1 2 3 4 5 6 7 8 9	JAMES S. BURLING, No. 113013 E-mail: jsb@pacificlegal.org CHRISTOPHER M. KIESER, No. 298486 E-mail: jft@pacificlegal.org Pacific Legal Foundation 930 G Street Sacramento, California 95814 Telephone: (916) 419-7111 Facsimile: (916) 419-7747  JONATHAN C. CORN, No. 156983 E-mail: joncorn@axelsoncorn.com VINCENT J. AXELSON, No. 159549 E-mail: vaxelson@axelsoncorn.com Axelson & Corn, P.C. 160 Chesterfield Drive, Suite 201 Cardiff by the Sea, California 92007 Telephone: (760) 944-9006	
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12	Attorneys for Plaintiff and Petitioner	
13		
14	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
15	COUNTY OF SAN DIEG	O, NORTH COUNTY DIVISION
16	BEACH & BLUFF CONSERVANCY,	CASE NO. 37-2013-00046561-CU-WM-NC
17	Plaintiff and Petitioner,	NOTICE OF MOTION IN SUPPORT OF
18	v. ()	MOTION FOR JUDGMENT ON THE PLEADINGS/PETITION
19	CITY OF SOLANA BEACH, et al.	[IMAGED FILE]
20	Defendant and Respondent,	Date: March 25, 2016
21		Time: 1:30 p.m. Judge: Hon. Timothy M. Casserly
22	CALIFORNIA COASTAL COMMISSION, ) a state agency; SURFRIDER FOUNDATION, )	Dept.: N-31
23	a non-profit organization.	·
24	Defendants/Respondents-Intervenors.	) 
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#### TO ALL PARTES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on March 25, 2016, at 1:30 p.m., or as soon thereafter as this matter may be heard, in Department N-31 of this Court, Plaintiff/Petitioner Beach & Bluff Conservancy will move the Court for judgment on the pleadings in the above-captioned case.

Because this is a facial challenge to several provisions in the City of Solana Beach's Land Use Plan (LUP), the issues are purely legal in nature. The Court need only decide whether the seven (7) challenged provisions (Policies 4.19, 4.22, 4.53, 2.60, 2.60.5, 4.39, and 4.50) of the LUP are constitutional and in compliance with the California Coastal Act. Because the challenged provisions are facially invalid, the Conservancy is entitled to judgment on the pleadings.

First, for reasons more fully explained in the attached Memorandum, several of the provisions violate the unconstitutional conditions doctrine as explained by the Supreme Court of the United States in Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Dolan v. City of Tigard, 512 U.S. 374 (1994), and Koontz v. St. Johns River Water Management District, 133 S. Ct. 2586 (2013). The United States Constitution significantly restricts Solana Beach's power to abridge protected property rights in exchange for permits. The City may only require an exaction if it is sufficiently related to impacts created by the proposed development. It cannot, for example, require property owners to give up the right to build a seawall in return for any coastal development permit.

Second, many of the challenged provisions violate sections of the California Coastal Act. For example, Section 30235 guarantees coastal property owners the right to build a bluff retention device so long as it is required to protect an existing structure and designed to mitigate adverse impacts on sand supply, but the LUP limits this right to "principal" structures. And Section 30610 prevents the City from requiring a permit for construction of a private stairway that does not result in an expansion

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1	of an existing stairway. Like the constitutional claims, the Conservancy's Coastal Act claims are	
2	purely legal and only the text of the LUP is necessary to decide them.	
3	Dated: March 3, 2016	
4 5	JAMES S. BURLING CHRISTOPHER M. KIESER Pacific Legal Foundation	
6	JONATHAN C. CORN VINCENT J. AXELSON	
7	Axelson & Corn, P.C.	
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10	By: Jonathan C. Corn Attorney for Plaintiff and Petitioner	
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### **DECLARATION OF SERVICE**

I, Kristine Merel, declare as follows:

I am a resident of the State of California, residing or employed in Cardiff, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 160 Chesterfield Dr., Suite 201, Cardiff, California 92007.

On March 3, 2016, true copies of:

### NOTICE OF MOTION IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS/PETITION

were emailed and placed in envelopes addressed to:

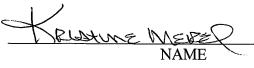
Kamala D. Harris
Attorney General of California
Jamee Jordan Patterson
Supervising Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101
Jamee.patterson@doj.ca.gov

Steven H. Kaufmann Richards, Watson & Gershon 355 South Grand Avenue, 40th Floor Los Angeles, CA 90071-3101 skaufmann@rwglaw.com

Angela T. Howe Surfrider Foundation P.O. Box 6010 San Clemente, CA 92674 ahowe@surfrider.org

which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Cardiff, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 3<sup>rd</sup> day of March, 2016, at Cardiff, California.



### **Kiren Mathews**

From: Jim Burling

**Sent:** Thursday, March 03, 2016 5:36 PM

To: EDM Files

**Cc:** Christopher M. Kieser

**Subject:** FW: eService Alert! Case No. 37-2013-00046561-CU-WM-NC. Notice of Motion for

Judgment on the Pleadings

Just in case you didn't receive this.

**From:** eservice@onelegal.com [mailto:eservice@onelegal.com]

**Sent:** Thursday, March 3, 2016 4:22 PM **To:** Jim Burling <jsb@pacificlegal.org>

Subject: eService Alert! Case No. 37-2013-00046561-CU-WM-NC. Notice of Motion for Judgment on the Pleadings

This is to inform you that you are being served electronically. To view the details of this service and view the eService documents, click on the link below or copy and paste the link into your browser.

#### eSERVICE SUMMARY

Submitted By: Corn, Jonathan Submitted On: Thu, Mar 3, 2016

eService Recipient: James S. Burling Email: jsb@pacificlegal.org

Court: Superior Court of California, San Diego County Case No.: 37-2013-00046561-CU-WM-NC Case Title: Beach & Bluff Conservancy vs. City of Solana Beach [IMAGED]

https://platform.onelegal.com/Eservice/Index/M2BgO5GwJE2lArqsCfVZmw

#### **DOCUMENTS SUMMARY**

Notice of Motion for Judgment on the Pleadings Notice of Motion for Judgment on the Pleadings

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Re: 20125140