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***NO FEE PURSUANT TO
GOVERNMENT CODE SECTION
6103***

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO
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13 **BEACH & BLUFF CONSERVANCY,**

14 Plaintiff and Petitioner,

15 v.

16 **CITY OF SOLANA BEACH; CITY
17 COUNCIL OF THE CITY OF SOLANA
18 BEACH, COUNCIL MEMBERS MIKE
19 NICHOLS, THOMAS M. CAMPBELL,
20 LESA HEEBNER, DAVID A. ZITO and
21 PETER ZAHN, in their official capacities;
CITY MANAGER DAVID OTT, in his
official capacity, and DOES 1 through 50,
inclusive and CALIFORNIA COASTAL
COMMISSION,**

22 Defendants and
23 Respondents,

24 **CALIFORNIA COASTAL COMMISSION,
a state agency,**

25 Defendant-Intervenor.
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Case No. 37-2013-00046561-CU-WM-NC

**MEMORANDUM IN SUPPORT OF
CALIFORNIA COASTAL
COMMISSION'S DEMURRER TO
SECOND AMENDED COMPLAINT AND
PETITION**

Date: February 27, 2015
Time: 1:30 p.m.
Dept: N-31
Judge: The Honorable Timothy M.
Casserly
Trial Date: not set
Action Filed: April 26, 2013

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THE COASTAL ACT FRAMEWORK

The California Coastal Act of 1976 (Pub. Resources Code, § 30000 et seq.) is the legislative continuation of the coastal protection afforded by Proposition 20, the 1972 Coastal Initiative which created the California Coastal Zone Conservation Commission. As our Supreme Court recently explained in *Pacific Palisades Bowl v. City of Los Angeles* (2012) 55 Cal.4th 783, 793-794:

The Coastal Act “was enacted by the Legislature as a comprehensive scheme to govern land use planning for the entire coastal zone of California. The Legislature found that ‘the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people’; that ‘the permanent protection of the state’s natural and scenic resources is a paramount concern’; that ‘it is necessary to protect the ecological balance of the coastal zone’ and that ‘existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state....’ ([Pub. Resources Code,] § 30001, subds. (a) and (d).)” (*Yost v. Thomas* (1984) 36 Cal.3d 561, 565, 205 Cal.Rptr. 801, 685 P.2d 1152.) The Coastal Act is to be “liberally construed to accomplish its purposes and objectives.” (Pub. Resources Code, § 30009.) Under it, with exceptions not applicable here, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit “in addition to obtaining any other permit required by law from any local government or from any state, regional or local agency. (*Id.*, § 30600, subd. (a).)

The Coastal Act . . . requires local governments to develop local coastal programs, comprised of a land use plan and a set of implementing ordinances designed to promote the act’s objectives of protecting the coastline and its resources and of maximizing public access. (*Id.*, §§ 30001.5, 30500 – 30526; *Landgate, Inc. v. California Coastal Com.* (1998) 17 Cal.4th 1006, 1011, 73 Cal.Rptr.2d 841, 953 P.2d 1188.) Once the California Coastal Commission certifies a local government’s program, and all implementing actions become effective, the commission delegates authority over coastal development permits to the local government. (Pub. Resources Code, §§ 30519, subd. (a), 30600.5, subds. (a), (b), (c).)

The Supreme Court further explained that a local coastal program and the development permits issued by local agencies pursuant to the Coastal Act are not solely a matter of local law, but embody state policy. (*Pacific Palisades Bowl v. City of Los Angeles, supra*, 55 Cal.4th at p. 794.) A fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government. (*Ibid.*) The courts have recognized that the Commission’s certification of a city’s LUP is a quasi-judicial action. (*San Mateo County Coastal Landowners’ Assn. v. County of San Mateo* (1995) 38 Cal.App.4th 523, 538; *City of Chula Vista v. Superior*

1 Court (1982) 133 Cal.App.3d 472, 488 [when the Commission reviews an LCP for conformity to
2 statewide standards it performs a predominantly judicial rather than legislative function].)

3 ARGUMENT

4 I. DECLARATORY RELIEF AND TRADITIONAL MANDATE ARE UNAVAILABLE IN A 5 CHALLENGE TO A COMMISSION DECISION, INCLUDING THE COMMISSION'S APPROVAL OF AN LUP OR LUP AMENDMENT.

6 A. Declaratory relief is inappropriate to review a Commission decision.

7 Petitioner seeks a declaration pursuant to Code of Civil Procedure section 1060 that various
8 LUP and LUP amendment policies violate Public Resources Code sections 30235 and 30610.
9 (SAC, p. 13.) However, declaratory relief cannot be used to attack an adjudicatory or "quasi-
10 judicial" agency decision. (*Tejon Real Estate, LLC v. City of Los Angeles* (2014) 223
11 Cal.App.4th 149, 155 [because complaint improperly sought declaratory relief to review an
12 administrative decision, demurrer was properly sustained on that ground alone].) It is long
13 settled that declaratory relief is unavailable in a challenge to a Commission administrative
14 decision. (*Walter H. Leimert Co. v. California Coastal Commission* (1983) 149 Cal.App.3d 222,
15 230-231.) A proceeding under Code of Civil Procedure section 1094.5 is the exclusive remedy
16 for judicial review of the Commission's quasi-adjudicatory administrative action. (Pub.
17 Resources Code, § 30801; *Rossco Holdings Inc. v. State of California* (1989) 212 Cal.App.3d
18 642, 654.) An action for declaratory relief is not appropriate to review an administrative decision.
19 (*State of California v. Superior Court (Veta)* (1974) 12 Cal.3d 237, 249.) Rather, administrative
20 mandamus is the sole means for challenging an administrative agency's quasi-judicial decision,
21 such as that at issue here, including where the petitioner contends the agency failed to comply
22 with the law. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 13-14.) This includes a
23 Commission decision to certify an LUP or an LUP amendment. (*San Mateo County Coastal*
24 *Landowners' Assn. v. County of San Mateo, supra*, 38 Cal.App.4th at p. 538; *City of Chula Vista*
25 *v. Superior Court, supra*, 133 Cal.App.3d at p. 488.) Petitioner is not entitled to a declaration
26 regarding whether the LUP or LUP amendment policies violate the Coastal Act or violate the
27 "Unconstitutional Conditions Doctrine."

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1 **B. The “unconstitutional conditions” arguments are not ripe.**

2 Petitioner cannot challenge the policies as violating the “Unconstitutional Conditions
3 Doctrine” for the additional reason that such challenges are not available at the LUP stage but
4 must await Commission action on a coastal development permit application. Section 30010 of
5 the Coastal Act specifically limits takings claims to permit decisions. (Pub. Resources Code §
6 30010.) That section provides that the Coastal Act “shall not be construed as authorizing the
7 commission” to exercise the “power to grant or deny a permit in a manner which will take or
8 damage private property for public use, without the payment of just compensation therefor.” A
9 takings claim or claim of unconstitutional conditions is not ripe at the LUP stage but must await
10 the permit stage. (*Sierra Club v. California Coastal Commission* (1993) 12 Cal.App.4th 602,
11 618.) For these reasons, the SAC fails to state a cause of action for declaratory relief that the
12 policies violate the “Unconstitutional Conditions Doctrine.” (SAC, p. 13, ¶ 1.)

13 **C. Declaratory relief is not available under the Coastal Act.**

14 The Commission anticipates that Petitioner will argue that it is entitled to declaratory
15 pursuant to Public Resources Code section 30803. Public Resources Code section 30803
16 provides in relevant part: “[a]ny person may maintain an action for declaratory and equitable
17 relief to restrain any violation of this division, of a cease and desist order issued pursuant to
18 Section 30809 or 30810, or of a restoration order issued pursuant to Section 30811.” (Pub.
19 Resources Code, § 30803(a).) Section 30803 embodies the equitable enforcement tool which the
20 Commission uses against landowners who fail to obtain a permit before developing within the
21 coastal zone or who obtain a permit but violate the permit’s conditions. (*See, California Coastal*
22 *Com. v. Tahmassebi* (1998) 69 Cal.App.4th 255, 259 [“Under [section 30803 of] the Public
23 Resources Code, the Commission may bring actions in the Superior Court for injunctive and
24 declaratory relief . . . for violations of the permit requirements of the Coastal Act.”]) However,
25 because a Commission action on an LUP or an LUP amendment is not a “violation” of the
26 Coastal Act, such action is not subject to declaratory relief pursuant to Public Resources Code
27 section 30803. In a challenge to a decision by the Commission’s predecessor under the earlier
28 version of the Coastal Act, the Court of Appeal described the distinction between an action to

1 restrain a threatened violation of the act and an action for judicial review of Commission
2 decisions, observing:

3 The purpose of the lawsuit was to review the administrative actions of both the
4 regional and state coastal commissions concerning the permits issued by the regional
5 commission to build 24 individual homes. This is not an action for declaratory or
6 equitable relief to restrain a violation of the Coastal Act under former section 27425
7 [now 30803]. It is not an action to compel the regional or state commission to
8 perform a specific act required by law. Petitioners are seeking to have the trial court
9 review administrative actions with respect to the commission's alleged abuse of
10 discretion.

11 (*Venice Canals Homeowners v. Superior Court* (1977) 72 Cal.App.3d 675, 681.)

12 **D. Traditional mandate is unavailable to review a Commission decision.**

13 A writ of traditional mandate is also not appropriate to review the Commission's decision.
14 Petitioner seeks a writ of traditional mandate pursuant to Code of Civil Procedure section 1085.
15 (SAC, cover page and p. 13.) Petitioner alleges that "Defendants took legislative action in
16 violation of the law and/or in excess of their authority." (SAC, p. 6 ¶ 32, p. 8 ¶ 39, p. 9 ¶ 45, p.
17 10 ¶ 51, p. 11 ¶ 57, p. 12 ¶ 63 and p. 13 ¶ 69.) However, Commission decisions on LUPs are
18 quasi-judicial, not legislative. (*San Mateo County Coastal Landowners' Assn. v. County of San*
19 *Mateo, supra*, 38 Cal.App.4th at p. 538; *City of Chula Vista v. Superior Court, supra*, 133
20 Cal.App.3d at p. 488.) Public Resources Code section 30801 provides that a Commission
21 decision can *only* be reviewed through a petition for writ of administrative mandate pursuant to
22 Code of Civil Procedure section 1094.5; a traditional writ of mandate is not available to review
23 the Commission's decision. (See, e.g., *DeCicco v. California Coastal Commission* (2011) 199
24 Cal.App.4th 947, 950 [in context of argument that Commission lacked jurisdiction, citing sections
25 30801 and 1094.5 to explain the procedure for challenge]; *Citizens for a Better Eureka v.*
26 *California Coastal Commission* (2011) 196 Cal.App.4th 1577 [challenge to Commission's
27 appellate jurisdiction brought under 1094.5]; *Hines v. California Coastal Commission* (2010) 186
28 Cal.App.4th 830 [trial court properly denied 1094.5 petition challenging Commission's refusal to
exercise jurisdiction]; *Mt. Holyoke Homes, LP v. California Coastal Commission* (2008) 167
Cal.App.4th 830 [trial court properly denied petition for writ of administrative mandamus
because petitioners were estopped from contesting Commission's jurisdiction].)

1 For all of these reasons, the SAC fails to state facts sufficient to constitute a cause of action
2 in either declaratory relief or traditional mandate.

3 **II. ANY FACIAL CHALLENGE TO THE LUP IS TIME-BARRED.**

4 Petitioner cannot now challenge the Commission's decision on the underlying LUP.
5 Petitioner previously challenged the Commission's decision but failed to timely name the City as
6 a real party in interest. This Court sustained the Commission's demurrer without leave to amend.
7 (City's RJN, Exh. 1.) Petitioner appealed, but then dismissed the appeal. (City's RJN, Exh. 2.)
8 The Commission's LUP decision is now final and cannot be collaterally attacked in a facial
9 challenge under any theory. (*Citizens for Responsible Development v. City of West Hollywood*
10 (1995) 39 Cal.App.4th 490, 505; *Patrick Media Group, Inc. v. California Coastal Commission*
11 (1992) 9 Cal.App.4th 592, 607-608.)

12 The Commission intervened in this case to protect the underlying LUP. (Commission's
13 Complaint in Intervention.) The Commission specifically alleged:

14 2. The Commission's review of local government plans is a quasi-judicial
15 action. Any person wishing to challenge the Commission's action on a local
16 government plan must file a petition for writ of administrative mandate within 60
17 days of the Commission's final decision. (Pub. Resources Code, § 30801.) Failure to
do so renders the Commission's decision free from collateral attack under any legal
theory.

18 3. On March 7, 2012 the Commission approved the City's plan with suggested
modifications.

19 4. On February 27, 2013, the City accepted the Commission's suggested
20 modifications.

21 5. On April 26, 2013, Petitioner sued the City of Solana Beach, challenging the
22 City's acceptance of the suggested modifications. Petitioner did not name the
Commission.

23 6. On June 12, 2013, the Commission's Executive Director reported the City's
24 acceptance to the Commission, the Commission concurred in the City's acceptance
and the Commission's decision to certify the City's plan with suggested
modifications became final.

25 7. The sixty days in which to challenge the Commission's final decision on the
26 City's plan expired on August 12, 2013. (Pub. Resources Code, § 30801; Cal. Code
Regs., tit. 14, § 13537.)

27 8. Petitioner filed a First Amended Petition on August 20, 2013. Petitioner did
28 not name the Commission and did not timely challenge the Commission's decision to
certify the City's plan with suggested modifications.

1 (Complaint in Intervention, filed Mar. 17, 2014, p. 2.)

2 Thus, Petitioner cannot now collaterally attack the facial validity of the LUP.

3 **III. THE COMPLAINT/PETITION IS UNCERTAIN.**

4 Petitioner conflates challenges to the underlying LUP policies with challenges to the LUP
5 amendment that changed some, but not all, LUP policies. This renders the complaint/petition
6 uncertain and warrants the sustaining of the Commission's demurrer. Petitioner seeks relief
7 regarding policies that were approved as part of the Commission's original, now final and
8 unassailable decision and were not subsequently amended. The second amended
9 complaint/petition does not differentiate between policies that have been amended and policies
10 that have not. (SAC pp. 4-6.) For example, policy 4.19 was not changed, policy 4.22 was not
11 changed, and policy 4.40 was simply renumbered 4.39 with no change in the text. (City's, Exh. 3
12 [chart comparing LUP and LUPA], Exh. 4 [LUP policies] and Exh. 5 [LUP amended policies].)
13 Despite the lack of any changes, Petitioner seeks declaratory relief regarding policies 4.19, 4.22
14 and 4.39. Petitioner's challenge to these policies is time-barred, res judicata and cannot proceed.
15 (*Patrick Media Group, Inc. v. California Coastal Commission, supra*, 9 Cal.App.4th at pp. 607-
16 608.) Because Petitioner conflates its challenge to the LUP with the LUP amendment, the second
17 amended complaint/petition is uncertain. The Court should sustain the Commission's demurrer
18 for this reason as well.

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CONCLUSION

For the foregoing reasons, the Commission requests that the Court sustain its demurrer to the second amended complaint and petition.

Dated: October 31, 2014

Respectfully Submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Beach & Bluff Conservancy v. City of Solana Beach**
No.: **37-2013-00046561-CU-WM-NC**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 31, 2014, I served the attached **MEMORANDUM IN SUPPORT OF CALIFORNIA COASTAL COMMISSION'S DEMURRER TO SECOND AMENDED COMPLAINT AND PETITION** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 31, 2014, at San Diego, California.

C. Valdivia

Declarant



Signature