

## **Appellate Courts to Malibu Homeowners: “Defy the Coastal Commission at Your Peril”**

Three months ago, the Fourth District Court of Appeal upheld a Coastal Commission fine of \$1 million on homeowners who performed major reconstruction on their Malibu home without obtaining coastal permits and refused to halt construction after notification of the violation by Commission staff. (See our report: [Coastal Commission Order to Homeowners to Remove Seawall and Pay \\$1 Million Fine Upheld](#)). Now, the Second District Court of Appeal has upheld a Commission penalty of \$4,185,000 on Malibu homeowners who refused to remove structures that blocked a public access easement granted to the Coastal Commission by a prior owner of the home. [Lent v. California Coastal Commission](#), No. B292091 (2nd Dist., April 5, 2021).

### **Background**

In 1978, the owner of beachfront property in Malibu applied to the Coastal Commission for a coastal development permit to build a house. As a condition of approving the permit, the Commission required, and the owner dedicated, a five-foot-wide easement for public access through the property from the highway to the beach. Notwithstanding the easement, in 1983, the owner built a wooden deck and stairway (shown in the photo below) over most of the easement area. The owner also constructed a fence and gate that entirely blocked access to the easement area from the highway. The Coastal Commission did not issue a permit or otherwise approve any of these structures.



The Lents bought the property in

2002. In 2007 the Commission notified the Lents that the structures were inconsistent with the easement and violated the Coastal Act. After subsequent failed attempts to convince the Lents to remove the structures, the Commission served them with a notice of intent to issue a cease-and-desist order. The notice informed the Lents that the Commission could impose administrative penalties under Public Resources Code section 30821 of up to \$11,250 per day per violation. Two weeks before the hearing on the cease-and-desist order, Commission staff issued a report stating that a penalty of up to \$8,370,000 was warranted because the violations caused "significant blockage of public access" and the Lents refused to undertake any "voluntary restoration efforts" despite the Commission's efforts over many years. The staff report, however, recommended a penalty between \$800,000 and \$1,500,000, and specifically \$950,000.

### **The \$4 Million Penalty**

After hearing testimony from the Lents and other interested parties, the Commission voted unanimously to issue the cease-and-desist order, requiring removal of the structures and imposing a penalty of \$4,185,000 (50% of the

maximum authorized penalty). The Lents sued to set aside the penalty, contending that its imposition violated their rights to due process of law and that the penalty was an excessive fine under the federal and state constitutions. The appellate court found no merit in the Lents' due process claims. "[A]lthough not as robust as trial-like proceedings," the notice and hearing procedures governing imposition of penalties by the Commission guaranteed that a property owner had notice of the alleged violations, an opportunity to present evidence, notice of the recommendation by the Commission staff and supporting evidence prior to the hearing, and an opportunity to present a defense prior to and at the hearing. The court likewise rejected the claim that the Commission violated due process by imposing a penalty over four times the amount recommended by its staff. The court said due process did not mandate advance notice of the exact penalty the agency intended to impose, so long as the agency provided adequate notice of the substance of the charge. The court also pointed out that staff had informed the Lents in writing that the statute authorized a penalty of up to \$11,250 per day; "the Lents at that point knew all they needed to know about the potential penalty they faced, how the Commission would calculate it, and why." The court also found that the penalty did not amount to an excessive fine under the state or federal constitutions. A fine is constitutionally excessive only if "grossly disproportionate to the offense." Examining the factors relevant to proportionality, the court held that the penalty was constitutionally valid because (1) the Lents had a high degree of culpability evidenced by their willful refusal to remove the structures for over nine years after the Commission told them the structures violated the Coastal Act; (2) the Lents' conduct effectively precluded the Commission from using the easement to enable public access to a beach that was part of a three-mile stretch of the coast with no other public access; (3) other statutes authorized daily penalties for activities similar to those involved here—including undertaking activity without obtaining a required permit—some of which were higher than the amounts authorized under section 30821; and (4) the Lents had submitted no evidence of inability to pay the penalty.

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