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****E-filed 01/25/2010****

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SURF AND SAND, LLC,

No. C 09-5542 RS

Plaintiff,

**ORDER CONTINUING HEARING
AND REQUESTING FURTHER
BRIEFING**

v.

CITY OF CAPITOLA, et al.,

Defendants.

Defendants' motion to dismiss is presently calendared for February 3, 2010. As the parties are aware, in October of 2009

the Ninth Circuit heard oral argument in the related case, *Surf and Sand LLC v. City of Capitola*, Case No. C 07-05043-RS ("*Surf and Sand I*"). The parties hold divergent views as to whether this Court's rulings in *Surf and Sand I* have any impact on the issues presented in this case. Without prejudging the extent to which, if at all, a decision by the Ninth Circuit in *Surf and Sand I*, could potentially be *dispositive* of any of the issues presented here, it is likely that the Ninth Circuit's decision, regardless of outcome, will be at least instructive, perhaps highly so.

Accordingly, in the interests of judicial efficiency, the hearing on defendants' motion to dismiss is hereby continued to March 11, 2010, at 2:30 p.m., in Courtroom 3, Seventeenth Floor, of the U.S. District Court, located at 450 Golden Gate Avenue, San Francisco, California.

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Within 10 days of the date of this order, the parties are invited to file letter briefs, not to exceed 5 pages each, setting forth their views as to whether or not the Court should continue the matter further, in the event the Ninth Circuit has not issued a decision prior to the hearing.

IT IS SO ORDERED.

Dated: 01/25/2010



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE