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12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SAN DIEGO - NORTH COUNTY DIVISION

14 BEACH & BLUFF CONSERVANCY, )

15 Plaintiff and Petitioner, )

16 v. )

17 CITY OF SOLANA BEACH, et al. )

18 Defendant and Respondent, )

19 CALIFORNIA COASTAL COMMISSION, )  
a state agency, )

20 Defendant/Respondent-Intervenor. )

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JOSEPH S. STEINBERG, )

22 Petitioner, )

23 v. )

24 CITY OF SOLANA BEACH, et al. )

25 Respondent, )

26 CALIFORNIA COASTAL COMMISSION )  
a state agency, )

27 Respondent-Intervenor. )  
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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**09/19/2014** at 08:00:00 AM

Clerk of the Superior Court  
By Amy Wagoner, Deputy Clerk

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF THE  
JOINT MOTION FOR LEAVE TO  
FILE VERIFIED SECOND AMENDED  
PETITIONS/COMPLAINTS**

Date: Oct. 3, 2014

Time: 1:30 p.m.

Place: Department N-31

Judge: The Hon. Timothy M. Casserly

No. 37-2013-00044897-CU-WM-NC

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1 HOMEOWNER’S ASSOCIATION OF THE )  
2 SOLANA BEACH & TENNIS CLUB, et al. )  
3 )  
4 Petitioners and Plaintiffs, )  
5 )  
6 v. )  
7 CITY OF SOLANA BEACH, et al. )  
8 )  
9 Respondent and Defendant, )  
10 )  
11 CALIFORNIA COASTAL COMMISSION )  
12 a state agency, )  
13 )  
14 Respondent/Defendant-Intervenor. )  
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No. 37-2013-00046245-CU-WM-NC

1 **INTRODUCTION**

2 Petitioners/Plaintiffs (hereinafter, Petitioners) in the above-captioned actions seek leave to  
3 file verified second amended petitions/complaints (collectively, petitions) in their respective cases  
4 challenging certain policies in the Land Use Plan (LUP) of Respondent/Defendant City of Solana  
5 Beach, as recently certified by Intervenor California Coastal Commission. Leave to amend is  
6 liberally authorized under California law, and amendment of the pleadings is necessary and  
7 appropriate for several reasons.

8 First, the City has amended its LUP (which is now final) since Petitioners filed their first  
9 amended petitions. The numbering and language of some of the challenged policies in the  
10 amended LUP are now different from the prior version. And some of the policies that Petitioners  
11 originally challenged have been excised entirely. For the convenience of all the parties and the  
12 Court, Petitioners therefore wish to amend their petitions to conform them to the final LUP.

13 Second, Petitioners seek to name the California Coastal Commission (the Commission) as  
14 a Defendant/Respondent in their actions. Although the Commission has voluntarily intervened in  
15 these actions, it could still attempt to dismiss its complaint-in-intervention at some future time and  
16 abandon the litigation, and/or the City can continue to assert (on appeal, for example) that the  
17 Commission is a necessary and indispensable party.<sup>1</sup> To head off these potential arguments,  
18 Petitioners want to formally name the Commission as a party to these actions.

19 Finally, granting the Petitioners leave to amend their pleadings will cause no harm or  
20 prejudice to the City or the Commission. Any arguments they might want to make against  
21 amendment can be raised in demurrer to or motion for judgment on the second amended petitions,  
22 once they are filed.

23 Given the law’s liberal amendment policy, Petitioners’ relatively minor amendments, and  
24 the absence of any harm to the City or Commission from amendment of the pleadings, the Court  
25 should grant Petitioners’ motion and allow amendment of the petitions. Declaration of Jennifer F.  
26 Thompson (Thompson Decl.), Exhibits A-C (Petitioners’ Second Amended Petitions).

27 \_\_\_\_\_  
28 <sup>1</sup> Petitioners continue to maintain that the Commission is not an indispensable and necessary party  
to these actions against the City.

**FACTUAL BACKGROUND**

1  
2           Until this past August, the drafting of the City’s LUP has been in constant flux over the last  
3 several years, and the Solana Beach community—including Petitioners’s members—have strived  
4 to keep pace with the City’s and Commission’s actions and amendments.

5           Historically, the relevant starting point for these cases is February 27, 2013, when the City  
6 adopted the Commission’s modified and approved LUP.<sup>2</sup> That same day, the City Council also  
7 instructed City staff to begin preparing *amendments* to the LUP in order to modify some of the key  
8 provisions in the LUP relating to bluff-top development and shoreline protection—the very  
9 provisions that Petitioners are deeply concerned about. No one could know at the time which  
10 policies would ultimately be amended (or how), so to protect their rights, Petitioners sued the City  
11 in April 2013, challenging certain policies from the LUP approved on February 27. Thompson  
12 Decl. ¶4. The following month, on May 22, 2013, the City approved proposed amendments to the  
13 LUP for submission to the Commission for its consideration. Again, to keep pace with the ever-  
14 evolving LUP, Petitioners filed first amended petitions in August 2013 to conform their pleadings  
15 to the latest amendments. *Id.* ¶ 5.

16           The Commission approved the amended LUP, *but with modifications*, on January 9, 2014.  
17 On June 11, the City adopted the Commission-modified amendments to the LUP, and, on  
18 August 13, the Commission certified it. With the LUP process finally over, Petitioners sought to  
19 file second amended petitions to conform their pleadings to the final LUP, as amended and  
20 modified. *Id.* ¶ 6. Petitioners proposed to the City and Commission a stipulation permitting the  
21 filing of second amended petitions, while expressly preserving the parties’ right to raise any  
22 argument or defense related to the amendments. *See id.* ¶ 6 and Exhibit D (Proposed Stipulation,  
23 p. 2, ¶ 2). The Commission and City ultimately refused to stipulate, thereby forcing Petitioners to  
24 move the Court for leave to file. *Id.* ¶ 8.

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26 \_\_\_\_\_  
27 <sup>2</sup> The entire timeline of events surrounding the LUP approval process can be found at the City’s  
28 website *available at* [http://www.ci.solana-beach.ca.us/index.asp?SEC=0D05AB2F-1E66-4C37-8D2C-97E6489F0B7E&Type=B\\_BASIC](http://www.ci.solana-beach.ca.us/index.asp?SEC=0D05AB2F-1E66-4C37-8D2C-97E6489F0B7E&Type=B_BASIC) (last visited on Sept. 18, 2014).

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**ARGUMENT**

California law authorizes courts to allow parties to amend their pleadings. Cal. Code of Civ. Proc. § 473(a)(1). Judicial policy favors the liberal exercise of that discretion. *See, e.g., Fogel v. Farmers Group, Inc.*, 160 Cal. App.4th 1403, 1423 (2008) (“There is a policy of great liberality in permitting amendments to the pleadings at any stage of the proceeding.”); *Simons v. Kern County*, 234 Cal. App. 2d 362, 367 (1965) (“It is the general rule that amendments to pleadings should be liberally allowed.”). This liberal-amendment policy reflects a desire to preserve judicial resources by encouraging parties to resolve all disputes existing between them in the course of the same lawsuit. *See Weil & Brown, California Practice Guide: Civil Procedure Before Trial* (2014 ed.), § 6:638. The policy also “allow[s] resolution of actions on the merits in furtherance of substantial justice between the parties.” *Dieckmann v. Superior Court*, 175 Cal. App. 3d 345, 352 (1985). “The policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified.” *Howard v. County of San Diego*, 184 Cal. App. 4th 1422, 1428 (2010).

Moreover,

[i]f the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is *error* to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion.

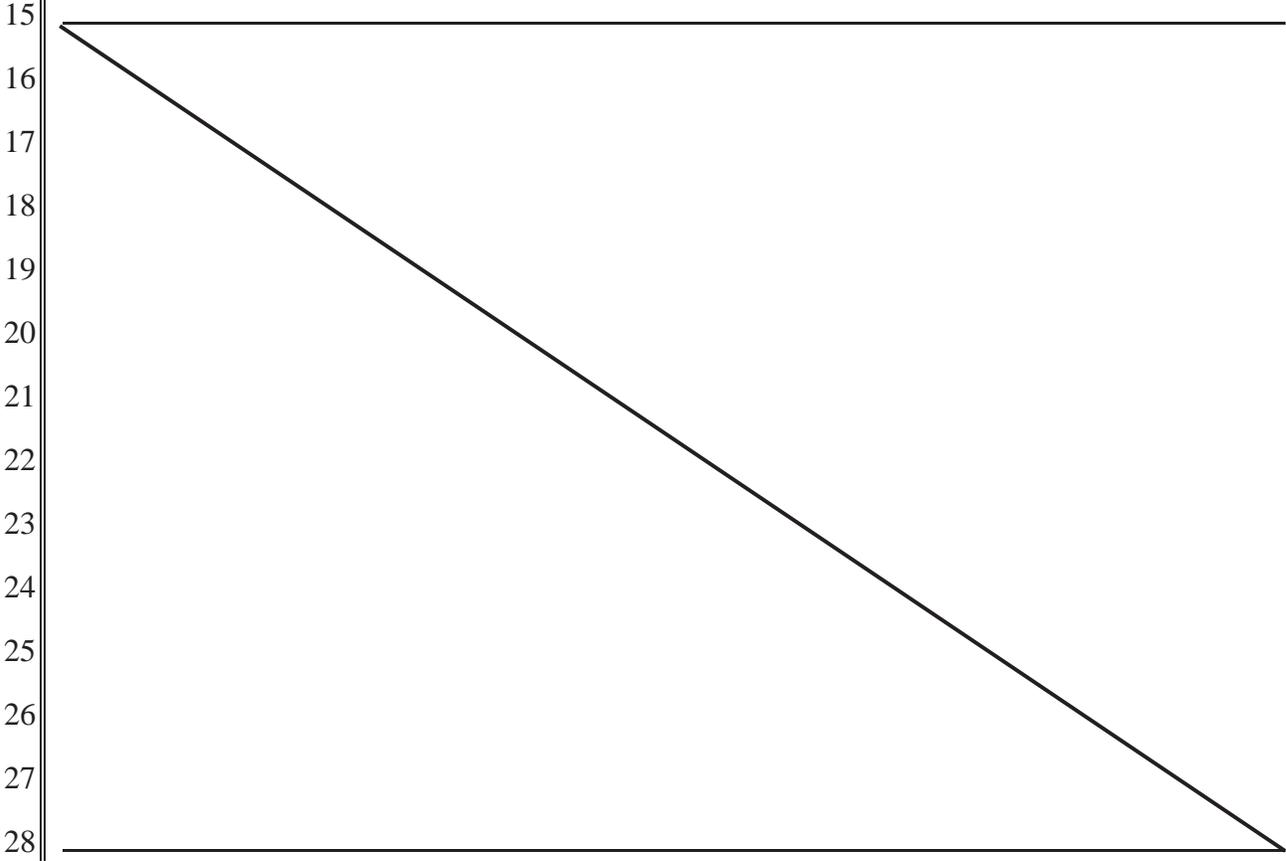
*Morgan v. Superior Court*, 172 Cal. App. 2d 527, 530 (1959) (emphasis added).

Here, the City and the Commission cannot overcome this strong judicial presumption in favor of allowing Petitioners to amend their petitions. First, Petitioners’ request for amendment is timely. The Commission certified the final LUP, with all of its amendments and modifications, just last month. Petitioners are therefore well within the statute of limitations for naming them in these suits and conforming the pleadings to reflect the final LUP. Nor does amendment threaten to delay the litigation of these actions. The administrative record (requested by Petitioners on July 8, 2014) has not been prepared, and no trial date has been set in these cases. Thompson Decl. ¶ 9.

Second, Petitioners’ amendments will not cause any prejudice to the Commission or the City. To the extent the City and Commission have arguments and defenses against any specific

1 amendment, the time for raising them is on demurrer to or motion for judgment on the pleadings.  
2 Consistent with a liberal-amendment policy, the law discourages the denial of leave to amend as  
3 a vehicle for judging the legal merits of proposed amended pleadings. *See Weil & Brown, supra*,  
4 § 6:644 (“Grounds for demurrer or motion to strike are premature. After leave to amend is granted,  
5 the opposing party will have the opportunity to attack the validity of the amended pleading.”). That  
6 is true “even if the proposed legal theory is a novel one.” *Kittredge Sports Co. v. Superior Court*,  
7 213 Cal. App. 3d 1045, 1048 (1989). In that case, courts should “permit the amendment and allow  
8 the parties to test its legal sufficiency by demurrer, motion for judgment on the pleadings or other  
9 appropriate proceedings.” *Id.* (quoting *Cal. Casualty Gen. Ins. Co. v. Superior Court*, 173 Cal.  
10 App. 3d 274, 281 (1985)).

11 If anything, amendment of the pleadings in these actions will only benefit, not harm, the  
12 parties. Amendment will only clarify Petitioners’ claims by conforming the language and  
13 numbering of the challenged policies to the final version of the LUP. And it will allow the parties  
14 to resolve all of the existing disputes between the parties on the merits of those claims.



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**CONCLUSION**

For all these reasons, the Court should grant Petitioners' motion for leave to file second amended petitions forthwith.

DATED: September 18, 2014.

Respectfully submitted,

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