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12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SAN DIEGO

14 NORTH COUNTY DIVISION

16 BEACH & BLUFF CONSERVANCY,)

17 Plaintiff and Petitioner,)

18 v.)

19 CITY OF SOLANA BEACH; CITY COUNCIL)
OF THE CITY OF SOLANA BEACH;)

20 COUNCIL MEMBERS MIKE NICHOLS,)
THOMAS M. CAMPBELL, LESA HEEBNER,)

21 DAVID A. ZITO, and PETER ZAHN, in their)
official capacities; CITY MANAGER DAVID)

22 OTT, in his official capacity; DOES 1 through)
50, inclusive, and CALIFORNIA COASTAL)

23 COMMISSION)

24 Defendants and Respondents,)

25 CALIFORNIA COASTAL COMMISSION,)

26 Defendant-Intervenor)
27 _____)
28

No. 37-2013-00046561-CU-WM-NC

**VERIFIED SECOND AMENDED
COMPLAINT FOR DECLARATORY
RELIEF AND PETITION FOR
WRIT OF MANDATE
(C.C.P. §§ 1060, 1085)**

1 Plaintiff and Petitioner Beach & Bluff Conservancy (Conservancy) brings this action for
2 declaratory relief and a petition for writ of mandate (hereinafter, Complaint), and alleges as
3 follows:

4 **THE PARTIES**

5 1. The Conservancy is a California mutual benefit corporation that represents the
6 interests of coastal property owners who are citizens and taxpayers of the City of Solana Beach,
7 California. Formed in 1998, its broad mission is to “restore, rebuild, maintain and preserve the
8 safety, beauty, joy and access of . . . beaches and bluffs for the benefit of everyone.” The
9 Conservancy challenges certain policies contained in City’s Land Use Plan (LUP), that will
10 adversely affect the property rights of the Conservancy’s Solana Beach members, some of whom
11 own bluff-top properties and private stairways that are the subject of said policies. The
12 Conservancy is authorized by its members to bring this litigation.

13 2. Defendant and Respondent City of Solana Beach is a general law city in the County
14 of San Diego, incorporated in 1986, and organized and existing under the laws and Constitution
15 of the State of California. The City is responsible for enforcing and defending its laws, including
16 the policies of the Land Use Plan challenged herein.

17 3. Defendant and Respondent City Council of the City of Solana Beach is the City’s
18 legislative body and is responsible for adopting resolutions, ordinances, and other laws, including
19 the policies described herein.

20 4. Defendant and Respondent California Coastal Commission (Commission) is a state
21 administrative body operating under the California Coastal Act (Act), Pub. Res. Code § 30000,
22 *et seq.* The Commission is responsible for enforcing and defending the policies of the LUP
23 challenged herein, when it asserts original or appellate jurisdiction over a Coastal Development
24 Permit application for development in the City. The Commission originally joined this case as a
25 Defendant-Intervener after stipulation by the parties. It filed a Complaint in Intervention March
26 17, 2014. The Conservancy filed an Answer, generally denying all of the allegations in the
27 Complaint on April 17, 2014.

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1 5. Defendants and Respondents Mike Nichols, Thomas M. Campbell, Lesa Heebner,
2 David A. Zito, and Peter Zahn are members of the City Council and were sued in their official
3 capacities in the original complaint, but subsequently dismissed with prejudice on July 18, 2013.

4 6. Defendant and Respondent David Ott is the City Manager, charged with enforcing
5 all applicable Federal, State, and City laws. He was sued in his official capacity in the original
6 complaint, but subsequently dismissed with prejudice on July 18, 2013.

7 7. The true names and capacities of Defendants and Respondents identified as Does 1
8 through 50, inclusive, are unknown to the Conservancy. The Conservancy is informed and
9 believes, and thereon alleges, that Does 1 through 50, inclusive, are individuals, public entities, or
10 both, with jurisdictional authority over the subject matter of this action and have authority to carry
11 out the judicial relief requested in this action. The Conservancy shall seek leave to add the true
12 names and capacities of said Doe Defendants and Respondents if and when they become known
13 to it.

14 8. Defendants and Respondents (hereinafter, “Defendants”) have the duty to adopt and
15 enforce laws, including the City’s Land Use Plan and the policies contained therein, consistently
16 with Federal and State statutory and constitutional requirements.

17 **JURISDICTION AND VENUE**

18 9. Jurisdiction and venue lie in the Superior Court for the County of San Diego
19 pursuant to Code of Civil Procedure sections 393 through 395, in that City is located, and
20 Defendants’ enforcement of the challenged LUP will occur, in the County of San Diego.

21 **APPLICABLE LAW**

22 10. The Coastal Act requires local governments with jurisdiction over “coastal zone”
23 lands to adopt a Local Coastal Program (LCP) that has been certified by the California Coastal
24 Commission. Pub. Res. Code § 30500. An LCP has two parts: a Land Use Plan (LUP) and a
25 Local Implementation Plan (LIP). The LUP is a general policy document that sets forth policies
26 for coastal development and has the force of law. The LIP is the collection of implementing
27 ordinances that carry out LUP policies. Both the LUP and LIP—together, the Local Coastal
28

1 Program—must be consistent with the Coastal Act, and with the California and United States
2 Constitutions.

3 11. The Act provides that each local government shall prepare and determine the
4 “precise content” of its own LUP. Pub. Res. Code § 30500(a), (c). By contrast, the Commission’s
5 review of a local government’s proposed LUP is strictly limited to its determination that the plan
6 does, or does not, conform with the requirements of Chapter 3 of the Coastal Act. *Id.* § 30512.
7 Once the Commission certifies an LUP, the local government has the power formally to adopt it.
8 The Commission’s Executive Director then makes a final determination that the local government’s
9 adoption of the LUP satisfies the Coastal Act. Cal. Code Regs. Tit. 14, § 13537(d).

10 12. LUP policies must be consistent with the Coastal Act’s unqualified mandate that
11 “[r]evetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such
12 construction that alters natural shoreline processes shall be permitted when required . . . to protect
13 existing structures . . . in danger from erosion.” Pub. Res. Code § 30235 (emphasis added).
14 (Hereinafter, revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and
15 other such construction for the protection of property against erosion shall be referred to as “Bluff
16 Retention Devices.”)

17 13. LUP policies must be consistent with the Coastal Act’s mandate that “no coastal
18 development permit shall be required” for “[i]mprovements to any structure,” for “[r]epair or
19 maintenance activities that do not result in an addition to, or enlargement or expansion of, the
20 object of those repair or maintenance activities,” or for “[t]he replacement of any structure . . .
21 destroyed by a disaster.” Pub. Res. Code § 30610.

22 14. The LUP must respect the constitutional right of property owners to “protect
23 property.” Cal. Const. art. I, § 1.

24 15. LUP policies must satisfy the constitutional requirement that the permitting
25 authority make an individualized determination that permit conditions bear an “essential nexus”
26 and “rough proportionality” to the alleged impacts of the specific project before it. U.S. Const.
27 amend. V (Takings Clause); *id.* amend. XIV (incorporating Takings Clause as against state and
28 local governments); *see also Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 837 (1987) (applying

1 the unconstitutional conditions in the context of the Takings Clause of the Fifth Amendment to the
2 U.S. Constitution to require an “essential nexus”); *Dolan v. City of Tigard*, 512 U.S. 374, 391
3 (1994) (requiring “rough proportionality” between permit conditions and a project’s alleged
4 impacts, and establishing the procedural rule that the burden is on the permitting authority to make
5 the individualized determination that a nexus and rough proportionality exist).

6 **FACTUAL ALLEGATIONS**

7 *The City Submits, and the Commission Approves (With Modifications), a Land Use Plan.*

8 16. After years of negotiation with Commission staff, the City submitted its seventh
9 draft of the LUP for Commission certification in October 2011.

10 17. At its hearing on March 7, 2012, the Commission denied certification of the City’s
11 LUP and instead certified a different LUP that contained substantial modifications demanded by
12 Commission staff.

13 18. Despite having twice acknowledged that the Commission-modified LUP was
14 defective, at a public hearing on February 27, 2013, the City Council adopted the LUP pursuant to
15 Solana Beach City Council Resolution 2013-018.

16 19. On May 22, 2013, the City Council adopted amendments to the LUP.

17 20. On January 9, 2014, the Commission approved those adopted amendments with
18 proposed modifications.

19 21. On June 11, 2014, the City Council accepted the Commission’s proposed
20 modifications pursuant to Resolution 2014-060.

21 22. On August 13, 2014, the Commission’s Executive Director reported the City
22 Council’s approval of the modifications to the Commission, in accordance with the Commission’s
23 regulations. Cal. Code Regs. Tit. 14, § 13537(d). Those amendments were incorporated into the
24 City’s prior-approved LUP, the relevant portions of which are attached as Exhibit 1.

25 *The LUP Policies Challenged by the Conservancy*

26 23. The LUP contains Policy 4.22, which provides that “[n]o bluff retention device shall
27 be allowed for the sole purpose of protecting an accessory structure.”

1 24. The LUP contains Policy 4.53, which imposes an expiration requirement on new
2 Coastal Development Permits (CDPs), approved for Bluff Retention Devices: “All permits for
3 bluff retention devices shall expire when the currently existing blufftop structure requiring
4 protection is redeveloped (per definition of Bluff Top Redevelopment in the LUP), is no longer
5 present, or no longer requires a protective device, whichever occurs first, and a new CDP must be
6 obtained.” Further, the policy states that “expansion and/or alteration of a legally permitted bluff
7 retention device shall require a new CDP.” In addition, the policy requires that the CDP
8 application “shall include an evaluation of changed geologic site conditions relative to sea level
9 rise, . . . the age, condition, and economic life of the existing principal structure.” The policy
10 mandates that “[n]o permit shall be issued for retention of a bluff retention device unless the City
11 finds that the bluff retention device is still required to protect an existing principal structure in
12 danger from erosion, that it will minimize further alteration of the natural land form of the bluff,
13 and that adequate mitigation for coastal resource impacts, including but not limited to impacts to
14 the public beach, has been provided.”

15 25. The LUP contains Policy 4.39, which requires an owner to pay fees as “mitigation
16 for the impacts of all bluff retention devices which consists of the payment of Sand Mitigation Fees
17 and Public Recreation Fees to the City or other assessing agency.” LUP Policy 4.50 incorporates
18 the mandate that Sand Mitigation and Public Recreation Fees required by Policy 4.39 be collected
19 for Bluff Retention Devices.

20 26. The LUP contains Policy 4.19, which provides, in relevant part:

21 A condition of the permit for all new development and blufftop redevelopment on
22 bluff property shall require the property owner record a deed restriction against the
23 property that expressly waives any future right that may exist pursuant to
Section 30235 of the Coastal Act to new or additional bluff retention devices.

24 27. The LUP contains Policy 2.60, which provides, in relevant part:

25 No new private beach stairways shall be constructed, and private beach stairways
26 shall be phased out at the end of the economic life of the stairways. Existing
27 permitted or private beach stairways constructed prior to the Coastal Act may be
28 maintained in good condition with a [Coastal Development Permit] where required,
but shall not be expanded in size or function. Routine repair and maintenance shall
not include the replacement of the stairway or any significant portion of greater than
50% of the stairway cumulatively over time from the date of LUP certification.

1 28. The LUP contains Policy 2.60.5, which provides: “Upon application for a coastal
2 development permit for the replacement of a private beach stairway or replacement of greater than
3 50% thereof, private beach access ways shall be converted to public access ways where feasible
4 and where public access can reasonably be provided.” It also provides that “[t]he condition to
5 convert the private stairway to a public stairway shall only be applied where all or a portion of the
6 stairway utilizes public land, private land subject to a public access deed restriction or private land
7 subject to a public access easement.”

8 29. On behalf of itself and its members, many of whom are directly affected by the
9 aforementioned policies, the Conservancy objected to the LUP prior to and/or at City and
10 Commission hearings held to consider the plan. There are no further administrative remedies
11 available to the Conservancy.

12 **FIRST CAUSE OF ACTION FOR**
13 **VIOLATION OF PUBLIC RESOURCES CODE § 30235**
14 **(POLICY 4.22)**

14 30. The Conservancy incorporates by reference and realleges each and every allegation
15 in this Complaint as if fully set forth herein.

16 31. Policy 4.22 provides that “[n]o bluff retention device shall be allowed for the sole
17 purpose of protecting an accessory structure.” However, Section 30235 unqualifiedly mandates
18 that a permit for a Bluff Retention Device “shall be permitted when required to . . . protect existing
19 structures . . . from erosion” (emphasis added). Policy 4.22 violates Section 30235, which
20 countenances no distinctions among the kinds of structures that may be protected from erosion.

21 32. In adopting Policy 4.22, Defendants took legislative action in violation of the law
22 and/or in excess of their authority.

23 33. An actual and justiciable controversy exists between the parties concerning the
24 legality of Policy 4.22. The Conservancy contends that the policy violates the law, as specified
25 above. The Conservancy is informed and believes, and on that basis alleges, that Defendants
26 dispute the Conservancy’s contention. A judicial determination of rights and responsibilities
27 arising from this actual controversy is necessary and appropriate at this time.

1 34. The Conservancy has no plain, speedy, or adequate remedy at law. Pecuniary
2 compensation to the Conservancy or its members would not afford adequate relief.

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5 **SECOND CAUSE OF ACTION FOR**
6 **VIOLATION OF PUBLIC RESOURCES CODE § 30235**
7 **(POLICY 4.53)**

8 35. The Conservancy incorporates by reference and realleges each and every allegation
9 in this Complaint as if fully set forth herein.

10 36. Policy 4.53 violates Section 30235 of the Coastal Act, because it imposes
11 unauthorized limitations and burdens on the right of bluff-top property owners to protect their
12 structures with Bluff Retention Devices.

13 37. Policy 4.53 imposes an expiration requirement on permits issued for new Bluff
14 Retention Devices, contrary to the Section 30235 unqualified mandate that such devices be
15 permitted to protect existing structures in danger from erosion. Section 30235 neither requires nor
16 authorizes the imposition of an expiration requirement on permits for Bluff Retention Devices
17 deemed necessary to protect structures against the threat of erosion.

18 38. Policy 4.53 also creates additional, unlawful burdens on bluff-top property owners
19 with permitted Bluff Retention Devices. For example, a new CDP permit application for an
20 existing Bluff Retention Device (either whose permit has expired or whose permit has not expired,
21 but whose permit was issued prior to the adoption of the LUP) may be denied if arbitrary factors
22 weigh against approval (*i.e.*, “changed geologic site conditions relative to sea level rise [and] [t]he
23 age, condition, and economic life of the existing principal structure.” Moreover, no permit will
24 issue allowing a property owner to keep an existing Bluff Retention Device unless the device “is
25 still required to protect an existing principal structure in danger from erosion,” “will minimize
26 further alteration of the natural landform of the bluff” and “adequate mitigation for coastal resource
27 impacts, including . . . to impacts to the public beach, has been provided.” The policy also requires
28 owners who seek to expand or alter previously permitted Bluff Retention Devices to obtain a new

1 CDP, incorporating the LUP’s unlawful conditions. These burdens violate Section 30235 as
2 follows:

3 a. Section 30235 mandates the issuance of Bluff Retention Device permits for
4 all structures in danger from erosion—not just “principal” structures. To the extent Policy 4.53
5 incorporates Policy 4.22’s prohibition against Bluff Retention Device permits for *nonprincipal*
6 structures, Policy 4.53 violates Section 30235.

7 b. Section 30235 mandates the issuance of Bluff Retention Device permits for
8 existing structures regardless of whether it “minimize[s] further alteration of the natural landform
9 of the bluff,” and regardless of “changed geologic site conditions . . . relative to sea level rise [and]
10 [t]he age, condition, and economic life of the existing principal structure.” Policy 4.53 requires the
11 consideration of factors not identified in Section 30235 and, if implemented, would violate the
12 statute’s mandate that a Bluff Retention Device permit shall issue to protect existing structures
13 against the threat of erosion.

14 39. In adopting Policy 4.53, Defendants took legislative action in violation of the law
15 and/or in excess of their authority.

16 40. An actual and justiciable controversy exists between the parties concerning the
17 legality of Policy 4.53. The Conservancy contends that the policy violates the law, as specified
18 above. The Conservancy is informed and believes, and on that basis alleges, that Defendants
19 dispute the Conservancy’s contention. A judicial determination of rights and responsibilities
20 arising from this actual controversy is necessary and appropriate at this time.

21 41. The Conservancy has no plain, speedy, or adequate remedy at law. Pecuniary
22 compensation to the Conservancy or its members would not afford adequate relief, or it would be
23 extremely difficult to ascertain the amount of compensation that would afford adequate relief.

24 **THIRD CAUSE OF ACTION FOR**
25 **VIOLATION OF PUBLIC RESOURCES CODE § 30235**
26 **(POLICIES 4.39 & 4.50)**

27 42. The Conservancy incorporates by reference and realleges each and every allegation
28 in this Complaint as if fully set forth herein.

1 43. LUP Policies 4.39 and 4.50 impose Sand Mitigation and Public Recreation Fees as
2 a condition of a permit to construct a Bluff Retention Device.

3 44. These policies violate Section 30235 of the Coastal Act, which unqualifiedly
4 mandates a Bluff Retention Device permit to protect existing structures in danger from erosion.
5 No Coastal Act provision authorizes fees as a condition of obtaining a Bluff Retention Device
6 permit.

7 45. In adopting LUP Policies 4.39 and 4.50, Defendants took legislative action in
8 violation of the law and/or in excess of their authority.

9 46. An actual and justiciable controversy exists between the parties concerning the
10 legality of Policies 4.39 and 4.50. The Conservancy contends that the policies violate the law, as
11 specified above. The Conservancy is informed and believes, and on that basis alleges, that
12 Defendants dispute the Conservancy's contention. A judicial determination of rights and
13 responsibilities arising from this actual controversy is necessary and appropriate at this time.

14 47. The Conservancy has no plain, speedy, or adequate remedy at law. Pecuniary
15 compensation to the Conservancy or its members would not afford adequate relief, or it would be
16 extremely difficult to ascertain the amount of compensation that would afford adequate relief.

17 **FOURTH CAUSE OF ACTION FOR VIOLATION OF**
18 **THE UNCONSTITUTIONAL CONDITIONS DOCTRINE AS**
19 **APPLIED TO THE U.S. CONSTITUTION, AMENDS. V & XIV**
20 **(POLICY 4.19)**

21 48. The Conservancy incorporates by reference and realleges each and every allegation
22 in this Complaint as if fully set forth herein.

23 49. Policy 4.19 forces bluff-top owners applying for a permit for new development or
24 for additions to existing development to forever waive their constitutional right to protect their
25 property in the future, should the property become endangered by erosion. Cal. Const. art. I, § 1.

26 50. This policy violates the unconstitutional conditions doctrine under *Nollan* and
27 *Dolan* for at least two reasons:
28

1 a. The policy categorically dispenses with the constitutional requirement, under
2 *Dolan*, that the permitting authority make an individualized determination of nexus and rough
3 proportionality between permit conditions and the impact of the proposed project.

4 b. The policy imposes a condition—*i.e.*, waiver of the right to protect property
5 (Section 30235, Cal. Const. art. I, § 1)—that bears no essential nexus or proportionality to the
6 present impact of permissible development. An otherwise permissible development generates no
7 public harms that possibly could be mitigated by the owner’s agreement not to construct a Bluff
8 Retention Device in the future.

9 51. In adopting this policy, Defendants took legislative action in violation of the law
10 and/or in excess of their authority.

11 52. An actual and justiciable controversy exists between the parties concerning the
12 legality of the policies. The Conservancy contends that the policy violate the law, as specified
13 above. The Conservancy is informed and believes, and on that basis alleges, that Defendants
14 dispute the Conservancy’s contention. A judicial determination of rights and responsibilities
15 arising from this actual controversy is necessary and appropriate at this time.

16 53. The Conservancy has no plain, speedy, or adequate remedy at law. Pecuniary
17 compensation to the Conservancy or its members would not afford adequate relief, or it would be
18 extremely difficult to ascertain the amount of compensation that would afford adequate relief.

19 **FIFTH CAUSE OF ACTION FOR**
20 **VIOLATION OF PUBLIC RESOURCES CODE § 30610**
21 **(POLICY 2.60)**

22 54. The Conservancy incorporates by reference and realleges each and every allegation
23 in this Complaint as if fully set forth herein.

24 55. Policy 2.60 provides that “[e]xisting permitted or private beach stairways
25 constructed prior to the Coastal Act may be maintained in good condition, with a CDP where
26 required, but shall not be expanded in size or function” (emphasis added). The policy mandates
27 that “[r]outine repair and maintenance shall not include the replacement of the stairway or any
28 significant portion of greater than 50% of the stairway cumulatively over time from the date of LUP

1 certification.” The policy also provides that “private beach stairways shall be phased out at the end
2 of the economic life of the stairways.”

3 56. Policy 2.60 violates Section 30610, which mandates that “no coastal development
4 permit shall be required”—let alone denied—for “[i]mprovements to any structure,” for “[r]epair
5 or maintenance activities that do not result in an addition to, or enlargement or expansion of, the
6 object of those repair or maintenance activities,” and for “[t]he replacement of any structure . . .
7 destroyed by a disaster.”

8 57. In adopting Policy 2.60, Defendants took legislative action in violation of the law
9 and/or in excess of their authority.

10 58. An actual and justiciable controversy exists between the parties concerning the
11 legality of Policy 2.60. The Conservancy contends that the policy violates the law, as specified
12 above. The Conservancy is informed and believes, and on that basis alleges, that Defendants
13 dispute the Conservancy’s contention. A judicial determination of rights and responsibilities
14 arising from this actual controversy is necessary and appropriate at this time.

15 59. The Conservancy has no plain, speedy, or adequate remedy at law. Pecuniary
16 compensation to the Conservancy or its members would not afford adequate relief, or it would be
17 extremely difficult to ascertain the amount of compensation that would afford adequate relief.

18 **SIXTH CAUSE OF ACTION FOR VIOLATION OF PUBLIC**
19 **RESOURCES CODE § 30610**
20 **(POLICY 2.60.5)**

21 60. The Conservancy incorporates by reference and realleges each and every allegation
22 in this Complaint as if fully set forth herein.

23 61. Policy 2.60.5 provides that “[u]pon application for a coastal development permit
24 for the replacement of a private beach stairway or replacement of greater than 50% thereof, private
25 beach access ways shall be converted to public access ways where feasible and where public access
26 can be reasonably provided,” where “all or a portion of the stairway utilizes public land, private
27 land subject to a public access deed restriction or private land subject to a public access easement.”

28 62. Policy 2.60.5 violates Section 30610, which mandates that “no coastal development
permit shall be required” for “[i]mprovements to any structure,” for “[r]epair or maintenance

1 activities that do not result in an addition to, or enlargement or expansion of, the object of those
2 repair or maintenance activities,” and for “[t]he replacement of any structure . . . destroyed by a
3 disaster.”

4 63. In adopting Policy 2.60.5, Defendants took legislative action in violation of the law
5 and/or in excess of their authority.

6 64. An actual and justiciable controversy exists between the parties concerning the
7 legality of Policy 2.60.5. The Conservancy contends that the policy violates the law, as specified
8 above. The Conservancy is informed and believes, and on that basis alleges, that Defendants
9 dispute the Conservancy’s contention. A judicial determination of rights and responsibilities
10 arising from this actual controversy is necessary and appropriate at this time.

11 65. The Conservancy has no plain, speedy, or adequate remedy at law. Pecuniary
12 compensation to the Conservancy or its members would not afford adequate relief, or it would be
13 extremely difficult to ascertain the amount of compensation that would afford adequate relief.

14 **SEVENTH CAUSE OF ACTION FOR VIOLATION OF THE**
15 **UNCONSTITUTIONAL CONDITIONS DOCTRINE AS**
16 **APPLIED TO THE U.S. CONSTITUTION, AMENDS. V & XIV**
17 **(POLICY 2.60.5)**

18 66. The Conservancy incorporates by reference and realleges each and every allegation
19 in this Complaint as if fully set forth herein.

20 67. Policy 2.60.5 provides that “[u]pon application for a coastal development permit
21 for the replacement of a private beach stairway or replacement of greater than 50% thereof, private
22 beach access ways shall be converted to public access ways where feasible and where public access
23 can be reasonably provided,” where “all or portion of the stairway utilizes public land, private land
24 subject to a public access deed restriction or private land subject to a public access easement.”

25 68. Policy 2.60.5 violates the unconstitutional conditions doctrine under *Nollan* and
26 *Dolan* for at least two reasons:

27 a. The policy categorically dispenses with the constitutional requirement, under
28 *Dolan*, that the permitting authority make an individualized determination of nexus and rough
proportionality between permit conditions and the impact of the proposed project.

1 b. The policy imposes a condition—*i.e.*, the conversion of private property to
2 public use without just compensation—that bears no essential nexus or proportionality to the
3 impact of permissible development—*i.e.*, repair/replacement of an existing private beach access
4 way.

5 69. In adopting Policy 2.60.5, Defendants took legislative action in violation of the law
6 and/or in excess of their authority.

7 70. An actual and justiciable controversy exists between the parties concerning the
8 legality of Policy 2.60.5. The Conservancy contends that the policy violates the law, as specified
9 above. The Conservancy is informed and believes, and on that basis alleges, that Defendants
10 dispute the Conservancy's contention. A judicial determination of rights and responsibilities
11 arising from this actual controversy is necessary and appropriate at this time.

12 71. The Conservancy has no plain, speedy, or adequate remedy at law. Pecuniary
13 compensation to the Conservancy or its members would not afford adequate relief, or it would be
14 extremely difficult to ascertain the amount of compensation that would afford adequate relief.

PRAYER FOR RELIEF

15 WHEREFORE, the Conservancy requests relief as follows:

- 16 1. A declaration pursuant to Code of Civil Procedure section 1060 that:
- 17 a. Policy 4.22 violates Public Resources Code section 30235;
 - 18 b. Policy 4.53 violates Public Resources Code section 30235;
 - 19 c. Policy 4.39 and 4.50 violate Public Resources Code section 30235;
 - 20 d. Policy 4.19 violates the Unconstitutional Conditions Doctrine;
 - 21 e. Policy 2.60 violates Public Resources Code section 30610; and
 - 22 f. Policy 2.60.5 violates Public Resources Codes section 30610 and the
 - 23 Unconstitutional Conditions Doctrine;
 - 24
- 25 2. A preemptory writ of mandate commanding Defendants to invalidate, set aside, and
- 26 not enforce the above-listed Policies, in whole or in part, as described above;
- 27 3. For costs of suit, including reasonable attorneys' fees; and
- 28 4. For such other and further relief as the Court may deem proper.

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DATED: September __, 2014.

Respectfully submitted,

PAUL J. BEARD II
JENNIFER F. THOMPSON
Pacific Legal Foundation

JONATHAN C. CORN
VINCENT J. AXELSON
Axelson & Corn, P.C.

By _____
PAUL J. BEARD II

Attorneys for Plaintiff and Petitioner

1 **VERIFICATION**

2 I, Chris Hamilton, declare as follows:

3 I am an authorized representative of Plaintiff and Petitioner Beach & Bluff Conservancy.
4 I have the authority to act on the Conservancy’s behalf to make this verification for, and on behalf
5 of, the Conservancy. I have read the foregoing VERIFIED SECOND AMENDED COMPLAINT
6 FOR DECLARATORY RELIEF AND PETITION FOR WRIT OF MANDATE and know the
7 contents thereof; that the same is true to my knowledge, except as to matters which are therein
8 stated on information or belief, and as to those matter I believe them to be true.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing
10 is true and correct and that this verification was executed this ____ day of September, 2014, at
11 Solana Beach, California.

12
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14 _____
15 CHRIS HAMILTON
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PACIFIC LEGAL FOUNDATION
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