to impose “reasonable terms and conditions” on permits in order to mitigate a development project’s adverse impact on public resources,<sup>2</sup> but that is the limit of their authority. This policy allows property owners to secure and enhance the value of coastal lands without doing harm to public beaches and other lands.

In this case, however, all the Wills seek to do is replace one mobilehome with another. No “development” that changes the use (or intensity of the use) of the existing home is taking place; no change in the existing lot; no expansion or change in use of the mobilehome park itself; and no actual or proposed change to the existing seawall that protects Space 12 and its neighbors – which has been in place since 1960. There is simply no authority for the Commission to demand that the Wills give up their valuable rights to protect their property in the future.

If it were someday necessary to repair or rebuild the seawall, Capistrano Shores, Inc. – the owner of the seawall and mobilehome park land and not individual residents, such as the Wills – would be responsible for that repair. And if such a repair were needed, Capistrano Shores, Inc. would be required to obtain a Coastal Development Permit from the Coastal Commission to do the work. The Coastal Commission has all the authority it needs to impose appropriate conditions on any future Capistrano Shores permit to ensure that repairs, maintenance, or rebuilding of the seawall will not damage the public beach or other public resources.

But the Commission's demand is not really about protecting public resources. Rather, the Commission is leveraging the Wills' vulnerability – their need to receive a permit to replace their deteriorating mobilehome – to advance antidevelopment policies inconsistent with the Coastal Act.

#### The Coastal Commission's Misguided Coastal Development Policy

The Commission has adopted a policy requiring coastal development permit applicants with beachfront or bluff-top properties to waive their right to shoreline protective devices (such as a seawall) as a condition of their permits. In 2014, PLF studied the issue and determined that 91 coastal development permits were issued by the Commission for residential construction on beachfront or bluff-top parcels since 2010; 82 of those required property owners to give up their right to protect their property with protective devices; in the 9 other cases a waiver of those rights was not demanded (and in those cases some shoreline protective device already existed on the property, as with Capistrano Shores, or the natural landscape made one unnecessary).

This case shows that the Commission is intent on expanding that policy in two ways: (1) to include not only new construction, but the replacement of mobilehomes that do not alter the land or change the use of property at all, and (2) to require waivers not only of the right to build a seawall but to repair or maintain those that already exist. By demanding that the Wills or other residents give up any rights they may have to shoreline protection, the Commission's actions may complicate and undermine the rights of the community as a whole to maintain, repair, or rebuild their seawall in the future. This is not just wrong, but unsupported by the Coastal Act.

The Commission, however, has pursued a policy of aggressively opposing shoreline protection for private property wherever it can (and sometimes, as in this

case, even where it has no legal authority to do so). In part, this policy is driven by its staff's speculation that there could be a substantial rise in the sea in coming years due to global warming.<sup>3</sup> Even assuming these concerns are warranted, there are different ways of addressing them: one can use technology and investment to prepare for new environmental challenges, thereby preserving the value and enjoyment of private property, or one can abandon property and retreat in the face of these challenges. The Commission has chosen the latter course (without regard to the specific facts such as in the case of the Wills where no retreat is possible, the public has access to the beach, and the seawall was built long before the Coastal Act was enacted).

The Commission is committed to a course of action that will see virtually all beach-adjacent development such as Capistrano Shores eliminated or eroded out of existence in the coming century. By depriving homes of the shoreline protection they need for long-term safety and security, the Commission hopes that property will be abandoned, clearing the coast of man-made structures – a state of affairs that some on the Commission deem favorable. It calls this a policy of “managed retreat” (i.e., they are managing development so that people will retreat from the coastline over time as beachfront structures become uninhabitable through erosion and other hazards).

People like the Wills family are caught in this larger battle over the future of California's coast. Whatever the political dimensions of this fight, however, the legal case is clear: it is unlawful for the Commission to prohibit coastal landowners from protecting the value and security of their existing development through shoreline protection devices. If the Commission wants to remove property owners from their land instead, the government should be required to pay them for the property.

#### PLF Defends the Rights of Homeowners Against Coastal Commission Lawlessness

Pacific Legal Foundation's Coastal Land Rights Project defends the rights of property owners nationwide, and is a frequent and successful opponent of the California Coastal Commission. PLF is the only organization that consistently monitors the Commission, offering pro bono legal representation to property owners when necessary to stop the Commission from abusing its authority.

PLF's landmark 1987 U.S. Supreme Court case, *Nollan v. California Coastal Commission*<sup>4</sup>, established the principle that conditions on development permits

must bear a close nexus to the mitigation of public harms arising from the development project at issue. The Supreme Court reaffirmed the principle in another PLF case, *Koontz v. St. Johns River Water Management District*<sup>5</sup>, in 2013. Among other violations of law, the Commission has trampled Nollan's precedent in the Wills' permit process.

In a case now pending before the California Supreme Court, PLF is representing the Lynch family of Encinitas, California, in their fight against the Commission to keep their shoreline protection rights: *Lynch v. California Coastal Commission*. PLF has also scored recent victories for families in Solana Beach (against the City of Solana Beach) and San Luis Obispo (against the Coastal Commission) involving seawalls and coastal land rights.

### The Wills' Legal Challenge

On April 15, 2015, the Coastal Commission approved the Wills' permit to replace their aging mobilehome with "special conditions," including a demand that the Wills waive any rights to shoreline protection of their property. On April 28, 2015, the Wills filed an action in Orange County Superior Court seeking a "Writ of Administrative Mandamus" to set aside the shoreline protection waiver.<sup>6</sup> A hearing has been set for June 30, 2016, at which the parties will argue the merits of the case.

The Wills are making one basic claim: The Coastal Commission has abused its lawful authority by forcing the family to give up their rights to protect their property as a condition of getting a permit.

Neither the Coastal Act nor any other law provides the Commission with the power to deprive the Wills of their right to shoreline protection in exchange for a permit absent some evidence that the replacement of their mobilehome will have an adverse effect on the coast. But the Capistrano Shores Mobilehome Park (including the Wills' Space 12) is already protected by a seawall; no new seawall or enhancement of the existing one has been proposed as part of the Wills' permit; and merely exchanging an aging mobilehome for a nearly identical new one imposes no adverse impact on any public resource at all.

### The Parties to the Lawsuit

The Plaintiff to the lawsuit is Capistrano Shores Property, LLC, which is the legal entity that the Wills family created to hold title to their mobilehome at Space 12 in the Capistrano Shores Mobilehome Park. The Respondent (the equivalent of a "Defendant" in an administrative mandamus case in California state court) is the California Coastal Commission.

## Litigation Team

Pacific Legal Foundation Attorney Larry Salzman is lead counsel, working with PLF Principal Attorney Damien Schiff. Salzman is also the Director of PLF's Liberty Clinic project, which sponsors a property rights trial litigation program at the Dale E. Fowler School of Law at Chapman University in Orange, California. The Liberty Clinic provides law students an opportunity to learn practical lawyering skills by assisting with work on important property rights litigation in federal and California trial courts. Schiff has litigated property rights cases in state and federal court, including a victory at the United States Supreme Court in *Sackett v. EPA*.

This backgrounder was prepared by Larry Salzman. For more information, or to arrange interviews with PLF attorneys and their clients, please contact:

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1. Cal. Public Resources Code § 30235.
2. Cal. Public Resources Code § 30607.
3. See, e.g., California Coastal Commission Sea Level Rise Policy Guidance, Adopted August 12, 2015, available at [http://documents.coastal.ca.gov/assets/slr/guidance/August2015/7\\_Ch7\\_Adopted\\_Sea\\_Level\\_Rise\\_Policy\\_Guidance.pdf](http://documents.coastal.ca.gov/assets/slr/guidance/August2015/7_Ch7_Adopted_Sea_Level_Rise_Policy_Guidance.pdf).
4. 483 U.S. 825 (1987).
5. 133 S. Ct. 2586 (2013).
6. *Capistrano Shores Property, LLC v. California Coastal Comm'n*, Case No. 30-2015-00785032-CU-WM-CJC (Sup. Ct. of Cal., Orange County), filed April 28, 2015.