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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

FRIENDS OF OCEANO DUNES, INC.,

Petitioner and Plaintiff,

v.

CALIFORNIA COASTAL COMMISSION; and DOES 1 through 50, inclusive,

Respondents and Defendants,

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION; and DOES 1 through 50, inclusive,

Respondents and Defendants as to the First Cause of Action, Count 4, and, as Real Parties-in-Interest, as the remaining counts, and

COUNTY OF SAN LUIS OBISPO; and DOES 1 through 50, inclusive,

Real Parties-in-Interest.

And consolidated actions

Lead Case No. 21cv-0214

Consolidated with Case Nos. 21CV-0219, 21CV-0246 and 21CV-0541

RESPONDENT CALIFORNIA COASTAL COMMISSION'S BRIEF IN OPPOSITION TO ECOLOGIC PARTNERS, INC. AND SPECIALTY EQUIPMENT MARKET ASSOCIATION'S OPENING BRIEF

Assigned for All Purposes to:
Hon. Tana L. Coates, Dept. 4

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INTRODUCTION

This case asks whether the California Coastal Commission has the legal authority to protect designated environmentally sensitive habitat ("ESHA") in the Oceano Dunes State Vehicle Recreation Area. Petitioner EcoLogic Partners et al. ("EcoLogic") does not dispute the material facts: the overwhelming evidence in the record shows that off-highway vehicle ("OHV") riding and related activities are significantly disrupting ESHA, which covers most of the park. Rather, EcoLogic—like fellow Petitioner Friends of Oceano Dunes ("Friends")—claims that the Commission lacks the authority to restrict OHV use under applicable state law, the County of San Luis Obispo's certified Local Coastal Program ("LCP"), and the Commission-issued Coastal Development Permit ("CDP") for the park. But like Friends, EcoLogic gravely misstates the law. The Coastal Act, the LCP, and the CDP all mandate the protection of the park's ESHA, and they all prioritize such protection above OHV use.

EcoLogic's claims turn on the erroneous notion that the law governing State Parks' management of State Vehicle Recreation Areas ("SVRAs") removed the Commission's legal authority to phase out OHV activities in the park, regardless of their impacts on ESHA. This argument is mistaken. The Coastal Act expressly provides that its coastal protection mandates apply to public as well as private property in the coastal zone, and that all state agencies are subject to its requirements. Pub. Resources Code ("PRC") §§ 30003, 30402. And the Off-Highway Motorized Vehicle Recreation Act ("OHV Act") relied upon by EcoLogic is in accord: it expressly provides that SVRAs must comply not only with its terms, but with all other state laws and regulations, "*including permit requirements*." PRC § 5090.39(b) (emphasis added). Tellingly, EcoLogic cites none of these dispositive provisions in its brief.

EcoLogic alternatively argues that County's LCP—which, along with the Coastal Act and the City of Grover Beach's LCP, governs the Commission's permit decisions—bars the Commission from excluding OHV use in the park. But the County's LCP policies and the Coastal Act clearly and unequivocally prohibit significant disruption of ESHA. To be sure, the LCP recognized that the original CDP for the park—which predated the LCP—provided initially for the regulation of OHV use. But that regulation was interim only, and subject to future review and modification by the Commission. In designating most of the park as ESHA, the LCP set a clear policy for the Commission to apply in future

actions—a policy that is consistent with, and compelled by, the Coastal Act's strict mandate to protect ESHA from harm.

EcoLogic next claims that the Commission never had any permitting authority over OHV use in the first place, because OHV riding in the park predated the 1977 effective date of the Coastal Act, and thus gave rise to a "vested right" to continue that use in perpetuity, exempt from any Coastal Act requirements. This argument is both meritless and 40 years too late. A vested right does not arise merely from engaging in a use but requires completion of substantial construction in reliance on an approved building permit or its equivalent—facts not present here. And courts have repeatedly rejected claims of vested rights exemptions that are raised after a CDP has been accepted, in violation of the process established by Commission regulations.

Finally, EcoLogic's California Environmental Quality Act ("CEQA") claims are meritless. EcoLogic makes a blanket assertion of inadequacy without pointing to a single specific environmental impact purportedly resulting from the Commission's action, much to less any evidence in the record demonstrating such impact. Contrary to EcoLogic's claim, the Commission performed an exhaustive analysis of both continuing *and* eliminating OHV use in the park, and found the latter would *benefit* the environment. EcoLogic fails to acknowledge this analysis or any of the substantial evidence supporting it, a failing that is fatal to its claim.

Because the Commission has the legal authority—and in fact, the legal mandate—to phase out a destructive use of coastal parkland that is incompatible with the protection of ESHA, it respectfully requests that the Court deny the pending petitions for writ of mandate in their entirety.

FACTUAL AND LEGAL BACKGROUND

A comprehensive discussion of the factual and legal background in this case is set forth in the Commission' Brief in Opposition to Friends of Oceano Dunes filed concurrently herewith. The following provides a brief summary of that discussion, which is incorporated by reference herein.

The Commission's permitting authority over Oceano Dunes arises from the Coastal Act, whose basic goals are to "[p]rotect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment," and to maximize public access and recreational opportunities along the coast to the extent "consistent with sound resources conservation principles." PRC § 30001.5(c). These goals

are implemented through the Act's mandatory "Chapter 3" policies. These policies elevate protections for ESHA over other concerns,[1] requiring that ESHA "shall be protected against any significant disruption of habitat values." *Id.* § 30240(a) (emphasis added).

The Commission "is designated as the state coastal zone planning and management agency for any and all purposes" and exercises "primary responsibility for the implementation of the [Coastal Act] provisions." PRC § 30330. But local governments are required to prepare an LCP for the portion of the coastal zone within their jurisdiction, which the Commission may certify only if it comports with the Coastal Act's policies. PRC §§ 30500-22. The Coastal Act's Chapter 3 policies, or the polices of an LCP once certified, are implemented through the CDP program, which prohibits any person, including state agencies, to undertake development in the coastal zone without a CDP. PRC §§ 30600(a), 21066.

The CDP for Oceano Dunes (CDP 4-82-300) was originally approved by the Commission in 1982, several years after the state park was established but before the County's LCP was certified. AR36116-20.[2] Recognizing that myriad issues and conflicts arising from OHV use in the park had yet to be resolved, the CDP provided only interim authorization for OHV use, and authorized the Commission to further limit OHV access, pursuant to the County's LCP policies, if its annual permit review finds OHV use "is not occurring in a manner which protects [ESHA]." AR36117, 36120.

A few years later, the County's LCP was certified.[3] AR38302. The LCP incorporates the Coastal Act's strict ESHA protection policies, providing that development in or adjacent to ESHA "shall not significantly disrupt the resource," and designates most of Oceano Dunes—including the entire riding area—as ESHA. AR36983, 37470. The LCP's recreational standards recognized that OHV use in the park was governed by the CDP and required compliance with CDP restrictions. AR37449-50. They also recognized the need to monitor, study, and adjust recreational use limits in the dunes, and that ultimately

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[1] ESHA is defined as habitat that is rare or especially valuable and easily disturbed or degraded by human activity. PRC § 30107.5.

[2] Citations to the Administrative Record are designated by "AR" followed by the Bates page number.

[3] The County LCP includes a Land Use Plan, which serves as the general plan "Land Use Element" for the coastal zone and consists of (1) the Coastal Zone Framework for Planning, (2) four area plans, and (3) Coastal Plan Policies. *See* AR54. The South County Area Plan covers most of Oceano Dunes. AR37404, 37410, 38133.

a moratorium on OHV use may be necessary to protect the park's resources. AR37449; *see* AR36928, 36930-37.

In the years that followed, many of the problems from OHV use identified in the CDP and LCP remained unresolved. In 2001, concerned with ongoing impacts to the park's habitat, the Commission amended the CDP, making it subject to annual renewal. AR 35114. The amended permit imposed interim daily limits on vehicle use, created a technical review team (TRT) to recommend management measures to protect ESHA, and, if that process was unsuccessful, authorized the Commission to prescribe an "alternative approach to resource management, or set of management measures." AR35114-19.

But ultimately, the TRT process proved unsuccessful, and the problems at Oceano Dunes continued to worsen. After several years of evaluation, further efforts at collaboration, and its own comprehensive study, Commission staff ultimately concluded in 2019 that OHV use was incompatible with the protection of ESHA. AR17413, 17416, 17470. When the Commission determined that that State Park's recent planning efforts would not address the concerns raised by staff, the Commission, pursuant to its reserved authority in the CDP, moved forward with a CDP amendment to eliminate OHV use in the park. AR 1946-55. In March, 2021, based on over 200 pages of findings, thousands of pages of evidence, and extensive public testimony, the Commission unanimously approved the CDP amendment. AR1-203.

STANDARD OF REVIEW

Judicial challenges to coastal development permit decisions, as well as CEQA claims, proceed in administrative mandamus pursuant to California Code of Civil Procedure section 1094.5. PRC §§ 30801, 21168; *Lent v. California Coastal Com.* (2021) 62 Cal.App.5th 812, 831. The inquiry in an administrative writ proceeding is whether the agency "has proceeded without, or in excess of, jurisdiction" and "whether there was any prejudicial abuse of discretion." Code Civ. Proc. § 1094.5(b). "An abuse of discretion is established if the [Commission] has not proceeded in a manner required by law, the order . . . is not supported by the findings, or the findings are not supported by the evidence." *11 Lagunita, LLC v. California Coastal Com.* (2020) 58 Cal.App.5th 904, 918 (citations omitted). In reviewing the record for substantial evidence, the Court does not substitute its own findings or

inferences for that of the Commission. *Id*. "Courts presume the Commission's findings are supported by substantial evidence; it is the [petitioner]'s burden to demonstrate to the contrary." *Id.*

ARGUMENT

I. EcoLogic's Statutory Authority Arguments Are Meritless.

EcoLogic's statutory authority argument is even more sweeping than Friends' argument, contending that the Commission lacks *any* authority whatsoever to regulate state park units, and thus had no power to restrict OHVs in Oceano Dunes SVRA. EcoLogic's Opening Brief ("EOB") at 14-16. But both the Coastal Act and the OHV Act expressly say the opposite in provisions that, not surprisingly, are mentioned nowhere in EcoLogic's brief. These provisions are dispositive of EcoLogic's claims.

A. The Commission Has Broad Authority to Enforce Coastal Act Standards in the Coastal Zone, Including Public Parkland Managed by State Parks.

EcoLogic begins its argument with the bold statement that the Coastal Act does not bestow upon the Commission "*any* authority to manage or regulate units of the State Parks system." EOB at 14 (emphasis in original). The true part of this statement—that the Coastal Act does not make the Commission responsible for "managing" state park units—is a red herring. The Commission does not dispute that State Parks is charged with that management responsibility for state parks generally and SVRAs specifically. *See* PRC §§ 5003, 5090.32(b)-(c).

But management responsibility is not the same thing as *regulatory* authority, and with respect to the Commission's regulatory authority, EcoLogic's statement is patently false. The Coastal Act gives the Commission broad plenary authority to implement and enforce special resource protection standards (those set forth in Chapter 3 of the Coastal Act). PRC §§ 30200(a), 30330. The Commission "shall have the primary responsibility for the implementation of the provisions of [the Coastal Act] and is designated as the state coastal zone planning and management agency for *any and all purposes.*" PRC § 30330 (emphasis added); *San Diego Navy Broadway Complex Coal. v. California Coastal Com*. (2019) 40 Cal.App.5th 563, 571. The Commission exercises this authority in part through the coastal development permit program, which requires any "person" seeking to undertake development in the coastal zone to first obtain a CDP. PRC § 30600. "Person" expressly includes agencies of the state. PRC §§ 30600(a), 21066. The Act further provides: "All public agencies . . . shall comply with the provisions

of this division." PRC § 30003; *see also* PRC § 30402. None of these provisions—which clearly give the Commission the authority to "regulate" state park lands in the coastal zone through coastal development permits—are mentioned anywhere in EcoLogic's brief.

EcoLogic also fails to mention section 5090.39(b) of the OHV Act, which states unequivocally: "Nothing in this chapter relieves the [OHV] division from compliance with state and federal laws and regulations, *including permit requirements*." PRC § 5090.39(b) (emphasis added). Section 5090.39 puts to rest any notion that the Legislature intended Oceano Dunes—or SVRAs more generally—to be exempt from the Coastal Act's resource protection standards or the Commission's permitting jurisdiction.

B. Coastal Act Section 30401 Does Not Prohibit the Commission from Imposing Resource Protections in the Coastal Zone that Are More Stringent than the OHV Act's Requirements.

Ignoring these dispositive provisions, EcoLogic looks instead to a handful of words in section 30401 and claims that allowing the Commission to bar OHVs in ESHA would impermissibly "decrease, duplicate, or supersede" State Park's authority to manage SVRAs. EOB at 14, 15-16. According to EcoLogic, Section 30401 prohibits the Commission "from taking any action that would encroach upon another state agency's existing regulations." EOB at 15-16. But the provision does nothing of the sort.

Section 30401 is part of a larger chapter devoted to "minimiz[ing] duplication and conflicts among existing state agencies carrying out their regulatory duties and responsibilities." *See* PRC §§ 30400-421. That chapter provides that no state agency other than the Commission has authority to enforce the Coastal Act, and that every other state agency must comply with it. PRC §§ 30400, 30402. Section 30401 begins with a legislative declaration that, except as specifically provided, the "enactment" of the Coastal Act "does not increase, decrease, duplicate, or supersede the authority of any existing state agency." PRC § 30401. This legislative declaration is followed by a directive: the Commission may not "set standards or adopt regulations that *duplicate regulatory controls established* by any existing state agency *pursuant to specific statutory requirements or authorizations*." *Id*. (emphasis added). Here again, EcoLogic fails to mention critical language in section 30401: "This chapter shall *not* be construed to limit in any way the regulatory controls over development pursuant to [the Commission's permitting authority]." *Id*.

When all of this language is read together, section 30401 provides that where another state agency is charged by law with establishing regulatory controls through standards or regulations, the Commission cannot supersede those controls with its own duplicative standards or regulations, but it may nevertheless use its permitting authority to impose additional requirements necessary to implement Chapter 3's resource protection standards.[4] The section cannot be read to create an *exemption* from Chapter 3 standards. Indeed, the same chapter shows that when the Legislature wants other regulatory programs to take precedence over Coastal Act policies, it knows how to do so expressly. *See* PRC §§ 30103(a) ("coastal zone" excludes jurisdiction of BCDC), 30412(b) (Commission shall not "adopt conditions, *or take any action in conflict with* any determination by the [state water boards] in matters relating to water quality.") (emphasis added), 30600(e) ("[t]his section *does not apply*" to disaster response or emergency projects(emphasis added), 30610(g) (exception for Sea Ranch).

This case does not involve the setting of duplicative standards or regulations. To be sure, under the OHV Act, State Parks is required to manage all SVRAs in a manner that provides for conservation of natural and cultural resources. PRC § 5090.35(a). But the OHV Act also makes clear that its environmental provisions are only *minimum* standards; SVRAs must *additionally* comply with all state laws and regulations "including permit requirements." PRC § 5090.39(b). This includes requirements imposed in a CDP to ensure compliance with the Coastal Act's coastal resource protection policies, as implemented through a certified LCP. And those policies require that designated ESHA be protected against any significant disruption of habitat values—an obligation the courts have repeatedly held to be a paramount concern under the Coastal Act. *See McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 923; *Douda v. California Coastal Com.* (2008) 159 Cal.App.4th 1181, 1193; *Sierra Club v. California Coastal Com.* (1993) 12 Cal.App.4th 602, 613; *Bolsa Chica Land Trust v. Superior*

[4] To provide an example, consider the California Endangered Species Act. That statute designates the California Department of Fish and Wildlife as the state agency charged with listing imperiled species as "endangered" or "threatened"—designations from which certain legal consequences flow. *See* Fish & G. Code § 2070. Section 30401 would not allow the Commission to supersede that authority by, for instance, designating an unlisted species as "listed" in the coastal zone because that is the Department's job. But the Commission could still impose appropriate permit conditions that are necessary to protect that species from harmful development in the coastal zone.

Court (1999) 71 Cal.App.4th 493, 506 ("The highest priority must be given to environmental consideration in interpreting the statute").

In sum, State Parks' delegated authority and requirements for managing SVRAs does not displace the Commission's own, independent permitting jurisdiction; rather, it "simply creates a system of overlapping jurisdiction, an uncontroversial concept under our law." *See Linovitz Capo Shores LLC v. California Coastal Com.* (2021) 65 Cal.App.5th 1106, 1117-18 (citation omitted) (holding Coastal Act's permitting authority is concurrent with, and not displaced by, state housing department's permitting authority); *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 793-94 (CDP requirements are "in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency"). Nothing in either the OHV Act or the Coastal Act—including section 30401—suggests that State Parks is exempt from the Commission's permitting authority in the coastal zone. To the contrary, the OHV Act expressly requires State Parks to comply with all permitting requirements.

C. The OHV Act Does Not Impliedly Conflict with or Place Limits on the Commission's Permitting Authority over ESHA.

Despite the absence from the OHV Act of any express exemption from Coastal Act requirements, EcoLogic insists that such exemption is *implied* by what it describes as the OHV Act's general intent to "preserve" and "expand" OHV recreation—an intent which, in EcoLogic's telling, requires that the Commission's jurisdiction to protect coastal resources give way. EOB 18-20. This argument is put to rest by the OHV Act's express requirement that the SVRA program is subject to all other state regulations and permitting requirements, discussed above. PRC § 5090.39(b). But even if that provision did not exist, it is clear that the remainder of the OHV Act is not in conflict with—and does not create an implied exemption from—the Coastal Act.

The California Supreme Court has articulated just how difficult it is to find a repeal by implication: "[A]ll presumptions are against a repeal by implication . . . Absent an express declaration of legislative intent, we will find an implied repeal only when there is no rational basis for harmonizing two potentially conflicting statutes . . ., and the statutes are irreconcilable, clearly repugnant, *and so inconsistent that the two cannot have concurrent operation*." *Pacific Palisades*, 55 Cal.4th at 805

(internal citations and quotes omitted; emphasis added). In that case, the Court held that there is no implied exemption for mobile home conversions from the requirement to obtain a CDP under the Coastal Act, "even if not fully consistent with the Legislature's expressed desire. . .to encourage or facilitate conversions." *Id.* at 806; *see also Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927, 943-46 (density bonus statutes for affordable housing do not create an exemption from the Coastal Act, despite "legislative provisions declaring the vital importance of encouraging affordable housing."). Here, even without the OHV Act's express provision subjecting SVRAs to other state permitting requirements, that act and the Coastal Act would in no way be "irreconcilable."

EcoLogic points to various provisions of the OHV Act which it claims express a legislative intent "not only to *preserve* existing OHV recreational areas but to *expand* them," and requiring SRVAs to be managed "for the purpose of providing the fullest appropriate public use." EOB at 18, 20 (citing PRC §§ 5090.02(c)(1)-(2), 5090.43(a)). But read in full, the cited sections cannot be read as requiring preservation of existing OHV levels in SVRAs, regardless of their environmental cost. On the contrary, those sections primarily express a concern with the *environmental impacts* of uncontrolled OHV use, which "may have a deleterious impact on the environment, wildlife habitats, native wildlife, and native flora," and state that effective management and conservation are essential for "ecologically balanced recreation." PRC §§ 5090.02(a)(3), (b), (c), 5090.43. Accordingly, the provisions require that SVRAs provide "for the conservation of cultural resources and the conservation and improvement of natural resource values over time," that they be managed in accordance with the OHV Act's requirements, and that they and provide only for "fullest *appropriate* use" of vehicular recreational opportunities.[5] PRC §§ 5090.02(b)-(c), 5090.43(a) (emphasis added). Clearly, OHV use is not "appropriate" where it would significantly disrupt ESHA in violation of Coastal Act and LCP policies.

EcoLogic also asserts that the Commission's jurisdiction over coastal resources must be supplanted by the OHV Act's requirements for protecting sensitive habitat, which, according to EcoLogic, directs State Parks "and no one else" to identify such habitat in SVRAs, and balance OHV

[5] Indeed, the OHV Act's environmental protection provisions expressly contemplate that SVRAs may have to suspend or be closed to OHV use in order to effectuate its statutory priority for preserving natural resources. PRC §§5090.02, 5090.35.

use with resource protection. EOB at 20; *see id.* at 30-32. But nothing in the OHV Act remotely implies that its environmental requirements are meant to be exclusive; in fact, it expressly says the opposite. PRC § 5090.39(b). And even if it had not, there is nothing irreconcilable in State Parks enforcing OHV Act requirements in SVRAs, and the Coastal Commission concurrently enforcing more stringent Coastal Act requirements where an SVRA lies in the coastal zone. Such concurrent jurisdiction is not only typical but is necessary to implement overlapping statutory mandates and does not create a statutory conflict, much less one sufficient to override the Coastal Commission's permitting authority.[6] *See Linovitz,* 65 Cal.App.5th at 117-18; *Pacific Palisades*, 55 Cal.4th at 793-94.

D. EcoLogic's Reliance on the Inoperative 1975 Coastal Plan Is Specious.

EcoLogic's suggestion that the Commission's action was unlawful because it dismantled a use "authorized by the 1975 [California] Coastal Plan" (EOB at 16) also fails. The 1975 Coastal Plan was developed pursuant to the Coastal Zone Conservation Act of 1972, the precursor to the 1976 Coastal Act. *Billings v. California Coastal Com.* (1980) 103 Cal.App.3d 729, 738. EcoLogic apparently believes that the 1975 plan's reference to ongoing OHV use at Pismo Beach (now Oceano Dunes) supports its claim. EOB at 16. That belief is misplaced. The California Coastal Plan is not, and never was, the law. That document made numerous policy recommendations to the Governor and California Legislature for consideration for inclusion in a permanent law. *See Billings*, 103 Cal.App.3d at 738. Some of those recommendations were ultimately incorporated into the Coastal Act and others were not. *See id.* (noting that a bill incorporating the 1975 Coastal Plan recommendations was rejected and that "many revisions, negotiations, and compromises . . . led to the final version" of the bill that ultimately became the Coastal Act). The Coastal Act, as finally enacted in 1976, did not mention Pismo Beach, Oceano Dunes, or SVRAs. That EcoLogic places so much emphasis on two passing references to Pismo Dunes in a vision document that was superseded by the adoption of an actual law tells the Court all it needs to know about the strength of Petitioners' legal claims. *See*, *e.g.*, EOB at 6-8, 14, 16, 21.

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[6] EcoLogic also relies on the fact that "the original 1982 version of the OHV Act expressly referenced" the park as an SVRA, and that State Parks' current implementing regulations do likewise. EOB at 18 (citing Cal. Code Regs., tit. 14, § 4609). But it offers no explanation as to how general references to the park in a prior statutory provision, since repealed, or in a regulation setting safety requirements for OHVs, can override the Coastal Act's coastal protection policies.

E. The Case Law Cited by EcoLogic Is Inapposite in All Respects.

EcoLogic cites two cases—*Schneider v. California Coastal Com.* (2006) 140 Cal.App.4th 1339, and *California Coastal Com. v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579—in support of its statutory construction argument, neither of which is instructive. In *Schneider*, the court ruled that the Commission exceeded its authority by imposing CDP conditions intended to protect the view of the shoreline from the perspective of someone on the water, holding that while the Coastal Act authorizes conditions to protect public views "to and along the ocean and scenic coastal areas," that authority applies only to views of the ocean from the land. 140 Cal.App.4th at 1345 (citations omitted). If anything, *Schneider* strongly supports the *Commission's* position here that the Court should not add language to a statute which the Legislature itself did not include.

Quanta Investment is no more helpful. The question before that court was whether the conversion of apartments into stock cooperatives constituted "development" within the meaning of section 30106 of the Coastal Act. Because that section defines development to include subdivisions under the Subdivision Map Act, the court performed a detailed analysis of the Map Act and concluded that the conversion was not a "subdivision." *Quanta Investment*, 113 Cal.App.3d at 600. But the court then went on to broadly construe the additional words "any other division of land" in section 30106 to include stock cooperative conversions. *Id*. at 609. Thus, contrary to Petitioners' misreading of the case, *Quanta Investment* did *not* hold that stock cooperative conversions were not development under the Coastal Act or that Commission lacked authority because "the regulation of stock cooperatives was run by a separate statutory scheme." EOB at 15. The court, noting that the Coastal Act must be "liberally construed to accomplish its purposes and objectives," held that "development" includes the proposed conversion and granted the Commission's request for a preliminary injunction. *Quanta* Investment, 113 Cal.App.3d at 609.

In short, while the OHV Act authorizes OHV use in SVRAs, it does not do so at the expense of environmental protections, whether required by the OHV Act or other state laws like the Coastal Act. Thus, EcoLogic's claim that the Commission lacks permit authority over SVRAs must fail.

II. The Commission's Action to Exclude OHV Use in ESHA Is Consistent with—and Compelled by—the LCP

EcoLogic next claims that the Commission's action to exclude OHVs from ESHA is inconsistent with the applicable LCP,[7] and therefore invalid. EOB at 28-29. On the contrary, the LCP's ESHA policies—which EcoLogic fails to mention—*flatly prohibit* any uses within or adjacent to ESHA that would "significantly disrupt" ESHA. AR36983. The Commission found that OHV use is significantly disrupting the park's ESHA, a finding EcoLogic does not (and cannot) contest. Nor is there any policy or standard in the LCP that exempts OHV use from the ESHA requirements. Thus, having found OHV use incompatible with the protection of ESHA, the Commission was required by the LCP to prohibit OHVs in the park.

A. The Commission's Undisputed Finding that OHV Use Significantly Disrupts ESHA Is Dispositive

An LCP's policies "must, at a minimum, conform to and not conflict with the resource management standards and policies of the [Coastal] Act." *McAllister,* 169 Cal.App.4th at 930. The Coastal Act requires that ESHA "shall be protected against any significant disruption of habitat values." PRC § 30240(a). As courts have made clear, the Coastal Act's ESHA policy "unambiguously establishes. . . there can be no significant disruption of habitat values" in ESHA. *Id.* at 928. The LCP's ESHA policy closely mirrors the language of the Coastal Act, providing that "within or adjacent to locations of environmentally sensitive habitats *shall not significantly disrupt the resource*." AR36983 (ESHA Policy 1) (emphasis added); *see also* AR36986 (Policy 7, coastal wetlands), 36992 (Policy 21, coastal streams), 36994 (Policy 29, terrestrial habitats). Tellingly, this key LCP policy is not mentioned at all by EcoLogic.

EcoLogic does not dispute that the portion of the park subject to the Commission's motorized vehicle restriction is designated as ESHA in the LCP's South County Area Plan. EOB at 28-29. Nor does it dispute the Commission's finding that continued OHV activity would significantly disrupt the

[7] EcoLogic cites to the LCPs of both the County and the City of Grover Beach. However, because only the northernmost portion of the park—and none of the current OHV riding area—lies within Grover Beach (*see* AR42-3), references to the "LCP" herein refer to the County's LCP unless otherwise noted. In addition, for certain portions of the riding area—including Arroyo Grande Creek—the Coastal Act's policies, not the LCP, provide the applicable standard. AR43, 323.

ESHA that comprises the dunes, or any of the voluminous evidence upon which that finding is based. *See, e.g.,* AR4 277-84 297-354 15615-26 15699-703. The Commission's unchallenged finding is thus dispositive: continued OHV use in the park's ESHA is barred under the LCP because it significantly disrupts the resource.

B. The LCP's OHV Recreation Policies Do Not Override the LCP's Protection of ESHA from Significant Disruption

EcoLogic nevertheless challenges the Commission's LCP consistency finding as an abuse of discretion, asserting that the LCP's recreation policies "specifically authorize and promote OHV uses," and thus the Commission's action is "entirely inconsistent" with the LCP. EOB at 28. But nothing in those policies comes close to suggesting that OHV use trumps the LCP's clear, mandatory policy prohibiting uses that significantly disrupt ESHA.

Pointing to the LCP's discussion of the Oceano Dunes SVRA, EcoLogic asserts that the LCP "acknowledges the ODSVRA is famous for recreational OHV riding," "recognizes the ODSVRA . . . provides recreational opportunities, including OHV riding," and "explains the unique task of determining the appropriate level of recreational use" in the park. EOB at 28 (citing AR36926, 36928). But the fact that LCP "acknowledges" and "recognizes" the existence of OHV use at the park does not mean it allows that use regardless of its impacts. The cited passages actually express a high level of concern about the environmental impacts of OHV use in the park, explain that the Coastal Act gives priority to protecting ESHA over recreational uses, and make clear that recreational uses in the park must be further restricted if environmental impacts warrant. AR36928.

Indeed, the more specific policies governing OHV use in the park, which are found in the recreation standards in the South County Area Plan, are all framed in terms of *limiting* the extent of OHV use to protect ESHA, and expressly defer to the Commission's CDP to establish those limits.[8] *See* AR37449 (Standard 4: State Parks shall commit sufficient resources to enforce access restrictions in the CDP), 37450 (Standard 7: camping "may" be appropriate "subject to the numerical limitations of the [CDP]," adjusted based on the impacts of the use), 37450-51 (Standards 8 and 9: ORV use is prohibited

[8] This is not surprising, since the LCP was not certified until 1986, several years after the CDP was approved in 1982. AR36116-20, 38302.

outside habitat areas fenced per the CDP, within any vegetated areas, or east of the Sand Highway). The LCP then goes further, recognizing that even the CDP's restrictions may not be "sufficient to regulate [OHV] use in a manner consistent with the protection of resources," and that the County reserves the ability to impose an "interim *moratorium on ORV use*" as may be necessary "to protect resources." AR37449 (Standard 4). Consistent with the LCP's "overriding concern" of resource protection, these policies make clear that OHV use in the park is secondary to protection of ESHA—a preference that is consistent with the Coastal Act. *Bolsa Chica,* 71 Cal.App.4th at 508 (Coastal Act provides "heightened protection to ESHA's"); *Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1377 (through the Coastal Act, the people "have unequivocally voiced a strong preference for the natural state of the coast and deemed it to be a valuable asset that must be protected, preserved, restored, and maintained, especially in ESHA's and areas adjacent to them").

EcoLogic also cites to the LCP's general recreational policy of protecting and encouraging "coastal recreation," and prohibiting removal of "existing lower cost facilities and opportunities" unless replaced by a facility offering comparable opportunities. EOB at 29 (citing "Policy 1," AR36928). But again, EcoLogic points to nothing in this general policy that elevates recreational uses over protection of ESHA. The LCP is clear that the opposite is true—Recreation Policy 2 states: "All uses shall be consistent with protection of significant coastal resources." AR36928. This follows the Coastal Act's policy of maximizing recreational opportunities "consistent with . . . the need to protect natural resource areas from overuse."[9] PRC § 30210; see also *id.* §§ 30212(a)(1), 30214(a)(2).

Moreover, the Commission found that phasing out of OHVs will result in *expanded* opportunities for other forms of recreation such as general beach use, fishing, hiking, and bird-watching, which had previously been "overtaken by the vehicular uses that predominate the Park" due to "incompatibility between vehicular recreation and these other forms of recreation." AR30; *see also* AR76-80. The

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[9] EcoLogic also cites to recreational policies in the Grover Beach LCP. EOB at 29. That LCP covers only the northern portion of the park where OHV use has never been allowed under the CDP and is thus not affected by the OHV restriction AR22, 210, 37480. But in any case the Grover Beach LCP does not help EcoLogic because, like the County LCP, it recognizes that recreation is not appropriate in sensitive habitats. *See, e.g.,* AR239 (Grover Beach LUP Policy 5.7.C: "Ensure that public access to the beach and shoreline is consistent with the protection of natural resources."), *id.* (Grover Beach LUP Policy 2.1.5.B.5: ESHA "shall be protected against any significant disruption of habitat values").

Commission also found that most camping in the park has occurred in RVs, which is considered a "higher cost" activity. AR76-77. The Commission's action will thus provide for new opportunities for traditional tent camping and other forms of "lower cost" recreation, and will be especially attractive "for families looking for unique lower cost recreational and outdoor opportunities." AR2. And the park will continue to provide unique vehicle recreation opportunities in the form of beach driving and camping for street-legal vehicles outside of ESHA—activities that are not allowed on any other state beach. AR16, 22-23. Thus, the Commission's action is not only compelled by the LCP's ESHA policies, but also promotes the LCP's policies of expanding lower cost and passive recreational opportunities. *See, e.g.,* AR36928 (Recreation Policy 1), 37451 (Recreation Standard 13: "Non-ORV-dependent uses such as camping, hiking trails, and passive use areas shall be identified and developed.").

In short, both the Coastal Act and the LCP's clear, unambiguous ESHA policy prohibits any activity in ESHA that would significantly disrupt the resource. Because it is undisputed that OHV recreation would do so, the Commission's action is consistent with the Coastal Act and County's LCP.

III. The CDP Expressly Authorized the Commission to Further Restrict OHV Use as Necessary to Protect ESHA.

EcoLogic also contends that the Commission's decision to eliminate OHV use in the park was not authorized by the CDP. EOB at 16-17. Not so.

From its inception in 1982, the CDP was clear that OHV use in the park was an unresolved issue, subject to further review and restriction. The original CDP required an annual review of the effectiveness of the permit conditions, and. expressly provided that "OHV access may be further limited pursuant to the access and habitat protection policies of the County certified Land Use Plan" if OHV use "is not occurring in a manner that protects environmentally sensitive habitats." AR36117, 36120.

The Commission's authority was later strengthened amid growing concerns about the impacts of OHV activity on the park's ESHA. In 2001, the CDP was amended to set "interim vehicle (street-legal, off-highway vehicle, and camping) limits," establish a Technical Review Team to provide management recommendations regarding protection of ESHA, and authorize the Commission to annually review the effectiveness of the park's management. AR35114. The interim vehicle limit was to be renewed each year only if the Commission "is satisfied with the review," and if it is not, the permit authorizes the

Commission to institute "*an alternative approach to resource management, or set of management measures*." *Id.* (emphasis added). Faced with the failure of prior approaches to protect ESHA from significant disruption, the Commission, through its 2021 action, instituted the alternative approach of eliminating OHVs in ESHA.

EcoLogic argues that the CDP did not allow the Commission to take this step "unilaterally," but authorized only a "collaborative effort" with State Parks and the County. EOB at 16-17. This argument finds no support in the CDP. As amended in 2001, the CDP does provide for a measure of inter-agency collaboration in the form of the TRT process. But it places the decision over whether to impose OHV restrictions squarely with the Commission and it does not require the concurrence of State Parks or the County.[10] *See* AR35114 (Special Condition 2). EcoLogic insists that the Commission's efforts in implementing annual reviews "have always been collaborative in nature" (EOB at 17). But the fact that the Commission has striven to be collaborative does not mean it has forfeited its authority under the CDP to impose OHV restrictions that are necessary to protect ESHA.

EcoLogic alternatively argues that the CDP's annual review provision is not lawful, because State Parks may not "cede" to the Coastal Commission the authority to shut down OHV use without an "act of the Legislature." EOB 16-17. But as discussed in Section I above, the Legislature *has* acted by expressly requiring state agencies to comply with Coastal Act permitting requirements, and by expressly subjecting SRVAs to all state regulations, including permitting requirements. Moreover, the time for challenging the validity of the CDP's conditions has long since passed. A permittee is "subject to the limitations in the permit under which he claims" and "is barred from challenging a condition imposed upon the granting of a special permit if he has acquiesced therein by either specifically agreeing to the condition or failing to challenge its validity, and accepted the benefits afforded by the permit." *County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510-11; *accord Lynch v. California Coastal Com.* (2017) 3 Cal.5th 470, 476; *see also* PRC § 30801 (60 day statute of limitations for challenging CDPs). The CDP

[10] Indeed, a requirement that the County concur in any OHV restrictions was added to the CDP in a 1983 amendment, but was eliminated in the 2001 amendment. *See* AR36093, 35114. The CDP has never required State Parks concurrence. *See id*.; AR36120

established Commission authority to further restrict OHV use in the park in 1982, and the operative permit conditions have been in place since 2001; any challenge to their validity was waived long ago. *Id.*

IV. OHV Use in the Dunes Prior to 1977 Did Not Create a "Vested Right" to Continue such Use, and any Claim of a Vested Rights Exemption from Coastal Act Requirements Was Waived When the CDP Was Accepted.

Like Friends, EcoLogic claims the Commission's action infringes on a "vested right" to continue OHV use in the park. EOB at 20-21. EcoLogic's vested rights argument has an entirely different basis than Friends', but it is equally meritless.

EcoLogic's vested rights claim is grounded not in the CDP, but in the existence of OHV use in the dunes at Oceano prior to the effective date of the Coastal Act in 1977. According to EcoLogic, that historic use gave rise to a "vested right" in continued OHV use in the park, and thus the Commission lacks any permitting authority over such use under Public Resources Code Section 30608.[11] EOB at 20-21. This argument misunderstands the concept of vested rights. A landowner[12] does not obtain a vested right to a use of property merely because the use previously occurred or was allowed. *See Davis v. California Coastal Zone Conservation Com.* (1976) 57 Cal.App.3d 700, 708 ("Landowners have no vested rights in any particular use of their property" unless restrictions on that use amount to a taking of property). A vested right does not arise "until a valid building permit, or its functional equivalent, has been issued and the developer has performed substantial work and incurred substantial liabilities in good

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[11] That section provides: "No person who has obtained a vested right in a development prior to the effective date of this division … shall be required to secure approval for the development pursuant to this division." PRC § 30608.

[12] As a threshold matter, EcoLogic cites no authority that it may maintain a vested rights claim—which arises from property rights—on behalf of State Parks or the County, the actual *owners* of the property in the park. A party lacks standing to assert a claim involving the alleged violation of another's property rights. *Martin v. Bridgeport Cmty. Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1032 ("ownership in the Property is a prerequisite to standing to assert each of the causes of action as each seeks redress for violations of rights of the owners of the Property, for which the causes of action are not assignable."); *see Davis,* 57 Cal.App.3d at 708 (vested rights claim arises only where restrictions on the use of a landowner's property "constitute an uncompensated taking . . . or damaging of the property"). Nor do Petitioners contend that their own interest in OHV use (or that of the public) is sufficient to give them an independent vested right, which contention would fail. *See, e.g., Gallegos v. State Bd. of Forestry* (1978) 76 Cal.App.3d 945, 950 (while public interest in timber resources involves a fundamental right, "neither appellants nor the public has any *present possessory, or vested, right* in the timberlands in question.") (emphasis added) The Court may dispose of EcoLogic's vested rights claim on this ground alone.

faith reliance on the permit." *Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 321 (citing *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785 and other cases). "Courts have yet to extend the vested rights or estoppel theory to instances where a developer lacks a building permit or the functional equivalent . . . California courts apply this rule *most strictly*." *Toigo*, 70 Cal.App.4th at 321-22 (emphasis added).

The mere use of OHVs at Oceano prior to 1977 does not meet this requirement. EcoLogic points to no evidence of *any* pre-1977 permit authorizing OHV use on the property, much less evidence of any substantial work undertaken in reliance on such permit. It cites only the 1975 Coastal Plan (EOB at 21), but that plan was not a "permit," much less a building permit equivalent. As discussed in Section I.D above, the 1975 Coastal Plan provided only recommendations to the Legislature, some of which—including the cited provisions regarding OHV use in the park—the Legislature declined to incorporate into the Coastal Act. *See* PRC § 30002; *Billings,* 103 Cal.App.3d at 738. A policy recommendation does not remotely qualify as a functional equivalent of building permit.[13] *Toigo*, 70 Cal.App.4th at 322 (preliminary approvals do not create vested rights).

Nor is the CDP a "retroactive" application of Coastal Act requirements as alleged by EcoLogic. EOB at 20-21. "'A statute does not operate "retrospectively" merely because it is applied in a case arising from conduct antedating the statute's enactment [citation], or upsets expectations based on prior law. Rather, the court must ask whether the new provision attaches new legal consequences to events *completed* before its enactment.'" *Hermosa Beach Stop Oil Coal. v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 550 (quoting *Landgraf v. USI Film Prod.* (1994) 511 U.S. 244, 269) (emphasis added). The CDP attaches no legal consequences to OHV use that occurred prior to 1977; it applies only to prospective OHV use occurring after the permit was approved in 1982. Because there was no vested right in continued OHV use, the CDP had no retroactive effect. *Id.* at 550-53 (measure banning new oil wells, though upsetting expectations, did not retroactively impair vested rights where drilling permits had not yet been obtained).

[13] The present case thus bears no resemblance to *Pardee Construction,* the case relied on by EcoLogic, because that case involved a developer who had obtained building permits and had completed extensive construction work in reliance thereon. *Pardee Constr. Co. v. California Coastal Comm.* (1979) 95 Cal.App.3d 471, 474.

Even if there were a vested right arising from pre-1977 OHV use, any claim of a Coastal Act exemption based on those rights is about 40 years too late. Commission regulations require that any person claiming a permit exemption under Public Resources Code Section 30608 "must file a claim of vested rights with the commission and obtain approval under this subchapter."[14] Cal. Code Regs., tit. 14, § 13201. It is settled that where a permittee "*fails to seek such a determination but instead elects to apply only for a permit*, he cannot later assert the existence of a vested right to development, i.e., the [permittee] waives his right to claim that a vested right exists." *LT-WR, L.L.C. v. California Coastal Com.* (2007) 151 Cal.App.4th 427, 785 (citing *Davis*, 57 Cal.App.3d at 708 and *State of California v. Superior Court* (1974) 12 Cal.3d 237, 248-50, 252) (emphasis in original); *see also* PRC § 30801 (60 day statute of limitations for challenging CDPs). Because State Parks never sought a vested rights determination from the Commission in 1982, but instead sought and accepted the CDP, any vested rights exemption claim is waived.

V. The Commission Complied with CEQA.

Lastly, EcoLogic claims that the Commission, in approving the CDP amendment, violated CEQA. EOB at 24-27. That claim also fails.

The Commission's program for reviewing and issuing coastal development permits is a certified regulatory program under CEQA Guidelines. PRC § 21080.5(a); Cal. Code Regs., tit. 14, §§ 15250, 15251(c). That means the Commission need not prepare an Environmental Impact Report ("EIR") or comply with CEQA's other procedural requirements. PRC § 21080.5(a). Instead it may rely on the documents prepared under its regulatory program, which serve as the "functional equivalent" of an EIR. *Id.; San Joaquin River Exchange Contractors Water Authority v. State Water Resources Control Bd.* (2010) 193 Cal.App.4th 1110, 1125. The Commission must comply with its regulatory program and with CEQA's substantive requirements to analyze the project's significant effects on the environment, and to consider feasible alternatives or mitigation measures that would lessen any significant effects. PRC §§ 21080.5(a) and (c), 21080.1(b).

[14] The regulations provide a detailed process for submitting and deciding vested rights exemption claims. *See* Cal. Code Regs., tit. 14, §§ 13202-05.

The Commission's program requires the preparation of a written staff report meeting a number of specified requirements, a public hearing, and written findings supporting the Commission's decision. Cal. Code Regs., tit. 14, §§ 13057, 13062, 13096. The staff report and findings must include "an analysis of whether the proposed development conforms to the applicable [LCP policies]." *Id.* § 13057(a)(3). Here, the Commission prepared a comprehensive 200-page staff report analyzing the conformity of the proposed CDP amendment with the Coastal Act and applicable LCPs, which the Commission adopted with revisions as its findings. *See* AR1-203. That analysis thoroughly analyzed the environmental effects of the proposed amendment and fully complied with the Commission's certified regulatory program.

EcoLogic's generalized CEQA argument is made without reference to any alleged significant environmental impact of the action, much less any evidence showing such impact, which alone is fatal to its claim. But in any case, the Commission fully complied with the requirements of its certified regulatory program and CEQA's substantive requirements to disclose the proposed action's potential environmental effects. And, having found no adverse effects on the environment, the Commission was not required to study further mitigation measures or alternatives.

A. The Commission Properly Analyzed the Environmental Effects of Restricting OHVs, and Its Finding that Those Impacts Would Be Insignificant or Beneficial Is Supported by Substantial Evidence.

EcoLogic asserts that the Commission violated CEQA because its staff report "fails to analyze any of the potentially significant impacts actually associated with the [amended CDP]," calling out five general impact categories: recreation, coastal access, historical and cultural uses, economic impacts leading to physical blight, and local land use plan consistency. EOB at 24-25. In support of this sweeping claim, EcoLogic does not bother to identify *any* specific impact of the amended CDP in *any* of these categories, or point to a *single* page in the record purporting to show such impact.[15] Instead, its

[15] Indeed, some of the broad impact categories flagged by EcoLogic would not appear to even qualify as environmental effects under CEQA. For example, to the extent EcoLogic is claiming that impacts *to OHV recreation* is an adverse environmental effect under CEQA, it is mistaken. CEQA considers only effects on the *environment*, which is defined as "the *physical conditions* which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance." Cal. Code Regs., tit. 14, § 15360 (emphasis
(footnote continued on next page)

argument is entirely based on a claim that the staff report analyzed only the impacts from OHVs in the park, and not the impacts of *eliminating* OHVs from the park. *Id.* Even a cursory review of the staff report shows this claim is false.

For each of the impact categories analyzed in the staff report, including those referenced by EcoLogic, the staff report considered the impacts *both* of renewing the CDP's OHV authorization *and* of phasing out OHV under the proposed CDP amendment. For example, the staff report acknowledged and discussed at length the impact of the loss of OHV and dune camping opportunities under the permit amendment, but also found that other passive and lower cost recreational opportunities that had been "overtaken by the vehicular uses that predominate the Park" would be enhanced. *See* AR30, 76-80, 119-21, 179; *see also* AR168 (absent OHVs, park can provide "new and diverse recreational offerings, particularly lower cost and unique offerings"). The report concluded that, under the amendment, the park would "still be one that allows the motoring public to enjoy low-cost recreation, including beach camping, albeit without OHVs," provide beach access and "myriad other activities," allow beach camping along roughly the same amount of shoreline as today, enable "lower-cost and ADA accessible beach vacations," and "open up new access opportunities" for underserved communities. AR120-21.

The staff report similarly analyzed the effects of the proposed OHV restriction in each of the other impact categories cited by EcoLogic. *See, e.g.,* AR122-26 (analyzing impacts to tribal cultural resources caused by OHVs, and acknowledging that those impacts would be addressed by removal of OHV use in the dunes), 116-18 (discussing adverse impacts of OHV use on local economic growth and community investment), 163-69, 167 (analysis of local economic impacts with and without OHVs, and concluding "OHV use can be eliminated without significant economic hardship to the region"), 52-75 (detailed analysis of applicable LCP policies, concluding that they prohibit OHV use in the park's ESHA). Because EcoLogic fails to acknowledge any of this analysis—much less identify how it is

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added). An impact on recreation is not an environmental effect under CEQA except to the extent it leads to the construction of new facilities or otherwise results in an adverse *physical* impact. *See* CEQA Guidelines Appendix G, XV (Recreation); *Save Our Access-San Gabriel Mountains v. Watershed Conservation Authority* (2021) 68 Cal.App.5th 8, 24-27 (displacement of park recreation from reduced parking "may have an adverse social impact for those who must recreate elsewhere" but is not itself an adverse physical effect on the environment under CEQA). EcoLogic has not pointed to any adverse effect on the physical environment arising from restricting OHV use in the park.

deficient—its claim fails. Cal. Code Regs., tit. 14, §§ 15064(d)(3), 15252(a) (CEQA analysis need only consider reasonably foreseeable, potentially significant impacts); *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, 1352 ("Unsubstantiated opinions, concerns, and suspicions about a project" are not enough to support claim of significant environmental effect).

EcoLogic alternatively argues that even if the Commission's analysis is adequate, its findings were not supported by substantial evidence. EOB at 25-27. Here again, EcoLogic fails to identify any specific significant impact of the CDP Amendment that it claims was ignored, much less point to any record evidence demonstrating such impact. And again it ignores the record, which is replete with evidence supporting the Commission's findings of no significant impact. For example, the record includes a study from an academic with 25 years of experience studying beach economics which concluded that ending OHV use in the park would likely be offset by an *increase* in park users who want a more passive recreational experience—a conclusion bolstered by another study showing an increase in hotel tax receipts during the pandemic when OHV use was suspended. AR164-67, 390, 30329; *see also* AR168 (results of series of stakeholder outreach meeting showing demand for alternative recreational uses in the park), 116-17 (community members reporting increased passive park use during OHV suspension period).

Substantial evidence also supports the findings in the other impact categories cited by EcoLogic. *See, e.g.,* AR76-77, fn. 68 (data and findings from 2014 Public Workshop on Lower Cost Visitor Serving Accommodations showing that RV camping is high cost), 124-25 (letter and communications with Chumash tribal representative regarding tribal cultural resources), 117 (communications with residents, letter from County Counsel, and grand jury report regarding economic and safety impacts of OHV use), 164-69 (discussion of expert reports showing no adverse economic impacts from ending OHV use), 380-96 (independent peer review of economic impact analysis), 30306-36 (economic impact study). Indeed, the record contains thousands of pages of studies and articles further informing and supporting the Commission's analysis. *See* AR12730-16717. EcoLogic fails to cite or refute any of this evidence.

As a petitioner, EcoLogic "bears the burden of proving there was no substantial evidence in the record to support the agency's decision." *In re Delta Stewardship Council Cases* (2020) 48 Cal.App.5th

1014, 1072 ("*Delta*"). To do so, it must "lay out the evidence favorable to the other side and show why it is lacking. *Failure to do so is fatal*." *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266 (emphasis added). "A reviewing court will not independently review the record to make up for [petitioner's] failure to carry his burden." *Delta,* 48 Cal.App.5th at 1072. "Where, as here, an opening brief fails to recite and discuss the record that supports the challenged agency decision, *the [petitioner] is deemed to have forfeited the substantial evidence argument.*" *Id.* (emphasis added).

EcoLogic fails not only to lay out the ample evidence supporting the Commission, but to cite any evidence to support its *own* claim. Its substantial evidence claim thus is forfeited, in addition to failing on the merits.[16]

B. Because the Amended Permit Would Have No Significant Impacts, No Other Mitigation or Alternatives Need Be Considered.

EcoLogic also complains that "nowhere does the Staff Report identify or discuss potentially feasible mitigation measures or alternatives that could reduce the action's impacts on the environment." EOB at 25. This claim fails because, as discussed above, the Commission found that the CDP amendment will not cause any significant impacts on the environment.

A CEQA document "need not consider every conceivable alternative to a project . . . Moreover, alternatives *shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project*." *Center for Biological Diversity v. Dept. of Forestry & Fire Protection* (2014) 232 Cal.App.4th 931, 947 (citations omitted; internal quotations omitted; emphasis added); *see* Cal. Code Regs., tit. 14, § 15126.6(a). Likewise, an agency need only provide mitigation for *significant* environmental impacts. PRC §§ 21002.1(a), 21081(a)(1).

As discussed above, the staff report analyzed the effects of the proposed CDP amendment, and of continuing with the prior OHV use. It concluded that the proposed CDP amendment, with the required permit conditions, would have no significant environmental effects, and indeed would *reduce*

[16] Even if EcoLogic had cited contrary evidence, the Commission would still prevail because there is substantial evidence to support the Commission's findings. A court must uphold the agency's decision if there is *any* substantial evidence in the record to support the agency's determination. *Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 47 Cal.3d 376, 393; *see also* Cal. Code Regs., tit. 14, § 15384(a).

impacts compared to existing conditions. AR190 (CDP amendment "will in fact provide mitigation for the impacts occurring under the status quo"). Accordingly, the Commission was not required to consider any further mitigation measures or alternatives.

For the same reason, this case is distinguishable from *Friends, Artists & Neighbors of Elkhorn Slough v. California Coastal Com.* (2021) 72 Cal.App.5th 666 ("*Elkhorn*"), upon which EcoLogic relies. *See* EOB at 24-25. In that case, the staff report had found the project would have significant impacts, and that alternatives were needed to address five different impact categories. Because staff was recommending denial, information on the alternatives was not developed. *Elkhorn,* 72 Cal.App.5th at 701. However, the Commission disagreed with the staff recommendation and approved the project *before* doing any further review of alternatives. *Id.* at 701-02. The court held that the environmental review was incomplete because the staff report "did not discuss alternatives or mitigation measures *despite finding significant impacts*." *Id.* at 699 (emphasis added).

Here, EcoLogic has pointed to no purported significant impact of the proposed amendment on the physical environment that would require further mitigation, nor has it identified any additional mitigation measures or alternatives the Commission should have considered.[17] Thus, it has failed to meet its burden of showing the Commission violated CEQA. *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 199 (a CEQA challenger "may not simply claim the agency failed to present an adequate range of alternatives and then sit back and force the agency to prove it").

C. State Parks Did Not Violate CEQA

EcoLogic's final CEQA claim—that State Parks violated CEQA to the extent it was the project "applicant"—is specious. As discussed above, CEQA was fully complied with. Moreover, the CDP

[17] Moreover, to the extent EcoLogic is implicitly suggesting the Commission should have considered an alternative that allows some amount of OHV use in the park to continue, the argument additionally fails because the Commission found that allowing *any* OHV recreation to continue in the park would be inconsistent with the LCP's ESHA policies, and thus is not legally feasible. CEQA does not require consideration of infeasible mitigation or alternatives. Cal. Code Regs., tit. 14, §§ 15126.6(a), 15126.4(a)(1); *see* PRC §§ 21004 ("[I]n mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than" CEQA); *Sierra Club v. California Coastal Com.* (2005) 35 Cal.4th 839, 859.

amendment was approved by the Commission, not State Parks. CEQA review is required only when an agency proposes to approve or "carry out" a project. *See* PRC §§ 21080, 21065; Cal. Code Regs., tit. 14, § 15352(b). Because State Parks did not propose and took no action to approve the CDP amendment, it could not have violated CEQA.

CONCLUSION

For all of the foregoing reasons, the Commission respectfully requests that EcoLogic's petition be denied.

Dated: March 28, 2023

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