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6 Attorneys for Plaintiff and Cross-Defendant
CENTER FOR NATURAL LANDS MANAGEMENT

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ORANGE

10 CENTER FOR NATURAL LANDS
MANAGEMENT, a non-profit organization,
11
Plaintiff,

12 v.

13 CITY OF DANA POINT and
14 DOES 1-50,
15 Defendants.

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17 CITY OF DANA POINT,
Cross-Complainant,

18 v.

19 CENTER FOR NATURAL LANDS
20 MANAGEMENT,
21 Cross-Defendant.

No. 30-2021-01219668-CU-OR-CJC
Assigned for all purposes to
Judge Michael Strickroth, Dept C15

NOTICE OF DEMURRER AND
DEMURRER TO CITY'S CROSS-
COMPLAINT

DECLARATION OF LAWRENCE S.
BAZEL

Reservation No. 73741939
Date: August 15, 2022
Time: 1:45 p.m.
Dept: C15
Trial Date: Not set

Accompanying documents:
Memorandum of Points and Authorities
Request for Judicial Notice

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on August 15, 2022 at 1:45 p.m. in Department C15 of
3 Orange County Superior Court, Central Justice Center, 700 Civic Center Drive West, Santa Ana, CA
4 92701, plaintiff and cross-defendant Center For Natural Lands Management (“Center”) will and
5 hereby does demur to all four causes of action in the Cross-Complaint For Civil Fines And
6 Injunctive Relief For Violation Of The Coastal Act (“Cross-Complaint”), filed by defendant and
7 cross-complainant City of Dana Point (“City”).

8 This demurrer is based on this notice, Code of Civil Procedure § 430.10(e), the attached
9 memorandum of points and authorities, the declaration of Lawrence S. Bazel below, the pleadings
10 and records on file in this case, and on any additional argument presented at the hearing.

11 **DEMURRER**

12 The Center demurs to the first, second, third, and fourth causes of action in the Cross-
13 Complaint on the following grounds.

14 **DEMURRER TO FIRST CAUSE OF ACTION**

15 **(Coastal Act)**

16 The City’s First Cause of Action is subject to a demurrer under Code of Civil Procedure
17 (“CCP”) § 430.10(e) because it fails to state facts sufficient to constitute a cause of action.

18 The First Cause of action fails to state a cause of action because the acts allegedly in
19 violation of the Coastal Act were authorized by a coastal development permit, and the Center has not
20 violated that permit or the City’s municipal code.

21 **DEMURRER TO SECOND CAUSE OF ACTION**

22 **(Conservation Easement)**

23 The City’s Second Cause of Action is subject to a demurrer under CCP § 430.10(e) because
24 it fails to state facts sufficient to constitute a cause of action. The Conservation Easement clearly
25 authorizes the acts allegedly in violation of the easement, and the City’s interpretation of that
26 easement is not reasonable.

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DEMURRER TO THIRD CAUSE OF ACTION

(Declaratory Relief)

The City’s Third Cause of Action is subject to a demurrer under CCP § 430.10(e) because it fails to state facts sufficient to constitute a cause of action. The City’s declaratory relief cause of action is wholly derivative of its first two causes of action, and fails because they fail.

DEMURRER TO FOURTH CAUSE OF ACTION

(Injunction)

The City’s Fourth Cause of Action is subject to a demurrer under CCP § 430.10(e) because it fails to state facts sufficient to constitute a cause of action. Injunction is not a cause of action but a remedy, and may be eliminated by demurrer.

DATED: April 19, 2022

BRISCOE IVESTER & BAZEL LLP



By: _____

Lawrence S. Bazel
Attorneys for Plaintiff CENTER FOR
NATURAL LANDS MANAGEMENT

DECLARATION OF LAWRENCE S. BAZEL

I, Lawrence S. Bazel, declare as follows:

1. I am attorney of record for plaintiff and cross-defendant Center for Natural Lands Management. I have personal knowledge of the facts in this declaration and would testify to them if called to do so.
2. On April 6, 2022, I conferred by telephone with counsel for defendant and cross-complainant City of Dana Point about the issues raised by this demurrer. I had previously e-mailed counsel for the City with the arguments I intended to make in support of this demurrer.
3. Despite these efforts, the parties did not reach agreement on the issues raised by the Center’s demurrer.

I declare under penalty of perjury under the laws of the State of California that the statement

1 in this declaration are true and correct.



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Lawrence S. Bazel

1 **PROOF OF SERVICE**

2 I declare that I am over the age of eighteen years and not a party to this action. I am
3 employed in the City and County of San Francisco, and my business address is 235 Montgomery
4 Street, Suite 935, San Francisco, California 94104.

5 On April 19, 2022, at San Francisco, California, I served the following document(s)

6 **NOTICE OF DEMURRER AND DEMURRER TO CITY’S CROSS-COMPLAINT**

7 **DECLARATION OF LAWRENCE S. BAZEL**

8 on:

9 Patrick Munoz
10 Jennifer Farrell
11 Rutan & Tucker LLP
12 18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Telephone: (714) 641-5100
Email: pmunoz@rutan.com
jfarrell@rutan.com

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14 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** On the date written above, I e-mailed the
15 documents to the persons on the service list at the e-mail addresses listed above. I did not receive, within a
16 reasonable time after transmission, any electronic message or other indication that transmission was
17 unsuccessful.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
19 correct and that this document was executed on April 19, 2022, at San Francisco, California.

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21 _____
22 Arlene Won
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