

**SUPERIOR COURT OF CALIFORNIA,**

COUNTY OF SAN DIEGO

SOUTH BUILDING

TENTATIVE RULINGS - February 26, 2015

EVENT DATE: 02/27/2015

EVENT TIME: 01:30:00 PM

DEPT.: N-31

JUDICIAL OFFICER: Timothy M. Casserly

CASE NO.: 37-2013-00046561-CU-WM-NC

CASE TITLE: BEACH & BLUFF CONSERVANCY VS. CITY OF SOLANA BEACH [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Writ of Mandate

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED:

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**The Court issues the following ruling on the City of Solana Beach ("City") demurrers to the Second Amended Complaint for Declaratory Relief and Petition for Writ of Mandate ("SAC") filed by Plaintiff and Petitioner Beach and Bluff Conservancy ("B&BC"):**

Preliminary Matters / Judicial Notice

Plaintiff /Petitioner Beach and Bluff Conservancy's ("B&BC") request for judicial notice is granted.

Respondent / Defendant City's request for judicial notice is granted.

Substantive Ruling

City of Solana Beach's ("City") demurrers to the second amended complaint / petition ("SAC") in its entirety and demurrers to the first, third, fourth, fifth, and seventh causes of action are overruled.

City is ordered to answer the Second Amended Petition and Complaint ("SAC") filed by Plaintiff / Petitioner Beach and Bluff Conservancy within 15 days of the date of this Ruling.

1. City's demurrer to the SAC, in its entirety, on the ground it fails to state facts sufficient to constitute a cause of action because declaratory relief and traditional mandate (Code Civ. Proc., § 1085) are unavailable to challenge a quasi-judicial decision of the Coastal Commission, including the Commission's decision to certify the Solana Beach Land Use Plan ("LUP") and amendments thereto is overruled. The allegations on the face of the SAC, show that the alleged actions of the City and the Commission may be challenged by traditional mandate and a request for declaratory relief.

2. City's demurrer to the fourth and seventh causes of action of the SAC on the ground the fourth and seventh causes of action fail to state facts sufficient to constitute a cause of action are overruled. As alleged, the SAC does not challenge any particular administrative action taken by the City or the Commission at the permit stage and the HOA is not seeking compensation or other redress based on the application of the LUP policies to any permit determination. The SAC challenges the legislative action in adopting the alleged LUP policies themselves, which are allegedly in violation of the Coastal Act and the federal and state Constitutions. The B&BC's request for a declaration from the Court that these policies are facially unlawful and unconstitutional will be addressed on the merits.

3. City's demurrer to the first, third, fourth and fifth causes of action of the SAC on the ground the first, third, fourth and fifth causes of action fail to state facts sufficient to constitute a cause of action because these causes of action attempt to again challenge the original policies of the certified LUP, and therefore are barred by res judicata is overruled. "Res judicata" involves the preclusive effect of a final judgment on the merits. "Res judicata" describes the preclusive effect of a final judgment on the merits." *Mycogen Corp. v. Monsanto Co.* (2002) 28 Ca1.46 888. A party alleging it as a defense must show: (1) "the issue decided in the prior adjudication is identical to the issue in the present action"; (2) "there was a final judgment on the merit of that issue"; and (3) "the party against whom the doctrine is asserted was a party to or in privity with a party to the prior adjudication." *Miller v. Campbell* (2008) 162 Cal.App.4th 1311. In this case, the BB&C has not obtained a final judgment on the merits of its causes of action and its first, third, fourth, fifth, and eighth causes of action are not barred by res judicata. City's demurrer based on res judicata is overruled.

4: City's demurrer to the SAC, in its entirety, on the ground it is uncertain because it conflates LUP policies which cannot now be challenged and thus are conclusively valid with subsequent amendments to the LUP the Coastal Commission recently certified is overruled. The Court concludes, based on the allegations on the face of the SAC, that the SAC is not uncertain with regard to the LUP policies challenged by HOA. Moreover, the SAC is sufficiently clear to apprise the Defendant / Respondents of the issues and nature of the claims alleged against them and to which they must respond. City's demurrer to the SAC, in its entirety, on the ground it is uncertain is overruled.

5. City's demurrer to the SAC on the ground there is a defect or misjoinder of parties and the SAC fails to state facts sufficient to constitute a cause of action because the SAC, names the Councilmembers and City Manager which were previously dismissed with prejudice is overruled. At paragraphs 5-6 of the SAC, BB&C alleges facts which show that certain members of the City Council and the City Manager were originally sued but subsequently dismissed with prejudice. SAC ¶¶ 5-6. City demurrer on the ground of defect or misjoinder of parties for including the names of previously dismissed defendants on the face of an amended complaint-where that complaint explicitly recognizes the dismissal of those parties-is not a valid ground for sustaining a demurrer.

**The Court issues the following ruling on the demurrers by the California Coastal Commission (Commission Defendant-Intervenor) to Second Amended Complaint for Declaratory Relief and Petition for Writ of Mandate (SAC) filed by Plaintiff and Petitioner Beach and Bluff Conservancy ("B&BC"):**

Preliminary Matters / Judicial Notice

Plaintiff /Petitioner Beach and Bluff Conservancy's ("B&BC") request for judicial notice is granted as to Exhibits 1, 2 and 4. BB&C's request for judicial notice of Exhibit 3 is denied.

Respondent / Defendant-Intervenor California Coastal Commission's ("Commission") request for judicial notice is granted. Commission's evidentiary objection to Petitioner BB&C's request for judicial notice of Exhibit 3 is sustained.

Substantive Ruling

The California Coastal Commission's ("Commission") demurrers to the SAC in its entirety and demurrers to the first, third, fourth, eighth and ninth causes of action of the SAC are overruled.

The Commission is ordered to answer the Second Amended Petition and Complaint ("SAC") filed by Plaintiff Petitioner Beach and Bluff Conservancy within 15 days of the date of this Ruling.

1. The Commission's demurrer to the SAC on the ground the SAC fails to state facts that constitute a cause of action in declaratory relief because declaratory relief is unavailable to challenge the

Commission's quasi-judicial administrative decision and is unavailable to challenge land use plan amendment policies as constituting unconstitutional conditions because such claims are not ripe and must wait Commission action on an application for a coastal development permit is overruled. As the SAC is alleged, declaratory relief is available to challenge the land use plan and land use plan amendment policies as constituting unconstitutional conditions.

2. The Commission's demurrer to the SAC on the ground the SAC fails to state facts that constitute a cause of action in traditional mandate is overruled. The allegations on the face of the SAC, show that the alleged actions of the City and the Commission may be challenged by traditional mandate.

3. The Commission's demurrer to the first, third and fourth causes of action of the SAC on the ground the first, third and fourth causes of action of the SAC fail to state facts that constitute a cause of action regarding the underlying land use plan policies is overruled. On the face of the SAC, there is no showing that HOA's challenge to the challenged policies is time-barred or barred by res judicata.

4. The Commission's demurrer to the SAC on the ground the SAC is uncertain and that to the extent the allegations conflate challenges to the unchanged land use plan policies and the land use plan amendment, the SAC is ambiguous is overruled. Based on the allegations on the face of the SAC, the SAC is not uncertain with regard to the LUP policies challenged by HOA. Moreover, the SAC is sufficiently clear to apprise all the Defendant / Respondents of the issues and nature of the claims alleged against them and to which they must respond. Commission's demurrer to the SAC, in its entirety, on the ground it is uncertain and/or ambiguous is overruled.

This is the tentative ruling for an appearance hearing at 1:30 p.m. on February 27, 2015. If no party appears at the hearing, this tentative ruling will become the order of the court as of February 27, 2015. If the parties are satisfied with the court's tentative ruling or do not otherwise wish to argue the motion, they are encouraged to give notice to the court and each other of their intention not to appear, though this notice is not required.