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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN DIEGO**
16 **(North County Division)**

17 BEACH & BLUFF CONSERVANCY,

18 Plaintiff and Petitioner,

19 v.

20 CITY OF SOLANA BEACH, et al.,

21 Defendants and Respondents,

22 CALIFORNIA COASTAL COMMISSION, a
state agency; SURFRIDER FOUNDATION, a
23 nonprofit organization.

24 Defendants and Respondent-
25 Intervenors.

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County of San Diego

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

**SURFRIDER'S MEMORANDUM OF
POINTS & AUTHORITIES IN
OPPOSITION TO MOTION FOR
JUDGMENT ON THE VERIFIED
PETITION FOR WRIT OF MANDATE**

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I. INTRODUCTION

In this action, Respondent-Intervenor Surfrider Foundation (“Surfrider”), a California-based nonprofit organization dedicated to the protection and enjoyment of oceans, waves, and beaches, has intervened in support of the City of Solana Beach Land Use Plan’s (“LUP”) policies regulating bluff retention devices and coastal access. Coastal armoring structures, including bluff retention devices, seriously threaten the coastline in Solana Beach by impeding public access and harming coastal resources. While armoring structures are designed to protect individual properties in the short-term, it is the public who bears the long-term consequences of such structures—consequences as dire as the loss of entire portions of the beach.

To address the direct harms bluff retention devices impose on the shoreline and to ensure the public’s ability to access the coast, the City of Solana Beach (“City”) and the Coastal Commission (“Commission”) developed the LUP portion of the City’s Local Coastal Program to regulate coastal development. The policies in the LUP—including suggested modifications carefully crafted by the Commission and then accepted by the City after two decades of public process—comport with coastal protection and public trust principles enshrined in the California Constitution and the California Coastal Act. As such, the petition for writ of mandate and complaint for declaratory relief should be denied.

In addition, Petitioner’s election to proceed without an Administrative Record is procedurally flawed.¹ Surfrider participated extensively, both in writing and orally, through the process of formulating and certifying the LUP and amendments to it. However, without a record, the Court is deprived of the public and expert opinion that informed the policies, along with the written findings that the Commission adopted to explain the rationale for its decision. The petition and complaint should be denied further because of Petitioner’s failure to provide the Administrative Record to the Court.

II. BACKGROUND

A. Coastal Armoring Harms California’s Famous Coastline.

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¹ The Commission and City will address additional procedural flaws that compel denial of the petition and complaint.

1 While designed as a stopgap measure to protect individual properties from erosion, coastal
2 armoring transfers the harm to the shoreline and to the public, impeding access to the beach and
3 water and destroying coastal resources. Coastal armoring, which includes seawalls and bluff
4 retention devices, are large man-made structures built into a shoreline or bluff to harden the coast.
5 These structures create or contribute to many negative and potentially long-lasting impacts,
6 including: reducing sand supply and beach width, increasing erosion, destroying habitat,
7 diminishing the quality of recreational activities at the beach, and limiting public access to the
8 beach. This directly impacts millions of people who come to California's famous coastline each
9 year to enjoy beach gazing, swimming, walking, jogging, surfing, sunbathing, beach combing and
10 building sandcastles. The impact of coastal armoring on these activities—and the economic
11 benefits these activities provide to the City, the region, and the State of California—is truly a
12 cause for concern.

13 It is well established that bluff retention devices cause a net loss of sand to the beach.²
14 Throughout the year, the coastline loses sand that is transported into the ocean by waves and wind,
15 and gains sand from rivers and coastal bluff erosion. Cal. Dep't of Boating and Waterways &
16 State Coastal Conservancy, California Beach Restoration Study 2-2 to 2-3 (Jan. 2002). The
17 replacement of sand is critical for maintaining beach area.³ Gary Griggs et al., *Living with the*
18 *Changing California Coast* 76, 480 (2005). Without it, there is a net loss in beach area over time
19 as sand is transported out to sea. Cal. Dep't of Boating and Waterways, *supra*, at 8-3. Bluff
20 retention devices inhibit the replenishment of sand from natural bluff erosion by placing a
21 hardened artificial barrier between the bluff and the beach, resulting in a decrease in sand and
22 ultimately narrowing the beach. Griggs, *The Effects of Armoring Shorelines*, *supra*, at 81-82.

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24 ² For a full analysis of armoring impacts, see Omar Defeo et al., *Threats to Sandy Beach Ecosystems: A Review*, 81
25 *Estuarine, Coastal, and Shelf Science* 1-12 (2009); Nicholas C. Kraus, *The Effects of Seawalls on the Beach: An*
Extended Literature Review, *Journal of Coastal Research* 1-28 (1988); Gary B. Griggs, *The Impacts of Coastal*
Armoring, 73 *Shore & Beach* 13, 13-22 (2005).

26 ³ Rivers and streams contribute 70 percent or more of the sand on California's beaches, with most of the remaining
27 sand coming from eroding bluffs and cliffs. Gary Griggs, *The Effects of Armoring Shorelines—The California*
Experience, in *Puget Sound Shorelines and the Impacts of Armoring—Proceedings of a State of the Science*
28 *Workshop*, 81 (Shipman, et al. eds., 2010). With a significant percentage of the riverine sediment supply blocked by
dams, the cumulative impact of any additional sand supply loss from armoring is particularly alarming. *Id.*

1 While bluff retention devices are designed to halt the impacts of erosion in a localized area
2 by anchoring the shoreline, these structures actually exacerbate erosion—causing the very impact
3 they are designed to prevent. *Id.* Wave energy deflecting off the front of armoring structures
4 exacerbates erosion on the sides of the structures, thereby increasing the vulnerability of
5 neighboring properties to increased erosion impacts and leading to the need for yet more armoring.
6 J. Peter Byrne & Jessica Grannis, *Coastal Retreat Measures*, in *The Law of Adaptation to Climate*
7 *Change: U.S. and International Aspects*, 269 (Michael B. Gerrard & Katrina Fischer Kuh, eds.,
8 2012). With increased erosion and reduced sand supply, the beach in front of the bluff retention
9 device will retreat to the face of the structure until no beach remains, cutting off the public's
10 access to that section of the beach and to surrounding areas. Griggs, *The Impacts of Coastal*
11 *Armoring*, *supra*, at 15-20. Put simply, when placed on California's retreating beaches, armoring
12 structures will cause that beach to narrow and eventually disappear. Sea level rise only exacerbates
13 this problem.

14 By reducing the size of the beach and disrupting natural processes, bluff retention devices
15 also decrease the ecological value and recreational value of California's beaches, impairing the
16 public's ability to access and enjoy coastal areas. Coastal armoring structures greatly diminish
17 habitat for species that rely on sandy beaches, marshes, bluffs and dune ecosystems. See Jenifer E.
18 Dugan et al., *Ecological Effects of Coastal Armoring on Sandy Beaches*, 29 *Marine Ecology* 160,
19 167 (2008). Shorebirds and coastal flora and fauna require these ecosystems for spawning,
20 nesting, and feeding and have few alternatives when great swaths of the coastline are armored. *Id.*
21 at 167-169. A smaller beach area also limits the activities for which the beach can be used. Meg
22 Caldwell & Craig Holt Segall, *No Day at the Beach: Sea Level Rise, Ecosystem Loss, and Public*
23 *Access Along the California Coast*, 34 *Ecology L.Q.* 533, 541 (2007). When the whole beach is
24 covered at high tide, there is no longer room for runners to jog or children to play. Surfers are
25 doubly harmed: treasured surf breaks are inaccessible at high tide because of beach loss and the
26 quality of surf breaks declines as waves rebound off of the concrete structures and change wave
27 patterns. See L. Benedet et al., *Impacts of Coastal Engineering Projects on the Surfability of*
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1 *Sandy Beaches*, 75 Shore & Beach 3, 13-15 (2007).⁴

2 In some areas, massive armoring structures can also provide a vertical barrier to the beach;
3 unable to access the beach by climbing down dunes or bluffs, the public must travel around each
4 structure before finding an access point. Griggs, *The Effects of Armoring Shorelines*, *supra*, at 81;
5 Caldwell & Segall, *supra*, at 540, 555. When vertical access points are limited to areas on private
6 property inaccessible to the public, attempting to reach the beach becomes even more challenging.
7 Having to search for a public beach access point along a busy coastal highway can deter
8 beachgoers and families. In Solana Beach, where the length of shoreline is only 1.7 miles and the
9 beach is below bluffs reaching 75 feet high, the City's efforts to ensure the continued provision of
10 public access points through the LUP policies is especially important.⁵

11 These large, often concrete, armoring structures also stick out in the landscape and mar the
12 beauty of the coast. With a third of California's southern coastline armored by hardened
13 structures, these negative impacts on the scenic and visual qualities of the coast do not go
14 unnoticed to the millions of visitors each year. Griggs, *The Effects of Armoring Shorelines*, *supra*,
15 at 78. Both residents and out-of-state travelers flock to California's coast, spending money in
16 beachside communities. As the beach is lost and hardened, the subsequent reduction in
17 recreational and visual quality has the potential to cause substantial economic loss as visitors
18 instead seek pristine beaches elsewhere.⁶

19 Moreover, the impacts from coastal armoring will become amplified by climate change.
20 Dan Cayan et al., Cal. Climate Change Ctr., *Scenarios of Climate Change In California: An*
21 *Overview*, 11 (2006). Sea level rise is predicted to increase at accelerating rates, exacerbating
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23

24 ⁴ For more on how armoring impacts surf breaks and flow conditions, see Bradley E. Scarfe et al., *Sustainable*
25 *Management of Surfing Breaks: Case Studies and Recommendations*, 25 Coastal Research 684, 684, 699 (May 2009).

26 ⁵ There are currently eight vertical access points, four of which are private. City of Solana Beach Local Coastal
Program Land Use Plan, ch.1, at 2 (as amended June 11, 2014) (hereinafter "LUP").

27 ⁶ For an analysis of the recreational and economic effects of reduced beach width, see Linwood Pendleton et al.,
28 *Estimating the Potential Economic Impacts of Climate Change on Southern California Beaches*, 109 Climatic Change
277, 277-298 (2011); *see also* Warren Kriesel & Robert Friedman, *Coping With Coastal Erosion: Evidence For*
Community-Wide Impacts, 71 Shore & Beach 19, 19-23 (2003).

1 already prevalent erosion.⁷ Climate change may increase the frequency of storms, which, when
2 coupled with escalations in storm intensity and wave energy due to increased sea level rise,
3 imperil California's beaches. See National Research Council, *supra*, at 7. These storms are more
4 likely to overwhelm existing armoring structures. Dan Cayan et al., Cal. Climate Change Ctr.,
5 *Projecting Future Sea Level*, 30 (2006). Rising sea levels will cover up existing beach area and,
6 as an armored coastline results in a narrower beach area, the public's right to access and enjoy the
7 coast will be further curtailed.

8 In order to combat erosion and maintain beaches for public use, the City of Solana Beach
9 has already dedicated millions in taxpayer money towards temporary sand nourishment projects.
10 However, without sound regulation of armoring structures, including mitigation fees, the City
11 would have to continue to use taxpayer dollars in order to negate the impacts from these
12 structures, forcing the general public to subsidize harmful structures that only benefit a small
13 number of private property owners. The LUP policies help avoid this inequitable outcome.

14 **B. The Solana Beach Land Use Plan is a Prudent Compromise between**
15 **Private and Public Interests.**

16 For the past two decades, the City has been working on its LUP to achieve a balance
17 between public interests, including public trust and environmental interests, and private interests,
18 including property and economic interests. The Coastal Commission approved the LUP in March
19 2012 with modifications to certain policies and subsequently approved further amendments to a
20 handful of LUP policies in January 2014. The LUP, as certified, provides reasonable policies
21 regulating "development and redevelopment in a manner that minimizes impacts to coastal
22 resources, including public access and recreation." LUP ch. 4, at 10.

23 The certified LUP strikes a balance between private interests and constitutional and
24 statutory mandates to protect the rights of the public.⁸ The processes that led to certification of

25 ⁷ Sea level in California is expected to rise by at least one foot in the next forty years and by at least four to five feet
26 over the next century. Cal. Climate Action Team, Coastal & Ocean Working Group, *State of California Sea-Level*
27 *Rise Guidance Document* (Ocean Protection Council, Mar. 2013); National Research Council, *Sea-Level Rise for the*
Coasts of California, Oregon, and Washington: Past, Present, and Future 117, table 5.3 (2012).

28 ⁸ The City further accommodated the interests of private property owners by changing the LUP after it was originally
approved and certified. In the originally challenged LUP, Policy 4.55 provided that permits issued for new bluff

1 the LUP and LUP amendments were the product of extensive public participation, which is a
2 fundamental requirement of the Coastal Act. Cal. Pub. Res. Code §§ 30006, 30503. And, while
3 throughout years of public meetings Surfrider consistently advocated for coastal protections and
4 public access policies that were more stringent than the regulatory policies ultimately adopted in
5 the LUP, Surfrider accepts that the existing LUP is a compromise between competing interests and
6 thus has not challenged the Plan. By contrast, Petitioner, not agreeing with the results of the
7 public process (and depriving the Court of the record which reflects it), has challenged the LUP
8 and urges an extreme interpretation of essentially unconstrained individual property rights.
9 Surfrider supports the existing LUP and supports giving deference to the decisions reached by the
10 Commission and City after over two decades of public process.

11 The LUP recognizes the importance of providing public access points to the coastline:
12 “[t]he intent and overarching goal of the [Land Use Plan] policies . . . is to ensure that [they]
13 provide[] for the protection, provision, and enhancement of coastal public access and recreation of
14 [sic] opportunities in the City of Solana Beach consistent with goals, objectives, and policies of
15 the California Coastal Act.” LUP ch. 2, at 8. This includes LUP Policies designed “to promote,
16 enhance and maintain safe public access to the beach while minimizing the physical and visual
17 impact to bluffs.” *Id.* ch. 2, at 9. In order to achieve this goal, the LUP limits construction of new
18 private beach stairways. *Id.* Policies 2.60, 2.60.5. The LUP also provides that, where more than
19 50 percent of a private stairway is replaced, it may be converted into a public stairway. *Id.*
20 However, this policy only applies in limited circumstances where all or a portion of the stairway
21 utilizes public land or a public access easement, where feasible, and where “public access can
22 reasonably be provided.” *Id.*

23 The LUP is “intended to facilitate development and redevelopment in a manner which
24 minimizes impacts from hazards as well as impacts to coastal resources, including public access

25 _____
26 retention devices would expire after 20 years. However, after pressure from property owners, the LUP was amended
27 to omit this sunset provision, to permit the bluff retention device to remain for the life of the structure protected, and
28 to instead require only a reassessment after 20 years. *Compare* Complaint and Petition for Writ of Mandate at 6,
Beach & Bluff Conservancy v. City of Solana Beach, No. 37-2013-00046561 (2013) with Second Amended Complaint
and Petition for Writ of Mandate, *Beach & Bluff Conservancy v. City of Solana Beach*, No. 37-2013-00046561
(2013).

1 and recreation.” LUP ch. 4, at 10. Accordingly, the LUP: prohibits the use of bluff retention
2 devices for new development; carefully limits the use of bluff retention devices for existing
3 structures; requires expiration of permits once a structure to be protected is no longer needed or
4 reaches the end of its lifespan; and requires new coastal development permits for expansion or
5 modification of an existing bluff retention device. Additionally, consistent with case law, the LUP
6 implements a sand mitigation fee, to mitigate loss of sand that would have been deposited on the
7 beach but for the bluff retention device, and a public recreation fee, to improve public access and
8 public recreation, on individuals owning bluff retention devices in order to combat the negative
9 effects from existing structures.

10 As detailed in the Argument section below, the City’s policies comply with the Coastal Act
11 and further important objectives enshrined in the California Constitution.⁹ As such, the policies
12 should be upheld.

13 **III. ARGUMENT**

14 The state’s common law public trust doctrine, the California Constitution and the Coastal
15 Act each emphasize the importance of preserving California’s renowned coastal resources and
16 ensuring the public’s ability to access those resources. In developing the LUP, the City and
17 Commission recognized the interests of private property owners while also following
18 constitutional and statutory directives to protect the public’s interests. The LUP policies provide
19 reasonable restrictions on armoring structures in order to minimize long-lasting harms to public
20 resources. Petitioner erroneously contends that the current LUP does not comply with statutory
21 and constitutional provisions. First, Petitioner argues that the Coastal Act provides an unqualified
22 mandate to allow bluff retention devices for existing development. Second, Petitioner argues that
23 the City lacks authority under the Coastal Act to provide public access easements for reconstructed
24 stairways or even to require a coastal development permit for stairway repairs that amount to
25 stairway replacement. These claims, in essence, seek to place unfettered interests of individual
26

27 ⁹ Because the City and the Commission refute Petitioner’s claims that the Land Use Plan policies violate the Fifth
28 Amendment of the U.S. Constitution, that issue is not addressed here. This brief also does not address the other
procedural issues that bar this lawsuit, as those are addressed by the Commission and the City.

1 homeowners over the interests of the public, directly contravening California law regarding public
2 access and coastal resources. Finally, and importantly, Petitioner's argument that a record is
3 unnecessary in this litigation prevents the public's voice, including Surfrider's written and oral
4 testimony to the Commission and City, from being heard and undermines the public participation
5 principles in the Coastal Act.

6 **A. The Public Trust Doctrine Provides Robust Protections for Coastal**
7 **Access and Coastal Resources that Will Be Undermined if the Land**
8 **Use Plan Policies are Overturned.**

9 California law requires strong protections for public access to the coast and for the
10 preservation of coastal lands and waters. It is well-established that the State owns all lands below
11 the ordinary high tide line and holds those lands, including the beach and submerged waters, in
12 trust for the public. Cal. Civ. Code § 670; *People ex inf. Webb v. California Fish Co.*, 166 Cal.
13 576, 584 (1913); *Marks v. Whitney*, 6 Cal. 3d 251, 259 (1971). The public trust not only
14 encompasses traditional public uses such as navigation and commerce, but also extends to the
15 preservation and enjoyment of tidelands “. . . in their natural state, so that they may serve as
16 ecological units for scientific study, as open space, and as environments which provide food and
17 habitat for birds and marine life, and which favorably affect the scenery and climate of the area.”
18 *Id.* at 259-60. Consistent with *Marks v. Whitney*, the California Supreme Court has concluded that
19 protecting recreational and ecological values and uses, including the scenic views of a waterbody
20 and its shores, are among the purposes of the public trust doctrine. *Nat'l Audubon Soc'y v.*
21 *Superior Court*, 33 Cal. 3d 419, 435 (1983). The Commission implements the public trust
22 doctrine through the policies of the Coastal Act.

23 As previously explained, bluff retention devices impair the public trust by placing a
24 physical barrier that harms coastal ecosystems and inhibits the public's ability to access the beach.
25 Coastal armoring can also reduce the physical area of public trust land. When the beach erodes to
26 such an extent that the waves crash directly into an armoring structure, the wet sand beach and
27 tidelands disappear. Caldwell & Segall, *supra*, at 539-41.

28 Both the Commission and City, which is delegated the coastal development permitting
responsibility once the full Local Coastal Program (LUP and Implementation Plan) is certified,

1 bear responsibility to protect the public trust. *Ctr. for Biological Diversity, Inc. v. FPL Grp., Inc.*,
2 166 Cal. App. 4th 1349, 1369 (2008) (holding that a county and other “subdivisions and agencies”
3 of the state must protect public trust resources). The public trust must be protected “whenever
4 feasible” and cannot be abandoned to appease private interests. *Nat’l Audubon Soc’y*, 33 Cal. 3d at
5 446; *City of Berkeley v. Super. Ct.*, 26 Cal. 3d 515, 521 (1980) (holding that the “administrator of
6 the trust in tidelands on behalf of the public, does not have the power to abdicate its role as trustee
7 in favor of private parties.”)

8 The City’s LUP policies are intended to protect irreplaceable shoreline within Solana
9 Beach in accordance with the City’s public trust duties. The City cannot simply subordinate the
10 public trust protections in the current LUP to pacify individual property owners.

11 **B. The California Constitution Preserves the Public’s Right to Access the**
12 **Coast.**

13 The right of the public to access and use the coast is enshrined in the California
14 Constitution:

15 No individual, partnership, or corporation, claiming or possessing
16 the frontage or tidal lands . . . shall be permitted to exclude the right
17 of way to such water whenever it is required for any public purpose,
18 nor to destroy or obstruct the free navigation of such water; and the
Legislature shall enact such laws as will give the most liberal
construction to this provision, so that access to the navigable waters
of this State shall be always attainable for the people thereof.

19 Cal. Const. art. X, § 4. In accordance with these constitutional protections, the California
20 Legislature passed the California Coastal Act to regulate coastal development to protect coastal
21 resources and ensure public access to these resources. *See* Cal. Pub. Res. Code § 30210.¹⁰ The
22 Commission and City, in turn, carried out these coastal protection and public access obligations by
23 including policies in the LUP that regulate the redevelopment of existing bluff retention devices
24 and stairways and limit new bluff retention devices. Similarly, the City and Commission worked

25
26 ¹⁰ Section 30210 provides that: “In carrying out the requirement of Section 4 of Article X of the California
27 Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be
provided for all the people consistent with public safety needs and the need to protect public rights, rights of
private property owners, and natural resource areas from overuse.” *Id.*

1 to ensure public access to the coast by developing LUP policies that phase out private stairways at
2 the end of their economic life and, upon replacement of 50 percent or more of a private stairway,
3 require conversion to a public accessway—but only where feasible, where public access can be
4 reasonably provided, and where the stairway utilizes public land or is subject to a public access
5 easement. LUP Policies 2.60, 2.60.5. All of these policies are squarely within the City’s authority,
6 since, under the state Constitution, the City has the authority to prevent private property owners
7 from excluding the public from public lands. *See* Cal. Const. art. X, § 4.

8 **C. The California Coastal Act Gives Priority to both Coastal Access and**
9 **Coastal Resource Protections.**

10 The California Coastal Act was enacted to “[p]rotect, maintain, and, where feasible,
11 enhance and restore the overall quality of the coastal zone environment and its natural and
12 artificial resources.” Cal. Pub. Res. Code § 30001.5(a). Protecting the overall quality of the
13 coastal zone includes preserving both the visual beauty of the coastline and the integrity of marine
14 resources. *See id.* § 30251 (finding “[s]cenic and visual qualities of coastal areas shall be
15 considered and protected as a resource of public importance.”); *see also id.* § 30230 (requiring that
16 “[m]arine resources shall be maintained, enhanced, and, where feasible, restored.”) The
17 Legislature specified that the protection of coastal resources is paramount in coastal management
18 decisions: when conflicts arise between provisions within the Coastal Act, they must “be resolved
19 in a manner which on balance is the most protective of significant coastal resources.” *Id.* §§
20 30007.5; 30200. This includes conflicts between policies regarding development and
21 redevelopment and policies on public access and preservation of coastal resources.

22 The Coastal Act was also enacted to “[m]aximize public access to and along the coast and
23 maximize public recreational opportunities in the coastal zone consistent with sound resources
24 conservation principles and constitutionally protected rights of private property owners.” *Id.* §
25 30001.5(c); *see also id.* § 30210. When balancing these interests, the Act clearly indicates a
26 preference for coastal access. For example, the Act states that “[d]evelopment shall not interfere
27 with the public’s right of access to the sea . . . including, but not limited to, the use of dry sand and
28 rocky coastal beaches.” *Id.* § 30211. And it provides that with certain exceptions not applicable

1 here, “[p]ublic access from the nearest roadway to the shoreline and along the coast shall be
2 provided in new development projects” *Id.* § 30212.

3 In this case, Petitioner’s challenge to certain policies in the LUP must be considered within
4 the overarching intent and goals of the Coastal Act. The fundamental flaw in Petitioner’s
5 contention regarding bluff retention devices is that it isolates but one policy of the Act—Section
6 30235—which it contends provides an “unqualified mandate” to allow construction of bluff
7 retention devices. This, however, is contrary to established precedent and fails to address other
8 equally applicable policies in the Coastal Act. Similarly, Petitioner’s argument that Section 30610
9 of the Act “mandates” the City to allow stairway replacement without a coastal development
10 permit ignores Section 30610 and the Coastal Commission’s regulations, which the Legislature
11 authorized to implement the coastal development permit exemption provisions in Section 30610.

12 Coastal Act Section 30235 allows bluff retention devices if such structures are necessary to
13 protect existing coastal development at risk from erosion and only if certain conditions are met,
14 limiting the ability of individual homeowners to construct or re-construct coastal armoring
15 structures. *Id.* § 30235. The California Court of Appeal has specifically rejected claims that
16 Section 30235 confers an unqualified right to having a seawall and has upheld the Commission’s
17 right to require mitigation fees. *Ocean Harbor House Homeowners Ass’n v. California Coastal*
18 *Comm’n*, 163 Cal. App. 4th 215, 242 (2008) (acknowledging “the Legislature’s express command
19 that the Coastal Act be liberally construed to accomplish its purposes and objectives.”) In *Ocean*
20 *Harbor House*, the Court specifically held “that section 30235 does not limit the type of
21 conditions that the Commission may impose in granting a permit to construct a seawall. Rather,
22 the Commission has broad discretion to adopt measures designed to mitigate all significant
23 impacts that the construction of a seawall may have.” *Id.*

24 Importantly, the Court emphasized, contrary to Petitioner’s argument here, that “[t]he
25 language of section 30235 is permissive, not exclusive,” and that “the statute does not purport to
26 preempt other sections of the Act that require the Commission to consider other factors in granting
27 coastal development permits.” *Id.* at 241. The other applicable provisions of the Coastal Act that
28 the Commission must consider include: Section 30604(c) (permits must comply with the Act’s

1 public access and recreation policies), Section 30251 (scenic and visual qualities of coastal areas
2 “shall” be considered and protected), and Section 30240 (environmentally sensitive habitats
3 “shall” be protected). *Id.* at 242. Consistent with *Ocean Harbor House*, and consistent with not
4 only Coastal Act Section 30235, but these other equally applicable Coastal Act provisions, the
5 Commission certified the LUP with policies that reasonably regulate coastal armoring in order to
6 mitigate the adverse impacts directly caused by armoring structures.

7 Other courts have also underscored that individual provisions within the Coastal Act
8 “cannot be considered in isolation” and instead should be interpreted “in light of other provisions
9 of the Act.” *Sierra Club v. Cal. Coastal Comm’n*, 19 Cal. App. 4th 547, 561 (1993). In *Sierra*
10 *Club*, the Court held that Section 20233, which provides that dredging “shall be planned and
11 carried out to avoid significant disruption to marine and wildlife habitats and water circulation,”
12 did not require the Coastal Commission to deny any dredging that causes significant habitat
13 disruptions. *Id.* at 561 (emphasis added). Instead of being read in isolation as an absolute and
14 mandatory provision, the Court held that section 20233 should be considered within the greater
15 context of the Coastal Act:

16 The meaning of a statute may not be determined from a single word
17 or sentence; the words must be construed in context, and provisions
18 relating to the same subject matter must be harmonized to the extent
19 possible. Literal construction should not prevail if it is contrary to
20 the legislative intent apparent in the statute. The intent prevails over
21 the letter, and the letter will, if possible, be so read as to conform to
22 the spirit of the act.

23 *Id.* The Court further clarified that should conflicts arise between individual provisions, the “plain
24 meaning of section 30007.5 authorized the Commission to resolve the conflict in favor of long
25 term protection of the [marine environment].” *Id.* at 562.

26 In reasoning analogous to the failed arguments in *Sierra Club*, Petitioner alleges that
27 Section 30235 is a mandatory provision, preventing regulation of the use of bluff retention devices
28 for existing development. However, this literal reading of Section 30235 fails to consider the
broader intent of the Coastal Act to protect California’s coastal resources. Specifically,
Petitioner’s argument fails to acknowledge that conflicts between provisions within the Coastal

1 Act, including conflicts between the authority to regulate bluff retention devices and the
2 requirements in other provisions of the Act to protect coastal resources, should be resolved in a
3 manner that is “the most protective of significant coastal resources”—even where, as in *Sierra*
4 *Club*, a provision at issue contains the word “shall.” Cal. Pub. Res. Code §§ 30007.5; 30200.
5 Petitioner’s argument simply ignores the conflicts between policies on short-term coastal armoring
6 and long-term environmental protection, the latter of which the courts have held should be
7 prioritized in the event of a conflict. *Sierra Club*, 19 Cal. App. at 362.

8 Turning to the issue of public access, Petitioner’s contention that Section 30610
9 “mandates” the City to allow stairway replacement without a coastal development permit similarly
10 ignores the broader intent of the Coastal Act and disregards the Commission’s regulations, which
11 the Legislature authorized to implement Section 30610. Section 30610 sets forth the types of
12 activities for which coastal development permits typically are not required. Cal. Pub. Res. Code §
13 30610. However, the Coastal Commission is given wide latitude to require such permits,
14 particularly where such activities will potentially cause adverse impacts. *Id.* The Coastal
15 Commission, through its regulations (Tit. 14, Cal. Code of Regs., § 13000 et seq.), has done just
16 that. Section 13252(b) of the Commission’s regulations implements Coastal Act section 30610
17 and requires a coastal development permit when 50% of more of a coastal structure is to be
18 replaced. It states: “Unless destroyed by natural disaster, the replacement of 50 percent or more of
19 a single family residence, seawall . . . bluff retaining wall . . . or any other structure is not repair
20 and maintenance under Section 30610(d) but instead constitutes a replacement structure requiring
21 a coastal development permit.” Cal. Code Regs. tit. 14, § 13252(b). These regulations effectuate
22 the clear intent of the Coastal Act to preserve coastal resources and provide public access.

23 In arguing that the LUP is inconsistent with the Coastal Act, Petitioner fails to
24 acknowledge that the Act must be construed liberally (Cal. Pub. Res. Code § 30009) and that an
25 LUP can be more restrictive in protecting coastal resources than the Coastal Act. Cal. Pub. Res.
26 Code § 30005(a). In *McAllister v. California Coastal Commission*, 169 Cal. App. 4th 912 (2008),
27 an individual homeowner challenged restrictions in the Big Sur Land Use Plan on development in
28 sensitive habitat areas. In upholding Big Sur’s Land Use Plan, the Court concluded that “[w]hen a

1 provision of the Coastal Act is at issue, we are enjoined to construe it liberally to accomplish its
2 purposes and objectives, giving the highest priority to environmental considerations.” *Id.* at 928.
3 Moreover, the Court held that “[a] local coastal program need not be identical to the Coastal Act.
4 As long as a local coastal program is not inconsistent with the Coastal Act, *it can be more*
5 *restrictive.*” *Id.* at 929 fn. 9 (emphasis added).

6 Similar to *McAllister*, the Commission and City have the authority to adopt LUP policies
7 that are more restrictive than the minimum requirements of the Coastal Act. Consistent with its
8 statutory authority, the City took action in the LUP to address public access issues. The LUP
9 policies requiring a coastal development permit and conversion of private stairways to public
10 stairways only apply in very limited circumstances: 1) when a repair amounts to replacing more
11 than 50% of an existing stairway and, 2) when the stairways are on public land or subject to a
12 public access deed or easement. This is consistent with *McAllister*, as an LUP can have
13 development policies that are “more restrictive” than the Coastal Act. Cal. Pub. Res. Code §
14 30005. The Solana Beach LUP policies meet the minimum requirements of the Coastal Act and
15 are a proper and reasonable exercise of the City’s authority to preserve coastal resources.

16 **D. The Administrative Record is Necessary for the Public’s Voice to be Heard.**

17 Petitioner also contends that its challenge does not require preparing a certified
18 Administrative Record for submission to the Court. Importantly, however, the consequence of
19 Petitioner’s argument is that Surfrider and the members of the public who participated extensively
20 for two decades in the proceedings before the Commission and City regarding the LUP policies
21 will be harmed as their views and the evidence before the Commission are excluded from review.

22 The Coastal Act requires that the public “shall be provided maximum opportunities to
23 participate,” including through public hearings. Cal. Pub. Res. Code §§ 30006, 30503; *Ross v.*
24 *Cal. Coastal Comm’n*, 199 Cal. App. 4th 900, 935 (2011). The Coastal Act further states that:

25 . . . the public has a right to fully participate in decisions affecting
26 coastal planning, conservation and development; that achievement of
27 sound coastal conservation and development is dependent upon public
28 understanding and support; and that the continuing planning and
 implementation of programs for coastal conservation and development
 should include the widest opportunity for public participation.

1 Cal. Pub. Res. Code § 30006.

2 In *Barrie v. California Coastal Comm'n*, 196 Cal. App. 3d 8 (1987), the court
3 acknowledged that this public process must not be undermined. There, the Coastal Commission
4 declined to grant a permanent emergency permit for an existing seawall because such a permit
5 “circumvents the Act’s procedures which are designed to ensure protection of the coastline and
6 input by the public.” *Id.* at 17. The Court held that such action “would undermine the Coastal
7 Act’s policies of informed decision-making and public participation and would encourage
8 individuals to circumvent the Coastal Act’s procedures as a matter of course.” *Id.* at 17-18.
9 Deciding this case in the absence of a record would similarly undermine the public participation
10 requirements in the Coastal Act.

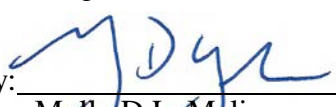
11 Consistent with statutory obligations for public participation, the Coastal Commission and
12 City both conducted a lengthy public process that ultimately led to the certified LUP. Surfrider,
13 representing over 7000 members and activists in San Diego County, was involved throughout this
14 process for over two decades. Indeed, Surfrider staff and members testified numerous times at
15 City Council and Coastal Commission hearings, testimony that is part of the record that Petitioner
16 is insisting is unnecessary. If Petitioner is allowed to challenge policies in the LUP without a
17 record, it will undermine the democratic administrative process required under the Coastal Act and
18 render an expensive and time-consuming public process meaningless.

19 IV. CONCLUSION

20 For the foregoing reasons and the reasons set forth in the City’s and Commission’s
21 opposition briefs, Surfrider respectfully requests the Court to deny the motion for judgment on the
22 verified petition for writ of mandate and enter judgment for the City and Commission.

23 Dated: September 28, 2016

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

24
25 By: 
26 Molly D.L. Melius
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27 Attorneys for Intervenor
28 SURFRIDER FOUNDATION

1 **PROOF OF SERVICE**

2 LYNDA F. JOHNSTON declares:

3 I am over the age of eighteen years and not a party to this action. My business address is 559
4 Nathan Abbott Way, Stanford, California 94305-8610.

5 On September 28, 2016, I served the foregoing **SURFRIDER'S MEMORANDUM OF**
6 **POINTS & AUTHORITIES IN OPPOSITION TO MOTION FOR JUDGMENT ON THE**
7 **VERIFIED PETITION FOR WRIT OF MANDATE** on the following persons by placing true
8 and correct copies thereof in sealed envelopes, with postage thereon fully prepaid, addressed to
9 each recipient respectively as follows:

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27 I declare under penalty of perjury under the laws of the State of California that the foregoing
28 is true and correct, and that this declaration was executed September 28, 2016 at Stanford,
California.


LYNDA F. JOHNSTON