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F I L E D
San Diego Superior Court

JUN 0 1 2011

Clerk of the Superior Court
BY: H. HENSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CITY OF DANA POINT, a California
Municipal Corporation,

Petitioner and Plaintiff,

v.

CALIFORNIA COASTAL COMMISSION, a
California public agency, and DOES 1 through
5, inclusive,

Respondent and Defendant,

HEADLANDS RESERVE LLC, a Delaware
Limited Liability Company, and DOES 6
through 10, inclusive,

Real Party in Interest,

Case No. 37-2010-00099827-CU-WM-CTL
(Consolidated with Case No 37-2010-00099878)

**ORDER GRANTING SURFRIDER'S
REQUEST FOR DECLARATORY RELIEF**

Judge: Joan M. Lewis
Dept.: 65

AND RELATED CONSOLIDATED CASE.

Petitioner Surfrider Foundation's ("Surfrider") petition for writ of mandate and for declaratory and injunctive relief came on regularly for hearing April 28, 2011, at 1:30 p.m., in Department 65 of the above-entitled Court, the Hon. Joan M. Lewis, judge presiding. A. Patrick Munoz, Esq., John A. Ramirez, Esq. and Jennifer Farrell, Esq., appeared on behalf of the City of Dana Point (the "City" or "Dana Point"). Jennifer Kalnins Temple, Esq., Brock F. Wilson, Esq., Angela Howe, Esq. and David Beckwith, Esq., appeared on behalf of Surfrider. George M. Soneff, Esq., appeared on behalf of Real Party in Interest Headlands Reserve, LLC ("Headlands").

ORDER GRANTING SURFRIDER'S REQUEST FOR DECLARATORY RELIEF

1 Also heard on April 28, 2011, was the consolidated matter *City of Dana Point v. California*
2 *Coastal Commission*. Attorneys Munoz, Ramirez and Farrell appeared on behalf of Petitioner and
3 Plaintiff, Dana Point. Jamee Jordan Patterson, Supervising Deputy Attorney General, appeared on
4 behalf of the California Coastal Commission (the "Commission"), the Defendant and Respondent.
5 Attorney Soneff appeared on behalf of Real Party in Interest Headlands Reserve, LLC.

6 On April 28, 2011, the Court confirmed its tentative ruling granting the City's petition for
7 writ of mandate in its case against the Coastal Commission. As to Surfrider's petition, the Court
8 took the matter under submission and now rules as follows.

9 This action concerns two beach access trails (the "trails") in the area of "The Strand at
10 Headlands" (the "project" or "Headlands") and Dana Point's finding of a nuisance that it believed
11 necessitated the closure and gating of the trails during certain portions of the day.

12 In 2002, the City proposed to amend its certified Local Coastal Program ("LCP") to allow
13 development of the Headlands. [1 CCC AR 185-186¹] In 2003, the City submitted the LCP
14 Amendment ("LCPA") to the Commission for its review and certification. [1 CCC AR 186]

15 In January of 2004, the Commission reviewed and approved the LCPA with modifications
16 necessary to bring the LCPA into conformity with the Coastal Act. [1 CCC AR 175] The
17 modifications included maximizing the hours of use of public beaches and parks, requiring that any
18 development provide a minimum of three public accessways and an inclined elevator/funicular to
19 the beach and requiring that any limitation on the time of use of public beaches and parks be subject
20 to a coastal development permit ("CDP"). [1 CCC AR 205, 207]

21 The Commission allowed gates in the Strand area to restrict vehicular access so long as
22 (1) pedestrian and bicycle access through the residential development to the beach remained
23 unimpeded; (2) a direct connection is provided between the mid-point of the beach parking lot and

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27 ¹ Both the Commission and the City submitted administrative records. A reference to "CCC" is a reference to
28 the Commission's administrative record ("AR") with the number preceding CCC referring to the volume of the record
and the number following CCC AR referring to the page number. Similarly, a reference to "DP" is to the City's
administrative record with the number preceding DP being the volume of the City's record and the number following a
reference to the specific page number.

1 the central Strand; and (3) an inclined funicular provided mechanized access to the beach instead
2 of public vehicular access. [1 CCC AR 208, 234, 253] Gates in the residential subdivision were to
3 only preclude public vehicular access. [1 CCC AR 352-353]

4 As modified, the Commission found the LCPA was consistent with the public access
5 policies of the Coastal Act. [1 CCC AR 333, 354] The City accepted the Commission's
6 modifications and the City's 2004 "The Headlands Development and Conservation Plan" ("Plan")
7 included the modifications. The Plan required a permit for limitations on time of use of beaches
8 and parks and prohibited gates from interfering with public pedestrian access. [1 CCC AR 421-422
9 (Policy 5-31, Policy 5-35).] The City subsequently approved a Coastal Development Permit for the
10 Headlands project. [2 CCC AR 1286]

11 Headlands developed and still owns major portions of the project. The project is located on
12 121 acres of oceanfront property in Dana Point above Strand Beach and included over 93 acres
13 reserved for parks and open space. [See, e.g., Headlands' opening brief in consolidated matter.]

14 One of the public parks constructed as part of the project is Strand Vista Park, which is
15 located above a beach known as Strand Beach. [1 CCC AR 195; 561-563] As part of the project,
16 Headlands constructed four new access ways and reconstructed the fifth. [1 CCC AR 460-461;
17 506-508; 2 CCC AR 1286-1287] It is the "Mid-Strand" and "Central Strand" trails² that are the
18 subject of this action. The additional access trails was a condition of the Commission approving
19 the City's Local Coastal Program Amendment. [1 CCC AR 205; 207] This was done to bring the
20 LCPA into conformity with the Coastal Act.

21 In May of 2009, after the construction of Strand Vista Park, The City adopted Ordinance
22 No. 09-05 to set hours for the new parks and trails. [2 CCC AR 1361-1366; 8 DP AR 2514-2519]
23 The City set the hours for opening of the trails at 8:00 a.m., and, depending on the time of year, the
24 trails close at either 5:00 p.m. or 7:00 p.m. The hours are enforced by locking gates. [1 CCC AR

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28 ² Unless otherwise indicated, future references to the "trails" are specifically to the Mid-Strand and Central Strand trails.

1 703] On the other hand, the North Strand Beach trail is open from 5:00 a.m. until midnight, the
2 same hours as Strand Beach. Strand Vista Park is open from 6:00 a.m. to 10:00 p.m. throughout the
3 year.

4 In October 2009, after the hours of operation had been set and before the park, trails and
5 other public amenities were opened, the Commission staff wrote to the City of Dana Point asserting
6 that the City did not have the ability to limit the park hours as it had. The Commission demanded
7 that the City revoke the hours and remove the gates based on the fact that no CDP authorized them.

8 [1 CCC AR 701-705]

9 Dana Point's City Council then adopted, as an urgency measure, Ordinance No. 10-05) (the
10 "ordinance") declaring the existence of a nuisance at the site and mandating the enforcement of
11 closure hours for the Strand Vista Park and the access ways, as well as maintenance of the gates on
12 the trails. [2 CCC AR 1072-1079]

13 Appeals of the ordinance were received and heard by the Commission. [See, e.g., 9 DP
14 AR 2957] The Commission's actions with respect to those appeals were the subject of the
15 consolidated matter brought by the City that has now been ruled upon by this Court.

16 The matter currently pending is the petition brought by Surfrider challenging the City's
17 finding of a nuisance and the resulting restrictions of access to the trails.

18 In seeking relief, Surfrider makes various arguments. It accuses the City of attempting to
19 "create a private enclave for its tax-generating benefactor, the Headlands . . ." Surfrider contends
20 that the record shows that a nuisance has never existed and that the ordinance goes above and
21 beyond nuisance abatement. Moreover, Surfrider argues, the City relied on "rank speculation" by
22 law enforcement as a basis for passage of the ordinance.

23 Generally, Surfrider argues that the closure of the trails violates the Coastal Act and the
24 "maximum access" requirements of the California Constitution and the constitutional rights of
25 freedom of association and assembly.

26 The City, on the other hand, with similar arguments being made by Headlands, suggests that
27 there was ample support for its Council's adoption of the ordinance and that Surfrider's
28 constitutional arguments lack merit.

1 In support of the City's argument that the Council had a basis for declaring and abating a
2 nuisance, the City in part cites to the testimony from Sgt. James Greenwood, the supervisor of the
3 community based policing team [2 CCC AR 1205, 1215; 8 DP AR 2686-9; 2691]; the number of
4 crime reports from the Sheriff's Department [2 CCC AR 1205; 1215; 8 DP AR 2573-2633]; a Staff
5 Report jointly prepared by the City Attorney, the Chief of Police Services [2 CCC AR 1341-1351; 8
6 DP AR 2542-52]; a log entitled "Headlands Police Call and Police Report Summary" [2 CCC AR
7 1433-1438; 8 DP AR 2634-2639]; and testimony from law enforcement personnel, City officials
8 and others [e.g., 2 CCC AR 1204-1210; 1215; 8 DP AR 2668-2678].

9 The City's declaration of a nuisance appears to principally be based on the crime reports.
10 These begin as early as 2005 and continue to 2010. [8 DP AR 2573-2633] However, it appears
11 to the Court that the majority of these reports predate the trails being opened to the public and/or
12 occurred outside of the trails. *Id.* [See also 2 CCC AR 1482-1492] Most of the calls related to
13 traffic violations or vandalism at the Headlands' development and the Court notes it found no
14 reports of injuries to persons.

15 The LCPA provided that "[t]he City will determine hours of operation." However, the
16 LCPA also, as modified, provided for the subject trails and required the maximization of hours of
17 use of public beaches and parks that those trails accessed.

18 The City could point the Court to no police activity that supported the Council's
19 determination that the trails should be closed 13 to 15 hours of the day. And, as indicated above,
20 the gates in the area were only to preclude public *vehicular* traffic.

21 The City did argue that opening the trails (by way of unlocking the gates) any earlier than
22 8:00 a.m. or closing the trails any later than 5:00 p.m. or 7:00 p.m. (depending on the time of the
23 year) would be a drain on resources. However, the gates locked and opened with a time lock
24 mechanism. [1 CCC AR 703]

25 Additionally, and importantly, the gates were erected and restrictive hours determined
26 *before* the public was given access to the trails. Therefore, the City never had before it any
27 information as to what would occur if the public was given greater access to the trails.

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1 Moreover, the support for closing the trails was also based on pure speculation. For
2 example, Sgt. Greenwood’s comments addressing his “broken window theory” that “when we take
3 the fences and the gates and the hours of operation down, *my fear* is that we will turn the Headlands
4 development into basically an amusement park There will be teenage drinking, teenage
5 smoking, sex parties, sex, drugs, rock and roll. . . .” [8 DP AR 2688]

6 In deciding this matter the Court believes the proper standard of review is the rational basis
7 standard.

8 The Court agrees that the City has the right to declare and abate a nuisance. See Pub.
9 Resources Code Sec. 30005(b). However, the City cannot act to abate the nuisance – i.e., limit
10 hours of access/place gates – in a manner that is in excess of that necessary without obtaining a
11 coastal permit. See, for example, 2 CCC AR 1222.

12 Having reviewed the record and considered the arguments of the parties, the Court believes
13 the record was entirely lacking in evidentiary support for declaring a nuisance and that the City
14 acted arbitrarily and capriciously in making such a declaration. Additionally, *even if* a nuisance
15 existed the Court finds the City acted arbitrarily and capriciously in the manner in which it abated
16 the purported nuisance and that the manner of abatement was entirely lacking in evidentiary
17 support.

18 Surfrider sought various forms of relief in its petition and complaint. [See Petition and
19 Complaint’s prayer.] For the reasons indicated, the Court believes that Surfrider is entitled to a
20 declaration that the City’s record fails to support a public nuisance. [*Id.*, at Para. (d)] The Court
21 makes such a declaration and finds that the nuisance ordinance should be set aside.

22 Based on this finding the Court does not believe it need reach Surfrider’s constitutional
23 arguments or requests for relief relative thereto.

24 In its prayer, at Paras. (a)(b) and (g), Surfrider requests a writ of mandate and/or
25 declarations from the Court directing the City to remove the gates and signs at the trails and to
26 apply for a CDP prior to the enactment of any other gates, impediments or signage relating to
27 public beach access at the trails.

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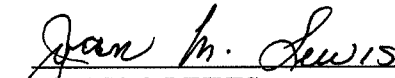
1 At Para. (c) of its prayer, Surfrider sought a declaration that the ordinance is void because
2 the city failed to apply for prior certification from the Commission for an ordinance which amends
3 its Certified Local Coastal Program.

4 The Court believes its finding that there was no properly declared nuisance and/or that the
5 manner of abatement was excessive sufficiently adjudicates the matters pending before this Court.
6 To the extent the City – in response to this ruling – continues to maintain the gates and/or signage
7 then the Court believes the matter would more appropriately be in the jurisdiction of the
8 Commission for further action.

9 In ruling on this matter, the Court granted Surfrider’s motion to strike those portions of tab
10 21 of the City’s administrative record that relate to police reports that post-date the date on which
11 the ordinance was passed.

12 IT IS SO ORDERED.

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14 Dated: 6 - 1 - 11


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16 JOAN M. LEWIS
17 Judge of the Superior Court
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