

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY
MINUTE ORDER**

DATE: 03/05/2015

TIME: 03:37:00 PM

DEPT: N-31

JUDICIAL OFFICER PRESIDING: Timothy M. Casserly

CLERK: Trish Dietrich

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2013-00046245-CU-WM-NC** CASE INIT.DATE: 04/26/2013

CASE TITLE: **Homeowner's Association of the Solana Beach & Tennis Club vs. City of Solana Beach [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Demurrer / Motion to Strike

APPEARANCES

The Court, having taken the above-entitled matter under submission on 2/27/15 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court, having taken the above-entitled matter under submission on 2/27/15 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court issues the following ruling on the demurrers by the City of Solana Beach ("City") to the Second Amended Petition and Complaint ("SAC") filed by the Petitioners and Plaintiffs Homeowner's Associations ("HOA"):

Preliminary Matters / Judicial Notice

Plaintiff /Petitioner Homeowner Association of the Solana Beach & Tennis Club's ("HOA") request for judicial notice is granted.

Respondent / Defendant City of Solana Beach's ("City") 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, seventh, eighth and ninth causes of action are overruled.

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, seventh and ninth causes of action of the SAC on the ground the fourth, seventh and ninth causes of action fail to state facts sufficient to constitute a cause of action are overruled. As alleged, the Petition 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. Petition 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. HOA'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 HOA 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 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 that the Coastal Commission recently certified is overruled. The allegations on the face of the SAC, show that the SAC is not uncertain with regard to the LUP policies challenged by HOA. Moreover, as alleged, the SAC is sufficiently clear to apprise the Defendant / Respondents of the issues and nature of the claims 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.

The Court issues the following ruling on the demurrers by the California Coastal Commission (Commission Defendant-Intervenor) to the Second Amended Petition and Complaint ("SAC") filed by the demurrer to the Homeowner's Associations ("HOAs"):

Preliminary Matters / Judicial Notice

Plaintiff /Petitioner Homeowner Association of the Solana Beach & Tennis Club's ("HOA") request for judicial notice is granted.

Respondent / Defendant-Intervenor California Coastal Commission's request for judicial notice is granted.

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.

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 is overruled. 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 and a request for declaratory relief.

3. The Commission's demurrer to the first, third, fourth, eighth and ninth causes of action of the SAC on the ground the first, third, fourth, eighth and ninth 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.

IT IS SO ORDERED

Melissa Keenan-Hall

From: Incoming Lit
Sent: Wednesday, March 11, 2015 3:33 PM
To: Kiren Mathews; Suzanne M. MacDonald; Melissa Keenan-Hall
Subject: FW: 4-1496
Attachments: 2015-03-05 Minute Order re MTS.pdf

From: Jennifer F. Thompson
Sent: Wednesday, 11 March 2015 15:32:35 (UTC-08:00) Pacific Time (US & Canada)
To: Incoming Lit
Subject: 4-1496

Jennifer F. Thompson
Attorney
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
JFT@pacificlegal.org
(916) 419-7111

Pacific Legal Foundation: Rescuing Liberty from Coast to Coast